

## DE JURE NEXUS LAW JOURNAL

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### **PARLIAMENTARY PRIVILEGES**

*According to Erskine May, "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament or by either house of parliament without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law."*

*Privilege is a special right, benefit, or immunity enjoyed by someone. So, in simple words, Parliamentary Privileges are certain types of rights, immunities, and exceptions enjoyed by both the houses of parliament and members of both the houses and committees.*

#### **History of Parliamentary Privileges**

For the first time in India Parliamentary privileges were introduced in the year 1883 with the help of the Charter Act of India, 1883. Through this act 4th member was added to the governor-general's council, which grew as full-fledged legislative machinery.

After that in the year 1909, Indian Council's Act, 1909 was introduced which provided for indirect elections, and after that officially privileges were provided.

Then Freedom of Speech in the legislature was given by the Government of India Act, 1935.

Currently, certain articles of the Constitution of India provide for these Privileges but certain statutes, rules of procedure of house, these continue to be based on the precedents of the House of commons.

#### **Sources of Parliamentary Privileges**

Article 105 of the constitution of India gives the right of freedom of speech and also the right of publication of its proceedings. The concept of Parliamentary privileges is borrowed from the British constitution. The main purpose for granting these privileges is to maintain the supremacy of the Parliament and its members. So, Article 105 and Article 122 deals with the Privileges of Parliamentary members and both the houses.<sup>1</sup>

Article 194 and Article 212 deal with the privileges and immunities of State legislatures and their members.<sup>2</sup>

Parliamentary privilege is also defined under Section 3 of The Parliamentary Proceeding (Protection of Publication) Act, 1977, 'Publication of reports of Parliamentary proceedings privileged' is provided, where no member shall be held liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of substantially true report of any proceeding of either House of Parliament.<sup>3</sup>

Various laws made by Parliament, Rules of both the Houses, Parliamentary conventions, and Judicial interpretations also provide for certain types of Parliamentary Privileges and their protection.

### **Purpose of Parliamentary Privileges**

These rights, immunities, privileges, exemptions are granted to members of each house of parliament in order to ensure the independence and effectiveness of their actions. These privileges are given in order to save the members from any kind of obstruction they face while discharging their functions. In order to maintain dignity and authority and protect the honor of members of parliament, these privileges are granted.

### **Types of Parliamentary Privileges**

Parliamentary privileges are categorized into two categories based on specification and recognition.

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<sup>1</sup> Article 105, The Constitution of India.

<sup>2</sup> Article 194, Constitution of India.

<sup>3</sup> Section 3, Parliamentary Proceeding (Protection of Publication) Act, 1977.

First is that are specified and listed in the Constitution of India and Second is that are not listed anywhere but are recognized.

The first category of Parliamentary privileges includes-

1. Freedom of speech
2. Immunity from any type of proceedings in court related to anything said in houses of Parliament.
3. Immunity from liability relating to any publication of proceedings of both the houses of Parliament.

The second category of Parliamentary privileges includes-

Under this category, all the privileges that were enjoyed by the House of Commons (Parliament of United Kingdom) of United Kingdom at the time of commencement of Constitution and India and these rights will remain in force until they are modified and defined by the Parliament of India.

These privileges are also categorized on the basis of beneficiaries which are as follows-

1. Enjoyed by Parliament as a whole on a collective basis.
2. Enjoyed by members of both the houses individually.

### **Collective Privileges**

1. Right to publish or deny to publish any report, proceeding, debate by the Houses of Parliament.

It explicitly stated that the Media houses can publish the true proceedings of houses of parliament except if it relates to any kind of secret meeting. This right to media houses was given by the 44th amendment of the Act of Parliamentary privileges.

2. Right to Exclude strangers from its proceeding.
3. Right to organize for secret sittings of the house.
4. Right to suspend or expel any member if he has committed a breach of privileges.
5. Right to receive immediate information of arrest, detention, conviction or imprisonment of any member.
6. Right not to get any proceeding of the houses to be inquired by any court of Law.

7. Right of immunity from arrest of any member of either house without prior permission from the Presiding officer of the house.
8. Right to initiate any kind of inquiry.
9. Right to punish any member or outsider for the breach of privileges of the house.
10. Right to make rules for the regulation of the procedures, conduct the business of the house.

### **Individual Rights of members of House of Parliament**

1. Right against arrest – No member of the house of Parliament can be arrested during its session. Also, no member can be arrested 40 days before the beginning of the session and 40 days after the end of the session of Parliament.

In the case of P.V. Narasimha Rao v. State, some of the MP's received bribes to vote against the motion of the no-confidence against the then Prime Minister P.V. Narsimha Rao. In this case, the question arose that under Article 105(2) does any member of parliament have any immunity to protect himself in criminal proceedings against him? Court held that under Article 105(2) the members of the parliament will get immunity and thus, the activity of taking bribes by the MP's will get immunity.<sup>4</sup>

2. Freedom of Speech – Each member of Parliament is granted freedom of speech in the house of Parliament. Any kind of court proceedings can't be initiated against any member for a speech delivered in any house of Parliament. This right is regulated by the certain provisions enumerated in the rules of the house of Parliament.

In the case of Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukherjee, the appellant was an elected member of the West Bengal Legislative Assembly, who made a publication of slanderous accusations against the respondent. Respondent, who was functioning as a Sub-Divisional Magistrate with an intention to be read by the other members of the Parliament. Thus, Court held the provision under Article 94 even though disallowed by the speaker were a part of the proceedings of the house and the appellant will not be

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<sup>4</sup> P.V. Narasimha Rao vs State(Cbi/Spe) on 17 April, 1998.

prosecuted, as Article 194(1) not only allow freedom of speech but also give the right to ask the question and publish them in the press.<sup>5</sup>

3. Exemption from Jury Service – Any member of either house of parliament can deny giving any kind of evidence in the court of law and they can also deny appearing as a witness in any court of Law.

### **Breach of Parliamentary Privileges**

If in any case, any member of either house of Parliament breaches any kind of collective or individual privilege, for example, he/she abuses, disrespects, or attacks any kind of Privilege in the house of Parliament then he/she is considered to cause the Breach of Privileges.

Parliamentary Privileges are created for the sole purpose that the House of Parliament and its members are respected and valued by everyone. So, the need arises to keep check any if this kind of incident takes place.

‘Privilege Motion’ is used to ensure a minister for the breach of the parliamentary privilege. In order to raise the question of privilege Adjournment motion and token cut motion can’t be used.

Judicial Powers vests with the parliament of India in order to punish the members of the houses or the outsider for any breach of privilege. There is a committee called ‘Committee of Privileges’ which is of semi-judicial nature. It is responsible for examining the privileges’ breach. There are 15 members in the committee of privileges for Lok Sabha while there are 10 members for the same committee in Rajya Sabha.

### **The functions of the Privilege committee are as follows:**

The Committee shall examine every question referred to it and determine with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the circumstances leading to it, and make such recommendations as it may deem fit.

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<sup>5</sup> Dr. Jatish Chandra Ghosh vs Hari Sadhan Mukherjee And Others 1961 AIR 613, 1961 SCR (3) 486.

Subject to the provisions of sub-rule (1) of this rule, the report may also state the procedure to be followed by the Council in giving effect to the recommendations made by the Committee.

The power of the committee can also be extended to take evidence or call for papers records or documents which includes:

The Committee of Privileges shall have the power to require the attendance of persons or the production of papers or records if such a course is considered necessary for the discharge of its duties.

Provided that if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Chairman, whose decision shall be final.

Provided further that Government may decline to produce a document on the ground that its disclosure would be prejudicial to the safety or interest of the State.

Subject to the provisions of this rule, a witness may be summoned by an order signed by the Secretary-General and shall produce such documents as are required for the use of the Committee.

It shall be in the discretion of the Committee to treat any evidence tendered before it as secret or confidential.

### **Punishment for Breach of Privilege**

If any member of anyone is found guilty of Breach of Privilege then the following punishments can be given for such conduct-

1. **Imprisonment:** The period for which the House can direct an offender to prison for contempt or breach of its privileges is limited by the duration of the session of the House. As soon as the House discontinues its session the prisoner is set free. There are a number of cases where the audience shouted slogans and threw leaflets from the visitor's gallery on the floor of the House, the offenders were sent to prison for committing contempt of the House by creating disorder in the public Galleries.

2. Admonition or reprimand: In cases where the offense of breach of privilege or contempt is not so serious like petty the warrant for the imprisonment of the offender by way of punishment the person concerned may be summoned to the Bar of the House and admonished or reprimanded by the presiding officer by order of the House. The admonition is the mildest form of punishment, whereas reprimand is the more serious remark of the displeasure of the House.

3. In the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly rather by admonition or reprimand, namely:

(i) Suspension from the service.

(ii) Expulsion from the House

The penalization powers of the House for committing a breach of privilege or contempt of the House are, however, exercised only in extreme cases where a deliberate attempt is made to disturb the house of Parliament to show disrespect and further in order to depict the institution has lost the public confidence. It is also a tradition of the House that unqualified and unconditional regrets sincerely expressed by the persons guilty of breach of privilege and contempt of the House can be accepted by the House. And the House normally decides in such cases to best consult its own dignity by providing no further notice of the matter.

### **Miscellaneous provisions**

By using the simple majority of the Parliament, the various provisions related to the parliamentary privileges of the parliament (members and committees) can be amended.

These privileges and immunities are granted to the member of the parliament only after he takes the oath before the Indian President.

Lok Sabha members' privileges and the committees of this house of the parliament are guarded by the Lok Sabha.

The privilege of the deputy speaker of Lok Sabha includes that he is automatically granted the seat of the chairman of the parliamentary committee he is a member of.

There is one interesting fact that 'The President is not entitled to the parliamentary privileges. But other persons who are allowed to speak in the proceedings of either house of the parliament are

also entitled to the privileges of the Parliament. Example – Attorney General of India and Union Ministers.

### **Pandit M.S.M Sharma v. Shri Krishna Sinha - A Crucial Landmark Judgement<sup>6</sup>**

In this case, proceedings for the breach of privilege were initiated against an editor of a newspaper for publishing those parts of the speech of a member delivered in the Bihar legislative assembly which the speaker had ordered to be expunged from the proceedings of the Assembly. The editor in a writ petition under Article 32 contended that the House of Commons had no privilege to prohibit either the publication of the publicly seen and heard proceedings that took place in the House or of that part of the proceedings which had been directed to be expunged. The Supreme Court by a majority of four to one rejected the contention of the petitioner. Das C.J., who delivered the majority judgment, observed that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings.

With this, Article 361-A inserted by the 44th Amendment with effect from June 20, 1979, provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of either House of Parliament or a State Legislature unless the reporting is proved to have been made with malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

In India, there also vest a right of the House to regulate its own constitution. When a seat of a member elected to the house becomes vacant, the Election Commission, by notification in the Gazette of India calls upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy. In India, Article 103 expressly provides that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred to the President whose decision shall be final. The

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<sup>6</sup> Pandit M. S. M. Sharma vs Dr. Shree Krishna Sinha And Others 1960 AIR 1186.

President is however required to act on this behalf according to the opinion of the Election Commission.

As far as the right to regulate internal proceedings are concerned Article 122 expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure, and no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of the business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

### **The conflict between Parliamentary Privileges and Fundamental Rights**

In Pandit M.S.M. Sharma's case, it was also contended by the petitioner that the privileges of the House under A.194 (3) are subject to the provision of Part III of the Constitution. In support of his contention, the petitioner relied upon the Supreme Court's decision in *Gunupati Keshavram Reddi v. Nafisul Hasan*. In this latter case, Homi Mistry was arrested at his B'bay residence under a warrant issued by the Speaker of U.P. Assembly for contempt of the House and was flown to Lucknow & kept in a hotel in the Speaker's custody. On his applying for a writ of habeas corpus, the Supreme Court directed his release as he had not been produced before a magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision, therefore, indicated that Article 194 (or Article 105) was subject to the Articles of Part III of the Constitution.

In Sharma's case, the Court held that in case of conflict between fundamental right under Article 19 (1) (a) and a privilege under Article 194 (3) the latter would prevail. As regards Article 21, on facts, the Court did not find any violation of it. In *Powers, Privileges, and Immunities of the State Legislature*, the proposition laid down in Sharma's case was explained not to mean that in all cases the privileges shall override the fundamental rights.<sup>7</sup>

The rules of each House provide for a committee of privileges. The matter of breach of privilege or contempt is referred to the committee of privileges. The committee has the power to summon members or strangers before it. Refusal to appear or to answer or to knowingly give the false

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<sup>7</sup> Pandit M. S. M. Sharma vs Dr. Shree Krishna Sinha And Others 1960 AIR 1186.

answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.



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