

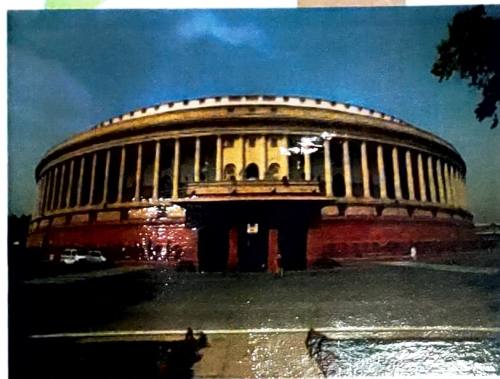
# Review of Research

International Online Multidisciplinary Journal

Volume - 10 | Issue - 12 | September - 2021

Impact Factor : 5.7631(UIF)      ISSN: 2249-894X

## PARLIAMENTARY PRIVILEGES



**Dr. Piyush Kumar Trivedi**

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**Editor - In - Chief - Ashok Yakkaldevi**



## International Online Multidisciplinary Journal

### REVIEW OF RESEARCH

ISSN NO: 2249-894X

Review of Research (ROR) Journal is an Online International Multidisciplinary Research Journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double-blind peer reviewed referred by members of the Editorial Board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

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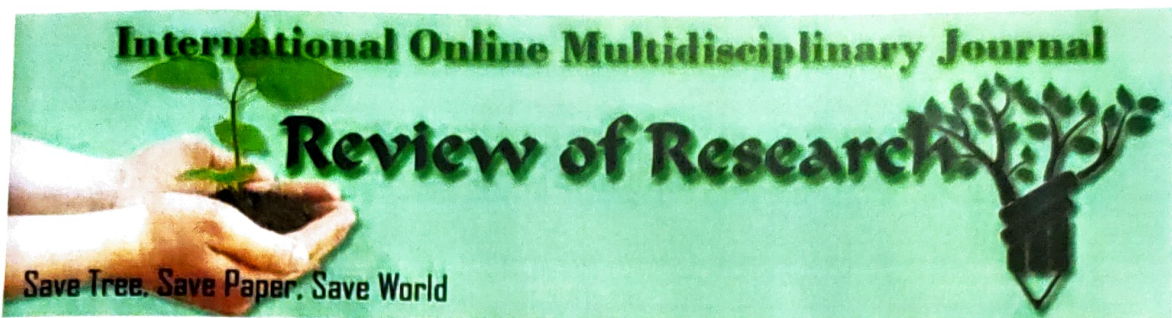
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Vol - 10 | Issue - 12 | September - 2021

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## PARLIAMENTARY PRIVILEGES

Dr. Piyush Kumar Trivedi

### ABSTRACT:

Constitution of India has given certain Privileges to the Members of Parliament so that the Democracy should be protected as the issues which are related to general public importance can be discussed in the House easily. It is the expansion of Article 19(1) (a). Members of Parliament have been given somewhat wider personal liberty and freedom of speech than an ordinary citizen enjoys for a reason that a House cannot function without the unimpeded and uninterrupted use of their services. These Privileges has been given with a view to make the functioning of the House more effectively and without any obstruction or hindrance.



**KEYWORDS:** Constitution of India , obstruction , freedom of speech.

### INTRODUCTION:

With a view to make the proceeding of the Parliament highly effective and enabling the parliament to act and discharge its functions more effectively without any interference and hindrance, fear or favor, certain privileges are attached to each House collectively, and to the member individually.

Members of Parliament have been given somewhat wider personal liberty and freedom of speech than an ordinary citizen enjoys for a reason that a House cannot function without the unimpeded and uninterrupted use of their services. Privileges are conferred on each House so that it may vindicate its authority, prestige and power and protect its member from any obstruction in the performance of their parliamentary functions<sup>1</sup>. One of the most important privileges is Legislative Privilege which is very essential in order to facilitate the House to fulfill its Constitutional functions and to conduct its business smoothly.

In India, parliamentary privileges are available not only to the members of a House but also to those who, though not member of a House, are under the Constitution entitled to speak and take part in the proceeding of the House or any of its committees. These people are the Minister and the Attorney Generals<sup>2</sup>.

<sup>1</sup> For a detailed study of Parliamentary Privileges see: MUKHERJEA, PARLIAMENTARY PROCEDURE IN INDIA, 350-407 (1967).

<sup>2</sup> Arts.88, 105(4); Stockdale v. Hansard (1839) L.J. (N.S.) Q.B. 294.

## PARLIAMENTARY PRIVILEGES

The privilege of a House has two aspects internal and external. They refrain anybody from outside the House to interfere in its working; this means that the freedom of speech and action is restricted to some extent. The privileges also restrain the members of the House from doing something which may amount to an abuse of their position<sup>3</sup>.

Article 105 defines the privileges of the two Houses of the Parliament. This Constitutional provision does not exhaustively enumerate the privileges of the two Houses. It specifically defines only a few privileges, but, for the rest, it assimilates the position of a House to that of the House of Commons in Britain. The Endeavour of the framers of the Constitution was to confer on each House very broad privileges, as broad as those enjoyed by the House of Commons which possess probably the broadest privileges as compared to any other legislature in the world.

Parliamentary Privileges may be defining as the expansion of Article 19(1) (a) *Right to Freedom of Speech and Expression* of the Constitution of India for the process of proper functioning of the Parliament. It may be noted that under Article 194, in the of the privileges the position of the State Legislature is the same as that of the Houses of Parliament.

## PRIVILEGES EXPRESSLY CONFERRED BY THE CONSTITUTION

### (a) FREEDOM OF SPEECH

The essence of Parliamentary Democracy is a free, frank, and fearless discussion in Parliament. For a deliberate body like a House of Parliament, freedom of speech within the House is of utmost significance. To enable members to express themselves freely in the House, it is essential to immunize them from any fear that they can be penalized for anything said by them within the House.<sup>4</sup>

The rule of freedom of speech and debate in Parliament became established in Britain in the 17th century famous case of *Sir John Eliot*<sup>5</sup>. Eliot was convicted by the Court of King's Bench for seditious speeches made in the House of Commons. The House of Lords reversed this decision on the ground *inter alia* that the words spoken in Parliament should only be judged therein. Finally, the Bill of Rights, 1688, laid down that the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament. A member thus may say whatever he thinks proper within the House and no action can be brought against him in any Court for this.

In India, the freedom of speech in Parliament has been expressly safeguarded by Article 105(1) and (2). Article 105(1) says: "Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament".

Article 105(1) secures freedom of speech in Parliament to its members. This freedom is "subject to the provisions of this Constitution". These words have been construed to mean subject to the provision of the Constitution which regulate the procedure of the Parliament<sup>6</sup>. i.e. Article 118 and 121. Article 105(2) confers immunity in relation to proceedings in Courts. It says that no member of Parliament is liable to any 'proceedings' in any Courts "in respect of" anything said, or any vote given in Parliament, or a committee thereof. The word 'proceedings' means any proceeding civil, criminal or even writ proceedings<sup>7</sup>. Nothing said within the House is actionable or justifiable.

The freedom is, however, subject to the provisions of the Constitution. A constitutional restriction imposed by Article 121 on this freedom is that no discussion can take place in any House concerning the conduct of Supreme Court or High Court Judge in the discharge of his duties except when a motion for his removal is under consideration.

<sup>3</sup> See SAMARADITYA PAL- LAW OF CONTEMPT (2006) JAGDISH SWARUP CONSTITUTION OF INDIA, 2<sup>nd</sup> Edn., Vol.2 Ed. L.M. SINGH (2006).

<sup>4</sup> M.P. Jain, *Indian Constitutional Law*, p.87 (Lexis Nexis, 7<sup>th</sup> Edn., Gurgaon, 2015)

<sup>5</sup> 3 State Trials, 294

<sup>6</sup> See M.S.M Sharma v. Sinha (1) AIR 1959 SC 395, 408-9 : 1959 Supp (1) SCR 806; Keshav Singh's case, AIR 1965 745, 746

<sup>7</sup> A.K. Subbiah v. Karn. Leg. Council, Surendra v. Nabakrishna, AIR 1958 Ori. 168; A.K. Subbiah v. Karnataka Leg. Council, AIR 1979 Kant. 24.



**PUBLICATION UNDER PARLIAMENTARY AUTHORITY**

In Britain, in *Stockdale vs. Hansard*<sup>8</sup> a book containing defamatory matter against the plaintiff published under the authority of the House of Commons, was held to enjoy no privilege and damages were awarded to the plaintiff against the publisher. As a consequence thereof, the Parliamentary Papers Act, 1840, was passed which made the publication of any reports, papers, and votes or proceeding of a House of Parliament, ordered by the House, completely privileged whether the publication was only for the use of members of Parliament, or for a wider circulation.

On the same basis, in India, under Article 105(2), no person is to be liable to any proceedings in any court in respect to the publication of any report, paper, votes or proceedings by or under the authority of the House of Parliament. Thus, all persons connected with the publication of proceedings of the House are protected if the same is made under the authority of the House itself. This Article does not protect the publications made without the authority of the House<sup>9</sup>.

To explain the true scope of Article 105(1) and 105(2), reference may be made to the Supreme Court case *Dr. Jatish Chandra Ghosh vs. Hari Sadhan Mukherjee*<sup>10</sup>. A member of the State Legislature gave notice of his intention to ask certain question in the Assembly. The speaker disallowed the questions. Nevertheless, the member published the disallowed questions in a local journal. A government servant filed a complaint (under Ss. 500 and 501, IPC) against the member as well as the editor, printer and publisher of the journal that the concerned had published false and scandalous imputations against him with a view to harming his reputation. The matter ultimately came before the Supreme Court.

**(3) RULE MAKING POWER**

Each House of Parliament in India is authorized, subject to the provisions of the Constitution, to make rules for regulating its own procedure and conduct of business. A rule made by a House is not valid if it infringes any provisions of the Constitution [Article 118(1)]<sup>11</sup>. The procedure of a house is thus regulated by:

1. The provisions of the Constitution.
2. Rules of Procedure and conduct of business made by House
3. Directions issued by the speaker from time to time under those rules
4. Conventions, traditions or past practices of the House

**(4) INTERNAL AUTONOMY**

It is very necessary for the proper working of the Parliament that each House is able to discharge its functions without any outside interference. In Britain, the courts do not interfere with its proceedings inside the House. The House has an exclusive right to regulate its own internal proceedings and to adjudicate upon matters arising there. It enjoys complete autonomy within its own precincts. "What is said or done within the walls of Parliament cannot be inquired in a Court of law."<sup>12</sup>

On the other hand this immunity has been taken to such an extent in *R. VS. Graham Campell*<sup>13</sup>, the Court refused to convict members of the Kitchen Committee for breach of the licensing law for selling liquor without the license in the precincts of the House of Commons by saying that a tribunal would feel "an invincible reluctance to interfere" in matters within the area of the internal affairs of the House.

<sup>8</sup> (1839) L.J. (N.S.) Q.B. 294

<sup>9</sup> M.P. Jain, *Indian Constitutional Law*, p.90 (Lexis Nexis, 7th Edn., Gurgaon, 2015)

<sup>10</sup> AIR 1970 SC at 1574.

<sup>11</sup> See also *M. Vetri Selvan v. Union of India*, AIR 2011 (NOC) 21 (Mad); *Ramdas Athawale v. Union of India*, (2010) 4 SCC 1 : AIR 2010 SC 1310

<sup>12</sup> LORD COLERIDGE, C.J., in *Bradlaugh vs. Gossett*, 12 QBD 271(1884).

<sup>13</sup> (1935) 1 KB 594

On the same basis, under Article 122(1), internal autonomy has been conferred on the House of Parliament in India as well. The validity of any proceedings in the Parliament cannot be called in question on the ground of any alleged irregularity of procedure. A House has absolute Jurisdiction over its own internal proceedings. Further, under Article 122(2), no officer of Parliament who is empowered by or under the Constitution:

1. To regulate the procedure or conduct of business.
2. To maintain order in Parliament.

Is subject to the Jurisdiction of any Court in respect of the exercise by him of those powers. Thus, House of Parliament has freedom from judicial control in its working.

### OTHER PRIVILEGES

The above Discussed privileges are exclusively on the House of Parliament by the Constitution. Originally Article 105(3) said that other powers and privileges of House, its members or committees would be the same as those of the House of Commons in Britain on the date of commencement of the Constitution. The Constitutional provision was so framed deliberately because the privileges of House of Commons could not be exhaustively catalogued<sup>14</sup>. On this basis the House of Parliament can enjoy a number of privileges. Some of the Privileges have been discussed below as:

#### (a) FREEDOM FROM ARREST

A member cannot be arrested on civil proceedings within a period of 40 days before and 40 days after a session of the House. The object of this privilege is to secure the safe arrival and regular attendance of members on the scene of their parliamentary duties. The privilege extends only to arrest and not to arrest on criminal charge,<sup>15</sup> or for contempt of court, or to preventive detention. The reason to exempt preventive detention from the scope of parliamentary privilege is that privileges of Parliament are granted for the services of the country and not to endanger its security.

A House of Parliament however has a right to receive immediate information about the arrest of any of its members, or about the offence and conviction, if any, of the member after trial. According to the Lok Sabha rules, when a member is arrested on a criminal charge or sentenced to imprisonment by a Court, or detained by an executive order, the committing judge, and magistrate or executive authority should immediately intimate to the Speaker the fact of arrest, conviction or detention, its reasons, and the place of detention or imprisonment<sup>17</sup>.

#### (b) INQUIRIES

A house has power to institute inquiries and order attendance of witnesses, and in case of disobedience, to bring witnesses in custody to the bar of the House.

A person charged with contempt and breach of privilege, can be ordered to attend to answer questions and if there is a willful disobedience of the order, the House has power to take the person into custody and the House alone is the proper judge when these powers are to be exercised<sup>18</sup>.

<sup>14</sup> See VIII CAD 149

<sup>15</sup> *Goudy v. Duncombe*, 74 R.R. 706; May, *op. cit.*, 103-6

<sup>16</sup> *Captain Ramsay's case*, The Committee of Privileges of the House of Commons (1940). Also, *Ansari v. State of West Bengal*, AIR 1952 Cal. 632, 636

<sup>17</sup> M.P. Jain, *Indian Constitutional Law*, p.94 (Lexis Nexis, 7<sup>th</sup> Edn., Gurgaon, 2015)

<sup>18</sup> *Howard v. Gossett*, 10 Q.B. 359 (1846)



**(c) DISCIPLINARY POWERS OVER MEMBERS**

A House of Parliament has power to enforce discipline, to punish its members for their offending conduct in the House, or to expel a member who conducts himself in a manner unfit for membership or for unbecoming behavior whether inside or outside the House<sup>19</sup>.

Suspension of members from the House is a matter of daily occurrence. Members are often suspended by a House for persistently flouting the authority of the Speaker, or for casting reflections on the impartiality of the Chair, or for defiance of the Chair. The Speaker/Chairman has power to suspend a member from the House for a day for grossly disorderly conduct. If a member disregards the authority of the Chair, or abuses the rules of the House by persistently and willfully obstructing its business, the Speaker/Chairman may name the defaulting member, and then by a motion of the House the member is suspended for a specified number of days which may not exceed the rest of the session<sup>20</sup>.

In *Raja Ram Pal*,<sup>21</sup> the Supreme Court had to again deal with the question of powers, privileges and immunities of the Legislatures and in particular the power to expel a Member of Parliament (MP). The case related to a telecast by a TV channel of a program on 12<sup>th</sup> December, 2005 based on sting operations conducted by it depicting 10 MPs of the Lok Sabha and one the Rajya Sabha accepting money, directly or through middlemen, as consideration for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre. The presiding officers of both the Houses made enquiries through separate committees. The report of the inquiry concluded that the evidence against the 10 MPs was incriminating. The report was laid on the table of the House; a motion was adopted by Lok Sabha resolving to expel the 10 MPs. Similar process was also followed in Rajya Sabh. It was contended on behalf of the MPs that the expulsion was malafide and the result of a predetermination of the issue and for this purpose relied on the declaration made by the Speaker on the floor of the House that 'nobody would be spared'. The MPs also argued that the circumstances do not warrant the exercise of the power of expulsion.

**(a) FREEDOM FROM JURY SERVICE**

Member of Parliament is exempted from jury service. Members may decline to give evidence as appear as a witness in a Court of law when Parliament is in session. These privileges are founded on the paramount right of the House to the attendance and service of its members.

**(b) PRIVACY OF DEBATES**

A House of Parliament has a right to exclude strangers from its proceedings and hold its sitting in camera. This power may be used by the House to go into secret session for reasons of national security. The Speaker/Chairman may, whenever he thinks fit, order the withdrawal of strangers from any part of the House.

**(c) POWER TO PUNISH FOR CONTEMPT**

A House has power to punish a person, whether its member or outsider, for its 'contempt' or 'breach of privilege'. A House can impose the punishment of admonition, reprimand, suspensions from the service of the House for the session, fine and imprisonment<sup>22</sup>.

<sup>19</sup> WADE AND PHILLIPS, *op. cit.*, 205; MAY, *op. cit.*, 139 (20<sup>th</sup> Ed.)  
<sup>20</sup> Lok Sabha suspended Maniram Bagri for seven days in its session in March 1983  
<sup>21</sup> *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184: (2007) 2JT 1. Also see *Amarinder Singh v. Special Committee, Punjab Vidhan Sabha*, (2010) 4MLJ 929 (SC) : 2010 (4) SCALE 354 : (2010) 6SCC 113.  
<sup>22</sup> *Hardwari Lal v. Election Commission of India*, ILR (1977) 2 P&H 269



This power to commit for contempt is truly described as the 'keystone of parliamentary privilege' for it is used by the House to protect its privileges, punish their violation, and vindicate its authority and dignity.<sup>23</sup>

The grounds on which a person can be held guilty of contempt of the House are vague, uncertain and indefinite as these have not been defined anywhere. The scope of the phrases 'contempt of the House' and 'breach of privilege' is very broad and covers a variety of situations when the House takes action. Generally speaking, a case of contempt of House arises when any act or omission obstructs or impedes it in the performance of its functions, or which obstructs or impedes any member or officer of the House in the discharge of his duties, or which has a tendency, directly or indirectly, to produce such results.

There is no closed list of classes of offences punishable as contempt of the House as new ways of obstructing the House of its Members in performing their functions may manifest themselves.<sup>24</sup> It is for the House to decide whether any particular factual situation amounts to its contempt or not. The right of the House to punish for its contempt is analogues to the right of a superior Court to punish for contempt,<sup>25</sup> and in fact was justified in early days in Britain by a reference to the mediaeval concept of Parliament being the highest Court in the land.

In 1964, during discussion in the Maharashtra Legislative Assembly, a few members severely criticized the Bombay Municipal Corporation. The Corporation passed an adjournment motion to record its strong resentment against the speeches made in the Assembly. The Assembly held that the Corporation had committed a breach of privilege and contempt of the House since the tone and content of the speeches made by the councilors as also the passing of the adjournment motion affected the dignity and authority of the House. The freedom of speech of the members of the Assembly being an important right, any interference with this right constitutes a breach of privilege. The House therefore decided to levy a fine of Rs. 10,000 on the Corporation if it did not rescind its offending resolution. The councilors who had participated in the discussion on the Adjournment motion in the Corporation were to be admonished unless they apologized unconditionally to the House.<sup>26</sup>

**(a) COMMITTEE OF PRIVILEGES**

Each House of the Parliament has a Committee of Privileges to advise it in matters affecting its powers, privileges, and immunities as well as those of its members and committees.<sup>27</sup> The Lok Sabha Committee consists of fifteen members nominated by the Speaker; the Rajya Sabha Committee has ten members nominated by the Chairman. The necessary reference may be made to the committee either by the Speaker or the Chairman *Suo Moto* or by the House upon a motion of the member.

The Committee may make such recommendations as it may deem fit. It may also state in its report the procedure to be followed by the House in giving effect to the committee's recommendations.<sup>28</sup>

<sup>23</sup> M.P. Jain, *Indian Constitutional Law*, p.98 (Lexis Nexis, 7<sup>th</sup> Edn., Gurgaon, 2015)

<sup>24</sup> *Repot of Select Comm.*, 97 (1967)

<sup>25</sup> On contempt of Court.

<sup>26</sup> *The Case of Bombay Municipal Corporation, Report of the Privileges Committee, II Maharashtra Leg. Ass.* April, 1996.

<sup>27</sup> JENA, *PARLIAMENTARY COMMITTEES IN INDIA*, 58-71.

<sup>28</sup> Rules 314 and 315 of the Rules of procedure of the Lok Sabha.

CONCLUSION

The Privileges which are provided to the Members are very important as the Member is representing many citizens of a particular Constitutional Assembly. Various privileges are given to them in certain provisions of the Constitution which is indeed very important for the protection of democracy. In regards of the Parliamentary Privileges some suggestions areas followed:

As Parliament is not only a House which is representing the people but it is also representing India abroad also so it becomes important that the use of abusive language and other prohibited materials should be considered a serious offence as it will destroy the image of our country. As Parliament is regarded as the temple of democracy so the decorum of this should be maintained with utmost care and the privileges which have been given to members should be used fruitfully.

AUTHOR'S BIBLIOGRAPHY

Dr. Piyush Kumar Trivedi was born in India in 1974. He is completed B.Com. LL.B, from the University of Gorakhpur, LL.M from the University of Lucknow, and Ph.D. from the Kumaun University, Nainital. Currently Teaching at Maa Vaishno Devi Law College, Lucknow as Assistant Professor of Law. He can be reached at piyush.trivdi.llm@gmail.com.

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