
BEYOND THE SHIELD: REASSESSING THE BOUNDARIES OF PARLIAMENTARY PRIVILEGES IN INDIA'S CONSTITUTIONAL FRAMEWORK

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ABSTRACT

Do parliamentary privileges serve as a tool to quell opposition or as a safeguard for democratic discourse? Parliamentary privileges, which have their roots in colonial history and are protected by the Indian Constitution, were created to guarantee the legislature's independence and uphold the honour of democratic institutions. These advantages are not unqualified, though. These privileges' unrestricted and frequently ambiguous scope has sparked worries about their abuse. The distinction between required immunity and impunity is becoming hazier in the current political environment because legislative privileges are occasionally used for purposes other than those for which they were designed. The legal and constitutional foundation of parliamentary privileges is critically examined in this paper, with an emphasis on how it interacts with fundamental rights like the right to free speech and expression. It examines the conflicts that exist between judicial supervision and legislative immunity, raising the question of whether parliamentary privileges give the legislature the authority to act outside of its constitutional bounds. The lack of codification allows for the arbitrary application of certain privileges, which is another issue raised in the study. This article argues for a revision of parliamentary privilege that upholds contemporary democratic norms where responsibility follows authority and transparency triumphs over tradition through historical background, case studies, and legal research.

INTRODUCTION

Parliamentary privileges may be defined as the “sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament and by members of each house individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals”¹. Parliamentary privileges are therefore solely designed to protect the rights and dignity of members of Parliament or legislative bodies to the extent necessary to enable them to fulfil their duties without obstruction. Parliament's privileges are a unique type of national law that is administered and interpreted by Parliament itself, without further external examination. Every legislative body must have these privileges in order to effectively carry out its many responsibilities on behalf of its different countries.

HISTORICAL BACKGROUND

The evolution of parliamentary privileges in India has been greatly impacted by the country's colonial past under British domination. The Indian Constitution incorporates and adopts the British Constitution's idea of parliamentary privileges. These rights have their roots in the Charter Act of 1833, which established an ordered legislative framework by adding a fourth member to the Governor-General's Council. This development laid the foundation for an organization that gradually evolved into an all-encompassing legislative body. This process was furthered by the Indian Councils Act of 1909, which reduced official resistance to parliamentary powers by creating indirect elections to the assembly². Parliamentary privileges in contemporary India come from a variety of sources. The Constitution expressly defines certain privileges of Parliament, its members, and committees; other privileges are governed by statutes, House procedural rules, and established precedents from the British House of Commons.

LEGAL BOUNDARIES AND CONSTITUTIONAL FRAMEWORK

The Indian Constitution itself outlines the rights of the Indian Parliament in two areas: freedom of expression³ and the publication of parliamentary debates and proceedings⁴. Every free council must have the right to free speech. The inclusion of this privilege in the Indian

¹ Erskine May, “*Treatise on The Law, Privileges, Proceedings and Usage of Parliament*”, (Butterworths 1957).

² M.P. Jain, “Indian Constitutional Law” 290–295 (LexisNexis 2018).

³ INDIA CONST. art. 105 cl. 1.

⁴ INDIA CONST. art. 105 cl. 2.

Constitution was regarded to be beneficial since it would allow legislators to freely and honestly express their innermost thoughts and feelings in the Legislative Chambers. No member of Parliament may be held accountable in any legal proceeding for anything he says or votes on in Parliament. State Legislature members are likewise entitled to these rights⁵.

In *Wason v. Walter*⁶ C.J. Cockburn, observed that public sovereignty necessitates parliamentary proceedings be communicated and displayed to the general public which has a significant interest in understanding the activities occurring within parliament. Providing an incomplete or disjointed report that contains fragmented information about proceedings, published with the intent to harm an individual's character, will not be entitled to protection.

In India, The Parliamentary Proceedings (Protection of Publication) Act, 1956⁷ incorporated the principle of *Wason v. Walter*⁸ but limited its application to newspaper publications of legislative proceedings. However, if the publication was made with malicious intent, it would not be protected.

The Constitution has not given unrestricted licence to speak anything within the four walls of Legislative Chambers. Freedom of speech is constrained by other sections of the Constitution and by the regulations established by the House under its authority to govern its internal procedures.⁹

Both Houses of the Indian Parliament have established specific rules and empowered their Presiding Officers to implement and uphold them. For example, the rules of the procedure and conduct of business in the Lok-Sabha, 1954 impose numerous limitations upon the freedom of speech of its members and empower the speaker to take appropriate action against them.

Besides the Constitution imposes another limitation upon the freedom of speech in Parliament that Parliament is prohibited from engaging in any debate concerning the conduct of a Supreme Court or High Court judge in the execution of their duties¹⁰, except when a formal motion is

⁵ INDIA CONST. art. 194

⁶ *Wason v Walter* (1868–69) 4 QB 73

⁷ The Parliamentary Proceedings (Protection of Publication) Act, 1956 (Act 24 of 1956), (India)

⁸ *Wason v Walter* (1868–69) 4 QB 73

⁹ INDIA CONST. art. 118

¹⁰ INDIA CONST. art. 121

introduced seeking the judge's removal through an address to the President. The same applies to the members of the State Legislative Assembly.¹¹

It is evident that the Members of the Parliament are not given absolute freedom to say anything but their freedom of speech is hedged with restrictions. In practice, it has been observed in India that a common citizen often enjoys more freedom than a Member of Parliament, as they are not bound by party directives. Additionally, MPs tend to experience greater liberty outside the parliamentary chambers than within, where their actions are restricted by strict rules and procedures, often rigorously applied by highly assertive Presiding Officers.¹²

Outside; the scope of these two privileges, the Constitution itself prefers not to describe other privileges but simply say- "In other respect, the powers, privileges and immunities of each House of Parliament, and of the members and the Committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment) Act 1978."¹³

Members of Parliament are granted additional privileges that are essential for the preservation of the integrity and efficacy of legislative functions. One such privilege is immunity from arrest, which ensures that MPs cannot be detained 40 days before or after a parliamentary session, allowing them to participate in proceedings without obstruction. Additionally, Parliament has the authority to exclude outsiders from its sessions and conduct confidential meetings to prevent any threats or disruptions. Another key privilege is the power to regulate the publication of parliamentary reports and proceedings, including the removal of content deemed inappropriate.

BREACH OF PRIVILEGES

Parliament also possesses the right to penalize both members and non-members for acts of contempt, ensuring that any breach of privileges, whether past or present, is appropriately addressed. A person found guilty of violating the House's privileges or contempt may be punished by the House with a sentence of *imprisonment*, *a reprimand*, or *an admonition*. The

¹¹ INDIA CONST. art. 212

¹² Dalip Singh, "Parliamentary Privileges in India", 26 IJPS 76, 76-77 (1965)

¹³ INDIA CONST. art.105 cl.3.

house also has two more options for disciplining its members: expulsion and suspension from office.

For instance: In 2023, India's parliament witnessed chaotic scenes after at least two men stormed into India's parliament, shouting slogans and throwing coloured gas. They were subsequently detained by the authorities concerned¹⁴.

On February 5, 2025, BJP Members of Parliament submitted breach of privilege notices against Congress leader Sonia Gandhi, accusing her of making disparaging comments about President Droupadi Murmu. The notices claimed that their comments demeaned the dignity of the President's office and violated parliamentary ethics¹⁵.

IMMUNITY OR IMPUNITY? RETHINKING PARLIAMENTARY PRIVILEGES IN MODERN DEMOCRACIES

In 2017, the Karnataka High Court arrested and imprisoned Ravi Belagare and Anil Raju, the editors of two Kannada tabloids, "Hi Bangalore" and "Yelahanka Voice," on the recommendation of the Speaker of the Legislative Assembly of Karnataka. The court contended that the journalists had infringed upon the Speaker's privileges by publishing defamatory content.

Asmita Basu, Program Director at Amnesty International India, denounced the journalists' imprisonment, emphasizing that journalists should be free to write critical pieces and that public figures must be open to scrutiny. She added that if someone believes their reputation has been harmed, they can seek redress through civil defamation proceedings in court.¹⁶

In 2019, Nana Patole, the Speaker of the Maharashtra Legislative Assembly, issued orders for the arrest of an individual who had made a satirical video imitating a speech by Assembly member Devendra Fadnavis. The individual was accused of violating the parliamentary

¹⁴ *India Today*, <https://www.indiatoday.in/india/story/two-persons-jump-into-lok-sabha-chamber-from-gallery-house-adjourned-2475423-2023-12-13> (last visited on 17-04-25)

¹⁵ *The Hindu*, <https://www.thehindu.com/news/national/bjp-mps-file-privilege-notice-against-sonia-gandhi-over-remarks-on-president/article69176393.ece> (last visited on 17-04-25)

¹⁶ *India Today*, <https://www.indiatoday.in/india/story/karnataka-assembly-jail-kannada-tabloids-hi-bangalore-yelahanka-voice-koliwad-ravi-belagere-984353-2017-06-23> (last visited on 17-04-25)

privileges of the member, which resulted in the issuance of an arrest warrant against him¹⁷.

In 2023, Union Parliamentary Affairs Minister Pralhad Joshi introduced a motion to suspend the three Congress MPs, Deepak Baij, D.K. Suresh, and Nakul Nath, for misconduct and invading the Well in the Lower House. This was followed by the suspension of up to 146 members on the grounds of misconduct¹⁸.

CONSEQUENCES OF ABUSE: LEGAL, POLITICAL AND ETHICAL CONSIDERATIONS

A. LEGAL DIMENSION

Parliamentary privileges, originally designed to ensure the independence and effective functioning of the legislature, are increasingly being exercised without clear legal boundaries. The absence of codified rules has created a legal vacuum that enables arbitrary use of these powers¹⁹. Instances such as, arrests for critical commentary or satire, as well as the suspension of opposition members, are indicative of a misuse of privilege that imperils constitutional safeguards such as fair representation and freedom of expression. The lack of oversight mechanisms further exacerbates the issue, highlighting the urgent need for legal reforms to define the scope and limits of parliamentary privilege, and to safeguard it from being weaponized against dissent.

B. POLITICAL DIMENSION

The misuse of parliamentary privilege has significant political implications. When opposition members are suspended or silenced, it compromises the legitimacy of Parliament as a deliberative body and weakens its role as a check on executive power. The suppression of critical voices—whether elected representatives, journalists, or civil society actors—reflects a growing tendency to use institutional mechanisms as weapon to stifle dissent and consolidate political control. When a member's individual rights are restricted under the guise of parliamentary privilege, the concept itself is diminished to merely a tool of executive

¹⁷ *The New Indian Express*, <https://www.newindianexpress.com/nation/2019/Dec/21/maharashtra-speaker-orders-action-against-man-for-parody-video-of-fadnavis-2079266.html> (last visited on 17-04-25)

¹⁸ *The Hindu*, <https://www.thehindu.com/news/national/parliament-proceedings-three-more-opposition-mps-suspended-as-protest-over-mass-suspension-continues/article67661514.ece> (last visited on 17-04-25)

¹⁹ "Bearing the burden of undefined privileges", *The Daily Star*, Jul 24, 2017, <https://www.thedailystar.net/opinion/asian-editors-circle/bearing-the-burden-undefined-privileges-1437583>

authority.²⁰ The marginalization of the Opposition raises fundamental questions about whether Parliament is fulfilling its constitutional mandate to represent diverse viewpoints and facilitate meaningful debate on national issues.

C. ETHICAL DIMENSION

At its core, the misuse of parliamentary privilege represents a serious ethical failure. Powers intended to protect democratic discourse are being employed to insulate those in power from scrutiny. This not only distorts the moral responsibility of lawmakers to uphold democratic values, but also erodes public trust in parliamentary institutions²¹. The trend towards using privilege as a tool for control rather than protection reflects a broader decline in democratic ethics—where authority is prioritized over accountability, and conformity is favoured over open dialogue. Restoring ethical integrity requires a commitment to transparency, fairness, and respect for opposing views within the legislative process.

ARE PARLIAMENTARY PRIVILEGES ABSOLUTE?

While parliamentary privileges empower legislators to perform their duties without fear or external influence, they are not absolute. These privileges exist to safeguard the dignity and independence of legislative bodies, but they must operate within the framework of constitutional supremacy. The Indian judiciary has consistently held that privileges cannot override fundamental rights, constitutional provisions, or the rule of law.

In *Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha & Other*²². In addressing the issue of striking a balance between legislative privileges and judicial scrutiny, the court declared that parliamentary privileges are not absolute and are susceptible to judicial review. The court highlighted that parliamentary privileges can be exercised only till the extent that they do not violate the constitutional provisions and are in compliance with the fundamental rights.

²⁰ "Executive fiat: On Rahul Gandhi's Lok Sabha speech and breach of privilege", The Hindu, Feb 18, 2023, <https://www.thehindu.com/opinion/editorial/executive-fiat-the-hindu-editorial-on-rahul-gandhis-lok-sabha-speech-on-adani-pm-modi-ties-and-breach-of-privilege/article66521209.ece>

²¹ "Drawing a clear line on parliamentary privilege" Hindustan Times, March 5, 2024, <https://www.hindustantimes.com/opinion/drawing-a-clear-line-on-parliamentary-privilege-101709647746367.html>

²² *Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha & Other*, AIR 2010 SC 1935

In 2024, the Supreme Court delivered a landmark judgement in *Sita Soren v Union of India*²³ while overruling its 25-year-old judgement of *P.V Narasimha Rao v State of Andhra Pradesh*²⁴. The landmark judgment elucidated the comprehensive scope of legislative immunity afforded under Articles 105(2) and 194(2) of the Indian Constitution.

CRITICAL ANALYSIS

The Supreme Court's ruling in *Sita Soren v. Union of India* marks a significant shift in the interpretation of legislative privileges under Articles 105(2) and 194(2) of the Indian Constitution. These provisions were originally designed to protect members of Parliament and State Legislatures from judicial interference for anything said or any vote cast in the course of their legislative functions, and to safeguard the official publication of parliamentary proceedings.

However, in the 1998 *P.V. Narasimha Rao* judgment, the Court had interpreted the phrase “in respect of” within Article 105(2) quite expansively. The majority held that if an act such as accepting a bribe was connected to the casting of a vote, it could fall within the protective shield of legislative privilege. This interpretation effectively made legislators immune from prosecution for corruption if the illegal act could be tied to a legislative function, drawing heavy criticism for encouraging impunity.

The *Sita Soren* decision revisits and corrects this interpretation. The Court, led by Chief Justice D.Y. Chandrachud, offered a more contextual and reasoned reading of the constitutional text. It held that the phrases “anything said” or “any vote given” cannot be read in isolation or granted an unchecked scope. The phrase “in respect of” must imply a direct and essential link with the legislative function, not a remote or incidental connection.

Crucially, the Court clarified that accepting a bribe is a distinct criminal act that falls outside the bounds of protected legislative activity. It is not an aid to free speech or independent voting in the legislature, it is an act that taints and undermines those very principles. As such, it cannot be insulated under Articles 105(2) or 194(2). The judgment underscores that the immunity granted to lawmakers is not a blanket protection against all forms of liability, especially not

²³ *Sita Soren v Union of India*, (2024) 5 SCC 629

²⁴ *P.V Narasimha Rao v State of Andhra Pradesh*, (1998) 4 SCC 626

those arising from corruption.

The ruling also put to rest a longstanding debate regarding whether Rajya Sabha elections fall within the scope of legislative proceedings. By overturning parts of the earlier *Kuldip Nayar v Union of India*²⁵ decision, the Court affirmed that such elections, and those involving the President and Vice-President are integral to the constitutional workings of the legislature and should be treated accordingly for the purpose of privileges.

Beyond the technical interpretation, the Court's reasoning reinforces the idea that legislative privilege is not a personal entitlement but a tool to safeguard institutional integrity. It is not meant to create zones of unaccountability but to ensure the legislature can perform its functions without fear or external pressure. Judicial oversight, in this context, serves as a check against the misuse of privilege and helps maintain the balance between autonomy and accountability.

PARLIAMENTARY PRIVILEGES AND FUNDAMENTAL RIGHTS: RECONCILING A CONSTITUTIONAL PARADOX

The Indian Constitution, recognized as the longest in the world, vests the authority to formulate laws. Through Part III, it guarantees fundamental rights to all citizens, aiming to protect their freedoms and liberties from potential abuse by the governmental powers entrusted with authority.

The battle begins in the *Searchlight case*²⁶ where the editor of the newspaper was sentenced to imprisonment for breaching legislative privilege by publishing a detailed account of a debate, defying a directive issued by the Speaker of the Bihar Legislative Assembly to remove specific sections. The editor filed a motion with the Supreme Court to have the committal quashed, claiming that the privileges under Article 194(3) infringed upon his freedom of the press under Article 19(1)(a), which gave him the right to publish an accurate and fair report of legislative proceedings. He therefore argued that the latter had to be declared unlawful.

The Supreme Court ruled that judicial review could not be used to contest Article 194(3), since it is an integral part of the Constitution. Applying the harmonious construction theory, the Court concluded that a conflict existed between two equally placed constitutional provisions—

²⁵ Kuldip Nayar v Union of India, AIR 2006 SC 3127

²⁶ Pandit M.S.M. Sharma v. S.K. Sinha, AIR 1959 SC 395

Article 19(1)(a) and Article 194(3). However, it ruled that freedom of the press under Article 19(1)(a) was subordinate to and must yield to parliamentary privileges under Article 194(3). The Court noted that if legislatures formally defined their privileges through legislation, such a law would become open to judicial scrutiny. But since no legislature had yet codified its privileges, they remained immune to judicial scrutiny²⁷.

Significantly, in the *blitz case (1964)*, the editor R K Karanjia, was similarly indicted by the Lok Sabha for an article on Acharya Kripalani, then an MP, because the apex court, once again, intended to place privileges over the fundamental rights²⁸.

A more tumultuous case followed in the *Keshav Singh* matter²⁹, making the *Searchlight* ruling seem mild by comparison. The Supreme Court once again upheld the principle of harmonious construction. Nevertheless, the Court this time, by consulting the privileges of the Commons, asserted its authority to determine whether an alleged privilege indeed existed. Using the harmonious construction method, the Supreme Court ruled that lawmakers could not assert any privilege by disregarding constitutional arrangements, even though it did nothing to change the balance between privileges and Art. 19(1)(a) as outlined in *Searchlight*.³⁰

Furthermore, in *Raja Ram Pal case*³¹, the Supreme Court revisited the tensions between parliamentary privileges and fundamental rights. The Supreme Court reaffirmed that it had the authority to determine whether or not any privileges asserted by the legislature were legitimate. Additionally, the harmonious construction theory produced the outcome that Article 20 and 21 could prevail over Articles 105(3) and 194(3), and the court would evaluate this on a case-by-case basis³².

In the recent case of *State of Kerala v. K. Ajith*³³, the Supreme Court observed that "privileges and immunities are not a means to claim exemptions from the general law of the land, particularly in the case of criminal law, which governs the actions of every citizen." This

²⁷ Swaminathan, Shivprasad "The Conflict between Freedom of the Press and Parliamentary Privileges: An Unfamiliar Twist in a Familiar Tale," 22, NLSIR 123, 125-127 (2010).

²⁸ Nirmalendu Bikash Rakshit, "Parliamentary Privileges and Fundamental Rights", 39, EPW 1, 2 (2004)

²⁹ Keshav Singh v Speaker, Legislative Assembly & Ors, AIR 1965 SC 750

³⁰ Swaminathan, Shivprasad "The Conflict between Freedom of the Press and Parliamentary Privileges: An Unfamiliar Twist in a Familiar Tale," 22, NLSIR 123, 125-127 (2010).

³¹ Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others, (2007) 3 SCC 184

³² Swaminathan, Shivprasad "The Conflict between Freedom of the Press and Parliamentary Privileges: An Unfamiliar Twist in a Familiar Tale," 22, NLSIR 123, 125-127 (2010).

³³ State of Kerala v. K. Ajith, AIR 2021 SC 3954

highlights that parliamentary privileges are not absolute and cannot be used as a shield against legal accountability. Members are subject to judicial scrutiny for their actions.

However, India's current position on parliamentary privileges and fundamental rights reflects a growing imbalance, where undefined legislative powers increasingly clash with constitutionally protected freedoms. Privileges, remain uncoded, granting broad immunity to legislators without clearly defined limits. At the same time, fundamental rights, especially the freedom of speech and expression face growing restrictions when they come into conflict with claims of privilege. These tensions have led to increasing calls for the codification of privileges and stronger oversight mechanisms to ensure that legislative protections do not override democratic accountability.

CONCLUSION & SUGGESTIONS

The Indian Constitution never intended for parliamentary privileges to be absolute powers that could not be questioned. Instead, they were created to safeguard the autonomy and honour of our legislative bodies to give representatives the freedom to speak and act in the public interest. The evolution of these rights has been examined in this essay, and it is evident that they are interdependent with the other provisions of the Constitution.

Moreover, the paper has highlighted how the lack of codification continues to create ambiguity, facilitating a misuse of privileges under the guise of legislative autonomy. Arrests for satire, suspension of opposition members, and punishment of journalists illustrate a troubling trend where privileges are invoked to insulate those in power rather than to protect parliamentary integrity.

From here, where do we go? How can privileges be restored to conform to democratic principles? A few precise actions can help clear the path:

- **Specify the guidelines**

First, legislative privileges should finally be codified. Giving them a distinct legal form will eliminate the ambiguity that encourages misuse. Additionally, it will make it easier for both individuals and courts to distinguish between overreach and privilege.

- **Allow checks and balances to be in place**

Legislators must maintain their independence, but there should be little judicial scrutiny, particularly where privilege is being used to stifle dissent or infringe upon fundamental rights. Fairness necessitates a review process.

- **Enhance internal checks stronger**

Strong ethics committees that are open, bipartisan, and able to hold lawmakers accountable when privilege is abused should be a component of every government. The importance of internal reform is equal to that of external checks.

- **Establish precise protocols**

A fair and open procedure should be followed for any action taken in the name of privilege, whether it be a warning, suspension, or discipline. This is providing the individual with an opportunity to be heard and making sure the procedure is logical and consistent.

- **Educate and make legislators more aware**

Misuse frequently results from misunderstandings. Providing MPs and MLAs with regular training and orientation can greatly increase their understanding of the responsibilities and limitations associated with parliamentary privilege.

- **Inform the public**

One of the best defences against the capricious use of power is a more informed and involved populace. The freedom to question, report, and hold legislators accountable must be granted to the media and civil society.

- **Make reform a continuous endeavour**

Privileges shouldn't be set in stone. It should be the responsibility of a Standing Commission or Review Body to monitor developments, suggest amendments when necessary, and make sure that our laws change in tandem with our democracy.

Conclusively, parliamentary privileges should ultimately be used to bolster democracy rather than to protect it from criticism. We may restore it to its proper position as a guardian of free

speech, dissent, and democratic principles in the biggest democracy in the world, by outlining its bounds and demanding responsibility.