
PARLIAMENTARY PRIVILEGES IN INDIA: A SHIELD FOR DEMOCRACY OR A TOOL FOR ABUSE?

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ABSTRACT

Laws enacted by the government are essential for upholding the democratic framework, ensuring that elected representatives can perform their roles without external pressure or undue influence. When these legal safeguards are misused or breached, the integrity of the democratic system is at risk. This report examines the nature and historical relevance of such laws, the criminal consequences of their violation, their effect on democratic governance, and the current legal developments through practical examples.

Consequences of violation of Parliamentary privilege

Violations of parliamentary privilege can seriously harm democratic governance. Such misuse may restrict an elected representative's ability to speak freely or perform their duties effectively, thereby weakening public confidence in Parliament.¹

Typically, when these privileges are breached, Parliament initiates an investigation. Depending on the nature of the violation, outcomes may range from formal censure to expulsion.²

Legal consequences may also follow if the breach involves criminal acts such as threats, bribery, or abuse of office.³

Politically, such incidents often lead to public outrage, loss of voter trust, and demands for resignation.⁴

¹ M.P. Jain, *Indian Constitutional Law* 374 (8th ed. 2018).

² *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184.

³ The Prevention of Corruption Act, No. 49 of 1988, Section 7 (India).

⁴ Abhishek Singhvi, *Parliamentary Privilege and Political Accountability in India*, 12 Indian J. Const. L. 45, 50 (2021).

Repeated violations not only erode democratic norms but also undermine the authority of Parliament to act as a check on executive power.⁵

What is parliamentary privilege?

Parliamentary privileges form a key part of the rule of law. They give legislators the freedom and protection needed to perform their duties without fear or outside pressure. These rights, grounded in law and tradition, help ensure open debate, fair representation, and the smooth functioning of democracy, both in the House and its committees.⁶

Entitlement of Parliamentary Privileges

To both Houses,

To all Members of Parliament,

To all Committees of Parliament,

To all Union Ministers and

To the Chief Justice of India,

Need for Parliamentary Privileges

Parliamentary privilege plays a key role in safeguarding democratic governance by allowing legislators to perform their duties without undue interference. These protections—such as freedom of speech in debates, immunity from legal action during sessions, and control over parliamentary procedures—are essential for ensuring free and open discussions on public matters.⁷

However, misuse of these privileges can seriously harm the democratic process. When they are abused to shield misconduct or suppress accountability, it weakens the rule of law and public

⁵ D.D. Basu, *Commentary on the Constitution of India* 301 (9th ed. 2020).

⁶ M.P. Jain, *Indian Constitutional Law* 385–86 (8th ed. 2018).

⁷ *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184 (India).

trust.⁸In political settings, violations often involve attempts to silence critics, interfere with opposition rights, or misuse power for personal or party gain.

Though meant to support institutional independence, parliamentary privileges are not personal rights but collective safeguards meant to protect the integrity of the legislative body as a whole.⁹ This report examines the concept, historical significance, criminal consequences of misuse, and its evolving role in modern politics.

Classification of Parliamentary Privileges

Individual Privileges:

Members of Parliament (MPs) enjoy protection from arrest in civil cases during the session, and 40 days before and after it. This safeguard does not apply to criminal cases or detention under criminal law. MPs are also protected from legal action for anything they say or vote in Parliament or its committees, ensuring free and open debate.¹⁰ Additionally, they may refuse to testify in court during parliamentary sessions, except in pending matters where their presence is essential.

Collective Privileges:

Parliament holds the right to publish or restrict publication of its reports, debates, and minutes. However, the 44th Constitutional Amendment (1978) restored the freedom of the press to publish true reports of parliamentary proceedings, except in the case of secret sittings.¹¹ Parliament is also entitled to be immediately informed if any member is arrested, detained, or released.¹² These privileges help maintain the independence and dignity of the legislature.

Origin and Constitutional Basis

Parliamentary privileges in India originated from Article 105 of the Constitution, which guarantees members of Parliament (MPs) freedom of speech in the House and immunity

⁸ M.P. Jain, *Indian Constitutional Law* 375–76 (8th ed. 2018).

⁹ D.D. Basu, *Commentary on the Constitution of India* 302 (9th ed. 2020).

¹⁰ *Constitution of India* art. 105(2); *K. Anandan Nambiar v. Chief Sec'y, Govt. of Madras*, AIR 1966 SC 657.

¹¹ The Constitution (Forty-Fourth Amendment) Act, 1978, § 3, No. 1, Acts of Parliament, 1978 (India).

¹² M.P. Jain, *Indian Constitutional Law* 377 (8th ed. 2018).

regarding the publication of parliamentary proceedings.¹³ Initially, these privileges were equivalent to those of the UK Parliament until India enacted its own laws. The 44th Amendment in 1978 clarified that these privileges would remain until altered by Parliament.¹⁴ However, no comprehensive legislation has been passed to codify them entirely.

Current Legal Sources

Today, parliamentary privileges derive from multiple sources:

- The Constitution
- Statutes
- Rules of Procedure
- Parliamentary conventions
- Judicial decisions¹⁵

Importance in a Democracy

Parliamentary privileges protect MPs from interference, allowing them to speak freely and hold the government accountable.¹⁶ They ensure that MPs can voice unpopular opinions without fear of legal consequences, which is essential for democratic debate and public representation.

Misuse and Consequences

However, when misused, these privileges can harm democratic integrity. External interference, like threats or political pressure, undermines parliamentary independence.¹⁷ MPs abusing their position for personal gain may face investigations, legal prosecution, or disciplinary action.¹⁸ For example, attempts to avoid legal scrutiny using privilege have been rejected by courts in

¹³ India Const. art. 105(1).

¹⁴ The Constitution (Forty-Fourth Amendment) Act, 1978, § 26.

¹⁵ M.P. Jain, *Indian Constitutional Law* 387–89 (8th ed. 2018).

¹⁶ D.D. Basu, *Commentary on the Constitution of India* 294 (9th ed. 2020).

¹⁷ *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.

¹⁸ The Prevention of Corruption Act, No. 49 of 1988, § 7 (India).

both India and abroad.¹⁹

Legal and Political Accountability

Privileges do not shield MPs from criminal liability. Offences like bribery, corruption, or actions outside Parliament (e.g., public speeches) are not protected.²⁰ Parliamentary privilege is not a license for impunity; it must be balanced with transparency and accountability.

Contemporary Challenges

In today's digital and global world, privileges face new questions:

- Do protections apply to social media posts or virtual sessions?
- How are cross-border legal issues handled when MPs face foreign scrutiny?²¹

Criticism and Reform

Critics argue that vague and outdated privileges may hinder transparency and accountability.²² There is a call to clearly define and modernize these powers to ensure they serve democracy rather than protect misconduct.

International Practices Regarding Parliamentary Privileges

Different countries follow unique practices to safeguard parliamentary privileges.

In the United Kingdom, the Westminster Parliament enjoys long-established rights like freedom of speech during debates, protection from arrest in civil cases, and control over internal proceedings.²³

In Canada, MPs have similar protections, including the freedom to speak without fear and

¹⁹ *Canada (House of Commons) v. Vaid*, [2005] 1 S.C.R. 667 (Can. Sup. Ct.).

²⁰ *Keshav Singh's Case*, U.P. Assembly Privilege Case, AIR 1965 All. 349.

²¹ Abhishek Singhvi, *Parliamentary Privilege and Changing Political Landscapes*, 12 Indian J. Const. L. 102, 109 (2021).

²² Shubhankar Dam, *Misusing Privilege: Shield or Sword?*, 5 N.U.J.S. L. Rev. 45, 47 (2012).

²³ *Bill of Rights*, 1689, 1 W. & M. c. 2 (Eng.); see also Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (25th ed. 2019).

immunity from certain legal actions.²⁴

Australia grants constitutional protection to its legislators, allowing them free speech in Parliament and independence in managing legislative affairs.²⁵

Arguments for Codifying Parliamentary Privileges

Codifying parliamentary privileges can bring much-needed clarity by clearly defining their scope and violations. It also promotes accountability by setting up proper oversight and encouraging responsible conduct by legislators. Codification ensures these privileges stay relevant in today's changing political and social context. Most importantly, it introduces checks to prevent misuse and protects the integrity of democratic institutions.²⁶

Arguments Against Codifying Parliamentary Privileges

Codifying parliamentary privileges carries several risks. It may limit legislative independence by exposing parliamentary functions to external or judicial scrutiny, weakening Parliament's ability to govern itself. Codification might also conflict with Article 122 of the Constitution, which protects parliamentary proceedings from judicial review.²⁷ A rigid legal framework could reduce the flexibility Parliament currently enjoys to address unique or evolving political situations. Additionally, reaching consensus on codification is difficult, given the need to align diverse political and institutional interests.

Conclusion

Parliamentary privilege plays a key role in safeguarding democracy by allowing lawmakers to speak and act freely in the public interest. However, misuse whether by external forces or within the system can harm transparency and public trust. While constitutional protections are vital, they must be balanced with accountability. Independent institutions are essential in maintaining this balance to uphold democratic integrity

²⁴ *Parliament of Canada Act*, R.S.C. 1985, c. P-1, §§ 4–5 (Can.).

²⁵ *Australian Constitution* s 49; see also *Parliamentary Privileges Act 1987* (Cth) (Austl.).

²⁶ M.P. Jain, *Indian Constitutional Law* 364–66 (8th ed. 2018).

²⁷ *India Const.* art. 122; see also M.P. Jain, *Indian Constitutional Law* 387 (8th ed. 2018).