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Parliamentary Privilege in India- Meaning, Types, Landmark Cases

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Introduction

In a parliamentary democracy, elected representatives must be able to perform their legislative duties without fear of obstruction, intimidation, or undue influence.

To safeguard this freedom, the Constitution of India provides for Parliamentary Privileges that are special rights and immunities enjoyed by the Members of Parliament (MPs) and State Legislatures (MLAs).

These privileges ensure that lawmakers can function independently, uphold the dignity of the House, and discharge their duties in the national interest.

The legal foundation of parliamentary privileges is rooted in Articles 105 and 194 of the Indian Constitution, which draw inspiration from the British parliamentary tradition. Yet, their undefined scope has often led to debates, controversies, and judicial scrutiny.

Meaning of Parliamentary Privilege

Parliamentary Privilege refers to the rights, immunities, and exemptions enjoyed by each House of Parliament (Lok Sabha and Rajya Sabha) and its members, without which they cannot perform their legislative responsibilities effectively.

The essence of these privileges is:

- To maintain the independence of the legislature.
- To protect freedom of speech and debate within the House.
- To ensure that proceedings of the legislature are not influenced by external pressures, including the executive and judiciary.

Thus, privileges are not meant for personal benefit of members, but for the collective functioning of the institution of Parliament.

Types of Parliamentary Privileges

Parliamentary privileges can be classified into two broad categories:

1. Collective Privileges (of the House as a whole)

These are enjoyed by each House of Parliament collectively:

- Right to publish proceedings: The House has the authority to publish its debates, reports, and proceedings. It can also restrict publication in cases where secrecy is necessary.
- Control over internal proceedings: No external authority (including courts) can interfere in the regular business of the House.
- Power to punish for contempt: The House can take action against members or outsiders for breach of privilege or contempt of the House.
- Right to exclude strangers: The House can hold private sittings by excluding non-members, including the press.
- Authority to enforce attendance: The House can summon members, witnesses, or officials for its functioning.

2. Individual Privileges (enjoyed by Members)

These apply to individual MPs and MLAs:

- Freedom of Speech in the House: Guaranteed under Article 105(1) (Parliament) and Article 194(1) (State Legislatures). Members cannot be held liable in court for anything said or any vote given in the House.
- Immunity from legal proceedings: Members enjoy immunity against any civil or criminal action for their speech or votes in the House.
- Exemption from arrest in civil cases: Members cannot be arrested during a session of Parliament, and 40 days before and after, in civil cases (but not in criminal cases or preventive detention).

- Exemption from jury or witness duty: Members are not bound to appear as witnesses in courts while Parliament is in session.

The 44th Constitutional Amendment and Extension to Committees

The 44th Amendment (1978) made important clarifications and extensions regarding parliamentary immunities. First, it explicitly brought parliamentary committees within the protective ambit of Article 105, ensuring that committee members, witnesses, and participants enjoy the same legal immunities as members of Parliament.

This was a recognition of the critical role played by committees in legislative oversight, policy examination, and financial scrutiny.

Second, the amendment empowered Parliament to legislate on its own privileges, moving away from a reliance on the House of Commons precedent. This was an important step in indigenizing parliamentary practice.

Additionally, the amendment introduced Article 361-A, which provided constitutional protection for the publication of parliamentary and state legislature proceedings. Under this provision, any person publishing a substantially true report of proceedings enjoys immunity from civil or criminal proceedings, unless malice can be shown.

However, this protection does not extend to reports of secret sittings, thereby striking a balance between transparency and confidentiality.

Judicial Perspectives on Parliamentary Privilege

1. Keshav Singh Case

- Background: Keshav Singh, a person not being an MLA, published a pamphlet criticizing a legislator in Uttar Pradesh. The Assembly ordered his imprisonment for contempt. When two judges of the Allahabad High Court ordered his release, the Assembly summoned the judges for breach of privilege.
- Supreme Court’s Ruling:

- Parliamentary privileges cannot override Fundamental Rights guaranteed under Part III of the Constitution.
- The judiciary has the power of judicial review to examine whether legislative privileges have been exercised within constitutional limits.
- This case struck a balance between the autonomy of legislatures and the supremacy of the Constitution.

2. Searchlight Case (M.S.M. Sharma v. Sri Krishna Sinha)

- Background: The editor of the newspaper Searchlight published portions of the Bihar Legislative Assembly proceedings that were expunged by the Speaker.
- Issue: Whether freedom of speech and expression under Article 19(1)(a) includes the right of the press to publish Assembly debates.
- Supreme Court's Ruling:
  - Freedom of press to report parliamentary proceedings exists but is subject to parliamentary privileges and reasonable restrictions under Article 19(2).
  - The Court upheld the legislature's right to prohibit publication of certain parts of debates (like expunged remarks).
  - Thus, legislative privilege prevailed over press freedom in such cases.

3. Raja Ram Pal v. Speaker, Lok Sabha

- Background: MPs were caught in the "cash-for-query" sting operation. They were expelled by the House after an internal inquiry. Expelled MPs challenged the decision in court.
- Supreme Court's Ruling:
  - Parliamentary privileges are not absolute or beyond judicial scrutiny.
  - The Court can intervene if privileges are exercised in a grossly unconstitutional or mala fide manner.
  - However, the Court will adopt a hands-off approach in matters relating to the internal functioning of Parliament, unless there is a clear violation of constitutional provisions.

4. Anandan Nambiar Case

- Background: In this seminal case, K. Anandan Nambiar, a Member of Parliament, faced arrest during a parliamentary session. The arrest raised questions about the extent of parliamentary privileges and the immunity granted to MPs during their tenure.
- Issues: The primary issue centered around whether an MP, in the course of parliamentary duties, could claim immunity from arrest and legal proceedings. The case delved into the balance between parliamentary privileges and the general legal framework applicable to citizens.
- Supreme Court's Ruling: The Supreme Court, in its judgement, held that an MP could claim no special status higher than that of an ordinary citizen. It emphasised that parliamentary privileges did not exempt MPs from arrest, detention, or questioning, even during a session. The ruling underscored the need for MPs to be accountable under the general legal framework.

5. State of Kerala vs. K. Ajith and Others

- Facts: In this recent case, the State of Kerala brought charges against K. Ajith and others for allegedly obstructing legislative proceedings and causing disruptions. The case raised questions about the boundaries of parliamentary privileges and whether they could be wielded to shield disruptive actions.
- Issues: The core issue revolved around the misuse of parliamentary privileges, questioning whether lawmakers could engage in disruptive acts on the parliamentary floor and then seek refuge behind the cloak of parliamentary freedom.
- Supreme Court's Ruling: The Supreme Court, in its observation, made it clear that privileges and immunities were not gateways to claim exemptions from the general laws of the land.It highlighted that criminal law, which governs the actions of every citizen, should prevail. This judgement reinforced the idea that parliamentary privileges do not provide a shield for actions that violate established legal norms.

Breach of Parliamentary Privilege

A breach of privilege occurs when there is a violation of the rights and immunities of Parliament or its members.

This can take various forms, including impeding the work of Parliament, obstructing MPs from carrying out their duties, or disclosing confidential information without proper authorization.

Breaches are considered serious offences, prompting disciplinary action against the offending members. In one such incident, for example, Rajya Sabha Chairman Jagdeep Dhankhar had requested a parliamentary committee to look into the claimed breach of privilege by 12 MPs from the Congress and AAP. This follows their repeated entry into the well of the House, shouting slogans, and disrupting its proceedings.

Conclusion

Parliamentary privileges in India represent a dynamic and integral aspect of the legislative process. Their intricate interplay with constitutional principles, ongoing challenges, and evolving judicial perspectives contribute to a nuanced understanding of their role and limitations. Effective utilisation demands a delicate equilibrium between upholding legislative independence and ensuring accountability, making parliamentary privileges a continually evolving and crucial aspect of India’s democratic fabric.