BLOGS

Parliamentary Privileges under the Indian Constitution

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Introduction

Parliamentary privileges in India grant certain special rights and immunities to members of Parliament and state legislatures, ensuring they can perform their legislative functions independently and effectively.

These privileges, derived from both the Indian Constitution and long-established parliamentary practices, protect the dignity and authority of legislative bodies while maintaining the separation of powers essential to a democratic setup.

Key Constitutional Provisions on Parliamentary Privileges

The primary provisions related to parliamentary privileges in India are outlined in **Articles 105** and **194** of the Indian Constitution.

1. Article 105 (Privileges of Members of Parliament):
    1. Article 105 specifically pertains to the privileges of Parliament members (i.e., the Lok Sabha and Rajya Sabha).
    2. Clause (1) grants MPs the freedom of speech within Parliament. This immunity is essential for the open debate necessary in a democratic legislature, safeguarding members from prosecution or liability for statements made during parliamentary sessions.
    3. Clause (2) extends immunity to any publication of the proceedings of Parliament authorized by it. This allows the reporting of parliamentary debates without the fear of legal consequences.
    4. Clause (3) empowers Parliament to define its privileges by law and provides that, until defined, members' privileges are similar to those of the British House of Commons as of 1947 (before India's independence).

2. Article 194 (Privileges of State Legislatures):
    1. Article 194 parallels Article 105, but it applies to members of state legislatures.
    2. State MLAs and MLCs enjoy similar privileges and immunities to ensure they can function without interference. This includes freedom of speech within the legislature and immunity from legal action for statements made during official proceedings.

Important Parliamentary Privileges in India

While the Constitution does not provide a comprehensive list of privileges, key privileges enjoyed by Indian parliamentarians and legislators include:

1. Freedom of Speech Members of Parliament (and state legislatures) have complete freedom to express themselves during debates without fear of repercussions. However, this freedom is not absolute – it is subject to the rules and procedures of the respective House. For instance, while MPs can discuss various issues openly, they are not allowed to breach established decorum or insult the dignity of the House.
2. Freedom from Arrest Members enjoy freedom from arrest in civil cases during the session of Parliament or state legislatures and 40 days before and after the session. However, this immunity does not extend to criminal cases, where members can be arrested if required. This privilege ensures members can fulfill their duties without disruptions due to legal issues in civil matters.
3. Right to Exclude Strangers The Houses of Parliament or state legislatures have the right to exclude non-members or “strangers” from their proceedings. This is primarily to prevent interruptions and maintain confidentiality, allowing members to discuss sensitive issues freely.
4. Power to Punish for Breach of Privilege and Contempt Legislatures can penalize individuals or members who breach parliamentary privilege or commit contempt of the House. Contempt includes behavior that undermines the authority or integrity of the legislative body. For instance, unauthorized publishing of debates or misreporting could lead to contempt proceedings.
5. Right to Regulate Proceedings Each House has the authority to make its own rules regarding its functioning and can discipline its members. This includes the power to suspend, reprimand, or expel members as needed to maintain decorum and discipline within the House.

Limitations and Judicial Scrutiny

While parliamentary privileges are crucial for legislative autonomy, they are not above judicial review. Courts have ruled that while they cannot interfere with the day-to-day proceedings of the legislature, they can intervene if any privilege is abused to violate the fundamental rights of citizens. The balance between parliamentary privilege and fundamental rights has been central to several landmark judgments.

The Supreme Court of India in the ***Keshav Singh case*** (1965) ruled that legislative privileges are subject to the constitutional mandate, including fundamental rights. It emphasized that while privileges are necessary, they should not violate the fundamental rights enshrined in Part III of the Constitution.

PV Narasimha Rao v. State involved allegations of bribery against members of Parliament in the JMM bribery case, where MPs allegedly received bribes to vote against a no-confidence motion. The main question was whether the MPs involved could claim parliamentary privilege to protect themselves from criminal prosecution for accepting bribes.

The Supreme Court held that MPs could not use parliamentary privilege as a defense against criminal prosecution. The Court reasoned that the privileges granted under Article 105 do not extend to acts of corruption and illegal activities committed outside Parliament. This judgment clarified that parliamentary privileges do not grant immunity from criminal prosecution for acts committed outside the legislature.

In **Amrinder Singh v. Special Committee, Punjab Vidhan Sabha**, the former Punjab Chief Minister Amrinder Singh was expelled from the Punjab Legislative Assembly following allegations of corruption in a land deal.

The primary issue was whether the Legislative Assembly could expel a member for alleged misconduct outside the House. The Supreme Court found that while legislative assemblies have the power to manage their own affairs and maintain decorum, expelling a member for alleged acts committed outside the House goes beyond their privileges. It overturned Singh’s expulsion, stating that an assembly’s powers are limited to matters directly related to its functions.

Privilege Committees

Both Houses of Parliament and state legislatures have Privilege Committees that examine issues related to breaches of privilege or contempt of the House. The committees investigate alleged violations, deliberate on the severity of the offense, and recommend appropriate action, ranging from a warning to punitive measures.

Despite their importance, parliamentary privileges in India remain largely uncodified. Some argue that codifying privileges would bring clarity and consistency to their application, reduce conflicts, and prevent arbitrary use. However, others believe codification could limit the flexibility that uncodified privileges afford, potentially constraining legislative independence.

Conclusion

Parliamentary privileges in India serve as pillars of legislative freedom, safeguarding members from external pressures and enabling effective functioning of the legislative bodies. As democracy evolves and the expectations for transparency increase, there is a growing need to reconsider whether these privileges should remain uncodified or be clearly defined to ensure they’re applied judiciously.