PARLIAMENTARY PRIVILEGES IN INDIA: AN OVERVIEW

Dr. Baljit Kaushik*

*Associate Professor, Hindu College, Sonepat, India.

INTRODUCTION

History of humanity records various instances of conflict between the government and the governed. It also records that gradually the governed asserted itself against the government and established its rights to freedom and liberty.

There has been a continuous struggle between fundamental rights and parliamentary privileges and very often the courts face the question of which of the two will be given greater importance? However, before anything can be said in regard to that, we first need to define what a parliamentary privilege is?

NATURE AND DEFINITION OF PARLIAMENTARY PRIVILEGE

According to Erskine May, "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... 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. Even though a part of the law of the land, it is to a certain extent, an exemption from the ordinary law of the land."

The Black's law dictionary defines privilege as, "a special legal right, exemption or immunity granted to a person or a class of persons, an exception to a duty."

A more contemporary definition of parliamentary privilege is one that has been developed by the report of Joint Committee on Parliamentary Privileges in the United Kingdom, according to which, "Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their
parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished).

It can therefore be said that privileges are important for the purposes of proper functioning of the Parliament. The members have to be free from the fear of detention and court proceedings for any view that they express in the House. Members need to be free of all constraints in the matter of what they say in the Parliament if they are effectively to represent their constituencies in its deliberations.

Thus, privilege, though part of the law of the land, is to certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeaded use of the services of its members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.

"When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege and is punishable under the law of Parliament. Each House also claims the right to punish as contempts actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers."

Thus Parliamentary Privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities.

The Constitution has also extended the parliamentary privileges to those persons who are entitled to speak and take part in proceedings of a House of Parliament or any of its committees. These include attorney general of India and Union ministers. The parliamentary privileges do not extend to the president who is also an integral part of the parliament

CLASSIFICATION

Parliamentary privileges can be classified into two broad categories:

✓ Those that are enjoyed by each House of Parliament collectively, and
✓ Those that are enjoyed by the members individually.
COLLECTIVE PRIVILEGES

The privileges belonging to each House of Parliament collectively are:

- The right to publish its reports, debates and proceedings, and also the right to prohibit others from publishing the same. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of Parliamentary proceedings without prior permission of the House. But this is not applicable in the case of a secret sitting of the House.

- To exclude strangers from its proceedings and hold secret sittings to discuss some important matters.

- To make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.

- To punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).

- The right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.

- To institute inquiries and order the attendance of witness and send for relevant papers and records.

- The courts are prohibited to inquire into the proceedings of a House or its committees.

- No person (either a member or outsider) can be arrested, and no legal process civil or criminal can be served within the precincts of the House without the permission of the presiding officer.

INDIVIDUAL PRIVILEGES

The privileges belonging individually to the members are:

- They cannot be arrested during the session of parliament and 40 days before the beginning and 40 days after the end of a session. This privilege is available in civil cases and not in criminal cases or preventive detention cases.

- They have freedom of speech in Parliament. No member is liable to any proceedings in any court for anything said or any vote given by him in Parliament or its committees. This freedom is subject to the provisions of the constitution and to the rules and standing orders regulating the procedure of Parliament.

- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when parliament is in session.
SOURCES OF PRIVILEGES

- Constitutional Provisions
- Statutory Provision
- Privileges based on Rules of Procedure and Precedents
- Consequential Powers of the House
- Parliamentary Conventions
- Judicial Interpretations

CONSTITUTIONAL PROVISIONS

Originally, there is a mention of two privileges in the Constitution of India. (Article 105), i.e., freedom of speech in Parliament;1 immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof;2 immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.3 Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure.4 No officer or Member of Parliament empowered to regulate procedure or conduct of business or to maintain order in Parliament can be subject to a court’s jurisdiction in respect of exercise by him of those powers.5 No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available for reports or matters broadcast by means of wireless telegraphy.6 This immunity, however, is not available to publication of proceedings of a secret sitting of the House.7

STATUTORY PROVISION

Apart from the privileges specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

PRIVILEGES BASED ON RULES OF PROCEDURE AND PRECEDENTS

The House has a right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member on a criminal charge or for a criminal offence.9 Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House. Members or officers of the House cannot be compelled to attend as witnesses before the other House or a House of a State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required.
CONSEQUENTIAL POWERS OF THE HOUSE

In addition to the above mentioned privileges and immunities each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are: to commit persons, whether they are members or not, for breach of privilege or contempt of the House; to compel the attendance of witnesses and to send for persons, papers and records to regulate its procedure and the conduct of its business; 10 to prohibit the publication of its debates and proceedings15 and to exclude strangers.

The freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentarily language or unparliamentarily conducts. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory.

Rule 353 of the Rules of Procedure provides that no allegation of a defamatory or incriminatory nature shall be made by a member against any person unless the member has given adequate advance notice to the Speaker and also to the Minister concerned so that the Minister may be able to make an investigation into the matter for the purpose of a reply.

PARLIAMENTARY CONVENTIONS

The powers, privileges and immunities of each House of Parliament and of the members and committees shall be from time to time be defined by Parliament by law and until so defined, shall be those of that House, its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

The framers of the Constitution had provided for the same powers and privileges for members, etc. as were possessed and enjoyed by the House of Commons at the commencement of the Constitution. The reference to the House of Commons in clause (3) of article 105 was omitted by the Constitution (Forty-fourth Amendment) Act, 1978. Since, however, no law defining the privileges has been made by Parliament so far, in actual practice; the position in this regard remains the same as it existed at the commencement of the Constitution.

Article 105 of our constitution defines parliamentary privileges of both Houses of Parliament and of their members and committees. To enable Parliament to discharge functions properly the Constitution confers on each Member of the Houses certain rights and immunities. In defining parliamentary privilege this article adopts certain methods. Two privileges, namely, freedom of speech and freedom of publication of proceedings. The most important privilege of the House is the right of the House to regulate its own procedure, free from intervention by the Government or the Courts.

JUDICIAL INTERPRETATIONS

Article 105, so also Article 194 subjects the powers, privileges and immunities of each House as well as all its members and all its committees not only to the laws made by the appropriate legislature but also to all other provisions of the Constitution. Both these articles far from dealing with the legislative powers of the Houses of Parliament or of State Legislature respectively are
confined in scope to such powers of each House as it may exercise separately functioning as a House.

A House of Parliament or Legislature cannot try anyone or any case directly as a court of justice can, but it can proceed quasi judicially in cases of contempt of its authority or take up motions concerning its privileges and immunities in order to seek removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arises as to a certain matter, it has to be decided by a court of law in appropriate proceedings. For example, the jurisdiction to try a criminal offence such as murder, committed even within a House vests in ordinary courts and not in a Parliament or in a State Legislature. Also, a House of Parliament or State Legislature cannot in exercise of any supposed powers under Articles 105 and 194 decide election disputes for which special authorities have been constituted under the Representation of People Act, 1951 enacted in compliance with Article 329.

CONCLUSION

It is true that, under a system of parliamentary government, the privileges of the legislature, its members and committees are an essential guarantee of its efficient working. There is a clear demarcation as to what all rights and privileges are absolute and what are not. For example, in India Legislative Assemblies and Parliament never discharge any judicial function and their historical and constitutional background does not support their claim to be regarded as courts of record in any sense. No immunity from scrutiny by courts of general warrants issued by House in India can therefore be claimed.

Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights. It is also a duty of the members to properly use these privileges and not misuse them for alternate purposes that is not in the favour of general interest of nation and public at large. Thus what we must keep in mind is the fact that power corrupts and absolute power corrupts absolutely. For this not to happen under the privileges granted, the public and the other governing body should always be on vigil.

Dr. Rajendra Prasad noted that, ‘Parliament may never legislate on that point and it is therefore for the members to be vigilant.’ The warning has proven prophetic. Therefore, till such time as the privileges of the Parliament are not codified, utmost care should be taken by the legislators that they do not abuse this benefit that has been given to them. The purpose of privileges is to ensure that their business is not interrupted and their business is to ensure a smooth running of the affairs of the country, much of which is achieved through discussion and debate. Parliaments and their members and committees are neither infallible nor embodiments of all wisdom. Being the representatives of the people they must always be prepared to face public criticism and should never consider themselves to be above such criticism.

NOTES AND REFERENCES

1. Constitution of India, Article 105(1)
2. Constitution of India, Article 105(2)
3. Ibid

4. Constitution of India, Article 122(1)

5. Constitution of India, Article 122(2)

6. Constitution of India, Article 361 A

7. Constitution of India, Article 361A(1)

8. Constitution of India, Article 105(3)

9. Code of Civil Procedure, 1908, s. 135A.

10. Art. 118(1).


http://legalsutra.org/1356/parliamentary-privileges/

http://www.sarai.net/publications/readers/04-crisis-media


Laxmikanth, M: Indian Polity, Tata McGraw Hill Ltd., New Delhi

Kashyap, Subhash C: Our Parliament, National Book Trust, 1999