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PARLIAMENTARY PRIVILEGE IN INDIA: CONSTITUTIONAL FRAMEWORK, SCOPE, AND CONTEMPORARY CHALLENGES

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ABSTRACT

"This research article examines the concept of parliamentary privilege in India, tracing its historical development from British parliamentary traditions to its current constitutional framework. The study analyzes the scope and limitations of parliamentary privileges as enshrined in Articles 105 and 194 of the Indian Constitution, exploring the tension between parliamentary autonomy and judicial review. Through examination of landmark judicial decisions, parliamentary proceedings, and comparative analysis with other democratic systems, this research highlights the evolving nature of parliamentary privileges and contemporary challenges in balancing legislative independence with democratic accountability. The findings suggest that while parliamentary privileges serve crucial purposes in maintaining legislative efficiency and independence, there remains a need for codification and well-defined boundaries to prevent potential abuse and ensure harmony with fundamental rights and constitutional principles."

Keywords :- Parliamentary privilege, Partial Codification, Anti Defection Law,

1. INTRODUCTION

The principle of parliamentary privilege is an essential component of democratic governance. It ensures that elected representatives are able to carry out their constitutional duties without being hindered in any way that is not warranted. Parliamentary privileges are constitutional safeguards that are meant to uphold the dignity, authority, and independence of Parliament and its members. In the context of India, congressional privileges act as constitutional safeguards. The privileges that are bestowed upon lawmakers serve to improve their operational efficiency while simultaneously protecting them from extraneous influences that have the potential to impede their legislative and deliberative actions (Kashyap, 2015).

The concept of parliamentary privilege in India has its origins principally in the parliamentary traditions of the United Kingdom. Nevertheless, it has experienced a distinctive development within the context of India's constitutional democracy. The parliamentary privileges in India are clearly acknowledged and protected by Articles 105 and 194 of the Constitution of India, which was passed in 1950. This is in contrast to the situation in the United Kingdom, where parliamentary privileges are mostly derived from historical precedents and established practices. Despite this, constitutional scholars, legislators, and legal professionals continue to engage in lively debate on the precise parameters, constraints, and applications of these privileges at the present day.

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The purpose of this study is to provide a comprehensive analysis of parliamentary privileges within the context of India, with a particular emphasis on its constitutional foundations, historical growth, practical use, and the challenges that are currently being confronted. Through the examination of significant judicial rulings, legislative debates, and a comparative analysis of India's practices alongside those of other parliamentary democracies, the purpose of this study is to improve the understanding of the complex relationship that exists between parliamentary autonomy and constitutional limitations within the context of a democratic framework.

2. HISTORICAL BACKGROUND AND EVOLUTION

2.1. British Origins and Colonial Legacy

Throughout the course of the ongoing struggle for parliamentary supremacy in opposition to monarchical power, the concept of parliamentary privilege has become firmly ingrained in the historical framework of the constitutional system that governs the United Kingdom. According to Erskine May (2019), the British Parliament established some rights and immunities in the seventeenth century, particularly in the aftermath of the Glorious Revolution of 1688. These rights and immunities became crucial to the nation's freedom. Among the rights that were granted were the right to freedom of speech during legislative proceedings, protection from arrest in civil issues while sessions were in progress, and the authority to impose fines for contempt of court.

In the context of British colonial government, the legislative assemblies that were founded in India were granted limited powers. These powers were influenced by the parliamentary norms that were prevalent in Westminster. Legislators were granted particular immunities by the Government of India Acts, which were passed in 1919 and 1935. However, these immunities were significantly restricted in compared to the immunities that were granted by the British Parliament (Pylee, 2003). This exemplifies the inferior constitutional status that the colonial legislative councils held within the larger imperial framework. The colonial legislative councils were only granted those privileges that were specifically defined by statute.

2.2. Post-Independence Development

A large amount of discussion is taking place within the Constituent Assembly regarding the characteristics and scope of legislative privileges that are planned to be included in the upcoming Constitution, as indicated by the debates that are taking place within the assembly. The framers of the Constitution wanted to strike a balance between the concerns that were raised about the potential for privileges to be abused and the desire to ensure that legislative operations were carried out effectively. In his capacity as chairwoman of the Draughting Committee, Dr. B.R. Ambedkar underlined the relevance of parliamentary privileges in terms of their ability to facilitate the uninterrupted operation of the legislature. However, he acknowledged the necessity of acceptable constraints on these privileges, as detailed in the Constituent Assembly Debates of 1949. He stated that these limitations should be imposed.

articles concerning parliamentary privileges are outlined in Articles 105 for Parliament and 194 for State Legislatures of the Constitution of India, which was ratified in 1950. These articles are included in the Constitution of India. The privileges of the British House of Commons were initially established by the provisions in question as an interim measure. This was done in anticipation of the introduction of legislation by Parliament that would define the privileges of the House of Commons. As a result of the fact that the anticipated codification did not materialise, references to House of Commons privileges continued to be made until the 44th Constitutional Amendment was ratified in 1978. This was the case despite the fact that early intentions stated that it would be implemented. The reference was removed as a result of this adjustment, which also ensured that the

privileges remained in their undated state (Jain, 2014).

3. CONSTITUTIONAL FRAMEWORK OF PARLIAMENTARY PRIVILEGES IN INDIA

3.1. Articles 105 and 194: Textual Analysis

The Indian Constitution, specifically Article 105, outlines the powers, privileges, and immunities that are bestowed to Parliament and the individuals who serve in it. To continue in this vein, Article 194 provides an outline of analogous provisions that are relevant to state legislatures. It is stated in Article 105(1) of the Constitution of India that "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament" (Constitution of India, 1950). This provision enshrines the principle of freedom of speech within the context of the parliamentary system.

The framework for the immunity of lawmakers is provided by Article 105(2), which shields them from legal procedures that are related to statements made or votes cast within the context of the legislative process. It is important to note that this immunity acts as a crucial precaution, insulating individuals from the influence of external factors and allowing for open and honest conversations about matters of public relevance. Following the revisions that were brought by the 44th Constitutional Amendment, the provisions that are detailed in Article 105(3) establish that the powers, privileges, and immunities that are attributed to Parliament are to be decided by legislation. In the lack of such a legal definition, the powers, privileges, and immunities that were already in place for Parliament and its members, as they were before to the amendment, will continue to be in effect (Constitution of India, 1950).

Individuals who are permitted to participate in legislative proceedings, such as the Attorney General of India, are granted certain powers by Article 105(4) of the Constitution of India. In order to maintain constitutional symmetry between the rights of parliamentary bodies and those of state legislative assemblies, Article 194 of the Constitution of India, which was ratified in 1950, outlines provisions that are comparable to those that are applicable to state legislatures.

4. SCOPE AND CATEGORIES OF PARLIAMENTARY PRIVILEGES

Parliamentary privileges in India can be broadly classified into two categories: collective privileges of each House and individual privileges of members.

4.1. Collective Privileges

1. **Right to regulate internal affairs**: The exclusive authority of each House to regulate its internal proceedings and to discipline its members is upheld without external interference (Kaul & Shakdher, 2009).

2. **Right to punish for contempt**: The legislative body holds the authority to impose penalties on individuals, regardless of their membership status, for acts of contempt or violations of privilege. The preservation of this authority is crucial for upholding the integrity and functionality of the legislative institution (Shukla, 2013).

3. **Right to exclude strangers**: Both Houses possess the authority to exclude non-members from their proceedings and to hold closed sessions when it is considered essential for the public interest or national security (Kashyap, 2015).

4. **Right to prohibit publication of proceedings**: The legislative body possesses the authority to restrict or oversee the dissemination of its proceedings; however, this authority is infrequently utilised in practice, largely owing to the democratic tenet of transparency (Kaul & Shakdher, 2009).

4.2. Individual Privileges

1. **Freedom of speech**: Parliamentary members are afforded complete immunity from judicial review concerning statements made within the context of parliamentary proceedings. This provision facilitates unrestricted discourse on issues of public significance (Jain, 2014).

2. **Freedom from arrest**: Parliamentary members are granted immunity from arrest in civil cases during the duration of parliamentary sessions, as well as for a period of forty days preceding and following each session. This provision is designed to facilitate uninterrupted attendance and active participation in legislative activities (Shukla, 2013).

3. **Exemption from jury service**: Members are granted exemption from jury service, acknowledging their principal obligation to engage in legislative activities (Pylee, 2003).

4. **Right to refuse to give evidence in courts when Parliament is in session**: This privilege recognises the precedence of parliamentary responsibilities in relation to court appearances (Kaul & Shakdher, 2009).

5. BREACH OF PRIVILEGE AND CONTEMPT OF THE HOUSE

An act that violates the rights, immunities, or privileges that are granted to members of Parliament or to Parliament itself is referred to as a breach of privilege. According to Kashyap (2015), the term "contempt of the House" refers to an all-encompassing concept that encompasses any conduct or failure to act that impedes the functioning of Parliament or prevents members from carrying out their duties.

It is the established Rules of Procedure and Conduct of Business that govern the procedure that must be followed in order to address matters pertaining to privilege. A member is entitled to raise a matter of privilege if they have obtained the agreement of the Speaker and provided that they have given previous notice of their intention to do so. In the event that the Speaker concludes that there is a prima facie case, he or she has the authority to send the matter to the Committee of Privileges for additional examination and subsequent recommendations. The conclusions that were submitted in the report of the committee indicate that the House of Representatives has the jurisdiction to adopt punishments that can range from admonition to a predetermined term of imprisonment (Kaul & Shakdher, 2009).

5. **Judicial Interpretation and Constitutional Boundaries**

Landmark Judicial Decisions

Several key decisions made by the Indian judiciary have had a significant impact on the connection between parliamentary privilege and judicial review.:

1. ***"M.S.M. Sharma v. Sri Krishna Sinha (1959)*** : This pivotal case involved an examination by the Supreme Court of the complex relationship between the freedom of the press and the concept of parliamentary privilege. The Court determined that Article 105(3) granted Parliament privileges equivalent to those held by the British House of Commons, encompassing the authority to restrict the publication of proceedings. The Court acknowledged the potential for parliamentary privileges to supersede fundamental rights under specific conditions, thereby setting a significant precedent for the supremacy of parliamentary authority in issues pertaining to privilege (M.S.M. Sharma v. Sri Krishna Sinha, 1959).

2. ***"Special Reference No. 1 of 1964"***: This study examines the Supreme Court's deliberation on the issue of legislative assembly privilege concerning the production of documents in judicial proceedings. The Court delineated a clear distinction between proceedings conducted within the House, which were afforded protection under privilege, and administrative functions, which continued to be subject to judicial examination. This ruling initiated the process of defining the parameters of parliamentary privilege (Special Reference No. 1 of 1964, 1965).

3. ***"Raja Ram Pal v. Hon'ble Speaker, Lok Sabha (2007)"***: This pivotal ruling notably redefined the dynamics between parliamentary privilege and judicial review. The Supreme Court determined that the expulsion of members implicated in the "cash-for-questions" scandal is amenable to

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judicial review; however, the Court indicated that it would approach the exercise of this authority with considerable caution. The Court established that parliamentary privileges are constrained by constitutional limitations and fundamental rights, indicating a transition towards enhanced judicial scrutiny (Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, 2007).

4. ***"P.V. Narasimha Rao v. State (1998)"***: This study investigates the parameters of parliamentary immunity concerning accusations of vote-related bribery. The Supreme Court determined that the immunity provided under Article 105(2) encompasses bribes purportedly received by members in exchange for their votes in Parliament. This ruling has ignited discussions regarding the scope of parliamentary privileges and the possibility of their abuse (P.V. Narasimha Rao v. State, 1998).

6. BALANCE BETWEEN PARLIAMENTARY AUTONOMY AND JUDICIAL REVIEW

A complex equilibrium between the independence of parliamentary functions and the scrutiny conducted by the court is illustrated by the existing set of legal principles, which is currently in the process of being developed. The initial decisions made by the judiciary, such as the one in the case of M.S.M. Sharma, were more inclined to adhere to the notion of parliamentary supranational authority. On the other hand, subsequent verdicts have gradually brought to light the relevance of constitutional restrictions placed on the rights of Parliament. According to Krishnaswamy (2009), the Raja Ram Pal case represents a significant event in the progression of the argument that the fundamental structure concept and fundamental rights place limitations on the advantages enjoyed by members of parliament.

In order to discern between the internal operations of Parliament, which are mostly protected by privilege, and matters that belong to exterior rights or constitutional laws, which are susceptible to judicial scrutiny, the Supreme Court has constructed a sophisticated framework. This framework distinguishes between Parliament's internal processes and constitutional provisions. An example of the constitutional concept that asserts that no state organ, including Parliament, holds supremacy over the Constitution is provided by this judicial refinement (Sathe, 2002).

7. CONTEMPORARY CHALLENGES AND CONTROVERSIES

7.1. Codification Debate

The continuous examination of the codification of parliamentary privileges has been a focal point of discussion since the achievement of independence. Proponents of codification argue that the creation of privileges through legislative action would lead to increased clarity, greater predictability, and enhanced democratic accountability. The implementation of codification has the potential to reduce conflicts between the Parliament and the judiciary by establishing clear boundaries for both entities (Kumar, 2018).

Critics contend that the codification process may impose constraints on Parliament's capacity to respond to unforeseen circumstances. The authors argue that the inherent dynamism of parliamentary democracy requires the establishment of adaptive privileges that evolve through practical application and established precedents, rather than being restricted by rigid statutory definitions (Kashyap, 2015).

Various committees, including the Press Commission established in 1954 and the Joint Committee on Parliamentary Privileges formed in 1967, have presented recommendations that support the codification of pertinent practices. Notwithstanding the persistent discussions regarding the necessity for thorough legislative frameworks, successive legislative bodies have repeatedly chosen to forgo such initiatives. This trend highlights the complex political factors that affect decisions related to the possible restriction of parliamentary powers (Jain, 2014).

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7.2. TENSIONS WITH MEDIA FREEDOM AND RIGHT TO INFORMATION

When it comes to the relationship between parliamentary privileges and media freedom, as well as the right of citizens to access information, there are instances of possible conflict that need to be investigated. However, it raises significant problems concerning the criticism of parliamentary activities and the potential for selective reporting that could lead to a distortion of the proceedings (Kumar, 2018). The protection of fair reporting of parliamentary processes is universally acknowledged; however, it presents these questions.

Additional difficulties have been introduced into this connection as a result of the passage of the Right to Information Act in the year 2005. It has been established that the Parliament is unwilling to fully execute the provisions of the Right to Information (RTI) in relation to its internal operations. The Parliament has invoked privileges as a basis for limiting excessive requests for transparency. This tension is an illustration of the continuous discourse that surrounds the equilibrium between the norms of democratic accountability and the autonomy of the legislative branch (Saxena, 2017).

As a significant example of the potential chilling impact on media freedom, the situation that occurred in 2016, in which Parliament considered initiating breach of privilege procedures against a television channel owing to the critical coverage it provided, serves as an example. In a similar fashion, the unwillingness of parliamentary committees to reveal material in compliance with the Right to material Act highlights the continued difficulty of striking a balance between the values of transparency and the privileges that are granted to legislators (Kumar, 2020).

7.3. Privileges and Fundamental Rights: Areas of Conflict

Among the constitutional conundrums that are particularly noteworthy is the interaction that exists between fundamental rights and legislative privileges. The first statement made by the Supreme Court in the case of M.S.M. Sharma that privileges can take precedence over fundamental rights has developed via later law, which increasingly acknowledges both as constitutionally coequal values that require harmonious interpretation (Krishnaswamy, 2009).

Particular tensions arise concerning:

1. **Freedom of expression**: The actions taken by parliamentary bodies against critics, which encompass journalists and citizens, have the potential to limit free speech and establish imbalanced power relations between lawmakers and the general populace (Sathe, 2002).

2. **Right to equality and non-discrimination**: The selective implementation of privileges concerning various external entities presents significant issues regarding the principle of equal treatment under the law (Kumar, 2018).

3. **Right to personal liberty**: The authority of Parliament to impose imprisonment for contempt, when exercised in the absence of judicial safeguards, poses a significant risk to individual liberty by circumventing due process protections (Saxena, 2017).

The ongoing necessity to reconcile these conflicting constitutional principles presents a continual challenge for both Parliament and the judiciary in delineating the appropriate boundaries of parliamentary privileges.

7.4. Expulsion of Members and Anti-Defection Law

The authority of Parliament to expel its members constitutes a significant privilege with far-reaching implications. The expulsion of members in 2005, who were implicated in the "cash-for-questions" scandal, serves as a significant case study illustrating Parliament's ability to uphold ethical standards via its disciplinary mechanisms, as evidenced in the ruling of Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, 2007.

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The anti-defection provisions established by the 52nd Constitutional Amendment contribute an additional layer of complexity to this matter. The constitutionalization of specific elements of parliamentary discipline results in intricate interactions with established privileges. This inquiry examines the extent to which the decisions made by the Speaker in relation to the anti-defection law warrant protection under parliamentary privilege, as opposed to being open to thorough judicial scrutiny (Saxena, 2017).

The recent controversies surrounding disqualification proceedings within various state legislatures highlight the inherent tension between the Speaker's function as an impartial arbiter and their position as a political entity influenced by party dynamics. This inquiry highlights essential considerations regarding the suitable institutional frameworks necessary for the enforcement of parliamentary ethics, all while maintaining the integrity of democratic representation (Kumar, 2020).

8. RECOMMENDATIONS FOR REFORM

8.1. Need for Partial Codification

A comprehensive strategy for reform should encompass a selective codification of parliamentary privileges, emphasising procedural dimensions while maintaining adaptability for substantive issues. The proposed middle path is expected to improve predictability and democratic accountability, while simultaneously acknowledging the necessity for institutional autonomy within Parliament (Kumar, 2018).

The identification of specific areas that are amenable to codification is essential:

1. Methods for the elevation and resolution of enquiries pertaining to privilege

2. Well-defined parameters for contempt and uniformity in associated penalties

3. This article examines the procedural safeguards available to non-members who are involved in privilege proceedings. It highlights the importance of ensuring fair treatment and due process for individuals who may not be part of the privileged group, while also addressing the implications of such proceedings on their rights and interests.

4. The temporal constraints associated with the initiation of privilege-related issues

This form of partial codification is anticipated to enhance clarity for citizens, media, and the judiciary, while simultaneously maintaining Parliament's ability to respond to the dynamic challenges inherent in a democratic society (Saxena, 2017).

8.2. Strengthening Internal Mechanisms

It is imperative for Parliament to enhance its internal mechanisms for the resolution of privilege matters by implementing a series of strategic measures.:

1. **Enhanced transparency**: The Committee of Privileges ought to disseminate comprehensive justifications for its recommendations, thereby facilitating public examination and fostering a uniform application of principles pertaining to privilege (Kumar, 2020).

2. **Due process guarantees**: Individuals charged with a breach of privilege must be afforded sufficient notice, opportunities for representation, and well-reasoned decisions. This approach ensures that parliamentary procedures are consistent with the essential tenets of natural justice (Krishnaswamy, 2009).

3. **Cross-party consensus**: Significant actions regarding privileges, especially those impacting non-members, ought to necessitate extensive bipartisan endorsement instead of mere majority votes, thereby mitigating the potential for partisan exploitation (Kumar, 2018).

The proposed internal reforms are anticipated to strengthen the legitimacy of actions pertaining to parliamentary privilege, concurrently preserving the essential autonomy of Parliament in the administration of its internal affairs.

8.3. Balancing Legislative Independence with Accountability

The attainment of a suitable equilibrium between legislative autonomy and democratic responsibility necessitates both institutional advancements and changes in mindset.

1. **Joint parliamentary-judicial committee**: The formation of a joint committee comprising representatives from Parliament and the judiciary may facilitate the development of guidelines pertinent to privilege matters that carry constitutional implications. This approach is likely to foster inter-institutional dialogue, thereby reducing the potential for confrontation (Saxena, 2017).

2. **Periodic review mechanism**: It is imperative for Parliament to engage in systematic evaluations of privilege precedents and practices, examining their ongoing significance within the framework of modern democratic governance (Kumar, 2018).

3. **Enhanced public education**: It is imperative for Parliament to create detailed educational resources that elucidate the objectives and constraints of parliamentary privileges. Such materials would promote a well-informed public dialogue regarding this intricate constitutional principle (Kashyap, 2015).

The proposed reforms aim to address the necessity for parliamentary autonomy while simultaneously upholding the fundamental principles of constitutional supremacy and democratic accountability.

9. CONCLUSION

The concept of parliamentary privilege in India holds a unique position within the constitutional framework, illustrating the country's distinct integration of Westminster traditions alongside its constitutional democratic principles. The privileges in question play a crucial role in upholding legislative independence and operational efficiency. However, their lack of codification and the potential conflicts with other constitutional principles pose persistent challenges for the governance of democracy in India.

The evolution of judicial interpretation regarding parliamentary privileges since independence reflects a transition from initial deference to parliamentary supremacy to a more pronounced focus on constitutional limitations and fundamental rights. This development signifies the advancement of India's constitutional culture and its dedication to harmonising institutional independence with constitutional limitations.

The current landscape presents significant challenges, characterised by tensions surrounding media freedom, increasing demands for transparency, and apprehensions regarding partisan misuse. These factors highlight the necessity for deliberate and considered reform initiatives. Although the implementation of complete codification may impose excessive limitations on parliamentary flexibility, a strategy involving partial codification alongside improved internal mechanisms has the potential to offer increased clarity while maintaining fundamental legislative independence.

In the context of India's evolving democratic framework, it is imperative that parliamentary privileges undergo a corresponding transformation to align with the shifting social expectations and interpretations of the constitution. The primary objective must be the establishment of privileges that facilitate efficient legislative operations, all the while ensuring adherence to constitutional principles and the preservation of democratic values. The attainment of this equilibrium necessitates continuous discourse among legislators, legal experts, constitutional academics, and the populace regarding the appropriate interplay between legislative independence and constitutional authority within a democratic framework.

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