

“CODIFICATION OF PARLIAMENTARY PRIVILEGES IN INDIA AN EVALUATIVE STUDY”

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ABSTRACT

Parliamentary privileges safeguard legislative independence but their uncodified nature in India raises concerns over ambiguity and misuse. Codifying these privileges can bridge the gap between legislative authority and citizens’ rights in a modern democracy. The concept of parliamentary privileges, rooted in British constitutional practices, was adopted in India post-independence. Article 105 of the Indian Constitution grants privileges to Parliament and its members but leaves them largely undefined, relying on conventions and judicial interpretations. Over the years, courts have played a pivotal role in shaping the understanding of these privileges, yet their uncodified status has often led to conflicts between the legislature, judiciary, and public. In India, parliamentary privileges remain uncodified, leading to debates over their scope and misuse. While these privileges are intended to ensure legislative independence, their ambiguous nature has led to controversies, including allegations of overreach and suppression of dissent. Codification is increasingly seen as a way to provide clarity, prevent misuse, and balance the rights of citizens with legislative autonomy. The study evaluates the need for codifying parliamentary privileges to address the ambiguities arising from their undefined nature. Codification would enhance transparency, accountability, and democratic balance by establishing clear boundaries and ensuring their consistent application. The lack of codification creates uncertainty, leading to potential misuse of privileges, conflicts with other constitutional authorities, and a lack of accountability to the public. This research seeks to evaluate whether codification can resolve these issues without compromising legislative independence. Codifying parliamentary privileges in India ensures clarity and accountability but may limit legislative discretion. Reforms could include drafting a comprehensive legal framework for privileges, promoting transparency, involving public consultations, and establishing mechanisms to address misuse while safeguarding legislative independence. This research aims to critically evaluate the need for codification of parliamentary privileges in India, analyzing its historical evolution, current challenges, and implications for democracy. It also seeks to propose actionable reforms to enhance accountability, transparency, and legal clarity while preserving the essence of legislative independence.

KEYWORDS: Parliamentary Privileges, Codification, Legislative Independence, Transparency, Accountability

1. Introduction

The bedrock of a robust democracy lies in the effective functioning of its legislative bodies. To ensure this, parliaments are endowed with

certain privileges, enabling them to operate without undue interference. In India, these parliamentary privileges, derived from British constitutional practices and enshrined in Article

105 of the Constitution, are intended to safeguard the independence and dignity of the legislature. However, their largely uncodified nature has become a subject of intense debate, raising critical questions about their scope, application, and implications for democratic governance. This paper undertakes an evaluative study of the necessity and feasibility of codifying parliamentary privileges in India, examining the historical context, contemporary challenges, and potential reforms.

The absence of a comprehensive legislative framework defining parliamentary privileges has created an environment of ambiguity, leading to frequent conflicts between the legislature, judiciary, and the public. This lack of clarity has raised concerns about the potential for misuse, impacting the fundamental rights of citizens and undermining the principles of transparency and accountability. In a rapidly evolving democratic landscape, it is imperative to reassess the current framework and explore the potential benefits of codification. This paper seeks to delve into the complexities of this issue, analyzing the arguments for and against codification, and proposing actionable reforms to strike a balance between legislative autonomy and the rights of citizens.

2. Historical Evolution and Constitutional Framework

The concept of parliamentary privileges in India is deeply rooted in the British parliamentary system, where these privileges evolved over centuries to protect the House of Commons from executive and judicial interference. Post-independence, the framers of the Indian Constitution recognized the importance of safeguarding the legislature's autonomy and incorporated provisions relating to parliamentary privileges in Article 105. This article grants certain privileges to Parliament and its members, including freedom of speech, immunity from legal proceedings for actions taken within the House, and the power to punish for contempt.

However, Article 105 leaves the specifics of these privileges largely undefined, stating that they shall be "those of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution." This reliance on the British precedent, without a clear articulation of the privileges within the Indian context, has been a major source of ambiguity. The Constituent Assembly debates reveal a lack of consensus on the precise scope of these privileges, leading to a pragmatic decision to defer the detailed enumeration to a later stage.

Over the years, the judiciary has played a crucial role in interpreting and shaping the understanding of parliamentary privileges. **Landmark cases like Searchlight Case (1959) and Keshav Singh Case (1965) highlighted the complexities of the relationship between the legislature and the judiciary, particularly in defining the boundaries of their respective jurisdictions. These cases underscored the need for a more precise definition of parliamentary privileges to avoid conflicts and ensure harmonious functioning of the constitutional framework.** (M.P. Jain, Indian Constitutional Law, 8th ed. (LexisNexis, 2018), p. 526.)

3. The Current Challenges: Ambiguity and Misuse

The inherent ambiguity arising from the uncodified nature of parliamentary privileges in India has engendered a complex web of challenges, fundamentally undermining the principles of democratic governance. These challenges, stemming from the lack of a clear and comprehensive legislative framework, manifest in several critical areas, impacting the balance of power and the rights of citizens. India's democratic journey, while rooted in the Westminster model, has evolved within a unique socio-political context. The reliance on British precedents for parliamentary privileges, as enshrined in Article 105, creates a disconnect. These precedents, forged in a colonial era, often fail to address the complex

realities of modern India, a nation grappling with diverse regional identities, socio-economic disparities, and a vibrant, often contentious, public sphere.

A. **Lack of Clarity** – The attitude, sometimes permeating Indian governance, can exacerbate the ambiguity. Without clearly defined privileges, interpretations become subjective, often influenced by political expediency. This leads to inconsistent applications across different state legislatures and even within the national Parliament. **For example, what constitutes "contempt" in a state assembly in the North might differ significantly from a similar interpretation in the South. This inconsistency undermines the uniform application of law and creates a sense of uncertainty for citizens.** The lack of clarity also fuels regional tensions, as state legislatures may assert privileges in ways that challenge the federal structure. (M.C. Chagla, *Roses in December: An Autobiography*, 2nd ed. (Bharatiya Vidya Bhavan, 2015), p. 312.)

B. **Potential for Misuse** – India's political landscape is often characterized by intense partisan rivalries. The absence of clear guidelines allows ruling parties to leverage parliamentary privileges to silence opposition voices and suppress dissent. This can manifest in the form of arbitrary contempt notices, restrictions on media reporting, or the expulsion of dissenting members. The "might is right" mentality, sadly prevalent in some political circles, can lead to the misuse of these privileges to settle political scores or protect vested interests. This is especially concerning in a nation where freedom of expression is already under pressure from various quarters.

C. **Conflicts with Other Constitutional Authorities** – India's judiciary, fiercely protective of its independence, often finds itself at loggerheads with the legislature over the interpretation of parliamentary privileges. The "basic structure" doctrine, developed by the Supreme Court, asserts its power to review constitutional amendments, including those

related to privileges. This clashes with the legislature's assertion of its sovereign right to define its own privileges. This tug-of-war, often played out in the media, erodes public trust in both institutions and fuels perceptions of institutional gridlock. The regional diversity also creates unique problems, as state legislatures often have their own ideas of what their rights are, which can conflict with federal law.

D. **Lack of Accountability** – The "VIP culture" that persists in India can exacerbate the lack of accountability. The perception that elected representatives are above the law undermines the fundamental principle of democratic accountability. The absence of independent oversight mechanisms for parliamentary privileges creates a sense of impunity. **This is particularly concerning in a nation where corruption and abuse of power are persistent challenges. The "who will question us?" mentality, sadly evident in some political circles, erodes public trust and fuels cynicism.** (Granville Austin, *Working a Democratic Constitution: The Indian Experience* (Oxford University Press, 1999), p. 482.)

E. **Suppression of Dissent** – India's vibrant media landscape, while a pillar of democracy, often faces intimidation from the legislature. The power to punish for contempt is sometimes used to silence critical reporting or stifle investigative journalism. This creates a chilling effect on freedom of the press and undermines the public's right to information. This is particularly concerning in a nation where social media has become a powerful tool for dissent. The "anti-national" narrative, often used to silence critics, can further exacerbate the suppression of dissent. The diverse nature of India means that what is seen as dissent in one area, may be seen as normal in another. This creates a very complex problem.

4. Arguments for Codification

The growing concerns surrounding the ambiguity and potential misuse of parliamentary privileges have led to increasing calls for their codification. The arguments in

favor of codification include. The imperative for codifying parliamentary privileges in India arises from a pressing need to rectify the existing ambiguities and potential for misuse, thereby strengthening the foundations of our democratic framework. While the current reliance on uncodified British precedents has served as a starting point, it has proven inadequate in addressing the complexities of the Indian socio-political landscape. Codification, in the Indian context, offers a pathway to a more robust, transparent, and accountable system of governance.

A. **Enhanced Clarity and Certainty** - In a nation as diverse and complex as India, the lack of clarity in parliamentary privileges creates a breeding ground for inconsistent interpretations and arbitrary applications. This ambiguity can be particularly problematic in a political environment where regional variations and partisan rivalries often influence decision-making. **Codification, by providing a clear and comprehensive framework, would ensure uniformity in the application of these privileges across different state legislatures and within the national Parliament.** This would reduce the scope for political maneuvering and ensure that the exercise of parliamentary powers is governed by objective legal principles, rather than subjective interpretations. In a nation where legal consistency is crucial for fostering national unity, this increased clarity is paramount. (Subhash C. Kashyap, *Parliamentary Privileges in India*, 2nd ed. (Universal Law Publishing, 2010), p. 145.)

B. **Improved Transparency and Accountability** - India's democratic ethos demands transparency and accountability from its institutions. Codifying parliamentary privileges would enhance transparency by making the rules and procedures governing their application publicly accessible. This would empower citizens to scrutinize the actions of their elected representatives and hold them accountable for any potential misuse of power. Furthermore, the establishment of mechanisms

for redressal, such as an independent oversight body or judicial review, would ensure that the exercise of these privileges is subject to scrutiny. **In a society where public trust in institutions is often eroded by perceptions of corruption and abuse of power, this increased transparency and accountability are essential for restoring confidence in the democratic process.** The Right to Information act has already shown the Indian citizens appetite for transparency, codification would extend this. (Jain, *Indian Constitutional Law*, 8th ed. (LexisNexis, 2021), p. 327.)

C. **Strengthening Democratic Balance** - India's constitutional framework is built on the principle of checks and balances, ensuring that no single branch of government becomes too powerful. Codification would help to strike a balance between the legislative autonomy and the rights of citizens, preventing the legislature from overstepping its boundaries and infringing upon fundamental rights. By clearly defining the boundaries of parliamentary privileges, it would ensure that these privileges are exercised in a manner consistent with the principles of democracy and the rule of law. **This is particularly important in a nation where the protection of individual liberties is often challenged by the competing demands of national security and public order.** The diverse makeup of the Indian populace, with its various religious and social groups, requires a system that actively protects the rights of minorities and marginalized communities. (Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press, 1966), p. 225.)

D. **Reducing Conflicts with the Judiciary** - The Indian judiciary, known for its independence and activism, often finds itself in conflict with the legislature over the interpretation of parliamentary privileges. Codification, by delineating the respective jurisdictions of the legislature and the judiciary, would minimize these conflicts and promote harmonious relations between these crucial institutions. This would ensure that the constitutional framework functions smoothly and efficiently, without

unnecessary disruptions. In a nation where the judiciary plays a vital role in upholding the rule of law and protecting fundamental rights, this reduction in conflicts is essential for maintaining the integrity of the constitutional system.

E. Alignment with Modern Democratic Principles - India, as the world's largest democracy, aspires to uphold the highest standards of democratic governance. Codification would align parliamentary privileges with modern democratic principles, ensuring that the legislature operates in a manner that is consistent with the expectations of a democratic society. Transparency, accountability, and the rule of law are paramount in a modern democracy, and codification would ensure that these principles are upheld in the exercise of parliamentary privileges. This would enhance public trust and confidence in the legislative process, strengthening the foundations of Indian democracy. In a nation where a large percentage of the population are young and well educated, these modern principals are expected, not just desired.

5. Arguments Against Codification

While the arguments for codification are compelling, there are also counterarguments that need to be considered. An Indian Perspective While the arguments for codification of parliamentary privileges in India are compelling, it's crucial to acknowledge the potential drawbacks, especially when viewed through the lens of India's unique socio-political dynamics.

A. Potential Limitation of Legislative Discretion - India's political landscape is marked by rapid socio-economic changes and unforeseen challenges. A rigid, codified framework might hinder the legislature's ability to respond swiftly and effectively to these evolving situations. For example, during national emergencies or periods of political instability, the legislature might need to exercise its privileges with greater flexibility.

Codification could create bureaucratic hurdles, delaying crucial decisions and impeding the legislature's ability to act decisively. In India, where "jugaad" (improvisation) is often a necessity, excessive rigidity can be counterproductive. The need to balance legal certainty with the ability to adapt is a delicate one, especially in a nation with such a diverse and dynamic population.

B. Difficulty in Anticipating All Scenarios - India's social and political complexities make it exceedingly difficult to anticipate all possible scenarios that might require the exercise of parliamentary privileges. The sheer diversity of regional customs, religious beliefs, and social practices creates a vast array of potential situations that a codified framework might fail to address. This could lead to unintended gaps and ambiguities, defeating the very purpose of codification. For example, the use of social media in political discourse has introduced new challenges that traditional parliamentary practices might not have anticipated. Crafting a framework that is both comprehensive and flexible is a formidable task in the Indian context, where the legal system is already overburdened.

C. Potential for Political Manipulation - India's political arena is often characterized by intense partisan rivalries and a "winner-takes-all" mentality. The process of codification could become highly politicized, with different political parties attempting to influence the outcome to their advantage. This could lead to a framework that is biased or unfair, favoring the ruling party or a particular political ideology. In a nation where political polarization is a growing concern, the risk of manipulation is significant. The fear of "legislative capture" by the ruling party is a legitimate concern, especially if the codification process lacks sufficient transparency and public participation.

D. Erosion of Traditional Parliamentary Practices - India's parliamentary traditions, while rooted in the Westminster model, have evolved over time to incorporate unique

cultural and social norms. These practices, while not codified, often play a crucial role in maintaining the decorum and functioning of the House. Codification could lead to the erosion of these traditions, potentially disrupting the delicate balance of parliamentary proceedings. For example, certain regional customs or linguistic nuances might be difficult to translate into a formal legal framework. The fear of "westernization" or the loss of indigenous parliamentary customs is a concern for some. The need to preserve valuable traditions while embracing legal clarity is a complex challenge, especially in a nation that values its cultural heritage.

6. Proposed Reforms and Recommendations

To address the challenges and concerns surrounding parliamentary privileges in India, it is essential to consider reforms that strike a balance between legislative autonomy and the rights of citizens. The following reforms are proposed:

A. **Drafting a Comprehensive Legal Framework:** A comprehensive legal framework should be drafted, clearly defining the scope and application of parliamentary privileges. This framework should be based on the principles of transparency, accountability, and the rule of law.

B. **Promoting Transparency and Public Access:** The rules and procedures governing the exercise of parliamentary privileges should be made publicly accessible. This would enhance transparency and ensure that citizens are aware of their rights and the limitations of legislative power.

C. **Involving Public Consultations:** The process of codification should involve public consultations, allowing citizens, civil society organizations, and legal experts to provide input and ensure that the framework reflects the values and aspirations of a democratic society.

D. **Establishing Mechanisms for Redressal:** Mechanisms should be established to address

grievances and provide redressal in cases of alleged misuse of parliamentary privileges. This could include an independent oversight body or judicial review.

E. **Developing Clear Guidelines for Contempt Powers:** Clear guidelines should be developed for the exercise of contempt powers, ensuring that they are used judiciously and in a manner that is consistent with freedom of speech and expression.

F. **Continuous Review and Amendment:** The codified framework should be subject to continuous review and amendment to ensure that it remains relevant and effective in addressing evolving challenges.

7. Case laws

A. **M.S.M. Sharma v. Shri Krishna Sinha (Searchlight Case), AIR 1959 SC 395** – This case dealt with the conflict between the fundamental right of freedom of speech and expression (Article 19(1)(a)) and the privileges of the legislature. The Supreme Court held that in matters of internal proceedings, the legislature's privileges prevail. This case illuminated the ambiguity of Article 105 and the judiciary's approach to interpreting it, highlighting the need for clearer boundaries. It shows the early judicial approach to the uncodified nature of privileges.

B. **U.P. Legislative Assembly v. Keshav Singh, AIR 1965 SC 745** – This case involved a conflict between the Uttar Pradesh Legislative Assembly and the Allahabad High Court concerning the Assembly's power to commit contempt. The Supreme Court clarified the relationship between the legislature and the judiciary, emphasizing that while the legislature has the power to punish for contempt, it is subject to judicial review in certain circumstances. This case underscored the ongoing tension caused by the lack of defined privileges and the potential for conflict. It is very important for the discussion of conflicts between constitutional authorities.

C. **Tej Kiran Jain v. N. Sanjiva Reddy, AIR 1970 SC 1573** – This case addressed the immunity of members of Parliament from legal proceedings for anything said within the House. The Supreme Court broadly interpreted the immunity granted by Article 105(2), further highlighting the wide scope of uncodified privileges and the potential for its application.

D. **P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626**. – This case involved allegations of bribery against members of Parliament. The Supreme Court examined the scope of Article 105(2) and its application to criminal proceedings. While the court upheld the immunity for speeches and votes, it clarified that this immunity does not extend to criminal acts, this case helps define what is and is not protected by the uncodified privileges.

E. **Raja Ram Pal v. Hon'ble Speaker, Lok Sabha, (2007) 3 SCC 184** – This case is a recent and very important case. The Supreme Court examined the power of the legislature to expel its members, and also the power of the courts to judicially review the actions of the parliament. This case strongly examines the balance of power, and the limits of parliamentary privileges. This case is very important to modern discussion of codification, and judicial review of legislative actions.

8. Conclusion

The debate surrounding the codification of parliamentary privileges in India presents a critical juncture for the nation's democratic evolution. While the historical legacy of uncodified privileges has fostered ambiguity, potential misuse, and persistent conflicts with other constitutional authorities, notably the judiciary, the potential for codification offers a pathway to greater clarity and accountability. Despite the inherent challenges in precisely defining and legislating these privileges, the long-term benefits of enhanced transparency and accountability significantly outweigh the potential drawbacks. Adopting a meticulously balanced approach is essential. This requires a process that goes beyond mere legislative

drafting, one that actively engages with diverse stakeholders. Public consultations, involving citizens, legal experts, and civil society organizations, are crucial for ensuring that the codified framework reflects the values and aspirations of a modern democratic society. The establishment of clear guidelines, particularly regarding the exercise of contempt powers, is vital to prevent the suppression of dissent and safeguard fundamental rights. Furthermore, robust mechanisms for redressal must be implemented to address grievances and ensure that the exercise of parliamentary privileges is subject to scrutiny and accountability. By implementing the proposed reforms, India can forge a framework for parliamentary privileges that successfully safeguards legislative independence while upholding the principles of democracy and the rule of law. This will ensure the legislature operates effectively and responsibly within the constitutional framework, fostering trust and confidence in the legislative process. Ultimately, this will strengthen the foundations of Indian democracy, ensuring that the parliament remains a pillar of democratic governance, accountable to the people and committed to upholding their rights.

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