

Privileged Legislature and Immune Legislators

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Introduction

Parliamentary privileges- this article defines parliamentary privileges of both Houses of Parliament and of their members and committees. Article 194, which is an exact reproduction of Article 105, deals with the State Legislatures and their members and committees. To enable Parliament to discharge functions properly, the Constitution confers on each member of the Houses certain rights and immunities and also certain rights and immunities and powers on each house collectively. Parliamentary privilege is an essential incident to the high and multifarious functions which the legislature is called upon to perform. According to May, the distinctive mark of a privilege is its ancillary character a necessary means to fulfillment of functions. Individual members enjoy privileges because the House cannot perform its function without unimpeded use of the services of its members and by each House for the protection of its members and the vindication of its own authority and dignity.

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of Parliament and by members of each House individually, without which they could not discharge their functions, efficiently and effectively, and which exceed those possessed by other bodies or individuals. When any of these rights and immunities, both of the members, individually, and of the assembly in its collective capacity which are known by the general name of privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Articles 105/194 of the Constitution deal with the powers, privileges and immunities of Members of Parliament/State Legislatures and their House. Members and Committees. Each House also claims the right to punish actions which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its members. Such actions, though called "breaches of privilege" are more properly distinguished as "contempts".

Article 105 of the Constitution of India which provides for the powers, privileges and immunities of the Houses of Parliament and of the Members and the Committee thereof reads as follows:-

(1) 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.

(2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

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

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any committee: thereof as they apply in relation to Members of Parliament.

(5) The corresponding provisions relating to the powers, privileges and immunities of the Houses of State Legislatures and of the members and committees thereof are contained in Article 194 of the Constitution which are in identical terms to those in Article 105 relating to Parliament.

(6) Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 came into force with effect from the 20th June, 1979. Prior to that, clause (3) of Article 105 provided that "in other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of the Constitution i.e. on the 26th January, 1950"

No law has so far been enacted by Parliament (and State Legislatures) in pursuance of clause (3) of Articles 105/194 of the Constitution to define the powers, privileges and immunities of each House and of the Members and the committees thereof. In the absence of any such law, therefore, the powers, privileges and immunities of the Houses of Parliament and State Legislatures and of the Members and the committees thereof continue in actual practice to be governed by the precedents of the British House of Commons as they existed on the date our Constitution came into force.

(6) It may be observed that Article 105(3) stipulates that Parliament may from time to time define its privileges by law and it has been urged particularly by the Press that there should be codification of the law of privilege so as to make the position clear and free from ambiguity. The "question of undertaking legislation on the subject has also engaged the attention of the Presiding Officers of Parliament and State Legislatures in India since 1921. The dominant view, however, has all along been that any codification is more likely to harm the prestige and sovereignty of Parliament/State Legislatures without any benefit being conferred on the Press and that in the present circumstances, codification of Parliamentary privileges is neither necessary nor desirable.

MAIN PRIVILEGES OF PARLIAMENT

(7) Some of the more important privileges of each House of Parliament and of its members and Committees are as follows:

- (i) Freedom of speech in Parliament (of Article 105(1) of the, Constitution].
- (ii) Immunity to a member from any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any Committees thereof (of Article 105(2) of the Constitution].
- (iii) 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 (of Article 105(2) of the Constitution].
- (iv) Prohibition on the courts to inquire into proceedings of Parliament (of Article 122 of the Constitution).
- (v) Freedom from arrest of Members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion (of section 135 of the Code of Civil Procedure).

(vi) Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of Member (of Rules 222A and 222B of the Rules of Procedure and Conduct of Business in Rajya Sabha).

(vii) Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the Chairman/ Speaker.

(viii) Prohibition of disclosure of the proceeding or decision's of a secret sitting of the House.

(ix) Members or Officers of the House cannot give evidence or produce documents in courts of law, relating to the proceedings of the House without the permission of the House (of First Report of Committee of Privileges of Rajya Sabha presented to the House on the 1st May, 1958).

(x) Members or Officers of the House cannot attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (of Sixth Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on the 17th December, 1958 and Thirty-third Report of the Committee of Privileges of Rajya Sabha, adopted by the House on 30th March, 1993).

(xi) All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purposes of the inquiry by Committee. A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of a Committee.

(xii) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.

(8) 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 as follows: -

(I) to commit persons, whether they are Member or not, for breach of privilege or contempt of the House;

(ii) to compel the attendance of witnesses and to send for papers and records:

(iii) to regulate its own procedure and the conduct of its business; (of Article 118 of the Constitution).

(iv). to prohibit the publication of its debates and proceeding's;

(v). to exclude strangers from the House

POWER OF PARLIAMENT TO PUNISH FOR CONTEMPT

Each House of Parliament is the guardian of its own privileges. Courts of law in India have recognised that a House of Parliament (or of a State Legislature) is the sole authority to judge as to whether or not there has been a breach of privilege or contempt of the House in a particular case.¹ The House may punish a person found guilty of breach of privilege or contempt of the House either by reprimand or admonition or by imprisonment for a specified period. In case of its own Members, two other punishments can be awarded by the House, namely, suspension from the service of the House or expulsion.

The penal Jurisdiction of the House is not confined to its own Members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by members or any persons who are not Members, irrespective of whether the offence is committed within the House or beyond its walls.

¹ M.S.M. Sharma, Vs. Shri Krishna Sinha, AIR: 1959, S.C. 395:

Homi D. Mistry Vs: Nalisul. Hassan, I.L'R 1957, Bombay 218.

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