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PROVISIONS RELATING TO PARLIAMENTARY PRIVILEGES IN INDIA

By Guvvala Balaraju

A Privilege is always understood as an advantage conferred by law on a person or a class of persons, which is not enjoyed by others (or to the exclusion of others). The word 'privilege' itself is drawn from the Latin term 'privus' ("private") and, lex, leg ("law") meaning 'a right, advantage or immunity granted to or enjoyed by a person or a class of people, beyond the common rights or advantages granted to the others.' The term 'parliamentary privileges' refer to power, privileges and immunities enjoyed by the Houses of Parliament (or Legislatures) and by their members and also includes its power to punish for contempt or breach of the conferred privileges. These privileges empower the legislature to discharge its function more effectively, fearlessly and without any extraneous interfering and influence. They are also vital to protect the authority and dignity of the legislature.¹

Privilege can under no circumstances be called a right. The reason being that as in the case of a right, there exists '*a correlative duty*' but not so in the case of a privilege. The sacrosanct need of this right can be assessed by the very fact that if the members of Parliament are unable to express their views freely and without any fear or threat of proceedings by anyone outside the Parliament, they will not be in a position to discharge effectively their responsibilities and duties and this would indeed be a handicap in discharge of their functions. In order to protect them from fear, immunity must be conferred upon them in respect of their actions in Parliament.

*Research Scholar, Faculty of Law, Osmania University, Hyderabad.

¹ <https://articles.manupatra.com/article-details/The-Indian-Parliament-Privileges-to-Powers>

Privilege is, therefore not a personal benefit that the members of the Parliament enjoy. It is intended for the protection and maintenance of the independence and dignity of the House. The Indian Parliament is classically modeled on the Westminster Parliamentary system existent in the United Kingdom, where also, the members of both the Houses enjoy similar privileges. In the United Kingdom Parliamentary Privileges have a long history, only a trifle shorter than the life of British Parliament itself albeit their role and scope have been different in (with changing times) different ages. They precipitate and form a part of the British Constitution. But, interestingly, the British Constitution itself is an unwritten and uncodified document. There exists, thus, no statutory statement of the privileges in British house of commons, except Article 9 of the Bill of Rights² which lays down “The freedom of speech and debates of proceedings in Parliament ought not to be impeached in any court or place out of parliament.”

Nevertheless, the drafters of the Constitution in India felt the need to confer certain privileges on the Legislature in India, therefore it necessitated the express provisions under Art. 105 and Art. 194 of the Constitution of India.³ In a nutshell, Article 105 of the Indian Constitution provides for the powers, privileges and immunities of the Union Parliament and its members, whereas, the powers, privileges and immunities concerning the State Legislatures and their members are specified, in identical terms, under Article 194 of the Constitution. Barring the substitution of the expression ‘Parliament’ used in Article 105 by the expression ‘Legislature of a State’, the remaining provisions are indistinguishable in Article 194.

Article 105(1) guarantees ‘freedom of speech’ in Parliament subject, of course, to the rules and Standing Orders regulating the procedures of Parliament. It is interesting to note that what makes Article 105(1) more effective and elevates this privilege conferred than the right of every citizen to free speech guaranteed by Article 19(1) (a) is the immunity from the process of the courts in respect of anything said in the House. The privilege is available not only to the Members of Parliament but also, under Article 105(4) of the Constitution, to persons like the Attorney General of India or Ministers who are not members but have a right to speak in the House. The stage has been set for fearless participation in the debates in the House in order to advance democracy without the fear of being prosecuted for anything said and is indeed a pillar which should not be compromised in the general sense. In order to claim

² <https://publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4306.htm>

³ https://www.constitutionofindia.net/constitution_of_india/the_states/articles/Article%20194

(or exercise) the immunity, the only conditions to be satisfied are that Parliament was sitting and that its business was being transacted.

In view of Article 122, the courts are also explicitly barred from enquiry into the validity of any proceeding in Parliament. Another exception to be read with the afforested is that Parliament must be sitting. The privilege cannot, arguably be stretched to cases of casual conversation in the House. A member cannot also claim immunity for any speech that he may make outside the House even if it is a verbatim reproduction of what he has said inside the House.

In furtherance of assessing the provisions of the Indian Constitution, “Clause 2 of Articles 105(2) and 194(2) provides that the members of the Parliament and State Legislatures have the immunity from the liability to any proceedings in any court in respect of anything said or vote given by them in the House”.⁴ The expression “any proceedings in any court” includes not only the civil and criminal proceedings but also the writ proceedings under Article 32 and 226. Therefore, the ambit covered by the granted privilege is wide enough to encompass the Writ Jurisdiction of the Courts as well. It further provides that no person is so liable in respect of the publication by or under the authority of the House, of any report, paper, votes or proceedings, which again re-iterates and strengthens the need for the privilege. Interpreting the scope of the said immunity the Supreme Court, in *P. V. Narsimha Rao v. State (CBE/SPE)*⁵, has held that “by virtue of Article 105(2) of the Constitution, a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal court if the acceptance of the bribe is in respect of the vote given by him in the Parliament.” Commenting upon the nature and scope of the privileges enjoyed by the legislative bodies in India, Justice Bala Subramanian observes⁶ – “So it is evident that subject to very minor limitations, the privileges under Article 105(1) and (2) with regard to speech in the House are complete, conclusive and outside the scope of scrutiny or enquiry by the organs of the State.”

It is interesting to note that till now no law has been endorsed, either by the Parliament or any other Legislatures of the States, to codify the ‘other Privileges’ as mentioned under Article 105(3) and 194(3), the specific nature and latitude of the parliamentary and legislative

⁴ <https://blog.ipleaders.in/parliamentary-privileges/>

⁵ (1998) 4 SCC 626

⁶ W.P. No. 4203 of 1987 Madras High Court

privileges continues to remain vague and not very clear. This would in obvious terms be regarded as a gray area in void of a law defining the same, in view of the fact, that the Constitution of India, unlike that of the United Kingdom, is a comprehensively written record.

