



Parliamentary and State Legislative Privileges in the Indian Constitution: A Comprehensive Analysis of Articles 105 and 194

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ABSTRACT

Legislators all over the world are entitled to parliamentary privileges, which can be defined as exceptional rights or advantages. Because of this, the legislatures and the members of those legislatures enjoy certain privileges in the majority of democratic countries so that they can function effectively. The concept of privilege, despite being a component of the law of the land, can be understood as an exemption from the general law to a certain extent. To say that privilege is on par with the prerogative of the Crown would not be an incorrect statement to make. Similarly, the House of Parliament can exercise privileges without the assistance or interference of the judges, just as the Crown can exercise prerogatives without any assistance or obstruction from Parliament or the judges. The future of India will, to a significant degree, be determined by the decisions that our legislators make regarding the country. There are lengthy debates and discussions on every conceivable subject that take place during the lengthy and exhausting process of lawmaking. The members of the organization, as well as the institution to which they belong, must be free to express their concerns and ideas without any restrictions or obstructions in order for this laborious task to be effectively enforced. Using a simple majority of the parliament, the provisions that pertain to the parliamentary privileges of the parliament (members and committees) can be amended. Additionally, the article discusses a wide range of violations that can occur with regard to these provisions. The purpose of this article is to provide readers with information regarding the meaning of the privileges as well as the constitutional aspects of those privileges. Its goal is to be informative in the stream of parliamentary privileges. A conclusion that discusses codification as the future of privileges is also included in the article. Additionally, the article covers the perspective of the judiciary through cases.

Keywords: Article 105, Article 194, Parliamentary Privileges, Constitution and Fundamental Rights.

Introduction

In the early days of the struggle that Parliament waged against the King¹ and his Courts in the United Kingdom, the concept of Parliamentary privilege² was first conceived. There were assertions of privileges made to get in the way of the hegemonic behavior of the British Monarch. The Royal Council had been the primary source of authority for Parliament when it first came into existence. "The absence of a continuous life and the subsequent

¹ Donoghue, M. (2020). Adam Smith and the Honourable East India Company. *History of Economics Review*, 77(1). 1-19.

² Kothandaraman, R. (2008, Sept 18). Questions of Privilege. *The Indian Express*. Taken from <http://archive.indianexpress.com/news/questions-of-privilege/362257/> (last accessed in April 2024).

changes in personnel prevented Parliament from establishing an independent tradition and from conceiving of itself as either a constantly or a constant critic of the Crown,³

It is known that it only occasionally displayed open dissatisfaction with the policies that the King deemed appropriate to implement. This is the current state of affairs. Despite this, the King did not spare any effort when it came to dealing with slight instances of stubbornness on the part of the Parliament or its members.

There is a close connection between the development of legislatures in India since 1833 and the history of parliamentary privileges in India. The legislative councils that were established in India in accordance with the British Parliament Act of 1833, 1892, and 1909 are believed to be the origin of this phenomenon. Despite the fact that they were occasionally expanded, these Councils were considered to be adjuncts of the executive branch and did not possess any particular parliamentary privileges. The legislative council that was operating under the Acts of 1833 and 1853 was in possession of the authority to create its own rules of procedure; however, this authority was taken away by the Act of 1861 for the legislative council. Prior to the passage of the Government of India Act in 1919, there was no constitutional⁴ or statutory recognition of parliamentary privileges in India. The only exception to this was the Bengal Civil Act of 1866, which provided for the recognition of parliamentary privileges.

It is important to note that the Government of India Act of 1919,⁵ which was the first legislation to establish a separate legislature that was distinct from the executive branch, did not address the issue of the powers, privileges, and immunities of the legislature. In sub-section (7) of section 72 D of the Act, the only exception was an express grant of the right to freedom of speech for members of the Central Legislature. This was the only exception.

An individual named Ram Narayan Singh, who was a member of the Central Legislative Assembly at the time, submitted a motion in 1929 with the intention of bringing the issue of conferring powers and privileges on legislators in India to the attention of the Government of India. These powers and privileges were similar to those that were enjoyed by members of the House of Commons in England. The government avoided the issue by arguing that the problems had widespread implications and should be postponed until such time as the Act was next amended. This was accomplished by avoiding the issue. In the year 1933, Iswar Saran and Muhammed Sunrawardy made demands that were comparable to one another. Concerns regarding privileges were voiced not only in the Legislative Assembly but also in Provincial Councils. This sentiment was shared by both organisations.⁶ During the year 1925, the Bombay Legislative Council was presented with a privilege issue regarding the action taken by the Commissioner of Sind.

In accordance with the Constitutional Reforms that were enacted in the Government of India Act of 1935, their privileges were restrained in the same way that the powers of Indian legislatures were restricted. The privileges that were enjoyed under Act XXIII of 1925, such as freedom from serving as a juror or assessor, freedom from civil imprisonment, and freedom from arrest during session, were maintained. The freedom of speech in the legislatures was also guaranteed, albeit subject to the limitations of discussion that were to be established by the Governor-General or the Provincial Governors and that were to be mentioned in the Standing Orders. Moreover, there was no possibility of any proceedings taking place in relation to papers that were published at the Centre on the order of either chamber. Any Act could confer the status of a Court or any punitive power other than that of re, moving persons, infringing the rules or standing orders, or behaving in a disorderly manner on any Legislature. However, the privileges could be expanded, but no Act could confer any of these powers on any Legislature.

Article 105 and the Privileges thereto

On January 26, 1950, India became a sovereign democracy, and the powers, privileges, and immunities that were enjoyed by the House of Commons on that day were transferred to India's own legislatures. When it comes to the provisions of the Constitution of India that pertain to parliamentary privileges, the influence of the British Parliament is nowhere more apparent than in this particular section.

³ Rakhsit, N., B. (2004). Parliamentary Privileges and Fundamental Rights. *Economic and Political Review*, 39(13), 1379-1383. Taken from: https://www.jstor.org/stable/4414828?casa_token=ahj1cFd9rikAAAAA%3ASM3U4slruiT6jG83RkuB-mfm9uRF97pu93b5sjcZNA2SHjqTUZth91H6Y4oXPoj8C-lN3ew-6-us27plVKpAgOGK9FFrCm5Rkolqpan1xaWAo4IVIQvm#metadata_info_tab_contents (last accessed in April 2024).

⁴ Seervai, PM. (1968 Reprint). *Constitutional Law of India*.

⁵ Baljit, Dr Kaushik. (2017). *Parliamentary Privileges in India: An Overview*. *Asian Journal of Multidimensional Research*, 2(7). 56-72.

⁶ Shakder, S.L. (1976). Reviewed Work by Parliamentary Privileges under the Indian Constitution by DC Jain. *SAGE Publications*, 32(1). 104-106. Taken from: https://www.jstor.org/stable/45070555?casa_token=HGA8YFMxMVkAAAAA%3ASzd6dqOF91e-KV2A2F2NmLWm2PQB9VozwkK1ZLj8a3588eJWgVyDV8mEQ5n88z-AAFqfViOoY_hVrOcjjGFWumQPHilY07Yy3eIaooGm4X74Jl97jn8T#metadata_info_tab_contents (last accessed in April 2024).

In the Indian Constitution, Article 105 includes a definition of the parliamentary privileges that are granted to both the Houses of Parliament as well as the members and committees of each House. In order to ensure that the Parliament is able to carry out its duties in an appropriate manner, the Constitution bestows certain rights and immunities upon each and every member of the House as well as each and every committee that lies under it.

For the purpose of ensuring that parliamentary democracy is able to function effectively, India ensures that members of Parliament are free to express themselves. Both clause (1) and clause (2) of Article 105 in India serve to protect the right to freedom of speech within the institution of Parliament. The freedom of speech that is guaranteed by clause (1) of Article 105 is very different from the freedom of speech that is given under Article 19 (1) (a), which is a fundamental right that is enjoyed by the citizens of India. The freedom of speech that is guaranteed by Article 19 does not provide complete protection for an individual from the things that they say. The second clause of Article 19 contains a number of reasonable restrictions that pertain to the same.⁷ The phrase "freedom of speech" is used in Article 105, and it indicates that no member of Parliament will be held liable for any proceedings in any court for the statements that he makes during the debates that take place in the Parliament or any committee of the Parliament, regardless of the severity of the statements.⁸ Therefore, the freedom of speech that is guaranteed by Article 105 cannot be restricted in accordance with clause (2) of Article 19, as the Supreme Court of India ruled in the case of *Narasimha Rao*.

In accordance with the provisions of Article 105, Clause (2), members of the parliament are granted immunity for any and all statements that they make in the parliament. In this context, the word "anything" is of the utmost significance and is virtually synonymous with the word "everything." The only restriction that can be found in this article is associated with the phrase "in Parliament."⁹

It is understood that the phrase "in Parliament" refers to the time when Parliament is in session as well as the time when Parliament is conducting its business. Anything that was said during the course of the business that was being conducted by the Parliament is exempt from any legal proceedings once it has been established that the Parliament was in session and that the business of the Parliament was being conducted.

According to what the Supreme Court stated in the *Tej Kiran* case, "This immunity is not only complete but is also as it ought to be." It is essential to the functioning of the Parliamentary system of government that representatives of the people be able to freely express themselves without the fear of being subjected to an adverse legal consequence. The only things that can be held accountable for what they say are the rules of Parliament, the members' common sense, and the Speaker's ability to maintain control over the proceedings. Despite the fact that they should not have any say in the matter, the courts have no say in it.

It is only possible for the respective Houses of Congress to decide how the immunities that are outlined in Article 105 of the Constitution are to be exercised, and the judiciary has absolutely no say in the matter whatsoever. The jurisdiction of the judiciary is limited to the decision-making process regarding the existence or absence of a specific privilege or immunity. If and when any warrants are issued or any resolutions are passed in the Parliament in its contempt proceedings, then the authority to decide such a case is completely vested in the Parliament alone, and it cannot be challenged in any court of law throughout the entire country anywhere in the country. In addition, it is abundantly clear that the exercise of a legislative privilege cannot be invalidated on the basis of an alleged irregularity in procedure, as stated explicitly in Article 122(1). In cases where it is evident to the courts that the exercise of a legislative privilege violates the Constitution or is tainted by fundamental illegality, the courts will only intervene in matters pertaining to the exercise of such a privilege.

Article 194 and the Privileges granted

There shall be freedom of speech in the legislature of every state, provided that it is not in violation of the provisions of this Constitution, as well as the rules and standing orders that regulate the procedure of the legislature. No member of the legislature of a state shall be held liable for any proceedings in any court in relation to anything that he may have said or voted on while serving in the legislature or any committee of the legislature, and no individual shall be held liable for any publication of any report, paper, votes, or proceedings that may have been made by or under the authority of a house of the legislature of that state. Other than that, the powers, privileges, and immunities of a House of the Legislature of a State, as well as those of the Members and Committees of a House of such a Legislature, shall be those that may, from time to time, be defined by the Legislature by law. Until such time as they are defined, they shall be those of the House of Commons of the Parliament of the United Kingdom, as well as those of its Members and Committees, at the beginning of this Constitution. One of the first questions that come to mind is whether or not our Constitution

⁷ Azeemuddin, M. (2015). Sir Sayyad Ahmad Khan: The Editor and Journalist. *International Journal of All Research Education and Scientific Methods (IJARESM)*, 3.

⁸ Redlich, Ilbert. (1908). *The Procedure of the House of Commons: A Study of its History and Present Form*, Volume 2. A. Constable & Company, Limited.

⁹ May, T.K. (2015). *A Treatise upon the Law, Privileges, Proceedings and Usage of Parliament*. Cambridge University Press. DOI: <https://doi.org/10.1017/CBO9781139941822> (last accessed in April 2024).

intends for every claim of Parliamentary Privilege that is made by the House of Commons in England at any time to be recognized as falling within the privilege that is granted to the Legislatures in India.

The members of state legislatures are granted immunities and the right to freedom of speech, as stipulated by Article 194, which also grants them the right to be protected from certain legal provisions. A member of the legislature is shielded from the possibility of being prosecuted for their speech or vote in the legislature.

A half an hour after the resolution was passed, the police conducted a raid on the Chennai office of The Hindu, during which they arrested the publication's Editor N. Ravi, Executive Editor Malini Parthasarathy, Bureau Chief V. Jayant, Special Correspondent Radha Venkatesan, and Publisher S. Rangarajan. Against the Order of the Speaker, Ravi and a few other individuals filed a petition with the Supreme Court on November 8, 2003. In his representation of The Hindu, Senior Advocate Harish Salve cited the cases of *Pandit M. S. M. Sharma v. Shri Krishna Sinha* (1958)¹⁰ and *In the Matter of: Under Article 143 v. Unknown* (1964).¹¹ In light of the fact that the publication did not interfere with the activities of the legislative assembly, he argued that the privileges guaranteed by Article 194 could not be applied to the situation at hand.

On November 10, 2003, the division bench, which consisted of Justices Y.K. Sabharwal and S.B. Sinha, issued a stay of the arrests, stating that the House had erroneously interpreted the law in order to initiate proceedings against journalists. It was brought to their attention, however, that the two cases that Salve relied on appeared to be in direct opposition to one another.

The Supreme Court of the United States ruled in the case of *MSM Sharma* that the right to freedom of speech and expression, as outlined in Article 19(1), was not affected by the law as outlined in Article 194. The Supreme Court made the observation in the second case that a fundamental right should not be allowed to take precedence over legislative privilege. Article 194 (which provides privileges to an MLA), Article 21 (which guarantees the right to personal liberty), and Article 32 (which guarantees the right to move the Court) were found to be in conflict with one another, and the Chief Justice of India Gajendragadkar, who authored this judgement, pointed out that a rule of harmonious construction was required to be implemented. His judgement, on the other hand, did not go into further detail regarding the matter.

Because of the absolute nature of its powers and privileges, the Parliament is able to enjoy the majority of the supreme powers when it comes to the process of making laws and has the ability to exercise its power to the greatest extent possible. Legislators have an excessively broad range of powers, including the ability to decide their own privileges, include points that can violate the privileges that have been established, and also decide the punishment for those privileges that have been violated. In accordance with the provisions of Article 105(3) and Article 194(3), the parliament is obligated to define the laws or pass the laws that govern the powers, privileges, and immunities of the members of the legislative assembly and the members of the parliament at regular intervals.

Breach of the Privileges

It is possible to look at parliamentary privileges from two different perspectives: the negative and the positive. When viewed from a negative perspective, a privilege can be used as a defense. For instance, freedom of speech can be used as a defense against criminal charges of libel for words that are spoken in Parliament. The fact that any individual who violates or infringes upon any of the privileges may be subject to punishment is a positive aspect of the system. In the final facet of privileges, the Indian Legislatures are granted the authority to exercise jurisdiction over criminal matters.¹²

As a consequence of the fact that Indian legislatures did not have any punitive powers prior to the country's independence, the members of the legislatures were forced to endure all insults and flagrant violations of their limited privileges. However, with the implementation of the Constitution, the Houses of Parliament and State Legislatures were given the authority to punish for breach of privilege or contempt and to commit the offender to custody. This authority was granted to them.

Contrary to popular belief, the phrase "contempt of the house" should not be confused with the phrase "breach of privilege." These two ideas are, in fact, very dissimilar to one another. The term "Breaches of Privilege"¹³ has been used for a long time to refer to offences that are of the nature of contempt. However, this expression is more appropriately applicable only to the type of contempt that involves the violation or disregard of the privilege of the House or the individual members of the House. It is a fact that a significant number of instances of contempt are brought about by the disregard of privileges that are held by members individually or collectively by each House.

Instances of breach of privileges encompass a wide range of topics. The classification of these actions can be succinctly described as follows:

Neglecting the freedom of expression and parliamentary proceedings;

Encroachment upon the liberty of members in carrying out their responsibilities;

¹⁰ *Pandit M. S. M. Sharma v. Shri Krishna Sinha* 1959 Supp 1 SCR 806.

¹¹ *In the Matter of: Under Article 143 v. Unknown* AIR 1965 SC 745.

¹² Donoghue, M. (2020). Adam Smith and the Honourable East India Company. *History of Economics Review*, 77(1). 1-19.

¹³ Rao. S., *Minutes of the Drafting Committee* (1948), Vol. III, Part 5. 533

Willful defiance of parliamentary authority; and
 Insults directed towards parliamentary proceedings.
 Detriments directed at officers or members of parliament while performing their official responsibilities.

Alternatively stated, a breach of privilege occurs when a member or any other individual disregards the privileges, rights, and immunities of the House collectively or with respect to its individual members. However, when the House is tasked with determining whether a breach of privilege has occurred in any of the aforementioned senses in a specific case, it consistently adheres to the following criteria:

Regardless of how detrimental it may be, the law of parliamentary privilege should not be applied in a manner that restricts or deters the free expression of opinion or criticism. The parliamentary investigation process ought not to be employed in a manner that undermines the house's dignity or gives unwarranted significance to irresponsible statements.

In the majority of situations, especially when the transgression is of a trivial nature, an unequivocal apology ought to be adequate to warrant an exemption. In the context of civil cases, the privilege of not being subject to arrest has been acknowledged and reinforced by the judicial system. The act of arresting and detaining a member of the legislature in violation of his freedom is considered to be a violation of his privilege. Given the circumstances surrounding Gurdial Singh, the "privilege committee" was tasked with addressing the following inquiry. In the event that Tehsildar Padampur arrested and sent Sri Gurdial Singh Sandhu, Member of Legislative Assembly, to jail for a civil claim within four days of the session of the Rajasthan Legislative Assembly, the question that needs to be answered is whether or not this constitutes a breach of privilege. It was determined that the arrest was a violation of privilege, and that the Tehsildar of Padampur and the Commissioner of Bikaner Division were both responsible for the violation.

A situation like this occurred in 1961 when a member raised a question of privilege in relation to a dispatch and a photograph of Sri J.B. Kripalani, a member, that was published in the Blitz. The photograph had the caption "Kripalani Bad, Black, Bald, Lies..." The matter was brought to the attention of the Privilege Committee, which made the following observation: "It is well settled that speeches and writings reflecting on the character and proceedings of the House or upon any one of its members for or relating to his speeches of conduct in the House constitute a breach of privilege by virtue of the principle that such acts tend to obstruct the House and its members in the performance of their functions and duties by diminishing the respect due to them."

Important Judgments at a look

It is a compromise between judicial supremacy and parliamentary sovereignty that led to the creation of the Indian Constitution. A reconciliation between the American model and the British model has resulted in a power balance that is too delicate between the two branches of government. As a result, the topic of Parliamentary Privileges, which is considered to be extremely complicated in the United Kingdom, is even more complicated in India. To this day, the privileges of parliament have not been codified in either England or India. In the course of time, the Indian Legislatures have not been able to establish their individual privileges, contrary to what the people who drafted the Constitution had anticipated would happen. The fact that there is a written constitution that contains a chapter on fundamental rights, including the fundamental right to freedom of speech, has particularly contributed to the problems that have arisen as a result of this specific circumstance. On the basis of this right, citizens have the ability to approach the courts of law in the event that their rights are violated by any individual or organisation, including Parliament of the United States. As a result of the fact that the Courts of Law in India possess the authority to conduct judicial reviews and that the Constitution imposes upon them the obligation to safeguard the fundamental rights of citizens, the superior courts have been making appearances in the disputes that are associated with parliamentary privileges since time to time.

The doctrine of parliamentary sovereignty, in the form that it is enshrined in England, does not hold sway in India, with the exception of the provisions that are stipulated by the Constitution. The entire structure of the Constitution is designed in such a way that it guarantees the independence and integrity of the nation as a Republic, as well as the democratic way of life that is supported by parliamentary institutions that are founded on elections that are both free and fair.

In the case of *Bergman v. Minister of Finance and State Comptroller*,¹⁴ which took place in 1969, the first decision regarding this subject was handed down. In the case of *United Mizrahi Bank*, Justice Zamir regarded the Bergman case as a precedent for the existence of judicial review power over primary legislation. This decision served to establish the timing of the "constitutional revolution."

In the case of *Adalah v. Minister of the Interior*,¹⁵ which took place in 2006, the High Court of Justice (HCJ) issued a ruling in favour of the constitutionality of the new law. The decision was reached by a majority vote of 6:5, with the Supreme Court President, Aharon Barak participating in the minority vote. This was Barak's final major case as President of the Supreme Court, and the fact that he was unable to convince his colleagues to agree with him in a manner that was almost unprecedented speaks volumes about the likely outcome of his

¹⁴ *Bergman v. Minister of Finance and State Comptroller* HCJ 98/69, decided 3 July 1969.

¹⁵ *Adalah v. Minister of the Interior* [2006] (1) IsrLR 443.

legacy. Generally speaking, four other Justices agreed with Barak's interpretation of the law as being unconstitutional, while five other Justices disagreed with this interpretation.

In the case of *Amrinder Singh v. Special Committee, Punjab Vidhan Sabha*,¹⁶ the Supreme Court has arrived at the conclusion that the expulsion of Amrinder Singh, who had previously served as the Chief Minister of Punjab, by the Assembly is deemed to be "constitutionally invalid." When a member of Parliament or an Assembly is expelled for "breach of privilege," citing acts of corruption or misconduct that are allegedly committed as part of executive functions, it is considered to be an instance of improper behaviour. In this particular instance, Amrinder Singh was expelled from the 13th Punjab State Assembly on September 10, 2008, for the breach of privilege.

This occurred after a resolution was passed on the basis of a report that was compiled by a panel that was appointed by the Assembly to investigate allegations of unlawful activities. The resolution was brought about as a result of the SAD-BJP government, which was led by Parkash Singh Badal, granting an exemption to 32.1 acres of land belonging to a private builder from the Amritsar Improvement Trust scheme. This decision resulted in a loss for the exchequer. The Chief Justice of the Constitution Bench, Balakrishnan, came to the conclusion that the appropriate course of action for the State Government would have been to initiate the criminal law machinery by filing a complaint, which would then be followed by an investigation, as stated in the Code of Criminal Procedure. The Punjab Vidhan Sabha went beyond the scope of its authority when it expelled the appellant on the basis of a breach of privilege when there was an absence of such a breach. Despite the fact that the allegedly improper exemption of land was an executive act that can be attributed to him, it did not in any way distort, obstruct, or threaten the integrity of the legislative proceedings. Therefore, the use of legislative privileges in accordance with Article 194(3) of the Constitution was not appropriate considering the circumstances of this case.¹⁷

In this particular case, the Madhya Pradesh High Court had considered the expulsion of Yaswant Rao Meghawale and Pandhari Rao Kridutta. Both of these individuals had been removed from their seats by the Madhya Pradesh Legislative Assembly on March 17, 1966, through the publication of notifications in the extraordinary Gazette on March 19, 1966. The reason for the expulsion of the aforementioned members was that on March 16, 1966, when a motion was moved to suspend Ram Swaroop Khare, who was disrupting the business of the House and disobeying the chair, from the service of the House for the remainder of the day, some opposition members caused a disturbance and prevented the marshal and the security force from removing him from the House. This led to the expulsion of the members. The petitions that protested the expulsion of Yaswant Rao Meghawale and Pandhari Rao Kridutta, both of whom were members of the Madhya Pradesh Legislative Assembly on March 17, 1966, were rejected by the High Court of Madhya Pradesh.

As a result of the petitioner's publication of booklets with titles such as "A Chief Minister runs amuck—Indian Democracy in danger" and "Emergence of rough and corrupt politics in India—Anatomy of a Chief Minister," the Punjab and Haryana High Court has taken into consideration a case that seeks to expel Hardwari Lal. The resolution concerning this case was dated January 8, 1975, and it asserted that the petitioner had violated the privileges guaranteed by Article 194 of the Constitution. According to the notice that was sent to the Speaker, the booklets contained insulting statements that were directed at the Honourable Speaker, the House, and the Members of the Haryana Vidhan Sabha. These statements were intended to bring the Honourable Speaker, the House, and the members' dignity into disrepute.

In the case of *Fertiliser Corporation, Kamgar Union v. Union of India*,¹⁸ the Supreme Court of India ruled that the jurisdiction that was granted to it by Article 32 is an essential and fundamental component of the fundamental structure of the Constitution of India. One of the conditions that must be met in order to exercise the right outlined in Article 32 is that a fundamental right must not be violated.¹⁹

In a recent case, the highest court reached a decision by a vote of 3-2 that members of parliament who accepted bribes and voted in the House of Representatives could not be prosecuted because they were protected by Article 105(2). According to the argument that the Union government presented to the Supreme Court,²⁰ the immunity that is granted to members of Parliament and state legislatures by the Constitution cannot protect them from being prosecuted under the Prevention of Corruption (PC) Act if lawmakers accept bribes in order to vote or ask questions on the floor of the House. When the Centre was asked to clarify its position in front of a Constitution bench consisting of seven judges, it maintained that the parliamentary privilege that is available to members of parliament and members of the Legislative Assembly within the legislative Houses cannot extend to an act of accepting bribes outside of Parliament or state assemblies. A statement made by Solicitor General Tushar Mehta, who was representing the Centre in front of a bench led by Chief Justice of India

¹⁶ *Amrinder Singh v. Special Committee, Punjab Vidhan Sabha* MANU/SC/0298/2010.

¹⁷ Griffith, G. (2009). Parliamentary privilege: first principles and recent applications. *Australasian Parliamentary Review*, 24(2). 71-96.

¹⁸ *Fertiliser Corporation, Kamgar Union v. Union of India* 1981 AIR 344.

¹⁹ Basu, DD. (2015). *Commentary on Constitution of India*. Lexis Nexis.

²⁰ *P. V. Narsimha Rao v. State* (1998) 4 SCC 626.

Dhananjaya Y Chandrachud, stated that the issue of immunity under Articles 105(2) and 194(2) of the Constitution will not be brought up in situations where a legislator accepts a bribe that has been offered to them.

Conclusion

Despite the fact that we are celebrating the glory of nearly sixty-six years of independence, the Indian Parliament is still suffering from a colonial hangover and is unquestioningly copying the lex parliament of imperial Britain. The Indian parliament has developed its own disease of distorting and disrupting the constitutional scheme, while at the same time borrowing the philosophy of privileges from the British government. To what extent will our sovereign nation, which is steadfast in its commitment to democratic principles, be able to afford the luxury of shutting the door on the possibility of future adaptation of old privileges in new contexts, thereby codifying its own? In order to have a complete understanding of the whole matter of codification of parliamentary privilege, it is necessary to take a fresh look at the controversy that surrounds the privilege of the Parliament in relation to the constitutional framework. The message that is made abundantly clear by Article 105(3) and Article 194(3) is that the formulation of legislative privileges for both the Parliament and the State Legislature, and not the perpetuation of colonial legacy, is the focus of these provisions.²¹

A decision that was made by the Supreme Court in Special Reference No. 1 of 1964 stated that the fundamental rights that are guaranteed by Article 32 cannot be overridden by the privileges that are granted by parliament. In light of this contradiction, a very interesting situation has arisen in which, as Seervai has pointed out in a succinct manner, one privilege (the right to prohibit publication) is not superseded by one fundamental right (Article 19(1)(a)), while another privilege (the right of committal) is subject to another fundamental right (Article 32).⁹ The question of whether or not parliamentary privileges should be codified has been brought up in conjunction with the issue of fundamental rights in relation to parliamentary privileges, which has resulted in a number of contentious debates that have been brought before us regarding which of these two options will be more advantageous.

"There is a dearth of literature on the hows of codification," despite the fact that there has been a great deal of discussion regarding the reasons why codification is necessary. There is still a need for academic investigation into the specifics of what constitutes a code of privileges. In a broad sense, the code ought to invariably incorporate the freedom of speech in the legislature, judicial immunity for speech or vote, or legislative publication, all of which are already outlined in the constitution.

Presently, certainty of privilege is a necessity.²² It is inexcusable to permit the House of Commons' past privilege to dictate the present and future of India. However, two significant drawbacks appear to be linked to the process of codifying privileges. Mavalankar, the former speaker of parliament, raised this point during a conference of presiding officers.

As per his assertion, only those privileges that are deemed acceptable by the executive government at the time and have the support of the majority in the legislature will be codified by the legislature. However, privileges ought not to be associated with any particular ruling party; rather, they ought to be associated with all members. Preferences would be restricted as a consequence.

Codification will solidify privileges, rendering interpretation of privileges as they currently exist in the British Parliament incapable of expanding or altering them. Presently, there is a chance to apply the guiding principles that underpin privileges in the United Kingdom to the circumstances in India. \However, when considering the broader public interest and democratic principles, the apparent anticipation of limiting a few privileges appears to be unwarrantedly feeble and unsustainable.

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²² Jatish v. Harisadhan, AIR 1961 S.C., 613.

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