

# INTRODUCTION: *PARLIAMENTARY* *PRIVILEGES*

The term parliamentary privileges is used in Constitutional writings to denote both these types of rights and immunities. Sir Thomas Erskine May has defined the expression **Parliamentary privileges** as follows: The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.

## Parliamentary Privileges

A.105.Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof

1. Subject to the provisions of this Constitution and 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 proceeding 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 the members and the committee 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 (44th Amendment) Act, 1978].

4. The provision 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 the members of Parliament.

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.

In defining parliamentary privilege this article adopts certain method. Two privileges, namely, freedom of speech and freedom of publication of proceedings, are specifically mentioned in clauses (1) and (2). With respect to other privileges of each House, clause (3) before its amendment in 1978 laid down that the powers, privileges and immunities shall be those of the House of Commons of the United Kingdom at the commencement of the Constitution until they are defined by an Act of Parliament. Though since 1978 position has changed in so far as the privileges of parliament, its members and committees have to be determined on the basis of what they were immediately before the commencement of 1978 amendment i.e., before 20th June 1979.

## **Freedom of speech**

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that 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. No action, civil or criminal, will therefore lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House,

such as, for notices of motions, questions, reports of the committee, or the resolutions.

It may be noted that clause (1) of Article 105 is made Subject to the provisions of this constitution and to the rules and standing orders regulating the procedures of Parliament. The words regulating the procedures of Parliament occurring in clause (1) should be read as covering both the provisions of the Constitution and the rules and standing orders. So read, freedom of speech in Parliament becomes subject to the provisions of Constitution relating to the procedures of Parliament, i.e., subject to the articles relating to procedures in Part V including Articles 107 and 121. Thus for example, freedom of speech in Parliament would not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). the freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to reasonable restrictions under clause (2) of Article 19. The term 'freedom of speech' as used in this article means that no member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof. The freedom of speech conferred under this article cannot therefore be restricted under Article 19 (2) . Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory . Besides, the freedom of speech. To which Article 105 (1) and (2) refer, would be available to a member of Parliament when he attends the session of Parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right has been invalidly invaded.

Article 105 (2) confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything. The only limitation arises from the words in Parliament, which means during the sitting of Parliament and in the course of business of Parliament. Once it was proved that Parliament was sitting and its business was transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but it is as it should be. It is one of the essence of parliamentary system of government that people's

representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.

In a much publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in *P.V.Narsimha Rao v. State* has held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament. The majority (3 judges) did not agree with the minority (2 judges) that the words in respect of in Article 105 (2) mean, arising out of and therefore would not cover conduct antecedent to speech or voting in Parliament. The court was however unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding's under Article 105 (2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

## **Right of Publication of proceedings**

Clause (2) of Article 105 expressly declares that no person shall be liable in respect of the publication by order under the authority of a house of Parliament, of any report, paper, votes or proceedings. Common law accords the defence of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere. In *Wason v. Walter*, Cockburn, C.J. observed that it was of paramount public and national importance that parliamentary proceedings should be communicated to public, which has the deepest interest in knowing what passes in Parliament. But a partial report or a report of detached part of proceedings published with intent to injure individuals will be disentitled to protection. The same is the law in India. The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that no person shall be liable to any proceedings, civil or criminal, in a court in respect of the publication of a substantially true report of the proceedings in either House of the Parliament, unless it is proved that the publication is made with malice.

## **Other privileges**

Clause (3) of Article 105, as amended declares that the privileges of each House of Parliament, its members and committees shall be such as determined by

Parliament from time to time and until Parliament does so, which it has not yet done, shall be such as on 20th June 1979 i.e., on the date of commencement of Section 15 of the 44th Amendment. Before the amendment this clause has provided that until Parliament legislates the privileges of each House and its members shall be such as those of the House of Commons in England at the time of commencement of the Constitution. As the position till 20th June 1979 was determined on the basis of original provision, it is still relevant to refer to the law as it has been in the context of English law. In that perspective it may be emphasized that there are certain privileges that cannot be claimed by Parliament in India. For example, the privileges of access to the sovereign, which is exercised by the House of Commons through its Speaker to have at all times the right of access to the sovereign through their chosen representative can have no application in India.

Similarly, a general warrant of arrest issued by Parliament in India cannot claim to be regarded as a court of record in any sense. Also the privilege of the two Houses of Parliament, unlike the privileges of the House of Commons and House of Lords in England are identical. To each House of Parliament, accordingly, belong the privileges, which are possessed by the House of Commons in the United Kingdom.

In India freedom from arrest has been limited to civil causes and has not been applied to arrest on criminal charges or to detention under the Preventive Detention Act. Also there is no privilege if arrest is made under s.151 Criminal Procedure Code. It has been held in *K. Anandan Kumar v. Chief Secretary, Government of Madras*, that matters of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention. In India, the rules of procedure in the House of People give the chair the power, whenever it thinks fit, of ordering the withdrawal of strangers from any part of the House and when the House sits in a secret session no stranger is permitted to be present in the chamber, lobby or galleries. The only exceptions are the members of the Council of States and the persons authorized by the Speaker.

In **Pandit M.S.M Sharma v. Shri Krishna Sinha**, proceedings for the breach of privilege had been started against an editor of a newspaper for publishing those parts of the speech of a member delivered in Bihar legislative assembly which the speaker had ordered to be expunged from the proceedings of the Assembly. The editor in a writ petition under A. 32 contended that the House of Commons had no privilege to prohibit either the publication of the publicly seen and heard proceedings that took place in the House or of that part of the proceedings which

had been directed to be expunged. The Supreme Court by a majority of four to one rejected the contention of the petitioner. Das C.J., who delivered the majority judgment, observed that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings.

Now Article 361-A inserted by the 44th Amendment with effect from June 20, 1979 provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of either House of Parliament or a State Legislature unless the reporting is proved to have been made with malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

In India there also vest a right of the House to regulate its own constitution. When a seat of a member elected to the house becomes vacant, the Election Commission, by a notification in the Gazette of India calls upon the Parliamentary constituency concerned to elect a person for the purpose of filling the vacancy. In India, Article 103 expressly provides that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications, the question shall be referred to the President whose decision shall be final. The President is however required to act in this behalf according to the opinion of Election Commission.

As far as right to regulate internal proceedings are concerned Article 122 expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure, and no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

## **Law Courts and Privileges**

Article 105, so also Article 194 subjects the powers, privileges and immunities of each House as well as all its members and all its committees not only to the laws made by the appropriate legislature but also to all other provisions of the Constitution. Both these articles far from dealing with the legislative powers of

the Houses of Parliament or of State Legislature respectively are confined in scope to such powers of each House as it may exercise separately functioning as a House.

A House of Parliament or Legislature cannot try anyone or any case directly as a court of justice can, but it can proceed quasi judicially in cases of contempt of its authority or take up motions concerning its privileges and immunities in order to seek removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arises as to a certain matter, it has to be decided by a court of law in appropriate proceedings. For example, the jurisdiction to try a criminal offence such as murder, committed even within a House vests in ordinary courts and not in a of Parliament or in a State Legislature. Also, a House of Parliament or State Legislature cannot in exercise of any supposed powers under Articles 105 and 194 decide election disputes for which special authorities have been constituted under the Representation of People Act, 1951 enacted in compliance with Article 329.

## **Parliamentary Privileges and Fundamental Rights**

In Pandit M.S.M. Sharma's case it was also contended by the petitioner that the privileges of the House under A.194 (3) are subject to the provision of Part III of the Constitution. In support of his contention the petitioner relied on the Supreme Court's decision in Gunupati Keshavram Reddi v. Nafisul Hasan. In this latter case Homi Mistry was arrested at his B'bay residence under a warrant issued by the Speaker of U.P. Assembly for contempt of the House and was flown to Lucknow & kept in a hotel in Speaker's custody. On his applying for a writ of habeas corpus, the Supreme Court directed his release as he had not been produced before a magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision therefore indicated that Article 194 (or Article 105) was subject to the Articles of Part III of the Constitution.

In Sharma's case the Court held that in case of conflict between fundamental right under Article 19 (1) (a) and a privilege under Article 194 (3) the latter would prevail. As regards Article 21, on facts the Court did not find any violation of it. In Powers, Privileges and Immunities of the State Legislature, Re , the proposition laid down in Sharma's case was explained not to mean that in all cases the privileges shall override the fundamental rights.

The rules of each House provide for a committee of privileges. The matter of

breach of privilege or contempt is referred to the committee of privileges. The committee has power to summon members or strangers before it. Refusal to appear or to answer or to knowingly to give false answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.

of the Houses of Legislature and of the members and committees thereof.

1. Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

2. No member of the Legislature of a State shall be liable to any proceeding in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

3. In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may be defined from time to time be defined by the Legislature 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 26 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 the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

This article that applies to the State Legislatures and members and committees thereof is an exact reproduction of Article 105, which applies to both Houses of Parliament and committees thereof.

Clause (1)- of this article declares that there shall be freedom of speech in the legislature of every State. This freedom is subject to the provisions of Articles 208 and 211 . A member cannot accordingly raise discussions as to the conduct of a Supreme Court or High Court judge as A. 211 prohibits it. The provisions of the Constitution subject to which freedom of speech has been conferred on the



legislators are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The freedom of speech guaranteed to citizens under A. 19 (1) (a) is therefore separate and independent of Article 194 (1) and does not control the first part of clause 1 of A.194.

Clause (2)- emphasizes the fact that the freedom of speech conferred on the Legislatures under clause (1) is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or committees thereof. Thus, if a legislator exercises a right of freedom of speech in violation of A. 211 he would not be liable for any action in any court. Likewise, if the legislator by his speech or vote is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the speech amounts to libel or becomes actionable or indictable under any other provision of the law immunity has been conferred on him from any action in any court by clause (2). He may be answerable to the House for such a speech and the Supreme Court may take appropriate action against him in respect of it. Thus clause (1) confers freedom of speech to the legislators within the legislative chambers and clause (2) makes it plain that the freedom is literally absolute.

Clause (3)- the first part of this clause empowers the State Legislature to make laws prescribing its powers, privileges and immunities. If the Legislature of a State under the first part of clause (3) makes a law which prescribes its powers, privileges and immunities, such law would be subject to Article 13 and clause (2) of that article would render it void if it contravenes or abridges any of the fundamental rights guaranteed by Part III.

The right of State Legislatures to punish for contempt can be discussed with the case law of Powers, Privileges and Immunities of State Legislature, Re. The reference was a sequel to the passing of an order by an unprecedented Full Bench of 28 judges staying, under Article 226, the implementation of the U.P.

Assembly resolution ordering two judges of Allahabad High Court to be brought in custody before the Bar of the House to explain why they should not be punished for the contempt of the House. The two judges had admitted the habeas corpus petition and granted bail to one Keshav Singh who was undergoing imprisonment in pursuance of the Assembly Resolution declaring him guilty of the breach of privilege. The resolution of the Assembly and the stay

order issued by the Full Bench resulted in a constitutional stalemate. Consequently, the president referred the matter under Article 143 to the Supreme Court for its opinion. The Supreme Court by a majority of 6:1, through an elaborate and learned opinion delivered by Gajendragadkar, C.J., held that in India notwithstanding a general warrant issued by the Assembly, the Courts could