

Course Name - B.A.LL.B 4TH sem/
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Subject - Constitution of India

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Concept - Parliamentary Privileges

Introduction-

Parliamentary privileges are defined in Article 105 of the Indian **Constitution**. The members of Parliament are exempted from any civil or criminal liability for any statement made or act done in the course of their duties. The **privileges** are claimed only when the person is a member of the house

Article 105--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.

Freedom of speech:

According to the Indian Constitution, the members of Parliament enjoy freedom of speech and expression. No member can be taken to task anywhere outside the four walls of the House (e.g. court of law) or cannot be discriminated against for expressing his/her views in the House and its Committees.

The basic idea of extending this freedom being the necessity that every member would put forward without fear or favour his/her arguments for or against any matter before the House. However, the Rules of procedure for the conduct of Business in the Houses of Parliament put certain restrictions on this freedom. That is, a member's freedom of speech should be in conformity to the rules framed by the House to regulate its internal procedure.

Furthermore, the privilege of freedom of speech does not mean an unrestricted license of speech. For example, our Constitution forbids discussion in Parliament on the conduct of judges except on motion for their removal. In this connection, it may be pointed out that in India, there have been clashes between freedom of speech as guaranteed to the members of parliament and fundamental rights as given to the people under Article 19 (1) (a) of the constitution.

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.

Freedom from Arrest:

The members of Parliament also enjoy freedom from arrest. From this freedom it is understood that no such member shall be arrested in a civil case 40 days before and after the adjournment of the House (Lok Sabha or Rajya Sabha) and also when the House is in session.

It also means that no member can be arrested within the precincts of the Parliament without the permission of the House to which he/she belongs. When a member of the House is arrested or detained, the authority concerned should immediately inform the speaker or the Chairman regarding the reasons for such arrest.

A member can be arrested outside the four walls of the House on criminal cases under the Preventive Detention, ESMA, NSA, POTA or any other such Act.

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.

The right to publish debates and proceedings:

Though by convention, the Parliament does not prohibit the press to publish its proceedings, yet technically the House has every such right to forbid such publication. Again, while a member has the privilege of freedom of speech in Parliament, he has no right to publish it outside Parliament. Anyone violating this rule can be held responsible for any libelous matter it may contain under the common law rules.

The right to exclude strangers:

Each House of Parliament enjoys the right to exclude strangers (no-members or visitors) from the galleries at any time and to resolve to debate with closed doors. The punishment may be in the form of admonition, reprimand, or imprisonment.

Right to regulate proceedings:

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.

The right to punish members and outsiders for breach of its privileges:

The Parliament has been given punitive powers to punish those who are adjudged guilty of contempt of the House. Such contempt can be committed by the members of any House or any outsider.

When a member of the House is involved for parliamentary misbehavior or commits contempt he can be expelled from the House.

The right to regulate the internal affairs of the House: In Indian Union, each House is a High court of Parliament. Therefore, the House has the right to regulate its internal affairs. A member of the House is free to say whatever he likes subject only to the internal discipline of the House or the Committee concerned.

Breach of Privilege and Contempt of the House

A breach of privilege is a violation of any of the privileges of MPs/Parliament. Among other things, any action 'casting reflections' on MPs, parliament or its committees; could be considered breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

There have been several such cases. In 1967, two people were held to be in contempt of Rajya Sabha, for having thrown leaflets from the visitors' gallery.

The punishment in case of breach of privilege or contempt of the House is that the house can ensure attendance of the offending person. The person can be given a warning and let go or be sent to prison as the case may be.

In the 2007 case of breach of privilege against Ambassador Ronen Sen, the Lok Sabha Committee on privileges held that the phrase "headless chicken" was not used by Shri Sen in respect of MPs or politicians. No action was taken against him.

Conclusion

There is a clear demarcation as to what all rights and privileges are absolute and what are not. For example, in India Legislative Assemblies and Parliament never discharge any judicial function and their historical and constitutional background does not support their claim to be regarded as courts of record in any sense. No immunity from scrutiny by courts of general warrants issued by House in India can therefore be claimed.

Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights. It is also a duty of the members to properly use these privileges and not misuse them for alternate purposes that is not in the favour of general interest of nation and public at large. Thus what we must keep in mind is the fact that ?power corrupts and absolute power corrupts absolutely. For this not to happen under the privileges granted, the public and the other governing body should always be on vigil.