Subject Name: Constitution Law
Topic Name: Parliamentary privileges

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Introduction

The primary rationale behind recognizing legislative privileges is to safeguard lawmakers from interference while carrying out their essential functions. This broadly includes shielding them from undue intrusions by the executive branch, the courts, and private parties. Originating in mediaeval England, these privileges initially aimed to resist arrest and prosecution based on statements made within the legislative chamber.

They encompass a legislative body's authority to regulate the publication of its proceedings, as unauthorised disclosure could subject lawmakers to unwanted scrutiny and hinder their performance. Additionally, these privileges have been wielded punitively, leading to instances of imprisonment, fines imposed on non-members, and the expulsion of members.

In the context of representative democracy, the scope of legislative privileges is closely tied to ensuring unhindered deliberation within the legislature. However, in India's post-independence era, their invocation has sparked controversy on numerous occasions, with calls for codification due to the vague nature of relevant constitutional provisions.

The rulings of the Indian Supreme Court have further complicated matters, particularly regarding their relationship with fundamental rights, such as freedom of speech and personal liberty. This raises questions about whether the exercise of legislative privileges is subject to judicial review and, if so, to what extent. While constitutional bench decisions have leaned towards limited judicial scrutiny, there is room for debate considering the broader principle of the separation of powers.

Various viewpoints exist, ranging from advocating for an absolute bar on judicial scrutiny to allowing courts to inquire into both the existence of a privilege and its merits.

Incumbents have often invoked legislative privileges to target political opponents and critics, cases that may be more suited for adjudication by the courts. They have also been used as a means of disciplinary control in response to allegations of misconduct by lawmakers. However, the doctrinal debate revolves around whether such actions are appropriate when other remedies are available.

Despite criticisms, privileges can be seen as tools to combat misconduct within the legislature while also serving as a defence against external pressures. Nevertheless, the discretionary use of privileges by legislative committees has sometimes deviated from expected procedural safeguards in adversarial settings. The stakes are particularly high when committees employ inquisitorial methods to suspend or expel serving legislators.

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Justification for Parliamentary Privileges

The concept of the 'rule of law' implies that lawmakers should be subject to the laws they enact, just like any other citizen. However, the conferral and exercise of legislative privileges may seem contradictory to this principle. Nevertheless, the differential treatment afforded to incumbent legislators is justified given their role as a distinct class of public officials. The freedom to speak and vote within the legislature without fear of intimidation or reprisal is considered essential to the function of an elected representative.

In the United Kingdom, parliamentary privileges were initially asserted as pre-existing rights enforceable against the prerogatives of the Crown and judicial authority. These privileges emerged as a significant check on the powers of the Crown, particularly during the English Civil War and its aftermath. They were primarily used to safeguard legislators from arbitrary arrests, prosecutions, and suspensions at the behest of the monarch. Reflecting this history, provisions such as Article 9 of the Bill of Rights of 1689 and Article 1(6) of the United States Constitution enshrined the freedom of speech and debates in Parliament without fear of external interference.

In the Indian context, legislative bodies established during the colonial period looked to British parliamentary practices for guidance. Legislative privileges were first invoked during the rule of the East India Company in Bengal and later during direct British rule to shield legislators from judicial scrutiny and impending arrests. Section 71 of the Government of India Act 1935 served as a precursor to the relevant provisions in the Indian Constitution.

During the Constituent Assembly debates, there were calls for codifying legislative privileges to depart from British precedents. However, Dr. B.R. Ambedkar defended the incorporation of

privileges available to the House of Commons while empowering the Indian Parliament to legislate on the subject in the future.

In the Indian Constitution, Article 105 deals with the powers and privileges of the Houses of Parliament, their members, and committees, while Article 194 contains similar provisions for state legislatures. These articles assure freedom of speech within the legislature and protect members from judicial proceedings for their speech and voting activities. Clause (3) of these articles empowers Parliament to define its 'powers, privileges, and immunities' further.

The interpretation of these provisions has led to debates about their scope, with judicial rulings often drawing comparisons with British precedents. Despite the removal of explicit references to the House of Commons in 1978, Indian legislative bodies are generally understood to enjoy powers, privileges, and immunities similar to those of the House of Commons as of January 26, 1950.

This approach establishes implicit limits on the permissible use of privileges, considering the differences in the governmental structure envisioned by the Indian Constitution. As a result, litigation concerning the scope of legislative privileges often revolves around establishing or refuting comparisons with British precedents.



Relationship with Fundamental Rights

The relationship between legislative privileges and fundamental rights, particularly freedom of speech and expression, has been a subject of debate and legal scrutiny in India. The landmark case of **Gunupati Keshavram Reddy v Nafisul Hasan** dealt with the arrest of Homi Dinshaw Mistri, a deputy editor of Blitz magazine, who was detained for reporting on legislative proceedings.

The subsequent case of **MSM Sharma v Sri Krishna Sinha,** commonly referred to as Search Light I, raised questions about the conflict between legislative privileges and freedom of speech and expression. In this case, the Bihar Legislative Assembly took action against a newspaper for reporting on remarks made during legislative proceedings, leading to a Supreme Court ruling that upheld the exercise of legislative privileges over press freedom.

The dissenting opinion in Search Light I argued that legislative privileges should not supersede fundamental rights guaranteed under the Constitution. However, the majority opinion favoured the exercise of legislative privileges, citing English precedents and the importance of allowing legislatures to control the publication of proceedings to prevent inaccurate reporting.

Subsequent cases, such as **Dr Jatin Chandra Ghosh v Hari Sadhan Mukherjee and Special Reference No 1 of 1964 (Keshav Singh),** further examined the scope of legislative privileges and their compatibility with fundamental rights. The Supreme Court ruled that while legislative bodies have the authority to define the scope of their privileges, judicial review over their actions is permissible, especially when fundamental rights are at stake.

Tej Kiran Jain v N Sanjeeva Reddy reaffirmed the immunity of parliamentarians from defamation suits for remarks made during parliamentary proceedings. This case reinforced the principle that legislative privileges protect legislators from legal action for their speech and actions within the legislature.

Despite legal scrutiny, there have been instances where legislative bodies attempted to invoke privileges against non-members, leading to controversies and legal challenges. These cases highlight the delicate balance between legislative privileges and fundamental rights in India's democratic framework.

Overall, while legislative privileges play a crucial role in safeguarding the integrity of legislative proceedings, their exercise must be balanced with the protection of fundamental rights, particularly freedom of speech and expression. Judicial oversight ensures that legislative privileges are not misused to curtail individual rights and liberties.

Sita Soren v. Union of India

The recent ruling by the Supreme Court, overturning the 1998 PV Narasimha Rao judgement, marks a significant development in the legal landscape regarding the immunity of legislators from prosecution on charges of bribery related to votes or speeches in the legislature. The court's decision highlights the detrimental impact of corruption and bribery by legislative members on public interest, probity in public life, and parliamentary democracy.

In its ruling, the Supreme Court emphasised that corruption and bribery erode the foundation of Indian parliamentary democracy and disrupt the aspirations and deliberative ideals of the Constitution. By granting immunity to legislators for receiving bribes, the court noted, the purpose of fostering a conducive environment for debate and deliberation within the legislature is undermined.

The judgement highlights that bribery is not essential for the function of casting a vote or giving a speech in the legislature and therefore cannot be rendered immune under Articles 105 or 194 of the Constitution. The court's decision came after careful consideration of the ramifications of the PV Narasimha Rao judgement, which had granted immunity to legislators in bribery cases related to their legislative functions.

The ruling stemmed from an appeal by Jharkhand Mukti Morcha leader Sita Soren, accused of accepting a bribe for a Rajya Sabha vote in 2012. The Supreme Court's decision to overturn the PV Narasimha Rao judgement reflects a commitment to upholding public interest, probity in public life, and the principles of parliamentary democracy.

Chief Justice DY Chandrachud highlighted the grave danger of perpetuating the error of granting immunity to legislators engaged in bribery for legislative functions. The court's reconsideration of the PV Narasimha Rao judgement shows its role in safeguarding democratic values and ensuring accountability in governance.

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