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### Parliamentary Privileges vs Judicial Review: Reconciling Legislative Autonomy and Constitutional Accountability

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#### Abstract

This paper examines the constitutional tension between parliamentary privileges, provided under Articles 105 and 194 of the Indian Constitution, and the doctrine of judicial review, a basic feature ensuring constitutional supremacy and the protection of fundamental rights. While privileges safeguard free speech, deliberative autonomy, and legislative integrity, their uncodified and expansive scope in India has enabled misuse—ranging from shielding legislators from corruption probes to suppressing dissent and enforcing politically motivated suspensions.

Analysing landmark cases such as *Keshav Singh v. Speaker, Raja Ram Pal v. Speaker, Lok Sabha*, and *Amarinder Singh v. Punjab Vidhan Sabha*, the study shows that privileges are not absolute and remain subject to judicial scrutiny when they infringe Articles 14, 19, or 21. A comparative review of the United Kingdom, United States, and Australia underscores the value of codification, independent oversight bodies, and procedural transparency in preventing abuse.

The paper proposes codifying privileges, instituting independent ethics committees, applying the doctrine of proportionality in review, and ensuring transparency—so that parliamentary privilege serves as a shield for democratic deliberation rather than a tool for evading accountability.

**Keywords:** Parliamentary Privileges, Judicial Review, Indian Constitution, Fundamental Rights, Doctrine of Proportionality, Legislative Immunity, Constitutional Accountability, Separation of Power..

## 1. Introduction

This article explores the ongoing constitutional conflict between parliamentary privileges and judicial review in India, highlighting its historical background, constitutional framework, and practical challenges.

### 1. What are Parliamentary Privileges?

Think of parliamentary privileges as special rights and protections given to our lawmakers (Members of Parliament at the central level, and Members of Legislative Assemblies/Councils at the state level). These special rights help them do their job effectively without fear of punishment or interference.

#### Why are they important?

They are important so that our elected representatives can:

Speak freely and openly about issues.

Vote on laws without fear. Do their work without being sued or arrested for things they say or do inside the legislative body.

#### Here's how it works:

##### 1. For the National Parliament (Lok Sabha and Rajya Sabha - MPs):

**Freedom to Speak:** Imagine a school debate. Students can say what they think without getting into trouble for it during the debate. Similarly, Members of Parliament can say anything they want inside the Parliament without being taken to court for it.

**Protection from Lawsuits:** If an MP votes a certain way, or says something during a discussion in Parliament or its committees, they can't be sued for it. Even the official records and documents published by Parliament are protected from legal challenges.

**Other Special Rights:** On January 26, 1950 (when India's Constitution began), our

Parliament got the same special rights that the British House of Commons had at that time. Unless a new law is made to change these rights, they remain the same. So far, no such new law has been passed.

**Ministers who aren't MPs:** Sometimes, a minister might not be an elected Member of Parliament but can still speak in Parliament. When they do, they also get these same special protections during their participation.

##### 2. For State Legislatures (Vidhan Sabha and Vidhan Parishad - MLAs and MLCs):

**Exactly the Same Rights:** The special rights for lawmakers in state assemblies and councils are just like those for MPs at the national level.

They also get:

Freedom to speak openly.

Protection from lawsuits for their actions inside the legislature.

The same "British-based" special rights that existed in 1950.

Ministers who aren't elected members but participate in discussions also get these protections.

In short, these special rights are there to ensure that our lawmakers can debate, discuss, and make laws freely and effectively, without external pressure or legal threats, which is crucial for a functioning democracy.

#### Unpacking Judicial Review and Parliamentary Sovereignty in India:

A Human Touch Speaking of the delicate dance between judicial review and parliamentary sovereignty in India. Kind of like a checks-and-balances thing, just so that no one power becomes absolute. To help us make sense of it all, let's take a closer look.

#### The Key Players

#### First, let's get our main concepts straight:

**Parliamentary Sovereignty:** Suppose Parliament has the final word in legislating and running its own business. It's like the boss of its own place.

**Judicial Review:** That is where our courts intervene. They can review the laws Parliament enacts and the decisions government makes, to ensure they're all following the rules of the Constitution. It's their method for keeping things fair and constitutional.

**Parliamentary Privileges:** These are privileges and immunities that MPs have. Imagine them as mechanisms to facilitate smooth and effective functioning of Parliament, such as a shield to guarantee freedom of speech and discussion without the fear of being persecuted with immediate legal action for something uttered within the house.

**Basic Rights:** These are the minimum human rights guaranteed to all citizens by the Indian

Constitution. We are discussing important ones such as: -

Article 14 (equality before the law),

Article 19 (free speech and expression), and

Article 21 (life and liberty).

They are not to be negotiated. The Interplay and Where Things Get Complicated, his Now is where the two powers come into contact, and occasionally, conflict:

**Parliament Isn't Omnipotent:** The important point to take away here is that although Parliament asserts sovereign power, it is not above judicial review. It's not a free pass.

Courts and Privileges:

Those parliamentary privileges? Those are intended for efficient functioning, not as a get-out-of-jail-free card for misbehaving.

If these privileges are abused or, more crucially, if they conflict with someone's inherent rights, the judiciary intervenes.

The courts have all the right to look at the boundaries of parliamentary authority and check whether those boundaries were overstepped or not.

**Judicial Review's Widespread Ambit:** In India, our judiciary has one of the "widest and most extensive" jurisdictions for judicial review in the world. That's a powerful assertion, supported by cases such as 'Union of India and others vs. Raghbir Singh'. It implies that our courts have an important role to play.

Fundamental Rights as a Check

Parliamentary privileges take a backseat to fundamental rights. Consider fundamental rights to be the superior authority. If there's a collision between a privilege and a fundamental right, they must learn to live with each other. This is referred to as "harmonious construction"—coming up with something that respects both of them.

While courts usually avoid mundane parliamentary issues, they are required to step in if the fundamental rights of society are transgressed.

### The Bedrock of Judicial Review

Aside from simply the rule of law and the separation of powers, these values are the very pillars of judicial review:

Article 14 (Equality before the law): All are equal in the eyes of the law.

Article 19 (Freedom of speech and expression, etc.): Your right to speak your mind, in moderation.

Article 21 (Protection of life and personal liberty): Your right to live with dignity and freedom.

These are not mere articles; they are "foundational values" and the "cornerstone of the rule of law" in India.

### The Heart of the Problem

The article points to a frequent problem: "It's quite common for Members of Parliament to fall back on parliamentary privileges." And stresses that "it's important for the judiciary to uphold the wrongs perpetrated by these members."

Parliament is supreme in its own sphere of activity, but its powers, particularly those parliamentary immunities, are not absolute. They are open to challenge by the courts, especially where they come into conflict with the fundamental rights enshrined in the Constitution. The courts serve as the watchdogs over such fundamental rights and the rule of law, ensuring that everything Parliament does remains within those constitutional parameters.

### Key Case Studies:

#### 1) **Keshav Singh vs. Speaker, Legislative Assembly and Ors. (1965)**

Facts of Case:

A person named Keshav Singh, hailing from Gorakhpur who was affiliated with the Socialist Party distributed a pamphlet against Congress MLA, Narsingh Narayan Pandey. The pamphlet contained allegations of corruption against Narsingh Narain. On 14th March, 1964, the Speaker of the Legislative Assembly of Uttar Pradesh issued orders of reprimand against Keshav Singh for contempt of the House as well as for the breach of privileges of Narsingh Narain Pandey. Subsequently, the Assembly made the decision and the Speaker instructed that Keshav Singh should be sentenced to prison. The reason for this decision was, he was deemed liable of contempt of the House for the second time when he was called to receive the reprimand, for his insubordinate behaviour as well as addressing a contemptuous letter to the Speaker of the Assembly. A warrant was issued ordering that Keshav Singh should be imprisoned in District Jail, Lucknow for a term of seven days. Thus, he was subsequently detained in furtherance of the order. On 19th March,

1964, Advocate B. Solomon submitted a petition to the High Court for Keshav Singh under Article 226. In the petition, the Speaker of the Legislative Assembly, the Chief Minister of Uttar Pradesh and the Superintendent of the District Jail, Lucknow were named as respondents. The petitioner asserted that the imprisonment was illegal. The High Court instructed that the applicant should be set free on bail. The Court also instructed that the applicant should attend all hearings of the matter. Therefore, the petition was allowed and notice was directed to be served to the respondent. However, rather than obeying the order of the High Court, the House decided to initiate measures against the two Judges who made the order in Keshav Singh's matter, Keshav Singh and his advocate on 21st March, 1964. The House passed a resolution stating that the abovementioned persons had committed contempt of the House. Afterwards, separate petitions were filed before the Allahabad High Court under Article 226. It was claimed that the resolution was blatantly unconstitutional and infringed upon the provisions of Article 211. It was asserted in the petitions that the application presented by Keshav Singh was valid, and the Judges passed the order releasing Keshav Singh under power vested upon them by Article 226. A full Judge Bench of the High Court also made interim orders restricting the Speaker of the Legislative Assembly and also the rest of the respondents from imposing the order of the Legislative Assembly.

#### **Issues raised:**

The following issues were raised in the Keshav Singh case are as follows:

1. Whether the detention of the petitioner violates Article 22(2) of the constitution?
2. Whether the legislative assembly has the criminal jurisdiction to punish anyone for its contempt?
3. Whether the act of the legislative assembly in punishing the petitioner was malicious?

#### **JUDGEMENT:**

In the judgment, it was held that the detention of the petitioner was not illegal. In its ruling, the court determined that Keshav Singh's detention was not unlawful; as a result, the petitioner's appeal was denied. The court ruled that while any imprisonment is inherently illegal, the person who authorized it may provide a defense. According to the terms of the Maintenance of Internal Security Act of 1971, the District Magistrate in this case had the power to order the detention of a person and issued a warrant for their detention.

The appeal was ruled to be invalid by the court, and the petitioner could only win if he could prove his claims. The petitioner must provide evidence to support their claim that the detention was unlawful because it cannot initially be assumed that it was. The petitioner had failed to provide evidence, the judge remarked, therefore the petitioner's claim that the detention was unlawful was likewise denied by the court since there was insufficient evidence to back it up. The petitioner had not presented any proof to show that the detention was unlawful, according to the court. The petitioner had been brought before the magistrate within 24 hours of his imprisonment, therefore the court further determined that the petitioner's rights under Article 22 of the Indian Constitution had not been breached. The court determined that the detention order was supported by legal justifications and that Before deciding to order the custody, the District Magistrate had given it some thought.

The petitioner had not contested the legality of the Maintenance of Internal Security Act of 1971, which was used to authorize the imprisonment, the court further noted. The petitioner's challenge to the Act's legitimacy could not be taken into consideration, the court ruled, because the Supreme Court had maintained the Act's legality in several decisions.

The Supreme Court's decision is supported by the idea that the three branches of a democratic state—legislative, executive, and judicial—should function together. The Court emphasized how crucial it is for these three organs to function together as a unit. A High Court Judge cannot be held accountable by the House for anything done while performing his duties since Article 211 of the Constitution prohibits the State Legislature from debating the behavior of a High Court Judge in the Assembly. Additionally, the Supreme Court decided that Articles 105(3) and 194(3) should not be used to restrict the ability of citizens to petition the courts or the ability of advocates to participate in that process. The legislature cannot issue a warrant to the judge and call him in the legislative assembly. In India, the Parliament and State Legislatures can never assert such a privilege due to the existence of the Fundamental Rights and the doctrine of judicial review, in particular Articles 32 and 226 that give the Supreme Court and High Courts authority and impose a duty on them to uphold the Fundamental Rights. As a result, a court may view an unsaid

House warrant as a judicially imposed sanction for contempt. Through the Reference to the President, the SC aimed to recognize that the House has the authority to punish for contempt or violating its

privileges in addition to that. Judicial independence would be significantly threatened if a House asserted the right to scrutinize a judge's actions, but the House also has the authority to penalize for contempt or violating its privilege. The Committee on Privileges is now looking into the matter and hearing from the petitioner before rendering a determination.

## 2) **Raja Ram Pal v. Hon'ble speaker, Lok Sabha**

### FACTS

A criminal investigation against 10 Lok Sabha (House of People) MPs and one Rajya Sabha (Council of State) MP who accepted money directly or through a broker in exchange for raising a point in Parliament was broadcast on a private channel. The Presiding Officer of each House of Parliament then conducted inquiries against the suspected members after this gained a lot of media attention. A motion for expulsion from both Houses of Parliament was approved based on the inquiry committee's report.

### ISSUES

The petitioner claimed that because the Indian Parliament lacks the ability to self-compose, it does not inherit the right to expel.

Whether the Parliament has the right to reject under Article 105?

Whether a judicial body can review the expulsion?

### JUDGEMENT –

The following ruling was made by the bench of the Supreme Court, which was made up of Sabharwal, Y.K. (CJI), Balakrishnan, K.G. (J), Thakkar, C.K. (J), R.V. Raveendran (J), and D.K. Jain: -There is no question that the Supreme Court has the authority to review cases involving specific powers and privileges claimed by the legislature. The Honourable court pointed out that while Articles 101 and 102 do discuss eligibility requirements and maintaining membership in the House of Representatives, they cannot be interpreted in the same way as Article 105(3). As a result, Articles 101 and 102 are not all-inclusive. Articles 83(2) and 106 do not grant constitutional rights in the strictest sense and do not fall under the category of fundamental rights, hence they were not violated as a result of expulsion.

Voting rights are not basic or protected by the constitution; rather, they are statutory rights. Therefore, the power of expulsion is not contrary to democratic principles.

“On scrutinizing the Inquiry reports, we find that there is no violation of any of the fundamental rights

in general, and Articles 14, 20, or 21 in particular,” the CJI Y.K. Sabharwal, K.G. Balakrishnan, and D.K. Jain ruled. The procedure used by the two Houses of Parliament cannot be seen to be subject to any illegality, irrationality, unconstitutionality, violation of the principles of natural justice, or perversity given that each petitioner was given a proper opportunity to explain and defend themselves. The claim that the petitioners did not receive a fair deal cannot be made.

However, Justice R. V. Raveendran disagreed, arguing that neither the inherent nor the Article 105(3)-related expulsion power of the Parliament exists. Only if Articles 102 or 101 are properly changed, or if a bill is passed pursuant to Article 102(1)(e), would the House have the authority to eject a member it finds to be unworthy or unfit to continue serving as a member. He claimed that the expulsion powers used by the Parliament were illegal because they violated Articles 101 to 103 of the Constitution.

## 3) **Amarinder Singh v. Special Committee, Punjab Vidhan Sabha**

### FACT-

The present case challenges a resolution passed by the Vidhan Sabha of Punjab expelling Captain Amarinder Singh (Appellant) as member of the 13th term of the Vidhan Sabha. The reasons for his expulsion from the legislative assembly arise from a criminal misconduct the Appellant indulged in during the 12th term of the Vidhan Sabha – when he was the Chief Minister of the State (“CM”).

As per the factual matrix, the Appellant allegedly partook in an improper exemption of a piece of land which was licensed to a particular private party (measuring 32.10 acres) from a pool of 187 acres of land that had been notified for acquisition by the Amritsar Land Improvement Trust on 5-12-2003. It was found that all other lands surrounding it had been acquired by the said trust in accordance with Punjab Town Improvement Act, 1922. The trust alleged that the land concerning the misconduct was the only one in the entire neighbourhood which had been granted an exemption notice and a no-objection certificate by the Amritsar Land Improvement Trust. This decision challenged by various land owners at the Punjab and Haryana High Court (HC) in a catena of cases.

Once the Vidhan Sabha got to know of such allegations, it ordered the formation of a Special Committee (Committee) to investigate into the matter on 18-12-2007. The Committee's investigation found that the Appellant did partake in the improper exemption of the concerned land. However, at this

juncture, the High Court had not pronounced any judgment.

On 10-09-2008, a resolution, and a subsequent notification, was passed by the Vidhan Sabha expelling the applicant from the assembly and vacating his seat. The resolution and the Committee report were challenged before the Punjab and Haryana HC by the Appellant. The HC issued an order directing that the case be heard on merits on 1-12-2008, but did not grant a stay on the operation of the impugned resolution; but granted protection to the Appellant from custodial interrogation. The Appellant thereafter moved to the Supreme Court (SC) seeking a special leave. The special leave was admitted by a division bench and the matter was directed for hearing by a three-judge bench. The three-judge bench allowed the transfer petition from the HC to the SC, upon the Appellant's request, and referred the matter to a Constitutional bench of the SC – since the case entailed to it a substantial question of law concerning the interpretation of Article 194(3) of the Constitution of India (Constitution). The bench was headed the then Chief Justice of India, J. KG Balakrishnan – who authored the unanimous SC verdict.

#### **ISSUES-**

“I. Whether the alleged misconduct on part of the appellant and the petitioners warranted the exercise of legislative privileges under Article 194(3) of the Constitution?

II. Whether it was proper for the Punjab Vidhan Sabha to take up, as a matter of breach of privilege, an incident that occurred during its previous term?

III. Whether the impugned acts of the Punjab Vidhan Sabha violated the norms that should be respected in relation to sub judices matters?”

#### **JUDGEMENT-**

The Hon'ble Apex Court in a 3 judge-Bench judgment upheld the validity of the summons issued by the Committee of the Delhi Legislative Assembly rejecting the petitioner's arguments saying that it doesn't have the requisite power to do so to a non-member. The court further emphasized that the functioning of the committee is not limited to just legislative or law-making functions, but also engaging in discussions pertaining to the security and well-being of the nation and its citizens. The court refrained from entering into any discussion pertaining to the expansion of the purview of the fundamental right of speech and expression as the same is still

lying before a 7-judge bench (N. Ravi v. T.N. Legislative Assembly) [20].

Further, the Bench held that the doctrine of separation of powers should always be respected to maintain the cooperative federal nature of India. The committee can deliberate on the questions pertaining to “peace and harmony” and not to the subject of “law and order” as the same has not been permitted to the assembly as per Entry 45 of List III. Following this, the Peace and Harmony Committee had all the right to discuss the aspects which pertained to the disturbance of peace and harmony in the society without encroaching in the domain of the Union government thus, summoning the petitioner and the privilege exercised being within the powers of the Legislative assembly.

#### **. Privilege or Pretext? Charges of Misuse and Abuse:**

Parliamentary privilege, as conceptualized in Articles 105 and 194 of the Constitution of India, was initially drafted to assure the autonomy and integrity of legislatures. Gradually, though, this safeguarding mechanism has been increasingly used as a pretext to shield Members of Parliament (MPs) and State Legislatures (MLAs) from accountability and judicial oversight. The uncodified and unchecked character of parliamentary privileges gives rise to grave concerns regarding the misuse of authority, gagging of dissent, and abuse in terms of political retribution, thus compromising the very pillars of democratic rule.

The most immediate concern is the use of privilege to muzzle dissent and criticism, especially from the media and civil society. Several cases have been reported involving notices of breach of privilege against journalists, editors, and even social media users for publishing reports or opinions that are critical of a legislator. Such actions tend to circumvent the mandatory requirement of *mala fide* intent and seek instead to limit legitimate democratic expression. This goes against the constitutional principles of free speech under Article 19(1)(a) and the right of the public to hold their representatives accountable.

Moreover, gag orders and suspension of members in the guise of upholding parliamentary discipline usually hide political motivations. Opposition members have been suspended in various sessions of the Parliament and State Assemblies for protesting, raising contentious issues, or asking tough questions of the Treasury benches. Most interestingly, in 2021, the winter session of Parliament saw the suspension of 12 Rajya Sabha MPs as a reaction against their protest over how contentious bills were passed. While legitimate in saying they were restoring order, such

measures are progressively being viewed as vendettas, disproportionately muzzling opposition voices and avoiding democratic debate.

Just as worrying is the differential resort to privilege to protect members from corruption probes and judicial inquiry. It is routine for ministers and MLAs to invoke privilege as a shield to delay or avoid criminal charges or inquests by investigating authorities. The irony is in the relative openness regarding the judiciary. Judges, when accused of corruption or misconduct, are likely to see their actions publicized through media oversight or judicial review processes, like in-house procedures or impeachment under Article 124(4). The legislative privilege, on the other hand, remains in a state of grey area, facilitating clandestine abuses with institutional impunity.

The imbalance highlights a structural imbalance between the accountability mechanisms of the judiciary and the blanket immunity usually accorded to legislators. In spite of judicial review being referred to as a minimum fundamental feature of the Constitution (*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461), courts have been hesitant in exercising jurisdiction when parliamentary privilege is claimed. In *P.V. Narasimha Rao v. State (CBI/SPE)* [(1998) 4 SCC 626], the Supreme Court held that MPs are entitled to immunity even where bribes for parliamentary votes are concerned. Such a judgment illustrates how privilege can be used as a constitutional cover for unwholesome behaviour.

Lack of defined boundaries and codification of privilege makes them vulnerable to politicised use. Although privileges are meant as institutional protection, their vagueness allows for their misuse, particularly by members of the ruling party, to limit criticism, avoid legal scrutiny, and gain political mileage. This is contrary to the ideal of responsible government that the Constitution envisioned.

In sum, what was meant to be a defence to maintain legislative dignity and autonomy is more and more being used as a sword against democratic opposition and scrutiny. Absent codified standards and judicial review, parliamentary privilege threatens to devolve from a valid institutional requirement into a powerful instrument of discretionary power and political vindictiveness.

. Is there any solution that can stop the misuse of parliamentary privileges by?

MPs and MLAs?

Yes, there are viable constitutional, legal, and institutional solutions to prevent the misuse of parliamentary privileges by MPs and MLAs, which are as follows: -

#### Codification of Parliamentary Privileges:

The oldest and most primary recommendation is codification of the privileges by a Parliamentary Privileges Act, like the Parliamentary Privileges Act, 1987 (Australia). Articles 105(3) and 194(3) of the present Indian Constitution already leave the field of privileges undefined, open to whimsical interpretation. Codification would give:

Specific definitions of "breach of privilege,"

Boundaries to what is legitimate legislative immunity, Protection against excessive or politically motivated action.

This would shut the grey areas that enable MPs/MLAs to cover up corruption or suppress dissent in the name of privilege.

#### Independent Parliamentary Ethics Committees:

Establishing independent and non-partisan Ethics Committees with external review can be an internal scrutiny mechanism. Such committees should:

Comprises jurists, constitutional specialists, and representatives of civil society,

Examine abuse of privilege or immoral behaviour by legislators,

Advise on disqualifications, suspensions, or public censure.

Compared to politically controlled internal privileges committees, these bodies would infuse impartiality and moral legitimacy in enforcing privilege.

#### Judicial Review with Constitutional Restraints:

Even if courts are generally shy of meddling with parliamentary processes, a nuanced judicial doctrine based on the doctrine of proportionality can permit judicial review in rare situations when:

Basic rights are infringed (e.g., suspension for dissent),

Privilege is being used to escape criminal or corruption investigations.

The action is arbitrary or in bad faith.

This was to some extent realized in *Raja Ram Pal v. Lok Sabha and Amarinder Singh v. Punjab Vidhan Sabha*. Subsequent judicial interventions are required to affirm that privilege is not absolute and must be aligned with constitutional morality.

#### Transparent Privilege Proceedings:

Most privilege proceedings are currently conducted in camera. To usher in compulsory transparency mechanisms can involve:

Public hearings in privilege inquiries (save in national interest),

Publishing detailed reports of privilege motions and decisions

Revealing the basis for suspension orders or gag orders.

Openness in this regard guarantees public notice and averts political weaponization of privilege.

#### Constitutional Amendment to Define Limits

If so required, Parliament can look at initiating a constitutional amendment to:

Restrict the scope of immunity to "legitimate legislative functions" alone.

Provide for judicial review where privilege is being raised to cover up corruption or violation of fundamental rights.

Specify privilege as an instrument of collective dignity, not personal exemption.

These amendments would maintain the essence of Articles 14, 19, and 21, ensuring that parliamentary privilege is within a scheme of constitutional checks.

#### Media and Civil Society Role:

Strong media reporting, RTI revelations, and civil society litigation (PILs) have frequently played a key role in revealing corrupt privilege claims. Improving whistleblower safeguards, stimulating investigative reporting, and depoliticizing the Speaker's role can build bottomup pressure for accountability on legislators.

#### Comparative Perspectives: How Other Democracies Manage It:

The constitutional design of parliamentary immunity differs in democracies, reflecting each country's unique history, legal culture, and institutional priorities. A comparison with the United Kingdom, the United States, and Australia provides useful

perspectives on how these systems balance the competing tensions of legislative immunity and judicial accountability. These comparative models put emphasis on the need for India to re-examine its sweeping, uncodified privilege regime and attach it to the norms of transparency, the rule of law, and constitutional balance.

#### United Kingdom: Codified Conventions and Judicial Restraint: -

India's understanding of parliamentary privileges stems from British constitutional practices. In the UK, privileges are primarily controlled by constitutional conventions and the Bill of Rights, 1689, according to which proceedings of Parliament "ought not to be impeached or questioned in any court." Nevertheless, even with this immunity, it is clear that privilege has a limited sphere. British courts, in rulings like *Attorney-General v. Times Newspapers Ltd* [1974 AC 273], have acknowledged that parliamentary privilege is not authorization for disorder or crime beyond the mainstream legislative purpose.

In addition, the UK Parliament's Committee on Standards and the Independent Parliamentary Standards Authority (IPSA) are mechanisms to provide for ethical oversight and accountability even in the privilege system. In contrast to India, there is a prevailing culture of public resignation and internal disciplinary actions when a Member of Parliament is charged with unethical behaviour. Such self-regulation, coupled with judicial restraint, provides a more balanced ecosystem of checks and autonomy.

#### United States: Speech and Debate Clause – A Narrow Immunity:

Article I, Section 6 of the United States Constitution includes the Speech or Debate Clause, which states that Senators and Representatives "shall not be questioned in any other place" for any speech or debate made in Congress. The extent of this provision has been interpreted by the courts, as in *Gravel v. United States* (408 U.S. 606, 1972), wherein the U.S. Supreme Court ruled that the protection applies to only legitimate legislative action and not to actions outside the official legislative domain.

Key among these is the allowance of criminal investigations and prosecution of members of parliament where privilege cannot be invoked. The judiciary has also explained that acts like taking bribes, financial impropriety, or administrative abuse are not privileged under the clause, as in *United States v. Brewster* (408 U.S. 501, 1972). This is a

distinct and constitutionally maintained line between privileged speech and unprivileged corrupt actions.

Australia: Parliamentary Privileges Act, 1987:

Australia offers a different paradigm in the form of the Parliamentary Privileges Act 1987, which makes the scope of privileges statutory and limits their abuse. The Act enshrines privileges, makes the courts bound to uphold parliamentary immunity in legislative matters, yet also prescribes limits by specifying what is not privileged activity. Such specificity minimizes the scope for ambiguity and abuse.

In addition, each House's Privileges Committee functions with procedural openness and keeps precise records of breach enquiries to ensure institutional accountability.

Significantly, Australia allows for judicial review when privilege is exercised to stifle justice or hide personal malfeasance under false pretences.

Lessons for India:

India's parliamentary privileges, although constitutionally recognized, are still mostly uncodified and abnormally vast, which invites potential misuse. India does not have strong internal standards committees with enforceable powers, unlike the UK. India does not have a clear judicial doctrine defining protected legislative activity and individual wrongdoing, unlike the U.S., and India does not have a parliamentary act that codifies and restricts privilege, unlike Australia.

This comparative examination shows that codification, judicial clarity, and bodies of institutional ethics are crucial to preserving the fine balance between legislative independence and democratic accountability. Indian democracy would gain from adopting statutory definitions and internal checks similar to these jurisdictions so that privilege continues to be a shield for democratic function rather than a cover for impunity.

. Towards Balance: Can Judicial Review and Privilege Coexist?

Whether parliamentary privilege and judicial review can coexist in a constitutional democracy like India is both complex and fundamental. Parliamentary privilege is designed to secure the independence of the legislative institution, while judicial review is a pillar of constitutional supremacy. Even though the two doctrines seem to be contradictory, their simultaneous existence is not only feasible but inevitable to maintain responsible government. This balance can only be achieved with a precise

demarcation of jurisdiction, observance of principles of the constitution, and strong implementation of the principle of proportionality.

Judicial Review: The Bedrock of Constitutional Supremacy: -

Judicial review, as entrenched in *Keshav Ananda Bharati v. State of Kerala* (AIR 1973 SC 1461), is an elementary attribute of the Indian Constitution. It entitles the higher judiciary to scrutinise legislation and executive conduct on the question of constitutionality. The

Supreme Court has reasserted this privilege in *Minerva Mills Ltd v. Union of India* [(1980) 3 SCC 625], highlighting that judicial review is necessary to uphold the primacy of the Constitution over every organ of the state.

But parliamentary privileges as granted under Articles 105 and 194 are not specifically subject to this power, and there is a possibility of conflict when legislative behaviour or actions impact basic rights or violate constitutional restraints.

The Conflict Zone: Privilege vs Fundamental Rights: -

There have been some controversial cases involving privileges being invoked to justify suspensions, contempt proceedings, or gag orders, and affected parties invoking judicial review on the grounds of violation of fundamental rights. In *Amarinder Singh v. Punjab Vidhan Sabha* [(2010) 6 SCC 113], the Supreme Court has held that legislative privilege cannot be invoked routinely and has to pass the test of judicial scrutiny when fundamental rights are infringed. Thus, in *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha* [(2007) 3 SCC 184], the Court established its jurisdiction to adjudicate on action under the privilege clause where such action manifests arbitrariness or violation of constitutional requirements.

These judgments establish that judicial review and privilege do not have to exist in isolation. When parliamentary actions transgress the field of basic rights, the judiciary is the constitutional watchdog.

Doctrine of Proportionality: A Middle Path: -

The proportionality doctrine presents a workable jurisprudential solution to resolve the conflict between the two doctrines. Proportionality requires that any limitation on rights should be necessary, reasonable, and least restrictive. Imposing this doctrine on actions involving privilege ensures that legislative autonomy is safeguarded without

encroaching on individual freedoms or constitutional requirements.

For example, if a media person is prosecuted for breach of privilege for releasing denunciation of a legislator, the judiciary, exercising proportionality, can assess whether the limitation is reasonable in a democratic society or an overreach aimed at stifling opposition.

#### Judicial Restraint vs Constitutional Supremacy: -

The Indian judiciary has demonstrated exemplary restraint in interfering with internal legislative processes, upholding the principle of separation of powers. This restraint is not absolute, though. Courts have asserted that they would interfere when legislative privilege is employed as a cloak for mala fides or unconstitutional behaviour.

This act of balancing is evident in the jurisprudence through Raja Ram Pal and Amarinder Singh, where the Court maintained the independence of the legislature but was not willing to give absolute immunity to actions that violate constitutional propriety.

#### Requirement for Clear Constitutional Guidelines: -

Despite these advancements, there is no codified framework or interpretive guidelines to mark the exact limits of privileges and the scope of judicial review. The persistence of the use of the nebulous expression "powers, privileges, and immunities as of the House of Commons" has led to judicial vagaries and legislative excesses. A constitutionally approved framework delimiting the legitimate parameters of privilege and the extraordinary jurisdiction of courts is imperative in order to guarantee predictability, uniformity, and impartiality.

Judicial review and parliamentary privilege, while appearing to be hostile to each other, can and have to coexist in a healthy constitutional democracy. The solution lies in the role of the judiciary as the constitutional sentry and ethical self-regulation of the legislature. Through proportionate adjudication and clarity in the constitution, India can maintain legislative autonomy as well as individual freedom and thus sustain the essence of constitutional democracy.

#### Recommendations: A Framework for Clarity and Control

The tension between parliamentary privileges and judicial review is symptomatic of an overarching constitutional challenge: the lack of codified constraints and guiding principles for legislative

immunity. In India, the privileges in Articles 105 and 194 have gone uncodified, allowing considerable scope for arbitrary use and abuse. To meet this democratic deficit, it is crucial to implement an exhaustive legal and institutional framework guaranteeing legislative autonomy and constitutional accountability. The following are recommendations made to maintain this balance successfully.

#### Codification of Parliamentary Privileges: -

The first step towards reform is the codification of parliamentary privileges in a proper statute. Codification would provide specificity to the scope, character, and reach of such privileges, make them different from immunities of the ordinary kind, and restrict their application only to activities directly pertaining to legitimate legislative activities. This suggestion is in the same vein as the 44th Report of the Law Commission of India (1971), which had categorically suggested codification of privileges so that they are not used arbitrarily. Codification would remove the uncertainty of law and would allow judicial interpretation within constitutionally acceptable parameters.

#### Creation of an Independent Review Mechanism: -

A stand-alone Parliamentary Ethics and Privileges Review Commission, made up of retired judges, constitutional specialists, and former parliamentarians, could be set up to observe and scrutinize cases of privilege invocation. This quasi-judicial commission could provide non-binding advice or initial clearance prior to punitive measures—such as breach proceedings, suspensions, or contempt notices—being taken against individuals or institutions. This would provide a safeguard against political abuse while acknowledging legislative autonomy.

#### Role of Constitutional Courts in Drawing Boundaries:-

Respecting parliamentary autonomy, constitutional courts are required to perform a helpful oversight role by enunciating distinct doctrines that define the boundaries of privilege. Decisions like Raja Ram Pal and Amarinder Singh v. Punjab Vidhan Sabha (2010) 6 SCC 113 form the basis for a judicially inspired approach. Courts must invoke the doctrine of proportionality to determine whether the exercise of privilege is either necessary or justifiable in a democratic society. Judicial guidelines must clearly distinguish between legislative conduct and personal misconduct, making constitutional remedies available in the latter case.

### Internal Safeguards and Procedural Reforms:-

Parliament and State Legislatures need to amend their Rules of Procedure and Conduct of Business to include elements of natural justice, such as the right to be heard, clear inquiry, and reasoned orders in privilege proceedings. Currently, proceedings tend to be summary and unclear, without even minimal due process. Codification of procedure can arrest arbitrary acts such as mass suspension or retaliatory privilege motions.

### Promoting Transparency and Public Scrutiny

The private sittings of privilege committees, frequently held in the shadows, should be partially disclosed to the public in the form of published reports and contemporaneous documentation. This will discourage political misuse and strengthen public confidence in the impartiality of legislative proceedings. Transparency is an antidote to impunity and a step towards ethical accountability in public office.

Protecting the dignity of parliamentary privileges should not be at the expense of constitutional integrity. Through codification, judicial supervision, procedural justice, and independent scrutiny, India can have a robust democratic system where privileges are tools of institutional dignity, not weapons of accountability.

### Conclusion:

The moving conflict between parliamentary privileges and judicial review represents a deeper constitutional challenge: that of reconciling institutional autonomy with the primacy of constitutional accountability. Whereas privileges are necessary to ensure the autonomous operation of legislatures, they must not become tools to cover up wrongdoing or avoid accountability. Judicial review, as a doctrine of basic structure, is there to uphold constitutional morality and ensure limits on institutional reach, legislative or executive.

Indian parliamentary privilege, inherited from the British, is uncodified and has been liberally interpreted. This looseness has been used to invoke it not merely to shield legitimate legislative activities but also to quell dissent, curb media inquiry, and exempt members from legal or ethical responsibility. Conversely, the judiciary itself, though endowed with constitutional instruments of review, is subject to the limitations of institutional restraint and separation of powers. Thus, there is an uneven equilibrium that continues, where privilege tends to function beyond the intervention of judicial correction, whereas

judicial review is restricted in dealing with legislative excesses.

Comparative models of constitution illustrate how democracies like the UK, USA, and Australia have instituted mechanisms—codification, judicial interpretation, and independent review—to ensure clarity and check abuse of privilege. These jurisdictions establish that legislative immunity and judicial accountability are not incompatible but can coexist in a principled constitutional system.

In order to resolve this conflict, India should march towards enacting privileges, having an independent review body, and making courts competent to invoke doctrines such as proportionality where privilege erodes constitutional values. Definite internal procedures, openness regarding proceedings under privilege, and adherence to natural justice can also reduce abuse.

In the end, parliamentary privilege should serve as a shield to maintain deliberative freedom and institutional dignity, not a sword to hinder justice or stifle criticism. In a democracy dedicated to constitutionalism and the rule of law, privilege should find room within a regime of accountability, bound by legality, and subject to judicious judicial review. Only then can legislative autonomy and constitutional supremacy be truly maintained in balance.

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