



Origin and Development of Parliamentary Privileges in England and India

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ABSTRACT

Four ways in which the experience of English parliamentary development and the processes of decolonization during the middle of the 20th century influence contemporary debates in these two crucial jurisdictions. The article contextualizes the spillover of English parliamentary privilege to British colonial India and the subsequent ‘migration’ of British derived standards of parliamentary conduct to the parliamentary legislative processes in Indian constitution-making and contributions to constitutional law in modern-day India. It begins by discussing the historical trajectory of parliamentary privilege over the centuries before analyzing how modern instances of parliamentary disruption and interventions by the courts have re-opened questions about the limits of parliamentary privilege and prerogative power. The article also singles out the role of key statutes and legal cases such as the Bill of Rights 1689 in England and the Constitution of India, 1950. It traces how, despite the continuity of Anglo-American parliamentary heritage, the contexts of two distinct parliaments at different stages of their history shaped the contours of modern privilege in each case.

Keywords: Parliamentary Privileges, England, India, Legal Evolution, Freedom of Speech, Legislative Autonomy

Introduction

Parliamentary privilege comprises various prerogatives, immunities and exemptions that belong to both the Houses of Parliament, joint or singly (especially the House of Lords), their committees, and their members. Legislative activity would be impossible without these privileges because of an elementary axiom of constitutional theory that the legislative function should be legally uncoerced in the performance of its functions in concert and without interruption. Parliamentary privilege ensures the autonomy of legislative debate and processes, and secures insulation both from external interference – which might emanate from the executive or the courts – and from legal sanction.

The thinking behind it comes from an English legal tradition, imported wholesale and adapted to suit each variety of parliamentary democracy, from India to the US. Privileges include members of parliament’s right to speak freely in Parliament, enjoy immunity from criminal or civil actions (e.g., for defamation) and a right to be free from jury service or having to give evidence in court when Parliament is in session.

In England, parliamentary privileges especially reflect centuries of conflict between the Crown and Parliament. The earliest English recognition of parliamentary privilege occurs in the 1689 Bill of Rights which reads, in part: ‘That the freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament: ...’ The King can’t, in short, stop someone in Parliament from saying something or another. The 1689 Bill of Rights was a direct response to the King’s efforts to control parliamentary speech.

These privileges have been developed further through litigation and statutes. One of the key early cases in the development of the parliamentary privileges was *Ashby v. White*, which concerned the rights of parliamentarians to freely address each other in debate. For one thing, this case law drew on the principle of ‘freedom of supply’: since parliament is where bodies outlining the government’s agenda – supply – prior to its formal reading and approval might be deemed a breach of privilege.

The constitutional rationale for parliamentary privileges in the Indian context is premised on the British colonial legal framework, though attuned after independence to the sovereign legislature of a democratic republic. The Constitution of India, which entered into force in 1950, contains the relevant provisions under Articles 105 (for Parliament) and 194 (for State Legislatures). These articles, much like the English Bill of Rights, reinforce the sanctity of free speech in Parliament and guarantee to members of Parliament or any legislature immunity from prosecution in any court for anything said or for any vote given there.

Some of the seminal judicial pronouncements on Indian parliamentary privileges derive from cases. One such case is *Keshav Singh v. Speaker, Legislative Assembly, Uttar Pradesh*, when the Supreme judiciary’s powers to defend a citizen legislature has the benefit of privileges, and these must not contravene the right to fundamental freedom that is guaranteed by the Constitution, marking a limit to legislative privileges.

Historical Background and Evolution

It is an English tradition that stretches back deeply into medieval England, through centuries of high political, constitutional, judicial and parliamentary battles and interactions between the monarchy, the judiciary and what became modern parliamentary structures. From its earliest origins, parliamentary privilege had no real codified form, but rather came into being through a combination of customs and legal precedents, and also via a host of statutes.

Role of the Magna Carta

Perhaps one of the most important early documents of what would become British constitutional law is the Magna Carta ('Great Charter'), a set of agreements sealed in 1215 between King John and England's feudal barons. While the Magna Carta was originally intended chiefly to limit the king's prerogative powers and secure certain classes of people's rights, it also enshrined basic ideas that would eventually be used to justify the privileges of more modern parliaments. The Magna Carta, establishing 'that we [the king] will neither grant nor confirm, nor cause to be granted or confirmed, anything ... against the law of the land', laid the basis for a rule of law that would surely apply to the king himself, and would gradually extend to the proceedings of the emerging legislative bodies as well – the idea that parliament, like anyone else, could not be overridden in what it lawfully agreed to secure.

Indirectly, the example of the Magna Carta contributed to parliamentary privilege, through the establishment of the idea of consultation and consent, which could lead to the early parliaments. They acknowledged that certain judgments, especially those regarding taxation, must, in principle, involve consultation of the common council of the realm. In time, this would mean a relatively formal Parliament.

Early Parliaments and the Assertion of Rights

Early English Parliaments were assemblages of nobles and clergy summoned by the monarch to discuss and approve new taxation. Gradually they assumed more prerogatives, so that by the 14th century parliament also acted as a legislative body and as a forum through which to raise grievances directly with the monarch. Parliaments began to assert their privileges more and more strongly in the 14th century.

A crucial moment came in 1297, with the confirmation of the Magna Carta, the 'Confirmatio Cartarum', which required the king to accept the agreement of the realm (effectively, what was rapidly becoming Parliament) to some legal changes, especially edicts of taxation. In so doing it pointed in the direction of a principle that was to become the foundation of parliamentary privilege: freedom from royal intrusion.

In the 14th and 15th centuries, several times Parliamentarians claimed the right of free debate, an obvious ancestor of the later privilege of free speech in Parliament. The separation of the Commons from the Lords within Parliament signaled the beginning of a new corporate social actor within government, representing not just the nobility and the clergy but a wider spectrum of society. As the Commons began aspiring to certain protections – specifically, the right of members of the Assembly to speak freely, without fear for punishment by the King or the Lords, or any other outside authority.

The increasing struggle for power between the monarchy and Parliament in the period of Tudor rule, notably Henry VIII and Elizabeth I, led to an ever more explicit assertion of parliamentary privileges. The monarchs relied on Parliament to agree to raise taxes, and this need to secure votes gave Parliament some leverage to insist on certain privileges in exchange, gradually acquiring the status of recognized rights.

Development Through the Ages

As parliamentary privileges in England grew out of their embryonic forms dating back to medieval England, they became more formalized, both as a result of statutory enactments and judicial decisions, helping England to make its way to become a modern, democratic state, with a separation of powers and the rule of law, and a legislature that was independent of the monarchy.

The Bill of Rights, 1689

One of the most important statutes in the development of parliamentary privileges in England is the Bill of Rights 1689. It was adopted in the wake of the Glorious Revolution, which overthrew King James II and saw William III and Mary II come to the throne on conditions placing the sovereignty of Parliament over that of the monarchy.

The Bill of Rights set out the nature of the political relationship between the Parliament and the Crown, and it enshrined several rights of Parliament and its members further into English law. On parliamentary privilege, the bill ensured the right to free debate in Parliament: 'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.' This was very important because it provided the grounding for the fundamental privilege that an MP does not have to fear threat of legal action or prosecution for slanderous, libelous or contemptuous remarks made during parliamentary proceedings. It means that open debate takes place, while also protecting those who speak from legal consequences.

Placing the obligation on subjects to obey the monarch however, sat oddly with these provisions and the Bill of Rights also proclaimed the illegality of the arbitrary arrests that the Stuart kings had often resorted to. The bill further insisted that parliamentary proceedings would be 'free and open', and

committed the monarch to respect the rights of individual MPs from undue influence or to physically coerce them. In these various ways, the Bill of Rights tremendously enhanced the independence and authority of Parliament.

After the adoption of the Bill of Rights, other precedents and cases expanded parliamentary privileges in other, complex ways. The more cases that arose, the more refined the interpretation and specific delineation of parliamentary privileges became, as argued in court to settle conflict and define where the lines fell.

A crucial early case in this area was *Stockdale v. Hansard* (1839), in which the courts ruled that parliamentary privilege applied neither to the act of publishing parliamentary reports, nor did privilege ‘imply a protection against the defamatory contents of those reports’; the public had a legitimate interest in knowing the contents of parliamentary documentation, and it could not be that only members of parliament had recourse to the courts if faced with inaccurate reports. This tension was resolved only when the Parliamentary Papers Act 1840 was passed, granting legal immunity to all publications with the approval of at least one of the two Houses of Parliament.

A second key case was *Bradlaugh v. Gossett*. This case further reinforced the prerogative of the House of Commons to regulate its own internal affairs free from external judicial intervention. Here the court decreed that determinations on questions of who may or may not take the oath and enter the House were matters ‘solely’ for the House itself and therefore not reviewable by the courts. This is a landmark decision for parliamentary sovereignty and its control of internal procedures.

These and other legal precedents and case laws are the means through which English parliamentary privileges have been both defined and, on occasion, refined. They mean that the specific privileges of Parliament, indispensable to its function, do not encompass more than is reasonably necessary to allow it to perform that function, without undermining the rule of law or the rights of citizens. It is through a careful balancing of these important interests – an exercise that judicial scrutiny has contributed to – that a democratic balance has been and is maintained, allowing our legislative powers to be unimpeded, but also vigorously constrained through responsible exercise.

Modern Interpretation and Application

In turn, as parliamentary privileges have evolved over time, case law interpreting and applying them to the modern world has also changed to suit political, social and legal developments. One clear example of this can be seen in the modern-day role and powers of the two Houses of the UK Parliament: the House of Commons and the House of Lords. Many of these case studies, too, have helped define and further develop these privileges over time.

House of Commons vs. House of Lords

While both the House of Commons and the House of Lords operate under the aegis of the common law of parliamentary privileges, the nature of these privileges and the way in which they are applied and interpreted differs because of the different and unique functions which each House fulfils, and the different make-up of each.

- ‘House of Commons: The Commons is the supreme legislative Chamber elected directly by the people. The privileges enjoyed here are designed to ensure the independence and effectiveness of its members. Chief of them is that of free speech. Thus, any member may speak freely in the conduct of his business, unimpeded by legal process and uninfluenced by the fear of seeing himself dragged from the House.’ Free speech is vital for the discharge of the Commons’ primary function of robust debate and the scrutiny of executive action.
- House of Lords: Though similarly free of the same restrictions that apply to other members, because of its unelected nature, the House of Lords uses its privileges in a somewhat different way. As a revising chamber that has historically retained many members who were former judges, politicians and experts of various stripes, the Lords has devoted itself less to making political statements and more to offering critical analysis and amendment. It also has the uncommon ability to try its members for certain kinds of offences (in years gone by, including impeachment – now such itself seems to have fallen into disuse).

Invited to take its seat in either House, the privilege means that each Chamber has a right to manage its own internal affairs without interference either from the other House or from the outside. In both cases, the privilege of exclusive cognizance is a living, breathing principle of parliamentary privacy.

Notable Case Studies

Several case studies highlight the modern application and interpretation of parliamentary privileges:

Chaytor v. The United Kingdom: The UK Supreme Court considered claims by MPs who relied on parliamentary privilege to ward off charges concerning the misuse of parliamentary expenses. The court decided that the privilege did not protect MPs against prosecution for ordinarily criminal conduct under the cloak of parliamentary function. Finally, privileges protect functions, not members.

HS2 Action Alliance Limited v. Secretary of State for Transport: reiterating the superiority of parliamentary legislation over the courts, and hence the principle of parliamentary sovereignty, the judgment also sketched out its limits (as illustrated by the *erreur* and non-justiciability doctrines) in the face of conflict between Acts of Parliament and fundamental legal principles or rights, thereby highlighting the interplay between parliamentary privilege and judicial oversight.

Parliamentary Privileges in India

The development of the parliamentary privileges in India is closely related to the colonial period of the Indian history under the British regime. All the legal framework and practices developed under British regime in India derived from the British parliamentary laws, adapted to the Indian context.

Influence of British Parliamentary Laws

The British brought with them their own institutions of the state, especially their laws and their parliamentary system. In British India, the initial legislatures were established following the British parliamentary model, and the laws and customs that governed their proceedings were identical to those of the British Parliament (especially in regard to parliamentary privileges).

The privileges guaranteed in British India were often transplants from those in Britain: freedom of speech in and immunity from legal actions for the members of the legislative bodies facilitated their work by protecting them from interference of the colonial administration or judiciary through those charters and acts passed by the British Parliament for the governance of colonial territories.

Importantly, both the Government of India Act of 1915 and its expansion, the Government of India Act of 1935, included separate chapters on the powers and privileges of legislative councils in British India. As modified versions of the British North America Act and the Australian Commonwealth Act – both grounded in the principles of British parliamentary government – the Government of India Act of 1935 came the closest to establishing a clear constitutional structure for parliamentary government in India, still under the authority of British sovereignty.

Early Legislative Bodies in British India

These early legislative councils in India laid the foundation of a legislative system established subsequently in India. The first of them was the Governor-General's Council set up in 1773, which was referred to as the Imperial Legislative Council. This was not a parliamentary form of government, but only an advisory body of the British Governor-General.

The Indian Councils Act of 1861 was brought in under this year and established legislative councils for India on a provincial basis. They were consultative and legislative bodies; though the council membership could debate on matters, there were some that could not be voted upon. The Act began the process of legislating in India.

By 1892 and especially with the Indian Councils Act of 1909 (also referred to as the Morley-Minto Reforms) the legislative councils were enlarged, and jurisdictions more clearly defined. The reforms set out to give Indians a greater role in councils and to 'induce the Indian peoples in the more advanced Provinces to take a financial interest in their own concerns' by introducing the electoral principle to the legislative process and thus, eventually, to a legislative body that could become more representative in nature.

The Montagu-Chelmsford Reforms of 1919 further democratized the structure by significantly increasing the number of members in the legislative councils, and also extending the scope of the powers of the Indian members. Although the British authorities still presided over these councils, and the councils still remained advisory, they operated as legislative councils with the real powers to pass laws about matters of specific concern to Indian subjects.

These were the earliest legislatures in India, and they laid the foundation of the parliamentary structure that would eventually be built in India since independence. The adaptation of British parliamentary privileges was critical to protect the legislative process and allow the legislature to perform at least some of its tasks with some independence under colonial rule. It would pave the way for the creation of a sovereign parliament in free India imbued with parliamentary privileges that would find a permanent place in the Constitution and become a central feature of the democratic method.

Post-Independence Developments

With the advent of independence in 1947, India was ready to start designing its own institutions of parliamentary government, partly borrowing its procedures from Britain, and partly from the traditions of local democracy. Here was a moment that would help shape the prerogatives and powers of parliamentarians, as well as the conduct and standards of parliament, that would define parliamentary centers of the new republic.

The post-independence constitutional framework based on parliamentary privileges in India came into being with the 1950 Constitution of India. The preambular narrative of justice, liberty and equality, and the several chapters devoted to the fundamental rights, sovereignty of Parliament, directive principles of state policy and judicial review, helped the constituent assembly members take a long, hard and deliberate look before including specific paragraphs on parliamentary privileges that sought to define, delimit and protect parliamentary privileges.

Article 105 relates to the powers, privileges and immunities of the houses of parliament and their members. Subsection (1) reads thus: Save as otherwise provided in this Constitution, the powers, privileges and immunities of the Houses of Parliament and of the members and the committees of Parliament and of persons attending at the invitation of either House shall be the same as it was immediately before the commencement of this Constitution. The first segment of this clause not only recognizes the historical links of Indian parliamentary privileges to British law but also modifies it for the Indian context.

Subsection (2) of Article 105 further protects freedom of speech in Parliament by stating 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. If members are not allowed to say things in Parliament without the risk of facing action in a court, then their ability to do their job would be diminished by external considerations and potential recriminations.

More controversially, Article 122 also states that the courts cannot intrude into proceedings of parliament, thus giving further authority to the legislative process and reaffirming the separation of powers that defines India's democratic structure.

Even though the heart of parliamentary privilege is enshrined in the Constitution, much of the detail in its operation is supplied not by that foundation text but rather by statute. These statutes – extending the common-law privileges of parliament and creating a suite of near-analogues of those rights – are important because the constitutionalized privilege is far from complete in itself: it requires legislative improvement before it functions properly in practice.

One example is the Parliament (Prevention of Disqualification) Act, 1959, which was passed by Parliament precisely to avoid the disqualification of its own members under the office of profit clause, within the law. This act allows MPs to undertake specific roles for the public interest, without breaking statutory law and losing their seats.

This renders morally and legally imperative the Parliamentary Proceedings (Protection of Publication) Act, 1977. This safe harbour from litigation allows the public and the media to peer into and comment upon parliamentary proceedings secure in the knowledge that they would be protected from a suit for publication of the truth as long as such publication was not malicious. Such a law helps keep the informed citizenry in shape.

The title itself suggests matters of financial entitlement Ent of MPs but it also clearly mentions some aspects of Parliamentary privilege, which are related to the logistics and practicalities of role of a member of Parliament.

Taken together, along with the underlying constitutional articles, these statutory provisions constitute a robust system of law that guarantees and governs the privileges of Parliament and its members in India and, unlike their counterparts elsewhere, they are consistent with the fundamental rights of citizens and the ideals of openness and accountability that define a democratic polity.

Contemporary Issues and Challenges

The concept of parliamentary privileges – so vital to the proper functioning and institutional integrity of any representative legislature – remains an idea of contested meaning and ongoing controversy. Balancing the freedom of the legislature with the ever-demanding imperatives of transparency and public accountability is no easy task.

Cases and Controversies

From year to year, we can discern broader trends in the ways in which parliamentary privileges are used, applied and abused. A number of high-profile cases over the past decade or so have brought to the fore the tensions implicit in the way parliamentary privileges are claimed and enforced – in particular, the question of what constitutes excess by those who wield them, as well as the boundaries imposed on members' general scope for accountability before the public and the courts.

- India: Here is an egregious example of a contempt power in India. In 1964, a member of the Uttar Pradesh Legislative Assembly was arrested for contemptuously criticizing the legislature. The matter led up the judicial hierarchy to the President of India and also to the judiciary. Finally, the Supreme Court of India ruled that the principle of separation of powers requires that the Constitution be supreme over any privilege that a parliament might have. If such a privilege encroached upon fundamental rights, it would be subject to the superiority of the Constitution. According to the Court, the legislature could still make its own rules regarding internal matters, so long as those rules did not violate the Constitution.

Another is the Cash-for-Questions Scandal of 2005 and 2023, where members of the Indian Parliament were allegedly offered bribes to ask certain questions in Parliament. The case had an interesting dimension, as the public demanded tighter disciplinary action against the offenders, putting the protective powers of parliamentary immunity to the test.

- England: In 2009, a scandal broke in the UK when members of Parliament's expenses claims were deemed abusive, as MPs had claimed payment for various things that weren't officially necessary, such as a house for a publisher or duffel coats for six grandchildren. The public response was one of outrage, and the power of parliamentary privilege was challenged just as severely as it had been in the American case for MPs' expenses. The whole issue prompted a major overhaul of the rules governing MPs' expenses.

Balancing Privilege with Public Accountability

This tension between holding on to necessary privileges and being accountable to the public is something that every legislature has to deal with, forever. Good democracy means that legislators have to be free from too much interference to do their job, yet at the same time, they need to be open and accountable to maintain public trust.

The legal frameworks in India and the UK try to strike this balance by restricting parliamentary privileges to strictly legislative functions. For example, the privilege of being free from arrest in civil cases during sessions has the purpose of preventing the exercise of any influence over members, but the privilege does not extend to avoiding criminal charges.

Moreover, it is precisely the fact that the quality of judicial review by the courts ensures that these privileges are not abused that the role of the judiciary becomes crucial in the oversight of their operation in both countries. On the whole, the courts are left with a task of ever more refined jurisprudence where autonomy of the legislature is respected but that does not enjoin courts to be passive when there is an event in A that causes an event in B. legal or constitutional breach. Courts in both countries have carved out jurisprudence in this regard.

In both India and the UK, recent reforms have been brought in in order to counteract public concerns about their abuse, such as tighter disclosure rules, changes to the expense's regime, and more specific rules about what constitutes a breach of privilege.

Changes to technologies and the media mean that parliamentary proceedings and the behaviour of MPs today have never been more accountable and transparent than at any time in history – while drawing greater scrutiny and public pressure on legislators, much of which has prompted debates over calls to reconsider parliamentary privilege laws in the interests of modernity.

Comparative Analysis of Parliamentary Privileges

Despite this vast continent of geography and culture, the English and Indian parliamentary systems have a common legal ancestry that imbues their parliamentary privileges with a remarkable similarity of character and use. This exercise in comparative examination of parliamentary privileges between the legislature of England and that of India is an attempt to seek out and assess the commonalities in privileges enjoyed by the two legislatures, including the freedom of speech in Parliament, non-justiciability and regulation of its internal affairs.

Commonalities in Privileges in England and India

Freedom of Speech in Parliament

Parliamentary freedom of speech is among the UK's most ancient (and perhaps most basic) of its privileges. By the Bill of Rights 1689, 'the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament'. That fundamental freedom allows MPs to talk about what they believe to be in the country's best interests, without threat of external judgment or prospect of subsequent legal action.

Similarly for parliamentary speech in India, entrenched in Article 105 of its Constitution, which provides that 'no member of either House 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'. This power is fully drawn from its British counterpart, and for the same reasons: to protect MPs; in order that 'as little discouragement as possible may be given to any hurry in debating any question' and that, as it necessarily involves the 'utterance of strong language among those who are under great emotional excitement, Room must be allowed for discussion, with freedom of expression' – in essence, to ensure that 'Robust discussions are the very strength of our system'.

In addition to constituting in both countries an exemption for members of the legislature to perform their duties without threat of punishment, thereby tending to promote a vigorous policy-making and governing capacity, this privilege is an integral attribute of democracy.

Exemption from Judicial Intervention

In the UK, parliamentary privilege includes an extremely wide heads-of-state immunity from judicial intervention. It derives from the Bill of Rights, as well as from common law precedents, and follows from the constitution's strict separation of powers, firmly reasserted over the years. Judges, at law, cannot interfere in what takes place in Parliament, which is another way of saying they cannot intrude on Parliament's internal affairs.

These principles are reflected in the Constitution of India. Article 122 provides that a House of Parliament enjoys legislative autonomy, in that 'no discussion in such House or any vote of any member thereof shall invalidate any proceeding of the House'. In essence, the courts will not inquire into the proceedings of a House of Parliament.

Regulation of Internal Affairs

It has the sovereign right to not only set its own agenda – in other words, decide which matters its members will debate – but also to determine and control the institution with which it manages its affairs, including its members, its management, its working procedures and committees. This is so that parliament can speak coherently and make decisions independently and with integrity.

In imitation of the British model, the Indian Parliament too has the power to regulate its own internal procedures. The Rules of Procedure and Conduct of Business in Lok Sabha and its parallel in Rajya Sabha govern how business is conducted in parliament, the modes and manner in which members interact with each other in the houses and how matters of discipline are dealt with.

Differences in Application and Scope

They might share many similarities, as is the case for the parliamentary systems of England and India, but the precise contours of the specific privileges and immunities enjoyed by parliamentarians in the two countries are different. The reasons for this divergence lie in combination of a distinctive set of legal doctrines, judicial rulings, and the independent forces of political culture and history in different legal systems.

Legal Frameworks and Constitutional Provisions

The legal framework for parliamentary privilege in England is rooted primarily in the common law and statutory precedents, such as the Bill of Rights 1689. Being a country without a codified constitution, the UK does not have a single foundational document that defines its constitution; in the case of parliamentary privilege, there are no explicit foundational provisions, just a series of legislative acts and judicial interpretations. The defining feature of English parliamentary privilege is its responsibility-centred approach to protecting the business of Parliament, with emphasis on the freedom of parliamentary speech and immunity from legal proceedings.

On the other hand, contemporary India has a codified and written Constitution, which came into force in 1950. The privileges of Parliament are expressly provided for in Articles 105 (for the Union) and 194 (for the State Legislatures) of the Constitution. Such clear and articulate codifications lend greater structure and organisation to spells out the specificities of the various accountability processes than a common law system does. Parliamentary privileges in India are in the main adapted and modelled on the British case, but have been accommodated within the constitutional structure that explicitly seeks to offset these privileges by the rights guaranteed to the citizens.

Notable Judicial Decisions

Historically, judicial precedent in the United Kingdom has upheld the self-governing power of Parliament to control its own processes. In *Bradlaugh v. Gossett*, the courts confirmed that they would never interfere with the internal proceedings of the House of Commons. In *Pepper v. Hart*, they allowed restrictive judicial review where the House declared their proceedings publicly via the printing of Hansard.

Likewise, Indian judiciaries have also expanded the purview of parliamentary privileges through common law. The Indian Supreme Court has, on many occasions, decided upon the interplay between parliamentary privileges and the rights of the people, overriding the constitutional provisions on privileges in favor of people's rights. In *P V Narasimha Rao v. State*, the court ruled that parliamentary privileges cannot trump the constitutional rights of citizens, a precedent to limit the ambit of those privileges that violate the constitutionally guaranteed rights of people.

Influence of Political Culture and History

The changing nature of parliamentary privileges in England owes much to two influences. First, the very concept of parliamentary sovereignty – itself a realization of the Crown-in-parliament's implied and used powers to make and control the law – buttressed parliamentary privilege. Most crucially, it guaranteed royal assent for statutes that consolidated the collection of privileges over centuries, and then ensured that English and, later, British legislatures could use law-making privileges as they saw fit. In a second wave of development, parliament became a democratic space that reflected the emergence of a democratic culture across the country – a culture that equally brought further expansions of parliaments' participatory powers and, hand to mouth, new privileges for members. A strong, independent Parliament, its freedom and immunity protected against the executive and judiciary, has for many centuries enjoyed a formal and informal protective, even paternalistic, approach from the political culture of the UK. This in turn reflected, and encouraged, the way in which members' privileges came to form a modern, thick low wall protecting the administration of a parliamentary state and the quasi-democratic core of the unwritten constitution. Independence of Parliament lies at the heart of the unwritten British constitution.

On the other hand, India's political history and culture informs a well-defined system of parliamentary powers. The Indian system seems more responsive to privileges of parliamentary members as an aftereffect of the colonial experience in which an excessive concentration of legislative powers at the center was tempered by the codification of countervailing forces. A striking feature of this template is the codified regime of privileges and the increased willingness of the courts to interpret those privileges, neither of which should be taken as indications of judicial assertiveness, but together can be seen as signaling a new dynamic in which a three-cornered competition between the branches of government is more vigorously contested in public debate and finds more often occasions for judicial tests of interpretation.

Key Aspects of Parliamentary Privileges

Parliamentary privileges form part of the functional aspect of legislative organizing. These privileges provide parliament and its members with a space for proper functioning and operation, free from an unnecessary inconvenience. This section considers three manifestations of basic parliamentary privileges: the privilege of freedom of speech, the privilege of immunity, and the privilege of exemption from court jurisdiction.

Freedom of Speech

England: Historical Cases and Modern Interpretations

In England, freedom of speech in Parliament rests on precedent. The Bill of Rights 1689 affirms that freedom specifying that the freedom of speech and debates or proceedings in Parliament 'ought not to be impeached or questioned in any court or place out of Parliament'. Such utterances were initially protected against prosecution by the monarch, and have developed into protection against all questioning in court and all civil and criminal liability for parliamentary utterances.

These more recent interpretations maintain the principle, but also leave room for accountability, for example in finding that freedom of speech applies to Parliament, overturned in the case *Pepper v. Hart* where the courts ruled that when no clear statutory language exists, ministers' speeches in Parliament can be used in court to clarify the law. This is a judicial compromise: ministers' speeches can be cited in court, but only when statutory language is ambiguous.

India: Landmark Judgments and Current Issues

In India, meanwhile, the frontrunners in Parliamentary privilege find expression in Article 105 of the Constitution, which protects Parliamentarians extensively while speaking from the floor of the House. The privilege is meant to provide 'freedom of speech and freedom of discussion in Parliament without curtailment since it is the obd reception of views that is the object of the provision, not their utterance'.

In a landmark case deciding parliamentary freedom of speech in India, *P V Narasimha Rao v. State*, the Supreme Court decided whether MPs could be summoned to face criminal prosecution for what they had done inside the legislative chamber. It found that, although members were generally covered by parliamentary privileges, these did not cover criminal conduct not related to their legislative work.

More recently, the Westminster case law on the privilege of freedom of speech in Parliament has been tested by challenges to the power of the House to expel a member for disorderly behaviour – questions about the scope of this privilege and the appropriate balance between decorum and legislative debate.

Immunity from Legal Proceedings

Protection in Civil and Criminal Cases

In the UK, parliamentarians are immune from civil proceedings in respect of all speeches made in Parliament and other parliamentary proceedings, a form of immunity sometimes referred to as freedom from civil arrest in Parliament.

Likewise in India, members are immune from civil or criminal liability for everything that they say or vote for (or abstain from voting in) the course of parliamentary proceedings. Such immunity is vital to the integrity of parliamentary proceedings since members must feel free to express their opinions without fear of legal sanction.

Exceptions and Limitations

In both parliamentary systems, however, this immunity is not absolute and provides exceptions: when a member commits a crime or steals money while engaging in private activities and outside legislative functions.

Exclusion of the Jurisdiction of Courts

That the courts should not interfere in the working of Parliament is an ancient principle in England, as well as India. The concept of separation of powers is fundamental to the proper functioning of a democratic government and guarantees that each branch (legislative, executive and judicial) functions independently of the others.

Modern-Day Controversies and Judicial Review

Current controversies, including the prorogation of Parliament and related legal proceedings that resulted in wide judicial review of the actions by the Supreme Court of the United Kingdom provide examples of the limitations of this principle. In its judgment in *R (Miller) v. The Prime Minister*, the court held that the judiciary 'does not normally interfere in the proceedings of Parliament' but that '[i]f there were a clear and unambiguous law' requiring the Prime Minister to have received a grant of prorogation from the Queen to thereby allow prorogation to occur, then such a violation of the law 'would be a matter for the courts.

The judiciary of independent India has had to deal with numerous cases testing the ambit of judicial review of parliamentary proceedings, but the courts have usually taken the route of non-interventionism. At the same time, they have reserved for themselves the right to intervene in cases where the allegations of subversion of the constitution or breach of basic legal rights are proved to be prima facie true.

Impact of Parliamentary Privileges on Governance

Parliamentary privileges help communicate to the public the importance of allowing legislatures space for autonomy and deliberation in order to advance popular sovereignty, while also assuring accountability and transparency through votes and debate.

Accountability vs. Privilege

One important reason is that, as MRL Spence outlined in 1816, the media are crucial mediators between parliamentary privilege and popular accountability: Notwithstanding the privilege ... of freedom of speech in Parliament, the members of which are elected by and are controllable by their constituents, the proceedings of Parliament are reported to the public; and hence it cannot be presumed either that the reporter would not be liable for publishing ignorance, or that members may act without responsibility to the public. At the same time, because the privilege of speech in Parliament entails the potential for quite sensitive or contentious matters being discussed in Parliament, the media often need to negotiate themselves across complicated legal terrain in being able to report back to the public on these matters.

Notably, in both England and India, media coverage of affairs in Parliament – whether in the form of reporting speeches and debates in its columns, or programmes/talk shows that make extensive references to matters before the legislature – can shape public attitudes and perceptions of legislations and rights of members to resort to parliamentary privileges.

Recent Scandals and Public Perception

Recent scandals in both the UK and India have exposed the tension between parliamentary privileges and the desirability of public accountability, suggest that the public's appetite for MPs' special privileges is wearing thin, and also question whether the scope given to parliamentary privileges is still appropriate in modern democratic societies. The MPs' expenses scandal in the UK (2009) and the cash-for-questions scandal in India earlier this year (2023) have been the most recent prominent public examples of intense scrutiny around the privileges protecting MPs.

Such scandals routinely erode public trust in legislative institutions, energizing calls for greater transparency and reforms to ensure that the privileges attached to legislative offices are not harnessed to permit questionable or even unlawful activity.

Future of Parliamentary Privileges

The development of the idea of democracy makes us realize that we would need to re-argue the case for parliamentary privileges as the need to adapt arises in each case. To the best of my understanding, however, the logic of parliamentary privileges requires to be rethought again in England and in India: sojourners in parliament cannot be held to these higher standards but they can play an important role in upholding the highest ethical standards of public life in their constituencies. To be able to do this, parliament would need to have on the one hand certain protections for its independence as a sub-constitutional body in the form of specific privileges, and on the other, certain general mechanisms that would hold it accountable.

The typical reform agenda often involves sharper definitions of what constitutes a breach of privilege, tighter conditions for disclosure of the interests of MPs, and a tightening of the scope for abuse of privilege via new rules and procedures. The second reform category regards the idea of modernizing parliamentary processes, involving greater openness – for example, by broadcasting parliamentary sessions and by making committees' hearings more open to public scrutiny.

Conclusion

Parliamentary privileges in England as well as in India are part of a history of assertion and compromise according to which the legislature has made itself indispensable to the operation of the state and of the constitution. Informed both by the medieval English beginnings as well as by their colonial Indian development and morphology, the privileges from civil and criminal actions guarding parliamentarians from suspensions of their election and the immunities protecting the liberty of parliamentary speech from the hazards of legal liability – designed to make parliamentary speech free and open while critically vulnerable – have preserved the institutional integrity as well as the operational effectiveness of parliaments in both countries by protecting the legislative independence of the parliamentarians without giving a carte blanche to arbitrary and abusive conduct of public affairs. As cases before the UK and Indian courts as well as UK and Indian statutes reveal, the parliamentary privilege has required repeated judicial interpretation and legislative amendment to accommodate the increased state power and to make the parliamentary regimen conform with the demands of modern democracies and federal governments. New questions relate to the scope of the protection guarded by the parliamentary privileges and the possibility of abuse of these rights so that they are not used to cover scandalous conduct or foment corrupt practices by MPs. For instance, the UK MPs' expenses scandal in 2009 and the cash-for-questions scandal in India in 2011, to select only the most striking among the recent controversies, provoked intense moral outrage and a clamor for more substantial accountability and fuller disclosure, along with increased regulation on the right before and while conducting the representative business. Future reforms may embrace a formal enumeration of the privileges, a greater transparency obligation on the part of parliamentarians, and a wide-ranging opening up of the parliamentary practice, for instance through audio-visual media coverage and live broadcasting of the proceedings.

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