

---

## PARLIAMENTARY PRIVILEGES

---

Vikhyat Sahani, Law Student, Vivekananda Institute of Professional Studies

### ABSTRACT

This paper examines the constitutional framework of parliamentary privileges in India, with particular reference to Article 105 of the Constitution. Through an analysis of historical origins, judicial interpretation, and key constitutional decisions, it explores the evolving balance between legislative autonomy and constitutional accountability in a democratic system. Parliamentary privileges are an important provision under the Articles 105 and 194 under the constitution, their main function is to ensure uninterrupted legislative function. Article 122 and 212 of the Constitution support both these provisions. While their original function is as mentioned above, usually their implementation is questioned, judicial interpretation of these provisions has always been crucial for defining a relationship between Parliamentary Privileges and Fundamental Rights mentioned in the Constitution. Judicial Interpretations also play a pivotal role in clarifying the limits of Parliamentary privileges through landmark cases such as MSM Sharma v. Shri Krishna Sinha, Keshav Singh's Case, P.V. Narasimha Rao v. State (CBI/SPE), and Raja Ram Pal v. Speaker, Lok Sabha. The most recent judgement interpreting Parliamentary Privileges is the Sita Soren v. Union of India case in 2024. This research paper dives into how parliamentary privileges in India are understood today, looking at the constitution, court rulings, and expert opinions. It makes the case that while these privileges are crucial for keeping the legislature independent, how they're used needs to line up with being accountable under the constitution and the bigger picture of democratic rule.

**Key Words:** - *Parliamentary Privileges, Article 105, Legislative Immunity, Judicial Review, Constitutional Accountability.*

## I. INTRODUCTION

*“Parliamentary privilege is in reality nothing else than the sum of the peculiar rights enjoyed by each House collectively and by members of each House individually.” - A.V Dicey*

**Article 122** of the Indian Constitution establishes that courts cannot question the validity of parliamentary proceedings on the grounds of procedural irregularities, ensuring legislative independence and upholding the doctrine of separation of powers. Parliamentary privileges form the foundation of independent working of the legislature, free of bias and hindrance during Parliamentary procedures. India is a parliamentary democracy, that is why establishing such privileges is important **Article 105** of the Indian Constitution establishes these privileges for members of the houses of Parliament. **Article 194** establishes similar privileges for the members of state legislatures. It is understood that these privileges are not provided for personal use for the members of parliament, they are established to protect the Parliament itself. However, the applicability of these privileges has led to some Constitutional questions being asked, particularly related to democratic accountability. Due to such questions being asked over time, judicial interpretation of provided privileges, in context of their limits and how constitutional supremacy is to be maintained in lieu of these provisions.

## II. CONCEPT AND ORIGIN OF PARLIAMENTARY PRIVILEGES

*Privilege is defined as a right, exemption, or immunity granted as a particular benefit, advantage, or favor.*

Parliamentary Privileges are some special rights and immunities given to the Houses, members and committees formed. These provisions are to be used in the realm of Parliamentary proceedings only. The Parliament itself having the power to regulate its internal affairs, maintain order and protect the formal proceedings is a collective right which is provided. Certain individual rights are provided to the MPs for their immunity as members of the Indian Parliament and what is seen as necessary for their participation in the aforementioned

proceedings. The concept of Parliamentary Privileges is not a strictly Indian concept. Many constitutional democracies such as France, Australia, UK and USA provide certain privileges to the members of their parliament. Such provisions are codified differently in different constitutions. The United Kingdom is seen as the origin of this concept, so far as that the Indian Constitution mentioned and gave a direct reference to the House of Commons in the UK. This reference was removed by the 42nd Amendment of the Indian Constitution in 1976. Parliamentary Privileges were originally conceived in the United Kingdom because of a struggle between the English Parliament and The Crown. The former during the 1600s faced intimidation, punishment and interference from the latter for expressing views which were opposing. This highlighted a need for some protection and immunity for members of the English Parliament. These privileges were formalised later in the Bill of Rights 1689.

### **III. ARTICLE 105**

Article 105 titled “Powers, privileges etc. of the Houses of Parliament and of the members and committees thereof-” consists of 4 clauses defining what privileges are given and who are they given to.

ARTICLE 105(1)- It introduces Freedom of Speech in the Parliament, which is subject to the provisions of The Constitution, reasonable restrictions such as public order or morality mentioned in Article 19(1)(a) of the Indian Constitution. However the article clearly states the subjectivity to provisions of the Constitution so MPs must follow parliamentary procedure and discipline.

ARTICLE 105(2)- It provides for the immunity of members of parliament against any proceedings of court with respect to anything said by the MPs in parliament. This is done so that MPs can participate in the legislative proceedings without the fear of civil and criminal liability. But this article is strictly limited to acts directly connected to the Parliament, this cannot be used externally anywhere. The Supreme Court has also affirmed the absolute nature of parliamentary speech immunity in *Tej Kiran Singh v. Sanjiva Reddy (1970)*, where it held that statements made during parliamentary proceedings are protected under Article 105(2) and cannot be subjected to judicial scrutiny.

ARTICLE 105(3)- It deals with the powers, privileges and committees of each House of Parliament, according to this article the privileges should be defined by Parliament by law. Until now defined, the same as those enjoyed by the House of Commons of the United Kingdom at the commencement of the Constitution, before the 42nd amendment used to directly reference the UK and their house of commons.

ARTICLE 105(4)- extends the provisions of Article 105(1), (2), and (3) to persons who are not Members of Parliament but are entitled to speak or participate in parliamentary proceedings. These are the provisions in Article 105, substantially Article 194 provides for the same in the state legislatures. The uncodified nature of clause 3 has led to the need of recurring judicial interpretation of the same. Article 122 and 212 further establish the concept of Parliamentary Sovereignty by barring the judiciary to question the parliamentary proceedings.

#### **IV. JUDICIAL INTERPRETATIONS**

As mentioned before, provisions of Article 105 and 194 have led to various judicial interpretations.

#### **Cases of English Jurisprudence:**

##### **V. Stockdale v. Hansard (1839)**

This is a case of English jurisprudence and is denoted as one of the origins of Parliamentary privilege.

Context: Hansard was the official printer for the House of Commons, He published a report under the House which was alleged to be defamatory. House of Commons claimed that they are protected by Parliamentary Privileges and are immune from judicial inspection and scrutiny

Holding: This case was put up in the Court of Queen's Bench. The court held that the House cannot publish defamatory material, merely by putting forward parliamentary privilege and that such privileges are not to do such acts. Parliamentary Privileges could not be held over ordinary jurisdiction of courts in a common law system

Significance: This case established that Parliamentary Privileges are not unlimited and it put forward a conflict between such privileges and individual rights. This led to a statutory clarification in Parliamentary Papers Act, 1840 in the UK.

##### **Bradlaugh v. Gossett (1884)**

**Context:** Charles Bradlaugh, an elected MP, was refused to take his seat after he decided that he won't follow the recommended religious oath by the parliament. The House of Commons refused and Bradlaugh challenged this decision arguing that House of Commons had acted unlawfully

**Holding:** The court held that the House of Commons had exclusive jurisdiction over its own proceedings, saying that they can't interfere with internal management and it is impermissible.

**Significance:** The doctrine of exclusive cognisance, a doctrine prevalent in common law systems, under this doctrine legislative houses over its own affairs without external interference. Article 122 of the Indian Constitution mentions such non interference in Parliamentary Proceeding

### **Cases of Indian Jurisprudence:**

#### **MSM Sharma v. Shri Krishna Sinha (1959)**

**Context:** The case came up when an editor of a newspaper published portions of legislative debate that had been ordered to be expunged from Assembly records. Bihar Legislative brought action against the editor, saying that it is a breach of privilege. Petitioner challenged that it is a violation of his fundamental right of speech and expression under Article 19(1)(a). The court's issue was the relation of Fundamental rights and privileges under Article 105 and 194.

**Holding:** The Supreme Court of India held that Parliamentary privileges in the aforementioned articles will prevail over freedom of speech and expression under Article 19(1)(a). The Court ruled that legislative privilege had a distinct constitutional power and that the Court cannot interfere with use of such privileges because of inconsistency with fundamental rights.

**Significance:** This is one of the first major Indian decisions interpreting Parliamentary privileges and it took a stand which portrayed Articles 105 and 194 as special constitutional provisions which can override certain fundamental rights . MSM Sharma case shows India's version of Parliamentary Privileges which gives protection to legislative autonomy, which was later changed through different judicial interpretations.

#### **Keshav Singh v. Speaker, Legislative Assembly And Ors.(1965)**

**Context:** Keshav Singh, a private individual, published a pamphlet which criticised a member of

the parliament , which led to this case being filed against Keshav Singh. Allahabad High Court granted Keshav Singh bail and summoned the judges and advocates involved in an alleged breach of Parliamentary Privilege. This confrontation raised questions related to provisions of Article 194 and Article 122.

**Holding:** The Supreme Court in a Presidential Reference held that exercise of privileges provided by the Constitution are subject to Judicial Review. These are not illimitable powers . A Judicial Review on said powers can be used when they violate constitutional provisions, particularly Fundamental Rights.

**Significance:** This judicial interpretation shows a move towards balancing supremacy of the Constitution and legislative autonomy. It clarifies certain restrictions put on the usage of Articles 105 and 194 and how Article 122 has a bit of leeway in terms of Parliamentary Privileges being used in an ill manner.

### **P.V. Narasimha Rao v. State**

**Context:** A no confidence motion is a formal parliamentary mechanism or a way of expression of lack of confidence for the Lok Sabha against the Council of Ministers under Article 75(3) of the Constitution. A no confidence motion was moved against the minority government led by then Prime Minister P.V. Narasimha Rao. It was alleged that certain MPs had taken bribes in return for voting against the motion . The central issue of the case was the provision under Article 105(2) and if the immunity mentioned under it can be used as a safeguard under these circumstances from criminal prosecution.

**The Ruling:** The Supreme Court of India delivered a majority judgment stating that Article 105(2) essentially acts as a shield for Members of Parliament. This means they cannot be dragged to court for how they voted in Parliament. So, even if it was claimed that an MP took a bribe to cast a certain vote, they were still safe from criminal charges if they actually cast the vote. However, the Court drew a line: if an MP accepted the bribe but didn't end up voting, they couldn't claim this protection.

**Significance:** The P.V. Narasimha Rao's judgment was a significant one because it said that what MPs said or how they voted in Parliament was totally protected by law, even if they had wrong reasons for it . This gave a massive shield to politicians under Article 105(2). While it strictly interpreted the legal text, it really worried people about accountability and the possibility of politicians abusing this power. So, the case became a controversial moment in the history of

parliamentary law, with later courts having to step in to pull back the scope of this immunity, especially when it came to issues of corruption and constitutional responsibility.

### **This position was reconsidered in the Sita Soren v. Union of India case in the year 2024**

#### **Raja Ram Pal v. Speaker, Lok Sabha**

Context: The case arose after several Members of Parliament were expelled from the Lok Sabha following allegations that they had accepted money in exchange for raising questions in Parliament. The expelled members challenged the action, contending that the power to expel was not expressly provided under the Constitution and that the Speaker's decision was protected from judicial review under Articles 105 and 122.

Holding: The Supreme Court of India held that Parliament possesses the power to expel its members as part of its privileges under Article 105(3). The Supreme Court upheld the applicability of Article 122 and it only restricted judicial interference in cases of procedural irregularities and not in cases where values of constitution or provisions of it are being opposed.

Significance: This again marks a shift from the previous judgement, such autonomy cannot be exercised in violation of constitutional limitations. Raja Ram Pal reconciled Articles 105 and 122 by drawing a clear distinction between protected procedural matters and reviewable blatant illegality. The case represents the settled position that parliamentary privileges are not absolute and must operate within the framework of the Constitution. A pattern of Constitutional supremacy has started in the judicial interpretations of Parliamentary privileges, this is only logical as the Constitution itself provides these Privileges and they cannot override the Constitution itself.

A similar emphasis on constitutional limits was reiterated in *Amarinder Singh v. Punjab Vidhan Sabha* (2010), where the Supreme Court observed that legislative privileges cannot be exercised in a manner that disregards constitutional principles or judicial oversight.

#### **Sita Soren v. Union of India**

Context: The case arose from allegations that a member of a State Legislature had accepted a bribe in connection with voting in a legislative proceeding. The accused claimed immunity from criminal prosecution under Article 194, arguing that the alleged act was connected with legislative functions. Since Articles 105 and 194 are substantially identical in content and purpose, the case raised an important constitutional question regarding the scope of legislative immunity for acts preceding or influencing legislative speech or voting.

**Holding:** The Supreme Court of India held that legislative immunity under Articles 105 and 194 is confined strictly to speech and votes within the legislature and does not extend to criminal acts such as bribery, even if such acts are alleged to be connected with legislative functions. The Court clarified that acts of bribery are independent criminal offences and cannot be protected under the guise of parliamentary privilege.

**Significance:** This decision significantly narrowed the scope of legislative immunity and marked a clear departure from the broad protection recognised in *P.V. Narasimha Rao v. State*. By drawing a firm distinction between protected legislative acts and unprotected criminal conduct, the Court reaffirmed the principles of constitutional accountability and rule of law. *Sita Soren* represents the current constitutional position that parliamentary privilege cannot operate as a shield against corruption and applies equally to the interpretation of Articles 105 and 194. This case can be taken as criticism towards the earlier mentioned *P.V. Narasimha Rao* case as in that blatant bribery was protected by holding the provisions of Article 194.

## VI. NOTABLE COMMENTARIES ON PARLIAMENTARY PRIVILEGES

**Erskine May (1815 – 1886):** In *Parliamentary Practice*, May lays down the concept of Parliamentary Privileges as a functional doctrine designed to protect the independence and efficiency of legislative proceedings. He emphasises that privileges are collective institutional safeguards rather than personal benefits of members. May's commentary clarifies that privilege exists to ensure free debate and orderly conduct within the legislature, not to exempt members from legal accountability for acts unrelated to parliamentary functions.

**H. M. Seervai (1906–1996):** H. M. Seervai views parliamentary privileges as constitutionally limited powers rather than expressions of legislative supremacy. He argues that privileges under Articles 105 and 194 exist only to facilitate legislative functioning and must remain subordinate to the Constitution. Seervai strongly rejects expansive interpretations of legislative immunity that shield misconduct from judicial review, emphasising that courts retain the authority to examine privilege claims where constitutional values, fundamental rights, or the rule of law are at stake.

**D.D. Basu (1910–1997):** In his *Introduction to the Constitution of India* treats parliamentary privileges as special constitutional provisions subject to judicial interpretation. He explains that

Articles 105 and 194 grant functional protections necessary for legislative work but do not place legislatures above the Constitution. Basu emphasises that privileges must be exercised consistently with fundamental rights and constitutional supremacy, especially in situations where it affects the individual liberty or the judicial authority.

These commentaries lay down the basic understanding of the Parliamentary Privileges concept and emphasise how it should not override constitutional supremacy

## **VII. DEBATE ON CODIFICATION OF PARLIAMENTARY PRIVILEGES**

One of the most significant debates on Parliamentary Privileges revolves around Article 105(3) of the Indian Constitution which empowers Parliament to define its own powers, privileges, and immunities through legislation. Until such a law is enacted, these privileges remain as they existed immediately before the Forty-fourth Amendment Act, 1978 came into force. This means the privileges are based on the historical practices of the House of Commons of the United Kingdom at the commencement of the Indian Constitution on January 26, 1950. The absence of a codified law has led to ambiguity and ongoing debate about the scope and application of these privileges.

Proponents of codification argue that it could provide legal certainty and avoid potential misuse of Parliamentary privileges. They argue that elimination of this ambiguity could clearly define the boundaries of Parliamentary Privileges. Since privileges may affect the rights of citizens, particularly in cases involving contempt of the legislature or restrictions on publication, codification could help ensure that such powers are exercised within well-defined constitutional limits. People opposing codification of Parliamentary Privileges say that rigid codification of such privileges would defeat the flexibility needed for free Legislative functioning. People not in support of codification say that overly defined framework for Parliamentary Privileges would hamper the legislature in managing their internal affairs.

The discussion regarding the codification of Parliament's special rights fundamentally reflects a critical constitutional tension: the necessity of balancing legislative autonomy, which is essential for the effective discharge of its duties, with the public demand for transparent and predictable

legal frameworks. These parliamentary privileges are paramount to maintaining the legislature's independence. Moving forward, the imperative lies in identifying an optimal balance—one that preserves this institutional independence while simultaneously ensuring accountability, consistent with the foundational principles of the Constitution.

### **VIII. CONCLUSION**

Parliamentary privileges occupy an important place within India's constitutional framework, as they are designed for the independent function of the legislative organ. Rooted in constitutional application and judicial interpretation, these privileges seek to protect and promote autonomy of legislature and meaningful debate. However, their operation within a written Constitution requires that they be exercised in accordance with constitutional values and democratic principles. The evolution of judicial interpretation demonstrates a gradual shift towards establishing a balance of legislative autonomy with constitutional accountability. While privileges remain necessary to safeguard parliamentary functioning, their scope cannot extend to actions that undermine the rule of law or individual rights which was done in P.V. Narasimha Rao's case but it was overruled in Sita Soren's . In a constitutional democracy, no institution operates beyond the Constitution, and legislative privilege must therefore remain functionally limited and strict to its purpose

Ultimately, the continued relevance of parliamentary privileges depends upon their proper and reasonably restrained application, clearer and better interpretations , and consistent alignment with Constitutional supremacy. Such an approach ensures that legislative independence is preserved without compromising the foundational principles of accountability, equality, and justice. Upholding of Constitutional supremacy has led to a clearer distinction between personal and Parliamentary privileges.

**References**

1. Basu, D. D. (2018). Introduction to the Constitution of India (25th ed.). LexisNexis.
2. Erskine, M. (2019). Parliamentary Practice (25th ed.). LexisNexis.
3. Seervai, H. M. (2013). Constitutional Law of India (4th ed.). N. M. Tripathi.
4. MSM Sharma v. Shri Krishna Sinha, AIR 1959 SC 395.
5. Keshav Singh, In re, AIR 1965 SC 745.
6. P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.
7. Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184.
8. Amarinder Singh v. Punjab Vidhan Sabha, (2010) 6 SCC 113.
9. Sita Soren v. Union of India, (2024) SCC OnLine SC 247.
10. Stockdale v. Hansard, (1839) 9 Ad & El 1.
11. Bradlaugh v. Gossett, (1884) 12 QBD 271.