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## “Legislative Privileges and Criminal Accountability of Legislators in India: A Critical Analysis”

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### Abstract

The paper analyses the conflict between privileges of the law making and the criminal responsibility of law makers in India and how the constitutional protection of the legislators overlaps with the rule of law. Parliamentary privileges, special rights, immunities and exemptions granted to members of Parliament and state legislatures to enable them to exercise their work freely, e.g. freedom of speech in the legislature and immunity on actions taken during the performance of legislative responsibilities under Articles 105 and 194 of the Constitution<sup>1</sup>. The paper utilises a doctrinal approach, which examines the provisions in the constitution, judicial statements, and scholarly writings to determine whether the said privileges afford protection to legislators against criminal liability outside the legislative functions. One of the areas of the analysis is new judicial illumination of the limits of immunity, especially the Supreme Court case that its members do not obtain protection against bribery in other areas of parliamentary work, and thus the scope of privilege is restricted. The results reveal that privileges are very vital in maintaining legislative independence and a healthy debate devoid of unreasonable and unwarranted influence, but should not be used as a way out of committing crimes that are not within the legislative mandate. The researcher introduces gaps in the constitutional text and offers the need of more understandable standards in order to create a balance between the protective immunities and democratic accountability. Lastly, the paper recommends specific changes by way of better statutory explanation and more robust ethical regulation, to ensure that legislators are not subject to the ordinary criminal law, and yet, they are afforded the protection needed to effectively fulfill their constitutional roles.

**Keywords:** Legislative Privileges, Parliamentary Immunity, Criminal Accountability, Constitutional Law India, Separation of Powers, Judicial Review.

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### I. Introduction

The legislative privileges are another crucial constitutional tool which supports the independence and the functionality of the representative institutions in India. These are in essence special rights, immunities and exemptions given to members of parliament and state legislatures so that they can carry out their legislative work without being interfered with or feared to break the law. These protections are specifically acknowledged in the Indian Constitution, in Articles 105 and 194, which give freedom of speech to legislators in the process of legislative work<sup>2</sup>, and immunity to prosecution to acts done in the style of their parliamentary work, among other collective and procedural protections identified by legislative practice or statute. These constitutional immunities have their historical grounding on the example of Westminster, where, in the Indian constitutional model, such

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<sup>1</sup> INDIA CONST. arts. 105, 194

<sup>2</sup> Supra note no. 1.

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privileges have been adapted to achieve the desired balance between independence and constitutional sovereignty.<sup>3</sup>

The rationale for entrenched legislative privileges is to secure the independence of legislative deliberations, allowing elected representatives the freedom to debate, question, and scrutinise executive action as part of the democratic process. Without these safeguards, members could be vulnerable to strategic litigation, intimidation, or disruption, compromising the legislature's role as the principal forum for law-making and oversight.<sup>4</sup> Privileges then are working as functional immunities that are associated with legislative responsibilities and not as personal protective measures of legislators.<sup>5</sup> However, researchers admit that lack of codification and absence of specific limits has created a dispute of scope and use of these immunities especially where they overlap with other constitutional values, which include the fundamental rights and the rule of law.<sup>6</sup>

This is because the importance of criminal responsibility in the eyes of a legislator in a democratic state like India is anchored in the inherent fact that no person is above the law. Criminalisation of politics in India, the tendency of people with serious criminal charges to challenge and serve in a governmental position has long been an issue of concern in the legal and policy literature, and has resulted in official investigations and judicial activism. Democracies have made it a condition that law-givers who are charged with the mandate to pass and supervise the implementation of laws are held accountable to the common criminal law in instances where they commit crimes that are not in line with their legislative roles. Otherwise, the safeguards that are meant to be used to ensure independence of the legislature will be a guise to impunity that will destroy citizens faith in democratic institutions. The underlying normative issue portrayed by this tension is the need to maintain the legislative independence versus the need to maintain the rule of law, which requires everyone to be equal before the law and to hold those who break the law accountable.<sup>7</sup>

The constitutional form of Indian government reflects separation of power between the legislature, executive and the judiciary, all of which work under a constitutional supremacy. Parliamentary implications are not absolute; the exercise of the privileges has to be in accordance with the constitutional boundaries and fundamental rights and it is open to a judicial review where it is seen to go beyond the valid legislative intent.<sup>8</sup> The privileges do not aim at achieving immunity to legislator responsibility of a criminal offense committed in a personal capacity but are intended to protect the legislative process itself. The role of the judiciary in giving the boundaries of the privilege has been instrumental in ensuring that the doctrine does not interfere with the constitutional principles where the case law affirming that the privilege does not apply to the acts not spelled out by the legislature particularly criminal acts like corruption or bribery.<sup>9</sup>

Recent jurisprudence in the Supreme Court of India has clarified that the provision of immunity against legal action in respect of legislative speech and votes under Articles 105 (2) and 194(2) of the constitution does not apply to the immunity against the normal criminal proceedings, which includes bribery, and puts the applicability

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<sup>3</sup> Ibid.

<sup>4</sup> Article 105 (Powers, Privileges, etc. of the Houses of Parliament and of the Members and Committees Thereof).

<sup>5</sup> Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184, ¶ 191–194.

<sup>6</sup> Supra note no. 2.

<sup>7</sup> Public Interest Found. v. Union of India, (2019) 3 SCC 224; Law Comm'n of India, 244th Report on Electoral Disqualifications (2014).

<sup>8</sup> N.K.P. Sinha, The Nature of Parliamentary Privileges in the Indian Constitution, 26 Indian J. Pol. Sci. 58 (1965), <http://www.jstor.org/stable/41854137>.

<sup>9</sup> Kihoto Hollohan v. Zachillhu, 1992 Supp (2) SCC 651; M.P. Jain, Indian Constitutional Law 601–04 (8th ed. 2018).

of privilege into question in cases where it clashes with an idea of accountability.<sup>10</sup> Such an argument can be regarded as a development of the constitutional commitment to the sovereignty of democratic discussion and the imperative of responsibility, and the necessity of being sensitive to place and limits of privilege.

The paper below tries to critically examine the constitution grounds, scope and boundary of legislative privileges in India and the special treatment which is the harmonizing of criminal liability of legislators and such immunities. The research questions are as follows:

- (1) What legal and functional basis does the legislative privileges have referring to the Indian law?
- (2) What is their interaction with criminal accountability procedures which may be imposed on lawmakers?
- (3) What effects have judicial interpretations had on the current understanding of the relation between the independence and responsibility of the legislature?

To answer these questions, the study will use the doctrinal and analytical approach, which includes under scrutiny the constitutional text, landmark court cases, and academic sources of peer-reviewed and open-access to back the answers.

The paper is structured in the following manner after this introduction; the second section II is a chronological and constitutional overview of the legislative privileges in India; Section III is an analytical analysis of the nature of legislative privileges and their scope; Section IV critically observes the attitude of the judiciary to criminal responsibility of parliament members, and Section V looks into the topic comparatively, and the concluding sections look back on the aspect of achieving the right constitutional balance.

## II. Historical and Constitutional Origins

The concept of *legislative privileges* forms a central pillar of constitutional legislative frameworks worldwide, particularly in democracies that follow the Westminster model. In India, these privileges—defined as special rights, immunities, and exemptions—are designed to protect the legislature and its members in the performance of their duties without undue influence or external interference. The historical evolution of parliamentary privilege in India is deeply rooted in British parliamentary practices and was later constitutionalised to suit India's democratic structure. This examines the *origins in British parliamentary law* and the *constitutional provisions* under Articles 105, 122 (for Parliament) and Articles 194, 212 (for state legislatures), while also analysing why such privileges were incorporated into the Constitution and the functions they are intended to protect.<sup>11</sup>

### Origins in British Parliamentary Law

This legislative privilege doctrine as conceived in contemporary constitutional law dates back to the era of parliamentary battle that occurred between the Crown and the House of Parliament in England. In the 16th and the 17th century, English Parliamentary members started demanding the special rights over the monarchical power in order to allow them to deliver their legislative duties without being forced.<sup>12</sup> Freedom of speech, freedom against arrest, and immunity against a prosecution of acts of parliament were later established by custom and statute, some of the first statutes being the Privilege of Parliament Act 1512<sup>13</sup> and the Bill of Rights 1689<sup>14</sup> which enshrined protection against outside interference in the procedure of parliament. Such rights were developed over

<sup>10</sup> Sita Soren v. Union of India, (2024) SCC OnLine SC

<sup>11</sup> India Const. arts. 105, 122, 194, 212; M.P. Jain, Indian Constitutional Law 525–30 (8th ed. 2018).

<sup>12</sup> Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament 75–80 (25th ed. 2019).

<sup>13</sup> Privilege of Parliament Act, 1512, 4 Hen. 8 c. 8 (Eng.).

<sup>14</sup> Bill of Rights, 1689, 1 Will. & Mary Sess. 2 c. 2 (Eng.).

centuries and became necessary guarantees of the independence of the parliament, which in turn were embodied in the legislation that regulated the British Parliament in a number of different legislative acts.

With the spread of the British parliamentary authority to its colonies, a number of constitutional ideas were taken over to the colonial systems of governance, including legislative privileges. The British colonial legislature in India through the Government of India Acts of the 19th and early 20th centuries subjectively introduced limited legislative powers to individual councils, but early institutions did not have complete autonomy and could be controlled by the executive and judiciary of the colonial government. The Indian demands regarding rights to legislation such as freedom of speech and the right against premature judicial action were addressed with concessions in the form of incremental legislation under successive Government of India Acts and Council Acts in the late colonial days. This historical institutionalization of Britain legislative traditions was the footing block to the ultimate constitutionalization of rights in independent India.<sup>15</sup>

This was the legacy of which the framers of the Indian Constitution were aware. When the Indian legislation was drafted, the Indian legislators lacked a full range of legislative privileges to statute, so the inclusion of these guarantees in the Constitution meant that the members of the Parliament and state legislatures would enjoy equal protection before the Constitution came into effect to those enjoyed in the British House of Commons. The objective of this was to secure the independence of the legislature at the very heart of the new nation, without entrusting such immunities to be determined by parliamentary convention or, as some specific legislation.<sup>16</sup>

### Constitutional Provisions

Articles 105 and 122 of the Indian constitution expressly state the powers of the powers of legislature of the Parliament and Articles 194 and 212 state the powers of the state legislatures. Based on these provisions, there are two ideals that are fundamental in the constitution, which are the freedom of speech in the legislature and immunity against prosecution over legislative acts.<sup>17</sup>

Article 105 is concerned with the powers, privileges and immunities of Parliament (both Houses) and the members and includes 3 important limbs:

- **Clause (1)** ensures the freedom of expression in Parliament but is limited by the constitution and the rules of the House.<sup>18</sup>
- **Clause (2)** states that no member shall be liable in respect of anything said or anything voted in Parliament or in any of its committees and no person shall be liable to the publication of the proceedings of parliament authorised by the House.<sup>19</sup>
- **Clause (3)** states that other privileges, according to the law or, in the case of no law, according to the privileges enjoyed just before the Forty-Fourth Amendment, so far as the Constitution should refer to them, were the privileges of the House of Commons of the United Kingdom.<sup>20</sup>

Article 122 supplements Article 105 by protecting parliamentary proceedings against any judicial accountability over procedural anomalies, and therefore supports the independence of legislative procedures. Articles 194 and 212, likewise, extend privileges and immunities to the members of the state legislatures and guard the proceedings

<sup>15</sup> Hans Raj, Evolution of Parliamentary Privileges in India, 41 Indian J. Pol. Sci. 298–301 (1980), <http://www.jstor.org/stable/41855027>.

<sup>16</sup> Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184, ¶ 342–350.

<sup>17</sup> India Const. arts. 105, 122, 194, 212; M.P. Jain, Indian Constitutional Law 525–27 (8th ed. 2018).

<sup>18</sup> India Const. art. 105(1); Tej Kiran Jain v. N. Sanjiva Reddy, (1970) 2 SCC 272.

<sup>19</sup> India Const. art. 105(2); P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.

<sup>20</sup> India Const. art. 105(3); Subhash C. Kashyap, Parliamentary Privileges in India 33–38 (2008).

of state bodies against the interference of courts on the procedural basis. All these elements constitute the constitutional design guaranteeing legislative independence on the national and state levels.<sup>21</sup>

The freedom of speech in legislative house is fundamental to democratic deliberation as it helps representatives to express all kinds of opinions, censure government policy, and subject the executive to criticism without the threat of retaliation. The distinction between this privilege and the constitutional right to speech under Article 19(1) in Indian constitutional text is that it is only exercised in the context of the legislative functions and only to people during their legislative term. This is to make sure that legislators have an opportunity to engage in strong debate, acting on behalf of the electorate.<sup>22</sup>

Legal immunity against prosecution of actions performed in the line of legislative service is a guarantee that the external judicial interference into the free speech of the legislative process is avoided.<sup>23</sup> The lack of this protection means that members may be at the mercy of the frivolous or strategic litigation, which may lead to their inability to engage in a debate or vote in parliament or distort decision-making processes. This is a constitutional guarantee, thus, being used to preserve the dignity, the power and the efficiency of the legislative functions.

These provisions were intentionally included in the Constitution and their incorporation was informed by both the colonial experience as well as the desire on the part of the framers to create a sovereign, democratic polity that would be able to maintain good self-government. The introduction of privileges into the constitutional text instead of wholly delegating them to the legislative enactment or to a convention would attempt to provide long run security against encroaching upon the legislative independence but would also place under a constitutional restriction and judicial review where needed. This measure shows the balance between safeguarding legislative functions and the need to adhere to some basic constitutional principles, so that the privileges do not abuse the legislative responsibilities and turn them into personal immunity.<sup>24</sup>

### III. Legal Nature of Legislative Privileges

It is important to have a delicate look at the legal nature of legislative privileges in India by placing the protections in the constitutional framework, legislative functionality, and democratic government. Such privileges do not form part of the perks of legislators, but are guaranteed by the constitution to guard liberty and sanctity of deliberative processes. These immunities and rights are specifically acknowledged under the Constitution of India under Article 105, 122, 194 and 212, yet the working, extent and restriction of these immunities and rights are a compromise between legislative sovereignty and constitutional responsibility.<sup>25</sup> The examination of the legal nature of such privileges can be used to determine their practical operation, distinguishing individual and collective privileges, and defining the scope of the privilege, as well as giving an account of such aspects of procedural matters as contempt and breach of privilege.

#### Individual vs. Collective Privileges

In India, traditional legislative privileges are distinguished in terms of individual and collective rights, as they describe the personal rights of lawmakers as well as the institutional rights of the legislative institution as an institution. The individual privileges are called those immunities granted to members in their quality of legislators so that they can be able to execute their functions free of fear and hindrance. Freedom of speech in the House is

<sup>21</sup> India Const. art. 122; Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184.

<sup>22</sup> India Const. arts. 194, 212; Amarinder Singh v. Punjab Vidhan Sabha, (2010) 6 SCC 113.

<sup>23</sup> P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626; M.P. Jain, *supra* note 1, at 528–30.

<sup>24</sup> Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184, ¶ 342–350.

<sup>25</sup> India Const. arts. 105, 122, 194, 212; M.P. Jain, *Indian Constitutional Law* 525–30 (8th ed. 2018).

the first individual right that has been acknowledged in the Constitution and is provided under Articles 105(1) and 194(1), which guarantees the legislator the right to remain not liable to prosecution over anything that he said during parliamentary sittings or committee hearings.<sup>26</sup> This immunity also provides strong debates on the public policy and allows members to bring controversial issues to the fore on a safe platform without the fear of being sued due to libel or any other cases. These are the protections required in an effective democratic legislature and they have constitutional textual and historical origins.<sup>27</sup>

Closely related to the freedom of speech is the protection of the constitution against prosecution due to the actions performed during the legislative work. By Articles 105(2), and 194, which is corresponding to Article 105(2), in either House or on any committee of it, nor will any person be liable in respect of anything said, or any vote given, in either House or any committee of the legislature; nor will any person be liable on account of publishing reports or proceedings which have been authorized by the legislature.<sup>28</sup> This type of law making immunity protects legislators against ex-post facto judicial meddling of matters that are directly related to legislative activities hence a necessary personal right.<sup>29</sup>

Conversely, collective privileges are a thing of the legislative organization. These consist of the rights to publish debates and proceedings, the right to keep off outsiders in sessions, and the right to punish members or non-members who defy the order of the day or commit contempt or infringement of privilege.<sup>30</sup> The authority of the legislature to exercise control over its company--in the making of rules of procedure, conduct, etc.--is the emphasis of collective privilege, which protects the institutional dignity, power, and autonomy of the House. Such institutional rights are especially necessary in order to maintain legislative independence against executive or judicial encroachment.<sup>31</sup>

Certain legislative powers that amount to punishment of disobedience to privilege or contempt of the House are also included as collective privileges, regardless of whether they are committed by members or non-members. The terminology of these privileges as a group corresponds to the legislature itself has the right to regulate and protect its own internal affairs and to uphold order and decorum without which it cannot effectively legislate.<sup>32</sup>

### Scope and Limitations

Even though, legislative privileges in India are constitutional rights, their area of operation has been deliberately restricted to maintain the balance between the legislative autonomy and the rule of law. Article 105 and Article 194 explicitly restrict privileges to the acts during the proceedings of the legislature or its committees. This operational restriction implies that privileges defend lawmakers when they are executing their professional legislative roles; not an immunity to crusades in areas beyond the confines of legislative obligations. The only solution to avoiding use of privilege as an accountability shield is to have a clear picture of this boundary.

The main drawback is that it is difficult to separate between civil and criminal liability. Although the Constitution offers the protection that one cannot face either civil or criminal charges on the basis of speech and votes in the

<sup>26</sup> Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184, ¶ 342–350.

<sup>27</sup> Supra note no.1.

<sup>28</sup> India Const. arts. 105(1), 194(1); Tej Kiran Jain v. N. Sanjiva Reddy, (1970) 2 SCC 272.

<sup>29</sup> Saurabh Kumar Bhargava & Brahm Dev Pandey, *Constitutionalism and Parliamentary Privilege: In Special Reference to India*, 11 Int'l J. Creative Res. Thoughts c454, c458 (2023).

<sup>30</sup> India Const. arts. 105(3), 194(3); Subhash C. Kashyap, *Parliamentary Privileges in India* 41–46 (2008).

<sup>31</sup> Powers, Privileges and Immunities of State Legislatures, In re, AIR 1965 SC 745.

<sup>32</sup> Amarinder Singh v. Punjab Vidhan Sabha, (2010) 6 SCC 113; Raja Ram Pal v. Speaker, Lok Sabha, (2007) 3 SCC 184.

legislature, the Constitution does not afford blanket immunity to all criminal offenses.<sup>33</sup> Jurisprudence of the Supreme court made it clear, that the articles granting privilege do not apply to criminal offenses with no relationship to legislative responsibilities; an example being in *Sita Soren v. Union of India* unanimously declared that ordinary criminal acts such as bribery are not covered by constitutional immunity by legislators under Articles 105(2) and 194(2). This ruling highlights the fact that the exception does not outshine a criminal law.

In addition to that, the privileges are not individual or lifelong rights, so they co-terminate with belonging to the legislature. When a member is no longer a member of the legislature, Articles 105 and 194 do not have any more effect and no longer confer any immunity. Judicial review is also restrictive of privileges as far as it is possible to evaluate whether legislative measures meet constitutional limits and basic rights that are considered as the separation of powers in the constitution. This legal control guarantees an element of control necessary over the exercises of privilege.<sup>34</sup>

The Constitution therefore places the privileges in operative form not as individual rights but as means of a working way of guaranteeing the effective and independent functioning of the legislature in the democratic system. Rights are not used to supplant the rule of law or basic rights; they act within the confines to ensure that they do not intrude on the legislative procedures without accountability.

### Procedural Privileges

The procedural privileges are also a part of legislative autonomy that covers the regulation of the legislature on its own process and preservation of order. Articles 122 and 212 provide immunity against judicial examination of the parliamentary process based on the issue of procedural irregularity, which strengthens the internal sovereignty of the Parliament and the state legislatures. Articles 122 and 212 offer immunity to a judicial review of the parliamentary process on the grounds of the problem of procedural irregularity which consolidates the internal sovereignty of the Parliament and the state legislatures.<sup>35</sup>

The legislature has one of the greatest procedural privileges in the form of its ability to address contempt of the House. The contempt processes are limited to those actions that hamper or hinder legislative business or are disrespectful to the institution like refusing to follow a legislative summons, interrupting business, or hindering the work of members. This force is necessary to exercise the legislative power and to have an operational environment of law-making. Although the powers of contempt are wide and far-reaching, they should be implemented with caution and consideration of the basic provisions of fairness and due process.

In reliance on this, mechanisms of breach of privilege allow legislatures to remedy the offence of particular privileges, whether by members or non-members, by using internal disciplinary measures. These are processes that are commonly associated with the Speaker or the Chairman and are used to research so called violations and suggest correct action. This internal self-control extends the independence of legislation, but demands that assertions of privilege be based on evidence of damage to legislative activities.

The procedural privileges therefore serve two functions;

- to shield the legislature against outside interference and
- to bring about a smooth internal behavior.

<sup>33</sup> *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 S.C.C. 184, ¶ 351–356.

<sup>34</sup> *Gopala Anjinappa*, Judicial Review of Parliamentary Privileges and Immunities in India, 5 Int'l J.L. 233, 236 (2021).

<sup>35</sup> *Pandit M.S.M. Sharma v. Sri Krishna Sinha*, A.I.R. 1959 S.C. 395.

They are the constitutional intent of making legislatures independent sources of democratic discourse and subject them to internal accountability and constitutional restraint.<sup>36</sup>

#### IV. Criminal Accountability of Legislators — Theory & Context

##### Democratic Theory and Accountability

One of the core lessons that the democratic theory teaches is that power is always associated with the threat of misuse; active accountability mechanisms are therefore necessary to avert the wrongdoings committed by the government officials even in legislature. In representative democracies had elected lawmakers, they are agents who have a lot of authority on behalf of citizens. Accountability in this principal-agent relationship makes the legislators work in line with the interests of the people and not with self-interest or freedom to escape prosecution.<sup>37</sup>

In this sense, accountability implies that legislators should be able to defend and clarify their actions to citizens and should also be punished in the case their actions do not correspond with the legal or ethical standards. All these combined with periodic elections, institutional checks, and legal sanctions make up a multi-layered accountability system that is incredibly important in democratic governance. Political accountability, including electoral sanctioning is central but it is supported by legal accountability to deal with serious wrongdoing beyond simple political judgment. The instability of lawmakers to infringe criminal law without consequences to democratic institutions means undermining the legitimacy of these institutions since it undermines trust and the normative basis of governance itself.<sup>38</sup>

The criminal behavior of the legislator poses a direct threat to the normative ideal according which the common good should be first of all in the priorities of the public officials. In cases of corruption, bribery, sexual acts, and other crime cases by the legislators, the democratic contract between the citizens and the representatives is broken. Democracies have a promise of bringing their own representatives to book because this limitation serves to bring the power to conformity to the accountability of the people.<sup>39</sup> Indeed, as an example, many constitutional systems aim at balancing legislative privileges and public interest by restricting immunity to such an extent that it does not cover serious crimes. The international practice has seen judges decide that the principle of legislative privilege cannot be applied to acts that are not within the scope of the legitimate performance of official functions and that immunity should not be a safe haven of the perpetrator.<sup>40</sup>

The rationale of enforcing criminal responsibility on lawmakers lies deeply in the democratic theory. The democratic ideology postulates that every person holding a governmental position, regardless of the position, is liable to regulations aimed at protecting the interest of the masses. When the legislators have immunity that is unlimited, then the nature of democracy, which is the government of, by and people is threatened. Accountability serves as a remedial measure against misrepresentation, maladministration and corruption. Without such a

<sup>36</sup> M.P. Jain, *Indian Constitutional Law* 545–50 (8th ed. 2018).

<sup>37</sup> John Locke, *Second Treatise of Government* §§ 149–151 (1690); Mark Bovens, *Analysing and Assessing Accountability: A Conceptual Framework*, 13 Eur. L.J. 447, 450–53 (2007).

<sup>38</sup> Yannis Papadopoulos, *Understanding Accountability in Democratic Governance* 45 (Cambridge Univ. Press 2023).

<sup>39</sup> K. Prabhakaran v. P. Jayarajan, (2005) 1 S.C.C. 754; Union of India v. Ass'n for Democratic Reforms, (2002) 5 S.C.C. 294.

<sup>40</sup> Gabriel C. Abiola, *Legislative Immunity vs. Criminal Accountability: Balancing Public Service and Justice*, ASG L. Partners (Feb. 3, 2000), <https://asglawpartners.com/criminal-law/2000/02/03/legislative-immunity-vs-criminal-accountability-balancing-public-service-and-justice>.

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mechanism, there is no difference between personal self interest and the obligation to the community and these are destructive to democratic stability and legitimacy. Accordingly, democracies should ensure that institutions are responsive to the people and act as a check against misuse of power, by establishing explicit legal limits to behavior and ensuring the control of lawmakers.

A democratic polity is not just a periodic election system; it entails an elaborate accountability framework, which includes institutional, political, as well as legal facets. Political responsibility, though core, might not be effective enough when electoral procedures are tasked to combat serious criminality by the representatives all by themselves. Rather, strong democratic governance demands that accessibility and enforceability of legal responsibility of criminal conduct is available. Having lawmakers, who are bound by common criminal laws, and the rest of the citizens, it liberates the concept of equality under the law and that no person, despite his or her status, is above the law.<sup>41</sup>

### Rule of Law Principles

The rule of law reflects the main principles to which every same individual, institution, and authority of the people are incorporated and are answerable by the law which is promulgated publicly, enforced equally, and adjudicated independently. One of the core principles of the rule of law is equality before the law which states that no-one is granted the privilege of the law because of their social position, political position or rank. This standard has been intellectually descendants to liberal legal thought and constitutional tradition that aim to promote an impartial justice and avoid arbitrary rule. Legislations that ensure equal application and enforcement are essential in preventing power abuse by the state players, such as the legislatures.<sup>42</sup>

Equality before the law enforces that members of legislature address the same legal standards as regular citizens. It rejects the notion that legislators can be above the law or protected against prosecution because they are legislators. This principle is not confined to legal equality, but also demands substantive barriers to discriminatory enforcement or immunization of the officials of the state. Essentially, the rule of law puts checks and balances on power to the extent that even the legislative body with legislative powers is subject to the law and under the supervision of the judiciary. Accountability in the law is there to make sure that criminal actions of the lawmakers are not left unaddressed just because they are the elected.<sup>43</sup>

One of the major characteristics of the rule of law is the bar of special status which puts legislators in higher positions than the normative legal requirements. The privilege of lawmakers, design to avoid arrest or prosecution, should be limited to fulfill certain institutional purposes, like to safeguard debate and deliberation, and not to avoid criminal misconduct. The constitutional rights, including the Speech or Debate Clause in some jurisdictions is designed to safeguard independence of the legislature but specifically does not safeguard serious crimes like treason and felony. These boundaries reflect a commitment of maintaining legal accountability as well as institutional autonomy of legislatures.

The equality before the law and the rule of law are mutually supportive since a legal system that distinguishes between lawmakers and ordinary citizens on the issue of criminal responsibility undermines each of them. The absence of the possibility to prosecute the legislators in case of serious misconduct would turn the equality before the law into a farce, and make the validity of legal institutions highly questionable. The normative power of the rule of law stipulates that the law rules apply to every individual under the same situation and that exceptions

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<sup>41</sup> Supra note no.10 at 12.

<sup>42</sup> Cass R. Sunstein, The Rule of Law, 4 Am. J.L. & Equal. 498 (2024), [https://doi.org/10.1162/ajle\\_a\\_00070](https://doi.org/10.1162/ajle_a_00070).

<sup>43</sup> A. I. Fowowe, Rule of Law: The Perspective of the Principle of Equality Before the Law (SSRN Working Paper, 2022).

must be supported by strong, open, and noticeable reasons. The legislators also have criminal accountability not only as an ideal but a practical application of the equality of the law and institutional checks on arbitrary power.<sup>44</sup>

Overall, both the principles of democratic accountability and the rule of law require that the legislators should be susceptible to criminal law. Although the democratic theory highlights the political and moral imperative of legislators to serve in the common good, the rule of law strengthens the law itself that discourages privilege becoming impunity. This is because democratic legitimacy is strengthened by giving lawmakers a criminal responsibility to act in a manner that is against the law and ethical principles and promotes confidence in the justice system. Combining these frameworks, it is clear that privilege cannot, and indeed should not, be used as a weapon of crime, and equality before the law is at the core of a democratic and a just society.<sup>45</sup>

## V. Judicial Interpretation

The jurisprudential development of the Supreme Court on the legislative privilege and immunity has had profound implications on the criminal responsibility, especially where such actions of the lawmakers have a nexus with the privilege provisions of the Constitution. Analyzing *Sita Soren v. Union of India (2024)* shows a significant change in the constitutional interpretation, in particular, the re-interpretation of precedent by the Court and the association of legislative freedom and the punishment of crimes.

### Sita Soren v. Union of India (2024)

In *Sita Soren v. Union of India*, a unanimous ruling determined that the parliament members (MPs) and state legislative assemblies do not have immunity under the Articles 105(2) and 194(2) of the Constitution against ordinary criminal prosecution in cases such as bribery even when the action is committed in relation to parliamentary business such as speech or vote. The decision of the Court made it clear that the constitutional privilege was limited to the support of the legislative process itself, and not the protection of criminal activities of legislators.

Articles 105(2) and 194(2) ensure that a member is not liable in any court to any action in respect to anything stated, or vote cast, during legislative proceedings. These privileges were originally designed to defend the autonomy and performance of the law-making body by making sure that there is free discussion and democracy in voting. The concept of immunities was therefore developed as performing a functional protection, but not as an overall exemption overall law.

The Sita Soren bench which comprised seven judges headed by Chief Justice, D.Y. Chandrachud strongly opposed the imposition of an excessively liberal definition of privilege to cover even criminal conduct, especially of bribery. The Court highlighted a two part functional test: immunity is only applicable in case the act is:

- (i) sincerely attached to the work of the House as a whole and
- (ii) requires to carry out an essential legislative role.

Actions which do not pass this functional test cannot be covered by privilege even where tangentially connected to the legislative action.

Traditionally, the concept of privilege as provided in Articles 105 and 194 had been applied to the debates and speech involved in the legislative activity. Sita Soren therefore cemented that these privileges do not cover

<sup>44</sup> Rule of Law Educ. Ctr., Equality Before the Law: No One Is Above the Law, <https://www.ruleoflaw.org.au/principles/equality-before-the-law>.

<sup>45</sup> *supra* note. 10 at 12.

criminal delinquencies such as acceptance of illegal gratification to vote. In its ruling, the Court emphasized the fact that immunity is never supposed to be an end but must rather be used to prevent cases of corruption that corrupts the integrity of the legislature.

### **Overruling P.V. Narasimha Rao v. State (1998)**

Another notable point about Sita Soren is that it overturned the previous Constitution Bench Sita Soren, which was a victory in the earlier case P.V. Narasimha Rao v. State (CBI/SPE), which had permitted wide immunity to lawmakers charged with bribery by taking the parliamentary privilege as read to mean the speech and votes of lawmakers, without adequate functional restriction.<sup>46</sup>

In Narasimha Rao a 3: 2 majority had decided that an MP who had participated in bribery involving legislative votes was not prosecutable on the ground that the act came within the category of anything said or vote given under Article 105(2). This broad interpretation practically identified the outcome of a vote with the actions that preceded it such as being bribed. This practice was constitutionally unsustainable and legally unsafe according to the Sita Soren Constitution Bench as it is a criminal offense in itself that cannot be justified by privilege even though it leads to a vote.

The Supreme Court, in its overruling of Narasimha Rao, reiterated that legislative immunity does not exist and that constitutional immunity should be very limited in nature so as to safeguard the main functions of the legislature and not the misconduct of the individual person in the guise of office. This is in line with the wider judicial understanding of privilege to provide an escape of the rule of law or hinder the application of anti-corruption laws like the Prevention of Corruption Act, 1988 and the Indian Penal Code.

### **Implications for Anti-Corruption Enforcement**

The decision in Sita Soren case is a milestone in the Indian constitutional law limiting privilege in favour of accountability. Anti-corruption: the decision:

- Upholds the precedence of the criminal law over legislative privilege in conduct that contravenes statutory prohibition of bribery and misconduct of the people.
- An indication to the legislature that immunity is not a protective zone, but an individual protection against prosecution.
- Limits the possibility of abusing the claim of privilege to evade responsibility, enhancing the ability of the anti-corruption laws to deter abuse.

These judicial interventions strike a balance between the constitutional objective of legislative independence and democratic objective of fighting corruption in the office of public office, and thus increase the trust of the people in the integrity of the institutions.

### **Privilege and Criminal Liability**

The development of the Indian jurisprudence on privilege under Articles 105 and 194, which preceded the case of Sita Soren, was a sequence of decisions that were grappling with the scope and boundaries of the immunities of the legislation. Privilege was imported by the British parliamentary system and it was introduced in the Indian constitution, so that free legislative debate and voting could be guaranteed in the Indian constitution. Nevertheless, this legacy was not expected to bring about blanket exemption against criminal responsibility.

<sup>46</sup> P. V. Narasimha Rao v. State (CBI/SPE), (1998) 4 S.C.C. 626 (India).

Scholarly commentaries observe that the framers of the Constitution were looking forward to privileges which could promote good legislation, rather than criminal law immunity. Such privileges as the freedom of speech in the legislature, protection against civil liability of the speech of the legislator or the vote, and relative immunity against arrest during the sessions are included. Nevertheless, they have been traditionally understood in a limited way when applied to the non-legislative circumstances.

The case on the interpretation of judicial law against breach of privilege has frequently indicated the importance of the line between the role of the legislature and individual wrongdoings. Indicatively, the courts have decided that a person cannot use privilege to protect acts that are not evident in terms of legislative debate or decision making. Additionally, privileges are not the barriers to the actions that amount to the violation of the basic rights or legal obligations.

Within the framework of parliamentary privileges, academic research focuses on the constitutional structure in that the legislative privileges are purposely exposed to judicial decision making in cases where the constitutional limit and right of passage is challenged. The judicial system still has the mandate of checking the exercise of the privileges especially where they contravene the norms of the constitution such as equality before the law and criminal responsibility.<sup>47</sup>

More to the point, historical review reveals that the provisions of privilege under the Constitution were presented following the British parliamentary system, but limited on the provisions of the written Constitution of India and republicanism. In contrast to the parliamentary sovereignty of the UK, the Constitution of India provides judicial review of legislative acts in which the legislative privileges are abused or go beyond their functional limit.

### Judicial Review and Privileges

The conflict between the legislative independence and the judicial review is expressed vividly in the privilege jurisprudence. Although Article 105 and 194 affirm privileges to safeguard the legislative activities, the judiciary has always believed that the privileges were not above constitutional scrutiny when being used to defend actions that were against basic rights or even the law.

In its academic discourse, it has been pointed out that the judiciary of India believes in a functional approach in scrutiny of legislative privilege claims, as the absolute immunity would destroy the basic structure of the Constitution and the democratic accountability. In this line of thought, courts have determined that privileges that apply in the proceedings at parliament could not be applied in any act that is not in the core role of lawmaking or debate.

In India, judicial review of claims to legislative privilege is not disqualified by the doctrine of separation of powers. Rather it involves a balancing exercise with which it can safeguard the true legislative functions and leave courts to intervene where legislative privilege is invoked to excuse wrongful acts or misuse of legislative power. This balance can be seen in the way the judiciary has operated in Sita Soren by claiming that legislative privileges cannot be construed in a way that they defeat accountability regimes.

The distinction made by the courts has been between internal discipline of legislature which can be regulated by rules of procedure and privilege and external responsibility to law, especially criminal law. This difference makes privilege not be part of impunity. Freedom of speech during legislative processes has been decriminalized but crimes such as bribery are considered to be different issues that the courts may enforce.

<sup>47</sup> *ibid.*

## VI. Comparative Perspectives

### United Kingdom: Tradition and Modern Checks

In the United Kingdom parliamentary privilege has its origin in a thousand-year-old constitutional practice that attempts to protect the deliberations of the legislature against outside interference, especially judicial or executive branches of government. It is based on Article 9 of the Bill of rights 1689, which states that the freedom of speech and debates or proceedings in Parliament should not be impugned or challenged in any other court or elsewhere other than parliament. This basic provision safeguards what members say and do during the parliamentary procedure and it is an aspect of the unwritten UK constitutional system.

Some of the privileges of the House of Commons and the House of Lords include the freedom of speech, authority over internal parliamentary matters (exclusive cognisance), and some immunities such as immunity against arrest in civil proceedings and immunities against published parliamentary papers. Nevertheless, such privileges do not serve as shields against the criminal law in case the actions do not remain in the scope of protected speech and internal affairs. One of the most prominent examples was seen in the expenses scandal and *R v Chaytor* (2010) in which the Supreme Court of the United Kingdom affirmed that parliamentarians did not have immunity against prosecution on fraudulent or criminal actions, even when those actions arose out of parliamentary allowances.

This two-sided nature: the general historical privilege and the material modern boundaries points to the changing interpretation of legislative immunity. In spite of the fact that even such privileges as freedom of speech in the parliamentary debates are sacrosanct, modern reforms and discussions have been seeking to establish limits as well as bring about accountability. Indicatively, UK parliamentary reports have suggested change to the very criminal privileges themselves, noting that wholesale codification may not be required but increased clarity to the criminal penal authority of both Houses, as well as an upper limit on privilege in criminal cases is desirable.<sup>48</sup>

Scholarly objections, including those that focus on the historical inability of the courts to look into internal parliamentary matters, point to the fact that privilege in the UK was in any case understood as an imperative against judicial review of internal parliamentary business (exclusive cognisance) at the expense of a diminished ability to check the separation of powers. According to critics, such a broad-based method is becoming harder and harder to defend when it comes to matters of basic rights or criminal responsibility.<sup>49</sup>

Although these controversies can be observed, the UK model continues to show greater privilege of internal legislative autonomy in comparison to most contemporary constitutions. It is based on the principles of its operation, which is as follows: a strong parliamentary speech and self-government promote an unrestrained debate, the fundamental component of a functioning democracy. Nevertheless, the jurisprudence since 2010, particularly in the context of prosecution concerning political misconduct, demonstrates that such privileges no longer provide immunity when they are applied to the act of misconduct that goes beyond the due process of legislation.

### Other Democracies: United States and Commonwealth Comparisons

#### United States

The United States is a representation of a unique constitutional pattern where the principle of the United States is based on the Speech or Debate Clause of Article 1, Section 6 and Article 1 of the United States Constitution. This provision safeguards federal legislators by stating that no one may ask them in another Place any Question

<sup>48</sup> Oonagh Gay, Parliamentary Privilege: Current Issues, Standard Note SN/PC/06390 (U.K. House of Commons Library, Parliament & Constitution Ctr. July 16, 2013).

<sup>49</sup> Edward Lui, Piercing the Parliamentary Veil Against Judicial Review: The Case Against Parliamentary Privilege, 42 Oxf. J. Legal Stud. 918 (Autumn 2022), <https://doi.org/10.1093/ojls/gqac008>.

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respecting any Speech or Debate in either House and that allows limited liberty of being arrested during legislative sessions except in the case of treason, a felony, or breach of peace.

Similar to the UK, the provision will establish greater independence in the legislature where lawmakers will be able to do their work without fear of executive or judicial reprisal. The U.S. Supreme Court and lower courts have construed this provision to provide absolute immunity to members against actions that are a part of the legislative process, including floor argument, voting, and committee reports but not those that are unrelated to the legislative process.<sup>50</sup>

Landmark cases illustrate these limits. In *Hutchinson v. Proxmire* (1979), the U.S. Supreme Court believed that newsletters and press releases issued in the outside of the legislative chamber did not enjoy the protection of the clause, highlighting that protection is only applied to those acts of the legislation, not acts of all the members. Moreover, in contemporary corruption cases like the William J. Jefferson case, the courts reiterated that legislators are usually not beyond the reach of criminal laws and the privileges granted to them like the Speech or Debate Clause do not make them super-citizens that cannot be prosecuted.

These adjudications are found to be more constitutionally reflective than the orthodox UK framework: the privileges are real yet very strictly restricted to lawful legislative conduct. The development of the doctrine in the United States focuses on the fact that the immunity could not be extended to any misconduct of the private character regardless of its relation to a legislative position.

### **Canada and Commonwealth Systems**

Parliamentary privilege is a direct result of the tradition of the UK Parliament and the constitutionally acknowledged privilege in Canada. Canadian practice recognises the freedom of speech and other privileges and, more and more, a necessity test is applied by the courts on whether assumed privileges are really necessary to legislative activities. The courts have contributed to the establishment of the fact that such privileges as immunity against legal proceedings should be explained by a definite functional need, and not accepted as blank checks.<sup>51</sup>

Equally, the parliamentary privilege is enshrined in the Constitution of Australia through reference to the UK model, especially to the effect that Houses would enjoy immunities comparable to those that were enjoyed by the UK Parliament at federation. In the Australian model, powers and immunities of legislative proceedings such as powers to punish contempts are stressed, although the criminal responsibility is a basic legal expectation.<sup>52</sup>

Such Commonwealth systems therefore represent some fine balances: they safeguard internal deliberations and autonomy in making laws and yet recognize that immunity is not applied to acts of criminal misconduct not necessary to the performance of legislative functions.

### **Lessons for India**

Comparative approaches highlight some educative themes to the constitutional system of privilege and accountability in India:

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<sup>50</sup> Precedents of the House of Representatives of the United States ch. 7, § 8, at 174–75 (U.S. Gov’t Publ’g Off. 2021).

<sup>51</sup> Lorne Neudorf, The Judicialisation of Parliamentary Privilege in Canada: A Cautionary Tale, 13 Laws 26 (2023), <https://doi.org/10.3390/laws13030026>.

<sup>52</sup> Parliament of Austl., No. 20 – Parliamentary Privilege, [https://www.aph.gov.au/About\\_Parliament/Senate/Practice\\_and\\_Procedure/Guides\\_to\\_Senate\\_Procedure/No\\_2\\_0](https://www.aph.gov.au/About_Parliament/Senate/Practice_and_Procedure/Guides_to_Senate_Procedure/No_2_0).

1. **Functional Limitation of Privilege:** In the U.S as well as the modern approach in the UK, privilege safeguards lawful legislative actions and not abuses. The Sita Soren evolution of India is in keeping with this relative tendency of reducing the immunity to functional necessity.
2. **Judicial Review as a Check:** In contrast with historical UK practice, contemporary judicial interpretation, particularly in Canada and the jurisdiction of the U.S., applies judicial review to make sure that privilege pleas do not abdote responsibility. This allows the constitutional balance of powers and not legislative autocracy.
3. **Clarifying Boundaries Through Reform:** The experience of the UK about the development of the statutory codification debates implies that more definite statutory or constitutional definitions of privilege are useful to prevent misinterpretations that may hinder criminal prosecution.
4. **Broad versus Narrow Privilege Doctrine:** India has to strike a balance between the necessity to have legislative autonomy and the principle of equality before law. The experience of the U.S. lessons demonstrates that immunities that are too broad can contribute to a sense of impunity and undermine people's confidence.

## VII. Challenges & Contemporary Issues

A constitutional democracy has to strike a balance between law accountability and independence of the legislature. The parliamentary privilege, which was intended to secure the legislative functions, in fact, in practice it has presented difficult issues when interpreted or overextended. These issues such as misuse of privilege to avoid criminal liability, failure to codify, undermining of public perception and inconsistent internal discipline processes are examples of the challenges of balancing legislative autonomy and democratic accountability.

### Abuse of Privilege to Evade Criminal Accountability

The possibility of lawmakers to claim privilege is one of the most controversial issues that can offer protection to them even if criminal charges are pressed. In the parliamentary practice of law making traditionally covers anything said and any vote cast in any of the legislative processes as a means of allowing the unhindered debate and decision making process without the fear of reprisal by a court of law. Based on the British tradition of parliamentary immunity, Articles 105 and 194 of the Constitution in India provide such immunities in respect of speech and votes. These rights did not have any intention to embrace wrongs but have been applied controversially in criminal cases.<sup>53</sup>

In reality, as it is used out of context, privilege may seem more of a defensive mechanism than protection. Despite the decision of the Supreme Court in *Sita Soren v. Union of India*, Articles 105(2) and 194(2), the wider doctrine of privilege is one area of conflict in criminal liability, in which opposed immunity of bribery. As part of that ruling the Court made clear that immunity of a legislature does not go as far as bribery and common criminal counts, and that the privilege regime in the Constitution is only meant to make the task of a legislature easier.

Equally, in the United Kingdom, the 2009 MPs expenses scandal showed how the trust of people can be destroyed when parliamentarians seem to use the procedural immunities to escape the consequences of investigation in their misuse of money. Other implicated MPs claimed that at least some of their actions were within the protection of privilege or internal parliamentary practice, a stance repudiated publicly and legally superfluous following judicial decisions that criminal prosecution on false accounting was in any case not a breach of parliamentary privilege.

<sup>53</sup> Y. Keerthana Reddy & Tushar Srivastava, Clash Between Parliamentary Privileges and Fundamental Rights, 4 Int'l J. Civ. L. & Legal Rsch. 97–105 (2024), <https://doi.org/10.22271/civillaw.2023.v4.i4.167>.

These instances prove that the image of privilege misuse, even in situations which are legally untenable, can undermine the intent of such immunities. The claim of privileges and inner procedures against the framework of criminal undertakings may tend to give the current an impression that legislators have a high standing in law, and this is harmful to the trust in the democratic responsibility.

### **Lack of Codification and Persistent Ambiguity**

The other key issue is that parliamentary privileges have not been thoroughly codified. Articles 105 and 194 of the constitution in India enjoy constitutional status, but are not exhaustive of all the privileges, so it is the House of Commons tradition and interpretation of the British precedent at the time of the Indian Constitution coming into force.<sup>54</sup>

This uncertainty creates the interpretative uncertainty. Legal academicians contend that the ambiguity in statutory definitions leads to the ambiguity in the boundaries and extent of privileges, thus inviting unequal or random treatment. The lack of a statutory framework in particular would mean that the parameters of immunity, contempt and disciplinary actions will be largely at the mercies of internal rules and judicial interpretation, as opposed to settled law.

The codification controversies have also been a major aspect beyond India. In the UK, parliamentary privilege has been proposed as a wide subject of reform and clarification (but not absolutely codification) by parliamentary committees, where they have found ambiguity to bear practical results in the criminal and civil litigation process.<sup>55</sup>

There is also the problem of judicial review of privilege claims made complicated by the lack of codification. Indian courts have made it clear on several occasions that they have the constitutional power to review the claim of necessary privileges to legislative functions. Nevertheless, without clear statutory standards, this review can become subject to normative judgments, on a case-by-case basis, and this can be different and unpredictable. This has created a legal environment in which lawmakers and courts have to work with a conflux of constitutional text, tradition, and judicial precedents that may be hard to balance out.

### **Public Perception and Democratic Legitimacy**

There is weak public trust in the democratic institutions and much of it is influenced by the perception of privileges when it comes to the contact with the accountability mechanism. Although the principle of parliamentary privilege theoretically seeks to empower the representatives to debate without intimidation, in fact, it can invite a lot of criticism among the masses when it is seen as safeguarding the representatives against the normal laws of the land.

Public trust is an important element in the academic discourse of democratic legitimacy. A system that is seen to give legislators preferences over general legal duties is likely to undermine this trust, and create wider issues about the impartiality and accountability of democratic representation. Although this kind of analysis is not specific to parliamentary privilege, it enhances the importance of institutional norms and institutional transparency in establishing the degree of trust which voters place in political systems.<sup>56</sup>

The UK MPs expenses scandal is another episode which underlines this matter: when the misuse of allowances is widespread, and the efforts to justify this type of behavior with reference to the procedural or privilege grounds,

<sup>54</sup> Ibid.

<sup>55</sup> Richard Gordon QC & Malcolm Jack, Parliamentary Privilege: Evolution or Codification? (The Constitution Society 2013), <https://consoc.org.uk/wp-content/uploads/2013/11/Parliamentary-Privilege-Evolution-or-Codification.pdf>.

<sup>56</sup> Hanspeter Kriesi, Democratic Legitimacy: Is There a Legitimacy Crisis in Contemporary Politics?, 54 Pol. Vierteljahresschrift 609 (2013), <https://www.jstor.org/stable/24201256>.

then the wave of indignation and the necessity to change ethical standards and accountability mechanisms become overwhelming.

Although the cases of high-profile privilege abuse are less common in India, the possibility of the privilege claims to be used in sensitive situations, such as defamation or the general public criticism, also creates the same concerns. As a case in point, defamation laws against politicians may cause lawyers to stifle speech when the distinction between the legislative speech that is considered a privilege and that which constitutes defamation is ambiguous, which gives opportunity to the claims of privilege, which should not necessarily be related to what the citizens would think is fair.<sup>57</sup>

### **Role of Ethics Committees and Internal Discipline**

Legislative ethics Policing Conduct in legislatures is intended to be policed by internal disciplinary mechanisms (like the parliament ethics committees or privileges committees). Nevertheless, they are not equally effective. These agencies tend to be quite independent, and they pay less attention to external control, implying that internal politics may affect results more significantly than coherent ethical principles.

The UK parliamentary bodies have developed to incorporate the role of the laity groups and external scrutiny of ethics rules in order to address the call by the citizens to have firmer guidelines. There are however controversies on whether there is enough internal mechanisms and whether there are fewer rules in clearer definitions on the execution of disciplinary and privileges here too.<sup>58</sup>

Internal processes on privileges and discipline in India also have a similar basis on standing orders and internal rules, which can not be as uniformly clear. The lack of legal laws and regulations on how ethics and privileges and powers ought to be composed, operated, and standards might enable partisan or unequal enforcement of disciplinary standards, which are less able to respond to the abuse of privileges in any credible way.

The proposals of academics and other legal commentators have contained reforms such as codification of protections associated with privileges, better defining limits between legislative privilege and accountability, and better safeguarding independent control over ethics committees. These measures are designed to see that the measures of discipline are both equitable and consistent as well as in line with constitutional values of equality before the law and democratic accountability.<sup>59</sup>

## **VIII. Reforms & Policy Recommendations**

The flexibility of the autonomy of the legislature and responsibility is the centre of a dynamic constitutional democracy. Independence and accountability can be strengthened by a combination of specific reforms, which include codification, constitutional transparency, better ethics and anti-corruption structures, and judicial prudence.

### **Codification of Privileges with Clear Limits**

The codification of parliamentary privileges is one of the major reform imperatives. Articles 105 and 194 of the Indian Constitution give constitutionally acknowledged privileges which are mostly undefined although the freedom of speech and the protection against judicial proceedings on things said or votes cast in the legislature.

<sup>57</sup> Kushagra Singh, *Judicial Review of Parliamentary Privilege and Freedom of Speech and Expression*, 24 Supremo Amicus 242 (2023).

<sup>58</sup> U.K. Cabinet Office, *Parliamentary Privilege* 12 (Cm. 8318, Apr. 2012).

<sup>59</sup> Saumya Baramwal, *Judicial Review of Legislative Expulsions: Implications for Parliamentary Privilege and Fundamental Rights*, *Indian J.L. & Legal Rsch.*, vol. 7, iss. 4, at 836 (2023).

Other privileges are left to be defined by law (mostly without being done so) by Parliament or by a state legislature. This form of structural ambiguity has created law ambiguity and occasional judicial- legislative conflicts.<sup>60</sup>

Codification would involve parliamentary legislations that clearly state and restrict the rights, immunities and procedural privileges of legislators. A statutory catalogue would reduce the ambiguity of interpretation, offer standards of internal discipline and judicial review, and eliminate unreasonable claims of privilege which may tend to undermine fundamental democratic ideals. Codified privileges are to express both the operational enablers (e.g. freedom of deliberation and speech in the House) and guardrails that seek to prohibit any mismatch with constitutional values (e.g. fundamental rights and the rule of law). The statutory clarity would maintain the functions of the legislation but it would help to avoid the growth of privilege to unwarranted immunity against criminal prosecution or civil responsibility.

#### **Legislative Revisit of Articles 105 & 194**

Another complementary reform is the review and amendment of Articles 105 and 194 per se. These are provisions on the basis of the parliamentary tradition in the UK, but are founded on the constitutional formation in India that nonetheless is still coupled with historical paradigms that may not suit well with modern democratic demands. Articles 105(3) and 194(3) expect parliament and state legislatures to provide the definition of privilege in law, implying that the Constitution envisaged a dynamic and conventional reading of privilege as opposed to one fixed in history.<sup>61</sup>

A legislative reconsideration would help answer some fundamental questions - including how far legislative immunity extends, how it interferes with the basic rights and in what situations the privileges can be asserted. Further, explicit constitutional amendments would offer greater protection against abuse and guarantee such privileges are used solely to the degree required to fulfil legislative responsibilities and not to secure personal malpractice and avoid responsibility. The democratic legitimacy would be enhanced by the constitutional or statutory text that would integrate the principles of proportionality i.e. balancing the legislative immunity with the larger text of constitutional rights.

#### **Strengthening Anti-Corruption and Ethics Frameworks**

The balance between parliamentary privilege and legislative autonomy is enhanced when it has some effective anti-corruption arrangements and ethical standards and frameworks. On the international front, legislative institutions are increasingly embracing formal codes of ethics and external checks and balances to regulations on unethical behaviors among legislators. Indicatively, some parliaments have tabled ethics reforms aimed at the establishment of mandatory financial disclosures, mandatory recusal rules, independent ethics commissions, and definitive gift and conflict-of-interest standards as the elements of broad-based integrity regimes.<sup>62</sup>

There is currently no homogenous and overarching code of parliamentary ethics in India that is applicable to all houses and the state legislatures. It would also create a clear ethical framework of parliamentary conduct and ethics code by using the best practices globally. Combined with an independent body, e.g. the Independent Parliamentary Standards Authority (IPSA) that the UK created in the wake of the 2009 expenses scandal, such a system would bolster transparency, impose ethical considerations, and offer believable disciplinary mechanisms other than internal political majority.

<sup>60</sup> Arvindaben B. Gajjar & Dishit Dhameliya, Codification of Parliamentary Privileges, Indian J. Integrated Rsch. L., vol. 4, iss. 1, at 1266 (2023).

<sup>61</sup> Ibid.

<sup>62</sup> Paula A. Franzese, The Anatomy of Government Ethics Reform: Lessons Learned, A Path Forward (draft manuscript, on file with the author).

Also, the parliamentary committees of privileges and ethics must be enabled through open procedures, necessity of reporting publicly and independent review mechanisms. These committees serve two purposes to protect the legitimate legislative immunity and to curb its abuse, to make the privilege not a mask of immoral or criminal behavior.

#### **Judicial Safeguards without Encroaching on Legislative Autonomy**

Judicial review is vital in provision of legislative privilege not to be against the constitutional norms or monitor on the basic rights. Such authority however should be wielded with respect to the autonomy of the legislature and strict limits. The new jurisprudence- the Supreme Court case in *Sita Soren v. Union of India* - shows that the courts may define the limits of the privileges and at the same time the legislative role is not violated. That groundbreaking decision saw the Court confirm that legislative immunity does not prevail in cases like bribery, which is a criminal offense, and thus uphold the principle of privilege and the principles of accountability.

In order to narrow this balance, judicial protections might be reinforced with more explicit types of legal tests that distinguish between the actions that are privileged legislative conduct and those that are beyond the constitutional protection. These standards would allow courts to interfere when the privilege is used to avoid responsibility of malpractice, but not to interfere when the privilege works to safeguard the defensible legislative speech and operations. Judicial review would be guided under codified criteria (i.e., functional necessity tests, proportionality analyses, etc.) and decrease the conflict between government branches.

#### **IX. Conclusion**

Parliamentary privileges are assigned a centre stage in the constitutional democracies as remedies to safeguard the autonomy and good performance of legislative bodies. These extraordinary legal privileges enable the legislators to debate freely, vote without intimidation and undertake their constitutional roles without any fear of being unduly interfered with by the courts or other pressures. Scholarship in both historical and constitutional studies highlights that the privileges are inherent in the design of democracies *per se* since deliberation in legislation must be shielded against intimidation or retaliation to ensure the protection of representative governance. Such privileges were deliberately included in the Articles 105 and 194 of the constitution by the constitutional framers in India so that the legislators can take part in the law-making process and deliberation without any legal hindrance. These clauses in its turn reflect some of the common law practices in the British parliamentary system which acknowledge the fact that the freedoms of legislative processes are the key to both the integrity and effectiveness of the legislative processes.

Nevertheless, the recent judicial interpretations and scholarly literature emphasize that privileges can never be unconditional and absolute. One of the fundamental conclusions of this paper - supported by judicial patterns in India and other countries - is that the terms of privilege should be practically limited to actual legislative work and it should not be used as wide protection against criminal responsibility. The ruling of the Supreme Court in *Sita Soren v. Union of India* has categorically limited the doctrine of immunity of lawmakers as it believed that legislators were not entitled to protection against an ordinary criminal prosecution such as bribery under Article 105(2) and 194(2) of the Constitution. The Court reinforced its prior statement that rule of law and norms of anti-corruption work side by side with legislative independence, by insisting on the fact that privilege only safeguards legislative functions but not criminal acts.

The same matching of privilege with responsibility underscores a wider constitutional value, which is that, as much as the democratic bodies are entitled to have the autonomy to execute their responsibilities, their autonomy must be balanced through mechanisms that guarantee accountability and legal integrity. It has been observed by theorists and comparative analysts of parliamentary privilege on many occasions that the lack of control in

immunities can undermine confidence in the populace and are open to abuse, particularly where privileges are invoked to avoid inquiry into misconduct or defamation. As an example, opponents of expansive privilege systems believe that their application to judicial review and other legal settings, particularly in the context of attempts to avoid civil or criminal responsibility, may jeopardize the separation of powers and raise the question of legitimacy.<sup>63</sup>

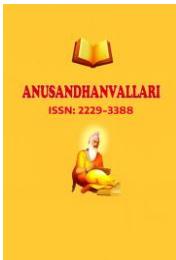
The evidence has indicated that privileges have to be interpreted and practiced in a way that is not against constitutional values and the rule of law and democratic accountability. Particularly, the privileges are necessary to safeguard critical legislative actions like speech, vote, and deliberation; but are incapable of being used as carte blanche insulations against criminal responsibility or against basic legal responsibilities. This balanced insight maintains the essence of privileges, namely, to enable legislative freedom, coupled with making sure that such freedom is not overridden by larger constitutional pledges to equality before the law, responsibility, and political trust.

Finally, an equal treatment of privileges that would not violate the democratic functions but rather the rule of law enhances legitimacy of the representative institutions. Having privileges accepted as being important but constrained is a sure way of keeping the legislatures independent and also accountable so as to maintain democratic governance without compromising legal integrity.

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