



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CONSTITUTIONALISM AND PARLIAMENTARY PRIVILEGE: IN SPECIAL REFERENCE TO INDIA

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Abstract:

This paper tries to examine the true meaning and effect of the term 'parliamentary privileges'. The author begins with an introduction to the very basic understanding of the term. He has dealt deeply with Constitutional provisions in Article 105 and 194 and then gone on to link these with British Constitutional concerns to provide a little historical aspect. The author has also tried to examine just how wide and sweeping the powers truly are within these provisions. Towards the end, he has examined several case laws that have added to widen the interpretation of rights that may be read within the parliamentary privilege.

Keywords : Parliamentary Privilege, Constitution, Provisions, Rights, Speech.

Introduction

Article 105 and 194 of the constitution of India deals with the power privileges and immunities of parliament and its members and of their state legislature and their members respectively. This constitution of India does not exhaustively enumerate the privileges of Indian parliamentarian. As Section 3 of both these articles refers directly to the privilege of the House of Commons at the commencement of the constitution. Hence it basically deals with all those privileges that exist in the House of Commons as on 26 January 1950.

Article 105: Powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof-

(1) *Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.*

(2) *No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.*

(3) *In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act 1978.*

(4) *The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.*

Article 194: Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof.-

(1) *Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.*

(2) *No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.*

(3) *In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (forty-fourth Amendment) Act, 1978.*

(4) *The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.*

Hence from the above 2 different Article of the Indian Constitution, it can be inferred that the position of the state legislature is the same as those of the house of parliament. Therefore Article 105 applies Mutatis Mutandis to the state legislature as well. Both articles expressly mentioned two privileges namely- freedom of speech and freedom of publication of proceedings.

Privileges and The British Constitution In Concern

Whenever it comes to privileges the biggest question which arises in front of us is why every time when privileges are discussed, the Privileges of Britain is taken into consideration. The answer to my question is that because it is realized that Britain enjoys the largest and the widest privileges as compared to the whole world and hence it the British houses which are taken care of.

Article 105 need to be taken into consideration at this point of time. When it comes to power and privileges of the house of parliament its subclause 3 it shows that the constitution makers themselves wanted that the privileges of the United Kingdom should be taken into consideration. But every now and then the approach is largely criticized. It is said that there is one major difference that exists within India and the United Kingdom and that need to be taken consideration.

Unlike the British Parliament, the Indian Parliament is not sovereign. It is the Constitution which is supreme and sovereign and Parliament will have to act within the limitations imposed by the Constitution. This is a mark of distinction between the British Parliament and the Indian Parliament. British Parliament is sovereign.

“One of the hallmarks of such sovereignty is the right to make or unmake any law which no court or body or any person can set aside or override.” On the other hand, the Indian Parliament is a creature of the Constitution and its powers, privileges, and obligations are specified and limited by the Constitution.

A legislature created by a written Constitution must act within the ambit of its power as defined by the constitution and subject to the limitations prescribed by the Constitution Any act or action of the Parliament contrary to the constitutional limits will be void.

A.7 In Special Reference No. 1, a bench of seven judges observed :

“In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognized by the law of England is having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to every part of the Queen’s dominion.

“On the other hand, the essential characteristic of federalism is “the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each other’s”. The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers.”

Freedom Of Speech -Articles 105(1) And 194(1)

The essence of the parliamentary democracy is a free, frank and fearless discussion in the parliament. For the body like parliament freedom of speech play a very important role that enables the members to express their feelings without any kind of fear of penalizing for offenses such as defamation, innuendo. The rule of freedom of speech in parliament became established in the 17th century in the **case of Sir John Elito**.

The Rajya Sabha held in its XII report that a parliament member cannot be questioned in any court or any place outside the parliament for any disclosure he made since it will amount to interference with the freedom of speech. Subsequently, Lok Sabha has also held that it will amount to contempt of court or breach of privilege if any suit is filed in court for what is said on the floor of the house.

The Supreme Court in the case of *Tej Kiran Jain v Sanjeeva Reddy*¹ held that “once it is proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceeding in any court”.

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof.

No action, civil or criminal, will, therefore, lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House, such as, for notices of motions, questions, reports of the committee, or the resolutions.

It may be noted that clause (1) of Article 105 is made Subject to the provisions of this constitution and to the rules and standing orders regulating the procedures of Parliament. The words regulating the procedures of

¹ 1970 AIR 1573.

Parliament occurring in clause (1) should be read as covering both the provisions of the Constitution and the rules and standing orders.

So read, freedom of speech in Parliament becomes subject to the provisions of Constitution relating to the procedures of Parliament, i.e., subject to the articles relating to procedures in Part V including Articles 107 and 121. Thus, for example, freedom of speech in Parliament would not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as the use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). The freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to reasonable restrictions under clause (2) of Article 19. The term freedom of speech as used in this article means that no Member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof.

The freedom of speech conferred under this article cannot, therefore, be restricted under Article 19 (2). Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory.

Besides, the freedom of speech to which Article 105 (1) and (2) refer, would be available to a member of Parliament when he attends the session of Parliament. Therefore, if an order of detention validly prevents a member from attending a session of parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right has been invalidly invaded.

Article 105 (2) confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything. The only limitation arises from the words in Parliament, which means during the sitting of Parliament and in the course of business of Parliament. Once it was proved that Parliament was sitting and its business was transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but it is as it should be.

It is one of the essences of the parliamentary system of government that people's representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of Parliament², the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.

² Article 118 and 208 empower each house to make rules of procedure to be followed therein. The freedom of speech is subjected to these rules. *In Re Under Article 143*, AIR 1965 SC 745.

In a much-publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in *P.V. Narsimha Rao v. State (JMM Bribery Case)*³ has held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament.

The majority (3 judges) of the Apex Court did not agree with the minority (2 judges) and explained that expression “in respect of” in Article 105(2) must be given a wide meaning so as to comprehend an act having a nexus or connection with the speech made or a vote given by a member in parliament or any committee thereof. So interpreted, it would include within its ambit, acceptance of a bribe by a member in order to make a speech or to cast his vote in parliament or any committee thereof in a particular manner.

Therefore, the bribe taker MPs, who had voted in parliament against no-confidence motion were held entitled to the protection of Article 105(2) and were not answerable in a court of law for alleged conspiracy and agreement. The court further held that the bribe taker MP, who did not vote on the no-confidence motion was not entitled to protection under Article 105(2). To the bribe giver MPs it was held, the protection under Article 105(2) was not available. The court further ruled that the Lok Sabha could take action for breach of privileges or contempt against the alleged bribe givers and against the alleged bribe takers, whether or not they were members of parliament.

The court was however unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding’s under Article 105(2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

Right Of Publication Of Proceedings- Articles 105(2), 194(2) And 361-A

Clause (2) of Article 105 (as well as Article 194) expressly declares that “no person shall be liable in respect of the publication by or under the authority of either house of Parliament of any report, paper, votes or proceedings”.

Therefore, this protection did not extend to the publication made by a private person without the authority of the house. Common law accords the defense of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere.

In *Wason v. Walter*⁴, **Cockburn, C.J.** observed that it was of paramount public and national importance that parliamentary proceedings should be communicated to the public, which has the deepest interest in knowing what passes in Parliament. But a partial report or a report of detached part of proceedings published with intent to injure individuals will be disentitled to protection. The same is the law in India.

³ AIR 1998 SC 2120.

⁴ (1868) LR 4 QB 73.

The Parliamentary Proceedings (Protection of Publication) Act, 1956 enacts that “no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication of a substantially true report of the proceedings of either House of the Parliament, unless it is proved that the publication is made with malice.” The Act was repealed during the 1975 Emergency.

However, The Constitution (44th Amendment) Act, 1978 has put the immunity for publication on a very sound footing. It has added Article 361-A to the constitution incorporating the provisions of the above-said act.

Article 361-A is titled as “Protection of publication of proceedings of Parliament and State Legislatures.” It provides in clause (1) *“No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice.”*

However, it is provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

The clause (2) states that “Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.” It is explained that in this article, “newspaper” includes a news agency report containing material for publication in a newspaper.

OTHER PRIVILEGES

Clause (3) of Article 105, as amended declares that the privileges of each House of Parliament, its members and committees shall be such as determined by Parliament from time to time and until Parliament does so, which it has not yet done, shall be such as on 20th June 1979 i.e., on the date of commencement of Section 15 of the 44th Amendment Act, 1978.

Before the amendment, this clause has provided that until Parliament legislates the privileges of each House and its members shall be such as those of the House of Commons in England at the time of commencement of the Constitution. As the position till 20th June 1979 was determined on the basis of the original provision, it is still relevant to refer to the law as it has been in the context of English law. In that perspective, it may be emphasized that there are certain privileges that cannot be claimed by Parliament in India.

For example, the privileges of access to the sovereign, which is exercised by the House of Commons through its Speaker to have at all times the right of access to the sovereign through their chosen representative can have no

application in India. Similarly, a general warrant of arrest issued by Parliament in India cannot claim to be regarded as a court of record in any sense. Also, the privilege of the two Houses of Parliament, unlike the privileges of the House of Commons and House of Lords in England are identical. To each House of Parliament, accordingly, belong the privileges, which are possessed by the House of Commons in the United Kingdom.

Freedom from Arrest

According to this privilege, no member of parliament or a state legislature shall be arrested or imprisoned in a civil proceeding during a period of 40 days before and 40 days after the session of the house⁵. If a member is arrested within this period, he shall be released so that he may be free to attend the session.

This privilege does not extend to arrests or imprisonment on a criminal charge⁶ or contempt of court⁷ or to preventive detention⁸. However, in case a member is so arrested, *Rule 261 of Lok Sabha* lays down a duty of the detaining authority to communicate to the house to which member belongs, the reasons for arrest or detention, the time of arrest, the place where he is detained or imprisoned and the period for which the member is detained or arrested. It has been held in *K. Anandan Nambiar v. Chief Secretary, Governor of Madras*⁹, that matters of Parliament do not enjoy any special status as compared to an ordinary citizen in respect of valid orders of detention.

Right to Exclude Strangers

The right to exclude strangers or non- members and to hold secret session was exercised in the past. The object is to exclude the possibility of any intimidation of the members. The strangers may attempt from galleries to interfere in the debate.

Rule 248 of Lok Sabha give the Chair the power, whenever it thinks fit, of ordering the withdrawal of strangers from any part of the House and when the House sits in a secret session no stranger is permitted to be present in the chamber, lobby or galleries. The only exceptions are the members of the Council of States and the persons authorized by the Speaker.

Right to Prohibit the Publication of Proceedings

The *Rules of Procedure* of the House of People, empower the Chair to expunge any part of the proceedings of the house. In *Pandit M.S.M Sharma v. Shri Krishna Sinha*¹⁰, popularly known as **Searchlight case** proceedings for

⁵ Section 135-A of Civil Procedure Code, 1908.

⁶ *Kalyan Chandra Sarkar v. Rajesh Ranjan*, 2005 (3) SC 307.

⁷ Sir Thomas Erskine May: Parliamentary Practice, 16th Edition., Chapter III, p.82

⁸ *Smt. Indira Gandhi v Raj Narain*, AIR 1975 SC 2299.

⁹ AIR 1966 SC 657.

¹⁰ *Kalyan Chandra Sarkar v. Rajesh Ranjan*, 2005 (3) SC 307

the breach of privilege had been started against an editor of a newspaper for publishing those parts of the speech of a member delivered in Bihar legislative assembly which the speaker had ordered to be expunged from the proceedings of the Assembly.

The editor in a writ petition under Article 32 contended that the House of Commons had no privilege to prohibit either the publication of the publicly seen and heard proceedings that took place in the House or of that part of the proceedings which had been directed to be expunged. The Supreme Court by a majority of four to one rejected the contention of the petitioner.

Das C.J., who delivered the majority judgment, observed that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate version of such debates or proceedings. The Court said that the effect in law of the order of the Speaker to expunge a portion of the speech of member might be as if that portion had not been spoken.

Now Article 361-A inserted by the 44th Amendment Act, 1978 with effect from June 20, 1979, provides that no person shall be liable to any proceedings civil or criminal for reporting the proceedings of either House of Parliament or a State Legislature unless the reporting is proved to have been made with malice. This provision does not apply to the reporting of proceedings of secret sittings of the Houses.

Right to Regulate internal Proceedings

The House has the exclusive right to regulate its own internal proceedings. The Governor is vested with the power to summon the Session of the State Legislative Assembly. But he does not have any Constitutional authority to direct the Speaker of an Assembly about the manner in which the proceedings of the House should be conducted.

The procedure is laid down in the Rules of Business of the House. To strengthen this right, Article 122 (Article 212 in case of State Legislature) expressly provides that the validity of any proceedings shall not be called in question on the ground of any alleged irregularity of procedure¹¹ and no officer or member of Parliament in whom powers are vested by or under the Constitution for regulating the procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

¹¹ AIR 1959 SC 395

Right to Punish for Contempt of the House

It is right of every house of the legislature to punish its members or non- members for contempt or breach of privilege of the house. It has been established in India that a house may punish not only for the present contempt but also for the past contempt.

After coming to power in 1977 elections, the Janta Party moved a resolution in the Lok Sabha that Mrs. Indira Gandhi, the former Prime Minister, Mr. R.K. Dhawan, her former Additional Private Secretary and Mr. D. Sen, the former Director of CBI, has committed a breach of privilege, contempt, of the house by causing obstruction, intimidation, harassment and institution of false cases against four officers who were deputed to collect information relating to Maruti Udyog Ltd., installing imported machinery in violation of licence regulations. A privileges committee was constituted to inquire into the allegation.

The committee found Mrs. Indira Gandhi guilty of committing the breach of privilege by preventing parliament from knowing the violation of license regulations by the Maruti Udyog Ltd. She committed a further breach of privilege and contempt of the house by refusing to take oath/ affirmation before the privileges committee and by casting aspersions on its member. Accordingly, she was held guilty and was expelled from the membership of Lok Sabha and sentenced to jail till the house was prorogued. She accepted the sentence.

But, when in 1980 elections, the Congress Party came to power defeating the Janta Party, a resolution was got passed in Lok Sabha rescinding the earlier resolution and it was held that she did not commit any contempt of the parliament and that the resolution was politically motivated.

Privileges And Fundamental Rights

In *Gunupati Keshavram Reddi v. Nafisul Hasan*,¹² one Homi Mistry was arrested at his Bombay residence under a warrant issued by the Speaker of U.P. Legislative Assembly for contempt of the House and was flown to Lucknow and kept in a hotel in Speaker's custody. On his applying for a writ of *habeas corpus* on the ground that his detention was in violation of Article 22(2), the Supreme Court quashed the detention and ordered his release as he had not been produced before a Magistrate within 24 hours of his arrest as provided in Article 22 (2). This decision, therefore, indicated that Article 194 (or Article 105) was subject to the fundamental right guaranteed under Article 22(2) in Part III of the Constitution.

¹² AIR 1954 SC 636

However, in *M.S.M. Sharma v. S.K. Sinha*¹³ it was also contended by the petitioner that the privileges of the House under A.194 (3) are subject to the provision of Part III of the Constitution. In support of his contention, the petitioner relied on the Supreme Court's decision in *Gunupati Keshavram Reddi v. Nafisul Hasan*. But, in Sharma's case, the Supreme Court held that in case of conflict between fundamental right under Article 19 (1) (a) and a privilege under Article 194 (3) the latter would prevail. As regards Article 21, on facts the Court did not find any violation of it.

*In Re Under Article 143*¹⁴, the Supreme Court explained the proposition laid down in *M.S.M. Sharma case* and said:

'We do not think it would be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must always yield to the former. The majority decision, therefore, is taken to have settled only that Article 19(1)(a) would not apply and Article 21 would.'

The rules of each House provide for a committee of privileges. The matter of breach of privilege or contempt is referred to the committee of privileges. The committee has the power to summon members or strangers before it. Refusal to appear or to answer or to knowingly to give the false answer is itself a contempt. The committee's recommendations are reported to the House which discusses them and gives its own decision.

Privileges And The Law Courts

The conflict between legislative privileges and the law courts came to be resolved by Supreme Court in *In Re Under Article 143*¹⁵, a reference case, popularly known as **Keshava Singh's Case** or **U.P. Assembly Case**.

In this case, one Keshava Singh, a non-member, of the U.P. Assembly printed and published a pamphlet. The Speaker of the U.P. Legislative Assembly reprimanded him for contempt and breach of the privilege of the member Mr. Narsingh Naraina Pandey. On the same day, Mr. Keshava Singh, who was present in the house, by his conduct, committed another contempt in the house. The Speaker, thereupon, directed Mr. Keshava Singh to be admitted to prison. A warrant was issued for his detention in the jail for 7 days and he was so detained.

Mr. Soloman, his advocate, moved under Section 491 CrPC read with Article 226, a *Habeas Corpus* petition alleging that his detention in jail was illegal and malafide because he was not given an opportunity to defend himself. The petition was heard by 2 Judges of Allahabad High Court which granted interim bail to Keshava Singh and he was released, pending the decision of the case on merit.

¹³ AIR 1959 SC 395

¹⁴ AIR 1965 SC 745

¹⁵ *In Re Under Article 143*, AIR 1965 SC 745

On this, the Assembly, by a resolution took the view that the 2 Judges, Mr. Keshava Singh, and Mr. Soloman had committed Contempt of the Assembly and ordered that the Keshava Singh be immediately taken into custody and the 2 Judges and the Advocate be brought in custody before the House. At this, the 2 Judges and the Advocate, by separate petitions moved under 226 the High Court, contended that the resolution amounted to contempt of court and that it be set aside and its implementation be stayed by the interim order.

The petition was heard by the Full Bench of all the 28 Judges of the Allahabad High Court. The court ordered the stay of implementation of the resolution. The assembly modified its order and the warrant against the 2 Judges was withdraw, but they were asked to appear before the House and explain their conduct. The Judges moved an application before the Court against the modified order and the Court granted the stay against the implementation of the later order.

At this stage, the President referred the matter to the Supreme Court, invoking the provisions of Article 143(1), for obtaining its advisory opinion. The main questions referred to were-

1. Whether the legislature is the sole and exclusive Judge of its privileges and whether it is competent to punish a person for its contempt taking place outside the Legislature?
2. Whether the High Court who entertained a petition of *habeas corpus* challenging the validity of the detention of a person sentenced by the assembly under a general or unspeaking warrant has committed contempt of the Legislature?

The Supreme Court by a majority of 6:1 held that the 2 Judges did not commit the contempt of the house by issuing an interim bail order. The Court explained that the Court under Article 226 had jurisdiction to order the release of a person from illegal detention.

The Court said that the courts in India could examine the validity of detention of a person, sentenced by the Assembly, under a general or unspeaking warrant.

The Courts in England cannot examine the validity of the general warrant issued by the House of Commons. Referring to this, the Court said that “such a right was not conferred on Legislatures in India. The House of Commons is a part of the High Court of Parliament as a superior Court and as a result, the general warrant issued by it cannot be subjected to scrutiny by the other superior Courts. Legislatures in India never discharged any judicial functions and their historical and constitutional background does not support the claim to be regarded as a Court of record. Therefore, the very basis on which the Court in England treats a general warrant issued by the House of Commons is absent in India.”

Article 226 confers wide power on the High Court to issue the writ of *habeas corpus* against any authority which under Article 12 included the Legislature.

Article 121 prohibits any discussion in a State Legislature on the conduct of any Judge of the Supreme Court or High Court in the discharge of his duties.

The court further opined that it could not be disputed that in the matters of privileges, the House was the sole and exclusive Judge provided such privilege could be found in Article 194(3). The question whether a privilege as claimed by the House was provided by Article 194(3) or not, was a matter for the Court to decide. The nature and scope of Article 194(3), was thus, to be determined by the Court.

The question whether the privileges enjoyed by the Legislature under the latter part of Article 194(3) were subject to the provisions of Part III relating to fundamental rights, was left undiscussed. However, the Court observed that such privileges were necessarily subject to Article 21 and 22 of the Constitution.

Conclusion

From the discussion made above it is clear that, parliamentary privileges are a special case to customary rule and are expected to permit parliament and Member of Parliament to play out their obligations unafraid of any threat fear or penance, and short of hindrance. Further, we have discussed in brief two components of parliamentary privileges i.e. Exclusive Cognizance and Freedom of speech and debate. It has been also regarded as requisite in allowing parliament to perform their function smoothly.

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5. Section 135-A of Civil Procedure Code, 1908.
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11. AIR 1959 SC 395
12. AIR 1954 SC 636
13. AIR 1959 SC 395
14. AIR 1965 SC 745
15. *In Re Under Article 143*, AIR 1965 SC 745