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Clash between parliamentary privileges and fundamental rights

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Abstract

This paper aims to look into the actual significance and implications of the expression "parliamentary privileges." The authors start by defining the term in its most fundamental form. They have extensively discussed the contents of Articles 105 and 194 of the Constitution before connecting them to issues with the British Constitution to add a little historical context.

The Keshav Singh Case summary depicts how a mere political issue turned into a critical agenda of conflict between the constitutional institutions. It became a clash of power between Hon'ble High Court and Assembly. The whole situation provoked a constitutional crisis where even the President was called to subside the whole situation. It was protested to the High Court by the petitioner that the Legislative Assembly exceeded its constitutional jurisdiction by penalizing him for disobedience. The Habeas Corpus writ petition filed by Keshav Singh urged that the President put numerous vital constitutional issues before the Supreme Court of India. The Supreme Court had to address these questions before the Allahabad High Court could rule on Keshav Singh's case.

Keywords: Parliamentary privileges, constitutional institutions, articles 105 and 194

Introduction

Parliamentary Privileges

What is meant by privilege in India?

Raja Ram Pal vs Speaker, Lok Sabha & Ors on 10 January 2007 ^[1] defined the term 'privilege' in India. According to legal definitions, a privilege is defined as immunity from or an exemption from a particular duty, burden, attendance requirement, or liability granted by a unique grant in derogation of a common right. The term originates from the expression "privilege," which refers to a law specifically passed in support of or opposition to a specific person.

Thus, the term "privilege" refers to the unique rights that members of parliament around the world have, to varying degrees and in a variety of ways. The proper conduct of business and the ability of the house to carry out its constitutionally mandated duties depend on these privileges.

Parliamentary privilege is the collection of specific rights that each House jointly and each Member, on an individual basis, enjoy that are more extensive than those held by other bodies or people and without which they could not perform their duties. Under Articles 105 and 194 of the Indian Constitution, members of parliament are given privileges or benefits to enable them to perform their duties and functions **Parliamentary privilege's objectives**

- To make the house run more efficiently.
- To preserve the houses' integrity.
- To defend and take action when the House's honour is threatened.

This kind of privilege is granted because it is essential to the operation of democracy. These powers, privileges, and immunities should be consistently defined by law. In the event of a conflict, these privileges take precedence over other provisions because they are viewed as exceptional clauses. The privileges of Indian parliamentarians are not comprehensively listed in the Indian constitution. Section 3 of both these articles refers directly to the privilege of the House of Commons at the commencement of the constitution. It therefore primarily addresses all of the privileges that are granted to members of the House of Commons since 26 January ^[2] 1950.

Indian evolution

The parliamentary privileges in India can be traced back to the Vedic era, when the Sabha and Samiti, two assemblies, functioned to check the King's actions. Later, under British rule, the Parliamentary Privileges were utilized in India's legislative proceedings through the passage of the Charter Act in 1833, the Charter Act in 1853, the Indian Council Act in 1861, and the Indian Council Act in 1892, as well as the Government of India Acts in 1915, 1919, and 1935.

Parliamentary privileges' historical context

The genesis of parliamentary privileges is closely linked to the unique history of the institution of parliament in England. The House of Commons was fighting to carve out a position within the Parliament, which was required to shield itself from the influence and authority of "the king" and "the house of the lord". The executive arm of government was divided from the parliament. As a result, the privileges were put into place in the late 16th century. The commons were claiming what came from the king's special protection on the grounds of heredity and the king's divine prerogative.

Historical development of privileges as follows

By the second half of the 15th century, it appears that the house of commons has the vaguely defined right to free speech out of tradition rather than as a result of rights sought and attained. The speaker did not make this assertion earlier. They did ask for the ability to remedy any intentional misrepresentation of the home to the monarch, though. Even the speaker questioned if it should be considered an accident if the House of Commons or speaker offends the king or violates the prerogative. The right to free speech was under discussion by Elizabeth's first parliament in 1563, and it was defended by old custom.

Sir John Eliot was imprisoned in 1629 along with the other two members after being found guilty by the King's Bench of using seditious language during a discussion and assaulting the speaker. The common bench ruled that the court of the king should not have recognized Eliot and other cases as falling under its purview. Furthermore, the ruling violated the rights of the parliament and was illegitimate. After the Revolution of 1688, the Common overturned the ruling, and Article 9 of the Bill of Rights gave the privileges legal recognition.

Although what is being said in either house is protected by the right to free expression. The privilege of publishing discussions or proceedings outside of parliament is not subject to this right to the same extent. Regardless of the publication by house order or not, a credible record of a discussion in either house is protected by the same rule that protects a fair report in a court of justice: the benefit of publicizing to the general public outweighs any potential harm to an individual, barring proof of malicious intent.

A servant of the king doing their duties in court should not be hindered by legislation in the lower tribunal, according to the premise that freedom from arrest is a reminder of the privileges associated with participation in the old public assemblies. It was established quite early on as a principle.

The earliest instance of freedom of arrest is thought to have occurred in 1340 when the king liberated a member of parliament who had been imprisoned during a previous session of parliament because his custody had stopped him from assuming his position. In the Thorpe case, the common

house speaker was sent behind bars in 1452. The decision to nominate the new speaker was so readily accepted by the commons. Sir Thomas Shrilley, who had been elected in the commons but had been imprisoned in the fleet and put to death before the sitting of parliament was discharged, is credited with creating the development in 1604.

After originally refusing to release the member, the fleet warden was punished for disrespect by being forced to serve time. The Prerogative of Parliament Act, of 1603, which acknowledges the privilege of freedom of arrest, came after these occurrences. Parliamentary privileges have their roots in ancient India. There were two gatherings called Sabha and Samiti that served as the king's checks and balances throughout the Vedic era. The East India Company visited India in 1600 to conduct business. Under the 1784 East India Company Act, they were involved in the situation. The 1833 Charter Act placed a strong focus on centralized legislative power. By virtue of the 1853 charter act, the Indian Legislative Council Act was expanded.

The Indian Council Legislation of 1892 was restated and expanded by this act, extending the privileges granted to members and members of the newly established legislative council of state, including the right to participate in debates and motions approved by parliament. The whole situation of parliamentary privilege that was attained was cemented with the Government of India Act of 1915. The Government of India Act of 1919 stipulated restrictions on members' freedom of expression. The laws relating to the privileges of Indian parliamentary members were included in the Government of India Act of 1935. The Indian Independence Act of 1947 granted India autonomous legislative authority. "External Parliamentary Privileges" forbid any interference from the outside, or from anyone who is not a member of the House, in the business of Parliament.

"Internal parliamentary privileges" prohibit representatives of either houses from acting in a way that might diminish the stature and authority of the House or constitute an abuse of their power.

The privileges granted to the Houses of Parliament by the provision are therefore clearly available to both the Houses and the individual members of each House. The privileges are provided in two distinct aspects, which are as follows:

Collective Privileges: The House itself can enjoy several privileges, including internal autonomy, the ability to punish for contempt in cases of privilege violations as well as intrusions from outsiders, freedom of speech during debates, the ability to pass resolutions that express the members' collective opinion in the public interest, rule-making authority, etc.

The following categories can be used to group the House's collective rights and powers

- the sole authority to control its own internal affairs (including discussions, proceedings, and facilities);
- the power to impose punishment for those who violate privileges or commit contempt, as well as the the power to expel members who act dishonourably;
- the power to ensure its appropriate governance, including the power to sustain the Members' attendance and service;
- the power to initiate investigations, summon witnesses, and demand documents;
- the power to oath witnesses who appear before it; and
- the ability to publish papers without being held

accountable for their substance in court.

Individual Privileges: Members of both Houses may enjoy privileges like conferring protection from detention in civil hearings, freedom of expression and speech in a rather wider sense than is granted as a constitutional right to all citizens by the constitution of India. Individual Member rights and privileges often fall under the following categories.

- Freedom of expression.
- Immunity from arrest in civil lawsuits.
- Exempt from jury service.
- Exemption from having to appear in court as a witness after being summoned.
- Freedom from harassment, molestation, intimidation, and hindrance.

Additionally, it is worth mentioning that the Attorney General of India and Ministers, who are not members of the House but are permitted to speak and participate in parliamentary proceedings or committees thereof under Article 88 of the Constitution, are also eligible for the privileges accorded to members of the Houses individually under clause 4 of Article 105.

Article 105 & Article 194

According to Article 105(1), there shall be freedom of expression in Parliament, subject to the requirements of this Constitution and the rules and standing orders governing the conduct of Parliament.

There are two components to Article 105(2). No parliamentary member shall be subject to any action in any court with respect to anything stated or any vote cast by him in the parliament or any committee thereof, as per part one. No one shall be accountable with respect to the publishing of any report, document, vote, or proceedings by or with the permission of either House of Parliament, according to part two.

Article 105(3) ^[3] is split into two parts as well. Part 1 states that, in all other aspects, each House of Parliament, its Members, and its committees shall have such rights, immunities, and privileges as may from periodically be prescribed by law by Parliament. The rights and privileges shall be those enjoyed by the House of Commons of the UK Parliament and of its Representatives and committees at the introduction of the Constitution, according to part two, until such time as they are specified. Therefore, it becomes important to determine the powers, privileges, and immunities of the House of Commons as of January 26, 1950, whenever an issue regarding the existence of a privilege arises.

It should be emphasized that Article 105(3) has a transitory nature, and the Constituent Assembly planned for a legislation to be passed in due time once there was enough supporting evidence. The substance of Articles 105(3) and 194(3) ^[4] has not changed despite minor cosmetic amendments made by the Constitution (44th Amendment) Act, 1978 (effective June 20, 1979).

However, a thorough codification is necessary since the legislature will only codify privileges that are acceptable to the current executive authority and have a majority within the legislature. On the contrary, privileges need to be available to all members and not just the party or parties in power. Limited privileges would be the overall result.

Codification will crystallize privileges, preventing their interpretation to be expanded upon or changed from as they are now understood in the British Parliament. Today, there is an opportunity to apply to Indian circumstances the ideas that support privileges in the United Kingdom.

However, the likelihood of such advantages being restricted appears too flimsy to be sustained in light of the larger public interest and democratic standards.

Parliamentary Benefits: Benefits and Drawbacks

Benefits

- It eases tension, fosters camaraderie, and encourages collaboration between the two institutions of government: The benefit of a parliamentary form of governance is that it fosters goodwill between the executive and legislative arms of government. This is the case due to the lack of separation between the two arms of government. In light of this, it promotes the free exchange of information between the two arms of the government and fills gaps that could cause misunderstanding rather than establishing a situation where all the government's organs are divided and given the authority to scrutinise and question each other's actions.
- **Effective decision-making:** The legislative and executive heads of government are combined with the parliamentary system to make decisions more quickly. By combining authorities, the government's policies and programmes can be approved more swiftly, and the government's policies and programmes can be implemented more quickly.
- **It costs less and needs fewer staff:** In a parliamentary system of government, the legislative and executive work together to administer a cabinet system of government, which requires less staff and money than a presidential system when all the branches of government are divided and held by distinct groups of people. It is appropriate to state that the parliamentary form of governance is less expensive than the presidential system.
- **It encourages good governance:** The parliamentary form of government encourages good governance since it motivates all cabinet members to work hard due to the individual and collective responsibilities assigned to the parliament. Accountability and openness are also guaranteed.

The drawbacks of parliamentary benefits are as follows

- **More authority will make parliamentarians too arrogant and more prone to abuse it:** A parliamentary system may appear to constantly encourage good governance, but it may also make parliamentarians overly strong and arrogant, which can also result in the misuse of political authority. Parliament's system will make its members dominant and unquestioned.
- **The Prime Minister is truly devoted to His Party:** In a parliamentary form of government, the Prime Minister is elected directly and is therefore only beholden to his party and not to the people of the country.
- **Government uncertainty and instability:** In a parliamentary form of government, the prime minister's term is undoubtedly uncertain since the house has the

power to remove him at any time with a "vote of no confidence." This might result in a crisis, segregation, or political instability.

- **Overburdening of cabinet functions:** The combination of the legislative and executive branches of government's powers among cabinet members may cause certain ministers to become overburdened with additional responsibilities. The combination of the legislative and executive branches of government will become too much for only the cabinet to handle since it may also make the government ineffectual.
- **Inefficiency brought on by a lack of specialisation:** Lastly, it is crucial to mention that a minister may lack specialisation, which would result in inefficiency in the art of governing in one arm of government, even if it is true that the parliamentary system requires persons to manage both legislative and executive tasks.

Studying Comparisons of Parliamentary Privileges in India with other Nations

Many other nations around the world have also adopted the concepts of parliamentary privileges. Parliamentary Privileges are granted to the Senate and House of Representatives in the United States of America by the Speech or Debate clause in Article 1 of the US Constitution. Equivalent privileges are also integrated with different State Constitutions.

As it was previously discussed, the idea of parliamentary privileges emerged from the institution of parliament during the early years of the British parliamentary system in England, specifically the privileges enjoyed by the House of Commons and House of Lords. As a result, the earlier vague privileges took shape and stabilized in the 19th century with the specific limits prescribed and recognized by the parliament. When compared to other legislatures around the world, the privileges enjoyed by the English House of Commons are frequently thought to be the most extensive. In those nations with constitutions based on the English Westminster system of parliamentary government, parliamentary privileges are a common sight.

Similarly, the Senate, House of Commons, and provincial legislative assemblies all have access to British-style parliamentary privileges in Canada. Roughly comparable parliamentary privileges can also be found in parliaments of contemporary democracies like Australia, New Zealand, Singapore, and South Africa, which were also influenced by British parliamentary privileges.

Judicial Review

The judiciary must act to address the wrongs committed by house members who are abusing their privileges. In the Keshav Singh case ^[5], the Apex Court reached the conclusion that members' privileges are subject to fundamental rights and that, in the event of a disagreement, fundamental rights must supersede.

The Supreme Court also stated that any inconsistency between privileges and fundamental rights would be resolved using a harmonious approach. The judiciary is sufficiently aware that it lacks judicial power over parliamentary matters, but it should still have the authority to decide whether any offense should be dealt with by the court as it sees fit in order to serve the interests of the community.

West Bengal Case: The Speaker of the Assembly granted

two communist MLAs temporary permission to remain within the Assembly boundaries in order to avoid arrest under the Prevention Detention Act. According to the court's ruling, members cannot be granted general immunity from arrest.

The Courts have served as guardians of the Constitution and the fundamental rights of citizens, which were compelled to decide issues despite being intertwined with the privileges, powers, and immunities of the Parliament and concerned with internal Parliamentary proceedings.

Is judicial review not applicable to parliamentary sovereignty?

The superiority of the Parliament in enacting laws is referred to as parliamentary sovereignty. In India, judicial review and legislative sovereignty continue to clash. When it comes to enacting laws and making decisions, the Parliament seeks absolute authority. Additionally, the court seeks complete flexibility in its ability to interpret these laws and, if necessary, declare any statute to be unconstitutional.

On one hand, Parliament asserts total authority over legislative issues. It aims to be the only authority in the nation with the power to make laws and decisions. It doesn't want the judicial framework to get in the way of what it does. On the contrary, the Indian Constitution and the fundamental rights guaranteed by it are protected by the judiciary. The judiciary has a responsibility to ensure that no unconstitutional laws are passed. Hence, it denies that its ability to conduct judicial reviews is limited in any way. As a result, parliamentary sovereignty is subject to judicial review in India. If legislation approved by the legislature or the administration is not in accordance with the Constitution, the judiciary has the authority to declare it invalid.

However, the situation is a little bit different in the United Kingdom. The laws passed by the British Parliament are not exempt from judicial review, but they also cannot be stopped or amended without Parliament's consent. The legislation passed by the British Parliament may be subject to judicial review, but it cannot be ruled unconstitutional or void. The parliament has complete sovereignty and is the only body that can pass laws. The Parliament has the authority to rule on whether legislation is constitutional or not. Consequently, parliamentary sovereignty is subject to judicial review in the United Kingdom. However, courts may only express their opinion on a particular law or order and cannot participate in the process of making new laws.

Parliamentary Privileges

Members of Parliament are entitled to unique privileges and immunities (individually and collectively), which enable them to effectively carry out their duties. Articles 105 and 122 of the Indian Constitution govern these immunities, whereas sections 194 and 212 deal with state-specific issues.

These privileges are Freedom of Speech

Parliamentary members have the right to free speech and expression under Article 19(a) of the Indian Constitution. No member is given responsibility beyond the four walls of the House, and they cannot be discriminated against for expressing their opinions in the House and Committees.

Personal freedom from Arrests

No member shall be arrested in civil cases 40 days both before and after the adjournment of Lok Sabha and Rajya Sabha, and when the House is in session. It also implies that no member shall be detained within the Parliamentary boundaries without the authority of the House to which he or she belongs.

Waiver of Attendance as Witnesses

Parliamentary members are also exempted from having to appear as witnesses.

Lok Sabha and Rajya Sabha Privileges

Right to exclude Strangers

Members of both houses have the authority and right to exclude outsiders who are not representatives of either house from the proceedings. This is one of the most important rights because it ensures fair and independent debate in the house, and if a breach is reported, the penalty will be in the manner of admonition, reprimand, or prison terms.

Right to publish Debates and Proceedings

The Parliamentary Proceedings (Protection of a Publication) Act of 1956 stated that no one shall be liable in any court for any kind of civil or criminal proceeding for the publication of the considerably genuine report of the proceedings of either house of Parliament except that it is proven that the publication of such proceeding was expressly ordered to be voided by the Speaker.

The Houses' Right to Regulate Internal Affairs

Both the Rajya Sabha and the Lok Sabha have the authority to govern their own internal affairs. Article 118 of the Indian Constitution empowers the house to regulate its proceedings, which cannot be challenged in court on the grounds that the house is not following the rules established by Article 118.

Right to punish members and non-members who violate its privileges

In the event of a breach or contempt of the House, the Parliament has the authority to bring someone to justice, whether they are strangers or members of either House. If a violation occurs, the person is immediately expelled from the House. This has been defined as a "keystone of parliamentary privilege," because without it, the house will be scorned and violated, which is critical for maintaining its authority and performing its functions.

Misuse of parliamentary privileges

Multiple cases demonstrate how the Parliament's members abused their individual parliamentary privileges, which stifled democratic viewpoints.

A few are mentioned below.

- The editors and journalists of "the Hindu" were ordered to be arrested in 2003 after they used the words "incensed," "fume," and "high pitched tone" to describe a member's behaviour during an assembly session. The speaker of the Tamil Nadu Legislative Assembly cited this as a violation of the member's privilege. The assembly's speaker said that the ability to exercise his privilege was a blatant example of the doctrine of "sky-high powers." The committee decided to condemn the journalists to prison after consulting with the other

reporters and editors. The principles of natural justice were violated by not even giving the journalists an opportunity to be heard. Because parliamentary privileges were not codified, the Speaker had unrestricted authority to detain journalists, that violated Articles 19 and 21 of the Indian Constitution.

- The next incident occurred in 2017 when the Karnataka High Court arrested and imprisoned the editors of the Kannada tabloids "Hi Bangalore" and "Yelahanka Voice" on the suggestions of the Speaker of the State Legislative Assembly of Karnataka, who claimed that the journalists had accepted for publication of derogatory remarks against the Speaker, which infringed their privileges. Asmita Basu, programme director at Amnesty International India and member of the human rights community, criticized the prison sentences of the journalists and said, "Journalists must have the freedom to write critical articles, and politicians must be able to tolerate criticism," as well as, "If people feel that their name and reputation have been damaged, they can turn to civil defamatory remedies in court."
- In February 2006, the head of the Dance Bar Association Maharashtra was sentenced to 90 days in prison for remarking, that If dance bars were outlawed, we wouldn't allow wives of minister walk around. According to the Legislative Assembly, the statement violated parliamentary privileges, and as a result, the Legislative Assembly has the power to order the member in chief of the Dance Bar Association's arrest.
- In 2019, Nana Patole, the Speaker of the Maharashtra Legislative Assembly, issued an arrest warrant for the person after he created a parody of a speech delivered by Devendra Fadnavis, one of the Assembly's members. A warrant for the man's arrest was issued after it was determined that he had breached the parliamentary privileges of the Parliament's members.

In these select few cases, the Parliament violated the citizens' fundamental rights while suppressing their democratic rights. Because citizens have the freedom to publish and write under Article 19 of the Indian Constitution, positive criticism and comments should not be construed as defamatory statements.

Inconsistencies between parliamentary privileges and fundamental rights

Parliamentary privileges assert that representatives of Parliament are authorized to prohibition of publishing of hearings and reports during the sessions where they are present, along with the freedom of press and speech, but this is in contrast with the Constitutional Right to free expression, that provides that it is a protected right of expressing one's thoughts freely via written text, publishing, visuals, or any other manner. Parliamentary privileges are regarded as independent rights with no reasonable restrictions, whereas Article 19(2) fundamental right is an undisputed individual right with reasonable restrictions.

Due to these conflicts, it becomes a matter of law and judicial interpretation as to which of the two will take precedence in the event that fundamental rights and parliamentary privileges clash. In the course of the discrepancy, the following issues come up:

- Which of the two will take priority if parliamentary

- privileges and fundamental rights clash?
- Can a parliamentary privilege be revoked if it violates fundamental rights?
- Do the courts have the authority to exercise judicial power in cases involving parliamentary privileges?

These are reviewable and interpretable using a number of judgments

Gunupati K. Reddy vs Nafisul Hasan & State of U.P., 1952

Under Article 32 of the Indian Constitution, a writ case was filed urging the Supreme Court to arrest GK Reddy, the magazine's editor, for contempt of court and unlawful detention. As per the petition, he was held by the Lucknow Police after being arrested in Bombay and had to appear before the UP Speaker to defend himself against a penalty of infringement of privilege. The journalist was unlawfully taken in the detention by the Speaker of the Legislative Assembly of Uttar Pradesh and was not even presented in front of the magistrate within one day.

The Supreme Court ruled that an unconstitutional arrest occurred when the arrested individual was not brought before the magistrate within twenty-four hours, violating his right under Article 22(2) of the Constitution.

Anandan Nambiar vs Chief Secretary Government of Madras (1966)

Citation: 1966 AIR 657

The petitioners in this case were parliamentary members who were held in detention in accordance with the 1962 Defence of India Rules. A lawmaker could not be imprisoned to keep him from enjoying his fundamental rights as a legislature when the legislative body he represented was in session, according to the petitioners who challenged the detention order.

The Supreme Court ruled that if someone was being held legally, they cannot demand parliamentary privilege or special treatment above and above that of an ordinary citizen and were subject to being arrested and subject to the same laws as other citizens. A member would not have the opportunity to exercise his right to free expression if a legal order of detention prevented him from attending a session of Parliament.

Presidential Reference

One of the earliest public disputes between the courts and the legislatures broke out in 1964. A private citizen named Keshav Singh was found guilty of contempt of the legislature by the Uttar Pradesh Legislature. By producing and disseminating certain distasteful leaflets, Keshav Singh had violated the privilege of MLA NN Pandey. He was summoned to appear before the Legislature. Later, after receiving a reprimand in the Legislature, he sent a disrespectful letter to the Speaker and behaved badly.

The Speaker issued a warrant authorising Keshav Singh's imprisonment for a week. However, the facts supporting the claimed contempt were omitted from the warrant. Keshav Singh filed a petition with the High Court of Uttar Pradesh asking for the writ of habeas corpus to be issued. His release on interim bail was mandated by a Division Bench awaiting the outcome of the habeas corpus case. The Uttar Pradesh Legislature took an extraordinary step by issuing contempt notices to both the High Court judges who had heard the petition as well as the accused's lawyer.

The High Court judges and the rest of them were ordered to appear before the Legislature in detention, according to a resolution voted by the Legislature. This signalled the start of a noteworthy constitutional crisis. The judges and Keshav Singh's lawyer both filed mandamus petitions the next day. With the exception of two judges, a Full Bench of the Uttar Pradesh High Court passed orders prohibiting the Speaker of the Legislature from issuing warrants and prohibiting the Marshal of the House from carrying out a warrant that had already been issued. In light of the worsening situation, the President of India requested the Supreme Court's view on the pertinent matters by using his discretionary power of a Reference.

A panel of seven judges offered opinions on a wide range of topics related to the debate. The analysis of the Searchlight case was made necessary as a result. The Court, presided over by Chief Justice Gajendraghadkar, gave the law of privileges a whole new meaning, rendering them typically subject to Fundamental Rights and obtaining for itself the authority to decide whether legislative action is lawful and constitutional. It did not, however, have the same weight as a case that had already been decided because it was an advisory opinion. The large percentage of the bench preferred to demonstrate that they were bound by the Searchlight decision by assigning to it the implications that they themselves desired to be drawn from it. After interpreting it in this way, the majority immediately realised that it was bound by the Searchlight ruling.

Below mentioned is the case analysis of the landmark judgment Keshav Singh vs Speaker, Legislative Assembly, 1965.

Citation: AIR 1965 SC 349

Facts

A resolution was passed by the Uttar Pradesh Assembly on March 14, 1964 to administer a reprimand to Keshav Singh, resident of Gorakhpur, Uttar Pradesh and a worker of an opposition party, who had published a pamphlet along with his two colleagues. The pamphlet read- "*Shri Narsingh Pandey ke Kale Karnamon ka Bhandra-Fod*". The contempt of the House and the breach of privileges arose because the pamphlets libelled a congress party's MLA, Mr. Narsingh Pandey, accusing him of bribery and corruption. The act offended the Congress party MLAs including Pandey, hence, they protested to the Speaker claiming, the pamphlet 'violated the assembly and its Members' rights and privileges.'

Keshav Singh along with his two colleagues were to be produced before the House in the capital of Uttar Pradesh for the purpose of receiving a reprimand. The other two colleagues accepted a reprimand on February 19, 1964 and appeared before the assembly. Keshav Singh, however, declined, citing his inability to pay the cost for the trip from Gorakhpur to Lucknow. In the due course, an order to arrest Keshav Singh was passed by the assembly on March 14, 1964. He reportedly refused to be an active participant in the proceedings of the House.

Following the accused's actions, the Assembly approved a resolution and sentenced Keshav Singh to seven days in jail for writing a letter in a way that constituted contempt of the House and for acting improperly in the House. The Marshal of the House as well as the Superintendent of the District Jail in Lucknow were served with a generalized warrant without mentioning the specific circumstances that

constituted contempt. On that same day, Keshav Singh was arrested and held there for seven days.

On 19th March, 1964, the 6th day of his imprisonment, Advocate Solomon filed a petition on behalf of Singh at the Allahabad High Court, seeking immediate release. He argued that the principles of Natural justice were not obeyed as Keshav Singh was abstained from defending himself and that the Assembly acted beyond its jurisdiction to imprison him. The petition was made under Article 226 ^[6] of the Indian Constitution and section 491 of the CrPC. Advocate Solomon argued the case. Based on the arguments and facts, the High Court ordered that Singh shall be released on bail subject to a condition that Singh should show his presence in court at all future hearings. The two-judge bench consisted Justices Nasirullah Beg and G. D. Sehgal.

Madan Mohan Varma, the speaker of the House and a professional lawyer, presumed this as a violation of the doctrine of separation of power. According to him, the order of the High Court of releasing Singh compromised the exclusive authority of the assembly to inscribe a breach of its own privilege. To our surprise, within two days of the order, on 21st March, 1964, a resolution was expressed with a majority declaring that the two Lucknow Bench Judges, learned counsel of Keshav Singh and Keshav Singh himself, Solomon was put in detention before the House to explain their acts.

A conundrum was raised between saving the honour of the Court and contempt of the Assembly. The judges filed petitions to protect their own reputations as well as the reputation of the Allahabad High Court before the HC stating that assembly's resolution violated Article 211 ^[7] of the Indian Constitution. The judges were represented by Advocate Jagdish Swarup. He suggested that the issue must be kept before the sitting judges of the High Court except Justices Beg and Sehgal. For the first time in the history of Indian Legal System, 28 judges sat together to decide upon a case. The unanimous decision of the bench restrained the Government from arresting the two judges and Solomon. The House agreed to the decision and withdrew their arrest warrant. There was a lot of uncertainty and confusion within the police department.

Parallel to this, there arose a chaos in the capital, New Delhi. The information regarding the issue was conveyed to Prime Minister, Nehru by the CM of Uttar Pradesh, Sucheta Kriplani. It was further decided that a presidential reference shall be made in order to make reference to the Apex Court, issues and legal provisions, that are perceived by him (President), to have established or are likely to establish, that are of a specific type and specific public significance that it becomes necessary for seeking the Supreme Court's opinion.

Issues Raised

According to the circumstances, there was a significant dispute between the High Court jurisdiction and the State Legislature (House) on the State Legislature's and its members' rights, privileges, and immunities concerning the HC and HC Judges in the performance of their roles and responsibilities. Under the Recommendation, the Supreme Court was obligated to rule on the following issues:

- The question of competency of the Lucknow Bench of the High Court of Uttar Pradesh to deal with the petition of imprisonment imposed upon Mr. Keshav Singh by the House.

- Whether the contempt of the House was committed by Mr. Keshav Singh, Advocate Solomon, and the two Judges or not.
- The question of competency of the House directing the summon of the two Judges and the Advocate before it in custody and to seek an explanation.
- The question of competency of the Full Bench of the Allahabad High Court to deal with the petitions and pass orders relating to the judges.
- If a High Court judge who reviews a petition against a House's contempt order or a breach of its rights and privileges, or whomever gives a ruling on a petition like this, constitutes House contempt and the House's jurisdiction to punish justices in this situation.

Many international cases and precedents were referred to in detail by the Hon'ble Supreme Court before landing to the following conclusions:

- In general, Lucknow Bench was competent to deal with petitions relating to Habeas Corpus.
- The absence of any materialistic proof that the presentation of the petition was an illegal act establishes that there was no contempt committed by the two judges and Keshav Singh in filing the petitions.
- The House was incompetent to charge the judges without providing them with a hearing. They were also not competent to order judges' custody.
- The power to pass the interim orders was in the hands of the full bench.
- The judge acts well within his power in entertaining the petition of any person against the orders of the House. The House is incompetent to take action against such a judge.

After the Supreme Court submitted its recommendation to the President through the Reference, the bail plea was filed in Allahabad High Court.

Petitioner's arguments

- The House does not possess any penal jurisdiction and it is beyond the power of the House to punish any person for its contempt.
- The detention of the petitioner is illegal since it violates Article 22(2) of the Indian Constitution, even if the House had such power.
- Articles 21 and 22(1), and the principles of Natural Justice were violated by the conviction of the petitioner by the House.
- It was beyond the power of "the Superintendent, District Jail, Lucknow", of receiving and detaining the petitioner based on the issued warrant by the House.
- The House's attempt to award punishment to the petitioner was malicious and motivated by political animosity.

Respondent's arguments

- Article 194(3) guarantees penal jurisdiction to the House and moreover, it is a court of record, it has the right to punish people for the contempt of the House
- Any case under Article 194(3) of the Constitution does not concern the provisions of Part III of the Constitution.
- Seizure of the petitioner's personal liberty is in accordance with the law.

- There is no explicit restriction against the Superintendent of a Jail accepting individuals sent by a relevant authority besides a Court of Law. Thus, the Superintendent of that jail was obliged by law to receive the petitioner and hold him in line with the Speaker's warrant.
- The fact that the individual charged with contempt belongs to a political party other than the dominant party in the House is no evidence that the House behaved maliciously.

Judgment in brief

The Allahabad High Court, following the Supreme Court's opinion to the President, dismissed the case and refused to interfere with the judgment of the House. Furthermore, the contention of Keshav Singh was turned down by HC on the grounds that the concerns stated against the petitioner by the Assembly were not enough to prove the Assembly contempt.

The HC also concluded that the respondent had not breached either Article 21 or the standards of natural justice because the legislature had established the procedures for looking into accusations of privilege breach. The HC made it quite apparent that the district jail's superintendent may execute the Speaker's warrant without violating any of his legal constraints. The High Court reiterated that the fundamental rights in Part III of the Constitution cede to Article 194(3) of the Constitution and that the provisions of Part III of the Constitution are entirely irrelevant to a matter covered under the article.

The HC further held that the petitioner's liberty and freedom were taken away in conformity with the legal process outlined in the later part of Article 194(3) of the Constitution. The petitioner further asserted that the Assembly's decision to commit him was unfair since it was driven by political hatred and resentment. The accuser's membership in a political party other than the one that controls the House could not be the only basis for the claim of mala fides against the body.

The Court of Appeal dismissed Keshav Singh's appeal and declined to establish malice in the Assembly. In rejecting Keshav Singh's plea, the High Court said that whether or not there was contempt of the House in a specific circumstance is a matter only for the House to determine, and the court would not delve into the issue of legality.

Authors' Comments

The intent of the Constitution's drafters was to ensure that law would rule the country, thus it is essential to grant members of parliament specific rights that would allow them to engage in parliamentary discussions and make decisions without interference. Parliamentary privileges are essential for maintaining and defending the dignity of the chamber.

In the Indian Constitution, the idea of parliamentary privileges was taken directly from the British Parliament. The British Parliament developed the idea to shield its members from the King's authority and meddling, not from the country's citizens. The parliamentary authorities consider how the party in power dominates the populace and constitutional rights, be it at the national or state level. Therefore, measures must be such that they to ensure balanced equation between a constitutional right and parliamentary privilege in order to uphold the democratic

principle and improve the efficiency of government.

The members of parliament are granted the privileges for the efficient operation of the legislature. The fundamental tenet of democracy-the protection of citizen rights-will be lost if privileges aren't granted in accordance with fundamental rights. The parliament has a responsibility to uphold all other constitutionally guaranteed rights. They must recognize that power does not corrupt them. This means that general warrants issued by the House in India cannot be shielded from judicial review.

The parliament should only embrace those privileges that are appropriate for our Indian democracy rather than adopting every privilege that exists in the house of commons. Thus, it is frequently determined successfully that in order to determine the privileges, the house cannot simply adopt a British counterpart without first determining if it is appropriate for the Indian Democracy and does not offend the Republic feature of the state.

In light of the fact that the Parliament and members of the Legislative Assembly have frequently abused their privileges, resulting in a direct negative impact on democracy and limiting the voices of democracy. Thus, there ought to be a significant balance between legislative privileges and citizens' constitutional rights.

Parliament has not yet made an effort to codify its privileges. One of the reasons might be that Parliament is concerned about ceding its absolute authority if the codified legislation is subject to judicial review. This interferes with individuals' fundamental rights and is not how a democracy ought to operate. Given that the Supreme Court is aware of the parliamentarians' intent, it should set a timetable for the legislature to codify its privileges in order to prevent future misuse of privileges.

Finally, the current situation has to be changed until privileges are codified and the relationship between privileges and fundamental rights is balanced. One potential approach would be to make the Privilege Committee as neutral as possible. Since this Committee is responsible for recommending whether a violation occurred and what penalty can be imposed on the offender, it must adhere to all natural justice principles.

Conclusion

The evolution of Indian parliamentary privileges, rooted in Vedic assemblies and British colonial legislation, grants collective and individual rights to lawmakers. While privileges foster legislative autonomy and free expression, misuse, as seen in arbitrary arrests, underscores the need for balance with fundamental rights. Judicial review, exemplified in cases like *Gunupati K. Reddy vs Nafisul Hasan & State of U.P.*, ensures accountability. Balancing parliamentary sovereignty with judicial oversight is crucial for upholding democratic principles and the rule of law in India's evolving governance landscape.

References

1. <https://indiankanon.org/doc/647343/>
2. 26 January was chosen as the date for Republic Day because it was on this day in 1929 when the Declaration of Indian Independence (Purna Swaraj) was proclaimed by the Indian National Congress in lieu of the Realm status as a Dominion later instated by the departing British Regime.
3. <https://indiankanon.org/doc/1653644/>

4. <https://indiankanoon.org/doc/1130308/>
5. <https://aishwaryasandeep.com/2021/06/07/keshav-singh-case-commentary/>
6. Article 226, empowers the high courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari or any of them.
7. Restriction on discussion in the Legislature.