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Parliamentary Privilege: An Analysis & Extent of 'Privilege'

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ABSTRACT

The Budget session of the Parliament was shook by the scathing remarks of Member of Parliament, Mahua Moitra on judiciary and the current government. She started of the speech by invoking her “garb of Parliamentary Privilege”. As per the definition given by Sir Thomas Erskine May, Parliamentary Privilege refers to the

“The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.”

Article 105 and Article 194 of the Indian Constitution deals with powers, immunities and privileges enjoyed by the members of the Parliament. These privileges includes the freedom of speech in the Parliament as well as the immunity from any action on anything said or done by him in Parliament or in committee thereof. They also include immunity to a member from proceedings in any court in respect of the publication in any report, paper, votes or proceedings. The House has the power of contempt with respect to any violation to the same.

In this article, I shall delve into extent of the parliamentary privilege and whether the immunities mentioned above shall be competing with judicial review. In the first section of this paper I shall delve into jurisprudential analysis of legal rights and privilege: with reference to Hohfeldian analysis of rights. In the second part of the paper I shall make a comparison of parliamentary privilege with respect to the same followed in U.K and Australia. The most important question to be analyses is whether the immunities provided under Article 105 and Art 194 is contrary to the principle of judicial review or do they work simultaneously?. In this section I shall look into whether parliamentary privilege mentioned in Indian constitution is against the concept of judicial review. In the final section I shall look into whether the concept of parliamentary privilege is in need of repealing or codification? Since the very concept of parliamentary privilege is antithesis to rule of law, I shall examine whether the immunity require a codification.

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I. INTRODUCTION

The word ‘privilege’ can be defined as an advantage which a person has over others. It is an advantage conferred ‘over and above the ordinary law’². Black’s Law Dictionary defines privilege as a particular and peculiar benefit or advantage enjoyed by a person or company or class beyond the common advantages of other citizen, an exceptional or extraordinary power or exemption.

As according to Speaker Lucien Lamourex the parliamentary privilege is that which sets the members of parliament apart from other citizens providing them with an advantage which is not possessed by public at large³. As per the definition given by Sir Thomas Erskine May, Parliamentary Privilege refers to the “The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.”⁴. In technical sense, it has been described as “certain fundamental rights of each House which are generally accepted as necessary for exercise of its constitutional functions.”⁵ But in essence, “the nature of privileges are that they are ancillary to the main functions of the House of Commons. It is also settled principle that some privileges solely rest upon the law and custom of the Parliament, while others have been defined by the statute upon these grounds alone all the privileges whatever are founded.”⁶ Another definition was offered in 1966 by Enid Campbell who defined parliamentary privilege as ‘...those rights, powers and immunities which in law belong to the individual Members and officers of a parliament and the Houses of Parliament acting in a collective capacity’⁷. This law of parliamentary privilege evolved in U.K due to its specific feature that it has its origin as judicial body or else known as the High Court of Parliament. The privileges enjoyed by the members individually include the freedom of speech, freedom from arrest, freedom of access to sovereign and most favourable construction should be placed on all the House’s proceedings. There are other privileges which are included collectively by the House of Commons which are the right to provide for its own proper constitution, regulate its own proceedings, compel witnesses to attend and give evidence and exercise penal

² In Re Miller (1893) 1 Q.B. 327

³ Debates.(Canadian House of Commons), 29th April, 1971

⁴ THOMAS ERSKINE MAY, A TREATISE UP ON THE LAW, PRIVILEGES, PRACTICES AND USAGES OF THE PARLIAMENT, 44 (1844).

⁵ T.G.B. COCKS, ERSKINE MAY’S PARLIAMENTARY PRACTICE, 44(1957)

⁶ id.

⁷ E. Campbell, *Parliamentary Privilege in Australia*, 1, Melbourne University Press, (1966).

jurisdiction⁸.

Article 105⁹ and Article 194¹⁰ of the Indian Constitution deals with powers, privileges and immunities enjoyed by the Members of the Indian Parliament and State Legislative Assemblies respectively. The Constitution has guaranteed wide powers to the members individually as well as to the House collectively. The privileges can be numbered as

- (1) Freedom of speech.
- (2) Freedom from arrest.
- (3) Right to exclude strangers.
- (4) Right to regulate internal proceedings.
- (5) Right to regulate members or Outsiders for Contempt of House.
- (6) Right of House to regulate its own Constitution.

In this paper we will be dealing with the question of freedom of speech given to members of the House as well as the question of judicial review.

II. ORIGIN & JURISPRUDENTIAL ANALYSIS OF PARLIAMENTARY PRIVILEGE

On looking at the origin of the parliamentary privileges, it can be found that it arose at a time of conflict in England between the Monarch and the Parliament. During the reign of King Richard II, a member of House of Commons was condemned to death on the ground that he brought a bill to reduce the expenditure of the Royal household, but it got annulled on the ground of same was rendered in good faith. For the first time it was Sir Thomas Moore in 1523 who pleaded to the then King Henry VIII for the right of the members of the House to speak freely within the House. But instead of considered as a right, right to speak freely within the House was considered as a grace granted the King. It was during the reign of King Charles I that there was an increased struggle between Parliament and Monarch. But it was the Glorious Revolution of 1689, which eventually brought Bill of Rights thus recognising the right of freedom of speech, which eventually became a stepping stone in recognising other privileges. This eventually lead to recognising that privilege is absolutely necessary for Parliament to function effectively and for members to carry out their responsibilities¹¹.

While in India, the Constituent Assembly debated on parliamentary privileges, Hon'ble Dr

⁸ DOD's Handbook of House of Commons Procedure, 7th edn.,(2009)

⁹ INDIA CONST. art. 105

¹⁰ INDIA CONST. art. 194

¹¹ THOMAS ERSKINE MAY, A TREATISE UP ON THE LAW, PRIVILEGES, PRACTICES AND USAGES OF THE PARLIAMENT,44 (1844).

Ambedkar observed, “Now the privileges which we think it fall into two different classes. These are first of all the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty...the privileges which we speak of in relation to Parliament are much wider than the two privileges, mentioned and which relate to individual members. The privileges for Parliament extend for instance, to the rights as against the public. Secondly, they also extend to rights as against individual members. For instance, under the House of Commons’ powers and privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again it is open to Parliament to take action against any individual member for anything that has been done by him which brings Parliament into disgrace. These are very grave matters, e.g. to commit to prison. The right to lock up a citizen for what Parliament regards as contempt of itself is not an easy matter to decide. Nor it is easy to say what are the acts and deeds of individual members which bring Parliament into disrepute”.¹²

Wesley NewComb Hohfield in his seminal book *Fundamental Legal Conceptions as Applied in Judicial Reasoning and Other Legal Essays* contributed to the modern understanding of Rights. He reflected that every legal relation is reduced into rights and duties, instead he noted that rights often include several interests like powers, privileges and immunities¹³. In the scheme of jural relations as mentioned by him, privilege is an opposite of duty and correlative of no right.

“if X has a right against Y that he shall stay off the former's land, the other man, should stay off the land, he himself has the privilege of entering on the land; or, in equivalent words, X does not have a duty to stay off. The privilege of entering is the negation of a duty to stay of.”¹⁴.

Meanwhile power is the opposite of legal disability and the correlative of legal liability. For example “X has the power to transfer his interest to Y, - that is, to extinguish his own interest and concomitantly create in Y a new and corresponding interest”¹⁵.

Immunity is the of disability while liability is the jural opposite to it. An example to it is “X, a landowner, has, as we have seen, power to alienate to Y or to any other ordinary party. On the other hand, X has also various immunities as against Y, and all other ordinary parties.”¹⁶

¹² Constituent Assembly Debates, Vol VIII, p.582 (3rd June, 1949)

¹³ Wesley Newcomb Hohfield, *Some Fundamental Legal Conceptions As Applied In Judicial Reasoning*, 26 YALE L.J.710(1917).

¹⁴ Id

¹⁵ Id at 12

¹⁶ Id at 12

On analysing this examples with that of parliamentary privileges, as mentioned in the Indian Constitution, above interest vested on the members is much beyond 'privilege' as such. On analysis of Article 105(1)¹⁷, the legal interest is in nature of a privilege which has a corresponding correlative of 'no right' of interference on others.¹⁸ While reading through Article 105(2) which provides that no member shall be liable for any proceedings in any Court for anything said or any vote given by him in Parliament, it actually immunises the member from anything said or done by him in furtherance of the immunity conferred. it imposes a correlative disability which prevents any other person from instituting legal proceedings.¹⁹ While analysing Art 105(3)²⁰. This provision gives the 'power' to the Parliament to enact legislations defining the power, privileges and immunities of each House. This 'power' imposes a corresponding liability on every other person to abide by and respect the powers, privileges and immunities of Parliament as defined by law²¹. Therefore, each of the rights mentioned in Article 105 cannot be included in just privilege but rather it is a combination of privileges, powers and immunities.

III. PARLIAMENTARY PRIVILEGE IN U.K.

The origin of Parliamentary Privilege can be dated back to ancient practice asserted by Parliament and the same must be accepted by the Crown as well as the Courts. Parliament began as a judicial body, as the High Court of Parliament. It can be traced back to time of Norman Conquest of England and Curia Regis was formed as a body exercising executive, judicial and legislative authority. Due to its origin as a judicial body, initially the scope of privilege extended only to protecting speeches and debates of members of Parliament from being brought before the Court. After 14th century, Parliament further divided into House of Lords and House of Commons. But the conflict between the Crown and House continued and many of members were imprisoned from time to time. This continued till 17th century which eventually lead to civil war, thus finally lead to the formulating the Bill of Rights thus providing parliamentary privileges. The Parliamentary Privileges Act, 1770 was enacted to determine the extent of Parliamentary Privileges. Only two of the sections 1 and 2 continue to be valid. Section 1 says about the right to sue any parliamentarian for anything he says outside the House, whereas Section 2 deal with immunities extended to parliamentarians Sir Thomas

¹⁷ INDIA CONST. art. 105

¹⁸ Arvind P. Datar, *Hohfeldian Analysis- Application By The Indian Judiciary, A Lawyer's perspective*, J -17,10 SCC (2012)

¹⁹ Id. At 26

²⁰ INDIA CONST. art. 105

²¹ Arvind P. Datar, *Hohfeldian Analysis- Application By The Indian Judiciary, A Lawyer's perspective*, J -17,10 SCC (2012)

Erskine May went into the very nature of Parliamentary privilege.²² Due to its inherent nature of parliamentary supremacy, no institution within its power has the right to declare a legislation is beyond the power of Parliament. When the same is identified as a statute, it has a legally binding nature, then the same can be repealed by a new legislation. In *Bradlaugh v. Gossett*²³, it was said that “House of Commons is not subject to the control of her Majesty’s Courts in its administration of that part of the statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into a Court of Law. A resolution of the House cannot change the law of land. But a Court of Law has no right to inquire into the propriety of a resolution of the House restraining a member from doing within the walls of the House itself something which by the general law of land he had a right to do”.²⁴

Parliamentary privilege in U.K was compared with that of India in some cases. In the case of *Powers, Privileges and Immunities of State Legislatures, In Re*²⁵, Justice Gajendragadkar held that in England, Parliament is sovereign, and it can make or unmake any law, while in case of India, federalism is an important feature of the Indian Constitution and the supremacy of the Constitution is protected by judiciary which eventually preserve the balance of power between its constituent units. It was later in case of *Raja Ram Pal* that this difference between parliamentary privilege in U.K and India was further explained. It was expressed that,

“the English Cases laying down the principle of exclusive cognisance of Parliament, arise out of a jurisdiction controlled by a constitutional principle of sovereignty of Parliament cannot be lost sight of. In contrast, the system of governance is found on the norm of supremacy of the constitution which is fundamental to existence of a federal state”²⁶

Similarly in the case of *Kalpana Mehta v. Union of India*²⁷, Justice Chandrachud says that the fundamental difference between two systems lie in the fact that parliamentary sovereignty in U.K and that of India’s constitutional supremacy. As according to constitutional supremacy which mandates that every institution must be subjected to the principles mentioned in constitution. Since judicial review is the basic structure of Indian Constitution, the exercise of parliamentary privilege is not excluded from the purview of judicial review when a

²² THOMAS ERSKINE MAY, A TREATISE UP ON THE LAW, PRIVILEGES, PRACTICES AND USAGES OF THE PARLIAMENT, 44 (1844) The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals.

²³ (1884) 12 QBD 271.

²⁴ *Bradlaugh v. Gosset* (1884) 12 QBD 271.

²⁵ AIR 1965 SC 745.

²⁶ *id*

²⁷ (2018) 7 SCC 1.

fundamental right is violated or a gross illegality occurs²⁸.

Thus the major difference between Indian and U.K form of parliamentary privileges lies in the supremacy of written constitution in India

IV. PARLIAMENTARY PRIVILEGES IN AUSTRALIA

The powers and privileges of the House of Commons in U.K was adopted by Commonwealth of Australia. Section 49 of the Commonwealth of Australia Constitution Act states:

The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.²⁹

Later in 1987, the Parliamentary Privileges Act was enacted to codify the privileges by the Parliament. And as according to Section 49 of the Constitution, the privileges are a part of ordinary law of the land. The immunity from impeachment and questioning in courts is the only immunity possessed by the Houses and their members. There are two forms of immunity, first there is right to freedom of speech, secondly there is immunity of parliamentary proceedings from questioning in courts. The courts will not question the legality of the decisions made by the House on the ground they did not follow the procedure of the House. The word 'proceedings' was defined in this Act. It includes the giving of evidence before a house, presentation or submission of a document, preparation of a document for the purposes of the House and publishing of such a document³⁰. One of the most important section is that which gives power to Courts to restrict the Parliament to receive evidences, As mentioned in 16(3)

“In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person, or(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly

²⁸ Id.

²⁹ Section 49 of the Commonwealth Constitution.

³⁰ Section 16(2) of Parliamentary Privileges Act, No. 21 of 1987

from anything forming part of those proceedings in Parliament.”³¹

The major difference between Indian and Australian form of parliamentary privilege lies the fact that later one is parliamentary privilege is codified, therefore privileges are therefore a part of ordinary part of law.

V. DOES THE POWER OF JUDICIAL REVIEW EXTEND TO PARLIAMENTARY PRIVILEGES?

Judicial review is the power of the judiciary to review any legislative, executive or judicial action. It is contained majorly in Article 13(2) of the Indian Constitution³². As per this Article, state shall not make any laws which are inconsistent with the fundamental rights. If a state make such a law, the same can be judicially reviewed by Supreme Court under Article 32 of the Indian Constitution and under Article 226 of the Indian Constitution.

The First question to be addressed is what is the extent of parliamentary privilege. It is a very wide right which gives the freedom of speech within the Parliament. A member can make any statement even if it is offensive and can create ill will towards him. No action of defamation can lie against him for anything he said in the House. Moreover the courts have no power to inquire into the validity of proceedings³³

The next question is to be addressed is regarding the limitations of such free speech. On of the limitation to free speech is mentioned in Article 105 itself. Article 105 provides that freedom of speech is subject to constitutional provisions and rules and procedures of Parliament. Another limitation is mentioned under Article 121 of the Indian Constitution. It provides that Parliament cannot discuss the conduct of judges of Supreme Court and High Courts within the House³⁴.

Another question to be considered is the fundamental right to speech and expression is similar to that mentioned under Article 105. The freedom of speech given to members of House is independent of those mentioned in Article 19(1) and its exceptions. Members of the House must be immune from all forms of restrictions and constraints to effectively represent their constituencies in the businesses of the House.

The most important question to be addressed is that are parliamentary privileges judicially

³¹ Section 16(3) of the Parliamentary Privileges Act, No. 21 of 1987

³² Laws inconsistent with or in derogation of the fundamental rights: (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

³³ INDIA CONST. art. 122

³⁴ INDIA CONST. art. 121

reviewable. In case of M.S.M. Sharma³⁵, it was argued that guaranteed Fundamental rights would be applicable to privileges and privileges would be subservient to fundamental rights. It was also contended that right to life and liberty under Article 21 would be affected too. The Supreme Court held that more specific privileges in Article 194 would override the general rights contained in Article 19(1)(a). The Supreme Court took a view that power of judicial review does not extend to parliamentary privileges mentioned under 105 and 194 of the Indian Constitution³⁶. But the Court in this case failed to answer questions relating to Article 21, whether it can override the privileges.

It was later in the case of *In Re Presidential Reference, 1964*³⁷, this question of judicial scrutiny of parliamentary privileges resurfaced. In this case Court said that in a federal state, the Constitution is supreme and this supremacy of the Constitution is protected by an independent judiciary. It was mentioned that immense powers of parliamentary privilege given to members of House are controlled by the provisions of the written Constitution³⁸.

This position was revisited in the case of *Raja Ram Pal*³⁹. In this case 11 M.Ps were caught taking bribes. The Committee of Privileges heard the matter and found all the MPs guilty and they were disqualified. They approached the Supreme Court. The Supreme Court has the opportunity of finally settling the law as regards parliamentary privilege. The Court said the following

“In light of the law laid down in the two cases of *Pandit Sharma* and in the case of *UP Assembly* we hold that the broad contention on behalf of the Union of India that the exercise of Parliamentary privilege cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct. In the case of *Pandit Sharma* the manner of exercise of the privilege claimed by the Bihar legislative Assembly was tested against the “procedure established by law” and thus on the touchstone of Article 21. It is a different matter that the requirements of Article 21 as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in the case of *UP Assembly* which added the enforceability of Article 20 to the fray.”⁴⁰

The Court laid down that privileges may be subject to Fundamental Rights on a case to case

³⁵ *Pandit M.S.M.Sharma v. S.K.Sinha*, AIR 1954 SC 636.

³⁶ *Id* at 34.

³⁷ AIR 1965 SC 745.

³⁸ *Id* at 36.

³⁹ *Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha* JT 2007(2) SC 1.

⁴⁰ *Id* at 38.

basis and the Court reserved for itself the power to review parliamentary privileges. The Court also looked into Article 122 and held that court is prohibited from interfering with parliamentary proceedings on matters of procedural irregularity only. The court further said that “Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament... Any attempt to read a limitation into Article 122 so as to restrict the court’s jurisdiction to examination of the Parliament’s procedure in case of unconstitutionality, as opposed to irregularity would amount to doing violence to the constitutional text.”⁴¹

Thus, it finally laid to rest the discussion as to whether Court has the power to review parliamentary proceedings.

On analysis of various cases with respect to Judicial review of parliamentary privilege, we can analyse the extent the parliamentary privilege. With respect to freedom of speech, it was held in the case of Keshav Singh that “Freedom under Arts.105 and 194 is wider than Art.19(1)(a). If not no need to confer it again in Arts.105 and 194”⁴². With respect to freedom of speech and political defections, it was held in the case of Kihoto Hollohan v. Zachillu that freedom of speech and freedom to vote in the House does not extend to unprincipled and unethical defections⁴³. On analysis of freedom to publish the proceedings of the House, we can find that freedom of press must yield to privilege of House to prohibit the publication of debates and proceedings within the House. It was held that only authorised publications are permitted to publish.⁴⁴ Later As per Article 361 A it was held that no person shall be liable for making substantially true report of any proceedings of either House, except for secret sitting of the House. With respect to matters concerning the right to life and personal liberty, it was held in the case of In Re Presidential Reference that “any procedure employed by the House by which a person is deprived of his life and personal liberty must also satisfy the requirement of Art.21 that it must be just, fair and reasonable”. Similarly, the House does not have power to commit a judge or counsel who is handling the case involving parliamentary privilege. Any such practise would enforcement of their fundamental rights, “The power to punish for contempt does not extend to issuing a warrant to commit a judge who entertains a writ petition for enforcement of the fundamental rights of a citizen challenging the exercise of legislative privilege”. Similarly, with respect to case of counsels it was held in the case of Kesav Singh that “The House cannot pass any strictures or penalties, in the exercise of contempt jurisdiction,

⁴¹ Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha JT 2007(2) SC 1

⁴² AIR 1965 All 349.

⁴³ 992 SCR (1) 686.

⁴⁴ Pandit M.S.M.Sharma v. S.K.Sinha, AIR 1954 SC 636

against a lawyer representing a citizen alleging a breach of fundamental rights arising out of the exercise of a privilege of the legislative Houses”.

VI. CODIFICATION OF PARLIAMENTARY PRIVILEGES

Parliamentary privilege immunizes members of House from ordinary law and judicial scrutiny. At one point it appears that they are acting beyond the rule of law, but if the members are not provided with such a right as parliamentary privilege, there are chances that it affects the efficiency of them in working for their constituencies and their people. In a way parliamentary is beyond rule of law or is antithesis to rule of law. In this situation it is important to talk about codification of parliamentary privilege.

The question relating to codification of privileges arose during the 1920s and it was recommended to codify those privileges. It was argued in Constituent Assembly regarding codification, but it was voted out on the ground that when a new situation arises, it will not be possible to adjust to the same⁴⁵. Hence the Constitution provided for privileges under Article 105 and 194. Article 105(3) and Article 194(3) initially provided that powers, privileges and immunities of each House shall be defined through law and the members shall enjoy the rights as that of House of Commons. This was later changed by the Forty-fourth Amendment Act, 1978, it said that

“In other respect the powers, privileges and immunities of each House of Parliament and of the members and Committees of each House shall be such as, from time to time* be defined by law and until so defined, shall be those of that House of its members and Committees immediately before the Constitution (44th Amendment) Act, 1978”⁴⁶.

Even if the Article said about codification of the parliamentary privileges, still legislature has not made any law regarding codification of parliamentary privilege

Need for codification

1. Conundrum relating to parliamentary privileges and fundamental rights will come to an end- the codification ensure that the parliamentary privilege will be consistent with fundamental rights

2. Extent of parliamentary privilege- the members of the House have the freedom of speech and freedom to cast any vote in the House as mentioned in Article 105 and Article 194 of the Indian Constitution. But all other powers given to members are not codified. Therefore,

⁴⁵ S. L. SHAKDHER, *PARLIAMENTARY PRACTICE IN INDIA* 67 (1972).

⁴⁶ INDIA CONST. art. 105

there is always certain discrepancies relating to the extent of parliamentary privilege. Once it is codified, the privileges and proceeding will be effectively defined. And the inconsistencies relating to voting in the House and discrepancies that may arise due to defection will be finally able to put to rest. Therefore, codification is essential to determine the extent of parliamentary privilege.

3. Judicial review of parliamentary privilege- Judicial review is one of the basic structure of Indian Constitution. It is a cornerstone of Indian legal system. By judicial review, judiciary protect the common people from excesses of legislative and administrative action. In a parliamentary sovereignty, Parliament is supreme and the court cannot review the laws made by the legislature. But in India, we have a written Constitution and hence constitutional supremacy. But still there exists doubt as to whether parliamentary privilege is judicially reviewable by the Courts. So essentially codification will bring to end it

4. Evolution of new privileges- every now and then we can hear about the evolution of new privileges in house. Certain other privileges which have grown out of precedent are

a) Members or officers of the House cannot be compelled to give evidence or produce document in Courts of law relating to proceedings of the House without permission of the House. b) The privilege relating to regulating its own procedure and conduct of business.⁴⁷ Similarly Rule 229, 230, 232 and 233 of Rules of Procedure and Conduct in Lok Sabha can also be statutory recognition.

5. Recommendation of Press Commission of India in 1954 – “It would therefore be desirable that both Parliament or state legislature should define by legislation the precise power, privileges and immunities which they possess in regard to contempt and the procedure for enforcing them. Such a law would have to be in consonance with our constitution and could presumably be challenged, if it appears to be in conflict with any fundamental right. If that happens the position would be clarified by the highest tribunal in land. Article 105 & 194 contemplate of an enactment and it is only during the intervening period that Parliament and State legislature have been endowed with powers and privileges of House of commons”⁴⁸

VII. CONCLUSION

Privilege refers to an advantage one has over another. Parliamentary privilege refers to that privilege, power or immunity which is given individually to members of House and collectively to the House itself. When we went to jurisprudential analysis of privilege, we were able to

⁴⁷ M.A. QURESHI, INDIAN PARLIAMENT, POWER, PRIVILEGES, IMMUNITIES 2, (1994).

⁴⁸ Report of the Press Commission (1954) Part 1 p. 421, para 1096.

understand that every legal right cannot be reduced just to 'rights' and 'duties', but it also includes 'powers', privileges and 'immunities'. Article 105(1) and Article 194(1) of the Indian Constitution refers to 'privilege' of free speech while Article 105(2) and Article 194(2), the rights are in the nature of 'immunities'. As well in Article 105(3) and Article 194(3), the rights are in the nature of 'power'

While making a comparison of parliamentary privileges in India and U.K, we can come to conclusion, the basic difference lies in the fact that India has a written Constitution and Constitution is Supreme. But in England, Parliament is supreme, therefore courts have no power to review the privileges. Therefore, the principle of exclusive cognisance has no power in India.

While comparing with Australian parliamentary privileges, Australia has codified its parliamentary privileges in Parliamentary Proceedings Act, 1987. Thus, codified law is a part of ordinary law of the land. But in India parliamentary privileges is a part of Constitution

Judicial Review of Parliamentary privilege by the Supreme Court and High Court analyses the existence, extent and manner of exercise of parliamentary privileges. But it is grey area relating to the parliamentary privilege in India. Even though there appears to be a settled position relating to parliamentary privilege, the question as to whether parliamentary privilege is judicially reviewable, and extent of privilege and manner of exercise of it is still arguable.

To address these issues there is a need for codification of parliamentary privileges, But just as Mr. Justice Hidayatullah expressed himself against codification by saying, "with a codified law more advantage would flow to persons bent on vilifying Parliament, its members and committees and the courts will be called upon more and more to intervene"⁴⁹.

⁴⁹ KAUL AND SHAKDHAR, PRACTICE AND PROCEDURE OF PARLIAMENT 185 (1979).