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# Power of the Parliament to Contempt v. Fundamental Rights

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## ABSTRACT

*The Constitution of India confers to all the members and committees of the Houses of Parliament with powers, privileges and immunities under Article 105 which provides the right to freedom of speech along with discharging them from other liabilities as mentioned thereof. These are also subjected to the Speaker or Chairman being empowered to punish for its contempt arising from the breach of such privilege. However, since these powers are not codified and may be enacted as defined by the Parliament from time to time, many issues in relation to ambiguities as to what amounts to contempt arises along with whether the Speaker or Chairman exercises arbitrary powers thereby violating the fundamental rights conferred under Part III of the Constitution of India.*

*In this paper, firstly the author will distinguish the major differences that exist between the Indian and British Constitution owing to the non-codification of privileges. Secondly, the role played by the judiciary in dealing with matters arising out of contempt in the Parliament with a special reference to certain landmark judgements that were passed by the Supreme Court in MSM Sharma v Sri Krishna Sinha and Gunnapati Keshavram Reddy v Nafisul Hasan and State of UP while analysing the extent to which such a punishment may be exercised for contempt without violation of the fundamental rights mentioned under Article 19(a) and Article 21 in particular. Thirdly, the author will also observe the changes required in the system in order to dissuade the lack of lucidity that exists in the scope of the power to punish for contempt by providing clarity on the extent of powers of the Legislature and Judiciary.*

**Keywords:** Powers, contempt, fundamental rights, non-codification, ambiguities, limitation.

## I. INTRODUCTION

*Nothing is harder to define than the extent of the indefinite powers or rights possessed by either house of parliament under the head of privilege or law and custom of parliament*

- Dicey

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Parliamentary privileges are entrusted with the members of the Parliament as a measure to perform their responsibilities, without which it would be impossible for the House to maintain its independence of action or the dignity of its position or for the members to discharge their functions<sup>2</sup>. And it is these parliamentary privileges that ensure a parliamentary sovereign in India. It is also important to understand that the meaning of privileges in the form of providing a special benefit is often confused with that of the actual meaning of parliamentary privileges as they constitute an important part of the inherent rights under the constitution that are provided to the members of the Parliament to discharge their functions as members of the supreme legislature and to preserve its dignity and prestige.<sup>3</sup>

This has inevitably resulted in several instances wherein the powers exercised by the Parliamentarians has been considered to exceed their immunities thereby amounting to contempt. It can be noticed that these immunities and privileges that are provided to the members of the Parliament under Article 105 and Article 194 of the Constitution have been highly controversial in several instances that will be elaborated in the paper hereinafter as these immunities have not been clearly defined.

A deeper analysis about the concept of parliamentary privileges in the UK shall be looked into as the Indian Constitution clearly states that until these privileges are defined it shall be the same as the privileges enjoyed by House of Commons.<sup>4</sup> Therefore, the powers of the Speaker or Chairmen to punish a member of the Parliament for contempt may also be used in the same manner as enshrined under the British Constitution. In this way, it is believed that the legislature also acts as a quasi-judicial authority while exercising its contempt power. However, this paper argues that though the British law acts as a guiding factor in this matter, it cannot be applied in its entirety due to the difference in the two constitutions along with highlighting the infamous judgements that outline the misuse of this contempt power by the Speaker or Chairman as the case may be.

This paper will mainly deal with the conflicts that arise from the power to punish for contempt and the freedom of press under Article 19(a) and the requirement of a just, fair and reasonable procedure under Article 21 thereby raising the issue of what among these shall have an overriding effect by elaborating on some landmark judgements passed by the Supreme Court of India. Several steps taken by the apex court, has also been commendable by limiting the powers of the legislature while infringing upon the rights of the judiciary, however on the other

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<sup>2</sup> May: Parliamentary Practice (16th Ed.), Page: 4.

<sup>3</sup> C.V.H Rao, "Privileges and Immunities of Parliament", in A.B Lal, (ed.), *The Indian Parliament* (1956).

<sup>4</sup> Article 105(3) of the Constitution of India, Forty-fourth Amendment Act 1978.

hand the very power to punish for contempt by the legislature is questionable considering the differences in the backgrounds of the British and Indian Constitution.

### **(A) Objectives of Study**

This paper aims at understanding the current position of law regarding the extent of exercising the power to punish the Parliamentarians for contempt by the Speaker or Chairman with a critical analysis of its impact on the enforcement of Article 19(a) and Article 21 in ensuring that the principles of natural justice are adhered to. This leads to the legislature exercising powers to punish that is otherwise confined with that of the judiciary thereby resulting in overlapping or infringement of adjudicating powers. Hence the author also explores the tussle between the two organs of the Government arising from the existence and exercise of such a power. It will also outline the tensions and gaps arising between the constitutions of the UK and India while analysing the definition of privileges and immunities as mentioned under Article 105(3) and Article 194(1).

### **(B) Research Problem**

#### **1) Arbitrary use of legislative power to punish for contempt due to non- codification of parliamentary privileges and immunities affecting fundamental rights.**

Parliamentary privileges are those that are enjoyed by the house collectively and individually by its committees and members, without which they cannot discharge their functions efficiently and effectively<sup>5</sup>. Presently, Article 105(1) and Article 194(1) grant to the Parliament and the State Legislature respectively, the freedom of speech in the House.<sup>6</sup> In India, since these privileges are not defined, the Constitution permits the Parliamentarians to exercise their parliamentary sovereignty by conferring to the privileges provided to the House of Commons in the UK. However, major differences between the laws of the UK wherein the Parliament is the Supreme power becomes inconsistent when applied in India with respect to the exercise of Parliamentary privileges since the Constitution is considered as the fundamental law to the existence of a federal state in order to prevent the organs from destroying the balance of power among the organs thereby imposing several restrictions on the same.<sup>7</sup> Such a parliament thus cannot pretend to have unlimited powers like that of the House of Commons under the ambit of Article 105(3).

When the actions of the members of Parliament are intended to obstruct the proceedings of the

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<sup>5</sup> Subhash C. Kashyap, *PARLIAMENTARY PRIVILEGES IN INDIA*, 1554 (2000).

<sup>6</sup> Art. 105(1) and 194(1), THE CONSTITUTION OF INDIA, 1950.

<sup>7</sup> U.P. Assembly Case, (1965) 1 SCR 413.

house and produce a disturbance for the members, the Speaker of the House has every right to punish for contempt. These powers to punish extend to any conduct of disturbance by outsiders, assault on the members, while performing his duties or any speech published, advertised or libel made against the character of any member also regarded as the contempt of the house. Such a power to punish was provided in order to prevent any misuse of privileges or immunities that were inherent to the members of Parliament. This power entrusted with the Legislature has led to several issues before the Supreme Court of India, if whether or not fundamental rights need to be upheld over parliamentary privileges. In this context a question also arises as to what really amounts to contempt and what all actions may be protected under the umbrella of Article 105.

Article 122 and 212 of the Constitution of India also provide that the courts of the land cannot interfere When the House acts in vindication of its rights and privileges. But since the Constitution is silent on the aspect of the nature and extent of the privileges of the legislature a constant tussle between the judiciary and the legislature may be observed due to the ambiguous limits of the power of the Speaker to punish for contempt. This very aspect had been dealt with in the *In Re Keshav Singh's case*<sup>8</sup> wherein the dispute between the two organs were discussed. This paper will be addressing all of the aforementioned issues arising due to non- codification of the privileges in order to enhance the clarity and protection of the same.

### **(C) Research Questions**

- 1) What are the differences between the constitutional backgrounds of the UK and India?
- 2) How are the fundamental rights interpreted when there is a breach of parliamentary privilege?
- 3) What are the loopholes present in the powers to punish for contempt and how can it affect the enforcement of Article 21?
- 4) What is the extent of immunity that can be claimed by the Legislature from being scrutinized by the courts?

### **(D) Research Methodology**

The research methodology adopted for the work is doctrinal method. It will be dealing with the interpretation of Article 105(3) and 194(1) along with a deep analysis of the historical backgrounds of privileges provided to the Parliamentarians in common law countries with a special reference to certain case laws in India that have sought to provide clarity regarding the

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<sup>8</sup> AIR 1965 SC 745.

interpretation of the same when conflicted with Part III of the Constitution of India.

### **(E) Literature Review**

The review of literature gives an idea about the research carried out by the other researchers in the past. The major part of the literature that exists for the topic is in the form of judicial decisions and articles. The books and commentaries which are there are with respect to the general interpretation of the legislation. The literature is reviewed under the following heads:

- 1) The Power To Punish For Contempt Under Parliamentary Privileges: An Analysis Of The Inherent Limitations<sup>9</sup>

Privileges of the parliamentarians is subject to the privileges and immunities that are provided in the House of Commons, hence this journal paper mainly concentrates on highlighting the major differences present between the Indian and British Constitution and why these difference shall play a role in not applying these guiding factors in the Indian feral system. It also points out the historical reasons for the Legislature being considered to be the highest court of Justice in the UK. The author also contends why the Indian legislature does not possess the power to expel a member from the House on contempt by citing important cases from common law countries.

- 2) The balance between fundamental rights and parliamentary privilege must be re-examined

This article urges the State to re- examine its privileges as the author considers the ‘sovereign people of India’ to have a restricted right to free speech but ‘their servants or representatives’ have an absolute freedom of speech in the Houses. He also contemplates that it was a major mistake to put the Indian Parliament on a par with the British House of Commons thereby urging the privileges to be codified so that they can be absolutely subjected to the scrutiny by the judiciary.

- 3) The Power To Punish For Contempt Of The House: Examining The Constitutional Issues And Conflicts<sup>10</sup>

In this article, the author analyses the conflict between the exercise of this power and the freedom of the press under Article 19(1) (a) of the Constitution of India as well as the requirement of a just, fair and reasonable procedure under Article 21. At the same time, she

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<sup>9</sup> Bedi, Shruti. “THE POWER TO PUNISH FOR CONTEMPT UNDER PARLIAMENTARY PRIVILEGES: AN ANALYSIS OF THE INHERENT LIMITATIONS.” *Journal of the Indian Law Institute*, vol. 51, no. 1, 2009, pp. 79–91.

<sup>10</sup> Faizan Mustafa, *Bring the House up to date*, The Hindu, 2017.

also notes that the Courts have so far failed to extend their own reasoning to its logical conclusion and explore whether the power to punish for contempt is itself suspect, given the difference in the historical backgrounds of the Indian Parliament and the House of Commons. It also explores the tussle between the legislature and the judiciary created due to this power.

#### 4) Parliamentary Privilege and Fundamental Rights

This research paper is based on the questions that, firstly, what has been the judicial approach on the conflict of Parliamentary Privilege and Fundamental Rights over the years? Secondly, is there a balance between Parliamentary Privilege and Fundamental Rights? The researcher has thus analysed various landmark case laws on the conflict of the parliamentary privileges and fundamental rights.

#### 5) PARLIAMENTARY PRIVILEGES IN INDIA

In this journal paper, the author analyses the concept of- Parliamentary Sovereignty and Constitutional Democracy in depth by emphasising on the concept of constitutionalism in India with minimum role of government and maximum governance. The rule of Separation of Power in India is also critically analysed by claiming the rule of equating the Indian legislature to that of the House of Commons to be unsound and that it is nearly impossible to apply the same in India.

## **II. ANALYSIS**

Articles 105(3) and 194(3) stipulate that the Parliament or State Legislatures by law shall define the privileges and immunities in other respects. However, the Parliament or the State Legislatures have not enacted any law in pursuance of this provision so far. Therefore, the powers, privileges and immunities of each House of Parliament and State Legislatures continue to be those of the House of Commons of the United Kingdom Parliament.<sup>11</sup>

### **(A) Distinction between the British and Indian Constitution**

It is an established fact that the UK has an unwritten constitution that derives its powers through a compendium of conventions and usages or customs that have developed in the course of time and history. On the other hand, the Indian Constitution clearly defines the functions and powers of the three organs of the State namely: legislature, executive and judiciary by clearly establishing the relations between them as well.<sup>12</sup>

Another key distinguishing factor that sets the two Constitutions fundamentally apart is that

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<sup>11</sup> Privileges, Practice and Procedure, RAJYA SABHA (Mar. 30, 1993).

<sup>12</sup> Supra note 2 at 43.

Parliament is sovereign in the UK wherein the following three key features may be observed: the Parliament has the right to make or unmake any law whatever, that no person or body recognised by the law of England as having a right to override or set aside the legislation of the Parliament and that the right or power of the Parliament extends to every part of the Queen's dominions.<sup>13</sup> Whereas in India all the three organs owe their origin to the Constitution and are compelled to work within the confines of the same. The observations of the Supreme Court in this regard can be clearly found in the case of UP Assembly case.<sup>14</sup> Thirdly, it can be noted that the House of Lords in England still administers judicial powers by being the 'court of appeal' which unlike in India is not exercised by the House of Parliament as it has very little relevance under the current constitutional scheme. Thus, it may not be wholly appropriate for the Indian Parliament to adopt the concept of privileges from the UK<sup>15</sup> although it has been highlighted as a guiding factor under Article 105(3) of the Constitution.

Similarly every breach of privilege is considered to amount to contempt in the House of Commons and the power to punish for the same is not a substantive power conferred upon legislative bodies but is inherent and ancillary as a mechanism to put an end, by which the legislature can carry out its functions. This is seemed to be stipulated in *Burdett v Abott*<sup>16</sup> wherein the King's Bench decided that "The privileges that belong to them seem at all times to have been and necessarily must be, inherent in them, independent of any precedent, it was necessary that they should have the most complete personal security, to enable them freely to meet for the purpose of discharging their important functions and also that they should have the right to self-protection." The principle based on which these powers were entrusted can be traced to *lex et consuetude parliament* which is a law peculiar to and inherent in the Houses of Parliament of the United Kingdom.

Thus, these powers are considered to be inherent and not recent creations in the dependencies of the crown.<sup>17</sup> But in case of India it is a historical fact that the legislative bodies under the Government of India, 1952 also never possessed any judicial powers and were thus not superior courts on record unlike the British Parliament. Accordingly, the Parliament cannot assume or claim the same status and therefore does not possess the general power to punish. It is also important to mention that the Government of India Act of 1952 and Government of India Act of 1956 also excluded the power to exercise any penal jurisdiction while conferring the powers

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<sup>13</sup> Dicey, *The law of the Constitution* (1959).

<sup>14</sup> Supra note 6.

<sup>15</sup> M.V. Pylee, "Free Speech and Parliamentary privileges in India", *Pacific Affairs* (1962) 11-23.

<sup>16</sup> *East 1* (1811) at 472.

<sup>17</sup> Jagdish Swarup, *2 Constitution of India* (2006).

to legislate regarding privileges.

This has been re-iterated in the case of *In Re Article 143* wherein the Supreme Court observed that “Since in India neither the parliament nor the State Legislature is a court of record, unlike the House of Commons, it cannot claim the privilege to commit a person for contempt by a general warrant. The existence of the fundamental rights and doctrine of judicial review further prevent existence of such a right.” Thus, from the above mentioned contentions it can be said that the legislature is not empowered to claim their right to punish for contempt in totality but can however exercise it in its restricted sense as it becomes indispensable for it to maintain discipline within the Parliament while carrying out its functions.

Canada is also one such example that has modelled its laws relating to parliamentary privileges according to the common law. In the case of *New Brunswick Broadcasting Co. v Nova Scotia (Speaker of the House of Assembly)*, a leading Supreme Court of Canada also observed that “Parliamentary privileges are a part of the unwritten constitutional convention of Canada and are governed by the principle of necessity rather than by historical incident and thus may not exactly replicate the powers and privileges found in the United Kingdom.” Thus, it can be inferred that like India, even though Canada can derive its guidance from the British Parliament it does not completely derive its powers from the UK. However on the other hand many British dominions and colonies have specifically enacted laws for the power to punish for contempt.<sup>18</sup>

### **(B) The power to punish for contempt in conflict with the Fundamental Rights**

The power to punish a member may be exercised by the Speaker or Chairman, however this leads to an issue whether the privileges and the power to punish is subject to Part III of the Constitution of India. This was first seen before the Supreme Court of India in *In Gunupati Keshavram Reddy v. Nafisul Hasan and the State of U.P.*,<sup>19</sup> a citizen had been arrested for contempt of the Uttar Pradesh Assembly under the Speaker’s order without first being produced before a magistrate, as required under Article 22(2)<sup>20</sup>. The Supreme Court found this to be a violation of the citizen’s fundamental rights guaranteed under the Constitution of India and thus struck down the Speaker’s order.

The fundamental right to freedom of speech and expression under Article 19(1) (a) has often

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<sup>18</sup> This reference contains 13 citations: Western Australia, 54 Victoria. No. 4, 1891; Tasmania Parliamentary Privileges Act, 1853; Victoria Act, 1705, 20 Victoria no. 1; Quebec Act, 53 Victoria. C. 5; Queensland Constitution Act, 1867; South Africa, Powers and Privileges of Parliament Act, 1911; British Columbia, 35 Victoria. C. 4, 36; Ontario, 1876, C. 9; Manitoba C.12, 1876; Nova Scotia C. 22, 1876; New Brunswick and Prince Edward Island, Alberta, 1904, C. 2; Saskatchewan, 1908, C. 4; Southern Rhodesia, no. 4 of 1924.

<sup>19</sup> AIR 1954 SC 636.

<sup>20</sup> Article 22, The Constitution Of India, 1950.

come into conflict with the Parliament's right to protect its privileges, particularly in relation to the freedom of the press. Although freedom of the press has not been expressly provided for in the Constitution of India, it has been read into the fundamental right to freedom of speech and expression.<sup>21</sup> A conflict regarding the freedom of press had arisen in *M.S.M SHARMA v Shri Krishna Sinha*<sup>22</sup>, wherein the editor of the magazine Searchlight was charged with contempt of House for publication of certain provisions of the speech that had been expunged by the Speaker. He moved the Supreme Court on the ground that the issue of a show cause notice for contempt amounted to the contravention of his fundamental rights under Article 19(1) (a) and 19(2). The Court therefore considered how Article 19(1) (a) and 21 were to be read with Article 194(3) by establishing a distinction between speech outside and inside the Parliament. It laid down that the speech outside the parliament was to be regulated by Article 19(1) and 19(2) and that the speech inside the Parliament would be regulated by Article 105 and 194(3), thereby interpreting the parliamentary privileges over the fundamental rights by considering the former to be a specific legislation over the latter.

This judgement has been highly criticised simply because the fundamental rights were undermined without considering its practical implications as it forms a part of the basic structure. The court also did not consider the limitation provided in Article 105 and Article 194 that read "Subject to the provisions of this Constitution" which implies that their scope cannot extend beyond or prevail over the fundamental rights guaranteed under Part III. However, J. Subba Rao's dissenting opinion may be applauded as he mentioned that any law that contravened the provisions of Article 19(1) (a) would be void by virtue of Article 13(2) unless saved by Article 19(2). It must be noted that Article 19(2) does not place a restriction on the exercise of the right under Article 19(1) (a) on the grounds of contempt.

This was followed by *In Re Keshav Singh's Case*<sup>23</sup>, which is famously known for being the case with the largest constituted bench in the High Court, held that "When it comes to patent illegality Supreme Court can look into the matter since two arrest warrants were issued against two sitting judges of the Allahabad High Court." Thus, fundamental rights in this case were harmoniously interpreted with the parliamentary privileges thereby making it a critically acclaimed judgement.

Article 118 and Article 208 of the Constitution explicitly provide for a procedure to be followed

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<sup>21</sup> Constituent Assembly Debates, Vol. VII p. 780; *Ramesh Thappar v. State of Madras*; *Brij Bhushan v. State of Delhi* (1950) SCR 605; *Sakal Papers Ltd v. Union of India* (1962) 3 SCR; *Bennet Coleman & Co. v. Union of India* (1973) 2 SCR 757.

<sup>22</sup> AIR 1960 SC 1186.

<sup>23</sup> AIR 1965 SC 745

by the Parliament and State legislature respectively in order to punish someone for a breach of privilege. These rules provide for a Committee for Privileges, which is nominated by the Speaker at the commencement of a new Lok Sabha and thereafter from time to time.<sup>24</sup> Our legislators have the power to be the sole judges to decide what their privileges are, what constitutes their breach, and what punishment is to be awarded in case of breach.

A matter of privilege is either discussed in the Parliament or is referred to the Committee or the Speaker may refer a matter *suo moto* to the Committee.<sup>25</sup> This is followed by recommendations made by the committee or punishments prescribed for the offender as it deems fit.<sup>26</sup> Due procedure of providing an opportunity to the offender is also provided before consideration of the matter by the Speaker who will then present the matter before the house to consider it instead of referring it back to the committee.

However, there exists several loopholes in this procedure that would affect the protection under Article 21 such as firstly, there is no precedent value that is concurred upon for any of the decisions of the Speaker or the recommendations of the Committee on Parliamentary Privileges that can lead to arbitrariness which was observed in *Balasubramaniam v. State of Tamil Nadu*<sup>27</sup> where the Speaker punished the editor of a magazine to an unprecedented three months of rigorous imprisonment for contempt of the House. The court, however awarded the petitioner with a compensation on violation of his right to life and personal liberty.

Secondly, the court may also opt to not apply Article 21 to be protected under the garb of upholding parliamentary sovereignty as was highlighted in the case of *A.M. Paulraj v. Speaker, Tamil Nadu Legislative Assembly*<sup>28</sup>, wherein a member was punished for a an imprisonment of one week for contempt by the previous assembly. On the election of a new assembly, the period of detention was increased to two weeks. This was questioned before the court which held that since in the United Kingdom a new House of Commons has the power to punish a person for contempt of the earlier House of Commons, the same could be done in India but no comment was opined on the change in the period of imprisonment thereby jeopardizing the promise made under Article 21.

In the instant case, the court once again failed to uphold the constitutional scheme and allowed the Parliament to exercise penal jurisdiction like that of the courts without following the just,

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<sup>24</sup> Rule 313, Rules of Procedure and Conduct of Business in the Lok Sabha, (15th edn. , 2014).

<sup>25</sup> Rule 277, Rules of Procedure and Conduct of Business in the Lok Sabha, (15th edn., 2014).

<sup>26</sup> Supra note 6

<sup>27</sup> AIR 1995 Mad 329.

<sup>28</sup> AIR 1986 Mad 248.

fair and reasonable procedure laid down under Article 21<sup>29</sup> by referring to its decision in *M.S.M. Sharma v. Shri Krishna Sinha* wherein parliamentary privileges in accordance with Article 194(3) read with Article 208 was said to not be violative of Article 21. It said: “It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Article 21”.

Lastly, the principle of natural justice of *nemo iudex in causa sua* requires that one cannot be a judge in his own case. However, the Speaker continues to act as the Presiding officer even for contempt committed by a member to who’s House the Speaker belongs thereby acting contrary to the established principle. As a result, Presiding Officers often retain their party affiliations even after being elected as Speaker, albeit with a few exceptions, thereby violating the fundamental rights of the accused under Article 21.

### **(C) Distinction of Extent of power to punish of the legislature and judiciary**

As it is already known that the Constitution does not allow the discussion in the Parliament about the conduct of any judge of the Supreme Court or the High Court in the discharge of his duties. Article 122 and 212 also prevents the court from enquiring into the proceedings of the parliament provided it happens in the floor of the House only.<sup>30</sup> As a result of which, contempt in the Parliament is usually regulated by the Legislature that assumes the responsibility of possessing judicial powers due to the ambiguous limits imposed on the Speaker of the House thus intervening with the powers of the Judiciary. However, this seems to have been clarified in the *Keshav Singh case*<sup>31</sup>, wherein Keshav Singh had received a bail by two judges who had previously been accused of breach of privilege. But since the Assembly was not satisfied by this judgement, two arrest warrants were issued against the sitting judges to be brought in custody before the House to explain why they should not be punished for contempt of the House. A stay order was passed by the High Court of Allahabad which was later referred to the Supreme Court under Article 143 by the President. The court upheld that the Courts could intervene the legality of the committal in proper proceedings.

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<sup>29</sup> 4 *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

<sup>30</sup> *Rajarampal v Speaker*, (2007) 3 SCC 184.

<sup>31</sup> *Supra* note 6

Justice Ganjendhragadkar further explained that since the House of Commons always held judicial powers as a superior court of record, any warrant issue by the same would not be subject to scrutiny due to its historical relevance. However, Legislative Assemblies have never discharged any judicial functions and their historical and constitutional background does not support their claim to be regarded as Courts of record in any sense. Thus, no House in India can claim immunity from scrutiny of the general warrants issued by it by Courts.<sup>32</sup>

It was also held that Article 194(3) cannot be read in isolation and Article 211, 226 and 32 limits its scope and that the question of determining the construction of Article 194 with respect to the nature, scope, and effect of powers of the House ultimately rested with the judiciary of the country. And that Article 212 does that affect the power of the court to interfere in case of patent illegality as mentioned above and that its restricts the courts from interfering only in the proceedings of the House.

This judgement surely imposed a barricade on the arbitrary powers that were exercised by the Speakers mainly violating the Fundamental rights of the accused , however the very fact that the Indian Parliament can be distinguished from the House of Commons on the ground that the former has never been the equivalent of the Court also leads to the conclusion that its power to punish for contempt is itself a suspect and can therefore never exercise similar powers as that of the House of Commons in its entirety.

#### **(D) Conclusion**

Non codification of Parliamentary privileges is the root cause for the conflicts that have been raised above due to which chaos regarding whether or not the British concept of parliamentary privileges can be applied or not have been faced several times. However, it can be inferred from the above analysis that the Indian Legislature cannot claim many privileges of the House of Commons such as the privilege to pass acts of retainer and impeachments or the privilege to have at all times the right to petition, counsel or remonstrate with the Sovereign, which owe their existence to the House of Commons' original status.<sup>33</sup>

In a democratic country like India, it is necessary for its citizens to understand that the Constitution is the fundamental law of the country and hence it is the ultimate supreme and sovereign unlike the British wherein the Parliament is the sovereign. The very oath of allegiance taken by the Legislative authorities to the Constitution is proof enough that they derive their powers and authority from the Constitution itself to whom they owe their

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<sup>32</sup> 6 V.N. SHUKLA'S CONSTITUTION OF INDIA, 623, (Mahendra Prasad Singh ed., 11th edn., 2008).

<sup>33</sup> H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, 345, (5TH edn, 2011).

allegiance. More importantly, even though Article 105(3) and Article 194(3) expressly obligate the legislature to enact a law codifying its privileges and laying down the procedures for its exercise & punishment for breach, no such efforts have been made till date.

Thus, the need of the hour is the codification of the privileges and immunities<sup>34</sup> as recommended by The Constitution Review Commission headed by Justice M.N. Venkatachaliah which mentioned that: The privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and State Legislatures. It should not be necessary to run to the 1950 position in the House of Commons every time a question arises as to what kind of legal protection or immunity a Member has in relation to his or her work in the House.<sup>35</sup>

Legislative privileges also have an adverse effect on the fundamental rights of the accused which has been tampered upon in several instances.<sup>36</sup> Due to which the legislature has never been vested with adjudicating powers as political affiliations may hamper a free and fair administration of justice.

And thus, it is for this reason that the legislature should be provided with restricted powers to maintain discipline within the House and in case of conflicts beyond their powers, the courts shall look into the matter. It is also contented that these restricted legislative powers should be subject to Part III of the Constitution and that no aspect of Article 21 in specific should be tampered upon thereby compensating on the standard of fair, just and reasonable procedure as is followed by the Courts.

The restrictive interpretation of the Supreme Court holding freedom of speech subject to legislative privileges is not in tune with modern notions of human rights and there is an urgent need to have a fresh look at the vexed question of freedom of press *vis-à-vis* legislative privileges. The tension arising regarding the protection of fundamental rights can only be solved by either constituting an independent mechanism to investigate into an alleged breach of privileges and contempt of the House in accordance with the principles of natural justice as it is not only important for the privileges to be vested with the Parliamentarians to discharge their functions efficiently but also a rational form of redressal should be established in order to ensure the protection of the same by an unbiased system.

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<sup>34</sup> V. Vijaya Kumar, A need for Codification, 45th Annual Conference of Indian Political Science Association; Vinod Sethi, Press and the Parliament, 41(4), THE INDIAN JOURNAL OF POLITICAL SCIENCE, 657, 664, (December, 1980).

<sup>35</sup> Report of The National Commission To Review The Working Of The Constitution.

<sup>36</sup> Supra note 19.

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#### **Books:**

1. The Constitution of India -Bare Act

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