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Original Article

Comparative Analysis of Parliamentary Privileges in UK and India: An Overview

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Abstract

When the British departed from India in a form of hand-downs India inherited and kept in its independent wake of political system as already established in the British India. The Preamble to the Constitution of India declares, India to be a 'Sovereign Socialist Secular Democratic Republic' and the form of democracy entrenched is 'Parliamentary Democracy' in India and the nature of the Parliament so accepted to be a part of the Government as its salient features are interesting to note. Even though the parliamentary form of democracy as envisaged in India is one which has somewhere its roots in British Parliamentary form of democracy, what sets India and Britain different is the existence of the written Constitution in India and a lack thereof in UK. The lack of a written Constitution essentially for technical purposes can be deemed to say that the powers of the Parliament in UK are undefined and exhaustive while that of the Indian Parliament depend and are subject to the provisions of the Constitution of India. The restrictions on the parliament of UK, as can be inferred from the above discussion, are mainly self-imposed in view of the developments around the world and within UK due to the enactments as per world standards. In case of India, even though self imposed regulations and limitations are possible by way of the rules of procedure that Indian Parliament formulates from time to time, all are subject to the provisions of the Constitution.

Keywords: Parliamentary Privileges; Democracy; Sovereignty; Political; Rights.

Introduction

Having its roots in British Common Law and practices, it is no surprise that the parliamentary sovereignty as was prevalent in Britain came to have some effect on the Indian Parliament too. For India that was under the British rule, it is important to understand through the observation of Hon'ble Apex Court that "Under the English Constitution the British Parliament with its legislative authority in the King and the two Houses of Parliament is supreme and its sovereignty cannot be challenged anywhere. It has no written Charter to define or limit its power and authority. Its powers are a result of convention but are now recognized as completely absolute, uncontrolled and unfettered [1]."

In this backdrop, having special reference to the British political system and the changes and developments it has seen since it became a part of the European Union especially post the enactment of The Human Rights Act, 1998 as to how the colour of 'Parliamentary Sovereignty' a concept strongly held as the basic character of British Parliament has seen a shift in these times, and the concept of 'parliamentary privileges' highly endeared by British as well as Indian Parliament and the nuances thereof shall be discussed in this assignment. It is

endearing to note how parliamentary privileges indeed to an extent flow from parliamentary sovereignty. The nature of Indian parliament and its struggle to retain some form of parliamentary sovereignty as a mid-way of synthesis between the British and American Parliaments, and the struggle and tussle between Judiciary and Parliament to maintain some sort of supremacy in India eventually accepting a common ground of consensus in admitting that the Constitution is supreme, becomes the subject matter of this assignment. Further treatment shall be given to the parliamentary privileges as envisaged in Articles 105 and 194 of the Constitution and the judicial and parliamentary approach to the same. A comparison ought to be drawn between the British and Indian systems of parliament and the influence of American political systems on India.

Parliamentary Sovereignty

Parliamentary sovereignty, a concept entrenched in some parliamentary democracies symbolises that the parliament or the legislature 'has absolute sovereignty and is supreme over all other government institutions, including executive or judicial bodies' [2]. Primarily, 'parliamentary sovereignty is a principle of the UK constitution. It makes Parliament the supreme legal authority in the UK, which can create or end any law [3].' This doctrine which in its most basic sense says that 'the courts will give effect to legislation passed by the Parliament on any subject matter, even if it is 'unconstitutional', is not unique to the UK. It applies in common law based New Zealand which – like the UK – does not have a formally entrenched written constitution (though a 75% majority in a referendum is required to certain aspects of the electoral system). It also applies to Finland, Sweden and the Netherlands [4].'

What is interesting to note here is the factor of lack of prowess in the Constitution as the supreme entity in a sovereign democratic state, like in cases of USA and India, and a complete shift in power due to lack of a strong (written) Constitution in essence, that gave rise to this concept, where the law making body usurps all sovereignty. This statement does not imply that the countries with parliamentary sovereignty have no Constitution, as it is a settled understanding that even United Kingdom without a written Constitution has an '*Un*written Constitution' in the form of Constitutional Conventions being followed a part of which mostly contain statutes passed by the Parliament itself. As such, 'the UK Constitution is often described as 'partly written and wholly uncodified' [5]. Yet in today's change in the role of state as a 'welfare state' to say that parliamentary sovereignty in excess of basic constitutional principles exists in these nation states would be a misnomer.

To explore and have a better understanding of the concept of parliamentary sovereignty, the best model of parliamentary sovereignty, as it has existed; United Kingdom shall be briefly studied in the foregoing paragraphs. How Parliamentary sovereignty came about and how it persists today shall be the discussion.

United Kingdom and Parliamentary Sovereignty

In the United Kingdom (UK), the parliament includes The Crown, The House of Lords and the House of Commons. 'Parliamentary sovereignty was a legal rule that specified the legal force of the statutes [6].' In other words: '*Whatever the Queen-in-Parliament enacts as a statute is law'* [7].

Inferences drawn by Barber have been summed up by him as; *firstly*, 'no institution within the Constitution has the capacity to declare that a statute is beyond the power of Parliament. Once the Court or anyone else operating within the legal order-has concluded that a document is a statute, it is obliged to treat that document as legally binding, unless it has been repealed by later legislation [8].'

Secondly, 'when there is conflict between an older and a newer statute, the resolution of this conflict must give legal force to the newer statute-a resolution which may require a court to find that elements of the earlier statute are impliedly repealed [9].' According to Barber, 'parliamentary sovereignty was a legal rule and, like other legal rules, its interpretation was a matter for the courts' [10].

Furthermore, *thirdly*, an 'inference was drawn by constitutional scholars: the Court's inability to rule that a statute was beyond the power of Parliament, coupled with the rule of implied repeal, entailed that Parliament could not effectively impose substantive limits on itself. A statute that purported to deny Parliament the power to legislate in a specified area would be impliedly repealed (or could be expressly repealed) by any later statute concerning the same matter [11].' Or in the words of Prof. A.V. Dicey, "In theory Parliament has total power. It is sovereign [12]."

The Evolution of Parliamentary Sovereignty in UK

To say that the British Parliament is sovereign in the classic sense would become a moot point in the light of developments in the political institutions therein. British Parliament has been the constant factor in UK since 1215 AD and at the same time has been the most dynamic one too. From a stage of usurping endless powers, it has arrived at a stage where there have been self-imposed or lateral limitations on the sovereignty of parliament.

Rather, most importantly, when UK became a part of the European Community i.e. the European Union, to a great extent the constitutional principle of parliamentary sovereignty was bound to be diluted. With the European Communities Act, 1972, UK voluntarily conceded and agreed to Section 2 (4) of the Act which asserted that 'statutes shall be construed and shall have effect subject to the foregoing provisions of this section'- that is, subject to the incorporation of European law into the British legal systems.'

In R. (Factortame Ltd.) v. Secretary of State for Transport [13] popularly known as *Factortame* have its roots that can be traced back from the time when UK joined the European Union in 1972 by way of European Communities Act, 1972. Initially when the Act's legality was challenged on the ground of it being violative of EU standards in lieu of discrimination on the ground of nationality of EU member states, by the time the matter reached the House of Lords it was held by them that the prayer of interim injunction pleaded by the petitioner (Factortame) could not be granted as no injunctory relief could lay against the Crown. Further, the Act being an Act of Parliament in a country where the Parliament was sovereign, on the question of what would prevail if the national law came in contact with the EU law; the matter was referred for the ECJ (European Court of Justice). ECJ, undoubtedly, gave the verdict that in case of conflict between EU Community law and the national law, the community law would prevail.

Thus, when the matter came back to the House of Lords for their final verdict, in consonance with the European Communities Act, 1972, as an unprecedented move, the national legislation was invalidated and the Community law was thus to prevail. And thus indirectly, the infamously sovereign Parliament was made subject to the European Community.

The effect of *Factortame* was revolutionary in the words of Sir William Wade. He argued 'that the judges had departed from Parliamentary sovereignty without enjoying the legal authority to make this change'. The rule of Parliamentary sovereignty could not be changed by Parliament and could not, as a matter of law, be departed from by the courts [14].

But with *Thoburn v. Sunderland City Council* [15], there has been a constructive change in the approach towards judicial interpretation where an understanding has been reached by the UK Courts that the legal sovereignty of UK parliament can elegantly reconcile with that of the pragmatic supremacy of the EU law. EU law takes priority over an Act of Parliament unless the latter is specifically contrary to the former which seems 'notional'.

This change of status from unflinching sovereignty to a sovereignty limited by conditions is a dominant characteristic of the parliamentary sovereignty enjoyed by UK parliament. Furthermore, with the enactment of Human Rights Act, 1998, there is a further conditional limitation on the parliament where it cannot enact anything that might be in contravention to the said Act. The Human Rights Act, 1998 gives primacy to many provisions of European 'Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950' [16].

According to Prof. Jain, 'politically, however, Britain has a responsible government with an elected House of Commons which reflects contemporary public opinion, social morality or consciousness. Parliament does not therefore ordinarily do anything which a large number of people oppose. But from a legal, and not political, point of view there is no fetter or restraint on the British parliament to make any law. Whatever Parliament enacts as law is law and its validity is not subject to any higher principles or morality, national or international law [17].'

This line of argument becomes important in the light of arguments where certain jurists opine that the UK can at anytime revoke the laws imposing sanctions on its sovereignty. But, considering Prof. Jain's opinion of UK being a responsible government, such a power indeed is left to be one of a moot point fit for coffee table discussions.

India and Parliamentary Sovereignty

The Preamble of the Constitution says, *'We the people of India, having solemnly resolved to constitute*

India into a Sovereign Socialist Secular Democratic Republic. In our Constituent Assembly this twenty-sixth day of November, 1949, do hereby Adopt, Enact and Give to ourselves this Constitution' [18]. Hereby the Constitution is clarifying 'beyond all shadow of doubt that sovereignty under the Indian political system vests in the people' [19]. But this divisible sovereignty is impracticable and a mere 'abstraction' [14]. 'Under the provision of universal adult franchise, the people exercise their sovereign power while casting their votes to elect representatives to the popular House of the Union Parliament. And, the Parliament becomes the people's institution *par excellence* through which the sovereign will of the people finds expression' [21].

'Parliament exercises sovereign power to enact laws. No outside power or authority can issue a direction to enact a particular piece of legislation. Prof. Jain remarks, 'Contrasting the British parliament with a legislature like the Indian Parliament, Dicey called the former as "sovereign" and the latter as "sub-ordinate" or non-sovereign. These terms are misleading as they create a false impression that the Indian Parliament is subordinate to some external authority or that India not yet an independent country

Unless there is an express or implied restriction on the Parliament's legislative prowess as provided in the Constitution, the Parliament is free to legislate on any issue or topic, beyond its 'territorial operation' [22], retrospectively or prospectively, subject to the provisions of the Constitution, including Part III.

'If a law is struck down by the courts as being invalid for an infirmity, Parliament can cure the same by passing another law by removing the infirmity in question.' 'A law passed by Parliament can neither be invalidated on the ground of non-application of mind nor that of *mala fides*. *Mala fides* or ulterior motives attributed to Parliament in making a law within its competence can never make such law unconstitutional [23].'

As such, the understanding of sovereignty of Parliament in India is derived from the people and the Constitution, in the spheres marked by the Constitution. Today, by sovereignty we mean "popular sovereignty" and not "parliamentary sovereignty" [24].

Parliamentary Privileges

On 4th January 1642, King Charles I entered the House of Commons to arrest 5 members thereof for high treason. But those five had fled before the King reached. When the King inquired about them from the Speaker of the House, the above image is the representation of the dialogue that took place between them. The Speaker William Lenthall chose to uphold the parliamentary privileges and the King left without any adverse action and since then no monarch has entered the House of Commons, since then.

According to Thomas Erskine May, "***Parliamentary privilege*** is the sum of certain rights enjoyed by each House collectively and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals [25]."

Parliamentary privileges were first claimed centuries ago when the English House of Commons was struggling to establish a distinct role for itself within Parliament [26]. In the earliest days, Parliament functioned more as a court than as a legislature, and the initial claims to some of these privileges were originally made in this context [27]. These privileges were found to be necessary to protect the House and its Members, not from the people, but from the power and interference of the King and the House of Lords [28]. Over time, as the House of Commons gained stature and power a deliberative assembly, these privileges were established as part of the common law of the land [29].

Parliamentary Privileges and UK

'Centuries ago, the British House of Commons began its struggle to win its basic rights and immunities from the King. The earliest cases go back to 14th and 15th centuries when several Members and Speakers were imprisoned by the King who took offence to their conduct in Parliament, despite the claims of the House that these arrests were contrary to its liberties [30].' The need was strongly felt to resist the 'stronger will of the sovereign' in order to secure certain rights for the House. 'Elected Speaker of the House of Commons in 1523, Sir Thomas More was among the first Speakers to petition the King to seek the recognition of the certain privileges of the House [31]' a trend which became a fixed practice by the end of the 16th century.

The struggle for the supremacy over parliament continued between the House of Commons and the Sovereign (Monarch). Privilege was unable to prevent the detention or arrest of Members at the order of the Crown. 'On several occasions in the early 17th century, Members were imprisoned without trial while the House was not sitting or after the

dissolution of Parliament. In 1626, Charles I arrested two Members of the House while it was in session and, in 1629, judgments were rendered against several Members for sedition. These outrages by the Crown were denounced after the Civil War and in 1667 both Houses agreed that the judgment against the arrested Members had been illegal and contrary to the privileges of Parliament [32].'

'In 1689, the implementation of the Bill of Rights confirmed once and for all the basic privilege of Parliament, freedom of speech [33.' The Bill of Rights which contains the relevant legislation was passed by Parliament in December 1689 and laid down the template for today's system of government by enshrining in law the monarch's requirement to rule with the consent of the people [34]. Article 9 of the said Bill of Rights stated:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament [35]."

Thus the Bill of Rights once and for all settled the position vis-à-vis the freedom of speech in parliament laying strong foundations of parliamentary privileges.

Of the several privileges, the most controversial has been the privilege of the House of Commons to punish for its contempt.

In regard to the privilege claimed by the House to punish for contempt, it is necessary to point out that there is a well-established convention recognised by the English courts that contempt of either House is in practice within its exclusive jurisdiction, since the facts constitution the alleged contempt need not be stated on the warrant of committal [36].

But the extent and borders of privileges stayed undefined. In the late 17th and 18th centuries, there were numerous cases to test the extent of privileges of Parliament in UK. Sometimes, it even extended to servants of the Members, their properties, etc. But as the same caused an obstruction to the ordinary course of justice, the same was sought to be curtailed by law. Thus privilege came to be recognised as only that which was absolutely necessary for the House to function effectively and for the Members to carry out their responsibilities as Members.

With the passage of time, the House of Lords and the Commons acknowledged that there was a need to establish balance between the need to protect the essential privileges of Parliament and at the same time to avoid any risk of undermining the interests of the nation. Thus, in 1704, it was consciously agreed by the Houses that neither House of Parliament had any power, in the manner or vote or declaration, to create for themselves any new privileges not warranted by the known laws and customs of the Parliament. Since then, no new privilege, beyond the ones already petitioned for by Speakers or already established by precedent and law have been claimed by the Parliament.

The Parliamentary Privilege Act, 1770 was enacted by the UK Parliament. Currently only two of the Sections of the Act stay valid being Sections 1 and 2. In section 1, the right to sue any Parliamentarian for matters concerning other than what may be encompassed in his function as a parliamentarian are covered and he is at par with a common man. In section 2 of the Act, the immunity is provided in the following words concerning parliamentary privileges:

Provided nevertheless, that nothing in this act shall extend to subject the person of any of the knights, citizens, and burgesses, or the commissioners of shires and burghs of the House of Commons of Great Britain for the time being, to be arrested or imprisoned upon any such suit of proceedings [37].

To determine the limits of parliamentary privileges, there happened a plethora of cases in the nineteenth century in the UK, with the most famous case of *Stockdale v. Hansard* [38]. In 1836, a publisher by the name of John Joseph Stockdale sued Hansard (the printer of the House of Commons) for libel on account of a 'report published by order of the House'. 'Despite numerous resolutions of the House protesting the court proceedings and the committal to prison of Stockdale by the House, the courts refused to acknowledge the claims of the House because it has not been proven that the claimed privilege existed. In the end, the situation was partially resolved by the enactment of the Parliamentary Papers Act of 1840, which gave statutory protection to papers published by order of either House [39].'

The British House of Commons now takes a more narrowly defined view of privilege that was formerly the case, with the emphasis being placed on parliamentary proceedings [40]. In 1967, the Select Committee on Parliamentary Privilege accepted the need for radical reform of the law, practice and procedure relating to privilege and especially contempt, with a modus of bringing simplification and harmony with present day thought. The Committee further expressed conviction that the recognised rights and immunities of the House must be enforced by the courts as part of the laws of the land. Even through the House took notice of the

Report, it was never adopted. In 1977, the Committee of Privileges re-examined the meaning of privilege and contempt, and the general thrust and conclusions of the 1967 were reiterated and this report was later adopted by the House. The Committee recommended that the application of privilege be limited to cases of clear necessity in order to protect the House, its Members and its officers from being obstructed or interfered with in the performance of their functions [41]. After about two decades of the acceptance of the Report of 1977, a Joint Committee on Parliamentary Privileges was constituted to examine parliamentary privilege. This committee made a number of recommendations including calling for the codification of various matters of privilege. Even though the Report was debated upon in Commons, it was never adopted and no legislation has yet been passed by the parliament in this regard.

As recent as 2010, the UK had again faced a matter concerning parliamentary privilege concerning three Labour MPs Elliot Morley, David Chaytor, Jim Devine and a Tory Peer Lord Hanningfield who had been charged with 'false accounting over their expenses claims' [42]. The biggest defence all four of them pleaded was of 'parliamentary privilege'. But the UK Supreme Court rejected their argument and held that they were not entitled for protection as per parliamentary privileges in the matter titled *R v. Chaytor & Others* [43]. Before the Crown Court their conviction was determined for certain periods of incarceration and compensation to be paid, respectively.

Thus, in brief, the concept of Parliamentary Privileges, which found its ground in UK, has seen an enormous amount of change for the better or for the worst. At one hand, it gives an edge to the Parliamentarians over the common folk and on the other it makes them duty bound and responsive to the needs of the common folk.

India and Parliamentary Privileges

For a democracy based on the mantel of Universal Adult Franchise and free and fair elections, it becomes necessary that the elected representatives of the popular sovereign are able to perform their functions without fear or favour. As such, by the time, the British left India, the parliamentary privileges as enjoyed by the UK in its parliament, was adopted into the bodice of the Indian Constitution. Today, Articles 105 and 194 of the Constitution that set forth the existence of parliamentary privileges, have their roots directly in the parliamentary privileges as established in the UK.

From a bare reading of the above mentioned provisions, it is clear that the provisions regarding the parliamentary privileges to members of State Legislatures is *mutatis mutandis* the same as those of members of Parliament as provided under Article 105. Hence a discussion pertaining to either one would suffice as a discussion befitting the other also.

Articles 105 and 195 of the Constitution of India set out the powers, privileges and immunities of Parliament and its Members read in conjunction with Articles 122, 361A etc. They are freedom of speech in Parliament [44], immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof [45], immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings [46]. Courts are prohibited from inquiring into the validity of any proceedings in Parliament on the ground of an alleged irregularity of procedure [47]. No officer or Member of Parliament empowered to regulate procedure or the conduct of business or to maintain order in Parliament can be subject to a court's jurisdiction in respect of exercise by him of those powers [48]. No person can be liable to any civil or criminal proceedings in any court for publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice [49]. This immunity is also available for reports or matters broadcast by means of wireless telegraphy [50]. This immunity, however, is not available to publication of proceedings of a secret sitting of the House [51].

There are two broad margins under which the powers and privileges can be grouped. The first is parliamentary privileges enjoyed by the members *individually*, which includes the freedom of speech, freedom from arrest etc., and the second being the privileges enjoyed by the House *collectively*, which includes the 'right to publish debates and proceedings and the right to exclude strangers from the house'.

Article 105 (1) provides that subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament [52]. This freedom of speech is broader and beyond the one guaranteed under Article 19 (1) (a) and is immune to Article 19 (2), but subject to provisions like Articles 118, 122, 212 etc. The freedom of speech guaranteed to a Member of Parliament or

to those of State Legislatures is absolute in comparison to the one guaranteed to the rest of the citizens of the country.

Article 105 (2) contains two parts of which part one says that no Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof and the second part provides that no person shall be liable in respect of the publication made by or under the authority of either House of Parliament or any report, paper, vote or proceedings.

Article 105 (3) further contains two parts of which part one says that in other respects the powers, privileges and immunities of each House of Parliament, and of the Members and the committees shall be such as may from time to time be defined by Parliament by law, and the second part says that until so defined, the powers and privileges shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978, which is nothing but a fancy way of saying that the privileges shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and committees at the commencement of the Constitution. Accordingly whenever a question arises with regard to the availability of a privilege, it becomes necessary to ascertain the powers, privileges and immunities of the House of Commons as on the 26-1-1950 [53].

The Constitution (44th Amendment) Act, 1978 made some cosmetic changes in Articles 105(3) and 194(3) (w.e.f. 20-6-1979) but the substance remains the same [54].' In India, some legislative privileges are expressly mentioned in the Constitution while the others are recognised in the Rules of Procedure and Conduct of Business in Lok Sabha framed under its rule-making power [55].

Privileges Expressly Conferred by the Constitution

Freedom of Speech

The essence of parliamentary democracy is a free, frank and fearless discussion in Parliament. To enable members to express themselves freely in the House, it is essential to immunize them from any fear that they can be penalized for anything said by them within the House [56]. Art. 105 (1) provides for freedom of speech for parliamentarians [57] and Art. 105(2) provide immunity to them from courts for anything said or any vote given in parliament [58].

The Rajya Sabha has decided that a Parliament member cannot be questioned in any court or any place outside the Parliament for any disclosure he makes in Parliament. The reason is that if the questioning is permitted, it would amount to interference with his freedom of speech in Parliament. The Lok Sabha Committee on Privileges has held on August 12, 1970 that it amounts to contempt of the House and a breach of its privilege if a person were to file a suit for damages in a court against a Member of Parliament for what he says on the floor of the House.'

In *Tej Kiran v. Sanjiva Reddy* [59] the concept of parliamentary privilege vis-à-vis freedom of speech was illustrated well. The Supreme Court dismissed the appeal and in light of Art. 105(1) held that "Once it was proved that the Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court" [60].

P.V. Narsimha Rao v. State [61] is a prominent case on the point of freedom of speech. 'Two questions arose for the consideration of the Supreme Court in the instant case:

a. Whether by virtue of Articles 105(1) and 105(2), Member of Parliament can claim immunity from prosecution before a criminal court on a charge of bribery in relation to the proceedings in parliament?

b. Whether a Member of Parliament is a 'public servant' under the Prevention of Corruption Act, 1998?

In a judgement of the five Judge Bench which was split at a ratio of 3:2, the court held that:

1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.
2. A Member of Parliament is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988.
3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19 (1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19 (1) in the absence of sanction but till provision is made by

> Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13, and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.

The majority claimed that though the bribe-givers could claim no immunity under Article 105 (2), the bribe takers stood on a different footing. 'The majority judges have insisted that to enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that 'bear a nexus to their speech or vote'. But the minority view as per S.C. Agrawal J, argued that 'the criminal liability incurred by a Member of parliament who has accepted bribe for speaking or giving his vote in parliament in a particular manner arises independently of the making of the speech or giving of vote by the member and such liability cannot be regarded as a liability 'in respect of anything said or any vote given in Parliament'.

Here the minority view of the Judges in the above noted matter is very apt and convincing. However precious may be the privilege of parliamentarians, considering the powerful words of 'with great power comes great responsibility', it would be a shame to immunize the elected representatives in a democracy for selling their votes.

Publication under Parliamentary Authority

'Part two of Article 105 (2) provides that no person shall be liable in respect of the publication by or under the authority of the House of Parliament of any report, paper, votes or proceedings. The Parliamentary Proceedings (Protection of Publication) Act, 1956 provided that no person shall be liable to any proceedings, whether civil or criminal, in any court in respect of the publication of a substantially true report of the proceedings of either House of Parliament unless it is proved that the publication of such proceedings was expressly ordered to be expunged by the Speaker. This position has been made much stronger by the insertion of Article 361-A by the Constitution (44th Amendment) Act, 1978.'

In *Dr. Jatish Chandra Ghosh v. Hari Sadhan Mukhejee* [62], a member of a State Legislature gave notice of his intention to ask certain questions in the Assembly. The Speaker disallowed the questions despite which the member published the questions in a local journal. A government servant filed a complaint against the member as well as the editor, printer and publisher of the journal, under Sections 500 and 501 of IPC, alleging that the member concerned has published false and scandalous imputations against him with a view to harming his reputation. When the matter reached the Supreme Court, 'the court ruled that the said publication did not fall within the scope of Article 194 (2) as it was neither under the authority of the House nor anything said or any vote given by a member of the Assembly.

Rule-Making Power

Each House of Parliament in India has the power to, subject to the provisions of the Constitution, to make rules regulating its own procedure and conduct of business. A rule made by a House is not invalid if it infringes any provision of the Constitution.

Internal Autonomy

Under Article 122(1) [63], internal autonomy has been guaranteed to the House of parliament in India. The validity of proceedings in Parliament cannot be called in question on the ground of any alleged irregularity of procedure.

A member of a House cannot be restrained from presenting a bill, or moving any resolution in the House. It is only when the bill becomes an Act that the courts would adjudicate upon its constitutional validity [64].

The most important and striking case for the purposes of internal autonomy is In re under Article 143 of the Constitution of India [65].

In kesav Singh vs. Speaker Legislative Assembly [66], On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N. U. Beg and G. D. Sahgal JJ., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition [67].

Further that Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon Advocate, by presenting the said petition, and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh. On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Solomon Advocate, before it in custody or to call for their explanation for its contempt [68]. And, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said Legislative Assembly; and 'answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four-walls of the legislative chamber. A judge of a High Court who entertains or deals with a petitions challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities' [69].

Other Privileges

Regarding other privileges, the following are recognised under the Rules of Procedure and Conduct of Business in Lok Sabha as well as by certain laws:

1. Freedom from arrest of Members in civil cases during continuance of the Session of the House and 40 days before its commencement and 40 days after its conclusion.
2. Exemption of Members from liability to serve as jurors. Member's decline to give evidence and appear as a witness in a court of law when Parliament is in session.
3. A House has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of the Member.
4. 'Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the Speaker.
5. Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.
6. All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the enquiry by a committee.
7. A Parliamentary Committee may administer oath or affirmation to a witness examined before it.
8. The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid down on the table of the House.
9. The right to prohibit the publication of its debates and proceedings.
10. Right to exclude strangers from the House.
11. Right to commit persons for breach of privilege or contempt of the House, whether they are members of the House or not.'

Whenever the question of parliamentary privilege arises, there are three major questions that form moot points from time to time. One is what would happen when there is a clash between a fundamental right and parliamentary privilege. Second being the relationship between courts and parliament and their mutual exclusivity in view of Articles 121 and 122 of the Constitution and thirdly, the unfortunate factum of lack of codification vis-à-vis parliamentary privileges.

The point of conflict between fundamental right and privilege arose for the first time in *Gunupati Keshavram Reddy v. Nafisul Hasan* [70] In a habeas corpus petition brought in this regard challenging the validity of the order of committal on the ground of violation of article 22(2), the court ordered his release.

But, in *M S M Sharma v. Sinha* [71] when a member of the Bihar Legislative Assembly made a speech on the floor of the House, the Speaker ordered certain parts of the speech to be expunged. *Search light* however published the entire speech including the expunged part. The House referred the question of breach of its privilege by the newspaper to its committee. When the committee summoned the editor, he moved a writ petition before the Supreme Court alleging violation of his fundamental right to speech and expression. But the Court dismissed the petition, holding the House to have autonomy to

deal with the matter and the court's willingness to abstain from interfering in the matters of the House.

Till date there is ambiguity regarding the status of what would happen when fundamental rights clash with parliamentary privileges. Although there are judgments on account of the fact that certain fundamental rights like 19 (1) (a), (b) etc. may not be able to face the force of parliamentary privileges, there are Articles like 21 that are so sacrosanct and to see the Houses violate the same would be nonetheless an abomination in the name of the democratic honor.

As regards, lack of codification, it is a sad point that one needs to still refer to the British common law to define what privileges are valid in Houses of Parliament in India. Lack of codification lets the houses to play havoc with the internal rules and procedure. Instead of the constitution deciding what is parliamentary vis-à-vis the privileges, the houses themselves become absolute bosses of the same. Perhaps this is why, hooliganism inside the four walls of the House, corruption to the extent that votes of members are bought and sold, and the likes thereof go unnoticed. A common man could be stripped of honour within the four walls of the House and it may claim parliamentary privileges, and courts would keep mum. In a democracy, such an ambiguity is not a solution.

Conclusion

The topics dealt with in this assignment being parliamentary sovereignty and parliamentary privileges are vast and there is a plethora of illustrations to better analyse the same. In a nutshell, parliamentary sovereignty aired the fire for parliamentary privileges, and the parliamentary privileges, slowly edged the parliaments to claim sovereignty.

In the days when in India, and the most developed of the democracies of the world, the popular sovereignty lies with the common men, it is to safeguard their interests that some privileges are guaranteed to the parliamentarians.

In these days of limited government, there has been a shift towards welfare state and the state and its instrumentalities together have to work for the same. It does not matter to the common man whether he is a sovereign or not. If the so called sovereigns for whom he cast his vote don't voice their concerns regarding him on the floor of the House, democracy loses its meaning.

There are ambiguities in the law. Due to lack of political will and the willingness of the Parliamentarians to stretch the limits of the constitution in their favour are appalling.

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