Unit 11: PARLIAMENTARY AND LEGISLATIVE PRIVILEGES UNDER INDIAN CONSTITUTION

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11.1 LEARNING OBJECTIVES

After going through this unit, you will be able to:

- identify the Legislative and Parliamentary privileges
- analyze the effect of Legislative and Parliamentary privileges on media reporting

11.2 INTRODUCTION

In this unit you will learn about the concepts Parliamentary and Legislative Privileges. You will learn about different provisions and types of Parliamentary and Legislative Privileges under the Constitution of India.

You will also be given an understanding about the effect and limitations on Media Reporting because of these constitutional provisions.

11.3 PARLIAMENTARY AND LEGISLATIVE PRIVILEGES: CONCEPT

Parliamentary or Legislative Privileges are the legal immunities conferred upon the members of the parliament or a legislature with regard to the acts they may perform in the legislature or on its behalf. That means no member may be held to account by an outside body or individual for words spoken within Parliament. The principal parliamentary privilege in the UK Parliament is that of freedom of speech in its proceeding, given statutory expression in Article 9 of the 1689 Bill of Rights. This marked the parliamentary victory over the royal executive in the struggle that had lasted for most of the 17th century. Similar notions exist in most other democratic legislatures. Also surviving, but of diminished importance, are the privileges of freedom from arrest in civil process, freedom of access to the monarch, and rights of punishment against those abusing parliamentary privilege or those held to be in contempt of parliament. Parliamentary Privilege is also known as Absolute Privilege.

Parliamentary privilege is controversial because of its potential for abuse; a member can use this privilege to make damaging allegations that would ordinarily be discouraged by defamation laws, without looking at the fact the such allegations are having any basis or not.

11.3.1. Constitutional Provisions on Legislative & Parliamentary Privileges

The Constitution of India, like that of the U.K. or the U.S.A., provides for the independence of the functioning of the Houses of legislature, both at the Union and State levels. Article 105 of the Constitution defines parliamentary privileges of both Houses of Parliament and of their members and committees and Article 194, which is an exact reproduction of Article 105, deals with the State Legislatures and their members and committees. The

members are also given protection because the House cannot perform its functions without the service of its members. Since there is no difference between the terminology of Articles 105 and 194, it may be sufficient to refer only to Article 105.

Parliamentary privilege is an essential incident to the high and multifarious functions which the legislature is called upon to perform. In defining parliamentary privilege this Article 105 adopts certain method. Two privileges, namely, 'freedom of speech' and 'freedom of publication of proceedings', are specifically mentioned in clauses (1) and (2). With respect to other privileges of each House, clause (3) before its amendment in 1978 laid down that the powers, privileges and immunities shall be those of the House of Commons of the United Kingdom at the commencement of the Constitution until they are defined by an Act of Parliament.

11.3.2. Freedom of speech

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof. Article 105 (2) confers immunity, inter alia, in respect of 'anything said in Parliament', the word 'anything' is of the widest import and is equivalent to 'everything'. No action, civil or criminal, will therefore lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words, it extends to votes, as clause (2) specifically declares, "any vote given by him in parliament or any committee thereof". Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House, such as, for Notices of Motions, questions, reports of the committee, or the resolutions.

Freedom of speech in Parliament is subject to the provisions of the Constitution relating to the procedures of Parliament, i.e., subject to the articles relating to procedures in Part V including Articles 118, 121, 208 and 211. Thus, for example, freedom of speech in Parliament would not permit

a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). The freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to Reasonable Restrictions under Article 19(2). The term freedom of speech used in Article 105 means that no Member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof. The freedom of speech conferred under this article cannot therefore be restricted under Article 19(2). Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory.

11.3.3. Right of publication of proceedings

Clause (2) of Article 105 expressly declares that no person shall be liable in respect of the publication by order under the authority of a House of Parliament, of any report, paper, votes or proceedings. The English Common Law accords the defence of qualified privilege to fair and accurate unofficial reports of parliamentary proceedings, published in a newspaper or elsewhere. In India, the Parliamentary Proceedings (Protection of Publication) Act, 1956 under Section 3 enacts that no person shall be liable to any proceedings, civil or criminal, in a court in respect of the publication of a substantially true report of the proceedings in either House of the Parliament, unless it is proved that the publication is made with malice. The protection under this Section is only given to newspapers or

broadcasting agencies. The protection is available provided that the publication is made for public good.

11.3.4. Law Courts and Privileges

The powers, privileges and immunities of each House of Parliament and State Legislatures as well as all its members and all its committees as mentioned under Article 105 and Article 194 are subject to the laws made by the appropriate legislature and also to all other provisions of the Constitution. A House of Parliament or Legislature cannot try anyone or any case directly as a court of justice can, but it can proceed quasi-judicially in cases of contempt of its authority or take up motions concerning its privileges and immunities in order to seek removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arises as to a certain matter, it has to be decided by a court of law in appropriate proceedings. For example, the jurisdiction to try a criminal offence such as murder, committed even within a House vests in ordinary courts and not in a Parliament or in a State Legislature. Also, a House of Parliament or State Legislature cannot in exercise of any supposed powers under Articles 105 and 194 decide election disputes for which special authorities have been constituted under the Representation of People Act, 1951 enacted in compliance with Article 329.

11.3.5. Some points on Parliamentary and Legislative Privileges

Important points on privileges of each House of Parliament and Legislative Assemblies and its members and Committees are under the Constitution of India, various statutes and rules:

(i) Freedom of speech in Parliament [of Article 105(1)].

(ii) Immunity to a member from any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any Committees thereof [Article 105(2)].

(iii) 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 [Article 105(2)].

(iv) Prohibition on the courts to inquire into proceedings of Parliament (Article 122).

(v) Freedom from arrest of Members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion (of section 135 of the Code of Civil Procedure).

(vi) Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of Member (of Rules 222A and 222B of the Rules of Procedure and Conduct of Business in Rajya Sabha).

(vii) Prohibition of arrest and service of legal process within the precincts of the House without obtaining the permission of the Chairman/ Speaker.

(viii) Prohibition of disclosure of the proceeding or decision of a secret sitting of House.

(ix) Members or Officers of the House cannot give evidence or produce documents in courts of law, relating to the proceedings of the House without the permission of the House (of First Report of Committee of Privileges of Rajya Sabha presented to the House on the 1st May, 1958).

(x) Members or Officers of the House cannot attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent (of Sixth Report of Committee of Privileges of Second Lok Sabha, adopted by Lok Sabha on the 17th December, 1958 and Thirty-third Report of the Committee of Privileges of Rajya Sabha, adopted by the House on 30th March, 1993).

(xi) All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purposes of the inquiry by a Committee. A witness may be summoned by a Parliamentary

Committee who may be required to produce such documents as are required for the use of a Committee.

(xii) The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.

11.3.6. Effect of Legislative & Parliamentary Privileges on Media Reporting

The Press is often called an extension of Parliament. It conveys to the people the substance of Parliamentary legislation and discussion and keeps the people informed of what is happening in Parliament with different reporting. Though what appears in the Press may influence the Members and provide them with necessary background, if the published report and materials do not form an authentic record of facts and exclusive reliance cannot be placed by a Member of Parliament on the matter as reported. Thus, it has been ruled by successive Presiding Officers that questions, motions and other notices which are merely based on Press reports may not be admitted. The Member may be required to produce some other primary evidence on which his notice is based.

Media Freedom has not been expressly provided for in the Constitution, but is implicit in the fundamental right of the "freedom of speech and expression" guaranteed to the citizens under Article 19(1)(a) of the Constitution. It has been settled by judicial decisions that freedom of speech and expression includes freedom of the Press. But while enjoying the "freedom of speech and expression" it is a breach of privilege and contempt of the House to publish expunged (partly omitted) proceedings of the House. This question came up for consideration before the Supreme Court in the Searchlight case wherein the Court held that a report of the whole speech including the expunged portion though factually correct, law may regard it as perverted and unfaithful and the publication of such a report may, prima facie, be regarded as constituting a breach of privilege of the House.

Absolute immunity has been conferred under the Constitution on all personnel connected with the publication of proceedings of either House of Parliament, if such publication is made by or under the authority of the House. [of Article 105(2)]. This immunity does not, however, extend to the publication of reports of Parliamentary proceedings in newspapers, whether published by a Member of the House or by any other person, unless such publication is expressly authorised by either House. However, constitutional protection has been given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament, provided the reports are for the public good and are not actuated by malice.



CHECK YOUR PROGRESS

Q.1: What is Parliamentary or Legislative Privileges?

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Q. 2: Which two Articles of the Constitution of India contain the main provisions of related to Parliamentary or Legislative Privileges?

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Q. 3: What is 'Freedom of Speech' as mentioned under Article 105 of the Constitution of India?

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Q. 4: Which of the Following is not a Parliamentary and Legislative Privilege?

(a) Right of publication of proceedings

(b) Freedom from arrest

(c) Freedom of Speech

(d) Immunity to a member from any proceedings in any court in respect of any thing said in Parliament

(e) Immunity from Contempt of court



11.4 LET US SUM UP

In this unit you have been introduced to the basic concepts of the Parliamentary and Legislative immunities along with the limitations on Media Reporting due to various constitutional provisions related to the concepts. Let us now quickly sum up these concepts.

Parliamentary or Legislative Privileges are the legal immunities conferred upon members of a parliament or a legislature with regard to acts they may perform in the legislature or on its behalf. Parliamentary Privilege is also known as Absolute Privilege. The Constitution of India, under Articles 105 and 194 provide for the independence of the functioning of the Houses of legislature, both at the Union and State levels. Two main immunities provided under these Articles are Freedom of Speech and Right of publication of proceedings.

While enjoying the "freedom of speech and expression", it is a breach of privilege and contempt of the House for the Media to publish expunged (partly omitted) proceedings of the House. However, constitutional protection has been given to the publication in newspapers or broadcasts of substantially true reports of any proceedings of either House of Parliament, provided the reports are for the public good and are not actuated by malice.



11.5 FURTHER READINGS

- H. K. Saharay: The Constitution of India – An Analytical Approach
- Dr. J. N. Pandey :Constitutional Law of India
- AurobindoMozumdar: The Law and the Newspapers

11.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q. No.1 : Parliamentary or Legislative Privileges are the legal immunities conferred upon members of a parliament or legislature with regard to acts they may perform in the legislature or on its behalf. That means no member may be held to account by an outside body or individual for words spoken within Parliament.

Ans to Q. No.2 : Article 104 and 194 of the Constitution of India contains the main provisions related to Parliamentary or Legislative Privileges.

Ans to Q. No.3 : Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof.

Ans to Q. No. 4 : (e) Immunity from Contempt of court

11.7 MODEL QUESTIONS

Q. 1. Explain the Parliamentary and Legislative Privilegesas enumerated under different Articles of the Constitution of India?

Q. 2. Analyse the effect of Parliamentary and Legislative Privilegesguaranteedunder the Constitution of Indiaon Media Reporting?

Q. 3. State briefly different provisions on Parliamentary and Legislative Privileges under various statutes and rules other than the Constitution of India.

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