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Privilege Notice and Parliamentary Privileges in India

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A recent privilege notice moved in Parliament against high-level political statements/actions has brought renewed focus on the concept of parliamentary privileges and breach of privilege proceedings, highlighting issues of legislative ethics, accountability, and executive–legislature relations.?

What are Parliamentary Privileges?

Parliamentary privileges refer to the special rights, immunities, and exemptions enjoyed by Members of Parliament (MPs) and state legislators to ensure the independent and effective functioning of the legislature. These privileges enable lawmakers to perform their duties without external interference or fear of legal action for actions taken within the House.

These are primarily derived from Article 105 (Parliament) and Article 194 (State Legislatures) of the Constitution, which guarantee freedom of speech in the House and immunity from legal proceedings for legislative actions.

Concept of Privilege Motion and Breach of Privilege

A privilege motion is a procedural tool used by MPs to draw attention to a breach of parliamentary privilege, which occurs when any individual or authority disregards or undermines the rights of Parliament or its members. Such breaches may include defamatory remarks, obstruction of parliamentary functioning, or violation of the dignity of the House. Once admitted, the matter is referred to the Committee of Privileges, which investigates and recommends appropriate action.

A breach of privilege is considered a serious offence as it amounts to contempt of Parliament, and the House has the authority to impose punishments such as censure, reprimand, suspension, or imprisonment for the duration of the session.

Constitutional and Legal Basis

The Constitution does not provide an exhaustive list of parliamentary privileges. Instead, they are based on constitutional provisions, parliamentary rules, and conventions derived from the British parliamentary system.

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Article 105: Grants MPs freedom of speech and immunity from legal proceedings for anything said or voted in Parliament

Article 122: Bars courts from questioning parliamentary proceedings on procedural grounds

Article 194: Extends similar privileges to state legislatures

Additionally, Rules of Procedure of Lok Sabha and Rajya Sabha govern the process of raising and deciding privilege matters.

Classification of Parliamentary Privileges

Individual Privileges

These are enjoyed by MPs personally and include:

Freedom of speech in Parliament

Immunity from court proceedings for legislative acts

Protection from arrest in civil cases during session and 40 days before and after session

Immunity for publishing parliamentary proceedings (with conditions)

Collective Privileges

These are enjoyed by Parliament as an institution:

Right to regulate its own procedures

Authority to exclude strangers and hold secret sittings

Power to punish for breach of privilege or contempt

Right to demand attendance and documents

Significance of Parliamentary Privileges

Parliamentary privileges ensure:

Independence of the legislature

Effective functioning of democratic institutions

Protection from external interference

Free and fearless expression of members

Maintenance of dignity and authority of Parliament

These are essential for upholding constitutional democracy and separation of powers.

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Issues and Concerns

Despite their importance, parliamentary privileges face several challenges:

Lack of codification, leading to ambiguity and inconsistency

Potential misuse for political purposes

Conflict with fundamental rights like equality and freedom of speech

Limited transparency in privilege proceedings

Risk of undermining public accountability and democratic scrutiny

Judicial Interpretation and Case Laws

The Supreme Court has clarified the scope of parliamentary privileges:

In *Ranjit Thakur v. Union of India* (1987), the Court emphasized the test of reasonable apprehension of bias in related judicial fairness contexts

In *P.V. Narasimha Rao case* (1998), immunity was extended for voting in Parliament (later revisited)

In recent judgments, the Court has held that privileges do not provide blanket immunity from criminal law or corruption offences, reinforcing accountability

Global Practices

In countries like the UK, Canada, and Australia, parliamentary privileges are either codified in statutes or constitutional provisions, ensuring greater clarity and reduced ambiguity compared to India's convention-based system.

Conclusion

Parliamentary privileges are a cornerstone of India's democratic framework, ensuring legislative independence and dignity. However, the absence of codification and rising political misuse highlight the need for clearer guidelines and balanced reforms to ensure harmony between legislative autonomy and constitutional accountability.