

POWER TUSSLE IN PARLIAMENT OVER PARLIAMENTARY PRIVILEGES

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ABSTRACT

The Constitution of India gives the right to an elected representative of a constituency to stand for the people's opinions and rights by the provided power. But, recently the Parliament of India has gone through a shaking exchange of blows regarding the Manipur situation though it is not the first time we have witnessed such in-house battles Delhi ordinance, discussion on legal marriage age, etc. and the new era politics goes beyond in some aspects thus seem to be crossing the line or Laxman Rekha. The origin of both houses has given roots to the Constitution, there are many amendments and discussions happened since then but presently there is more need to settle disputes between political parties than to delay house proceedings. Opposition parties also have a major role in a democratic country and without their understanding and comments on issues the ruling party may not be able to know the weaknesses and demands of each citizen of the Union of State they may act as a barrier but most importantly boost the will of power of other parties. As we all know, Parliament consists of two houses, Lok Sabha the lower house and Rajya Sabha the Upper house, thereby mentioned in Article 79¹. This article will elaborate on the effects and advantages of conflicts happening in the houses and do they impact the rights of the public with provided parliamentary privileges does the constitution approve the unwanted behavior if not then what are the consequences of it? Debates are a conclusive part of the law-making procedure but any unsolicited exercise by members can disrupt the regular required proceedings of the house since there are three sessions throughout the year.

Keywords: Legal Marriage Age, Constitution, Lok Sabha, Rajya Sabha, Constituency.

UNDERSTANDING PARLIAMENT

The Parliament of India is defined in the constitution of India from Articles 79 – 122 and the state legislature in Articles 168-177². The provisions mentioned here are familiar ones and with this assumption, there is no need to elaborate on them but it is important to throw light on

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¹ Central government Act, Constitution of India 1949

² Central Government Act, Constitution of India 1949

people sitting there and following those procedures and rules. According to Article 79, Parliament consists of the President and the other two houses. The people sitting are referred to as MPs (members of Parliament), the Upper house or Council of States has MPs as representatives of states following the Fourth schedule and some members are appointed by the President. During each session in Rajya Sabha, there are sitting MPs, the leader of the house which Chairperson or *Sadan Neta* is the parliamentary chairperson of the majority party, the Leader of the Opposition is another important post then comes the speaker of the house which is the chairman of the house that handles the in-house session affairs and similarly the composition of people in Lower house or house of people revolves around the de facto part that Lok Sabha has member representatives directly with the choice of public as election and here the Chairman or speaker of house is elected by ruling party and assisted by Lok Sabha secretary general and top secretariat staff to look into the parliamentary procedures though there are no requirements for post of speaker, but in both the houses the power of speaker is prominent one and cannot be disregarded. The jurisdiction of the speaker in the house is to grant agenda to the members, joint sitting, dissolve the deadlock, continue with smooth parliamentary proceedings like motions adjournment and many more. The power of disqualification of a member on the grounds of defection under the Tenth Schedule is the ultimate power in the following context.

DISQUALIFICATION OF MEMBERS OF PARLIAMENT

There are three sessions held in the Parliament, i.e., Budget session, Monsoon session, and Winter session and during this period each member should protect their office and power to ensure that they relay public demands but many issues regarding the attendance of members, unwelcomed actions that sometimes force the speaker to take regulatory actions against them (under exceptional circumstances). The sole arbiter in disqualification of a political defector is in the hands of the speaker like the removal of a judge is in the hands of Parliament rather than the judiciary but parenthetically we are not in a discussion to question the powers of the offices and therefore the members disqualified on conditions if

- He voluntarily gives up his membership of such political party
- He votes or abstains from voting in such House contrary to any direction issued by his political party without prior permission of such party.³

³ TH 'Disqualification Powers of Speaker (Drishti IAS 22 Jan 2020) < <https://www.drishtias.com/daily-updates/daily-news-analysis/disqualification-powers-of-speakers> > accessed 26 august 2023

Anti-defection law was passed in 1985 through the 52nd amendment of the constitution and added to the tenth schedule and the main intent of this law was to combat evil political defections⁴. Defection term is used for a person who gives up allegiance to one's duty or changes sides in a way considered illegitimate by the first state. This law provides the grounds for Members of the Legislative Council and Members of Parliament to lose their privileges. The speaker resolves any question arising out of defection laws but there are many petitions filed for judicial review based on the disqualification the reason behind it was a case where the Supreme Court decided that the decision of the Presiding officer is not final and is therefore subject to judicial review.⁵

Representatives of Peoples Act 1951 deals with the disqualification of members based on conviction and does not allow either of the members to contest the elections. Section 8 of the act talks about the conditions for disqualification of members and most notably Section 8(3) implants in the Act about the conviction of members with not more than two years of punishment being disqualified from the date of conviction⁶ like that recently happened in Rahul Gandhi case though the three-month period to appeal was invalidated by Supreme Court in the case of Lily Thomas vs Union of India 2013 as was mentioned in Section 8(4) of Representation of Peoples Act 1951.⁷ There was a case filed by petitioners who were Members of Parliament and were detained through court and it was ruled that their detention was valid by the Supreme Court.⁸ The decision of article 102 of disqualification can be questioned and therefore always referred to the President who is the final authority and the President shall take opinions from the Election Commission. However, there are still many MPs and MLAs sitting in the state assembly and the Parliament with criminal cases without any reluctance.⁹

DEBATING THEIR VIEWS IN PARLIAMENT

The Indian Parliament is the vital institution of the world's largest democracy and with the principle of "*Salus populi suprema lex esto*" meaning the "*welfare of the people*"¹⁰ but the

⁴ India gov national portal (12 oct 2012) < <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-fifty-second-amendment-act-1985> > accessed 27 august 2023

⁵ *Kihoto Hollohan v Zachillhu* [1992] SSCR [1] 686, [1992] SCC Supl (2) 681

⁶ Central Government Act < <https://indiankanoon.org/doc/1662686/> > accessed 27 august 2023

⁷ *Lily Thomas v Union of India AIR* [2013] SC 2662

⁸ *K Anandan Nambiar v Chief Secretary Government of Madras* [1996] AIR 657

⁹ Central Government Act 1949 < <https://indiankanoon.org/doc/1662686/> > accessed 27 august 2023

¹⁰ by Wasim Beg, Swarnendu Chatterjee, Garvish Jain & Monika Prajapat (sconline 10 Sep 2021) < <https://www.sconline.com/blog/post/2021/09/10/decriminalisation-of-politics/#:~:text=salus%20populi%20suprema%20lex%20esto%E2%80%9D%2C%20meaning%20the%20%E2%80%9Cwelfare%20of%20the%20people%E2%80%9D> > accessed 27 august 2023

functioning relies on the factor that opinions are to be heard by all political parties for smooth functioning of the republic of India laid down laws. Clashes that happen in Houses are majorly based on some of the aspects:

- I. Party politics and ideological crisis – There are several national as well as state political parties recognized under the Election Commission of India and in parliament, the debates over legislation quickly turn into ideological and regional interests. Comments over the working of Parties' ideologies and dragging that politics in growth of the country like the walking away of MPs from Parliament due to disagreement on certain issues. Each party has a right to express its views but discipline in politics is to be maintained
- II. Coalition between parties – In a political scenario, it is important to maintain stability and a balanced act for which parties have to negotiate with each other terms. The recent formation of the INDIA alliance also called the Indian National Developmental Inclusive Alliance with 26 political together or an example of power-sharing of the BJP with NDA by the former Prime Minister Atal Bihari Vajpayee and both faced the general elections of 1998 and 1999 but sometimes this coalition led to power struggle and the party has to give up resulting in dissolution of government power similar to Maharashtra political crisis, sinking of Thackeray rule.
- III. Regional Dynamics and State Concerns – A federal country like India has always promoted autonomy the evidence of which traces to history. Article 1 includes the “Union of States” while articles 2,3,4 enable parliament by law to admit a new state, and increase or decrease the area of the state. ¹¹State Reorganization Act 1956 was a major reformation for Indian states and UTs. Recently the highlighted issue of Manipur Violence on granting status to communities of state was long burning dispute in both the houses and the Jammu and Kashmir reorganization subject, these concerns were raised in Parliament but have long dragged due to unnecessary arguments between parties' consequence of which the rest bills have to wait to be present in house until next session thus limitation to dirty politics around is essential.
- IV. Policy Formation and Public Interest – The introduction of bills in parliament and then making them a law makes an impact on citizens of the country and it is common to have discussions and debates over the laws, the tussle emerges with the disagreements of

¹¹ Indian Constitution 1949

representatives and reflects the complexities of rising public aspirations and need of urgency to look into specific public issues and the only concern is avoiding any intense debate.

DISCOVER SOME CASES

A long-standing subject of contention is the UCC uniform civil code which has its origins in debates on the formation of the Constitution due to its rough history it was left behind but the BJP government introduced it in its manifesto thus gaining importance again. 21st Law Commission examined the code and assigned it to the 22nd Law Commission, deemed it necessary to revisit the topic¹² and gain opinions on it, but as soon as there was the introduction of the bill there were debates, disagreements and denying its importance overall many divergent views on it. The need for the law is necessary and was also suggested by the Supreme Court in many cases like the 2015 case of ABC vs. the State of Delhi in which Christian women were denied the right of legal guardian¹³ of their children and the court addressed the concern for UCC in similar case yet the landmark one was Shah Bano case 1985 for rights of Muslim divorce women. Although there are some disquiets regarding UCC the clauses can be debated and argued in houses hence public rights cannot be deprived.¹⁴

Explosive debates on three Farm law bills and a huge number of protests that surrounded New Delhi make it quite a remembered issue. There were MPs suspended from both houses result of vehement protest and disregarding the discipline in parliament further, the three farm laws were repealed but after so much agitation and in-house shakedown.

The currently known Rahul Gandhi defamation case and a long time back a case of March 1989 of violence erupted in the state legislative assembly of Tamil Nadu between members of Jayalalitha party and MLAs of Karunanidhi DMK government where later she was physically assaulted. These types of acts in the assembly or house are unexpected thus the MPs or MLAs are disqualified¹⁵.

¹² 21st Law Commission Of India, Reform of Family Law (Law 31 august 2018) Consultation Paper

¹³ *ABC v State of NCT of Delhi* [2015] SCC online SC 609

¹⁴ *Mohd Ahmed Khan v Shah Bano Begum and Ors* [1985] AIR 945

¹⁵ 'How Jayalalitha becomes the most Authoritative Figure In Indian Politics' *Economic Times* (6 dec 2016)

CONCLUSION

India is a democratic country that protects the fundamental rights of each citizen of the country and there are many National political parties and state parties that have different ideologies and principles the debates in parliament play a crucial role in shaping the policies, laws, and direction of a nation. The parliament and state assemblies and councils are formed for the expression of different deliberations that serve as a platform for representatives to express diverse viewpoints, critically analyze issues, and engage in constructive discussions. With all these debates, important societal matters that concern the citizens are examined, leading to informed decision-making. Parliamentary debates are transparent, accountability, and democratic principles, allowing citizens to witness their elected representatives in action and hold them responsible for their choices. While differences in opinions are natural, the debates are to be fair without any unequal treatment and unwanted behavior enabling compromises and consensus-building that contribute to the overall progress of the country. Parliamentarians need to approach debates with open minds, and the willingness to listen with commitment to the greater good. The discussions should be driven by facts, evidence, and empathy rather than personal biases. A healthy debate culture leads to well-informed policies that address the needs and concerns of the people. In this era of rapid change and complex challenges, and to make India at the top platform all the politicians and lawmakers have to work together regardless of any disagreements or any comments that are more now. Parliamentarians have the responsibility to engage in meaningful debates that reflect the diverse perspectives of their constituents and contribute to the betterment of society.