

ANALYSIS OF THE PRIVILEGES AND IMMUNITIES OF GOVERNMENT IN LEGAL PROCEEDINGS

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ABSTRACT

This paper titled "Privileges, immunities of the Government as Provided under the Indian Law" Focuses on immunities, and privileges of Government as provided under Indian law and is exercised in legal proceedings. This paper involves sections and doctrines provided under aforesaid topic along with case laws.

Keywords: Immunities, Privileges, Doctrines.

INTRODUCTION

The Constitution assigns the Parliament several responsibilities, which are carried out by each member. To allow them to carry out their responsibilities without hindrance, they are granted protection from certain procedures and the parliamentary privilege. This concept is predicated on the idea that members of parliament should retain their dignity and power. A "privilege" is when someone is granted special access to benefits or exemption from certain legal obligations. This special privilege is offered to ensure the system runs successfully and without hiccups. These privileges do not discriminate against or place members of the public above the broader people, with the exception of situations in which they further the objectives of the Parliament. The fundamental rights of every person are respected and they are all treated equally. These are the privileges granted to them while they are carrying out their formal duties as representatives in parliament. The primary sources of these members' privileges and immunities in court proceedings are Articles 105 and 122.

Other nations, like the United Kingdom, have the freedom to talk openly on the floor of the house without worrying about breaking the rules outlined in the Official Secrets Act, ensuring that the system is open and honest. The Canadian Parliament is given the authority to determine its privileges by Section 4 of the Parliamentary of Canada Act of 1875, with the restriction that

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these rights may not be greater than those established by the British in their House of Commons.

ORIGIN

Despite the absence of a unified political framework in ancient India, parliamentary privileges have been suggested. There were two organisations called Sabha and Samiti that would hold the king in check throughout the reign of Dharma. This means that even if the king or rule-maker was exempt from many formalities, he was nevertheless accountable to a group of people. Although accountability was upheld, the king's dignity, power, and independence were preserved.

The bi-cameral Indian Legislature was established under the Government of India Act, 1919, with each chamber limited to performing only legislative duties. It mentioned the freedom of speech in the houses and the legislators' exemption from legal proceedings. The lower house was granted the right to vote. Because voting was not available to everyone in such a situation, members of the legislature were recognised and given exclusive rights.

In addition, the Government of India Act, 1935, which introduced privileges, framed section 71, which provided for freedom of speech and exemption from judicial action. Prior to this, privilege appeared to be a cultural phenomenon rather than a recognised term.

The provincial legislature of India had the authority to grant certain privileges, including immunity from legal action regarding the submission of an assembly, the release of members who had been detained for attending the assembly, exemption from having to appear in person at court proceedings, etc. These regulations were put in place to enable legislators to effectively use their authority.

These legislative powers were also freed with the passage of the Final Government of India Act, 1950, which marked the handover of power from the British to the Indians. The legislative privileges that were further administered were codified under Articles 105 and 122.

UNDER ADMINISTRATIVE LAW

In contrast to administrative law, which is a subordinate law that focuses on the delegation of authority, constitutional law is the supreme law and establishes the general principles that must be obeyed. We can claim that the government has a strategy if the Constitution has a

perspective. Both are crucial, but they are different from one another. The constitutional rights are embodied in Article 105, which grants members of the parliament exemption from the law when the legislature is not in session because they are required to serve the Legislature. immunity from legal action for anything spoken or voted for on the floor of the house. When it comes to legal actions with the government's interests in mind, the administrative law's provisions provide the government the advantage. In order to uphold the authority but prevent complete escape, the public order and the standing of a government official are taken into account.

PRIVILEGES AND IMMUNITIES IN SUITS OF THE STATE

Every issue may be resolved. The extraordinary legal remedies that an individual may pursue for administrative purposes against an unlawful entity are less likely to occur with the use of these remedies. They do not, however, offer the injured party full compensation. Access to regular courts and traditional legal remedies may be restricted for private individuals due to the state's possession of specific privileges and immunities. Although these advantages and immunities were appropriate in the era in which they were created, they hardly seem appropriate in a democratic society today. Yet, the state does have several privileges and immunities that may be required of it. In order to bring these advantages and immunities into line with the demands of the modern world, administrative law is redefining them. The Union's and each state's executive power is expressly defined in the Constitution as "the carrying on of any trade or business, the acquisition, holding, and disposal of property, and the signing of contracts for whatever purpose." As a result, the Constitution explicitly states that the government may file or be sued. Similar provisions can be found in the Code of Civil Procedure. The aforementioned clauses, however, just outline a course of action; they do neither increase nor decrease the scope of State obligation. We shall talk separately about the scope of the liability.

ADMINISTRATION'S PRIVILEGES AND IMMUNITIES IN COURT

A number of statutes offer the following privileges to the government:

I. Exemptions from the application of the law: The rule in England is that its own laws do not bind the Crown unless they are made so expressly or by necessary inference. So, in England, laws are not binding on the crown unless they are made so expressly or by necessary

inference. The adage "the King can do no wrong" serves as its foundation. Even in India, this regulation was adhered to till 1967.

The current legal framework in India stipulates that the State or Government is bound by the law unless it has been explicitly or necessarily impliedly excluded or barred from its application. It is simple to determine whether the State must comply with a statute when it is expressly excluded from the application; however, matters become more complex when the state must establish an inference exempting it from the application. However, a law that mandates criminal prosecution and jail time is regarded as exempt from the statute's required penalties.

II. Civil Procedure Law of 1908 Privileges and Immunities: According to Section 80 (1), no lawsuit may be filed against the Government or a public official for any act that is allegedly undertaken in that person's official capacity until two months have passed after written notice has been made in accordance with the section's provisions. This clause is mandatory; there can be no exceptions to it. Thus, notice must be given. It should be noted that a public person is not compelled to give notice if they act without authority. It seems that the goal is to give the government or the public figure some time to go through their legal options and reach an out-of-court settlement.

The government may, openly or tacitly, forgo the need to notify. Plaintiffs find the notice requirement extremely annoying, especially when they want prompt assistance from the government. In an effort to ease the constraints on litigants, the Civil Procedure Code Amendment Act of 1970 introduced a new Clause (20) to Section 80 of the C.P.C. The section states that if the relief sought is urgent and immediate, the court may allow someone to sue the government or a public person without requiring them to give two months' notice. Before granting an exemption, the Court must ascertain the necessity in the short term.

It should be underlined that S.80 of the C.P.C. does not apply to lawsuits brought against statutory corporations. Consequently, in the event that the statutory Corporation is the target of legal action. Therefore, there is no need to give such notice when a statutory corporation is the target of a lawsuit. A claim made under the Motor Vehicle Act to the Claim Tribunal is exempt from Section 80. Writ petitions brought against the government or any public figure are exempt from Section 80 of the C.P.C., while Section 82 of the C.P.C. grants the government privilege in a similar manner. Sections 80 and 82 of the C.P.C. do not need notice.

This paragraph states that in every matter brought by or against the government or a public official, a deadline must be stated in the decree. If the deadline is missed, the decree must be satisfied within three months of its date. In the event that there is no deadline, the Court will report the issue in accordance with government orders. Therefore, a decree against the government or a public official cannot be put into effect right away. In cases where the court has not assigned a timetable, it will be ninety days from the decree date. The court must set forth a deadline for the decree's fulfillment. The Court must report the matter to the Government's orders if the decree is not fulfilled within the specified time frame.

III. The Evidence Act's Privileges (Privileges to withhold documents): If the Crown feels that putting a document in front of the court would be against the public interest, they have the authority to refuse to do so in England. In *Duncon v. Cammel Laird Co. Ltd.*, the court concluded that the Crown is the only judge who can decide whether or not a document is privileged, and that the court is not allowed to review the Crown's decision. However, the decision in *Conway v. Rimmer* was overturned. In this case, the Court has decided that the Crown's power to decide whether or not a document is confidential is not unqualified. The court can see it, and it will decide whether or not it is privileged.

According to Section 123 of the Indian Constitution, no person may offer evidence gleaned from unpublished official records pertaining to any subject of state without the officer at the head's consent. Only materials that deal with state affairs and whose disclosure would be detrimental to the general welfare are included in this category. The publication of the document must be against the interests of the State or the public welfare, and it must be related to the concerns of the state.

The section is predicated on the notion that disclosing the relevant material would be detrimental to the general welfare. Additionally, the public interest has to take precedence over private interest in cases when they clash.

Whether or not this communication was delivered to the officer in confidence can be decided by the Court. For Section 124 to be applicable, the communication had to have been made in confidence to a public official, and the public official had to think that making the communication public would be against the public interest.

When asked to produce a document, a witness under Section 162 is required to do so regardless

of any objections to the document's production or admissibility if the document is in his possession or under his control. Whether the objection is legitimate or not will be decided by the court. The court may examine the document to establish its admissibility unless it pertains to matters of state or necessitates additional evidence. When translating a document for this purpose, the court has the authority to compel the translator to keep the content confidential. Should the translator ignore this order, they will be prosecuted under Section 166 of the Indian Penal Code. The rules included in Section 162 apply to both official and private documents.

Whether a document is or is not the Court can decide a record relevant to State affairs. For this reason, the Court may review the document itself and may collect evidence.

The court was given the opportunity to discuss the extent of the government's right to suppress information in the *State of Punjab v. Sodhi Sukhdev Singh*¹, where the competing claims of individual justice and government secrecy fought for acceptance.

Gajendragadkar, J., who authored the majority ruling, cautioned that care must be taken to prevent interests other than the public from dissimulating as the public's and unduly benefiting from Section 123's provision. The court was well aware of how this privilege restricted private defence. In order to guard against any misuse of the privilege, the court also set some guidelines. An affidavit, signed by the relevant Minister or the Department Secretary, must be submitted with the claim of privilege. Second, the affidavit needs to explain, within the limitations of the law, why disclosing the information would be detrimental to the public interest and why the authority is positive that the document in question has been thoroughly reviewed and considered. Third, if the affidavit is found to be untrustworthy, the court has the right to summon the authority for cross-examination.

Further refining the wording, the court in *Amar Chand v. Union of India*² refused the privilege when there was proof that the authorities had neglected to take into account the damage that the document's disclosure would cause to the public interest. In *Indira Nehru Gandhi v. Raj Narain*³, the court rejected the privilege claims and ordered the submission of the policy's Blue Books. The Supreme Court once more denied the privilege in *State of Orissa v. Jagannath Jena*⁴ on the basis that the affidavit's description of the public interest component was unclear.

¹ *State of Punjab v. Sodhi Sukhdev Singh* 1961 AIR 493

² *Amar Chand v. Union of India* 1973 AIR 313

³ *Indira Nehru Gandhi v. Raj Narain* 1975 AIR 865

⁴ *State of Orissa v. Jagannath Jena* 1969 AIR 215

In this case, the plaintiff wanted to see the signatures on a file from the I.G. of Police and the DCM.

In *S.P. Gupta v. Union of India*⁵, the law governing government privileges underwent a radical change. The matter under consideration concerned whether the Law Minister's contact with these Chief Justices should be made available to the Supreme Court for the purpose of evaluating the validity of the Delhi High Court Additional Judge's non-continuance. The government objected to the production of these reports on the grounds that their disclosure would be detrimental to the public interest, as stated in Section 123 of the Indian Evidence Act. However, the Supreme Court rendered a distinct ruling. The case is clear evidence of the court's attempts to further India's goal of open governance.

When he declared his belief in the objective of an open government in the aforementioned case, Judge Bhagwati took a similar stance. Just maintaining government secrets is not a crucial public interest that should take precedence over the most pressing needs of justice.

Bhagwati, J. highlighted that "it is essential that the citizens ought to know what their Government is doing if a society has opted to accept democracy as its creedal religion" in providing a fresh interpretation of the relevant legislative language. "One of the pillars of a democratic state is thus the citizen's right to know the facts, the genuine facts, concerning the governance of the country," he stated. And as a result, there is a growing desire for government transparency on a global scale.

He continued by pointing out that if government operations are kept secret and out of the public's view, it will tend to favour oppression, corruption, and the misuse or abuse of power.

The judgement has expanded the scope of judicial oversight over the executive's use of the rights granted by Section 123. Now that the Court has the authority to examine papers behind closed doors, it may uphold the request for non-disclosure if it determines that doing so would harm the public interest. The Court would order the disclosure if, in its opinion, it does not jeopardise the public interest.

⁵ *S.P. Gupta V. Union of India* AIR 1982 SC 149

LIMITATION TERM FOR A LAWSUIT AGAINST THE GOVERNMENT

Article 149 of the First Schedule of the Limitation Act of 1890 created a lengthier statute of limitations for actions undertaken by or on behalf of the State. The Act of 1963 has a comparable clause in Article 112. This Article is applicable to the Central Government and all State Governments, including the Government of the State of Jammu and Kashmir. This long statute of limitations was created in accordance with the common law doctrine *nulla tempus occurit rei*, which states that time has no bearing on the Crown. Nonetheless, government appeals and petitions are exempt from the longer statute of limitations.

According to section 5 of the Act of Limitation, if the court finds there was a valid reason for the delay, a request or appeal may be granted after the statute of limitations has passed. In the condominium nation of delay case, it was decided that the governing body had no right to any special consideration.

IV. Immunity from Promissory Estoppel: According to the doctrine of estoppel, one party cannot retract statements he has made in the past and on which the other party has depended or is permitted to rely. According to the equity principle, courts developed the idea of promissory estoppels to prevent unfairness.

Administrative law provides a strong foundation for promissory estoppel, also referred to as equitable estoppel. The hypothesis supports the notion that equity was established in order to avert injustice. It is common knowledge that the idea against the government can be used, especially in cases where ending heinous injustices perpetrated against any individual is required.

The concept of promissory estoppel against the government in circumstances where performing executive, public, or official tasks requires putting an end to fraud or blatant injustice. The thesis cannot be disproved by the argument of executive need or future freedom of executive action under the aforementioned limits.

It is not possible to use this concept to force the government or public authority "to carry out a representation or promise" that is either a) unlawful or b) outside the scope of the government official's or public authority's authority or jurisdiction. Be advised that estoppel cannot be used to defend someone against laws or as a minor. If a statement of facts made under Section 115 goes against the law or a legislative act, estoppel does not apply to the government; nonetheless,

it may be used in the event of an irregular act. The principle of Promissory Estoppel has increased the government's culpability.

V. Promissory Estoppel Doctrine: The Promissory Estoppel doctrine is frequently used to hold the government accountable for its actions and prevent it from breaking agreements. This notion states that if an assurance or promise is made by actions or words and the recipient negatively follows through on it, the commitment-maker is not permitted to change their mind or wander from the assurance.

PRECEDENTS RELATED TO THE DOCTRINE OF PROMISSORY ESTOPPEL

The doctrine of Promissory Estoppel was used against the government in *Union of India v. Anglo (Indo) - Afghan Agencies Ltd.*⁶, which was decided in India. A new judicial trend was created by this case. The judiciary supported the use of Promissory Estoppel in relation to State executive actions. The argument of executive necessity was rejected by the court. According to the plan, an exporter was allowed to import raw materials in a quantity equal to what they exported. The petitioner shipped products valued at five lakh rupees, however, he only received an import permit for purchases under two lakh rupees.

Accordingly, the Government was required to fulfill its commitment. According to the ruling, the Government must abide by the plan, and the petitioner has a right to benefit from it.

This rule was once more upheld by the Supreme Court in *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council*⁷. In this case, the principle was applied against the authority of the state. The Court has made it plain that it will not distinguish between a private citizen and a governmental entity when it comes to the idea of promissory estoppel.

Stated differently, should the Government make a pledge and the promisee follow through, changing his stand, the Administration will be held accountable for the assurance and will not be allowed to reverse course. The promisee also need not provide additional evidence that his actions were detrimental. It is not essential for there to be a prior contractual arrangement between the parties for the doctrine of Promissory Estoppel to apply.

⁶ *Union of India v. Anglo(Indo)-Afghan Agencies Ltd.* 1968 AIR 718

⁷ *Century Spinning and Manufacturing Co. Ltd. V. Ulhasnagar Municipal Council* 1971 AIR 1021

The Supreme Court ruled in *Delhi Cloth and General Mills v. Union of India*⁸ that the Promissory Estoppel doctrine is applicable without proof when a party acts on a pledge of a promise to modify their stance.

It is not, however, permissible to use it to oppose a legislative provision, justify an act that exceeds its jurisdiction, or compel the government or any other public organization to uphold a legal obligation that exceeds its authority.

NON-APPLICABILITY OF DOCTRINE OF PROMISSORY ESTOPPEL

The following circumstances do not apply the Promissory Estoppel doctrine:

One of Public Interest Promissory estoppel is an equitable doctrine, thus if a broader public interest dictates it, it must make way for equity. Saying that the Government would suffer if it were compelled to uphold it wouldn't be sufficient to demonstrate the public interest. The Govt. would disclose to the Court the various circumstances that it argued supported its claim to be exempt from liability in order to contest its liability, and it would be up to the Court to determine whether or not those circumstances qualified as equitable grounds for enforcing the Government's liability.

2. Representation against the law: A public authority or the government cannot be forced to keep a pledge that the law prohibits by using the Promissory Estoppel concept.

3. Ultra vires promise or representation: Under the Principle of Promissory Estoppel, the State cannot be held accountable for an officer's promise or representation that is outside the scope of his authority.

4. Fraud: If the government guarantee was gained through deception, the Promissory Estoppel concept does not apply.

5. Constitutional fraud: The law of promissory estoppel does not apply when a promise or representation is obtained by constitutional fraud and its implementation would undermine or else incline to undermine the aim of the Constitution.

Following *Keshava Singh v. Speaker of the Legislative Assembly*⁹

⁸ *Delhi Cloth and General Mills v. Union of India* 1963 AIR 791

⁹ *Keshava Singh v. Speaker of the Legislative Assembly* AIR 1965 All 349

The case's facts include: A leaflet was printed and published by assembly member Keshava Singh, who did not have legislative authority. The Speaker of the U.P. Legislative Assembly condemned him for contempt and violating the privilege of one of the members due to the production and publication of the leaflet. The following day, Mr. Keshava, who was present in the home, engaged in further improper behaviour.

The speaker ordered his imprisonment in jail for 7 days as a result of his behaviour in the house. He also issued a warrant for his arrest. A writ of habeas corpus was used in his petition in accordance with Article 226. According to the appeal, incarceration in jail is unlawful and carried out with malicious intent. He wasn't given an opportunity to defend or explain himself, according to the petition. The two judges heard the petition and granted them temporary bail.

The assembly adopted a new resolution as a result of the judgement rendered in Keshava's case. This resolution provided the groundwork for the two judges to consider the petitioner's and his attorney's writ. The assembly declared the two judges and the attorney in contempt and ordered them to appear before the house and give an explanation for their actions. Additionally, it mandated that Keshava be detained. They did this by submitting petitions under section 226 and a writ of mandamus to the Allahabad High Court in an effort to get the assembly's decision overturned.

The Supreme Court's majority concluded that the actions of the two justices did not constitute contempt. The Court continued by saying that the house will be regarded as the exclusive and exclusive judge in questions of privileges indicated under Article 194(3) given that it should be stated in that. Nonetheless, if the article does not cover any such privilege, the Court will have to make the call.

CONCLUSION

If a member of parliament satisfies the requirements listed in this section, they may request the privileges under administrative law, subject to the Court's ultimate determination. All those privileges are exclusive rights granted for the purpose of keeping the government running smoothly. Since granting such privileges and immunities could encourage the misuse of power, the court has the last say on the matter. They are therefore provided in a way that permits the use of them in their official capacity. The public order, the government's interests, and the legislature's efficient operation must all be considered when determining whether a power or privilege is being abused.