



CODIFYING PARLIAMENTARY PRIVILEGES: A PATH TO ACCOUNTABILITY OR JUDICIAL OVERREACH

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ABSTRACT

Parliamentary privilege is the sum of special rights and immunities vested in each house of Parliament as a collective body and in its members individually. These privileges are considered essential for the performance of legislative functions. The origins of these privileges can be traced to the British era, whereas their legal foundation is rooted in Articles 105 and 194 of the Indian Constitution. The constitution expressly recognises certain parliamentary privileges, such as freedom of speech inside the legislature or parliament and protection for members from judicial or legal proceedings arising out of the speech or statement made by them in the course of debate inside the parliament. There are many more privileges which are enjoyed by the lawmaker in the parliament. In light of the immunity conferred on the member's right to speech and action in the house, its misuse can have serious consequences on the people of the country, so as a people, the lawmakers are under a greater obligation to exercise the right with utmost care and without any prejudice to the law of the land.

Keywords: Rights and Immunities, Legislative Functions, Freedom of Speech, Law of the Land.

INTRODUCTION

Parliamentary privileges occupy a central position in the constitutional architecture of democratic governance, functioning as safeguards intended to preserve the independence, dignity, and effectiveness of legislative institutions. In India, these privileges derive constitutional recognition primarily from Articles 105 and 194, which confer certain rights and immunities upon Members of Parliament and State Legislatures to enable the unhindered performance of their legislative duties. Historically inspired by the Westminster model,

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parliamentary privileges were incorporated to protect legislators from executive domination, judicial interference, and external intimidation, thereby fostering free and uninhibited debate within legislative forums. However, the contemporary operation of these privileges in India reveals a growing dissonance between their original constitutional purpose and their present-day application.

In parallel, legislative functioning has increasingly been disrupted by frequent walkouts, boycotts, and sustained disorder within parliamentary proceedings. While dissent remains an essential feature of a vibrant democracy, its transformation into systematic obstruction undermines meaningful deliberation and legislative productivity. These disruptions assume greater significance when viewed in light of the substantial public expenditure incurred during parliamentary sessions. The inability of citizens to question or seek accountability for such conduct—owing to the protective ambit of parliamentary immunity—further deepens the democratic deficit and erodes public confidence in representative institutions.

This article engages with these competing perspectives to examine whether codification of parliamentary privileges in India represents a necessary step toward democratic accountability or poses a genuine risk of judicial intrusion into legislative affairs. By analysing constitutional provisions, judicial precedents, contemporary legislative practices, and comparative models, the paper contends that the greater constitutional danger lies not in codification itself but in the continued absence of clearly defined limits. In an era marked by declining public trust and increasing institutional polarisation, redefining the contours of parliamentary privilege is not merely a legal reform but a constitutional imperative aimed at restoring the integrity of democratic governance.

WHY THERE'S A NEED TO CODIFY LEGISLATIVE IMMUNITY

The immunity which is provided to the lawmakers so that they can function freely without any fear and keep their point and be the voice of the people in the house, the lawmaker represents from the different parts of the country without any undue influence from any person or institution, strengthening the democratic fabric of the nation. But in the past few years, there has been a serious degradation of accountability and functions performed by the lawmakers inside the parliament because they use the immunity provided to them to escape responsibility. No action can be taken against them for the functions performed in parliament by the court unless they are against the constitutional mandate. To start, let us look at some of the speeches

delivered by the lawmakers of the various parties. These speeches lower the decorum and dignity of the house, lowering its standard and setting a bad example for the public at large. In recent times, there has been a substantial increase in the hate speech delivered by MPs in the House. These speeches not only highlight the biased or prejudiced mindset of the lawmakers but also reflect their non-serious attitude towards the cautious use of their words, as it affects the public at large. Despite this, they do not refrain. because they know they have immunity, which they exploit for their personal agenda or goal. In 2023, a BJP MP, Ramesh Bidhuri, called a BSP MP a terrorist and a pimp and used communal slurs against him. Despite this, no action could be taken against him by the court of law due to the immunity granted by the Constitution. This highlights the increasing hatred among the members of the house or the polarisation of members against certain sections of MPs, setting a dangerous precedent for the future. Recently, in the Karnataka legislative assembly, a misogynist and sexist comment was made by the Congress leader Kr Ramesh Kumar, he said, “When rape is inevitable, lie down and enjoy it”. Highlighting the deeply entrenched patriarchy and anti-women mindset. These statements not only lower the dignity of women but also trivialise real trauma, showing institutional insensitivity and reinforcing harmful social norms. Such statements do not occur in vacuums. Moreover, they contribute to an environment where Rape and sexual assault are treated casually rather than taken as serious crimes, and public discourse shifts away from accountability and justice toward dismissal and humour. This can be seen in this case as the speaker was laughing with the lawmaker. Despite this insensitive and derogatory statement, no legal action could be taken against him because of the immunity. These acts clearly highlight the departure from the original function for which the immunity was granted. Democracy thrives on reasoned debate, dignity, and respect for constitutional values. Repeated derogatory remarks degrade the quality of legislative deliberations and reduce assemblies to platforms for sensationalism rather than law-making. The government must think and work on it and should make a law to stop such incidents from taking place in future. So, the lawmakers focus on the work for which they have been elected. Now let’s talk about the walkover and boycotts of the parliamentary session. Dissent is an essential part of a sound and robust democracy. The opposition has the right to oppose the ruling government on various issues, laws and the functioning of the government. But in recent times, we have seen a trend of boycotting a whole parliamentary session or disturbing the parliamentary proceedings through protest by the opposition. Debates and discussions are essential for solving any issue in a democratic country, but when these are taken over by protest and boycott, no solution can be reached. Around 2.5

lakh per minute¹ is spent by taxpayers during one session of a parliament, and when things like this happen, it amounts to wastage of taxpayers' money and the public cannot question or take any action against it because they are protected by the immunity for their actions done in parliament. It's because of this that the lawmakers take the sessions in-house for granted, diverging from the main goal. In order to maintain the rich colours of Indian democracy, there must be a law so that the lawmakers can be held liable for their actions, because without it, they can escape accountability and responsibility with ease.

Now let's shift our focus to another concerning issue, which is when members indulge in criminal activities to provide favour to someone, like taking a bribe for votes, or giving a speech in someone's favour as part of an illegal agreement. When things like this take place, it threatens the sanity and democratic fabric of the parliament. Eroding the trust placed in them by the public. Previously, it was unclear whether this type of activity was protected under the immunity given to them or not. But the Supreme Court, through some of the landmark judgements, made it clear what activities were protected under the immunity and what were not.

The first case which dealt with this kind of issue was *PV Narsimha Rao v. State (CBI/SPE)*.² Also known as the JMM bribery case. The Supreme Court in this case gave its judgment in favour of the member of the House and stated in its judgment that lawmakers who accepted bribes could not be prosecuted for corruption if they followed through with voting or speaking in the House as agreed. Background of the case in 1993, certain MPs of the JMM were accused of accepting bribes in exchange for voting against a no-confidence motion. After the motion, certain allegations of corruption were made, and the case reached the Supreme Court. The Supreme Court held that the bribe takers who cast their vote against the motion were immune from criminal prosecution under Article 105(2) of the Constitution.³ This decision of the Supreme Court highlighted or stressed the importance of stability in governance and the functioning of parliamentary democracy. The decision of the court prioritised the smooth operation of the government. Over individual accountability based on the reasoning that prosecuting lawmakers for bribery could potentially disrupt the stability of the government. In 2024, the Supreme Court overturned the 1998 judgment, realising the dangerous precedent it

¹ Ashwine Kumar Singh, "Parliament Costs 2.5 Lakh Per Minute To Run. 3 Days Already Lost This Session", NDTV (23rd July 2025) <[Monsoon Session, Lok Sabha, Rajya Sabha: Parliament Costs 2.5 Lakh Per Minute To Run. 3 Days Already Lost This Session](#)> accessed on 10 January 2026

² *P V Narasimha Rao v State (CBI/SPE)* [1998] 4 SCC 626

³ Constitution of India 1950, art 105(2)

had set through the judgment, as until now, the lawmakers were free to accept bribes and provide favours without the fear of being prosecuted. But the Supreme Court in *Sita Soren v. Union of India* through CBI,⁴ reversed the judgment. The verdict was given by a seven-judge constitutional bench. wherein it emphasised the detrimental impact of bribery on democratic principles and governance. It highlighted that taking bribes was a criminal activity unrelated to the core duties of the lawmakers within the parliament or legislative assembly. The court stated that the immunity provided under articles 105 and 194 of the Constitution does not extend to cases of bribery.⁵ This decision signals a significant shift towards prioritising accountability and integrity in governance over stability alone, aiming to uphold the principles and ideals of a responsible, responsive and representative democracy in India. Another case which contributed significantly to these matters was the *State of Kerala v. K. Ajith*,⁶ in which the apex court observed that privileges and immunities are not gateways to claim exemptions from the general law of the land. Further, the apex court rejected the state government's pleas to withdraw criminal cases against its MLA, who was charged in the assembly. The following judgments signal court activism. when there's no codified law or act to hold the guilty accountable. The apex court, through its different judgments, realised its mistakes and made guidelines to define what constitutes core activities and what does not. Seeing the current situation, it is high time that governments come up with a bill to codify these privileges.

SHOULD PARLIAMENTARY PRIVILEGES BE CODIFIED, AND WOULD CODIFICATION LEAD TO JUDICIAL OVERREACH?

The controversy surrounding the codification of parliamentary privileges under Articles 105 and 194 of the Indian Constitutional structure remains a debate since the formation of the Indian Constitution. It was typical of Article 105(3) of the Indian Constitutional structure, as it was amended under the 44th Constitutional Amendment Act of 1978, to be only a temporary mechanism until Parliament drafted legislation based on practical experience.⁷ However, as of now, legislation regarding these matters remains pending, leading Parliament's privileges to remain effectively the same as those of the House of Commons in Britain as of January 26, 1950, with modifications to accommodate pre-amendment privileges. This situation leads to conflict and abuse of these privileges, due to judicial interventions to elucidate their

⁴ *Sita Soren v Union of India* [2024] INSC 161

⁵ Constitution of India, art 105: Constitution of India 1950, art 194

⁶ *State of Kerala v K Ajith* [2021] SCC OnLine SC 377

⁷ Constitution of India 1950, art 105(3)

interpretation. This discussion highlights scholarly debates for and against codifying these privileges in India, with references to other countries where these privileges are codified.

ARGUMENTS IN FAVOR OF CODIFICATION

Codification would bring in clarity, uniformity, and closer harmony with the constitutional values of fundamental rights. Vague historical precedents have perpetuated inconsistencies, abuse (for example, in hate speech, disruptions, or privilege motions against critics), and inconsistency with citizens' rights, such as freedom of speech under Article 19(1)(a). Precedents like *Keshav Singh v. Speaker, Legislative Assembly*,⁸ and *Kesavananda Bharati v. State of Kerala*,⁹ establish that such privileges are not absolute but must conform to the Constitution's basic structure, and scholars have supported codification for this very reason: to avoid overreach.

NS Nigam and MG Vineetha, in the article "Codification of Parliamentary Privileges: A Need-Based Perspective," published in the *National Law School of India Review*, Vol. 8, Iss. 1, 1996,¹⁰ argue that the continued resorting to colonial British precedents in independent India amounts to a "colonial hangover" which distorts the scheme of the Constitution and prevents privileges from adapting themselves to democratic needs. According to them, codification would rid distortions, preserve the essential protection, and enable privileges to grow in an Indian context without blindly acting on obsolete foreign rules.

A recent article published in the *Indian Journal of Integrated Research in Law* in 2024, with the topic 'Codification of Parliamentary Privileges',¹¹ discusses a study among academics, researchers, and practitioners, showing that there is a unanimous support for establishing a code of privileges. Furthermore, it discusses how being uncodified makes it susceptible to personal interpretations, causing setbacks to public trust.

Immunity from prosecution is one of the most important reasons for codification, as illustrated by the cases of bribery. The Supreme Court's 2024 decision in *Sita Soren v. Union of India*

⁸ *Keshav Singh v Speaker, Legislative Assembly* [1965] AIR 745

⁹ *Kesavananda Bharati v State of Kerala* [1973] AIR 1461

¹⁰ NS Nigam and MG Vineetha, 'Codification of Parliamentary Privileges-A Need Based Perspective' (1996) 8 *National Law School of India Review* (Vol 8, Issue 1, Article 13) <<https://repository.nls.ac.in/nlsir/vol8/iss1/13>> accessed on 12 January 2026

¹¹ Aravindhan B and Daksh Dhariwal, *Codification of Parliamentary Privileges* (*Indian Journal of Integrated Research in Law*, Volume IV Issue I, March 2024) <<https://ijirl.com/wp-content/uploads/2024/03/CODIFICATION-OF-PARLIAMENTARY-PRIVILEGES.pdf>> accessed on 13 January 2026

(which overturned *P.V. Narasimha Rao v. State*) established that bribery is a corrupt criminal offence not connected to primary legislative functions and, therefore, does not receive protection from either Article 105(2) or 194(2).¹² The process for codifying will help to provide clarity and certainty on this issue and eliminate the potential for legislators to argue that all acts of corruption were protected by immunity; thereby protecting the principle of accountability and promoting the integrity of representative democracy while at the same time protecting important constitutional rights, such as free speech in legislative debate.

The same examples from other democracies illustrate how codification can bring in greater accountability without seriously compromising legislative independence. The Parliamentary Privileges Act 1987 of Australia codifies certain essential elements, such as "proceedings in Parliament," protection given to witnesses, and restriction in contempt powers, while maintaining an element of flexibility through references to past precedents.¹³ This has reduced disputes and judicial interventions. The New Zealand Parliamentary Privilege Act 2014 targets core areas like freedom of speech and contempt procedures, thereby ensuring more openness and modern accommodation.¹⁴ In Canada, privileges are identified under the Parliament of Canada Act and synthesised with Charter rights through judicial review so as to maintain the independence of the legislature without unwarranted interference.¹⁵ These models, often invoked in Indian scholarship, demonstrate how codification serves the cause of democracy better through the proper balancing of privileges with accountability.

ARGUMENTS AGAINST CODIFICATION AND THE RISK OF JUDICIAL OVERREACH

Some critics hold the view that privileges need to be pliable and necessity-based, and that codification will only end up in its rigidification, politicisation, or weakening of Parliament's ability for self-regulation. Even the parliamentary committees, not least by the 2008 Lok Sabha Committee on Privileges, have opposed such a move, as have repeated rejections by the UK (e.g., Joint Committee on Parliamentary Privilege, 1999 and later reviews) to preserve flexibility. Indeed, even the Rajya Sabha's publications state that codification would affect the prestige and sovereignty of Parliament.

¹² Constitution of India 1950, art 105(2); Constitution of India 1950, art 194(2)

¹³ Parliamentary Privileges Act 1987 of Australia, s 16

¹⁴ New Zealand Parliamentary privilege Act 2014, s 11

¹⁵ Parliament of Canada Act 1985, s 5

Judicial overreach is one area that will be exposed to challenges from the provisions of Articles 13, 32, and 226 when the law becomes statutory. This was evident when the courts demonstrated restraint in cases involving *P.V. Narasimha Rao vs. State*,¹⁶ rather than intervening in matters of governance (although this was reversed in the case of *Sita Soren v. CBI* in 2024). There is concern that judicial intervention will allow the judge to decide the 'core' privileges.

Regarding immunity from prosecution, opponents contend that codification might narrow protections excessively, exposing legislators to frivolous criminal cases that could disrupt parliamentary duties. In the pre-2024 era, the *Narasimha Rao* ruling's broad interpretation shielded certain bribery-linked acts to ensure governance stability; rigid codification could invite courts to second-guess legislative motives more frequently, undermining the fearlessness required for robust debate and voting.

Nevertheless, facts from codification systems disprove the above contention. In Australia and New Zealand, codification of powers has been helpful in demarcating them clearly, thus limiting the role of courts through clearly laid down guidelines. Judicial review in Canada supports constitutional independence without inconsistency with rights.

CONCLUSION

The proposal for the codification of the Parliamentary Privileges (Article 105 and 194 of the Indian Constitution) indicates that existing legislation does not ensure legislators are held accountable to their constituents in India, since the laws have not been substantially changed since they were established in the 1800's during British rule in India. Therefore, there is a growing body of evidence included in this paper establishing that to have greater accountability among legislators, the need for the creation of codified parliamentary privileges is critical to reduce the impact of Judicial Overreach on lawmakers. By giving an example of the historical development of parliamentary privileges, showing the Importance of these Privileges as the means of preserving Independence of Legislative Branch from Executive Branch, and citing numerous instances where members of the Legislative Branch have misused their Privileges by making racist, sexist, and otherwise derogatory statements, creating chaos in session through disruptive actions, accepting bribes etc. we are establishing a compelling and immediate need to create appropriate measures at the Legislative level to eliminate this overwhelming amount

¹⁶ *P V Narsimha Rao* (n 3).

of unaccountable actions taken by the Members of the Legislative Branch. The recent decision by the Indian Supreme Court in *Sita Soren v. Union of India* (2024) is an example of how the evolving jurisprudence of the Courts reflects attempts to correct the Legislative void caused by legislative inaction by the Courts through reversing a prior decision made by the Supreme Court in *RV. Narasimha Rao v. State*,¹⁷ and thus resulted in allegations of overreach against the Courts. Additionally, the examples of the Codification of the Parliamentary Privileges in Australia, New Zealand and Canada and other jurisdictions provide a model of how to balance the need to maintain the Parliamentary Sovereignty while ensuring that these privileges are upheld in line with Constitutional Values, including the Right to Life and Public Accountability.

When trying to define how MPs and MLAs should be protected from other people's influence (this is called Parliamentary Privilege), there is a large argument about how to balance autonomy with accountability. Protecting MPs (and MLAs) from outside influences is important so they can speak freely about issues that help improve governmental processes and maintain the dignity of the House of Commons. As a result, without a proper law defining what constitutes 'parliamentary work', this imprecision allows for people (like Ramesh Bidhuri or K Ramesh Kumar) to manipulate this for personal and political gain. Both of these individuals have demeaned the proceedings of the House and have made many people mistrustful of the way government works. Article 105(2) provides MPs and MLAs with immunity for activities outside their role as parliamentarians, which is what leads to many of these particular problems.¹⁸

The earlier arguments for codifying privilege have built upon the foundation of promoting clarity, uniformity, and harmony with the Fundamental Rights. The authors of the 1996 NLSIR article N.S. Nigam and M.G. Vineetha have critiqued this "colonial hangover" of basing privileges on old British precedents by advocating for an indigenous framework that continues to evolve with India's growing democratic needs. More recently, a study published in the *Indian Journal of Integrated Research in Law* (2024) has demonstrated that academia has come together in agreeing that codifying privilege will limit personal interpretations of privilege and will help restore whatever trust the public may have lost. In order to further define privileges by statute, it is suggested that the definition should limit privileges solely to those that promote

¹⁷ *Sita Soren* (n 5)

¹⁸ Constitution of India 1950, art 105(2)

fundamental rights, such as Freedom of Speech during debates, and Immunity from Civil Suit for Publication of Proceedings, but not abusive activity such as Hate Speech or Corruption. Such a statement aligns with those established through the Constitution, and in decisions such as *Keshav Singh v. Speaker, Legislative Assembly* and *Kesavananda Bharati v. State of Kerala* (1973), establish that privileges must be subordinate to the Basic Structure Doctrine.¹⁹

Critics of codification are also concerned that it could create rigidity in the application of parliamentary privileges, which may result in politicising privileges or diluting the self-regulation of Parliament. For example, the Parliamentary Committee on Privileges in the Lok Sabha (2008) and the recent UK parliamentary reviews (1999 Joint Committee) have both opposed the attempts to codify Parliamentary privileges on the grounds that flexibility is essential to enable Parliament to respond effectively to unforeseen circumstances. Also, critics believe that the availability of statutory Privilege will result in increased judicial oversight through Articles 13, 32 and 226, with the potential for courts to exceed their jurisdiction and question the motivations of legislators. Furthermore, on the issue of immunity from prosecution, there is an argument that narrow codification could expose Members of Parliament to frivolous lawsuits and inhibit bold decision-making. They contend that the broad immunity before 2024 protected the stability of the Parliament and that codification will allow for challenges to stability.

Yes, I understand that there are serious concerns about codifying parliamentary privileges in India, but I also believe that these problems can be addressed. In fact, other countries have managed to do so quite nicely. For instance, the Australian Parliament Acts of 1987 provided clear definitions of what is meant by "proceedings in Parliament" as well as a means of dealing with contempt of Parliament that did not require ongoing litigation in the courts. The New Zealand Parliament's 2014 Act only provides protections for freedom of speech and openness while allowing for a degree of flexibility. And Canadian legislation enables privileges of Parliament to coexist with Charter Rights; it allows some judicial oversight but prevents judges from taking control of Parliament. These examples show codification doesn't freeze everything or invite endless lawsuits — it actually brings more clarity and less drama.

India could adopt a middle-ground legal structure that clearly defines the fundamental protections for Members of Parliament while allowing for contempt to be dealt with on an ad-

¹⁹ *Keshav Singh* (n 3); *Kesavananda Bharati* (n 10)

hoc basis by parliamentary committees. Such an approach will provide clarity when dealing with contempt-related matters while allowing Parliament to operate independently of the court system. It will also provide guidelines for judges to interpret statutes according to their specific wording, rather than relying on their own opinions about what is covered by them.

In a broader context, the codification of contempt laws will benefit democracy. The extreme partisanship that defines the current political landscape in India has created a need for courts to impose stricter standards on hate speech and denying access to bribes. These types of actions would foster true debate. Additionally, by providing citizens with a set of standardised rules, a sense of trust could be re-established among the public about the actions of their elected officials, which has been undermined by instances in which Members of Parliament have been allowed to evade punishment for their actions, while the average citizen does not have that same level of protection.

A possible solution? Introduce a legislative proposal, or bill, to clearly delineate Parliamentary Privilege, which is the legal immunity and protections provided to Parliament, as well as what does, and does not, fall under that provision. Things such as corrupt practices and hate speech are already addressed in existing legislation, so they are not part of the Parliamentary Privilege definition. Legislative safeguards should include: time-limited (Max) committees, limited court (judicial) oversight regarding larger constitutional issues, penalties for abuse of Parliamentary Privilege, and regular updates to keep staying relevant. The issue is not an attack against Parliament, and the purpose of codifying privileges would be to provide Parliament with more mature methods of operating and to distance itself from the colonial past while demonstrating that both independence and accountability exist simultaneously. India is too large and too important a country to keep putting off addressing Parliamentary Privilege, and the time has come to take action.