Codification of Parliamentary Privileges

Click here for Part I

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What is the issue?

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With no codified laws for what constitutes a breach of privilege, it has become a tool in the hands of the ruling party.

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Is the power of privilege too wide?

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- In our country, the Parliament enjoys almost supreme powers and legislators face no threat from government.
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- Legislators have the power to be the sole judges to decide what their privileges are, what constitutes their breach, and what punishment is to be awarded in case of a breach.
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- Thus, it can be said it is too wide a power that clearly **impinges on constitutionalism,** i.e. the idea of limited powers.
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What are the constitutional provisions?

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- **Article 105** pertains to the powers, privileges, etc, of Parliament, its members and committees while **Article 194,** protects the privileges and powers of the houses of legislature, their members and committees in the states.
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- They state that the privileges 'until so defined', shall be those of the "House

of Commons" (lower house of the Parliament of the UK).
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- The expression **"until so defined" does not mean an absolute power** not to define privileges at all.
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How our parliament is different from British parliament?

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- The drafters of the Constitution committed the mistake of **putting Indian Parliament on a par with the British House of Commons.**
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- The supremacy of British Parliament is not applicable to India. In India **the Constitution is supreme,** not the Parliament.
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- Also, British Parliament remained the highest court till 2009.
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- Thus, Indian legislatures and British Parliament differ not merely as regards their general political status but also in the matter of legal powers.
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Is codification of privileges necessary?

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- Legislators have been arguing that codification of privileges will harm the sovereignty of Parliament.
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- Today, by sovereignty, we mean 'popular sovereignty' and not 'parliamentary sovereignty'.
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- Our legislators basically resist codification, because **it would make the privileges subject to judicial scrutiny.**
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- Also, it would make evolution of new privileges not possible.
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- Our legislators also have protection from arrest in civil cases 40 days before the session, during the session and 40 days after the session.
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- It means, the MPs & MLAs have protection from arrest for more than 365 days in a year.

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- Thus, the need for codification cannot be stressed enough.
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Source: The Hindu

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