I. Parliamentary Privileges: Historical and Theoretical Background

‘Parliamentary Privileges’ is an all-embracing and comprehensive term which includes certain powers, privileges and immunities enjoyed by a legislature and its members. These privileges enable the legislature to discharge its functions effectively, fearlessly and without any outside interference. They are also essential to protect the authority and dignity of the legislature. The British Parliament, which is regarded as the cradle of Parliamentary institutions all over the world, has certain powers and rights such as the ‘power to punish for breach of privilege or contempt’, ‘right to regulate its own composition’ and ‘right to prohibit the publication of its proceedings’. Individual members of each House of Parliament also have certain rights and immunities such as ‘freedom of speech and debate in the house’ and ‘freedom from arrest in civil cases’ etc.

According to Erskine May, “Parliamentary privilege is the sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals”\(^1\).

Like most of the laws in United Kingdom, these privileges are not codified but crystallized in the form of resolutions, standing orders, conventions and practices of the Houses and they are part of the Law and Custom of Parliament (\textit{Lex et consuetudo Parliamenti}). The Courts have jurisdiction only to the extent of determining whether a particular privilege exists or not and both the houses of the Parliament have the exclusive authority as to the manner in which the privilege is to be exercised. The general warrants issued or general resolutions passed by the House of Commons, in relation to its own contempt, are regarded as final and conclusive and courts are not at liberty to interfere with the same.

At the commencement of each Parliament, the Speaker of the British House of Commons makes the following statement for claiming the ancient and undoubted rights and privileges of the House:

It is now my duty in the name and on behalf of the Commons of the United Kingdom, to lay claim, by humble petition to Her Majesty, to all their ancient and undoubted rights and privileges, especially to freedom of speech in debate, to freedom from arrest, and to free access to Her Majesty whenever occasion shall require, and the most favourable construction shall be put upon all their proceedings.\(^2\)

The statement reflects upon the judicial character of a House of Commons. Historically, the British Parliament was considered as the King’s great court and thus the highest court of royal justice. The statement also highlights the fact that there is no strict separation of legislative and judicial powers in United Kingdom and that the Parliament is Supreme and Sovereign authority. For these reasons, the British Parliament and its members enjoy much wider privileges than the other known legislatures of the world, which owe their authority to the supreme and written Constitutions.

Article 1, Section 6 of the U.S. Constitution grants immunity to members of the Congress (Federal Legislature) from arrest, during their attendance at the session of their respective Houses, in all cases except treason, felony and breach of peace. Similarly, for any speech or debate in either house, they shall not be questioned in any other place.\(^3\) In *United States v. Johnson*\(^4\), the U.S. Supreme Court has held that the speeches made by the members in the Congress could not be used against them as evidence in criminal prosecutions. Similarly, in *Hutchinson v. Proxmire*\(^5\), the U.S. Supreme Court has held that a civil suit could not be instituted against the senator for defamatory statements made by him on the floor of the Senate (Upper House of the Congress).

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\(^5\) Hutchinson v. Proxmire 443 U. S. 111 (1979)
In India, some of the privileges of the Parliament and State Legislatures, such as freedom of speech, are explicitly provided by the written and the supreme Constitution and other privileges, such as power to punish for contempt, are required to be codified by the respective legislatures by making laws. Until the enacted laws codify the privileges, the legislative bodies in India are permitted to enjoy all the privileges exercised by their predecessor (the British House of Commons), as an interim measure.

Article 105 of the Indian Constitution provides for the powers, privileges and immunities of the Union Parliament and its members. The powers, privileges and immunities of State Legislatures and their members are specified, in identical terms, under Article 194 of the Constitution. Except for substituting the expression ‘Parliament’ used in Article 105 by the expression ‘Legislature of a State’, the remaining provisions are the same in Article 194. Clause 1 of Articles 105 and 194 bestows upon the members of Parliament and State Legislatures, the ‘freedom of speech’ in the House. The freedom of speech is not unqualified and it is controlled by the “other provisions of the Constitution” and “the rules and standing orders regulating the procedure of the House”. The expression “Subject to the other provisions of the Constitution” referred in the said clause includes provisions like Articles 121 and 211, which prohibit any discussion, in the Parliament and the State Legislatures regarding the conduct of a Supreme Court Judge or a High Court judge, relating to the discharge of his official duties. In The President’s Reference No.1 of 1965, popularly known as Keshav Singh’s Case, the Supreme Court has made it clear that there is no legal sanction for the said prohibition as no proceedings can be brought against the members in any court in respect of anything said or vote given by them in the State Legislative Assembly. The Court held that the freedom of speech would only be subject to the supervisory powers of the Speaker of the Assembly under the internal rules regulating the procedure and conduct of business of the House.

6 See Annexure I for the Full Text of Articles 105 and 194

7 The President’s Reference No.1 of 1965 AIR 1965 SC 1186
Clause 2 of Articles 105(2) and 194(2) provides that the members of the Parliament and State Legislatures have the immunity from the liability to any proceedings in any court in respect of anything said or vote given by them in the House. The expression “any proceedings in any court” includes not only the civil and criminal proceedings but also the writ proceedings under Articles 32 and 226. It further provides that no person is so liable in respect of the publication by or under the authority of the House, of any report, paper, votes or proceedings. Interpreting the scope of the said immunity the Supreme Court, in P. V. Narsimha Rao v. State (CBI/SPE), has held that by virtue of Article 105 (2) of the Constitution, a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal court if the acceptance of the bribe is in respect of the vote given by him in the Parliament.

Commenting upon the nature and scope of the privileges enjoyed by the legislative bodies in India, Justice Balsubramaniyan observes - “So it is evident that subject to very minor limitations, the privileges under Articles 105(1) and (2) with regard to speech in the House are complete, conclusive and outside the scope of scrutiny or enquiry by other organs of the State”.

By virtue of un-amended Articles 105(3) and 194(3), the Parliament and State Legislatures had been authorized to codify the other privileges and until they were so defined by law, the privileges enjoyed by the British House of Commons and its members at the time of commencement of the Indian Constitution would have to be applied in India. When these provisions were being discussed in the Constituent Assembly of India, some prominent members of the Assembly raised objections to the reference made to the British ‘House of Commons’ in the Constitution of a free country like India, and they demanded that the privileges should be laid down overtly in a separate Schedule to be appended to the Constitution. They felt that the rights and privileges of members should not be determined by referring to the textbooks of

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8 A.K. Subbiah v. The Chairman, Karnataka Legislative Council, Bangalore, AIR 1979 Kant. 24
9 P. V. Narsimha Rao v State (CBI/SPE) AIR 1998 SC 2120
11 For more details, See Chapter V
The Chairman of the Drafting Committee, Dr. B. R. Ambedkar was not in favour of enacting a complete code of the privileges extending over twenty to twenty-five pages and he was of the view that the objection raised in respect of the reference made to the British House of Commons was merely sentimental in nature. He observed:

…….[S]o that if you were to enact a complete code of the privileges and immunities of Parliament based on what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament ……It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee.¹³

The reference made to the ‘House of Commons’ in un-amended Articles 105 (3) and 194 (3) was deleted by the 44th Constitutional Amendment in 1978. According to the amended Articles 105 (3) and 194 (3), until the privileges are codified, the powers, privileges and immunities of the Parliament and State Legislatures shall be those enjoyed by them before the coming into force of Sec. 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Though the verbal reference to the House of Commons was removed by the said amendment, it made no material change in the substance of existing position of the law because the privileges enjoyed by the houses before the said amendment cannot be determined without making an indirect reference to the House of Commons. A. G. Noorani has referred to the amendment as ‘a cosmetic sham’¹⁴ because it has merely made a superficial change and it has not introduced any substantive or qualitative difference regarding the application of the privileges enjoyed by the British Parliament to the Indian Legislative Bodies.

No law has so far been made, either by the Parliament or any of the Legislatures of States, to codify the ‘other privileges’ i.e. the privileges other than the freedom of speech and immunity from legal proceedings which are explicitly provided under the

¹² Shri H. V. Kamath, Member of the Constituent Assembly, opined that the reference made to the Commons was derogatory to the Indian Sovereign State- Constituent Assembly Debates (Vol. 8, Lok Sabha Secretariat, New Delhi, 2003) 144

¹³ Constituent Assembly Debates (Vol. 8, 4th Reprint, Lok Sabha Secretariat, New Delhi, 2003) 583

¹⁴ A. G. Noorani, Constitutional Questions in India (Oxford University Press New Delhi 2002) 165
Constitution. However, the ‘other privileges’ implicit under Articles 105 (3) have been incorporated in ‘the Rules of Procedure and Conduct of Business in Lok Sabha and Rajya Sabha’. They are as follows.\textsuperscript{15}

1. Exemption of members from liability to serve as juror;
2. Prohibition of disclosure of the proceedings or decision of a secret sitting of the House;
3. Right of the House, to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member;
4. Prohibition of arrest or services of legal process within the precincts of the House without obtaining the permission of the Speaker/Chairman;
5. Members or officers of the House cannot give evidence or produce documents in courts of law, relating to the proceedings of the House without the permission of the House;
6. Members or officers of the House cannot attend as a witness before the other House or a Committee thereof or before a House of State Legislature or a Committee thereof without the permission of the House and they cannot be compelled to do so without their consent;
7. All Parliamentary Committees are empowered to send for persons, papers and records relevant for the purpose of the inquiry by a Committee. A witness may be summoned by a Parliamentary Committee who may be required to produce such documents as are required for the use of a Committee;
8. A Parliamentary Committee may administer oath or affirmation to a witness examined before it;
9. The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published by anyone until these have been laid on the Table of the House.

In order to enable each House of the Parliament to protect the above-stated immunities and privileges, the following consequential powers are also vested in them\textsuperscript{16}.

\textsuperscript{15} \textit{Parliamentary Privileges, Digest of Cases 1950-2000} (Vol. I, Lok Sabha Secretariat, New Delhi, 2001) 2,3
1. To commit persons, whether they are members or not, for breach of privilege or contempt of the House;
2. To compel the attendance of witnesses and to send for papers and records;
3. To regulate its own procedure and conduct of its business (Article 118 of the Constitution);
4. To prohibit the publication of its debates and proceedings;
5. To exclude strangers from the secret sittings of the House;
6. To regulate the admission to and order withdrawal/removal of strangers from any part of the House.

The above-mentioned privileges incorporated under the Rules of Procedure and Conduct of Business in Lok Sabha and Rajya Sabha are not exhaustive in nature. Both the Houses of Parliament can also validly claim the privileges not mentioned in the rules of the procedure but enjoyed by the House of Commons before the commencement of the Indian Constitution. It is, however, not clear, whether the Indian legislative bodies, which are subordinated to the supremacy of the Indian Constitution, can claim all the privileges enjoyed by the sovereign Parliament of United Kingdom. As no law has been enacted, either by the Parliament or any of the Legislatures of the States, to codify the ‘Other Privileges’ as mandated under Articles 105 (3) and 194 (3), the precise nature and scope of the parliamentary and legislative privileges continues to remain ambiguous.

The uncertain and hazy nature of the law relating to the Parliamentary Privileges in India has been aptly summarized recently by the National Commission to Review the Working of the Constitution in the following words:-

The founding fathers envisaged codification of parliamentary privileges by Parliament by law. But so far no law has been made and these privileges remain undefined. It is a somewhat curious situation that even after 50 years after the commencement of the Constitution we are unable to lay down precisely by law when a Member of Parliament is not subject to the same legal obligation as any ordinary citizen is. .......... The Commission recommends that the tims come

\[\text{16 Ibid}\]
to define and delimit privileges deemed necessary for the free and independent functioning of Parliament. It should not be necessary to run to the position in the House of Commons every time a question arises as to what kind of legal protection or immunity a Member has in relation to his work in the House.\textsuperscript{17}

II. Need for the Present Study

‘Parliamentary Privileges’ has once again become the burning topic of public discussion in India because of some recent controversies surrounding it. Most recently, on November 9, 2009, Maharashtra Legislative Assembly suspended four of its members, belonging to a regional party- \textit{Maharashtra Navnirman Sena}, for four years on the alleged charges of assaulting another member of \textit{Samajwadi Party} Abu Asim Azmi, who took the oath in Hindi against their party leader Raj Thackeray's diktat, and misbehaving with a woman legislator.\textsuperscript{18} It would not be appropriate to specifically comment upon the alleged misconduct by the concerned members and the proportionality of the punishment imposed on them in this particular case because the matter is under the consideration of the Hon’ble Legislative Assembly. However, for academic purpose it is important to evaluate the impact of the suspension of the members on the right of representation enjoyed by the constituency people represented by them.

It is also pertinent to refer to one more recent controversy, which is popularly known as ‘Cash-for-query Scandal’. On 19 December 2005, a private News-Channel telecasted a programme namely, “Operation \textit{Duryodhan}” showing some Members of Parliament receiving money for raising questions in Parliament. Few days later, another private channel telecasted a programme namely, “Operation \textit{Chakravyuh}” alleging improper conduct of some Members of Parliament in the implementation of MPLAD (Member of Parliament Local Area Development) Scheme. The ‘Ethics Committee’ of the Parliament made a recommendation for the


expulsion of the guilty MPs, which was later accepted by the Parliament. The expelled MPs filed a petition against the decision in the Supreme Court. The Speaker of Lok Sabha, Shri Somnath Chatterjee, refused to respond to the notice issued by the Court by saying that the matter fell within the ambit of ‘Parliamentary Privileges’ over which the Courts had no jurisdiction. Later, the Supreme Court in *Raja Ram Pal v. The Hon’ble Speaker, Losabha*¹⁹ upheld the expulsions but made it very clear that the Parliamentary Privileges were controlled by the mandatory provisions of the Indian Constitution and hence amenable to the judicial review.

There are many un-resolved legal questions arising out of certain recent and the past controversies concerning the Parliamentary Privileges, which need to be answered so that the individual interests of the citizens are protected without interfering with the efficient and effective functioning of the Legislatures. Moreover, some of these political and legal controversies have posed great challenge to the future of the Civil Liberties and the Parliamentary Democracy in India; few important ones are as follows-

1. **Keshav Singh’s Case**²⁰: - One Mr. Keshav Singh and two others printed and published a leaflet containing false and defamatory allegations against a Member of the Uttar Pradesh State Legislative Assembly. The concerned Member made a complaint to the Assembly alleging that the said persons had committed contempt of the House and on 7 March 1963, the Assembly referred the matter to the Privilege Committee of the House. Keshav Singh appeared before the House and there he behaved in disrespectful manner. The House then passed a resolution and sentenced him to 7 days imprisonment. On 19 March 1964, Keshav Singh filed a writ petition in the Lucknow bench of Allahabad High Court and Advocate Mr. Solomon represented him. The High Court admitted the petition and granted interim bail to Keshav Singh. On 21 March 1964, the Legislative Assembly adopted a resolution saying that the two judges of the High court who granted relief to the petitioner, Adv. Solomon and Keshav Singh had committed the contempt of the House.

¹⁹ *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Others* (2007) 3 SCC 184

²⁰ *The President’s Reference No.1 of 1965 AIR 1965 SC 745*
The Assembly ordered that they should be taken into custody and produced before the House. The two judges of the Allahabad High Court and Adv. Solomon filed petitions in the Allahabad High Court under Article 226 of the Constitution on 23 March 1964 for a writ of *mandamus* restraining the Speaker from implementing the resolution passed by the House. The High Court consisting of a full bench of 28 judges issued orders for preventing the Speaker from issuing the arrest warrant in pursuance of the resolution. On 26 March 1964, the President of India made a special reference to the Supreme Court under Article 143 (1) of the Constitution. The Court was asked to give its opinion about the constitutional crisis created due to the conflict between the State Legislature and the High Court in the State of Utter Pradesh.

The Court did not consider the larger issue as to whether latter part of Article 194 (3) was subject to the fundamental rights in general but held that Article 21 would apply. The Court held that if an application were made to the Court for issue of *Habeas corpus*, it would not be competent for the House of the Legislature to raise the preliminary objection that the Court had no jurisdiction in the matter. The Court further held that Article 211, which prohibits a discussion in the State Assembly as to the conduct of any judge of Supreme Court or of any of the High Courts, was mandatory in nature. It was held that a High Court Judge could not be held guilty of contempt of the Legislative Assembly for exercising his constitutional power under Article 226 of the Constitution and deciding upon a writ petition filed by a citizen for enforcement of his fundamental rights against the Assembly. This judgment raises the following questions of constitutional importance: -

a) Do all the Fundamental Rights enshrined under Chapter III of the Constitution control Parliamentary Privileges?

b) Is the order of the House punishing a person for its contempt final and conclusive? Can the legality of such order be challenged in the Court?

c) Is there an urgent need to codify the Parliamentary Privileges in India? What should be the nature and scope of the proposed law for codification of the Privileges?
2. *P. V. Narsimha Rao v. State (CBE/SPE)*\(^{21}\): - In this case, a question before a Constitutional Bench of the Supreme Court was - whether by virtue of Article 105 (2) of the Constitution a Member of Parliament could claim immunity from prosecution on the charge of bribery in a criminal court? It was alleged that some Members of Parliament belonging to *Jharkhand Mukti Morcha* and other political parties accepted the illegal gratification to vote against the no-confidence motion proposed by the opposition against the Congress Party Government led by Late Prime Minister Shri. P. V. Narsimha Rao. The accused persons raised an objection that the jurisdiction of the court was barred under Article 105(2) of the Constitution because the matter was related to motive and action of Members of Parliament with respect to the ‘vote given’ by them in Parliament\(^{22}\). The Supreme Court held that the expression ‘in respect of’ used in Article 105(2) must receive a broad meaning to include the conspiracy, which constituted motive behind the votes given by the alleged bribe-taking Members of Parliament. Hence, the alleged bribe-taking Members of Parliament had the protection of Article 105(2) and they were not answerable to any Court.

Justice G. N. Ray, who was part of the majority judgment in the *P. V. Narsimha Rao v. State*, later on publicly acknowledged that the decision was erroneous and it required a re-look.\(^{23}\) According to some critics\(^{24}\), the decision would cause harm to the principle of ‘Rule of Law’, which is one of the foundations of democratic polity. The immunity granted to the members of Parliament under Article 105(2) should ensure that the members are able to discharge their functions fearlessly and without any outside interference and nothing more than that. It must not be extended to any criminal acts committed by the Member in order to make a speech or to give his vote in Parliament. This leads us to the following questions: -

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\(^{21}\) *P. V. Narsimha Rao v. State (CBI/SPE)* AIR 1998 SC 2120

\(^{22}\) A Member of Parliament or State Legislature is immune from any proceedings in any court in respect of anything said or any vote given by him in the House by virtue of Articles 105(2) and 194(2) respectively

\(^{23}\) *The Times of India* (24 July, 2008)

\(^{24}\) See Balwant Singh Malik, ‘P.V.Narsmha Rao v. State: A Critique’ (1998) 8 SCC (Jour) 1
a) What is the scope of the immunity from the proceedings in any court in respect of anything said or vote given by the member in Parliament or State Legislature, guaranteed under Articles 105(2) and 194(2) respectively?

b) Should Articles 105(2) and 194(2) be suitably amended to exclude, the criminal acts committed by the legislators outside the legislatures, from the scope of the immunity?25

3. Raja Ram Pal v. The Hon’ble Speaker, Losabha: - In Raja Ram Pal v. The Hon’ble Speaker, Losabha26, the Supreme Court held that the Parliament has power to expel a member but made it clear that the sovereignty, which can be claimed by the Parliament in England, cannot be claimed by any of the legislatures in India in the literal and absolute sense. The Court further held that the Parliamentary Privileges are subject to the supervision and control of the Courts and the Parliament cannot determine for itself the nature, scope and effect of its privileges.

In this context, it is necessary to deal with the following question: - Can the Parliament and Legislatures in India claim all the privileges enjoyed by the House of Commons at the commencement of the Indian constitution as envisaged by Articles 105(3) and 194(3) of the Constitution? If the answer is in negative then there is a pressing need to codify the parliamentary privileges so that all ambiguities and uncertainties relating to applicability of vague and outdated English law to the Indian legislative bodies are removed.

III. Review of the Literature

The existing literature on this research work mainly revolves around the published works of foreign as well as Indian authors pertaining to the subject matter, the decided and pending cases, Constituent Assembly and the articles published in the Law-journals.

25 See Report of the National Commission to Review the Working of the Constitution (Vol. I, Universal Law Publishing Co. Pvt. Ltd. 2002) 168. The Commission has recommended that Article 105 (2) may be suitably amended to clarify that the immunity enjoyed by the Members of Parliament does not cover corrupt acts committed by them in connection with their duties in the House or otherwise.

26 Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Others (2007) 3 SCC 184
1) Erskine May’s Parliamentary Practice\textsuperscript{27} is a classic exposition and the source book of knowledge with regard to the law, privileges, proceedings and usages of the British Parliament. The book finds mention in the Constituent Assembly Debates and speeches made by Dr. Ambedkar in the Drafting Committee. It would be an exercise in futility to attempt to deal with the question of powers, privileges and immunities of the Parliament without referring to ‘May’. This book is considered as a sure guide in Indian Legislatures to ascertain the privileges of the English Parliament. The Supreme Court itself has made detailed reference to the book while deciding cases relating to Parliamentary Privileges like \textit{Keshav Singh, P.V. Narsimha Rao} and \textit{Raja Ram Pal}. The book extensively deals with the historical development of the law relating to Parliamentary Privileges in U.K. with reference to records pertaining to the proceedings of Parliament, reports of the Privileges Committees of the Houses and decisions of the English Courts.

However, Erskine May’s book on Parliamentary Practice is a foreign publication, which essentially deals with the origin and development of Parliamentary Privileges of the United Kingdom. It merely help one understand the privileges enjoyed by the British Parliament at the commencement of the Indian Constitution. It does not deal with the actual application of these privileges to the Indian legislative bodies. The problems arising out of the application of the English law relating to the Parliamentary Privileges in India by virtue of the transitory provisions of the Indian Constitution, i.e. Articles 105 (3) and 194 (3), cannot be completely understood by referring to May’s work.

2) \textit{Myth and Law of Parliamentary Privileges}\textsuperscript{28} by Hardwari Lal, Former Vice Chancellor of Maharshi Dayanand University, Rohtak and Former Education Minister of Haryana, is a well-documented book about the unexplored area of, real role and precise scope of Parliamentary Privileges in India. It is an outstanding contribution to the literature relating to Parliamentary Privileges and the working of the


parliamentary form of government in India. The author was himself expelled from the Haryana Assembly in 1975 and he challenged the resolution passed by Haryana Assembly before the Punjab and Haryana High Court. He personally argued his case before the court and secured a favourable judgment that Indian Legislatures have no power to expel a duly elected member. This book meets the need of the researchers, lawyers, legislators and political commentators.

Though this book is certainly useful in understanding the historical and theoretical background of the law concerning Parliamentary Privileges in India and its early development till 1979, it is not updated to incorporate the recent trends in this area of law. The recent Supreme decisions in *P. V. Narsimha Rao v State*[^29] and *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha*[^30] are not discussed and analyzed. It also fails to take note of the related developments in commonwealth countries like Australia, which has codified the Parliamentary Privileges in 1987. The book does not give any guidelines for the codification of Parliamentary Privileges in India as mandated under part 2 of Article 105 (3) and 194 (3) of the Indian Constitution.

3) *Parliamentary Privileges An Indian Odyssey*[^31] by Justice V. R. Krishna Iyer and Dr. Vinod Sethi is comparatively more recent work on Parliamentary Privileges in India. This book gives an overview of the historical perspective of Parliamentary Privileges in United Kingdom and their application in India up to 1996. The authors have also successfully dealt with the problems arising out of the non-codification of Parliamentary Privileges in India and the conflicts between the Press and the Parliament. However, this book does not extensively deal with certain important powers and privileges like freedom of speech and immunity from any judicial proceedings of the members of Parliament and State Legislatures. It also fails to consider and discuss the controversial power of the Parliament and State Legislatures to expel their own members. The book does not provide any guidance as to the codification of privileges in India. The book was published in 1996 and hence it omits

[^29]: AIR 1998 SC 2120

[^30]: (2007) 3 SCC 184

certain landmark judgments of the Supreme Court like *P. V. Narsimha Rao v State*\(^{32}\) and *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha*\(^{33}\).

4) The Lok Sabha Secretariat has published a book in 2002 namely *Parliamentary Privileges Court Cases* which deals with the summary and compilation of judgments delivered by the Supreme Court and various High Courts on ‘privilege’ related matters. The book enables us to appreciate the ratio adopted by the Court on arriving at its final verdict, the arguments put forth before the Court and the line of argument followed by it. It is very useful reference tool as well as a ready reckoner to those interested in the subject. Another publication of the Lok Sabha Secretariat—*Parliamentary Privileges, Digest of Cases 1950-2000*\(^{34}\), Vol. I and II, in which summaries of privilege cases in the two houses of Parliament from 1950 to 2000, has also proved to be helpful as a reference tool to analyse the practices and procedures followed by the Parliament in dealing with the privilege related matters. Both these publications are not standard commentaries on the Parliamentary Privileges but they are compilations of court judgments on ‘privilege’ related matters and summaries of privilege cases in the two houses of Parliament. These publications do not provide any insight into the theoretical analysis of law relating to Parliamentary Privileges.

5) An authoritative commentary, written by eminent Constitutional expert and Former Secretary General of Lok Sabha Dr. Subhash Kashyap, *Parliamentary Procedure, Law, Privileges, Practice and Precedents*\(^{35}\) has proved to be a reliable guide and a ready reckoner on Rules of Procedure and Conduct of Business of both the Houses of Parliament. It is not a comprehensive book dealing exclusively with Parliamentary Privileges and related case laws. It has limited use merely to understand the rules and practices followed by both houses of Parliament.

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\(^{32}\) AIR 1998 SC 2120

\(^{33}\) (2007) 3 SCC 184

\(^{34}\) *Parliamentary Privileges, Digest of Cases 1950-2000* (Vol. I & II, Lok Sabha Secretariat, New Delhi, 2001)

As evident from the above-stated discussion, the existing literature on the Parliamentary Privileges does not throw any light on the recent trends relating to the area of this research and it fails to visualize the future of the law relating to the Parliamentary Privileges in India. The available material on Parliamentary Privileges does not reflect the recent international and comparative trends relating to the subject. There is a dearth of a comprehensive work on all-important aspects of Parliamentary Privileges in India dealing extensively with comparative analysis the Indian and the foreign law. The researcher has made sincere efforts to fill the gap and lacunae in the existing literature and suggested guidelines for making draft legislation codifying the law of Parliamentary/Legislative Privileges as mandated under Articles 105(1) and 194(1) of the Constitution.

IV. Statement of the Problem

The Legislative privileges in India are scattered in the form of conventions and usages followed by the House of Commons in U.K. at the commencement of the Indian Constitution. Articles 105(3) and 194(3) have frozen the law relating Parliamentary Privileges to the year 1950 whereas in U.K. itself much water has flown under the bridge since then. A mechanical application of the English law, without bearing in mind the politico-legal conditions prevailing in India, is not in tune with the spirit of the Indian constitution and the doctrine of ‘Separation of Powers’ envisaged by it. In *Indira Nehru Gandhi v. Rajnarain*\(^{36}\), the Indian Supreme Court has held that Separation of Powers is a ‘basic structure’\(^{37}\) of the Constitution and the Parliament, being a legislative body, cannot exercise judicial powers. The power to punish for contempt, enjoyed by the British House of Commons, is essentially a judicial power. It is doubtful whether the Indian Parliament can validly exercise such a power. In United Kingdom itself the Joint Committee of House of Lords and House of Commons on Parliamentary Privileges in its First Report published in 1999 has proposed that Parliament’s power to imprison persons, whether members or not, who

\(^{36}\) AIR 1975 SC 2299

are in contempt of Parliament should be abolished and it should be transferred to the High Court.\textsuperscript{38}

In U.K., the Parliament is the supreme and sovereign authority. According to Dicey, the British Parliament has ‘the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament’\textsuperscript{39}. The courts have no power to declare the laws made by or decisions taken by the Parliament as unconstitutional or void. There are no written constitutional guarantees in the form of Fundamental Rights or Bill of Rights, which can be enforced against the State including Parliament.

In India, however, the Constitution is the Supreme law of the land (\textit{Suprema Lex}) and all the three organs of the State i.e. Legislature, Executive and Judiciary are equally subordinated to, and controlled by the Constitution. The Constitution is thought of an instrument by which the arbitrary powers of the Government can be controlled. It guarantees certain basic, natural and inalienable rights, which can be claimed against ‘the State’, including the Parliament and State Legislatures. The exercise of the legislative powers and even the privileges enjoyed by the legislatures in India are subject to the Supremacy of the Constitution and hence are amenable to the judicial review.

\textbf{V. Objectives of the Study}

- To critically analyze the working of the Constitutional provisions and the Judicial responses involving to the law of Parliamentary/Legislative Privileges in India with comparative analysis of law prevailing in other countries especially the U.K., U.S.A. and Australia.

- To make an analytical inquiry into the powers, privileges and immunities enjoyed by the Parliament and State Legislatures and their Members vis-à-vis other Constitutional Provisions including Fundamental Rights.

\textsuperscript{38} United Kingdom Parliament <http://publications.parliament.uk/pa/> accessed 23 October, 2008

To make suitable suggestions for making draft legislation codifying the law of Parliamentary/Legislative Privileges as required by Articles 105(3) and 194(3) of the Constitution.

VI. Hypotheses

1. The ‘freedom of speech’ and ‘immunity from legal proceedings’ guaranteed under Clauses 1 and 2 of Articles 105 and 194, respectively, are not absolute but they are controlled by the other provisions of the Constitution including Fundamental Rights.

2. There is an imminent need to codify the ‘other Privileges’ of the legislative bodies in India, including power to punish for contempt and power of expulsion, as required by clause 3 of Articles 105 and 194 of the Constitution.

VII. Methodology

The study is doctrinal and based on primary and secondary data gathered from different sources including Constitutional Provisions, Statutes, Constituent Assembly Debates, Parliamentary Debates, Case Laws, Books, Law-Journals, Magazines, Newspapers, Published-interviews and On-line Databases.40

The researcher has analytically studied various Indian and foreign judgments relating to Parliamentary Privileges delivered by the Constitutional Courts. As framers of the Indian Constitution have borrowed the privileges from the Constitution of the U.K., the researcher has made critical study of the Cases decided by the British Courts along with the Parliamentary Conventions and Practices relevant to the topic. Contrary to the Constitutional mandate in Articles 105 (3) and 194 (3) of the Indian constitution, the Legislatures in India have not codified the Legislative Privileges in India. Thus, the researcher has also provided the guiding principles for the legislation to be made in future by analyzing the relevant legislation existing in other countries. The framework for the said guidelines is prepared on the basis of the findings of the study.

40 The researcher has also gained valuable insights and inputs through participation in 22nd Appreciation Course in ‘Parliamentary Processes and Procedures’ (organized by Bureau of Parliamentary Studies and Training, Parliament of India, New Delhi from 22-26 August 2005)
and is also influenced by the First Report of the Joint Committee of House of Lords and House of Commons on Parliamentary Privileges,1999\textsuperscript{41} and The Parliamentary Privileges Act 1987 of Australia\textsuperscript{42} and . The cut-off date for data collection and analysis was 31 May 2010 and the events after the said date have not been considered for the study.

**Method of Citation Used** - ‘Oxford Standard for Citation of Legal Authorities’ (OSCOLA 2006)\textsuperscript{43} is used for citing legal authorities in the footnotes. In the Bibliography, the available guidelines of the Symbiosis International (Deemed University), specifying the order of the entries for books and articles, are followed in addition.

**VIII. Scope and Limitations of the Study**

The researcher has restricted the scope of the study to certain important and most-controversial privileges of the legislative bodies in India like freedom of speech, the immunity from any proceedings any court in respect anything said or vote given by the members, power of the houses to punish for their own contempt and power of the houses to expel their own members. Due to the time and energy constraints, the study is restricted only to doctrinal research and the comparative analysis is restricted to certain important legal systems like United Kingdom, United States and Australia.

**IX. Plan of the Study**

The study is divided into six chapters. The first chapter is introductory and it contains the historical and theoretical background of the ‘Parliamentary Privileges’ including their origin and development in United Kingdom, U.S.A. and India. This chapter also


\textsuperscript{42} See Annexure III for the Full Text of the Act

\textsuperscript{43} http://denning.law.ox.ac.uk/published/oscola.shtml
contains need for the present study, review of the existing literature, exact statement of the problem, objectives of the study hypotheses, research methodology adopted including the method of citation and the scope and limitations of the study.

The second chapter deals with the ‘freedom of speech’ and ‘immunity from legal proceedings’ guaranteed to the members of legislative bodies in India along with their position in other countries, nature and scope, judicial enforceability and their relation with the contempt of court. The right of a legislature to prohibit the publication of its proceedings and its impact on the freedom of the press is also included in this chapter.

The third chapter examines the un-codified power of the Parliament and State Legislatures in India to punish for their own contempt, its impact on fundamental rights including the right to life and personal liberty and the freedom of the press. This chapter also extensively deals with the conflicts between the legislative bodies on the one hand and the judiciary and the press on the other.

The fourth chapter analyses the power of the legislative bodies to expel their own members, its constitutionality and relation with the fundamental rights with reference to the recent controversies and judicial responses. The right of the houses to suspend their members is also discussed with reference to its impact on the right of the constituency people to representation.

The fifth chapter presents a critical analysis of the transitory nature of the Parliamentary Privileges in India and need for their codification with reference to the Constituent Assembly Debates, the views in favour of and against their codification and the Australian law codifying the privileges.

The final chapter deals with the summary of the conclusions and suggestions, which are drawn based on discussions made in the previous chapters.

In keeping with the above-mentioned plan of the study, the chapter on Freedom of Speech and Immunity from Legal Proceedings follows.