

Codification of Parliamentary Privileges in India: Reconciling Legislative Independence with Constitutional Supremacy

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Abstract

Parliamentary privilege in India poses a constitutional challenge. The Constitution protects the independence of Parliament through Articles 105 and 194 while also upholding constitutional supremacy, judicial review, and fundamental rights. Although Article 105(3) allows Parliament to define its powers, privileges, and immunities by law, these privileges remain largely uncoded even after more than seventy years. This article examines whether such uncertainty is consistent with the rule of law in a constitutional democracy. It analyses constitutional provisions and key Supreme Court decisions, including *In re: Keshav Singh*, *P.V. Narasimha Rao v. State (CBI/SPE)*, and *Raja Ram Pal v. Speaker, Lok Sabha*, to show that parliamentary privileges are not unlimited and must conform to constitutional principles. The study demonstrates that judicial interpretation has increasingly linked parliamentary privilege with fundamental rights, fairness, and the Basic Structure doctrine. However, the lack of codification continues to create legal uncertainty and institutional conflict. Relying on the experience of Australia, Canada, the United Kingdom, and the United States, the article argues that codifying parliamentary privileges can provide clarity while preserving legislative independence. It recommends substantive, procedural, and hybrid reforms to balance parliamentary autonomy with constitutional accountability and strengthen the rule of law.

Keywords: Parliamentary Privilege; Constitutional Supremacy; Judicial Review; Basic Structure Doctrine; Rule of Law.

I. Introduction: The Unresolved Constitutional Question

The Constitution of India creates a parliamentary system which is based upon deliberative democracy and respects institutional autonomy.¹ In such a system, Parliament is expected to discharge its duties as the pivot of political accountability around which the representatives of people deliberate, legislate, and scrutinize executive power. At the same time, however, the Indian constitutional framework is steeped in the principles of constitutional supremacy, judicial review, and justiciable fundamental rights.² This mutual existence of legislative autonomy and constitutional limitation has been one of the fundamental enduring components of Indian constitutionalism.

¹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford University Press, 1966).

² *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 292.

This dual nature is well embodied by the doctrine of parliamentary privilege. Parliamentary privilege refers to the collective set of powers, immunities, and exemptions that enable legislative bodies to perform their constitutional functions without any external interference.³ In India, these privileges are primarily governed by Articles 105 and 194 of the Constitution, which confer similar privileges upon Parliament and state legislatures respectively.⁴

Article 105(1) guarantees freedom of speech in Parliament, ensuring that members may participate in legislative debate without fear of external sanction.⁵ Article 105(2) further provides immunity from judicial proceedings in respect of anything said or any vote casted in Parliament or its committees.⁶ These provisions reflect the functional necessity of safeguarding legislative deliberation from executive or judicial interference.

However, Article 105(3) introduces a more complex dimension to the matter. The provision states that the “powers, privileges and immunities” of Parliament, apart from those explicitly mentioned, shall be such as may be defined by law and, until so defined, shall be those enjoyed by the House of Commons at the commencement of the Constitution.⁷ The framers, therefore, contemplated a transitional arrangement whereby parliamentary privileges were temporarily adopted from the British parliamentary system, with the expectation that they would subsequently be defined by legislation.

Despite express constitutional authorization, Parliament has not been able to shake off its inertia towards enactment of any comprehensive legislation for codifying its privileges. Consequently, even after more than seventy-five years of constitutional governance, parliamentary privilege in India remains largely uncoded⁸, with its contours continuing to be defined primarily by parliamentary practice and judicial interpretation.⁹

This prolonged legislative inaction has given rise to several constitutional questions of immense significance. First, whether undefined coercive powers can coexist with the rule of law in a constitutional democracy that is committed to legal certainty and accountability?¹⁰ Second, whether the constitutional safeguard of judicial review alone suffices in providing an adequate mechanism for regulating the exercise of privilege powers?¹¹ Third, whether such codification is merely administratively desirable, or is it constitutionally pertinent to harmonize legislative privilege with the broader structure of constitutional governance?¹²

Time and again, these questions have gathered renewed relevance in the recent years as controversies surrounding the suspension of legislators, privilege proceedings against journalists, and disciplinary actions within legislative bodies have drawn public scrutiny and intensified public debate.¹³ The

³ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1045–47 (2nd edn., Universal Law Publishing, 2015).

⁴ CONST. OF INDIA, arts. 105 & 194.

⁵ CONST. OF INDIA, art. 105(1).

⁶ CONST. OF INDIA, art. 105(2).

⁷ CONST. OF INDIA, art. 105(3).

⁸ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1045–47 (2nd ed., Universal Law Publishing Co. 2015).

⁹ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184, ¶¶ 366–431.

¹⁰ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183–205 (10th ed., Macmillan 1959).

¹¹ Special Reference No. 1 of 1964 (*In re Keshav Singh*), AIR 1965 SC 745.

¹² Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

¹³ *Ashish Shelar v. Maharashtra Legislative Assembly*, (2022) 1 SCC 641.

invocation of privilege powers in such contexts often raises concerns regarding procedural fairness, freedom of expression, and the limits of legislative autonomy.¹⁴

The present article argues that codification of parliamentary privileges in India is constitutionally consistent with—and normatively required by—the structure of limited governance established by the Constitution. The central thesis advanced here is that while parliamentary privilege remains an essential institutional safeguard, its continued existence in an uncoded form leads to doctrinal uncertainty and risks undermining the rule of law.

The argument proceeds on three principal premises. First, the constitutional framework of India differs fundamentally from the British system from which the doctrine of parliamentary privilege was historically derived. Whereas the United Kingdom operates under parliamentary sovereignty, India is governed by a written Constitution that places substantive limitations upon all state power.¹⁵ Second, judicial decisions of the Supreme Court have progressively clarified that parliamentary privilege is subject to constitutional limitations and is not immune from judicial review.¹⁶ Third, comparative constitutional experience demonstrates that codification of parliamentary privilege can coexist with legislative autonomy while enhancing legal clarity.¹⁷

Methodologically, this article adopts a doctrinal and comparative constitutional approach. It examines the constitutional text, judicial decisions, and scholarly commentary relating to parliamentary privilege, and positions the Indian experience within a broader comparative framework. The analysis proceeds in several stages.

Part II traces the historical origins of parliamentary privilege in the British constitutional tradition and examines its transplantation into the Indian constitutional framework. Part III analyzes the constitutional architecture governing parliamentary privileges under Articles 105 and 194. Part IV examines the judicial interpretation of parliamentary privilege in leading Supreme Court decisions. Part V evaluates the rule of law concerns arising from an uncoded privilege regime. Part VI explores comparative constitutional approaches to legislative privilege in other democratic systems. Part VII proposes models for codifying parliamentary privileges in India while preserving legislative autonomy.

Ultimately, the article argues that codification of parliamentary privilege would not diminish the dignity or authority of Parliament. Rather, it would clarify institutional boundaries, reinforce constitutional accountability, and strengthen democratic legitimacy.

II. Historical Foundations: Borrowed Privilege in a Written Constitution

A. English Origins and Parliamentary Sovereignty

The doctrine of parliamentary privilege originated in the constitutional tussles between the English Parliament and the Crown during the seventeenth century. Historically, privileges acted as protective mechanisms to ensure that members of Parliament could deliberate without any interference from the monarch or the courts.¹⁸ The growth of these privileges was closely tied to the broader development of parliamentary sovereignty within the British constitutional system.

One of the most significant landmarks in the evolution of parliamentary privilege was the enactment of the **Bill of Rights, 1689**. Article 9 of the Bill of Rights declared that “the freedom of speech and debates

¹⁴ INDIA CONST. arts. 19(1)(a), 21 & 32.

¹⁵ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, 76.

¹⁶ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184, 264.

¹⁷ Erskine May, *Parliamentary Practice* 239–53 (25th ed., LexisNexis 2019).

¹⁸ Erskine May, *Parliamentary Practice* 75–78 (25th edn., LexisNexis, 2019).

or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.”¹⁹ This provision established a basic postulate of legislative immunity, protecting parliamentary proceedings from the glare of judicial scrutiny.

With the passage of time, the privileges of the House of Commons gradually expanded through an admixture of parliamentary practice, judicial deference, and constitutional convention. Unlike written constitutional systems, the British constitutional apparatus did not impose any formal limitations on parliamentary authority. Instead, Parliament itself had remained the supreme law-making body whose decisions could not be invalidated by courts.²⁰

Within this framework, parliamentary privilege had evolved as an integral part of legislative sovereignty. Privileges were not defined exhaustively in statute; rather, they were determined by parliamentary practice and historical precedent. The House of Commons asserted authority to punish for contempt, regulate its internal proceedings, and discipline members whose conduct was considered incongruent with parliamentary dignity.²¹

The absence of judicially enforceable constitutional limitations connoted that parliamentary privilege operated, by and large, as a self-regulating institutional doctrine. Courts have traditionally refrained from questioning parliamentary proceedings, recognizing that the autonomy of Parliament formed a central feature of the British constitutional framework.²²

B. Constitutional Transplantation into India

When the framers of the Indian Constitution had considered the question of parliamentary privilege, they had borrowed some elements from the British constitutional tradition while simultaneously adapting them to the context of a written constitutional system. The incorporation of parliamentary privileges in the Indian setting cannot be construed as a mere replication of the British practice. Rather, it can be deemed as a deliberate constitutional transplantation into a different institutional environment.²³

During the Constituent Assembly Debates, members recognized that legislative bodies required certain immunities to function effectively. At the same time, concerns were raised regarding the feasibility of such undefined privileges being compatible with the constitutional commitment to the safeguarding of fundamental rights.²⁴

Dr. B.R. Ambedkar, while supporting the incorporation of Article 105(3), emphasized that the provision was deemed only as a temporary arrangement. According to him, it was neither tenable nor proper for the Constituent Assembly to exhaustively enumerate all parliamentary privileges within the Constitution itself. Instead, the Constitution permits the Parliament to define these privileges through appropriate legislation in the future.²⁵

This approach reflected a balanced compromise between the ground constitutional realities of those times and the prospects for evolution of core principles of legislative privileges. By temporarily incorporating the privileges of the House of Commons as they had existed at the time of commencement of the Constitution, the framers ensured continuity with established parliamentary practice while leaving

¹⁹ Bill of Rights, 1689, 1 Will. & Mary, c. 2, art. 9 (Eng.).

²⁰ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 39–41 (10th edn., Macmillan, 1959).

²¹ Erskine May, *Parliamentary Practice* 281–330 (25th ed., LexisNexis 2019).

²² R. v. Chaytor, [2010] UKSC 52, [2011] 1 AC 684.

²³ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

²⁴ Constituent Assembly Debates, Vol. VII, 972–74 (19 Dec. 1948).

²⁵ Ibid., at 973 (statement of Dr. B.R. Ambedkar).

ample scope for legislative clarification. It was expected that the Parliament would eventually codify these privileges in a manner consistent with India's constitutional framework.²⁶

Despite the above, however, the much awaited legislative codification has never materialized. Since 1950, Parliament has not taken any steps for enacting any comprehensive statute defining parliamentary privileges. As a result, the scope and content of privilege continue to depend on a combination of constitutional interpretation, parliamentary precedent, and judicial decisions.

Such prolonged legislative inertia or inaction has been often criticised by various scholars. Constitutional thinkers such as M.P. Jain have argued that reliance upon the privileges of the House of Commons as they existed in 1950 creates an interpretative unpredictability because British parliamentary practices have continued to evolve over time.²⁷ Similarly, H.M. Seervai observed that such non-codification of legislative privileges leaves the scope of privilege ambiguous and may lead to deliberate misuse.²⁸

Resultantly, the onus of clarifying the limits of parliamentary privilege has increasingly fallen upon the judiciary. Very often, the Supreme Court of India has been required to reconcile legislative privilege with fundamental rights and constitutional limitations in several landmark decisions. These judicial interventions have gradually paved the way for and thereby shaped the modern doctrine of parliamentary privilege in India.

III. Constitutional Architecture: Limits Within the Text

A. Article 105: Structure and Scope

The constitutional framework governing parliamentary privilege in India is primarily contained in Article 105 of the Constitution. The structure of the provision itself reveals a carefully calibrated balance between legislative autonomy and constitutional limitation. Article 105 is divided into four clauses, each addressing a distinct dimension of parliamentary privilege.²⁹

Article 105(1) guarantees freedom of speech in Parliament. This freedom is not similar to the freedom of speech guaranteed to citizens under Article 19(1)(a). Instead, it constitutes a specialized constitutional safeguard designed to ensure that members of Parliament may participate in legislative deliberation without any extraneous fear or favour.³⁰ The privilege is institutional rather than individual for it exists not for the personal benefit of legislators but for the effective functioning of the legislative body.

Article 105(2) further strengthens this protection by providing immunity from judicial proceedings for anything said or any vote given in Parliament or its committees. The provision also extends immunity to the publication of parliamentary reports and proceedings under the authority of the House.³¹ This clause reflects the classic doctrine of legislative immunity derived from the English Bill of Rights of 1689.

However, the most controversial provision within Article 105 is clause (3). This clause states that the powers, privileges, and immunities of Parliament shall be those defined by law and, until so defined, shall be those of the House of Commons at the commencement of the Constitution.³² The clause thus

²⁶ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1045–47 (2nd ed., Universal Law Publishing Co. 2015).

²⁷ M.P. Jain, *Indian Constitutional Law* 405–07 (8th edn., LexisNexis, 2018).

²⁸ H.M. Seervai, *Constitutional Law of India*, Vol. II, 2097–2100 (4th edn., Universal Law Publishing, 1996).

²⁹ CONST. OF INDIA, art. 105.

³⁰ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1048–49 (2nd edn., Universal Law Publishing, 2015).

³¹ CONST. OF INDIA, art. 105(2).

³² CONST. OF INDIA, art. 105(3).

incorporates two important elements: a temporary reference to British parliamentary privileges and an explicit authorization for Parliament to define these privileges through legislation.

The structure of Article 105 therefore connotes that not all parliamentary privileges possess the same constitutional status. Freedom of speech and immunity from judicial proceedings are expressly recognized in the Constitution, whereas other privileges remain contingent upon legislative definition.³³

This structural classification has important constitutional ramifications. It diminishes the argument that parliamentary privilege constitutes an absolute or untouchable domain of legislative authority. Instead, the constitutional text itself provides that the scope of privileges may be clarified and limited through legislation.

B. Articles 122 and 212: Procedural Immunity

In addition to Article 105, the Constitution contains provisions designed to protect legislative proceedings from judicial interference. Article 122 provides that the validity of any proceedings in Parliament shall not be questioned in any court on the ground of any alleged irregularity of procedure.³⁴

A parallel provision exists for state legislatures under Article 212.³⁵

At first glance, these provisions appear to create a broad area of legislative immunity from judicial scrutiny. However, a minute reading reveals that the protection extends only to “irregularity of procedure.” The Constitution does not protect parliamentary proceedings from judicial review in cases where substantive constitutional violations are alleged.

This distinction between procedural irregularity and substantive illegality has played a crucial role in the development of constitutional jurisprudence relating to parliamentary privilege. Courts have consistently interpreted Articles 122 and 212 as barring judicial intervention only in matters of internal procedure while permitting review in cases involving constitutional violations.³⁶

The Supreme Court has repeatedly emphasized that these provisions cannot be interpreted as excluding judicial review altogether. Such an interpretation would erode the supremacy of the Constitution and undermine the role of the judiciary as the final interpreter of constitutional limitations.

C. Interface with Fundamental Rights

Parliamentary privilege inevitably crosses paths with the constitutional guarantee of fundamental rights. Several fundamental rights provisions may be involved when privilege powers are exercised.

First, Article 14 guarantees equality before the law and prohibits arbitrary state action.³⁷ Legislative actions that involve punishment for contempt, suspension of members, or other coercive measures may raise questions regarding arbitrariness and proportionality.

Second, Article 19(1)(a) protects freedom of speech and expression. Although parliamentary speech is protected under Article 105(1), conflicts may arise when privilege powers are invoked against journalists, media organizations, or individuals who criticize parliamentary proceedings.

Third, Article 21 guarantees that no person shall be deprived of life or personal liberty except according to the procedure established by law. Pursuant to the landmark decision in *Maneka Gandhi v. Union of India*, the Supreme Court interpreted Article 21 as mandating that such procedure must be fair, just, and reasonable.³⁸

³³ M.P. Jain, *Indian Constitutional Law* 404–05 (8th edn., LexisNexis, 2018).

³⁴ CONST. OF INDIA, art. 122(1).

³⁵ CONST. OF INDIA, art. 212(1).

³⁶ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184, 264–65.

³⁷ CONST. OF INDIA, art. 14.

³⁸ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, 281.

When legislative bodies exercise powers involving arrest, detention, or imprisonment for contempt, the procedural fairness requirements of Article 21 become directly relevant. The absence of clearly defined statutory procedures raises concerns regarding the aspects of due process and accountability.

D. Basic Structure Doctrine and Parliamentary Privilege

The doctrine of parliamentary privilege must also be comprehended in light of the Basic Structure doctrine developed by the Supreme Court. In *Kesavananda Bharati v. State of Kerala*, the Court held that certain fundamental features of the Constitution—including judicial review and constitutional supremacy—cannot be modified even by constitutional amendment.³⁹

Subsequent decisions reaffirmed that parliamentary authority is subject to constitutional limitations. In *Indira Nehru Gandhi v. Raj Narain*, the Court explicitly rejected the argument that Parliament possesses unlimited power within the constitutional framework.⁴⁰

These decisions connote that India does not follow the British doctrine of parliamentary sovereignty. Instead, Parliament operates within a constitutional structure in which all institutions are subject to the supremacy of the Constitution.

Consequently, parliamentary privilege cannot be interpreted in a manner that undermines or overlooks constitutional principles such as judicial review, rule of law, and fundamental rights. Therefore, the Basic Structure doctrine provides an important conceptual framework for determining the legitimacy of uncodified privileges of the legislature.

IV. Judicial Interpretation of Parliamentary Privileges

A. In re: Keshav Singh (1965)

One of the earliest constitutional discords between legislative privilege and judicial authority occurred in *In re: Special Reference No. 1 of 1964*, commonly known as the **Keshav Singh case**.⁴¹ The case arose from an unprecedented incident of dispute between the Uttar Pradesh Legislative Assembly and the Allahabad High Court.

Keshav Singh, a private individual, had been committed to prison by the Legislative Assembly for contempt. When he challenged the detention before a bench of the Allahabad High Court, the latter had granted him interim bail. In response, the Legislative Assembly passed a resolution directing that the judges who had granted such bail be brought before the House for contempt.

The consequent institutional crisis had raised fundamental questions regarding the relationship between legislative privilege and judicial authority. The President of India referred the matter to the Supreme Court under Article 143 of the Constitution.

In its advisory opinion, the Supreme Court had adopted a balanced approach. The Court recognized that legislative bodies possess certain privileges which are necessary for the effective functioning of the legislature. At the same time, however, it discarded the argument that such privileges are completely immune from judicial scrutiny.⁴²

The Court emphasized that parliamentary privilege must operate within the broader framework of the Constitution. If the exercise of privilege infringes fundamental rights or exceeds constitutional limits, courts may intervene.⁴³

³⁹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 292–93.

⁴⁰ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, 76–77.

⁴¹ *In re Special Reference No. 1 of 1964*, A.I.R. 1965 S.C. 745, 763.

⁴² *Ibid.*, at 774–75.

⁴³ *Ibid.*, at 777.

The decision in *Keshav Singh* therefore established an important principle that legislative privilege does not constitute an independent or supreme source of authority but remains subject to constitutional limitations.

B. P.V. Narasimha Rao v. State (CBI/SPE)

The scope of parliamentary privilege was further scrutinized by the Supreme Court in *P.V. Narasimha Rao v. State (CBI/SPE)*.⁴⁴ This case arose from allegations that certain Members of Parliament had accepted bribes in exchange for voting in a no-confidence motion in Parliament.

The vital legal question before the Court was whether Members of Parliament could claim immunity under Article 105(2) from criminal prosecution relating to their parliamentary votes. By a narrow majority, the Supreme Court held that Members of Parliament who had allegedly accepted bribes were immune from prosecution if the bribe was directly connected to a vote given in Parliament.⁴⁵

The majority reasoned that Article 105(2) grants absolute immunity in respect of parliamentary speech and votes. Since the alleged bribery related to a vote given in Parliament, prosecution would require questioning the validity of that vote and would therefore violate the constitutional protection afforded to parliamentary proceedings.

However, the decision was sharply criticized both within the Court and by constitutional scholars. The dissenting opinion argued that interpreting Article 105(2) to protect bribery would effectively place legislators above the criminal law and undermine public accountability.⁴⁶

Critics have suggested that the majority judgment adopted an overly literal interpretation of Article 105(2) without adequately considering its constitutional purpose. Parliamentary privilege exists to safeguard legislative deliberation which fosters the growth of developmental ideas germane to the overall progress of nation, and not to safeguard criminal conduct unrelated to legislative debate.

The controversy surrounding the *P.V. Narasimha Rao* decision highlights the risks associated with the regime of such uncodified legislative privileges. In the absence of statutory codification, courts are often required to interpret constitutional provisions in ways that may produce unintended consequences.

However, in 2024, the Supreme Court in a seven-Judge bench verdict in *Sita Soren v. Union of India*⁴⁷ overruled the majority judgment in *P.V. Narasimha Rao* reasoning that parliamentary privileges do not grant immunity to legislators from criminal prosecution for bribery. Overruling the 1998 *P.V. Narasimha Rao* case, the Court held that bribery is not protected, as it is not necessary for casting a vote or making a speech in the legislature.

C. Raja Ram Pal v. Speaker, Lok Sabha

The modern constitutional framework governing parliamentary privilege was articulated in *Raja Ram Pal v. Speaker, Lok Sabha*.⁴⁸ The case arose from the widely publicized “cash-for-query” scandal, in which several Members of Parliament were accused of accepting money to raise questions in Parliament. Following an investigation by a parliamentary committee, both Houses of Parliament expelled the members involved in the scandal. The expelled members challenged the decision before the Supreme Court, arguing that parliamentary privilege could not be used to expel members and that the matter was beyond judicial review.

⁴⁴ *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626.

⁴⁵ *Ibid.*, at 691–92.

⁴⁶ *Ibid.*, at 744 (Agrawal, J., dissenting).

⁴⁷ *Sita Soren v. Union of India*, 2024 INSC 161.

⁴⁸ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184.

The Supreme Court rejected these arguments and upheld the expulsions. However, the Court simultaneously clarified that parliamentary privilege is not immune from judicial scrutiny.⁴⁹ The Court held that judicial review may be exercised in cases involving substantive illegality, constitutional violations, mala fide exercise of power, and manifest perversity in decision-making.⁵⁰ Importantly, the Court reaffirmed that judicial review forms part of the Basic Structure of the Constitution and cannot be excluded even in matters relating to parliamentary privilege.⁵¹ The decision in *Raja Ram Pal* therefore represents a significant development in the constitutional law of parliamentary privilege. While recognizing the autonomy of legislative bodies, the Court firmly established that such autonomy must operate within constitutional limits.

V. Scholarly Perspectives and Emerging Debates

Academic commentary on parliamentary privilege in India reflects a range of perspectives regarding the desirability of codification.

Several scholars have argued that the absence of codification creates uncertainty and undermines transparency in legislative governance. According to M.P. Singh, undefined privileges create opportunities for misuse because the boundaries of privilege remain unclear.⁵²

Similarly, H.M. Seervai contended that constitutional democracies require that coercive powers be defined by law rather than exercised through vague institutional claims.⁵³ From this perspective, codification would enhance legal certainty while preserving the essential functions of parliamentary privilege.

Other scholars, however, caution that codification may invite excessive judicial intervention in parliamentary affairs. Some argue that the flexibility of an uncoded privilege regime allows legislative bodies to respond to evolving institutional challenges without being constrained by rigid statutory definitions.⁵⁴

Nevertheless, the debate increasingly recognizes that the Indian constitutional framework differs significantly from the British model from which parliamentary privilege was historically derived. In a constitutional democracy governed by judicial review and fundamental rights, indefinite reliance upon inherited parliamentary conventions may be difficult to justify.

VI. Democratic Accountability and the Structural Risks of an Uncodified Regime

A. Indeterminacy and the Rule of Law

A fundamental principle of constitutional governance is that public power must operate within legally defined boundaries. The rule of law requires that governmental authority be exercised through transparent, predictable, and publicly accessible norms.⁵⁵ Where coercive power exists without pre-determined legal standards, the potential for arbitrariness increases.⁵⁶

⁴⁹ Ibid., at 264–65.

⁵⁰ Ibid., at 266.

⁵¹ Ibid., at 268–69.

⁵² M.P. Singh, "Parliamentary Privileges and the Indian Constitution", (2010) 3 *NUJS Law Review* 221, 227.

⁵³ H.M. Seervai, *Constitutional Law of India*, Vol. II, 2101–02 (4th edn., Universal Law Publishing, 1996).

⁵⁴ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1062–63 (2nd edn., Universal Law Publishing, 2015).

⁵⁵ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183–85 (10th edn., Macmillan, 1959).

⁵⁶ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

The absence of statutory definition for parliamentary privileges under Article 105(3) therefore raises important concerns. Privilege powers such as contempt jurisdiction, suspension of members, or imprisonment for breach of privilege may significantly affect individual liberty or democratic representation. Still, the Constitution does not specify the procedural safeguards or substantive limits governing such powers.⁵⁷

In several decisions, the Supreme Court has acknowledged that the privileges of Parliament in India were historically derived from the privileges of the House of Commons as they existed at the commencement of the Constitution.⁵⁸ However, the reliance on historical parliamentary practice generates doctrinal ambiguity. British parliamentary conventions have evolved over time, and their application within a written constitutional system presents interpretive challenges.⁵⁹

Legal theorists have long emphasized that the rule of law requires laws to be knowable and general in their application. Lon L. Fuller described these requirements as the “internal morality of law,” arguing that legal systems must provide publicly accessible standards governing the exercise of authority.⁶⁰ When institutional powers remain undefined, individuals affected by those powers may lack clear guidance regarding their rights and obligations.

In the context of parliamentary privilege, this stalemate may undermine both legal certainty and institutional legitimacy. Codification could address these concerns by clarifying the scope of privilege powers and the procedures governing their exercise.

B. Privilege and the Suspension of Members

Recent controversies involving large-scale suspensions of legislators have renewed attention to the constitutional implications of parliamentary privilege. Legislative bodies possess authority to regulate their internal proceedings and discipline members whose conduct disrupts parliamentary functioning.⁶¹ However, the exercise of such authority raises important questions concerning proportionality and democratic representation.

Suspension or expulsion of elected representatives affects not only the individual member but also the electorate represented by that member. In such a scenario, excessive or prolonged disciplinary measures may have implications for democratic accountability.⁶²

The Supreme Court in *Raja Ram Pal v. Speaker, Lok Sabha* recognized that Parliament possesses the authority to expel members in appropriate circumstances.⁶³ At the same time, the Court emphasized that such powers remain subject to judicial review.

The absence of codified procedural safeguards complicates judicial review of such decisions. Courts are often required to adjudicate parliamentary actions without clear statutory standards governing notice, hearing procedures, or evidentiary requirements. Codification could therefore enhance procedural fairness while preserving legislative autonomy.⁶⁴

C. Contempt Powers and Media Freedom

Another area of possible discord pertains to the interaction between parliamentary privilege and freedom

⁵⁷ *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395.

⁵⁸ *In re Special Reference No. 1 of 1964*, AIR 1965 SC 745, 764.

⁵⁹ Erskine May, *Parliamentary Practice* 203–53 (25th ed., LexisNexis 2019).

⁶⁰ Lon L. Fuller, *The Morality of Law* 39–41 (Yale University Press, 1964).

⁶¹ M.N. Kaul & S.L. Shakdher, *Practice and Procedure of Parliament* 1090–92 (7th edn., Lok Sabha Secretariat, 2016).

⁶² *Ashish Shelar v. Maharashtra Legislative Assembly*, (2022) 1 SCC 641;

⁶³ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184, 261.

⁶⁴ House of Commons, *Joint Committee on Parliamentary Privilege, Report* (HL Paper 43-I, HC 214-I, 1999).

of the press. Legislative bodies possess the power to punish for contempt in order to protect the integrity of parliamentary proceedings.⁶⁵ Historically, this power was intended to prevent obstruction of legislative functioning and to preserve institutional dignity.

However, conflicts may arise when privilege proceedings are initiated against journalists or external critics of parliamentary conduct. Such actions interfere with the constitutional guarantee of freedom of speech and expression under Article 19(1)(a).⁶⁶

The Supreme Court addressed this issue in *M.S.M. Sharma v. Sri Krishna Sinha*, commonly known as the **Searchlight case**.⁶⁷ The Court considered whether publication of certain legislative proceedings by a newspaper constituted a breach of privilege. While the Court recognized the supremacy of legislative privilege in specific circumstances, it also acknowledged that constitutional rights must be considered in cases where privilege powers affect individuals outside the legislature.

Modern constitutional jurisprudence increasingly emphasizes the doctrine of proportionality when assessing restrictions on free speech. Codification of privilege powers could incorporate proportionality standards, thereby ensuring that disciplinary actions remain consistent with constitutional principles.⁶⁸

D. Institutional Legitimacy and Public Confidence

Beyond legal doctrine, the legitimacy of constitutional institutions depends upon public confidence in their fairness and transparency. When legislative bodies exercise coercive powers without clearly defined legal standards, the resulting decisions may appear arbitrary or politically motivated.⁶⁹

Codification of parliamentary privileges could, therefore, strengthen institutional legitimacy by clarifying the boundaries of legislative authority. Transparent procedural rules demonstrate that parliamentary discipline operates within a structured legal framework rather than through temporary discretion.

VII. Counter-Arguments Against Codification

A. The Autonomy Argument

Opponents of codification frequently argue that legislative autonomy requires a flexible and uncoded privilege regime. According to this view, parliamentary privilege functions as a shield protecting legislative deliberation from judicial interference.⁷⁰

This argument reflects legitimate concerns regarding the separation of powers. Excessive judicial intervention in parliamentary affairs could affect the independence of the legislature. However, codification does not necessarily diminish legislative autonomy. Rather, it provides a framework within which privilege powers may be exercised.

Comparative constitutional experiences of various countries show that codification of privileges can coexist with robust legislative independence. The Australian Parliamentary Privileges Act 1987, for example, codifies key privilege powers while preserving the institutional dignity of Parliament.⁷¹

⁶⁵ Erskine May, *Parliamentary Practice* 214–16 (25th edn., LexisNexis, 2019).

⁶⁶ *Raja Ram Pal v. Speaker, Lok Sabha*, (2007) 3 SCC 184.

⁶⁷ *M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1959 SC 395, 401.

⁶⁸ *Internet and Mobile Association of India v. Reserve Bank of India*, (2020) 10 SCC 274.

⁶⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

⁷⁰ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1060–63 (2nd edn., Universal Law Publishing, 2015).

⁷¹ *Parliamentary Privileges Act*, 1987 (Cth), ss. 4–7 (Austl.).

B. The Flexibility Argument

Another common objection is that codification may introduce rigidity into parliamentary practice. Legislative institutions must adapt to changing political circumstances, and an uncoded privilege regime allows greater flexibility. While flexibility is valuable, statutory frameworks can also accommodate change. Legislative enactments may be amended as institutional practices evolve. Codification therefore need not stultify parliamentary privilege; rather, it may provide a stable legal basis for its development.⁷²

C. The Political Realism Argument

Some commentators suggest that codification is politically unlikely because legislative bodies may be reluctant to restrict their own powers. While this observation may be descriptively accurate, it does not answer the basic constitutional conundrum of such legislative inaction. Constitutional governance is not solely determined by institutional incentives. It is guided by principles such as rule of law, accountability, and separation of powers. If codification enhances these principles, political reluctance alone cannot justify indefinite legislative inaction.⁷³

VIII. Comparative Constitutional Analysis

Comparative constitutional experience provides valuable insights into how democratic systems regulate parliamentary privilege.

A. United Kingdom

In the United Kingdom, parliamentary privileges remain largely uncoded due to the doctrine of parliamentary sovereignty. However, parliamentary committees have periodically examined the desirability of statutory clarification. The Joint Committee on Parliamentary Privilege noted that evolving constitutional norms require greater transparency regarding privilege powers.⁷⁴

B. Australia

Australia offers one of the most prominent examples of statutory codification. The Parliamentary Privileges Act 1987 defines contempt of Parliament, limits penalties, and establishes procedural safeguards for privilege proceedings.⁷⁵ Importantly, the Act clarifies that courts retain authority to interpret the existence and scope of parliamentary privilege.

This model demonstrates that codification can enhance legal clarity without compromising parliamentary autonomy.

C. Canada

Canadian constitutional jurisprudence recognizes inherent parliamentary privilege while simultaneously subjecting its scope to judicial determination. In *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, the Supreme Court of Canada held that courts may determine the existence and scope of parliamentary privilege within the broader framework of constitutional rights.⁷⁶

Subsequent Canadian decisions have emphasized balancing legislative privilege with the rights protected under the Canadian Charter of Rights and Freedoms.

⁷² House of Commons, *Joint Committee on Parliamentary Privilege, Report* (HL Paper 43-I, HC 214-I, 1999).

⁷³ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183–205 (10th ed., Macmillan 1959).

⁷⁴ Joint Committee on Parliamentary Privilege, *Report of the Joint Committee on Parliamentary Privilege* 21–25 (UK Parliament, 1999).

⁷⁵ *Parliamentary Privileges Act*, 1987 (Cth), ss. 4–9 (Austl.).

⁷⁶ *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, [1993] 1 SCR 319, 389 (Can.).

D. United States

The United States Constitution addresses legislative privilege through the Speech or Debate Clause, which provides immunity to members of Congress for legislative acts.⁷⁷ American courts have interpreted this clause to protect legislative deliberation while permitting prosecution for criminal conduct unrelated to legislative functions.⁷⁸ They have shown that codification of legislative privilege can coexist with meaningful judicial supervision.

IX. Synthesis: Comparative Lessons for India

Comparative analysis reveals several consistent patterns across constitutional democracies. First, legislative privilege is universally recognized as essential for protecting legislative functioning.⁷⁹ Second, courts retain authority to interpret the scope of privilege in order to preserve constitutional limitations.⁸⁰ Third, statutory clarification often enhances doctrinal stability and institutional accountability.⁸¹

India's current regime differs from these models primarily in its reliance on historical incorporation rather than contemporary legislative definition. Codification would therefore align India with other constitutional democracies that harmonize legislative autonomy with constitutional supremacy.

X. Models of Codification

Reform proposals for codifying parliamentary privileges may be categorized into three broad models.

1. Substantive Codification

This approach would involve defining the scope of parliamentary privileges in detail. Legislation could enumerate core immunities—such as freedom of speech in Parliament, immunity for legislative votes, and protection of committee proceedings—while clarifying that privilege does not extend to criminal conduct unrelated to legislative deliberation.⁸²

2. Procedural Codification

A second model focuses on procedural safeguards rather than substantive enumeration. Legislation could establish requirements for notice, hearing, representation, and reasoned decisions in privilege proceedings. Such safeguards would align privilege powers with the due process requirements recognized in modern constitutional jurisprudence.⁸³

3. Hybrid Framework

A hybrid model would combine substantive clarification of core privileges with procedural safeguards governing their exercise. It could also include an overt constitutional savings clause providing that parliamentary privilege remains within the purview of judicial review.⁸⁴

Among these options, the hybrid approach appears most consistent with India's constitutional framework.⁸⁵

⁷⁷ U.S. CONST. art. I, § 6, cl. 1

⁷⁸ *United States v. Brewster*, 408 U.S. 501, 526 (1972)

⁷⁹ Bill of Rights, 1689, 1 Will. & Mary, c. 2, art. 9 (Eng.).

⁸⁰ *R. v. Chaytor*, [2010] UKSC 52, [2011] 1 AC 684.

⁸¹ Parliamentary Privileges Act 1987 (Cth) (Austl.).

⁸² Erskine May, *Parliamentary Practice* 239–53 (25th ed., LexisNexis 2019).

⁸³ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353.

⁸⁴ INDIA CONST. arts. 32, 105 & 226.

⁸⁵ Subhash C. Kashyap, *Parliamentary Procedure: Law, Privileges, Practice and Precedents* 1045–48 (2nd ed., Universal Law Publishing Co. 2015)

XI. Constitutional Theory: Privilege and Separation of Powers

The doctrine of parliamentary privilege must ultimately be situated within the broader theory of separation of powers. In India, separation of powers operates as a functional principle rather than a rigid structural division.⁸⁶ Each branch of government possesses autonomy within constitutionally defined limits. Codification of parliamentary privilege may therefore be understood as a mechanism for maintaining institutional balance. By defining the scope of privilege powers, legislation would clarify the relationship between legislative autonomy and judicial oversight.⁸⁷

XII. Addressing Residual Concerns

It is sometimes argued that codification would encourage excessive constitutional litigation. However, judicial review already applies to privilege claims under existing jurisprudence. Clear statutory definitions may in fact minimize litigation by providing predictable standards for institutional conduct. Similarly, concerns regarding institutional prestige are often overstated. Institutional dignity is strengthened when public authority operates within transparent legal frameworks rather than undefined discretionary powers.⁸⁸

XIII. Normative Synthesis

The constitutional question surrounding parliamentary privilege is not whether legislatures require institutional protections. Such protections are indispensable for effective democratic governance. The real issue is whether these protections should remain undefined within a constitutional system committed to rule of law and judicial review.⁸⁹

India's constitutional identity differs fundamentally from that of the United Kingdom in three crucial respects, namely, the existence of a written Constitution, the existence of fundamental rights, and the recognition of judicial review as part of the Basic Structure.⁹⁰ In such a system, indefinite reliance upon inherited parliamentary conventions appears increasingly difficult to justify.

XIV. Conclusion

More than seven decades after the adoption of the Constitution, the provisional incorporation of House of Commons privileges under Article 105(3) remains unfulfilled. Judicial doctrine—from *Keshav Singh* to *Raja Ram Pal*—has progressively clarified that parliamentary privilege operates within the broader framework of constitutional supremacy. In other words, constitutionalism shall always have the final say in any matter as to the judicial interpretation of parliamentary privilege.

Codification of parliamentary privileges would not represent a judicial encroachment upon legislative authority. Rather, it would satisfy the constitutional ideal envisioned by the framers of Constitution by providing statutory clarity regarding the scope and limits of privilege powers.

In a constitutional republic committed to rule of law, clarity is not to be construed as a constraint upon institutional authority but only as an embodiment of upholding constitutional values. Parliamentary privilege, defined by law and adhering to the ideals of constitutionalism, would reconcile legislative

⁸⁶ *Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, 76.

⁸⁷ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

⁸⁸ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 183–205 (10th ed., Macmillan 1959).

⁸⁹ Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 50–52 (Oxford Univ. Press 1966).

⁹⁰ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225, 292–93.

autonomy with constitutional supremacy and, thereby, strengthen the foundations of India's democratic governance.

To conclude, codification would align parliamentary sovereignty with judicial supervision, and a delicate balance between these two concepts is vital for safeguarding democratic principles and the rule of law in the backdrop of our country's gradual rise in the global arena.