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Role of Courts in Legislatures Privileges

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Abstract – The troika Legislature, Judiciary and Executive, are the three different but important limbs of the Constitution which are complementary and supplementary to each other. The Constitution provides constraints on state's action since a sound government is the one which is based on checks and balances. This is the ethos of India's Constitution. Though, under the Constitution the powers of the two institutions, legislature and judiciary are separate yet they are marked by some sort if interrelationship in which the role of the judiciary is much more predominant.

The greatest reservoir for supplying power to the judiciary to invalidate a statute is provided by the fundamental rights mainly by Article 14 and 19, but almost since the inception of the constitution, an attempt has been made by the Parliament to weaken this reservoir, further it is thought that the Acts passed by the legislature are supposed to be superior as compared to the judges because the former are the representatives of the peoples and thus, there is the necessity of the judicial self-restraint.

Keywords: Courts, Legislatures, Privileges

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INTRODUCTION

Court too proceeds with the assumption that the legislature is the best judge of what is good for the community by whose suffrage it has come into existence, but the ultimate responsibility of determining the reasonableness of the restraints from the point of view of public interest rests with the court and the court cannot shirk this solemn duty casted on it by the Constitution. In practice it is very difficult to draw a boundary between the competence of the court and the exclusive jurisdiction of each House, and thus provided many puzzling cases.

It was common ground between the Houses and the courts that privileges depend on the known laws and customs of Parliament, and not on the ipse dixit of either House. The question whether a matter of privilege should be judged solely by the House to which it is concerned even when the rights of the third party were involved or whether it might in certain cases be decided in the courts and if so, in what sort of cases.

Both the constitutional authorities were supreme in their own fields neither of which could compel the submission of the other. The House of commons and the House of Lords in England claimed to be the sole judges of their own privilege while on the other side the court maintained that privileges were the part of the law of the land and thus, the court is bound to decide questions coming before it in any case within their jurisdiction even when privileges were involved.

The Houses claimed to be the exclusive judge of their own privileges especially the House of Commons, as actually it was the House of Commons that entered into dispute with courts. They were that time, engaged in establishing and maintaining their privileges therefore, could not admit the authority of any other body to decide what its privilege should be.

At the end of 17th century almost after the establishment of superiority of Parliament and rights of the House of Commons the court started to draw a distinction between the constitutional position of the High Court of Parliament and of each House of Parliament alone, claiming that Parliamentary privileges were but a branch of the law of the land which they were bound to administer. The phrase that 'neither House could create a new privilege' proved the limits of the privileges and immunities. The court further argued that their refusal to adjudicate whether parliamentary privileges were involved would in many cases result in a failure of justice since the House of Commons could not give remedies or award damages or decides litigation between parties.

The conflict was ultimately resolved by conceding to the courts the right in principle, to decide all questions of privileges arising in litigation before them with few large exceptions in favour of parliamentary jurisdiction, which include exclusive jurisdiction of each House over its internal proceedings and right of both Houses to commit/punish for contempts. C.J. Fortescue in Thropes Case in 1452, boserved that "they ought not

to answer to that question, for it hath not been used afortyme, that justices should in any way determine the privilege of this High Court of Parliament; for it is so high and so mighty in its nature, that it may make law, and that is law it may make no law; and the determination and knowledge of that privilege belongth to the Lords of Parliament, and not to the justices." Generally the court agrees with the decision of the House as judge of its own privileges," but despite that conflicts still prevail.

Since then the judges who used to give their judgement were not accepted by the House of Commons simply because they were the Members of the King and his Council and not willing to delegate much power to the House of Commons, but later the supremacy of Parliament was established and the British constitution al law recognized the supremacy of Parliament which can do almost everything which is not naturally impossible and its Acts cannot be nullified by courts on any grounds. Its errors are corrected only by itself that is why the English Judges do not sit as a court of appeal against Parliament.

ROLE OF COURTS IN LEGISLATURES PRIVILEGES

Another judge Coleridge observed that "this and all other courts of law are inferior in dignity to the House of Commons, and therefore it is impossible for us to review its decision. As a court of law we know no superior but those courts which may revise our judgement for errors, and in this respect there is no common terms of comparison between this court and the House... the House is not a court of law at all., neither originally, nor by appeal, can it decide a matter in litigation between two parties. It has no means of doing so, it claims no such powers, power of inquiry and of accusation it has, but it decides nothing judicially, except where it is itself a party in the case of contempts. The third judge Patteson said, "in making this resolution, the House of Commons was not acting as a court either legislature, judicial or inquisitorial, or any other description. It seems to me, therefore, that the superiority of the House of Commons has really nothing to do with the question.

Almost a century before i.e. in early 18th century the position was quite in favour of the court. It is clear from the Holts decision in paty's case who observed that "I will suppose, that the bringing of such actions declared by the Houses of Commons to be a breach of their privileges but that declaration will not make that breach of privilege that was not before. But if they have any such privilege, they ought to show precedent of it. The privileges of the House of Commons are well known, and are founded upon the law of the land, and are nothing but the law. As we all know they declare themselves to have privileges for which they have no legal claim to, the people of England will not be estopped by that declaration. This privilege of theirs concern the liberty of the people in a high degree, by subjecting them to imprisonment for the infringement of them, which is what the people cannot be subjected to without an act of Parlimanet.

Regarding the contempt of the House and breach of privilege, if the House mentions specific grounds for holding a person guilty of its contempt or breach of privilege, and the warrant ordering imprisonment is a speaking warrant then only the court can go into the question of validity of the committal and can scruitinise the grounds to ascertain whether these are sufficient or adequate to constitute contempts or breach of privilege of the House. But if the warrant mentions contempts in general terms and not mentioning the grounds which the House held to be its contempt, in such cases the courts have nothing to do and its validity too cannot be questioned. In sheriffs case since the warrant did not mention the facts constituting the contempt of the House, the court refused to issue the writ, because of the absence of such specific nature, of habeas corpus to discharge the sheriff from imprisonment saying that "if the warrant merely stated a contempt in general terms the court is bound by it*. This shows that the House may reprimand or suspend a Member from the House and use force as may be absolutely necessary for the purpose.

India in the case of ***Raja Ram Pal v Hon'ble speaker*** defined the term privilege as "A special right, advantage or benefit conferred on a particular person. It is a particular advantage or favor granted to one person as against another to do certain acts". Inherent in the term is the idea of something, apart and distinct from a common right which is enjoyed by all persons and connotes some sort of special grant by the sovereign.

The word grant by sovereign refers the privilege is conferred to them by the higher authority and the privilege an immunity is derived from them only to such members. As inspired by the privileges of the house of the commons. The privileges of House of Commons have been defined as "the sum of the fundamental rights of the house and of its individual members as against the prerogative of the crown, the authority of the ordinary court of law and the special rights of the House of Lords".

"Parliamentary privilege is the sum of the 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. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions

without unimpeded use of the services of its Members.

"Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members".

Sir Erskin, widening beautifully the scope of Privileges with inducing the concept of Power and Immunities of the members of parliament that exists in India too describes them as the necessity for Parliament to perform its function with impeded use of services of its members. He considers it as the tool for the collective discharge of its collective and important function.

Sankar J. in a particular case stated that the right of the House to have absolute control of its internal proceedings may be considered as its privilege. Sighted very rightly in the case of Raja Ram Pal that "privilege depends on the known laws and customs of Parliament". Thus, the term privilege is the special rights that are available in the different extent and in various forms to the members of parliament throughout the world. These privileges are important in order to enable the house to perform its functions authorized to them by the constitution and for the proper conduct of business.

DISCUSSION

The essence of the parliamentary democracy is a free, frank and fearless discussion in the parliament. For the body like parliament freedom of speech play a very important role that enables the members to express their feelings without any kind of fear of penalizing for offenses such as defamation, innuendo. The rule of freedom of speech in parliament became established in the 17th century in the **case of Sir John Elito**[iii].

The Rajya Sabha held in its XII report that a parliament member cannot be questioned in any court or any place outside the parliament for any disclosure he made since it will amount to interference with the freedom of speech. Subsequently, Lok Sabha has also held that it will amount to contempt of court or breach of privilege if any suit is filed in court for what is said on the floor of the house.

The Supreme Court in the case of ***Tej Kiran Jain v Sanjeeva Reddy***[iv] held that "once it is proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceeding in any court".

Article 105, clause (1), expressly safeguards freedom of speech in parliament. It says: there shall be freedom of speech in parliament. Clause (2) further provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof.

No action, civil or criminal, will, therefore, lie against a member for defamation or the like in respect of things said in parliament or its committees. The immunity is not limited to mere spoken words; it extends to votes, as clause (2) specifically declares, viz. any vote given by him in parliament or any committee thereof. Though not expressly stated, the freedom of speech would extend to other acts also done in connection with the proceedings of each House, such as, for notices of motions, questions, reports of the committee, or the resolutions.

It may be noted that clause (1) of Article 105 is made Subject to the provisions of this constitution and to the rules and standing orders regulating the procedures of Parliament. The words regulating the procedures of Parliament occurring in clause (1) should be read as covering both the provisions of the Constitution and the rules and standing orders.

So read, freedom of speech in Parliament becomes subject to the provisions of Constitution relating to the procedures of Parliament, i.e., subject to the articles relating to procedures in Part V including Articles 107 and 121. Thus, for example, freedom of speech in Parliament would not permit a member to discuss the conduct of any judge of the Supreme Court or of a High Court. Likewise, the freedom of speech is subject to the rules of procedures of a House, such as the use of unparliamentary language or unparliamentary conduct.

The freedom of speech guaranteed under clause (1) is different from that which a citizen enjoys as a fundamental right under Article 19 (1) (a). The freedom of speech as a fundamental right does not protect an individual absolutely for what he says. The right is subject to reasonable restrictions under clause (2) of Article 19. The term freedom of speech as used in this article means that no Member of Parliament shall be liable to any proceedings, civil and criminal, in any court for the statements made in debates in the Parliament or any committee thereof.

The freedom of speech conferred under this article cannot, therefore, be restricted under Article 19 (2). Clauses (1) and (2) of Article 105 protect what is said within the house and not what a member of Parliament may say outside. Accordingly, if a member publishes his speech outside Parliament, he will be held liable if the speech is defamatory.

Besides, the freedom of speech to which Article 105 (1) and (2) refer, would be available to a member of Parliament when he attends the session of Parliament. Therefore, if an order of detention validly prevents a member from attending a session of

parliament, no occasion arises for the exercise of the right of freedom of speech, and no complaint can be made that the said right has been invalidly invaded.

Article 105 (2) confers immunity, inter alia, in respect of anything said in Parliament the word anything is of the widest import and is equivalent to everything. The only limitation arises from the words in Parliament, which means during the sitting of Parliament and in the course of business of Parliament. Once it was proved that Parliament was sitting and its business was transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but it is as it should be.

It is one of the essences of the parliamentary system of government that people's representative should be free to express themselves without fear of legal expenses. What they say is only subject to the discipline of the rules of Parliament[v], the good sense of the members and the control of proceedings by the speaker. The courts have no say in the matter and should really have none.

In a much-publicized matter involving former Prime Minister, several ministers, Members of Parliament and others a divided Court, in ***P.V. Narsimha Rao v. State (JMM Bribery Case[vi])*** has held that the privilege of immunity from courts proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament.

CONCLUSION

The majority (3 judges) of the Apex Court did not agree with the minority (2 judges) and explained that expression "in respect of" in Article 105(2) must be given a wide meaning so as to comprehend an act having a nexus or connection with the speech made or a vote given by a member in parliament or any committee thereof. So interpreted, it would include within its ambit, acceptance of a bribe by a member in order to make a speech or to cast his vote in parliament or any committee thereof in a particular manner.

Therefore, the bribe taker MPs, who had voted in parliament against no-confidence motion were held entitled to the protection of Article 105(2) and were not answerable in a court of law for alleged conspiracy and agreement. The court further held that the bribe taker MP, who did not vote on the no-confidence motion was not entitled to protection under Article 105(2). To the bribe giver MPs it was held, the protection under Article 105(2) was not available. The court further ruled that the Lok Sabha could take action for breach of privileges or contempt against the alleged bribe givers and against the alleged bribe takers, whether or not they were members of parliament.

The court was however unanimous that the members of Parliament who gave bribes, or who took bribes but did not participate in the voting could not claim immunity from court proceeding's under Article 105(2). The decision has invoked so much controversy and dissatisfaction that a review petition is pending in the court.

REFERENCES

[i] Oxford dictionary, 10th Edition, p.1138.

[ii] Sir Thomas Erskine May: Parliamentary Practice, 16th Edition., Chapter III, p.42.

[iii] 1686

[iv] 1970 AIR 1573.

[v] Article 118 and 208empower each house to make rules of procedure to be followed therein. The freedom of speech is subjected to these rules. *In Re Under Article 143,* AIR 1965 SC 745.

[vi] AIR 1998 SC 2120.

[vii] (1868) LR 4 QB 73.

[viii] See Section 135-A of Civil Procedure Code, 1908.

[ix] *Kalyan Chandra Sarkar v. Rajesh Ranjan*, 2005 (3) SC 307.

[x] Sir Thomas Erskine May: Parliamentary Practice, 16th Edition., Chapter III, p.82

[xi] *Smt. Indira Gandhi v Raj Narain*, AIR 1975 SC 2299.

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