



Parliamentary Privileges and Immunities

For Prelims: [Parliamentary Privileges](#), [Parliamentary conventions](#), [statutory laws](#), [Rules of Procedure and Conduct of Business](#), [freedom of speech](#), [right to information](#), [judicial immunity](#), [breach of privilege](#), [Committee of Privileges](#), [Lok Sabha](#), [Rajya Sabha](#), [reprimand](#), [suspension](#), [expulsion](#), [44th Amendment Act 1978](#), [parliamentary autonomy](#), [Supreme Court \(SC\)](#), Articles 105, 122, 194 and 212 of the Constitution.

For Mains: Significance of parliamentary privileges and immunities in a democratic political system

What are Parliamentary Privileges and Immunities?

- **About:**
 - [Parliamentary privileges](#) and immunities refer to the **special rights, freedoms, and exemptions** granted to [members of Parliament \(MPs\)](#) and **members of state legislatures** in India to enable them to **perform their duties efficiently** and without interference.
 - These privileges ensure the **independence, dignity, and effective functioning** of **legislative institutions** in a democratic framework.
- **Origin:**
 - Parliamentary privileges in India trace their roots to the [Charter Act, 1833](#) and evolved through the [Government of India Act, 1935](#), which granted legislators freedom of speech.
- **Sources of Parliamentary Privileges:**
 - **Constitution of India:**
 - **Article 105:** [Article 105](#) grants MPs freedom of speech, immunity from court proceedings for actions in Parliament or its committees, and empowers Parliament to define privileges by law.
 - **Article 122:** [Article 122](#) bars judicial review of parliamentary proceedings on grounds of procedural irregularities.
 - **Article 194:** [Article 194](#) provides state legislators freedom of speech and immunity for actions in the legislature, with the power to define privileges through laws.
 - **Article 212:** [Article 212](#) prohibits courts from questioning state legislative proceedings due to procedural irregularities.
 - **Parliamentary Conventions** (based on British parliamentary practices as of 1947).
 - **Statutory Laws** (laws enacted by [Parliament](#)).
 - **Rules of Procedure and Conduct of Business** ([Lok Sabha](#) and [Rajya Sabha](#)).
 - **Judicial Interpretations** ([Supreme Court](#) and [High Court](#) rulings).
- **Key Features:**
 - Its purpose is to **safeguard members from external pressures** and legal liabilities while performing their parliamentary functions.
 - These privileges are **co-terminus with membership**, meaning they cease once the individual ceases to be a member of the legislature.
 - They **extend to individual members** and the **collective institution (House)**.

Note:

- Currently, there is **no act of the Parliament** that defines **parliamentary privileges**.
- These immunities are currently governed by **British parliamentary conventions**.
- Efforts to codify privileges have been **rejected**, with the **Lok Sabha Committee of Privileges** recommending against it in 2008.

What are the Parliamentary Privileges Enjoyed by MPs and MLAs?

▪ Individual Privileges:

◦ About:

- **Individual Privileges** refer to the rights and immunities enjoyed by **MPs** and **members of State Legislature** to enable them to perform their duties without fear of interference or prosecution.

◦ Privileges:

- **Freedom of Speech:** Members have the **right to freely express** themselves in Parliament (**Article 105(1)**).
- **Immunity from Legal Proceedings:** Members are protected from court action for anything said or any vote cast in **Parliament** or its committees (**Article 105(2)**).
- **Protection for Publications:** No court proceedings can be initiated against individuals for publishing reports, papers, votes, or proceedings authorized by Parliament (**Article 105(2)**).
- **Exemption from Judicial Inquiry:** Courts cannot question the validity of parliamentary proceedings on grounds of procedural irregularities (**Article 122(1)**).
- **Freedom from Arrest:** Members are exempt from arrest in civil cases during sessions, as well as **40 days before and after** the session (Section 135A, **Code of Civil Procedure, 1908**).

▪ Collective Privileges:

◦ About:

- These are the rights and immunities enjoyed **collectively by the Indian Parliament and State Legislature**, as well as their **members and officers**.

◦ Privileges:

- **Publication Rights:** Parliament can **publish its reports, debates, and proceedings**, and restrict others from doing so.
 - The **44th Amendment Act, 1978**, allows the press to publish accurate reports of parliamentary proceedings without prior approval, except during secret sittings.
- **Secret Sitings:** Parliament can **exclude strangers and hold confidential discussions** on critical matters.
- **Rule-Making Authority:** It can **establish rules for its procedures** and business conduct, including adjudication of related matters.
- **Disciplinary Powers:** Parliament can **punish members or outsiders** for **breaches of privilege** or contempt through reprimand, admonition, imprisonment, suspension, or expulsion.
- **Right to Information:** It has the **right to be informed** immediately about the arrest, detention, conviction, imprisonment, or release of its members.
- **Inquiry Powers:** Parliament can **conduct inquiries, summon witnesses**, and demand relevant papers and records.
- **Judicial Immunity:** Courts cannot question parliamentary proceedings or its committee activities.
- **Protection of Premises:** Arrests or legal actions cannot be carried out within the premises of Parliament **without the presiding officer's permission**.

What is the Breach of Privilege and Contempt of House?

- **Breach of Privilege:**
 - A **breach of privilege** occurs when an individual or authority disregards or undermines the privileges of a member or the House.
 - It includes offenses like **disobedience to the House's legitimate orders** or **defamatory actions against the House**, its members, committees, or officers.
 - Such breaches are punishable.
- **Contempt of the House:**
 - It is distinct from breach of privilege and it refers to **any act or omission** that **obstructs the House, its members, or officers in performing their duties**.
 - It includes **defamatory speeches or writings about the House or its members**, questioning the impartiality of the Chair, or publishing expunged proceedings.

What is the Process to Raise a Question of Privilege?

- **Authority:** Only **Parliament** can determine breaches of privilege or **contempt**; courts have no jurisdiction.
- **Procedure:**
 - A member can raise a breach of privilege with the **Chairman of Rajya Sabha / Speaker of Lok Sabha** consent.
 - If consent is granted, the **House may decide on the matter** or refer it to the **Committee of Privileges** (10 members in Rajya Sabha, 15 in Lok Sabha).
 - **Functioning of the Committee of Privileges:**
 - The Committee **examines referred matters** to determine if a breach of privilege occurred, its nature, and the circumstances.
 - A **report with recommendations is presented** to the House by committee.
 - After a motion to consider the report, the **Committee moves for the House to accept or reject** the recommendations.
 - Further action is based on the **House's decision**, implemented if the resolution is unanimously passed.
- **Chairman's Role:** The Chairman can also refer matters suo-motu to the Committee or conduct an independent inquiry and inform the House.
- **Restrictions:** **Only one privilege question** can be raised per sitting, focusing on a specific, recent matter.
- **Punishment for Breach of Privilege:**
 - Once the House determines the punishment for a breach of privilege, it may include measures such as **reprimand, warning, or imprisonment**, with **custody** restricted to the duration of the House session.
 - For guilty MPs, penalties can include **suspension or expulsion**.
- **Notable Case:**
 - In 1978, **former Prime Minister Indira Gandhi** was found guilty of breach of privilege and contempt by the Lok Sabha privileges committee. She faced **expulsion from Parliament** and **imprisonment** for allegedly harassing government officials. The resolution was later **rescinded in 1981**.

What are the Key Judgments Related to Parliamentary Privileges?

- **P.V. Narasimha Rao vs. State (CBI/SPE), 1998:** The **Supreme Court (SC)** ruled that lawmakers who accepted bribes **could not be prosecuted for corruption** if they voted or spoke in the House as per the agreement tied to the bribe.
- **State of Kerala vs. K. Ajith and Others, 2021:** The SC clarified that parliamentary privileges and immunities **do not provide exemptions from general laws**, including criminal laws applicable to all citizens.
- **Sita Soren vs. Union of India, 2024:** The **SC overturned the 1998 PV Narasimha Rao judgment** which had established immunity for Members of Parliament and Legislative Assemblies who accepted bribes for casting votes.
 - The SC emphasized the detrimental impact of bribery on democratic principles and governance, and ruled that the immunity under **Articles 105** and **194** does **not extend to cases of bribery**, which is a **separate criminal act** unrelated to the core duties of

lawmakers.

What are the Criticism of Parliamentary Privileges?

- **Lack of Transparency:** Parliamentary privileges are often invoked through **non-transparent processes, limiting public oversight** and undermining confidence in the legislative system.
 - This obstructs efforts to hold legislators accountable, both within legislative proceedings and in their public conduct.
- **Potential for Misuse:** Legislators have occasionally **exploited privileges to evade legal accountability** or suppress dissent, using freedom of speech within the legislature to make inflammatory or baseless statements.
 - Mechanisms to monitor and regulate the use of privileges are insufficient, increasing the risk of abuse and eroding trust in legislative processes.
- **Ambiguity in Scope:** The unwritten nature of many privileges leads to **inconsistent interpretations and applications**, creating uncertainty and scope for arbitrary decisions.
- **Conflict with Equality:** Privileges such as immunity from arrest can be seen as **inconsistent with the principle of equality before the law**, granting legislators undue protection.
- **Outdated Practices:** Some privileges, rooted in colonial-era traditions, no longer align with modern democratic ideals of transparency and public accountability.

What are the International Practices on Parliamentary Privileges?

- **United Kingdom:**
 - The UK Parliament enjoys privileges such as **freedom of speech, immunity from arrest**, and the **authority to regulate its own proceedings**. These are derived from a combination of statutes, common law, and precedents.
- **Canada:**
 - The Canadian Parliament grants members privileges like **freedom of speech, immunity from arrest**, and the power to address breaches of privilege.
 - These are defined under the **Constitution Act, 1867** and the **Parliament of Canada Act, 1985**.
- **Australia:**
 - Parliamentary privileges are enshrined in the Constitution. Legislators enjoy **freedom of speech, immunity from arrest, and the right to regulate parliamentary proceedings**, adhering to principles similar to those in the UK and Canada.

What are the Challenges Associated with Parliamentary Privileges?

- **Risk to Parliamentary Autonomy:** Codification could **undermine the legislature's independence** by subjecting parliamentary affairs to judicial scrutiny or executive interference, thus eroding the separation of powers.
- **Contradicts Constitutional Provisions:** **Article 122** of the Constitution **prohibits courts from inquiring into parliamentary proceedings**, ensuring legislative autonomy. Codifying privileges could dilute this protection by allowing **legal challenges** to parliamentary matters.
- **Loss of Flexibility:** Parliamentary privileges are **flexible and allow legislators to adapt to emerging issues**. Codification could **impose rigid rules**, reducing the legislature's ability to respond to evolving political dynamics.
- **Complexity and Lengthy Process:** Codification would require **extensive discussions among lawmakers, legal experts, and civil society**, making it a **time-consuming and complex process**.

Way Forward

- **Responsible Utilization:** Legislators must **exercise privileges judiciously, refraining from misuse for personal or political gains**. Inflammatory remarks, baseless allegations, or actions undermining decorum should be strictly avoided.
- **Respect for Rights:** Parliamentary privileges **should not infringe on the rights and dignity**

of individuals. Legislators must avoid using privileges to intimidate, harass, or engage in discriminatory behavior.

- **Transparency and Accountability:** Lawmakers should maintain **transparency in invoking privileges**, clearly articulating their **reasons and being prepared to justify their actions**. This fosters public trust and strengthens legislative credibility.
- **Adherence to Parliamentary Procedures:** Strict compliance with established parliamentary rules and standing orders is essential. It is necessary to ensure **impartiality and fairness** in the invocation and enforcement of privileges, upholding the sanctity of legislative processes.
- **Capacity Building and Awareness:** Training programs and **regular sensitization** sessions on the scope, limits, and ethical use of parliamentary privileges can help legislators **better understand and uphold their responsibilities**.

UPSC Civil Services Examination, Previous Year Questions (PYQ)

Prelims

Q. One of the implications of equality in society is the absence of (2017)

- A. Privileges
- B. Restraints
- C. Competition
- D. Ideology

Ans: (A)

Mains

Q. The 'Powers, Privileges and Immunities of Parliament and its Members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and un-enumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed? **(2014)**