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Sansad Immunity

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Abstract: Immunity means a privilege enjoyed by a certain class of individuals which others might not have a access to. In reference to the parliament[1] privilege refers to the powers and immunities given to each house of the parliament and its members collectively to enjoy the rights. These privileges are an exception to common law and allow the members to enact their duties without the fear of being threatened or punished, and even without any obstacle. The privileges of the parliament are equivalent to the immunity of the crown[2]. Like the crown can administer without the help or interference of the parliament or the judges. Even both the houses of union supervise the privileges without the involvement of the judges. This paper talks about these parliamentary privileges in detail and to what extent the members can exercise them.

I. INTRODUCTION

In India The immunities enjoyed by the Lok Sabha and Rajya Sabha are known as parliamentary privileges. This feature is acquired from the British constitution. India is a country where the initial law making has been done by foreign institutions and those developed gradually and became the laws and institutional bodies we have today. The parliamentary privileges are an example of that. These privileges came into existence after the charter act of 1833. The hate and the arguments related to the privileges came to an end after the devious election provided by the Indian Council Act 1909. These privileges have evolved over time and are even mentioned in the constitution under articles 105 and 102 followed by articles 192 and 212 for the state. article 105(1) says that freedom of speech will be provided to the legislature. This freedom of speech in the legislature was provided by the government of India act, 1935.

II. USES OF THE PRIVLIGES

These immunities are given by the constitution to let the members work without any interruption. However, this doesn't mean that they don't abide by the duties of an ordinary citizen. The rules and regulations are the same as those of any other individual. The universal rule that everyone is supposed to be treated equally in the eyes of the law is applicable here. These privileges are available to the members only when they are functioning the duties as the members of the parliament. The law, however, has not defined the powers and privileges. Even The British parliament has not codified its laws. The viewpoints related to the privileges being codified are still divided. The primary perspective is that it might harm the supremacy of the union and state legislatures. It is an immunity enjoyed by certain legislatures which protects them from the civil and criminal liabilities they have incurred while performing their duties as legislators. This can be controversial as there are chances of members misusing the power. E.g. any member might use the power to defame another person.

The constitution of India has identified some privileges, such as freedom of speech in parliament[3]. Immunity from the proceeding of the court[4]. Immunity to any person from the proceedings of court related to the publications. Courts cannot investigate about the rationality of any proceedings of the parliament on the grounds of unproven irregularities[5]. No member of officer of the union is accountable for the court's jurisdiction for the actions done by him while exercising those powers.[6]

No person to be made liable for civil or criminal proceedings in any court if they have published any report of either house of the parliament unless they have made a mistake while publishing the same.[7]

These are not relevant if the publications have published the report of the confidential sitting of the house.[8] These powers are defined time to time.

[1] Sansad as called in India.
[2] Referring to the constitution monarchy of United Kingdom
[3] Article 105(1)
[4] Article 105(2)
[5] Article 122(1)
[6] Article 122(2)
[7] Article 361A
[8] Article 361A proviso

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III. TYPES OF PRIVLIGES

1) *Freedom of Speech:* The freedom of speech available to the member of the house is different from that available to the ordinary citizen[9]. There is a reasonable amount of interference within the rights of an ordinary citizen however the member has complete immunity on whatever he says inside the parliament even if it is false and bitter. The Court has no authority to take legal action against the member, even if his speech amounts to contempt of court.
2) *The Authority To Check The Publication Of Proceedings:* the house has the right to exclude any unfamiliar member from the house to stop them from publishing the reports of its debates and proceedings. It is evident that the discussions of the sessions are confidential, and thus there is no room for transparency unless the same is given to the houses. It is a breach of the house's privacy. One of the major violations of the privileges of the houses is the misrepresentation of the proceedings report. Each house holds the privilege of having proceedings in a manner comfortable for them. Each house has its own authority and no authority other than the house and its members have a say in the proceedings.
3) *Freedom From Arrest:* this immunity is limited to civil cases. If a member is arrested under preventive detention cases, then the members have no immunity greater than that of an ordinary citizen and would not be allowed to sit in the sessions with a valid order to get arrested and detained under it like any other citizen. A member detained under emergency or criminal charges would also not be allowed to sit in the sessions and the chairman could not direct the authorities to do so.

IV. COMMITTEE OF PRIVLIGES

Each house has a committee which guides them in matters relating to these immunity and powers. The house of people[10] committee consists of fifteen members, whereas the council of states[11]consists of ten members each nominated by the speaker and the chairman, respectively. The references are mostly made to the committee by the speaker or the chairman on its own[12] or by the members of the house on a motion. The role of the community is to inspect the queries and to check with the recommendations of the facts whether a breach of privilege has been committed or not. However, the houses are not bound by the recommendations of the committee; they can reject or accept the same.

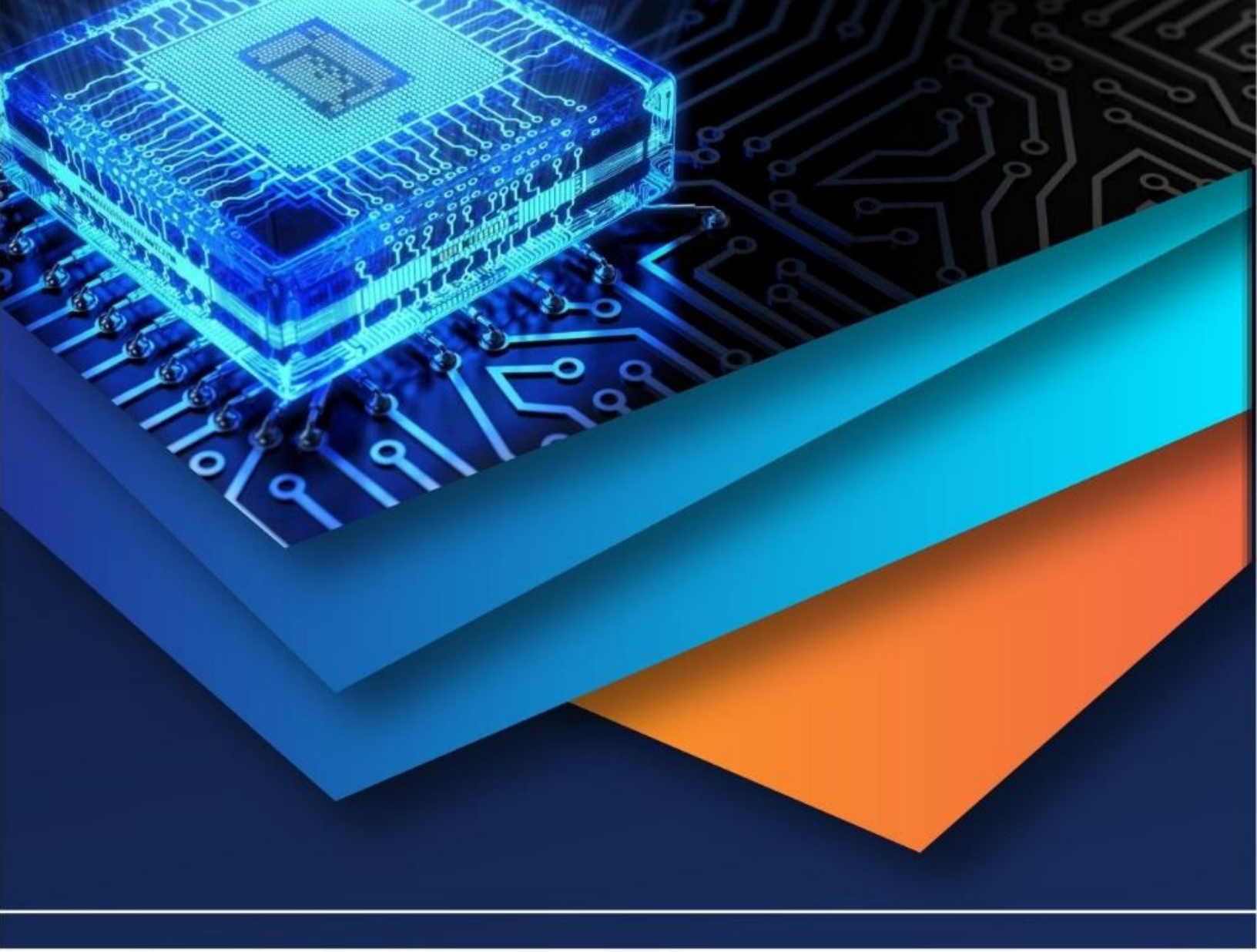
V. PARLIAMENTARY PRIVLIGES AND FUNDAMENTAL RIGHT

1) *Freedom Of Speech:* Article 105(1) of the constitution guarantees the member of the union the right to speak freely. Article 105(3) says that the powers, privileges, and immunity of the committee and members of both houses will be the same until the parliament defines them.
2) *Right To Life And Personal Liberty:* Article21 guarantees that each individual has a right to live their life with human dignity and personal liberty. Being a citizen of India as well as a member of the parliament, this right is available to all the members of the union. If any of his rights were infringed while they were in term as the member of parliament, this would also amount to a breach of privilege.

VI. CONCLUSION

Even after completing seventy-five years of independence, India still suffers from the decisions made by the British rulers. We still have no clue how long it will take for the parliament to codify the privileges. Codification is necessary as the legislative privileges will be hand with the fundamental rights, which would make sure that the legislators don't act in a wrongful manner. It would also define parliament in terms of state legislation to the ordinary citizen. Some assurance of privilege is needed today. The past privileges cannot control the present and future India. A basic issue with the privileges is that the legislative would only codify those privileges which are acceptable by the executive, thus keeping the legislative in the majority. Rather than privilege being subjective, one should be of the members as a whole. Codification of the privileges will make them crystal clear as they would be sealed without the possibility of interpretations or changes. The Indian public is huge and to cope with the needs of this society, some privileges still remain too delicate to survive.

[9] Article 19(2)
[10] Lok Sabha.
[11] Rajya Sabha.
[12] Sue moto.



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