September 2023 (№27)
Volume 9; Issue 3; Page No. 52-62
ISSN: 2346-7916 (Print)
ISSN: 2587-5043 (Online)

INTERNATIONAL JOURNAL OF LAW: "LAW AND WORLD" www.lawandworld.ge

https://doi.org/10.36475/9.3.5

EVOLUTION OF PARLIAMENTARY IMMUNITY AND PRIVILEGES

Anand Singh Prakash
Doctoral Candidate of Law,Banaras Hindu University, Research Scholar, Varanasi, India

ARTICLE INFO

Article History:

Received	25.08.2023
Accepted	08.09.2023
Published	30.09.2023

Keywords:

Parliamentary, Immunity, Privilege, Democracy, Separation of powers

ABSTRACT

The evolution of parliamentary immunity and privilege is a fascinating subject that reflects the development and transformation of democratic governance. This article provides an overview of the historical progression and key aspects of parliamentary immunity and privilege, highlighting their significance in protecting legislative independence and fostering democratic debate. Parliamentary immunity gives a legal protection to the members of parliament from being held accountable or prosecuted for their speeches or actions in the course of their parliamentary duties. The idea of "parliamentary privilege" is another one that embraces the notion of "popular sovereignty," emphasising that lawmakers are the representatives of the will of the people. In many democracies, the scope of immunity has been refined to prevent abuse and maintain public trust. Additionally, courts have played a crucial role in interpreting and defining the limits of parliamentary privilege, striking a balance between the need for robust debate and accountability.

INTRODUCTION

Immunity, in essence, signifies an exemption from the application of the law, a privilege that can potentially curtail the rights of others. A profound comprehension of parliamentary immunity is indispensable for the assessment and resolution of such conflicts. On a more abstract plane, parliamentary immunity delves deep into the fundamental principles of constitutional law. Immunity regulations are intricately interwoven with the foundational structure and ideals of a democratic state, encompassing the separation of powers, the concept of representation, the rule of law, and the protection of human rights. The exploration of parliamentary immunity, therefore, both necessitates and elevates our grasp of broader constitutional jurisprudence.A widely accepted consensus underscores that the raison d'être of parliamentary immunity lies in shielding the core institution of modern representative democracy: the parliament itself. Elected representatives, serving as the collective embodiment of the public will and the architects of the laws governing our lives, must possess the freedom to engage in unfettered discourse within the parliamentary arena and execute their mandates without undue apprehension. They should be impervious to politically motivated prosecutions or any endeavors to obstruct the parliamentary process. This is the very objective that immunity endeavors to achieve through the selective exemption of members of parliament from the purview of ordinary legal processes. Ordinarily, parliamentarians are shielded from prosecution or trial for utterances made within the parliamentary domain. Frequently, criminal proceedings and the apprehension of parliamentarians require parliamentary authorization. In certain scenarios, immunity even extends to preventing civil litigation against members of parliament.

MEANING OF IMMUNITY

Immunitas or immunitatis has its roots in the Latin adjective "immunis", meaning: "not bound" "free from obligation", "disengaged" "making no return", "without payment" "making no contribution", "untaxed", and, figuratively, "free from", "devoid of" "apart from", "without". In turn, the adjective immunis has its root in the noun munus, whose complex meaning was "gift", "obligation", "duty".[1] It gave many interpretations to the idea of immunity, governing public life by imposing alternatives like exemptions from service, obligation, or military duty. Due of its varied significance in the fields of finance and medicine, the idea later developed into one that was quite complex. The medical meaning persisted as the dominant one up to the start of the early modern era, uninterrupted and unimpaired by other domains. The idea entered politics in the latter half of the eighteenth century. Immunity became more significant and became a catchphrase as a result of its ability to function as a metaphor. After its introduction to politics, intense emotive discussions over the boundaries and purposes of immunity have persisted to the present. Applied to history, parliamentary immunity has its roots in the unequal political and legal relationship between the absolute power of the king and the parliament.[2] The French Revolution of 1789 gave birth to the idea of immunity[3], through the term "inviolability". The two decrees, *Les Decrets des 23 juin 1789 et 26 juin 1790,* initiated by Mirabeau opened a new file of history, standardizing the French two-tier model of parliamentary immunity. This time in history, or the "turning point," as Koselleck commonly refers to it, is when immunity acquired its contemporary implications.

PARLIAMENTARY IMMUNITY AND ITS EXTENSION

The narrative is set up in such a way that the historical notion of parliamentary immunity could be characterised by a gradual evolution, both in meanings and domains, and that this gradual evolution could be seen in the way the notion of im-

1 'Latin Synonyms 1839: Lewis Ramshorn (Trans. Francis Lieber): Free Download, Borrow, and Streaming: Internet Archive'. <https://archive.org/details/latin-synonyms-1839-03> [Last seen 29 March 2023].

2 Directorate General for research, 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament'.

3 William Rogers Brubaker, 'The French Revolution and the Invention of Citizenship' (1989) 7 French Politics and Society 30 <https://www.jstor.org/stable/42844105> [Last seen 29 March 2023].

munity transposed from philosophy to the field of history philosophy. Immunity has been referred to be a transitory notion that has had varying definitions across several fields since the seventeenth century. In Koselleck's opinion, the concept's entry into the sphere of medicine makes it easier to understand its significance. In order to explain how smallpox affects the human body, Dutch physician Van Sweiten first employed immunitas in 1775[4], which is when the term first appeared in medicine.

The term "immunity" has come to be widely recognised in the parliamentary setting as the meaning of parliamentary privilege over the ages. This privilege, granted to the entire House of Representatives and not just to the members, was intended to give the members of the body the framework they would need to use their institutional functions without interference and, in other words, to be exempt from the application of ordinary law. Erskine May's Treatise on the Law, Privilege, Procedures and Use of Parliament[5], popularly known as the "parliamentary bible," one of the most significant works on British parliamentary procedure, which was first published in 1844 and later updated, provides evidence in favour of this claim. The use of parliamentary immunity has always represented the separation of powers between the legislative and executive branches in terms of roles and responsibilities. Given this, the relationship between politics and philosophy is constructed in light of an understanding of how parliamentary immunity and the separation of powers affect one another.

PARLIAMENTARY PRIVILEGE

The idea of "parliamentary privilege" is another one that embraces the notion of "popular sovereignty," emphasising that lawmakers are the representatives of the will of the people. The people are the masters who hold the legislators, who are their employees, accountable, hence parliamentary immunity should in no way keep the representatives from the people. In a nutshell, parliamentary immunity is a mechanism that ensures that legislators and voters are integrated rather than separating them from their constituency. The idea of popular sovereignty also implies the need for a safeguard against "self-dealing". This phrase was first coined by Josh Chavetz in his book *'Democracy's Privileged Few'*[6], which made the case that legislative self-dealing is inevitable when legislators priorities their own interests over the interests of the people. In a similar vein, Anthony Downs discussed the intrinsic motive of representatives in his book '*An Economic Theory of Democracy*', contending that they prioritise their own interests above the well-being of society.[7]

The defence of citizens' rights is another matter governed by popular sovereignty. The separation of powers between the executive and legislative branches of government is the best way to guarantee that all rights are sufficiently protected and not violated in this regard. In this instance, the theory of the separation of powers as seen through the lens of philosophy is turned into parliamentary immunity or privilege. This connection can be understood by referring to Montesquieu's defence of the separation of powers, Esprit des Lois (1748).[8] The division of powers, which emerged as a response to the royal absolutism of the eighteenth century, was viewed as the guarantee of an open and moderate government, the means by which "lepouvoir arrête le pouvoir" and the protection

4 Jay Odenbaugh and Paul Griffiths, 'Philosophy of Biology' in Edward N Zalta (ed), The Stanford Encyclopedia of Philosophy (Summer 2022, Metaphysics Research Lab, Stanford University 2022) <https://plato.stanford.edu/archives/sum2022/entries/biology-philosophy/> [Last seen 29 March 2023.

5 Thomas Erskine May, WR McKay and Frank Cranmer, *Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament* (LexisNexis UK 2004); Edited Harry Evans, 'Odgers' Australian Senate Practice – Twelfth Edition'; Robert Blackburn and others, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2003).

6 'Introduction | Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions | Yale Scholarship Online | Oxford Academic' <https://academic.oup.com/yale-scholarship-online/book/22563/chapter-abstract/182897038?redirectedFrom=fulltext> [Last seen 6 April 2023].

7 Anthony Downs, 'An Economic Theory of Political Action in a Democracy' (1957) 65 Journal of Political Economy 135 <https://www.jstor.org/stable/1827369> [Last seen 6 April 2023].

8 Mark R Rutgers, 'Public Administration and the Separation of Powers in a Cross-Atlantic Perspective' (2000) 22 Administrative Theory & Praxis 287 <https://www.jstor.org/stable/25611434> [Last seen 6 April 2023]."plainCitation":"Mark R Rutgers, 'Public Administration and the Separation of Powers in a Cross-Atlantic Perspective' (2000).

of freedom are appropriately gained. In this sense, parliamentary immunity or privilege is viewed as an essential component in defining the separation of powers and as the force sustaining the various political system. Hence, in the context of the separation of powers, parliamentary privilege should ensure the clear separation of powers and enable the parliament to function without interference by external threats.

IMMUNITY AND PRIVILEGES

In general, immunity is protection against something. There are "immunities" from taxation, "immunities" from the arrest of witnesses, judges, and legislators, and other things in legalese. However, it should be remembered that a legal "immunity" can always be broken. There is no perfect legal immunity. Legal regulations can be broken because it is in their nature.[9] Use of the term Immunity as correlative to No Power is simply an operational idea. When someone is immune, their rights cannot be changed by another person. Disability is defined as the inability to alter legal privileges. The fundamental distinction between rights and privileges, as well as between powers and immunities, is the same. A privilege is someone's exclusion from another person's right claim, whereas a right is an affirmative claim made against another person.

THE PARLIAMENTARY IMMUNITY AND PRIVILEGES

Immunity and privilege are related concepts in parliamentary proceedings, but they are different in their scope and application.[10] Parliamentary privilege refers to a set of legal rights and immunities that protect the members of parliament from legal action for the things they say or do in the course of their duties as representatives.[11] Parliamentary privilege includes the freedom of speech and debates, the freedom from arrest during their attendance in Parliament or state legislature, and the power to punish for contempt of the House. Parliamentary immunity, on the other hand, specifically refers to the protection granted to members of Parliament and state legislatures from any legal proceedings against them for anything said or any vote given by them in Parliament or the state legislature. Parliamentary immunity is a subcategory of parliamentary privilege that provides protection to elected representatives while they perform their legislative duties. Parliamentary privilege is a broader concept that encompasses various rights and immunities granted to members of parliament, while parliamentary immunity is a specific type of privilege that protects elected representatives from legal action for their words and actions in the legislature. The difference between parliamentary immunity and privileges can be understood in terms of the types of legal concepts involved: immunity involves the absence of a duty or liability, while privileges involve the presence of positive legal rights and powers.

TWO FORMS OF IMMUNITY: (I) NON – ACCOUNTABILITY & (II) INVIOLABILITY

"Non-accountability" refers primarily to the freedom of expression and of the parliamentary vote in a parliamentary setting.[12] The most common type of parliamentary immunity is this one. Parliamentarians who practise non-accountability are not subject to legal consequences for their statements and voting actions in the assembly to which they are elected. Non-accountability is typically an absolute in both time and space. This means that any legal action is permanently barred and that it will continue to apply even after the completion of their contract. And last, non-accountability is typically neither lifted by parliament nor relinquished by a single member.

9 Albert Kocourek, '"Privilege" and "Immunity" as Used in the Property Restatement' LOUISIANA LAW REVIEW.

10 Canberra corporateName=Commonwealth Parliament; address=Parliament House, 'CHAPTER 2 | Parliamentary Privilege: Immunities and Powers of the Senate' <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_02> [Last seen 31 May 2023].

11 *Ibid*.

12 'Parliamentary Privilege – First Report' <https://publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4306.htm> [Last seen 31 May 2023].

Inviolability refers to protection against legal action, detention, and measures of prosecution or investigation that are not directly related to a member's duties in the legislature.[13] In other words, non accountability does not cover issues that are covered by inviolability. While inviolability does not exist everywhere and its exact breadth varies greatly between systems, non-accountability is a trait of parliamentarianism that is nearly universal. In some cases, inviolability may extend to behaviours that have nothing to do with the parliamentary mandate, such as stealing or traffic violations. In other systems, inviolability does not apply unless there is a specific link between an act and parliamentary action. The ramifications of inviolability also vary: they range from the prohibition of arrest and detention to a general prohibition of all legal action, civil and criminal, and of all investigative techniques like home searches or wiretaps. Inviolability typically has a time restriction as contrasted to non-accountability. It frequently only applies while parliament is in session and typically expires when the parliamentary mandate expires. This means that it merely has a suspense impact; even in cases when inviolability prevents an MP from being detained or prosecuted while serving on a committee, he may still be detained and charged with a crime committed while serving on the committee after his term has finished. Moreover, inviolability may typically be lifted by parliament at the request of the prosecuting authorities.

HISTORICAL BACKGROUND OF PARLIAMENTARY IMMUNITY AND PRIVILEGE

The United Kingdom is an unavoidable option to portray the multiplicity of parliamentary immunity systems. Second, most countries with a history of British colonialism, such as the USA, Canada, Australia, New Zealand, and India, uphold a Westminster-type privilege. The most significant privilege in certain Commonwealth nations is still based on Article 9 of the Bill of Rights from 1689[14], which essentially guarantees freedom of expression in parliament. The British system of parliamentary privilege is one of the most important systems of parliamentary immunity in the world.

England

The English Parliament's session from 12th January to 12th February 1397 is when parliamentary immunity first came into existence. During this time, the House of Commons passed a bill criticizing the scandalous practises of Richard II of England's court as well as the resulting excessive financial burdens.[15] Thomas Haxey, the group member who had originally proposed this direct action against the king and his court, was tried for treason and found guilty, and he was given the death penalty. But, as a result of pressure from the Commons, a royal pardon prevented the punishment from being executed.[16] Due to this incident, there was discussion in the House of Commons over whether or not lawmakers should be able to discuss and debate issues in total autonomy and independence without intervention from the monarchy. As a result, Article 9 of the Bill of Rights, which was adopted in 1689[17], confirmed the right to free speech that had been introduced into the House of Commons at the beginning of the sixteenth century. This provision explicitly shields the speeches and actions of members of parliament from any outside interference or dispute. A thorough investigation of immunity systems should naturally begin with the British concept of parliamentary privilege. The Westminster Parliament is not only referred to as "the mother of all parliaments," but its privileges system stretches almost as far back as the formal

13 'REPORT ON THE SCOPE AND LIFTING OF PARLIAMENTARY IMMUNITIES' <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e>.

14 'Bill of Rights 1689' <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/collections-glorious-revolution/billofrights/> [Last seen 10 April 2023].

15 'Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union' <https://www.astrid-online.it/static/upload/protected/Rule/RulesParlImmunity.pdf>

16 Paul Seaword, 'Yonge, Haxey, and the Privilege of Freedom of Speech in Parliament – Reformation to Referendum: Writing a New History of Parliament' (*The History of Parliament*, 7 April 2020) <https://historyofparliamentblog.wordpress.com/2020/04/07/yonge-haxey-and-the-privilege-of-freedom-of-speech-in-parliament/> [Last seen 11 April 2023].

17 'Bill of Rights 1689' (n 14).

beginnings of English legislative in the middle Ages.[18] First, Westminster-type parliamentary immunity is distinct from other forms of parliamentary immunity in Europe due to the common law nature of its legal structure and the absence of a codified constitution.

The right to be free from arrest has its roots in ancient England, although as was already indicated, this privilege there was primarily associated with policies that limited personal freedom brought on by civil actions. During the Revolution of 1789, it was decided that Parliamentarians in France should not be held accountable for any beliefs they may have stated while carrying out their individual responsibilities. Following the declaration of the privilege barring the incrimination of Assembly members without the latter's authorization in a decree dated 26 June 1790; this non-liability was established by the infamous decree of 23 June 1789, which was accepted on a suggestion by Mirabeau.[19]

The foundation of this immunity system is already laid out in the Constitution of 1791, which states that "[Representatives of the Nation] may, for criminal acts, be arrested in flagrante delicto or pursuant to an arrest warrant; but the legislative body will be notified thereof without delay, and proceedings may not be continued until the legislative body has determined that charges should be brought".[20] The National Assembly and its members' position of superiority over other State bodies, which they attained during the Revolution, with the exercise of powers that are a reflection of the principle of national sovereignty, is closely linked to the considerably wider scope of parliamentary privileges in France, which were only partially derived from the English model.

France

The French model, with its dual features of non-liability and inviolability, seems to have had the most influence on other countries in continental Europe, where parliamentary immunity was also becoming recognised. On a comparative scale of immunity, the French system can be said to be one of the "extremes"; the immunity of members of the French National Assembly and Senate stands in stark contrast to other systems, like those of the UK or the Netherlands, which do not grant this extra-professional layer of immunity for crimes unrelated to the exercise of parliamentary mandate. It is natural and essential to include a system that is near the top of a scale of immunity protection for a comparative study with the objective of examining and comparing the many legislative and constitutional possibilities in the field of parliamentary immunity.[21]

Several nations on the European continent give their parliamentarians comparable or even greater degrees of protection. Nonetheless, given its capacity to be compared to the other case studies taken into consideration, France seems to be the most sensible choice. In contrast to countries where the precariousness or general novelty of the current democratic system of government would have to be taken into account in an analysis of parliamentary immunity, it is crucial that all three case studies are "established democracies" and share a comparable socio-political situation.[22] Last but not least, like the UK, France was one of the historical pioneers in the development of parliamentary immunity systems and was also one of the most powerful colonial powers. Since 1789, "all types of forms of administration have been explored" in France, which has been called a "constitutional laboratory." The study of French parliamentary immunity is worthwhile given this constitutional instability and the surprisingly long-lasting presence of parliamentary immunity, initially instituted

18 Cecilia Mbewe, 'Half-Yearly Review of the Association of Secretaries General of Parliaments' <https://www.asgp.co/sites/default/files/CPI%20review%20211%20Lusaka%20March%202016.pdf>.

19 Emmanuelle de Champs (ed), 'Reflections for the Revolution in France', *Enlightenment and Utility: Bentham in French, Bentham in France* (Cambridge University Press 2015) <https://www.cambridge.org/core/books/enlightenment-and-utility/reflections-for-the-revolution-in-france/681D8DBDACEEC312327A39226D36B049> [Last seen 11 April 2023].

20 The Constitution of 1791.

21 'The National Assembly In The French Institutions' <https://www.agora-parl.org/sites/default/files/agora-documents/The%20National%20Assembly%20in%20the%20French%20Institutions.pdf>.

22 'Parliamentary Immunity: Protecting Democracy or Protecting Corruption? – Wigley – 2003 – Journal of Political Philosophy – Wiley Online Library' <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9760.00165> [Last seen 11 April 2023.

in the early days of the Revolution.[23] A thorough examination of all historical immunity regimes is not only beyond the purview of this study, but is also impossible due to the sheer number of constitutions and types of government France has seen since 1789.

Netherland

Initially, it was unlikely that there would be a dispute around immunity in the Netherlands because Dutch legislators' immunity is much less extensive than that of their counterparts in the majority of other nations. One may anticipate difficulties in systems where immunity is perceived to be unfairly broad, when it appears to create unduly privileged political elite and elevates politicians beyond the law. This is scarcely true of the Dutch immunity system, which is why for the most of its existence it has attracted little notice and generated even less controversy. However, in recent years, the Dutch immunity system has been the subject of discussion and controversy, most of which has been sparked by some statements made by the far-right politician Geert Wilders. Wilders was cleared of all charges, including those of inciting racial hatred, but the mere possibility of his prosecution and trial sparked debate over parliamentary immunity. Because the alleged statements were made outside of parliament and did not fall under the purview of non-accountability, Wilders was not protected. The question of whether the Dutch system of immunity is sufficient or whether it would be conceivable and desirable to increase its scope arose as a result of this.[24] This debate has brought parliamentary immunity into the public and academic spotlight, setting the Netherlands apart from most other nations where public opinion hardly demonstrates much enthusiasm for the existing immunity regime, much less for expanding it. The attention that parliamentary immunity recently got in the Netherlands after leading a "dormant existence" for much of the 20th century was significant in prompting this comparative analysis.[25]

The privileges of the Commons evolved over a far longer and more complicated period of time than those of the Lords, who "enjoy their privileges merely because of their immemorial function in Parliament as counsellors of the Sovereign."[26]Since the Commoners were not initially a part of the feudal chain of interdependences, each of whose members quite naturally possessed a certain degree of authority and freedom towards the other (though of course never entirely unopposed), this may be plausible. The Speaker of the House petitions the King at the start of every new Parliament, requesting that the monarch grant the House certain privileges, including "freedom of speech in debate, freedom from arrest, freedom of access to His Majesty whenever occasion shall require; and that the most favourable construction shall be given to the proceedings of the House of Commons."Today, this tradition is still upheld, albeit mainly as a formality. The Lord Chancellor, appointed by the monarch in accordance with letters patent, responds to the petition on behalf of the Queen by stating that "Her Majesty most readily confirms all the rights and privileges which have ever been granted to or conferred upon the Commons, by Her Majesty or her royal predecessors."In the past, granting royal approval to a privilege was not always simple; it took centuries before the petition was reduced to a ceremonial component of the first meeting of a new Parliament.[27]

India

The British East India Company established its first trading post in India in 1600,[28] and over time, British officials began to exercise powers of governance over Indian territories. The members of parliament enjoyed a certain degree of immunity from arrest and prosecution, but this was not formally codified until the 17th century. The Bill of Rights[29]

23 Marina Valensise, 'The French Constitution in Prerevolutionary Debate' (1988) 60 The Journal of Modern History S22 <https://www.jstor.org/stable/1880369> [Last seen 11 April 2023.

24 Sascha Hardt, 'The Case against the Introduction of "Political Immunity" in the Netherlands' <https://www.montesquieu-instituut.nl/9353262/d/policypaper/policy_paper_04.pdf>

25 Remco Nehmelman and Max Vetzo, 'Freedom of Speech under Attack: Extension of Parliamentary Immunity' [2009] Eleven international publishing 77.

26 'Parliamentary Privilege – First Report' (n 12).

27 'Parliamentary Privilege' <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/79390/consultation.pdf>.

28 'British East India Company' <https://www.cs.mcgill.ca/~rwest/wikispeedia/wpcd/wp/b/British_East_India_Company.htm> [Last seen 31 May 2023].

29 'Bill of Rights 1689' (n 14).

established that members of parliament were not to be arrested or prosecuted for anything said or done in the course of their parliamentary duties without the permission of the House of Commons. This privilege was later extended to members of the House of Lords. There was no formal system of parliamentary immunity or privilege in India. However, British officials, including those in India, enjoyed certain immunities and privileges, which were gradually extended to members of the legislative assemblies. The Indian Councils Act of 1861[30] introduced limited forms of immunity and privilege for members of the legislative councils. This act granted members the freedom of speech, the right to vote, and the right to discuss matters of public interest. However, this immunity did not extend to criminal proceedings or arrests. The Indian Councils Act of 1892[31] expanded the scope of parliamentary privilege and immunity, granting members the right to be present at all meetings of the council, the right to vote on all questions put before the council, and the right to express their opinions without fear of legal consequences.

Under the 1919 Act,[32] a separate chapter on the powers and privileges of the Legislative Councils and the Central Legislative Assembly was introduced. The chapter outlined the powers and privileges that were to be enjoyed by these legislative bodies and their members. These powers included the power to regulate their own procedure and conduct, the power to punish members for breaches of privilege, and the power to require the attendance of witnesses and the production of documents.

The 1935 Act[33] made further developments to the immunity and privileges of the legislative bodies and their members. The Act provided for the establishment of a separate committee known as the Privileges Committee to inquire into any breach of privilege and recommend punishment. The Act also extended the immunity enjoyed by the members of the legislative bodies to their aides and servants. The Constituent Assembly had to grapple with the question of how to balance the need to protect the freedom of speech and action of the members of the legislative bodies[34] with the need to ensure accountability and transparency. There were concerns that the immunity and privileges granted to the members of the legislative bodies could be used to shield them from scrutiny and accountability. To address these concerns, the Indian Constitution included provisions on the powers and privileges of the legislative bodies and their members. Article 105[35] of the Constitution provides that the members of Parliament shall have the freedom of speech in Parliament and shall not be liable to any proceedings in any court for anything said or any vote given by them in Parliament or any committee thereof. Article 105(2) provides that the members shall not be protected from any proceedings in relation to any speech or vote given by them outside Parliament. Similarly, Article 194(3)[36] provides that the members shall not be protected from any proceedings in relation to any speech or vote given by them outside the House.

CONCLUSION

The evolution of parliamentary immunity and privilege has been a dynamic process shaped by historical, political, and legal developments.[37] From its ancient origins to the modern era, the concept of parliamentary immunity has played a vital role in safeguarding legislators' independence and fostering democratic governance. Likewise, parliamentary privilege has provided the necessary tools for effective legislative functioning and the protection of democratic principles.[38] This conclusion summarizes the key findings and implications of

30 'Indian Councils Act (1861) Was Passed by British Parliament on August 1, 1861, Which Altered the Composition of the Governor General's Council for Executive and Legislative Purposes.'

31 'The Indian Council Act of 1892 Was Introduced by the British Parliament to Amend the Existing Constitutional Provisions in the Country.'

32 'The Government of India Act 1919 (9 & 10 Geo. 5. c. 101).'

33 'Government of India Act, 1935.'

34 'Constituent Assembly Debates On 2 December, 1948 Part I' <https://indiankanoon.org/doc/1389880/> [Last seen 7 June 2023].

35 'The Constitution of India' <https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf>.

36 *Ibid*.

37 Ciprian Negoiţă, 'Immunity: A Conceptual Analysis for France and Romania' (2015) 10 Contributions to the History of Concepts 89 <https://www.jstor.org/stable/26373810> [Last seen 11 April 2023].

38 'Parliamentary Privilege – First Report' (n 12).

the evolution of parliamentary immunity and privilege.Throughout history, parliamentary immunity has undergone significant transformations. In its early stages, immunity primarily served to protect lawmakers from external interference and retribution, allowing them to speak freely without fear of repercussions. Over time, the concept expanded to encompass a broader range of actions and activities, including legislative acts, statements, and votes. The underlying principle behind parliamentary immunity is to uphold the freedom of speech and expression, which are essential for democratic debate and representation.[39]However, the evolution of parliamentary immunity has not been without challenges. The delicate balance between protecting legislators' independence and ensuring accountability has led to ongoing debates and occasional controversies. Critics argue that excessive immunity can enable abuse and impunity, allowing legislators to act with impunity for illegal or unethical conduct. Striking the right balance between immunity and accountability remains a complex task, requiring constant vigilance and adaptation to changing societal norms and expectations.

39 'Privileges and Immunities – Parliamentary Privilege: A Definition' <https://www.ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?Language=E&Print=2&Sec=Ch03&Seq=2> [Last seen 7 June 2023].

BIBLIOGRAPHY:

1. 'Bill of Rights 1689' <https://www.parliament.uk/about/living-heritage/evolutionofparliament/parliamentaryauthority/revolution/collections1/collections-glorious-revolution/billofrights/> [Last seen 10 April 2023].
2. Blackburn R and others, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2003)
3. 'British East India Company' <https://www.cs.mcgill.ca/~rwest/wikispeedia/wpcd/wp/b/British_East_India_Company.htm> [Last seen 31 May 2023].
4. Brubaker WR, 'The French Revolution and the Invention of Citizenship' (1989) 7 French Politics and Society 30 <https://www.jstor.org/stable/42844105> [Last seen 29 March 2023
5. 'Constituent Assembly Debates On 2 December, 1948 Part I' <https://indiankanoon.org/doc/1389880/> [Last seen 7 June 2023].
6. Directorate General for research, 'Parliamentary Immunity in the Member States of the European Community and in the European Parliament'.
7. Downs A, 'An Economic Theory of Political Action in a Democracy' (1957) 65 Journal of Political Economy 135 <https://www.jstor.org/stable/1827369> [Last seen 6 April 2023].
8. Evans EH, 'Odgers' Australian Senate Practice – Twelfth Edition'.
9. 'Government of India Act, 1935.'
10. 'Indian Councils Act (1861) Was Passed by British Parliament on August 1, 1861, Which Altered the Composition of the Governor General's Council for Executive and Legislative Purposes.'
11. 'Introduction | Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions | Yale Scholarship Online | Oxford Academic' <https://academic.oup.com/yale-scholarship-online/book/22563/chapter-abstract/182897038?redirectedFrom=fulltext> [Last seen 6 April 2023].
12. Kocourek A, '"Privilege" and "Immunity" as Used in the Property Restatement' LOUISIANA LAW REVIEW.
13. 'Latin Synonyms 1839 : Lewis Ramshorn (Trans. Francis Lieber) : Free Download, Borrow, and Streaming : Internet Archive' <https://archive.org/details/latin-synonyms-1839-03> [Last seen 29 March 2023].
14. May TE, McKay WR and Cranmer F, *Erskine May's Treatise on the Law, Privileges, Proceedings, and Usage of Parliament* (LexisNexis UK 2004)
15. Mbewe C, 'Half-Yearly Review of the Association of Secretaries General of Parliaments' <https://www.asgp.co/sites/default/files/CPI%20review%20211%20Lusaka%20March%202016.pdf>
16. Negoiţă C, 'Immunity: A Conceptual Analysis for France and Romania' (2015) 10 Contributions to the History of Concepts 89 <https://www.jstor.org/stable/26373810> [Last seen 11 April 2023].
17. Odenbaugh J and Griffiths P, 'Philosophy of Biology' in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2022, Metaphysics Research Lab, Stanford University 2022) <https://plato.stanford.edu/archives/sum2022/

entries/biology-philosophy/> [Last seen 29 March 2023].
18. 'Parliamentary Immunity: Protecting Democracy or Protecting Corruption? – Wigley – 2003 – Journal of Political Philosophy – Wiley Online Library' <https://onlinelibrary.wiley.com/doi/abs/10.1111/1467-9760.00165> [Last seen 11 April 2023].
19. 'Parliamentary Privilege – First Report' <https://publications.parliament.uk/pa/jt199899/jtselect/jtpriv/43/4306.htm> [Last seen 31 May 2023].
20. Paul Seaword, 'Yonge, Haxey, and the Privilege of Freedom of Speech in Parliament – Reformation to Referendum: Writing a New History of Parliament' (*The History of Parliament*, 7 April 2020) <https://historyofparliamentblog.wordpress.com/2020/04/07/yonge-haxey-and-the-privilege-of-freedom-of-speech-in-parliament/> [Last seen 11 April 2023].
21. 'Privileges and Immunities – Parliamentary Privilege: A Definition' <https://www.ourcommons.ca/marleaumontpetit/DocumentViewer.aspx?Language=E&Print=2&Sec=Ch03&Seq=2> [Last seen 7 June 2023].
22. Remco Nehmelman and Max Vetzo, 'Freedom of Speech under Attack: Extension of Parliamentary Immunity' [2009] Eleven international publishing 77.
23. 'REPORT ON THE SCOPE AND LIFTING OF PARLIAMENTARY IMMUNITIES' <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)011-e>
24. 'Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union' <https://www.astrid-online.it/static/upload/protected/Rule/RulesParllmmunity.pdf>
25. Rutgers MR, 'Public Administration and the Separation of Powers in a Cross-Atlantic Perspective' (2000) 22 Administrative Theory & Praxis 287 <https://www.jstor.org/stable/25611434> [Last seen 6 April 2023].
26. Sascha Hardt, 'The Case against the Introduction of "Political Immunity" in the Netherlands' <https://www.montesquieu-instituut.nl/9353262/d/policypaper/policy_paper_04.pdf>
27. 'The Constitution of India' <https://www.indiacode.nic.in/bitstream/123456789/15240/1/constitution_of_india.pdf>
28. 'The Government of India Act 1919 (9 & 10 Geo. 5. c. 101).'
29. 'The Indian Council Act of 1892 Was Introduced by the British Parliament to Amend the Existing Constitutional Provisions in the Country.'
30. 'The National Assembly In The French Institutions' <https://www.agora-parl.org/sites/default/files/agora documents/The%20National%20Assembly%20in%20the%20French%20Institutions.pdf>
31. Valensise M, 'The French Constitution in Prerevolutionary Debate' (1988) 60 The Journal of Modern History S22 <https://www.jstor.org/stable/1880369> [Last seen 11 April 2023].