

1. “JUDICIAL REVIEW OF PARLIAMENTARY PRIVILEGE: INDIA AND SOUTH AFRICA.”

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Abstract: The tussle between the supreme authority is always a research topic in federal government. Even when there is separation of power but still there are no water tight compartment. Because of which interference of one authority over other takes place. And the special power of judicial review wasted in hands of judiciary makes it more complicated. The members of lower and upper house while making legislation has to come across various differentiation is their view and this many a time back fire them on their life. To protect them they are given protection under Parliamentary privilege. This research paper will compare the judicial review on those parliamentary privilege between India and South Africa.

Keywords: Federal Government, India, Judicial Review, Parliamentary privilege, South Africa, Supreme authority.

1. INTRODUCTION:

Since the dawn of the new constitutional democracy, there has been a growing trend to seek judicial review of decisions of the Speaker of the National Assembly and Chairperson of the National Council of Provinces (NCOP), based on claims by members of parliament that the freedom of speech in parliament has been infringed¹. Many Cases have come before courts which involve the infringement of the privileges and immunities of parliament. Surprisingly, the extent and scope of the privilege and immunity under the Constitution of the Republic of South Africa, 1996, has not been fully considered. Even in Indian constitution there are many cases where the

¹*Speaker of National Assembly v De Lille MP 1999 4 ALL SA 241 (A), Mazibuko v Sisulu 2013 6 SA 249 (CC) & Lekota v Speaker, National Assembly 2015 4 SA 133 (WCC)*

question of judicial review with regard to parliamentary privilege was involved one of the issue the supreme court of India, "A unique right, advantage or benefit conferred on a particular person, it is a peculiar advantage or favor granted to one person as against another to do certain acts"²³ (Raja Ram Pal vs Speaker, Lok Sabha & Ors on 10 January, 2007) ⁴defined privilege in such a beautiful way the privilege has been differentiate than power. Privilege defined in the case was in context with the privilege which the members of parliament have as holding the position as member of legislative assembly. Legislative, Judiciary and Executive which forms the government which is an essential for a state.

India is a democratic country where everyone directly or indirectly connected with the government. Directly by giving votes and indirectly as there representative represent them in legislative assembly. These representatives while discussing a bill gives their opinion as well as discusses the effects of the bill on the society at large. While doing so they should be part of discussion with having any restriction of freedom of speech so that they can freely express the will of the people they are representing. So they are given privilege⁵ so that they are not being convicted for the act done by them for the will of the people. But that privilege is in respect with the position they held during those legislative assemblies only. The moment the assembly session is over and they are not acting as a member of legislative assembly the privilege is waived off. Privilege is only constructed towards the four walls of the assembly.

The powers, privileges and immunities of either House of the Indian Parliament⁶ and of its Members and committees are laid down in Article 105⁷ of the Constitution. Article 194⁸ deals with the powers, privileges and immunities of the State Legislatures⁹, their Members and their committees.

² Raja Ram Pal vs The Hon'ble Speaker, Lok Sabha & others, 2007 WP 1 of 2006 also see Raja Ram Pal v Speaker, Lok Sabha & Ors, Pg 3 of 113 , Available at Indian kanoon.com.

³ <https://iasscore.in/national-issues/Judicial-Review-of-Parliamentary-Privileges>.

⁴ Raja Ram Pal v Hon'ble speaker

⁵ Article 105 OF Indian Constitution, 1960.

⁶ Art. 79 of Indian constitution, 1960.

⁷ Powers, privileges, etc., of the Houses of Parliament and of the members and committees

⁸ Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof.

⁹ Constitution of Legislatures in States.

In the South African context, the evolution of the concept of parliamentary privilege should be understood against its archaic history which was characterized by strife, 'tumultuous and epic conflict' before the attainment of democracy in 1994.¹⁰ The uniqueness of parliamentary privilege that has emerged through the protracted history of a political struggle for freedom, underpins the independence of Parliament. This has given reliance on the enactment of the Powers, Privileges, and Immunities of Parliament and Provincial Legislatures Act¹¹. Before the promulgation of the Constitution Act No 108 of 1996 (Constitution), judicial review practiced on the common law grounds determined by the Supreme Court of Appeal under its inherent jurisdiction and through the use of the ultra virus doctrine. The common law areas for judicial review were specific in the catch-all expression of the administrator's "failure to apply his mind to the matter". Section 33 (1) of the Constitution entitles everyone the right to administrative action that is lawful, reasonable and procedurally fair¹².

2 ORIGIN AND DEVELOPMENT: PARLIAMENTARY PRIVILEGES

Parliamentary privileges are commonly described as the sum of unique rights enjoyed by each House collectively and by members of each House individually, without, which they could not perform their functions, and which exceed those controlled by other bodies or individuals. "Privileges, though part of the law of the land, are to a certain extent an exemption from ordinary law". Privilege in law is protection or immunity conferred by special grants in derogation of common rights. Parliamentary privileges are an indispensable part of the parliamentary democracy as it survives in the U.K. and as it has been embraced by many democratic countries in the World. Where ever parliamentary democracy of the British pattern has been utilized, parliamentary privilege has also been made a part and parcel of such a democracy, though the size of such privilege has of obligation, modified in each case.

¹⁰ Devenish 2012 SA Public Law 172.

¹¹ Act 4 of 2004.

¹² Constitution Act No 108 of 1996

2.1. Position in India.

Sir Thomas Erskine explains the phrase “Parliamentary Privilege, as the total sum of the specific rights enjoyed by each House of Parliament collectively is a constituent part of Parliament, and by the members of every house of Parliament one by one, without which they could not proceed with their functions, and which exceed those possessed by different bodies and people”^{13 14}. The privileges to the members of the Parliament, and also bestowed on the person who actively engages in any of the committees and the function of the parliament, but the President does not entrust with parliamentary privileges even though he is part of parliament.

Parliamentary privilege in India is either:

Collectively enjoyed by the Member of Parliament.

Individually enjoyed by the Member of Parliament.

2.1.1. Under Indian constitution-

“Article 105. Powers, privileges, etc of the **Houses of Parliament and of the members and committees** thereof (1) Subject to the provisions of this constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament (2) 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, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty fourth Amendment) Act 1978 (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.”

¹³ Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*

¹⁴ 1959 AIR 395, 1959 SCR Supl. (1) 806

“Article 194. Powers, privileges, etc, of the **House of Legislatures and of the members and committees** thereof (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State (2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings (3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution forty fourth Amendment Act, 1978 (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.” Under article 105¹⁵ the Powers, privileges, etc of the Houses of Parliament and of the members and committees i.e the Rajya Sabha¹⁶ (upper house) and Lok Sabha¹⁷ (lower house) which are the two houses of Indian parliament¹⁸. After examining the two articles of the Indian Constitution, the position of the house of the Parliament is alike to the position of the state legislature. Consequently, article 105 implements, mutatis mutandis, to the state legislature as well.

2.1.2. Under South Africa Constitution.

In South Africa, the most important part of it, the right to freedom of speech in legislatures, is protected in the Constitution (sections 58, 71 and 117). Other aspects of the law of parliamentary privilege are found in the Powers and Privileges of Parliament Act, 91 of 1963, and in the powers and privileges Acts of the provincial legislatures.

¹⁵ Powers, privileges, etc of the Houses of Parliament and of the members and committees.

¹⁶ Article 79 the Constitution of India, 1960.

¹⁷ Article 79, 1960.

¹⁸ Article 79 of the Constitution of India, 1960.

“*Constitution section 58*¹⁹: (1) Cabinet and members of the National Assembly – (a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and (b) are not liable to criminal or civil proceedings, arrest, imprisonment or damages for – (i) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees. (2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.”

“*Constitution section 117*²⁰: (1) Members of a provincial legislature and the province’s permanent delegates to the National Council of Provinces – (a) have freedom of speech in the legislature and in its committees, subject to its rules and orders; and (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for – (i) anything that they have said in, produced before or submitted to the legislature or any of its committees; or (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the legislature or any of its committees. (2) Other privileges and immunities of a provincial legislature and its members may be prescribed by national legislation.”

“*Constitution section 71*²¹: (1) Delegates to the National Council of Provinces and the persons referred to in sections 66 and 67 – (a) have freedom of speech in the Council and in its committees, subject to its rules and orders; and (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for – (i) anything that they have said in, produced before or submitted to the Council or any of its committees; or (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Council or any of its committees. (2) Other privileges and immunities of the National Council of Provinces, delegates to the Council and persons referred to in sections 66 and 67 may be prescribed by national legislation.” Certain parliamentary powers are closely linked to parliamentary privilege. The power of legislatures to manage their own affairs (protected in sections 57, 70 and 116 of the

¹⁹ ACT 200 OF 1993

²⁰ THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993.

²¹ CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 200 OF 1993.

Constitution) is the most important of these. It encompasses the power to discipline members for breaches of rules and protects legislative processes from interference by the executive. At present the law relating to parliamentary privilege in South Africa is unsettled. As we have already mentioned, the Constitution protects the right to freedom of speech in legislatures. It also specifically states that further privileges and immunities in both the national Parliament and provincial legislatures 'may be prescribed by national legislation'. However, the national Parliament still relies on the 1963 Act that, in turn, incorporates centuries of British parliamentary common law into South African law.

As in **Indian and South Africa** where a democratic culture has been developed and nurtured. The purpose is most obviously served by the protection of freedom of speech. Members feared legal consequences for things that they said in the legislature, a culture of representative democracy would not be allowed to blossom. Furthermore, limits on speech would hamper the ability of members to make decisions with a full understanding of the facts and to conduct oversight properly. Similarly, if a member who was running an enquiry could be pulled away from his or her legislative business to attend court for a trivial matter, the business of the legislature would be impeded. The parliamentary privilege need to be there for the legislative members for the democracy to prevail. Article 105²² of the Constitution with reference to the "Powers, privileges and immunities of Parliament and its members" and Article 194²³ with reference to the State Legislatures and their members contain sure enumerated privileges and powers whereas effort area for an outsized variety of uncodified and unenumerated privileges to continue. relation to sure alternative provisions like Articles 118, 121, 122, 208, 211 and 361-A, that even have a sway on the topic, area unit created at the acceptable places.

Regarding speech, article 105(1) guarantees freedom of speech in Parliament subject in fact to the foundations and Standing Orders regulation the procedure of Parliament. What makes Article 105(1) effective and far quite the proper of each national to free speech secure by Article 19(1) (a), is that the immunity from the method of the courts in respect of something same within the House. The privilege is obtainable not solely to the Members of Parliament however conjointly,

²² *Indian Constitution act, 1949.*

²³ *The constitution of India, 1949*

below Article 105(4) of the Constitution, to persons just like the professional General of Bharat or Ministers United Nations agency don't seem to be members however have a right to talk within the House. The stage has been set for fearless participation within the debates within the House. So as to assert the immunity, what has to be shown is simply that Parliament was sitting which its business was being transacted. The limitation on the privilege regarding to free speech in Parliament are few. One limitation clearly is that the liberty is subject to the constitutional provisions and therefore the rules and procedures of Parliament. the foundations area unit those framed below Article 118 of the Constitution below Article 121, Parliament cannot discuss the conduct of Judges of the Supreme Court and of the Judges of the state supreme court. though there's any violation of those limits it might still be a matter completely for Parliament to touch upon and therefore the courts would haven't any jurisdiction to seem into the matter. Visible of Article 122, the courts are expressly barred from enquiry into the validity of any continuing in Parliament. Another exception is in fact that Parliament should be sitting. The privilege cannot, arguably, be stretched to cases of casual oral communication within the House. A member cannot conjointly claim immunity for any speech that he might build outside the House though it's a verbatim copy of what he has same within the House. During a case determined by the U.S. Supreme Court proof had been admitted on the authorship, content and motivation of a speech created by a member on the ground of the House of Representatives in pursuance of a conspiracy designed to present help reciprocally for compensation. It absolutely was held that the conspiracy conviction was supported associate intensive enquiry of the proceedings of the House and was, therefore, unsustainable. In England, below Section thirteen of the Defamation Act, a member might waive privilege and contest the proceedings within the absence of an identical provision, it's uncertain if associate Indian court might, within the light-weight of the categorical bar below Article 105(2), entertain a judicial proceeding even during a case of relinquishing of privilege. So, it's evident that subject to terribly minor limitations the privilege below Articles 105(1) and (2) with relevancy speech within the home is complete, conclusive and out of doors the scope of scrutiny or enquiry by alternative organs of the State.

In **Republic of South Africa**, parliamentary privilege and immunity area unit sourced directly from the Constitution, that provides that: Cabinet members, Deputy Ministers and

members of the National Assembly have freedom of speech within the Assembly and in its committees, subject to its rules and orders; and aren't susceptible to civil or criminal proceedings, arrest, imprisonment or damages for any price that they need aforesaid in, made before or submitted to the Assembly or any of its committees; or something disclosed as a results of something that they have aforesaid in, created before or submitted to the Assembly or any of its committees. The Constitution additional provides for the privileges and immunities of delegates to the National Council of Provinces (NCOP), and provincial legislatures, in terms just like those of the National Assembly. The Constitution additionally provides for privileges and immunities of municipal councils at the native sphere of state. For functions of this discussion, the focus is on the privilege of parliament that applies in similar terms to the National Assembly, NCOP, and provincial legislatures. Like the scope of the parliamentary privilege in UK, parliamentary privilege in Republic of South Africa has components: freedom of speech; and also the exclusive cognizance of parliament. This is often clear from the availability within the Constitution which guarantees freedom of speech subject to the principles and orders of the Assembly. The importance of freedom of speech in parliament was emphatic in Speaker of the National Assembly v de lille MP, wherever the court control that this right may be a elementary right crucial to democracy the aim of the right to freedom of speech associated discussion in an assembly was additional explained in *Dikoko v Mokhatla*²⁴, wherever the court command that: Immunizing the conduct of members from criminal and civil liability throughout deliberations may be a bulwark of democracy. It promotes freedom of speech and expression. It encourages democracy and full and effective deliberation. It removes the worry of repercussion for what's aforesaid. These advances affect democratic government. Consequently, freedom of speech is a vital tool for democracy that extends the irresponsibleness of presidency to the representatives of the individuals in parliament.

3.Judicial review and parliamentary privilege:

The Judiciary, legislative assembly and government are the three pillars on which the effective functioning of the govt. rests. A balance as against conflicts is incredibly necessary to realize the

²⁴ [2006] ZACC 10; 2006 (6) SA 235 (CC); 2007 (1) BCLR 1 (CC) (3 August 2006)

final word public welfare and sleek functioning of the constitutional machinery. India, on the contrary, bears the dominance of the Constitution wherever the powers of the Parliament are circumscribed among the four walls set by the Constitution and however provides for putting a balance between the varied pillars with none encroachment on every other's space and providing effective governance. Judicial review encompasses the facility of judiciary to review actions of legislative and judiciary therefore enshrining the principle of Rule of Law and maintaining separation of power principle at the grassroots level. Thus, the most frame among that the judiciary limits are circumscribed contains review of body and legislative actions and scrutinizing many constitutional amendments within the lightweight of constitutional provisions thereby protective the quality of the Constitution and protective the basic rights of the voters. Judicial review could be a sturdy tool to stay a check on public bodies and rendering their answerability if their selections or policies go outside the powers that are laid out in the Constitution. It maintains effective checks and balances by dominant unbridled, absolute or unjust acts taken on behalf of the manager and also the legislative assembly.

4.Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha and Others²⁵

On 12th December, 2005, a private News-Channel telecasted a program entitled "Operation Duryodhan"²⁶ showing ten members of the Lok Sabha and one member of the Rajya Sabha receiving cash as thought for raising certain queries within the House. Afterwards on 19th December, 2005, another private channel telecasted a programme titled "Operation Chakravyuh" alleging improper conduct of one member of the Rajya Sabha within the implementation of 'MPLAD theme (Member of Parliament Local area Development Scheme). The respective house of the Parliament established separate Inquiry Committees to analyze and report the alleged incidents of bribery by the members. The conscience of the complete nation was afraid because the bribe-taking MPs created the mockery of the democratic method and lowered the dignity of the Parliament within the eyes of the common voters. The Committee appointed by the

²⁵ (2007) 3 SCC 184

²⁶ [https://en.wikipedia.org > wiki > Operation_Duryodhana](https://en.wikipedia.org/wiki/Operation_Duryodhana)

Speaker of the Lok Sabha established the costs created against the indicted ten Members of Parliament and control them guilty of unethical conduct erosion the credibility of Parliament as an establishment. The Committee suggested that the guilty Members of Parliament be expelled from the House. On twenty third December, 2005, the Lok Sabha adopted a motion accepting the aforesaid recommendations and expelled the concerned Members of Parliament consequently. Consequently, a notification was issued on the same day by the Lok Sabha Secretariat declaring their seats as vacant. The committee of the Rajya Sabha additionally created an intensive inquiry into the similar allegations created against its two members. On the recommendations of the 'Ethics Committee', the involved MPs were additionally expelled from the Rajya Sabha.

The contentions is summarized thus:-

- (i) the ability of review is an event of and flows from the idea that the basic and better laws are the standard of the boundaries of the powers of the assorted organs of State that derive power and authority beneath the Constitution of that the judicial wing is the interpreter;
- (ii) in contrast to in England where Parliament is sovereign, in a federal State with a written Constitution like India is, the supremacy of the Constitution is fundamental to its existence, that supremacy is protected by the authority of the independent judicial body that acts as the interpreter there from through the ability of review to that even the law-makers is amenable and cannot claim immunity wherefrom;
- (iii) The legislative supremacy being subject to the Constitution, Parliament cannot verify for itself the character, scope and impact of its powers that are, consequently, subject to the supervising and management of judicial organ;
- (iv) The petitioners would also means that in contrast to the Parliament of England, the standing of law-makers in India has ne'er been that of a court of record which even privileges of Parliament are subject to limits that should essentially be determinable and, therefore, subject to scrutiny by the Court, like several alternative right;
- (v) The validity of any proceedings even within a legislative chamber is referred to as in question before the Court once it suffers from unlawfulness and unconstitutionality and there's no immunity out there to Parliament from review.

It was held that the Court could not sit as a legal proceeding authority over the House and confirm the extent of penalization that due to be administered in such cases. Justice C. K. Thakker, in his concurring decision, agreed with the majority decision delivered by the chief justice Sabharwal and held that the petitions should be laid off.

The House of Commons cannot be imported to India as the constitutional scheme elaborately deals with the exhaustive provisions for disqualification and vacancy. The Court, by way of judicial creativity has narrowed the scope of English law relating to Parliamentary Privileges in its application to the Indian Legislative Bodies including Parliament.

5. De Lille v Speaker of the National Assembly.²⁷

An important case in South African constitutional law, was decided in the Cape Provincial Division from April 3rd to 7th, 1998, with judgment handed down on May 8th. It was afterwards confirmed, on appeal, by the Supreme Court of appeal. The high court addressed the problem of the powers of Parliament and parliamentary privilege, and found that such powers and privilege, to the extent of their inconsistency or incompatibility with the Constitution, are invalid. Wherever the privilege breaches the provisions of the Constitution, the aggrieved party is entitled to seek redress from the courts, to that is entrusted the task of making certain the supremacy of the Constitution. The certificate issued by the Speaker in terms of section 5 of the Powers and Privileges of Parliament Act²⁸ had the impact of undermining the independence of the courts and interfering with their functioning. Section 5²⁹, therefore, was unconstitutional to the extent that it attempted to place parliamentary privilege beyond judicial scrutiny, and so beyond the supreme Constitution, on the mere assertion of the Speaker. Nor, the court found, does Parliament have the facility to act mala fide. The Constitution was not supposed to authorize bias on the part of Parliament. In specific, section 57(1) (a) of the Constitution does not embrace the ability to suspend a Member of Parliament as penalization for contempt. Such suspension, the court found, was inconsistent with the requirements of representative democracy, because it penalized not only the Member or her party, however additionally the electorate which voted for that party. The penalization of suspension, therefore, was unreasonable and insupportable in an open and democratic society supported by freedom and equality, and consequently unsuccessful. The restrictions check set in section thirty six of the Constitution. During this regard, the court found conjointly that parliamentary privilege doesn't qualify as a law of general application for the

²⁷ 1998 (3) SA 430 (C)

²⁸ Act No. 91 of 1963

²⁹ Powers and Privileges of Parliament Act.

needs of section thirty six. Finally, the court noted that section 58(1) of the Constitution, providing for freedom of speech in Parliament, was associate absolute freedom, subject only to the principles and orders of the National Assembly, which it was not a right subject to the limitations clause in section 36. The Supreme Court of appeal (SCA) dismissed an appeal against the ruling of the high court, but on narrower grounds. It noted that no national legislation or Rules or orders of Parliament provided for the suspension of a Member where she was not obstructing or disrupting or unreasonably impeding the management of orderly business within the Assembly, but merely making a non-obstructive and non-disruptive speech. Such a suspension, accordingly, had no constitutional authority, and was therefore void.

During an interpellation discussion in the National Assembly, the first applicant, Patricia de Dille, named repose Alia eight senior members of the bulk party in the House, the African National Congress, as being suspect of having been spies of the previous government. The respondent, the Speaker of the House, intervened and dominated that the regard to spies was unparliamentarily. The first applicant categorically withdrew the statement she had made. Thereafter, and after having examined Hansard, the respondent found that the first applicant had created two further remarks that she thought of to be unparliamentarily. The first applicant additionally withdrew those allegations unconditionally. Subsequently a motion, proposed by a member of the ANC, was adopted appointing an ad hoc committee to report to the House on the conduct of the first applicant in creating serious allegations without substantiation against members of the House and to suggest what action, if any, the House ought to absorb light of its report. Only the ANC supported the motion. The ad hoc committee met under the chairmanship of "D" and was established in proportion to the parties' illustration within the House, with the ANC having eight members and the opposition parties seven. Once the meeting of the committee commenced, the ANC members tried to exclude the first applicant. The first applicant insisted on being present. At the first meeting of the committee, "D" had announced that the ANC had a motion that he wished to place. He then began reading an ANC proposal on the advice to be created to the House. An ANC member of the committee intervened to clarify that the advice was just placed to the primary applicant and was within the nature of a charge instead of a conclusion. "D" refused to disclose the document from that he was reading once known as upon

to do this and even molding up some of his papers. Before the committee's finalizing its task, "C" took over as chairperson, within the absence of "D," who was overseas. "C" had explained that the committee had been created because he and his comrades had "been offended" by the first applicant's statement, and since she had flouted a rule of Parliament. The first applicant had been formally charged with abusing her privilege of freedom of speech and, secondly, with contravening the Powers and Privileges of Parliament Act, in that she had willfully didn't adjust a National Assembly resolution to the result that members shouldn't impute improper conduct to others except by approach of a separate substantial motion. She was ne'er formally found guilty by the committee of the two charges against her. "C" had commented when this was drawn to his attention, that "there is not anybody else who has said that [the first applicant] is innocent in her conduct." The committee recommended to the House, inter alia, that she be suspended for fifteen parliamentary operating days. These recommendations were adopted by the House. On appeal, the decision of the Cape high court was confirmed on the narrower ground that there was no legal authority allowing the Assembly to penalize a member for creating a speech by suspending that member from the proceedings of the Assembly. The court noted that section 58(1) expressly guarantees freedom of speech within the National Assembly. "It is," the court command, "a crucial guarantee." The threat that a Member of the Assembly may be suspended for something aforesaid in the assembly reserved freedom of expression in the Assembly, and "must thus adversely impact on it guarantee." "It is clear," the court found, that the respondent wasn't suspended as a result of her behavior was obstructing or disrupting or unreasonably impeding the management of orderly business inside the Assembly, but as some reasonable punishment for creating a speech within the Assembly some days earlier that didn't hinder or disrupt the proceedings within the Assembly at the time." In the result," continued Mahomed CJ, "the appellant has didn't persuade me that the National Assembly had any constitutional authority to suspend the respondent from the National Assembly in the circumstances disclosed by the proof adduced before the high court." Accordingly, the suspension of a Member of the Assembly in those circumstances didn't have constitutional authority and was void.

After going through both the cases it makes clear that, codification of privilege in South Africa made it clearly define the meaning, limit and scope of parliamentary privileges. Whereas

in India the lack of codification of those privilege made the situation more complicated and as in Indian context every organ of government has its own unique feature but still there is no water tight compartment as like in USA where legislature is supreme here in south Africa and India all there organs are at equal footing they are unique in the way they are so whenever the matter of supremacy is there the constitution is consider as supreme and every organ is given its own grievance committee where the matter regarding the same can be solved and the jurisdiction for the same lies with themselves only.

6.Suggestion and conclusion.

The power to suspend the members of the legislative bodies springs by the Parliament and State legislative assembly below the second part of Articles 105 (3) and 194 (3) of the Constitution. The non-codification of the Parliamentary and Legislative Privileges, as needed below first a part of Articles 105 (3) and 194 (3), has resulted into absolute exercise of powers by the Legislative bodies in India. So far as the power to suspend a member of the legislative assembly cares, there's no minimum or maximum period, that the member is also suspended, is prescribed. Suspension of a member for long period might severely have an effect on the proper of the constituency people pictured by the concerned member (227 Jai Singh Rathi (225) Para 17 123) When a member of a legislative body is suspended for indefinite period, no vacancy is created within the body pictured by such member and re-election cannot be control. This could violate the right of the representation of the individuals of the concerned constituency. If the legislative assembly chooses to impose the penalty apart from suspension then no such situation will arise. The sole answer to the matter is that the codification of the privileges by the Parliament and State Legislatures. The statute law will regulate the power of suspension and it can even lay down the minimum and maximum period for which a member may be suspended.

“There is limit on the extent to which a court can engage in policymaking that obstructs the popular will, before it is viewed as just another political player — and an unaccountable one at that.”³⁰

³⁰ Michael Asimow 'The need for an Administrative Justice Act' 1996 SALJ

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