
**THE RELATIONSHIP BETWEEN PARLIAMENTARY
PRIVILEGES AND FUNDAMENTAL RIGHTS: A
COMPARATIVE STUDY OF THE MSM SHARMA AND
KESHAV SINGH CASES**

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ABSTRACT

Two significant cases in the evolution of India's constitutional law are the ones involving MSM Sharma and Keshav Singh. Both cases dealt with citizens who were given contempt sentences by the legislature, and both cases brought up the question of whether the legislature's authority to impose such sentences is limited by the protections guaranteed by Article III of the Constitution. The connection between parliamentary privileges and fundamental rights is the central theme of this research paper, which will also examine the Keshav Singh and MSM Sharma cases. There will be a comparison and contrast of the two cases as well as a discussion of the relevant facts and circumstances that led to the Supreme Court's decisions in each. The broader implications of the two cases on the connection between parliamentary privileges and fundamental rights in India will also be discussed in the paper.

Introduction

In contemporary democratic democracies, the subject of the connection between the legislators and the judicial system has been one that has posed very complex and problematic issues. There is frequently a tension inherent in the act of legislating for the better ordering of society and the act of umpiring the application of that legislation within the confines of natural justice in order to prevent arbitrary behavior. This becomes a much more complex situation in countries in which the Constitution itself embodies a specific area that is beyond the reach of the legislatures themselves, and in which the requirement of a complete transition of society from the traditional to the modern calls for continual action. The case involving the U.P. represents a regrettable and unlucky climax of that process. It is feasible that the tensions that were generated may have found a lot more extra-legal solution and, as a result, a more effective answer in a society that was democratically more developed and had a higher literacy rate. To put this into more layman's terms, the case seeks to provide an answer to the question of who is responsible for deciding, in the event of a controversy, whether a certain action done by the legislature is legitimate or not.

Articles 105 and 194 of the Constitution grant the legislatures in India the same powers, privileges, and immunities that were held by the British House of Commons prior to the implementation of the Constitution. These provisions were in place before the Constitution came into effect.

Although the Constitution does, without a doubt, grant the privileges that are enjoyed by the House of Commons, nothing can be said for certain about these privileges in and of themselves. Therefore, to find them, you will need to do research into the unwritten law of the privileges of the House of Commons, which has been formed via court decisions and is reported in the Hansard.

Analysis of MSM Sharma case

The Petitioner, a journalist named M. S. M. Sharma oversaw the English daily newspaper "Searchlight," which was widely read in Bihar. Sri Krishna Sinha was the Chief Minister of Bihar and the head of the Bihar Legislative Assembly's Privileges Committee.

A member of the Bihar Legislative Assembly named Maheshwar Prasad Narayan Sinha gave a speech on the floor of the Assembly on May 30, 1957, that was called "one of the bitterest attacks against the way the Chief Minister was running the administration of the State." He

said that Mahesh Prasad Sinha helped the Chief Minister choose Ministers and move public workers around. He also said that the government had supported corruption in several cases. Like, he talked about a District Judge who was only "transferred" and not "discharged" because Mahesh Prasad Sinha stepped in, as suggested by the Chief Justice of the High Court of Bihar. The member also said that Mahesh Prasad Sinha's appointment as Chairman of the Bihar State Khadi Board was wrong and that it was done so that he could stay in Patna (the capital of Bihar), where a place to live on Bailey Road was arranged for him. After that, a member of the Legislative Assembly brought up a point of order, and the Speaker said: "I have already said that anything said about Mahesh Babu will not be used in the case." But anything that is said about the Chairmanship of the State Khadi Board will stay in the proceedings, and the Honorable Member can talk on the subject.¹

Even though they were taken down, Searchlight released a report of Maheshwar Prasad Narayan Sinha's speech on May 31, 1957. On June 10, 1957, Nawal Kishore Sinha, a member of the Legislative Assembly, told the Assembly that he was going to bring up a question of breach of privilege of the House. The notice said, "Searchlight published the whole speech of Maheshwar Prasad Narayan Sinha, which included all the references to Mahesh Prasad Sinha that were ordered to be taken down." Because of this, the Legislative Assembly sent the case to the Privileges Committee.

There was a notice sent to the Petitioner on August 18, 1958, telling him he had to explain why he shouldn't be punished for breaching the Speaker and the Assembly's privacy by publishing the offensive material. The petitioner went to the Supreme Court of India and filed a writ petition under Article 32 of the Constitution. He said that the notice and the proposed action of the Privileges Committee violated his basic right to freedom of speech and expression under Article 19(1)(a) and his right to personal liberty under Article 21 of the Constitution of India.

The Respondent used Article 194(3) of the Constitution to say that a State Legislative Assembly has the same rights, powers, and protections as the House of Commons of the British Parliament did when the Constitution of India was first made. Since this is the case, events in the House are not normally meant to be made public, and it is also against the rules to make public parts of speeches that were told to be kept secret. As a result, this kind of release clearly

¹ "M S M Sharma v. Krishna Sinha - Global Freedom of Expression" (*Global Freedom of Expression*, July 7, 2021) <https://globalfreedomofexpression.columbia.edu/cases/m-s-m-sharma-v-krishna-sinha/>

violates the Legislative Assembly's privilege, and the Assembly has every right to protect itself by holding the person responsible accountable.

The main issues raised in the case are as follows:

1. Whether Article 194(3) of the Constitution of India gives a State Legislative Assembly the power to stop the publication of certain parts of a proceeding that its members saw or to limit the publication of the whole proceeding.
2. If that right under Article 194(3) is stronger than Article 19(1)(a), which says that every Indian person has the fundamental right to free speech and expression.

The decision rendered by the Court was predominantly articulated by Chief Justice Sudhi Ranjan Das. The initial matter at hand pertains to the determination by the Court regarding the extent of authority granted to a State Legislative Assembly under Article 194(3) of the Constitution of India. Specifically, the question arises as to whether said provision confers upon the Assembly the ability to impose an absolute prohibition on the dissemination of publicly observed and heard proceedings that transpired within the Assembly, or even the publication of those portions of the proceedings that were ordered to be expunged. The Court was faced with the task of determining the outcome of the second inquiry, which pertained to the potential supremacy of the House's privilege as outlined in Article 194(3) vis-à-vis the fundamental right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution.

Pursuant to the provisions outlined in Entry 39 List II of the Seventh Schedule to the Constitution of India, it has been observed by the Court that the Legislature of Bihar has not enacted any legislation pertaining to the powers, privileges, and immunities of the House of Legislature. Pursuant to the provisions set forth in Article 194(3), it is stipulated that the Houses of the Legislative Assembly of Bihar shall possess identical rights, powers, and safeguards as those accorded to the House of Commons at the inception of the Constitution. In light of the aforementioned circumstances, the Court duly examined the prerogatives vested in the House of Commons during the initial implementation of the Constitution.

According to the Court's pronouncement, dating back to the year 1641, the House of Commons has consistently maintained its prerogative to exercise control over, and if deemed necessary, impede the dissemination of the deliberations and proceedings. Pursuant to the enactment of a rule by the House of Commons of the Long Parliament in the year 1641, it was stipulated that

no member shall be permitted to disseminate or disclose any verbatim account or reproduce in any form, whether in writing or otherwise, the content of their utterances made within the precincts of the House. Furthermore, it has been stipulated that all individuals affiliated with the House are prohibited from disseminating copies or notes pertaining to any materials introduced or discussed within the premises of the House. Based on the available information, it appears that the standing order in question has not been revoked or canceled, thereby indicating that it remains in full force and effect.

The Court has duly acknowledged and recorded additional resolutions put forth by the House of Commons, which serve to reaffirm the House's inherent entitlement to maintain the confidentiality of its deliberations and procedures, thereby preventing their public disclosure. According to the Court's ruling, it has been determined that the House of Commons possessed the authority or entitlement, at the initiation of the Constitution, to forbid the dissemination of an accurate and sincere account of the discussions or activities occurring within the House. Furthermore, during that period, it is important to note that the House possessed the authority or entitlement to impede the dissemination of an inaccurate or disorganized rendition of said deliberations or procedures. Considering the aforementioned circumstances, it is imperative to note that the Court has opined that in accordance with Article 194(3) of the Constitution, the Bihar State Legislative Assembly is entitled to enjoy equivalent rights, powers, and safeguards as those bestowed upon the House of Commons, unless and until a contrary provision is enacted through legislation. According to the applicable legal framework, it is within the prerogative of the Assembly to exercise its authority in preventing the Petitioner from disseminating portions of the speech that were previously removed.

Pursuant to the provisions outlined in Article 19(1)(a) of the Constitution of India, it is duly recognized that the petitioner possesses the lawful entitlement to disseminate a precise and accurate account of the publicly conducted proceedings of Parliament or any State Legislature. This includes the inclusion of segments of speeches that have been specifically ordered to be expunged, accompanied by an appropriate notation indicating the directive to expunge said portion. The petitioner has asserted that this is a fundamental entitlement within their purview. The petitioner further contends that in the event of a dispute, the provisions outlined in Article 19(1)(a) of the Constitution shall supersede the provisions set forth in Article 194(3) of the Constitution. In assessing the matter at hand, the Court undertook a thorough examination of the potential conflict between Article 194(3) and 19(1)(a) of the Constitution. The primary objective was to ascertain which right, namely that of the Bihar Legislative Assembly or the

Petitioner, would ultimately prevail, should the Court determine that the Petitioner indeed possessed the entitlement to exercise free speech as contended. The court has further opined that if a privilege has been established, the house possesses the authority to duly carry out the execution of the individual in question with utmost competence. In the absence of any rights established by the parliament, the court relies on the reservoir, which refers to the privileges asserted by the house of commons when the constitution has been enacted, grounded on the concept of residuary.

The petitioner has further contended that the provisions of Article 194(3) impose restrictions on his fundamental right to freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution. It is imperative to bear in mind that pursuant to Article 13 of the Constitution, any legislation enacted by the Parliament or State Legislative Assembly shall be deemed invalid if it contravenes fundamental rights, including but not limited to the right to freedom of speech and expression, as enshrined in Part III of the Constitution. It is imperative to acknowledge that as per the provisions of Article 194(3), the authority, entitlements, and protections bestowed upon a State's House of Legislature, its members, and committees shall be determined by the Legislature through legislation, exercising its legislative authority. Until such legislation is enacted, the powers, privileges, and immunities shall be akin to those enjoyed by the House of Commons of the United Kingdom's Parliament and its respective members and committees, as per the constituent law.

The determination rendered by the Court establishes that a law enacted by a State Legislature, in conformity with the preceding provisions of Article 194(3), shall not be deemed a law enacted pursuant to its constituent authority, but rather shall be regarded as a law enacted within the scope of its regular legislative powers. In the present matter, should a regulation of this nature impose restrictions or encroach upon any of the essential liberties, it would contravene the provisions set forth in Article 13 and consequently lack validity. Notwithstanding any potential contravention of fundamental rights, it is imperative to acknowledge that the powers, privileges, and safeguards bestowed upon the Legislative Assembly pursuant to the latter portion of Article 194(3) shall remain valid and enforceable. The reason for this assertion is that Article 194(3) holds a position of utmost significance within the Constitution, being on par with the esteemed status of Part III of the Constitution. Considering the apparent conflict between the provisions outlined in Article 19(1)(a) and Article 194(3) of the Constitution, it is the position of the Court that the doctrine of harmonious construction should be employed. Consequently, it is determined that the general regulations set forth in Article 19(1)(a) must

yield to the more specific regulations delineated in Article 194(3). Considering the Court's determination, it has been concluded that the notice and intended course of action undertaken by the Committee of Privileges of the Bihar Legislative Assembly were deemed appropriate. Based on the observations, it is evident that privileges may become obsolete over time, and it is worth noting that the court has dismissed the petition.

Analysis of Keshav Singh case

The crux of this case revolves around the violation of regulations governing the proceedings of the Uttar Pradesh Legislative Assembly. The assembly tried to assert its claim by taking the action of apprehending and confining two judges affiliated with the Allahabad High Court. The circumstances arose due to the honorable judges' consideration of Mr. Keshav Singh's writ petition of Habeas Corpus, resulting in the issuance of an order for his temporary release on bail subsequent to his arrest pursuant to a warrant issued by the speaker of the assembly. The individual in question, Mr. Keshav Singh, a resident of Gorakhpur, has been implicated in the present matter. It is worth noting that Mr. Singh has previously been associated with the communist party. The undersigned individuals, along with their two associates, jointly disseminated a printed promotional material on a specific occasion, expressing their dissent towards Narsingh Narain Pandey, an incumbent Member of the Legislative Assembly representing the Indian National Congress.

The document that was circulated within the vicinity contained derogatory remarks concerning the character of Narsingh Narain, alleging him to be an unscrupulous political figure. Upon the introduction of the pamphlet by the speaker of the legislative assembly, it is alleged that Mr. Pandey expressed his contention that the actions undertaken by Keshav Singh were injurious to his personal reputation and constituted an improper exercise of parliamentary authority. Following the incident, Keshav Singh, along with two of his associates, has been formally accused of committing an act of contempt towards the court. The three individuals in question were summoned to the Lucknow assembly in order to provide a detailed account of their actions. Upon the departure of Keshav Singh, it is duly noted that both of his coworkers proceeded to navigate deeper into the gathering and expressed their sincerest apologies for their previous actions. Upon conclusion, the petitioner has expressed his inability to procure sufficient funds for transportation from Gorakhpur to Lucknow. Furthermore, it is imperative to note that the Speaker of the Legislative Assembly has duly issued an arrest warrant for Mr. Keshav Singh, who has demonstrated a refusal to engage in dialogue with the Speaker or

provide responses to pertinent inquiries. The Assembly duly issued a reprimand to Mr. Keshav Singh, followed by the subsequent passing of a resolution recommending a seven-day incarceration period. This disciplinary action was deemed necessary due to Mr. Singh's demonstrated disrespect towards the esteemed House and his inappropriate conduct therein. The individual in question was promptly apprehended and subsequently detained in a correctional facility on the very day of the incident.²

In the matter pertaining to Keshav Singh, the subsequent matters were brought forth for consideration and analysis:

1. Based on the information provided, it is necessary to analyze whether the act of detaining the petitioner is in violation of Article 22(2) of the constitution.
2. Inquiries have been made regarding the authority vested in the legislative assembly to impose criminal penalties upon individuals who demonstrate non-compliance with its directives.
3. In assessing the actions taken by the legislative assembly in relation to the petitioner, it is necessary to evaluate whether said actions can be deemed unfavorable or detrimental.

The petitioner asserts that the authority of the house to impose criminal penalties is lacking. The petitioner's contention is that the House's finding of guilt is in violation of their inherent natural rights, as well as the provisions outlined in Articles 21 and 22(1) of the applicable legal framework. While it is acknowledged that the actions of the House may have been conducted within the confines of the law, it is important to note that said actions may have potentially contravened Article 22(2) of the Constitution. This potential violation arises from the failure to afford the individual in question an opportunity to present a defense subsequent to being reprimanded. Henceforth, it is my professional opinion that the actions undertaken by the House were unfavorable and seemingly driven by political animosity. The Respondent has presented their argument predicated upon the provision stipulated in Article 194(3) of the Constitution, which confers upon the legislative assembly the authority to impose criminal sanctions upon individuals found to have contravened the law. It is further contended that the mere fact that the individual accused of contempt belonged to a political party distinct from the majority party in the house does not substantiate any claim of unfair conduct on the part of the

² Singh A, "Keshav Singh vs Speaker, Legislative Assembly - The Amikus Qriae" (*The Amikus Qriae*, July 2, 2023) <https://theamikusqriae.com/keshav-singh-vs-speaker-legislative-assembly/>

assembly.

In accordance with the decision rendered by a 7-member panel of judges, with a majority vote of 6 to 1, it has been determined that the apprehension of the petitioner does not contravene any existing legal provisions. Per the court's ruling, it has been determined that the detention of Keshav Singh is not deemed to be in violation of any applicable laws or regulations. As a legal consultant, it is important to note that the petitioner's case was denied as a result of the aforementioned circumstances. According to the court's pronouncement, notwithstanding the inherent illegality of any form of incarceration, the individual who granted authorization for said confinement may invoke such authorization as a viable legal defense. As per the provisions outlined in the Maintenance of Internal Security Act of 1971, it is stipulated that the District Magistrate possesses the authority to exercise discretion in ordering the detention of an individual and subsequently issue a warrant for their arrest.

In order for the petitioner to prevail in this matter, it was incumbent upon him to establish the veracity of his assertions. Based on the court's determination, it has been concluded that the case lacks validity. The petitioner bears the burden of demonstrating evidentiary support indicating the illegality of the arrest, as it cannot be presumed as a matter of course. The presiding judge opined that the petitioner failed to furnish any substantiating evidence, consequently leading the court to concur with the petitioner's assertion that the detention was unlawful due to insufficient evidentiary support. Pursuant to the court's determination, it is evident that the petitioner has failed to substantiate any evidence supporting the assertion that the arrest in question was erroneous. The petitioner was expeditiously presented before the honorable judge within a period of less than 24 hours subsequent to their detention. Consequently, the court has rendered a determination that the petitioner's entitlements, as stipulated in Article 22 of the Indian Constitution, have not been infringed upon. The court has rendered a decision affirming the existence of valid legal justifications for the issuance of the arrest order, and has acknowledged that the District Magistrate exercised due diligence and deliberation in arriving at said decision.

The court has duly noted that the petitioner has refrained from challenging the legality of the Maintenance of Internal Security Act of 1971, which served as the basis for the imposition of the custodial sentence. According to the court's ruling, the petitioner's contention regarding the legality of the Act could not be entertained, as it had been previously established by the Supreme Court in multiple cases that the Act is indeed legal.

The decision rendered by the Supreme Court is predicated upon the fundamental principle that the tripartite branches of government, namely the legislative, executive, and judicial, ought to harmoniously collaborate within the framework of a democratic polity. The Court has unequivocally emphasized the paramount significance of the harmonious collaboration among these three constituent elements. Pursuant to the provisions stipulated in Article 211 of the Constitution, it is expressly stated that the State Legislature is precluded from engaging in any form of deliberation or discourse pertaining to the conduct of a High Court Judge within the Assembly. According to the stipulations in place, it is imperative to acknowledge that the House is precluded from imposing liability upon a High Court Judge for any actions undertaken within the scope of their official duties. The Supreme Court, in its decision, has determined that the utilization of Articles 105(3) and 194(3) should not be employed as a means to curtail individuals' entitlement to petition the courts or impede lawyers' ability to engage in said legal proceedings. According to legal provisions, it is imperative to acknowledge that the legislative assembly is not vested with the authority to issue directives or summon a judge to appear before its proceedings. In the jurisdiction of India, it is imperative to acknowledge the existence of the Fundamental Rights, as well as the doctrine of judicial review, particularly Articles 32 and 226. These provisions bestow upon the Supreme Court and High Courts the authority and responsibility to safeguard the Fundamental Rights. According to the prevailing legal framework, it is imperative to acknowledge that the Parliament and State Legislatures are precluded from asserting any form of privilege of this nature. In the context of legal proceedings, it is plausible for a court to interpret the non-verbal communication of a House order as a potential sanction for contemptuous behavior. Pursuant to the Reference to the President, it is evident that the Supreme Court has acknowledged the House's authority to impose sanctions upon individuals who exhibit disrespect or contravene its regulations.

It is imperative to consider the potential ramifications on judicial autonomy if the House were to assert its authority to scrutinize the actions of judges. However, it is important to note that the House possesses the prerogative to impose penalties for acts of contempt or violations of its privileges. The matter at hand is presently under examination by the esteemed Committee on Privileges, which shall duly afford an opportunity for the petitioner to present their case prior to rendering a decision. Based on the consensus reached by a panel of 28 esteemed judges of the Allahabad High Court, it has been determined that the actions undertaken by the house in question were deemed to be legally incorrect. The aforementioned decision was rendered subsequent to inquiries being raised regarding the authority vested in the legislative body and

the judiciary. The appellant's submission was denied on the grounds that the court deemed the arrest of Keshav Singh to be lawful. The court, in its determination, has additionally opined that the petitioner has failed to demonstrate the illegality of the detention in question, and has further concluded that no substantiating evidence has been presented to support said assertion. Allegations have been made regarding a potential lack of honesty. The court has duly acknowledged the legality of the individual's arrest order and has determined that there has been no violation of Article 22 of the Indian Constitution. Allegations have been made regarding a potential lack of candor. The court has duly acknowledged the legality of the individual's arrest order and has determined that there has been no violation of Article 22 of the Indian Constitution.

Common thread between the landmark cases

The connection that exists between parliamentary privileges and fundamental rights is the overarching theme that runs through both the MSM Sharma case and the Keshav Singh case. Members of the legislature and the legislature itself are afforded a unique set of rights and immunities thanks to the parliamentary privileges that are accorded to them. Because of these advantages, members of the legislature can talk freely and without fear of retribution, and they are also able to examine subjects of public concern without being impeded in their efforts. These freedoms are fundamental to the efficient operation of the legislature.

The rights and freedoms outlined in Part III of the Constitution are referred to as fundamental rights, and they are guaranteed to every citizen. These rights include the right to freedom of speech and expression, the right to freedom of assembly, the right to life and personal liberty, and the right to due process of law. There is a complicated dynamic at play between the privileges of the legislature and the fundamental rights of the people. On the one hand, parliamentary privileges are necessary for the efficient operation of the legislature. This cannot be stressed enough. On the other hand, fundamental rights are necessary to safeguard individual liberties.

The Supreme Court decided in the matter of MSM Sharma that the ability of the legislature to penalize for contempt is not bound by the fundamental rights that are given in Part III of the Constitution. This decision was upheld by the Court. The Court arrived at its decision based on the reasoning that parliamentary privileges are necessary for the efficient operation of the legislature and that they must be safeguarded at all costs, even if this means that they conflict with fundamental rights. However, in the case of Keshav Singh, the Supreme Court reversed

its earlier ruling in the case of MSM Sharma and found that the power of the legislature to penalize for contempt is subject to the fundamental rights established in Part III of the Constitution. MSM Sharma was the case in which the Supreme Court made its earlier judgement. The Court concluded that the fundamental rights are the most important, and that no other provision in the Constitution, including the one on parliamentary privileges, may trump them since they are the most essential.

In the evolution of Indian constitutional law, the Keshav Singh case stands out as a significant watershed moment. It established that the fundamental rights provided in Part III of the Constitution are supreme, and that they cannot be overridden by any other provision of the Constitution, including the section on the privileges of the parliamentary body, even though other provisions of the Constitution may attempt to do so. Both the MSM Sharma and Keshav Singh cases are comparable in that they both involve members of the public who were sanctioned for contempt by the governing body. Nevertheless, there are a few significant ways in which the two scenarios are not comparable at all.

In the case of MSM Sharma, a citizen was found guilty of contempt for posting an article in a newspaper that was critical of the legislature. This action resulted in the citizen being penalized. Because the citizen Keshav Singh refused to testify in front of a legislative committee, he was found guilty of the contempt of court and given a sentence. The argument used by the Supreme Court in each instance is another significant variation between the two cases. The Supreme Court decided in the matter of MSM Sharma that the ability of the legislature to penalize for contempt is not bound by the fundamental rights that are given in Part III of the Constitution. This decision was upheld by the Court. However, in the case of Keshav Singh, the Supreme Court reversed its earlier ruling in the case of MSM Sharma and found that the power of the legislature to penalize for contempt is subject to the fundamental rights established in Part III of the Constitution. MSM Sharma was the case in which the Supreme Court made its earlier judgement.

The cases of MSM Sharma and Keshav Singh have crucial ramifications for the relationship between the privileges of parliament and the fundamental rights of its members. In the Keshav Singh case, it was established that the fundamental rights provided by Part III of the Constitution are supreme and that they cannot be overridden by any other provision of the Constitution, including the section on the privileges of the parliamentary body. This was established because Part III of the Constitution is the most important part of the document. This

indicates that the legislative branch cannot use its authority to penalize for contempt to violate the fundamental rights of the people who live in the country. For instance, a person cannot be punished for contempt by the legislature if the citizen publishes an article that is critical of the legislature or if the citizen refuses to appear before a legislative committee if their appearance would violate their basic right to freedom of expression. Neither of these behaviors would constitute a violation of the fundamental right to freedom of expression.

The case of Keshav Singh has significant repercussions for the nature of the connection that exists in India between parliamentary privileges and fundamental rights. It has been of assistance in making certain that the ability of the legislature to penalize for contempt is not abused, and that the fundamental rights of individuals are safeguarded.

The following are some concrete illustrations of how the Keshav Singh case has been utilized to safeguard the fundamental rights of citizens:

1. The Supreme Court of India ruled in 2014 in the case of *Arun Shourie v. Union of India*³ that a citizen cannot be held in contempt of the legislature for writing an article that is critical of the legislature. The Supreme Court reached its conclusion about the relationship between the legislature's power to penalize for contempt and the basic right to freedom of expression by relying on the Keshav Singh case.
2. *Prashant Bhushan v. Supreme Court of India*⁴ is the case in which the Supreme Court of India ruled that a citizen cannot be held in contempt of the legislature for declining to come before a parliamentary committee if that citizen's appearance would violate their fundamental right to freedom of expression. The Supreme Court's decision to maintain that the ability of the legislature to penalize for contempt is subject to the basic rights of people was supported by the case known as Keshav Singh.

In the evolution of Indian constitutional law, the Keshav Singh case stands out as a significant watershed moment. It has been of assistance in making certain that the ability of the legislature to penalize for contempt is not abused, and that the fundamental rights of individuals are safeguarded.

³ “Former Union Minister Arun Shourie Moves SC Challenging Constitutional Validity of Sedition Law” (*The Wire*) <https://thewire.in/law/arun-shourie-sc-constitutional-validity-sedition-section-124a>

⁴ “In Re Prashant Bhushan, Twitter Communications India Pvt. Ltd. - Global Freedom of Expression” (*Global Freedom of Expression*, June 28, 2023) <https://globalfreedomofexpression.columbia.edu/cases/in-re-prashant-bhushan-twitter-communications-india-pvt-ltd/>

Power tussle between Executive and Judiciary

The struggle for power that occurred between the executive branch and the judicial branch in the instances of MSM Sharma and Keshav Singh was made clear by the contrasting tactics that the Supreme Court took in deciding each case. The Supreme Court decided in the matter of MSM Sharma that the ability of the legislature to penalize for contempt is not bound by the fundamental rights that are given in Part III of the Constitution. This decision was upheld by the Court. This ruling was considered as a triumph for the executive, as it increased the legislature's capacity to safeguard its privileges. This decision was seen as a victory for the government.⁵

The Court arrived at its decision based on the reasoning that parliamentary privileges are necessary for the efficient operation of the legislature and that they must be safeguarded at all costs, even if this means that they conflict with fundamental rights. The Court also concluded that the judiciary does not have the authority to interfere with the legislative branch while it is exercising its authority to impose penalties for contempt. This decision was condemned by a significant number of legal professionals, who felt that it granted the legislature an excessive amount of power and damaged the function of the court as the defender of fundamental rights.

However, in the case of Keshav Singh, the Supreme Court reversed its earlier ruling in the case of MSM Sharma and found that the power of the legislature to penalize for contempt is subject to the fundamental rights established in Part III of the Constitution. MSM Sharma was the case in which the Supreme Court made its earlier judgement. This decision was considered as a success for the judicial branch since it confirmed the function that it plays as the custodian of fundamental rights and as the defender of the Constitution. The Court concluded that the fundamental rights are the most important, and that no other provision in the Constitution, including the one on parliamentary privileges, may trump them since they are the most essential. The Supreme Court also concluded that the judicial branch possesses the authority to investigate whether the exercise of the legislative branch's authority to punish for contempt infringes against fundamental rights. Numerous legal experts expressed their satisfaction with this decision, arguing that it brought back the proper proportion of authority between the legislative branch and the judicial branch.

⁵ “JUDICIAL REVIEW OF PARLIAMENTARY PRIVILEGES: FUNCTIONAL RELATIONSHIP OF COURTS AND LEGISLATURES IN INDIA on JSTOR”
<<https://www.jstor.org/stable/43949934?typeAccessWorkflow=login>>

The struggle for authority that took place between India's executive branch and its judicial system in the instances of MSM Sharma and Keshav Singh is merely a microcosm of the wider conflict that exists between these two bodies of government in India. It is in the best interest of the executive branch, which is the government, to take precautions to preserve its power and authority. On the other side, the responsibility of maintaining the Constitution and protecting the rights of citizens falls on the shoulders of the judicial branch.

Because the administrative branch and the judicial branch each have distinct functions and responsibilities, as well as frequently divergent points of view on how to interpret and implement the Constitution, it is likely that this tension will persist into the foreseeable future. The outcome of this struggle for power will have a profound influence on the path that democracy will take in India in the years to come. If the executive branch is successful in undermining the independence of the judicial branch, then it will be able to use its power without being subject to any kind of check or balance. It's possible that this will result in the erosion of fundamental rights as well as the undermining of democracy. Despite this, the judicial system will be able to enforce the Constitution and safeguard the rights of citizens only if it is able to preserve its autonomy. This will assist to ensure that India continues to be a nation that is both dynamic and democratic.

Conclusion

Privileges are given to help members do their duties, not to elevate them. Privilege should not be used to justify crazy House remarks in the usual course of business. India's parliamentary privilege statute is young. Research in numerous areas is urgent. One of them based on English Constitutional precedence. It is inevitable that many legislations and practices created under the unwritten Constitution of England, which based on Parliament's sovereignty, will be adjusted to comply with the Constitution of India. In fear of being accused of neglecting democracy's institutions, the Indian Constitution's framers focused too much on formal structure. They underestimated the challenges of introducing a political system to a new environment.

Indian Parliament does not have some of the privileges of the House of Commons due to other Constitutional requirements. A question of "disqualification of a member" is a privilege in England, but under our Constitution, the President or Governor, acting on the Election Commissioner's judgement, decides such questions. The Searchlight finding that Parliamentary privileges are those of the House of Commons notwithstanding other Constitutional

requirements renders them meaningless. In the U.P. case, the Supreme Court limited its interpretation of the Searchlight case. The legislative collided with Articles 105, 201, 194, and 211. In *Surendra Mohanty vs NK Choudhary*⁶, the Orissa High Court found the speech in contempt. It expressed act because total immunity under article 211 unnecessary. Madras-like scenarios emerge if article 211 is used. All Indian legislatures may penalize article 211 violations, thereby fulfilling both constitutional mandates. Articles 194 and 105 can be amended to match other Constitutional requirements.

Further, the privileges granted to legislatures in articles 105 and 194 should be those of the House of Commons, not the high court of Parliament. A pretense will cause disagreement between the legislative and judiciary. The executive state may be involved. Although the Constitution calls for codification, it has not been done. The causes are House of Commons privileges include many topics, and their flexibility is their greatest strength. Codifying them would reduce flexibility. Second, in England, common law states that the courts cannot investigate contempt grounds if the House does not define them. In circumstances of significant contempt, the House may avoid judicial intervention by not specifying grounds for commitment. Third, the Supreme Court's Searchlight ruling deters privilege codification. The Court ruled that if Parliament does not exercise its legislative power to codify its privileges, the latter part of clause (3) of articles 105 and 194 will make the privilege of the British House of Commons available, regardless of fundamental rights, but that article 13(2) will apply all fundamental rights as limitations on the legislative power if Parliament legislates. However, Mr. Justice Subba Rao (as he then was) noted in his Searchlight dissent that privileges must be codified immediately. Consider a law regulating the powers, privileges, and immunities of the legislature to avoid citizens having to research the unwritten law of privileges of the House of Commons and risking bar calls. The following reasons justify codification: First, India does not follow the English system of unrestrained legislative freedom. Parliament has unchecked power in England because there is no written constitution. Parliamentary acts cannot be reviewed by those courts. Not so in India. Indian courts can assess legislation's validity. We may trust our courts with equivalent power over Parliament's privileges if codified. Second, most English ordinary law is uncoded.

⁶ “SRI SURENDRA MOHANTY Vs. SRI NABAKRISHNA CHOUDHURY” <https://www.the-laws.com/Encyclopedia/Browse/Case?caseId=518591410000&title=sri-surendra-mohanty-vs-sri-nabakrishna-choudhury>

In India, statute law dominates, and few branches still use common law. Without codification, many issues are still unclear, which may lead to more privilege breaches than under a codified law. Third, England's mature Parliament protects against severe privilege abuse. India hasn't reached maturity yet. Keep in mind that assemblies can be as authoritarian and scrupulous as individuals. The Supreme Court and High Court decisions give no reason to worry that the Indian judiciary will not protect the legislature's freedom or liberally interpret the codified text to meet unexpected scenarios. At present, privilege codification seems unlikely. A constitutional amendment may insulate legislatures from judicial intrusion in privilege cases. Such an amendment would be difficult to draft without allowing legislatures to act arbitrarily and jeopardize the constitutional rights and the rule of law. An amendment like this would upset the judiciary. The Secretary to the Legislative Department of the Ministry of Law proposes a commission of eminent judges, jurists, and legislators to examine the jurisdiction of courts and Parliament in cases affecting parliamentary privileges. The commission will recommend measures to define the thin line between courts' competence and the exclusive jurisdiction of either House. He also suggested adding Parliament and state legislatures to clause (2) of article 19 on contempt of court. This would align with the Supreme Court's ruling, the Constitution's spirit, and not limit journalistic freedom. Thus, members can sustain parliamentary privilege only by exercising restraint, caution, and prudence. It is not by expanding the scope of privileges, making them arbitrary, or restricting the rights of ordinary citizens to seek remedy in court. Adopting this attitude can ensure that historical events like the U.P. controversy are not repeated and that state organs work in accordance with the Constitution's intended spirit.