LEGISLATIVE PRIVILEGES AND FREEDOM OF PRESS

K.S. PADHY
GOVINDRA BEHERA
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CHAPTER 1

EXPLORATION AND DETERMINATION OF LEGISLATIVE PRIVILEGES

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ABSTRACT:

In order to assist their duties and safeguard the operation of democratic institutions, lawmakers are given a set of legal immunities and protections known as legislative privileges. In this essay, the complex world of legislative privileges is explored, and its historical roots, justifications, application, and consequences for democratic government are explored. It explores how these rights strike a compromise between the need for public discourse and defence against judicial proceedings that can restrict legislative independence. The research looks at several legislative advantages, including freedom of expression and protection from prosecution, and how they contribute to lively political debate. It also examines the difficulties and issues that can arise from the abuse or misuse of these rights. In order to assist their duties and safeguard the operation of democratic institutions, lawmakers are given a set of legal immunities and protections known as legislative privileges.

KEYWORDS:

Democratic Governance, Freedom of Speech, Immunity, Legislative Privileges, Political Discourse, Protection.

INTRODCUTION

A privilege is basically a legal benefit enjoyed by a certain individual, group of individuals, or organisation that is not granted to others. When seen from this perspective, privilege is the collection of benefits enjoyed by or available to members of both Houses. time spent more leisurely than their fellow citizens, which is the ability to obtain Westminster, freedom from detention or legal action, and immunity from judicial punishment for what they say or act in Congress. From a different perspective, parliamentary privilege is the unique power and dignity. each House in its corporate role, including the authority to direct its own business and to discipline both members and outsiders for disrespect. Any Parliament must operate. appropriately, must possess certain rights that will guarantee independence from outside intrusion[1], [2].

Protecting the institution of Parliament and its members' independence, power, and dignity is the goal of the parliamentary privilege. As a result, each House has certain rights for the protection of its members as well as the reaffirmation of its own authority and dignity since the House cannot carry out its duties without the unhindered use of the services of its members. As a result, the freedom of the representative of the people to speak their views without worrying about repercussions from the law is essential to the Parliamentary form of administration. The court should not, and does not, have any authority over the situation.By guaranteeing each legislator's independence, the immunity has been provided to safeguard the legitimacy of the legislative process. They should be used to make sure that legislative tasks may be carried out successfully and without excessive hindrances. The ability of members to speak and vote on the House floor as well as the deliberations of several legislative

committees are among these duties. In this regard, privileges may be used to safeguard those working in administrative positions. The question of whether the use of legislative privileges was required to protect the objectivity of the legislative process should be carefully examined. The freedom of speech while carrying out parliamentary responsibilities is the most significant privilege. Article 19 also grants the right to free expression to citizens, although Articles 105 and 194 place specific emphasis on this freedom for legislators. According to Article 19, the right to free expression is subject to legitimate limitations, such as the prohibition against libel. A member of parliament who speaks in the House or one of its Committees is exempt from any assault on the grounds that his remark was defamatory or libellous, unlike an ordinary citizen who says anything that may result in legal action.Members are required to voice public complaints and bring up different issues of public interest. Members should be allowed to speak up and share their opinions without any restraints while participating in this[3], [4].

A member is completely free to speak anything he wants within the House or Committees of the Parliament, subject only to the internal discipline of the House or Committees in question; no outside authority has the power to intervene. For a member to work freely and without fear or favour in the committees and in the Houses of Parliament, they must have the right to free expression. One cannot expect a member to talk freely and openly unless his statements are protected from legal repercussions. According to the Constitution, a Member of Parliament cannot be sued for anything spoken to or a vote cast by him in the Houses of Parliament or any Committee thereof in any court or before any authority other than the Parliament. Assaulting a member or taking any other action against him because of what he said in the Parliament or a Committee thereof is also a violation of privilege. Similarly, it would be a violation of privilege to bring legal action against a member for whatever he stated in the House of Representatives or a committee thereof.

Additionally, a member's disclosures in the parliament cannot be used against him in court or by any other body. Any inquiry conducted outside of Parliament into anything said or done by members while performing their parliamentary responsibilities would be a significant violation of their rights. A member of the House may be found in contempt of court for a remark he makes, but no legal action may be taken against him. The court lacks the ability to look into the situation since it is an outside authority. expressly bans any judicial investigation into legislative or executive branch actions.

Similar to other royal courts, the High Court of Parliament's privileges were originally a component of the King's peace, which was enjoyed by all of the King's subjects, but especially by his employees. Due to their initial disadvantage, the Commons had to wage a more arduous and protracted battle to secure their own rights, not only against the Crown and the courts but also against the Lords. When the Commons began to assert their customary rights that had their roots in the King's special protection, some of these rights eventually hardened into legally recognised "privileges" that the Commons could use to defend their independence from threats coming from any direction.

The development of legislative privileges may be dated to mediaeval England, when the Monarch and the Parliament engaged in a constant power struggle. Most often, privileges were used to shield members of Parliament from improper pressure or influence, including that of the monarch and others[5], [6].

The particular history of the English institution of Parliament and the development of parliamentary privileges are closely linked. The House of Commons struggled to find a position for itself in the Parliament, which was essential to safeguard them from the meddling

and authority of the King and the House of Lords. The executive arm of government was divided from the Parliament. As a result, the privileges were put into place in the late 16th century. The Commons claimed what came from the King's special protection on the grounds of inheritance theory and the King's divine prerogative. Thus, when the stable state was attained in the 19th century and the Parliament had established and approved the restrictions on privileges.

By the second half of the 15th century, it seems that the House of Commons has the vaguely defined right to free speech because of tradition rather than as a result of rights sought and attained. The Speaker did not make this assertion before. The authority to address any intentional misrepresentation of the House to the King was what they did ask for. Even the Speaker questioned whether it should be considered an accident if the House of Commons or the Speaker offends the King or violates the prerogative. The right to free speech was under discussion by Elizabeth's first parliament in 1563, and it was defended by old custom. Sir John Eliot was imprisoned in 1629 along with the other two members after being found guilty by the King's Bench of using seditious language during a discussion and assaulting the Speaker. The Commons bench ruled that the court of King should not have recognised Eliot and other cases as being within its purview.Furthermore, the judgement violated the rights of the Parliament and was illegitimate. The Commons overturned the ruling, and during the Revolution of 1688, Article 9 of the Bill of Rights gave the privileges formal legitimacy.Although the right to free expression protects what is said in either House, this right does not, to the same extent, include the right to publish discussions or proceedings outside of Parliament.The same rule that safeguards a fair report in court of justice applies to the publication of a fair and accurate account of a debate in either House: unless malice is proven, the benefit of publicity to the general public outweighs any personal harm caused by the publication[7], [8].

Freedom from arrest is a throwback to the rights associated with participation in the customary public assemblies or, more generally, the idea that a king's servant doing their duties in court should not be hindered by laws of inferior tribunals. It was established quite early on as a principle. The earliest instance of freedom from arrest is said to have occurred in 1340, when the King liberated a member of parliament who had been imprisoned during a session of parliament during which he had been barred from taking a seat due to his confinement. In the Thorpe case, the House of Commons Speaker was sent behind bars in 1452. The decision to pick the next Speaker right away was so readily accepted by the Commons. Development first appeared in 1604. Prior to the opening of Parliament, Sir Thomas Shrilley, who had been elected to the Commons, was released from his execution-related imprisonment in the fleet. After first refusing to release the member, the fleet warden was punished for disrespect. The Privileges of Parliament Act, 1603, which acknowledges the right to freedom of arrest, came after these occurrences. As already mentioned, parliamentary privilege was first used by the King to defend his servants but is now asserted as a separate prerogative. The long-standing privilege of Members of Parliament being free from arrest or harassment was shown to be essential to the service of the Crown first, and then to the operation of each House:The notion of a royally approved safe conduct may be found in connection with the majority of early assemblies that were in any way connected to the King; the King's peace was to continue in his assembly and be extended to the Members when they arrived at and left it. Naturally, Parliament was subject to these royal penalties. However, as time went on, it became more possible that a Member would be abused via the legal system as opposed to being physically hurt or restrained.Parliament could not be certain of any success until it could maintain its membership, free from outside intervention, whether or not the meddling had the intention of embarrassing its conduct. p. 439 of White, Eng Const. The

principal reason for the privilege has also been well expressed in a passage by Hatsell: ‘As it is an essential part of the constitution of every court of Judicature absolutely necessary for the due execution of its powers, that persons resorting to such courts, whether as judges or as parties, should be entitled to certain privileges to secure them from molestation during their attendance; it is more peculiarly essential to the Court of Parliament, the first and highest court in this kingdom, that the Members, who compose it, should not be prevented by trifling interruption from their attendance on this important duty, but should, for a certain time, be excused from obeying any other call , not so immediately necessary for the great services of the nation; it has been therefore, upon these principles, always claimed and allowed, that the Members of both Houses should be, during their attendance in Parliament, exempted from several duties and not considered as liable to some legal processes, to which other citizens, not entrusted with this most valuable franchise are by law obliged to pay obedience’

It will be useful to quickly discuss the breadth of the privilege of freedom from arrest as well as the main restrictions on its use that are covered in this chapter.Both positive and negative definitions of the privilege exist; the Commons' claim to freedom from arrest in all civil actions or suits during the time of Parliament and during the time when a Member was travelling to or from Parliament expresses the privilege's positive definition. The Commons argued in their petition dated 1404 that they were exempt from arrest for debt, trespass, or any other kind of contract under the custom of the realm (3 Rot Parl, 541).It will be convenient to start with the sphere in which enjoyment of freedom from arrest is uncontested, namely in civil suits outlining the extent to which this privilege has been limited or defined by statutes and resolutions of either House; then similarly to define the sphere in which they did not claim that it extended to criminal charges; and its dependence on the King's assistance for realisation.

When any of these privileges, which are known generally as rights and immunities granted to members and the assembly in its collective role, are violated or challenged by a person or authority, it is referred to as a breach of privilege.Under the Law of Parliamentary Privileges, violating this privilege is illegal. Also, each House asserts the right to penalise behaviours that, although not violating any particular privilege, a reacts against its power or honour, such disobeying its rightful orders or insults the organisation, its executives, or its members. Despite being often referred to as "Breaches ofprivileges should really be distinguished as contempt.

With one exception, the remaining privileges of the House of Lords and the House of Commons are justifiable on the same grounds of necessity as the privileges enjoyed by the independent members of the Commonwealth and some British colonies' legislative assemblies under common law as a legal incident of their legislative authority. The ability to penalise for contempt falls within this exemption. Since the Privy Council's ruling in Kielley v. Carson, it has been maintained that each House of Parliament has this authority by virtue of the lex et consuetudo parliament and not because it is a body with legislative powers but rather because it is descended from the High Court of Parliament.Every legislature's ability to function depends on having these powers. Thus, there is a strong relationship between the duties, privileges, and disciplinary authority of a legislative body. The privileges serve as both the essential complement to the functions and as a means of disciplinary action [9], [10].

DISCUSSION

However, there are other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, which are more directed to the maintenance of its own collective authority than to the security of the individual members and may be said to

belong to the House itself. These rights and immunities include freedom from arrest and freedom of speech. Individual privileges are enjoyed by Members of the House solely as a means to the efficient fulfilment of the House's duties, notwithstanding the fact that this is a beneficial distinction. When arguing that every Member of the House of Commons has access to the privileges of Parliament, the Commons stated in their reasons presented at a meeting with the Lords that "the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption.

While certain privileges are governed exclusively by Parliamentary law and tradition, others have legal definitions. All privileges, regardless of kind, are grounded only on these basis. The Lords have always enjoyed them because "they have place and voice in Parliament," but the Commons have developed a custom that seems to subject their privileges to royal favour. Every Parliament has a tradition of having the Speaker declare, "In the name and on behalf of the Commons, to lay claim by humble Petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require, and that the most favourable construction should be placed upon all their proceedings."

'Her Majesty most willingly acknowledges all the rights and privileges which have ever been bestowed to or conferred upon the Commons, by Her Majesty or any of her royal predecessors,' the Lord Chancellor writes in response to the Speaker's plea. Claiming these rights become a habit over time. The sole privilege the Speaker requested during the reign of Henry IV was for himself, that he be permitted to notify the King of the Commons' thinking and that any errors he made in doing so may be remedied by the House (3 Rot Parl, 424; see also ibid., 425).

A clear demand for access to the Crown is made in 1536, Speaker Moyle makes a claim for freedom of speech in 1541 (see Elsynge, 175-8), and for the first time in 1554, the three demandsfreedom from arrest, freedom of speech, and accessare stated all at once (CJ (1547-1628), 37). The practise seems to have grown commonplace by the end of the sixteenth century (see 2 Hatsell, 225 et seq.).

The Speaker's report to the House, which states that the Commons' privileges have been confirmed in the same full and ample manner as they have previously been granted or allowed by Her Majesty or any of her royal predecessors, further recognises the authority of the Crown with regard to those privileges.

This practise likely has its roots in the historic act of the King assenting to petitions from the Commons with the advice and approval of the Lords in order to reaffirm legislation that were already in effect in Parliament.

The Commons claimed their rights as prescriptive and in accordance with "custom of the realm" as of the beginning of the fourteenth century at the latest, and as being founded, like those of the Lords, on the law and custom of Parliament. In the petition to the Queen, the liberties requested are simultaneously described as "ancient and undoubted." The Commons in James I's first Parliament said that asking to use their privileges was "just an act of manners." The Commons depended on the Lords to enforce their privileges until they had thoroughly established their position in Parliament. In Thorpe's case, the Commons accepted the Lords' decision and chose a new Speaker after the Lords, acting on the recommendation of the Judges, decided that Thorpe, the Speaker of the House of Commons, should stay in jail notwithstanding any privileges granted by Parliament. It seems that even under the privilege jurisdiction of Parliament, the Commons did not stake a claim. The Commons did not use

their own power to free one of their members until Ferrers' case in 1543. However, the rule that an issue involving either House of Parliament should be determined in the House to which it belongs and not elsewhere had been established by the time of Coke at the turn of the century. As a result, the two Houses have equal jurisdiction to administer a single set of rights. As an integral element of Parliament, each House is free to exercise its own rights without interference from the others. However, they do not individually have a unique privilege that allows them to enjoy them; rather, they only do so because of Parliamentary law and tradition. There are some benefits and abilities that are unique to each House, yet all privileges really apply to both Houses equally. These are stated and explained by each House, and violations of privilege are evaluated and punished by each, but the legislation of Parliament is nevertheless administered in this way. The Select Committee on Parliamentary Privilege was established by the House of Commons on July 5, 1966, with the mission to "review the law of Parliamentary Privilege as it affects this House and the procedures by which cases of privilege are raised and dealt with in this House and to report whether any changes in the law of privilege or practise of the House are desirable." The Committee was reinstated at the start of the following session, and it released its report on December 1st, 1967. On July 4th, 1969, a move to take notice of the Report was discussed.

The Report made suggestions regarding the purview of privilege and the way the House handles accusations of contempt. The Committee's recommendations were not immediately acted upon by the House, who instead sent them to the Committee of Privileges on January 27, 1977. On February 6, 1978, the House considered the Committee's Report and endorsed its recommendations.

This historical prerogative was first abused under the 20th Richard II (1396–1397), and afterwards it was clearly upheld. Haxey's, who had served as the King's secretary since 1382, was denounced as a traitor in Parliament after upsetting the monarch by proposing a measure to lower the exorbitant cost of the royal household. The judgement was, however, overturned and annulled as a result by the King with the advice and consent of all the lords spiritual and temporal after Hexey presented a petition to the King in Parliament asking him to do so because it was "against the law and custom which had been before in Parliament." That year, the Commons took up the case of Haxey and in a petition to the King stated that "he had been condemned" against the law and course of Parliament, and in annihilation of the customs of the Commons." They prayed that the judgement might be reversed, "as well for the furtherance of justice as for the saving of the liberties." With the advice and consent of the lords spiritual and temporal, the King also consented to this, and as a result, the whole Legislature decided that the judgement against Haxey, which violated Parliamentary rights, "should be annulled and held to be of no force or effect." Strode, a member of the House of Commons, was charged in the Stannary Court during the fourth Henry VIII (1512) era for suggesting many legislation to control the tanners in Cornwall. As a result, he was fined and imprisoned. The Stannary Court's proceedings were subsequently declared invalid, and it was further enacted that all lawsuits and other legal actions brought against Richard Strode and any other member of the current Parliament or of any Parliament in the future "for any bill,, which here, in this High Court of Parliament, should and ought to be communed and treated of, "should and ought to be, " It is clear that freedom of speech was then admitted to the privilege of Parliament and was not initially enacted at that time because the proceedings against Strode had already been declared invalid. It is also clear that the statute was intended to have a general application going forward and to shield all members of either House from any inquiry regarding their speeches or votes in Parliament.'Every Member hath freedom from all impeachment, imprisonment, or molestation, other than by censure of the House itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters

touching the Parliament or Parliament business,' the Commons stated in their protestation in 1621. The Commons expanded upon their allegations in their protestation, going beyond what Strode's case (1512) had already proved. The Fourth Henry VIII Act only protected Members from having their actions in Parliament questioned in other courts, but its underlying concept ought to have protected them against the wrath of the Crown as well. As in the instances of Mr. Strickland in 1571, Mr. Cope, Mr. Wentworth, and others in 1586, and Sir Edwin Sandys in 1621, "molestation" included victimisation or discriminating action by the King or the administration. While in contemporary times any such action by the Crown (in respect of non-political position) may be viewed as an invasion of privilege, the King might express his disapproval by dismissing an employee "without openly violating the Commons' claims of privilege." The last time the prerogative was used in this manner was in the case of General Conway, who was expelled from the service of the King in 1764 and removed from his position as Colonel of a regiment for disagreeing with George Grenville's government regarding general warrants.

CONCLUSION

Legislative privileges that ensure free speech foster healthy political conversation, enhancing democracy and encouraging the interchange of differing points of view. In order to create a legislative climate where the interests of the people may be adequately represented, the concept of immunity from legal action seeks to guarantee that lawmakers can carry out their responsibilities without fear of retaliation.] The extent and limits of legislative privileges may need ongoing review as legislative bodies adapt to meet contemporary circumstances. Upholding democratic institutions' integrity while protecting against possible privilege abuse is still an important obligation. The delicate balance between legislative privileges and the general good of society is maintained through transparent government, moral behaviour, and commitment to democratic accountability standards. Finally, it is crucial to take a considered and impartial stance to make sure that legislative privileges fulfil their intended functions of enhancing democratic representation and encouraging ethical lawmaking.

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CHAPTER 2

DETERMINATION OF STATUTORY RECOGNITION OF THE PRIVILEGE

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ABSTRACT:

A legal system that identifies and accords certain rights and immunities to people or organisations within a given setting is represented by the legislative acknowledgment of privilege. This essay explores the relevance, extent, and ramifications of legislative acknowledgement of privilege in numerous fields as it digs into the complex topography of the subject. In order to strike a balance between society interests, individual rights, and the administration of justice, it analyses how legislation officially define privileges. The research looks at the many types of privileges, such as the source privilege for journalists and the attorney-client privilege, and how they protect private communications and promote free speech. Additionally, it examines possible conflicts between privilege and openness as well as difficulties arising from the misuse or improper use of these legal rights.

KEYWORDS:

Confidential Communications, Legal Protections, Privilege, Statutory Recognition, Transparency, Rights, Immunities**.**

INTRODUCTION

After the Revolution of 1688, this legal acknowledgement of the right to free expression got ultimate legislative confirmation. The freedom of expression, as well as debates or processes in Congress, "ought not to be impeached or questioned in any court or place outside of Congress," according to the Bill of Rights' ninth article. The Bill of Rights' ninth article, which supports the Commons' claim to exclusive authority over statements made in their own House, strengthens the Fourth Henry VIII Act. The Lords' authority in their House is also subject to its terms. Additionally, this article included "proceedings in Parliament"a word that refers to more than just speeches and debateswithin its exclusive authority. 'Proceedings in Parliament' have been interpreted in a variety of ways, which has caused issues and been the focus of judgements made by the courts and parliament[1], [2].

acknowledgment of each House's authority to decide how its members behaved while serving in that body. Each Member has a responsibility to abstain from any activity that may jeopardies the privilege that he enjoys once the Speaker claimed it and legislative recognition of the right to free expression was provided. The House of Commons declared in a resolution on July 15, 1947, that "it is inconsistent with the dignity of the House, with Members' duties to their constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Members' complete independence and freedom of action in Parliament or stipulating that he shall act in any manner as the representative of his constituents."

The report from the Committee of Privileges on the matter of Mr. Brown and the Civil Service Clerical Association (HC 118 (1946-47)) was accepted by the House in the same resolution. This situation resulted from specific decisions made by the executive committee of a trade union that had a legal contract with a member of the house and paid him a salary[3], [4].

According to the complaint lodged to the Committee of Privileges, the Trade Union's activities were inappropriately planned to influence the Member in the performance of his legislative responsibilities. The relationship between a Member and an outside body with which he has a contractual relationship and receives financial payments is, however, one of great difficulty and delicacy, in which there must frequently be a danger that the Rules of privilege will be violated, even though the Committee found that there had been no breach of privilege in this specific case. The absolute privilege of words made in debate is no longer in question, although it should be noted that the privilege that formerly shielded members from action by the Crown now primarily protects them from civil or criminal lawsuits. A Member may say anything he sees fit in discussion, according to the Rules of Order, regardless of whether it may be hurtful to people's emotions or damaging to their reputation. He is shielded by his privilege from any legal action for libel as well as from any other questions or molestation.

The court in this case, which was brought in the Irish courts in 1887 against a Member of the House of Commons for remarks made in the House and found to be the cause of action, ordered that the writ and statement be removed from the court's records because the court lacked jurisdiction in the case.] Thus, it may be claimed that speech and activity in Parliament are unrestricted and free. However, this immunity from outside influence or intervention does not entail an unrestricted right to free expression within the House. Too many instances exist where Members have been held accountable and disciplined by the House for insulting remarks made in front of the House. others have received warnings, some have been put in jail, and others have been kicked out of the Commons. The Court of King's Bench acknowledged in the case of Lord Shaftsbury the absolute authority of the Lords to condemn a lord for remarks made in the House. The summary powers granted to the chair by Standing Orders serve as a reinforcement of the disciplinary powers of privilege in the House of Commons.

The House of Commons has always asserted and cherished the authority to keep out outsiders and have closed-door discussions.The first reason was the disruption generated in the past by outsiders rushing into the House or trying to sway discussion from the gallery. The second, and more important, reason was that the Crown would threaten members if reports of their speech and actions were published in the past, when freedom of expression did not always guarantee full safety. The authority of either House to forbid the publishing of debates or proceedings is closely related to the capacity to exclude strangers in order to attain, when needed, such seclusion as may insure freedom of discussion[5], [6].

There can be no doubt that if either House wishes to keep its proceedings secret from the public, it is within the strictest limits of its jurisdiction to do so and to punish any violation of its orders. The publication of the debates of either House has previously been declared to be a breach of privilege, especially false and perverted reports of them. But on July 16, 1971, the House of Commons passed a resolution declaring that "notwithstanding the resolution of the

House on March 3, 1762 and other such resolutions, this House will not entertain any complaint of contempt of the House or breach of privilege in respect to the publication of the debates or proceedings of the House or of its Committees, except when any such debates or proceedings shall have been conducted with closed doors or in private, or when such publication shall have been made in accordance with the provisions of this Act or any other

The House of Commons also decided it would not consider any complaints regarding (i) the publication of a Member's vote in a House division prior to the relevant Division Lists or Notice Papers, the content of any notice of a parliamentary Question or Notice of Motion submitted, or (ii) the publication of a Member's expressed intention to cast a particular vote, abstain from casting a vote, or to submit any notice of motion. These resolutions were passed in response to the Select Committee on Parliamentary Privileges' recommendations and with the goal of harmonising the House's rules with accepted convention. On October 31, 1980, a new Resolution was adopted that eliminated the limitations on the reporting of testimony from Select Committee public meetings. The repeated orders of the House directing the punishment of violators of such rules and prohibiting the publication of comments on or about the debates and proceedings of the House or of any committee thereof in newspapers, newsletters, or in any other medium had long since been disregarded. In fact, since 1909, the discussions have been recorded, published, and sold to the general public by an official reporting crew working under the direction of Mr. Speaker.

DISCUSSION

Evidence before the courts as to proceedings in Parliament

Article 9 of the Bill of Rights is likewise in line with how the Commons handles evidence that is requested about procedures that have taken place inside of Parliament but outside of its borders. The courts have ruled that Members cannot be forced to testify about procedures in the House of Commons without the House's authorization, which is a well-known truth. Although the courts have ruled on a number of particular issues related to Parliament, they have not explicitly defined what is meant by the word "proceedings in Parliament" or how it should be used. There is additional uncertainty over whether crimes committed in a house of representatives remain within the exclusive jurisdiction of that house. It was purposefully left unclear in the House of Lords ruling in the Eliot case (mentioned above) whether the attack on the Speaker may have been a matter heard and decided by the King's Bench. In the meeting with the Lords that before the writ of error, one of the Commons managers acknowledged the potential that it may have been lawfully so decided.

In Bradlaugh v. Gossett, Mr. Justice Stephen said that he was unaware of any precedent supporting the idea that a common crime committed in the House of Commons would not be subject to the regular process of criminal justice (1884, 12 QBD, p. 284). It must be assumed that the learned judge had in mind a criminal act as opposed to criminal speech because he immediately made reference to Eliot's case and agreed that "nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts." If legal action is started or other action is taken against anyone because of something they may have said or evidence they may have provided during any proceedings in the House itself or before one of its Committees, each House of Parliament will treat it as a breach of their privileges. Although the Parliamentary Privilege Act of 1770 states that no privilege of Parliament may be invoked as a defence in a lawsuit or other legal proceeding against a member of either

House of Parliament, the Judicial Committee has determined that this restriction only applies to legal proceedings brought against the members as private individuals, such as lawsuits for debts, and not to their conduct in Parliament as "Members." Therefore, a court cannot issue a writ in response to a Member of Parliament's "speech or proceeding in Parliament."According to the House of Commons, "everything said or done by a Member in the exercise of his functions as a Member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business" is included in the definition of "proceedings" in the Bill of Rights.As a formal action, often a decision, made by the House in its capacity as a whole, "proceedings" has a specific meaning in the context of the Parliament. This naturally extends to the kind of business the House does as well as the whole process, the main component of which is discussion through which it comes to a resolution. An individual member participates in a procedure often by speech, but they may also do so through other recognised types of formal acts like voting, noting a motion, etc., or submitting a petition or committee report, the majority of which are time-saving alternatives to speaking. Officers of the House participate in its proceedings by executing its commands, whether general or specific. Strangers are also permitted to participate in House procedures, for example, by testifying before the House or one of its Committees or by ensuring the presentation of their petition[7], [8].

Members, Officers, and outsiders who participate in a House's business are safeguarded by the same rule that protects free expression, which states that they cannot be held accountable for their actions by a body other than the House itself.Since letters from a Member of Parliament to a Minister containing accusations against third parties are not covered by the immunity, it only applies to proceedings in Parliament. Regarding the latter, the only privilege that may be provided is the qualified privilege under ordinary law. In other words, the member may claim qualified privilege by demonstrating that he communicated his constituent's claims in good faith and in the public interest, but will have to respond in court if they are malicious. Again, the immunity covers any remarks made within the House. Therefore, a Member cannot claim Parliamentary privilege against the defamation legislation if his defamatory statement is published outside of Parliament.

However, if it can be shown that the information was shared in the public interest and was limited to his constituency, he may be able to claim qualified privilege under the law of defamation: Contrary to the Committee of Privileges' advice, the House of Commons decided in the Strauss case (House Committee 305 (1956–57)) that a letter from a Member to a Minister was not a parliamentary procedure. The Joint Committee did not suggest a modification in the statute despite the fact that this may be seen as anomalous since a member's query to a minister on the same subject would constitute a procedure in Parliament, in part because there was little proof that the decision had resulted in issues. Under certain conditions, including the existence of a shared interest between the parties and the lack of malice, letters to and from members, ministers, and constituents will be shielded by qualified privilege in relation to a defamation lawsuit.

The House itself has the authority to control members' excessive freedom of speech under its right to regulate its proceedings and internal affairs and to punish violations of such house rules by suspension, commitment, or expulsion and thus possesses the power to control members' excessive freedom of speech. This is true even though a member of parliament is free to make libellous attacks on private individuals within the House and is not held

accountable in a court of law even for such an attack on another member.Reflections on the behaviour of the Sovereign, the heir to the throne, or other members of the Royal family, the Lord Chancellor, the Governor General of an independent territory, the Speaker, the Chairman of Ways and Means, Members of either House of Parliament, or Judges of the Superior Courts of the United Kingdom, including persons holding the position of J, may not be made in debate unless the discussion is based on a substantive motion, drawn in proper terms. It is forbidden to express opposition to sovereigns, rulers, governments of independent Commonwealth areas, or nations friendly to Her Majesty or their representatives in the nation.

No member should use the name of another during a discussion to avoid any appearance of personality. Each member must be identified by the position he or she holds, the location they represent, or some other designation, such as "the Noble Lord the Secretary of State for Foreign Affairs, the Honorable" or "right Honourable gentleman the Member of York," "the Honourable and learned member who has just sat," or, when referring to another member of the same party, my (right) Honourable friend, the Member of."

Parliamentary discourse is characterised by restraint and moderation. When a member is questioning the views and deportment of his adversaries in a discussion, parliamentary terminology is never more desirable. However, it is acceptable to make negative remarks about former members of the House, even if they are Privy Councillors.References to either House of Parliament in debate must be polite, and members of the House of Commons who use abusive language or false accusations against members of the House of Lords are typically dealt with by the Chair intervening right away to get them to stop speaking offensively, or in the event of failure, suspending them from the meeting. However, it is acceptable to criticise a House of Lords member for his actions while serving in another position.

House cannot be examined outside of Parliament for supporting a cause of action, even if the cause of action itself arises out of something done outside the House, according to Article 9 of the Bill of Rights. This means that statements made in the House are not only not subject to legal action in a court of law. Therefore, the proceedings in the House documenting the defendant's words in the House cannot be utilised by the plaintiff to demonstrate malice against him in an action for libel against a Member of Parliament for a statement made outside the House. It may be assumed that a member cannot be tried in a regular court for anything stated during a discussion, regardless of whether it was illegal in character. The wording of Bill of Rights Art. 9 is intended to make this apparent. Words said during a discussion cannot be separated from the category of proceedings in Parliament, except by some forced construction. A criminal conduct committed in the House is often subject to criminal justice laws. But there are several exceptions to this rule as well. It will be determined that the norm and exception both rely on whether or not the specific conduct may be considered as a legislative procedure in Parliament.According to Section 13 of the Defamation Act of 1996, a person may forgo the right that prevents judicial review of parliamentary procedures in defamation cases when that person's behaviour during or in connection with those proceedings is at issue.It has no effect on their immunity from legal accountability for whatever they say or do during or as part of parliamentary proceedings. Sec. 13 has drawn a lot of criticism because it undermines the principle that privilege belongs to the House as a whole, not to individual members, and because it makes it unclear what

happens when multiple parties are involved in the same action. It is also unusual because privilege cannot be waived in other civil actions or in criminal cases. The Joint Committee recommended repealing Section 13 and replacing it with a statutory provision allowing either House to waive the Art. 9 privilege with respect to any legal proceeding, provided that there is no question as to whether the member or other person who made the statement would be exposed to a risk of legal liability as a result. This would provide either House the ability to consent to judicial review of parliamentary proceedings where it is deemed to be in the interests of justice.

The right to publish debates and proceedings as well as the right to prevent other people from publishing.It is an unquestionable prerogative for each House to publish its own discussions and proceedings. Before the famous decision of Stockdale v. Hansard, it was believed that the common law of defamation placed restrictions on the House's ability to communicate its proceedings to parties other than its own members. However, the Parliamentary Papers Act, 1840, which was introduced to overturn the ruling in the aforementioned case, stipulated that no defamation suit lies for any publication made with the consent of either House of Parliament. Those who publish unauthorised reports of parliamentary documents or procedures are not helped in any way by the Parliamentary documents Act.

It follows from the above that although lawmakers enjoy complete freedom of expression inside of the House of Commons, they do not have an unconditional right to publicise their private statements.A member's printed statement becomes an independent publication, unrelated to any events in Parliament, if they publish their speech.Here, they are on an equal footing with regular people, and if the speeches they broadcast include libellous material or anything that may lead to the overthrow of the government or something similar, they could be held accountable under regular law.However, the law of defamation grants "qualified privileges" to reports of parliamentary proceedings (even if they are published without the House's consent) on the grounds that they are "essential to the working of the Parliamentary system and to the welfare of the nation," which would outweigh any inconvenient effects on individuals that may occasionally occur.It is guaranteed that democratically elected members of parliament have the right to debate and express themselves as they see fit. This implies that members are exempt from civil or criminal penalties for whatever they say or debate in the legislature.

Similar to how an article based on parliamentary proceedings would be protected provided it is an honest and accurate assessment of the facts. Extracts that are truthful and accurate from licenced publications would likewise have the same rights. According to the same logic that governs reports of judicial processes, this privilege is extended to the publishing of parliamentary proceedings and, as a result, is subject to the same restrictions that govern reports of judicial proceedings.Therefore, just like in the case of reports of court processes, a muddled or fragmentary report, or a report of disconnected sections of proceedings, released with the goal to do people harm, will not be entitled to protection.According to the same principle, a member's legitimate publication of a defamatory speech for the benefit of his constituents is protected, but a member's publication in a newspaper of a single defamatory speech in Parliament intended to harm an individual would not be protected. -A fair and faithful report of the entire debate would not be actionable," the rule reads. "However, if a member publishes his own speech, reflecting upon the character of another person, and omits to publish the remainder of the debate, the publication would not be fair, and so would not be

privileged.There is obviously a significant difference between the faithful publication of Parliamentary reports in their entirety, with the aim of providing information to the public, and with a complete absence of hostile intention or malicious motive towards any one, and the publication of a speech made in Parliament for the express purpose of criticising the conduct of an individual and then published with a like purpose or effect[9], [10].

CONLUSION

The idea of legislative acknowledgement of privilege emphasises the precarious balance between individual rights and the needs of the public. While privileges like the attorney-client privilege allow for open legal advice and the journalist source privilege promotes free speech, they also raise concerns about how much information should be kept hidden in certain situations. Discussions over legislative acknowledgment of privilege continue to focus on transparency and accountability. A careful balance must be struck between the necessity for supervision and justice and the preservation of confidential information. The principles supporting legislative safeguards may be jeopardised by the misuse or abuse of privileges. The scope and use of statutory privileges may change as legal systems adjust to contemporary socioeconomic and technical advancements. It is necessary to have a flexible legal system that preserves the principles of justice while taking into account contemporary realities in order to address new issues, such as those brought on by digital communications and globalised information exchange. In the end, legislative acknowledgment of privilege is essential for defending individual liberties, promoting transparency in communication, and preserving the credibility of diverse organisations and professions. The basis of a fair and equitable society is strengthened by a clear framework that acknowledges the subtleties of privilege while making sure that these safeguards are not abused. In order for statutory recognition to fulfil its intended goals of upholding rights, building trust, and furthering the ideals of justice and fairness, privilege and responsibility must be balanced.

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CHAPTER 3

EVOLUTION AND ANALYSIS OF FREEDOM OF SPEECH IN LEGISLATIVE

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ABSTRACT:

A key component of democratic government, freedom of speech in legislative settings enables legislators to freely express their opinions, participate in spirited discussions, and represent the interests of their people. This essay explores the complexity of free speech in legislative settings, looking at its importance, restrictions, and effects on democratic procedures. It considers the difficulties of striking a balance between free speech and adherence to decency and the prevention of damage while also examining how this freedom encourages open dialogue, accountability, and public representation. The research looks at how this right has changed through time, how it interacts with other legal advantages, and how technology has influenced current disputes. Additionally, it examines possible disagreements and disputes about the limitations of free speech in legislative settings.

KEYWORDS:

Accountability, Democratic Governance, Freedom of Speech, Legislative Bodies, Open Discourse, Public Representation.

INTRODUCTION

The right to free expression is often referred to be the most significant privilege. It was first included in the 1689 British Bill of Rights. The freedom of expression and debates or processes in Parliament may not be challenged or impeached in any court or venue outside of Parliament, according to Article 9 of the Bill of Rights. According to the Commonwealth Constitution, the House and the Senate acquired this prerogative since it belonged to the House of Commons in 1901. Although Section 16 of the Parliamentary Privileges Act specifies in some detail what may be covered by the word "proceedings in Parliament," it retains the applicability of the traditional meaning of this right. This has the practical effect of giving participants in Parliamentary proceedings unlimited privilege. It is common knowledge that Members of the House may not be held liable for defamatory remarks they make while participating in debates, but the privilege extends beyond that and, for example, shields Members from prosecution if they make remarks during a debate that would otherwise constitute a crime, such as a Member who felt it necessary to disclose information that was subject to a law's secrecy clause, such as personal tax information[1], [2].

It has been said that the right to free expression is a "privilege of necessity." It gives Members the chance to bring up issues in the House that they otherwise wouldn't be able to (at least not without worrying about the repercussions of doing so). This makes the privilege very valuable, and it is acknowledged that it comes with the commensurate responsibility that it should always be used wisely. Members who made unjustified allegations in the Parliament would come under pressure from their fellow lawmakers, the general public, and the media.

Additionally, there is a process for anyone who have been aggrieved by comments made about them in the House to request that their reaction be made public.Anyone participating in "proceedings in Parliament" has the right to free expression, which is not only reserved for members of parliament. The most prominent example of those who could be granted total privilege is witnesses who testify before committees. It is important to highlight that the privilege does not, for example, extend to party committees and only applies to testimony provided to legally constituted parliamentary committees.There is a distinction between unqualified privilege and qualified privilege. When certain requirements are met, such as when a remark is not uttered maliciously, a person may not be held accountable for defamation. This is known as qualified privilege. Newspapers that cover parliamentary discussions depend on qualified privilege. On the other side, absolute privilege arises when absolutely no action may be taken, even if, for instance, a statement is made maliciously[3], [4].

The House and properly formed committees may provide absolute privilege to particular documents by approving their publication, in addition to the absolute privilege that applies to all proceedings in Parliament. This authority is often used by parliamentary committees to permit the publishing of submissions and transcripts of testimony provided during investigations. The Hansard record of proceedings also enjoys absolute privilege under the Parliamentary Papers Act. The same is true for the official broadcast under the Parliamentary Proceedings Broadcasting Act, however the broadcast of proceedings snippets is exempt from absolute privilege. On sitting days and for five days before to and after sitting days, members may not be compelled to appear before courts or tribunals as witnesses or be detained or arrested in connection with civil issues. These privileges also apply to members of committees that are in session. People who are forced to appear before committees as witnesses may not also be called as witnesses before a court or tribunal, nor may they be imprisoned or arrested for a civil issue on the days they are called to testify before the committee. Members are likewise immune from jury duty, as are certain members of the legislative staff.

These privileges are defended by the argument that members' and other parties' primary responsibility is to the legislature, which takes precedence over all other commitments. Members are nonetheless subject to the law's enforcement even if they are immune from civil arrest and incarceration. Even when the Parliament is not in session, members are still required to execute their legal responsibilities, and there is no exemption from prosecution in criminal cases. The House may also take action regarding situations that obstruct or hinder the House in the performance of its functions or Members or officers in the discharge of their duties, even though they do not violate any specific legal powers or immunities. This is in addition to dealing with people or organisations that violate specific rights or immunities. This is referred to as the contempt penalty authority and is comparable to the court's contempt penalty power.

This authority affords the House the freedom to defend both itself and its Members against fresh or unique dangers. Even if a precedent doesn't exist, matters may be handled using this jurisdiction. Section 4 of the Parliamentary Privileges Act provides a safeguard against the abuse of this significant power by stating that conduct is not unlawful unless it amounts to, is intended to amount to, or is reasonably likely to amount to an improper interference with the free exercise by a House or committee of its authority or functions, or with the free

performance by a Member of his or her duties as a Member. Speakers have also stressed the need of exercising caution while using the House's contempt procedures. The Act also forbids prosecution in situations where the sole wrongdoing was criticism or defamation of the House, a committee, or a Member in words or deeds. This did away with a category that has received several complaints over the years, such as newspaper articles denouncing the conduct of Members[5], [6].

The ability of the House to defend its committees and its witnesses is one of the most significant outcomes of the authority to punish contempts. However, committees often lack the authority to directly take action against any individual or group that is impeding or impeding their ability to collect evidence and information. A committee may bring the issue to the House, which may finally penalise for contempt, if it is misled, impeded, or if its witnesses are punished or intimidated. Only Members may officially bring complaints of a violation of privilege or contempt before the House; anybody who feels there has been an infringement must ask a Member to do so. The usual procedure is for a Member to request the call "on a matter of privilege" and to promptly provide a short summary of the complaint. The Speaker then gives the issue some quiet thought.

DISCUSSION

The Speaker may grant priority to a motion on the subject if they are convinced that it has been brought up at the earliest opportunity and that it has some substance (the precise word is that a prima facie case exists). Although additional motions might be submitted or a Member could inform the House that he or she did not intend to take the topic further, the typical such move would be that the issue be referred to the Committee of Privileges and Members' Interests. Thus, it is up to the House to determine whether or not to refer a topic for inquiry to the Committee on Privileges and Members' Interests. Since 1944, the House has had a privileges committee. When two committees were united, the name was changed to the Committee of Privileges and Members' Interests in February 2008. The committee now has 11 members, and like other committees, government members make up the majority, even though it is customary to not assess privilege issues on a party basis. The committee has the authority to order the production of documents and the presence of witnesses, which means that it has the capacity to force these actions. Before testifying, witnessesincluding Membersmay be required to take an oath or affirmation.

The committee has often held private meetings. During a 1986–1987 investigation into the improper publication of information pertaining to a joint select committee, significant procedural adjustments were undertaken. For the first time ever, testimony was gathered throughout that investigation, and witnesses were allowed to have legal counsel or advisors present. The House approved a vote in December 2000 authorising the publishing of any testimony or records given behind closed doors or in confidence that have been in the care of the Committee of Privileges for at least 30 years. The National Archives of Australia now makes these documents accessible.

Penalties cannot be imposed by the committee itself. Its duties include research and advice. The committee typically determines if a violation of privilege or act of contempt has occurred in its report to the House and recommends to the House what action, if any, should be taken.The committee has the authority to look into particular complaints of privilege violations as well as any general privilege matters presented to it by the House. For instance,

it has looked into whether documents kept in members' offices qualify as confidential information. It also takes into account requests for a "right of reply" from those who have received criticism in the House.Any allegations of privilege infringement or acts of contempt must be brought to the House's notice as soon as possible. Once a Member has been acknowledged by the Speaker on a matter of privilege, the Member must briefly describe their grievance. The Speaker may then decide whether to hear from other Members or not before determining whether there is a prima facie case of privilege (i.e., whether the matter appears to be important enough to merit priority or consideration).

If the Speaker determines that there has been a violation of privilege, the Member who raised the issue is requested to make a motion, often asking for the Standing Committee on Procedure and House Affairs to look into the situation. The Standing Committee will review the case if the motion is approved by the House (which is debatable) and may decide to consult with expert witnesses. The House is provided with the committee's report detailing its conclusions and recommendations, at which point a motion to concur in the report may be made.

Since certain privileges are guaranteed by the Canadian Constitution, Parliament lacks the power to restrict them. Instead, the courts have the ability to decide whether a privilege really exists and what its boundaries are. Their overarching premise in doing so has always been to defend legislative independence from the judiciary and the executive. Whether the alleged privilege is required for the House of Commons and its Members to carry out their legislative duties of discussing, legislating, and holding the Government accountable without interference from outside of Parliament is the main issue the judges consider.

The use of parliamentary privilege, including any decision or action done inside the protected category, cannot be challenged in court after a category of privilege is established and its boundaries are established. Details on certain particular parliamentary privileges in several nations, including Belarus, Burkina Faso, Chile, Colombia, Cyprus, Denmark, Egypt, Estonia, Finland, Gabon, Germany, Guinea, Hungary, Italy, Kuwait, Croatia, Austria, Poland, Russian Federation, and Sweden.Ministers have special protection in a select few nations (like Belgium and Guinea) that is connected to their position. In Romania, the President of the Republic is likewise covered by the legal privilege system for parliamentary members' political ideas.In some nations (such as Switzerland), protection is broader and includes everyone who participates in parliamentary activities, including witnesses, experts, officials, and petitioners as well as those who participate in parliamentary debates (such as Ministers, even if they are not members of parliament).

Everyone who attends the meetings is protected in both Canada and the Netherlands. Freedom of expression is guaranteed to everyone who participates in parliamentary proceedings in the UK, including lawmakers as well as officials, witnesses, solicitors and petitioners. All participants in legislative proceedings, including witnesses and petitioners, are entitled to the protection of privilege in New Zealand.In France, privilege, in theory, only applies to lawmakers. statute recognises that witnesses who testify before a parliamentary committee of inquiry also have immunity on the grounds of the statute of July 29, 1881 respecting press freedom: "It is believed (Court of Appeal Paris, 16 January 1984) that witness statements heard before a committee of inquiry enjoy the immunity provided for every report and document published by order of the Assemble National and the Senate, except in the case of statements which are malicious, defamatory, or harmful to those external

to the Parliamentary inquiry The Committees of the Houses of Oireachtas; Compellability, Privileges and Immunities of Witnesses Act 1997 is a recent law revision in Ireland that affects the freedom of expression of witnesses summoned to testify before a Parliamentary Committee. Due to their complete immunity, these witnesses cannot be held accountable for any remarks they made during Committee hearings. One of the two houses of the Irish Parliament had to pass a resolution before this clause could go into effect. The writings or statements made by members of Parliament in the aforementioned circumstances determine whether or not parliamentary privilege applies. The issue, however, changes when someone else quotes verbatim or in writing what a member of Parliament has written or said, or makes a remark on it. Most nations permit this practise as long as the copying is done truthfully and accurately. Examples of countries where this is the case include Australia, Bangladesh, Belarus, Burkina Faso, Canada, Chile, Colombia, Denmark, Estonia, the Philippines, Finland, Gabon, Greece, Guinea, Hungary, India, Italy, Kuwait, Croatia, FYR of Macedonia, Mongolia, Mozambique, Namibia, Norway, Austria, Portugal, Slovenia, Spain, Sri Lanka, Spain, United Kingdom, Zambia, South Africa, and Sweden[7], [8].

According to Article 33 of the Austrian Federal Constitution, "no one shall be held accountable for publishing true accounts of proceedings in the public sessions of the National Council and its Committees." The law specifically states that one cannot be charged with a crime in Germany for honestly reporting what is stated in committees and during the Bundestag's plenary session. In comparable circumstances, the so-called "qualified" privilege is applicable in a number of nations. Courts and tribunals have jurisdiction under this privilege (there is consequently no absolute immunity). However, this privilege may be used as a defence in slander, libel, and defamation cases. (There are instances of qualified privilege in Australia, New Zealand, and Ireland.) In Mali, it is only possible to accurately reproduce and remark on the speeches of parliamentarians with their consent. The member of parliament is in charge of the publishing. Some nations do not acknowledge this kind of privilege, including Kenya, the Republic of Korea, Malaysia, the Netherlands, Poland, and Thailand.

In several nations (Australia, Belarus, Canada, Egypt, Malaysia, Nepal, New Zealand, etc.), limitations are also placed on the criticism of judges that members of Parliament are permitted to make in connection with matters that are still ongoing in court (referred to as "sub judice" cases). Members of Parliament are not allowed to disparage judges in Malaysia. Unless the Australian Parliament (House of Representatives and Senate) deems it appropriate to waive this rule in the public interest, debates that could lead to a position being taken with regard to pending court cases must be avoided. This custom (in this case, a convention that the assembly has imposed upon itself) is a requirement in Australia.

This Rule of Custom is not included in the rules of the House of Commons, but the Speaker applies and interprets it as necessary. In the United Kingdom, members of Parliament are prohibited from criticising judges without first filing a resolution, according to House of Commons rules. However, the Member of Parliament who disobeys this rule is protected by privilege. Regarding complaints filed against the Head of State, members, judges, and certain other elected officials, similar procedures exist in South Africa and Ireland. They are not subject to accusations during discussion, but they may be stated in a motion[9], [10].

Freedom of expression does not apply to any acts that are more harmful than words, such as strikes or injuries. However, it is explicitly stated in Denmark that all symbolic activities, in addition to vocal declarations, are protected by privilege.

Slander/libel and defamation are also prohibited activities in several nations (Belarus, Estonia, Finland, Hungary, Republic of Korea, Mongolia). In Germany, slanderous insults are not protected by the right to free expression. However, until their Parliamentary immunity has been revoked, a Member of Parliament cannot be charged in such a case.

Additionally, in Switzerland, legal action against a person who enjoys the protection of freedom of expression is only permitted with the approval of the Federal Chambers by a simple majority of the members of each Council.

In Norway, a member of parliament may be taken before the Constitutional Court notwithstanding their right to free expression. Members of the Parliament and Supreme Court judges make up this court. The Constitutional Court has the authority to find members of parliament guilty of crimes. This process has never been used as of yet.

There is a unique statutory provision regarding witnesses in South Africa. They are given a certificate upon request if they have testified in front of the Assembly or committees in a comprehensive and accurate manner, according to the Chair. Except in cases of perjury in Poland, Portugal, Romania, Slovenia, Spain, Sri Lanka, Czech Republic, Uruguay, Sweden, and Switzerland, this document obligates courts and tribunals to suspend all civil or criminal proceedings taken against them based on their testimony before the assembly or committee. On the other hand, it is feasible for the member of parliament to make the choice themselves in Guinea and Canada. In Greece, the decision is made by both the assembly and the individual member of parliament. The Member of Parliament may relinquish his or her privilege in their individual capacity, but the Assembly, which must decide by secret vote, is not bound by the Member's choice. In Hungary, a member of parliament has the option to relinquish their privilege in cases of infractions. In a trial for slander/libel and defamation, Members of Parliament in the United Kingdom may now renounce their privilege under the newly approved Defamation Act 1996. No individual privilege has ever been acknowledged.

In some circumstances, a member of parliament may also relinquish his privilege without having to complete a formal process. Therefore, in nations where freedom of expression is only permitted in the parliament building, the member of parliament is permitted to repeat his remarks elsewhere.

According to a decision made by the Supreme Court of the Philippines, a Member of Parliament could not assert privilege while making claims that were included in an open letter that was published in all publications. The disputed letter was drafted while lawmakers were on vacation (Jimenez v. Cabangbang). In contrast, a Member of Parliament had successfully asserted freedom of expression in a different case involving charges made against the President (Osmena Vs Pendatun, 1960).

During a news conference, a member of the Polish parliament revealed confidential security service (Office of State Protection) papers. The Parliamentary Privilege was in play in this case, according to the Polish Supreme Court. In Canada, immunity is restricted to the freedom from the need to testify in court (including in civil proceedings) during the proceeding. A similar provision may be found in South Africa, where a member of parliament

is not allowed to be forced to testify as a witness or a defendant in a civil matter anywhere other than when parliament is in session.Immunity only offers protection in Norway and Ireland from arrest while travelling to and from the Parliamentary Estate (as well as against arrest for actions taken by the interested party prior to becoming a member of Parliament).

Parliamentary immunity does not exist in Colombia as such; yet, only the Supreme Court (Corte Suprema de Justicia) has the authority to investigate and decide on the behaviour of deputies and senators. The notion is usually often contained in the constitution or in a "constitutional law" (Portugal), and at a more detailed level in the statutes and regulations of the Assemblies, in those nations where the system of parliamentary immunity is still in place. In certain countries, like New Zealand and Switzerland, the idea is exclusively incorporated in statute law, but in others, like the United Kingdom, it is based on both precedent and the law. The idea of parliamentary immunity seems to be quite static in most nations, and it has hardly changed in recent years. Contrarily, it is commonly accepted that the scope of immunity has been constrained in nations where major changes have recently taken place. For instance, in France, the system of immunity has undergone significant changes as a result of the constitutional reform passed on August 4, 1995.The Bureau of the Assembly to which the Member of Parliament belongs must now provide its approval before any arrest, the installation of correctional measures, or restrictions on freedom.

CONCLUSION

The dynamics of freedom of expression in legislative settings have changed as a result of technology. Legislators have the opportunity to interact with voters through social media and other digital platforms, but these tools also raise concerns about the limits of appropriate behaviour and the spread of misinformation. When the right to free speech in a legislative setting conflicts with issues of hate speech, provocation, or information manipulation, disputes may result. It's crucial to strike a balance between safeguarding the democratic space for criticism and making sure that communication is morally upright and responsible. In the end, the right to free expression in legislative settings continues to be a crucial component of democratic administration. Legislators support a vibrant and responsive democratic system by fostering free conversation, maintaining accountability, and recognising the plurality of viewpoints. Adopting this freedom while adhering to moral guidelines guarantees that legislative bodies continue to act as forums for spirited discussion, informed judgement, and the promotion of the public interest.

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CHAPTER 4

ANALYSIS OF INDIAN HISTORICAL AND CONSTITUTIONAL PROVISIONS

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ABSTRACT:

The foundation of India's identity is made up of historical and constitutional laws that reflect the country's rich history and direct its present and future. The linked connection between India's history and its constitutional structure is explored in this essay, along with the ways in which historical events shaped the Indian Constitution. It looks at significant historical occurrences, movements, and individuals who had a significant impact on India's fight for independence and the following evolution of its constitutional principles. The research examines how the Indian Constitution incorporates the values of democracy, federalism, social justice, and basic rights. The difficulties and arguments surrounding the interpretation and application of these rules are also covered.

KEYWORDS:

Constitutional Provisions, Democracy, Federalism, Fundamental Rights, Historical Events, Indian Constitution, Social Justice.

INTRODCUTION

Parliamentary privileges have their beginnings in ancient India. There were two gatherings called Sabha and Samiti in Vedic times that served as the King's checks and balances on all of his actions. The East India Company visited India in 1600 to do business. By the terms of the 1784 East India Company Act, they were involved in the situation. The Charter Act of 1833 placed a strong focus on centralised legislative power. By virtue of the 1853 Charter Act, the Legislative Council Act of India was expanded. The demand made by the legislative councilor under the Charter Act of 1853 may be viewed as a claim of privileges. Consequently, the Indian Council Act of 1861 established the authority of the Legislative Council. The Indian Council Act, 1892, was reiterated and expanded by this act, extending the privileges available to the members and to the members of the newly established legislative council of state. These privileges include the debate, any motion passed by Parliament, etc. The Government of India Act, 1915, consolidated the entire position of Parliament privileges that were attained. The Government of India Act, 1919, set restrictions on members' freedom of expression. The provisions relating to the privileges of members of the Indian Legislature were included in the Government of India Act, 1935. The Indian Independence Act of 1947 granted India autonomous legislative authority[1], [2].

The advancement of the nation's constitution has been accompanied by a progressive expansion of the rights of the Indian legislatures. The various Acts controlling Indian legislatures, such as the Indian Councils Acts of 1853, 1861, 1892, and 1909, and the Government of India Acts of 1919 and 1935, are indicative of the constitutional progress. These numerous Acts represent a series of significant steps in the evolution of India's

legislative institutions. Following the country's declaration of independence, the Constituent Assembly, which had been established for that reason, eventually approved the Constitution in 1950.Regarding privileges, Act 23 of 1925 guaranteed immunity from arrest under civil process for a particular defined amount of time, and Sub-Section (7) of Section 72(D) of the Government of India Act, 1919 established certain immunities for Members of the Council with relation to speaking and voting in the House. Regarding the courts' intervention with House procedures, the situation was far from established[3], [4].

However, even before the 1935 Government of India Act, courts declined to meddle in the internal affairs of the House. A request for a Writ of Certiorari to prevent the President of the Legislative Council from admitting the motion or putting it to the House's vote was made in the Madras High Court on September 3, 1928, at the time the Madras Legislative Council motioned for the election of the 7 representatives to consult with the Indian Statutory Commission. The President was made aware of the ongoing High Court proceedings, but he emphasised that the Council had the authority to control its own conduct and that a High Court application did not have to interfere with the Legislative Council's activity. In accordance with Sections 28 and 71 of the Government of India Act, 1935, there shall be freedom of speech in a legislature, no member of a legislature shall be subject to proceedings in any court with respect to anything said or any vote given by him in the legislature or a committee thereof, and no person shall be subject to such liability with respect to publications by or under the authority of either chamber of the legislature of any report, paper, votes, or proceedings. Other than that, the members' privileges were to be as they were prior to the founding of the Federation or the start of Part III of the Act, or as may from time to time be defined by an act of the federal or provincial legislature, as the case may be. Nothing in this Act shall be interpreted to give the federal or provincial Legislature, or either or both of its chambers sitting together, or any committee or officer thereof, the status of a court or any punitive or disciplinary powers other than the power to remove or exclude those violating the rules or standing orders or otherwise acting in an unruly manner, according to Subsection (3) of these sections.

DISCUSSION

A provision may be made by an act of an appropriate Legislature for the punishment of people who refuse to testify or produce documents before a committee of a chamber when properly required to do so by the committee chairman, according to subsection (4) (of these Sections). The Government of India Act, 1935's Sections 41 and 87 went further and made an improvement over the situation under the Government of India Act, 1919 in that they specifically stated that the legitimacy of any proceedings in a federal or provincial Legislature shall not be questioned on the basis of any alleged irregularity of procedure. Additionally, they stated that no officer or other member of the Legislature in whom the powers are vested by or under this Act shall be called into question. Section 28 of the Act of 1935 had its subsections (3) and (4) removed. However, Section 71's subsections (3) and (4), which dealt with the provincial legislatures, were left in place. As a consequence, the Central Legislature was free to provide itself the authority and privilege to convict members of its members of contempt, and it was also given the green light to define its rights in relation to those of the British House of Commons, which it eventually accomplished in the Constitution of 1950. However, the provincial legislatures lacked this authority since they were still bound by the limitations established by Section 71, Subsections 3 and 4.Thus, it can be seen that the

Legislatures enjoyed immunity from the courts with regard to their internal proceedings as well as the publication of a report, paper, votes, or proceedings by or under their authority, and that members were also guaranteed freedom of speech and the right to vote as well as freedom from arrest during certain stipulated times.

The Conference of the Presiding Officers of Indian Legislatures was fighting alongside the House of Commons for the rights it enjoys. As previously stated, they were added gradually over time until the 1950 Indian Constitution aligned the status in every way with the House of Commons in regard to both the Parliament of India and the State Legislatures.

- Freedom of expression is guaranteed in Parliament, subject to the provisions of this Constitution and the rules and standing orders governing its conduct.
- No Member of Parliament shall be subject to any proceedings in any court with respect to anything said or any vote cast by him in the House of Representatives or any of its committees, and no person shall be subject to such liability with respect to the publication of any report, paper, votes, or proceedings by or under the authority of either House of Parliament.
- In all other respects, each House of Parliament, as well as its members and committees, shall have such powers, privileges, and immunities as may from time to time be defined by Parliament by law; however, until such time as such definitions are made, each House, as well as its members and committees, shall have the same powers, privileges, and immunities as they did prior to the effective date of Section 15 of the Constitution (Forty-fourth Amendment) Act of 1978.
- The provisions of sections (1), (2), and (3) shall apply to individuals who, according to this Constitution, have the right to speak in, and otherwise to participate in, the proceedings of, a House of Parliament, or of any committee thereof, in the same manner as they apply to members of Parliament.

(1) There shall be freedom of expression in the Legislature of every State, subject to the provisions of this Constitution and the rules and standing orders governing the business of the Legislature.

(2) No member of the Legislature of a State shall be subject to any proceedings in any court with respect to anything said or any vote cast by him in the Legislature or any committee thereof, and no person shall be subject to such proceedings with respect to the publication of any report, paper, votes, or proceedings by or under the authority of a House of such a Legislature.

(3) In all other respects, a House of the Legislature of a State, as well as its members and committees, shall have such powers, privileges, and immunities as may from time to time be defined by the Legislature by law; however, until such time as they are defined, they shall remain the same as they were before the effective date of section 26 of the Constitution (Forty-fourth Amendment) Act of 1978.

(4) The provisions of paragraphs (1), (2), and (3) shall apply to individuals who, by virtue of this Constitution, have the right to speak in and otherwise participate in proceedings of a House of the Legislature of a State or any committee thereof, in the same manner as they do to members of that Legislature. The State Legislatures' rights and privileges are similar to those granted to the Union Parliament under Article 105. The freedom of expression in the

House and the right to publish proceedings without fear of repercussions are both expressly mentioned in Articles 105 and 194. Other legislative privileges, however, are not included. The powers, privileges, and immunities that are accessible to the Legislature are those that were in place at the time the Constitution (Forty-Fourth) Amendment Act, 1978, according to the explicitly stated provisions of Articles 105(3) and 194(3). With these comments, Subhash C. Kashyap has outlined the Indian stance.

Regarding other privileges, Art.105(3) as originally enacted provided that in all other respects, Parliament, its committees, and members shall have the same powers, privileges, and immunities as the House of Commons of the United Kingdom as of the date on which the Constitution entered into force on January 26, 1950, unless otherwise defined by law or otherwise provided for by Parliament. However, this clause was changed in 1978 to state that, with regard to privileges not listed in the Constitution, each House of Parliament, its members, and Committees shall have such powers, privileges, and immunities as may from time to time be defined by Parliament by law and, until such time as they are defined, shall have the same meanings as before Section 15 of the Constitution (44th Amendment), Ac By eliminating all references to the British House of Commons, this amendment has just changed the language; the content has not changed. In other words, each House, its Committees, and its members shall continue to enjoy the rights, powers, and privileges (other than those set out in the Constitution) that were granted to the British House of Commons as of January 26, 1950.

According to Article 105(3), so long as the Indian Parliament does not pass any laws "defining" any of the privileges, they will be the same as those of the British House of Commons as of January 26, 1950, with the exception of the matters for which the Constitution has made specific provisions.According to Ridge, the rights of the House of Commons include:

(1) Freedom from Arrest (a right claimed in 1554);

(2) Freedom of Speech (a right claimed in 1541);

(3) Access to the Crown (a right claimed in 1536);

(4) The Right to Have the Most Favourable Construction Placed Upon Its Proceedings;

(5) The Right to Provide for the Due Composition of Its Own Body (a right not available since we have a Written Constitution); and

(6) The Right to Regulate Its Own Business[5], [6].

The third of the aforementioned items is irrelevant in India. Items 1 through 4 are routinely requested by the Speaker of the House of Commons at the start of each legislative session and granted. According to our Constitution, Article 105 provides freedom of expression. When it comes to arrest, it has only been used in civil situations and hasn't been used to custody under the Preventive custody Act or arrest on criminal accusations. No privilege may be invoked if an arrest is made in accordance with Section 151 of the Criminal Procedure Code. In K. Anandan Nambiyar v. Chief Secretary, Government of Madras, it was found that lawmakers do not have any special standing in relation to regular citizens in terms of legally legitimate detention orders.The right to keep strangers out of the House and forbid the publishing of the debates and proceedings is an incidental right to the right to free speech and debate. The

ability to bar outsiders was initially a measure of self-defense. The House has sometimes decided to hold a "secret session" for the rest of the day's proceedings. The right of either House to forbid the publication of debates or proceedings is closely related to the power to exclude strangers in order to obtain, when necessary, such privacy as may ensure freedom of debate, according to the House's rule on controlling debate publication.

There can be no disagreement that if either House wishes to keep its proceedings secret from the public, it is within the strictest limits of jurisdiction to do so and to punish any violation of the order. The publication of debates of either House has previously been declared to be a breach of privilege, especially false and perverted reports of them.

The Indian Parliament and State Legislatures might claim the authority to expel members as one of the rights they received from the House of Commons.Expulsion from a group is more often seen as a statement of ineptitude than as a punishment.

The result is a vacancy. However, the Commons may choose to forbid him from accepting his position if he is elected again, but they cannot stop him from doing so. According to recognised law, the House of Commons is thought to have the authority to form its own constitution. The House of Commons still has the authority to judge a member's eligibility and to eject them if it finds them unsuitable to serve in the chamber.

It is possible for a House to make ancillary or subsidiary provisions relating to the privileges while regulating its "procedure" even though Arts. 118(1) does not specifically mention "privileges" but grants rule-making authority to each House of Parliament to make rules to regulate "its procedure and conduct of business." However, because they are authorised by the Constitution under Article 105(3), such Rules will only be valid if they are consistent with the Constitution, including both its express provisions and the privileges that were in place in the British House of Commons on January 26, 1950. Given that the British House of Commons privileges are codified and must be gathered from multiple sources, there is room for the Indian Parliament's Houses to expand upon them by rules, provided that they do not conflict with the British privileges. The Presiding Officer (Speaker or Chairman) interprets the Constitution or the House rules on behalf of the House, and this interpretation controls unless it is superseded by substantive motions, resolutions, rules, or statute. Each House of Parliament has the sole authority to regulate its own proceedings. These "rulings from the Chair" are followed in following hearings or by succeeding Presiding Officers as "precedents" and have power inside the House comparable to judgements of judges. Established precedents may eventually find their way into the House's rules.

But Article 105 of the Constitution limits the precedents or the rules. No House of Parliament may, by its own proclamation, establish a new privilege, according to one of the tenets of the British Law of Privileges. As a result, no House of the Legislature in India may establish a new privilege by precedents or regulations. The House is not permitted to increase its rights or grant new ones. The courts must decide whether a specific claim represents an expansion and formation of a privilege or an application of an already-existing privilege:The House must be made aware of the reason why any member of either House is being held from their duties in the legislature when they are arrested on criminal charges.When a Member is being held while awaiting trial by naval or military courts-martial or after being sentenced to jail by a judge or magistrate for any criminal conduct, it has been customary to inform the public of the reason for the Member's commitment. Instead of speaking to the House orally as is

customary, the Speaker has placed a copy of a letter on the table to inform the House that a Member has been arrested or imprisoned.When someone is committed for a military crime, a royal message is used to communicate that fact. A letter from the prosecuting judge or magistrate written to the Lord Chancellor or the Speaker is used to bring the conviction of a Lord or Member for high treason or any other criminal violation before the House. In these situations, the first communication is made when the Lord or Member is imprisoned without the ability to post bail; subsequently, if the Member is not released from custody or is found not guilty, the judge informs the Speaker of the Member's offence and the verdict. The magistrate's need to notify the Speaker does not apply when a Member is found guilty but freed on bail while appealing the conviction. A person who is elected to the House of Representatives while serving a jail term is not required to notify the Speaker of the election; nonetheless, the Speaker must tell the House of the notice when it is given to him. On May 9, 1972, the Speaker of the House told the House that he had received notification from the Secretary of State for Northern Ireland that three Members' sentences had been commuted as part of the royal right to pardon. The Committee on Privileges was tasked with determining whether the detention of a Member under Regulation 18B of the Defence (General), Regulations 1939, made under the Emergency Powers (Defence) Acts 1939 and 1940, violated the House's privileges. The Committee concluded that there was no violation of privilege.

The Speaker determined there was no prima facie evidence of privilege violation in the instance of a Member who was deported from Northern Rhodesia for failing to comply with an order designating him as a barred immigrant.

The Speaker informed the House of the detention of Members in Ireland in 1918 and 1922 pursuant to the Defence of the Realm Regulations and the Civil Authorities Act after receiving information from the Chief Secretary to the Lord Lieutenant and the Secretary to the Northern Ireland Cabinet, respectively[1], [7], [8].

CONCLUSION

Individual liberties are guaranteed by the provision of basic rights, mirroring the goals of those who fought for independence. India's dedication to representative government and the empowerment of its many states and regions is emphasised by the ideals of democracy and federalism. However, there are still obstacles in the way of completely achieving the goals ingrained in both historical conflicts and constitutional restrictions.

The Indian socio-political landscape is still being shaped by discussions over how to strike a balance between individual rights and community interests, affirmative action for underrepresented groups, and state autonomy within the federal system. The nation's tenacity and dedication to democratic ideals are shown by India's historical and constitutional development.

The marriage of historical knowledge and constitutional provisions continues to be crucial in establishing a fair, inclusive, and dynamic society as India navigates modern problems. India may continue to develop as a varied and peaceful country that honours its past while embracing the prospects of the future by respecting the concepts of justice, liberty, equality, and fraternity, as entrenched in both history and the Constitution.

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CHAPTER 5

ANALYSIS OF CONTEMPT OF COURT IN JUDICIARY SYSTEM

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ABSTRACT:

The legal idea of contempt of court, which is fundamental to the judicial system, is crucial in preserving the honour and power of courts. This essay examines the many facets of contempt of court, looking at its relevance, historical setting, various forms, and potential effects on the administration of justice. It looks at how activities that hinder the judicial process, jeopardise the integrity of the judiciary, or erode public confidence in the legal system fall within the purview of contempt of court. The paper explores civil and criminal contempt, the restrictions on free expression during legal procedures, and the need for a careful balance between defending the court and preserving individual rights. It also examines the difficulties of upholding fairness and openness standards while implementing contempt legislation.

KEYWORDS:

Administration of Justice, Contempt of Court, Free Speech, Judiciary System, Legal System, **Sanctity of Courts.**

INTRODUCTION

It is a contempt for a Member of either House to accept a bribe intended to influence his behaviour as a Member or any fee, compensation, or reward related to the support of or opposition to a bill, resolution, matter, or thing that has been submitted or is intended to be submitted to either House, or to a committee. Anyone who is discovered to have provided such a corrupt benefit is equally in contempt. Such a transaction constitutes both a grave insult to the dignity of the relevant House and an effort to subvert the democratic process that is implied in members' freedom to carry out their responsibilities to the House and (in the case of the Commons) to the voters. Recent progress in the House's concern for the highest standards of behaviour on the part of its Members may be seen in the Commons' adoption of a Code of behaviour for Members[1], [2].

The House of Commons is concerned about more than only the direct financial corruption of its members. The Code of Conduct states that Members of the Commons "should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties." The House has emphasised that "it is personal responsibility of each Member to have regard to his public position and the good name of Parliament in any work he undertakes. “The House has made it illegal for its members to receive payment from professionals for services related to parliamentary processes. As a result, a Member is not allowed to represent a client in court or before a committee. It is also improper for a Member to represent a client in a private bill or other legislative process.Additionally, it has been ruled that it is against the law and custom of Parliament for any Member to handle private legislation before either House of Parliament in exchange for financial gain, whether alone or with a partner[3], [4].

Members who represent themselves in court proceedings before the Committee for Privileges and the Lords bar are not subject to the ban. However, it is a contempt for a Member of either House to receive payment in exchange for creating, advising on, or editing a bill, petition, or other document that has been or is planned to be presented to either House or one of its committees The House of Commons voted on June 22, 1858, to declare that it was "contrary to usage and derogatory to the dignity of this House" for any member to introduce, support, or advocate in this House any proceeding or measure in which he may have participated or been involved in exchange for money.

More broadly, the Commons recently revised a 1947 resolution to prohibit paid advocacy or associated activities and outlawed any paid advocacy by Members of Parliament, as opposed to paid advice offered to outside individuals or organisations.

The fundamental concept in the Lords is that they should never take any financial For willfully failing to take into his custody those committed to him and for allowing those committed to go without any House of Commons order, the Serjeant at Arms has been accused of contempt. Doorkeepers have offended by allowing outsiders into the Lords against the House's authority, and one officer of the Lords has been found in contempt for failing to properly carry out an order for the attachment of certain people. Without initially receiving permission, the shorthand writer testified in court about actions in the House, and the commons consented to a resolution mandating that permission must be granted in such cases. It was established as early as the middle of the eighteenth century that it was against Parliamentary tradition for any act carried out in a committee to be revealed before being reported to the House.

The privacy of committee proceedings and the prior right of the House itself to a committee's conclusions were upheld subsequently, even though the House of Commons found it increasingly difficult to effectively enforce its rules against the disclosure abroad of proceedings in the Chamber. A newspaper owner who published the contents of a draught report that was presented to a select committee but not considered by it or presented to the House was also punished.According to the unquestionable privileges of this House and for the proper protection of the public interest, the testimony taken by any select committee of this House and the documents presented to such committee but not reported to the House ought not to be published by any Member of such Committee, or It has been deemed contemptuous to suggest that a member sitting on a private bill committee can't serve impartially, or to make a similar assumption about a member selected to a select committee. More general criticisms of Members that accuse them of engaging in corruption in the performance of their responsibilities, cast doubt on their motivations or sincerity, or label their behaviour as "inhuman" and humiliating have also been ruled objectionable and dealt with.

Threatening to frighten a Member in his parliamentary behaviour is likewise a kind of contempt similar to the ones stated above. Actions of this nature that have been prosecuted include casting doubt on the character of Members and threatening to expose them further if they participated in debates, threatening to communicate with Members' constituents to the effect that, if they did not respond to a questionnaire, they should be considered as not objecting to certain sports, publishing posters containing a threat regarding the voting of Members in an upcoming debate, and informing Members that they would be voting in a

forthcoming debate. Bribery is one way that such influence may be used; offering a corrupt payment to a Member of either House with the intention of influencing his behaviour in that capacity is just as guilty as accepting the corrupt reward.A Commons committee came to the conclusion that "pressure" entailed an active and deliberate attempt to sway an opinion already held in one direction or another, and premeditation was not a necessary prerequisite[5], [6].

DISCUSSION

Conduct that does not directly seek to unlawfully influence Members in the execution of their responsibilities but has the potential to compromise their independence in the future may be seen as contempt. Private solicitation's influence has also been deemed inappropriate in certain situations. The Lords have decided that it was improper to privately solicit Members for honours claims or other legal processes. According to the same logic, it would be disrespectful to try to use letters, whether anonymous or not, to persuade Members who are working in judicial or quasi-judicial capacities, such as when they are sitting on committees for private legislation.Although the Habeaus Corpus Act applies to everyone who has prisoners in their care, and even though the Serjeant at Arms and others have been required by House of Commons order to respond to writs of habeas corpus since 1704, the general rule is that, with the exception of the situation described below, the reasons for a person's incarceration cannot be investigated by the courts of law. Additionally, those who have been confined for contempt are not eligible for bail admission. Brass Crosby's case in 1771 effectively articulated the position: "No court can discharge or bail a person who is in execution by the judgement of any other court." This is because when the House of Commons finds something to be a contempt or a breach of privilege, their decision is a conviction, and their commitment as a result is execution.

As a result, the House of Commons has the power to make a pledge that will be carried out. The warrants that describe the specific circumstances upon which the committal warrant was based constitute an exception to the general norm outlined above. The courts have heard conflicting opinions about their duty to inquire. In previous instances, the courts denied having any investigative authority, but later, judicial opinion altered. Lord Ellenborough noted that he could imagine a cause of committal coming collaterally before the court in the form, for example, of a justification pleaded to an action of trespass, in such a way that the court might be required to consider it and declare it defective in Burdett v. Abbot in 1810 (which was an action for assault and not on a writ of habeas corpus). However, it would be less likely that the court would release the subject from the House's commitment if the issue came before the court directly, such as in the instance of a return to a habeas corpus. He continued, "I say that, in the case of such commitment, we must look at it and act upon it as justice may require from whatever court, regardless of whether the commitment purports to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law or natural justice."

In 1840, Lord Denman agreed and noted that the court should look into the warrant if the specific circumstances described in it do not support the committal. If the warrant indicates a contempt in generic words, the court is obligated by it, in his opinion.

A Member may be reprimanded or warned in the Commons while standing in his place, unless the Serjeant is watching him in which case he is warned at the bar. A Member may be summoned to receive an immediate rebuke or admonition when so ordered, or he may be instructed to appear in person before the House the next day or at a later time. Most recently, Members have received reprimands (and suspensions) due to a House resolution to that effect, but have not since earned the House's censure, whether they were standing in their place or not.

Suspension

Although Standing Order No. 44 now specifies that Members who violate House rules or the authority of the Chair will be suspended from their positions in the House of Commons, this disciplinary measure predated the creation of the Standing Order in 1880 by a very long time., Between 1692 and 1877, when the Speaker ruled that "any Member persistently and wilfully obstructing public business without just and reasonable cause is guilty of a contempt of this House, and is liable to punishment, whether by censure, suspension from the service of the House or commitment, according to the judgement of the House," there are a number of cases of such suspension for varying lengths of time. Standing Order established the process for suspending a Member for certain crimes in 1880.Since that time, the majority of suspensions have been carried out in accordance with the clause, but some haven't. Withholding the Member's pay during the suspension time was one of the sanctions in a few of the situations.

Expulsion

Although it is conveniently addressed here as one of the House of Commons' many punishment options, the expulsion of one of its Members may be seen as an illustration of the House's capacity to control its own constitution. Expulsions of members have occurred formany different reasons. Members who escaped from the law and were never found guilty or had a judgement entered against them have also been expelled.

Members' legal conviction records have been presented to the House when they have been found guilty of crimes that might lead the House to consider expelling them. In other instances, the processes were supported by commission or house committee findings or other acceptable evidence. In order to provide the Member a chance to defend himself, he is required to appear in person if he is absent. However, where it is clear that there would be no opportunity for defence, there is no order for presence. When a Member is required to attend in a Member's absence, the Member is served with the order of the House requiring his presence, unless there is proof that service is impracticable. If he is in detention, the governor of the prison has been instructed to transport him to the House if he so chooses.Expulsion does not make a Member unable to serve in the Commons again if re-elected, even if a fresh writ is issued right once and the Member's seat is instantly vacant.

The House's attempts to remove John Wilkes, who was expelled three times and had his return amended once to favour his defeated opponent, failed in the middle of the eighteenth century, and the earlier resolution that he could not be re-elected in that Parliament following his expulsion was only later expunged from the Journal as "subversive of the rights of the whole body of electors of this kingdom." When Bradlaugh was kicked out in 1882 and then promptly re-elected, there was never any debate about the legitimacy of his victory.The term

"privilege" refers to a benefit one person enjoys over another. It is a benefit given "over and above the ordinary law." According to Black's Law Dictionary, a privilege is an uncommon or extraordinary authority or exemption that is enjoyed by a person, corporation, or class in addition to the common benefits received by other citizens[7], [8].

As stated by Speaker Lucien Lamourex, the parliamentary privilege is what distinguishes members of parliament from ordinary people and gives them a benefit not enjoyed by the general public3. "The sum of the peculiar rights enjoyed by each house collectively is a constituent part of the High Court of Parliament, and by members of each house of parliament individually, without which they cannot discharge their functions, and which exceed those possessed by other bodies or individuals," is how Sir Thomas Erskine May defined "parliamentary privilege."4 It has been referred to as "certain fundamental rights of each House which are generally accepted as necessary for exercise of its constitutional functions" in a technical sense.5 However, in essence, "privileges are secondary to the primary tasks of the House of Commons. It is also settled principle that certain rights exclusively lie upon the law and tradition of the Parliament, while others have been specified by the legislation upon these grounds alone all the privileges whatever are founded.6 " Enid Campbell provided a different definition of parliamentary privilege in 1966, stating that it is "...those rights, powers and immunities which in law belong to the individual Members and officers of a parliament and the Houses of Parliament acting in a collective capacity."7 .Due to the High Court of Parliament's unique genesis as a judicial body, the law of parliamentary privilege developed in the United Kingdom.

The rights possessed by each member individually include the right to free expression, the right to be unrested, the right to contact the sovereign, and the right to the most favourable interpretation of all House actions. The House of Commons also has other rights that are collectively listed, such as the authority to establish its own appropriate structure, control its own procedures, force witnesses to appear and testify, and exercise criminal law.

When the Monarch and the Parliament in England were at odds, this is when the parliamentary privileges first came into being. A member of the House of Commons was sentenced to death during the reign of King Richard II on the grounds that he introduced a measure to cut down on royal household expenses, but the law was later overturned on the grounds that it was made in good faith. Sir Thomas Moore originally argued before King Henry VIII in 1523 for the freedom of members of the House to freely express themselves in the House. But rather than being seen as a right, the ability to speak freely in the House was seen as a favour bestowed upon the King. King Charles I's reign saw a rise in the conflict between Parliament and the monarch. However, the Glorious Revolution of 1689 was the catalyst for the ultimate passage of the Bill of Rights, which recognised the right to free speech and served as a foundation for the recognition of other freedoms.

This ultimately led to the realisation that privilege is essential important for Parliament to run well and for members to fulfil their duties.1 Now, the privileges that we believe fall into two categories.

First and foremost, these are the rights that individual members have, such as freedom of expression and protection from arrest while doing their duties.The privileges we refer to in regard to Parliament go well beyond the two specified advantages, which are exclusive to individual members. The rights against the public are one area where Parliament has

privileges. Second, they include rights against certain members.For instance, the House of Commons has the authority to find any person guilty of contempt of Parliament, and when that authority is used, the court's jurisdiction is nullified. That privilege is significant. On the other hand, the Parliament is free to act against any individual member for whatever actions he has taken that reflect poorly on the institution. These are very serious offences, such being sentenced to jail. The decision of whether or not to imprison a citizen for what the Parliament deems to be self-contempt is not an easy one. It is also difficult to determine whether specific actions taken by individual lawmakers have damaged the reputation of Parliament. The practise that gave rise to parliamentary privilege may be traced to a previous era, and both the Crown and the courts must recognise it. When it first started, Parliament served as a court of law, the High Court of Parliament. It dates back to the Norman Conquest of England, when Curia Regis was established as a body with legislative, executive, and judicial powers. Due to the Court's beginnings as a judicial body, the scope of privilege previously only applied to preventing members of Parliament from having their remarks and debates brought before the Court. Parliament was further separated into the House of Lords and the House of Commons from the fourteenth century. However, the rivalry between the Crown and House persisted, and several members sometimes found themselves behind bars. This persisted up until the 17th century, which ultimately resulted in a civil war and the formulation of the Bill of Rights, which granted legislative powers. To define the scope of parliamentary privileges, the Parliamentary Privileges Act, 1770 was passed. Only two of sections 1 and 2 are still in effect.

Section 2 deals with the immunity granted to legislators, whereas Section 1 deals with the power to sue any legislator for whatever they say outside of the House. The fundamentals of parliamentary privilege were covered by Sir Thomas Erskine May.22 No institution within its purview has the authority to proclaim a piece of law to be beyond the purview of Parliament due to the intrinsic nature of parliamentary supremacy. When anything is classified as a law, it becomes legally binding and can only be repealed by new legislation. "House of Commons is not subject to the control of her Majesty's Courts in its administration of that part of the statute law which has relation to its internal procedure only," it was said in Bradlaugh v. Gossett23.

A court of law cannot look into what is said or done within its walls. The law of the country cannot be altered by a House resolution. However, a Court of Law is not authorised to review the legality of a House resolution prohibiting a member from acting within the House itself in accordance with his legal rights under the general law of the nation.24. In certain instances, the parliamentary privilege in the United Kingdom was contrasted to that in India. In the case of the Powers, Privileges, and Immunities of State Legislatures, In Re 25, Justice Gajendragadkar held that unlike India, where federalism is a key component of the Indian Constitution and the supremacy of the Constitution is protected by the judiciary, ultimately maintaining the balance of power between its constituent units, Parliament in England is sovereign and can make or unmake any law. This distinction between parliamentary privilege in the UK and India was eventually clarified in the case of Raja Ram Pal."The English Cases laying down the principle of exclusive cognizance of Parliament, arise out of a jurisdiction controlled by a constitutional principle of sovereignty of Parliament," it was said. In contrast, the system of government is based on the constitutional principle of supremacy, which is essential to the survival of a federal state.26

Similar to this, Justice Chandrachud asserts in the case of Kalpana Mehta v. Union of India27 that the essential distinction between the two political systems is the existence of constitutional supremacy in India and parliamentary sovereignty in the United Kingdom. According to the notion of constitutional supremacy, every institution must be held to the values outlined in the constitution. Since judicial review is a fundamental component of the Indian Constitution, the use of parliamentary privilege when a court finds that the Commonwealth of Australia accepted the rights and privileges of the British House of Commons. The powers, privileges, and immunities of the Senate, the House of Representatives, and the members and committees of each House shall be such as are declared by the Parliament, and until declared, shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth, according to Section 49 of the Commonwealth of Australia Constitution Act.29

The Parliamentary Privileges Act, which was passed later in 1987, codified the privileges granted by the Parliament. Additionally, the privileges are a component of the common law of the nation, as stated in Section 49 of the Constitution.

The sole immunity that the Houses and its members have is immunity from impeachment and cross-examination in court. There are two types of immunity: the first is the right to free expression, and the second is the immunity of legislative procedures from judicial interrogation. On the grounds that the House's decisions did not adhere to its own process, the courts will not challenge their validity.

In this Act, the term "proceedings" was defined. It comprises testifying in front of a house, presenting or submitting a document, creating a document specifically for the House's needs, and publishing such a document30. The part that allows courts to limit the Parliament's ability to accept evidence is one of the most crucial. According to 16(3), "In proceedings in any court or tribunal it is not lawful for evidence to be tendered or received, questions to be asked, statements to be made, submissions to be made, or comments to be made in relation to proceedings in Parliament, by way of, or for the purpose of: (a) questioning or relying on the truth, motive, intention, or good faith of anything forming part of those proceedings in Parliament."(b) otherwise challenging or establishing the sincerity, motivation, purpose, or good faith of any individual; or (c) formulating inferences or conclusions, or encouraging the formulation of inferences or conclusions, in whole or in part.

The ability of the court to evaluate any legislative, executive, or judicial action is known as judicial review. The Indian Constitution's Article 13(2) contains the majority of it. According to this Article, a state may not enact any legislation that violate basic rights. If a state passes such a legislation, the Supreme Court may use its judicial review rights under Articles 32 and 226 of the Indian Constitution[9], [10].

The second issue to be addressed is that of the restrictions placed on such free expression. The text of Article 105 specifically mentions one restriction on free expression. According to Article 105, the right to free expression is constrained by parliamentary norms and regulations as well as constitutional laws. Article 121 of the Indian Constitution mentions another restriction. It states that the House 34 of Parliament is not permitted to debate the behaviour of Supreme Court and High Court judges.The basic right to speech and expression is comparable to that indicated in Article 105, thus that is another issue to take into account.

Members of the House have a right to free expression that is not limited by Article 19(1) or any of its limitations. To successfully represent their constituents in House proceedings, members of the House must be free from all kinds of limitations and restrictions.

CONCLUSION

It's crucial to strike a balance between the right to free expression and the requirement to protect the integrity of the court. Although it is legal for anyone to criticise the judiciary, the line is crossed when such criticism results in disrespectful actions that impede the administration of justice or disobey court orders. Finding this balance protects the authority of the courts while respecting individual speech. Enforcing contempt legislation while upholding due process and the right to a fair trial present difficulty. To avoid the misuse of contempt powers, transparency, uniform implementation, and conformity to legal processes are essential.The idea of contempt of court remains crucial as the judicial system changes to handle modern complexity. The concepts of justice, accountability, and public trust in the judicial system are strengthened when contempt powers are used responsibly and that people's rights are upheld. The judiciary protects not just its own integrity but also the tenets upon which democratic societies are based by maintaining the sanctity of courts.

CHAPTER 6

ANALYSIS OF LEGISLATION AS LEGAL POWER

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ABSTRACT:

As the main source of law, legislation has tremendous legal clout and is crucial in determining how nations' legal systems are structured. This essay examines the relevance, function, reach, and ramifications for governance and justice of the many facets of legislation as a source of legal authority. It looks at how laws are made by legislative bodies, how they represent the will of the people, and how they respond to changing social requirements. The investigation looks at the legislative process, from writing and debate through passage, and how it affects many facets of legal, social, and economic life. It examines issues with guaranteeing the clarity, coherence, and adaptation of law in a world that is changing quickly.

KEYWORDS:

Governance, Legislation, Legislative Process, Legal Power, Rule of Law, Societal Needs.

INTRODUCTION

The future's legal foundation, which has strong ties to the past, is law. Legislation that is consciously created reflects legal principles and derives its legitimacy from state institutions. It serves as a vehicle for the expression of 6public policy, and the legislative and executive branch each have a role in this process role. Legislation is the only administrative action that is more distinctive. The most significant source of law in a society is legislation. To cite The public good ought to be the object of legislation," wrote Jeremy Bentha The rationale should be grounded in general utility, However, the truth is that The Executive Branch of Government creates laws rather than the Legislature. Delegated legislation or the creation of administrative rules has so greatly increased. Significance in the twenty-first century. Modern administrations are distinguished by a tremendous increase in the number of government actions. Unprecedented technological and scientific advancements made during the 20th century has led to a tremendous expansion in the variety and extent of duties and activities of the government that contributed to the expansion of state activities and a matching increase in administrative infrastructure, as well as the new political and administrative structures emerging. These modifications have a tendency to disturb the conventional equilibrium between the administration and the legislature These have brought to light certain issues with the legislative process in stark perspective oversight of the executive The Akzin defines the word "legislation" in a contemporary meaning. assumes a significant level of political and legal differentiation[1], [2].

basic guidelines for people or organisations 7. The main justification for delegated legislation is that it is required when Parliament does not thoroughly address minor issues. It is the end result of a certain legislative body and refers to the pursuit of the creation of rules-equivalent legislation. The fact that an Act of Parliament was created by a body having the authority to create law is what qualifies it as legislation. It is thus absolute8.According to Griffith, to

legislate is to either carry out the whole legislative process or to authorise the action of legislation that transforms a legislative proposal into a law. In this respect, the role of passing laws now is more akin to a governmental one than a parliamentary one9. The chambers of administrators, not the legislature, are where the majority of the legislation that regulates people is created. With the overstretching of governmental operations in the current welfare State, subordinate legislations have emerged as a crucial phenomenon. Due to the fast expansion of administrative procedures, administrative rule-making or delegated legislation has acquired crucial significance even in the twenty-first century. Due to the growing complexity of modern administration, the difficulty of passing complex legislation through the method of parliamentary debate and discussion, and the numerous technical details of the matters, administrative authorities or other agencies now have a great deal of power to create ancillary or subsidiary legislation10. Ex post facto monitoring and control are how parliamentary control has shown itself in the vast field of administration[3], [4].

Subordinate or delegated legislation refers to any use of the legislative authority granted by or pursuant to a Parliamentary act. A broad range of organisations, including government agencies, municipal governments, public companies, and private groups, may be granted the ability to make laws11. Furthermore, those granted to the government are conveyed in a number of ways, including via orders, statutory instruments, regulations, rules, directives, plans, and instructions. These phrases all refer to subordinate law.Legislation that is derived from a source other than a sovereign power is referred to as delegated legislation. Depending on whether the laws is a Central or a State law, the authority may be granted to the Central Government or the State Government12. The right to make rules is often granted by legislation, and the broad principles are laid forth there as well. But the guidelines outline the specifics that must be filled out in the parent Act. The rules cover the technically complex issues that have no bearing on considerations of policy. Regulations often address technical or other aspects that do not impact the policy of the law.

According to conventional wisdom, the executive's role is to carry out the legislation passed by the legislature. In a perfect state, only lawmakers who are answerable to the voters directly wield the legislative authority. In addition to performing purely administrative duties, the executive also handles a variety of legislative and judicial tasks. In theory, only Parliament in the UK has the authority to enact laws. Throughout the nineteenth century, it evolved into a government role. Prior to the Reform Act of 1832, individual members of the House of Commons or the House of Lords were mostly in charge of initiating legislation, but following the Act, the government took on a growing amount of this responsibility13. By the turn of the 19th century, all changes were done. As a consequence, Parliament continued to be the law-making body, while other authorities issued laws. The legislature has given the executive branch legislative authority even in the United States of America, where the theory of delegated legislation is not generally acknowledged.

The Executive runs the Government in accordance with American political theory. However, the legislature forms the government's bureaus, boards, commissions, and other organisational structures. Thus, there has been a tremendous rise in the quantity of administrative legislation for improving the effectiveness of laws, making them more flexible to changing societal demands, and relieving the legislature of its onerous workload15. These laws and the administrative legislation that is created by various non-legislative entities under the authority of those statutes are like a kid and a parent. Lawmaking may be seen as a

collaborative effort between the legislature and the courts. The 'doctrine of separation of powers' mandates that the legislature create laws independently. It disallows the legislative branch from carrying out duties that are beyond the purview of the executive branch or the judiciary16.

A number of significant events that happened in the first decade of the 20th century contributed to the expansion of delegated legislation. The legislature could have passed every piece of legislation required during the laissez-faire period, when the government merely performed a few restricted duties, but it is now unable to do all of the legislative work on its own without assistance. Delegated legislation is one way to save time throughout the legislative process. The legislature restricts itself to establishing broad policies and defers to the relevant administrative agency17 the responsibility of moulding and creating specifics. The welfare State has replaced the laissez-faire philosophy as the dominant idea. The State's functions also grew as a result of this shift in its role. The relevance of subordinate laws increased as a result

In the public and private sectors, dynamism replaced the laissez-faire philosophy19. A new social awakening occurred, and as a consequence, the state has come to directly govern a significant portion of the socioeconomic development of the populationIt was obvious that the old government structures weren't up to the new challenges. To face the challenge of contemporary times, administration has seen the largest upheaval outside of courts and legislatures21. Due to the impact of the Sociological School of Jurisprudence and the state's adoption of the social engineering and solidarity in legislation policies, legislators must approve a significant amount of legislation.

DISCUSSION

Ex-Lord Chancellor Hewart outlined the causes of the emergence of delegated legislation in his book "New Despotism," which was released in 1929. In recent years, "a practise has grown and is rapidly expanding, whereby Parliament delegate to the public departments more or less wide powers of legislation," it has been said. 23. The evils that had developed were attacked in Lord Hewart's “Delegated legislation is the term for the majority of laws that are enacted by the executive branch on behalf of the legislature. The term "delegated legislation" is used in two different senses, as in the exercise by a subordinate agency of the legislative power delegated to it by legislature and the subsidiary rules or regulations made by the subordinate agency by way of the power delegated to it25, according to the Donoughmore Committee or the Committee on Ministers Powers, which was appointed in the UK in 1932 to report on the problem of delegated legislation.

It is accurate to say that even if Parliament meets every day for the whole 24 hours of today, it may not produce the amount and calibre of laws that are required. Thus, the need for administrative rulemaking has arisen26. Delegation of rule-making authority is hence a compulsive need. It also benefits the executive since a Parliament with a tight deadline for passing legislation may be inclined to adopt skeletal legislation with the specifics to be added later via the creation of rules and regulations27. The majority of laws passed nowadays take the form of statutory instruments. It is essential for the government to function effectively in regards to social security measures, health concerns, law and order, etc. As a consequence, the executive's legislative authority increased.Delegated legislation in the USA was founded

on the tenets "delegatus non potest delegare" and "theory of Separation of Powers."28. The separation of powers principle mandates that the legislature enact laws on its own[3], [5].

It disallows the legislative branch from carrying out duties that are the purview of the executive branch or the judicial branch29. A strict application of the theory of separation of powers, however, is both impractical and undesirable. If the legislature established a reasonable norm, principle, policy, or guideline to regulate the use of the delegated power, delegation of legislative authority was permitted. The provision of some protection against potential misuse of delegated law, not the norm, is what matters.30. The administrators have a shield in the form of delegated law.

Numerous variables influence the development of delegated law. Due to the shift in the government's duties, the state's legislative activity intensified, and the legislature neglected to give some issues careful thought. As a result, the executive was given control over subordinate laws. The legislature's creation of laws sometimes calls for technical or specialist expertise. The executive branch, local governments, and specialist organisations are relied upon for this purpose.

Legislation that has been delegated is less formal and hence more readily amendable. In the current situation, many administrative agencies and regulatory bodies carry out government duties. Delegated legislation is increasing for other reasons as well. One of them is the need for the government to respond quickly in an emergency. Here, the executive's ability to make rules has more significance.The Delhi Laws Act's mention to the delegation issue was the first to do so in India31. The restriction is that no 'essential authority' of law may be transferred. Therefore, the legislature is not permitted to assign the responsibility for formulating legislative policy to a third party. Although the challenged Act was upheld, His Lordship Mr. Justice Fazl Ali has noted that delegation of legislative authority has reached a "high water-mark"32. Although Indian courts have ruled that the Constitution forbids the delegation of vital legislative authority, in practise they have supported delegation to the greatest extent possible. It is now widely acknowledged that it is preferable to focus on avoiding or reducing the misuse of such delegated power33 rather than raising objections against the delegation of legislative authority.

The Supreme Court has stressed the need of delegated legislation in a number of rulings. Regional Director v. St. John's Teachers Training Institute, NCTE34, the Supreme Court had noted that when the Act enters into effect, the statutory authority carefully draughts delegated legislation. Delegated legislation was sometimes regarded as being undemocratic since it is produced by the executive branch rather than the legislative. It was even seen as an expansion of the bureaucracy's authoritarian powers. Later, however, due to its actual administrative need, the opposition to delegated legislation has subsided.

assemble with little warning and produce laws on the spot. Therefore, it is advisable to issue the required laws and regulations to address the situations35 in order to pre-arm the government with the necessary authority to respond immediately. The reach of state activity is always extending into new areas. Since the Parliament is unable to dedicate enough time to discussing every little detail of every subject topic, bulk legislation has become necessary.

The Supreme Court has highlighted the factors that make delegated legislation necessary, as it did in the instance described previously. The Hon'ble Supreme Court said in St. John's

Teacher Training Institute v. Regional Director, NCTE36 that the legislature's overburden and the complexity of contemporary society's requirements are the primary justifications for delegated legislation. After the act is passed, it is hard to assess the administrative challenges. Additionally, delegated legislation fills this gap.

The system of delegated legislation has flaws; thus it is not fully faultless. The executive is in charge of establishing and deciding policies and principles pertaining to the subject matter of legislation since the legislature often approves Acts in "skelton" form, which only contains the most basic general ideas.

In certain cases, the ability to enact subordinate legislation may be limited to a specific time frame, thus it is important to verify that the person to whom the authority has been granted exercises it. It is the draftsman's obligation to ensure that the subordinate delegation is effective and to provide the most logical structure possible38. Although the method of delegated legislation has benefits, it also has certain drawbacks. Therefore, it is vital to develop safeguards to reduce the sense of unease and concern that the executive may abuse the authority that has been entrusted to it39.

Creating appropriate controls and safeguards is therefore the duty in the field of delegated law. The Procedural Control Mechanism is the initial level of control. Before rules and regulations are created by the administrative authorities, procedural control is exercised via the publishing of delegated legislation and by prior consultation with concerned parties. Administrative rule-making becomes democratic thanks to this control mechanism, which also raises its acceptability and affectivity. The fundamental tenets of judicial review of administrative action are relevant to the amount of judicial supervision over administrative rule-making. The level of immunity that a legislative act would have over subordinate law is incomparable40. The notion of extra vires is primarily used to exert judicial oversight over delegated legislation. The surveillance of delegated legislation, as opposed to delegating legislation, constitutes the second degree of control[6]–[8].

The "present study" is primarily focused on the oversight of delegated legislation, or legislative control. Legislative control monitors executive authority and calls attention to any instances of power abuse. There are two degrees of legislative authority over delegated legislation. Courts in the United States only have to consider whether administrative rulemaking is valid, therefore they have less power over delegated legislation. Because of the UK's idea of parliamentary sovereignty, the authority that Parliament has over the development of administrative rules is particularly strong. In India, parliamentary oversight of delegated legislation is a constitutional duty. Today, the issue is not whether there is delegated legislation, but rather, what controls and safeguards can be put in place to prevent abuse of the authorities granted. Legislative control, procedural control, and judicial control are the three main parts of the control system for delegated legislation. Since politicians sometimes lack legal expertise, legislative oversight over delegated legislation is obviously ineffective.As a result, a method that allows for public engagement in the ratification of the regulations is being sought for.

The legislative house has the authority to set rules governing its operation and how business is conducted. The Kerala Legislative Assembly has made provisions for the creation of the Committee on Subordinate Legislation in order to carry it out. The first Committee was established after the creation of the Kerala Legislative Assembly on May 2, 1957. Since that

time, the Committee has been diligently and methodically working.The purpose of the Committee on Subordinate Legislation is to ensure that the Government does not go beyond the legislative rule-making authority granted to it by Parliament. The ability of the government to enact laws is vast. There is a risk that the Government might progressively usurp the legislative authority of Parliament or that the regulations could exceed the authority granted to the Government to make rules if this power is not adequately monitored by Parliament45. According to the Lok Sabha's Rules of Procedure and Conduct of Business, a committee on Subordinate Legislation must be established in order to examine and report to the House on whether the executive's authority to enact laws, including those granted by the Constitution or delegated by the Parliament, is being used appropriately46. Through mutual dialogue, the Committee operates. The report of committees is highly valued by the government, and it makes an effort to put its suggestions into practise. Similar to this, the Rajya Sabha Committee reviews all orders, whether or not they are presented to the Rajya Sabha, as well as bills that include clauses relating to the delegation of legislative authority. The legislative branch of a contemporary welfare state is covertly overwhelmed with authority. Therefore, the legislature must transfer part of its legislative duties to the Executive in order to fulfil the State's ongoing demands. In these situations, the legislature establishes the skeleton and transfers rule-making authority to the executive. Thus, after formulating a legislative policy, the legislature may provide an administrative agency discretion to carry out the policy. The issue is important because it examines the volume of work completed, the restrictions on the capacity to delegate, and the effective application of policy.

The primary duty of Parliament is thought to be the creation of laws. Even while private members also propose laws, the executive is given the reins of initiative47. Due to the growing complexity of modern administration, the difficulty of passing complex legislation through the method of parliamentary debate and discussion, and the specifics and technical nature of these matters, administrative authorities or other agencies now have a lot of power to create ancillary or subsidiary legislation48.According to societal demands, there has been a tremendous rise in the amount of administrative laws. A growing child is asked to relieve the parent of the burden of overwork and is capable of attending to minor matters while the parent manages the main business49. Administrative legislation is made by various non-legislative bodies under the authority of statutes. It is directly related to those statutes. The concept of state has evolved, which has led to a rise in state functions. Delegated legislation became necessary and unavoidable as a result of this development. The best way to characterize Indian politics is as a representative parliamentary democracy. The trio of words. The three pillars of a political system are democracy, representative government, and parliamentary government50. Delegated legislation is the outcome when a law-making power specifically permits another authority to carry out supplemental law-making.

the topic of legislative oversight of delegated legislation is covered. The concern that arises is whether the legislatively enacted controls and protections, which take the shape of a subordinate legislation committee, are fully functional. It is primarily a civic responsibility to ensure that the executive is not abusing the authority granted to it by passing laws improperly, and that it is acting in the best interests of society.When legislatures began giving the administration significant amounts of legislative authority, the conventional notion that maintains the division of powers among the three branches of government came under tremendous pressure.52. Every issue of public policy must now be governed by law in order

for the will of the people to prevail due to the expansion of parliamentary democracy.53 Additionally, "the executive is given power to devise suitable rules consistent with the provisions contained in statutes" as the volume of legislation grows. The legislature is required to carefully review the regulations created in order to ensure that the authority so granted is being used appropriately. For this reason, the regulations are being presented to the legislature, giving them a chance to review them even though they may or may not be updated. The fourth branch currently has a more tangible influence on residents' lives than all the other branches combined. The fourth branch's expansion has come at the price of Parliament's ability to make laws. There is minimal accountability for these rules.The legislature is fully capable of giving other bodies the authority to set the rules and carry out the legislation it has passed. After establishing the legislative policy, the legislature may provide discretion to an administrative agency for the implementation of the policy and let the agency figure out the specifics within the parameters of the policy.54 The limitations of delegation are also inferred implicitly from the Constitution's provisions.In India, it is a question of construction to determine how far delegation is permitted from the specific provisions of the Constitution. Furthermore, the fundamental legislative duties cannot be transferred. The enactment of the legislative policies and its establishing of standards into a rule of law is required. The first control is exerted at the time the enabling Act is passed while the legislature carefully reviews the delegated legislation. When a Bill is being considered in the House, this is the first chance. Members may object to the scope or style of delegation approved by this clause. Members of Parliament aggressively challenge the Government on its ability to make rules by raising questions during question period55.

First, before being issued, the regulations should be presented to Parliament for approval as the second level of control, often in draught form. Giving Parliament a chance to debate the merits of the regulations will allow them to suggest that a specific rule be changed or repealed. The second measure of protection is the creation of a Committee to examine delegated legislation on behalf of the Parliament. The Committee on Subordinate Legislation does not strive to bring in a substantive topic, but rather confirms in each instance that the regulation is within the parameters of the Act. This Committee furthermore confirms that the rules were posted on the table as soon as possible and that they were there for the designated amount of time. These protections guarantee that the executive branch won't be accused of the "new despotism" and that Parliament's legislative authority won't be curtailed.The Lok Sabha and Rajya Sabha Rules of Procedure also include a provision for committees on subordinate legislation to continuously monitor the vast number of subordinate laws. The purpose of the current research is to analyse a selection of reports from the Twelfth, Thirteenth, and Fourteenth Kerala Legislative Assemblies from the years 2006 to 2019. The Internal Working Rules of the Subordinate Legislation Committee of the Kerala Legislative Assembly are also used in this evaluation, which also aims to evaluate how the Kerala Legislative Assembly on Subordinate Legislation works and operates57. The aforementioned reports make clear that, in order to lessen the difficulties or hardships experienced by the members of the public who are affected by the rules and to increase administrative effectiveness, the Committee has made a number of sound and useful recommendations, observations, and suggestions. Due to the state's increased legislative activity in response to the shifting demands, roles, and obligations of the legislature in a changing society, delegated legislation has grown quickly. The issue is that the legislature is overworked and compelled to deal with significant policy issues, thus it only has a very limited amount of time to address

the issues in-depth. The issue of whether the delegated law needs a less formal process to allow the Administrative agency to make modifications to it more quickly emerges. The division of the topic into chapters, with certain alterations about the order of the chapters, is a crucial stage. The history, growth, and evolution of the Committee system are examined as a prologue to a study of the delegated legislation and its many elements since the issue primarily concerns the efficacy of the Committee on Subordinate Legislation.

CONCLUSION

Creating law that is understandable, consistent, and flexible presents difficulties. Legislative frameworks must stay adaptable to account for unanticipated events and technology improvements, and complex legal terminology may make it difficult for people to understand and access it. Every aspect of society, from individual rights to economic laws, is impacted by legislation as a source of legal authority. It establishes standards for commercial conduct, protects human rights, and offers a framework for resolving conflicts. Its correct implementation also depends on a strong judicial system that fairly interprets and applies the law. In a time of fast change, law must be continuously reviewed, revised, and synchronised with social advancement to remain relevant and effective. The effectiveness and responsiveness of legislation may be improved by embracing technology and incorporating a variety of stakeholders. The legitimacy of laws demonstrates civilizations' ability to rule themselves via accepted standards. Legislative bodies may make sure that the laws they enact actually represent the common objectives for a fair, egalitarian, and orderly society by improving the legislative process, encouraging openness, and involving people.

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CHAPTER 7

HYPOTHESIS OF SUBORDINATE LEGISLATIONS

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ABSTRACT:

Subordinate laws, usually referred to as delegated laws or secondary laws, are an important part of the legal system in many countries. This essay explores the many facets of subordinate laws, including their function, traits, legal foundations, and ramifications for rule-making and government. It looks at how main laws provide executive bodies the authority to make certain rules and regulations in order to deal with specific, technical issues. The paper examines the procedures for creating, reviewing, and putting into effect subsidiary laws, emphasising their importance in improving the adaptability, efficiency, and flexibility of legal systems. It also examines issues with judicial review, accountability, and achieving a balance between executive authority and democratic supervision.

KEYWORDS:

Accountability, Delegated Legislation, Executive Power, Governance, Judicial Review, Rule-Making.

INTRODUCTION

To a significant degree, although not entirely, the Committee on Subordinate Legislation is successful in establishing sufficient parliamentary authority over the executive. Committees are particularly effective legislative control mechanisms if issues are well studied. The Committees resemble small-scale legislatures. The Committee determines whether the regulations are in line with the Statute's overarching objectives. The Committee may investigate the unreasonable delay in subordinate legislation publication. The executive functions are closely monitored by the Committee on Subordinate Legislation. It is urgently necessary to start new initiatives in the Committee on Subordinate Legislation's current functioning structure in order to improve it. Examining the available publications on Parliamentary Procedures, Rules of Procedure, and Business Conduct, as well as journals, periodicals, newspapers, online reports, and numerous Committee reports, constitutes the review of literature. In most of the established democracies, parliamentary standing committees are significant legislative institutions. In many nations, like the USA, UK, Canada, Australia, etc., the committee system is a well-established institution, hence those nations have a wealth of literature about the system[1], [2].

When it comes to the Indian situation, a comparable investigation of the committee structure and related publications are not available. Although books are accessible, the majority of the material about India's committee system is in the form of articles. The majority of them are reflective or opinion-based.The amount of significant input coming from in-depth study and book publishing is still minuscule.One of the oldest publications in this area that is often cited is Practise and Procedure of Parliament by Kaul, M.N., and Sakdher, S.L., originally published in 1968. The succeeding versions of the book include in-depth details regarding the

committees and the processes by which they operate.In a similar vein, Volume I Parliamentary Procedure: Law, Privileges, Practise and Procedure by C. Subhash Kashyap, originally published in 2000, fits the bill. A significant amount of the book is devoted to the committee system, however it only discusses its procedural and legal aspects. The extensive History of Parliament study by Kashyap, C. Subhash, serves as a valuable point of reference for comprehending the historical background of the committee system.

The idea of several parliamentary committees in India is discussed by B.B. Jena in his work "Parliamentary Committees in India." The author also explores the recent evolution of the committee system and identifies the fundamental distinctions between committees in India and the United Kingdom. This literary work may be regarded as a must-read for people who work with parliamentary committees.John Arder's work, Constitutional and Administrative Law, clarifies the fundamental ideas of constitutional law. It illuminates administrative law by providing a thorough picture of governmental entities. And this has aided in the development of scholarly literature on the topic.A number of articles on different aspects of the parliament and experiences with parliamentary democracy in India are included in Malhotra, G.C.'s edited edition Fifty Years of Indian Parliament, released by the Lok Sabha Secretariat in 2002. The committee system is covered in this volume's section. The primary literatures on which the research was based are the books listed above. The researcher went to the important Kerala Legislative Assembly Library, the Secretariat Law Library, the State Central Library, the Kerala University Library, the Libraries of CALSAR, the Department of Law, and the Law College for this. The goals of the thesis were determined based on the materials found[3], [4].

This book provides a thorough understanding of administrative law using well-known cases and UK-specific laws. This book aims to provide administrative law transactions as well as a study of recent advancements in the human rights sector. The book "Administrative Law" by Craig, P.P. provides a thorough analysis of the law by drawing on its past. This book goes into considerable detail in its consideration of court rulings and administrative rules. It also sheds light on the administrative system's historical context and the functions of the legislative and executive branches in the formulation of administrative rules. A thorough analysis of the legislation has also been done.

The scope and impact of judicial review of legislative acts are well explained in Jha, Dr. Chakardhar's Judicial Review of Legislative Acts. The concepts developed are well explained in this work. It also emphasises the need of the judicial review process and its significance todemocracy. The researcher has used a mix of empirical and non-empirical research methods,depending on the needs and relevance of the study issue for society. Both primary and secondary sources have been used to identify the pertinent and essential facts. This research has employed both historical and analytical methods.

The events and conditions that contributed to the development of the committee system as a whole, notably in India, have been studied using historical methods. By analysing committee reports for a certain time period, an analytical approach is utilised to evaluate the efficacy of the Committee on Subordinate Legislation. The many sources that were used are specifically identified and recognised in the end notes of the corresponding chapters, and they are also cited once more in the bibliography at the conclusion of the thesis.

The researcher primarily examined several Subordinate Legislation Committee reports from the Kerala Legislative Assembly. The Committee's reports are more trustworthy resources for understanding how the system works. With this in mind, the study's main focus was a thorough review of the Committee on Subordinate Legislation's findings.The researcher had also carefully examined different SROs that the government had announced in accordance with its own guidelines. By referring to the Subordinate Legislation Committee's internal working procedures, a study of the proceedings of its meetings has also been handled. The researcher has made an effort to highlight how important the committee's members are to its efficient operation. To reach a decision, discussions based on prepared questions were also used. The other techniques use secondary sources, which are in-depth facts gleaned from books, journals, case laws, research articles, newspapers, and other sources. Since the focus of the study is mostly on Kerala, the researcher has referred to the Rules of Procedure and Conduct of Business in the Lok Sabha, Rules of Procedure and Conduct of Business in the Rajya Sabha, and primarily the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly. It has also been necessary to rely on pertinent information found in books, journals, magazines, conference and seminar proceedings, as well as online[5], [6].

DISCUSSION

The Indian Constitution gives the legislature the authority to enact laws for the nation. Such authority certainly cannot be granted to other entities. However, the legislature cannot carry out all the duties because of the welfare state's wide range of activity. Delegated law comes into effect in this circumstance. The ability to delegate is a part of the legislative plenary authority. But it's important to keep in mind that such delegation authority has restrictions, such as not ceding fundamental legislative authority to its delegate1.

According to constitutional philosophy, the legislature is primarily responsible for creating laws. The legislature is a body made up of elected officials, and when that body enacts legislation, the public should be in agreement with it. However, under parliamentary government, the executive must have a part in proposing laws. It is true to say that the process of creating administrative rules is today seen as "useful, inevitable, and indispensable." Nearly all of a citizen's actions and those of the whole society are governed by secondary law. There are several forms of delegated legislation. It is the creation of laws without the involvement of the legislature and takes the form of rules, regulations, bylaws, order schemes, notices, etc. Sometimes, delegated law is referred to as "ancillary," "subordinate," "administrative law or quasi-law.The administrators are protected by delegated legislation. It consists of legislation established by statutory bodies and outside of Parliament, which is permitted by the authority granted by the parent Act5. The act of creating statutory instruments by a body subordinate to the legislature in the execution of the authority granted by the legislature is referred to as "subordinate legislation"6.

For delegated legislation, there are many definitional formats. The phrase "delegated legislation" is defined as follows by the committee on ministerial powers: Delegated legislation may refer to subsidiary laws issued by ministers in the form of departmental regulations and other statutory rules and orders, as well as the exercise of legislative authority by a subordinate authority, such as a minister, who has been granted such authority by parliament.It is a method of relieving the strain on the legislature so that it can focus on formulating policy. There is no law passed by the legislature today that does not transmit

some authority of the legislature: to the Executive9 due to the broad use of this kind of delegated legislation in current administrative procedure.If a statute is not read in conjunction with the delegated legislation created thereunder, it may be inaccurate, incomplete, difficult to understand, and even deceptive.The premise of law that the authority of delegated legislation is a fundamental part of legislative power as a whole is now well established, and in contemporary times, the legislature enacts laws to address the issue of socioeconomic problems10. This kind of legislative authority is delegated rather than being original11. Delegated legislation is defined differently by Willis. He claims that "in essence, establishing a general rule is legislation, and delegated legislations is the best name for the process carried out by an inferior at the superior's command[5], [6].

Therefore, this definition suggests that the delegate is subordinate to the delegator and that he obeys the latter's instructions. Although a delegate is not always superior to the delegator, it should be recognised that the delegated authority is subservient to the originating power of parliament. For instance, in Britain, the monarch receives power delegations from parliament, but this does not imply that the crown is seen as having less authority than Parliament. Delegation does not imply a command, however. The majority of the time, it is optional and facilitating in nature. Legislation that originates from a body other than the legislature, which is the sovereign power, is referred to as subordinate legislation since it depends on the same supreme authority for both its legitimacy and existence. They may be seen as having their roots in the delegation of parliamentary authority to subordinate bodies, which places the execution of those responsibilities under the supervision of the sovereign legislature13. This power may be granted by the federal or state governments. Whether the parent Act is Central or State14 will determine this. There are instances when Central laws provide the State legislative authority, and there are other instances where both the Central and the State derive authority for enacting rules15. In several legislation, the word "appropriate Government" refers to the Central or State Government depending on its authority over a particular issue[7], [8]

The rapid expansion and expansion of the executive's legislative powers is one of the distinguishing characteristics of a contemporary democratic nation. All legislators strive to look into the future and make provisions that are as broad as possible for any scenario that could occur in enforcing the law. However, it is not always achievable. To decide the circumstances in which the law is to be implemented and the potential scope of its application, the legislation has thus delegated its responsibility to a specific authority. In a perfect world, the legislature, which is directly answerable to the president, would be the only body with the authority to enact laws. However, in actuality, in addition to its basic administrative duties, the executive also has legislative and judicial responsibilities. It develops with the advent of the Welfare State concept19. The evolution of the idea of a state has significantly expanded the roles of a contemporary government and legislature.

Rule of law and judicial scrutiny are more important in welfare states. Additionally, in a democracy, the legislature often exercises joint authority with the executive and other administrative bodies. As a result, legislation has become increasingly technical and complicated. The expansion of rules, regulations, bye-laws, plans, and orders issued by different administrative organs under the power granted by parliament20 is a direct result of this progress.Various types of ministerial or departmental legislation exist, including rules, regulations, bylaws, plans, orders, directives, and warrants. In India, "delegated legislation" is

defined as rules, regulations, orders, notifications, and bye-laws. The same statute may also utilise a variety of terms to indicate when an administrative body or agency is using its subordinate lawmaking authority21. There is "no terminological consistency in the family of delegated legislation," according to Prof. Sathe.22 Additionally, phrases like orders, rules, and regulations are all used interchangeably. In the UK, only Parliament has the authority to pass laws. In practise, the legislature has given the executive legislative authority since the idea of delegated legislation is not acknowledged in the USA. Following World War II and in India from 1973 to 1977, administrative law had a remarkable rise. For certain purposes, the system of delegated legislation is both legally permissible and beneficial, but only within specific bounds and with particular protections. Summarising the causes of the emergence of delegated legislation.

Parliamentary time is under a lot of pressure. If more procedural and incidental issues can be removed from thorough parliamentary debate, the parliament will have more time to explore fundamental legal ideas. The executive is given authority to fill in the details once the legislative creates the skeleton. Modern legislation often deals with complex technological issues. Aside from the general concepts involved, it is difficult to incorporate technical issues in a Bill since Parliament cannot properly debate them. The members are unable to handle difficult technological issues. It is challenging to develop the administrative infrastructure in time to handle all the necessary requirements for major, intricate reform plans. Additionally, it is hard to anticipate all the unforeseen events and local circumstances for which accommodations would ultimately need to be made. Additionally, it is said that requiring prior approval from Parliament for every executive action would severely hinder and handicap the executive in performing technical and sophisticated tasks.Over the last 50 years or more, parliament has approved a rising amount of legislation, expanding the scope of governmental activity across a wide range of industries and often including provisions with high levels of complexity25. It allows for ongoing adaptation to unknowable future circumstances without the need to change the law, which is why flexibility is so important.

The process of delegated legislation allows for the quick application of knowledge and the outcomes of consultation with parties who may be impacted by the implementation of new Acts. Additionally, it allows for experimentation and would provide chances to apply experience-based teachings. It further assists in putting important adjustments into practise by drawing on experience in various circumstances. A sudden necessity for legislative action arises often in contemporary states. Delegated legislation is the viable remedy in every caseUrgency and urgency are very important issues. In order for the executive government to respond to situations of emergency that impact the whole country, Parliament must give it practically full authority in advance. Delegated legislation is often created by Parliament as Statutory Instruments28. Orders in Council are the most significant forms of delegated legislation.Even though they have different legal forms, there is always overlap between delegated legislation and administrative regulations or quasi-legislation.

The administration does not have a broad authority to amend laws passed by the legislature, and the authority it does have comes from delegations made in accordance with particular enactments. Delegated or subordinate legislation is the term used to denote this sort of action, or the authority to augment law. Delegation of power refers to the transfer of authority from higher to lower levels of government, such as when the legislature transfers authority to the executive branch of government to create legislation for the performance of administrative

duties. It is important to differentiate between "delegated legislation" and "subordinate legislation." Delegated law indicates that Parliament has granted this authority. In this case, the term "delegation" does not necessarily apply to all subordinate laws. A Parliamentary Act or the Constitution may be the basis for the issuance of subsidiary legislation. It is delegated in the first scenario but not in the second. The Lok Sabha Committee's methodology is followed by the Committee on Subordinate Legislation when it comes to reviewing delegated legislation. So, the Secretariat conducts a preliminary examination. The Chairman of the Committee32 presents the Committee's report to the House. Articles 98, 148, and 309 provide the president the power to enact regulations. These Constitutionally mandated regulations are not instances of delegated legislation, but they are subordinate to legislative law since they are subject to it. Consequently, "subordinate legislation" has a broader definition than "delegated legislation." All delegated law is subordinate, but not all subordinate legislation is delegated, to put it succinctly33. In India, the phrase "subordinate legislation" is used rather often. Furthermore, the subsidiary laws are enforceable against both the general public and the government. Since it has the same legal impact as legislation and is obligatory on both the government and the general population. Administration of law

The legislation drafted by statutory companies with delegated legislative authority is often referred to as "regulations" or "bye-laws"36.These terminologies are perplexing since the same terms are used for various purposes while alsobeing used for the same thing. The phrases "rules and regulations" were not previously used consistently.

The Donoughmore Committee proposed that the term "regulation" be used to refer to a tool used to exercise the authority to adopt a rule of procedure. Sometimes, the terms "rules" and "regulations" are used interchangeably. The term "rule" is the one that is most often used in relation to administrative law in India. The words "regulation" and "rule" are acceptable abroad but are used for procedural concerns in the UK. In India, regulations are often regarded to deal with administrative detail, while rules are thought to handle concerns of a broad character.

Regulations37, compared to rules, are relatively inferior since they are often created by a statutory body, such as a Board, or another subordinate authority.38 In India, it is customary to provide the government the right to make rules, and when a specific subordinate authority is chosen to regulate a particular issue, the subsidiary law usually takes the form of a regulation. Delegated legislation is often referred to as "Orders"39. However, it is questionable if there is a definite difference between the phrases "regulation" and "rule." In reality, they are usually used arbitrarily, and a subject that is regularly covered by a "regulation" made under one Act is not necessarily covered by a "rule" made under another Act40.

It is often allowed for the relevant authorities to create "rules" "to give effect to the provisions of the Act." In certain circumstances, this is supplemented with a clause that permits another body to create "regulations" with specific objectives. It must be noted that the phrase "to give effect to the provisions of the Act" has a broad meaning and confers jurisdiction on the other authority. Acts that establish regulations and rules often state that the regulations must be "not inconsistent with the Act" and "the rules made there under.The courts will thus declare regulations invalid in the event of a dispute between rules and regulations6.

There is no difference between "rule" and "regulation" in the General Clauses Act of 1897.44. "Rule" refers to a rule created in the execution of a power granted by any law, which includes regulations issued as rules according to any law.45. Therefore, the definition of "rule" is broader than that of "regulation". The illustrious Supreme Court has also ruled in many occasions that regulations are subordinate law. When the Act states that regulations to be adopted should be regarded "as of enacted in this Act," they cannot go beyond of its boundaries.When a law specifies that subordinate legislation passed under it is to have the same effect as if enacted in the statute, it is stated in Halsbury's Laws of England that such delegation may be cited for the purpose of restricting a provision in the statute itself. Subordinate legislation issued pursuant to a law cannot change or amend the meaning of the statute itself when it is unclear if the statute does not include such a provision and does not provide any authority to modify the application of the statute by subordinate legislation. The word "regulation" is not only used to describe delegated law. It refers to a device used to provide public information about government decisions, orders, and actions.However, in the context of administrative rule-making, the phrase refers to circumstances when authority is granted to set a date for the execution of a law, issue exemptions from the law, set pricing, etc[9], [10].

CONCLUSION

Maintaining a fine line between executive effectiveness and democratic protections presents difficulties. It is essential to ensure accountability via legislative scrutiny, public input, and open procedures to avoid possible abuse of delegated authorities.A crucial safeguard for ensuring that secondary legislation is in line with the Constitution and the initial law's aim is judicial review. By determining whether secondary laws are valid, reasonable, and compliant, courts play a critical part in sustaining the rule of law.The complexity of regulatory requirements in modern governance necessitates a combination of main and secondary legislations. Subordinate laws are certain to help to efficient, receptive, and accountable governance when the appropriate balance is struck between allowing the executive branch of government some discretion and respecting democratic norms. These secondary laws may support core legislations and support the dynamic operation of contemporary legal systems via careful design and strict control.

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CHAPTER 8

INVESTIGATIONOF DELEGATED LEGISLATION: DISCRETION BASEDCLASSIFICATION

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ABSTRACT:

Delegated legislation, a method for transferring legislative authority to the executive branch, includes a wide variety of rules with varying degrees of discretion. This essay examines the idea of discretion-based delegated legislation, examining its relevance, traits, classifications, and ramifications for governance and legal systems.

It looks at how delegated legislation is divided into two broad categories by discretion-based classification: those involving actual policy-making and those concentrating on administrative or procedural issues. In order to determine the extent of executive discretion in these categories, the research examines legislative oversight, legal systems, and judicial review as means of guaranteeing adequate delegation of authority. It also examines the difficulties and factors involved in striking a balance between effective rule-making and the preservation of democratic norms.

KEYWORDS:

Administrative Matters, Delegated Legislation, Discretion, Governance, Judicial Review, Policy-Making.

INTRODUCTION

A very limited transfer of legislative authority was recognised by the courts in India during the colonial era under the umbrella of conditional legislation. The legislature creates a legislation that is whole and complete, but it is not immediately put into effect. The power to decide whether or not the specified condition has been satisfied is granted to the outside agency by the legislation, which is enforced upon the fulfilment of the requirement.6administrative authority finds the circumstances outlined in the statute, the statute is contingent. The statute's prerequisites and conditions are met in this instance, and they serve as the foundation for putting the law into effect.

On the basis of discretion, delegated legislation is separated from conditional legislation. As a result, the executive is now responsible for enforcing conditional laws. However, when it comes to delegated law, the government is free to wield its authority as it sees fit. The contrast between the two was emphasised by the Honourable Supreme Court in the well-known case of Hamdard Dawakhana.The difference between conditional and delegated legislation is that the former involves delegation of rule-making authority that, under the Constitution, may be exercised by the administrative agent, while the latter involves delegation of the power to decide when a legislatively declared rule of conduct shall become effective[1], [2].

In this sense, rom 1869 is the illustrative case. A statute was made to detach Garo Hills from the legal system and courts that were in place there and to give the Lt. Governor of Bengal the power to select judges to oversee the area's judicial system. The statute also gave the Lt. Governor the authority to apply whatever laws that may have been in effect at the time in other areas under his control to Garo Hills. The Lt. Governor designated a day for the Act to go into effect. The Act was upheld by the privy council on the grounds that the legislature, having decided that a certain change should occur, had left it up to the Lt. Governor's discretion as to when and how to implement it.

In re Delhi Laws Act case65, which examined the essence of legislation, it was decided that a law is finished when it leaves the legislative chamber. The ability to assess whether or not a condition has been met is delegated to a third party, and the operation of the law is made contingent upon the fulfilment of that condition. Furthermore, it was decided that conditional legislation had never been considered a kind of delegated legislation. It is also noted that the legislatures of India, Australia, Canada, and the United States must carry out their legislative duties by establishing a code of behaviour. By doing this, it may set its own requirements that, if met, may make the law relevant to a certain region. Furthermore, this is referred to as conditional legislation. Even after the notion of "excessive delegation" emerged, the courts continued to uphold the idea of conditional legislation. A very restricted kind of legislative authority delegation is known as conditional legislation[3], [4].

- The courts do not have to determine the Act's underlying policy once this idea is applied. The Rajasthan Government issued an Ordinance for two years in Inder Singh v. State of Rajasthan66, but the Governor was given further authority to prolong its validity by a notice. The Governor initially added two years to the ordinance's lifespan before adding another two years. The Supreme Court determined that the ability to prolong the duration of the ordinance was legal since it was conditional legislation. It is customary for the legislature to pass legislation, but to leave it up to the executive branch to implement the law whenever it sees fit. An example of conditional legislation is this.67 In A.K. Roy v. Union of India68, the Court affirmed a clause in a constitutional amendment that gave the Executive unrestricted freedom to implement the amendment. From all of the rulings, it is evident that conditional legislation is what happens when the legislature passes a law and the executive branch decides to prolong its lifespan before putting it into effect. Three types of conditional legislation are distinguished:
- A law passed by a legislative body that applies to a specific region and is subject to the subjective judgement of the delegate about the circumstances indicating the appropriate period for that purpose.
- An act is enforced by a power that may be revoked if the delegate is satisfied either subjectively or objectivelythat the necessary preconditions have been met.
- The ability to deny the actual class of people the advantages provided by the law, which may be exercised by a class of people upon the delegate's satisfaction based on objective facts. Principles of natural justice are drawn to this subcategory of conditional legislation.

Sub-delegation refers to a subsequent delegation by the delegates that will go through a number of phases. If we consider the enabling Act to be the parent and the delegated and sub-delegated laws to be the children, the parent may have descendants to a maximum of four or

five degrees in his own lifetime71. The ability to further delegate is an accessory capacity that is essentially a part of the delegation power. Even though sub-delegation is normally prohibited, it is allowed if the appropriate inference can be drawn. Delegatus non potest delagare is not true in this case.

We may observe other situations in which the legality of such sub delegation has been contested here as well. In Allingham v. Minister of Agriculture and Fisheries73, the Committee was given authority by the Minister of Agriculture to issue any instructions he deemed necessary regarding the cultivation, management, or use of land for agricultural purposes. This authority came from the Defence (General) Regulations, 1969. Regarding this, the Committee's subordination of its authority to its subordinate official was contested. The court determined that the sub delegation of authority by the Committee was unlawful and that the subordinate officer's instruction was given in violation of the law. The State Government was given the authority to bring legal action for violations under Section 20(i) of the Prevention of Food Adulteration Act, 1954, in A.K. Roy v. State of Punjab74. The State Government granted authority to the Food Authority under Rule 3 of the Punjab Rules for the Prevention of Food Adulteration, 1958[5], [6].

DISCUSSION

The Food Authority further granted the aforementioned competence to the Food Inspector upon notice. The Supreme Court determined that the aforementioned notice was unlawful by pointing out that Section 20(i) of the Act does not call for any additional delegation. However, if the legislation does not specifically or expressly enable sub-delegation, it would also be examined. If there is no mention of sub-delegation of authority by the delegate in the Parent Act, it is believed that this may be assumed by necessary implication75. In several cases, the court upheld the validity of every sub-delegation. Since the adage "delegatus non protest delegare" applies to delegated laws, there is also much criticism of the practise of sub-delegation. Since it applies to everyone equally, publishing sub-delegated law presents significant challenges. However, if the legislation does not specifically or expressly enable sub-delegation, it would also be examined. If there is no mention of sub-delegation of authority by the delegate in the Parent Act, it is believed that this may be assumed by necessary implication75. In several cases, the court upheld the validity of every sub-delegation. Since the adage "delegatus non protest delegare" applies to delegated laws, there is also much criticism of the practise of sub-delegation. Since it applies to everyone equally, publishing sub-delegated law presents significant challenges.

When delegates sub-delegate, there is a subsequent delegation that will go through a number of phases. The father may have descendants up to four or five degrees71 in his own lifetime if we may consider the enabling Act to be the parent and the delegated and sub-delegated laws to be the children. The ability to further delegate comes along with the capacity to delegate as an accessory capability. Even though sub-delegation is normally prohibited, if the requisite connotation can be drawn, it is allowed. Delegatus non potest delagare72 is not applicable in this situation.

Here, too, we can identify a variety of instances where the legality of such subdelegation has been debated. According to the Defence (General) Regulations, 1969, the Committee in Allingham v. Minister of Agriculture and Fisheries was given permission by the Minister of Agriculture to issue any instructions he deemed necessary regarding the cultivation,

management, or use of land for agricultural purposes. The Committee's subordination of its authority to its subordinate official, to directives, was contested. The court determined that the Committee's subdelegation of authority was unlawful and that the subordinate officer's directive was given in violation of the law. Similar to this, in A.K. Roy v. State of Punjab74, the State Government was given the authority to bring legal action for crimes under Section 20(i) of the Prevention of Food Adulteration Act, 1954. The Food Authority was given authority by the State Government under Rule 3 of the Prevention of Food Adulteration (Punjab Rules), 1958. Following notice, the Food Authority further granted the aforementioned competence to the Food Inspector. By pointing out that Section 20(i) of the Act does not imply additional delegation, the Supreme Court determined that the aforementioned notice was supra vires. However, if there isn't a clear or explicit provision in the law allowing sub-delegation, it would also be examined. If the Parent Act does not include a provision regarding the sub-delegation of authority by the delegate, it is believed that such a provision may be inferred by necessary implication75. The court has on occasion upheld the validity of all sub-delegations. As the adage "delegatus non protest delegare" is valid in the context of delegated legislation, there is also a great deal of criticism directed against the practise of sub-delegation. Sub-delegated law must be published, but since it applies to everyone equally, there are significant challenges. However, if there isn't a clear or explicit provision in the law allowing sub-delegation, it would also be examined. If the Parent Act does not include a provision regarding the sub-delegation of authority by the delegate, it is believed that such a provision may be inferred by necessary implication75. The court has on occasion upheld the validity of all sub-delegations. As the adage "delegatus non protest delegare" is valid in the context of delegated legislation, there is also a great deal of criticism directed against the practise of sub-delegation. Sub-delegated law must be published, but since it applies to everyone equally, there are significant challenges.

In Great Britain, statutory instruments are used to create the majority of delegated law. The majority of the delegated laws was given the comprehensive term of "statutory instruments" by the Statutory Instruments Act, 1946, which entered into effect on January 1st, 194880. Every order in Council is a legislative instrument if the parent legislation specifies it to be one in circumstances where the parent statute was issued in or after 194881. If the parent act was passed before to 1948, the Rules Publication Act of 1893's provisions will apply. Not every delegated legislation is covered by the Statutory Instruments Act82, it should be emphasised.According to the Act of 1946, statutory instruments must be forwarded, with few exceptions, to the Queen's Printer of Acts of Parliament for printing and sale as soon as they are prepared. The general instruments that have been produced and marketed are comparable to public and general Acts83. When an enabling law makes use of particular procedures, the Statutory Instruments Act, 194684 standardises such methods[7], [8].

The same factors that contributed to delegated legislation growth in other nations also exist in Britain. Because of complexity, technicality, urgency, and expediency, Parliament had little choice but to transfer its "legislative office" to the executive branch85. However, it became clear that authority in the legislative and executive branches did not vary much from one another. The tests used to differentiate between legislative and administrative tasks have been shown to be weak and unsuitable.86 It is a well-established constitutional principle that no court in Britain may inquire as to whether parliament exceeded its authority by giving the Executive rule-making authority. Without a doubt, the government departments may get as

much legislative authority from parliament as they wish.The concept of parliamentary sovereignty is present in Britain, meaning that the legislature has unrestricted or unchallengeable ability to transfer its legislative powers to the administrative authorities as it sees fit.87 In other words, because the legal sovereignty of parliament is undisputed in the courts, it is permissible for parliament to give the executive branch as much of its legislative authority as it sees fit without running the risk of the judiciary invalidating the law on the grounds that parliament has overreached in its delegation of authority

In the UK, Parliament is free to delegate its ability to enact laws to anyone or whatever degree it sees fit. It is not required for the parliament to provide any standards, policies, or rules by which the delegating authority is to be implemented in the enabling statute89. The subordinate law was thus said to have greater benefits throughout the nineteenth century.

According to Lord Thring, freeing Parliament from the weight of detailing would allow it to focus on concerns of principle. The only way that parliamentary government can likely carry out its legislative duties is by adopting the practise of limiting the attention of Parliament to just material provisions and allowing minutiae to be resolved departmentally91. However, this led to an excessive concentration of the government's ability to make laws.

In 1929, the matter was referred to the Committee on Ministers' Powers (Donoughmore Scott Committee) to examine the powers exercised by Ministers of the Crown through delegated legislation and to report on what safeguards are desirable to secure the constitutional principles of Parliamentary sovereignty and legal supremacy92. In 193293, the committee turned in its report. It said that it was doubtful that Parliament itself understood the entire scope of the practise of delegated legislation, the degree to which it had ceded control of its own powers in the process, or the ease with which the practise may be misused.

According to the Committee on Ministers' Powers,95 when a minister is granted the authority to make laws, such authority should be explicitly limited by the legislation that grants it, and when discretion is granted, that discretion should likewise have a well-defined limit. Despite the Committee's criticism of the writing of the instruments, it was generally agreed that subordinate legislation had a more aesthetically pleasing shape than major legislation because of the various situations and settings under which it was created97. For Britain more than any other nation, establishing restrictions in the enabling statute is crucial since only on the basis of these legislative restrictions can the power of judicial review be used98. Delegated legislation has often been criticised for violating the constitution and the rigorous idea of the separation of powers.

It is well established by a string of rulings that Parliament does not intend for delegated powers to be used for certain objectives unless it expressly or impliedly authorises them. In Britain, statutory authority is essential. Due to the inherent distinction between a Sovereign and a subordinate law-making body, delegated legislation does not have the same legal protection as Acts of Parliament101. The courts have also accepted the idea that delegates who do not protest are entitled to vote. In contemporary Britain, the parliament has delegated part of its legislative authority to inferior legislative bodies because of need. Such subordinate legislation102 has no bearing on the sovereignty of the legislature. The delegating authority's directives must be rigorously followed by the subordinate legislative body while making laws.

Due to the dominance of the doctrines of delegates on potest delegare and the separation of powers, the situation is significantly different in the United States. Both of these arguments act as a primary constitutional barrier to the transfer of legislative authority to the administration. Therefore, it is generally agreed that the legislature should refrain from giving an administrative entity unchecked or infinite power.

The separation of powers principle has been elevated to constitutional status in the USA. The U.S. Supreme Court has noted that the notion of the separation of powers has been deemed to be one of the fundamental principles underpinning the Constitution and that the powers granted to one should be utilised solely by them without interfering with the rights of another104. The American Supreme Court said in the case of Field v. Clark, 105 that it is a commonly accepted principle that Congress cannot grant the President legislative authority. According to the American Constitution, "All legislative powers herein granted shall be vested in a congress of the United States, consisting of a Senate and a House of Representatives106." In order to execute its broad duties, the Congress is authorised to "make all laws that shall be necessary and proper"107. The president has additional executive powers108. Therefore, it may be claimed that only Congress has the authority to execute the legislative duty, which the executive is incapable of doing. The Congress is prohibited from delegating the crucial legislative responsibilities in which it is so invested109. Everyone agrees that, given the additional demands placed on the executive, a strict implementation of the concept is not possible.

Additionally, the United States Constitution is founded on the idea that the American people have granted Congress, the President, and the Supreme Court certain specified authorities. It claimed that further delegation is not feasible by using the notion of delegates non potest delegate.As the state began to assume more and more responsibilities, strict adherence to these notions proved to be impossible. The court developed a theory that acknowledged delegation in practise while rejecting it in name because it was unable to ignore this reality.110 As a result, throughout time, the courts have relaxed their rigid application of the concept of the separation of powers and allowed Congress to delegate extensive legislative jurisdiction. However, Congress still has to establish proper norms and regulations for the direction of the relevant authorities. An administrative authority is given a blank cheque to establish any regulations if the legislation offers no guidelines or norms to restrict the delegation of power111. In this case, the administrative authority takes the place of the Congress as the main legislative body. By using a few examples, the rule's operation may be shown[9], [10].

In Panama Refining Co. v. Ryan112, the Supreme Court of the United States declared the first section to be invalid due to excessive delegation. The National Industrial Recovery Act, 193383 gave the President the power to forbid the transportation of petroleum and petroleum products produced or removed from storage in excess of what is permitted by state law, as well as any valid regulations or orders issued thereunder by any board, commission, officer, or other duly authorised agency of a state. The President gave the Interior Secretary full authority to use all Section 9 authorities. Every buyer and shipper was required by regulation to disclose the specifics of their purchases and sales of petroleum. The Industrial Recovery Act of 1933's Section 9 was contested by the Panama Refining Company as an illegal transfer of legislative authority. The Act stated that the goal of the legislation is "to foster fair competition" and "to encourage national industrial recovery."

The Act was declared unconstitutional by the U.S. Supreme Court on the grounds that establishing ambiguous guidelines for administrative action does not adequately satisfy the constraints of the delegation of legislative authority. Chief Justice Hughes said that an executive order must demonstrate the presence of specific circumstances and conditions under which the issue of such an order has been authorised by Congress in order to fulfil the constitutional requirement. While outlining a standard, Chief Justice Hughes noted that we should look to the statute to determine whether Congress has established a policy with regard to that matter, whether it has established a benchmark for the President's action, and whether it has required any findings by the President in the exercise of the authority to enact the prohibition113. It was discovered that the contested part lacked any criteria. It granted the President unrestricted power to set policy and to impose or not impose a restriction as he saw suitable. Any disobedience to his commands becomes a criminal subject to a fine and jail time. a breach of any of the rules outlined in the code is now considered "an unfair method of competition" and is thus penalised by the government of certain crafts and industries. The Supreme Court of the United States determined that the code-making authority granted by Section 13 constituted an unconstitutional delegation of legislative power under the panama doctrine. In a concurring opinion, Mr. Justice Cardozo noted that this code's assigned legislative authority is not contained inside any banks that prevent it from overflowing.115 It is homeless and unconfined.

These two instances established the fundamental constitutional rule that whenever the legislature transferred legislative authority, it was required to set appropriate criteria and a legislative policy in order for the delegated authority to be used. Delegation would be unlawful if such a policy and standard could not be identified.116Only a small number of times is congressional legislation ruled to be unlawful. So far, the delegation has only been deemed excessive in the three situations. Since the Carter Case, the Supreme Court of the United States has repeatedly defended the delegation of legislative authority. This standard was upheld in Yakus v. United States117, where the administrator was given the power to set commodity prices that "in his judgement will be generally fair and equitable and will effectuate the purpose of this Act" while taking into account the prices in effect between October 1 and October 15, 1941.Similar requirements were accepted, such as "the power to fix just and reasonable rates118" or "to approve consolidations in the public interest"119"or "to control radio stations involved in chain broadcasting as public interest, convenience or need requires"120" In the United States as in Britain, the growth of delegated legislation has been noteworthy. There is a significant doctrinal difference between Britain and the U.S.A. on the subject of delegation, notwithstanding the Americanization of the notion of non-delegation.

Delegation of authority dates back to the time when the East India Company was recovering political clout in India. The sole legislative authority was given to the Governor-General in Council, an executive body, by the Act of 1833. He had the authority to enact laws and regulations that would nullify, modify, or otherwise change any laws or rules that applied to everyone, regardless of nationality123. assigned legislation has been created by an authority to whom the power was assigned by Parliament ever since laws began to be written by Parliament124. This demonstrates the constant need for delegated laws. The Government of India Act was enacted in 1935. The Committee on Minister’s Power reportwhich was presented and approvedfully made the case for delegation of authority and was seen as

inevitable in India. The legislative, executive, and judicial branches of government are usually acknowledged to fall into three broad types. A state's government is composed of three primary branches: the legislative, executive, and judicial branches. According to the principle of separation of powers, in order to protect democracy, these three governmental authorities and responsibilities should always be maintained apart and carried out by different government organisations. Even though the Constitution was built on the principle of separation of powers, it was not feasible to achieve perfect separation. As a result, it preserved the doctrine's holiness in the contemporary meaning. The Constitution does not prohibit power transfers. On the other hand, under a number of laws, the executive has been given legislative authority.The law we are talking about here is subordinate or delegated legislation, which should not be confused with executive legislation. This is evident in the articles. Only extraordinary or urgent circumstances should be used to issue an ordinance, according to rule 128. The State Legislature or the Parliament must ratify these ordinances129. If such an ordinance is not approved within six weeks after the legislature's assembly, it loses its force. To some degree, it may be claimed that the essence of this kind of legislation is quite similar to subordinate legislation that the executive might create in accordance with the authority granted by an Act 130. The ordinance might be fully enforceable up to the point of no ratification or rejection by parliament, even if ratification by parliament is eventually required. As a result, the ordinance issued by the President according to Art. 123 does not constitute delegated legislation in India. But the president's regulations issued in accordance with Acts of Parliament, such as Section 12 of the Representation of Peoples Act of 1950 or Section 16 of the High Court Judges (Conditions of Service) Act of 1954, come within the category of delegated legislation.

CONLUSION

Judicial review plays a crucial role in preserving the legitimacy of both forms of delegated legislation. By determining how closely executive discretion adheres to the goals of the enabling legislation and the larger legal framework, courts serve as the protectors of the rule of Law.In the area of delegated legislation, finding a balance between effective rule-making and democratic protections continues to be difficult. Clear rules for the use of delegated authorities, strong legislative supervision, and easily accessible legal review processes are necessary to achieve this balance.Delegated legislation that is based on discretion encourages careful reflection on how executive agencies influence legislative frameworks. Societies may promote a governance style that maximises efficiency while upholding the values of openness, accountability, and fairness by recognising the subtleties of substantive policy-making and administrative issues.

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CHAPTER 9

HISTORICAL EVOLUTION OFPARLIAMENTARY COMMITTEE SYSTEM:ORIGIN & DEVELOPMENT

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ABSTRACT:

A key element of contemporary legislative procedures is the parliamentary committee system, which increases the effectiveness, accountability, and openness of legislative bodies. In-depth analysis of the parliamentary committee system's relevance, roles, forms, and consequences for efficient government are covered in this essay. It looks at how these committees, which are made up of elected officials, provide in-depth examination, evaluation, and supervision of new laws, official acts, and policy issues. The research looks on the functions of different committee kinds, such as standing, select, and ad-hoc committees, in assuring sound judgement and raising the standard of legislation. The issues of committee dynamics, party pressures, and striking a balance between committee independence and governmental power are also examined.

KEYWORDS:

Accountability, Governance, Legislative Processes, Oversight, Parliamentary Committee System, Policy Analysis.

INTRODCUTION

A parliamentary system of government is a kind of democratic government in which the legislature grants the executive branch its democratic legitimacy and holds it responsible. Here, the elected representatives of the people are directly answerable to the executive branch of government. While the legislature is in session, this idea is put into practise in a variety of ways, such by passing budgets to restrict spending, taxing measures to increase income, resolutions via adjournment motions, etc. Parliament should oversee how the public policy approved by the elected officials is implemented since it represents the will of the people. It is only natural that purposeful actions are sometimes made to increase the influence of parliament over administration in a parliamentary form of government like the one in our nation. In a parliamentary system, the government is run by the parliament, which has priority over all other institutions[1], [2].

The parliamentary form of government was chosen by our republic's founding fathers because they believed it was the most compatible with our values, personalities, and democratic heritage2. The purse is under the supervision of the state and federal legislatures, and the executive branch is prohibited from making any expenditures without their consent. Passing the budget or approving the requests of individual ministries does not absolve Parliament of its obligations; instead, it must analyse the government's subsequent spending. It is universally acknowledged that the Executive must answer to the Parliament and that the Parliament has the authority to monitor and examine how the Executive carries out its duties. The three terms democratic, parliamentary, and representative are the three defining

characteristics of our political system. In practise, it is challenging for parliament to conduct thorough inspection of the many and complicated elements of the day-to-day administration and its financial transactions owing to several variables that are inevitable, such as the strain on Parliament and its operating process. By creating a number of "Committees of the Parliament" with sufficient authority to examine the operations of the various government agencies, Parliament has found a solution to this issue. As a result, a comprehensive structure of committees emerged.The Committees, which function somewhat like mini-houses, are where the Legislative Assembly conducts the majority of its activity. If the legislative process is to be completed quickly and with acceptable care, it should be delegated to another organisation that the House has faith in. The Committee system has always been a viable option[3], [4].

They play a crucial part in parliamentary democracies. A committee is a group of one or more individuals who serve as the underlings of a deliberative assembly. Typically, the assembly refers issues to a committee for more investigation than would be feasible if the assembly were to examine them directly. Different committees may perform a variety of tasks. Each committee completes tasks that are specific to the kind of organisation and its requirements. These committees are established to handle certain business matters that need for knowledgeable or in-depth analysis. The structure of parliamentary committees is especially helpful for handling issues that, due to their uniqueness or technicality, are best handled by a small group of members than by the House itself5. Additionally, this arrangement frees up more time for the House to consider crucial issues. Additionally, it assists the Parliament in maintaining control over fundamental policies.

Any predisposition on the side of the Executive6 towards laziness, carelessness, or arbitrariness is greatly discouraged by the administration's awareness that there is a body that will examine what has been done. Legislation is the responsibility of the legislature, but if for whatever reason the legislature decides to transfer this authority to the executive, it is not only within its rights but also its responsibility to monitor how its agent executes the tasks assigned to it. For instance, there are Select Committees for bills when it comes to policies in resolutions or bills, Public Accounts Committees and Committees on Public Undertakings when it comes to financial matters and administration inquiries, and Consultative Committees for each administrative department. There was a perceived need for committees since just setting down rules before a house would not be very effective without procedures being developed to examine the rules that were handed down. There are, in essence, five key factors that contributed to the establishment and expansion of parliamentary committees. Following is a summary of them:

- Compared to the conversation held in the home, a more thorough and in-depth discussion is required.
- To accurately and minutely explain every facet of the issue at hand.
- Extensive examination of the topic above party politics.
- To provide the House more time to work on legislative matters by giving some of its responsibilities to other governmental entities; and (v) To make the necessary expert opinion and/or subject-matter expertise accessible.

According to H.W.R. Wade, the most significant outcome of establishing this Committee was that it provided relevant departments a keen awareness that watchful eyes were maintained on

them10. Any Instrument that seems to make an unusual or unexpected use of the authority granted by the parent Act is brought to the House's notice by the committee. The Legislature has the authority to assign tasks to other agencies and to create the regulations needed to implement the laws it has passed. In the case of D.S. Grewal v. Punjab State. In Article 312133 of the Constitution, the powers of delegated legislation were discussed in depth in paragraph 132. Nothing in the terms of Article 312, according to the commenter, "takes away the usual power of delegation, which ordinarily resides in the legislature." There should be no misunderstanding that the phrase "Parliament may by law provide" in Article 312 does not exclude delegation in laws established according to that provision.

DISCUSSION

As the ultimate body in the UK, the Parliament is free to assign any number of powers. On the other hand, unlike India and the USA, the Congress does not have unrestricted and limitless delegation rights. As on the observation of K.C. Where, Committees covering the entire range of administrative activity, will be able to keep in touch with the ministers and to discuss matters with the department concerned would be the best way to control bureaucracy. When establishing the Public Accounts Committee in 1950, the Hon. Speaker Sri. G.V. Mavalankar said, "We have here a method of having Advisory Committee of the House in connection with general administration. According to him, the main goals of having these various Committees are to become familiar with and train as a large group in not only how administration is carried out but also to make them knowledgeable about the various issues that Government must deal with on a daily basis, to exercise control over the executive so that they do not become oppressive or arbitrary, to influence the Government's policies, and to act as a liaison between the Government and the public.

As a result, every issue cannot be thoroughly discussed on the floor due to the vast amount of work that must be done before a legislature and the constrained time available to it. Therefore, the necessity for an organisation that can share the responsibility and in which the whole House has faith was brought up in order to expedite the job promptly and with acceptable care. As a result, the committee system under the parliamentary system was born. As a result, administrative responsibility to the legislature via committees has been the "Sine Quanon14" of the parliamentary form of government in this nation from its inception. Now the legislative body may work without being continually slowed down by and prepare for a final decision via preliminary debate.

Nothing could be more crucial and natural than to assign such preparatory work to a group selected from among its members and having a smaller membership than the actual legislative Assembly.A group of individuals conversing over a table is the fundamental idea behind a committee. "A Committee is a body of one or more persons appointed or elected by an Assembly or society to consider, investigate, or take action with regard to certain matters or subjects, or to do all these thing," claims H.M. Robert. The British model is the foundation of our committee system. The Committees have a crucial role in the legislative and even governmental processes[5], [6].

In contrast, American Congress Committees are referred to as "Parliaments workshops" and the committees of the British Parliament as "Mini Parliaments"17. A House's committees are equally significant to the House as a whole. The committee structure ensures that the legislatures operate effectively, which would not be possible without it. In the parliamentary

system, there are smaller groupings or entities called parliamentary committees. They provide the parliament the ability to carry out many tasks at once and give room for more thorough research and debates prior reaching conclusions. The findings of these committee meetings are also offered to the larger group for discussion and judgement in the form of committee reports. Parliamentary committees, usually referred to as commissions or councils, are organisational divisions of the legislature that enable smaller groups of lawmakers to examine legislation or policies more thoroughly than the full chamber could.The function of committees varies from nation to nation based on the form of government, the size and organisation of political parties, and other factors. It also relies on the political environment and the resources that are available. In addition to influencing initiatives and policies, the Committees have had a bigger impact on the government's operational procedures. In order to guarantee the economical, effective, and prompt implementation of the Government's policies and programmes, the Committees often provide their recommendations after giving careful thought to the issue at hand[7], [8].

The United States Supreme Court ruled that, under certain circumstances, the Congress may grant the executive branch legislative authority. It sets out the principles and defines standards while reserving the administrative authorities' ability to enact supplemental regulations within the parameters specified. Orders in Council issued under the royal prerogative and other types of legislation are not included in the UK's definition of "delegated legislation" since the Crown retains the authority to enact such laws. However, if an Act grants the Crown legislative authority, the resulting law falls under the category of delegated legislation136. In our nation, the executive and legislative branches do not have complete separation of powers. In contrast to the American Constitution, the Indian Constitution does not explicitly vest the various government agencies. Only the executive authority has been given to the president under Article 53(1).

However, there is no equivalent vesting clause for the legislative and judicial functions. A somewhat recent development is the widespread usage of Parliamentary Committees in various Parliaments. Parliamentary committees were primarily used by the US Congress. The 28th President of the United States, Woodrow Wilson Our Constitution grants parliament and state legislatures the authority to enact laws. The Constitution also grants the president and state governors the authority to enact new laws. As previously mentioned, the president is allowed to promulgate ordinances under Article 123138 and the governor is authorised to do so under Article 213139 during the respective legislatures' recesses. Under the jurisdiction of the Constitution, they may also enact laws, rules, and regulations. Only as an emergency provision in Article 357 of the Constitution, where the legislature has been expressly authorised to delegate its lawmaking powers, has parliament been recognised as having the authority to confer on the president the power to make laws and to authorise the president to delegate the power to be conferred to any other authority. It seems that the legislative bodies themselves should be responsible for passing laws, as was the goal of our Constitution's framers. However, it would be incorrect to assume that they were unaware of the need for administrative law.

Reading through Article 13(3) of the Constitution140 makes this quite evident. The Constitution's intent is therefore evident, even if the United States was cited in 1885 as saying that "congress in its committee rooms is at work"18. The majority of the work of Congress was sent to committees for in-depth assessment in order to influence House floor discussion.

The creation of Committees for in-depth preparatory examination of key issues is a constant practise in Continental parliaments and the US Congress. Even though their roles varies, committees are crucial supporting structures in the House of Commons19. Parliamentary Committee Systems have now become a novel technique for parliaments to carry out their fundamental duties. They are constantly the centre of attention for law and regulation. In the current situation, parliamentary committees have developed as vital and important organs of democratic parliaments. Every parliament in the world has its own set of guidelines for creating committees. Despite not sharing some traits, they differ on the composition, the mission, and the method of selecting the chairpersons. Numerous parties often participate in committees. Typically, they focus on certain policy, administrative, or performance issues. Effective Committees have gained some level of competence in a particular policy area, often via ongoing participation and consistent membership. They are able to portray variety while also bridging enough gaps to provide action-oriented suggestions. Additionally, they provide a legislative body a way to thoroughly explore a variety of issues and to find politically and technically viable solutions.

Appointing committees as a general rule is not a new idea. Nearly as ancient as Parliament itself, it is20. Even when its workload was relatively modest, the British Parliament understood that, as a sizable deliberative body, it could not attend to every detail and step of the business that was brought before it for transaction.The custom of assigning small groups of membersconsidered to represent the House itselfto address intricate or technical topics in both Houses of Parliament dates back many years21. As a result, it pioneered the custom of assigning more intricate and unimportant tasks to smaller groups known as committees, which have since been often chosen for various purposes.

As a result, each House currently has a structured system of committees that includes whole-house committees23. The importance and number of committees have greatly expanded with the expansion of legislative activities in the contemporary era. The House of Commons has a lot of committees, although Morrison has noted that the main emphasis still remains on work in the Chamber rather than in the Committee Rooms.The committee system first appeared in Britain somewhere in the sixteenth century, and parliamentary committees were afterwards formed in the United States. The committee system was introduced by the French Parliament in the 18th century, but it wasn't until the second half of the nineteenth century that committees were created in other European nations and territories ruled by the British. Even though the development of parliamentary committees varies across nations, they always began as select committees to support the Crown or the Executive, and eventually they changed their status to become standing committees of the House[9], [10].

The introduction of the Montage-Chelmsford Reforms led to the establishment of the committee system in India. Nevertheless, since they lacked authority and privileges, the Committees of the time were not immune to state oversight and involvement. Additionally, they weren't in charge of their own process. They were unable to create guidelines for their own internal operations26. In India, committees have existed since the first legislature was established in 185427. In its very first meeting, which took place on May 20, 1854, the legislative Council established a committee to study the structure of its standing orders. It was the first committee with four members that a House with just twelve members appointed. A Select Committee was subsequently constituted in 1856. The Legislative Council of India's Standing Orders (1854-61) had a provision that allowed the council to transform itself into a

Committee of the Whole Council after approving a vote to that effect28. On July 20, 1854, the Indian Legislative Council's first committee was formed, and the procedure was repeated multiple times.History has made reference to the employment of parliamentary committees, particularly in the US Congress35. As a modern, inventive manner for parliament to carry out its fundamental duties, the system of parliamentary committees has arisen. They act as the centre of attention for legislation and regulation36. 'Parliamentary Government' was defined as 'Government by committees' by Professor K.C. Wheare37.

A robust, engaged committee structure is always beneficial to the smooth operation of parliamentary democracy. By increasing the transparency and accountability of the government's administrative and policy operations, a comprehensive structure of parliamentary committees promotes more accountability. Additionally, committees provide a venue for probing topics of public interest and a chance for members to deepen their understanding of them. In essence, they provide the Parliament the ability to guarantee that the proper choices are being taken at the proper time and for the proper reasons. By bringing the Parliament to the people and allowing them a say in how it runs, they also significantly strengthen democracy.

The Speaker of the Lok Sabha appointed the first committee on subordinate legislation in India, which was created in 1953. Then-Minister of Law Dr. B.R. Ambedkar suggested in the House that they take into consideration the process recently implemented in the House of Commons to review such delegated legislation. And to inform the legislature if the delegated law went beyond what the original objective of the legislature was or compromised any basic

The speaker has proposed the members of the Committee for a one-year term39.The activity of this committee is also specialist, unlike that of many other committees. This is so that only a professional can sift through the legal jargon of subordinate laws. The Rajya Sabha's Rules of Procedure included provisions for the establishment of a Committee in 1964, and on September 30, 1964, the Chairman appointed the Committee to examine the vast number of sub legislations and delegated laws. The Committee examines the delegated legislation in accordance with the procedures used by the Lok Sabha Committee. So, the Secretariat conducts a preliminary examination. The chairman of the committee delivers the committee's report to the house. The Committee's original mandate was for it to investigate and document whether the "statute delegating those powers" had been correctly followed while using any powers granted by Parliament.As a result, the Committee was unable to review the orders and regulations made in accordance with the Constitution. A House has the option to send a Bill to a Select Committee of the House or a Joint Committee of the Houses when it is brought up for general debate. To this end, a motion must be proposed and approved in the House during which the Bill is considered.

The opposite House is informed of the outcome and asked to propose members to serve on the Committee if the motion approved is for the Bill to be referred to a Joint Committee. Similar to how the two Houses analyse the bill section by clause, the select or joint committee may make adjustments to certain provisions. The Committee may also hear testimony from groups, government agencies, or specialists who are concerned about the Bill. These are permanent committees that the House appoints to investigate or inquire into certain matters once the bill has so been passed. A committee's expansion in a parliamentary democracy like the one in the United Kingdom has led academics like Prof. K.C. Where to

refer to the "Parliamentary Government" as "Government by Committees"45. Since Indian parliamentary democracy has been operating after the British model, it is important to determine if our committees have surpassed the power and usefulness of their House of Commons counterparts46. Although they are created by each Legislature, they are known by different names in various nations. They are referred to as Permanent Committees in the French Parliament and as Standing Committees in the US and the UK. In the USA, however, they also review measures that are not referred to them by the House of Commons.

CONCLUSION

The committee system encourages openness and democratic participation by enabling legislators to actively participate in the development of legislation, have expert consultations, and solicit opinion from the general public. This procedure guarantees that various points of view are taken into consideration while enhancing the quality of legislative solutions. It may be difficult to preserve committee independence when juggling political interests and governmental power. This balance must be struck in order to prevent political objectives from unduly influencing committee proceedings.

The committee system improves governance, but to make it work well, it needs careful consideration. To enable comprehensive analysis and insightful suggestions, it is essential to have clear mandates, broad representation, and enough resources. The parliamentary committee system in contemporary democracies is evidence of the dedication to open and responsible government. These committees contribute to the vitality of democratic institutions and the improvement of social welfare by sustaining the values of informed decision-making, public engagement, and governmental supervision.

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CHAPTER 10

SCRUTINY OF SPECIAL COMMITTEES OR SELECT COMMITTEES

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ABSTRACT:

Within legislative bodies, special committees perform a unique and focused role in resolving certain problems, crises, or policy subjects that call for specialised attention and in-depth examination. The complexity of special committees is examined in this research along with its relevance, roles, makeup, and effects on good governance and decision-making. It looks at how special committees are formed to look at important issues, make suggestions, and give insight beyond the purview of ordinary parliamentary procedures. The research examines the many functions and designations of special committees, including advisory, crisis-response, and investigative committees, as well as their effects on influencing public policy, promoting accountability, and building public confidence. It also examines difficulties with committee organisation, independence, and juggling narrowly focused mandates with more general legislative goals.

KEYWORDS:

Advisory, Crisis-Response Committees, Governance, Investigative, Special Committees.

INTRODUCTION

Both houses of the legislature are represented on these committees. Only nations with bicameral legislatures have such committees. A joint committee of the British Parliament is a select body made up of representatives from both the Commons and the Lords. It is the Congressional Committee in the US Congress, made up of both Senate and House members54. Joint Committees, however, are not created in India until an issue involving both Houses is being debated. Permanent Joint Committees are often not chosen by the Indian Parliament. Despite the fact that there are two committeesthe Joint Committee on Members' Salary and Allowances and the Joint Committee on Office of Profitthere are only two. The second kind of joint committee is one that is permanent. It is referred to as a committee of the whole House when, after the adoption of a resolution, the whole House meets as a single committee. The Speakers' resignation and the election of another member to serve as Committee Chairman signal this. This makes informal conversation easier to have. These committees had their start in the British parliament under James I[1], [2].

The USA, Canada, Denmark, and many other nations followed the practise in the 17th century. This technique is not acknowledged by the Indian Parliament, and no similar committees have been constituted there to yet. Actually, the French Parliament made this contribution. According to this procedure, the House is split into many sections, each of which serves as a committee. Every single member of the House joins a "part" of the house. 'Bureau'55 is the name given to this. The French Assembly has ten of these Bureaus, while the council has seven. For comparison, the House is split into Sections in Belgium. They mostly review private member bills and budget-related legislation. The Indian Parliament

typically does not adhere to this practise. The parliamentary committees of the Lok Sabha are closely knit. A Parliamentary committee is one that is established by the House, is elected by the House, or is nominated by the Speaker, works under the Speaker's guidance, and submits its report to the House or to the Speakers. The articles of the rules and any instructions given by the speaker in accordance with these rules govern their appointment, tenure of office, duties, and primary lines of procedure for conducting business. The three sets of regulations that apply to parliamentary committees are as follows. general guidelines that apply to all committees[3], [4].

Internal rules that govern the internal workings of the committees57 and specific rules that provide unique arrangements for individual committees. These committee internal rules are created by the committees themselves, with the speaker's agreement, and are constructed in accordance with the requirements of the rules and Directions. They are in the nature of a thorough working method. he Parliament appoints parliamentary committees in accordance with the Rules of Procedure and Conduct of Business. It mostly involves House members' personal affairs. The House may appoint as many committees as necessary to meet the demands of various circumstances. A parliamentary committee may be established by the House by appointment, election, or nomination by the speakers.

A Committee that the Speaker nominates typically serves for the time frame set by the Speaker or until a new Committee is nominated. A resolution put out and modified in nomination by the speakers results in members of a Parliamentary Committee being appointed or elected by the House. 71 The committees that are chosen based on a motion approved by the House are the Select Committee or Joint Committee on Bills. None of the members will be appointed if they are unable to serve on the Committee. The proposer has a responsibility to confirm that the person whose name is being submitted is open to serving on the committee. The names of the candidates for appointment to the committee are included in the proposal to send a measure to a select committee. Only Lok Sabha MPs are suggested for nomination to the Committee. However, under some circumstances, Ministers who are Rajya Sabha members may also be nominated as members of a Select Committee of the House. They cannot, however, cast a vote in the Committee.

Members are selected by the member in charge of the bill and the Minister whose Ministry the bill's subject matter affects. In a similar manner, members of a Joint committee on a bill are chosen based on a motion that has been approved by both houses of Congress72.

Every year, Lok Sabha members elect members to the Committee on Public Accounts, Estimates, and Public Undertakings, as well as the Committee on Welfare of Scheduled Castes and Scheduled Tribes73. Motions are made to do this, and the House then approves them. Members of the Rajya Sabha are also assigned to the Committees on Public Accounts, Public Undertakings, and the Welfare of Scheduled Castes and Scheduled Tribes. Depending on their relative strength in the House, several parties and groupings are represented on a committee. Casual vacancies in a Parliamentary Committee are filled by nomination from the Speaker, appointment or election by the House based on a resolution. A committee's tenure may be for the duration of the whole legislative session or only for one single House session. It may also be for a certain amount of time determined when the Committee was formed. It is possible as long as the task given to it is finished. For the Standing Committee, the typical term of an Indian parliamentary committee is one year. However, in cases when Special

Committees or Select Committees are formed for a particular reason, the term is only valid until the designated job is completed. The Rules Committee, the Business Advisory Committee, and the Privileges Committee are examples of new committees that the Indian Parliament has established.

Typically, there are more members in the Standing Committees than in the Select Committees. The strength of the Committees is often addressed in the regulations. The Lok Sabha committees in India typically have 15 members. Each of the two committee'spublic undertakings and public accountshas 22 members. Additionally, the Estimates Committee and the Committee on the Welfare of Scheduled Castes and Scheduled Tribes each have 30 members. Each of the Rajya Sabha's Standing Committees typically has ten members. A committee's chairman may be appointed by the presiding officer of the house or chosen by the committee's members. He may also be chosen by the party, chosen by the committee, or chosen by the House[5], [6].

DISCUSSION

The first approach is often used in Western nations like Canada and Belgium. Even in Britain, the members of the committees elect the chairmen of the different committees, with the exception of the Committee of the Whole House, the Standing Committees, and the Committee on Private Bills. The Speaker in India appoints the chairperson of each parliamentary committee. However, the Chairman of the Committee shall be chosen if the Deputy Speaker or a member of the panel of presiding Officers is a member of any of these CommitteesIn the majority of nations, including India, the Chairmen work under the Speaker's command and supervision. Additionally, it is the Chairmen's responsibility to inform the Speaker on the Committees' progress. The Chairmen may ask for an extension of time in order to complete the tasks allocated to them and give the Committee's report to the House. In the event of a tie, he may also cast the deciding vote.

As a result, documents provide equal weight to subordinate or delegated law and have established appropriate required controls to ensure that it does not violate the rights of the nation's residents.

Therefore, Art. 13 of the Indian Constitution gives the subordinate laws first priority. Situations in which laws become null and invalid are covered under Art. 13(1)147. According to Article 13(2), the State may not enact any legislation that restricts or revokes the rights granted by this Part III. Any legislation passed in violation of this paragraph is invalid to the extent of the violation.

The amount of activity in the legislature has grown to the point that there never seems to be enough time, and the production of legislation is constantly delayed. In today's world, the legislature is unable to foresee or predict every situation to which a legislative action should be implemented. Furthermore, it is difficult for the parliament to plan for all potential repercussions of unforeseen events. Therefore, the legislature is allowed to delegate some of its own jurisdiction to a subordinate body. It is now widely accepted that the legislature has the authority to provide other bodies the authority to create regulations to carry out the goals of the legislation it has passed. The Committee on Minister's Powers noted that the practise of delegated legislation allows for some flexibility and elasticity in the area of social legislation

and facilitates the adoption and adjustment of law to the new circumstances at the exigency of the hour, which may be difficult through the lengthy parliamentary process.149.

The phrase "constitutional limitation of delegated legislation" refers to the bounds set down in every nation's constitution within which the legislature may lawfully transfer rule-making authority to other administrative bodies.

In ancient India, the notion of the division of powers took on a highly concrete form. The King or his Ministers used their executive authority. The legislative authority is in the hands of the wise150. The Indian Constitution recognises three departments of government, although they are not as clearly defined as they are in the American Constitution. According to the Supreme Court, the Indian Constitution does not recognise the theory of separation of powers in its most rigorous form. Even if there isn't a clear division of powers, it will eventually happen. In Chandra Mohan v. State of UP151, this was decided. Additionally, a legislative act may be used to overrule a judicial decision152. One of the crucial areas of judicial review is delegated legislation. Due to emergencies, a lack of time, the normal growth in legislative activity, the need to prepare for unanticipated events, etc., delegation of non-essential legislative authority is unavoidable under the current form of government.

The Committees' members and their authority, privileges, and immunity are equivalent to those of the House. The committees specifically have the authority to send for people, documents, or records. Furthermore, failure to come before the committee or fail to deliver any requested papers may constitute a violation of privilege and contempt of the committee, unless doing so is required by law and would jeopardise the safety or interests of the State. The Rules of Procedure and sometimes issued orders by the Speaker specify the committees' authority. One or more subcommittees may be appointed by a committee to look into any topics that may be brought to them, with each having the authority of the whole committee. If they are accepted at a meeting of the whole Committee, the reports of such subcommittees shall be assumed to constitute the reports of the entire Committee.78. The House's motion to refer a bill to the Joint Committee on Bills does not specifically grant the Joint Committee any authority, but rather provides that the Joint Committee may report a member of the House for contempt of the House in accordance with the Rules of Procedure. The Committee is able to question witnesses.

As to Rule 27379, witnesses are questioned in front of a committee. The committee should establish the style of operation and the kind of questions that may be posed to the witness before calling them for questioning80. Any pertinent information that hasn't been addressed but that a witness believes should be brought up in front of the Committee may be requested from them. If a witness who will be questioned by the committee is in prison, the Home Ministry and the relevant State Government arrange for him to appear before the committee. Typically, a Committee will hear a witness in person. A witness may be allowed to be represented by or accompanied by counsel under certain circumstances, such as in judicially related inquiries or investigations. The Mudgal Case is being discussed here. In the Mudgal case, the House granted the Committee authority to hear Sri. H.G. Mudgal by himself or via counsel if he so chooses, and the committee may hear counsel to the degree they see appropriate on behalf of any other individual. The witness who is coming before the Committee on Privilege is examined under oath. False testimony presented to a parliamentary committee is considered contempt of the House82.

Evidence, reports, and Committee sessions must be kept private.83. According to Rule 275, a Committee may order that all or a portion of the evidence, or a summary of it, be written down on Table 84. No portion of the testimony, report, or proceedings of a Committee that has Up until 1949, India's highest court of appeals was the Judicial Committee of the Privy Council. The Judicial Committee of the Privy Council was asked in a number of instances to rule on the legitimacy of legislative authority delegation. One of these, Queen v. Burah153, from early in 1878, is the most significant. Rule 26 of the Defence of India Rules was ruled to be ultra vires by the Federal Court of India in Keshav Talapade v. King Emperor, 154 on the grounds that it exceeded the authority granted to make rules by Clause (X) of Sub-Section (2) of Section 2 of the Defence of India Act, 1939, even though it was acknowledged that the rule might be covered by the language of Sub-Section (1) of Section 2. The Privy Council disagreed with the Federal Court's view. The Privy Council believes that Sub-Section (2) serves only an illustrative purpose.The rules that are authorised by and created under those Sub-Sections are the rules to which the rule-making authority granted by Sub-Section (1) and "the rules" specified in Sub-Section (2) applies. The phrases "without prejudice to the generality of the powers conferred by Sub-Section" explicitly establish that the provisions of Sub-Section (2) do not limit the scope of Sub-Section (1). In Indian law, this judgement has traditionally been regarded as a preeminent authority on delegated legislation[7]–[9].

To sum up, the Lieutenant Governor was granted three different sorts of powers under the contested Act:

(i) The authority to put the Act into effect by establishing a start date for it.
(ii) The authority to decide which laws should be applied to the specific area, in this case the Garo Hills.
(iii) The ability to make the Khasi Jantia and Naga Hills subject to the Act's provisions and thereby exempt them from the jurisdiction of regular courts and tribunals.

The Indian legislature was a delegate of the British parliament, and as such, a delegate could not further transfer the powers that the British parliament had vested in it157, according to the Calcutta High Court, which determined section 9 to be unconstitutional. The Judicial Committee of the Privy Council overturned the Calcutta ruling in an appeal and affirmed the validity of Section 9 on the grounds that it is only a conditional piece of law, contrary to the Calcutta ruling. The Privy Council noted that the Indian legislative is clearly constrained by the Act of the Imperial parliament, and it can do nothing beyond the limitations which circumscribe these powers, while rejecting the theory that it was an agent of the Imperial Parliament. However, while working within those parameters, it is not in any way a representative or agent of the Imperial parliament but rather possesses full legislative authority comparable to that of the parliament itself. Two conflicting interpretations of the Privy Council's ruling were made. According to one understanding, the delegation of legislative duties is unrestricted since the Indian legislature is not an Imperial parliament delegate. The opposing view made the case that the transfer of legislative authority was unlawful since the Privy Council had only approved conditional legislation.

The Indian assembly had used its discretion on the place, person, laws, and powers; all that the Lieutenant Governor needed to do was to make this decision official at the completion of a specific creation. Conditional legislation is the kind of delegation that the Privy Council upheld in the Burah Case. In a strict sense, this is not delegation. In Emperor v. Benoari Lal

Sharma159, the Privy Council once more used the principle of conditional legislation to uphold the constitutionality of an ordinance160 passed by the Governor-General to establish special courts and grant authority to their provincial governments to declare this law applicable in their provinces whenever they see fit161.

The Calcutta High Court invalidated the ordinance due to excessive delegation, and the Federal Court upheld this ruling162. On appeal, the Privy Council overturned the Federal Court's ruling and affirmed the Act. The ordinance also included a list of requirements that had to be satisfied before the law would take effect. The executive was only needed to ascertain if those requirements had been met. The ordinance's provisions were to go into effect if and when these requirements were met. As a result, it was conditional legislation rather than delegated law. The Privy Council also ruled that the preamble of the ordinance's objective restricted the executive's ability to choose which crimes or groups of offences would be prosecuted by the special courts. This established that a legislature may assign legislative authority as long as it maintained control over the delegate and established rules or guidelines by which the delegate was expected to perform.

A member may not disclose the contents of a paper or document that is marked "Secret" or "Confidential" when it is sent to the committee members, either in the minute of dissent or on the floor of the House, without the Speaker's approval. Any limitations placed by the Speaker on how the information contained in the document may be disclosed must be rigorously adhered to if such authorization has been granted. Members are specifically asked to keep information pertaining to defence issues as confidential when it comes to the Estimates Committee. Each copy of the information sent to members is properly numbered, and a record of each copy is preserved. The members' access to the distributed secret information is withdrawn after the subject's inspection. Examining estimates pertaining to defense-related issues is always done in a distinct manner.The Chairman of the Committee has the authority to decide whether to provide the members access to top-secret materials, and he must take the Ministry of Defense's argument into consideration. The Speaker is asked for advice if the Chairman is unable to follow the submission provided by the Ministry of Defence.

In accordance with rule 27688, a committee has the authority to create a special report on any issue that comes up that it deems important to bring to the Speaker's or the House's attention. Providing that such a subject is not directly related to or does not come within its purview. Two special reports that were annexed to the main report by the committee on the behaviour of a Member in the Mudgal Case were sent to the Speaker as references. These occurrences may also be seen in the UK's Committee system. The editor and political reporter of the "Evening News," who testified as witnesses before the committee of privileges in the Allighan case, declined to reply to several of the Committee's inquiries. After that, the Committee sent a special report to the House on the subject so that it might take whatever action it deemed appropriate and necessary. As stated in the norms of process, the committee has the authority to provide ideas at any time. A committee has the authority to make resolutions on procedural issues pertaining to the committee for the Speaker's consideration, in accordance with Rule 28189. The Speaker is free to alter the process in any way that he sees fit. The purpose of a committee's constitution is chosen and stated at the time of its appointment. The Rules of Procedure regulate the terms of reference, the constitution, and other matters, but the committee itself sets the guidelines for internal operations. A quorum of members must be present at a committee meeting in order for it to convene. The quorum

for a committee meeting must consist of one-third of the committee's members, according to Rule 259 of the Lok Sabha's Rules of Procedure and Conduct of Business. If there is not a quorum, the committee meeting must be postponed by the chairman at a later time or delayed until there is one.

The committees often meet between sessions. However, it's not always the case. Even during House sessions, the sitting may go on. In such case, sittings are scheduled before to 11:00 AM or after 3 PM. In the event of a tie in the House, this aids the members in casting their votes. The committee meetings are always secret and confidential92. Normally, meetings take place within the walls of the Parliament House, but if necessary, the Speaker may provide authorization for a committee to meet outside. Parliamentary committees have the authority to hear testimony on a variety of issues that are brought before them. The committees' deliberations and the material they gather are always documented verbatim and handled with confidentiality. The next stage is to draught minutes of the decision made by the committee, get the chairman's approval, and distribute them to the members. Additionally, these minutes are kept private until they are sent to the House.

CONCLUSION

Creating and maintaining special committees present difficulties. Political biases must be avoided in order to guarantee successful results, therefore committee makeup, independence, and clear mandates must all be carefully considered. The creation of special committees demonstrates the legislative body's dedication to completely tackling certain issues. These committees improve the integrity of decision-making processes by promoting informed debates, inviting expert input, and encouraging public participation. The dynamic nature of difficulties in contemporary governance necessitates specialised systems. This vacuum is filled by special committees, which enable legislative bodies to react quickly and successfully to crises, disputes, and changing policy requirements. Special committees contribute to the vitality of democratic institutions and the wellbeing of societies by using their expertise and narrowly defined mandates.

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CHAPTER 11

ANALYSIS OF CODIFICATION OF PARLIAMENTARY PRIVILEGES

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ABSTRACT:

Members of legislative bodies are given a set of legal immunities and safeguards known as parliamentary privileges, which allow them to carry out their duties without interference from outside parties or concern about repercussions from the law.

The complexity of parliamentary privileges is examined in this essay along with its relevance, kinds, historical roots, and consequences for democratic administration. It looks at how parliamentary privileges include both individual and group rights, enabling lawmakers to hold open hearings, check the actions of the executive branch, and successfully represent their people. The research looks at how these advantages and responsibility must coexist, as well as issues with possible abuse or conflicts with other legal rights. It also examines how parliamentary privileges interact with the larger legal system, highlighting how important these interactions are for upholding the separation of powers and guaranteeing the independence of legislative bodies.

KEYWORDS:

Accountability, Democratic Governance, Free Debate, Legislative Bodies, Parliamentary Privileges,

INTRODUCTION

Members of the House are shielded from common law and judicial examination by parliamentary privilege.At times it seems as if they are going against the law, but if the members are not given a privilege like parliamentary privilege, there is a potential that it will impair how well they serve their constituents and the general public. In certain ways, parliamentary government goes beyond or opposes the rule of law. It is crucial to discuss the codification of parliamentary privilege in this context.

In the 1920s, the issue of privilege codification emerged, and it was advised to codify the privileges. Codification was debated at the Constituent Assembly, but it was rejected on the grounds that it would be impossible to adapt to new circumstances45. Consequently, the Constitution established privileges under Articles 105 and 194. Originally, Articles 105(3) and 194(3) stated that each House's powers, privileges, and immunities would be determined by legislation and that its members would have the same rights as the House of Commons. The Forty-fourth Amendment Act of 1978 later amended this to read: "In other respects, the powers, privileges, and immunities of each House of Parliament, and of its members and Committees, shall be such as, from time to time*, shall be defined by law, and until so defined, shall be those of that House, and of that House's members and Committees, immediately prior to the Constitution." The State of Travancore established a legislative council in 1888, which is where Kerala's Legislative Assembly's history begins. The first

native legislature outside of British India seems to be this one. The Travancore legislative council underwent a significant overhaul. This led to the creation of the Sri. Moolam Popular Assembly of Travancore, a new representative body[1], [2].

This gathering was intended to give the populace a chance to voice their needs and complaints to the government, as well as to better inform the populace about government policies and initiatives in order to dispel any potential misperceptions.Later, it evolved into a group that represents the people. To provide the public the right to choose Assembly members, a rule was adopted. There were initially 100 members, and their terms were one year long. The yearly land income that the populace received was used to determine who got to vote. Only those with a net income of at least Rs. 2000 and a graduate from an accredited institution with at least 10 years of standing were permitted to vote3.Year after year, the popular assembly's membership grew. Finally, in 1921, the elected MPs won a majority. Members were both elected and nominated by the house. There were a total of 50 members, both elected and nominated. A legislative council made up of both elected and nominated members was established in Cochin State. Representatives from the Malabar District sit in the Madras Legislative Assembly4. Both Travancore and Cochin created responsible governments after India became independent. In 1949, Travancore and Cochin were combined to create the Travancore Cochin Legislative Assembly. Malabar's members sit in the Madras Legislative Assembly[3], [4].

Owedto Take Evidence or Call for Document

The Committee should settle on the manner of operation and the questions to be posed to the witness before the witness is summoned for questioning. The Chairman will initially present the questions in accordance with the topic at hand. Other members are also invited to ask whatever queries they have in mind by the chairman. A witness is also given the chance to raise pertinent issues that have not yet been addressed but that he believes are important to bring up in front of the Committee. A verbatim record of the proceedings must be retained in such a situation. All Committee members have access to the submitted evidence.

The evidence or its short note must be placed whole or in part on the table, as directed by the Committee. It should be underlined that no member of the Committee may disclose the evidence before it is laid out on the table. It is crucial that the committee's report and deliberations be kept confidential54.

The Committee should provide a special report on any issues that arise during its work that it deems important and should also be brought to the Speaker's or Assembly's attention. The Committee's recommendations, suggestions, observations, and instructions are outlined in its report and provided in accordance with Rule 202 of the Kerala Legislative Assembly's Rules of Procedure and Conduct of Business. Reports must be signed by the Committee Chairman and may be either preliminary or final. If the Chairman is unavailable, another committee member might be asked to sign the report in the committee's behalf.

Before presenting the report to the Assembly, any finished portions must be made available to the Government. And until they are brought to the Assembly56, these reports are private.

Additionally, a committee has the authority to approve resolutions on committee procedure for the Speaker's consideration and, if necessary, procedural changes. This is stated in rule 206 of the Kerala Legislative Assembly's Rules of Procedure and Conduct of Business. The

Speaker has the authority to provide the Committee's Chairman instructions that are required to govern the committee's process and how its work is organized5. The Assembly's members may not have time to go into depth about every regulation presented before the Assembly due to their many responsibilities. To assist the Members in this, the Committee on Subordinate Legislation was established. The Committee examines the regulations already implemented in accordance with the requirements of the Acts and informs the Assembly as to whether the Executive's authority has been effectively used within the parameters of the relevant legislation.

Subordinate legislation lost effectiveness over time as the Executive's administrative, developmental, and welfare responsibilities grew. When the Legislature passes a legislation, the required regulations must be drafted at the same time in order to carry out its provisions. This is done via the use of the legislatively granted authority. The Executive is obligated to design regulations based on the requirements of the Statute and to notify it in a timely way while properly following all legal formalities and processes[5], [6].

Rule 253 specifies the duties of the Committee on Subordinate Legislation. According to this rule, there should be a Committee on Subordinate Legislation to examine and report to the Assembly on the issue of whether or not the powers granted by the Constitution or delegated to the State Government by the Legislature to make regulations, rules, sub-rules, bye-laws, etc. are properly exercised within the scope of delegation. Under Rule 25459, the Committee's constitution is described. Additionally, it states that the Speaker is the one who proposes a Committee on Subordinate Legislation, which may have up to nine members. A Minister may not be proposed for nomination as a Committee member. If a member is appointed as a Minister after being nominated to the Committee, he no longer qualifies as a member of the Committee as of the date of the appointment. Every regulation, rule, sub rule, and bye-law is written in accordance with the Constitution's provisions or in consideration of the legislative responsibilities assigned to the State Government by a higher authority. According to Rule 256, the Speaker may direct that such orders be numbered and published in the Gazette as soon as they are issued after consulting with the House.

DISCUSSION

In a democratic system, the issue of ensuring administrative accountability is crucial.1. Accountability and administrative effectiveness are linkedand conversing. Using administrative judgement, the responsibility of theIn order to maximise efficiency, officials must be assured. administration2The proper authorities to monitor are the legislature and courts. Administrative activities. Justice MJ Kaniya H.J. has distinguished between both definitions of legislative authority. Externally, it refers to the ability to decide on a course of action and to enact legislation, including supplementary regulations. It also denotes the capacity to write laws and policies, but not supplementary rules. Power. As part of its legislative duty, the legislature might grant authority to create rules and guidelines for implementing the law's operation and effects. Similar to this, a legislator has the authority to establish the guidelines and policies that the behaviour code. Additionally, it stipulates that in cases when specific dates or facts are an executive authority discovers and confirms the Act's execution, broader in some areas, although the authority to designate "essential legislative “functionalities' are in no way justified. Despite the assumption that any authority has been given power, reasonable judgement will be used, it's probable that when promulgating

theexecutive may make mistakes with subordinate laws either consciously or inadvertently. Without fully understanding the scope of the authority provided. The subordinate's When the executive branch of government draughts laws, there will at least be loopholes. Sometimes to safeguard personal interests. And this worry is supported by Here are the situations when the Committee on Subordinate Lawmaking and examining specific SROs. It should be noted that when the authority to grant exemption is used, it is evident that, at least sometimes, private By misusing power, interest trumps the needs of the public.When a delegated authority is exercised by sending a notice, it is obvious that the withdrawal from performing that item should also be communicated in the same way in order to resolve the legal tangles that the prior notification caused. When the reports are analysed, it becomes clear that many times they are not completed on time, which forces the parties involved to file lawsuits6. A gross abuse of authority occurs when the executive uses such delaying strategies. Some of the members have brought up this issue and believe that doing so would undermine public confidence in both the executive branch and the legislature. Additionally, they have said that when subordinate law is written in imprecise words, it will only serve private interests[7], [8].

Another significant issue identified via the examination of the reportsand one that has been emphasised by the membersis the delay in receiving the information needed from the executive in the form of clarification on various issues. There are several instances when the committee has criticised the administration's inaction on this matter. The majority of the papers attest to this issue the committee encountered, and there were several occasions when the committee received evasive and careless responses.

The Legislative Assembly's operations would be negatively impacted if the executive failed to provide the information requested by the Committee on Subordinate Legislation, given the Committee's members are also Legislative Assembly members8. Thus, the Legislative Assembly members are wasting time that might be better spent assisting the public in a variety of ways. Because of this, showing disrespect to a committee would also show disrespect to the whole Assembly. Due to the significance of the committee's recommendations, executive departments should be made aware of them and given explicit instructions to do so.9 . The Subordinate Legislation Committee's proposals, explanations, and corrections are entirely grounded in the public's interest. The committee's conclusions and suggestions would undoubtedly contribute to the elimination of prejudice, bad management, and corruption on the side of the executive department.

Additionally, it is clear from the committee's reports that it receives the regulations and notices for review after a period of time has passed10. A regulation or notice must be rigorously put before the committee for a thorough examination once it has been published by the executive department in accordance with the Act. However, most reports indicate that this is not being done correctly. The fundamental goal of the Committee system would be destroyed by these delaying methods. The draught notifications are often created by the same department rather than leaving it in the hands of the legal department. The Committee would often suggest revisions to the notice or regulations or the annulment of the same in situations where it believes any private interests have crept into them. And only if the executive department's regulations and notices are promptly and without delay presented to the Committee for review would this be achievable.

A notice typically takes five years to get to the scrutiny table. It is really unfortunate that the beneficiaries may have suffered irreparable harm for which no one could be held responsible or compensated as a result of a notice that was sent five years earlier. The members believe that such a delay in the examination undermines both the purpose and the intent of the delegation of authority to the executive11.

Additionally, it has been shown that the review of SROs often has a backlog of more than five years. Due to the limited time available for the committee members who are already involved in the legislative process, the group meets relatively seldom. They could also be participants in other committees. Due to the dissolution of the Legislative Assembly for unanticipated political reasons, there may be a potential that the committee meeting will not take place as scheduled. As a result, there will be a backlog of SROs to be examined during the tenure of one committee. If the committee splits into two groups, becomes involved in the examination, and can keep it current, this problem might be solved. As an alternative, the committee's meeting times should ideally be doubled.

Because of the delay in getting, analysing, and gathering information from the department, committee findings often reach the legislature too late to be examined or placed out on the table. The amount of time available for moving and laying would be reduced by the delay in setting up the Committee at the beginning of a session. And the session would have ended as a result.

The execution of the Committee on Subordinate Legislation's recommendations is stressed as being of utmost importance. It is evident that there is no efficient follow-up activity to determine whether or not the Committee's recommendations are executed on time. The goal of the examination will be defeated if the suggestions are not correctly and promptly carried out. There will be a responsible person who could be held personally accountable for the failure in this regard if there is a separate wing in the Legislative Assembly to which reports regarding the implementation of the recommendations are to be sent by the executive at regular intervals and one officer in every department of government is specifically entrusted with the implementation of the recommendation.

The Committee often hears testimony and requests the attendance of the relevant department's representatives. The departmental representative who is entrusted to come before the Committee may not be completely knowledgeable of the issue, which is one of the challenges the subordinate legislation committee has in conducting hearings of the officials. It can be because they are underprepared or lack the necessary technical knowledge. In these situations, it is extremely difficult for them to persuade the committee members on the concerns brought up, and as a result, the Committee's precious time is used. In certain cases, the procedure of calling government witnesses before the Committee turns out to be ineffective.

The Committee examined the reports and discovered that the errors were there even in the draught form of the notices and regulations. It should be noted that the legal department's draught rules may also be flawed since they may not include all the specifics and complexities of the many departments.Additionally, it can be noticed that there aren't many people in the legal department who have had specialised training in drafting. The fact that there was practically any debate on the Assembly floor demonstrates the legislative inertia to check the Subordinate Legislation when it is presented to the Legislative Assembly.

Legislative vigilance is perceived to be seldom performed with regard to the subordinate legislation that is presented before the Assembly.Additionally, it should be noted that identical alerts are not all written in the same way. In certain cases, if the Statute is not in Malayalam, subordinate legislation is issued in Malayalam. This takes up a significant amount of time while the Committee examines the Subordinate Legislation. The majority of studies highlight several legal issues that arose during the preparation of the subordinate legislation. This can be as a result of a lack of legal knowledge. Some Committee on Subordinate Legislation members and officials have identified a critical element as the primary reason for a Subordinate Legislation's legal flaws. Because few office assistants are specialists, the task of creating the subordinate laws is now in their hands. Departments must have the essential staff members who have received specialised training and expertise.

The frequency of meetings conducted by the Subordinate Legislation Committee is yet another issue that affects the efficiency of the Committee. The Committee typically has three meetings every month. But given the enormous number of S.R.O.s that are issued every day, this seems like a relatively short period of time. The Committee on Subordinate Legislation's effectiveness would unquestionably be impacted by this. The Committee is currently dealing with a severe workload. Due to scenarios when the Committee must address fields of intensely technical and scientific competence, this might make the Committee system ineffective.Only by creating expert-filled subcommittees can the matter be resolved.

Power corrupts, and absolute power corrupts totally, according to the general principle. The executive is to be granted total rule-making authority while yet being subject to the same premise. This is due to the fact that the executive may sometimes demonstrate its prejudice, discriminating, and corrupt character.

When the Committee requests a document, information, or response from the relevant department, it does not get it within the allotted time, according to an analysis of the Committee system's operations. If this practise is still being used, it is most likely necessary to start fresh action plans for supplying the necessary information right now. It is thus necessary to take strict action and make procedural changes to the way the committee operates. It may not only save the Committee considerable time, but it may also increase the executive's accountability to the Legislature.

The Chairman or one or two other members are often found to be efficient in reviewing the S.R.O.s. Due to their lack of knowledge and interest in a certain topic, other members who are present during the meeting may start to become passive. Therefore, it is important to be aware of every member of the main topics. The Committee's suggestions in some ways aid in allocating enough funding at the appropriate time for projects and programmes that the public may feel are necessary. As a result, the committees' role assists the legislature in interfering with the state's process of growth, expansion, and construction by indirectly monitoring executive activity. This makes the Legislature's dedication to upholding the public interest clear.

A little spelling mistake or signs like a "comma," "dots," or "hyphens" may result in an incorrect reading of the regulations, and if this interpretation is not made correctly, it may result in administrative nepotism13. For this reason, the committee carefully examines even the smallest elements of the notices released. Although the committee on subordinate laws examines the S.R.O. after publication, it has the authority to suggest that the Government fix

the problems and the right to completely revoke the notice if it deems it to be unfit14. In cases when an adjustment is made, the modified S.R.O. must be brought before the legislative assembly, and the executive is responsible to the Committee as it must resubmit the amended notice shortly after it has been reprinted.

The Subordinate Legislation Committee has made significant contributions to enhancing the parliamentary process and has improved oversight of legislative and executive authority. It serves as a useful tool for the Legislature in scrutinising statutory rules, orders, and bye laws and reporting to the Assembly on the properness of the delegation of the powers to make rules, sub rules, etc. granted by the Constitution or delegated by the legislature or by parliament. As was already said, the Subordinate Legislation Committee reviews the regulations when they have been informed by the relevant department, not while they are still in draught form. The majority of the reports show that by the time the Committee considers the regulations, the department in question would have already accomplished the goal that the rule was designed to achieve[7], [8].

By watching the current procedure followed by the Committee, we may infer that the Subordinate Legislation Committee's review of the regulations is, to a great degree, postmortem. The bureaucracy is always crucial to successfully carrying out public will. The welfare State's growing bureaucracy was made more visible by the social laws it enacted. A nation like India, which aims for rapid industrial, social, and administrative progress through planned development, must respond to the bureaucracy not only for the efficient implementation of policy but also for expert advice on the policy's foundation, the determination of priorities, ongoing readjustments, as well as effective implementation. Control over bureaucracy is seen necessary in such circumstances, and this is made possible by the Committees that keep a careful and watchful eye on the Executive.According to Allen, the legislature's broad and ill-defined authority transfers to subordinate entities lead to the secret exercise of discretionary power; this tendency is said to be a hallmark of contemporary bureaucracy.

taking into account all the aforementioned factors, the Subordinate Legislation Committee assists the Legislature in curbing the Executive's abuse of authority. It allows the legislature to effectively manage the executive without taking up important time. It also functions as a mechanism to combat corruption, prejudice, and poor management. It prevents the Executive from abusing its authority. Given its capabilities, it seems to be more potent and to play a significant role in the development of the State.Everyone contacted believed that the need of delegating legislative authority to the executive and other subordinate authorities cannot be disputed, notwithstanding all potential arguments against giving the executive ever-increasing powers. Experience has shown that under a parliamentary democracy, a certain degree of legislative power transfer to the executive will always be a necessary evil.

The internal working procedures serve as the foundation for the Committee on Subordinate Legislation's operations. This is the most crucial section, and it must be considered carefully in the research. Rule 20763 of the norms of Procedure and Conduct of Business of the Kerala Legislative Assembly governs internal working norms.64. For the duration indicated in the Constitution or the applicable Act65, the regulations, rules, sub-rules, and bye-laws that are drafted in accordance with the Constitution or the legislative duties assigned, or by the Assembly to a subordinate authority, must be placed before the Legislative Assembly.

Regulations, rules, sub-rules, byelaws, and the like must be placed before the legislative assembly for a period of fourteen days if the relevant act does not include a provision for their laying or if it does not specify a time frame.A day or a portion of a day must be set aside by the speaker for the deliberation and adoption of any amendments to the aforementioned regulations, rules, subrules, bylaws, etc. A member must serve the notification in this situation. No notification of a modification to a state government regulation, rule, sub-rule, or byelaw whose subject matter pertains to any item or entries in the Union List in the seventh schedule of the Constitution.

The government's statutory regulations, orders, notices, etc. This is done in accordance with the authority granted to them by numerous laws. The Committee members create questionnaires with all the essential information. The Government Secretariat's department will be requested to provide any relevant responses with regard to the information sought68. Statements, memos, and notes must typically be provided together with thirty copies of the responses69.

Three days before to the Committee meeting, the members may submit their ideas for the Committee to consider70. The Secretary must also keep track of any areas where the Committee, acting on the Chairman's instructions, needs further information71. The Secretary is responsible for maintaining the minutes of each committee meeting72. All proceedings shall be kept private in accordance with Rule 9. If the Committee agrees to produce a report, its choices will be reflected in the draught report, which will be discussed at the committee meeting73.

The report will be printed and sent to the legislature as per Rule 13 as soon as it is finished. The committee meeting is sometimes scheduled by the chairman74. The Secretary may also arrange for the publication of the Committee's activity for the benefit of the general public on the Chairman's instruction.

the performance of several committees in the Kerala Legislative Assembly over the last few decades sheds light on the boundaries of their extensive operations and the fact that it had a significant influence on the assembly's successful legislative process. By carefully examining the SROs and reporting to the assembly on whether the powers to enact rules, sub-rules, etc. granted by the Constitution or delegated by the legislative or by the Parliament are being properly exercised within such delegation, the Committee on Subordinate Legislation successfully carried out its mandate. The subordinate legislative committee is reviewing the regulations after being informed by the relevant department, not while they are still in draught form. Since the legislature changed to allow for greater examination of legislation and better public implementation of that law, there has been a substantial improvement in the legislative process and other related mechanisms.

CONCLUSION

The separation of powers is crucially maintained via parliamentary privileges. They provide democratic checks and balances by allowing the legislative branch to function independently of the executive and judicial branches. Making sure that parliamentary privileges are used appropriately and morally presents difficulties. Maintaining these advantages while maintaining the larger legal system and safeguarding people' rights calls for constant watchfulness and open channels for reporting violations. Maintaining the fundamentals of

parliamentary privileges now is crucial for the health of democratic institutions. Societies may retain an effective system of checks and balances, sustaining a strong democracy that serves the public interest and promotes the principles of openness, representation, and fairness, by preserving these privileges while encouraging responsibility.

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CHAPTER 12

ANALYSIS OF LEGISLATION ON PENAL JURISDICTION

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ABSTRACT:

A key element of legal systems is legislation on penal jurisdiction, which establishes the parameters for the classification, pursuit, and determination of criminal offences. This essay explores the relevance, breadth, guiding principles, and ramifications for the administration of justice of the complex laws pertaining to criminal jurisdiction. It looks at how rules governing criminal jurisdiction create the legitimacy of judges, decide which laws apply, and guarantee that both the accused and the victim get due process. The research looks at how domestic and foreign laws interact, taking into account matters like extradition, legal cooperation, and punishment enforcement across borders. The difficulties of harmonising criminal jurisdiction legislation across various legal systems and cultural settings are also examined.

KEYWORDS:

Administration of Justice, Criminal Offenses, Legislation, Penal Jurisdiction, Principles, Due Process.

INTRODUCTION

The use of legislation to address contempt powers has benefits and drawbacks. Former Clerk of the House of Commons Sir Malcolm Jack KCB believed that a "modern statute" would be more persuasive to the European Court of Human Rights than the existing concoction of "seventeenth century can't" and common law.

The Lord Chief Justice thought the authority to deal with contempt of court may serve as a model, but he also thought you couldn't "resuscitate the old process" and that any enforcement mechanism would need to be supported by law.70 However, the degree to which privilege would be encroached upon by enshrining punitive powers in legislation would depend on the chosen paradigm. s The Green Paper makes a number of legislative suggestions that might guarantee that contempts could be penalised. Simple statutory structure and explanation of the current powers of Parliament might be provided by such legislation. Alternately, legislation might make particular criminal crimes related to contempt of Parliament or criminalise contempt in general.

These methods would provide the courts new authority. Parliament would effectively give up some of its privileges, as Lord Justice Beatson observed: "You either give up a little bit of your exclusive cognizance and you get enforcement, or you stay pure and are faced with the difficulty that you so vividly put about how on earth you are going to enforce it. Only a few narrowly defined contempts would be punished by the courts if the government's plan to criminalise particular contempts were implemented, leaving Parliament's authority to prosecute other contempts in dispute. In fact, the possibility of such contempts being

prosecuted would be raised by legislation granting the courts authority over certain types of contempt. 8. There may be yet additional issues with other styles of judicial examination of processes. According to the Green Paper, some material may be suppressed if it is irrelevant, would violate a confidentiality obligation, or falls under the legal professional privilege[1], [2].

It is essential to the operation of both Houses that you have the most information possible when making choices, as Nigel Pleming QC put it.72 Currently, the courts and Parliament each acknowledge the other's authority to choose whatever details are required in a particular case. Each House goes to considerable measures to avoid meddling with particular cases, despite the fact that Parliament establishes the legislative framework and may, in theory, be motivated by court proceedings to assess whether that framework is appropriate. Even when inquiries are too early for sub judice considerations to apply, Committees take care to avoid activities that might damage judicial procedures in addition to abiding by the sub judice rule. The Green Paper investigated whether the ambiguities over the authority of the Parliament may be cleared up by simply defining the House of Commons' power to impose fines. A little more clarification about the fact that Parliament itself has the authority to deal with contempts may be required, according to Nigel Pleming QC and former MP David Howarth, who is now a Reader in Law at Cambridge University.74 In comparing it to contempt of court, David Howarth asserted that "there are processes that can be set up by statute that give Parliament jurisdiction, quite broadly, and the courts would find it quite difficult to intervene"; he continued, "There is no reason why Parliament should give itself fewer powers than the magistrates court[3], [4].

The first and most significant obstacle is proving that each House still has jurisdiction over contempt. Fundamentally, this is a test of institutional trust. The two Houses are urged to accept this challenge. The issue of whether the Houses have the authority to impose penalties is if they can be carried out, according to the Clerk of the House of Commons. There is no need for a legislation to reaffirm the existing legal notion of desuetude in England and Wales. In New Zealand, the authority to fine (based on the authority held by the House of Commons of the United Kingdom) has only lately been claimed and exercised.80 The procedures for prisoner committal by warrant from the Speaker to the jail governor have not been changed. This section's remaining paragraphs address the steps we believe the two Houses should take to exercise their criminal jurisdiction. The two Houses are likely to define these procedures differently: the House of Commons typically relies on specific rules outlined in Standing Orders, whereas the House of Lords uses Standing Orders to outline general principles and leaves specific implementation to committee-prepared guidance that is then approved by the House. Furthermore, House of Lords Committees have seldom brought up claims of contempt; the sole one that has recently been brought before the House of Lords Committee for Privileges involved Mr. Trevor Phillips and came from a Joint Committee.81 Accordingly, the sentences that follow are based on Commons practises. If the House of Commons adopted our recommendations for how to exercise its criminal jurisdiction, we would anticipate that the House of Lords would follow suit in due order and adopt comparable processes that were tailored to that House's customs[5], [6].

The codification is required for a number of reasons, including its clear conflict with basic rights, notably Article 193, as well as other factors. such as the legislative and judicial branches' respective authority and the potential for conflict between them. In 1964, the Uttar

Pradesh legislative assembly approved a resolution for violation of privileges and ordered two judges of the Allahabad high court to be taken into jail and brought before the legislature, which was an unprecedented event4. To explain why they violated the house's privilege by hearing a plea from Keshav Singh, who had previously been imprisoned by the house, the two judges were invited to appear before the assembly in Lucknow. Despite the Supreme Court's intervention, which invalidated the house's decision to summon the two high court justices, this episode served as a wake-up call over the unlisted powers granted to legislators. Looking at the event and the Speaker of the Assembly's response, it seems that the argument had no foundation to begin with and that Keshav Singh could have averted a bad situation by apologising to the Assembly. Along similar lines, a resolution calling for the dismissal of Justice V. Ramaswamy, a serving judge of the Supreme Court of India, was approved by the Lok Sabha in 1991. This privilege's detractors are quite clear-cut and direct in their condemnation.

The primary source of these immunities, Articles 105(3) and 194(3) of the Indian Constitution, states that up until that point, "privileges enjoyed by the House of Commons of the United Kingdom were to be extended to the Indian parliament and state legislatures." Due to time restrictions, the Constituent Assembly did not include these immunities. In the Constituent Assembly, Dr. Rajendra Prasad issued a dire warning: "Parliament may never legislate on these privileges." His prediction came true, and unlike the constituent assembly, parliament has never attempted to codify these rights, drawing condemnation from legal experts and civil groups. There might be a justification for not codifying privileges, such as the fact that doing so would subject them to judicial review. The public's reasonable access to the regulations and standards of each House is one of the needs of fairness. This is why we propose that the two Houses define what constitutes contempt openly and publicly in addition to asserting their continued criminal authority[7], [8].

DISCUSSION

The standard of fairness for regular committee inquiries should recognise that a committee is not a court and that the consequences of a committee inquiry for the person or organisation whose testimony may be sought will be limited, even though we urge that Standing Orders be much more explicit about this standard. Many times, all that person or those people may need to do is provide information; their involvement in the investigation won't be necessary. According to the Resolution we are attaching, it would be a contempt of court for an outside authority to attempt to punish a witness for testimony provided to a committee.

Judges, government workers, and lawmakers should all be excluded from any summons authority, according to the Green Paper. We briefly discuss these issues here even though we believe legislation is improper since each House might limit the capacity of Committees to call certain types of witnesses. Such a limitation does exist, in fact. According to the constitution, a Committee cannot force a Minister to appear since, as Members of one or more Houses of Parliament, they may only be compelled by their own House. Although there have been times when Committees have unsuccessfully attempted to get participation from MPs or members of the House of Lords who are not Ministers, political pressure is often effective in guaranteeing attendance in practise. The House of Commons already has formal processes in place to address claims of privilege. The House as a whole decides whether to refer a matter of privilege to the Committee of Privileges, Members need the Speaker's permission to raise a matter of privilege, and the Committee of Privileges only has the

authority to investigate complaints that are referred to it. These measures protect against frivolous allegations of privilege breaches. The official complaints of leaks from select committees are the exception to this rule and are immediately submitted to the Committee of Privileges.

The existing procedure for submitting a topic to the Committee of Privileges hinders frivolous or poorly thought-out objections, but it also has drawbacks. It appears unjust because the decision is made after a discussion in which the Members who will eventually determine the result if a contempt is discovered consider the issue before the inquiry begins.Since the majority of complaints are expected to concern select committee meetings, we advise that select committee reports that include accusations of contempt be immediately forwarded to the Committee of Privileges. Before making any such complaint, the House of Commons Liaison Committee should be consulted in order to prevent a select committee from hastily adopting a report and later concluding that the behaviour complained of did not, in fact, constitute a serious interference with the work of the select committee.

The House should continue to determine whether or not to refer a contempt claim made by a specific Member where the Speaker of the House of Commons believes it is acceptable to enable a question of privilege to be raised in other circumstances. The Member's complaint and, if applicable, a single speech objecting to the referral should be the only topics up for discussion.

If the Committee of Privileges finds that a contempt has been committed, members of the Committee to which the contempt related, Members of the Committee of Privileges, as well as any member of the Liaison Committee consulted, should be barred from voting when the House comes to consider the matter. The procedures for looking into a contempt complaint should be more stringent than those for regular committee inquiries, although the specific procedures needed may vary depending on the kind of complaint and the penalty that the Committee of Privileges deems suitable. The Committee would be conducting a very different kind of investigation than one in which penalties or jail were discussed, if it believed it would just reprimand violators. Despite Sir Malcolm Jack's opinion that "the possibility of hauling people to the bar of the House and admonishing them would provide a theatre of the absurd,"86 the current Clerk of the House pointed out that admonishment could be done by resolution and suggested that, if it was clear that it was based on fair processes, admonishment would have a significant reputational (and in some cases, financial) impact.87 Without requiring the offender to show up in person, admonishment may take the shape of a House resolution. We take notice of the announcement made by the House of Commons Committee on Standards and Privileges that it would only take into consideration proposing an admonishment in the matter of the alleged contempt against the Culture, Media, and Sport Committee. As stated in its minutes from July 3, 2012, it has already established fair mechanisms to handle such complaints.88 These include the ability to reply to any criticism from the Committee, hearings when witnesses may be accompanied by solicitors, and the exchange of material with people who are the subject of an inquiry.

It would be appropriate to grant greater rights of legal adviser intervention and make sure that the subject of the investigation or his or her legal counsel had the chance to question any witnesses if the Committee of Privileges wished to retain the option of imposing a stronger punishment than admonishment. In debating the topic of lay members, the House of

Commons Procedure Committee heard arguments that the inclusion of lay members wouldn't jeopardise the Committee's privileges or that the courts wouldn't entertain such a case.However, the Committee came to the conclusion that if lay members were to be granted voting rights, legislation should establish the issue beyond a reasonable doubt. According to the Committee, there would be a "strong element of risk" if lay members were appointed in the absence of such legislation because it could "lead to conflict between the House and the courts and might have a chilling effect on how the Committee conducts its work even before such a challenge emerged."89

According to the existing policy, lay members may participate in Committee on Standards meetings but are not permitted to make motions, modify motions, or vote. The Committee is not quorate until at least one lay member is present, and lay members who are present when a report is agreed upon have the right to add their opinions to that report. However, they also have additional, special privileges.As a result, the position of lay members is protected without running the danger of raising questions about whether the Committee's deliberations were protected by parliamentary privilege[9], [10].

This strategy prevents challenges to the Committee's authority, but it does separate lay members from the other Committee members. I cannot overstate how crucial it is that lay members should be able to participate on the same basis as MPs do. It is important to note at the outset the different roles and different modes of operation of the courts and the legislature. Rt Hon Kevin Barron MP, the Chair of the Committee on Standards, wrote to our Chairman to support legislation granting lay members full voting rights. Whether in the House or in committees, Parliament is a location where discussion occurs in a political setting. A political process led to the law that Parliament passed. Legal rulings, on the other hand, are carefully considered, objective declarations of a court's conclusions in regard to particular facts, and in the case of rulings by higher courts, of the interpretation or effect of a statute or common law in the context of those circumstances. Courts and Parliament are both vital, but they work in quite different ways, so it may be difficult to draw the lines between them in a manner that allows one to efficiently carry out its duties without interfering with those of the other.

The Green Paper claims that recent changes have led to more frequent use of parliamentary proceedings in court than in the past without violating parliamentary privilege. The Green Paper analyses the conditions under which parliamentary proceedings may be used in court and then states the Government's opinion that "the current situation, whereby parliamentary proceedings may be used by the courts so long as they are not questioned or impeached, is perfectly satisfactory." Despite the courts' careful consideration of the correct limits of privilege, judicial notice of parliamentary proceedings might theoretically influence what is said in Parliament. Ministerial utterances should be verified with parliamentary counsel, according to the Government's Guide to Making Legislation, since "parliamentary material may be used to assist in the interpretation of legislation."110 David Howarth also suggested that political declarations made in Parliament can end up serving as a "substitute" for "clear drafting" of law.111 He said that "the courts are scrutinising what a Minister stated in Parliament to see if the Minister satisfies the legal test of relevance or the legal test of logic. Allowing the courts to interpret Article 9 as they see fit regarding the admissibility of parliamentary proceedings while requiring them to inform Parliament whenever it is intended to use such proceedings as evidence is a possible middle ground. Before the House of

Commons agreed on October 31, 1980, that "the practise of presenting petitions for leave to refer to parliamentary papers be discontinued," it was necessary not only to inform the House of Commons but also to request permission to refer to privileged material.116 The House of Lords has never established such a requirement, and it seems that the Commons rule was not consistently followed in practise. Three MPs (David Chaytor, Elliot Morley, and Jim Devine) and one peer (Lord Hanningfield), who were charged with false accounting in relation to their parliamentary expenses, had challenged the court's jurisdiction on the grounds that their expense claims were protected by parliamentary privilege. This provided the impetus for the government's commitment to address the issue. When the general election was held in May 2010, the lawsuit had not yet been litigated, but by the time the Green Paper was officially released over two years later, in April 2012, the Supreme Court had definitively rejected the four Members' claims. "Neither Article 9 nor the exclusive cognisance of the House of Commons poses any barriers to the jurisdiction of the Crown Court.

Thus, the main driving force behind the coalition agreement's pledge had, to a considerable measure, been disproved. The Green Paper nonetheless outlines the Government's ongoing concern: "it would be wrong if MPs or peers accused of serious criminal offences could use parliamentary privilege to avoid criminal prosecution, where these are not related to the key elements of freedom of speech and debate."120 In order to balance the need to protect free speech and debate in Parliament with the requirement that "parliamentary privilege cannot be used to evade the reach of courts where criminality is suspected," the Green Paper proposes that proceedings in Parliament could be used as evidence in criminal cases, with some exceptions. It states that these exceptions should "minimise any chilling effect to free speech in parliamentary proceedings the Government's proposals suggest." But before we entertained the idea of weakening a privilege that even the Green Paper acknowledges is of "fundamental importance," we would need to see proof that the issue being addressedthe parliamentary privilege's obstruction of justicewas so serious that it justified weakening a long-standing, essential protection that is deeply ingrained in our constitution.

Even if the Constituent Assembly hoped that the parliamentary privileges would be codified, our legislators have not even made a single move in that direction. By codifying their immunity, the Parliament or State legislatures do not want to restrict it. However, if these liberties are not enshrined in law, it might result in flagrant violations of the right to free speech and expression. How practical is a different path in a democracy? In a democracy, it is not ideal to take a different path to accomplish something that is the clamour of many. It is not something to take pride in. However, considering that our lawmakers have put this issue on hold for more than 70 years, it is critical to find a means to enumerate and restrict the rights of the parliament. The 42nd Constitutional Amendment Act12 of 1976, passed under the Emergency, intended to substitute (delete and replace) Articles 105(3) and 194(3).

This was done in order to add a sentence to the original language stating that "the privileges would be periodically evolved by the parliament and state legislatures." Even while the Parliament intended for this modification to increase its control over what would constitute a privilege, it really provided a backdoor for this clause to be overturned13. As a result of Articles 105(3) and 194(3) being removed and replaced with new language by the Parliament (where it was possible to modify just a portion of the provision without changing the whole text), these provisions are no longer original components of the constitution but rather constitutional modifications. The Kesavananda Bharati ruling states that "a constitutional

amendment is null and void" if it violates the fundamental principles of the constitution. An amendment to the constitution is not a law. The legislative privileges provisions of the Constitution, notably Article 19(1)(a), might be overturned if it is shown that Article 19 is a component of the Constitution's essential structure.14. In the Minerva Mills15 decision, the Supreme Court ruled that "Articles 14, 19, and 21 form part of the basic structure of the Constitution and they cannot be abridged by any law." Since the Supreme Court itself determined that Article 19 is a component of the fundamental structure, the Court now has the authority to assess the constitutional legitimacy of the revisions to Articles 105(3) and 194(3) using the standard of Article 13 as established in the Kesavananda Bharati case16. Article 19(1)17 predominates over any change to the Constitution but not over any legislation passed by the Parliament, therefore it would predominate over the aforementioned amendments but not over any statute codifying parliamentary privileges.

CONCLUSION

Laws governing criminal jurisdiction cross international boundaries, particularly when it comes to transnational crimes. To fight transnational criminal activity, a complex network of international treaties and accords handles problems including extradition, mutual legal aid, and harmonization of penal laws Harmonising criminal jurisdiction rules across various legal systems, cultural norms, and enforcement procedures presents complicated challenges. Careful dialogue and cooperation are necessary to strike a balance between upholding national sovereignty and solving global concerns. Strong law is required in the modern legal environment to take into consideration changing criminal behaviour, technological advancements, and international collaboration.

Societies may guarantee that criminal offences are properly handled, that justice is served, and that the ideals of fairness and accountability remain crucial to the administration of justice by implementing comprehensive and flexible laws on penal jurisdiction.

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