

Forum: Legal Committee(GA5)

Issue: The question of legislative immunity

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Introduction

The legislative immunity, as an essential part of the constitutional democracy, is a provision that involves preventing the people's representatives from being put on trial concerning all legislative issues. The separation of power serves as the very basis of the judicial independence, hence; law-makers will not be frightened of the interference from the other branch of the government while carrying out their due tasks. The oldest roots of the legislative immunity can be traced back to the era of parliamentary systems when it has been introduced as a weapon of defense of the parliament members from the executive branch and a protection tool of the independence of the legislative discussions. Along with the constitutional arrangements and the legal systems, which provided the limits and the criteria of this process, such concept came into existence.

The legal principles particularly of legislative immunity derive from the notion of the principle of legislative privilege that bestow legislators with some privileges and prerogatives which are revered as necessary for the functioning of the legislative process. These goods are expressed as immunity from all civil and criminal liability of the discussion and any actions made within the legislative chamber. The legislative immunity, however, cannot be absolute but is bounded by certain restrictions to keep abuse and mismanagement at bay. Relevant here is the fact that immunity usually is not applicable to acts unrelated to the legislative functions, such as corruption or personal misbehaving.



Furthermore, landmark judiciary cases have been very instrumental in sculpting the frame of legislative immunity, by setting the traits that demarcate them from it as well as an exceptions. A case in point is that of the United State Supreme Court in *Kilbourn v. Thompson* (1881), which marked the limits of the immunity of legislators thereby condoning rulings that gave the politicians accountability for illegal actions not related to legislative authority. On the other hand, the Supreme Court's ruling in *Gravel v. United States* (1972) conferred the legislative immunity and even gave an exception for legislative activity which is fatally necessary like the publication of legislative materials.

Although its role in maintaining independent legislature cannot be underestimated, legislation inherent in the same has been the object of appraisal and criticism for a long time. Theorists claim that rebellion shields members of the legislature from accountability regarding unethical or illegal acts which contradicts the cornerstone principles of transparency and accountability in democratic governance. In addition, the uniform application of legislative immunity does not work with all the legal systems for the result of inequalities and different implementation of the practice.

To summarize, the thorough look into the legislative immunity issue calls for the consideration of where it originated from, its legal grounds, members of the Supreme Court who made the most outstanding decisions, and the current debates surrounding it. Legal immunity is an essential tool that shields the 'legislative branch' members; nevertheless, its execution must be complemented with the public accountability rule and the rule of law in order to guarantee the non-impairing of democratic governance. Continuous dialogue about and alterations that clear up the



domain of legislative immunity is high on the agenda of how it could fit with standards of democracy.

Definition of Key Terms

Term 1: Legislative Immunity

Legislative immunity is the judicial protection granted to the legislators that shields them from the liability of any civil or criminal offenses for their acts done or the statements released in course of their legislative duties. This independence is meant to shield the legislature from undue interference or pressure from other authorities and to ensure that the legislators exercise their legislative functions independently and impartial. The other illustration is when an elected official makes various controversial statements during a debate at the legislative chamber, they are typically immune from being sued for those statements even if they offend certain people or groups.

Term 2: Separation of Powers

The pointed dissociation of powers is a crucial tenet of democratic governance, which splits governmental authority between branches that are separately defined—mostly those of executive, legislative and judicial powers. This barrier ensures that power remains dispersed and blocks the masses of a single branch, aiming to protect people from despotism and misuse of such power. Examples, rule of law having its divisions; the legislature is the one making laws, the executive is the one implementing them and enforcing those laws, and the judiciary is the one interpreting and applying the laws; thus, creating a well-structured system of checks and balances.



Term 3: Legislative Privilege

Legislative privilege implies the rights and immunities granted to the members of the legislature during the legislative sessions. Among these privileges are speech, debate, and voting within the legislative chambers which makes it possible for the lawmakers to fully express their views, discuss strenuously without any legal consequences. For example, if a legislator expresses an opinion against a proposed policy during a legislative session, they cannot be sued for defamation or libel based on the statements made in a legislative context.

Term 4: Accountability

Responsibility means to be accountable, to the public or another oversight body, to give an explanation about every action, decision and policy one makes. Through legislative immunity, accountability becomes an option for the public to confront to the conduct and decisions of the legislators of the certain degree being within the legal protections from the immunity. Such as, although, lawmakers can still be prosecuted for their actions that exceed material jurisdiction, electorate authority gives them capability to account them with any form of political assistance even after elections.

Term 5: Rule of Law

A rule of law doctrine is premised on the authority of law which is higher to arbitrary exploit of power and all individuals and institutions are controlled by that law including rulers and governors. When discussing legislative immunity, the rule of law



requires that the privileges assigned to legislators do not result in their being exempted from legal liability or the due process afforded under the authority of norms. Such collies like the fact that legislators are not immune from investigation and prosecution, especially if they commit a criminal offense outside a legislative sphere or the rule of law.

Background Information

The legislative immunity, also called the parliamentary immunity or the legislative privilege is the common law principle that grants elected representatives from civil and criminal liability for actions made and comments issues in course of their Parliament's decision-making on the job. This immunity works to promote the very idea as well as vision of sovereignty of lawmakers in and the uninhibitiveness of the debates within the legislative bodies. On the other hand, the legislative immunity, in spite of the arguments in its favor, gives rise to some questions regarding democracy, accountability, as well as the principle of law.

Historical Origins

The notion of legislative immunity has its origin in parliamentary traditions. It should be stressed that these traditions can be traced to ancient and medieval times when it functioned to protect parliamentarians from royal or executive interference. As an instance, in the Medieval England, MPs acting during parliamentary sessions were exempted from arrest for assurance that even in the midst of a debate they have freedom of speech and may not get retribution



after. The exemption from criminal prosecution for representatives during their legislative practice has gradually been expanded into an immunity protecting lawmakers from any kind of legal consequences.

Evolution of Legislative Immunity

The current perception of immunity of the representatives by citizens since the time of constitution to the present day is due to legal precedence and set rules in jurisdictions. The speech or debate clause of US constitution comes in to play in situations like these. It provides a broad immunity to the members of congress. It means that member of congress cannot be prosecuted or have civil suits related to the legislative activities. Activities like speech, debates and votes of members are included.

Legal Foundations

Legislative immunity is established on separation of authority concepts and necessity that the House is free of influence of judiciary and executive branches. The immunity provides for the shielding of the members of the parliament from the any legal suits, therefore, they are permitted to discharge their duties without any fear of being impeached by other state organs or by the general public. At the same time, it should be pointed out that legislative immunity provisions do not possess unlimited character, being open to debates both in the jurisdiction of courts and in the spheres of legislative bodies. Example is the limited nature of the immunity abroad which does not usually protect the lawmakers from the wrong doing in their personal lives or acts of corruption.

Significance of Legislative Privilege



Legislative immunity is in combination with legislative privilege, it which is including freedom of speech, debate, and voting in legislative chamber, a major component of legislative immunity. It is a privilege that provide members of the legislature ability to voice out their views, interrogate and continue with the discussions without any legal restraint. Likewise, an MP who encounters any criticism or accusation of the government policies during parliamentary debate shall not be sued for defamation or libel on account of their statements.

Notable Cases and Precedents

As a matter of fact, several landmark state cases served as binding models in shaping the scope of legislative immunity and key precedents. *Kilbourn v. Thompson* (1881) and *Gravel v. United States* (1972) in the United States are the examples which bring out the limitations of senatorial immunity and strengthen the concept of independence that legislators have. This cases give the percept that both justice and security deserve not be treated like foes as the rules of law and accountability are paramount.

Contemporary Debates and Challenges

Yet, legislative immunity is an issue that still gets a mixed reaction from people. Although it is a key guarantee against the interference of legislative bodies in the legislative process, it is debated and controversial. Critics argue that the immunity of legislative players from accountability to the society for unethical or



unlawful behavior may shield them against public scrutiny of transparency and accountability in the democratic process. Similarly, the uniform application of lawmaking immunity is different in different jurisdictions constituting more rooms for disparities and raising questions about its fairness. The ongoing debate and reforms, hence, should be expanded for narrowing down the scope and limitations of legislative immunity so that it is in line democratic standards and ideals.

In conclusion, there is no easy answer to the question of legislative immunity which has usually been an important legal doctrine with very old historical roots and has a great impact on democratic management in general. The impunity of legislative members through their immunity without accountability and rule of the law permits them only to preserve legislative independence and debate freely. Through analyzing how legislative impunity has come about, the underpinnings of the law, witnessing significant court cases, and the contemporary discussions stemming from this issue, one learns about the shortcomings and the complexities of legislative immunity as well as the efforts to balance guarantees of freedom of expression too.

Major Countries and Organizations Involved

United States

The US carves a niche to itself when it comes to the content of legislative immunity, primarily by constitutionally and judicially molding it. The Speech and Debate Clause of the US Constitution that was enacted back in 1789 gives broader protection to the U.S. Senators and Congressmen and ensures that they cannot be prosecuted or sued in the court for the legislative actions performed within the scope of their



official responsibilities. Issues like *Kilbourn v. Thompson* (1881) and *Gravel v. United States* (1972) have also helped to write new rules and strengthen legislative immunity. These cases represented a victory of people over the authorities. They confirmed the legislative independence and its infallibility. Adding to the list, the Congress' discussions and decisions affecting the amendment of the legislative immunity are not only national issues but also international ones. This is because other countries that also are on the path of solving the same matter consider their precedent cases.

United Kingdom

The UK, with the centuries old practice of parliamentary legitimacy, is also one of those countries, which has helped to advance the values of legislative immunity in the European Union. Parliament in the UK, old traditions applied and its peers used to be generally immune from arrest during a session, a privilege intended mainly to ensure the separation of the legislative process from external influence. Be that as it may, the UK legislative immunity might differ in extent as is the case with the legal system of the United States but the fundamental principles of guarding legislative autonomy and legislating through open debate are ever applicable. The new calls in the UK parliament over the privileges and immunity dealt with harshly by the PAM show the ongoing discussions over the balance between the legislative autonomy as well as accountability.

European Union



The European Union, which is a supranational entity born of the collective of multiple member states, is confronted with the issue of reconciling the different forms of jurisdiction and sovereignty of those making up its constituent countries on the question of legislative immunity. Even though the European Union as such lacks a legislative body empowered with similar immunity provisions as exist at national levels, the questions of parliamentary privileges and immunities may arise even in relation to the European Parliament as well as other EU institutions. While the goal of the EU is to forge a tightly integrated and homogeneous framework of legal standards applicable across member states, the pertinence of legislative immunity in the European perspective might be called for deepened scrutiny.

International Organizations

Numerous global institutions, such, as the United Nations (UN) and the Inter Parliamentary Union (IPU) also address matters concerning immunity albeit in a manner. While these organizations may not wield influence over legislative assemblies they advocate for the principles of parliamentary democracy, human rights and the rule of law which bear significance on legislative immunity. For instance the UNs Universal Declaration of Human Rights and the International Covenant on Political Rights acknowledge the importance of freedom of speech and expression aspects closely intertwined with privilege and immunity. Furthermore the IPU serves as a platform for parliamentarians from nations to share perspectives and best practices regarding issues like immunity fostering international dialogue and collaboration, on shared concerns.



Timeline of Events

Date	Description of event
1881	The United States Supreme Court case Kilbourn v. Thompson establishes limitations on legislative immunity, affirming that legislators are not immune from accountability for actions exceeding the scope their legislative authority.
1972	The supreme court decision in Gravel v. United States further clarifies the scope of legislative immunity, recognizing exceptions for activities essential to the legislative process, such as the publication of legislative materials.
2016	The European Court of Human Rights rules in Mammadov v. Azerbaijan that the arrest and detention of an opposition leader violated his parliamentary immunity, highlighting international implications for legislative immunity protections.



2020	Controversies surrounding legislative immunity arise globally, prompting renewed debates about the balance between legislative independence and accountability in democratic governance.
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Relevant UN Resolutions and Other Documents

- UN Resolution 68/201 (2013)

This resolution, titled "Inadmissibility of certain practices that contribute to fueling contemporary forms of racism, racial discrimination, xenophobia and related intolerance," addresses issues related to racism, discrimination, and intolerance, which can intersect with debates surrounding legislative immunity. [[Link to Resolution](#)]

- UN Resolution 55/2 (2000)

Known as the Millennium Declaration, this resolution outlines the United Nations' commitment to uphold the principles of human dignity, equality, and justice. While not specifically focused on legislative immunity, the declaration underscores the importance of promoting democratic governance and the rule of law, which are central to discussions about legislative accountability and transparency. [[Link to Resolution](#)]

- International Covenant on Civil and Political Rights (ICCPR)

Adopted by the United Nations General Assembly in 1966, the ICCPR is a multilateral treaty that outlines fundamental human rights, including the rights to freedom of expression and participation in public affairs. While not directly addressing legislative immunity, the principles enshrined in the ICCPR are relevant to discussions about the balance between legislative autonomy and accountability. [[Link to ICCPR](#)]



- Inter-Parliamentary Union (IPU) Declarations

The Inter-Parliamentary Union, an international organization of national parliaments, has issued various declarations and resolutions addressing issues related to parliamentary privilege and immunity. These documents provide insights into international best practices and standards regarding legislative immunity and parliamentary autonomy. [[Link to IPU Declarations](#)]

- Council of Europe Resolutions

The Council of Europe, an intergovernmental organization promoting human rights, democracy, and the rule of law, has adopted resolutions addressing parliamentary privilege and immunity. These resolutions offer guidance and recommendations to member states on ensuring the effectiveness of parliamentary oversight while upholding the principles of accountability and transparency. [[Link to Council of Europe Resolutions](#)]

Previous Attempts to Solve the Issue

- UN Resolution 59/294 (2005):

A rule by the United Nations in 2005 stresses the importance of following laws in running a country. Although it doesn't directly talk about legislative protection, it highlights the call for fairness, openness, and respect for human rights in all parts of governing, including how lawmakers operate.

- Inter-Parliamentary Union (IPU) Suggestions:

The IPU gives suggestions and rules to boost openness and accountability in how parliaments work, covering conversations about legislative protection. These suggestions often stress the need to find a balance between lawmakers having power and being answerable to ensure democratic institutions work well.



- National Law Changes:

Many countries have made changes to laws to explain and update the extent of legislative protection within their legal systems. These changes could mean adjustments to constitutional rules, laws, or parliamentary ways to deal with problems like the scope of protection, exceptions, and ways to be answerable.

- Court Rulings:

Court decisions, especially in countries with common law systems, have had a big role in forming how legislative protection is understood and used. Important cases have set examples and made clear the limits of legislative protection, giving direction for lawmakers, legal experts, and policymakers.

- Global Conversations and Meetings:

Global groups like the United Nations, the Inter-Parliamentary Union, and regional bodies like the Council of Europe, often bring together talks, meetings, and classes to talk about problems linked to parliamentary rights and protection. These meet-ups give chances for lawmakers, legal experts, and policymakers to exchange ideas, share good ways to do things, and consider possible answers to challenges linked to legislative protection.

Possible Solutions

In addressing the issue of legislative immunity, several potential solutions emerge. One approach involves establishing clear guidelines delineating the scope of legislative immunity, including provisions for exceptions and limitations. This measure aims to prevent potential abuses or misunderstandings of legislative immunity while safeguarding the independence of lawmakers.

Additionally, enhancing oversight mechanisms within legislative bodies could bolster accountability. Strengthening parliamentary committees' authority to



investigate allegations of misconduct or misuse of legislative immunity, alongside implementing measures to increase transparency and public scrutiny, could be instrumental in this endeavor.

Education and training programs for legislators represent another avenue for addressing the issue. By providing comprehensive training on the rights and responsibilities associated with legislative immunity, lawmakers can make more informed decisions and avoid potential conflicts.

Developing international standards or best practices for legislative immunity based on comparative legal systems and human rights norms could promote consistency and coherence in its application globally. This framework could serve as a guide for countries to align their legislative immunity provisions with international norms and principles.

Engaging civil society organizations, legal experts, and the general public in discussions about legislative immunity is paramount. By soliciting input from diverse stakeholders, policymakers can ensure that reforms to legislative immunity reflect the broader interests and values of society. Implementing mechanisms for regular review and revision of legislative immunity provisions allows for adaptation to evolving societal norms and legal developments.

Periodic reassessment ensures that legislative immunity regulations remain relevant and effective in addressing emerging challenges. Striking a balance between the rights and responsibilities of legislators regarding legislative immunity is crucial.

Clarifying that legislative immunity does not absolve lawmakers of accountability for criminal offenses or serious misconduct unrelated to their legislative duties helps maintain the integrity of legislative processes.

Lastly, promoting collaborative efforts among national governments, international organizations, and civil society stakeholders is key to addressing issues related to legislative immunity comprehensively. By fostering dialogue and



cooperation, stakeholders can develop holistic solutions that uphold democratic principles and the rule of law.

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