A STUDY ON PARLIAMENT PRIVILLAGES ISSUES AND CHALLENGES.

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ABSTRACT:

*Under the Constitution, the people of India exercise their sovereignty through Parliament at the central level and through State Legislatures in each State. The executive power is vested in the President, who is the highest dignitary in the realm, the symbol of the statehood, and the embodiment of the unity of the country. He represents the sovereign will of the nation and exercises his functions by acting on the advice and aid of the Council of Ministers. Different cases have been discussed regarding the judicial approach to parliamentary democracy, the concept of independence of the judiciary, and its power to amend the Constitution. After discussing the parliamentary privileges and freedom of speech in Parliament, the author casts more light on the concepts of election and adult suffrage in India, and focuses on the role and position of the Speaker/Chairman in the House of People and respective State Legislatures. In the end, the author identifies specific problems observed in practice and discusses the challenges facing the Indian parliamentary democracy.*

**INRODUCTION:**

*“We the People of India*…”, the very first wordings of the Preamble of the Constitution of India clearly indicates that the people adopted the Constitution to ensure social, economic and political justice. The makers of the Constitution were not aware of the fact that they were making the world’s largest Constitution. The Constitutional Assembly believed that India already had the tradition of British system, which is better suited to our country’s conditions in 1961, and adopted the parliamentary form of democracy based on the Westminster Model for ensuring the political justice for the citizens. After obtaining independence, when the new Constitution of India came into effect on the 26th January 1950, India became for the first time in her long history, a full-fledged parliamentary democracy with the modern institutional framework 1971. Democracy is a concept, a political philosophy, an ideal practiced by the nation culturally advanced and politically mature, resorting to governance by representatives of the people elected directly or indirectly.

**Nature of parliamentary democracy**

According to Abraham Lincoln, “Democracy is the Government of the people, by the people and for the people”. But there is also a concept of representation in this democracy because, due to mass population, it is very difficult to run government by involving everyone in the government. In Indian context, we have both types of representation: direct and indirect. In popular elections, people directly elect their representatives in government and after that the elected representatives elect their representatives. Basically, having both direct and indirect representation, the nature of Indian parliamentary democracy is participatory democracy.

Although the makers of the Constitutions adopted the British model of parliamentary democracy, democratic system was not new to India considering that the republican forms of government, deliberative representative bodies and democratic self-governing institutions existed in the many parts of Vedic India also.

**OBJECTIVES:**

1. To really find out what are issues and challenges having a special parliamental privileges provided by the constitution.

2. To know that up to what level that the parliament can interpret in the issues.

3. Also to know the challenges faced by the parliamentary in certain privileges.

**LIMITATIONS**:

1. Lack of secondary sources.

2. Restricted accessibility to primary source of data.

RESEARCH METHODOLOGY:

Type of research:

* Applied research
* Descriptive research

Research method:

Quantitative & Qualitative method

Data collection:

Secondary source of data that includes research papers, journals, books, and Articles.

CONSTITUTIONAL AND JURISTIC APPROACH TO PARLIAMENTARY DEMOCRACY

**Office of President and Council of Minister**

The President is the highest dignitary in the realm, the symbol of the statehood, the embodiment of the unity of the country, and represents the sovereign will of the nation. The office of the President came into existence immediately after the Constitution was adopted on Nov. 26, 1949. There is no exception to this rule. Therefore, the operation of the constitutional scheme or structure cannot be envisaged even for a short while without a President of India being in the office.

The constitutional position of the President of India, envisaged in the provisions of Articles 53, 74 and 75, may be particularly referred to. Article 53 the Constitution vests the executive power of the union in the President, but he is required to exercise his powers in accordance with the Constitution. Article 74 says that there shall be the Council of Ministers to aid and advise the President in the exercise of his function, and he shall act in accordance with such advice. Article 75(3) lay’s down that the Council of Ministers shall be collectively responsible to the house of the people. There is no provision in the Constitution which makes the President accountable to the legislature.

In *Ram Jwaya Kapur* v. *State of Panjab,* it was observed that the executive power is vested in the President but the President is only a formal or constitutional head of the executive. The real power is vested in the Council of the Ministers, on whose aid and advice the President acts in the exercise of his function. The executive has the primary responsibility to formulate governmental policy and to transmit it into the law. But it is responsible for all its action to the legislature and, therefore, it must retain the confidence of the legislature. The basis of this responsibility is embodied in Article 75(3). The President acts on the aid and advice of the Council of Ministers in executive action, and he is not required by the Constitution to act personally without or against the advice of the Council of Ministers.

In *U.N.R. Rao* v. *India Gandhi*, it was observed that the harmonious reading of the mandatory character of Article 74(1) along with Article 75(2) and 75(3) is that the President cannot exercise executive powers without the aid and advice of the Council of Ministers even after the President has dissolved the legislature. Article 74(1) is mandatory and therefore the President cannot exercise executive powers without aid and advice of the Council of Ministers.

The essence of parliamentary democracy is that the Council of Minister shall be responsible to the House of the People. The Constitution of India, under Article 75(3), explicitly provides for responsible government. In the United Kingdom, the concept is that of individual and collective responsibility of Ministers. The Constitution of India provides only for the collective responsibility, which means that there can be no vote of no-confidence against a single Minister. The Council of Ministers is collectively responsible to the House of the People for all acts of government. Therefore, it stands and fall together (Kashyap, 2008: 1027).

**Judicial approach to collective responsibility**

In *U.N.R. Rao* v. *Smt. Indira Gandhi*, the Supreme Court held that the ministers constituting the Cabinet act upon the principle of collective responsibility. Our Constitution, though federal in its structure, is modeled on the British parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law, although the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State. In *Sanjeevi Naidu* v. *State of Maharashtra,* Justice N.S. Hagde, while observing the essence of joint responsibility, held that the Cabinet is responsible to the legislature for every action taken by any of the Ministries. The object of collective responsibility is to make the whole body of Minister collectively or vicariously responsible for acts of other Ministers if an individual minister may not personally be responsible for it; yet, he will be deemed to share the responsibility with those who may have actually committed some wrong.

**Parliamentary privileges and the freedom of speech in Parliament**

The Constitution of India provides the Parliamentary Privileges to the Members of Parliament (Article 105) as well as the Members of the State Legislatures (Article 194). The parliamentary privileges are an essential immunity to the high and multifarious functions which the legislature is called upon to perform. The essence of parliamentary democracy is free, frank and fearless discussion in Parliament. For a deliberative body like a House of Parliament, freedom of speech within the House is of utmost significance. To enable members to express themselves freely in the House, it is essential to minimize any fear that they can be penalized for anything said within the House. The members of Parliament have freedom of speech in Parliament by virtue of Article 105(1) of the Constitution of India. The Constitution of India gives privileges to the members of Parliament that they shall not be liable in any proceeding in any Court in respect of anything said for any vote given by him in Parliament. In Article 105 (2), the Constitution provides immunity from the liability in respect of publication by or under the authority of either House of Parliament of any report, paper, vote and proceedings. Article 194 of the Constitution provides the powers and privileges to the members of Legislative Assemblies and their Committee. The freedom of speech and powers and privileges are subject to Section 15 of the Constitution (44th Amendment) Act, 1978.

In *Advocate M.L. George* v. *High Court of Kerala,* it was observed that the Legislature, being protected by privilege under Article 194, is not answerable to Court for voting in a particular manner in Parliament. No person can claim any legal right to have a rule framed in a particular manner and the rule-making authority does not owe any corresponding duty to do the same.

ISSUES AND CHALLENGES

The makers of the Indian Constitution, while adopting the parliamentary form of government, had a view that parliamentary democracy will be the best suitable form of government for India. Most of the members of the Constituent Assembly were in favour of adopting the British parliamentary system as the role model for Indian parliamentary democracy. Pt. Jawahar Lal Nehru, Sardar Patel, K.M. Munshi, Dr. B.R. Ambedkar and Alladi Krishnan Ayyer strongly believed that British parliamentary system would be the best model, which would be able to meet with all democratic problems and aspirations in the future. But, after 66 years of the republican system of governance, we find that the operation of this parliamentary system is not so smooth or free of hurdles. In the past period, a number of problems have been observed in the practical functioning of parliamentary democracy.

**Legal issues**

1. Role of President

The essence of the parliamentary democracy is that the Council of Ministers shall be responsible to the House of the People. In *U.N.R. Rao v. Indira Gandhi,* the Supreme Court observed that the President is only the constitutional head and must act on the advice of the ministers, whereas the real executive powers are to be exercised by the Council of Ministers. The 44th Amendment of the Constitution of India provides that the President may require the Council of Minister to reconsider the advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration. Similarly, under Article 111 of the Constitution of India, the President may return the Bill for reconsideration (unless it is a money Bill). But if the Bill passed again by the Houses, it shall be presented to the President for assent and the President shall have no power to withhold his assent.

There have been few instances when the President sent a Bill for recommendation. In 1986, President sent the 1986 Post Office (Amendment) Bill to the Cabinet. In 2006, President Abdul Kalam sent the amended Parliament (Prevention of Disqualification) Act of 1959 for such recommendation. He assented to it when it was presented to him again, after such reconsideration but without any amendment.

*Delegated legislation*

The main function of Parliament is to make law for the country. But, usually, what happens is that the legislature enacts a law covering only the general principle and policies relating to the subject matter in question, and confers the rule-making power to the government or to some other administrative agencies. The absence of the Members of Parliament from the proceedings, as well as some un-parliamentary activities (such as watching porn clips, abusing others, throwing shoes, papers, paper weights and ink, sleeping during discussion, unreasonable walk-outs, demonstrations of banners and causing disturbance by raising unnecessary slogans) are the main causes for increasing of delegated legislation in India.

*Qualification of Representatives*

The minimum qualification to contest the election of MPs and MLAs is required in Indian parliamentary system. Article 84 clause (c) of the Constitution of the India provides power to the Parliament to decide the qualifications for its members. The Parliament enacted the Representation of People‟s Act, 1951 which provides for qualification and disqualifications of the Members of Parliament. Yet, the educational qualification is not specifically provided for being elected for the membership of the Parliament. The Haryana Government has fixed the minimum education qualification for Panchayat elections by the Haryana Panchayati Raj Amendment Act, 2015.The Apex Court of India also observed this amendment constitutional valid in *Rajbala v. State of Haryana* (Civil Writ Petition 671/2015). When a state government can take such a strong step to enhance the standard of elected representatives then why the Parliament cannot take such steps to fix minimum qualifications for MPs and MLAs.

*Right to reject and recall*

The Election Commission of India has introduced the NOTA option (None of the above) in pursuance of the order of the Supreme Court of India. The issue is in the electorates chose the NOTA, If a voter does not want to vote for anyone, why would he come to the polling station to cast his vote? If the voters cast their votes as NOTA, there is no effect on the election. The right to reject or recall an elected representative has not been given yet, although it seems to be a natural right along with the right to vote. After the fair and free election, an elected representative may change his mind in the course of a legislative term, or may be negligent in exercising his duties

*Office of the Governor*

In Indian parliamentary democracy, there can be different government at the Central level as well as at State level. Conventionally, the Government at the Central level appoints the Governors for the States in India. Sometimes, the governor uses his discretionary powers, which causes disturbance in the governance and policy making. The term of the Governor depends upon the pleasure of the President which acts in accordance with the aid and advice of the Council of Ministers in Parliament. So, the Council of Ministers use their influence over Governors of the States. The insecurity of term of Governor’s office can make the Governor pro-Centre government, which is a serious issue regarding democracy.

*Reservation for women*

The parliamentary institution represents the will of the citizen of the country. For adequate representation in the democratic system, under Article 334 of the Constitution of India, reservation of seats and special representation in Parliament is provided for SC, ST and Anglo-Indian community. But, the issue of reservation of seats for women representation in Parliament has not been resolved yet. Article 243D (3) of the Constitution of India provides 33% reservation for woman in Panchayat election while Article 243T (2) provides 33% reservation for women in Municipal election. The reservation is given at the lower level, but it is not provided at the central level. In the first Lok Sabha, the representation of women was 4.50% (22 members), while in 2014 the representation of women was 12.15% (66 members). While the global average for Women in Parliament stands at 22.4%, India is at the 103rd place out of 140 countries with a mere 12% representation. Within Asia, India is at the 13th position out of 18 countries. Countries like South Sudan and Saudi Arabia have better women representation in Parliament than India.37 With these issues, how can we secure the representation of the citizens‟ will? There is a need to provide reservation for women representation in Parliament as well as for the representation of socially and educationally backwards citizens.

**Challenges**

Indian parliamentary democracy presently faces the following challenges, which preclude achieving the goals of parliamentary democracy:

 Lesser participation of Citizenry in democratic processes

 Education and raising awareness of the electorate,

 Corruption in politics

 Criminalization of politics

 Negative role of the media

CONCLUSION

To the Indian Constitution, the envisaged form of government is the parliamentary democracy based on the British model of popular representation and control. The envisaged tenets of parliamentary democracy are: (1) representation of the people, (2) responsible government, (3) accountability of the Council of Ministers to the legislature. Yet, after 66 years of the republican system of governance, we find that the operation of this parliamentary system is not so smooth or free of hurdles. In the past period, a number of problems have been observed in the practical functioning of parliamentary democracy in India. The discussed issues and challenges show that the character and content of parliamentary democracy ultimately depend on the quality of the persons who man the legislature as representatives of the people. Given that debate, discussion and persuasion are the means and essence of the democratic process, there is a need to ensure maximum citizen participation and representation of all sections of the society, to raise the qualification standard of elected representatives, to enhance women representation in Parliament, and to vest more power in the local electorate by ensure the right to recall an elected representative. Above all, it is essential to address the observed problems and negative tendencies which preclude achieving the goals of parliamentary democracy in India.