

Vicissitudes of Parliamentary Privileges in India

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ABSTRACT

Oath to office suggests that Parliamentarians have fiduciary relationships of a kind with the Constitution and the people of India. The good faith norm in the Constitution seems to be most under enforced norm. Abuse of this good faith by Parliamentarians in the name of privileges is offensive to the dignity of this institution. Researcher has made efforts to find out the areas manifesting the abuse of parliamentary privileges and endeavors to find out the causes and consequences of abuse of good faith. Different instances and court cases related to the abuse of good faith in parliamentary privileges which relate to India or which are followed in India have been analyzed to find out how good faith is abused in the garb of parliamentary privileges and further the suggestions are based on this analysis.

Keywords: Parliamentary privileges, Oath, Subjective good faith, Objective good faith,
Election funding

I. INTRODUCTION

Parliamentary privileges are important tools with Parliament so that it can discharge the duties assigned to it without fear or favour under different circumstances and pass the test of legitimate expectation of the people. There is ambiguity and vagueness in these privileges. Principles of good faith are applied to different civil matters including law of contract but not to cases of parliamentary privileges. Over the course of years after independence the practices adopted by legislature for making laws are not appreciable. Parliamentarians are seen abusing the privileges resulting in worse effects on legislation. They are exercising unique degree of legislative discretion, institutional opportunism and methodological pluralism which is feared to be against this institution. Not only in India but also on the global plane, like United Nations Charter (U. N. Charter art 2, para 2), various conventions (Vienna Convention on the Law of Treaties, 1969), agreements, resolutions, declarations etc. have requirement of good faith. The importance of good faith can be judged from the fact that the parliamentarians are required to take oath of good faith and allegiance to the Constitution (Indian Constitution sch. 2). But, 'Good faith' is difficult to define. It expresses honest sentiments of good conscience that banishes clever maneuvers, dishonest dealings, fraudulent calculations, malice and taking advantage of simplicity and ignorance under the guise of prudence and skill (Schafera et al., 2015). Generally speaking, the concept of good faith centres on honesty, loyalty and fair dealing. For constitutionalism, good faith ought to be vital at foundational level of law making. Absence of good faith may be invoked as basis for substantive liability or other remedies like punitive damages. Good faith may also be used in a gap filling role to disallow conduct that otherwise would be afoul of framing laws. Fiduciaries of all sorts are held to a standard of good faith. Good faith prevails in all laws but not in making laws. Incentive and guidance is provided to the Parliamentarians to

reshape laws imposing sanctions to evade penalties so as to self defeat the purpose of law. Parliamentarians try to fit between the law and scope of the conduct (Buell, Samuel W., 2011). The worry lies in the fact that there is no exit in this vicious cycle.

In case of infringement of any privilege or contempt of House there is provision with the parliamentarians to raise 'question of privilege' (Rajya Sabha, 2016 r 187). But if there is abuse of privilege, there is no power with the people to take action against them. There is perception that Parliament is enjoying the monarchy of discretionary powers while legislating on a subject. The whiggish notion of legislative supremacy that has once enabled parliament to legislate is now deployed to protect the rich. Money is supplied to political campaigns which leave unchecked demands for favoured legislations for rich. It distorts policy making.

II. METHODS

It is a doctrinal study based on analysis of various documents. The various documents of Parliament of India and British Parliament have been discussed and referred. The land mark cases related to abuse of parliamentary privileges and contempt of parliament of various countries which have been referred to in the Supreme Court and High Courts of India have been referred to in the discussion and result part of this Article. Also, the famous Articles and Books authored by Indian and International authors have been made basis for the discussion of this Study.

III. RESULTS AND DISCUSSION

3.1 Reasons for Origin of Parliamentary Privileges

Privileges have been conferred mainly to give effect to the will of the people which is the true political sovereign in democracy. Such privileges make it convenient for the legislature to keep watch over the multifarious functions and the delegated legislations of the executive. They guard legislature and its members from fear of judiciary. Members can speak their minds in debates or proceedings without fear of legal liability or other reprisal or questioning in any court or place out of Parliament (Indian Const. art. 122). There is no fear of arrest in civil actions and the obligation to answer a summons so that the interests of the nation are best served by their exemption from this civic duty (Code of Civil Procedure of 1908). The words of speech during debate are not considered as seditious. Speech can be made even against the presiding officers of the House. Privileges protect them from powerful press. House can restrain press from publishing debates and reports without the consent of the house (Indian Const. art. 105(1)). The integrity of committees is protected by discouraging leaks, and to censure a Minister for misleading a select committee. The privileges are mandatory to maintain independence of the house. House is independent to regulate its own affairs during debates and proceedings (Indian Const. art. 118). It can control access to the precinct and exclude strangers from the House (Rajya Sabha, 2006). Such immunities are considered important to maintain the dignity of the House. It has the right to punish, expel or discipline anyone found to have breached its privileges or to be in contempt for lowering the dignity (*Homi D. Mistry vs. Nafisul Hassan*, 1957).

3.2 Abuse of Parliamentary Privileges

Good faith in parliamentary privileges can be abused by delay in framing of laws; compromising with quality of laws; affecting the quantum of people covered under law; exploiting the word 'public interest'; disrespecting culture; illegal use of money during elections; use of power by Speaker to limit views of opposition during debates in Houses etc.. Parliament does not have the power to create to itself any new privileges (David, 2016); still they keep creating unreasonable interpretations to protect themselves from different civil and criminal liabilities. There are different occasions and circumstances where good faith has been being abused continuously. For better understanding, those instances have been classified into two major parts i.e. abuse of Subjective good faith and abuse of Objective good faith.

3.2.1 Abuse of Subjective good faith

Here, Subjective good faith has been related to parliamentarian's loyalty, forthrightness, guilelessness, indigenouness, sincerity, freehearted, free-spoken, honest, openhearted, outspoken, straightforward, up-front, plainspoken, innocence etc. as a subject or person (Merriam- Webster, n.d.). It may involve to exhibit, expose or reveal material facts, benevolent purpose, proper motive or belief to establish that conduct is lawful. It is not easy to judge subjective good faith. Without taking Oath, winning candidate is not allowed to be the member of the House. Legislator takes oath of allegiance to the Constitution on entering the legislature. The member while speaking and exhibiting Oath promises to bear true faith and allegiance to the Constitution; uphold sovereignty and integrity of India; and faithfully discharge the duty to be entered into (Indian Const. sch. 2). He promises to truthfully discharge his functions 'according to his conscience and good sense' in the capacity of legislator (Peter, 1995). Court has laid emphasis on discharge of duty by legislator towards his constituency and his country according to supreme conscience honouring the sanctity of thought and belief during speech and vote in the Parliament (*P.V. Narasimha Rao vs. State*, 1998). Public duties are inseparable from the position they enjoy so retaining honour and divesting duties cannot be justified (*Horne v. Barber*, 1920). The fundamental obligation is duty to serve and act with fidelity and single mindedness for the welfare of the community (*R.V. Boston & Others*, 1923). These duties include the supreme power of making and moulding law in favour of and according to the prevailing necessities of the people and faithfully guarding the public finances (*R.V. Boston & Others*, 1923). This subjective good faith has been abused in different manners and some of the situations speaking for and exhibiting abuse of Subjective good faith have been discussed below.

3.2.1.1 Biased Legislations.

The legislations which allow political parties not to disclose the names of the donors of political funds cannot to any stretch be held in public interest (Representation of peoples Act of 1951, s. 29-C). Despite countless proposals from Election Commission for electoral reforms, to reduce financial ceiling of faceless donations to Rs. 2,000, efficacy of reform is questionable, because loophole is left for the parties to justify contributions as result of donations less than 2,000 (The Finance Act of 2017, s.11, 135). There is new scheme of electoral bonds, through which donors can donate their bonds to any party. Such donations are tax deductible, but the political party benefitted is exempted from tax payment (The Finance Act of

2017, s. 137). Companies are not required to maintain records of such donations under Income Tax Act which results in unquestionable contribution by companies (The Income Tax Act of 1961, s. 13A, 139). Parties are exempted to inform Election Commission regarding money received through electoral bonds (Representation of peoples Act of 1951, s. 29-C). Election Commission has sharply criticised these changes as 'retrograde step' opening up doors for shell companies and routing black money. Such provisions are made so as to make the effect of law 'negatory and redundant' and 'escape route' for the expenditure incurred by candidates in election (Representation of Peoples Act of 1951, s. 77, Explanation 1). This has resulted in financial opacity whereas democracy is known for transparency. On the contrary a common citizen is punished for non-disclosure of source of his hard earned money.

While determining constitutionality of legislative enactment, court has enunciated various principles like State action must be adjudged in the light of its operation upon the rights (*R. C. Cooper vs. Union of India*, 1970), the pith and substance of the enactment (*Bennett Coleman Co. vs. Union of India*, 1973), direct and immediate effect on fundamental rights (*Smt. Maneka Gandhi v. Union of India*, 1978), the evils intended to be eradicated and the circumstances for the enactment (*Hamdard Dawakhana v. Union of India*, 1960). But there is no emphasis or mentioning of oath of good faith, its abuse and effect on the fundamental rights of people or direct or inevitable effect on the democratic set up.

3.2.1.2 Promulgation and Re-promulgation of Ordinances.

Evasion of the spirit of the bargain and debate with the opposition in the House and the other problems of misconduct that the political system generates, forces the President to promulgate the Ordinances. There are hundreds of instances of promulgation of Ordinances in State as well as in the Centre where there was no need for promulgation or re-promulgation of Ordinances. Re-promulgation of Ordinances is fraud on the Constitution. It is also sub-version of democratic legislative process (*D.C. Wadwa vs. State of Bihar*, 1987). Legislature sits idle or hinders the proceeding of the House and the duty to legislate is diverted to be performed by Executive. Deliberately violating constitutional constraints or disregarding constitutional duties is opportunism and boundary breaching. Justification for not legislating is simply unpersuasive and insincere. The ordinances if not placed before the legislature and re-promulgated are bereft of any legal effects and consequences and results in status quo ante (*Krishna Kumar Singh v State of Bihar*, 2017).

3.2.1.3 Divided Loyalty.

Parliamentarians have fiduciary relationship to the people and Constitution. Loyalty can be perceived at individual level as well as institutional level. Perfect commitment to constitutional ideals, texts or values is expected from the legislators. Divided or imperfect loyalty towards constitutionalism and affiliated political party is abuse of good faith. While passing bills, the result oriented reasoning and a predisposed conclusion is favoured how so ever illegitimate it may be. An extreme commitment to inter-party adversarialism may not be compatible with the constitutional oath.

3.2.1.4 Self Interest.

The infinite forms of opportunism cannot always be anticipated as cost effective and is crucial to the reputation of this institution. Whether inside or outside the Parliament, any kind of influence on

Member of Parliament to induce him to use his official position to carry out any kind of transaction in parliament which involves payment of money out of public funds tending to public mischief amounts to a criminal offence (*R.V. Boston & Others*, 1923, p.400). This influential position has been derived from the right to sit and vote in Parliament and this cannot be ignored or disregarded (*R.V. Boston & Others*, 1923, pp.392, 393). Even one vote in parliament sometimes plays critical role (*R.V. Boston & Others*, 1923, p. 403). They are opinions to bar them from receiving compensation for their services before any agency like United States (Crimes and Criminal Procedure, 1948). The conduct which is not related in any sense to due functioning of legislative powers is not protected by speech and debate clause (*United States v. Johnson*, 1987). The US Court considered an attempt to influence a mail fraud indictment in Post Office Department as an act unprotected non- legislative conduct (*Burton v. United States*, 1906).

3.2.1.5 Corrupt Transactions.

Corrupt transactions in respect of matters not connected with parliamentary activities which involve Members of Parliament are breach of privileges and it is recommended to be included within the ambit of criminal law (UK Parliament, 1976). The reason is that the investigative machinery of the House is not comparable to that of police investigation. Complex and serious corruption matters need expertise in investigation (UK Parliament, 1976). Also to maintain equality before law, such cases of corruption, bribery and attempted bribery by members have to be brought within the ambit of criminal law (UK Parliament, 1976). Further, offer and acceptance of bribe as a reward for using influence as member in the parliament is not only an offence but also contempt of Parliament (*R.V. Currie & others*, 1992). An Australian Court had considered an attempt to bribe a member of legislature in order to influence his vote to be a criminal offence and member was considered to be public official (*R.V. White*, 1875). The position in India regarding the cases of charge of bribery in a criminal court on Member of Parliament is not clear. Whether he is public servant or not is also contradictory. If a Member of Parliament is considered as public servant as he holds an office and anti-corruption law (Prevention of Corruption Act, 1988) is made applicable to him, there is no authority to grant sanction for his trial and removal. Despite such strong arguments and justifications, there is no law or authority which authorises the removal of a Member of Parliament for breach of duties and good faith.

3.2.1.6 Political Defections.

There are remarkable examples of a legislators defecting four times in a course of few weeks, other defecting thrice and another defecting twice (Ministry of Home Affairs, 1969). The resignation or removal in defection cases does not suffice the quantity of punishment for defection. There is no right to recall a legislator when the voters of constituency are unhappy with the defection. The accountability for wastage of money in election process has not been fixed by making stringent laws for protection of people's money and faith. Political defections resorting to topple down the Government in power have posed a serious challenge to the lucrative functioning of parliamentary democracy (Lok Sabha, 1999). Instead of marginalising the defector, other political parties confer benefits on the defector. Sound party system to stabilise parliamentary democracy is to be balanced with the preservation of right to dissent. The worst type of public immorality is when political defector tries to topple down Government by abstaining from

voting or voting against the whip and contributing in defeat of his party in the House (*P.V. Narasimha Rao vs. State*, 1998).

3.2.1.7 Abuse of Freedom of Speech/ Debate.

Freedom of speech and expression under Article 19(1) (Indian Const.) which is conferred on legislator stands on a higher pedestal than fundamental right under Article 19(1)(a) guaranteed to the citizens (*M. Sharma v. Sri Krishna Sinha*, 1959). They are merely privileges to speak on the floor of the house (*K.A. Nambiar and another vs. Chief Secretary, Government of Madras and Others*, 1966). Freedom of speech in the House has been construed to mean subject to Article 118 and 121; and with wider amplitude than Article 19(1)(a) (*M. Sharma v. Sri Krishna Sinha*, 1959). The same has been reiterated in Legislative Privileges case (*Keshav Singh vs. Legislative Assembly, Uttar Pradesh*, 1965). The freedom of speech in parliament provides protection from enquiry into legislative acts or motive behind such acts. It does not protect them from other political activities and taking bribe for influencing official conduct. Taking bribe is not by any conceivable interpretation, an act of or incidental to the legislative process (*United State v. Brewster*, 1972). But past legislative acts of the member cannot be referred without regarding the values protected by Speech Clause (*United States v. Helstoski*, 1979). Defamatory statements are made on the floor of the House by certain members. The jurisdiction of courts is ousted by saying that they have complete immunity from the legal consequences to protect integrity of legislative process except the internal discipline rules, good sense of members and control of speaker in the Parliament (*Tej Kiran Jain and others vs. N. Sanjiva Reddy and others*, 1971). Today this immunity is being used as “charter for corruption” and to elevate the members as “super citizens immune from criminal liability”. The punishment cannot exceed the duration of the House and the person has to be released from the custody (*Sushanta Kumar Chand vs. Speaker, Orissa Legislative Assembly*, 1973). Immunity from prosecution in a criminal court for an offence in connection with the freedom of speech in Parliament weakens the basic structure of the Constitution (*Committee on Judicial Accountability v. Union of India*, 1991). Political reality is that receiving illegal gratification for speaking or voting or absenteeism has penetrated roots as a strong nexus. The financial contributions have defeated the right of the public to honest representation. They perform public duty cast on them by the Constitution and by their electorate for which they get remuneration (*Habibullah Khan vs. State of Orissa*, 1993). At the same time, the Court with the pious hope stated that parliamentarians will preserve, protect and uphold the faith, confidence and trust reposed by the Constitution and the people in them (*Raja Ram Pal vs. The Honble Speaker, Lok Sabha & others*, 2007).

3.2.1.8 Misconduct.

Making propaganda and putting questions in the Parliament, dealings with business association in return for alleged financial or other advantages are common. Such conducts are considered inconsistent with the standards of conduct expected from members and derogatory to the dignity of the House. Also, the allegation of bribery and forgery were held serious and unbecoming of the member lowering dignity of the House (Kaul, 1991).

3.2.1.9 Non- Performance/ Breach of Duties.

There has been no provision to take action against legislators if they do not represent the interest of people who have reposed trust and confidence in them. In contrast public servants who lag in their performances, action is taken or they are made accountable for non-performances. Although, the immunity is needed from certain actions but that does not give the license not to work. The shield has to extend only to the extent what is essential to preserve the integrity of the legislative process. Court in United States has refused to apply privileges to the promises by a member to perform an act in future, e.g. promise to deliver a speech or introduce a bill in future etc. (*United States v. Helstoski*, 1979). Court in England has included in breach of privilege not only conspiracy to do an illegal act, but also to do an act by illegal means. In certain cases, English courts have precluded the immunity for speech in Parliament where cause of action arose out of something done outside the Parliament (*Church of Scientology of California v. Johnson Smith*, 1972). Also, the evidence led before Selection Committee has been allowed to be cross-examined and analysed in the course of criminal trial (*R. v. Murphy*, 1986). In freedom of speech, the important public interest to be protected by the privilege is the confidence that member or witness can express themselves freely and fully in the House or before committees respectively (*Prebble v. Television New Zealand Ltd.*, 1994).

3.2.2 Abuse of Objective good faith

The objective good faith is the fairness or reasonableness of the conduct of parliamentarians which is not focused on the mind of the parliamentarian. It demands honesty in fact and observance of reasonable standards of fair dealing and equitable conduct. It is abused if there is evasion of spirit of participations in debates, lack of diligence and slacking off in deliberations, wilful imperfect performance in duties, abuse of power dynamics in voting, interference in the proceedings of the parliament, failure to cooperate in proceeding before committees etc.

3.2.2.1 Irrelevant discussions.

The level of political discussion has fallen to the level that the discussion lands on personal rather than on political aspects (*Tej Kiran Jain and others vs. N. Sanjiva Reddy and others*, 1971). The downfall of discussion is up to the extent that the discussion is made on the attire of PM or leader of opposition rather than on the problems we are facing at the grass root levels. Everybody is busy in trifles or personal attacks or religious attacks. Parliamentarians waste time in opposing and interfering relevant discussions; or raising local and other less important issues of notional interest instead of matters of urgent public importance, it leads to blunt the weapon of debate, wastage of public money and parliamentary time.

3.2.2.2 Walk outs/Abstain.

In every parliament session we see the opposition walks out without participating in discussion. People do not vote for walk outs but for struggles to be faced in parliament. It is unreasonable and irresponsible behaviour. On 10 May, 1993, ruling party abstained from voting to defeat the motion of opposition for removal of a judge of Supreme Court.

3.2.2.3 Legalisations regulating contributions towards party funds and financial opacity.

Contributions received during elections are the latest phase of controversy over the scope of

parliamentary privileges that predates the Constitution of India. The seeds for abuse of Parliamentary privileges are sown and start germinating before the candidate in elections wins and becomes Member of Parliament. The court has recognised that contributions in politics have the unique potential to corrupt the political process (*Buckley vs. Valeo*, 1976). All parties act in collusion for contributions towards political funds despite the fact that in democracy it is ghost of unseen and unaccounted money. After amendments in Companies Act, there is no limit to the amount which companies can donate through electoral bonds, towards political party funds (The Companies Act, 2013, s.182). Even companies in loss can purchase electoral bonds. The fact that any person or corporation or company is willing to spend money to persuade voters presupposes to have the ultimate influence over the elected parliamentarians. More the investment during elections more is the political gain. The laws are influenced by propertied groups, whose primary purpose is to entrench and serve their respective economic interests. Policy making is mixed with motives, allegiances and commitments to political parties, constituents and institutions. The bribe given to procure job of even a post of peon is a crime but the use of money to win elections is not taken seriously. Rather, the donations made by different companies are legalised. The money received by parties is not taxable. Parties cannot be forced to disclose their sources of funding. In United States and United Kingdom, it is mandatory to reveal the name of the donor to maintain transparency whereas in India, Parliament has legitimised financial opacity. For a common man even a hundred-rupee transaction is charged for payment of taxes. The accountability of funding is necessary because those who contribute towards elections want the legislations and policies of their own choice and the interest of majority is not taken into consideration. This way the laws are made for protection of interest of minority rather than majority of people. It is against the constitutional mandate and abuse of will of people.

3.2.2.4 Unwillingness to compromise or Negotiate.

It is legally binding obligation to cooperate in the smooth functioning of the House which in itself means to support the Constitution. But members of competing parties engage themselves in conscious or unconscious deception and infuse the debate with false allegations and self interests. Ill-motivation and uncooperative attitude prolong conflicts, pathologises disagreement and weaken incentives for good faith overtures. The battle between dictatorship and democracy; bossism and legislator's freedom has deepened.

3.2.2.5 Whip issued by Party.

Sometimes, there is whip from the party for undemocratic measure or a communal measure, which the legislator is obliged to vote for. He cannot dissent or vote against it or abstain from it. Following such whip results in killing of the conscience and abuse of good faith and going against such whip results in disqualification to continue legislator and removal from party. The doors to act freely without fear or favour as envisaged by constitution are closed by such laws. Although the purpose of anti-defection law is not to destroy the liberties and freedoms of legislators but at the same time it does not permit a vote on ground of conscience and on the contrary disqualifies the membership in the House. Whip of political parties chooses the person to represent their viewpoints and instructs the casting of votes in favour or against the business conducted in the House. The role of Members has reduced significantly to a rubber stamp of the party as they have no voice in law-making process.

3.2.2.6 Absenteeism.

Absenteeism of members is a serious malady. There are legitimate expectations of citizens that their representatives shall spend some minimum hours in the house to do parliamentary work. There is no accountability and no provision to take action against their salaries to make Parliament as an impregnable institution to restore its traditional esteem and honour. The adjournments because of insufficient number of Members of Parliament are not new (Roy, 2017). Recently, crucial vote of a member due to his absence resulted in dropping of a clause granting constitutional status to National Commission for Backward Classes (Ghosh, 2017). Signing attendance register to mark attendance does not ensure their entry or participation in the House. The benches remain vacant once the quorum is complete. Such bypassing of quorum is acceptable to miss crucial parliamentary proceedings. This problem has plagued the parliament and Oath of trust and good faith has no place to breathe and survive.

3.2.2.7 Interference in proceedings of the House.

Members persistently disregard authority of the chair and wilfully obstruct the business by shouting slogans. There are events of coming to the Well of the House occasioned by members resulting in grave disorders. It leads to wastage of invaluable time of Parliament and public money; reflects disrespect to the Parliament; and lowers the dignity of the institution.

3.2.2.8 Neutralising Judgements of Courts.

Judgement or precedent has been overruled by the Parliament to achieve their motive. Motivated reasoning and related dynamics lead parliamentarians to fit their views and biases of the law to their political preferences, moral values, and cultural views. They fit their motivated reasons, fatalistic logic or manipulate the evidentiary standards or empirical data to convince or justify the legislation making or opposing. The role of the parliamentarians demands that they are above politics and should justify their decisions with the legal necessity, social forces and not by poor, canonical or moral reasoning. They must hold the promise of unity and integrity; good faith; otherwise it will create a fertile soil for the roots of treachery and betrayal. In 2014, Delhi High Court in a case (*Association for Democratic Reforms and another vs. Union of India and others*, 2014) indicted both Congress and Bhartiya Janta Party (BJP) for receiving foreign funds illegally. In response to the judgement, FCRA (Foreign Contribution (Regulation) Act, 2013) was amended and political parties were exempted from scrutiny of all foreign funding received by them retrospectively from 1976 onwards. These repeated amendments to the Act had only one objective i.e. to save these parties from the disclosure of funds and punishments directed by Court and neutralise the orders of Delhi High Court. It is clear from this narrative that Parliamentarians believe law of the land does not apply to political parties and they are above law.

3.2.2.9 Intentional escape from fixing accountability/qualifications.

Intentionally Parliamentarians are escaping from framing laws, rules and regulations to impose liability and accountability. The reason is that such laws will make them answerable to the public whose money they are using for their salaries and enjoying other benefits. Till date, there is no legislation of Parliament to regulate the services of MPs; or to force Political parties to disclose their sources of funds or make them accountable under RTI to provide information; or to make laws to include income of parties as

taxable; or lay down academic qualifications to become MPs; or make laws to terminate the services of MPs before five years for their non-performances etc. although it is need of the time. Parliamentarians are paid salaries, allowances and other emoluments like other public servants. But they are not made accountable on similar grounds. After five years they are given pension. They are socially secured although they may or may not have performed in five years. There is no check on their performances although for every single facility they get, the hard earned public money is used. There are different terms and conditions for public servants for remaining in their services but there are no such terms and conditions for parliamentarians. Members of Parliament are not above law. Resort to foreign sources to determine parliamentary privileges and not legislating on it is ill motivation, disloyalty, unfair dealing and unreasonable conduct by parliamentarians.

3.3. Conclusion.

The abuse of good faith is clear from the various instances discussed above. The oath of allegiance and good faith and its silent abuse is not taken seriously by the Parliamentarians, Courts as well as people. The different kinds of abuse of good faith mentioned above are weakening the intertwined roots of democracy. Undefined parliamentary privileges are a cake walk towards anachronism. Privileges are being used to nullify their own wrong deeds and acts which are against the constitutionalism, rule of law and interest of people and nation. It is indeed time to bewail such culture soaked in accusations. Privileges assumed unreasonably by Parliamentarians are violating equality before law. Witnesses to a case who lie on oath are punished although they are not party to the crime, whereas the legislators who are members on oath of allegiance to the Constitution are not punished for non-recognition of good faith principle in society. Image of Parliament as an institution is degrading day by day. Quality of members reflects what and how it makes law. Talk about good faith serves useful social functions, political purpose and climate of trust. The present use of parliamentary privileges is characterised by profound constitutional distrust in the parliamentary form of government. Sincere efforts by Courts to address the problem of abuse of good faith may start with the change in present scenario. Every branch of government is focussing on small problems but no one smells the highest level of corruption embedding roots in our democracy. All is being considered as fair in love for political party, war with opposition and politics in parliament.

3.4 Recommendations.

Parliamentarians have to sincerely realise their duties towards Parliament and public irrespective of party affiliations and project a good image both inside and outside the House through their conduct. In democracy the discourse on such culture can identify, generate and shape the changes in privileges. Honest, substantive and responsible culture in legislature may sooth the abuse of good faith. There is need for professional training and orientation regarding conduct of business, rules, technicalities, etiquette etc. The division and distrust among elites in the parliament, which ramifies throughout constitutional culture and provokes abuse of good faith must flush out. It is high time to make changes in the conduct, punishments, qualifications, disqualifications and attitude of the Parliamentarians. The word 'unparliamentary language' shall be properly defined. 'Breach of privilege' shall include the acts done where cause of action has arisen outside the House. There shall be loss of immunity where the business in the House is guided by an

improper motive or Member of Parliament aids other member to violate any criminal law in legislative acts. For abuse of good faith, the punishment of expulsion of a member for the session is meagre. After expulsion, he should not be permitted to contest any future elections. Future benefits like pensions shall be withdrawn to restore the confidence of people and uphold right to equality. The action should be taken not only against Member but also against his property. The abuse of good faith is a high crime and it should be distinguished from other corruption crimes and punishment shall also be high and stringent. It should be equated with the crime against Nation and unity and integrity of Nation. There is need to make laws for channelizing their performances and make them accountable for their acts or non-acts like public servants.

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