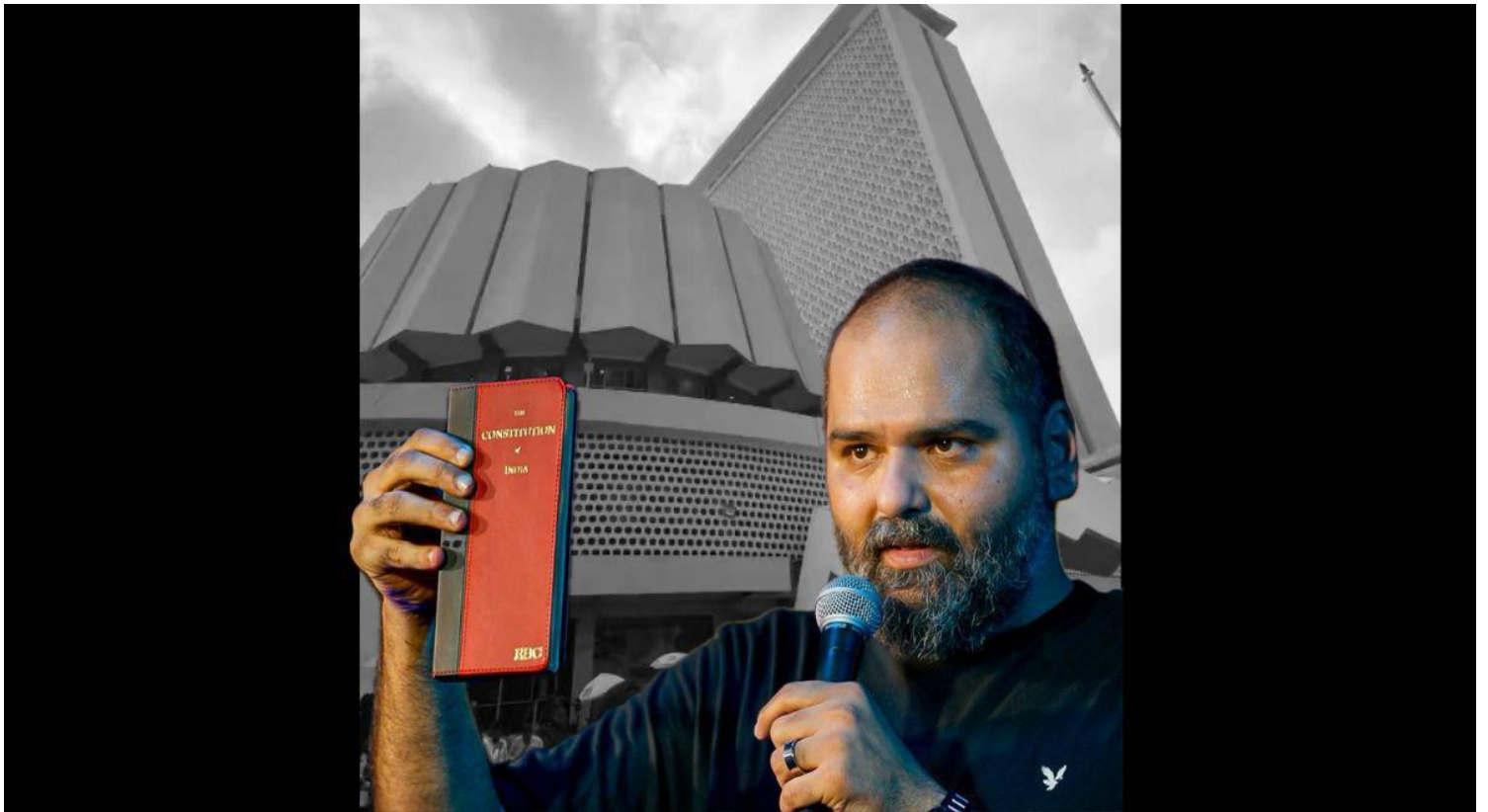


# Breach of privilege: A history of the colonial-era provision being used against comedian Kunal Kamra

Legislative privilege was adapted from the British legal system but remains undefined with the Indian Parliament reluctant to enact a law specifying its limits.

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On April 9, comedian Kunal Kamra refused to tender an “unconditional apology” to the privilege committee of the Maharashtra Legislative Council which had summoned him for his “derogatory remarks” about Deputy Chief Minister Eknath Shinde.

A year before, in March 2025, Kamra had posted a video of his stand-up comedy act on YouTube that included a [satirical song mocking Shinde](#) as a “traitor” for breaking ranks with the undivided Shiv Sena in July 2022 and joining the Bharatiya Janata Party, bringing down the Maha Vikas Aghadi-led state government.

Soon after, BJP legislator Pravin Darekar had moved a breach of privilege motion, claiming that Kamra's jokes lowered the dignity of the House. Sushma Andhare, spokesperson for the Shiv Sena's UBT faction, was also summoned for purportedly offering Kamra support.

A breach of privilege motion is a formal proceeding in which a legislature issues summons and can potentially punish any person, member or non-member who is alleged to have obstructed or brought the House into disrepute.

In response to the committee's questions on Thursday, Kamra said he could not tender an "unconditional apology" as that "[would not be sincere](#)" and set a "terrible precedent for artists and their freedom".

Legislative privilege is an extension of the colonial British legal system and its weaponisation against political satire raises serious questions about free speech in India and the constitutional limits of legislative power.

The United Kingdom has already modernised and narrowed the scope of these legislative privilege provisions through the Parliamentary Standards Act, 2009, as part of reforms that began with the [Joint Committee on Parliamentary Privilege report of 1999](#). The reforms explicitly exclude the use of parliamentary privilege to shield members from public accountability or to punish external criticism.

## **A shield against the Crown**

Legislative privilege was never intended to be weaponised against citizens. It emerged in the 17th century when monarchs sought to intimidate Members of Parliament for speeches in the House. Privilege developed as a shield to protect parliamentary independence from executive interference.

This principle was crystallised in [Article 9 of the UK's Bill of Rights, 1689](#), which provides that the [freedom of speech and debate in Parliament](#) "ought not to be impeached or questioned in any Court or Place out of Parliament". The aim was institutional autonomy, to prevent the Crown from using courts to punish parliamentary dissent.

Parliamentary privilege thus was an instrument of democratic self-assertion to protect the institution from the Crown, not politicians from criticism.

## **Adopted by India**

When India adopted its Constitution in 1950, legislative privilege was incorporated into the text, mirroring provisions from the colonial-era [Government of India Act, 1935](#): Section 28, defined the privileges of the members of the legislatures, and Section 71 mentioned freedom of speech in provincial legislatures. Even before Independence, elected representatives in India were protected by legislative privilege.

In India's draft Constitution, Article 105 conferred freedom of speech in Parliament. Clause 3 of the article provided that each House has the same powers, privileges, and immunities as the House of Commons, until defined by law. Article 194 similarly provided for the "Powers, Privileges and Immunities of State Legislatures and their Members".

The phrase "until defined so defined" is critical. The Constituent Assembly clearly contemplated eventual codification, treating the adoption of Westminster privileges as temporary. The [Constituent Assembly](#) in December 1948 extensively debated the question of parliamentary privilege.

Members such as TT Krishnamachari and Alladi Krishnaswami Ayyar flagged the need for parliamentary self-regulation within constitutional limits. Krishnamachari cautioned that privileges must not become "a weapon for tyranny", while Ayyar emphasised that they must remain subordinate to fundamental rights and judicial oversight.

Members of the Constituent Assembly were also aware of satirical commentary on legislative conduct, long before the digital age, which spanned radio, films and stage plays.

Member HV Kamath, for instance, argued that parliamentary privilege could not be used as a pretext to stifle artistic and literary commentary on legislators, foreshadowing the tensions the Kamra case now brings into relief.

Yet, more than seven decades later, Parliament has not enacted a law defining the [scope and limits of parliamentary privilege](#). The [Constitution \(Forty-fourth Amendment\) Act, 1978](#), modified Article 105(3) to remove the reference to the House of Commons, but extends the ambiguity over a standalone law. State legislatures too have largely refrained from enacting a law.

The reluctance to codify is telling. Designing privilege will establish limits, and legislators have been unwilling to surrender a broad, discretionary power that can be deployed against critics and opponents alike.

## **Problem of the undefined**

In constitutional democracies, power is legitimate when it is defined, limited and subjected to procedural safeguards. Yet, it remains unclear what constitutes breach of privilege.

Is harsh criticism of a minister or public official contempt? Can satire be treated as lowering the dignity of the House? In the absence of codification, such questions are a matter of legislative whims.

Privilege committees, set up to examine alleged breaches and recommend action, operate without uniform statutory standards or a well-articulated test of proportionality. The punishments that committees may impose including formal reprimand, admonition, and even imprisonment are also uncodified, leaving their scope and duration to the unfettered discretion of the House.

Arbitrariness is antithetical to the right to equality, enshrined in [Article 14](#) of the Indian Constitution. Undefined legislative privilege also contradicts [Article 19\(1\)\(a\)](#) which guarantees freedom of speech and expression but permits only such restrictions as are reasonable, proportionate and grounded in law.

A loosely defined privilege power risks becoming an exception to such constitutional guarantees.

## Judicial interventions

The Supreme Court has grappled with the limits of legislative privilege.

In 1964, the [Keshav Singh case](#) resulted in a constitutional crisis involving the powers of the Uttar Pradesh Legislative Assembly and the Allahabad High Court. It compelled a presidential reference on whether the High Court had the jurisdiction to grant bail to a person arrested for contempt of the state Assembly.

The Supreme Court, in its ruling, held that [legislative privileges are not absolute](#) and must operate within the framework of the Constitution. Neither the legislature nor the judiciary is supreme, the Constitution is, said the Court.

Similarly, in a 2007 case on cash-for-votes involving members of Parliament, arising from the Raja Ram Pal vs Hon'ble Speaker, Lok Sabha, the Supreme Court said [privilege actions are subject to judicial review](#) where they violate constitutional mandates or are mala-fide.

Even so, judicial review has been reactive and episodic, intervening after damage is done.

## Constitutionalism and the Rule of Law

Parliament now faces a choice.

It could enact a standalone law under Article 105(3) defining the scope, procedure, and limits of legislative privilege. Such an exercise would not require a constitutional amendment but will be the first such codification since 1950. Otherwise, Parliament could amend Article 105 to exclude non-members exercising free speech from the reach of privilege proceedings.

Codification would strengthen legislative dignity by differentiating the obstruction of legislative functioning from external criticism. It would also establish procedural safeguards in issuing privilege notices, seeking representation, and encourage reasoned decisions and proportionality.

In a constitutional republic, no power should remain undefined for decades. India's Parliament and state legislatures should safeguard their dignity by enacting provisions that reflect the values of the Constitution.

Such reforms would transform an inherited convention into a democratically accountable framework. Institutional legitimacy flourishes when power is exercised transparently and predictably.

When it comes to satire, executive authority must be confident enough to endure criticism and wise enough to distinguish dissent from disruption.

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