

No immunity to MPs or MLAs for acts of vandalism

July 30, 2021

The Supreme Court declared that parliamentary privileges can't be extended to members for acts of vandalism and destruction of properties inside the House. The Court held that any attempt to claim an exemption from the application of criminal law would be betraying the trust impressed on the character of elected representatives as the makers and enactors of the law. In this context, let us review the Parliamentary Privileges and issues associated with them.

In news: No immunity for acts of vandalism: SC

Placing it in syllabus: Law & Policy

Dimensions

- SC Ruling and its importance
- What are Parliamentary Privileges?
- Who enjoys them?
- List of Privileges
- Problems with them
- Suggestions

Content:

SC Ruling and its importance:

Background:

- Kerala government had appealed the SC to withdraw prosecution of top Left Democratic Front (LDF) leaders accused of vandalism and wanton destruction of public property on the Assembly floor during a Budget speech in 2015.
- The current ruling party in the State was in opposition at the time of the incident.

- The leaders had claimed **immunity from criminal prosecution citing parliamentary privilege**.
- It was argued that the incident occurred inside the Assembly hall and falls under the ambit of parliamentary privileges.

Supreme Court's Observations:

The Supreme Court declared that a member of the legislature cannot claim parliamentary privileges or immunity to acts of vandalism or destruction of properties inside the House.

Major observations include:

- Acts of vandalism **cannot be said to be manifestations of freedom of speech** and be termed as 'proceedings' of the Assembly.
- **Vandalism and destruction** inside the house **is not essential for exercising legislative function**. It **does not serve public function** or come under freedom of speech
- It was **not the intention of the drafters** of the **Constitution** to extend the interpretation of '**freedom of speech**' to include criminal acts by placing them **under a veil of protest**.
- "There is no immunity or privilege that protects legislators from criminal law," the bench said, pronouncing the judgement.
- Legislators cannot unleash violence, run riot in Parliament or a Legislative Assembly and then claim parliamentary privilege and immunity from criminal prosecution.
- **Boundaries of lawful behaviour apply to all**, including MLAs who hold responsible elected office in the Legislative Assembly.
- The top court said the withdrawal of cases against the accused persons will be against public justice and policy.

Importance:

- With this judgment there is clarity now that members of legislatures will have to face the law for committing criminal acts inside the House.
- The Court has held that Legislature is a public place and assaulting the Speaker, destroying public property are plain offences, against which no state can withdraw prosecution.
- MPs and MLAs have other ways to protest by raising slogans and staging walkouts and the judgment makes it clear that any act of vandalism will not go unpunished.

What are parliamentary privileges?

- Parliamentary Privileges are certain rights and immunity enjoyed by the members of the parliament and legislative assemblies till the time they retain their position as a member of the legislature.
- These privileges are applicable both individually as well as collectively
- These rights are not enjoyed by common citizens and are restricted to Parliamentarians only.

Article 105 of the Constitution of India lays down the privileges available to a Parliamentarian.

Article 194 of the Constitution of India provides for privileges to the State legislatures and its members.

Who enjoys them?

- The exemptions, rights or immunities are provided to the members of each house of the parliament and the parliament committees for securing the independence and effectiveness of the actions taken by them.
- These privileges are called off as soon as the members complete their tenure in the legislative body (Houses of

Parliament at the Centre & Legislative Assemblies in the States).

Important notes:

- The provisions related to the parliamentary privileges of the parliament (members and committees) can be amended using the simple majority of the parliament.
- The President of India is not entitled to parliamentary privileges.
- Without taking the oath before the Indian President, the privileges and immunities are not granted to the member of the parliament.
- There is a motion named 'Privilege Motion' used to censure a minister for the breach of parliamentary privilege.
- Adjournment motion and token cut motion can't be used to raise the question of privilege.
- The parliament has the judicial power to punish the members of the houses or the outsider for any breach of privilege.
- There is a committee called 'Committee of Privileges' which is of semi-judicial nature. It is responsible for examining the privileges' breach. There are 15 members in the committee of privileges for Lok Sabha while there are 10 members for the same committee in Rajya Sabha.
- The Constitution also extends the parliamentary privileges to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. These include the Attorney General of India.

List of Privileges:

- Article 105 of the Constitution expressly mentions two privileges, that is, freedom of speech in Parliament and right of publication of its proceedings.

- Apart from the privileges as specified in the Constitution, the Code of Civil Procedure, 1908, provides for freedom from arrest and detention of members under civil process during the continuance of the meeting of the House or of a committee thereof and forty days before its commencement and forty days after its conclusion.

The Indian parliamentary privileges are categorised into two:

- **Collective Privileges** – Those privileges which are enjoyed by the Indian Parliament as a whole.
- **Individual Privileges** – Those privileges which are secured to the members of the parliament on an individual level.

Collective Privileges:

- The reports, debates and proceedings can be published or denied to be published by the Indian parliament. The 44th Constitutional Amendment Act allowed the media to publish the true reports of the parliamentary proceedings except the same related to the house's secret sitting.
- The Indian parliament has a right to exclude strangers from its proceedings.
- The secret sittings of the houses is also a part of parliamentary privileges
- The two houses can make rules for: the regulation of their procedures; Conduct of their business; Adjudication of their work
- The parliament can suspend or expel members in case of breach of privilege
- The parliament is entitled to punish the outsiders or the members for any breach of privilege by using either Reprimand, Admonition or Imprisonment
- The parliament has a right to receive immediate information of the arrest, detention, conviction,

imprisonment and release of a member

- Any enquiries can be initiated by the Indian parliament and so can be the right to call upon the witnesses
- The proceedings of the houses and committees of the parliament can't be inquired by the court
- No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer

Individual Privileges:

- No arrest of the member of the parliament can take place during its session. Also, members can't be arrested 40 days before and after the session's beginning and end of the session.
- The members of parliament are entitled to the freedom of speech in the houses. They are not liable to any court proceedings for the speech given in the parliament or its committees. However, it is regulated using the rules guiding such provisions of the house.
- They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when Parliament is in session.

Problems with them:

It is argued that these privileges have become a tool for getting immunity against charges of bribery, defamation or for curbing the freedom of journalists publishing independent opinions that question or challenge parliamentary proceedings.

Absence of Clearly Codified Laws:

- Grey areas in legal terms have no codified laws which constitute a breach of privilege offense or prescriptions for punishment.
- They are not defined clearly under Article 105 of Indian

Constitution.

- The Supreme Court in **P.V. Narsimha Rao v. State** interpreted the expression “in respect of” and held that the privileges even extend to the act of taking bribes by any member for voting in the parliament.
- Due to such a wide approach, the parliamentarians can claim immunity against any act which is in conflict with the public interest or is contrary to the essence of democracy as the representatives of the people are “privileged” to put their own interests above that of the people.

Unnecessary Restriction on Freedom of Press:

- parliamentary privileges put unnecessary restrictions upon the freedom of press.
- The original provisions allow the publication of honest and unbiased reporting of parliamentary proceedings.
- This was meant to avoid misinformation of facts, but over the years, it has become a tool for harassment of reporters if their opinions are against that of the government in power.
- In 2017 two journalists were held guilty of publishing an article defaming the speaker and MLAs of the Karnataka Assembly and were sentenced to one year imprisonment.
- These undefined powers of the legislature, thus make the misuse of privileges easy and bring out their conflict with the fundamental rights of citizens.

Conflict of Interest:

- The ‘breach of privilege laws’ often indicate the faults for allowing politicians to become judges in their cause and raising concerns of conflict of interest and violating basic fair trial guarantees.

Almost absolute nature of Freedom of Speech:

- The freedom of speech given to the members of parliament under the ambit of parliamentary privileges is almost absolute.
- MPs' freedom of speech is not subjected to any such restrictions due to the immunity under Article 105.
- It may happen that a citizen gets defamed by the speech of an MP during the proceedings but due to immunity provisions, the said citizen does not have any option other than raising the issue before a parliamentary committee and there is a high probability of these proceedings being prejudiced against the ordinary citizens.

Suggestions:

- **Codifying Parliamentary Privileges** will bring them under the purview of the judiciary and will limit the scope for misuse of these powers. No codification of the privileges provided superior powers to the members with no scope to check the abuse of such power.
- The **procedure of the trial by parliamentary committee should be defined specifically**, to ensure clarity on the procedural questions
- individuals who feel that they have been unfairly targeted in the name of parliamentary privileges, should have the right to reply to the evidence provided to the committee against them.
- It is also important to demarcate the distinction between these privileges and the fundamental rights, so that the former don't contradict the latter under any circumstances

Mould your thought: What are parliamentary privileges? Discuss the challenges of parliamentary privileges in India.

Approach to the answer:

- Introduction

- Define Parliamentary privileges and their objective
- Mention the constitutional provisions
- Discuss the problems of parliamentary privileges in India
- Suggest measures to alleviate them
- Conclusion