

The Privileges of Members of Parliament

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For Prelims: Vice President of India, Enforcement Directorate (ED), Central Bureau of Investigation (CBI), Income Tax department (IT), Article 105

For Mains: The Privileges of Members of Parliament

Why in News?

Recently, the **Vice President of India** highlighted the wrong assumptions of Members of Parliament about the **Parliamentary privileges**, that action can't be taken against them by investigating agencies during a Parliamentary session.

- There have been protests by some political parties against the alleged misuse of central agencies like the **Enforcement Directorate (ED)**, **Central Bureau of Investigation (CBI)**, and the **Income Tax department (IT)** by the government to frame political rivals.

What are the Parliamentary Privileges?

- **About:**
 - Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members.
 - These privileges are defined in **Article 105 of the Indian Constitution**.
 - Under these privileges, the members of Parliament are exempted from any civil **liability (but not criminal liability)** for any statement made or act done in the course of their duties.
 - The privileges are claimed only when the person is a member of the house.
 - As soon as s/he ends to be a member, the privileges are said to be called off.
 - **Parliament has not made any special law** to exhaustively codify all the privileges. They are **rather based on five sources:**
 - Constitutional provisions
 - Various laws made by Parliament
 - Rules of both the Houses
 - Parliamentary conventions
 - Judicial interpretations
- **Privileges:**

○ **Freedom of Speech in Parliament:**

- The freedom of speech and expression guaranteed to a citizen under **Article 19(2)** is different from the freedom of speech and expression provided to a member of the parliament.
- It has been guaranteed under Article 105(1) of the Indian constitution. But the freedom is subject to rules and orders which regulate the proceedings of the parliament.
- **Limitations:**
 - Freedom of speech should be in accordance with the constitutional provisions and subject to rules and procedures of the parliament, as **stated under Article 118 of the Constitution.**
 - Under **Article 121 of the Constitution**, the members of the parliament are restricted from discussing the conduct of the judges of the **Supreme Court** and the High Court.

○ **Freedom from Arrest:**

- The members enjoy freedom from arrest in any **civil case 40 days before and after the adjournment of the house and also when the house is in session.**
- **No member can be arrested from the limits of the parliament without the permission of the house** to which s/he belongs so that there is no hindrance in performing their duties.
- If the detention of any members of the parliament is made, **the chairman or the speaker should be informed by the concerned authority, of the reason for the arrest.**
 - But a member can be arrested outside the limits of the house on criminal charges against him under the **Preventive Detention act, the Essential Services Maintenance Act (ESMA), the National Security Act (NSA), or any such act.**

○ **Right to Prohibit the Publication of Proceedings:**

- **Article 105(2)** of the Constitution, **no person shall be held liable for publishing any reports, discussions etc. of the house under the authority of the member of the house.**
 - For paramount and national importance, it is essential that the proceedings should be communicated to the public to aware them of what is going on in the parliament.

○ **Right to Exclude Strangers:**

- The members of the house have the **power and right to exclude strangers** who are not members of the house from the proceedings. This right is very **essential for securing free and fair discussion** in the house.

What Did the Vice President Hold?

- According to the Vice President under the Article 105 of the Constitution, the Members of Parliament enjoy certain privileges so that they can perform their parliamentary duties without any hindrance.
- One of the privileges is that a **Member of Parliament cannot be arrested in a civil case**, 40 days before the commencement of the Parliamentary session or Committee meeting, and 40 days thereafter.

- This privilege is already incorporated under **Section 135A of the Civil Procedure Code, 1908.**
- However, in **criminal matters, Members of Parliament are not on a different footing than a common citizen.**
- It means that a Member of Parliament does not enjoy any immunity from being arrested in a criminal case, during the session, or otherwise.

What is the View of Supreme Court?

- The Supreme Court in the **State of Kerala Vs. K. Ajith and Others (2021)**, observed, that “**privileges and immunities are not gateways to claim exemptions** from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen.”
- In July 2021, the **Supreme Court rejected Kerala government’s plea to withdraw criminal cases against its MLAs** who were charged in the assembly.
 - **The Supreme court stated that Parliamentary Privileges are Not Gateways of Immunity and** the legislators who indulge in vandalism and general mayhem cannot claim parliamentary privilege and immunity from criminal prosecution.

Way Forward

- The Parliamentary privileges are conferred on the members for the smooth functioning of the parliament. But these rights should always be **in conformity with the fundamental rights** because they are our representatives and work for our welfare.
 - If the privileges are not in accordance with the fundamental rights, then the very essence of democracy for the protection of the rights of the citizen will be lost.
- It is the duty of the parliament not to violate any other rights which are guaranteed by the constitution. The members should also use their privileges wisely and not misuse them.