

General Studies – 2; Topic: Parliament and State Legislatures – structure, functioning, conduct of business, powers & privileges and issues arising out of these.

Parliamentary Privileges

1) Introduction

- The idea of privilege emerged in England as Parliament started to protect itself from excesses by the monarch.
- It established several rights and privileges including the freedom of members of Parliament to freely speak and vote in Parliament (including its committees).
- The Karnataka Legislative Assembly has found two journalists guilty of breach of its privilege and sentenced them to jail.
- This case once again raises the question of what should constitute privilege of the legislative bodies.

2) Parliamentary Privileges

- The Indian Constitution specifies the powers and privileges of Parliament in Article 105 and those of State legislatures in Article 194.
- The Articles were passed on the assurance that they were a temporary measure.
- They provide freedom of speech in Parliament subject to other provisions of the Constitution and standing orders of the House
- Give immunity for all speeches and votes in Parliament from judicial scrutiny
- Allow Parliament (and State legislatures) to codify the privileges, and until then, have the same privileges as the British Parliament had in 1950.
- Till now, Parliament and State legislatures have not passed any law to codify their privileges.

3) The question of privilege

- The power of privilege has been used against journalists in several instances and as a substitute for legal proceedings.
- In 2003, the Tamil Nadu assembly Speaker directed the arrest of five journalists of The Hindu newspaper for publishing articles and an editorial that were critical of the AIADMK government
- All persons have a right to trial by a competent, independent and impartial tribunal.
- Breach of privilege laws allow politicians to become judges in their own cause, raising concerns of conflict of interest and violating basic fair trial guarantees
- The last person to be imprisoned by the British Parliament was in 1880. In India however, this power has been frequently resorted to.
- This is seen as an encroachment on press freedom – a fundamental right guaranteed under Article 19 (1) (a).
- Legislatures have been reluctant, as once privileges are codified they will be subject to judicial scrutiny.

4) Solution

- Restrict the use of privilege to proceedings of the legislature and not to the individual member. Any member who is falsely accused of any impropriety can use the defamation route through courts.
- Parliament and Legislative Assemblies should pass laws to codify privilege.

- Both the Parliament and State Legislatures have a duty to look carefully before making any law, so that it doesn't harm other rights.
- It is also the duty of the members to properly use these privileges and not misuse them and protect the general interest of nation and public at large.
- Australia passed the Parliamentary Privileges Act in 1987.
- Courts should revisit the earlier judgments and find the right balance between fundamental rights of citizens and privilege of the legislature.
- Power corrupts and absolute power corrupts absolutely. For this not to happen under the privileges granted, the public and the other governing body should always be on vigil.

5) **Recommendations for Codification of Privileges**

- The Press Commission has often taken up the issue of codification of privileges.
- National Commission to Review the Working of the Constitution in its report in 2002, suggested that privileges be “defined and delimited.”

