



Parliamentary Privileges and Related Cases

For Prelims: [No-Confidence motion](#), Parliamentary Privileges, [Supreme Court \(SC\)](#), Articles 105 and 194 of the Constitution.

For Mains: Parliamentary Privileges, Parliament and State Legislatures.

Source: [IE](#)

Why in News?

Recently, the [Supreme Court \(SC\)](#) overturned a **25-year-old majority opinion** in the ***P V Narasimha Rao v State (CBI/Spec) Case, 1998*** also known as the [JMM \(Jharkhand Mukti Morcha\) bribery case](#). The SC stated that the **bribery is not protected by parliamentary privileges**.

- The **previous ruling** had stated that **lawmakers who accepted bribes could not be prosecuted for corruption** if they followed through with voting or speaking in the House as agreed.

What was P V Narasimha Rao Case and Recent Ruling of Supreme Court?

- **Case Background:**
 - In the **1993 P V Narasimha Rao case**, certain members ([MPs](#)) of the **Jharkhand Mukti Morcha (JMM)** were accused of accepting **bribes in exchange for voting against a [No-Confidence motion](#)**.
 - This case highlighted allegations of corruption within the parliamentary system, raising concerns about the integrity of legislative processes and the accountability of elected representatives.
- **Court's Observation in 1998 Case:**
 - The Supreme Court's ruling in **1998 established immunity for MPs (Members of Parliament) and [Member of Legislative Assembly](#) (MLAs)** from prosecution in bribery cases **as long as they fulfilled their end of the bargain**.
 - The Supreme Court held that the bribe takers who cast their vote against the no-confidence motion were immune from criminal prosecution under [Parliamentary Privilege \(Article 105\(2\)\)](#).
 - This decision underscored the importance of stability in governance and the **functioning of parliamentary democracy**.
 - The court's observation prioritised the smooth operation of the government over individual accountability, suggesting that **prosecuting lawmakers** for bribery could **potentially disrupt the stability of the government**.
- **Court's Observation in 2024 Case:**
 - The **7-Judge Constitution Bench** overturned the 5-Judge Bench verdict of ***P.V. Narasimha Rao v. State Case, 1998***.
 - Wherein it was established that the Member of Parliaments and Member of Legislative Assemblies enjoyed immunity if they cast vote in the House after taking

- bribes for it.
- The SC emphasised the detrimental **impact of bribery on democratic principles** and governance.
- The court highlighted that **accepting a bribe is a separate criminal act**, unrelated to the core duties of lawmakers within the Parliament or legislative assembly.
 - The **Section 7 of the [Prevention of Corruption Act](#)**, deals with 'offence relating to public servant being bribed'.
- Therefore, the immunity provided under **Articles 105 and 194 of the Constitution** does not extend to cases of bribery.
 - This decision signifies a shift towards prioritising accountability and integrity in governance over stability alone, **aiming to uphold the ideals of a responsible, responsive, and representative democracy in India.**

What are the Parliamentary Privileges?

▪ About:

- Parliamentary privileges are **special rights, immunities and exemptions** enjoyed by the members of the Parliament and their committees.
 - These privileges are **defined in [Article 105](#)** of the Indian Constitution.
 - **Article 194** guarantees same privileges to the Members of Legislative Assemblies of states.
- 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.
- **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 of Individual Member:

- **[Freedom of Speech](#)** in Parliament (Article 105(1))
- Immunity to a Member from **any proceedings in any court** in respect of anything said or any vote given by him in Parliament or any Committee thereof [Article 105(2)].
- Immunity to a person from proceedings in any court in **respect of the publication by or under the authority of either House of Parliament** of any report, paper, votes or proceedings (Article 105(2)).
- **Prohibition on the Courts to inquire** into the validity of any proceedings in Parliament on the ground of any alleged irregularity of procedure. [Article 122(1)].
- **Freedom from arrest of Members in civil cases** 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 (**Section 135A of the Code of Civil Procedure, 1908**).

▪ Collective Privilege of House:

- Right **of the House to receive immediate intimation of the arrest**, detention, conviction, imprisonment and release of a Member.
- **Immunity from arrest and service of legal process** within the precincts of the House without obtaining the permission of the Chairman/ Speaker.
- **Protection of publication** of the proceedings of a secret sitting of the House.
- The evidence tendered before a Parliamentary Committee and its report and proceedings cannot be disclosed or published **by anyone until these have been laid on the Table of the House.**
- Members or officers of the House **cannot give evidence or produce in courts of law**, documents relating to the proceedings of the House without the permission of the House.

Note

- The Supreme Court in the ***State of Kerala Vs. K. Ajith Case, 2021***, observed, that **“privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as case of, the criminal law which governs the action of every citizen.”**

- In July 2021, the [Supreme Court rejected the Kerala government's plea to withdraw criminal cases against its MLAs](#) who were charged in the assembly.

What are the International Practices Regarding Parliamentary Privileges?

- **The United Kingdom:**
 - The Parliament at Westminster **enjoys similar privileges**, including freedom of speech, immunity from arrest, and the right to regulate its own proceedings.
 - These privileges are established through a combination of statute, common law, and precedent.
- **Canada:**
 - The Parliament of Canada also has **established privileges for its members**, including freedom of speech, immunity from arrest, and the right to punish breaches of privilege.
 - These privileges are outlined in the Constitution Act, 1867 and the Parliament of Canada Act.
- **Australia:**
 - The Parliament of Australia follows similar principles, with privileges enshrined in its Constitution. Members enjoy freedom of speech, immunity from arrest, and the right to regulate their own proceedings.

What is the Need to Codify Parliamentary Privileges?

- **Need to Codify Parliamentary Privileges:**
 - **Clarity and Precision:** Codification would provide a clear and **precise definition of parliamentary privileges**. It would specify what constitutes a violation of privileges, eliminating any ambiguity.
 - A statute would establish a precise threshold beyond which no penalty may be meted out for privilege violations.
 - **Enhanced Accountability:** Clearer guidelines for parliamentary privilege would **facilitate better accountability mechanisms**, enabling parliamentarians to exercise their privileges responsibly while also subjecting them to appropriate scrutiny and oversight.
 - **Modernization and Adaptation:** Codifying parliamentary privilege would provide an opportunity to **update and modernize existing laws** to reflect contemporary governance practices and societal norms, ensuring that legislative privileges remain relevant and effective in a rapidly evolving political landscape.
 - **Checks and Balances:** Codification would introduce checks and balances on privileges, **preventing their misuse**. It would **curb unnecessary curtailment** of press freedom.
- **Need not to Codify Parliamentary Privileges:**
 - **Risk of Encroachment on Parliamentary Autonomy:** Codifying parliamentary privilege could potentially lead to encroachments on the autonomy of the legislature **by subjecting parliamentary affairs to greater judicial scrutiny** or government intervention.
 - **Against Constitutional Mandate:** Article 122 deals with the **restrictions on courts not to inquire into proceedings of Parliament**. It further states the following: The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
 - **Loss of Flexibility:** Codification may restrict the flexibility of parliamentary privilege, making it **challenging to adapt to unforeseen circumstances or changing political dynamics** that may require a more nuanced approach to legislative affairs.
 - **Complexity and Lengthy Process:** The process of codifying parliamentary privilege could be **complex and time-consuming**, requiring extensive deliberation and consensus-building among stakeholders, including legislators, legal experts, and civil society organizations.

Way Forward

- Parliamentary privileges are given to members to ensure smooth functioning. However, these privileges must align with fundamental rights, as MPs represent citizens.
- If privileges conflict with these rights, democracy loses its essence. MPs should use privileges responsibly and avoid misuse.

UPSC Civil Services Examination, Previous Year Questions (PYQ)

Prelims

Q. Which of the following are the discretionary powers given to the Governor of a State? (2014)

1. Sending a report to the President of India for imposing the President's rule
2. Appointing the Ministers
3. Reserving certain bills passed by the State Legislature for consideration of the President of India
4. Making the rules to conduct the business of the State Government

Select the correct answer using the code given below:

- (a)** 1 and 2 only
- (b)** 1 and 3 only
- (c)** 2, 3 and 4 only
- (d)** 1, 2, 3 and 4

Ans: (b)

Mains

Q. What do you understand by the concept of "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss. **(2014)**