

Legislative Privilege Vs. Free Speech

Mains: GSII - Polity

Why in News?

Recently the Supreme Court disposed of a long-pending reference concerning the relationship between legislative privileges and freedom of speech and expression.

What Was the Case About?

- In 2003, The Hindu published reports on Tamil Nadu Assembly proceedings and an editorial criticising the then Chief Minister.
- The Assembly alleged a breach of privilege under Article 194 and passed a resolution seeking the arrest of senior editors, police raided the newspaper's Chennai office.
- Editor N. Ravi approached the Supreme Court, arguing that legislative privileges could not curtail press freedom under Article 19(1)(a)
- **Recent Development** - The recent Supreme Court order did not establish a final judicial rule on the precedence of legislative privilege over freedom of speech.

What Is Legislative Privilege?

- **Legislative privileges** - These are special powers, rights and immunities granted to legislatures and their members to enable them to perform their constitutional functions independently and effectively.
- **Constitutional Provisions** -
 - **Article 105** - Deals with the powers, privileges and immunities of Parliament, its members and committees.
 - **Article 194** - Deals with the powers, privileges and immunities of State legislatures, their members and committees.
 - **Article 194(3)** - Provides for the determination of State legislative privileges by law and specifies the applicable position until such a law is made.

LEGISLATIVE PRIVILEGES IN THE INDIAN CONSTITUTION

CONSTITUTIONAL BASIS

- Article 105**: Powers, privileges and immunities of Parliament, its members and committees.
- Article 194**: Corresponding provisions for State Legislatures, members and committees.

KEY PRIVILEGES

- Freedom of speech in the House**, subject to constitutional provisions and House rules.
- Immunity from court proceedings** for anything said or any vote given in the House or its committees.
- Publication-related protections** as provided by the Constitution and law.
- Collective powers** to regulate internal proceedings and maintain order.

PURPOSE

- Ensure independent functioning of the Legislature.
- Enable effective and free debate.
- Strengthen accountability of the executive.

IMPORTANT CLARIFICATION

- Privileges are not unlimited.** They operate within the Constitution and applicable law.

Related provision: Article 361A — protection for publication of substantially true reports of legislative proceedings, subject to its conditions.

• Objectives of Legislative Privileges –

- **Legislative independence** – Protect legislatures from undue external interference.
- **Freedom of deliberation** – Enable members to debate and express views within the House.
- **Institutional authority** – Protect the functioning and dignity of legislative institutions.
- **Effective functioning** – Provide powers necessary for legislatures to discharge their constitutional responsibilities.

What Is Freedom of Speech and Expression?

- **Article 19(1)(a)** – It guarantees citizens the fundamental right to freedom of speech and expression.
- It protects the expression of opinions, dissemination of information and criticism of public institutions.
- Freedom of the press, although not separately mentioned in the Constitution, is protected as part of Article 19(1)(a).
- **Article 19(2)** – It permits reasonable restrictions on this freedom on specified grounds, including public order, defamation, contempt of court, decency or morality, and incitement to an offence.
- **Importance of Press Freedom**
 - **Democratic accountability** – Enables the media to scrutinise government and legislative actions.
 - **Transparency** – Helps citizens access information about public institutions.
 - **Public debate** – Facilitates informed discussion of public policies and legislative decisions.
 - **Checks on power** – Discourages arbitrary exercise of public authority.

What Are the Major Constitutional Issues Involved?

- **Legislative Privilege vs Fundamental Rights** -The key issue is the extent of legislative privileges to be invoked against speech and publications outside the legislature.
- **The extent of legislative powers** - Particularly the power to punish for breach of privilege or contempt of the House, requires constitutional clarity.
- Such powers must be examined in the context of the Constitution and the rights of affected individuals.
- **Accountability of Legislative Institutions** - Unclear boundaries may create uncertainty for journalists reporting on legislative proceedings.
 - The exercise of privilege powers raises questions about procedural fairness, proportionality and safeguards against arbitrary action.
- **Judicial Review and Constitutional Supremacy** - The dispute raises questions about the role of courts in examining the exercise of legislative privilege.
 - It also highlights the need to reconcile legislative autonomy with fundamental rights and constitutional limitations.

Earlier Judicial Developments

- **Searchlight case (1959)** - It examined the relationship between legislative privilege and freedom of the press in the context of publication of Assembly proceedings.
- **Keshav Singh case 1964** - It examined the relationship between legislative privilege and judicial authority, including the scope of legislative powers and judicial review.
- The differing legal positions raised in these earlier decisions contributed to the need for an authoritative examination by a larger Bench.

What Is the Way Forward?

- **Clarify the legal framework** - Legislatures should consider clearly defining their privileges through law, as envisaged under the Constitution.
- **Protect press freedom** - Ensure that legitimate criticism and fair reporting are not unnecessarily restricted through privilege proceedings.
- **Ensure procedural fairness** - Establish transparent procedures and safeguards when allegations of breach of privilege are considered.
- **Promote constitutional balance** - Reconcile legislative independence with fundamental rights and judicial review.
- **Develop clear judicial standards** - An appropriate future case may help clarify the scope and limits of legislative privileges in relation to speech outside the House.

What lies ahead?

- The Supreme Court's disposal of the reference ended a long-pending proceeding but did not settle the confusion between legislative privilege and freedom of speech.
- The issue remains important for protecting legislative independence while safeguarding press freedom, democratic accountability and fundamental rights.
- A clear legal framework and constitutionally balanced exercise of privilege powers are essential for a healthy parliamentary democracy.

Reference

[The Hindu| Legislative privilege versus free speech](#)



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