Legislative privileges - Law and Lawmakers

Why in news?

The Supreme Court has said that the legislative privileges available to the members of a House could not extend to immunity from application of criminal law.

What is the case about?

- The Supreme Court dismissed Kerala government's petition challenging the March, 2021 order of the state High Court.
- The HC had upheld a trial court decision to reject the request to withdraw the prosecution of six Left Democratic Front (LDF) MLA's.
- They were booked under IPC and Prevention of Damage to Public Property Act 1984.
- This was for alleged acts of vandalism inside the Assembly during budget presentation by the erstwhile UDF (United Democratic Front) regime in March 2015.
- Their action resulted in destruction or damage to some items, amounting to a loss of Rs. 2.20 lakh.

What has the Supreme Court held?

- **Members of legislatures** - Those named as the accused held a responsible elected office as MLAs in the Legislative Assembly.
- In the same manner as any other citizen, they are subject to the boundaries of lawful behaviour set by criminal law.
- Legislative privilege and parliamentary free speech are necessary elements of a lawmaker's freedom to function without hindrance, fear or favour.
- But, an alleged act of destroying public property within the House cannot be considered "essential" for their legislative functions.
- It cannot either be equated with the freedom of speech in the legislature or with forms of protest on the floor of the House legitimately available to the members of the opposition.
- So, in any way, they cannot claim either a privilege or an immunity to stand above the sanctions of the criminal law, which applies equally to all citizens.
- **Withdrawal of case** - It is argued that the courts ought not to re-appraise a prosecutor's decision to withdraw a case.

- And that they should only examine whether the prosecutor had applied his/her mind independently.
- However, on the other hand, it is the court's duty to decide whether the withdrawal is in good faith, is in the interest of public policy, and is not aimed at thwarting the process of law.
- Allowing the current prosecution to be withdrawn would mean that the elected representatives are exempt from the mandate of criminal law.
- This would go against the tenets of public justice.
- So, the Court's decision also gives a new life to the law relating to a prosecutor's role in withdrawing an ongoing criminal case.

Source: The Hindu, The Indian Express

