SC's stand on Parliamentary Privileges

Why in news?

Recently the Supreme Court ruled that legislators cannot claim immunity from criminal prosecution for bribery related to their speech and votes in the House.

Parliamentary Privileges
• **Special rights-** It provide immunities and exemptions enjoyed by the two houses of the Parliament, their committees and their members. • **Need-** To secure the independence and effectiveness of their actions. • Without these privileges the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their parliamentary responsibilities. • **Extension-** It is extended to those persons who are entitled to speak and take part in the proceedings of a House of Parliament or any of its committees. • These include *Attorney General of India and Union Ministers*. • **Exception-** The parliamentary privileges *do not extend to the President* who is an integral part of the Parliament. • **Article 121- I**t restricts members from discussing the conduct of the judges of the Supreme Court and the High Court. • Freedom of speech in Parliament is subject to the provisions of the Constitution and the rules regulating the procedure of the Houses. • **Rajya Sabha Rulebook-** It is an essential pre-requisite for the efficient discharge of their Parliamentary duties, in the absence of which, they may not be able to speak out their mind and express their views in the House without any fear. • **Classification-** - **Collective privileges-** Those privileges that are enjoyed by each house of Parliament collectively. - **Individual privileges-** Those privileges that are enjoyed by the members individually.

What are the provisions that grant legislators immunity from prosecution?

- **Article 105 –**It deals with the powers, privileges, etc. of the Houses of Parliament and of the members and committees thereof.
- **Article 105(2)-** No MP shall be liable to any proceedings in any court in respect of anything said or vote given by him in Parliament and no person shall be liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- This provision exempts MPs from any legal action for any statement made or act done in the course of their duties.
- **Article 194(2)**- A corresponding provision giving immunity to members of state legislatures is contained under Article 194(2).
- **Defamation** – The defamation suit cannot be filed for a statement made in the House
- **Immunity to non-members**- *Attorney General of India* or a *Minister* who may not be

a member but speaks in the House.
- **Role of Speaker-** In cases where a member oversteps or exceeds the contours of admissible free speech, the Speaker of the House will deal with it, as opposed to the court.

What is the current issue?

- **Sita Soren case**- Sita Soren, a member of the Jharkhand Mukti Morcha (JMM), revolves around bribery allegations related to the 2012 Rajya Sabha elections.
- The Central Bureau of Investigation (CBI) filed a chargesheet against Sita Soren in response to the bribery accusation.
- In 2014, Sita Soren filed a plea in the Jharkhand High Court seeking the quashing of criminal proceedings against her, it was dismissed by the Court leading her to appeal the case in the Supreme Court.
- The three judge bench noted that P.V.Narashimo Rao case is directly related to this case, due to narrow margin in the decision the case was referred to a larger bench underscoring that the issue was "substantial and of general public importance".
- Recently Supreme Court ruled that parliamentary privileges do not grant legislators higher immunity from general criminal law.

P.V.Narshima Rao Case, 1993
• During 10th Lok Sabha, no-confidence motion was introduced against then Prime Minister P.V.Narashima Rao, it is alleged that Jharkhand Mukti Morcha MPs and Janata Dal (Ajit Singh) had accepted massive bribes from Rao to vote against the no-confidence motion. • Ajit Singh belonging to Janata Dal party abstained from voting. • In 1996, Central Bureau of Investigation started investigating alleging that a criminal conspiracy was devised by which the members belonging to the JMM and the JD entered into an agreement and received bribes to vote against the no-confidence motion, the case was taken up by Delhi High Court. • Delhi High Court refused to quash the charges, Narasimha Rao and the other accused appealed to the Supreme Court. • A five-judge Constitution bench, by *3:2 majority*, held that lawmakers have immunity against criminal prosecution for any speech made and the vote cast inside the House under Articles 105(2) and 194(2) of the Constitution. • **Majority opinion**-The court held that in order to protect the independence of MP's, the phrase "in respect of" in the Article must be given a "broad meaning" to protect the MP from all civil or criminal proceedings that have a connection with anything they have said or voted for in Parliament. • The court refused to extend the same protections to Ajit Singh, since he had neither made a speech nor cast a vote. It also refused to extend protections to bribe-givers. • **Minority opinion-**It held that immunity from prosecution for bribery charges would elevate legislators above the rule of law, which contradicts the purpose of Article 105(2). • It ruled that the offence of bribe is complete the moment a bribe is accepted. • By shielding an MP who has accepted bribes in exchange for voting or speaking in a particular manner, the immunity would effectively grant a license for corrupt conduct.

What are the key highlights of the verdict?

- **No violation of the doctrine of stare decisis-** The petitioners argued that overturning the established law in the P.V. Narasimha Rao case would violate this

doctrine.

Doctrine of stare decisis is a legal principle that obligates judges to adhere to prior verdicts while ruling on a similar case.

- **Flexibility of doctrine-** The doctrine is not an "inflexible rule of law" and that a larger bench is well within its limits to reconsider a prior decision in appropriate cases.
- **Statutory origin-** Unlike the United Kingdom's House of Commons, India's parliamentary privileges do not stem from "ancient and undoubted" rights established through historical struggles between Parliament and the monarchy.
- **Legislative privileges have to conform to Constitution**- The Court emphasizes that claims to privilege must be subject to judicial review to ensure they align with constitutional norms.
- **Fails two fold test**- The Court held that the constitutional immunity from prosecution for bribery related to voting o speech fails to fulfil two fold test.
    - **Collective functioning**- The privilege claimed must be linked to the overall functioning of the House.
    - **Essential duties**- The necessity for the privilege should relate to the legislator's essential duties.
- **Influence legislators**- Articles 105 and 194 grant privileges to lawmakers to facilitate debate and deliberation within the legislature but, this purpose is undermined when bribery influences a member's voting or speech.
- **Bribery is not immune-** It is not immune because it is not essential to the casting of the vote or decision-making, the same principle applies to bribery related to speeches in the House or committees.
- **Completion of bribery offence**-The offense of bribery is considered complete when a legislator accepts an illegal gratification, regardless of whether it is followed by voting or making a speech as desired by the bribe giver.
- **Over turned P.V.Narasimha case**- The recent ruling ensures that legislators cannot escape accountability for bribery, regardless of their subsequent actions.

Previously the legislators were immune when accepting a bribe and voting as agreed. However, if they accepted a bribe but voted independently, they could be prosecuted.

- **Parallel jurisdiction of Courts and Houses**- The court's jurisdiction to prosecute criminal offenses and the House's authority to address breaches of discipline operate independently.
- **Accountability-**Bribery charges can be treated by the House as contempt or a breach of privilege, but this does not exclude judicial proceedings. Hence the legislator can be held accountable through both House proceedings and judicial processes.
- **Corruption erodes democracy-**Corruption and bribery by members of the legislature erode the very foundation of Indian parliamentary democracy.

- **Disrupt moral principles**-When a legislator is influenced to vote not based on their genuine beliefs or stance on an issue, but due to monetary inducements, it undermines probity in public life.
- **Verdict applies to Rajya Sabha elections-** The recent verdict confirms that voting in Rajya Sabha elections falls within the ambit of Article 194(2) as the parliamentary privileges extends beyond law making on the floor of the House, it encompasses other powers and responsibilities of elected members, even when the House is not in session.

Kuldip Nayar case (2006) held that elections to the Rajya Sabha are not proceedings of the legislature but a mere exercise of franchise and therefore fall outside the ambit of parliamentary privileges under Article 194.

What lies ahead?

- The ruling underscores the importance of constitutional scrutiny in determining the boundaries of legislative privileges.
- Supreme Court with its recent verdict made clear that Parliament is not the sole judge of its privileges, allowing for judicial review of the House and its members' actions
- Sita Soren vs Union of India is a significant step towards strengthening legislative accountability and upholding the rule of law.
- By outlining a clear stance in relation to parliamentary privilege concerning bribery cases the court reaffirms principles of moral uprightness and openness within public life.

References

1. The Hindu- SC's ruling on legislators immunity for bribery charges
2. Indian Express- SC's interpretation on privileges
3. Indian Express- SC overturns narasimha rao decision

SHANKAR IAS PARLIAMENT
Information is Empowering