



## The Privileges of Members of Parliament

**For Prelims:** Vice President of India, Enforcement Directorate (ED), Central Bureau of Investigation (CBI), Income Tax department (IT), Article 105

**For Mains:** The Privileges of Members of Parliament

### Why in News?

Recently, the [Vice President of India](#) highlighted the wrong assumptions of Members of Parliament about the [Parliamentary privileges](#), that action can't be taken against them by investigating agencies during a Parliamentary session.

- There have been protests by some political parties against the alleged misuse of central agencies like the [Enforcement Directorate \(ED\)](#), [Central Bureau of Investigation \(CBI\)](#), and the [Income Tax department \(IT\)](#) by the government to frame political rivals.

### What are the Parliamentary Privileges?

#### ▪ About:

- Parliamentary privileges are special rights, immunities and exemptions enjoyed by the two Houses of Parliament, their committees and their members.
  - These privileges are defined in [Article 105 of the Indian Constitution](#).
- 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.
  - The privileges are claimed only when the person is a member of the house.
  - As soon as s/he ends to be a member, the privileges are said to be called off.
- **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:

- **Freedom of Speech in Parliament:**
  - The freedom of speech and expression guaranteed to a citizen under [Article 19\(2\)](#) is different from the freedom of speech and expression provided to a member of the parliament.
  - It has been guaranteed under Article 105(1) of the Indian constitution. But the freedom is subject to rules and orders which regulate the proceedings of the parliament.
- **Limitations:**
  - Freedom of speech should be in accordance with the constitutional

provisions and subject to rules and procedures of the parliament, as **stated under Article 118 of the Constitution.**

- Under **Article 121 of the Constitution**, the members of the parliament are restricted from discussing the conduct of the judges of the [Supreme Court](#) and the High Court.
- **Freedom from Arrest:**
  - The members enjoy freedom from arrest in any **civil case 40 days before and after the adjournment of the house and also when the house is in session.**
  - **No member can be arrested from the limits of the parliament without the permission of the house** to which s/he belongs so that there is no hindrance in performing their duties.
  - If the detention of any members of the parliament is made, **the chairman or the speaker should be informed by the concerned authority, of the reason for the arrest.**
    - But a member can be arrested outside the limits of the house on criminal charges against him under the [Preventive Detention act](#), **the Essential Services Maintenance Act (ESMA)**, [the National Security Act \(NSA\)](#), or any such act.
- **Right to Prohibit the Publication of Proceedings:**
  - **Article 105(2)** of the Constitution, **no person shall be held liable for publishing any reports, discussions etc. of the house under the authority of the member of the house.**
    - For paramount and national importance, it is essential that the proceedings should be communicated to the public to aware them of what is going on in the parliament.
- **Right to Exclude Strangers:**
  - The members of the house have the **power and right to exclude strangers** who are not members of the house from the proceedings. This right is very **essential for securing free and fair discussion** in the house.

## What Did the Vice President Hold?

- According to the Vice President under the Article 105 of the Constitution, the Members of Parliament enjoy certain privileges so that they can perform their parliamentary duties without any hindrance.
  - One of the privileges is that a **Member of Parliament cannot be arrested in a civil case**, 40 days before the commencement of the Parliamentary session or Committee meeting, and 40 days thereafter.
    - This privilege is already incorporated under **Section 135A of the [Civil Procedure Code, 1908.](#)**
  - However, in **criminal matters, Members of Parliament are not on a different footing than a common citizen.**
    - It means that a Member of Parliament does not enjoy any immunity from being arrested in a criminal case, during the session, or otherwise.

## What is the View of Supreme Court?

- The Supreme Court in the **State of Kerala Vs. K. Ajith and Others (2021)**, observed, that **“privileges and immunities are not gateways to claim exemptions** from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen.”
- In July 2021, the [Supreme Court rejected Kerala government’s plea to withdraw criminal cases against its MLAs](#) who were charged in the assembly.
  - **The Supreme court stated that Parliamentary Privileges are Not Gateways of Immunity and** the legislators who indulge in vandalism and general mayhem cannot claim parliamentary privilege and immunity from criminal prosecution.

## Way Forward

- The Parliamentary privileges are conferred on the members for the smooth functioning of the parliament. But these rights should always be **in conformity with the [fundamental rights](#)** because they are our representatives and work for our welfare.
  - If the privileges are not in accordance with the fundamental rights, then the very essence of democracy for the protection of the rights of the citizen will be lost.
- It is the duty of the parliament not to violate any other rights which are guaranteed by the constitution. The members should also use their privileges wisely and not misuse them.

**[Source: TH](#)**

PDF Refernece URL: <https://www.drishtias.com/printpdf/the-privileges-of-members-of-parliament>

