

MPs, MLAs Not Exempt From Prosecution For Accepting Bribes

Why In News

- **Supreme Court ruled** that Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) cannot claim any immunity from prosecution under **Articles 105 and 194 of the Constitution** when they are accused of taking bribes [Sita Soren v. Union of India].
- A Constitution bench **Chief Justice of India (CJI) DY Chandrachud** with Justices AS Bopanna, MM Sundresh, PS Narasimha, JB Pardiwala, PV Sanjay Kumar and Manoj Misra delivered the unanimous verdict this morning.



- The Court also overruled a contrary judgment rendered by it in 1998 in the case of **PV Narasimha Rao v. State** in which the Court had opined that legislators are immune from being prosecuted for taking bribes to vote a certain way in a legislative house.
- "The **judgment of the majority** in PV Narasimha Rao (supra), which grants immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for casting a vote or speaking has wide ramifications on public interest, probity in public life and parliamentary. democracy. There is a

grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered," the Court opined.



Constitutional Articles

- **Article 105(2) of the Constitution states:** “No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of Parliament of any report, paper, votes or proceedings.”
- **Article 194(2) provides identical protections** to members of state Assemblies. Before the seven-judge Bench was essentially the interpretation of this provision. This provision was previously interpreted in the 1998 JMM Bribery ruling, so the correctness of that ruling had to be tested.

“Privileges and immunities are not gateways (for MPs/ MLAs) to claim exemptions from the general law of the land... To claim an exemption... would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law. The purpose of bestowing privileges and immunities... is to enable them to perform their functions without hindrance, fear or favour...”

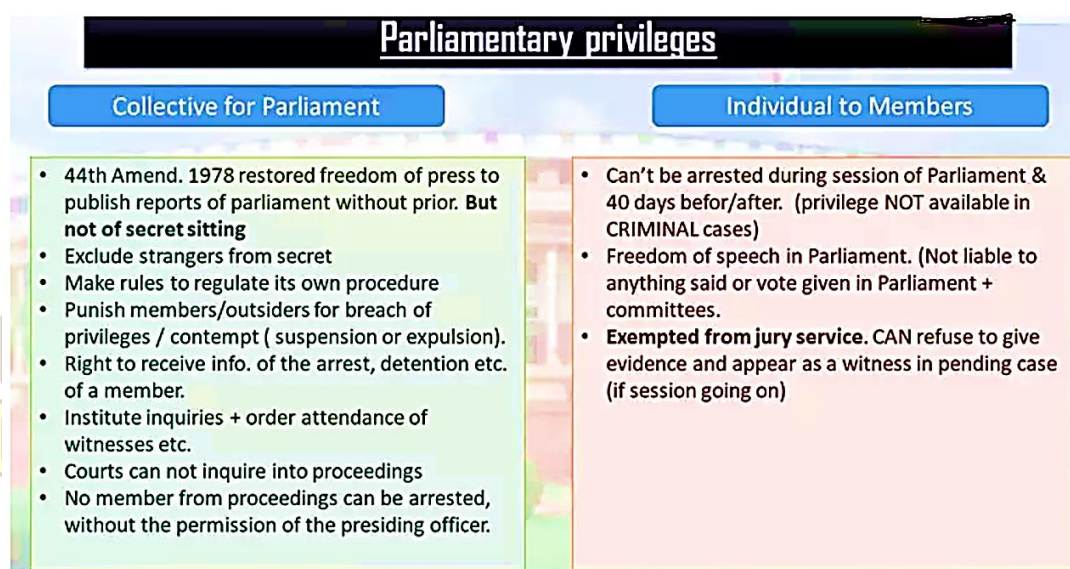
[Withdrawal of prosecution against the MLAs]... would amount to an interference with the normal course of justice for illegitimate reasons. Such an action is clearly extraneous to the vindication of the law to which all organs of the executive are bound

It was not the intention of the drafters of the Constitution to extend the interpretation of ‘freedom of speech’ to include criminal acts by placing them under a veil of protest... We miss the wood for the trees if we focus on rights without the corresponding duties cast upon elected public representatives

—Supreme Court

What Does Court Said

- There are **two components of parliamentary privilege**. One is what the House exercises collectively — which would include the power to punish for its contempt, the power to conduct its own affairs, among others. The second is for individual rights — say exercise of free speech by each member. This, the court said, has to pass a test.
- The ruling cited the **“necessity test”**, which means that for a member to exercise a privilege, the privilege must be such that without it “they could not discharge their functions.”



- **Naturally, accepting bribes cannot** be said to be necessary to discharge one's functions as a lawmaker, unlike, for example, having the right to free speech. The court also said that the Constitution envisions probity in public life.
- **“Corruption and bribery of members of the legislature** erode the foundation of Indian Parliamentary democracy. It is destructive of the aspirational and deliberative ideals of the Constitution and creates a polity which deprives citizens of a responsible, responsive and representative democracy,” the ruling stated.
- The Court analysed **Section 7 of the Prevention of Corruption Act**, which deals with ‘offence relating to public servant being bribed’.
- “The mere **“obtaining”, “accepting” or “attempting”** to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed,” the court said.

BREAKING

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“Bribery is not rendered immune under Articles 105 or 194 because a member engaging in bribery indulges in a criminal act which is not essential for the function of casting a vote or giving a speech in the legislature. Corruption and bribery by members of the legislatures erode probity in public life.”

SUPREME COURT

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- This means that accepting a bribe is an offence as is, and it does not depend on whether the public servant acted differently.
- The Court also said that it would be a violation of the right to equality under **Article 14 of the Constitution to create** “an illegitimate class of public servants which is afforded extraordinary protection.” Such a classification, the court said, would be manifestly arbitrary.
- Since Parliament also has the **power to punish its members for contempt** — the punishment here could be suspension from the House and even sentencing to jail term — the SC had to decide whether this meant courts had no role to play.



- The **SC held that both the court and Parliament** can exercise jurisdiction on the actions of lawmakers in parallel. This is because the purpose of punishment by the House is different from the purpose of a criminal trial.

- “The issue of bribery is not one of exclusivity of jurisdiction by the House over its bribe-taking members. The purpose of a House acting against a contempt by a member for receiving a bribe serves a purpose distinct from a criminal prosecution,” the court said.