

Making the House rules



Summary:

The Karnataka Legislative Assembly has found two journalists guilty of breach of its privilege and sentenced them to jail. This followed certain articles written by the journalists which were alleged to defame some legislators. This case once again raises the question of what should constitute privilege of the legislative bodies.

The Speaker authorized penal action for something that should have, at best, attracted admonition. While the sentencing is technically within the legislature's powers, whether the framers of the Constitution envisaged 'breach of privilege' to lead to a prison sentence—a power usually exercised only by the courts—is open to question.

Constitutional provisions in this regard:

The Indian Constitution specifies the powers and privileges of Parliament in Article 105 and those of State legislatures in Article 194. In brief, they:

Provide freedom of speech in Parliament subject to other provisions of the Constitution and standing orders of the House.

Give immunity for all speeches and votes in Parliament from judicial scrutiny.

Allow Parliament (and State legislatures) to codify the privileges, and until then, have the same privileges as the British Parliament had in 1950.

Till now, Parliament and State legislatures have not passed any law to codify their privileges.

What are the origins of the privileges?

These are derived from the British House of Commons. The privileges are reported to have originated when a nascent British parliament was attempting to establish itself in the light of monarchy.

“The legislatures in India claim to be the sole and exclusive judges of their privileges. This claim is based both on their status as coordinate organs of the state under the broad separation of powers among the executive, the legislature and the judiciary and their entitlement to all the privileges enjoyed by the British House of Commons on January 26, 1950. However, this claim is not supported by the constitutional scheme in India or by the situation in Britain in 1950,” a Supreme Court project on restatement of Indian law said in a publication on legislative privilege in India in 2011.

What constitutes a breach of privilege?

While the Constitution accords special privileges and powers to parliamentarians and legislators to maintain the dignity and authority of Parliament and the legislatures, these powers and privileges are not codified. There are no clearly laid out rules on what constitutes breach of privilege and what punishment it entails.

Concerns associated:

The Constitution confers certain privileges on legislative institutions with the idea of protecting freedom of speech and expression in the House and ensuring that undue influence, pressure or coercion is not brought on the legislature in the course of its functioning. Unfortunately, breach of privilege is invoked for the ostensible reason of protecting the image of the House on the whole or its individual members; too often, it is a thinly disguised mechanism to insulate elected representatives from criticism.

Without a law codifying the legislative privileges, there is little merit in subjecting anyone, leave alone a journalist, to penal action for allegedly breaching a legislator’s privilege, unless there is a move or attempt to obstruct the functioning of either the House or its members.

The problem also stems from the Constitution’s provisions on privileges and powers of the legislature. These provisions are loosely worded—Article 194 (3) states that “the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees”.

It is sometimes used to counter media criticism of legislators and as a substitute for legal proceedings. All persons have a right to trial by a competent, independent and impartial tribunal. Breach of privilege laws allow politicians to become judges in their own cause, raising concerns of conflict of interest and violating basic fair trial guarantees.

Way ahead:

Though dozens of people are summoned every year before the privileges committees of Parliament and state legislatures on charges of breach of privilege of

legislators, it is rare that punitive action like imprisonment has been ordered. With no codified laws for what constitutes a breach of privilege offence or prescriptions for punishment, this is largely a grey area in legal terms.

The legislature must use the power to punish for contempt or breach of privilege sparingly, invoking it mainly to protect the independence of the House and not to take away the liberty of critics. Legislators are in a position to clarify facts and refute misconceived criticism. There is no reason for them to seek imprisonment for contempt.

There are many unsettled questions about the very nature of legislative privileges. The absence of codification gives the House the freedom to decide when and how breach of privilege occurs. Even if it is conceded that the House has such a right, a moot question is whether the legislature, through its Committee of Privileges, should be a judge in its own cause. Whether the legislature's power to punish for breach of privilege extends to handing down a prison term is still an open question. Perhaps, it is better to restrict the use of privilege to proceedings of the legislature. Any member who is falsely accused of any impropriety can use the defamation route through courts.

Conclusion:

The time has come for the legislature to codify privileges and for the higher judiciary to lay down the limits of penal action for breach of privilege. It may also be time for the courts to revisit the earlier judgments and find the right balance between fundamental rights of citizens and privilege of the legislature. The recent case in Karnataka gives another opportunity to examine the issue.

The Karnataka government must consider the public odium it would attract if it acted on the resolution. If the Chief Minister and the Speaker take the lead in getting the Assembly to rescind the resolution, that would better safeguard the dignity of the august House.