

Editorial of the Day – 23.02.2026

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1. Protecting the freedom of speech of MPs (TH)

General Studies 2– Governance

Topic– Parliament and State Legislatures—Structure, functioning, conduct of business, powers & privileges and issues arising out of these.

Sub Topic– Parliamentary Privileges; Article 105 vs. Article 19; Separation of Powers.

Freedom of Speech in the Houses– Article 105 of the Constitution

1. Introduction

Article 105 of the Indian Constitution serves as the bedrock of parliamentary democracy by ensuring that Members of Parliament (MPs) can perform their duties without fear of legal reprisal. Recently, the Supreme Court has re-emphasized that while the House has the power to regulate its proceedings, procedural rules cannot eclipse the constitutional rights granted to legislators. This clarification addresses the misconception that internal House rules possess the authority to override the express mandate of Article 105.

2. Constitutional Foundation

Article 105(1)– Explicitly guarantees freedom of speech within the walls of Parliament.

Distinct Identity– This is separate from Article 19(1)(a) (general freedom of speech for citizens). While Article 19 is subject to "reasonable restrictions," Article 105 is a Parliamentary Privilege designed to protect the collective independence of the legislature.

Historical Roots– Derived from the British House of Commons traditions, specifically the Bill of Rights 1689, to prevent the Executive or Judiciary from intimidating lawmakers.

3. Scope and Extent of the Freedom

The protection is expansive and covers all forms of legislative participation–

Forums– Applies to the Lok Sabha, Rajya Sabha, and all Parliamentary Committees.

Actions– Includes oral debates, discussions, formal questions, motions, and the act of voting.

Documentation– Covers both verbal statements and written submissions presented in the House.

4. Absolute Immunity from Legal Proceedings

Under Article 105(2), MPs enjoy a "shield" against the judiciary–

Judicial Immunity– No MP is liable in any court for anything said or any vote given in Parliament.

Civil & Criminal Protection– This protects members from defamation suits (civil) and criminal prosecution related to their speech or conduct within the House.

Authorized Publications– Reports, papers, votes, or proceedings published by or under the authority of either House also enjoy this legal immunity.

5. Limitations and Restrictions

While expansive, this freedom is not absolute and is moderated by–

Constitutional Provisions– Specifically Article 121, which restricts discussion on the conduct of Judges of the Supreme Court or High Courts (except during impeachment).

House Rules– Subject to the Rules of Procedure of the House and the authority of the Presiding Officer (Speaker/Chairman).

Internal Discipline- Members can be asked to withdraw remarks, face suspension for disorderly conduct, or have their statements expunged from the official record if deemed inappropriate.

National Security- Deliberations must adhere to established norms regarding sensitive national interests.

6. Rationale and Significance

Independent Functioning- Protects legislators from external pressure by the Executive, Judiciary, or private interests.

Accountability- Enables fearless questioning of the government, ensuring executive accountability.

Separation of Powers- Maintains the constitutional boundary by preventing the Judiciary from scrutinizing the "internal proceedings" of the House.

Minority Voice- Protects the right of opposition and minority members to raise sensitive issues without fear of political vendetta or litigation.

7. Judicial Interpretation and Supremacy

Constitutional Supremacy- Courts generally respect the "internal autonomy" of Parliament. However, the Supreme Court has ruled that parliamentary privileges are subject to constitutional supremacy and cannot violate the Basic Structure of the Constitution.

Balance of Rights- In cases of conflict, the judiciary acts as the arbiter to ensure that privileges do not become a tool to infringe upon fundamental rights outside the scope of legislative necessity.

8. Conclusion

Freedom of speech under Article 105 is the cornerstone of a vibrant democracy. It ensures that the "Grand Inquest of the Nation" remains fearless. While House rules are essential for maintaining decorum, they must function as a regulatory framework, not a restrictive one. A balanced interpretation preserves the dignity of the House while upholding the constitutional mandate of legislative independence.

Source- <https://www.thehindu.com/opinion/op-ed/protecting-the-freedom-of-speech-of-mps/article70663727.ece>

2. 'Use summons judiciously, expedite probe, conclude long-pending investigations'- ED chief directs officers (IE)

General Studies 2- Governance

Topics- Issues relating to development and management of Social Sector/Services relating to Health.

Sub Topic- Recent developments in Indian Medicine and Research; Public Health Infrastructure and Policy.

Balancing Enforcement and Rights- The Enforcement Directorate (2026)

1. Introduction

In February 2026, the Director of the Enforcement Directorate (ED) issued landmark internal directives to officers to expedite probes and exercise the power of summons judiciously. This shift comes in response to heightened judicial scrutiny regarding "roving enquiries" and the need to reconcile the agency's vast statutory powers under the Prevention of Money Laundering Act (PMLA) with the fundamental rights of citizens.

2. The Enforcement Directorate- Role and Mandate

Specialized Agency- Functions under the Department of Revenue, Ministry of Finance, investigating financial crimes related to money laundering and foreign exchange violations (FEMA).

Statutory Teeth- Powered by the PMLA, 2002, which grants the agency authority to attach properties, conduct arrests, and issue summons.

Economic Security- A pivotal institution for ensuring India's financial integrity, anti-corruption efforts, and compliance with the Financial Action Task Force (FATF) standards.

Growing Workload- A significant surge in cross-border and high-stakes corruption cases has tested the agency's procedural fairness and institutional capacity.

3. Judicial Scrutiny and Constitutional Safeguards

The judiciary has played a corrective role in defining the boundaries of ED's power-

Against "Roving Enquiries"- Courts have warned against "fishing expeditions"—broad, unfocused investigations conducted without specific incriminating material.

Right to Silence- Recent rulings (2024-25) clarified that the ED cannot compel an accused in custody to make self-incriminating statements, upholding the protection against self-incrimination (Article 20(3)).

Proportionality & Due Process- Emphasized that strong laws like PMLA must still adhere to the principle of Article 21 (Right to Life and Liberty).

Non-Bailable Warrants- Courts have ruled that such warrants cannot be issued mechanically, especially when the individual is merely being summoned as a witness.

4. Protection of Lawyer-Client Privilege

A critical recent development involves the independence of the legal profession-

The Controversy- The ED faced backlash for summoning advocates to testify regarding legal advice provided to clients.

Supreme Court Intervention (2025)- The Court established binding directions to protect lawyer-client privilege, viewing it as essential for a fair trial.

Internal Reform- The ED now requires prior approval from the Director before summoning any advocate, marking a significant step toward institutional accountability.

5. Push for Efficiency and Time-Bound Probes

To address the criticism of "never-ending" investigations, the ED has adopted a new framework-

Target Timelines- Aiming to conclude most investigations within 1 to 2 years.

Prosecution Focus- Shifting priority toward filing prosecution complaints rather than prolonged preliminary probes.

Bail Context- Given the stringent "twin conditions" for bail under PMLA, timely investigations are now seen as a constitutional necessity to prevent indefinite incarceration without trial.

Administrative Tech- Implementation of real-time case management and data integrity tools to improve efficiency.

6. Federal and Political Dimensions

Centre-State Frictions- Investigations involving State officials (e.g., District Collectors) have raised questions about the federal balance and the limits of central agency jurisdiction.

Institutional Neutrality- The agency faces the challenge of insulating high-profile investigations from perceptions of political selectivity to maintain public and judicial credibility.

Democratic Accountability- The report stresses that robust enforcement must coexist with the principles of cooperative federalism.

7. Conclusion

The shift toward "rights-sensitive enforcement" acknowledges that the ED's effectiveness is not measured solely by its power to arrest, but by its ability to conduct fair, time-bound, and legally sound investigations. By balancing state power with civil liberties, the agency can strengthen the Rule of Law and ensure that the fight against financial crime does not come at the cost of constitutional values.

Source- <https://indianexpress.com/article/india/ed-chief-asks-officers-to-expedite-probe-use-summons-judiciously-10546594/>