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Article 105 of Constitution

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Why in News: In a letter to Rajya Sabha Chairman Jagdeep Dhankhar, Congress president Mallikarjun Kharge cited Article 105 of the Constitution that deals with the privileges and powers of parliamentarians

Provisions under Article 105

Article 105 of the Constitution deals with “powers, privileges, etc of the Houses of Parliament and of the members and committees thereof”, and has four clauses. It reads:

- (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
- (2) No Member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
- (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
- (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.”

Members of Parliament are exempted from any legal action for any statement made or act done in the course of their duties. For example, a defamation suit cannot be filed for a statement made in the House.

This immunity extends to certain non-members as well, such as the Attorney General for India or a Minister who may not be a member but speaks in the House.

In cases where a Member oversteps or exceeds the contours of admissible free speech, the Speaker or the House itself will deal with it, as opposed to the court.

Article 194 provides the same privileges to the state legislatures and their members and committees.

Origin of idea of privilege of Parliament

The Government of India Act, 1935 first brought this provision to India, with references to the powers and privileges enjoyed by the House of Commons in Britain. An initial draft of the Constitution too contained the reference to the House of Commons, but it was subsequently dropped.

However, unlike India where the Constitution is paramount, Britain follows Parliamentary supremacy. The privileges of the House of Commons is based in common law, developed over centuries through precedents.

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In the 17th-century case ‘R vs Elliot, Holles and Valentine’, Sir John Elliot, a member of the House of Commons was arrested for seditious words spoken in a debate and for violence against the Speaker. However, the House of Lords provided immunity to Sir John, saying that words spoken in Parliament should only be judged therein.

This privilege has also been enshrined in the Bill of Rights 1689, by which the Parliament of England definitively established the principle of a constitutional monarchy.

In the 1884 case of ‘Bradlaugh v. Gosset’, then Chief Justice Lord Coleridge of the House of Lords observed: “What is said or done within the walls of Parliament cannot be inquired into in a court of law.”

Breach of the legislature’s privilege

While the Constitution has accorded special privileges and powers to parliamentarians and legislators to maintain the dignity and authority of the Houses, these powers and privileges are not codified. Thus, there are no clear, notified rules to decide what constitutes a breach of privilege, and the punishment it attracts.

Any act that obstructs or impedes either House of the state legislature in performing its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or has a tendency, directly or indirectly, to produce such results is treated as breach of privilege.

It is a breach of privilege and contempt of the House to make speeches or to print or publish libel reflecting on the character or proceedings of the House, or its Committees, or on any member of the House for or relating to his character or conduct as a legislator.

Procedure to be followed in cases of alleged breach of the legislature’s privilege

The Legislative Assembly Speaker or Legislative Council Chairman constitutes a Privileges Committee consisting of 15 members in the Assembly and 11 members in the Council.

The members to the committee are nominated based on the party strength in the Houses.

If the privilege and contempt are found prima facie, then the Speaker or Chairman will forward it to the Privileges Committee by following the due procedure

The Committee will examine whether statements made by him had insulted the state legislature and its Members, and whether their image was maligned before the public

If the Committee finds the offender guilty of breach of privilege and contempt, it can recommend the punishment. The punishment can include communicating the displeasure of the state legislature to the offender, summoning the offender before the House and giving a warning, and even sending the offender to jail.

In the case of the media, press facilities of the state legislature may be withdrawn, and a public apology may be sought.

Supreme Court view about Parliamentary Privilege

In the 1970 ruling in ‘Tej Kiran Jain v N Sanjiva Reddy’, the Supreme Court dismissed a plea for damages filed by the followers of the Puri Shankaracharya against parliamentarians.

The judgment recalled that “in March 1969, a World Hindu Religious Conference was held at Patna. The Shankaracharya took part in it and is reported to have observed that untouchability was in harmony with the tenets of Hinduism and that no law could stand in its way, and to have walked out when the National Anthem was played.”

The petitioners claimed that when the issue was debated in Parliament, uncharitable remarks were made against the seer. The petitioners argued that the MPs' immunity "was against an alleged irregularity of procedure but not against an illegality".

However, the SC ruled that "the word "anything" in Article 105 is of the widest import and is equivalent to 'everything'."

Almost two decades later, in 1998, the SC in the case of 'P V Narasimha Rao vs. State' answered two questions on parliamentary privilege, broadly relating to questions of corruption.

In 1993, Narasimha Rao was Prime Minister of a minority government at the Centre. When a vote of no-confidence was called by members of the opposition against the government, some factions of the ruling party paid [Jharkhand Mukti Morcha](#) (JMM) members to vote against the motion. The motion was defeated in the House, with 251 members supporting it and 265 members against it.