RAJA RAM PAL

v.

THE HON'BLE SPEAKER, LOK SABHA & ORS.

JANUARY 10, 2007

[Y.K. SABHARWAL, CJI, K.G. BALAKRISHNAN, C.K. THAKKER, R.V. RAVEENDRAN AND D.K. JAIN, JJ.]

Constitution of India, 1950:

Articles 101, 102, 105 and 122/Representation of the People Act, 1951—Sections 7 and 10A:

Cash for query—Monetary consideration for raising questions in Parliament—MP Local Area Development Scheme—Improper conduct in relation to implementation thereof—Espoused by T.V. channels—Inquiry by Committee of MPs—Report tabled in House and the MPs concerned expelled from the House—Constitutional validity of—Powers, privileges and immunities—Competence of the Houses of Parliament to expel the Members from the membership of the House—Whether such power subject to judicial review—Held: The Houses of Parliament are competent to expel the Members—Such power subject to judicial review—Scope thereof—Explained.

Procedure adopted by the two Houses of Parliament—Does not suffer from any illegality, irrationality, unconstitutionality, violation of principles of natural justice or perversity—Hence not violative of Articles 14, 20 or 21.

Lok Sabha Speaker's announcement that the guilty will not be spared—Whether **mala fide** *and motivated—**Held**, no, since the Speaker was only giving vent to his feeling on the subject—The fact that the Speaker had thereafter constituted an Inquiry Committee with Members also from the opposition would go to show that the resolve at that stage was to find the truth.*

*Articles 19(1)(g) and 21—***Vis-à-vis***—Article 105(3)—Discussed.*

A *Powers, privileges and immunities of Members of Parliament—Position in countries like USA, U.K., Canada, Australia—Discussed.*

Words & Phrases:

B *'Vacancy', 'disqualification', 'expulsion', 'power', 'privilege', 'immunity'—Meaning of.*

The interpretation of Article 105 of Constitution of India is in issue in these matters. The question is whether in exercise of the powers, privileges and immunities as contained in Article 105, are the Houses of
C **Parliament competent to expel their respective Members from membership of the House. If such a power exists, is it subject to judicial review and if so, the scope of such judicial review.**

The aforesaid questions have arisen in the background of the allegation
D **that the Members of Parliament (MPs) indulged in unethical and corrupt practices of taking monetary consideration in relation to their functions as MPs.**

The Presiding officers of each House of Parliament instituted inquiries through separate Committees.
E

On the Report of the Inquiry Committee being laid on the table of the House, a Motion was adopted by Lok Sabha resolving to expel the 10 members from the membership of Lok Sabha, accepting the finding as contained in the Report of the Committee that the conduct of the members
F **was unethical and unbecoming of the Members of Parliament and their continuance as MPs is untenable. On the same day i.e. 23rd December, 2005, the Lok Sabha Secretariat issued the impugned notification notifying the expulsion of those MPs with effect from same date.**

Similarly the Report of the Ethics Committee was adopted by Rajya
G **Sabha concurring with the recommendation of expulsion and on the same date i.e. 23rd December, 2005, a notification notifying expulsion of the Member from membership of Rajya Sabha with immediate effect was issued.**

H **In the Writ Petitions/Transfer Cases, the expelled MPs have challenged**

the constitutional validity of their respective expulsions.

On behalf of the petitioners, it was *inter alia* contended that the power of judicial review is an incident of and flows from the concept that the fundamental and higher laws are the touchstone of the limits of the powers of the various organs of State which derive power and authority under the Constitution of which the judicial wing is the interpreter; unlike in England where Parliament is sovereign, in a federal State with a written Constitution like India is, the supremacy of the Constitution is fundamental to its existence, which supremacy is protected by the authority of the independent judicial body that acts as the interpreter thereof through the power of judicial review to which even the Legislature is amenable and cannot claim immunity wherefrom; the legislative supremacy being subject to the Constitution, Parliament cannot determine for itself the nature, scope and effect of its powers which are, consequently, subject to the supervision and control of judicial organ; that unlike the Parliament of England, the status of Legislature in India has never been that of a superior court of record and that even privileges of Parliament are subject to limits which must necessarily be ascertainable and, therefore, subject to scrutiny by the Court, like any other right; the validity of any proceedings even inside a legislative chamber can be called in question before the Court when it suffers from illegality and unconstitutionality and there is no immunity available to Parliament from judicial review; the Legislature has no power to expel its member since the Parliament has not enacted any law which provides for expulsion of a member in a specified circumstance, in terms of enabling power to legislate on the subject as available in Article 105(3) of the Constitution; the expulsions are illegal, arbitrary and unconstitutional, being violative of the provisions of Articles 83, 84 and 101 to 103, 105 and 190 to 193 of the Constitution; there is no provision either in the Constitution of India or in the Rules of Procedure and Conduct of Business of the Houses of Parliament for expulsion of a member by adoption of a motion and thus the impugned acts were beyond the jurisdiction of Parliament; the expulsion of the petitioners from the Legislature through a motion adopted by simple majority was a dangerous precedent which would give dictatorial powers to the ruling majority in the Legislatures in future and thus be prone to further abuse; the Constitutional law governing the democracies the world over, even in other jurisdictions governed by written Constitutions, would not allow the power of exclusion of the elected members unto the legislative chamber.

A **The following questions were formulated by the Court:**

1. Does this Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privileges and immunities of the Legislatures and its members?

B **2. If the first question is answered in the affirmative, can it be found that the powers and privileges of the Legislatures in India, in particular with reference to Article 105, include the power of expulsion of their members?**

C **3. In the event of such power of expulsion being found, does this Court have the jurisdiction to interfere in the exercise of the said power or privilege conferred on the Parliament and its members or Committees and, if so, is this jurisdiction circumscribed by certain limits?**

D **Dismissing the Writ Petitions and the Transferred Cases, the Court**

HELD: *Per Majority (Sabharwal, CJI, for himself and K.G. Balakrishnan and D.K. Jain, JJ.)*

1. In view of the clear enunciation of law by Constitutional Benches
E **of this court in case after case, there ought not be any doubt left that whenever Parliament, or for that matter any State legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or Article 194(3) as the case may be, it is the court which has the authority and the jurisdiction to examine, on grievance being brought before it, to**
F **find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of the Parliament of United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian legislatures.**
G **[Para 62] [386-G-H, 387-A-B]**

Kesavananda Bharati **v.** *State of Kerala,* **[1973] 4 SCC 225;** *Indira Nehru Gandhi* **v.** *Raj Narain,* **[1975] (Suppl) SCC 1;** *Minerva Mills Ltd.* **v.** *Union of India,* **[1980] 3 SCC 625;** *Sub-Committee on Judicial*
H *Accountability* **v.** *Union of India,* **[1991] 4 SCC 699;** *I. Manilal Singh* **v.**

A *H . Borobabu Singh (Dr),* **[1994] Supp (1) SCC 718;** *Union of India* **v.** *Assn. for Democratic Reforms,* **[2002] 5 SCC 294;** *Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter),* **[2002] 8 SCC 237;** *People's Union for Civil Liberties (PUCL)* **v.** *Union of India,* **[2003] 4 SCC 399;** *Pratap Singh* **v.** *State of Jharkhand,* **[2005] 3 SCC 551;** *Rameshwar Prasad (VI)* **v.** *Union of India,* **[2006] 2 SCC 1;** *Kuldip Nayar* **v.** *Union of India,* **[2006] 7 SCC 1;** *Special Reference No. 1 of 1964,* **[1965] 1 SCR 413 (***UP Assembly* **case);** *M.S.M. Sharma* **v.** *Sri Krishna Sinha,* **[1959] Supp (1) SCR 806;** *M.S.M. Sharma* **v.** *Shree Krishna Sinha,* **[1961] 1 SCR 96 and** *State of Karnataka* **v.** *Union of India,* **[1977] 4 SCC 608, relied on.**

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C *Bradlaugh* **v.** *Gosset,* **[1884] 12 QBD 271 and** *Richard William Prebble* **v.** *Television New Zealand Ltd.,* **(1994) (S) WLR 970, referred to.**

"Rules of Procedure and Conduct of Business in Lok Sabha"; "Rules of Procedure and Conduct of Business in the Council of States" and "May's Parliamentary Practice" **by Sir Thomas Erskine May, referred to.**

D

2. The historic origin of the doctrine of privileges of the legislature in England is founded on its judicial functions. The House of Lords has always claimed itself to be a Court of Record and as such having the inherent authority and power not only to imprison but also to impose fines in matters of contempt. But then, its position as a Court of Record does not E **inure, according to Lord Kenyon, "when exercising a legislative capacity". According to May's Parliamentary practice, the House of Commons at one point of time in the history had also claimed to be a Court of Record, but this position has never been finally determined.**

[Para 82] [393-H, G 394-A-B]

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Sir Thomas Erskine May: *"May's Parliamentary Practice"* **and Rutledge:** *"Procedure of the House of Commons"* **[Volume I, page 46], referred to.**

3.1. The medieval concept of Parliament in England primarily as a G **court of justice, the 'High Court of Parliament' gave rise to the firm belief that in order to defend the dignity of Parliament against disrespect and affronts, there must vest in it a power to commit, without which the privileges of Parliament would not exist. [Para 83] [394-D]**

3.2. In matters concerning import of powers and privileges of the H

A House of Commons unto the legislature in India, while examining the issue, albeit from the limited concern of the availability to State legislature under Article 194(3) of the power of commitment for contempt, this court in the *UP Assembly* Case had administered a note of caution that must hold good even for purposes at hand. [Para 86] [395-D-E]

B 3.3. In the *UP Assembly* Case, it was settled by this court that a broad claim that all the powers enjoyed by the House of Commons at the commencement of the Constitution of India vest in an Indian legislature cannot be accepted in its entirety because there are some powers which cannot obviously be so claimed. [Para 87] [396-B]

C Special Reference No. 1 of 1964, [1965] 1 SCR 413 (*UP Assembly* case), relied on.

Ashby v. *White L.J.* (1701-05), 714, referred to.

D 4. The Constitution thus adopted through Articles 105 and 194, for the Parliament and the State Legislatures respectively, the same powers, privileges and immunities as vested at the commencement of the Constitution in the House of Commons of the Parliament of United Kingdom, until they were "defined by law". [Para 122] [413-D-E]

E Prititosh Roy: *"Parliamentary Privilege in India"* (1991), *Chapter-4, titled 'Historical Background of Parliamentary Privilege in India (1915-1950)'* p. 53 and *Constituent Assembly Debates* Volume 8 of 19.5.1949, page 143-149, 578-584, referred to.

F 5. Reference to the privileges of the House of Commons was justified on grounds of self-assertion that free India and its Parliament are as great as the Parliament of Great Britain. The drafting committee was more concerned about giving to the Parliament the widest privileges as exercised by members of Parliament in England, including the power to punish for G contempt of the House. Full fledged provisions listing out the powers and privileges was not possible as there was not sufficient time or the leisure to formulate all of them in a compendious form, as had been found by a Committee constituted by the Speaker on the legislative side. That is why a wide scope and unfettered discretion was being left for the future H Parliament of India to set up the proper machinery for formulating

privileges, which could be enlarged or curtailed. The adoption of the powers and privileges of the House of Commons was only as a temporary measure, following the practice that had been followed in Australia, Canada and in other Dominions with advantage to secure complete freedom of speech and also the omnipotence of the legislature in every respect.

[Para 123] [413-F-H, 414-A-B]

6. The amendment brought into force in 1979 does not turn the clock ahead. The powers and privileges of the House of Commons of the Parliament of the United Kingdom as on the date of commencement of the Constitution of India were the powers and privileges available to the Parliament before the amendment and that is the package which continues to be available post-amendment. Use of a particular power in 1947 would rather make it closer in terms of time to the crucial date of commencement of Indian Constitution. Its disuse in later period is of no consequence. [Para 125] [414-F-G]

7. It is incumbent in view of Article 105 (3) to trace the power of expulsion with reference to the powers, privileges and immunities recognized as vesting in the House of Commons of Parliament of United Kingdom as on the date of commencement of the Constitution of India, that is 26th January 1950. If such a power or privilege vested in the said legislature, the question would arise as to whether it could be part of the inheritance for Indian legislatures in the face of the provisions of its written Constitution. [Para 135] [417-G-H]

8. It is settled that out of entire bouquet of privileges and powers which the House of Commons claimed at the time of its bitter struggle for recognition during the 17th through 19th centuries, all have not survived the test of time. Some were given up. Some others faded out by desuetude. [Para 136] [418-A]

9. The argument of availability of all the powers and privileges has been rejected in *UP Assembly* Case with reference to illustrations of some powers claimed by the House of Commons as mentioned in May's Parliamentary Practice, but which cannot be claimed by the Indian legislatures, including the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "*to have at* all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction

A placed on his words was justly regarded by the Commons as fundamental privilege"; the privilege to pass acts of attainder and impeachments; and the privilege in regard to its own Constitution which is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; *secondly*, by the trial of controverted elections; and *thirdly*, by determining the qualifications of its members in cases of doubt. [Para 137] [418-E-G]

Special Reference No. 1 of 1964, (1965) 1 SCR 413 (*UP Assembly* case), relied on.

C Sir Thomas Erskine May : *"May's Parliamentary Practice"* 16th Edn. pp. 86, 175, referred to.

10.1. It is necessary to understand the exact import of the terms 'vacancy', 'disqualification' and 'expulsion'. These terms have different meanings and they do not overlap. Disqualification strikes at the very root of the candidate's qualification and renders him or her unable to occupy a member's seat. Expulsion, on the other hand, deals with a person who is otherwise qualified, but in the opinion of the House of the legislature, unworthy of membership. While disqualification operates to prevent a candidate from re-election, expulsion occurs after the election of the member and there is no bar on re-election. As far as the term 'vacancy' is concerned, it is a consequence of the fact that a member cannot continue to hold membership. The reason may be any one of the several possible reasons which prevent the member from continuing membership, for example disqualification, death or expulsion. [Paras 142 & 143] [420-B-D]

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10.2. In view of above, it is not possible to accept the submission that the termination of membership can be effected only in the manner laid down in Articles 101 and 102. While these articles do speak of qualifications for and continuation of membership, they operate independently of Article 105(3). Article 105(3) is also a constitutional provision and it demands equal weight as any other provision, and neither being 'subject to the provisions of the constitution', it is impossible to accord to one superiority over the other. It cannot be said the submission that the provisions in Articles 101 or 102 restrict in any way the scope of Article 194(3). There is no reason for them to do so. Though disqualification and expulsion both result in the vacancy of a seat, there is no necessity to read one in a way

that restricts the scope of the other. The expulsion on being found unfit for functioning within the House in no way affects the qualifications that a member must fulfill, and there is no reason for the latter to affect expulsion. Both of the provisions can operate quite harmoniously. There is no inconsistency between the two. Nor is there any reason to support the claim that provisions under Articles 101 and 102 are exhaustive and for that reason, Article 105(3) be read as not to include the power of expulsion. Further, death as a cause for vacancy of a seat is also not mentioned in the relevant provisions. Similarly, it is not necessary for expulsion to be mentioned, if there exists another constitutional provision that provides for such a power. It is obvious that upon expulsion, the seat of the member is rendered vacant and so no specific recognition of this provision is necessary within the provision relating to vacancy. Thus, the power of expulsion cannot be held to be inconsistent with these provisions.

[Para 144] [420-E-H, 421-A]

10.3. It is not possible to accept the Petitioners' contention that Articles 101 and 102 are exhaustive with respect to termination of membership. Therefore, power of expulsion cannot be said to be inconsistent with these provisions. [Para 146] [421-E]

10.4. Disqualification and expulsion are two different concepts altogether, and recognizing the Parliament's power to expel under Article 105(3) does by no means amount to adding a new ground for disqualification. [Para 147] [421-G]

10.5. Article 105(3) itself provides the power to make a law defining powers and privileges and further the position that all the privileges of the House of Commons vest in the Parliament until such a law is passed. Article 327 pertains to the constitution of the House insofar as election matters, etc. are concerned. It does not refer to privileges that the Parliament enjoys. Thus, the power of expulsion is not negated by any of the above constitutional or statutory provisions. [Para 148 & 149] [422-B-C]

Yashwant Rao Meghawale v. *Madhya Pradesh Legislative Assembly,* AIR (1967) MP 95; Hardwari Lal ILR (1977) 2 P&H 269 (FB); *K. Anbazhagan* v. *TN Legislative Assembly,* AIR (1988) Mad. 275 and *Shrikant* v. *Vasantrao,* [2006] 2 SCC 682, referred to.

Armstrong v. *Budd,* (1969) 71 SR 386 (NSW), referred to.

A **11.1. In the present case, where there is a lawful expulsion, the members cannot claim that the provisions relating to salaries and duration of the House create such rights for the members that would have supremacy over the power of expulsion of the House. [Para 154] [423-F]**

B **11.2. As far as the provision for the duration of the House is concerned, the normal duration of a House is to be five years. It cannot be interpreted to mean that it guarantees to the members a term of five years. The Respondents have correctly pointed out that a member does not enjoy the full five-year term under various circumstances; for example-when he or she is elected mid-term, when the term of the House is cut short by** C **dissolution, when the member stands disqualified or the seat is rendered vacant. A correct view in this regard has been taken in *K. Anbazhagan*, in line with the view expressed by this Court in *K. Anandan Nambiar*. If the provisions mentioned by the petitioners were actually to create rights in respect of members, then each of the above situations would be liable to be** D **challenged for their violation. This quite obviously is not what is intended by the Constitution. Expulsion is only an additional cause for the shortening of a term of a member. [Para 156] [424-A-C]**

11.3. Further, as far as the provision relating to the salary of the member is concerned, it is quite absurd to claim that because the E **Constitution makes a provision for salaries, the power of the House to expel is negated since the result would be that the member would no longer be paid. Salaries are obviously dependent upon membership, and the continuation of membership is an independent matter altogether. The termination of membership can occur for a variety of reasons and this is** F **at no point controlled by the fact that salaries are required to be paid to a member. [Para 157] [424-D-E]**

11.4. Thus, the provisions do not negate the power of expulsion of the House, and there is no inconsistency between the House's power of expulsion and the said provisions. [Para 158] [424-F]

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11.5. While it is true that the right to vote and be represented is integral to our democratic process, it must be remembered that it is not an absolute right. There are certain limitations to the right to vote and be represented. For example, a citizen cannot claim the right to vote and be H **represented by a person who is disqualified by law or the right to be**

represented by a candidate he votes for, even if he fails to win the election. Similarly, expulsion is another such provision. Expulsion is related to the conduct of the member that lowers the dignity of the House, which may not have been necessarily known at the time of election. It is not a capricious exercise of the House, but an action to protect its dignity before the people of the country. This is also an integral aspect of our democratic set-up. The power of expulsion is not contrary to a democratic process. It is rather part of the guarantee of a democratic process. Further, expulsion is not a decision by a single person. It is a decision taken by the representatives of the rest of the country. Finally, the power of expulsion does not bar a member from standing for re-election or the constituency from electing that member once again. Thus, the power of expulsion does not violate the right of the constituency or any other democratic principles. [Paras 161 and 162] [425-B-F]

11.6. Article 105(3) is itself a constitutional provision and it is necessary to construe the provisions in such a way that a conflict with other provisions is avoided. Where there is a specific constitutional provision as may have the effect of curtailing these *fundamental rights* if found applicable, there is no need for a law to be passed in terms of Article 19(6). For example, Article 102 relating to disqualifications provides that members who are of unsound mind or who are undischarged insolvents as declared by competent courts are disqualified. These grounds are not mentioned in the Representation of Peoples Act, 1951. Though this provision would have the effect of curtailing the rights under Article 19(1)(g), there is doubt that it can ever be contended that a specific law made in public interest is required. Similarly, if Article 105(3) provides for the power of expulsion (though not so expressly mentioned), it cannot be said that a specific law in public interest is required. Simply because the Parliament is given the power to make law on this subject is no reason to say that a law has to be mandatorily passed, when the Constitution itself provides that all the powers of the House of Commons vest until such a law is made. Thus, Article 19(1)(g) cannot prevent the reading of power of expulsion under Article 105(3). [Para 165] [426-B-E]

11.7. As far as Article 21 is concerned, it was submitted that the 'procedure established by law' includes the rules relating to the Privileges Committee, etc., which were not followed and thus the right was violated. This does not prevent the reading of the power to expel in Article 105(3).

A It is not possible to say that because a 'procedure established by law' is required, it will prevent the power of expulsion altogether and that every act of expulsion will be contrary to the procedure established by law. Whether such a claim is maintainable upon specific facts of each case is something that will have to be considered when the question of judicial review is taken up. At this stage, however, a blanket ban on the power of
B expulsion based on Article 21 cannot be read in the Constitutional provisions. This is an issue that may have a bearing on the legality of the order. But, it cannot negate the power of expulsion. [Para 166] [426-F-H]

11.8. The power of expulsion does not come into conflict with any of
C the constitutional provisions and thus cannot be negated on this basis. [Para 167] [427-A]

Shrikant v. *Vasantrao,* [2006] 2 SCC 682 and *Kuldip Nayar* v. *Union of India,* [2006] 7 SCC 1, relied on.

D

K. Anbazhagan v. *TN Legislative Assembly,* AIR (1988) Mad. 275 and *K. Anandan Nambiar* v. *Chief Secretary, State of Madras,* AIR (1966) SC 657, referred to.

12.1. Neither Parliament nor State Legislatures in India can assert
E power to provide for or regulate their own constitution in the manner claimed by the House of Commons in United Kingdom. Having regard to the elaborate provision made elsewhere in the Constitution, this power cannot be claimed even, or least of all, through the channel of Articles 105 (3) or 294 (3). [Para 188] [431-G-H]

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12.2. Though Maitland also discusses expulsion along with the other constituent elements of the House's Privilege of determining its own composition, it is difficult to accept the argument of the Petitioners that this exposition by Professor Maitland shows that the power of expulsion was claimed by the House of Commons it being only a part and parcel of its basic
G privilege to control its own composition. [Para 217] [441-B-C]

12.3. Wade & Phillips have treated the subject of expulsion from different angles, not necessarily leading to the conclusion that this power would always be traceable to the power of self composition alone. Expulsion
H on account of conviction for misdeamonour refers to disciplinary control

and therefore part of penal jurisdiction which undoubtedly is distinct from the power of the House to provide for its own constitution. A

[Para 220] [442-C]

12.4. The petitioners seek to point out that expulsion of a member is not included in the penal powers of the House of Commons. Default in this regard by the author does not lead to the conclusion that expulsion was not one of the sanctions available against a member to the House as part of its disciplinary control in as much as other authorities on the subject demonstrate it to be so. [Para 222] [442-F-G] B

12.5. It is clear that E.W. Ridges, though referring to the power of expulsion under the heading "The Right to Provide for its Due Composition", does not restrict it as a power sourced from the right to provide for its own composition but refers at length to cases where the power of expulsion was used by the House of Commons in cases of criminal conduct, gross misdemeanour and even in matters of contempt. It is difficult to subscribe to the inference that the power of expulsion according to Ridges is traceable only to the privilege of self composition. [Para 224] [442-D-E] C D

12.6. It cannot be said that the source of Power of Expulsion in England was the privilege of the House of Commons to regulate its own constitution or that the source of the power is single and indivisible and cannot be traced to some other source like independent or inherent penal power. The right to enforce its privileges either by imposition of fine or by commitment to prison (both of which punishments can be awarded against the members of the House as well as outsiders) or by expulsion (possible in case of members only) is not a part of any other privilege but is by itself a separate and independent power or privilege. To enforce a privilege against a member by expelling him for breach of such privilege is not a way of expressing the power of the House of Commons to constitute itself. Though expulsion can be, and may have been, resorted to by the House of Commons with a view to preserve or change its constitution, it would not exclude or impinge upon its independent privilege to punish a member for breach of privilege or for contempt by expelling him from the House. Expulsion concerns the House itself as the punishment of expulsion cannot be inflicted on a person who is not a member of the House. As a necessary and direct consequence, the composition of the House may be affected by the expulsion of a member. That would not, however, necessarily mean that the power of expulsion is exercised only with a view, or for the E F G H

A purpose of regulating the composition of the House. One of the three ways of exercising the privilege of the Commons to constitute itself as mentioned by May (in 20th Edition) can undoubtedly, in certain circumstances, be expressed by expelling a member of the House. But this does not mean that the existence and exercise of the privilege of expelling a member by way of punishment for misconduct or contempt of the House stands ruled B out. The power of self composition of the House of Commons is materially distinct and meant for purposes other than those for which the House has the competence to resort to expulsion of its members for acts of high misdemeanour. The existence of the former power on which expulsion can be ordered by the House of Commons cannot by C itself exclude or abrogate the independent power of the House to punish a member by expelling him, a punishment which cannot be inflicted on a non-member. [Paras 233, 234 & 235] [447-C-H, 448-A-B]

12.7. Expulsion being regarded as "justly as an example of the D privilege of the House of Commons to regulate its own Constitution" by May does not mean that the power to expel is solely derived from the privilege to regulate its own Constitution or that without the privilege of providing for its own Constitution, the House could not expel a member. The latter view would be contrary to the established position that the House has a right as part of its privilege to have complete control over E its proceedings including the right to punish a member by expulsion who by his conduct interferes with the proper conduct of Parliament business. [Para 236] [447-C-D]

Anson: *'The Law and Custom of the Constitution'* [Fifth edition F (1922), Volume I, Chapter IV]; Para 1019 of Halsbury's Law of England; Professor F.W. Maitland: The *"Constitutional History of England"* (first edition 1908, reprinted 1941); Professors Wade and Phillips: *"Constitutional Law"* (Seventh edition); Professors Keir and Lawson: *"Cases in Constitutional Law"* (fifth edition) and E.W. Ridges: *"Constitutional Law"* (Eighth edition, p. 65), referred to.

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13.1. In the opinion of the Court in case of *UP Assembly*, legislatures in India do enjoy the power to punish for contempt. It is equally clear that while the fact that the House of Commons enjoyed the power to issue unspeaking warrants in its capacity of a Court of Record was one concern, H what actually worried the Court was not the source of the power *per se*, but

the 'judicial' nature of power to issue unspeaking warrant insofar as it was directly in conflict with the scheme of the Constitution whereby citizens were guaranteed *fundamental rights* and the power to enforce the fundamental right is vested in the Courts. It was not the power to punish for contempt about which the Court had reservations. Rather, the above-quoted passage shows that such power had been accepted by the Court. The issue decided concerned the non-reviewability of the warrant issued by the legislature, in the light of various constitutional provisions. There are many differences between the case of *UP Assembly* and the one at hand. The entire controversy in the former case revolved around the privileges of the House in relation to the *fundamental rights* of a citizen, an outsider to the House. The decision expressly states that the Court was not dealing with internal proceedings, nor laying down law in relation to members of the House.

[Paras 266 & 267] [459-H 460-A-D]

13.2. The ratio of case of *UP Assembly*, which was decided under significantly different circumstances, cannot be interpreted to have held that all the powers of the House of Commons enjoyed in its capacity as a Court of Record are unavailable to the Indian parliament, including the power to punish for contempt. [Para 268] [461-A-B]

13.3. This Court is unable to accept the contention that the power to punish for contempt is denied to the Indian legislatures as they are not Courts of Record. However, it is emphasized that the power to punish for contempt of the House of Commons is a very broad power, encompassing a variety of other powers. The case of *UP Assembly* examined only one aspect of that power – to issue unspeaking warrants – and held that such a power is unavailable under our constitution. What this Court presently examining in the cases at hand is another aspect of this broad contempt power – the power to expel a sitting member. While the power to punish for contempt in its totality has not been struck down by decision in *UP Assembly*, this Court does not intend to rule on the validity of the broad power to punish for contempt as a whole. The different elements of this broad contempt power will have to be decided on an independent scrutiny of validity in appropriate case. This Court would restrict to the power to expel a member for contempt committed by him. Having found, however, that there is no bar on reading the power to punish for contempt in Article 105(3), it is possible to source the power of expulsion through the same provision. [Para 272] [463-B-E]

A **13.4. There is no contest whatsoever to the plea that the House of Commons did in fact enjoy the power of expulsion at the commencement of the Constitution. A number of instances have been quoted even by the petitioners, including those occurring around the time of the commencement of the Constitution. To mention some of them, notice may be taken of case of member named Horatio Bottomley, expelled in 1922 after he was convicted for fraudulent conversion of property; case of Gary Allighan, expelled in 1947, for gross contempt of House after publication of an article accusing members of the House of insobriety and taking fees or bribe for information; and, the case of Peter Baker, expelled in 1954 from the House after being convicted and sentenced for forgery. Although the examples of expulsion in this century by the House of Commons are few, the relevant time for our purposes is the date of the commencement of the Constitution. The last two cases occurring in 1947 and 1954 clearly establish that the power to expel was in fact a privilege of the House of Commons at the commencement of our Constitution. Thus, from this perspective, the power of expulsion can be read within Article 105(3). As already held this power is not inconsistent with other provisions of the Constitution.**

[Paras 273 & 274] [463-F-H, 464-A-B]

Special Reference No. 1 of 1964, **[1965] 1 SCR 413 (***UP Assembly* **case;** *M.S.M. Sharma* **v.** *Sri Krishna Sinha,* **[1959] Supp 1 SCR 806;** *M.S.M. Sharma* **v.** *Shree Krishna Sinha,* **[1961] 1 SCR 96;** *Yeshwant Rao* **v.** *MP Legislative Assembly* **AIR (1967) MP 95;** *Hardwari Lal* **v.** *Election Commission of India Etc.* **ILR (1977) P&H 269;** *K. Anbazhagan* **v.** *Tamil Nadu Legislative Assembly,* **AIR (1988) Mad 275 and** *State of Karnataka* **v.** *Union of India,* **[1977] 4 SCC 608, referred to.**

Dill **v.** *Murphy,* **1864 (15) ER 784;** *Fielding* **v.** *Thomas,* **[1896] AC 600;** *Keilley* **v.** *Carson,* **[1842] 4 Moo. PC 63; Fenton v. Hampton (1858) 11 MOO PCC 347;** *Doyle* **v.** *Falconer,* **[1865-67] LR 1 PC 328;** *Barton* **v.** *Taylor,* **[1886] 11 App Cases 197 and** *Marshall* **v.** *Gordon,* **243 U.S. 521, 541 [1917], referred to.**

14. It is axiomatic to state that expulsion is always in respect of a member. At the same time, it needs to be borne in mind that a member is part of the House due to which his or her conduct always has a direct bearing upon the perception of the House. Any legislative body must act through its members and the connection between the conduct of the members and the

perception of the House is strong. It is, therefore, concluded that even if the Parliament had only the limited remedial power to punish for contempt, the power to expel would be well within the limits of such remedial contempt power. There is no reason as to why legislatures established in India by the Constitution, including the Parliament under Article 105 (3), should be denied the claim to the power of expulsion arising out of remedial power of contempt. [Paras 290 and 291] [469-H, 470-A-B]

Hartnett v. *Crick,* [1908] AC 470, referred to.

15. In view of the interpretation of Article 105(3) of the Constitution, it is not essential to determine the question whether 'necessity' as an independent source of power, apart from the power of the House to punish for contempt, by expulsion of a member, is available or not.

[Para 293] [470-E]

16. The approach adopted in Australia is entirely for the Parliament to consider and examine, if so advised. In so far as this Court is concerned, since India does not have a law that codifies the privileges of the Parliament, nothing turns on the basis of the Australian legislation.

[Para 297] [472-A]

Odger's *"Australian Senate Practice",* referred to.

17. The opinion expressed by the Members of Parliament in May 1981, or for that matter in December 1978, as indeed in June 1951 merely represent their respective understanding of the law of privileges. These views are not law on the subject by the Parliament in exercise of its enabling power under the second part of Article 105(3). It cannot be said, given the case of expulsion of Mudgal in 1951 that the parliamentary practice in India is wholly against resort to the sanction of expulsion for breach of privileges under Article 105. On the question whether power of expulsion exists or not, divergent views have been expressed by members in the Parliament. These views deserve to be respected but on the question whether there exists power of expulsion is a matter of interpretation of the constitutional provisions, in particular Article 105(3) and Article 194(3) on which the final arbiter is this Court and not the Parliament. [Paras 313 & 314] [481-C-E]

Hardwari Lal, ILR (1977) 2 P&H 269, referred to.

A **Subhash C. Kashyap: *'Parliamentary Procedure'* (Vol. 2, p. 1657) and *'Practice and Procedure of Parliament'* by Kaul and Shakder (5th Edn.) page 262, referred to.**

18. The observation of this court in the case of *UP Assembly*, paraphrasing the position of law and practice in England on the authority B **of May's Parliamentary Practice, refers to enforcement by the legislature of privileges which had been recognized by the courts. The observation has no relevance on the question under consideration in these matters since the law in England of exclusive cognizance has no applicability in India which is governed and bound by the Constitution of India. [Para 330] [486-E-F]**

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M.S.M. Sharma **v.** *Sri Krishna Sinha,* **[1959] Supp (1) SCR 806;** *Indira Nehru Gandhi* **v.** *Raj Narain,* **[1975] Supp SCC 1 and** *P.V. Narasimha Rao* **v.** *State,* **(CBI/SPE) [1998] 4 SCC 626, referred to.**

D *Earl of Shaftesbury* **(86 E.R. 792);** *Ashby* **v.** *White,* **[1703-04] 92 E.R. 129;** *R.* **v.** *Paty,* **(1704) 92 E.R. 232;** *Case of Murray* **(95 E.R. 629);** *Case of Brass Crosby* **(95 E.R. 1005);** *Case of Sir Francis Burdett* **(104 E.R. 501);** *Cases of Stockdale* **(1836-37),** *Howard* **v.** *Sir William Gosset* **(116 E.R. 139) and** *Bradlaugh* **v.** *Gossett,* **(1884) L.R. 12 Q.B.D. 271, referred to.**

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19. What this Court "deliberately omitted" to do in the case of *UP Assembly* was consideration of the powers, privileges and immunities other than the contempt jurisdiction of the Legislature. The views expressed as to the applicability of Article 20 and Article 21 in the context of manner F **of exercise of the powers and privileges of the Legislative Assembly are of general import and cannot be wished away. They would hold good not merely against a non-member as was the case in that Reference but even against a member of the Legislature who also is a citizen of this country and entitled to the protection of the same *fundamental rights*, especially when the impugned action entails civil consequences. [Para 349] [495-C-F]**

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Special Reference No. 1 of 1964, **[1965] 1 SCR 413 (*UP Assembly* case) and** *M.S.M. Sharma* **v.** *Sri Krishna Sinha,* **[1959] Supp 1 SCR 806, referred to.**

H *New Brunswick Broadcasting Corporation* **v.** *Nova Scotia Speaker,*

[1993] 1 SCR 391; *Harvey* v. *New Brunswick,* [1996] 2 SCR 876 and *House of Commons* v. *Vaid,* (2005) 1 SCR 667, referred to. A

20. In the light of law laid down in the two cases of *Pandit Sharma* and in the case of *UP Assembly*, it is held that the broad contention on behalf of the Union of India that the exercise of Parliamentary privileges cannot be decided against the touchstone of *fundamental rights* or the constitutional provisions is not correct. In the case of *Pandit Sharma* the manner of exercise of the privilege claimed by the Bihar Legislative Assembly was tested against the "procedure established by law" and thus on the touchstone of Article 21. It is a different matter that the requirements of Article 21, as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in the case of *UP Assembly* which added the enforceability of Article 20 to the fray. [Para 350] [495-F-H] B C

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***Special Reference No. 1 of 1964,*]1965] 1 SCR 413 (*UP Assembly* case); *M.S.M. Sharma* v. *Sri Krishna Sinha,* [1959] Supp 1 SCR 806 and *M.S.M. Sharma* v. *Shree Krishna Sinha,* [1961] 1 SCR 96, referred to.**

21.1. The enforceability of Article 21 in relation to the manner of exercise of Parliamentary privilege, as affirmed in the cases of *Pandit Sharma* and *UP Assembly* has to be understood in light of the expanded scope of the said fundamental right. [Para 352] [497-H, 498-A] E

21.2. It is to be remembered that the plenitude of powers possessed by the Parliament under the written Constitution is subject to legislative competence and restrictions of *fundamental rights* and that in case a member's personal liberty was threatened by imprisonment of committal in execution of Parliamentary privilege, Article 21 would be attracted. [Para 353] [498-B] F

21.3. If it were so, it is difficult to fathom any reason why the general proposition that *fundamental rights* cannot be invoked in matters concerning Parliamentary privileges should be accepted. Further, there is no reason why the member, or indeed a non-member, should not be entitled to the protection of Article 21, or for that matter Article 20, in case the exercise of Parliamentary privilege contemplates a sanction other than that of G H

A **committal. [Para 354] [498-C]**

Special Reference No. 1 of 1964, **[1965] 1 SCR 413 (*UP Assembly* case);** *M.S.M. Sharma* **v.** *Sri Krishna Sinha,* **[1959] Supp 1 SCR 806;** *M.S.M. Sharma* **v.** *Shree Krishna Sinha,* **[1961] 1 SCR 96;** *A.K. Gopalan* **v.** *State of Madras,* **[1950] SCR 88;** *Rustom Cavasjee Cooper* **v.** *Union of* B *India,* **[1970] 1 SCC 248 and** *Ashok Kumar Gupta* **v.** *State of U.P.,* **[1997] 5 SCC 201, referred to.**

22. Notwithstanding the existence of finality clauses, this court exercised its jurisdiction of judicial review whenever and wherever breach C **of *fundamental rights* was alleged. President of India while determining the question of age of a Judge of a High Court under Article 217 (3), or the President of India (or the Governor, as the case may be) while taking a decision under Article 311 (3) to dispense with the ordinarily mandatory inquiry before dismissal or removal of a civil servant, or for that matter the** D **Speaker (or the Chairman, as the case may be) deciding the question of disqualification under Para 6 of the Tenth Schedule may be acting as authorities entrusted with such jurisdiction under the constitutional provisions. Yet, the manner in which they exercised the said jurisdiction is not wholly beyond the judicial scrutiny. In the case of Speaker** E **exercising jurisdiction under the Tenth Schedule, the proceedings before him are declared by Para 6 (2) of the Tenth Schedule to be proceedings in Parliament within the meaning of Article 122. Yet, the said jurisdiction was not accepted as non-justiciable. In this view, it is not possible to subscribe to the proposition that there is absolute immunity available to the Parliamentary proceedings relating to Article 105(3). It is a different** F **matter as to what parameters, if any, should regulate or control the judicial scrutiny of such proceedings. [Para 374] [510-B-D]**

Sub-Committee on Judicial Accountability **v.** *Union of India,* **[1991] 4 SCC 699;** *Union of India* **v.** *Jyoti Prakash Mitter,* **[1971] 1 SCC 396;** G *Union of India* **v.** *Tulsiram Patel,* **[1985] 3 SCC 398;** *Kihoto Hollohan* **v.** *Zachillhu,* **[1992] Supp 2 SCC 651 and** *Express Newspaper (P) Ltd.* **v.** *Union of India,* **AIR (1958) SC 578, referred to.**

Australian Boot Trade Employees Federation **v.** *Whybrow & Co.,* **(1910) 10 CLR 266, referred to.**

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23. The question before the court in the case of *Indira Nehru Gandhi* essentially pertained to the lawfulness of the session of Parliament that had passed the constitutional amendment measure. The concern of the court did not involve the legality of the act of the legislative body. As regards the views based on the holding in the case of *Pandit Sharma*, it has already been observed that it was rather premature for the court to consider as to whether any illegality vitiated the process of the legislative assembly. [Para 381] [513-C]

Tej Kiran Jain **v.** *N. Sanjiva Reddy,* **[1970] 2 SCC 272 and** *Indira Nehru Gandhi* **v.** *Raj Narain,* **[1975] Suppl. SCC 1, referred to.**

24. Article 122(1) must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament. The fact that the case of *UP Assembly* dealt with the exercise of the power of the House beyond its four-walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction. Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of the Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of "*expressio unius est exclusio alterius*" (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality. [Para 384] [514-C-F]

Smt. S. Ramaswami **v.** *Union of India,* **[1992] Suppl. 1 SCR 108, referred to.**

25. It is always expected, rather it should be a matter of presumption, that Parliament would always perform its functions and exercise its powers in a reasonable manner. But, at the same time there is no scope for a general rule that the exercise of powers by the legislature is not amenable to judicial review. This is neither the letter nor the spirit of our Constitution. This Court finds no reason not to accept that the scope

A for judicial review in matters concerning Parliamentary proceedings is limited and restricted. In fact this has been done by express prescription in the constitutional provisions, including the one contained in Article 122(1). But the scrutiny cannot stop, merely on the privilege being found, especially when breach of other constitutional provisions has been alleged. [Para 387] [515-F-H]

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26. Non-existence of standards of judicial review is no reason to conclude that judicial scrutiny is ousted. If standards for judicial review of such matters as at hand are not yet determined, it is time to do so now. Parliament indeed is a coordinate organ and its views do deserve deference C even while its acts are amenable to judicial scrutiny. While its acts, particularly of the nature involved here ought not to be tested in the same manner as an ordinary administrative action would be tested, there is no foundation to the plea that a Legislative body cannot be attributed jurisdictional error. [Para 389] [516-C-D]

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27. While it is agreed that contempt of authority of Parliament can be tried and punished nowhere except before it, the judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature. As has been noticed, in the context of Article 122(1), mere irregularity of the procedure cannot be a E ground of challenge to the proceedings in Parliament or effect thereof, and while same view can be adopted as to the element of "irrationality", but in our constitutional scheme, illegality or unconstitutionality will not save the Parliamentary proceedings. [Para 391] [516-G-H, 517-A]

F 28. It is the submission on behalf of the Union of India that the proceedings in question were proceedings which were entitled to protection under Article 105(2). In other words, in respect of proceedings, if a member is offered immunity, Parliament too is offered immunity. The actions of Parliament, except when they are translated into law, cannot be questioned in court. It is found the argument to be founded on reading of Article 105(2) G beyond its context. What is declared by the said clause as immune from liability "to any proceedings in any court" is not any or every act of the Legislative body or members thereof, but only matters "in respect of anything said or any vote given" by the members "in Parliament or any Committee thereof". If Article 105(2) were to be construed so broadly, it would tend to H save even the legislative Acts from judicial gaze, which would militate against

the constitutional provisions. [Paras 392 and 393] [517-B-D] A

29. The manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent indicated in Article 122(1), that is to say the Court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the 7th *Lok Sabha* with conclusion that it was "inconsistent with and violative of the well-accepted principles of the law of Parliamentary privilege and the basic safeguards assured to all enshrined in the Constitution", it would be partisan action in the name of exercise of privilege. This issue is not gone into but incident is cited as an illustration. [Para 396] [518-A-C] B C

30. While rejecting the reliance on certain cases cited in support of the plea of exclusive cognizance vesting in the Legislature, and restriction of judicial review to the extent of finding the privilege, support is found to the case set up by the petitioners from constitutional provisions and debates thereupon which show that it is the duty of the Court to inquire into the legitimacy of the exercise of the power. [Para 410] [523-A-B] D

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Special Reference No. 1 of 1964, **[1965] 1 SCR 413 (*UP Assembly* case)** *M.S.M. Sharma* **v.** *Sri Krishna Sinha,* **[1959] Supp 1 SCR 806;** *M.S.M. Sharma* **v.** *Shree Krishna Sinha,* **[1961] 1 SCR 96** *Bachan Singh* **v.** *State of Punjab,* **[1982] 3 SCC 24;** *Jatish Chandra Ghosh* **v.** *Hari Sadhan Mukherjee,* **[1961] 3 SCR 486;** *K. Nagaraj* **v.** *State of A.P.,* **[1985] 1 SCC 523 and** *T. Venkata Reddy* **v.** *State of A.P.,* **[1985] 3 SCC 198, referred to.** F

Harvey **v.** *New Brunswick,* **[1996] 2 SCR 876, referred to.**

31. In the *Rajasthan* case while dealing with the issues arising out of communication by the then Union Home Minister to the nine States asking them to advise their respective Governors to observe the legislative assemblies and seek fresh mandate from the people, this court observed that: G

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A *"This Court has never abandoned its constitutional function as the final Judge of constitutionality of all acts purported to be done under the authority of the Constitution...."*

The said resolve is reaffirmed and there is no reason why in the facts and circumstances at hand this court should take a different view so as to
B **abandon its constitutional functions as the final judge of constitutionality of all acts purported to be done under the authority of the Constitution, though at the same time refraining from transgressing into the sphere that is properly the domain of the Parliament.**

[Paras 412 & 413] [523-D-E, 524-C]

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State of Rajasthan **v.** *Union of India,* **[1977] 3 SCC 592, referred to.**

32. While it is true that there is no challenge to the Rules of Procedure and Conduct of Business in Lok Sabha and Rules of Procedure and Conduct of Business in the Council of States, as made by the two
D **Houses of Parliament in exercise of enabling powers under Article 118 (1), that mere availability of Rules is never a guarantee that they have been duly followed. [Para 415] [524-F]**

33. A controversy similar to the one in the case of *S.R. Bommai* **arose before this Court in** *Rameshwar Prasad.* **The questions raised once again**
E **concerned the validity of the subjective satisfaction of the President under Article 356 for issue of proclamation. Following the spirit of the judgment of** *S.R. Bommai,* **with due deference to the exceptional character of the power exercised by the President under Article 356 which cannot be treated on a par with an administrative action and so the validity whereof**
F **cannot be examined by applying the grounds available for challenge of an administrative action, this Court held that the power is not absolute but subject to checks & balances and judicial review. [Para 429] [530-C-D]**

Barium Chemicals Ltd. **v.** *Company Law Board,* **AIR (1967) SC 295;** *Rohtas Industries Ltd.* **v.** *S.D. Agarwal,* **[1969] 1 SCC 325;** *S.R. Bommai*
G **v.** *Union of India,* **[1994] 3 SCC 1 and** *Rameshwar Prasad* **v.** *Union of India,* **[2006] 2 SCC 1, referred to.**

34. The Legislature cannot ordinarily be accused of having acted for an extraneous purpose or being actuated by caprice or *malafide* **intention.**
H **The Court would not lightly presume abuse or misuse of authority by such**

august bodies also because allowance is always to be given to the fact that the legislature is the best Judge in such matters. [Para 434] [534-B-C]

35.1. Conclusions cannot be drawn so as to attribute motive to the Houses of Parliament by reading statements out of the context. The relevant part of the speech of the Hon'ble Speaker made on the floor of the House on 12th December 2005 has been extracted in the counter affidavit filed on behalf of the Union of India. It is pertinent to note that before stating that nobody would be spared, the Speaker had exhorted the members of the House to rise to the occasion and to see to it that such an event does not occur ever in future and commended that "if anybody is guilty, he should be punished". It is clear that when he stated that nobody would be spared he was not immediately passing a judgment that the petitioners were guilty. He was only giving vent to his feeling on the subject of the proper course of action in the event of inquiry confirming the facts that had been projected in the telecast. The finding of guilt would come later. The fact that he had constituted an Inquiry Committee with members drawn also from parties in opposition rather goes to show that the resolve at that stage was to find the truth. [Para 435] [534-D-F]

35.2. In these circumstances, one is unable to accept the allegation of *malafide* on the ground that decision had already been taken to expel them. Even otherwise, it cannot be ignored that the dissent within the respective Committees of the two Houses essentially pertained to the procedure adopted. Nothing less and nothing more. Further, the reports of the Committees having been adopted by the respective chambers of Parliament, the decision of the Committee got merged into that of the Legislative chamber which being collective body, it is difficult to attribute motive thereto, in particular, in the face of the fact that the resolutions in question were virtually unanimous as there was no demand at any stage from any quarter for division of votes. [Para 436] [534-G-H, 535-A]

36. This Court is not concerned here with what kind of gains, financial or otherwise, those persons made as had conceived or engineered the sting operations leading to the material being brought into public domain through electronic media. This was not an area of anxiety even for the Houses of Parliament when they set about probing the matter resulting ultimately in expulsions. The sole question that was required to be addressed by the Inquiry Committees and the Legislative chambers revolved

A around the issue of misconduct attributed to the individual members bringing the House in disrepute. [Para 438] [535-C-E]

37. This Court already found that the purposes of the procedure prescribed in both the said provisions of the Constitution are entirely different. While Article 103 relates to disqualifications prescribed in B Article 102, the tenth schedule pertains to the disqualification on account of defection. These provisions have no nexus whatsoever with the exercise of power of expulsion claimed as a privilege available to the Houses of Parliament under Article 105(3). [Para 440] [535-G-H]

C 38. The matters pertaining to the two Members of Rajya Sabha were referred to the Committee on Ethics which is also a mechanism provided by the Rules of Procedure and Conduct of Business in the said House. While it is correct that the matters pertaining to the Members of Lok Sabha were referred to a Committee specially constituted for the purpose but nothing D turns on that fact. It may be observed that under circumstances in question the composition of the Committee itself is sufficient to show that it was not a partisan Committee. The terms of reference for the Committee required it to make investigation into the allegations. The conclusions reached by the Inquiry Committee and recommendations made have been accepted by passing of resolutions by the two Houses that have adopted the reports of the E respective Committees. [Paras 442 & 443] [536-D-F]

39. Article 118 empowers each House of Parliament to make rules for regulating its procedure. The rules of the procedure of both Houses permit constitution of Committees. There is no illegality attached to F constitution of a Special Committee by the Speaker, Lok Sabha for purposes of investigation into the allegations against members of the said House. [Para 444] [536-F-G]

40. One cannot draw inferences from the amount of time taken by the Committees that inquired the matters as no specific time is or can be G prescribed. Further such matters are required to be dealt with utmost expedition subject to grant of reasonable opportunity, which was granted to the petitioners. The request for supply of full-footage of video recordings and audio tapes or extension of time or representation through counsel for such purposes did not find favour with the Inquiry Committee mainly because the H Committee had offered to the concerned Members of Lok Sabha an opportunity

to view the relevant video-footage that was available with the Committee and point out the discrepancies therein. But the petitioners themselves chose to turn down the said offer. [Para 446 & 447] [537-E-G]

Jagjit Singh v. *State of Haryana & Ors.*, [WP (C) No. 287 of 2004 decided by S.C. on 11.12.2006], referred to.

41.1. The Inquiry Committee in the face of the refusal on the part of the concerned members was fully justified in not giving any credence to the objections that the video-clippings were doctored or morphed. The Committee in these circumstances could not be expected but to proceed to draw conclusions on the basis of the available material. [Para 448] [538-A]

41.2. The reports of the Inquiry Committee of Lok Sabha and the Committee on Ethics of Rajya Sabha indicate that both of the said Committees had called for explanations from each of the Members in question and had given due consideration to the same. The submissions of the counsel for Union of India that the proceedings of the respective Committees were open to one and all, including these petitioners who actually participated in the proceedings could not be refuted. Therefore, it is not permissible to the petitioners to contend that evidence had been taken behind their back. The reports further show that the Committees had taken care not to proceed on the edited versions of the video recordings. Each of them insisted and procured the raw video-footage of the different sting operations and drew conclusions after viewing the same. The evidence contained in the video recordings indicating demand or acceptance of money was further corroborated in two cases by the admissions made by the two Members of Rajya Sabha. Dr. Chhattrapal Singh Lodha had sought to attribute the receipt of money to a different transaction connected with some organization he was heading. But this explanation was not believed by the Committee on Ethics that unanimously found his complicity in unethical behavior on account of acceptance of money for tabling questions in Rajya Sabha. Dr. Swami Sakshiji Maharaj, on the other hand, went to the extent of expressing his regrets and displaying a feeling of shame for his conduct even before the Committee on Ethics. [Para 449] [538-B-F]

42. The impugned resolutions of Lok Sabha and Rajya Sabha cannot be questioned before this Court on the plea of proportionality. This Court is not sitting in appeal over the decision of the Legislative chambers with

A regard to the extent of punishment that deserved to be meted out in cases of this nature. That is a matter which must be left to the prerogative and sole discretion of the legislative body. All the more so because it is the latter which is the best Judge in exercise of its jurisdiction the object of which is self-protection. So long as the orders of expulsion are not illegal or unconstitutional, this Court not concerned with the consequences for the B petitioners on account of these expulsions. [Para 451] [538-H, 539-A-B]

43. In these proceedings, this Court cannot allow the truthfulness or correctness of the material to be questioned or permit the petitioners to go into the adequacy of the material or substitute its own opinion for that of C the Legislature. Assuming some material on which the action is taken is found to be irrelevant, this Court shall not interfere so long as there is some relevant material sustaining the action. It is found this material was available in the form of raw footage of video recordings, the nature of contents whereof are reflected in the Inquiry reports and on which subject D the petitioners have not raised any issue of fact. [Para 452] [539-C-D]

44. On perusal of the Inquiry reports, it is found that there is no violation of any of the *fundamental rights* in general and Articles 14, 20 or 21 in particular. Proper opportunity to explain and defend having been given to each of the petitioners, the procedure adopted by the two Houses E of Parliament cannot be held to be suffering from any illegality, irrationality, unconstitutionality, violation of rules of natural justice or perversity. It cannot be held that the petitioners were not given a fair deal.

[Para 453] [539-E]

F C.K. THAKKER, J: *(Supplementing) :*

1.1. Though all the three expressions, *viz.* powers, privileges and immunities are invariably used in almost all Constitutions of the world, they are different in their meanings and also in contents. [Para 8] [541-B]

G 1.2. 'Power' means 'the ability to do something or to act in a particular way'. It is a right conferred upon a person by the law to alter, by his own will directed to that end; the rights, duties, liabilities or other legal relations either of himself or of other persons. It is a comprehensive word which includes procedural and substantive rights which can be H exercised by a person or an authority. [Para 9] [541-B-C]

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1.3. 'Privilege' is a special right, advantage or benefit conferred on a particular person. It is a peculiar advantage or favour granted to one person as against another to do certain acts. Inherent in the term is the idea of something, apart and distinct from a common right which is enjoyed by all persons and connotes some sort of special grant by the sovereign. [Para 10] [541-D]

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1.4. 'Immunity' is an exemption or freedom from general obligation, duty, burden or penalty. Exemption from appearance before a court of law or other authority, freedom from prosecution, protection from punishment, etc. are immunities granted to certain persons or office bearers. [Para 11] [541-E]

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1.5. Elected representatives, however, are not placed above the law by way of parliamentary privileges; they are simply granted certain advantages and basic exemptions from legal process in order that the House may function independently, efficiently and fearlessly. This is in the interest of the nation as a whole. [Para 17] [543-E]

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Powers, Privileges and Immunities of State Legislatures, **Article 143,** *Constitution of India, Re,* **[1965] 1 SCR 413 : AIR (1965) SC 745, referred to.**

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Sir Erskin May: *Treatise on The Law, Privileges, Proceedings and Usage of Parliament* **(23rd Edn.) p. 75;** *Halsbury's Laws of England,* **(4th Edn.; Reissue, Vol. 34; p. 553; para 1002) and** *Parliamentary Privilege, First Report* **(Lord Nicholas Report), referred to.**

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2. In the United States, the House possesses the power of observance of discipline by its members and in appropriate cases, such power extends to expulsion. It is also clear that such power has been actually exercised for disorderly behavior in the House as also outside the House, where the House was satisfied that the member was 'unfit' physically, mentally or morally even if such conduct could not be a 'statutable offence' or was not committed by him in his official capacity or during House in Session or at the seat of Government. [Para 32] [548-B-C]

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Chapman, Re, **166 US 661 (1891) : 41 L Ed 2nd 1154;** *Julion Bond* **v.** *James Sloppy Floyd,* **385 US 116 (1966) : 17 L Ed 2nd 235;** *Powell v. McCormack,* **395 US 486 (1969) : 23 L Ed 2nd 491;** *H. Snowden Marshall*

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A v. *Robert B. Gordon,* 243 US 521 (1917); *Kielley* v. *Carson,* (1842) 4 MOO PC 63 : 13 ER 225 and *United States* v. *Daniel Brewster,* 408 US 501 : (1972) 33 L Ed 2nd 507, referred to.

Cooley: *Treatise on the Constitutional Limitations',* (1972 Edn., p. 133); Willoughby: *Constitutional Law of the United States* (Second Edn.; B p. 256); Pritchett: American Constitution (Third Edn., p. 146); *American Jurisprudence* (Second Edn., Vol. 77, p. 21) and Enid Campbell: *Parliamentary Privilege in Australia dealing with 'Expulsion',* referred to.

3. In Australia, only recently, the power to expel a member from the C House has been taken away by a specific statute. [Para 40] [550-C]

Enid Campbell: *Parliamentary Privilege in Australia* dealing with 'Expulsion'; *Odger: Australian Senate Practice,* (11th Edn.; p. 57) and Lumb and Ryan: *The Constitution of the Commonwealth of Australia,* 1974 D Edn., referred to.

4. Unlike India, in Canada, the Legislature could not enlarge its privileges by enacting a law investing in it the privileges enjoyed by British Parliament. There is no such limitation under Section 49 of the Australian Constitution nor under Article 105(3) or Article 194(3) of the Indian E Constitution. Inspite of the above provision in the Constitution, the right of the House to expel a member has never been challenged. [Paras 42 & 43] [550-G-H, 551-A]

Speaker of the House of Assembly v. *Canadian Broadcasting* F *Corporation,* [1993] 1 SCR 319; *Stockdale* v. *Hansard,* [1839] 9 Ad & E 1 : 112 ER 1112 (QB); *Kielley* v. *Carson,* [1842], 4 MOO PC 63 : 13 ER 225; *Fred Harvey* v. *Attorney General for New Brunswick,* [1996] 2 SCR 876 and *House of Commons* v. *Satnam Vaid,* (2005) 1 SCR 667, referred to.

G Sir John George Bourinot: *Parliamentary Procedure and Practice in the Dominion of Canada,* (4th Edn., p. 64), referred to.

5.1. In its creative sense, in England the House did not sit down to build its edifice of the powers, privileges and immunities of Parliament. The H evolution of English Parliamentary institution has thus historical

development. It is the story of conflict between Crown's absolute prerogatives and Commons' insistence for powers, privileges and immunities; struggle between high handed actions of Monarchs and People's claim of democratic means and methods. Parliamentary privileges are the rights which Houses of Parliament and members possess so as to enable them to carry out their functions effectively and efficiently. Some of the parliamentary privileges thus preceded Parliament itself. They are, therefore, rightly described by Sir Erskine May as *'fundamental rights'* of the House as against the prerogatives of the Crown, the authority of ordinary Courts of Law and the special rights of the House of Lords. [Para 62] [557-C-E]

5.2. Initially, the House simply claimed privilege. They neither made request to the Crown for their recognition nor to Courts for their enforcement. Parliamentary privileges in that sense are outside the law, or a law unto themselves. For instance, the House would not go to Crown or to Court for release of its member illegally detained. It would also not pray for a writ of *habeas corpus*. It would simply command the Sergeant-at-Arms with the ceremonial mace to the prison and get the Member released on its own authority. [Para 63] [557-E-F]

Ann Lyon : *'Constitutional history of the United Kingdom,* [2003] p. 39; Holdsworth: *A History of English Law,* Second Edition, pp. 92-93 and *Halsbury's Laws of England,* (Fourth Edn.; Reissue : Vol. 34; p. 569; para 1026, referred to.

6. The two things, namely, (i) expulsion; and (ii) disqualification are different and distinct. A member can be expelled by the Legislature if his conduct renders him 'unfit' to continue as such. It, however, does not *ipso facto* disqualify him for re-election. An expelled member may be re-elected and no objection can be raised against his re-election, as was the case of *John Wilkes* in 1769. [Para 68] [558-H, 559-A]

O. Hood Phillips: *'Constitutional and Administrative Law'*, 4th Edition; p. 180; Wade and Phillips: *'Constitutional Law'*, 7th Edition; p.793; Sir William Anson: *"The Law and Custom of the Constitution"*, Fifth Edn; Vol. I; pp. 187-88; Griffith and Ryle: *"Parliament, functions, practice and procedures"*, (1989), at p. 85 and Sir Erskine May: *'Treatise on the Law, Privileges, Proceedings and Usage of Parliament'*, referred to.

A **7. *Keilley* has no application inasmuch as it was decided in the light of factual, political and legal background which was totally different. For more than one reason, the ratio in *Keilley* cannot be pressed in service in the case on hand. Firstly, India, after 1950, cannot be termed as a 'colonial country' nor its Legislature Colonial or subordinate. *Secondly*, it was not to derive powers, privileges or prerogatives from the Crown either expressly or impliedly. *Thirdly*, after January 26, 1950, it is the written Constitution which has conferred powers, privileges and immunities on Parliament/ Legislatures and on their members. *Fourthly*, provisions of the Constitution themselves expressly conferred certain powers, privileges and immunities [Arts.105(1), (2); 194 (1), (2)]. It also allowed Parliament to define them by making an appropriate law and declared that until such law is enacted, they would be such as exercised by British Parliament on January 26, 1950 [Arts. 105(3), 194(3)]. *Fifthly*, the crucial question is not the fact that the Assembly of Newsouthland had no right to commit a person for contempt but whether or not the British Parliament possessed such power on January 26, 1950. *Sixthly*, *Keilley* was not a member of Assembly and as such the ruling in that case has no direct bearing on the issue raised before this Court. *Finally*, *Keilley* was a case of committal of a person to jail and keeping in view the fact situation, the Privy Council decided the matter which is absent here. For all these reasons, reliance on *Keilley* is of no assistance to the petitioners. [Para 109] [569-H, 570-A-D]**

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***Bradlough* v. *Gossett,* [1884] 12 QBD 275; *Stockdale* v. *Hansard,* (1839) 9 Ad & E 1 : 112 ER 1112 (QB); *Edward Keilley* v. *William Carson,* (1842) : 4 MOO PC 63 : 13 ER 225 and *Beaumont* v. *Barrett,* (1836) 1 MOO PC 80, referred to.**

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8. An interesting point of law, which has been raised before this Court was also raised before the Supreme Court of *New South Wales in Armstrong* v. *Budd,* [1969] 71 SR 386 (NSW). Section 19 of the Constitution Act, 1902 laid down that in certain circumstances, a seat in the Legislative Council would automatically fall vacant. *A* was a member of Legislative Council against whom a suit was filed. During the course of litigation, he gave evidence. The evidence was disbelieved by the Court and in the judgment, certain strictures were passed by the trial Judge. The Legislative Council, on the basis of comments and adverse observations, passed a resolution and expelled *A* from the Council and declared his seat vacant. *A* sought a declaration that the resolution was *ultra vires*. It was contended by *A* that

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since his case was not covered by any of the eventualities enumerated in Section 19, he could not be disqualified. The Court, however, negatived the contention. [Paras 114 & 115] [571-H, 572-A-C]

Thomas William Doyle v. *George Charles Falconer,* [1866] LR 1 PC 328; *Barton* v. *Taylor,* [1886] 11 AC 197 and *Armstrong* v. *Budd,* [1969] 71 SR 386 (NSW), referred to.

Broom's Legal Maxims, 10th Edn; p. 314, referred to.

9.1. It is no doubt true that the existing law relating to parliamentary privileges in India is essentially of English origin. But the concept of parliamentary privileges was not unknown to ancient India. Prititosh Roy in his work *'Parliamentary Privilege in India'* (1991) states that even during *Vedic* times, there were two assemblies; *Sabha* and *Samiti* which were keeping check on all actions of the King. Reference of *Sabha* and *Samiti* is found in all *Vedas.* In Buddhist India, there was a developed parliamentary system. Members were not allowed to disobey directions of Assemblies. Offenders were answerable to Assemblies and after affording an opportunity to them, appropriate actions used to be taken against erring officers. It has thus 'rudimentary features' of parliamentary privilege of today. [Para 119] [583-C-E]

9.2. During 1915-50, there was remarkable growth and development of Parliamentary privileges in India. For the first time, a limited right of freedom of speech was conferred on the Members of Legislature by the Government of India Act, 1919 (Section 67). By the Legislative Members Exemption Act, 1925, two parliamentary privileges were allowed to Members; (i) exemption from jury service; and (ii) freedom from arrest. The Government of India Act, 1935 extended the privileges conferred and immunities granted. The Indian Independence Act, 1947 accorded sovereign legislative power on the Indian Dominion.

[Paras 121 and 122] [583-G-H, 584-A]

10. There are certain instances wherein Indian Parliament has exercised the power of expulsion of its members. [Para 126] [587-G]

Kaul and Shakhder: *'Practice and Procedure of Parliament',* (5th Edn., p. 262), referred to.

A **11. The right to expel a member is distinct, separate and independent of right to provide for the due constitution or composition of the House and even in absence of such power or prerogative, right of expulsion is possessed by a Legislature (even a Colonial Legislature), which in appropriate cases can be exercised. [Para 165] [602-F-G]**

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M.S.M. Sharma **v.** *Shri Sri Krishna Sinha & Ors.,* **[1959] Supp 1 SCR 806 : AIR (1959) SC 395;** *Re: Powers, Privileges and Immunities of State Legislatures, Article 143 of the Constitution,* **[1965] 1 SCR 413 : AIR (1965) SC 745;** *Raj Narain* **v.** *Atmaram Govind & Anr.,* **AIR (1954) All 319;** *Yeshwant Rao Meghawale* **v.** *Madhya Pradesh Legislative Assembly*
C *& Ors.,* **AIR (1967) MP 95;** *Hardwari Lal* **v.** *Election Commission of India,* **ILR (1977) 2 P & H 269 (FB) and** *K. Anbazhagan & Ors.* **v.** *Secretary, Tamil Nadu Legislative Assembly, Madras & Ors.,* **AIR (1988) Mad 275, referred to.**

D **12. When draft Article 85 (Present Article 105) was considered, different view-points were before the House. It was also aware of various Constitutions, particularly, Constitutions of Canada and Australia. The Members expressed their views, made suggestions and sought amendments and *finally*, the draft Article 85 was approved as amended.**
E **[Para 169] [605-C-D]**

13.1. Likewise, when draft Article 169 (Present Article 194) came up before the House on June 3, 1949, again, the matter was discussed at length. [Para 170] [605-E]

F **13.2. The Constitution Assembly debates clearly and unequivocally indicates that the Members of the Constitution wanted Parliament (and State Legislatures) to retain power and privileges to take appropriate action against any individual member for 'anything that has been done by him' which may bring Parliament or Legislative Assembly into 'disgrace'.**
G **Therefore, it cannot be said that the Founding Fathers of the Constitution were not aware or never intended to deal with individual misdeeds of members and no action can be taken by the Legislature under Article 105 or *194* of the Constitution. [Para 173] 607-H, 608-A]**

14. We have a written Constitution which confers power of judicial
H **review on this Court and on all High Courts. In exercising power and**

discharging duty assigned by the Constitution, this Court has to play the role of a '*sentinel on the qui vive*' and it is the solemn duty of this Court to protect the *fundamental rights* guaranteed by Part III of the Constitution zealously and vigilantly. [Para 182] [611-E-F]

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***Ashby* v. *White,* (1704) 14 St Tr 695; *Stockdale* v. *Hansard,* [1839] 9 Ad & E 1 : 112 ER 1112 and *Bradlaugh* v. *Gossett,* [1884] 12 QBD 271: 53 LJQB 200, referred to.**

Anson: *'The Law and Custom of the Constitution',* 5th Edn.; Vol. I; pp. 190-99; *Halsbury's Laws of England,* (4th Edn., Reissue, Vol. 34; pp. 553-54; paras 1004-05 and Holdsworth: *'A History of English Law'* (Vol. I; pp. 393-94), referred to.

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15. This Court cannot be oblivious or unmindful of the fact that the Legislature is one of three organs of the State and is exercising powers under the same Constitution under which this Court is exercising the power of judicial review. It is, therefore, the duty of this Court to ensure that there is no abuse or misuse of power by the Legislature without overlooking another equally important consideration that the Court is not a superior organ or an appellate forum over the other constitutional functionary. This Court, therefore, should exercise its power of judicial review with utmost care, caution and circumspection. [Para 184] [612-B-C]

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***R.* v. *Her Majesty's Treasury, ex parte Smedley,* 1985 QB 657, 666, referred to.**

16. In *Searchlight* as well as in *Keshav Singh,* it has been observed that there is no doubt that Parliament/State Legislature has power to punish for contempt, which has been reiterated in other cases also. But what has been held is that such decision of Parliament/State Legislature is not 'final and conclusive'. This Court in all earlier cases held that in view of power of judicial review under Articles 32 and 226 of the Constitution, the Supreme Court and High Courts have jurisdiction to decide legality or otherwise of the action taken by State-authorities and that power cannot be taken away from judiciary. There lies the distinction between British Parliament and Indian Parliament. Since British Parliament is also 'the High Court of Parliament', the action taken or decision rendered by it is

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A not open to challenge in any court of law. This is based on the doctrine that there cannot be two parallel courts, *i.e.* Crown's Court and also a Court of Parliament ('the High Court of Parliament') exercising judicial power in respect of one and the same jurisdiction. India is a democratic and republican State having a written Constitution which is supreme and no
B organ of the State (Legislature, Executive or Judiciary) can claim sovereignty or supremacy over the other. Under the said Constitution, power of judicial review has been conferred on higher judiciary (Supreme Court and High Courts). The said power is held to be one of the 'basic features' of the Constitution and, as such, it cannot be taken away by Parliament, even by an amendment in the Constitution. [Para 187] [612-G-H, 613-A-D]

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M.S.M. Sharma v. *Shri Sri Krishna Sinha & Ors.*, [1959] Supp 1 SCR 806 : AIR (1959) SC 395; *Re: Powers, Privileges and Immunities of State Legislatures, Article 143 of the Constitution,* [1965] 1 SCR 413 : AIR (1965) SC 745; *State of Karnataka* v. *Union of India,* [1977] 4 SCC 608;
D *P. V. Narasimha Rao* v. *State,* [1998] 4 SCC 626; *Sambamurthy* v. *State of A.P.,* [1987] 1 SCC 362 : AIR (1987) SC 663; *Kesavananda Bharti* v. *State of Kerala,* [1973] 4 SCC 225 : AIR (1973) SC 1461; *Indira Nehru Gandhi* v. *Raj Narain,* [1975] Supp SCC 1 : AIR (1975) SC 2299; *Minerva Mills Ltd.* v. *Union of India,* [1980] 3 SCC 625 : AIR (1980) SC 1789; *L. Chandra Kumar* v. *Union of India,* [1987] 1 SCC 124 : [1987] 1 SCC
E 124 : [1987] 1 SCR 435 and *Kihoto Hollohon* v. *Zachilhu,* [1992] Supp 2 SCC 651 : AIR (1993) SC 412, referred to.

17. It has been held in several cases that an action of Parliament/State Legislature cannot claim 'total immunity' from judicial review. In fact, this
F argument had been put forward in *Keshav Singh* which was negatived by this Court. It was opined that an aggrieved party may invoke the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 of the Constitution. That, however, does not mean that while exercising extraordinary jurisdiction under the Constitution, the powers of the courts are absolute, unlimited or unfettered. The Constitution
G which conferred power of judicial review on the Supreme Court and High Courts, with the same pen and ink provided that the validity of proceedings in Parliament cannot be called in question on the ground of 'irregularity in procedure'. It is, therefore, the duty of this Court to give effect to the said provision and keeping in view the limitation, exercise the power of
H judicial review. [Para 188] [613-F-H, 614-A]

Re: Powers, Privileges and Immunities of State Legislatures, Article 143 of the Constitution, **[1965] 1 SCR 413 : AIR (1965) SC 745, referred to.**

18. In the instant cases, the Court is called upon to answer a limited question whether Parliament can expel a member. Even a Colonial Legislature having limited privileges possesses the power to expel a member if his conduct is found to be not befitting a member of Legislature. If it is so, it goes without saying that Indian Parliament, which has undoubtedly much more powers than a Colonial Legislature, can take such action and it cannot be successfully contended that Parliament does not possess the power to expel a member. [Para 189] [614-B-C]

19. Every legislative body—Colonial or Supreme—possesses power to regulate its proceedings, power of self-protection, self-preservation and maintenance of discipline. It is totally different and distinct from the power to provide the constitution or composition which undoubtedly not possessed by Indian Parliament. But every legislative body has power to regulate its proceedings and observance of discipline by its members. In exercise of that power, it can suspend a member as also expel him, if the circumstances warrant or call for such action. It has nothing to do with disqualification and/or vacation of seat. In fact, a question of expulsion arises when a member is not disqualified, his seat has not become vacant and but for such expulsion, he is entitled to act as a member of Parliament.

[Para 191] [614-F-H]

20. Parliament, like the other organs of the State, is subject to the provisions of the Constitution and is expected, *nay*, bound to exercise its powers in consonance with the provisions of the Constitution. But it cannot be held that the power to expel a member is a *carte blanche* in nature and Parliament has no authority to expel any member. Parliament can take appropriate action against erring members by imposing appropriate punishments or penalties and expulsion is one of them. Under our Constitution, every action of every authority is subject to law as nobody is above law. Parliament is not an exception to this 'universal' rule. It is, therefore, open to an aggrieved party to approach this Court raising grievance against the action of Parliament and if the Court is satisfied within the limited parameters of judicial review that the action is unwarranted, unlawful or unconstitutional, it can set aside the action. But

A it is not because Parliament has no power to expel a member but the action was not found to be in consonance with law. [Para 192] [615-C-E]

Ahmedabad St. Xavier's College Society & Anr. v. *State of Gujarat & Anr.*, [1975] 1 SCR 173 : [1974] 1 SCC 717 : AIR (1974) SC 1389, referred to.

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21.1. Taking into account serious allegations against some of the members of the House, Parliament decided to inquire into correctness or otherwise of the charges by constituting an 'Inquiry Committee'. The members were asked to offer their explanation and considering the evidence C and material on record, the Committee appointed by Parliament decided the matter. It, therefore, cannot be said that the case is covered by exceptional part of clause (1) of Article 122. It cannot be overlooked that this Court is exercising power of 'judicial review', which by its nature limited to serious infirmities of law or patent illegalities. It cannot, therefore, enter into sufficiency of material before the authority nor can substitute D its own opinion/finding/ decision for the opinion/finding/decision arrived at by such authority. Hence, even if there is any irregularity in adopting the procedure or in appreciating evidence by the Committee or in approving the decision by Parliament, it squarely falls under the 'protective umbrella' of Article 122(1) of the Constitution and this Court cannot interfere with the E decision in view of the constitutional protection granted by the said provision. [Para 199] [617-E-H]

21.2. Neither the Committee appointed by Parliament can be said to be a 'Court' *stricto sensu*, nor it is bound by technical rules of evidence or procedure. It is more in the nature of 'fact-finding' inquiry. Since the F dignity, decorum and credibility of Parliament was at stake, the Committee was appointed which was required to act with a view to restore public faith, confidence and honour in this august body without being inhibited by procedural impediments. [Para 200] [618-A-B]

G *Pandit M.S.M. Sharma* v. *Shree Krishna Sinha & Ors. (Pandit Sharma II);* [1961] 1 SCR 96 : AIR (1960) SC 1186 and *Kihoto Hollohan* v. *Zachillhu & Ors.*, [1992] Supp 2 SCC 651, 711, referred to.

Constituent Assembly Debates : Vol.VIII; pp. 199-201), referred to.

H 22. So far as principle of law is concerned, it is well-settled and cannot

be disputed and is not challenged. However, in the facts of the case, it cannot successfully be contended that there is breach or non-observance of natural justice by the Committee. Reading of the Reports makes it clear that adequate opportunity had been afforded to the petitioners and thereafter the action was taken. Notices were issued to the members, CDs were supplied to them, evidence of witnesses was recorded, defence version was considered and 'findings and conclusions' were reached. [Para 203] [619-B-C]

Kihoto Hollohon v. *Zachilhu,* [1992] Supp 2 SCC 651 : AIR (1993) SC 412 and *Maneka Gandhi* v. *Union of India,* [1978] 1 SCC 248 : AIR (1978) SC 597, referred to.

23. What was stated by the Hon'ble Speaker was that "if anybody is guilty, he would be punished. Nobody would be spared". In other words, an assurance was given by the Hon'ble Speaker to the members of august body that an appropriate action will be taken without considering the position or status of an individual member and if he is found guilty, he will not be spared. The statement is a responsible one, expected of the Hon'ble Speaker of an august body of the largest democracy. There is nothing in the above statement from which it can be concluded that the issue had already been decided even before the Committee was constituted and principles of natural justice were violated. [Para 213] [625-H, 626-A-B]

24. It is well settled that Parliament has power to take up the matter so far as privileges are concerned and it can take an appropriate action in accordance with law. If it feels that the case of 'Cash for query' was made out and it adversely affected honesty, integrity and dignity of the House, it is open to the House to attempt to ensure restoration of faith in one of the pillars of democratic polity. [Para 222] [627-E-F]

Sir Erskine May: *'Corruption or impropriety'* and Hilaire Burnett: *'Constitutional and Administrative Law',* Fourth Edn.; pp. 571-72, referred to.

25. It cannot be gainsaid that expulsion of a member is a grave measure and normally, it should not be taken. Parliament could have taken a lenient view as suggested on behalf of the petitioners. But it cannot be accepted as a proposition of law that since such action results in deprivation of constituency having its representation in the House, a member can *never* be expelled. If representation of the constituency is taken to be the sole

A consideration, no action can be taken which would result in absence of representation of such constituency in the House. Such interpretation would make statutory provisions (the Representation of the People Act, 1951) as also constitutional scheme (Articles 84, 102, 190, 191, 192, Tenth Schedule, etc.) non-workable, nugatory and otiose. If a member is B disqualified or has been convicted by a competent court, he has to go and at least for the time being, till new member is elected, there is no representation of the constituency in the House but it is inevitable and cannot be helped. There is one more aspect also. Once it is conceded that an action of suspension of a member can be taken (and it was expressly conceded), there is no reason why in principle, an action of expulsion is C impossible or illegal. In a given case, such action may or may not be lawful or called for, but in theory, it is not possible to hold that while the former is permissible, the latter is not. If it is made referable to representation of the constituency, then as observed in *Raj Narain*, withdrawal of a member from the House even for a brief period is a serious matter both for the D member and his constituency. Important debates and votes may take place during his absence even if the period be brief and he may not be able to present his view-point or that of the group or that of the constituency he represented. It is, however, in the nature of disciplinary or punitive action for a specific parliamentary offence, namely, disorderly behaviour. Moreover, if the House has a right to expel a member, non-representation of the E constituency is merely a consequence, nothing more.

[Paras 225 & 226] [628-E-H, 629-A-C]

26.1. Even in England, where Parliament is sovereign and supreme and can do everything but 'make woman a man and a man a woman', no F member of Parliament has ever been expelled on the ground of 'ugly face'. And not even a single incident has been placed before this Court to substantiate the extreme argument. Even Maitland himself has not noted any such instance. On the contrary, he had admitted that normally, the power of expulsion can be exercised for illegalities or misconduct of a serious nature. [Para 228] [629-F-G]

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26.2. It is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision *ultra vires* or bad in law. There is distinction between *existence* (or availability) of power and *exercise* thereof. Legality or otherwise of the power must be decided by H considering the nature of power, the extent thereof, the body or authority

on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected only on the ground that it is likely to be misused. [Para 229] [629-H, 630-A-B]

State of Rajasthan v. *Union of India,* [1977] 3 SCC 592, 658 : AIR (1977) SC 1361 and *Ajit Kumar Nag* v. *Indian Oil Corporation,* [2005] 7 SCC 764, referred to.

Providence Bank v. *Alphens Billings,* 29 US 504 (1830) : 7 Law Ed 939, referred to.

27. By and large, constitutional functionaries in this country have admirably performed their functions, exercised their powers and discharged their duties effectively, efficiently and sincerely and there is no reason to doubt that in coming years also they would continue to act in a responsible manner expected of them. Not only all the constituents of the State will keep themselves within the domain of their authority and will not encroach, trespass or overstep the province of other organs but will also act in preserving, protecting and upholding the faith, confidence and trust reposed in them by the Founding Fathers of the Constitution and by the people of this great country by mutual regard, respect and dignity for each other. On the whole, the situation is satisfactory and there is no reason to be disappointed for future. [Para 234] [631-G-H, 632-A-B]

RAVEENDRAN J. *(Dissenting) :*

1.1. There is no power of expulsion in the Parliament, either inherent or traceable to Article 105(3). Expulsion by the House will be possible only if Article 102 or Article 101 is suitably amended or if a law is made under Article 102(1)(e) enabling the House to expel a member found unworthy or unfit of continuing as a member. [Para 36] [659-H, 660-A]

1.2. The action of the two Houses of Parliament, expelling the petitioners is violative of Articles 101 to 103 of the Constitution and therefore invalid. Petitioners, therefore, continue to be Members of Parliament (subject to any action for cessation of their membership).

[Para 37] [660-B-C]

A *State of Rajasthan* v. *Union of India,* **AIR (1977) SC 1361;** *Kesavananda Bharati* v. *State of Kerala,* **[1973] 4 SCC 225;** *Sub-Committee on Judicial Accountability* v. *Union of India,* **[1991] 4 SCC 699;** *Re. the C.P. and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938 -- the Central Provinces case,* **AIR (1939) FC 1;** *Atiabari Tea Co. Ltd.* v. *State of Assam,* **AIR (1961) SC 232;** *M.P.V. Sundaramier & Co.* v. *State of Andhra Pradesh,* **AIR (1958) SC 468 and** *Automobile Transport Ltd.* v. *State of Rajasthan,* **AIR (1962) SC 1406, relied on.**

Re: Art. 143, Constitution of India and Delhi Laws Act, **AIR (1951) SC 332;** *Special Reference No.1 of 1964, UP Assembly Case,* **[1965] 1 SCR 413;** *Mary Roy* v. *State of Kerala,* **[1986] 2 SCC 209;** *Chhabildas Mehta* v. *The Legislative Assembly, Gujarat State,* **[1970 Guj.LR 729] and** *Hardwari Lal* v. *The Election Commission of India,* **[1977 (2) Punj. & Har. 269], referred to.**

Clarke v. *Bradlaugh,* **[1881] 8 QBD 63, referred to.**

2. The Constitution-makers have made detailed and specific provisions regarding the manner in which a person becomes a Member of Parliament (elected/nominated), the duration for which he continues as a member and the manner in which he ceases to be a member and his seat becomes vacant. Therefore neither the question of election or nomination, nor tenure, nor cessation/termination of membership of the House covered by the express provisions in the Constitution, can fall under 'other powers, privileges and immunities' of the House mentioned in Article 105(3).

[Para 31] [658-C-D]

3. The Constitution makes express provisions for election/appointment and removal/cessation of service of the Executive (President and Vice-President), Judiciary (Judges of the Supreme Court and High Court) and all other constitutional functionaries (Attorney General, Auditor and Comptroller General, Chief Election Commissioner etc.). It is therefore inconceivable that the Constitution-makers would have omitted to provide for 'expulsion' as one of the methods of cessation of membership or consequential vacancy, if it intended to entrust such power to the Parliament. [Para 32] [658-E-F]

4. In view of the express provisions in the Constitution, as to when a person gets disqualified to be a member of either House of Parliament (and

thereby ceases to be a member) and when a consequential vacancy arises, it is impermissible to read a new category of cessation of membership by way of expulsion and consequential vacancy, by resorting to the incidental powers, privileges and immunities referred to in Article 105. [Para 33] [658-G]

5. Clause (3) of Article 105 opens with the words 'in other respects'. The provision for 'powers, privileges and immunities' in clause (3) occurs after referring to the main privilege of freedom of speech in Parliament, in clause (1) of Article 105, and the main immunity against court proceedings in clause (2) of Article 105. Therefore, clause (3) is intended to provide for 'non-main' or 'incidental' or miscellaneous powers, privileges and immunities which are numerous to mention. Two things are clear from clause (3). It is not intended to provide for the matters relating to nomination/ election, term of office, qualifications, disqualification/cessation, for which express provisions are already made in Articles 80, 81, 83, 84, 101 and 102. Nor is it intended to provide for important privilege of freedom of speech or important immunity from court proceedings referred to in Clause (1) and (2) of Article 105. By no stretch of imagination, the power to expel a member can be considered as an 'incidental' matter. If such a power was to be given, it would have been specifically mentioned. [Para 34] *[658-H, 659-A-C, E]*

Special Reference No.1 of 1964, UP Assembly Case, [1965] 1 SCR 413, relied on.

6. The appropriate course in case of allegation of corruption against a Member of Parliament, is to prosecute the member in accordance with law. The immunity under Article 105(2) may not be available, as the decision in *P.V.Narasimha Rao* v. *State* recognizes immunity to a member who is a bribe taker only where the 'bribe' is taken in respect of a 'vote' given by him in Parliament and not otherwise. Such cases can be fast tracked. Pending such criminal proceedings, the member can be suspended temporarily, if necessary, so as to prevent him from participating in the deliberations of the Houses. On being tried, if the member is convicted, he becomes disqualified for being or continuing as a Member under Article 102(1)(e). If he is acquitted, he is entitled to continue as a member. Though it may sound cumbersome, that apparently is what the Constitution intends. [Para 35] [659-F-G]

P.V. Narasimha Rao v. *State,* [1998] 4 SCC 626, relied on.

A CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No. 1 of 2006.

(Under Article 32 of the Constitution of India)

WITH

B TC (C) Nos. 82/2006, 83/2006, 84/2006, 85/2006, 86/2006, 87/2006, 88/2006, 89/2006, 90/2006 and WP(C) No. 129/2006.

Gopal Subramanian, ASG, Dayan Krishan, Gautam Narayan, Satyakam, T. S. Murthy, Raghenth Basant, Aman Ahluwalia, Arunav Patnaik, Abhishek Tiwari and D.S. Mahra for Attorney General for India.

C Ram Jethmalani, P.N. Lekhi, T.R. Andhyarujina, Sr. Advs. Dr. Krishan Singh Chauhan, Dr. Indra Pratap Singh, Gyan Mitra, Chand Kiran, P.K. Jayakrishnan, K.C. Lamba, Sudha Pal, V.K. Shukla, Nischal Kumar Neeraj, Ashish Tripathi, K.K. Mohan, Nawal Kishore Jha, M.P. Jha, Harshvardhan Jha, Ram Ekbal Roy, Rani Jetmalani, Harish Pandey, Samar Bansal, Abhik Kumar, P.R. Mala, Rajiv Kumar Tiwari, Rajesh Kumar, Sanjai Kumar Pathak,
D Devvrat, Harish Pandey, Rajeev Kumar Tiwari, Lata Krishnamurti, Sachin Jain, Mukesh Kumar Tripathi, Lokesh Kumar, Sanjay Kumar Pathak, Jaspreet S. Rai, Rakesh Kumar, M.K. Garg, Meenakshi Arora, S.K. Mehndiratta, Pranav Sen, S.W.A. Qadri, Ashis Chugh, Gaurav Agarwal, Satyakam, D.S. Mahra, R.M. Sharma and Sushma Suri for the appearing parties.

E The Judgments of the Court were delivered by

Majority Judgment by Hon'ble the Chief Justice alongwith Hon'ble Mr. Justice K.G. Balakrishnan, Hon'ble Mr. Justice C.K. Thakker and Hon'ble Mr. Justice D.K. Jain.

F Dissenting Judgment by Hon'ble Mr. Justice R.V. Raveendran.

Order of the Hon'ble Court.

Y.K. SABHARWAL, CJI. :

Factual Backgrounds :

G

1. The interpretation of Article 105 of Constitution of India is in issue in these matters. The question is whether in exercise of the powers, privileges and immunities as contained in Article 105, are the Houses of Parliament competent to expel their respective Members from membership of the House. If such a power exists, is it subject to judicial review and if so,
H the scope of such judicial review.

2. The unfortunate background in which the aforesaid questions have arisen is the allegation that the Members of Parliament (MPs) indulged in unethical and corrupt practices of taking monetary consideration in relation to their functions as MPs.

3. A private channel had telecast a programme on 12th December, 2005 depicting 10 MPs of House of People (Lok Sabha) and one of Council of States (Rajya Sabha) accepting money, directly or through middleman, as consideration for raising certain questions in the House or for otherwise espousing certain causes for those offering the lucre. This led to extensive publicity in media. The Presiding Officers of each Houses of Parliament instituted inquiries through separate Committees. Another private channel telecast a programme on 19th December, 2005 alleging improper conduct of another MP of Rajya Sabha in relation to the implementation of Member of Parliament Local Area Development Scheme ('MPLAD' Scheme for short). This incident was also referred to a Committee.

4. The Report of the inquiry concluded, *inter alia*, that the evidence against the 10 members of Lok Sabha was incriminate; the plea that the video footages were doctored/morphed/edited had no merit; there was no valid reason for the Committee to doubt the authenticity of the video footage; the allegations of acceptance of money by the said 10 members had been established which acts of acceptance of money had a direct connection with the work of Parliament and constituted such conduct on their part as was unbecoming of Members of Parliament and also unethical and calling for strict action. The majority report also recorded the view that in case of misconduct, or contempt, committed by its members, the House can impose punishment in the nature of admonition, reprimand, withdrawal from the House, suspension from service of House, imprisonment, and expulsion from the House. The majority report recorded its deep distress over acceptance of money by MPs for raising questions in the House and found that it had eroded the credibility of Parliament as an institution and a pillar of democracy in this country and recommended expulsion of the 10 members from the membership of Lok Sabha finding that their continuance as Members of the House would be untenable. One member, however, recorded a note of dissent for the reasons that in his understanding of the procedure as established by law, no member could be expelled except for breach of privileges of the House and that the matter must, therefore, be dealt with according to the rules of the Privileges Committee.

A 5. On the Report of the Inquiry Committee being laid on the table of the House, a Motion was adopted by Lok Sabha resolving to expel the 10 members from the membership of Lok Sabha, accepting the finding as contained in the Report of the Committee that the conduct of the members was unethical and unbecoming of the Members of Parliament and their continuance as MPs is untenable. On the same day *i.e.* 23rd December, B 2005, the Lok Sabha Secretariat issued the impugned notification notifying the expulsion of those MPs with effect from same date. In the Writ Petitions/Transfer Cases, the expelled MPs have challenged the constitutional validity of their respective expulsions.

C 6. Almost a similar process was undertaken by the Rajya Sabha in respect of its Member. The matter was referred to the Ethics Committee of the Rajya Sabha. As per the majority report, the Committee found that the Member had accepted money for tabling question in Rajya Sabha and the plea taken by him in defence was untenable in the light of evidence before it. However, one Member while agreeing with other Members of the D Committee as to the factual finding expressed opinion that in view, amongst others, of the divergent opinion regarding the law on the subject in judgments of different High Courts, to which confusion was added by the rules of procedure inasmuch as Rule 297(d) would not provide for expulsion as one of the punishments, there was a need for clarity to rule out any E margin of error and thus there was a necessity to seek opinion of this Court under Article 143(1) of the Constitution.

7. The Report of the Ethics Committee was adopted by Rajya Sabha concurring with the recommendation of expulsion and on the same date *i.e.* 23rd December, 2005, a notification notifying expulsion of the Member from F membership of Rajya Sabha with immediate effect was issued.

8. The case of petitioner in Writ Petition (C) No.129/2006 arises out of different, though similar set of circumstances. In this case, the telecast of the programme alleged improper conduct in implementation of MPLAD Scheme. The programme was telecast on 19th December, 2005. The Report G of the Ethics Committee found that after viewing the unedited footage, the Committee was of the view that it was an open and shut case as the Member had unabashedly and in a professional manner demanded commission for helping the so-called NGO to set up projects in his home state/district and to recommend works under MPLAD Scheme. The Committee came to the H conclusion that the conduct of the Member amounts to violations of Code

of Conduct for Members of Rajya Sabha and it is immaterial whether any money changed hands or not or whether any commission was actually paid or not. It found that the Member has not only committed gross misdemeanor but by his conduct he also impaired the dignity of the House and its Member and acted in a manner which is inconsistent with the standards that the House is entitled to expect of its Members. Since the conduct of the Member has brought the House and its Members into disrepute, the Committee expressed the view that the Member has forfeited his right to continue as Member and, therefore, recommended his expulsion from the membership of the House. The Rajya Sabha accepted the recommendations of the Ethics Committee and Motion agreeing with the recommendation was adopted on 21st March, 2006 thereby expelling the Member from the membership bringing to an end his membership. On the same date notification was issued by Rajya Sabha Secretariat.

9. The two Members of Rajya Sabha have also challenged the constitutional validity of their expulsions. Article 105 reads as under :

> **"105. Powers, privileges, *etc.* of the Houses of Parliament and of the members and committees thereof.**— (1) Subject to the provisions of this Constitution and 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 anything 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

A 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."

B 10. There is identical provision as contained in Article 194 relating to powers, privileges and immunities of State legislature. Article 194 reads as under :–

"194. Powers, privileges, *etc.*, of the House of Legislatures and of the members and committees thereof.— (1) Subject to the C provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any D proceedings in any court in respect of anything said or any vote given by him in the Legislature 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 such a Legislature of any report, paper, votes or proceedings.

E (3) In other respects, 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 F committees immediately before the coming into force of section 26 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 G of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

11. Article 105(3) underwent a change in terms of Section 15 of the Constitution (44th Amendment) Act, 1978. In Article 105(3), the words H "shall be those of the House of Commons of the Parliament of the United

Kingdom, and of its members and committees at the commencement of this Constitution" were substituted by the words "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". The similar changes were also effected in Article 194(3) of the Constitution. These amendments have no relevance for determining the interpretation of Article 105(3) since the amendments clearly seem to be only cosmetic for the purpose of omitting the reference of the House of Commons in these articles.

12. Before the amendment in 1978, clause (3) of Article 105 read as under :-

> "(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 the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution."

Contentions

13. The petitioners submit that all the powers, privileges or immunities, as vested on the date of commencement of the Constitution of India, in the House of Commons of the Parliament of United Kingdom had not been inherited by the legislatures in India under Article 105(3) of the Constitution.

14. The main contention urged is that power and privilege of expulsion was exercised by the House of Commons as a facet of its power of self-composition and since such power of such self-composition has not been given by the Constitution to Indian Legislature, it did not inherit the power to expel its members. The contention is that expulsion is necessarily punitive in nature rather than remedial and such power vested in House of Commons as a result of its power to punish for contempt in its capacity as a High Court of Parliament and since this Status was not accorded to Indian Legislature, the power to expel could not be claimed by the Houses of Parliament under Article 105(3). It is also their contention that power to expel cannot be asserted through Article 105(3) also for the reason that such an interpretation would come in conflict with other constitutional provisions. A grievance has also been made about denial of principles of natural justice in the inquiry proceedings and it is contended that there are gross and

A patent illegalities which are not protected from judicial review by Article 122 on plea of procedural irregularities. The contention of the petitioners further is that even the plenary powers of the legislature are controlled by the basic concepts of the Constitution and, therefore, it has to function within the circumscribed limits. The submission is that this Court is the final arbiter
B on the constitutional issues and the existence of judicial power in such behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court for protection of fundamental rights and for due adherence to the constitutional provisions and scheme in absence of which the power conferred on the judicial organ would be rendered meaningless. The contention also is that the extent and scope of power
C conferred on each branch of the State, limits on the exercise of such power under Constitution and any action of any branch that transgresses such limit is for the judiciary to determine as the final interpreter of the Constitution. Petitioners submit that the constitutional and legal protection accorded to the citizens would become illusory if it were left to the organ in question to
D determine the legality of its own action. They further submit that it is also a basic principle of rule of law permeating every provision of the Constitution, rather forming its very core and essence, that the exercise of power by the Executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law in which context it is
E primarily the function of the judiciary alone to ensure that the law is observed and there is compliance with the requirement of the constitutional provisions which is performed through patent weapon used as power of judicial review.

15. On the plea that this Court has the jurisdiction to exercise the power
F of judicial review in a case of this nature where another coordinate organ of the State has asserted and claimed a power and privilege on the strength of a Constitutional provision seemingly also claiming "exclusive cognizance", meaning immunity from judicial interference, the contentions of the petitioners can be summarized thus:-

G

"(i) The power of judicial review is an incident of and flows from the concept that the fundamental and higher laws are the touchstone of the limits of the powers of the various organs of State which derive power and authority under the Constitution of which the judicial wing
H is the interpreter;

(ii) Unlike in England where Parliament is sovereign, in a federal State with a written Constitution like India is, the supremacy of the Constitution is fundamental to its existence, which supremacy is protected by the authority of the independent judicial body that acts as the interpreter thereof through the power of judicial review to which even the Legislature is amenable and cannot claim immunity wherefrom;

(iii) The legislative supremacy being subject to the Constitution, Parliament cannot determine for itself the nature, scope and effect of its powers which are, consequently, subject to the supervision and control of judicial organ;

(iv) The petitioners would also point out that unlike the Parliament of England, the status of Legislature in India has never been that of a superior court of record and that even privileges of Parliament are subject to limits which must necessarily be ascertainable and, therefore, subject to scrutiny by the Court, like any other right;

(v) The validity of any proceedings even inside a legislative chamber can be called in question before the Court when it suffers from illegality and unconstitutionality and there is no immunity available to Parliament from judicial review."

16. It is the petitioners' contention that the Houses of Parliament had no power of expulsion of a sitting member. They plead that the petitioners could not be debarred from membership of the House by or under the impugned notifications pursuant to proceedings consequent upon the media reports inasmuch as substantive and adjectival law had been disregarded and the Constitutional inhibition placed on the exercise of power of debarment had been defeated. On the case that the Indian Legislatures cannot claim the power of expulsion of their members, the contentions are stated thus:-

"(i) The Legislature has no power to expel its member since the Parliament has not enacted any law which provides for expulsion of a member in a specified circumstance, in terms of enabling power to legislate on the subject as available in Article 105(3) of the Constitution;

(ii) The expulsions are illegal, arbitrary and unconstitutional, being violative of the provisions of Articles 83, 84 and 101 to 103, 105 and 190 to 193

A of the Constitution;

(iii) There is no provision either in the Constitution of India or in the Rules of Procedure and Conduct of Business of the Houses of Parliament for expulsion of a member by adoption of a motion and thus the impugned acts were beyond the jurisdiction of Parliament;

B

(iv) The expulsion of the petitioners from the Legislature through a motion adopted by simple majority was a dangerous precedent which would give dictatorial powers to the ruling majority in the Legislatures in future and thus be prone to further abuse;

C

(v) The Constitutional law governing the democracies the world over, even in other jurisdictions governed by written Constitutions, would not allow the power of exclusion of the elected members unto the legislative chamber. "

D

17. Claiming that they were innocent and had been falsely trapped, by the persons behind the so-called sting operation who had acted in a manner actuated by *mala fides* and greedy intent for cheap publicity and wrongful gains bringing the petitioners into disrepute, the Petitioners question the procedure adopted by the two Houses of Parliament alleging that it suffered E from gross illegality (as against procedural irregularity) calling for judicial interference. In this respect, the petitioners submit that the enquiries conducted by the two Houses were unduly hurried; were neither fair nor impartial and have resulted in gross violation of rules of natural justice which were required to be followed inasmuch as the action that was F contemplated would entail civil consequences; the Petitioners had not even been treated as ordinary offenders of law and deprived of basic opportunity of defending themselves through legal counsel and opportunity to explain; the evidence in the form of videography etc. had been relied upon without opportunity being given to them to test the veracity of such evidence, specially in the face of their defence that the video clippings had been G doctored or morphed which plea had not been properly examined or enquired into and the evidence of such nature had been relied upon in violation of the settled law; the expulsions are illegal, arbitrary and unconstitutional, being violative of the provisions of Articles 14 & 21 of the Constitution; the petitioners claim that as a consequence of the impugned H decisions they had suffered irreparable loss and their image and prestige had

been lowered in the eyes of the electorate. A

18. The two Houses of Parliament, through their respective secretariats, have chosen not to appear in the matter. The impugned decisions are, however, sought to be defended by the Union of India. The contention urged on behalf of Union of India is that the conduct of accepting money for tabling questions and raising matters in the House was considered by the respective Houses of Parliament as unbecoming of members of the House rendering them unfit for being members of the respective Houses. The actions of expulsions are matters within the inherent power and privileges of the Houses of Parliament. It is a privilege of each House to conduct its internal proceedings within the walls of the House free from interference including its right to impose disciplinary measures upon its members. The power of the Court to examine the action of a House over outsider in a matter of privilege and contempt does not extend to matters within the walls of the House over its own members. When a member is excluded from participating in the proceedings of the House, it is a matter concerning the House and the grievance of expulsion is in regard to proceedings within the walls of Parliament and in regard to rights to be exercised within the walls of the House, the House itself is the final judge. The expulsion of these members has been rightly carried out by respective Houses in exercise of their powers and privileges under Article 105(3) of the Constitution which power and privilege of expulsion has been exercised by the Houses of Parliament in the past as well. The expulsion does not create any disability to be re-elected again as a member of the House. B C D E

19. We have heard learned Senior Advocates Mr. Ram Jethmalani, Mr. P.N. Lekhi for the petitioners as also Dr. K.S. Chauhan, Advocate and other learned counsel appearing for the petitioners. For the respondents, we have heard Mr. Gopal Subramanian, learned additional Solicitor General appearing on behalf of Attorney General for India and Mr. T.R. Andhyarujina, learned Senior Advocate on behalf of Union of India. F

Constitutional Scheme G

20. To appreciate the contentions, it is necessary to first examine the constitutional scheme.

21. That the Constitution is the *Supreme lex* in this Country is beyond H

A the pale of any controversy. All organs of the State derive their authority, jurisdiction and powers from the Constitution and owe allegiance to it. This includes this Court also which represents the judicial organ. In the celebrated case of *Kesavananda Bharati* v. *State of Kerala,* [1973] 4 SCC 225, this Court found certain basic features of the Constitution that include, besides supremacy of the Constitution, the republican and democratic form of Government, and the separation of powers between the Legislature, the Executive and the Judiciary. The principle of supremacy of the Constitution has been reiterated by this Court post *Kesavananda Bharati* in case after case including, to name just some of them, *Indira Nehru Gandhi* v. *Raj Narain,* [1975] Suppl SCC 1, *Minerva Mills Ltd.* v. *Union of India,* [1980] 3 SCC 625, *Sub-Committee on Judicial Accountability* v. *Union of India,* [1991] 4 SCC 699, *I. Manilal Singh* v. *H. Borobabu Singh (Dr),* [1994] Supp 1 SCC 718, *Union of India* v. *Assn. for Democratic Reforms,* [2002] 5 SCC 294, Special Reference No. 1 of 2002, In *re (Gujarat Assembly Election matter)* [2002] 8 SCC 237, *People's Union for Civil Liberties (PUCL)* v. *Union of India,* [2003] 4 SCC 399, *Pratap Singh* v. *State of Jharkhand,* [2005] 3 SCC 551, *Rameshwar Prasad (VI)* v. *Union of India,* [2006] 2 SCC 1, *Kuldip Nayar* v. *Union of India,* [2006] 7 SCC 1.

22. That the parliamentary democracy in India is qualitatively distinct from the one in England from where we have borrowed the Westminister model of Government, is also well settled. In this context, before proceeding further on this premise, we may quote the following observations of the Constitution Bench (7 Judges) appearing at page 444 in *Special Reference No. 1 of 1964,* [1965] 1 SCR 413 (*UP Assembly* case) :-

> "In dealing with this question, it is necessary to bear in mind one fundamental feature of a Federal Constitution. In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament, and that the right or power of Parliament extends to every part of the Queen's dominions [Dicey, The Law of the Constitution 10th ed. Pp.xxxiv, xxxv]. On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and

> independent of each other". The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Nor is any change possible in the constitution by the ordinary process of federal or State legislation [Ibid p.lxxvii]. Thus the dominant characteristic of the British Constitution cannot be claimed by a Federal Constitution like ours."

23. In the constitutional scheme that has been adopted in India, the Legislatures play a significant role in pursuit of the goals set before the nation and command the position of grandeur and majesty. The Legislatures undoubtedly have plenary powers but such powers are controlled by the basic concepts of the written constitution and can be exercised within the legislative fields allotted to their respective jurisdiction under the Seventh Schedule. They have the plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution. But, the basis of that power is the Constitution itself. In this context, it would be fruitful to also take note of the following observations appearing at page 445 of the afore-mentioned judgment in *UP Assembly* case :-

> "...Besides, the legislative supremacy of our legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution."

A 24. The judicial organ of the State has been made the final arbiter of Constitutional issues and its authority and jurisdiction in this respect is an important and integral part of the basic structure of the Constitution of India. Before coming in grips with the complex Constitutional questions that have been raised, we would well remind ourselves, more than we do everyone else, of the following further observations made at page 447 :-

B

> "...In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the legislatures and the Judicature, are derived primarily from the status, dignity and importance of the respective causes that are
C assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antimony nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such
D harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country."

25. The issues involved are required to be examined bearing in mind the basic ethos of our Constitutional scheme in the above light.

E

26. The Constitution of India provides through Chapter II of Part V for Union Legislature, called the "Parliament". Parliament consists of, besides the President, two Houses known respectively as the Council of States (Rajya Sabha) and the House of the People (Lok Sabha). Article 80 deals
F with the matter of composition of Rajya Sabha. Article 81, on the other hand, provides for composition of Lok Sabha. In terms of Article 83, Rajya Sabha is a permanent body, not subject to dissolution, its continuance being ensured by replacements of one third of the members who retire on the expiration of every second year. Lok Sabha, on the other hand, is given a fixed term of five years, unless sooner dissolved or unless its term is
G extended in situation of emergency as provided in the proviso to sub-rule (2) of Article 83.

27. In the loose federal structure that India has adopted for itself, wherein India is an indestructible Union of destructible units, there is a
H provision for State Legislature in Chapter III of Part VI governing the States,

almost similar to the set up at the Centre. A

28. The relations between the Union and the States are controlled by the provisions contained in Part XI of the Constitution.

29 The Constitution permits, through Article 118 and Article 208, the Legislature at the Centre and in the States respectively, the authority to B make rules for regulating their respective procedure and conduct of business "subject to the provisions of this Constitution".

30. Since we are concerned mainly with the Houses of Parliament in these proceedings, it may be mentioned that each House in exercise of its C powers under Article 118 has framed detailed rules of procedure which are called "Rules of Procedure and Conduct of Business in Lok Sabha" and Rules of Procedure and Conduct of Business in the Council of States".

31. Conscious of the high status of these bodies, the Constitution D accorded certain powers, privileges and immunities to the Parliament and State Legislatures and their respective members. For this purpose, specific provisions were included in the Constitution in Articles 105.

32. For the present, it may only be noticed that sub-Article (1) of Article 105 and Article 194 respectively confers on the Members of Parliament E and the State Legislatures respectively "freedom of speech" in the Legislature, though "subject to the provisions" of the Constitution and "subject to the rules and orders regulating the procedure" of Parliament or of the Legislatures, as the case may be.

F

33. Sub-Article (2) of both the said Articles grants, *inter alia*, absolute immunity to members of the Legislatures from "any proceedings in any Court in respect of anything said or any vote given" by them in the Legislatures or any Committee thereof. Sub-Article (3) of Article 105 and Article 194 declares that "the powers, privileges and immunities" of each G House of the Legislatures and the members and Committees thereof, "in other respects" shall be "such as may from time to time be defined" by the Parliament or the State Legislature, as the case may be, "by law" and, "until so defined", to be those as were enjoyed by the said Houses or members of the Committees thereof immediately before coming into force of the amendment in 1978.

H

34. Article 122 is of great import in the context of, amongst others, Article 105, since it seems to restrict the jurisdiction of the Courts in relation to "proceedings of Parliament". It reads as under:-

> "*122. Courts not to inquire into proceedings of Parliament.*—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
>
> (2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

35. There is a similar provision in relation to State Legislature.

36. Having given our anxious considerations to the myriad issues that have been raised on both sides of the divide, we have found that the primordial questions that need to be addressed by the Court can be formulated as under :-

1. Does this Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privileges and immunities of the Legislatures and its members?

2. If the first question is answered in the affirmative, can it be found that the powers and privileges of the Legislatures in India, in particular with reference to Article 105, include the power of expulsion of their members?

3. In the event of such power of expulsion being found, does this Court have the jurisdiction to interfere in the exercise of the said power or privilege conferred on the Parliament and its members or Committees and; if so, is this jurisdiction circumscribed by certain limits?

37. In our approach to these issues of great importance, we have followed the advice of Thomas Huxley in the following words :-

> "It is not who is right, but what is right, that is of importance"

38. In our quest, again borrowing the words of Thomas Huxley, we must :

"learn what is true in order to do what is right".

39. The need, if any, to take up for consideration, the grievances expressed by the petitioners in relation to the manner of exercise of the power and privilege asserted by both Houses of Parliament to expel their respective members would arise in light of decision on the two first-mentioned cardinal questions.

Court's Jurisdiction to decide on the scope of Article 105(3)

40. There was virtually a consensus amongst the learned counsel that it lies within the powers and jurisdiction of this Court to examine and determine the extent of power and privileges to find out whether actually power of expulsion is available under Article 105(3) or not.

41. Having regard to the delicate balance of power distributed amongst the three chief organs of the State by the Constitution of India and the forceful assertions made particularly with regard to the limitation on court's jurisdiction, we decided not to depend upon mere concession of the learned counsel as to our jurisdiction. We thought it prudent to examine it fully even in the context of primary question about the judicial authority to go into the question of existence of a particular power or privilege asserted and claimed under Article 105, so as to reassure ourselves that we were not in any manner intruding into a zone which is out-of-bounds for us.

42. Fortunately, the subject at hand is not a virgin territory. There have been occasions in the past for this court to go into these issues, though in somewhat different fact situations. Similarly, we have the benefit of opinion on these questions, expressed by at least three High Courts, though that happens to be a divided opinion.

43. As can be seen from the language employed in Article 105, the Parliament is empowered to define, by law, the powers, privileges and immunities of each House and of their Members and Committees in respects other than those specified in the Constitutional provisions. Though some part of the arguments advanced on behalf of the petitioners did try to refer to certain statutory provisions, for example, provisions contained in Sections

A 8 to 11 of the Representation of People Act 1951, as referable to the enabling power given to the Parliament in the first part of Article 105(3) but for present purposes, we would assume that Parliament has not yet exercised the said enabling power in as-much-as there is no law enacted till date that can be referred as cataloging the powers, privileges and immunities of each House of Parliament and of their members and committees. This consequence B leads to continuity of the life of the second part of Article 105(3) in as-much-as that part of the provision was designed to come to an end as soon as the Parliament defined by law its powers, privileges and immunities. Therefore, powers, privileges and immunities not having been defined, the question is what are those powers which were enjoyed by House of C Commons at the commencement of our Constitution as that will determine the powers, privileges and immunities of both Houses of Indian Parliament.

44. The history of the subject of Parliamentary privileges indicates numerous instances where the effort at tracing the dividing line between the competence of courts and the exclusive jurisdiction of the legislature threw D up complex Constitutional questions giving rise to divergent opinions and decisions even in England, more importantly, in connection with the House of Commons. These questions included the abstract question whether the law of Parliament in such regard was a "particular law" or "part of the common law" in its wide and extended sense and the practical question E whether the House of Commons was to be the sole judge of a matter of privilege claimed by it even when the rights of third parties were involved or whether in such cases the issues could be decided in the courts. The next question arising from the last mentioned issue naturally concerned the extent of the power of the judges, that is to say, if they were bound to accept and apply the parliamentary interpretation of the law or were free to form F their own view in such regard.

45. The dust has since settled even in England which jurisdiction since concedes the jurisdiction of the court to decide all questions of privilege, except those concerning exclusive jurisdiction of the legislative chamber G over its own internal proceedings.

46. The works of English and Commonwealth authors have always been treated as the most authoritative references for determining the source of a privilege or power exercised by the House of Commons. They include Halsbury's Laws of England, Maitland, Wade and Phillips, Keir & Lawson, H Sir Barnett Cocks, Ridges on Constitutional Law, and Sir William Anson's

"The Law and Custom of the Constitution". Sir Thomas Erskine May was a clerk of the House of Commons (1871-1886). His work "Parliamentary Practice", hereinafter referred to as *"May's Parliamentary Practice"*, is universally regarded as an authoritative exposition of this branch of law.

47. The following extract from page 183 in chapter 11 "Jurisdiction of Courts of Law in Matters of Privilege" as appearing in Erskine May's Parliamentary Practice, 20th Edition reflects the prevalent law in United Kingdom:-

> "The problem thus became one of reconciling the law of privilege with the general law. The solution gradually marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these, which are supported by a great weight of authority, are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt. While it cannot be claimed that either House to commit or formally acquiesced in this assumption of jurisdiction by the courts, the absence of any conflict for over a century may indicate a certain measure of tacit acceptance."

48. The learned counsel for all sides have referred to *Bradlaugh* v. *Gosset,* [1884] 12 QBD 271. Charles *Bradlaugh*, the plaintiff in that case before Queen's Bench Division had been elected a Burgess to serve in the House of Commons and was entitled to take oath by law prescribed to be taken by the members of the said chamber of legislature and to sit and vote in the House as an elected representative. This resolution was explained in due course by Speaker to mean that the exclusion of *Bradlaugh* from the House would continue "until he should engage not to attempt to take the oath in disregard of the resolution of the House now in force". The issues that were raised before the court included the question whether the House of Commons had a right to pass such a resolution forbidding the member of the House within the walls of the House itself from doing something which by the law of the land he had a right to do so and whether the court could inquire into the said right and allow an action to be maintained by a member of the House. Reliance has been placed on certain observations made in the judgment that was rendered in the said fact situation. At page

275, Lord Coleridge, C.J. observed as under:-

> "Alongside, however, of these propositions, for the soundness of which I should be prepared most earnestly to contend, there is another proposition equally true, equally well established, which seems to me decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject — *Burdett* v. *Abbott* [14 East, 1, 148] and *Stockdale* v. *Hansard* [9 Ad. & E. 1.]; - are agreed, and are emphatic. The jurisdiction of the House over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, *"They would sink into utter contempt and inefficiency without it."* [14 East, at p. 152]"

49. The learned counsel then referred to the Privy Council decision in *Richard William Prebble* v. *Television New Zealand Ltd.,* [1994] (S) WLR 970. It arose out of a defamation action by a former Minister of the Government of New Zealand where proceedings in Parliament were questioned. The issue of infringement of parliamentary privilege was raised in the context of Article 9 of the Bill of Rights, 1689 which declared that the freedom of speech and debates or proceedings in Parliament "ought not to be impeached or questioned in any court or place out of Parliament". The Privy Council observed as under at page 976:-

> "In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, *viz.* that the courts and Parliament are both astute to recognize their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protect one of its established privileges. *Burdett* v. *Abbot,* (1811) 14 East 1; *Stockdale* v. *Hansard,* (1839) 9 Ad. & El. 1; *Bradlaugh* v. *Gossett,* [1884] 12 QBD 271; *Pickin* v. *British Railways Board,* [1974] AC 765; *Pepper* v. *Hart,* [1993] AC 593. As Blackstone said in his Commentaries on the Laws of England, 17th ed. (1830), vol.1, p. 163:

> "the whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere."

50. Further, the views formulated in *Prebble* v. *Television New Zealand Ltd.* were expressed at page 980 thus:

> "Parties to litigation, by whomsoever commenced, cannot bring into question anything said or done in the House by suggesting (whether by direct evidence, cross-examination, inference or submission) that the actions or words were inspired by in proper motives or were untrue or misleading. Such matters lie entirely within the jurisdiction of the House, subject to any statutory exception such as exists in New Zealand in relation to perjury under Section 108 of the Crimes Act 1961."

51. The learned counsel would then refer to the law that has been evolved in India, the case of *M.S.M. Sharma* v. *Sri Krishna Sinha,* [1959] Supp 1 SCR 806, hereinafter referred to as case of *Pandit Sharma (I)*, being perhaps the first in a series of such cases on the subject.

52. Pandit Sharma, the petitioner in that case was editor of an English Daily Newspaper "Searchlight" of Patna. He invited the wrath of the legislative assembly of Bihar by publishing extracts from proceedings of the legislative assembly including certain parts which had been ordered to be expunged by the Speaker. In this context, the Speaker had referred the matter to the Privileges Committee of the assembly which in turn issued a show cause notice to him. Pandit Sharma brought writ petition in this court under Article 32 of the Constitution of India alleging that the proceedings initiated by the legislative assembly had violated his fundamental right of speech and expression under Article 19 (1) (a) as also the fundamental right of protection of his personal liberty under Article 21. The case was decided by a Constitution Bench (five Judges), with main focus on two principal points; namely, the availability of a privilege under Article 194(3) of the Constitution to the House of a legislature in India to prohibit entirely the publication of the publicly seen and heard proceedings that took place in the House or even to prohibit the publication of such part of the proceedings

A as had been directed to be expunged and as to whether the privilege of the legislative chamber under Article 194(3) prevailed over the fundamental right of a citizen under Article 19 (1) (a). Noticeably, no specific objection as to the jurisdiction of the court in examining the issue of existence and availability of the particular privilege was raised at any stage.

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53. It may be mentioned here that the writ petition of Pandit Sharma was dismissed on the basis of majority view, *inter alia*, holding that the legislatures in India were vested with the power or privilege of prohibiting the publication of debates or proceedings that took place in the House, of even a true and faithful report, as indeed of an inaccurate or garbled version C thereof. It was further held that the powers, privileges and immunities available in terms of Articles 105(3) and 194(3) stood in the same supreme position as the provisions of Part III of the Constitution and could not be affected by Article 13 and, therefore, the principle of harmonious construction required to be adopted. The court concluded that the fundamental right of free speech and expression under Article 19 (1)(a) being general in nature D must yield to Article 194(1) and the latter part of Article 194(3) which are special provisions. The challenge to the proceedings under Article 194(3) on the basis of Article 21 was also repelled on the ground of it being "in accordance with the procedure established by law" in as-much-as the rules framed by the legislative assembly under Article 208 laid down the procedure.

E

54. The case of *Pandit Sharma* (supra) did not end there. Subsequently, the legislative assembly of Bihar came to be prorogued several times and the committee of privileges was also reconstituted. This led to a fresh notice being issued to Pandit Sharma in the wake of which he brought another writ F petition under Article 32 of the Constitution, substantially raising the same questions and contentions as had been agitated in the earlier proceedings by him before this court. This writ petition was dismissed by the Constitution Bench (eight Judges). The judgment is reported as *M.S.M. Sharma* v. *Shree Krishna Sinha,* [1961] 1 SCR 96, hereinafter referred to as case of *Pandit Sharma (II)* (supra).

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55. In Para 10 of the Judgment, this Court observed thus:-

> "10...It was contended that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance H with law. There are two answers to this contention, firstly, that

according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court. Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to consider the question of procedure as the Committee is yet tc conclude its proceedings. It must also be observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non- compliance with rules of procedure cannot be a ground for issuing a writ under Article 32 of the Constitution vide *Janardan Reddy* v. *State of Hyderabad,* [1951] SCR 344."

56. By far, the advisory opinion given by a Constitution Bench comprising of seven Judges of this court in *UP Assembly* (Supra) case is the most elaborate discourse on the subject of powers, privileges and immunities of the legislatures under the Constitution of India. The matter had arisen out of a Reference by the President of India under Article 143(1) of the Constitution seeking opinion of this court on certain issues, the genesis of which was traceable to certain unfortunate developments concerning the legislative assembly of the State of Uttar Pradesh and the Lucknow Bench of the High Court at Allahabad. The legislative assembly of Uttar Pradesh had committed one Keshav Singh, who was not one of its members, to prison for its contempt. The warrant of committal did not contain the facts

A constituting the alleged contempt. Keshav Singh moved a petition, *inter alia*, under Article 226 of the Constitution through his advocate challenging his committal as being in breach of his fundamental right. A division bench of the High Court sitting at Lucknow gave notice to the Government counsel and on the appointed day proceeded to hear the application for bail. At that stage, the Government Counsel did not appear. The division bench heard the application and ordered release of Keshav Singh on interim bail pending decision on his writ petition. The legislative assembly found that Keshav Singh and his advocate in moving the High court and the two Judges of the High Court in entertaining the petition and granting bail had committed contempt of the legislative assembly. The assembly passed a resolution that all of them, including the two High Court Judges, be produced before it in custody. The High Court Judges and the advocate in question thereupon filed writ petitions before the High Court at Allahabad. A full bench of the High Court admitted the writ petitions and ordered the stay of execution of the assembly's resolution against them. Subsequently, the legislative assembly passed a clarificatory resolution modifying its earlier stand and asking the Judges and the advocate to appear before the House and offer their explanation. It was against this backdrop that the President made a Reference under Article 143(1) of the Constitution seeking opinion mainly as to the Constitutional relationship between the High Court and the State Legislature in matters of the powers and privileges of the latter. The contours of the main controversy were summarized by this court at page 439 in the report in the following words:-

> "27... Is the House the sole and exclusive judge of the issue as to whether its contempt has been committed where the alleged contempt has taken place outside the four walls of the House? Is the House the sole and exclusive judge of the punishment which should be imposed on the party whom it has found to be guilty of its contempt? And, if in enforcement of its decision the House issues a general or unspeaking warrant, is the High Court entitled to entertain a *habeas corpus* petition challenging the validity of the detention of the person sentenced by the House?....."

57. It is clear from the opinion rendered in *UP Assembly* (Supra) case that the State legislature, though participating in the hearing, expressed reservations as to the jurisdiction of this court in any manner in respect of the area of controversy covered by the questions, insisting that "the

question about the existence and extent of the powers, privileges and immunities of the House, as well as the question about the exercise of the powers and privileges were entirely and exclusively within the jurisdiction of the House; and whatever this Court may say will not preclude the House from deciding for itself the points referred to us under this Reference", referring in this context, *inter alia* to the fact that there was no *lis* before the court which was therefore not exercising "its judicial function" while dealing with a Reference under Article 143 (1).

58. After examining the issue of absolute immunity of the proceedings of the House in such matters from challenge in the court, in the light of various Constitutional provisions and tracing the development of the law on the subject in England with the help, amongst others, of *May's Parliamentary Practice*, this Court summarized the legal position as obtaining in United Kingdom, at page 467, as under:-

> "**83.** In regard to punishment for contempt, a similar process of give and take by convention has been in operation and gradually a large area of agreement has, in practice, been evolved. Theoretically, the House of Commons claims that its admitted right to adjudicate on breaches of privilege implies in theory the right to determine the existence and extent of the privileges themselves. It has never expressly abandoned this claim. On the other hand, the courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction, and to decide it according to their own interpretation of the law [*May's Parliamentary Practice*, p. 172]. Naturally, as a result of this dualism the decisions of the courts are not accepted as binding by the House in matters of privilege, nor the decisions of the House by the courts; and as May points out, on the theoretical plane, the old dualism remains unresolved. In practice, however, "there is much more agreement on the nature and principles of privilege than the deadlock on the question of jurisdiction would lead one to expect" and May describes these general conclusions in the following words:
>
> (1) It seems to be recognized that, for the purpose of

A adjudicating on questions of privilege, neither House is by itself entitled to claim the supermacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the King and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.

(2) It is admitted by both Houses that, since either House can by itself add to the law, neither House can by its own declaration create a new privilege. This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the courts.

On the other hand, the courts admit:

(3) That the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.

(4) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal [*May's Parliamentary Practice,* p. 173]."

84. It is a tribute to the remarkable English genius for finding pragmatic *ad hoc* solutions to problems which appear to be irreconcilable by adopting the conventional method of give and take. The result of this process has been, in the words of May, that the House of Commons has not for a hundred years refused to submit its privileges to the decision of the courts, and so, it may be said to have given practical recognition to the jurisdiction of the courts over the existence and extent of its privileges. On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognized privileges [*May's Parliamentary Practice,* pp. 173-74]. That broadly stated, is the position of powers and privileges claimed by the House of Commons."

59. Sarkar J. in his separate judgment in the same case was *ad idem* with the majority opinion in this context. Rejecting the contentions based on the observations in *Bradlaugh*, he observed at page 508 as under:-

> "This passage should suffice to illustrate the nature of the dispute. It will not be profitable at all, and indeed I think it will be 'mischievous', to enter upon a discussion of that dispute for it will only serve to make it turbid, by raking up impurities which have settled down, a stream which has run clear now for years. Furthermore *that dispute can never arise in this country for here it is undoubtedly for the courts to interpret the Constitution and, therefore, Article 194(3).* It follows that *when a question arises in this country under that article as to whether the House of Commons possessed a particular privilege at the commencement of the Constitution, that question must be settled, and settled only, by the Courts of law.* There is no scope of the dreaded "dualism" appearing here, that is, courts entering into a controversy with a House of a legislature as to what its privileges are. I think what I have said should suffice to explain the nature of the privileges for the purposes of the present reference and I will now proceed to discuss the privileges of the Assembly that are in question in this case, using that word in the sense of rights ancillary to the main function of the legislature."
>
> (Emphasis supplied)

60. His conclusions to above effect were settled in view of the legal position in England, as is clear from the observations at page 522 of his Judgment, which read as under:-"

> "All privileges of the House of Commons are based on law. That law is known as *Lex Parliamenti.* Hence privileges are matters which the House of Commons possesses as of right. In *Stockdale* v. *Hansard,* [112 E. R. 1112] all the Judges held that the rights of the House of Commons are based on *Lex Parliamenti* and that law like any other law, is a law of the land which the courts are entitled to administer."

61. The case *State of Karnataka* v. *Union of India,* [1977] 4 SCC 608

A decided by a Constitution Bench (seven Judges) of this Court finally clinched the issue beyond the pale of any doubts. The case had arisen against the backdrop of appointment by the Central Government of a Commission of Inquiry against the then Chief Minister of Karnataka. The State of Karnataka filed a suit in this court, *inter alia*, for a declaration that the appointment of the Commission was illegal, in as much as the terms of B reference of the Inquiry Commission covered matters falling exclusively within the sphere of the State's legislative and executive power on which basis, amongst others, it was contended that the federal structure implicit and accepted as an inviolable basic feature of the Constitution was being abridged. Some arguments in the context of this controversy were founded C on the powers and privileges of the legislature of the State under Article 194 of the Constitution. Examining these arguments, Beg CJ. in his judgment observed as under:-

> **"63.** Now, what learned Counsel for the plaintiff seemed to suggest D was that Ministers, *answerable to a Legislature were governed by a separate law which exempted them from liabilities under the ordinary law. This was never the Law in England. And, it is not so here.* Our Constitution leaves no scope for such arguments, based on a confusion concerning the "powers" and "privileges" of the House of Commons mentioned in Articles 105(3) and 194(3). E *Our Constitution vests only legislative power in Parliament as well as in the State Legislatures. A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its* F *"privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions.* But, *if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings."*
>
> (Emphasis supplied)

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62. In view of the above clear enunciation of law by Constitutional Benches of this court in case after case, there ought not be any doubt left that whenever Parliament, or for that matter any State legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or

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Article 194(3) as the case may be, it is the court which has the authority and the jurisdiction to examine, on grievance being brought before it, to find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of the Parliament of United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian legislatures.

Historical perspective from England

63. To find out the basis of House of Commons possessing the right of expulsion of its members, it is necessary to *examine the historical* perspective of preliminary powers and privileges and immunities. For finding out the roots of powers, privileges and immunities of House of Commons, it is necessary to refer to the views of constitutional authors mentioned hereinbefore.

64. The term 'privilege in law' is defined as immunity or an exemption from some duty, burden, attendance or liability conferred by special grant in derogation of common right. The term is derived from an expression 'privilegium' which means a law specially passed in favour of or against a particular person.

65. *May,* in his "Parliamentary Practice", has defined parliamentary privilege as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies of individuals". Thus, privilege, though not part of the law of the land, is to a certain extent an exemption from the ordinary law.

66. Rutledge, in his "Procedure of the House of Commons" [Volume I, page 46], defined privileges as "the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the courts of law, and the special rights of the House of Lords".

67. The origin of parliamentary privileges is inextricably intertwined

A with the specific history of the institution of Parliament in England, and more specifically with the battle between Parliament and the English Monarch for political control in the 17th century. An understanding of the manner in which the concept of parliamentary privilege developed, therefore, requires a sound understanding of the institutional history of Parliament in the
B United Kingdom.

68. Parliament in the United Kingdom emerged in the Thirteenth Century. By 14th century, Parliament had begun to exercise a small measure of judicial power. It took on the role of a court in relation to treason and related matters. In 1376, Parliament, specifically the Commons, had taken
C upon itself the power of impeachment of the King's servants. Thus, the Lords could hear appeals of treason and Bills of Attainder where the accuser was the King. The long struggle of the British subjects to bring about a parliamentary democracy involved royal concessions, people's resistance, claims against Crown prerogatives, execution of Monarchs and restoration
D of Parliament, struggles, advances and retreats, and it is through these turbulent times that the House of Commons emerged as a representative form of government.

69. The origin of some of the Parliamentary privileges preceded Parliament itself and was part of the King's peace, common to all his
E subjects, but in special measure shared by his servants. The privilege of freedom of speech eventually came to be statutorily recognized by Article 9 of the Bill of Rights Act, 1688.

70. May [23rd edn., pp.78, 79, 83, 89, 90] describes the historical
F development of privileges as follows:-

> ""At the commencement of every Parliament it has been the custom for the Speaker, in the name, and on the behalf of the Commons, to lay claim by humble petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate,
G freedom from arrest, freedom of access to Her Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings....
>
> Freedom of Speech — The first claim in the Speaker's petition is
H for freedom of speech in debate. By the latter part of the fifteenth

century, the Commons of England seems to have enjoyed an undefined right to freedom of speech, as a matter or tradition rather than by virtue of a privilege sought and obtained... A

FREEDOM FROM ARREST — The second of the Speaker's customary petitions on behalf of the Commons at the beginning of a Parliament is for freedom from arrest. The development of this privilege is in some ways linked to that of other privileges. Arrest was frequently the consequence of the unsuccessful assertion of freedom of speech, for example.... B

FREEDOM OF ACCESS — The third of the Speaker's petitions is for freedom of access to Her Majesty whenever occasion shall require. This claim is medieval (probably fourteenth century) in origin, and in an earlier form seems to have been sought in respect of the Speaker himself and to have encompassed also access to the Upper House.... C D

FAVOURABLE CONSTRUCTION — The final petition which the speaker makes is that the most favourable construction should be placed upon all the House's proceedings...

PRIVILEGE WITH RESPECT TO THE CONSTITUTION OF THE HOUSE — It is a privilege of the House of Commons to provide for its own proper constitution as established by law. The origins of this privilege are to be found in the sixteenth century." E

71. In the *UP Assembly* (supra) Case, while dealing with questions relating to Powers, Privileges and Immunities of State Legislatures, it was observed as under:- F

"69....Parliamentary privilege, according to May, is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. The particular privileges of the House of Commons have been defined as "the G H

A sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords". There is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reserve the term "privilege" to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessity for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity [*May's Parliamentary Practice*, pp. 42-43]."

D 72. According to May, origin of the modern Parliament in England consisted in its judicial functions. It was Maitland who was the first to point out in his introduction to the Parliament Roll of 1305 that Parliament at that time was the King's "Great Court" and thus, *inter alia*, the highest Court of royal justice. It is now generally accepted that a strong judicial streak in the character of the earliest Parliament was noticeable throughout the earlier E period of English history, reflected by the fact that dispensation of justice was one of its chief functions in the eyes of the subjects of the realm, aside from the political and economic business.

73. Out of the two chambers of Parliament of United Kingdom, the F House of Lords has continued till the present times as the Court of Judicature, as part of which function it has the power to sit as a Court during prorogation and dissolution. The final appellate jurisdiction vests in the Lords and, in matters of impeachment, the Lords are the sole judges of the crime in proceedings that involve the other chamber, the House of Commons, as the accusers or advocates.

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74. While the House of Lords would claim its powers and privileges on the basis of theory of inheritance and Divine Right of Kings, the House of Commons was constrained to wage a fierce struggle against the prerogatives of the Crown and of the House of Lords to assert and claim H its rightful place. It was almost a fight for its existence in which the House

of Commons was pitted against not only the Crown and the House of Lords, but also the judicature which was regarded as a creature of the King and which wing was subordinate to the House of Lords that happened to be the main opponent of the House of Commons.

75. The dust raised by the bitter struggle waged by the House of Commons to assert its privileges finally settled when equilibrium was reached in the 19th century with limits of privileges being prescribed and accepted by Parliament, the Crown and the courts in England. The position that emerged against this backdrop has been noticed by this court in the following words in the *UP Assembly* (supra) Case:-

> "The two Houses are thus of equal authority in the administration of a common body of privileges. Each House, as a constituent part of Parliament, exercised its own privileges independently of the other. They are enjoyed, however, not by any separate right peculiar to each, but solely by virtue of the law and custom of Parliament. Generally speaking, all privileges properly so called, appertain equally to both Houses. They are declared and expounded by each House; and breaches of privilege are adjudged and censured by each; but essentially, it is still the law of Parliament that is thus administered. It is significant that although either House may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. This position emerged as a result of the historic resolution passed by the House of Lords in 1704. This resolution declared "that neither House of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament". This resolution was communicated by the House of Lords to Commons and assented to by them [*May's Parliamentary Practice,* p.47]. Thus, there can be no doubt that by its resolutions, the House of Commons cannot add to the list of its privileges and powers."

76. The Resolution of 1704, mentioned in the passage extracted above, had been adopted by the House of Lords in answer to an earlier resolution passed by the House of Commons declaring its intent to treat the conduct of any person in moving the court for relief in matters mentioned by the resolution of the House of Commons as amounting to its contempt.

77. The main privileges which are claimed by the House of Commons were noticed at length at page 462 of the judgment in the *UP Assembly* (supra) Case, as under:-

> "72...Freedom of speech is a privilege essential to every free council or legislature, and that is claimed by both the Houses as a basic privilege. This privilege was from 1541 included by established practice in the petition of the Commons to the King at the commencement of the Parliament. It is remarkable that notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. This privilege received final statutory recognition after the Revolution of 1688. By the 9th Article of the Bill of Rights, it was declared "that the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament [*May's Parliamentary Practice,* p. 52]".
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> **73.** Amongst the other privileges are: the right to exclude strangers, the right to control publication of debates and proceedings, the right to exclusive cognizance of proceedings in Parliament, the right of each House to be the sole judge of the lawfulness of its own proceedings, and the right implied to punish its own Members for their conduct in Parliament [ibid, p. 52-53].
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> **74.** Besides these privileges, both Houses of Parliament were possessed of the privilege of freedom from arrest or molestation, and from being impleaded, which was claimed by the Commons on ground of prescription..."

78. The privilege of freedom of speech under Article 9 of the Bill of Rights includes the freedom of the member to state whatever he thinks fit in debate, howsoever offensive it may be to the feelings, or injurious to the character, of individuals. He is protected by his privilege from any action for libel, as well as from any question or molestation [*May's Parliamentary Practice,* 23rd edn., pp. 96-97]. The privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation.

79. In early days of its struggle the House of Commons would assert a claim to all kinds of privileges for itself and its members but in the course of time many of such privileges either fell into disuse or faded out of existence or came to be controlled by legislation. Examples in this context can be given of the privilege of freedom from being impleaded, limitation put by the Parliamentary Privilege Act, 1770 on the freedom from arrest and the privilege of exemption from jury service. What is important for purposes at hand is that the major privileges properly described as privileges essential for the efficient functioning of the House still continue in force.

80. As per *May's Parliamentary Practice* [23rd edn., pp. 128] contempt came to be defined as "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions or which obstructs or impedes any member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results even though there is no precedent of the offence".

81. Power to punish and commit for contempt is one of the privileges asserted by both Houses of Parliament in United Kingdom. In the context of power to punish for contempt, this Court found in the *UP Assembly* (supra) Case (at page 461) as under:-

> "....Since the decision of the Privy Council in *Kielley* v. *Carson,* [4 Moore P.C. 63] it has been held that this power is inherent in the House of Lords and the House of Commons, not as a body with legislative functions, but as a descendant of the High Court of Parliament and by virtue of the *lex et consuetudo parliamenti* [*May's Parliamentary Practice,* p. 44]. Historically, as originally the weaker body, the Commons had a fiercer and more prolonged struggle for the assertion of their own privileges, not only against the Crown and the courts, but also against the Lords. Thus the concept of privilege which originated in the special protection against the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognised "privileges".

82. As has been noticed earlier, the historic origin of the doctrine of privileges of the legislature in England is founded on its judicial functions. The House of Lords has always claimed itself to be a Court of Record and

A as such having the inherent authority and power not only to imprison but also to impose fines in matters of contempt. But then, its position as a Court of Record does not inure, according to Lord Kenyon, "when exercising a legislative capacity". According to *May's Parliamentary Practice*, the House of Commons at one point of time in the history had also claimed to be a Court of Record, but this position has never been finally determined. Be that as it may, as observed in the *UP Assembly* (supra) Case (at pp. 465-466), on the authority of *May's Parliamentary Practice,* the genesis of the power of commitment, "the key stone of Parliamentary privileges", as possessed by the House of Commons, arises out of "the medieval inability to conceive of a constitutional authority otherwise than as in some sense a court of justice".

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83. The medieval concept of Parliament in England primarily as a court of justice, the 'High Court of Parliament' gave rise to the firm belief that in order to defend the dignity of Parliament against disrespect and affronts, there must vest in it a power to commit, without which the privileges of Parliament would not exist. On the penal jurisdiction of the House arising from this, May in his "*Parliamentary Practice*" [23rd edn. pp. 91-92] would observe as follows:-

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> "The Lords derived an independent power to punish from their original membership of the *Curia Regis*. Immemorial constitutional antiquity was not similarly available to the Commons, and indeed its possession of penal jurisdiction was challenged on this ground as late as the nineteenth century, and has been defended by arguments which confused legislative with judicial jurisdiction. The difficulties the Commons experienced in proving its case to be a Court of Record (see p. 161)—an issue never determined at law — were connected with these problems. Yet whatever the legal or constitutional niceties, in practice the House on many occasions in the sixteenth and seventeenth centuries exercised its power to impose fines (see p. 161) and imprison offenders. These offenders might include Members of the House itself or non-members, the latter comprising sheriffs, magistrates and even judges of the superior courts."

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84. Almost to ensure that there be not any doubts entertained in this behalf in any quarter, while asserting its right to commit offenders on the

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same terms as the House of Lords, it was said in the House of Commons in 1593 as under:-

> "This court for its dignity and highness hath privilege, as all other courts have. And, as it is above all other courts, so it hath privilege above all other courts; and as it hath privilege and jurisdiction too, so hath it also Coercion and Compulsion; otherwise the jurisdiction is nothing in a court, if it hath no Coercion."

85. The House of Lords would eventually concede this power in favour of House of Commons at the conference between the two Houses as noticed in the case of *Ashby* v. *White,* [L.J. (1701-05), 714]. This has ever since been consistently recognized even by the courts of law in England. The origin of this power of commitment for contempt, judicial in its nature, is thus traceable to the conception of Parliament as primarily a court of justice – the "High Court of Parliament".

86. In matters concerning import of powers and privileges of the House of Commons unto the legislature in India, while examining the issue, albeit from the limited concern of the availability to State legislature under Article 194(3) of the power of commitment for contempt, this court in the *UP Assembly* Case (supra) had administered a note of caution that must hold good even for purposes at hand. At page 591 of the judgment, it was observed thus:-

> *"121.* In this connection, it is essential to bear in mind the fact that the status, of a superior Court of Record which was accorded to the House of Commons, is based on historical facts to which we have already referred. *It is a fact of English history that the Parliament was discharging judicial functions in its early career. It is a fact of both historical and constitutional history in England that the House of Lords still continues to be the highest Court of law in the country. It is a fact of constitutional history even today that both the Houses possess powers of impeachment and attainder.* It is obvious, we think, that these historical facts cannot be introduced in India by any legal fiction. Appropriate legislative provisions do occasionally introduce legal fictions, but there is a limit to the power of law to introduce such fictions. Law can introduce fictions as to legal rights and obligations and as to the retrospective operation of provisions made in that behalf, *but legal*

A *fiction can hardly introduce historical facts from one country to another."*

(Emphasis supplied)

87. In the *UP Assembly* (supra) Case, it was settled by this court that a broad claim that all the powers enjoyed by the House of Commons at the B commencement of the Constitution of India vest in an Indian legislature cannot be accepted in its entirety because there are some powers which cannot obviously be so claimed. In this context, the following observations appearing at page 448 of the judgment should suffice:-

C "....Take the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "to have at all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded D by the Commons as fundamental privilege" [*Sir Erskine May's Parliamentary Practice* (16th ed.) p.86]. It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and impeachments cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed E in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt [ibid, p. 175]. This privilege again, admittedly, cannot be claimed by the House. F Therefore, it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."

88. The historical background of parliamentary privileges in India is to be understood with reference to history of England and the Constitutional G history of the Constitution of India.

Indian Constitutional History

The East India Company Act, 1784 formed the basis of the Indian H Constitution till 1858. It created Commissioners for the affairs of India to

be appointed at home by the King. This was followed by the Charter Act, 1833 that provided for a legislative authority. In this dispensation, the meetings of the Governor-General's Council for law-making were distinguished from the meetings of the Council for discharging other, *i.e.*, executive functions. Macaulay, as Law Member of the Governor General Council, against the backdrop of the insistence by the Executive Councilor of the Governor General's Council that all the drafts of laws should be fully considered by the Executive Council before they were laid before the Legislative Council for final passage, in his speech of 13th June, 1835, described the deliberative chamber as the "supreme Legislative Council", and said "when the Parliament gave us the power of legislating it gave us also, by necessary implication, all the powers without which it is impossible to legislate well", referring in this context particularly to power "to correspond directly with the subordinate Governments"; "directly call for information from any public functionary"; and "require the attendance of the military or financial secretary". An expansion of the Legislative Council of India was provided by the Charter Act of 1853, followed by certain further additions by the Acts of 1854 and 1861.

90. The period 1915-1950 indeed marks a definite advance in the history of the development of parliamentary privilege in India. By the Government of India Act, 1915, the entire position of Parliamentary privilege that obtained before that time was consolidated. The Government of India Act, 1915, provided in Section 63 that the Indian Legislature shall consist of the Governor-General and "two chambers, namely, the Council of State and the Legislative Assembly".

91. Section 67 of the Act related to the business and proceedings of the Indian Legislature. Sub-Section (1) enabled provision to be made by rules, *inter alia*, "for regulating the course of business and the preservation of order in the chambers of the Indian legislature"; "as to the persons to preside at the meetings of the Legislative Assembly in the absence of the president and the deputy president"; for "quorum"; and "for prohibiting or regulating the asking of questions on, and the discussion of any subject specified in the rules". Sub-Section (6) allowed "Standing orders" to be made providing for the conduct of business and the procedure, to be followed in either chamber of the Indian Legislature in so-far-as these matters are not provided for by rules made under this Act. Sub-Section (7) declared "Subject to the rules and standing orders affecting the chamber" that there shall be "freedom of speech in both

A chambers of the Indian legislature"; and that no person shall "be liable to any proceedings in any court by reason of his speech or vote in either chamber, or by reason of anything contained in any official report of the proceedings of either chamber".

B 92. The Government of India Act, 1919 brought about material changes in the Government of India Act, 1915. The legislature now ceased to be part of the Executive and stood on its own. It was no longer an expanded Governor-General's Council with additional members. The Governor General and the Executive Councilor ceased to be *ex-officio* members of the Legislative Council. The bicameral Indian Legislature would consist of both nominated C and elected members.

93. Section 65 of the Government of India Act, 1915, as amended in 1919, provided for the powers of the Indian Legislature, subject to the specific prohibition that it shall not have the powers, *inter alia*, to make laws D "unless expressly so authorized by Act of Parliament (of United Kingdom)", amongst others, "affecting the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any persons to the Crown of the United Kingdom, or affecting the sovereignty or domination of the Crown over any part of British India". The powers of E legislation of the local legislatures were defined more or less similarly in Section 80 A.

94. 'Parliamentary Privilege in India' by Prititosh Roy (1991), in Chapter-4, titled 'Historical Background of Parliamentary Privilege in India (1915-F 1950)' mentions, at page 53, about the Report dated 3rd December, 1924 of the Reforms Inquiry Committee under the chairmanship of Sir Alexander Muddiman (the Home Member), which included as members Sir Tej Bahadur Sapru and Mr. Jinnah, which had examined the issue of powers of the Indian Legislature and gave vent to the hope and aspiration of bringing legislatures in India "at par with the House of Commons" and that "eventually no doubt G similar provision will be made in the Constitution of British India". On the basis of the Report, the Indian Legislature passed the Legislative Members Exemption Act, 1925 (Act XXIII of 1925) which granted two new parliamentary privileges; *viz.* the privilege of exemption of the legislator from jury service and the privilege of freedom from arrest. These new privileges would be H reflected in the Code of Criminal procedure 1898 by incorporation in Section

323 and insertion of Section 135A respectively. A

95. Prititosh Roy mentions in "Parliamentary Privilege in India" [p-55], the Legislative Assembly created under the Government of India Act, 1919 witnessed a number of instances wherein the privileges of a legislative body were asserted. These include the adjournment motion moved on 21st January, 1927 by Pt. Motilal Nehru to discuss the conduct of the Government B in detaining Shri Satyendra Chandra Mitra, an elected member of the House, on the ground it tantamounts to a breach of the Privileges of the House and the adjournment motion in the Legislative Assembly moved by Shri Gaya Prasad Singh on 4th September, 1928 against the Editor of the Times of India having made an attack on the President of the House, though disallowed but C with the President having held that it is the inherent right of any assembly to defend itself against outside attacks and it is perfectly open in a proper cause for the House to table a substantive motion and pass a vote of censure or condemnation on the attacker.

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96. Prititosh Roy also mentions at Page 56 an interesting episode involving the Indian Press Act, 1931 that was enacted on 13th February, 1932. In its context, a question arose before the Legislative Assembly under the Government of India Act, 1919 regarding breach of the privileges upon a notice of motion having appeared in the Press given by a member. Acknowledging that there was a convention in the House of Commons E against release by a member to the Press for publication questions for resolutions before they are admitted by the chair and that breach thereof was treated as a serious breach of the privilege of the House of Commons which had ample powers to deal with the member in question, the President of Indian Legislative Assembly noted that "unfortunately neither this House F nor the Spokesmen have such powers" and commended that "this well established convention, which is observed in the House of Commons should also be observed as one of the conventions of this House".

97. Prititosh Roy refers at Pages 58-59 to Debates of Indian Legislative Assembly [22nd January, 1935, p. 81 ff], which quote yet another incident G that needs to be taken note of. Shri N.C. Bardaloi had raised an issue about the conduct of the Government in preventing Mr. Sarat Chandra Bose, an elected Member of the House, from attending to his duties as Member and thereby seriously infringing the privileges of the House. Sir N.N. Sircar, the then Law Member of the Government of India replied stating that the House H

had no power to punish for its breach of privilege.

98. The Government of India Act, 1935 came into force on 1st April, 1937 and was operative till 14th August, 1947. Sections 28 and 71 of the Government of India Act, 1935 dealt with the subject of Privileges etc. of members of Federal Legislature and Provincial Legislatures respectively.

99. The provision in Sub-Section (1) of Section 71 extended the freedom of speech and immunity to speech or vote even in the Committees of the Legislature and also covering publication under the authority of a Chamber of the Legislature of the House. Sub-Section (1) of Section 71, *inter alia*, declared that "Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature there shall be freedom of speech in every Provincial Legislature" and that every member shall be entitled to immunity from "any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof".

100. Sub-Section (2) of Section 71 of the Government of India Act, 1935, for the first time, empowered the Provincial Legislature to pass an Act to define the other privileges of the members and, pending such legislation, the pre-existing privileges were confirmed. Some of the Provincial Legislatures did legislate or attempt to legislate on this subject. Sub-Section (2) of Section 71 was on lines similar to present Article 194 (3). It read as follows:-

> "71.(2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province."

101. Sub-Section (3) of Section 71 watered down the powers and privileges of Indian Legislatures under the Government of India Act, 1935. It ran as follows:-

> "71.(3) Nothing in any existing Indian Law, and, notwithstanding anything in the foregoing provisions of this Section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a chamber thereof or on both Chambers

> sitting together or any Committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner."

102. Clearly, the intendment was to restrict the powers and privileges of Indian Legislatures to remedial action for unobstructed functioning, severely restricting, or rather forbidding, the exercise of punitive powers by a House of Legislature.

103. Similar provisions, *mutatis mutandis*, were made for the Central Legislature, called the Federal Legislature, under Section 28 which, however, never came into force since Part II of the Act of 1935 concerning the Federation of India never became operative. Sub-Section (1) of Section 28 of the Government of India Act, 1935, *inter alia*, declared that there shall be "freedom of speech" in the Federal Legislature "Subject to the provisions of this Act and to the rules and standing orders regulating the procedure", and that "no member of the legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any Committee thereof".

104. Sub-Section (2) of Section 28 of the Government of India Act, 1935, for the first time, empowered the Federal Legislature to pass an Act to define the other privileges of the members and again, pending such legislation, the pre-existing privileges were confirmed. Its language has a resonance of what is employed in present Article 105 (3). It stated as follows:-

> "28. (2). In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by the Act of the Federal Legislature, and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian legislature."

10. Sub-Section (3) of Section 28 was designed to restrict the powers and privileges of Indian Federal Legislature to remedial action for unobstructed functioning. While preventing the legislature from exercising the *powers of* the Court for any punitive or disciplinary powers, it allowed the limited jurisdiction to remove or exclude the person infringing the rules or standing

A orders or otherwise behaving in a disorderly manner. It read thus:-

> "28. (3). Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this act, shall be construed as conferring, or empowering the Federal legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of the Court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner."

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C 106. It is also necessary to take note of *sub-Section (4)* of section 28 of Government of India Act, 1935 since it made the intention clear that for punitive action in certain matters the Legislature would have to go before a court. It provided as follows:-

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> "28. (4). Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of the Committee to do so.

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> Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure as may be made by the Governor General exercising his individual judgment."

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107. Prititosh Roy at Page 71 mentions that the above mentioned provisions were found by the Legislatures to be ineffective and inadequate for upholding the dignity and prestige of the legislature in India and for safeguarding the right and privileges of Members and officers thereof. This became subject matter of grievance conveyed in a Memorandum by the G President of the Indian Legislative Assembly to the Reforms Commissioner of the Government of India on 29th January, 1938, raising a demand that the Central as well as Provincial Legislature in India should have among other privileges also "the power to proceed in contempt like the High Court and inflict punishment on any person who violates the privileges of the House H and of the members thereof, or tries to bring the House or the President or

the Speaker into contempt" and for a request to be made to the Government of India to take immediate steps to get Sections 28 and 71 of the Government of India Act, 1935 amended so as to secure for the Central and Provincial Legislatures and the officers and members thereof "all the powers and privileges which are held and enjoyed by the Speaker and members of the British House of Commons".

108. The Indian Independence Act, 1947, which brought freedom from alien rule, made India a full fledged Dominion of the Commonwealth of Nations. The Act conferred, through Section 6(2), sovereign legislative power on the Indian dominion abrogating the Imperial Doctrine of Repugnancy in the following terms:-

> "No law and no provision of any law made by the Legislature of either of the new Dominions (India and Pakistan) shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of this or any existing or future Act of Parliament of the United Kingdom, or to any order, rule or regulation made under any such Act."

109. The Governor General of India issued an Adaptation Order by which, amongst others, the provisions of Section 28 of the Government of India Act, 1935, excepting the sub-Sections (3) and (4), were brought into force for the first time for purposes of dominion legislature,. As a result, aside from the "freedom of speech in the legislature", the law provided that "in other respects the privileges of the members of the domain legislature" shall be such as may from time to time be defined by dominion legislature and, until so defined, should be such as were immediately before the establishment of the dominion enjoyed by the members of the Indian legislature. The omission of sub-Section (3) and sub-Section (4) of Section 28 indicated that the restrictions on the exercise of punitive and disciplinary powers by the legislature were being removed.

110. As a result of the omission of sub-Sections (3) & (4) of Section 28 by the Order, the Central Legislature became entitled to pass any Act on the subject of privileges under sub-Section (2) without any restriction and assume punitive and disciplinary powers similar to those invested in the House of Commons in England. But then, the Central Legislature did not pass any law on privileges in exercise of the enabling powers under Section

28 (2) of the Government of India Act, 1935, as adapted after Independence.

111. Dr. Ambedker, the Chairman of the Drafting Committee of the Constitution, while mooting for the Parliamentary System similar to the one obtaining in England noted, in the course of debates in the Constituent Assembly, that in the latter jurisdiction, the Parliamentary System relies on the daily assessment of responsibility of the executive by Members of Parliament, through questions, resolutions, no-confidence motions and debates and periodic assessment done by the electorate at the time of election; unlike the one in the United States of America a system far more effective than the periodic assessment and far more necessary in a country like India. India thus adopted parliamentary Constitutional traditions.

112. The concept of parliamentary privileges in India in its modern form is indeed one of graft, imported from England. The House of Commons having been accepted by the Constituent Assembly as the model of the legislature, the privileges of that House were transplanted into the Draft Constitution through Articles 105 and 194.

113. Article 85 of the Draft Constitution, which corresponds to present Article 105, contained the following provision with respect to parliamentary privileges:-

> "85. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
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> (2) 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 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 respect, the privileges and immunities of member of the Houses shall be such as may from time to time be defined by Parliament by law, and until so defined, of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(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 take part in the proceedings of, a House of Parliament as they apply in relation to Members of Parliament."

114. The reference to the House of Commons of the Parliament of the United Kingdom provoked comment and intense debate. As is seen from the Constituent Assembly Debates (Volume 8 of 19.5.1949 page 143-149), Shri H.V. Kamath suggested that draft Article 85 should truly rely upon our own precedents, our own traditions and no importation must be attempted. While commending reference to be made instead to privileges "as were enjoyed by the members of the Dominion Legislature of India immediately before commencement" of the Constitution, he spoke thus:-

"Sir, my knowledge of the various Constitutions is not as vast or as profound as that of Dr. Ambedkar, but relying on my meagre knowledge of these constitutions, I venture to state that this is the first instance of its kind where reference is made in the Constitution of a free country to certain provisions obtaining in the constitution of another State. I see no valid reason why this should be done. It may be that the rights and privileges which we are going to confer upon the Members of Parliament of free India will be identical with, or more or less similar to, those enjoyed by the Members of the House of Commons in the United Kingdom. But may I ask, Sir, in all humility "Is it necessary or is it desirable, when we are drafting our own Constitution that we should lay down explicitly in an Article that the provisions as regards this matter will be like those of the House of Commons in England?"

It may be argued in support of this proposition that there is nothing derogatory to the dignity of our Constitution or of our State in making reference to the United Kingdom. It may be further reinforced by the argument that now we have declared India as a full member of the Commonwealth, certainly there should be no objection, or any sort of compunction in referring to the House of Commons in England. But may I suggest for the serious consideration of the House as to whether it adds – it may not be derogatory, or detract from the dignity of the Constitution – but does it add to the dignity of the Constitution? We say that such and such thing should be what it is in the United Kingdom or in

A America. Will it not be far better, far happier for us to rely upon our own precedents, or our own traditions here in India than to import something from elsewhere and incorporate it by reference in the Constitution? Is it not sufficient to say that the rights and privileges and immunities of Members shall be such as have been enjoyed by the Members of the Constituent Assembly or Dominion B Legislature just before the commencement of this Constitution? Personally, I think, Sir, this would be far better. I venture to hope that my honourable friends in this House will be inclined to the same view that instead of quoting or citing the example of the United Kingdom it would be far better for us to rely upon the C tradition we have built up here. Surely, nobody will dispute the fact that the privileges and immunities enjoyed by us here today are in no way inferior to, or worse than, those enjoyed by Members of the House of Commons in the United Kingdom.

D As a matter of fact, I think most of us do not know what are the privileges of the Members of the House of Commons. We know very well what our privileges at present are. Therefore, Sir, it is far better to build on our own solid ground, rather than rely on the practices obtaining in other countries. ....."

E 115. Similar views were expressed in the course of the debate, amongst others, by Shri Jaspat Roy Kapoor, Prof. K.T. Shah, Prof. Shibban Lal Saxena, Mr. Naziruddin Ahmad, Dr. P.S. Deshmukh. Prof. K.T. Shah had also proposed insertion of clause (5) in draft Article 85 in the following form:-

F "In all matters of the privileges of the House of Parliament or of members thereof the House concerned shall be the sole Judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof".

G 116. Sir Alladi Krishnaswamy Iyer, while replying to the criticism, stated thus:-

"Sir, in regard to the Article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State H with which the average citizen or the Members of Parliament here

may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by Members of Parliament in England. *If the privileges are confined to the existing privileges of legislatures in India as at present constituted, the result will be that a person cannot be punished for contempt of the House.* The actual question arose in Calcutta as to whether a person can be punished for contempt of the Provincial Legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and in the Colonies and it has been held that by reason of the wide wording in the Australia Commonwealth Act as well as in the Canadian Act, the Parliament in both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found it very difficult to formulate all the privileges, unless they went in detail into the whole working of parliamentary institutions in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak, subject to correction, because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely no question of *infra dig.* We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating

A privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom
B at the commencement of this Constitution." That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India.
C *Only as a temporary measure, the privileges of the House of Commons are made applicable to this House.* Far from it being *infra dig*, it subordinates the reference to privileges obtained by the Members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore,
D there is no *infra dig* in the wording of clause (3). *This practice has been followed in Australia, in Canada and in other Dominions with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect.* Therefore, we need not fight shy of borrowing to this extent, when we are
E borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be a badge of slavery, a badge of serfdom, if we say that the privileges shall be the same as those enjoyed by the members of the House of Commons. It is far from that. *Today the Parliament of the United Kingdom is exercising sway over Great*
F *Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament.* Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British
G Parliament. *Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain."*

(Emphasis supplied)

H

117. Dr. Ambedkar when invited by the President to speak, expressed satisfaction with the reply already given by Mr. Alladi by saying "Mr. Alladi and others have already given the reply, and I will be saying mostly the same thing, probably in a different way". A

118. The amendment moved by Prof. Shah was negatived by the Constituent Assembly on 19th May, 1948. After adoption of a minor amendment, for including the Committees of the Houses of Parliament, Draft Article 85 (present Article 105) was adopted and added to the Constitution. B

119. Article 169 of the Draft Constitution, which corresponds to present Article 194, contained similar provision with respect to privileges of the State Legislatures and came up for discussion before the Constituent Assembly on 3rd June, 1949. The speeches made on the occasion are available at pages 578-584 of the Constituent Assembly Debates (Volume 8). C

Shri H.V. Kamath took exception in the following words:- D

> "Mr. President, I shall, by your leave, say a few words with respect to clause (3) of this Article. I do not propose to repeat what I said on an earlier occasion when we were discussing the corresponding clause relating to the privileges of members of the Central Parliament. But I should like to invite the attention of Dr. Ambedkar and also of the House to the reaction among the people as well as in the Press to the clause that we adopted on that occasion. I have no doubt in my own mind that Dr. Ambedkar keeps his eyes and ears open, and cares to read some of the important papers daily or at least has them read to him daily. Soon after this clause relating to the privileges of Members of Parliament was adopted in this House, most of the Press was critical of the way in which we had dealt with the matter. ..... Britain, as the House is aware, has an unwritten Constitution though this particular measure may be written down in some document. ..... Many of the Members here who spoke on that occasion remarked that they did not know what the privileges of the Members of the House of Commons were, ... They could have at least drafted a schedule and incorporated it at the end of the Constitution to show what the privileges of the members of the House of Commons were. That was not done, and simply a clause was inserted that the privileges E F G H

A obtaining there will obtain here as well. Nobody knows what those are, and *a fortiori* nobody knows what privileges we will have. Our Parliament presided over by Mr. Mavalankar has adopted certain rules of business and procedure tentatively, and has also appointed or is shortly going to appoint a Committee of Privileges. I wonder why we could not have very usefully and wisely adopted in our B Constitution something to this effect, that whatever privileges we enjoy as Members of the Central Parliament will be enjoyed by Members of the Legislature in the States. If at all there was a need for reference to any other Constitution. I think it was very unwise on the part of the Drafting Committee to refer to an unwritten C Constitution, *viz.*, the Constitution of Great Britain. There is the written Constitution of the U.S.A., and some of us are proud of the fact that we have borrowed very much from the American Constitution. May I ask Dr. Ambedkar whether the privileges of the Members of the House of Commons in the United Kingdom are in D any way superior to or better than the privileges of the Members of the House of Representatives of the United States? If they are, I should like to have enlightenment on that point. If they are not, I think the reference to an unwritten Constitution is not at all desirable. .....If necessary let us put in a schedule to our Constitution, and say here in this Article that the privileges and E rights are as specified in the Schedule at the end.... I would any day prefer a definite schedule in the Constitution showing what privileges shall be enjoyed by Members of the Legislatures and of Parliament. This particular clause, to my mind, should be recast. We have passed one clause on an earlier occasion, but that is no F reason why we should perpetrate the same mistake over and over again. I would, therefore, beg of Dr. Ambedkar and his wise team of the Drafting Committee and the House to revise this clause, and if necessary, to go back to the other clause, if they are convinced of the wisdom of this course, and revise that also accordingly, and proceed in a saner and a wiser manner."

G

120. Dr. B.R. Ambedkar, Chairman of the Drafting Committee, trying to allay doubts, answered the criticism in the following manner:-

"Sir, not very long ago this very matter was debated in this House, H when we were discussing the privileges of Parliament and I thought

that as the House had accepted the Article dealing with the privileges and immunities of Parliament no further debate would follow when we were really reproducing the very same provision with regard to the State Legislature. But as the debate has been raised and as my friend Mr. Kamath said that even the press is agitated, I think it is desirable that I should state what exactly is the reason for the course adopted by the Drafting Committee, especially as when the debate took place last time I did not intervene in order to make the position clear.

I do not know how many Members really have a conception of what is meant by privilege. Now the privilege which we think of fall into two different classes. There are first of all, the privileges belonging to individual members, such as for instance freedom of speech, immunity from arrest while discharging their duty. But that is not the whole thing covered by privilege.

XXXXXXXXXXXXXXX

..... It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating these privileges and immunities.

But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the Parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have

A to follow three courses. One is to adopt them in the Constitution, namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone B over the index to May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and the immunities of Parliament. So that if you were to enact a complete code of the privilege and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than C twenty or twenty five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty five pages. That I think is one reason why we did not adopt that course.

D

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we E could have adopted. We would have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable *Members will know, the 1935 Act conferred no privileges and no immunities on* F *Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possesses no privilege* G *and no immunity. Therefore we could not resort to that course.*

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except for H the sentimental objection to the reference to the House of Commons

> I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it."
>
> (Emphasis supplied)

121. Dr. Ambedkar thus reiterated the justification given by Mr. Alladi earlier, adding that the cataloguing of all powers and privileges would have added to the volume of the Constitution and that the course of adopting the powers and privileges of the existing legislature under Government of India Act, 1935 was inadvisable as that body had hardly any rights available. The draft Article 169 (corresponding to present Article 194) was adopted after the above mentioned explanation and made part of the Constitution.

122. The Constitution thus adopted through Articles 105 and 194, for the Parliament and the State Legislatures respectively, the same powers, privileges and immunities as vested at the commencement of the Constitution in the House of Commons of the Parliament of United Kingdom, until they were "defined by law". From this perspective, the learned Additional Solicitor General is not wrong when he says that the establishment of privileges in India at par with those existing in the House of Commons was not reflective of a colonial legacy but, it was an assertion of the truly sovereign nature of the Indian Parliament.

123. The above discussion shows that the reference to the privileges of the House of Commons was justified on grounds of self-assertion that free India and its Parliament are as great as the Parliament of Great Britain. The replies above quoted also show that the drafting committee was more concerned about giving to the Parliament the widest privileges as exercised by members of Parliament in England, including the power to punish for contempt of the House. Full fledged provisions listing out the powers and privileges was not possible as there was not sufficient time or the leisure to formulate all of them in a compendious form, as had been found by a Committee constituted by the Speaker on the legislative side. That is why a wide scope and unfettered discretion was being left for the future

A Parliament of India to set up the proper machinery for formulating privileges, which could be enlarged or curtailed. The adoption of the powers and privileges of the House of Commons was only as a temporary measure, following the practice that had been followed in Australia, in Canada and in other Dominions with advantage to secure complete freedom of speech
B and also the omnipotence of the legislature in every respect.

124. We would like to dispose of here itself a small argument put across by learned Counsel for the Petitioners. The argument is that the fact that the provisions of Article 105 were amended by the Constitution (44th Amendment) Act, 1978, thereby deleting the reference to the House of Commons with
C effect from 20th June, 1979, the subject of powers and privileges are to be construed and pegged to that date and further that since the House of Commons had not exercised the power of expulsion after 1947, such power, even if it existed in the House of Commons in 1947 has become obsolete and non-existing. While arguing that such power has not been inherited by the
D Indian Parliament, counsel would also refer to certain recent developments in United Kingdom, in particular Parliamentary Privilege-First Report, published on 30.03.1999, in the wake of which a recommendation has been made that "the Parliament's power to imprison person whether member or not, who are in contempt of Parliament should be abolished" and further that, "the power
E of the House of Lords to suspend its members should be clarified and confirmed".

125. We are not impressed with any of these arguments. The amendment brought into force in 1979 does not turn the clock ahead. The powers and privileges of the House of Commons of the Parliament of the United
F Kingdom as on the date of commencement of the Constitution of India were the powers and privileges available to the Parliament before the amendment and that is the package which continues to be available post-amendment. Use of a particular power in 1947 would rather make it closer in terms of time to the crucial date of commencement of Indian Constitution. Its disuse in
G later period is of no consequence. In this view, we are also not concerned with subsequent developments.

126. We are, thus, back at the issue of powers and privileges of the House of Commons of the Parliament of the United Kingdom as on the date
H of commencement of the Constitution of India.

Powers, Privileges and Immunities - generally A

127. As already noticed, Articles 105 and 194 employ almost identical language. Article 194 was at the core of the controversy in the *UP Assembly* (supra) Case.

128. Dealing with the provisions contained in Clause (1) of Article 194, B this Court observed thus:-

> "..... Clause (1) makes it clear that the freedom of speech in the legislature of every State which it prescribes, is subject to the provisions of the Constitution, and to the rules and standing orders, regulating the procedure of the legislature. While interpreting C this clause, it is necessary to emphasise that the provisions of the Constitution to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the legislature. The rules and standing orders may regulate the D procedure of the legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. The adjectival clause "regulating the procedure of the legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing E orders". Therefore, *clause (1) confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part.* It would thus appear that by making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately F and, in a sense, independently of Article 19(1)(a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Article 19(1)(a), it would have been unnecessary to confer the same right specifically in the manner adopted by Article 194(1); and so, it would be legitimate to G conclude that *Article 19(1)(a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Article 194."*
>
> (Emphasis supplied)

129. Taking note of *Pandit Sharma (I)*, it was reiterated in the *UP* H

A *Assembly* (supra) Case that clause (1) of Article 194 no doubt makes a substantive provision of the said clause subject to the provisions of the Constitution; but in the context, those provisions cannot take in Article 19(1)(a), because latter article does not purport to regulate the procedure of the legislature and it is only such provisions of the Constitution which regulate the procedure of the legislature which are included in the first part of
B Article 194(1)

130. On the provisions of clause (2) of Article 194, this is what the Court found:-

C "It is plain that the *Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2).* Thus, clause (1) confers *freedom*
D *of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered."*

(Emphasis supplied)

E 131. In the context of the all important clause (3) of Article 194, the Court observed thus:-

".....The Constitution-makers must have thought that the legislatures will take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was
F clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by clause (3), are *incidental powers, privileges and immunities which every legislature must possess in order that it may be able to function effectively*, and that
G explains the purpose of the latter part of clause (3)."

(Emphasis supplied)

132. The above quoted observations squarely apply to the corresponding clauses of Article 105 of the Constitution.

H 133. In the context of the noticeable omission in other clauses,

including clause (3), of the expression "Subject to the provisions of this Constitution" as used in clause (1) of Article 194, this Court felt:

> ".....all the four clauses of Article 194 are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is couched in such wide terms that in exercising the rights conferred on them by clause (1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by Part III, they would not be liable for any action in any court. Nevertheless, *if for other valid considerations, it appears that the contents of clause (3) may not exclude the applicability of certain relevant provisions of the Constitution, it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution*". In dealing with the effect of the provisions contained in clause (3) of Article 194, *wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction"*
>
> (Emphasis supplied)

134. The argument that though Article 194(3) had not been made subject to the provisions of the Constitution, it does not necessarily mean that it is not so subject, and that the several clauses of Article 194 should not be treated as distinct and separate provisions but should be read as a whole and that, so read, all the clauses should be taken as subject to the provisions of the Constitution which, of course, would include part III of the Constitution had been earlier rejected by this Court through unanimous view on the subject in *Pandit Sharma (I)*.

135. It is incumbent in view of Article 105 (3) to trace the power of expulsion with reference to the powers, privileges and immunities recognized as vesting in the House of Commons of Parliament of United Kingdom as on the date of commencement of the Constitution of India, that is 26th January 1950. If such a power or privilege vested in the said legislature, the question would arise as to whether it could be part of the inheritance for Indian legislatures in the face of the provisions of its written Constitution.

136. It is settled that out of entire bouquet of privileges and powers which the House of Commons claimed at the time of its bitter struggle for recognition during the 17th through 19th centuries, all have not survived the test of time. Some were given up. Some others faded out by desuetude. In this context, this Court in *UP Assembly* Case opined thus:-

> ".....in every case *where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time.* It must also appear that the *said power was not only claimed by the House of Commons, but was recognised by the English Courts.* It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is: *is the power in question shown or proved to have subsisted in the House of Commons at the relevant time?"*
>
> (Emphasis supplied)

137. The argument of availability of all the powers and privileges has been rejected in *UP Assembly* Case with reference to illustrations of some powers claimed by the House of Commons as mentioned in *May's Parliamentary Practice* (pages 86 & 175 in 16th Ed.), but which cannot be claimed by the Indian legislatures, including the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "to have at all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded by the Commons as fundamental privilege"; the privilege to pass acts of attainder and impeachments; and the privilege in regard to its own Constitution which is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt.

Plea of negation by other Constitutional provisions

138. Before we consider the question whether the power of expulsion

can be read within Article 105(3) or not, it is necessary first to decide the question : will reading such a power under Article 105(3) violate any other provisions of the constitution. In other words, whether power of expulsion would be inconsistent with other provisions of the Constitution of India.

139. According to the Petitioners the power of expulsion is inconsistent with the following provisions of the Constitution:-

(i) The provisions relating to vacancy and disqualifications [Articles 101 - 103];

(ii) The provisions relating to salaries and allowances of members and their right to hold office till the end of the term [Article 106 and Article 82(3)];

(iii) Citizen's right to vote and right of representation of their constituency in Parliament ; and

(iv) The fundamental rights of the MPs.

(i) Provisions relating to vacancy and disqualification:

140. The Petitioners have relied on Articles 101, 102 and 103 of the Constitution in support of their contention. The submission is that these Articles (relating to vacancy and disqualification) are exhaustive regarding the termination of membership of the Parliament and that no additional ground can exist based on which the membership of a sitting Member of Parliament can be terminated. Articles 101, 102 and 103 appear under the sub-heading "Disqualifications of Members" in Chapter II of Part V of the Constitution.

141. Learned counsel for the Petitioners submit that since the Parliament can create an additional disqualification by law, it was open to it to pass a law seeking to disqualify from continuing the membership of such members as are guilty of conduct unworthy of a member. Such a law not having been passed, the petitioners submit, the termination of membership cannot take place through a resolution of the House purporting to act under Article 105(3). Articles 190 and 191 which pertain to the vacation of seats and

A disqualifications for membership of State legislatures, correspond to, and are on identical terms as, Articles 101 and 102.

142. It is necessary to understand the exact import of the terms 'vacancy', 'disqualification' and 'expulsion'.

B

143. These terms have different meanings and they do not overlap. Disqualification strikes at the very root of the candidate's qualification and renders him or her unable to occupy a member's seat. Expulsion, on the other hand, deals with a person who is otherwise qualified, but in the opinion of the House of the legislature, unworthy of membership. While C disqualification operates to prevent a candidate from re-election, expulsion occurs after the election of the member and there is no bar on re-election. As far as the term 'vacancy' is concerned, it is a consequence of the fact that a member cannot continue to hold membership. The reason may be any one of the several possible reasons which prevent the member from D continuing membership, for example disqualification, death or expulsion.

144. In view of above, it is not possible to accept the submission that the termination of membership can be effected only in the manner laid down in Articles 101 and 102. While these articles do speak of qualifications for and continuation of membership, in our view they operate independently of E Article 105(3). Article 105(3) is also a constitutional provision and it demands equal weight as any other provision, and neither being 'subject to the provisions of the constitution', it is impossible to accord to one superiority over the other. We cannot accept the submission that the provisions in Articles 101 or 102 restrict in any way the scope of 194(3). There is no reason F for them to do so. Though disqualification and expulsion both result in the vacancy of a seat, there is no necessity to read one in a way that restricts the scope of the other. The expulsion on being found unfit for functioning within the House in no way affects the qualifications that a member must fulfill, and there is no reason for the latter to affect expulsion. Both of the provisions can operate quite harmoniously. We fail to see any inconsistency G between the two. Nor do we find any reason to support the claim that provisions under Articles 101 and 102 are exhaustive and for that reason, Article 105(3) be read as not to include the power of expulsion. Further, death as a cause for vacancy of a seat is also not mentioned in the relevant provisions. Similarly, it is not necessary for expulsion to be mentioned, if H there exists another constitutional provision that provides for such a power.

It is obvious that upon expulsion, the seat of the member is rendered vacant and so no specific recognition of this provision is necessary within the provision relating to vacancy. Thus, the power of expulsion cannot be held to be inconsistent with these provisions.

145. While interpreting Article 194, three High Courts have rightly rejected similar contentions {*Yashwant Rao Meghawale* v. *Madhya Pradesh Legislative Assembly,* AIR (1967) MP 95, *Hardwari Lal,* ILR (1977) 2 P&H 269 (FB)], *K. Anbazhagan* v. *TN Legislative Assembly,* AIR (1988) Mad. 275. An almost identical question was raised in an Australian case of *Armstrong* v. *Budd,* [1969] 71 SR 386 (NSW). The question in that case was whether Section 19 of the Constitution Act which provided for circumstances of vacation of seats of Legislative Councillors was exhaustive so as to prevent the power of expulsion. The Court rejecting the argument that section 19 was exhaustive stated:-

> ".....but cannot be argued that s. 19 constitutes a complete code for the vacation of a seat or contains the only criteria upon which a vacancy can occur...."

146. Thus, we are unable to accept the Petitioners' contention that Articles 101 and 102 are exhaustive with respect to termination of membership. Therefore, power of expulsion cannot be said to be inconsistent with these provisions.

147. In connection with this issue, the Petitioners have also relied on two other provisions. First, they would submit that sections 7-10A of the Representation of Peoples Act, 1951 lay down exhaustive provisions on disqualification, implying that all disqualifications must be made by law. Indeed, there is no quarrel with this position. In fact, it has been held by this Court in *Shrikant* v. *Vasantrao,* [2006] 2 SCC 682 that "it is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or perceived legislative intention". However, as discussed earlier, disqualification and expulsion are two different concepts altogether, and recognizing the Parliament's power to expel under Article 105(3) does by no means amount to adding a new ground for disqualification.

148. The other provision that the Petitioners have relied upon is Article

A 327 of the Constitution. This article enables the Parliament, subject to the other provisions of the Constitution, to make provisions by law for "all other matters necessary for securing the due constitution of the House". They would also refer to Entry 74 of List I of the Seventh Schedule which confers upon the Parliament the competence to legislate on the power, privileges and
B immunities of the Houses of Parliament. The argument is that the Parliament can only claim additional powers by making a law. However, we are unable to accept this contention, since Article 105(3) itself provides the power to make a law defining powers and privileges and further the position that all the privileges of the House of Commons vest in the Parliament until such a law is passed. Article 327 pertains to the constitution of the House insofar
C as election matters, etc. are concerned. It does not refer to privileges that the Parliament enjoys.

149 Thus, we find that the power of expulsion is not negated by any of the above constitutional or statutory provisions.

D *(ii) Provisions relating to salary etc. and the right to a fixed term:*

150. It was further argued by the Petitioners, that provisions in the constitution relating to salary and the term for which they serve in the House are constitutional rights of the members and the power of expulsion,
E by terminating their membership violates these constitutional rights.

151. The relevant provisions in the constitution are Article 106 on the subject of salaries and Article 83(2) in relation to the duration of the Houses of Parliament.

F 152. The Petitioners have relied on these above constitutional provisions and submitted that an expulsion of a Member of Parliament would result in the violation of the above rights guaranteed to him. The claim of the other side is that the decision to expel does not violate these rights. Firstly, it has been argued that the article laying down the duration of the House does not
G guarantee a term for the member. Various circumstances have been pointed out under which the term held by a member can be much less than five years, regardless of what is stated in Article 83(2). Secondly, it has been argued that Article 106, which lays down provisions for the salary of the member, is dependent upon the person's membership. It is only as long as the person continues to be a member that he can draw the salary. When the membership
H terminates, the provisions of Article 106 become inapplicable.

153. Similar arguments were made in the case of *K. Anandan Nambiar* v. *Chief Secretary, State of Madras,* AIR (1966) SC 657. In that case, certain members of Parliament were detained by the Government of Madras and one of the grounds on which they challenged their detention was the violation of their constitutional rights. In support of this contention, the Petitioners relied on various provisions relating to members and proceedings of the Parliament including Articles 79, 85, 86 and 100. They claimed that they continued to exercise all the 'constitutional rights' that flow from membership unless the member is disqualified. The contention was that "if a Member of Parliament incurs a disqualification, he may cease to be such member, but if he continues to be qualified to be a member, his constitutional rights cannot be taken away by any law or order". This Court rejected this argument holding that:-

> ".....they are *not constitutional rights in the strict sense,* and *quite clearly, they are not fundamental rights at all*".
>
> (Emphasis supplied)

154. Although this case involved detention and the arrest of the members of Parliament, which are matters relating to field distinct from that of the rights claimed in the cases at hand, we are of the view that the logic in the case applies equally to the present situation. In this case certain provisions regarding members and their functioning within the Parliament were held not to create independent rights which could be given supremacy over a legal detention. Similarly, in the present case, where there is a lawful expulsion, the members cannot claim that the provisions relating to salaries and duration of the House create such rights for the members that would have supremacy over the power of expulsion of the House.

155. With specific reference to the power of expulsion, a similar argument with respect to the duration of the Legislative Assembly of a State was rejected by the Madras High Court in the *K. Anbazhagan* (supra). The High Court rightly held that such a provision could not negate the power of expulsion. It stated:

> "Therefore, it cannot be said that merely because Article 172 provides for a period of five years to be the duration of the Legislative Assembly each member must necessarily *continue to be* a member for five years irrespective of the other provisions of the Constitution".

156. As far as the provision for the duration of the House is concerned, it simply states that the normal duration of a House is to be five years. It cannot be interpreted to mean that it guarantees to the members a term of five years. The Respondents have correctly pointed out that a member does not enjoy the full five-year term under various circumstances; for example, when he or she is elected mid-term, when the term of the House is cut short by dissolution, when the member stands disqualified or the seat is rendered vacant. We find that a correct view in this regard has been taken in *K. Anbazhagan,* in line with the view expressed by this Court in *K. Anandan Nambiar*. If the provisions mentioned by the petitioners were actually to create rights in respect of members, then each of the above situations would be liable to be challenged for their violation. This quite obviously is not what is intended by the Constitution. Expulsion is only an additional cause for the shortening of a term of a member.

157. Further, as far as the provision relating to the salary of the member is concerned, it is quite absurd to claim that because the Constitution makes a provision for salaries, the power of the House to expel is negated since the result would be that the member would no longer be paid. Salaries are obviously dependent upon membership, and the continuation of membership is an independent matter altogether. The termination of membership can occur for a variety of reasons and this is at no point controlled by the fact that salaries are required to be paid to a member.

158. Thus, in our view, the above provisions do not negate the power of expulsion of the House, and there is no inconsistency between the House's power of expulsion and the said provisions.

(iii) The right of the constituency to be represented and the right to vote:

159. The next contention of behalf of the Petitioners has been that in the democratic set-up adopted by India, every citizen has a right to vote and to be duly represented. It was argued that expelling a member who has been elected by the people would violate the democratic principles and the constituency would go unrepresented in the Parliament. They submit that the right to vote ought to be treated as a fundamental right and that the power of expulsion violates various democratic principles. On the other hand, the learned Counsel for Union of India submitted that the right to be represented is not an absolute right, and that expulsion does not create a bar for re-election.

160. We are unable to accept the contentions of the petitioners. In this regard, it is first important to note that the right to vote has been held to be only a statutory right, and not a constitutional or a fundamental right (see *Shrikant* v. *Vasantrao,* [2006] 2 SCC 682 and *Kuldip Nayar* v. *Union of India,* [2006] 7 SCC 1.

161. While it is true that the right to vote and be represented is integral to our democratic process, it must be remembered that it is not an absolute right. There are certain limitations to the right to vote and be represented. For example, a citizen cannot claim the right to vote and be represented by a person who is disqualified by law or the right to be represented by a candidate he votes for, even if he fails to win the election. Similarly, expulsion is another such provision. Expulsion is related to the conduct of the member that lowers the dignity of the House, which may not have been necessarily known at the time of election. It is not a capricious exercise of the House, but an action to protect its dignity before the people of the country. This is also an integral aspect of our democratic set-up. In our view, the power of expulsion is not contrary to a democratic process. It is rather part of the guarantee of a democratic process. Further, expulsion is not a decision by a single person. It is a decision taken by the representatives of the rest of the country. Finally, the power of expulsion does not bar a member from standing for re-election or the constituency from electing that member once again.

162. Thus, we hold that the power of expulsion does not violate the right of the constituency or any other democratic principles.

(iv) Fundamental rights of the member:

163. Lastly, it has been contended by the Petitioners that the power of expulsion violates the fundamental rights of the member. It was argued that the power of expulsion violates Article 19(1)(g), which guarantees the right to 'practise any profession, or to carry on any occupation trade of business'. It was submitted that this right can only be curtailed by a law in the interest of general public and that producing the same result by a resolution of the House is impliedly barred. It was also contended that Article 21, which includes the right to livelihood was violated, since it can only be restricted by a 'procedure established by law'.

A 164. We are not impressed with any of these contentions of the petitioners. Even if it were to be assumed these rights apply, we do not believe that they could prevent reading the power of expulsion within Article 105(3).

B 165. First, it is to be remembered that 105(3) is itself a constitutional provision and it is necessary that we must construe the provisions in such a way that a conflict with other provisions is avoided. We are of the view that where there is a specific constitutional provision as may have the effect of curtailing these fundamental rights if found applicable, there is no need for a law to be passed in terms of Article 19(6). For example, Article 102 C relating to disqualifications provides that members who are of unsound mind or who are undischarged insolvents as declared by competent courts are disqualified. These grounds are not mentioned in the Representation of Peoples Act, 1951. Though this provision would have the effect of curtailing the rights under Article 19(1)(g), we doubt that it can ever be contended that D a specific law made in public interest is required. Similarly, if Article 105(3) provides for the power of expulsion (though not so expressly mentioned), it cannot be said that a specific law in public interest is required. Simply because the Parliament is given the power to make law on this subject is no reason to say that a law has to be mandatorily passed, when the Constitution itself provides that all the powers of the House of Commons vest until such E a law is made. Thus, we find that Article 19(1)(g) cannot prevent the reading of power of expulsion under Article 105(3).

166. Finally, as far as Article 21 is concerned, it was submitted that the 'procedure established by law' includes the rules relating to the Privileges F Committee, etc., which were not followed and thus the right was violated. In our view, this does not prevent the reading of the power to expel in Article 105(3). It is not possible to say that because a 'procedure established by law' is required, it will prevent the power of expulsion altogether and that every act of expulsion will be contrary to the procedure established by law. Whether such a claim is maintainable upon specific facts of each case is G something that will have to be considered when the question of judicial review is taken up. At this stage, however, a blanket ban on the power of expulsion based on Article 21 cannot be read in the Constitutional provisions. This is an issue that may have a bearing on the legality of the order. But, it cannot negate the power of expulsion.

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167. In the light of the above discussion, we hold that the power of expulsion does not come into conflict with any of the constitutional provisions and thus cannot be negated on this basis.

168. Let us now consider the argument in relation to the power of self composition of House of Commons.

Power of self composition

169. The history of England is replete with numerous instances wherein the power of expulsion was exercised by the House of Commons. It has been strenuously argued by Mr. Jethmalani and Mr. Lekhi that all the powers and privileges of the House of Commons have not been inherited by the legislative organ under the Constitution of India and power of expulsion is one such power. To consider this contention, it is necessary to find out the true nature and character of the power of expulsion claimed by the House of Commons.

170. It is true that certain privileges of the House of Commons are not available to any legislative body in India, whether at the Union level or in the States, even under clauses (3) of Articles 105 or 194 of the Constitution.

171. The case of the petitioners is that the House of Commons derives the power to expel its members solely from its privilege of regulating its composition, and from no other source. In other words, they submit that the power of expulsion has always been claimed and exercised by the House of Commons as one that stems from the power of the House of Commons to determine its own composition including the fitness of elected members to remain members. Power of expulsion is a facet of and is part & parcel of this basic privilege of the House of Commons to provide for and regulate its own Constitution. The House of Commons has always claimed an unrestricted and un-canalized power of expelling anyone of its members for historical reasons and as an adjunct of the ancient and peculiar privilege of determining its own composition. It has resorted to this power of expulsion in numerous cases which have not the remotest relevance to either a breach of privilege or to the commission of contempt or as a measure of punishment for ordinary crimes.

172. The argument is that since the Parliament of India does not have the power to provide for or regulate its own constitution, power of expulsion

A cannot be found conferred by Article 105 on the Houses of Parliament. In this respect, the petitioners would place reliance on the conclusion, reached, with reference to May's Parliamentary Practice [16th ed., p.175], in the *UP Assembly* Case (at page 448) to the effect that the legislature in India cannot claim privilege of the House of Commons "in regard to its own Constitution" which is "expressed in three ways, first by the order of new writs to fill B vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt".

173. That the legislatures established under the Constitution of India C do not have the power of self composition cannot be a subject matter of controversy. It was clearly so observed in *UP Assembly* Case.

174. The Legislative organs in India, both Parliament and the State legislatures, are completely subservient to, and controlled by, the written D provisions of the Constitution of India in regard to the composition and the regulation of the membership thereof and cannot claim the privilege of providing for or regulating their own constitution. This can be demonstrated by even a cursory look at the various provisions of the Constitution which we may presently do.

E 175. India is an indestructible Union of destructible units. Article 3 and Article 4 of the Constitution together empower Parliament to make laws to form a new State by separation of the territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State, and in so doing to increase or diminish the area of any State F and to alter its boundaries and further to give effect through measures to provide for the representation in the Legislatures of State or States affected by such law by varying the composition, the numerical strength thereof or even affecting the very existence of a State Legislature.

176. Article 79 provides for the Constitution of Parliament *i.e.* the G Union Legislature which consists of the President and two Houses known respectively as the Council of States and the House of the People. Article 81 deals with the composition of the House of the People and *inter alia* provides for the maximum numerical strength (not more than five hundred and thirty members from the States and not more than twenty members to H represent the Union Territories), the manner of election (direct) and the

nature of constituencies in the States (territorial), allotment thereof to the different States on the basis of ratio between the number of seats and the population of the State, with Article 82 taking care of the readjustment of allocation of seats and the division of each State into territorial constituencies after each census. Article 83 provides for the duration of each House of Parliament, making the council of States a permanent body with one-third of the members thereof retiring on the expiration of every second year, thereby giving to each of them tenure of six years. It declares the term of the House of the People to be five years, unless sooner dissolved, extendable for a period not exceeding one year at a time in the event of proclamation of emergency.

177. Article 84 prescribes the qualifications for membership of Parliament, spelling out two main qualifications, leaving the discretion to prescribe the others by law to the Parliament. The qualifications necessary as per the constitutional provisions include the citizenship of India and a minimum age.

178. Article 102 prescribes certain disqualifications which operate as disqualifications at the time of Election or may become supervening qualifications subsequent to the election. As per the mandate in this constitutional provision a person is disqualified for being chosen as or for being a member of Parliament if he holds an office of profit (other than such offices as are declared by Parliament to be exempt from such consequences); if he is of unsound mind and so declared by a competent court; if he is an undischarged insolvent; if he is not a citizen of India or has voluntarily acquired citizenship of a foreign state or is under any acknowledgement of allegiance or adherence to a foreign state and if he is so disqualified by or under any law made by parliament. The question of disqualification is decided on the basis of opinion of the Election Commission by the President, in terms of the power vested in him by Article 103. Article 102(2) also refers to disqualification as a result of enforcement of the provisions of the Tenth Schedule on account of defection.

179. Article 101 makes provision on the subject of vacation of seats in the Houses of Parliament. A person cannot be a member of both Houses at the same time and if chosen as a member of both Houses he is required to vacate his seat in one or the other House. Similarly a person cannot be a member both of the Parliament and of a House of the Legislature of a State. If so elected to both the said bodies, he is required to resign one seat and

A in case of default at the expiration of period specified in the Rules made by the President, the seat in Parliament is rendered vacant. Article 101(4) empowers the House to declare the seat of a member vacant if such member remains absent from all meetings of the House for a period of sixty days without permission of the House. Article 101(3) declares that on a member being found disqualified under Article 102, his seat in the Parliament B becomes vacant. In addition to these various modes of vacation of seats, resignation of the seat by writing under the hand of the member results in the seat becoming vacant upon acceptance of the resignation.

180. Article 99 requires every Member of Parliament to make and C subscribe the oath or affirmation prescribed in the Third Schedule, before taking the seat. Article104 prescribes a penalty for sitting and voting in the Parliament before making oath or affirmation or when not qualified or in the event of being rendered disqualified.

D 181. Article 330 and Article 331 make special provision for reservation of seats in the House of the People for the Scheduled Castes & Scheduled Tribes and the Anglo Indian community.

182. Article 85 vests in the President the power to summon each House of Parliament for periodical sessions, the period between two sittings E whereof cannot exceed six months. The said Article also vests in the President the authority to prorogue either House or dissolve the House of the People.

183. The above mentioned are some of the provisions of the Constitution F that collectively show that the privilege of regulating own composition is not available to the Parliament.

184. Part XV of the Constitution of India makes detailed provisions on the subject of Elections to the Parliament and State Legislatures. Article 326 makes adult suffrage as the norm for these elections. The mandate of Article G 324 is that it is the Election Commission that controls the superintendence, direction and control of elections. There is no power in any legislature to fill its own vacancies or to issue writs for the holding of by-elections etc.

185. Articles 168 and 169 provide for the constitution of the State H Legislatures, with Parliament being vested with power to substantially alter

the very composition of the State Legislatures by providing procedure following which bicameral Legislature of a State may be altered to a unicameral one, or vice versa. Article 170 and Article 171 deal with the composition of the Legislative Assemblies and the Legislative Councils respectively in the States. The maximum and the minimum number of members are prescribed by law and the ratio between the population of each constituency within the State with the number of seats allotted to it being also regulated by constitutional provisions, even the matter of re-adjustment of the territorial constituencies being controlled by such authority (Delimitation Commission) and in such manner as Parliament is to determine by law. The normal tenure of five years for a State Legislative Assembly is prescribed by Article 172. The duration of the State Assembly and the mode and manner of its dissolution are matters controlled by constitutional prescriptions. Articles 173 and 191 prescribe the qualifications and disqualifications for the membership of the State Legislature; Article 174 creates a constitutional obligation on the State Legislatures to meet at least once within a space of six months, the power to summon the State legislature having been given not to the House(s) but to the Governor.

186. Articles 327 and 328 empower the Parliament and the State Legislatures, in that order, to make laws in connection with the preparation of the electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of the State Legislatures. Article 333 to 334 provide for the reservation of seats for the Scheduled Castes and other communities in the State Legislatures again dealing with the subject of composition and the character of the membership thereof.

187. Article 329 does bar the jurisdiction of courts but only in matters of delimitation of constituencies or allotment of seats thereto and reserves the jurisdiction to deal with election disputes in favour of the authority prescribed by law, which incidentally is High Court as per the Representation of People Act, 1951.

188. It must, therefore, be held as beyond the pale of all doubts that neither Parliament nor State Legislatures in India can assert power to provide for or regulate their own constitution in the manner claimed by the House of Commons in United Kingdom. Having regard to the elaborate provision made elsewhere in the Constitution, this power cannot be claimed even, or least of all, through the channel of Articles 105 (3) or 294 (3).

A 189. The question that immediately arises is as to whether the power of expulsion is referable exclusively, or solely, to the power of the House of Commons to determine its own composition including the fitness of elected members to remain members.

B 190. The Union of India has argued that there is no authority for the proposition that the House of Commons derived its power to expel a member only from its privilege to provide for its own Constitution or composition. It is the stand taken by the learned Counsel that at the highest it may be stated that the expulsion of a member by the House of Commons can also be a manifestation of its power to control its own composition in addition C to the privilege to control its own proceedings including disciplining a member in a fit case by his expulsion.

191. On the other hand, seeking support from commentaries on Constitutional law of England, the petitioners point out that the subject of D expulsion is dealt with by all authorities as inextricably linked with the determination of the legal qualifications or disqualifications for the membership of the House of Commons, that is the peculiar right to judge upon the fitness or unfitness of anyone of its members to continue as a legislator. This power, they submit, is essentially derived from the privilege to provide for its own constitution and from no other source.

E

192. The petitioners submit that a holistic reading of the works of English and Commonwealth authors reveals that all of them treat expulsion solely as an expression of the 'Privilege of Regulating Due Composition of the House', and not as part of privilege of regulating own proceedings or F as an independent penal power for punishing contempt. In fact, they submit, the right of the House of Commons to regulate its own proceedings was nothing more than a right of exclusive cognizance of matters concerning the House to the exclusion of the Courts' jurisdiction. It was merely a jurisdictional bar, and had nothing to do with the source of power that could be legitimately exercised in Parliament. The argument is that if the power to G expel does not reside in the House of Commons independent of the power to constitute itself, it would naturally not be available to the Indian Legislatures.

193. Mr. Andhyarujina and Mr. Subramanian, however, submitted that H the privilege of the House of Commons "to provide for its own proper

constitution" has a meaning with regard to its privileges in the matter of elections to it, as explained by May in three ways as noticed by this Court in *UP Assembly* Case as mentioned above and which include "determining the qualifications of its members in cases of doubt". Referring to May's 20th ed. Chapter 2 on elections p. 34 and Chapter 3 on Qualifications p. 520, it is argued that this privilege is essentially related to electoral matters including disqualifications to be elected. The "qualifications" referred to are the qualifications of a member elected but whom the House considers as not qualified to stand for elections and sit in Parliament *e.g.* insolvents, minor, lunatics, aliens, those charged with treason, peers etc. The House has a right to determine the qualifications "in case of doubt" which clearly shows that this statement does not mean unfitness to be a member by conduct.

194. The debate on the subject took the learned counsel to the interpretation and exposition of law of Parliament as is found in the *maxim lex et Consuetudo Parliamenti* as the very existence of a parliamentary privilege is a substantive issue of parliamentary law and not a question of mere procedure and practice.

195. The petitioners seek to draw strength from the observations of this Court in *UP Assembly* Case referring to the privilege of the House of Commons in regard to its own constitution "expressed in three ways" that cannot be claimed by the Indian Legislature. In this context, however, questions have been raised as to whether the privilege in regard to its own constitution is expressed by the Commons only in the three ways mentioned above or the three ways enumerated are merely illustrative of the various other ways in which the House of Commons might have expressed, claimed or enjoyed the said privilege. Reference has been made to a distinct fourth way of expression mentioned by Anson (in "Law and Custom of the Constitution") with counter argument that the said fourth way is a mere extension of the three ways and is really a part thereof and not independent of the same.

196. Anson in 'The Law and Custom of the Constitution' [Fifth edition (1922), Volume I, Chapter IV] deals with the privileges of the House of Commons, dividing them broadly into two classes; namely (i) privileges which are specifically asserted and demanded of the Crown at the commencement of every Parliament and (ii) the undoubted privileges of the House of Commons regarding which no formal demand or request is made

A by the Speaker to the Crown and which nevertheless are regularly asserted and enforced by the House. The instances of the first category include the privileges of free speech, of access to the Crown and of having the most favourable construction put upon all their proceedings. The instances of the second category include the fundamental privilege claimed by the House of Commons to provide for and regulate its own Constitution.

B

197. At page 154, Anson makes the following observations:-

> "But there are other privileges not specifically mentioned on this occasion though regularly asserted and enforced by the House. These are the right to provide for the due constitution of its own body, the right to regulate its own proceedings, and the right to enforce its privilege by fine or imprisonment or in the case of its own Members by expulsion."

C

D 198. While dealing with the privilege of the House of Commons to provide for and regulate its own Constitution, Anson sub-divides the mode and manner of its exercise into four parts, the first three of which correspond to what is expounded by May (20th Edition). He deals in great detail (5th ed., p. 182) with expulsion on account of unfitness to serve as the fourth sub-heading under the main heading of 'Right to provide for its proper E Constitution' stating as under:-

> *"Unfitness to serve, a cause of expulsion,* Case may arise in which a member of the House, without having incurred any disqualification recognised by law, has so conducted himself as to be an unfit member of a legislative assembly. *For instance,* misdemeanour is not a disqualification by law though it may be a disqualification in fact, and the House of Commons is then compelled to rid itself of such a member by the process of expulsion. But expulsion, although it vacates the seat of the expelled member, does not create a disqualification; and if the constituency does not agree with the House as to the unfitness of the member expelled, they can re-elect him. If the House and the constituency differ irreconcilably as to the fitness of the person expelled, expulsion and re-election might alternate throughout the continuance of a Parliament."

F

G

H (Emphasis supplied)

199. Under the same sub-heading Anson also deals in detail with the cases of expulsion of *John Wilkes* (1769) and *Walpole* (1712). The case of *Wilkes* is cited to bring out the fact that expulsion did not have the effect of creating a disqualification. In spite of repeated expulsions by the House of Commons, which even proceeded to declare his election void thereby seeking to arbitrarily create a new disability depending on its own opinion of his unfitness to be a member of this body, Wilkes was elected to serve in the new Parliament and "took his seat without question".

200. From the passage extracted above, the petitioner wants to infer that when expulsion is resorted to by the House of Commons to rid itself of a member who may be fully qualified but is found to be unfit to continue as a member of the House, it is so done in exercise of the privilege of the Commons to constitute itself. The petitioner has stressed that such action can only be taken on a member having been convicted for misdemeanor.

201. But then, one cannot lose sight of the words "for instance" that precede the particular illustration of exercise of power of expulsion by the House of Commons in Anson. Clearly, what Anson seeks to convey is only that it is within the power of the House of Commons to get rid of such member as is considered to be unfit to continue to be its member on any ground other than of conviction for misdemeanor.

202. It is the argument of the Petitioners that Anson treats expulsion exclusively as a facet of the privilege of the House of determining its own composition, and under no other head. Anson explains (5th ed., p. 188) the nature and character of this power, under the heading 'Power of inflicting punishment for breach of Privilege' in the following words:-

> "But expulsion is a matter which concerns the House itself and its composition, and amounts to no more than an expression of opinion that the person expelled, is unfit to be a member of the House of Commons. The imposition of a fine would be an idle process unless backed by the power of commitment. It is, then the right of commitment which becomes, in the words of 'Sir E. May, 'the keystone of Parliamentary privilege'. It remains to consider how it is exercised and by what right."

203. What Anson seems to indicate here is that expulsion is a sanction

A that goes beyond mere imposition of fine backed by the power of commitment in case of default and also that expulsion undoubtedly affects the composition of the House. He does not state that expulsion only concerns the composition of the House. He is talking of possible sanctions for gross misdemeanour against members and not the qualifications requisite to become a member. Further, Anson mentions the details of the privilege of the right to constitute B itself (5th ed., p. 177). He states, under a separate heading "Right to provide for its proper Constitution", as follows:-

> "One of these privileges is the right to provide for the proper constitution of the body of which it consists by issue of writs when C vacancies occur during the existence of a parliament, by enforcing disqualification for sitting in parliament, and until 1868 by determining disputed elections."

204. Noticeably, in this context, Anson would not mention expulsion D as one of the facets of the power of the House of Commons to constitute itself.

205. At the same time, one cannot lose sight of the fact that the power of inflicting punishment for breach of privilege has been separately dealt with even by Anson (5th ed., p. 177 onwards). The punishments which are E awarded to members or non-members are dealt with by Anson under separate headings such as "admonition", "reprimand", "commitment", "fine", and "expulsion". The discussion under the last mentioned item in Anson starts with the following passage (5th ed., p. 187): -

> F "In the case of its own members the House has a stronger mode of expressing its displeasure. It can by resolution expel a member."

206. The resolution of expulsion as an expression of displeasure takes it beyond the realm of power of self constitution. These paragraphs unmistakably show that expulsion is not considered by Anson as exclusively G arising from the privilege of the House to provide for its own Constitution.

207. Halsbury in his "Laws of England" deals with the subject of the "Privileges peculiar to the House of Commons". The Petitioners argue that the power of expulsion is dealt with directly as a facet of the privilege of H determining due composition of the House by Halsbury as well. This

conclusion, they submit, is fortified by the fact that Halsbury deals with 'Penal Jurisdiction of the House' distinctly in paragraphs 909-913. While express reference is made to reprimand, admonition, committal etc, expulsion is conspicuous by its absence. Arguing that the privilege of the House of Commons to provide for its own Constitution is "in addition" to possessing complete control over its proceedings including punishing its own members, reliance is placed, on the other hand, by Mr. Andhyarujina, learned counsel for Union of India on the following observations in Halsbury's Law of England (Fourth Edition, Vol. 34, Para 1019):-

> *"1019. Privilege of the House of Commons in relation to its constitution.* In addition to possessing a complete control over the regulation of its own proceedings and the conduct of its members, the House of Commons claims the exclusive right of providing, as it may deem fit, for its own proper constitution."

208. The petitioners, in reply, submit that no such significance can be attached to the words "In addition". They argue that the paragraph, when viewed in the context of the other paragraphs under Chapter 2 namely 'Privileges etc claimed', it becomes clear that the opening words 'In addition to' make no addition to the Respondent's case. Paragraph 1007 deals with the right of the House of Commons to regulate its own proceedings as 'Exclusive cognizance of proceedings'. *Bradlaugh* also relied upon by the Union of India as part of this argument is cited in this part. The scope of this privilege is explained in the words, "This claim involves the exclusion of review by any court or other external body of the application of the procedure and practice of either House to the business before it".

209. The petitioners submit that the right of the House to regulate its own proceedings, of which expulsion is being claimed an incident, is nothing more than a jurisdictional bar, and not a positive source of any power. It is in this context that Para 1019 opens with the words, "in addition to possessing complete control over the regulation of its proceedings and the conduct of its members". It refers only to the exclusive jurisdiction exercised by the House of Commons to the exclusion of the Courts. These words, according to the petitioners, in no manner locate a new source of expulsion power in the privilege of regulating its internal affairs. It is the argument of the petitioners that Expulsion is explicitly dealt with in paragraph 1026, which describes expulsion as being a facet exclusively of the privilege of determining due composition of the House.

A 210. Para 1019 of Halsbury's Law of England quoted above corresponds to Para 905 in its third edition of Volume 28 (Part 7, Section 2), also under the heading "Privileges peculiar to the House of Commons". As is seen in that edition, after making particular reference to the claim of the House of Commons to the exclusive right of providing as it deems fit "for its own proper constitution", Halsbury would mention the "Power of expulsion" in B the succeeding Para, as is noticeable in the following extract:-

> *"906. Power of expulsion.* Although the House of Commons has delegated its right to be the judge in controverted elections, it retains its right to decide upon the qualifications of any of its C members to sit and vote in Parliament.
>
> If in the opinion of the House, therefore, a member has conducted himself in a manner which renders him unfit to serve as a member of Parliament, he may be expelled from the House, but, unless the D cause of his expulsion by the House constitutes in itself a disqualification to sit and vote in the House of Commons, it is open to his Constituency to re-elect him.
>
> The expulsion of a member from the House of Commons is effected by means of a resolution, submitted to the House by means of a E motion upon which the question is proposed from the chair in the usual way."

211. The petitioners seek to argue that Halsbury, in a later part in its third edition of Volume 28 (Part 7, section 3), dealing with the "Penal F Jurisdiction of the two Houses" in matters of "Breaches of Privileges and Contempts", made express mention of the sanctions that included reprimand, admonition and the power to commit to imprisonment for contempt but omitted reference to power of expulsion. The submission made is that this omission renders doubtful the plea that expulsion from the House of Commons is also within its penal jurisdiction and is imposed as a measure G of punishment for contempt.

212. But then, it is pertinent to mention here that Para 906 of the third edition has been omitted in the fourth edition. The subject of "Privilege of the House of Commons in relation to its constitution" is followed by H narration in separate Para (1020) on the subject of "Power to fill vacant seat

while the House of Commons is sitting" and then by another Para (1021) on the subject of "Power to fill vacant seat during prorogation or adjournment" which appeared in earlier edition as Para numbers 907 & 908 respectively.

213. The subject of the power of expulsion claimed by the House of Commons stands shifted in the Fourth edition to a later sub-part (3) under the heading "Jurisdiction of Parliament" mainly dealing with the Penal jurisdiction, and after narrating the position generally on the subject of "Proceedings against offenders" and then referring to the "Power to commit", "Period of imprisonment" and two other sanctions namely "Reprimand and admonition", deals specifically with the subject of power of expulsion of the House of Commons in Para 1026, which reads as under:-

> *"1026. House of Commons' Power of expulsion.* Although the House of Commons has delegated its right to be the judge in controverted elections (see para 1019 note 2 ante), it retains its right to decide upon the qualifications of any of its members to sit and vote in Parliament.
>
> If in the opinion of the House a member has conducted himself in a manner which renders him unfit to serve as a member of Parliament, he may be expelled, but, unless the cause of his expulsion by the House constitutes in itself a disqualification to sit and vote in the House, he remains capable of re-election."

214. Noticeably, the contents of Para 1026 of the Fourth Edition are virtually the same as were reflected in Para 906 of the Third Edition, the last sub-Para of the latter (relating to the means adopted for effecting expulsion) being one major omission. What is significant, however, is the shifting of the entire subject from close proximity to the privilege of the House of Commons in relation to its Constitution, (as was the position in earlier edition) to the mention of power of expulsion now amongst the various sanctions claimed by the said legislature as part of its penal jurisdiction. The footnotes of Para 1026 borrow from the elaboration made through footnotes relatable to erstwhile Para 906 and clarify that the jurisdiction formerly exercised by the House of Commons in controverted elections has been transferred since 1868 to the Courts of law and further that, as mentioned in May's Parliamentary Practice, members have been expelled from the House of Commons upon various grounds, such as being rebels,

A or having been guilty of forgery, perjury, frauds and breaches of trusts, misappropriation of public money, corruption in the administration of justice or in public offices or in the execution of their duties as members of the House, or of contempts and other offences against the House itself.

B 215. Undoubtedly, the words "In addition" with which Para 1019 opens do relate to the House of Commons possessing "a complete control over the regulation of its own proceedings" but that is not the end of the matter. The words are significant also in the context of the second limb of the opening clause of the said Para, that is to say the words "and the conduct of its members". We are therefore, unable to accept the contention of the C petitioners that Halsbury narrates the power of expulsion as a power originating from the power of the House of Commons to regulate its own proceedings only. Rather, the new arrangement in the Fourth edition shows that Halsbury treats the power of expulsion more as a power arising out of the penal jurisdiction than from the power of self composition.

D 216. The "Constitutional History of England" by Professor F.W. Maitland (first edition 1908 - reprinted 1941), based on his lectures, is divided chronologically. In the last and most contemporary 'Period V' titled "Sketch of Public Law at the Present Day (1887-8)", he deals with the House of Commons in Part III. It has been opined by him that the earlier exercise E of privileges from the 14th to the 18th century may have fallen into utter desuetude and indeed may furnish only an example of an arbitrary and sometimes oppressive exercise of uncanalised power by the House. After mentioning the membership and the qualification of the voters as also principles and the mode of election and dealing with the power of determining F disputed elections by the House of Commons, one of the facets of the privilege of the House of Commons to provide for and regulate its own Constitution, in the context of the vacation of seats in the House by incurring disqualifications, he refers in sub-Para (6) to the power of expulsion. His words may be extracted:-

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> "The House has an undoubted power of expelling a member, and the law does not attempt to define the cases in which it may be used. If the House voted the expulsion of A.B. on the ground that he was ugly, no court could give A.B. any relief. The House's own discretion is the only limit to this power. Probably it would not be H exercised now-a-days, unless the member was charged with crime

or with some very gross miss-behaviour falling short of crime, and in general the House would wait until he had been tried and convicted by a court of law. In 1856 a member who had been indicted for fraud and who had fled from the accusation was expelled."

217. Though Maitland also discusses expulsion along with the other constituent elements of the House's Privilege of determining its own composition, we are unable to accept the argument of the Petitioners that this exposition by Professor Maitland shows that the power of expulsion was claimed by the House of Commons it being only a part and parcel of its basic privilege to control its own composition. During the course of lectures, which is the format used here, Maitland referred to expulsion alongside the privilege of the House of Commons to control its own composition. But his narration reflects it was the penal jurisdiction which was being highlighted in the context of sanction of expulsion of members for misconduct.

218. Reference has also been made to the "Constitutional Law" (Seventh edition) by Professors Wade and Phillips. On the subject of the privileges of the House of Commons (Chapter 10), while elaborating the undoubted privilege to control its own proceedings and to provide for its own proper Constitution, reference is made to the power of the House to determine the disputed elections also indicating it to be inclusive of the power of expulsion. The authors write as under:-

> *"Expulsion:–* The House of Commons still retains the right to pronounce upon legal qualifications for membership, and to declare a seat vacant on such ground. The House may, however, as in the case of *Mitchel* [(1875), I.R. 9C.L. 217] refer such a question to the Courts. The House of Commons cannot, of course, create disqualifications unrecognised by law, but it may expel any member who conducts himself in a manner unfit for membership. A constituency may re-elect a member so expelled, and there might, as in the case of John Wilkes, take place a series of expulsions and re-elections. Expulsion is the only method open to the House of dealing with a member convicted of a misdemeanour."

219. It has been argued by the petitioners that Professors Wade and

A Phillips plainly treat expulsion as inextricably linked with privilege of determining own composition or as an inevitable consequence, where the House takes the view that a member has conducted himself in such a manner as to be unworthy of membership of the legislature, an act not explainable as expulsion by way of a measure of punishment for the offence of
B contempt.

220. We are unable to agree. Wade & Phillips have treated the subject of expulsion from different angles, not necessarily leading to the conclusion that this power would always be traceable to the power of self composition alone. Expulsion on account of conviction for misdeamonour refers to
C disciplinary control and therefore part of penal jurisdiction which undoubtedly is distinct from the power of the House to provide for its own constitution.

221. Professors Keir and Lawson in their work "Cases in Constitutional Law" (fifth edition), while dealing with cases of Parliamentary privileges
D (page 263) mention first the exclusive jurisdiction over all questions which rise within the walls of the House except perhaps in cases of felony, referring in this context to case of *Bradlaugh*, and then to the personal privileges (freedom of debate, immunity from civil arrest, etc.) which attach to the members of Parliament, and lastly the punitive power for contempt indicated in the following words at page 268:-
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> "(iii) The power of executing decisions in matters of privilege by committing members of Parliament, or any other individuals, to imprisonment for contempt of the House. This is exemplified in the case of the Sheriff of Middlesex."

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222. The petitioners seek to point out that expulsion of a member is not included in the penal powers of the House of Commons. To our mind, default in this regard by the author does not lead to the conclusion that expulsion was not one of the sanctions available against a member to the House as part of its disciplinary control in as much as other authorities on
G the subject demonstrate it to be so.

223. "Constitutional Law" by E.W. Ridges (Eighth edition, p.65), as part of the discourse on the rights exercisable by the House of Commons as flowing from its basic privilege of providing for its due composition sets out
H the classification as under:-

"The Right to provide for its Due Composition.

This comprises:

(a) The right of the Speaker to secure the issue of a new writ on a vacancy occurring during the existence of a Parliament either by operation of some disqualification or on the decision of a member elected in more than one place which seat he will accept. If in session, the writ is issued in accordance with the order of the House. If not in session, the procedure is regulated by certain statutes.;

(b) The right to determine questions as to the legal qualifications of its own members, as in *Smith O Brien's* case (1849), *O' Donovan Rossa's* case (1870), *Mitchel's* case (1875), Michael Davitt's case (1882) and *AA Lynch's* Case (1903), these persons being disqualified as undergoing sentence in consequence of conviction for felony or treason.

In *Mitchel's* Case the House declared the seat vacant, but on his being elected a second time they allowed the courts to determine the question, and it was held that the votes given to Mitchel were thrown away and his opponent at the election duly elected in consequence. In *Michael Davitt's* case the House resolved that the election was void, and a new writ was accordingly issued.

(c) The right to expel a member although subject to no legal disqualification. So, in 1621, Sir R. Floyd was expelled merely because he was a holder of the monopoly of engrossing wills. Thus a member guilty of misdemeanour does not forfeit his seat, but may be expelled, thus vacating his seat. Or the House may itself decide that a member's acts merit expulsion, as in the case of *Sir R. Steele's* pamphlet, *The Crisis,* in 1714, and of Wilkes' North Briton (No. 45) in 1763. In *Wilkes'* Case (1769), Wilkes having been expelled and re-elected, the House passed a resolution declaring his election void, and the member next on the poll duly returned. In 1782 the House declared this resolution void, as being subversive of the rights of the electors, and the proceedings in connection with the election were expunged from the journals. The proper

course in such a case would therefore be for the House to expel the member a second time, if so disposed. In Upper Canada Mr. Mackenzie was thus four House times expelled in the Parliament from 1832. In October, 1947, the House expelled Mr. Garry Allighan, the member for Gravesend, after a committee of privileges had declared him to be guilty of gross contempt of the House in publishing scandalous charges against other members, such charges being, to his knowledge, unfounded and untrue. At the same time the House also reprimanded Mr. Evenlyn Walkden, the member for Doncaster, on whose conduct a committee of privileges had reported adversely. The House declared him guilty of dishonourable conduct in having disclosed to a newspaper information that had come to him at a private and confidential party meeting. and

(d) Formerly the House claimed from the reign of Elizabeth and exercised the right to determine questions of disputed election,....."

224. It is clear from the above extract that E.W. Ridges, though referring to the power of expulsion under the heading "The Right to Provide for its Due Composition", does not restrict it as a power sourced from the right to provide for its own composition but refers at length to cases where the power of expulsion was used by the House of Commons in cases of criminal conduct, gross misdemeanour and even in matters of contempt. We are therefore unable to subscribe to the inference that the power of expulsion according to Ridges is traceable only to the privilege of self composition.

225. Indeed, as pointed out by the Editor Sir Barnett Cocks (also a former Clerk of the House of Commons) in the preface to the 18th Edition (1971) of May in Parliamentary Practice, this work would deal with the subject under various headings including 'Elections', 'Disqualification for Membership of Either House' etc. leading to overlapping. Be that as it may, while discussing the subject of disqualification for the membership of the House of Commons in Chapter III, it has been mentioned that a person convicted of a misdemeanour is not thereby disqualified for election or for sitting and voting, but when a member is so convicted, the House might decide to expel him, but such expulsion does not in itself create a disability or prevent a constituency from re-electing the expelled member. After having referred to this aspect of the expulsion, the editor would make a cross-

reference for further discussion on the subject at page 130 included in Chapter IX of the work which pertains to the penal jurisdiction of the House of Parliament and their powers to inflict punishment for contempt.

226. It has been argued by the learned Counsel for Union of India that the exposition of law by May shows that the power of expulsion was not sourced only from the power of the House of Commons to provide for its own composition but also out of its penal jurisdiction dealing with breaches of privileges and contempt. He would refer in this context to observations at page 127 that in cases of contempt committed in the House of Commons by its members, the penalties of suspension from the House and expulsion were also available and in some cases they had been inflicted cumulatively.

227. The exposition by May in Chapter 8 titled "Other privileges claimed for the Commons" (20th Edn.) under the heading "Privilege of the House of Commons with respect to its own constitution", according to the petitioners, treated expulsion as an example of the power of the House of Commons to regulate its own constitution, relatable to the matters of disqualification for membership. Though he would deal with the subject of expulsion at length with other punitive powers of the House, in as much as the results are equally grave and adverse to a sitting member, the petitioners argue that, May would categorically explain that expulsion is neither disciplinary nor punitive but purely a remedial measure intended to rid the house of persons who in its opinion are unfit for its membership.

228. The petitioners refer to the testimony given by Sir Barnett Cocks during inquiry before a Committee of the House of Commons. He had been specially called by the Committee of Privileges of the House of Commons in the case of Rt. Hon. Quintin Hogg, Lord President of the Council and Secretary of State for Education and Science and examined about the essence and the real nature of this parliamentary Privilege. The Report dated 16th June 1964 of the Committee indicates that when questioned by the Attorney General as to the nature of power exercised by the House of Commons treating the behaviour of Asgill as either a contempt of the House or a breach of privilege he agreed that the House of Commons having complete control over its own membership was merely exercising its said power. He referred to Erskine May wherein it is illustrated as one of the privileges of the House to control its own membership and to expel members who are unworthy of membership, to control its own composition.

229. When the Chairman Mr. Salwyn Llyod, referred to case of Garry Allignan's and asked for clarity as to whether there could be a situation of expulsion simply for disreputable conduct having nothing to do with privilege or contempt but because the House regarded one of its members as unfit to sit in it, Sir Barnett Cocks opined, "I think a Member can be expelled for conduct which need not be related to one of three or four existing Privileges", this in answer to query from Sir Harold Wilson wherein he had mentioned other Privileges, one being the power to determine its own membership.

230. The Petitioners have submitted that the above mentioned opinion rendered by Sir Barnett Cocks in House of Commons also demonstrates that he would also regard the power of expulsion essentially as another facet of the basic parliamentary privilege of the House of Commons to provide for its own constitution and determine its membership, which had been used by that legislature to expel members for undefined and unspecified reasons completely and wholly unrelated to any breach of its privilege or its contempt and thus not as a punitive measure of express punishment for contempt of the House.

231. May, in 20th Edition dealt with the "Penal Jurisdiction of the Houses of Parliament" in separate chapter (Chapter 9), and after dealing with the power to inflict punishment for contempt and referring to various sanctions including that of commitment, fine, reprimand & admonition, talked about the power of "Expulsion by the Commons" at page 139, where he would state thus:-

> "The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it among the methods of punishment at the disposal of the House."

232. In the 23rd Edition of May's Parliamentary practice, the discourse on the subject of "Privilege of the House of Commons with respect to its own constitution" has been shifted to Chapter 5 titled "The privilege of Parliament" and appears at page 90 onwards. As noticed earlier, the paragraph appearing in the 20th Edition wherein it was mentioned that the privilege to

provide for its proper constitution was expressed in three ways by the House of Commons has been omitted. It is significant that the power of expulsion is mentioned even in the 23rd Edition, elaborately in Chapter 9 that deals with "Penal Jurisdiction of both Houses", alongside the other such powers of punishment including committal, fines, reprimand and admonition. The observation that the purpose of expulsion is "not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership" is also missing.

233. We are unable to accept the contentions of the petitioners that the source of Power of Expulsion in England was the privilege of the House of Commons to regulate its own constitution or that the source of the power is single and indivisible and cannot be traced to some other source like independent or inherent penal power.

234. The right to enforce its privileges either by imposition of fine or by commitment to prison (both of which punishments can be awarded against the members of the House as well as outsiders) or by expulsion (possible in case of members only) is not a part of any other privilege but is by itself a separate and independent power or privilege. To enforce a privilege against a member by expelling him for breach of such privilege is not a way of expressing the power of the House of Commons to constitute itself.

235. Though expulsion can be, and may have been, resorted to by the House of Commons with a view to preserve or change its constitution, it would not exclude or impinge upon its independent privilege to punish a member for breach of privilege or for contempt by expelling him from the House. Expulsion concerns the House itself as the punishment of expulsion cannot be inflicted on a person who is not a member of the House. As a necessary and direct consequence, the composition of the House may be affected by the expulsion of a member. That would not, however, necessarily mean that the power of expulsion is exercised only with a view, or for the purpose of regulating the composition of the House. One of the three ways of exercising the privilege of the Commons to constitute itself as mentioned by May (in 20th Edition) can undoubtedly, in certain circumstances, be expressed by expelling a member of the House. But this does not mean that the existence and exercise of the privilege of expelling a member by way of punishment for misconduct or contempt of the House stands ruled out. The

A power of self composition of the House of Commons is materially distinct and meant for purposes other than those for which the House has the competence to resort to expulsion of its members for acts of high misdemeanour. The existence of the former power on which expulsion can be ordered by the House of Commons cannot by itself exclude or abrogate the independent power of the House to punish a member by expelling him, a punishment which cannot be inflicted on a non-member.

236. Expulsion being regarded as "justly as an example of the privilege of the House of Commons to regulate its own Constitution" by May does not mean that the power to expel is solely derived from the privilege to regulate its own Constitution or that without the privilege of providing for its own Constitution, the House could not expel a member. The latter view would be contrary to the established position that the House has a right as part of its privilege to have complete control over its proceedings including the right to punish a member by expulsion who by his conduct interferes with the proper conduct of Parliament business.

Power to punish for Contempt

237. The next question that we need to decide is whether the Indian parliament has the power of expulsion in relation to the power to punish for contempt. It is the contention of the petitioners that the Parliament cannot claim the larger punitive power to punish for contempt.

238. It has been argued on behalf of the Petitioners that the power to punish for contempt is a judicial power enjoyed by the House of Commons in its capacity as a High Court and, therefore, the same power would not be available to the legislatures in India. According to the Petitioners, this position has already been laid down in the case of *UP Assembly*. In addition, they would also place reliance on various decisions from other jurisdictions which make a distinction between punitive contempt powers - essentially judicial in nature and powers for self-protection - incidental to every legislative body. According to the Petitioners, the full, punitive power of the House of Commons is not available; rather the legislatures in India can exercise only limited remedial power to punish for contempt.

239. On the other hand, the Respondents have argued that the power

to punish for contempt is available to the Parliament in India as they are necessary powers. It was submitted that the power to punish for contempt is a power akin to a judicial power and it is available to the Parliament without it being the High Court of Record. Further, it was submitted that the Parliament has all such powers as are meant for defensive or protective purposes.

240. Thus, the questions that need to be addressed are as to whether the legislatures in India have the power to punish for contempt and, if so, whether there are any limitations on such power.

241. The powers, privileges and immunities of Parliament under Clause 3 of Article 105 are other than those covered by earlier two clauses. Since powers thus far have not been defined by Parliament by law, they are such as vested in the House of Commons at the commencement of the Constitution.

241-A. The first question, therefore, is whether this source itself incorporates any restrictions. Article 105(3) in this respect seems plain and unambiguous. Upon a reading of the clause, it seems clear that the article itself envisages no restrictions regarding the powers that can be imported from the House of Commons. It only states that the powers of the Indian parliament are those of the House of Commons in the United Kingdom without making any distinction regarding the nature of the power or its source. Hence the argument on behalf of the respondents that it would be alien to the Constitution to read qualifying words into this article that are not present in the first place and not intended to be included.

242. The respondents have referred to the evolution of the jurisprudence on the subject in other jurisdictions, in particular where there have been legislated provisions in respect of colonial legislatures, in which context it has been held that such legislative bodies enjoy all the powers of the House of Commons, including those the said House had enjoyed in its capacity as a Court of Record.

243. Through an enactment establishing a Colonial Constitution, the parliament of the Colony of Victoria was empowered to define the privileges and powers it should possess, which were declared not to exceed those possessed at the date of the enactment by the British House of Commons.

A The case of *Dill* v. *Murphy*, [1864] 15 ER 784 revolved around the powers of the Legislative Assembly of Victoria. Such powers were held to include the power to punish for contempt and in the light of the enactment the distinction between the powers of the House of Commons as a legislative body and those as a High Court was not applied to weed out the 'judicial powers', this position being upheld in an appeal to the Privy Council. Williams J. held:-

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> "On a closer investigation of all the authorities and considering the comprehensive nature of the 35th section, no restriction as the House of Commons as a deliberative Assembly, but of the House of Commons generally, I am led to the conclusion.....*that the powers and privileges of Commons House of Parliament whether obtained by the lex et consuetudo Parliamenti or not, whether as a deliberative Assembly or as a component part of the Highest Court in the realm are claimable by the Legislative Assembly in this Colony.*"
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> (Emphasis supplied)

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244. Section 20 of the law establishing the Nova Scotia House of Assembly provided it with all the powers of the House of Commons and Section 30 provided that it shall have the same powers of a Court of Record. The case of *Fielding* v. *Thomas*, [1896 AC 600] involved issues concerning the powers of the said legislature conferred upon it through statutory provisions. In this case, holding that the House of Assembly's action was legal based only on section 20, it was held:-

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> "If it was within the powers of the Nova Scotia Legislature to enact the provisions contained in s. 20, and the privileges of the Nova Scotia Legislature are the same as those of the House of Commons of the United Kingdom as they existed at the date of passing of the British North America Act, 1867, *there can be no doubt that the House of Assembly had complete power to adjudicate that the respondent had been guilty of a breach of privilege and contempt and to punish that breach by imprisonment.* The contempt complained of was a willful disobedience to a lawful order of the House to attend."
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> (Emphasis supplied)

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H 245. The principle that has been followed in the cases mentioned above

is that where the legislature has the power to make an enactment and it chooses to have the powers of the House of Commons, all the powers of the House of Commons, regardless of which capacity they were enjoyed in, transfer unto the legislature. This is to say that once there is an express grant of such powers, there is no justification for excluding certain powers.

246. Rooting for the case that the extent of powers incorporated in the Constitution is of wide amplitude, reliance has been placed on the following observations of this Court in the case of *Pandit Sharma (I)*:-

> "It is said that the conditions that prevailed in the dark days of British history, which led to the Houses of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United Kingdom or in our country and that there is, therefore, no reason why we should adopt them in these democratic days. *Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to re-make it. Nor do we share the view that it will not be right to entrust our Houses with these powers, privileges and immunities, for we are well persuaded that our Houses, like the House of Commons, will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases."*
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> (Emphasis supplied)

247. Reading this judgment and constitutional provisions, it does appear that the Constitution contains in Article 105(3) an express grant that is subject to no limitations on the powers of the Parliament. The petitioners, however, contend that the argument of availability of all the powers and privileges has already been authoritatively rejected in *UP Assembly* Case by this Court and reliance is placed on the following observations:-

> "Mr. Seervai's argument is that the latter part of Art. 194(3)

A expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House..... Therefore, *it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."*

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(Emphasis supplied)

C 248. It does not follow from rejecting the broad claims and holding that there are some powers of House of Commons which cannot be claimed by Indian legislatures, that the power of expulsion falls in that category. A little later we will show the circumstances which led to *UP Assembly* case and its ratio on the point in issue.

D 249. On the specific issue of the power to punish for contempt, learned Counsel have relied on various observations made in the aforementioned case in support of the proposition that the legislatures in India are not a Court of Record. It has been submitted that, relying on the logic of case of *UP Assembly*, any privilege that is found to be part of the '*lex et consuetudo parliamenti*' would be unavailable to the Indian legislatures, because the Indian legislatures cannot claim to be Courts of Record. In line with the same reasoning, it has been argued that all that the Indian Legislatures can claim is a limited power to punish for contempt.

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F 250. Reliance has been placed on several English cases, namely *Keilley* v. *Carson,* [1842 4 Moo. PC 63], *Fenton* v. *Hampton,* [1858 11 MOO PCC 347], *Doyle* v. *Falconer,* [1865-67) LR 1 PC 328], and *Barton* v. *Taylor,* [1886 11 App Cases 197]. These cases refer to the distinction between the punitive powers of contempt and the self-protection powers. Significantly, while the first two cases related to conduct of outsiders, the latter two cases related to the conduct of sitting members. These four cases hold that the other legislatures, that is to say bodies other than the House of Commons, can only claim the protective powers of the House. This distinction has been explained in *Doyle* as follows:-

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H "It is necessary to distinguish between a power to punish for a

> contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation."

251. It has been submitted on behalf of the petitioners that Parliament can only claim the protective, limited power to punish for contempt, that also if committed *ex facie*. It has been argued that this limited self-protective power can never include power of expulsion, as expulsion is not necessary for the protection of the House. A distinction between expulsion and exclusion is sought to be brought out to argue that the measure of exclusion would be sufficient for the protection of the dignity of the House.

252. On the other hand, for the respondent it was submitted that the Privy Council cases referred to above are irrelevant in as much as they laid down the powers of subordinate or colonial legislatures, whereas Parliament in India is the supreme legislative body and the limitations that bind such subordinate bodies as the former category cannot bind the latter.

253. The petitioners, in answer to the above argument, have referred to the decision of US Supreme Court in the case of *Marshall* v. *Gordon,* [243 U.S. 521, 541 1917]. The case related to the contempt powers of the US Congress. The Congress had charged a District Attorney for contempt. The question before the Court was as to whether Congress had the power to do so without a trial and other legal requirements. The Court held that the US Congress did not have the 'punitive' power of contempt. At page 887, the US Supreme Court observed:-

> "There can be no doubt that the ruling in the case just stated upheld the existence of the implied power to punish for contempt as distinct from legislative authority and yet flowing from it. It thus becomes apparent that from a doctrinal point of view the English rule concerning legislative bodies generally came to be in exact accord with that which was recognized in *Anderson* v. *Dunn,* supra, as belonging to Congress, that is, that in virtue of the grant of legislative authority there would be a power implied to deal with contempt in so far as that authority was necessary to preserve and carry out the legislative authority given."

A .....

> "Without undertaking to inclusively mention the subjects embraced in the implied power, we think from the very nature of that power it is clear that it does not embrace punishment for contempt as punishment, since it rests only upon the right of self-preservation, that is, the right to prevent acts which in and of themselves inherently obstruct or prevent the discharge of legislative duty or the refusal to do that which there is an inherent legislative power to compel in order that legislative functions may be performed."

C 254. Placing reliance on the above case, it was also argued by the petitioners that unless India tends to be "terribly arrogant", one cannot place the Indian Parliament on a higher footing than the Congress of the United States. In our view, there is no place here for arguments of sentiments. It is not the comparative superiority of the Indian parliament D with respect to either the Colonial Legislatures or the US Congress that determines the extent of its powers. We would rather be guided by our constitutional provisions and relevant case law.

255. The respondents have referred to the case of *Yeshwant Rao* v. *MP* E *Legislative Assembly,* AIR (1967) MP 95, decided by the Madhya Pradesh High Court. This case involved the expulsion of two members of the State Legislative Assembly for obstructing the business of the House and defying the Chair. This expulsion was challenged in the High Court. It was argued that the House had no power to expel as the power to expel in England was part of the power to regulate its own constitution, which was not available F to the House in India. It was also argued by the Petitioners in that case that the resolutions expelling them were passed without giving them an opportunity to explain the allegations. The High Court dismissed the petition holding that it had the limited jurisdiction to examine the existence of the power to expel and found that the House did in fact have this power.

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255-A. Noticeably, in this case, the High Court did not look into the power to punish for contempt. It held the Legislative Assembly's power to expel its member to be an inherent power for "its protection, self-security and self-preservation and for the orderly conduct of its business." The High Court was of the view that:-

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> "The House of Commons exercises the power of expelling a member not because it has the power to regulate its own constitution but because it finds it necessary for its proper functioning, protection and self-preservation to expel a member who has offered obstruction to the deliberations of the House during its sitting by his disorderly conduct or who has conducted himself in a manner rendering him unfit to serve as a member of the Parliament."

256. The case of *Hardwari Lal* v. *Election Commission of India Etc.*, [ILR (1977) P&H 269] decided by a full bench of Punjab & Haryana High Court also related to expulsion of a sitting member from the legislative assembly of the State of Haryana. The majority decision in that case held that the Legislative Assembly does not have the power to expel. The ratio in that case was identical to the arguments of the petitioners before us in the present case. The minority view in the case was, however, that the Legislative Assembly did have the power to expel as well as the power to punish for contempt. This view has been commended by the respondents to us as the correct formulation of law. With respect to the power to punish for contempt, the minority view has distinguished the case of *UP Assembly* on the ground that it dealt only with non-members and held that the fact that the power to punish for contempt was sourced from the judicial functions of the House of Commons is wholly irrelevant. The minority view says:

> "Indeed the source from which the House of Parliament derives a power to punish for its contempt may not be in dispute at all, but it must be remembered that "House of Parliament" and "House of Commons' are not synonyms. As already stated the House of Parliament consists of the House of Commons, the House of Lords and the King Emperor (or the Queen as the case may be). *Be that as it may, if we were to go to the source from which the Commons derive any particular power or privilege and then to decide whether that particular source is or is not available to the Indian Legislatures in respect of that privilege, it would be adopting a course which is wholly foreign to the language of Article 194(3).* Such an enquiry would be relevant only if we were to read into Article 194(3) after the words "at the commencement of this Constitution", the words "other than those which are exercised by the Commons as a descendant of the High Court of Parliament".

A There is no justification at all for reading into Article 194(3) what the Constituent Assembly did not choose to put therein. Adopting such a course would, in my opinion, not be interpreting clause (3) of Article 194, but re-writing it."

(Emphasis supplied)

B

257. The case of *K. Anbashagan* v. *Tamil Nadu Legislative Assembly,* AIR (1988) Mad 275 had similar dispute concerning powers of the State legislative assembly in Tamil Nadu. The view taken by the Madras High Court is similar to the one in *Yeshwant Rao* decided by the Madhya Pradesh C High Court and the minority view in the *Hardwari Lal* decided by Punjab & Haryana High Court. It was held by Madras High Court that the power of expulsion is available as a method of disciplining members. However, at no point did the Court examine the power to punish for contempt. The Court upheld the power of expulsion independently of the contempt jurisdiction.

D

258. The petitioners referred to the case of *UP Assembly*, particularly the passages quoted hereinafter:-

"In considering the nature of these privileges generally, and particularly the nature of the privilege claimed by the House to E punish for contempt, it is necessary to remember the historical origin of this doctrine of privileges. In this connection, May has emphasised that the origin of the modern Parliament consisted in its judicial functions."

F .....

"In this connection, it is essential to bear in mind the fact that the status of a superior Court of Record which was accorded to the House of Commons, is based on historical facts to which we have already referred. It is a fact of English history that the Parliament G was discharging judicial functions in its early career. It is a fact of both historical and constitutional history in England that the House of Lords still continues to be the highest Court of law in the country. It is a fact of constitutional history even today that both the Houses possess powers of impeachment and attainder. It is H obvious, we think, that these historical facts cannot be introduced

in India by any legal fiction. Appropriate legislative provisions do occasionally introduce legal fiction, but there is a limit to the power of law to introduce such fictions. Law can introduce fictions as to legal rights and obligations and as to the retrospective operation of provisions made in that behalf; but legal fiction can hardly introduce historical facts from one country to another."

.....

"The House, and indeed all the Legislative Assemblies in India never discharged any judicial function and constitutional background does not support the claim that they can be regarded as Courts of Record in any sense. If that be so, the very basis on which the English Courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record, is absent in the present case, and so, it would be unreasonable to contend that the relevant power to claim a conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the House. On this view of the matter, the claim made by the House must be rejected."

(Emphasis supplied)

259. It has been argued that in the face of above-quoted view of this Court, it cannot be allowed to be argued that that all the powers of the House of Commons that were enjoyed in its peculiar judicial capacity can be enjoyed by the legislatures in India. In our considered view, such broad proposition was neither the intended interpretation, nor does the judgment support such a claim.

260. In above context, it is necessary to recognize the special circumstances in which case of *UP Assembly* arose. It involved the resolutions of the Legislative Assembly in Uttar Pradesh finding that not only had Keshav Singh committed contempt of the House, but even the two Judges of the High Court, by admitting Keshav Singh's writ petition, and indeed his Advocate, by petitioning the High Court, were guilty of contempt of the legislature. The resolution further ordered the Judges of the High Court to be brought before the House in custody. In response to this

A resolution, petitions were filed by the Judges under Article 226. In the wake of these unsavoury developments involving two organs of the State, the President of India decided to make a reference to the Supreme Court under Article 143(1) formulating certain questions on which he desired advice.

B 261. Significantly, the scope of the case was extremely narrow and limited to the questions placed before the Court. The Court noticed the narrow limits of the matter in following words:-

> "During the course of the debate, several propositions were canvassed before us and very large area of constitutional law was C covered. We ought, therefore, to make it clear at the outset that in formulating our answers to the questions framed by the President in the present Reference, *we propose to deal with only such points as, in our opinion, have a direct and material bearing on the problems posed by the said questions.* It is hardly necessary to D emphasise that in dealing with constitutional matters, the Court should be slow to deal with question which do not strictly arise. This precaution is all the more necessary in dealing with a reference made to this Court under Art. 143(1)."
>
> (Emphasis supplied)

E 262. The question of the power to punish for contempt was never even seriously contested before the court. Rather, while discussing the various contentions raised before it, the Court noted:-

> F "*It is not seriously disputed by Mr. Setalvad that the House has the power to inquire whether its contempt has been committed by anyone even outside its four-walls and has the power to impose punishment for such contempt;* but his argument is that having regard to the material provisions of our Constitution, it would not be open to the House to make a claim that its general warrant G should be treated as conclusive."
>
> (Emphasis supplied)

263. Thus, in the case of *UP Assembly* the Court was mainly concerned with the power claimed by legislature to issue general warrant and conclusive H

character thereof. There was no challenge in that case to the power to punish for contempt, much less the power to expel, these issues even otherwise being not inherent in the strict frame of reference made to the Court.

264. Indeed, the thrust of the decision was on the examination of the power to issue unspeaking warrants immune from the review of the Courts, and not on the power to deal with contempt itself. A close reading of the case demonstrates that the Court treated the power to punish for contempt as a privilege of the House. Speaking of the legislatures in India, it was stated:-

> "there is no doubt that the House has the power to punish for contempt committed outside its chamber, *and from that point of view it may claim one of the rights possessed by a Court of Record"*
>
> (Emphasis supplied)

265. Speaking of the Judges' power to punish for contempt, the Court observed:-

> "We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger of irritation would not help to sustain the dainty or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. *We venture to think that what is true of the Judicature is equally true of the Legislatures."*
>
> (Emphasis supplied)

266. It is evident, therefore, that in the opinion of the Court in case of *UP Assembly*, legislatures in India do enjoy the power to punish for contempt. It is equally clear that the while the fact that the House of

A Commons enjoyed the power to issue unspeaking warrants in its capacity of a Court of Record was one concern, what actually worried the Court was not the source of the power *per se*, but the 'judicial' nature of power to issue unspeaking warrant insofar as it was directly in conflict with the scheme of the Constitution whereby citizens were guaranteed fundamental rights and the power to enforce the fundamental right is vested in the Courts. It was B not the power to punish for contempt about which the Court had reservations. Rather, the above-quoted passage shows that such power had been accepted by the Court. The issue decided concerned the non-reviewability of the warrant issued by the legislature, in the light of various constitutional provisions.

C

267. Last, but not the least, there are many differences between the case of *UP Assembly* and the one at hand. The entire controversy in the former case revolved around the privileges of the House in relation to the fundamental rights of a citizen, an outsider to the House. The decision expressly states that the Court was not dealing with internal proceedings, D nor laying down law in relation to members of the House. In the words of the Court:-

> The obvious answer to this contention is that *we are not dealing with any matter relating to the internal management of the House* E *in the present proceedings.* We are dealing with the power of the House to punish citizens for contempt alleged to have been committed by them outside the four-walls of the House, and that essentially raises different considerations."
>
> XXXXXXX

F

> "In conclusion, we ought to add that throughout our discussion we have consistently attempted to make it clear that *the main point which we are discussing is the right of the House to claim that a general warrant issued by it in respect of its contempt alleged to* G *have been committed by a citizen who is not a Member of the House outside the four-walls of the House*, is conclusive, for it is on that claim that the House has chosen to take the view that the Judges, the Advocate, and the party have committed contempt by reference to the conduct in the habeas corpus petition pending before the Lucknow Bench of the Allahabad High Court."
>
> (Emphasis supplied)

H

268. In the light of the above, we are of the opinion that the ratio of case of *UP Assembly*, which was decided under significantly different circumstances, cannot be interpreted to have held that all the powers of the House of Commons enjoyed in its capacity as a Court of Record are unavailable to the Indian parliament, including the power to punish for contempt.

269. The view that we are taking is in consonance with the decisions of this court in the two cases of *Pandit Sharma.* In *Pandit Sharma (I)*, this Court upheld the privilege of the legislative assembly to prevent the publication of its proceedings and upheld an action for contempt against a citizen. This decision was reiterated by a larger bench of this Court in *Pandit Sharma (II)*, when it refused to re-examine the issues earlier answered in *Pandit Sharma (I)*. The cases involved contempt action by the legislature against an outsider curtailing his fundamental rights, and yet the Court refused to strike down such action.

270. This view finds further strength from the case of *State of Karnataka* v. *Union of India,* [1977] 4 SCC 608. This case involved a challenge to the appointment of a commission of enquiry against the Chief Minister and other Ministers of Karnataka. In this context, the Court examined the 'powers' of the state in relation to Article 194 (3). It would be fruitful to extract the relevant portions of the decision. They are as follows:

> *".....But, apart from an impeachment, which has become obsolete, or punishment for contempts of a House, which constitute only a limited kind of offences, the Parliament does not punish the offender.* For establishing his legal liability recourse to ordinary courts of law is indispensable."

> "It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the "powers" meant to be indicated here are not independent. *They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons in England for all purposes.* For example, it could not be contended that each House of a State Legislature has the same share of legislative power as the House of Commons has,

A as a constituent part of a completely sovereign legislature. Under our law it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in Legislative power as is assigned to it by the Constitution itself. The powers conferred on a House of a State Legislature are distinct from the legislative powers of either Parliament or of a State legislature for which, as already observed, there are separate provisions in our Constitution. We need not travel beyond the words of Article 194 itself, read with other provisions of the Constitution, to clearly reach such a conclusion."

"There is, if we may say so, considerable confusion still in the minds of some people as to the scope of the undefined "powers, privileges and immunities" of a House of a State Legislature so much so that it has sometimes been imagined that a House of a State Legislature has some judicial or quasi-judicial powers also, *quite apart from its recognised powers of punishment for its contempts* or the power of investigations it may carry out by the appointment of its own committees."

"..... A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, *but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions.* But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. *For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."*

(Emphasis supplied)

271. The passage quoted above makes it further clear that the only limitation the Court recognizes in the power of the legislatures to punish for contempt is that such contempt powers cannot be used to divest the

ordinary courts of their jurisdiction. This is in tune with the decision in the case of *UP Assembly*. More over, when the Court spoke of the use of contempt power to remove obstructions to the functioning of the House, it did not read into it any limitations on the power to punish for contempt. Rather, the general purpose of its invocation was recognized.

272. Thus, we are unable to accept the contention that the power to punish for contempt is denied to the Indian legislatures as they are not Courts of Record. However, we would like to emphasize that the power to punish for contempt of the House of Commons is a very broad power, encompassing a variety of other powers. The case of *UP Assembly* examined only one aspect of that power – to issue unspeaking warrants – and held that such a power is unavailable under our constitution. What we are presently examining in the cases at hand is another aspect of this broad contempt power – the power to expel a sitting member. While we hold that the power to punish for contempt in its totality has not been struck down by decision in *UP Assembly*, we do not intend to rule on the validity of the broad power to punish for contempt as a whole. The different elements of this broad contempt power will have to be decided on an independent scrutiny of validity in appropriate case. We would restrict ourselves to the power to expel a member for contempt committed by him. Having found, however, that there is no bar on reading the power to punish for contempt in Article 105(3), it is possible to source the power of expulsion through the same provision.

273. There is no contest whatsoever to the plea that the House of Commons did in fact enjoy the power of expulsion at the commencement of the Constitution. A number of instances have been quoted even by the petitioners, including those occurring around the time of the commencement of the Constitution. To mention some of them, notice may be taken of case of member named Horatio Bottomley, expelled in 1922 after he was convicted for fraudulent conversion of property; case of Gary Allighan, expelled in 1947, for gross contempt of House after publication of an article accusing members of the House of insobriety and taking fees or bribe for information; and, the case of Peter Baker, expelled in 1954 from the House after being convicted and sentenced for forgery.

274. Although the examples of expulsion in this century by the House of Commons are few, the relevant time for our purposes is the date of the

A commencement of the Constitution. The last two cases occurring in 1947 and 1954 clearly establish that the power to expel was in fact a privilege of the House of Commons at the commencement of our Constitution. Thus, from this perspective, the power of expulsion can be read within Article 105(3). We have already held that this power is not inconsistent with other provisions of the Constitution.

B

275. We may also briefly deal with the other possible sources of the power of expulsion.

Plea of limited remedial power of Contempt

C 276. The next scrutiny concerns the anxiety as to whether the Parliament possesses only a limited remedial power of contempt and, if so, whether it can source therefrom the power of expulsion.

277. There has been great debate around the cases of *Keilley, Fenton, Doyle* and *Barton* mentioned earlier. We would, therefore, notice the D relevant portions of the decisions rendered in the said cases.

278. The case of *Keilley* arose out of the imprisonment of the appellant, who allegedly used threatening and insulting language against a member of the Legislative Assembly of Newfoundland. His conduct was held to be a breach of privilege by the Assembly and their powers came up for scrutiny E before the Privy Council. It was found by the court that the Legislative Assembly of Newfoundland did not have the power to punish for contempt. The judgment was delivered by Mr. Baron Parke, who held:-

> *"The whole question then is reduced to this–whether by law, the power of committing for a contempt, not in the presence of the* F *Assembly, is incident to every local Legislature.* The Statute Law on this subject being silent, the Common Law is to govern it; and what is the Common Law, depends upon principle and precedent.
>
> .....
>
> G Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both H sides, it is admitted, it was competent for the Crown to perform.

This is the principle which governs all legal incidents. "*Qunado Lex aliquid concedit, concedere et illud, sine quo res ipsa esse non potest.*" In conformity to this principle we feel no doubt that such as Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law. *But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such a contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not.* (234-35)

....

But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetude Parliamenti,* which forms a part of the Common Law of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one. (235)

.....

Nor can the power be said to be incident to the Legislative Assembly by analogy to the English Courts of Record which possess it. This assembly is no Court of Record, nor has it any judicial functions whatever' and it is to be remarked, that all these bodies which possess the power of adjudication upon, and punishing in a summary manner, contempts of their authority, have judicial functions, and exercise this as incident to those which they possess, except only the House of Commons, whose authority, in this respect, rests upon ancient usage." (235)

(Emphasis supplied)

279. The above case was followed in *Fenton.* This action against the Speaker of the Legislative Assembly of Van Dieman's Island arose from the allegedly unlawful assault, seizure and imprisonment of the respondent. The judgment was pronounced by Lord Chief Baron Pollock on 17th February, 1858. The case followed *Keilley*, observing that in that case:-

> "they held that the power of the House of Commons in England was part of the '*Lex et consuetudo Parliamenti*'; and the existence of that power in the Commons of Great Britain did not warrant the ascribing it to every Supreme Legislative Council or Assembly in the Colonies. We think we are bound by the decision of the case of K*eilley* v. *Carson.*"

280. The next case was that of *Doyle.* This case involved the power of the Legislative Assembly of Dominica to punish its member for his conduct in the Assembly. This case followed *Keilley* and *Fenton* holding that the Assembly had no power to punish for contempt. The judgment was delivered by Sir James Colvile. It was observed:-

> "*Keilley* v. *Carson*.....must here be taken to have decided conclusively that the Legislative Assemblies in the British Colonies have, in the absence of express grant, no power to adjudicate upon, or punish for, contempts committed beyond their walls. (339)
>
> The privileges of the House of Commons, that of punishing for contempt being one, belong to it by virtue of *lex et consuetude Parliamenti*, which is a law peculiar to and inherent in two Houses of Parliament of the United Kingdom. It cannot therefore, be inferred from the possession of certain powers by the house of Commons, by virtue of that ancient usage and prescription, that the like powers belong to Legislative Assemblies of comparatively recent creation in the dependencies of the Crown. (339)
>
> .....
>
> Again, there is no resemblance between a Colonial House of Assembly, being a body which has no judicial functions, and a Court of Justice, being a Court of Record. There is, therefore, no ground for saying that the power of punishing for contempt,

because it is admitted to be inherent in the one, must be taken by analogy to be inherent in the other." (339)

Is the power to punish and commit for contempts committed in its presence one necessary to the existence of such a body as the Assembly of *Dominica*, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal-sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment another." (340)

281. Finally, in *Barton*, it involved the suspension of a member from the Legislative Assembly of New South Wales. The power of suspension for an indefinite time was held to be unavailable to the Legislative Assembly as it was said to have trespassed into the punitive field. The judgment was delivered by the Earl of Selborne. Referring to the cases of *Keilley* and *Doyle*, the Court observed:-

"It results from those authorities that no powers of that kind are incident to or inherent in a Colonial Legislative Assembly (without express grant), except 'such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute'.

Powers to suspend toties quoties, sitting after sitting, in case of repeated offences (and, if may be, till submission or apology), and *also to expel for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a member whose conduct is habitually obstructive or disorderly.* To argue that expulsion is the greater power, and suspension the less, and that the greater must include all degrees of the less, seems to their Lordships fallacious. The rights of constituents ought not, in a

A question of this kind, to be left out of sight. Those rights would be much more seriously interfered with by an unnecessarily prolonged suspension then by expulsion, after which a new election would immediately be held."

(Emphasis supplied)

B

282. The Court went on to examine what is necessary and found that an indefinite suspension could never be considered necessary.

283. The learned Counsel for the petitioners have relied on the above distinction and submitted that the limited power does not envisage expulsion C and can only be used for *ex facie* contempts.

284. We are not persuaded to subscribe to the propositions advanced on behalf of the petitioners. Even if we were to accept this distinction as applicable to the Indian parliament, in our opinion, the power to expel would D be available.

285. Firstly, the case of *Barton*, which allows only a limited power to punish for contempt, finds that even though the Legislative Assembly does not have the power to indefinitely suspend, as that was punitive in nature, the Assembly would have the power to expel, considering expulsion a non- E punitive power. Secondly, the objection that the limited power could only deal with *ex facie* contempt, is not tenable.

286. In the above context, reference may be made to the case of *Hartnett* v. *Crick,* [(1908) AC 470]. This case involved the suspension of F a member of the Legislative Assembly of New South Wales until the verdict of the jury in the pending criminal trial against the Member had been delivered. The suspension was challenged. When the matter came up before the Privy Council, the Respondents argued that:-

G "The Legislative Assembly had no inherent power to pass [the standing order]. Its inherent powers were limited to protective and defensive measures necessary for the proper exercise of its functions and the conduct of its business. They did not extend to punitive measures in the absence of express statutory power in that behalf, but only to protective measures....The fact that H a criminal charge is pending against the respondent does not

affect or obstruct the course of business in the Chamber or relate to its orderly conduct." A

287. This argument was rejected and the House of Lords allowed the appeal. Lord Macnaghten, delivering the judgment, initially observed that:

".....no one would probably contend that the orderly conduct of the Assembly would be disturbed or affected by the mere fact that a criminal charge is pending against a Member of the House" (475) B

288. But he found that certain peculiar circumstances of the case deserved to be given weight. The Court went on to hold thus:- C

"If the House itself has taken the less favourable view of the plaintiff's attitude [an insult and challenge to the house], *and has judged that the occasion justified temporary suspension, not by way of punishment, but in self-defence, it seems impossible for the Court to declare that the House was so wrong in its judgment*, and D the standing order and the resolution founded upon it so foreign to the purpose contemplated by the Act, that the proceedings must be declared invalid."(476)

(Emphasis supplied)

E

289. The above case thus establishes that even if the House of legislature has limited powers, such power is not only restricted to *ex facie* contempts, but even acts committed outside the House. It is open to the assembly to use its power for "protective" purposes, and the acts that it can act upon are not only those that are committed in the House, but upon anything that lowers the dignity of the House. Thus, the petitioners' F submission that House only has the power to remove obstructions during its proceedings cannot be accepted.

290. It is axiomatic to state that expulsion is always in respect of a member. At the same time, it needs to be borne in mind that a member is G part of the House due to which his or her conduct always has a direct bearing upon the perception of the House. Any legislative body must act through its members and the connection between the conduct of the members and the perception of the House is strong. We, therefore, conclude that even if the Parliament had only the limited remedial power to H

A punish for contempt, the power to expel would be well within the limits of such remedial contempt power.

291. We are unable to find any reason as to why legislatures established in India by the Constitution, including the Parliament under Article 105 (3), should be denied the claim to the power of expulsion arising out of remedial B power of contempt.

Principle of necessity

292. Learned Counsel for Union of India and the learned Additional Solicitor General also submitted that the power of expulsion of a sitting C member is an inherent right of every legislature on the ground of necessity. The argument is that 'necessity' as a source of the power of expulsion, is also available to a House for expulsion of one of its members, as such power is 'necessary' for the functioning of the House. The petitioners, on the other hand, argued that expulsion can never be considered 'necessary' or D a 'self protective' power and, therefore, it cannot be claimed by the House.

293. In view of our interpretation of Article 105(3) of the Constitution, it is not essential to determine the question whether 'necessity' as an independent source of power, apart from the power of the House to punish E for contempt, by expulsion of a member, is available or not. We may note that number of judgments were cited in support of the respective view points.

294. Further, the Petitioners have also relied on the fact that Australia has passed a law taking away the power of expulsion. It is true that Section F 4 of the Parliamentary Privileges Act, 1987 removed the power to expel from the Houses of the Commonwealth Parliament in Australia. The Act was passed on the recommendation of the Parliament's Joint Select Committee on Parliamentary Privilege. Enid Campbell, the eminent authority on Australian Parliamentary privilege writes, "The Committee so recommended G because of the potential abuse of the power, because of the specific provisions in the federal Constitution on disqualification of members, 'and on the basic consideration that it is for the electors, not members, to decide on the composition of Parliament'."

295. *Odger's Australian Senate Practice* further clarifies the basis for H the Joint Select Committee's recommendation :

"The 1984 report of the Joint Select Committee on Parliamentary Privilege recommended that the power of a House to expel its members be abolished. The rationale of this recommendation was that the disqualification of members is covered by the Constitution and by the electoral legislation, and if a member is not disqualified the question of whether the member is otherwise unfit for membership of a House should be left to the electorate. The committee was also influenced by the only instance of the expulsion of a member of a House off the Commonwealth Parliament, that of a member of the House of Representatives in 1920 for allegedly seditious words uttered outside the House. This case had long been regarded as an instance of improper use of the power (see, for example, E. Campbell, *Parliamentary Privilege in Australia, MUP*, 1966, pp.104-05 (Odger's Australian Senate Practice 11th Edition, 56-57).

296. The Australian Joint Committee Report itself weighs the dangers of misuse of expulsion against any potential need for expulsion and definitively recommends its abolition :

"This danger [i.e. misuse by the majority] can never be eradicated and the fact that the only case in federal history when the power to expel was exercised is a case when, we think, the power was demonstrably misused is a compelling argument for its abolition. But the argument for abolition of the power to expel does not depend simply on the great potential for abuse and the harm such abuse can occasion. There are other considerations. Firstly, there are the detailed provisions in the Constitution. In short, we already have something approaching a statutory code of disqualification. Secondly, it is the electors in a constituency or in a State who decide on representation. In principle, we think it wrong that the institution to which the person has been elected should be able to reverse the decision of his constituents. If expelled he may stand for re-election but, as we have said, the damage occasioned by his expulsion may render his prospects of re-election negligible. Thirdly, the Houses still retain the wide powers to discipline Members. Members guilty of a breach of privilege or other contempt may be committed, or fined.... These sanctions seem drastic enough. They may also be suspended or censured by their House."

297. The aforesaid approach adopted in Australia is entirely for the Parliament to consider and examine, if so advised. In so far as this Court is concerned, since India does not have a law that codifies the privileges of the Parliament, nothing turns on the basis of the Australian legislation.

Argument of Parliamentary practice

298. During the course of arguments it was brought out that since the date of commencement of the Constitution of India there have been three occasions when the Houses of Parliament have resorted to expulsion of the sitting Member. Out of these three occasions, two pertained to Members of *Lok Sabha.*

299. The first such case came on 8th June 1951 when the 1st *Lok Sabha* resolved to expel Mr. H.G. Mudgal for having engaged himself in conduct that was derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its members. The second occasion of expulsion came in 6th *Lok Sabha*, when by a resolution adopted on 19th December 1978, it resolved to agree with the recommendations and findings of the Committee of Privileges and on the basis thereof ordered expulsion of Mrs. Indira Gandhi along with two others (Mr. R.K. Dhawan and Mr. D. Sen) from the membership of the House having found them guilty of breach of privilege of the House. The third case pertains to *Rajya Sabha* when expulsion of Mr. Subramanium Swamy was ordered on 15th November 1976.

300. The above-mentioned three instances of expulsion from the Houses of Parliament have been referred to by the learned counsel for Union of India in support of his argument that expulsion of a Member of Parliament has not been ordered for the first time and that it is now part of Parliamentary practice that the Houses of Parliament can expel their respective members for conduct considered unfit and unworthy of a Member. On the other hand, the learned counsel for the petitioners would refer to these very instances to quote certain observations in the course of debates in the Parliament to buttress their plea that the Parliamentary practice in India is against resort to the extreme penalty of expulsion from amongst the sanctions that may be exercised in cases of breach of privileges by the House of Commons.

301. The facts of the case of expulsion of Mr. Subramaniam Swamy

from *Rajya Sabha* are narrated by Subhash C. Kashyap in his 'Parliamentary Procedure' (Vol. 2, p. 1657). It appears that *Rajya Sabha* adopted a motion on 2nd September 1976 appointing a Committee to investigate the conduct and activities of the said member, within and outside the country, including alleged anti-India propaganda calculated to bring into disrepute Parliament and other democratic institutions of the country and generally behaving in a manner unworthy of a member. The Committee presented report on 12th November 1976 recommending expulsion as his conduct was found to be derogatory to the dignity of the House and inconsistent with the standards which it was entitled to expect from its members. On 15th November 1976, a motion was adopted by Rajya Sabha expelling the member.

302. Coming to the cases of expulsion from *Lok Sabha*, the facts of the case of Mr. H.G. Mudgal have been summarized at page 262 in Practice and Procedure of Parliament by Kaul and Shakder (5th Edn.). Mr. H.G. Mudgal was charged with having engaged himself in "certain dealings with the Bombay Bullion Association which include canvassing support and making propaganda in Parliament on problems like option business, stamp duty etc. and receipt of financial or business advantages from the Bombay Bullion Association" in the discharge of his duty in Parliament. On 8 June, 1951, a motion for appointment of a Committee to investigate the conduct and activities of the member was adopted by *Lok Sabha.* The Committee, after inquiry, held that the conduct of the member was derogatory to the dignity of the House and inconsistent with the standard which Parliament was entitled to expect from its members. In pursuance of the report of the Committee, a motion was brought before the House on 24 September, 1951, to expel Mr. Mudgal from the House. The member, after participating in the debate, submitted his resignation to the Deputy Speaker.

303. When the report of the Committee was being debated, Pt. Jawahar Lal Nehru, the then Prime Minister of India, spoke at length on the subject. His speech rendered in Parliament on 24th September 1951 dealt with the facts of the case as also his views on the law on the subject. After noticing that in the Constitution of India no particular course is laid down in regard to such matters inasmuch as Article 105(3) refers one back to the practice in the British House of Commons, this is what he had to say :-

> "..... this House as a sovereign Parliament must have inherently the right to deal with its own problems as it chooses and I cannot

A imagine anybody doubting that fact. This particular article throws you back for guidance to the practice in the British House of Commons. There is no doubt as to what the practice in the House of Commons of the Parliament in the U.K. has been and is. Cases have occurred from time to time there, when the House of Commons has appointed a Committee and taken action

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So there is no doubt that this House is entitled inherently and also if reference be made to the terms of article 105 to take such C steps according to the British practice and expel such a Member from the House.

The question arises whether in the present case this should be done or something else. I do submit that it is perfectly clear that this case is not even a case which might be called a marginal case, D where people may have two opinions about it, where one may have doubts if a certain course suggested is much too severe. The case, if I may say so, is as bad as it could well be. If we consider even such a case as a marginal case or as one where perhaps a certain amount of laxity might be shown, I think it will be unfortunate from E a variety of points of view, more especially because, this being the first case of its kind coming up before the House, if the House does not express its will in such matters in clear, unambiguous and forceful terms, then doubts may very well arise in the public mind as to whether the House is very definite about such matters or not. F Therefore, I do submit that it has become a duty for us and an obligation to be clear, precise and definite. The facts are clear and precise and the decision should also be clear and precise and unambiguous. And I submit the decision of the House should be after accepting the finding of this report, to resolve that the G Member should be expelled from the House. Therefore, I beg to move:

'That this House, having considered the Report of the Committee appointed on the 8th June, 1951 to investigate into the conduct of Shri H.G. Mudgal, Member of Parliament, H accepts the finding of the Committee that the conduct of Shri

> Mudgal is derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its Members, and resolves that Shri Mudgal be expelled from the House'."

304. On 25th September 1951, the House deprecated the attempt of the member to circumvent the effect of the motion and unanimously adopted an amended motion that read as follows:-

> "That this House, having considered the Report of the Committee appointed on the 8th June, 1951, to investigate the conduct of Shri H.G. Mudgal, Member of Parliament, accepts the findings of the Committee that the conduct of Shri Mudgal is derogatory to the dignity of the House and inconsistent with the standard which Parliament is entitled to expect from its members, and resolves that Shri Mudgal deserved expulsion from the House and further that the terms of the resignation letter he has given to the Deputy Speaker at the conclusion of his statement constitute a contempt of this House which only aggravates his offence".

305. The facts of the matter leading to expulsion of Mrs. Indira Gandhi and two others are summarized at page 263 in Practice and Procedure of Parliament by Kaul and Shakder (5th Edn.). On 18th November 1977, a motion was adopted by the House referring to the Committee of Privileges a question of breach of privilege and contempt of the House against Mrs. Indira Gandhi, former Prime Minister, and others regarding obstruction, intimidation, harassment and institution of false cases by Mrs. Gandhi and others against certain officials.

306. The Committee of Privileges were of the view that Mrs. Indira Gandhi had committed a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against the concerned officers who were collecting information for answer to a certain question in the House. The Committee recommended that Mrs. Indira Gandhi deserved punishment for the serious breach of privilege and contempt of the House committed by her but left it to the collective wisdom of the House to award such punishment as it may deem fit.

307. A resolution was moved to inflict the punishment of committal and expulsion. In the course of debate on the motion, Mr. C.M. Stephen, Leader

A of the Opposition, *inter alia*, inviting attention to the full Bench decision of Punjab & Haryana High Court in the case of *Hardwari Lal* [ILR (1977) 2 P&H 269] stated that the proposal to expel was "not countenanced by the Constitution" and the House had no power to expel an elected member. Mr. K.S. Hegde, the Speaker, acknowledged the importance of the constitutional B arguments advanced by Mr. C.M. Stephen. On 19th December 1978, the House adopted a motion resolving that Mrs. Indira Gandhi be committed to jail till the prorogation of the House and also be expelled from the membership of the House for the serious breach of privilege and contempt of the House committed by her.

C 308. What was done by the 6th *Lok Sabha* through the resolution adopted on 19th December 1978 was undone by the 7th *Lok Sabha*. It discussed the propriety of the earlier decision. Certain speeches rendered in the course of the debate have been relied upon, in extenso, by the learned counsel and may be taken note of. Mr. B.R. Bhagat spoke thus:-

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> "They have committed an error. I am not going into the morality of it, because I am on a stronger ground. It is illegal because there is no jurisdiction.
>
> Coming to the third point the determination of guilt and E adjudication they are judicial functions in many countries and, therefore question of breach of privilege, contempt of the House, punishment etc. are decided in the courts of law in them. Only we have followed the parliamentary system the Westminster type. In the House of Commons there the House itself deals with breach of F its privileges, and we have taken it from them. Therefore, here the breach of privilege is punished by the House. But in many other countries almost all other countries if I may say so, any breach of privilege of the House is punished by the courts and therefore, the point I am making is that the procedure followed in the Privilege Committee is very important. The law of privileges, as I said is a G form of criminal law and I was making this point that excepting the House of Commons and here – we have taken the precedents and conventions from the House of Commons – in regard to all other Parliaments this offence or the contempt of the House or the breach of privilege of the House is punished by the courts and therefore, H essentially the law of privileges is a form of criminal law and often

a citizen and his Fundamental Rights may clash with the concepts of the dignity of the House and the Legislatures, their committees and Members. The essence of criminal law is that it is easily ascertainable. The law of privileges on the other hand is bound to remain vague and somewhat uncertain unless codified. And here, it has not been codified except in Rule 222. Whereas in India following the British practices the House itself judges the matter it is important to ensure that the strictest judicial standards and judicial procedures are followed. This is very important because my point is that in the Privileges Committee the deliberations were neither judicial nor impartial nor objective, and they did not follow any established rules of procedure for even the principles of equity and natural justice. They were not applied in dealing with this matter in the case of Mrs. Gandhi and the two officers and the principal that justice should not only be done but also seem to have been done is totally lacking in this case. Nothing that smacks of political vendetta should be allowed to cloud a judgment as even the slightest suspicion of the Committee of Privileges of the House acting on political consideration or on the strength of the majority party etc. may tend to destroy the sanctity and value of the privileges of the Parliament.

Now, I am dealing only with the deliberations of the Committee. When the matter comes before House, then I will come with it separately. In that, political vendetta governed the Members of the Committee. If you take the previous precedents either here in this Parliament, or in the House of Commons or in other Parliaments, you will find that the decisions of the Privileges Committee were unanimous. They are not on party lines. But in this particular case, not only the decisions were on party lines, but there were as many as 6 or 7 Notes many of them were votes of dissent though they were not called as such because this is another matter which I want to refer quoting: "Under the Directions of the Speaker" 'there shall be no Minute of Dissent to the report of a parliamentary committee – this is a parliamentary committee – 'except the select committee'. In a Select Committee or a Joint Select Committee Minutes of Dissent are appended. In other parliamentary committees – the Privileges Committee is a parliamentary committee – under Direction 68(3), "There shall be no minute of dissent to the report".

A The idea is that the deliberations in these committees should be objective, impartial and should not be carried on party or political lines. In this matter there are as many as six notes – they are called 'notes' because they cannot be minutes of dissent and four of them have completely differed, totally different with the findings of the Committee. Seven Members were from the ruling party. This reflects the composition of the Committee. They have taken one line. I will come to that point later when I deal with the matter, how the matter was adopted in the House. How it was taken and how political and party considerations prevailed. That is against the spirit and law of Parliamentary Privileges. In the Committee too, Mrs. Gandhi said that the whole atmosphere is political and partisan, the Members of the Privileges Committee, the Members of the ruling party, the Janata Party have been totally guided by a vindictive attitude, an attitude of vendetta or vengeance or revenge to put her in prison or to punish her."

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"Rule 72 of the Rules of Procedure is only, as I said earlier, an enabling provision inasmuch as the Committee of Privileges may administer an oath or affirmation to a witness. It does not mean that every witness is bound to take an oath. In any case, it does not apply to an accused. Every accused must be given the fullest opportunity of self-defence. He should be allowed to be represented before the Committee by a counsel of his or her choice to lead evidence and to cross-examine witnesses and, further, the benefit of doubt must go to an accused. This is the law.

Earlier, in the Mudgal case, we have a precedent. The Committee of the House gave an opportunity to the accused. He was allowed the services of a counsel, to cross-examine witnesses, to present his own witnesses and to lead his defence through his counsel. The Committee was also assailed by the Attorney-General throughout the examination of the matter. This was not given to Mrs. Indira Gandhi. This also clearly indicates the motivations in the Privileges Committee.

H Again, the punishment for a breach of privileges in recent

> times, this maximum punishment, this double punishment of expulsion and imprisonment, is unheard of an unprecedented. The recent trend all over the world is that the House takes as few cases of privilege as possible. The minimum punishment is that of either reprimand or admonition. In this matter also, the majority decision of the Privileges Committee showed a bias or rather a vendetta."

309. Mr. A.K. Sen, in his speech was more concerned about the fairness of the procedure that had been adopted by the Committee on Privileges before ordering expulsion of Mrs. Gandhi and others. He stated as under :-

> "I remember when Charles the First was arraigned before the court which was set up by the Cromwell's Government, at the end of the trial, he was asked whether he had anything to plead by way of defence. The famous words he uttered were these. I do not think I can repeat them word by word, but I would repeat the substance. He said "To whom shall I plead my defence? I only find accusers and no Judges". So this is what happened when Mrs. Gandhi appeared before this august Committee. Excepting a few who had the courage to record their notes of dissent, the minds of the rest had already been made up. This is very clear from the utterances which came from them outside the Parliament, before and after the elections and from the way they were trying to manipulate the entire matter."

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> "Sir, the Supreme Court in a series of decisions started from *Sharma's* case laid down very clearly that the privileges cannot violate the Fundamental rights of a citizen. Therefore, if a citizen has the right not to be a witness against a sin or not to be bullied into cross-examination, then that right cannot be taken away in the name of a privilege. You can convict her or you can verdict him by only evidence, but not by her own hand. Our law forbids a person to be compelled to drink a cup of poison. The Plutonic experiment would not be tolerated under our laws. No accused can be said: 'You take the cup of poison and swallow it.' He has to be tried and he has to be sentenced according to the law."

310. Mr. Jagan Nath Kaushal also referred to the case of *Hardwari Lal* and then said :-

> "When *Mrs. Gandhi's* case was before the Parliament, that judgment was in the field. But nobody just cared to look at that. The reason is obvious, and the reason has been given by the friends who have spoken. The reason is, we had a pre-determined judge who was not in a mood to listen to any voice of reason and I say it is a very sad day when we have to deal with pre-determined judges. I can understand a judge not knowing the law, but it is just unthinkable that a judge should come to the seat of justice with a pre-determined mind to convict the person who is standing before him in the capacity of an unfortunate accused. It is the negation of notions of justice. Therefore, what happened at that time was that not only Mrs. Gandhi was punished with imprisonment, but she was also expelled."

311. The resolution adopted on 19th December 1978 by the 6th *Lok Sabha* was rescinded on 7th May 1981 by the 7th *Lok Sabha* that adopted the following resolution:-

> (a) the said proceedings of the Committee and the House shall not constitute a precedent in the law of parliamentary privileges;
>
> (b) the findings of the Committee and the decision of the House are inconsistent with and violative of the well-accepted principles of the law of Parliamentary privilege and the basic safeguards assured to all enshrined in the Constitution; and
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> (c) Smt. Indira Gandhi, Shri R.K. Dhawan and Shri D. Sen were innocent of the charges leveled against them.
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> And accordingly this House:
>
> Rescinds the resolution adopted by the Sixth *Lok Sabha* on the 19th December, 1978."

312. It is the argument of the learned counsel for petitioners that the resolution adopted on 7th May 1981 by *Lok Sabha* clearly shows that resort to expulsion of a sitting elected member of the House was against parliamentary rules, precedents and conventions and an act of betrayal of

the electorate and abuse by brute majoritarian forces. In this context, the learned counsel would point out that reference was made repeatedly in the course of debate by the Members of *Lok Sabha*, to the majority view of Punjab & Haryana High Court in the case of *Hardwari Lal*. The learned counsel would submit that *Lok Sabha* had itself resolved that the proceedings of the Privileges Committee and of the House in the case of expulsion of Mrs. Gandhi shall not constitute a precedent in the law of parliamentary privileges. They argue that in the teeth of such a resolution, it was not permissible for the Parliament to have again resolved in December 2005 to expel the petitioners from the membership of the two Houses.

313. In our considered view, the opinion expressed by the Members of Parliament in May 1981, or for that matter in December 1978, as indeed in June 1951 merely represent their respective understanding of the law of privileges. These views are not law on the subject by the Parliament in exercise of its enabling power under the second part of Article 105(3). It cannot be said, given the case of expulsion of Mudgal in 1951, that the parliamentary practice in India is wholly against resort to the sanction of expulsion for breach of privileges under Article 105.

314. On the question whether power of expulsion exists or not, divergent views have been expressed by learned members in the Parliament. These views deserve to be respected but on the question whether there exists power of expulsion is a matter of interpretation of the constitutional provisions, in particular Article 105(3) and Article 194(3) on which the final arbiter is this Court and not the Parliament.

Judicial Review — Manner of Exercise — Law in England

315. Having held that the power of expulsion can be claimed by Indian legislature as one of the privileges inherited from the House of Commons through Article 105(3), the next question that arises is whether under our jurisprudence is it open to the Court to examine the manner of exercise of the said power by Parliament as has been sought by the petitioners.

316. The learned counsel for Union of India, as indeed the learned Additional Solicitor General, were at pains to submit that the matter falls within the exclusive cognizance of the legislature, intrusion wherein for purposes of judicial review of the procedure adopted has always been

consistently avoided by the judicature in England from where the power of expulsion has been sourced as also expressly prohibited by the constitutional provisions.

317. The principal arguments on behalf of the Union of India and of the learned Additional Solicitor General on the plea of ouster of the court's jurisdiction is that in essence, the position with regard to justiciability of exercise of Parliamentary privilege is exactly the same in India as what exists in England. As seen in *Bradlaugh* v. *Gossett*, Courts in England have recognized the Parliamentary Privilege of exclusive cognizance over its own proceedings, whereby Courts will examine existence of a privilege but will decline to interfere with the manner of its exercise.

318. The contention of the petitioners, on the other hand, is that the arguments opposing the judicial review ignore both the impact in the Indian context of existence of a written Constitution, as well as the express provisions thereof. It has been submitted that the English decisions, including *Bradlaugh*, cannot be transplanted into the Indian Constitution and are irrelevant as the position of Parliament in the United Kingdom is entirely different from that of the Indian Parliament which is functioning under the Constitution and powers of which are circumscribed by the Constitution, which is supreme and not the Parliament.

319. Against the backdrop of challenge to the jurisdiction of the court to examine the action of the legislature in the matter arising out of its privilege and power to punish for contempt, this court in the case of *UP Assembly* took note of the law laid down in a series of cases that came up in England during the turbulent years of struggle of House of the Commons to assert its privileges. {*Earl of Shaftesbury* (86 E.R. 792), *Ashby* v. *White* [(1703-04) 92 E.R. 129], *R.* v. *Paty* [(1704) 92 E.R. 232], *Case of Murray* (95 E.R. 629), *Case of Brass Crosby* (95 E.R. 1005), *Case of Sir Francis Burdett* (104 E.R. 501), *Cases of Stockdale* (1836-37), *Howard* v. *Sir William Gosset* (116 E.R. 139) and *Bradlaugh* v. *Gossett,* [1884] L.R. 12 Q.B.D. 271}.

320. The learned counsel for Union of India quoted extensively from the judgment in *Bradlaugh*, mainly the passages mentioned hereinafter.

321. Lord Colridge CJ observed at page 275 thus:-

"……there is another proposition equally true, equally well

established, seems to be decisive of the case before us. What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject, - *Burdett* v. *Abbott* (14 East, 1, 148) and *Stockdale* v. *Hansard* (9 Ad. & E.I); - are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and inefficiency without it". (14 East, at p.152.)"

322. Stephen J., at page 278, was categorical in his view that "the House of Commons is not subject to the control of her Majesty's courts in its administration of that part of the statute – law which has relation to its own internal proceedings" and referred in this context to the following:-

"Blackstone says (1 Com.163): "The whole of the law and custom of Parliament has its original form this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere." This principle is re-stated nearly in Blackstone's words by each of the judges in the case of *Stockdale* v. *Hansard.* (9 Ad. & E.1.)"

Then, at page 279, Stephen J. copiously quoted from Stockdale as under:-

"Lord Denman says (9 Ad. & E. at p. 114) "Whatever is done within the walls of either assembly must pass without question in any other place." Littledale, J. says (At p.162) : "It is said the House of commons is the sole judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned." Patteson, J. said (at p. 209) "Beyond all dispute, it is necessary that the proceedings of each house of Parliament should be entirely free and unshackled that whatever is said or done in either House should not be liable to examination elsewhere." And Coldridge, J. said (at p.233) : "That the House should have exclusive jurisdiction to regulate the course of its own proceedings and animadvert upon any conduct there in violation of its rules or

A derogation from its dignity, stands upon the clearest grounds of necessity."

Further, at page 285 Stephen J. observed thus:-

B "I do not say that the resolution of the House is the judgment of a Court not subject to our revision; but it has much in common with such a judgment. The *House of Commons is not a Court of Justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character* when it has to apply to particular cases the provisions of Acts of Parliament. We must C presume that it discharges this function properly and with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a judge whose decision is not subject to appeal."

D (Emphasis supplied)

325. On the basis of appraisal of the law in the aforementioned series of cases, this court summarized the position in the law of England on the question of jurisdiction of the court in matters arising out of contempt jurisdiction of the legislature, in the following words at page 482:-

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"*108.* Having examined the relevant decisions bearing on the point, it would, we think, not be inaccurate to observe that the right claimed by the House of Commons not to have its general warrants examined in *habeas corpus* proceedings has been *based more on* F *the consideration that the House of Commons is in the position of a superior Court of Record and has the right like other superior courts of record* to issue a general warrant for commitment or persons found guilty of contempt. Like the general warrant issued by superior courts of record in respect of such contempt, the general warrants issued by the House of Commons in similar G situations should be similarly treated. It is on that ground that the general warrants issued by the House of Commons were treated beyond the scrutiny of the courts in habeas corpus proceedings. In this connection, we ought to add that *even while recognising the validity of such general warrants, Judges have frequently* H *observed that if they were satisfied upon the return that such*

general warrants were issued for frivolous or extravagant reasons, it would be open to them to examine their validity."

(Emphasis supplied)

326. The case of *Prebble* has been mentioned earlier. The observations of Privy Council (at page 976 and 980 of the judgment) have been extracted in earlier part of this judgment. They have been referred to by the learned counsel for Union of India for present purposes as well. The principle of law and practice that the courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges was reiterated in this case on the basis of, amongst others, the cases of *Burdett, Stockdale* and *Bradlaugh.*

327. Learned counsel for Union of India and learned Additional Solicitor General, submit that in the case of *UP Assembly*, this court was dealing mainly with the powers of the courts under Article 32 and 226 of the Constitution of India to entertain petitions challenging legality of committal for contempt of State legislature on the grounds of breach of fundamental rights of non-members. The learned counsel drew our attention to certain observations made, at page 481-482 of the judgment, which read as under:-

> "Mr. Seervai's argument was that though the resolution appeared to constitute an infringement of the Parliamentary Oaths Act, the Court refused to give any relief to *Bradlaugh*, and he suggested that a similar approach should be adopted in dealing with the present dispute before us. The obvious answer to this contention is that *we are not dealing with any matter relating to the internal management of the House in the present proceedings.* We are dealing with the power of the House to punish citizens for contempt alleged to have been committed by them outside the four walls of the House, and that essentially raises different considerations."

(Emphasis supplied)

328. The submission of the learned counsel is that the view in *Bradlaugh* that matters of internal management were beyond the purview of judicial scrutiny had been followed. This, according to the learned counsel,

A has been the consistent view of this court, as can be seen from the cases of *Indira Nehru Gandhi* v. *Raj Narain* [1975 Supp SCC 1] and *P.V. Narasimha Rao* v. *State* (CBI/SPE) [(1998) 4 SCC 626]. Both the judgments referred to the law in *Bradlaugh*, the case of *P.V. Narsimha Rao* also quoted with approval *Stockdale.* In the case of *Indira Nehru Gandhi,* the court took note, in Para 70, of the law in *Bradlaugh*, in the following words:-

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> ".....It was held that the Court had no power to restrain the executive officer of the House from carrying out the order of the House. The reason is that the House is not subject to the control of the courts in the administration of the internal proceedings of the
C House."

329. Learned counsel for Union of India also sought strength from the following observation appearing at page 468:-

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> ".....On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognized privileges (May's Parliamentary Practice, pp. 173-74)....."

330. In our view, the above observation of this court in the case of *UP*
E *Assembly*, paraphrasing the position of law and practice in England on the authority of May's Parliamentary Practice, refers to enforcement by the legislature of privileges which had been recognized by the courts. The observation has no relevance on the question under consideration in these matters since the law in England of exclusive cognizance has no applicability
F in India which is governed and bound by the Constitution of India.

Parliamentary privileges vis-á-vis *Fundamental Rights*

331. Before considering judicial review in Indian context, it is appropriate to first examine this aspect. In the face of arguments of illegalities in the
G procedure and the breach of fundamental rights, it has been strongly contended on behalf of the Union of India that Parliamentary privileges cannot be decided against the touchstone of other constitutional provisions, in general, and fundamental rights, in particular.

H 332. In this context, again it is necessary to seek enlightenment from

the judgments in the two cases of Pandit Sharma as also the *UP Assembly* case where breach of fundamental rights had been alleged by the persons facing the wrong end of the stick.

333. In the case of *Pandit Sharma (I)*, one of the two principal points canvassed before the Court revolved around the question as to whether the privilege of the Legislative Assembly under Article 194 (3) prevails over the fundamental rights of the petitioner (non-member in that case) under Article 19(1)(a). This contention was sought to be supported on behalf of the petitioner through a variety of arguments including the plea that though clause (3) of Article 194 had not, in terms, been made "subject to the provision of the Constitution" it would not necessarily mean that it was not so subject, and that the several clauses of Article 194, or Article 105, should not be treated as distinct and separate provisions but should be read as a whole and that, so read, all the clauses should be taken as subject to the provisions of the Constitution which would include Article 19(1)(a). It was also argued that Article 194 (1), like Article 105 (1), in reality operates as an abridgement of the fundamental rights of freedom of speech conferred by Article 19(1) (a) when exercised in Parliament or the State Legislature, as the case may be, but Article 194 (3) does not purport to be an exception to Article 19(1) (a). It was then submitted that Article 19 enunciates a transcendental principle and confers on the citizens of India *indefeasible* fundamental rights of a permanent nature while the second part of Article 194 (3) was of the nature of a transitory provision which, from its very nature, could not override the fundamental rights. Further, the contention raised was that if in pursuance of Article 105 (3), Parliament were to make a law under entry 74 in List I to the Seventh Schedule defining the powers, privileges and immunities of the Houses of Parliament and if the powers, privileges and immunities so defined were repugnant to the fundamental rights of the citizens, such law will, under Article 13, to the extent of such repugnancy be void and this being the intention of the Constitution-makers and there being no apparent indication of a different intention in the latter part of the same clause, the powers & privileges of the House of Commons conferred by the latter part of clause (3) must also be taken as subject to the fundamental rights.

334. The arguments of the petitioner to above effect, however, did not find favour with the Court. It was, *inter alia*, held that the subject matter of each of the four clauses of Article 194 (which more or less correspond

A to Article 105) was different. While clause (1) had been expressly made subject to the provisions of the Constitution, the remaining clauses had not been stated to be so subject, indicating that the Constitution makers did not intend clauses (2) to (4) to be subject to the provisions of the Constitution. It was ruled that the freedom of speech referred to in clause (1) was different from the freedom of speech and expression guaranteed under Article 19 (1) B (a) and the same could not be cut down in any way by any law contemplated by Article 19 (2). While agreeing with the proposition that a law made by Parliament in pursuance of the earlier part of Article 105 (3) would not be a law made in exercise of constituent power but would be one made in exercise of ordinary legislative powers under Article 246 read with the C relevant entries of the Seventh Schedule and that consequently if such a law takes away or abridges any of the fundamental rights, it would contravene the peremptory provisions of Article 13 (2) and would be void to the extent of such contravention, it was observed that this did not lead to the conclusion that if the powers, privileges or immunities conferred by the latter D part of the said Article are repugnant to the fundamental rights they must also be void to the extent of repugnancy. It was pointed out that it "must not be overlooked that the provisions of Article 105 (3) and Article 194 (3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III". Interestingly, it was also observed in the context of amenability E of a law made in pursuance of first parts of Article 105(3) and Article 194(3) to the provisions of Article 13(2) that "it may well be that that is perhaps the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities ....."

F 335. On the basis of conclusions so reached, this Court reconciled the conflict between fundamental right of speech & expression under Article 19(1)(a) on one hand and the powers and privileges of the Legislative Assembly under Article 194(3) on the other by holding thus:-

G "The principle of harmonious construction must be adopted and so construed, the provisions of Art.19(1)(a), which are general, must yield to Art.194(1) and the latter part of its cl. (3) which are special"

336. Pandit Sharma had also invoked Article 21 to contend that the proceedings before the Committee of Privileges of the Legislative Assembly H threatened to deprive him of personal liberty otherwise than in accordance

with the procedure established by law. This Court, however, found that the Legislative Assembly had framed rules of procedure under Article 208 and, therefore, if the petitioner was eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation would be in accordance with the procedure established by law and, therefore, a complaint of breach of fundamental rights under Article 21 could not be made. The Court then proceeded to examine the case to test the contention that the procedure adopted by the Legislative Assembly was not in accordance with the standing orders laying down the rules of procedure governing the conduct of its business made in exercise of powers under Article 208.

337. It is not possible to overlook developments in law post *Pandit Sharma*, including *UP Assembly* case.

338. In the course of addressing the issues raised in the case of *UP Assembly*, this court had the occasion to examine both parts of clause (3) of Article 194. Article 194 (1) provides "freedom of speech" in the legislature, though subject to provision of the Constitution and to the rules and standing orders regulating the procedure of the House in question. Article 194 (2) creates an absolute immunity, in favour of members of the legislature, against liability to any proceedings in any court in respect of anything said or any vote given by them in the legislative body or any committees thereof. The first part of the clause (3) empowers the legislature to define "by law" the powers, privileges and immunities of the House, its members and the committees thereof, in respect other than those covered by the earlier two clauses of Article 194.

339. While construing the effect of the expression "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the legislature" as used in Clause (1) of Article 194 which has been omitted in the remaining clauses of the said Article, at page 443 this court observed as under:-

> "It will thus be seen that all the 4 clauses of the Article 194 are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is couched in such wide terms that in exercising the rights conferred on them by cl.(1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by

A Part III, they would not be liable for any action in any court. Nevertheless, if for other valid considerations, it appears that *the contents of cl.(3) may not exclude the applicability of certain relevant provisions of the Constitution,* it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution." In dealing with the effect of the provisions contained in cl. (3) of Art. 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction"

(Emphasis supplied)

340. Reiterating the view taken in *Pandit Sharma (I)*, it was observed at page 452 as under:-

"……It is true that the power to make such a law has been conferred on the legislatures by the first part of Article 194(3); but when the State Legislatures purport to exercise this power, they will undoubtedly be acting under Article 246 read with Entry 39 of List II. The enactment of such a law cannot be said to be in exercise of a constituent power, and so, such a law will have to be treated as a law within the meaning of Article 13. That is the view which the majority decision expressed in the case of *Pandit Sharma* [(1959) Supp. 1 SCR 806], and we are in respectful agreement with that view."

341. This was reiterated yet again at page 497 of the said judgment in the following words:-

"……that is one reason why the Constitution-makers thought it necessary that the legislatures should in due course enact laws in respect of their powers, privileges and immunities, because they knew that *when such laws are made, they would be subject to the fundamental rights and would be open to examination by the courts in India.* Pending the making of such laws, powers, privileges and immunities were conferred by the latter part of

Article 194(3). As we have already emphasised, the construction of this part of the article is within the jurisdiction of this Court, and in construing this part, we have to bear in mind the other relevant and material provisions of the Constitution."

(Emphasis supplied)

342. In the case of *UP Assembly*, this Court observed that the general issue as to the relevance and applicability of all the fundamental rights guaranteed by Part III had not been raised in the case of *Pandit Sharma* inasmuch as contravention of only Article 19 (1) (a) and Article 21 had been pleaded, therefore, it had not become necessary to consider the larger issue as to whether the latter part of Article 194 (3) was subject to the fundamental rights in general. It was held that in view of the majority opinion in case of *Pandit Sharma (I)*, "it could not be said that the said view excluded the application of all fundamental rights, for the obvious and simple reason that Article 21 was held to be applicable and the merits of the petitioner's argument about its alleged contravention in his cases were examined and rejected." The following observations appearing at p.451 in the case of *UP Assembly* are instructive and need to be taken note of:-

"Therefore, *we do not think* it would be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the *latter must always yield to the former*. The majority decision, therefore, must be taken to have *settled that Article 19(1)(a) would not apply, and Article 21 would.*"

(Emphasis supplied)

343. The Court proceeded to examine the applicability of Article 20 to the exercises of power and privilege under Article 194 (3) and the right of the citizen to approach this Court for redressal under Article 32. In this context, in Para 125 (at pages 492-93), it was held:-

".....*If Article 21 applies, Article 20 may conceivably apply*, and the question may arise, if a citizen complains that his fundamental right had been contravened either under Article 20 or Article 21, can he or can he not move this Court under Article 32? For the

purpose of making the point which we are discussing, the *applicability of Article 21 itself would be enough. If a citizen moves this Court and complains that his fundamental right under Article 21 had been contravened, it would plainly be the duty of this Court to examine the merits of the said contention,* and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law. In fact, this question was *actually considered by this Court in the case of Pandit Sharma [1959] Supp. 1 SCR 806. It is true that the answer was made in favour of the legislature: but that is wholly immaterial* for the purpose of the present discussion. If in a given case, the allegation made by the citizen is that he has been deprived of his liberty not in accordance with law, but for capricious or *mala fide* reasons, this Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. In our opinion, therefore, *the impact of the fundamental constitutional right conferred on Indian citizens by Article 32 on the construction of the latter part of Article 194(3) is decisively against the view that a power or privilege can be claimed by the House, though it may be inconsistent with Article 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Article 208(1).*"

(Emphasis supplied)

344. The hollowness of the proposition of total immunity of the action of the legislatures in such matters is brought out vividly in the following words:-

".....It would indeed be strange that the Judicature should be authorised to consider the validity of the legislative acts of our legislatures, but should be prevented from scrutinising the validity of the action of the legislatures trespassing on the fundamental rights conferred on the citizens."

(Emphasis supplied)

345. Referring to the above observations the learned Additional Solicitor General submitted that this observation may be relevant to Article 21 in the limited context but cannot be applied to all the fundamental rights. It is the contention of the learned counsel for Union of India and the learned Additional Solicitor General that the case of *UP Assembly* was restricted to the consideration of the exclusiveness of the right of the Legislative Assembly to claim a general warrant issued by it in respect of its contempt alleged to have been committed by a citizen who was not a member of the House outside the four-walls of the House and to the jurisdiction of the High Court to entertain a *Habeas Corpus* petition on the allegations of breach of fundamental rights of the said citizen. The learned counsel would point out that the majority judgment in the course of setting out its conclusions pre-faced its answer with the observation that "the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four-walls of the legislative chamber". The submission of the learned counsel is that the Court in the said case had deliberately omitted reference to infringement of privileges and immunities of the Legislature other than those with which it was concerned in the said matter and, therefore, the views taken with regard to applicability of Article 20 or Article 21 could not be taken as law settled.

346. The learned counsel for Union of India further submitted that in exercise of the privileges of the House to regulate its own proceedings including the power to expel a member, it does not engage Article 14 or Article 19. He referred to the judgment of Canada Supreme Court in *New Brunswick Broadcasting Corporation* v. *Nova Scotia Speaker,* [1993] 1 SCR 391, in particular, the observations (page 373) to the following effect:-

> "It is a basic rule, not disputed in this case, that one part of the Constitution cannot be abrogated or diminished by another part of the Constitution: Reference re Bill 30, An Act to amend the *Education Act (Ont.),* [1987] 1 SCR 1148. So if the privilege to expel strangers from the legislative assembly is constitutional, it cannot be abrogated by the Charter, even if the Charter otherwise applies to the body making the ruling. This raises the critical question: is the privilege of the legislative assembly to exclude strangers from its chamber a constitutional power?"

347. He also referred to the judgment of Canada Supreme Court in the

A case of *Harvey* v. *New Brunswick,* [1996] 2 SCR 876 and referred in particular to observations at pages 159 and 162 as under:-

> "This is *not to say that the courts have no role to play in the debate which arises where individual rights are alleged to conflict with parliamentary privilege.* Under the British system of parliamentary supremacy, the courts arguably play no role in monitoring the exercise of parliamentary privilege. In Canada, this has been altered by the Charter's enunciation of values which may in particular cases conflict with the exercise of such privilege. *To prevent abuses cloaked in the guise of privilege from trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.* As this Court made clear in New Brunswick Broadcasting, the courts may properly question whether a claimed privilege exists. This screening role means that where it is alleged that a person has been expelled or disqualified on invalid grounds, the courts must determine whether the act falls within the scope of parliamentary privilege. If the Court concludes that it does, no further review lies."
>
> xxxx xxxx xxxx
>
> "The authorities establish that expulsion from the legislature of members deemed unfit is a proper exercise of parliamentary privilege. Regarding the British House of Commons, Erskine May, supra, wrote that,"[n]o power exercise by the Commons is more undoubted than that of expelling a member from the house, as a punishment for grave offences" (p. 58). In Canada, J. G. Bourinot, in Parliamentary Procedure and Practice in the Dominion of Canada (2nd Ed. 1892), at pp. 193-94, affirmed the same rule."
>
> (Emphasis supplied)

348. We may note that observations made by Canadian Supreme Court in *House of Commons* v. *Vaid,* [2005] 1 SCR 667, show that even in Canada, the approach is on change. In *Vaid*, it is observed that "over the years, the assertion of parliamentary privilege has varied in its scope and content". Further, the court comments that much more recently the Speaker in Canada stated "In my view, parliamentary privilege does not go much beyond the

right of free speech in the House of Commons and the right of a member to discharge his duties as a member of the House of Commons" (page 682). Be that as it may, in our considered opinion, the law laid down by the Supreme Court of Canada has to be construed in the light of Constitutional and statutory provisions in vogue in that jurisdiction and have no relevance here in as much as it has already been settled in the aforementioned cases by this Court that the manner of enforcement of privilege by the legislature can result in judicial scrutiny on the touch-stone of Articles 20 or 21, though subject to the restrictions contained in the other Constitutional provision, for example Article 212 (1) in the case of legislative assembly of the State (corresponding to Article 122 in the case of Parliament).

349. We are unable to accept the argument of the learned Counsel for Union of India for the simple reason that what this Court "deliberately omitted" to do in the case of *UP Assembly* was consideration of the powers, privileges and immunities other than the contempt jurisdiction of the Legislature. The views expressed as to the applicability of Article 20 and Article 21 in the context of manner of exercise of the powers and privileges of the Legislative Assembly are of general import and cannot be wished away. They would hold good not merely against a non-member as was the case in that Reference but even against a member of the Legislature who also is a citizen of this country and entitled to the protection of the same fundamental rights, especially when the impugned action entails civil consequences.

350. In the light of law laid down in the two cases of *Pandit Sharma* and in the case of *UP Assembly*, we hold that the broad contention on behalf of the Union of India that the exercise of Parliamentary privileges cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct. In the case of *Pandit Sharma* the manner of exercise of the privilege claimed by the Bihar Legislative Assembly was tested against the "procedure established by law" and thus on the touchstone of Article 21. It is a different matter that the requirements of Article 21, as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in the case of *UP Assembly* which added the enforceability of Article 20 to the fray.

351. When the cases of *Pandit Sharma* and *UP Assembly* were decided, Article 21 was construed in a limited sense, mainly on the strength of law laid down in *A.K. Gopalan* v. *State of Madras,* [1950] SCR 88, in which a Constitution Bench of this Court had held that operation of each Article of the Constitution and its effect on the protection of fundamental rights was required to be measured independently. The law underwent a total transformation when a Constitution Bench (11 Judges) in *Rustom Cavasjee Cooper* v. *Union of India,* [1970] 1 SCC 248, held that all the provisions of the Constitution are required to be read conjointly as to the effect and operation of fundamental rights of the citizens when the State action infringed the rights of the individual. The jurisprudence on the subject has been summarized by this Court in Para 27 of the judgment in *Ashok Kumar Gupta* v. *State of U.P.,* [1997] 5 SCC 201, in the following words :-

> "*27.* In *A.K. Gopalan* v. *State of Madras,* [1950] SCR 88, per majority, the Constitution Bench had held that the operation of each article of the Constitution and its effect on the protection of fundamental rights is required to be measured independently and not in conjoint consideration of all the relevant provisions. The above ratio was overruled by a Bench of 11 Judges in *Rustom Cavasjee Cooper* v. *Union of India,* [1970] 1 SCC 248. This Court had held that all the provisions of the Constitution conjointly be read on the effect and operation of fundamental right of the citizens when the State action infringes the right of the individual. In *D.T.C.* case [1991 Supp (1) SCC 600] (SCC at pp. 750-51, paras 297 and 298) it was held that:
>
> > "It is well-settled constitutional law that different articles in the chapter on Fundamental Rights and the Directive Principles in Part IV of the Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject-matter of what is to be protected by its various provisions particularly the Fundamental Rights.
> >
> > ..... The nature and content of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual but by its objects. *The validity of the State action must be adjudged in*

the light of its operation upon the rights of the individuals or groups of individuals in all their dimensions. It is not the object of the authority making the law impairing the right of the citizen nor the form of action taken that determines the protection he can claim; *it is the effect of the law and of the action upon the right which attract the jurisdiction of the court to grant relief.* In *Minerva Mills Ltd.* v. *Union of India,* [1980] 3 SCC 625 the fundamental rights and directive principles are held to be the conscience of the Constitution and disregard of either would upset the equibalance built up therein. *In Maneka Gandhi case [1978 1 SCC 248] it was held that different articles in the chapter of fundamental rights of the Constitution must be read as an integral whole, with possible overlapping of the subject-matter of what is sought to be protected by its various provisions particularly by articles relating to fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution.* Their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. The fundamental rights protected by Part III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny. Fundamental rights are necessary means to develop one's own personality and to carve out one's own life in the manner one likes best, subject to reasonable restrictions imposed in the paramount interest of the society and to a just, fair and reasonable procedure. The effect of restriction or deprivation and not of the form adopted to deprive the right is the conclusive test."

(Emphasis supplied)

352. The enforceability of Article 21 in relation to the manner of exercise of Parliamentary privilege, as affirmed in the cases of *Pandit Sharma* and *UP Assembly* has to be understood in light of the expanded

A scope of the said fundamental right interpreted as above.

353. It is to be remembered that the plenitude of powers possessed by the Parliament under the written Constitution is subject to legislative competence and restrictions of fundamental rights and that in case a member's personal liberty was threatened by imprisonment of committal in B execution of Parliamentary privilege, Article 21 would be attracted.

354. If it were so, we are unable to fathom any reason why the general proposition that fundamental rights cannot be invoked in matters concerning Parliamentary privileges should be accepted. Further, there is no reason C why the member, or indeed a non-member, should not be entitled to the protection of Article 21, or for that matter Article 20, in case the exercise of Parliamentary privilege contemplates a sanction other than that of committal.

Judicial Review — Effect of Article 122

D

355. It is the contention of the learned Counsel for Union of India that it should be left to the wisdom of the legislature to decide as to on what occasion and in what manner the power is to be exercised especially as the Constitution gives to it the liberty of making rules for regulating its procedure and the conduct of its business. He would refer to Article 122 (1) E to argue that the validity of proceedings in Parliament is a matter which is expressly beyond the gaze of, or scrutiny by, the judicature. It has been the contention on behalf of the Union of India that the principle of exclusive cognizance of Parliament in relation to its privileges under Article 105 constitutes a bar on the jurisdiction of the Court which is of equal weight F as other provisions of the Constitution including those contained in Part III and, therefore, the manner of enforcement of the privilege cannot be tested on the touchstone of other such constitutional provisions, also in view of the prohibition contained in Article 122.

356. The issue of jurisdiction was one of the principal concerns of this G court in the case of *UP Assembly*, under the cover of which the Uttar Pradesh Legislative Assembly had asserted its right to commit Keshav Singh for contempt and later had taken umbrage against the entertainment of a petition for habeas corpus in the High Court under Article 226. The main controversy in that case squarely lay in the question as to whether the H legislature was "the sole and exclusive judge" of the issue of contempt and

of the punishment that deserved to be awarded against the contemnor, as against the jurisdiction claimed by the High Court to entertain a writ challenging the validity of the detention of the alleging contemnor.

357. In the case of *Pandit Sharma (II)*, while dealing with the questions raised as to the regularity of the procedure adopted by the House of the legislature, this court *inter alia* observed as under at page 105:-

> ".....the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. *Article 212 of the Constitution is a complete answer* to this part of the contention raised on behalf of the petitioner. *No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business*....."
>
> (Emphasis supplied)

The question of extent of judicial review of Parliamentary matters has to be resolved with reference to the provision contained in Article 122 (1) that corresponds to Article 212 referred to in *Pandit Sharma (II)*. On a plain reading, Article 122 (1) prohibits "the validity of any proceedings in Parliament" from being "called in question" in a court merely on the ground of "irregularity of procedure". In other words, the procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, 'procedural irregularity' stands in stark contrast to 'substantive illegality' which cannot be found included in the former. We are of the considered view that this specific provision with regard to check on the role of the judicial organ *vis-à-vis* proceedings in Parliament uses language which is neither vague nor ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or invocation of principles of harmonious construction.

359. Article 122 corresponds to Draft Article 101 which was considered by the Constituent Assembly on 23rd May 1949. Though the marginal note of the Article "Courts not to enquire into proceedings of Parliament" clearly indicates the import of the provision contained therein, Mr. H.V. Kamath

A introduced an amendment that the words "in any court" be inserted after the words "called in question" in Clause I. Answering to the debate that had followed, Dr. B.R. Ambedkar intervened and clarified as under:-

> "*The Honourable Dr. B.R. Ambedkar :* Sir, with regard to the
> B amendment of Mr. Kamath, I do not think it is necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a court? Therefore *the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the court.* Therefore it is
> C unnecessary to mention the words which Mr. Kamath wants in his amendment.
>
> For the reason I have explained, *the only forum where the proceedings can be questioned in a legal manner and legal relief obtained either against the President or the Speaker or any*
> D *officer or Member, being the Court,* it is unnecessary to specify the forum. Mr. Kamath will see that *the marginal note makes it clear.*"
>
> (Emphasis supplied)

360. The above indeed was a categorical clarification that Article 122
E does contemplate control by the courts over legality of Parliamentary proceedings. What the provision intended to prohibit thus were cases of interference with internal Parliamentary proceedings on the ground of mere procedural irregularity.

F 361. That the English cases laying down the principle of exclusive cognizance of the Parliament, including the case of *Bradlaugh*, arise out of a jurisdiction controlled by the constitutional principle of sovereignty of Parliament cannot be lost sight of. In contrast, the system of governance in India is founded on the norm of supremacy of the Constitution which is fundamental to the existence of the Federal State. Referring to the distinction
G between a written Federal Constitution founded on the distribution of limited Executive, Legislative and Judicial authority among bodies which are coordinate with and independent of each other on the one hand and the system of governance in England controlled by a sovereign Parliament which has the right to make or unmake any law whatever, this Court in the
H case of *UP Assembly* concluded thus in Paras 39 and 40:-

"*39.* Our legislatures have undoubtedly plenary powers, but *these powers are controlled by the basic concepts of the written Constitution itself* and can be *exercised within the legislative fields allotted to their jurisdiction* by the three Lists under the Seventh Schedule; but beyond the Lists, the legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the *legislative supremacy of our legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India.* Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.

40. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Article 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any legislature in India in the literal absolute sense."

(Emphasis supplied)

362. The submissions of the learned counsel for Union of India and the learned Additional Solicitor General seek us to read a finality clause in the provisions of Article 122 (1) in so far as parliamentary proceedings are concerned. On the subject of finality clauses and their effect on power of judicial review, a number of cases have been referred that may be taken note of at this stage.

363. The case of *Sub-Committee on Judicial Accountability* v. *Union of India,* [1991] 4 SCC 699, pertained to interpretation of Articles 121 and 124 of the Constitution and of the Judges (Inquiry) Act, 1968. One of the contentions raised in that case pertained to the issue as to whether the question if a motion had lapsed or not was a matter pertaining to the conduct of the business of the House of Parliament of which the House was taken as the sole and exclusive master. It was contended that no aspect of the matter was justiciable before a Court since Houses of Parliament are privileged to be the exclusive arbiters of the legality of their proceedings. Strong reliance, in this context, was placed on the decision in *Bradlaugh* which, it was noted, arises out of a jurisdiction where exclusiveness of Parliamentary control was covered by a Statute. In this context, the majority view was expressed in the following words by this Court:-

> "61. But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the Constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation.
>
> 63. But it is the duty of this Court to interpret the Constitution for the meaning of which this Court is final arbiter.

65. The rule in *Bradlaugh* v. *Gossett,* [1884]12 QBD 271 : 50 LT 620 was held not applicable to proceedings of colonial legislature governed by the written Constitutions *Barton* v. *Taylor* [(1886)11 AC 197 : 2 TLR 382] and *Rediffusion (Hong Kong) Ltd.* v. *Attorney General of Hong Kong,* [1970] AC 1136 : [1970] 2 WLR 1264.

66. The principles in *Bradlaugh,* [1884] 12 QBD 271 : 50 LT 620] is that even a statutory right if it related to the sphere where Parliament and not the courts had exclusive jurisdiction would be a matter of the Parliament's own concern. But the principle cannot be extended where the matter is not merely one of procedure but of substantive law concerning matters beyond the *parliamentary* procedure. Even in matters of procedure the constitutional provisions are binding as the legislations are enforceable. Of the interpretation of the Constitution and as to what law is the courts have the constitutional duty to say what the law is. The question whether the motion has lapsed is a matter to be pronounced upon the basis of the provisions of the Constitution and the relevant laws. Indeed, the learned Attorney General submitted that the question whether as an interpretation of the constitutional processes and laws, such a motion lapses or not is exclusively for the courts to decide."

364. The touchstone upon which Parliamentary actions within the four-walls of the Legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny by Article 122 (1) inasmuch as the broad principle laid down in *Bradlaugh* acknowledging exclusive cognizance of the Legislature in England has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog of and guarantor of the Constitution.

365. Article 217(3) vests in the President of India the jurisdiction to decide the question as to the age of a Judge of a High Court, after consultation with the Chief Justice of India and declares that the said decision of the President shall be final. Interpreting this finality clause

A relatable to the powers of the President, this Court in the case of *Union of India* v. *Jyoti Prakash Mitter,* [1971] 1 SCC 396 observed in Para 32 as under:-

> "The President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the Rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence."

366. Article 311 relates to the dismissal, removal etc. of persons employed in civil capacities under the Union or a State. The second proviso to Article 311(2) empowers the President or the Governor, as the case may be, to dispense with the enquiry generally required to be held, upon satisfaction that in the interest of the security of the State it is not expedient to hold such enquiry. Article 311(3) gives finality to such decision in the following manner:-

> "If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

367. Construing the expression "finality" in the aforesaid provision, this Court in *Union of India* v. *Tulsiram Patel,* [1985] 3 SCC 398, in Para 138, observed as under:-

> ".....The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of *mala fides,* if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to

> hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b)....."

368. Article 191 relates to disqualifications for membership of the State Legislature. The authority to decide the questions arising as a result is vested in the Governor whose decision, according to Article 192(1), "shall be final".

369. Tenth Schedule was added to the Constitution by the Constitution (52nd Amendment) Act 1985 with effect from 1st March 1985, to provide for detailed provisions as to disqualification on the ground of defection with reference, *inter alia*, to Article 102(2) that deals with "disqualifications for membership" of Parliament. Paragraph 6(1), amongst others, vests the authority to take a decision on the question of disqualification on ground of defection unto the Chairman of *Rajya Sabha* or the Speaker of *Lok Sabha*, as the case may be. This provision declares that the decision of the said authority "shall be final". Interestingly, Para 6 (2) states that all the proceedings relating to decision on the question of disqualification on the ground of defection "shall be deemed to be proceedings in Parliament within the meaning of Article 122".

370. Paragraph 7 of Tenth Schedule contains an express bar of jurisdiction of courts. It reads as under:-

> "*Bar of jurisdiction of courts.* Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."

371. It was in the context of these provisions that questions relating to the parameters of judicial review of the exercise of a constitutional power in the face of constitutional bar on the jurisdiction of the Court arose before a Constitution Bench of this Court in the case of *Kihoto Hollohan* v. *Zachillhu,* [1992] Supp 2 SCC 651. The matter was examined by this Court with reference, amongst others, to the immunity under Article 122, exclusivity of the jurisdiction vested in the authority mentioned in the Tenth Schedule and the concept of "finality", in addition to an express bar making it a non-justiciable area. Construing the word "finality" and referring, *inter alia*, to

A interpretation of similar finality clause in Article 217(3) in the case of *Jyoti Prakash Mitter* and in Article 311(3) as construed in *Tulsiram Patel*, this Court held that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule was a judicial power and it was inappropriate to claim that it was within the non-justiciable legislative area. The Court referred to the case of *Express Newspaper (P) Ltd.* v. *Union of India,* AIR (1958) SC B 578 and quoted the exposition as to what distinguishes a judicial power from a legislative power in *Australian Boot Trade Employees Federation* v. *Whybrow & Co.,* [1910] 10 CLR 266 by Issacs, J. as under:-

> *"If the dispute is as to the relative rights of parties as they rest* C *on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed.* If, however, the dispute is as to what shall in the future be the mutual rights and D responsibilities of the parties — in other words, if no present rights are asserted or denied, but a future rule of conduct is to be prescribed, thus creating new rights and obligations, with sanctions for non-conformity — then the determination that so prescribes, call it an award, or arbitration, determination, or decision or what you will, is essentially of a legislative character, and limited only by E the law which authorises it. If, again, there are neither present rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained necessary for the practical effectuation of admitted rights, the proceeding, though called an arbitration, is rather in the nature of an appraisement or ministerial act."

F (Emphasis supplied)

372. The following observations in the judgment in *Kihoto Hollohan* need to be quoted in extenso:-

G > *"96.* The fiction in Paragraph 6(2), indeed, places it in the first clause of *Article 122 or 212,* as the case may be. The words "proceedings in Parliament" or "proceedings in the legislature of a State" in Paragraph 6(2) have their corresponding expression in Articles 122(1) and 212(1) respectively. *This attracts an immunity* H *from mere irregularities of procedures.*

99. Where there is a lis – an affirmation by one party and denial by another – and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a Court. In *Associated Cement Companies Ltd.* v. *P.N. Sharma,* [1965] 2 SCR 366, this Court said: (SCR pp. 386-87)

> "... The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function. Applying this test, there can be no doubt that the power which the State Government exercises under Rule 6(5) and Rule 6(6) is a part of the State's judicial power.... There is, in that sense, *a lis*; there is affirmation by one party and denial by another, and the dispute necessarily involves the rights and obligations of the parties to it. The order which the State Government ultimately passes is described as its decision and it is made final and binding."

101. In the operative conclusions we pronounced on November 12, 1991 we indicated in clauses (G) and (H) therein that judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited? *The finality clause in Paragraph 6 does not completely exclude the jurisdiction of the courts under Articles 136, 226 and 227 of the Constitution.* But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is *ultra vires* the powers conferred on the said authority. Such an action can be *ultra vires* for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be *ultra vires* the powers conferred on the authority if it is vitiated by *mala fides* or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their *certiorari* jurisdiction, *the courts have applied the test whether the impugned*

action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust certiorari *to some extent and it will be effective in ousting the power of the court to review the decision of an inferior tribunal by* certiorari *if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not affect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice.* [See: *Administrative Law, H.W.R. Wade,* (6th edn.), pp. 724-26; *Anisminic Ltd.* v. *Foreign Compensation Commission,* [1969] 1 All ER 208; *S.E. Asia Fire Bricks* v. *Non-Metallic Mineral Products Manufacturing Employees Union,* [1980] 2 All ER 689 (PC)].

109. In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under Paragraph 6, the scope of judicial review under Articles 136, and 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under Paragraph 6 would be confined to jurisdictional errors only viz., *infirmities based on violation of constitutional mandate,* mala fides, *non-compliance with rules of natural justice and perversity.*

111. In the result, we hold on contentions (E) and (F):

That the Tenth Schedule does not, in providing for an additional grant (sic ground) for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the speakers/

Chairmen is valid. *But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates,* mala fides, *non-compliance with Rules of Natural Justice and perversity, are concerned.*

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh case to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words 'be deemed to be proceedings in Parliament' or 'proceedings in the legislature of a State' confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review."

(Emphasis supplied)

373. In answer to the above submissions, the learned counsel for Union of India would argue that the actions of Houses of Parliament in exercise of their powers and privileges under Article 105 cannot be subjected to the same parameters of judicial review as applied to other authorities. He would submit that it was clarified in the case of *Kihoto Hollohan* that the authority mentioned in the Tenth Schedule was a Tribunal and the proceedings of disqualification before it are not proceedings before the House and thus the decision under Para 6(1) of the Tenth Schedule is not a decision of the House nor is it subject to the approval of the House and rather operates independently of the House. He would submit that the decision of the House in regulating its own proceedings including in the matter of expulsion of a member for breach of privilege cannot be equated to the decision of such authority as mentioned in the Tenth Schedule and the House in such proceedings is not required to act in a quasi-judicial manner. He would, in the same breath, concede that the House does act

A even in such matters in conformity with rules of natural justice.

374. In our considered view, the principle that is to be taken note of in the aforementioned series of cases is that notwithstanding the existence of finality clauses, this court exercised its jurisdiction of judicial review whenever and wherever breach of fundamental rights was alleged. President
B of India while determining the question of age of a Judge of a High Court under Article 217 (3), or the President of India (or the Governor, as the case may be) while taking a decision under Article 311 (3) to dispense with the ordinarily mandatory inquiry before dismissal or removal of a civil servant, or for that matter the Speaker (or the Chairman, as the case may be) deciding
C the question of disqualification under Para 6 of the Tenth Schedule may be acting as authorities entrusted with such jurisdiction under the constitutional provisions. Yet, the manner in which they exercised the said jurisdiction is not wholly beyond the judicial scrutiny. In the case of Speaker exercising jurisdiction under the Tenth Schedule, the proceedings before him are
D declared by Para 6 (2) of the Tenth Schedule to be proceedings in Parliament within the meaning of Article 122. Yet, the said jurisdiction was not accepted as non-justiciable. In this view, we are unable to subscribe to the proposition that there is absolute immunity available to the Parliamentary proceedings relating to Article 105(3). It is a different matter as to what parameters, if any, should regulate or control the judicial scrutiny of such proceedings.
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375. In the case of *UP Assembly*, the issue was authoritatively settled by this Court, and it was held, at pages 455-456, as under:-

> "Art.212(1) seems to make it possible for a citizen to call *in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality.*
F If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than
G this that the procedure was irregular."
>
> (Emphasis supplied)

376. With reference to the above-quoted observations recognizing the
H permissibility of scrutiny in a court of law on allegation that the impugned

procedure was illegal or unconstitutional, the learned Additional Solicitor General submitted that these observations need to be clarified and the expression "illegality" must necessarily mean "unconstitutionality", that is violation of mandatory constitutional or statutory provisions.

377. The learned Additional Solicitor General has referred to *Tej Kiran Jain* v. *N. Sanjiva Reddy,* [1970] 2 SCC 272]. This was a matter arising out of a suit claiming damages for defamatory statement made by the respondent in Parliament. The suit had been dismissed by the High Court of Delhi in view of the immunity from judicial redress as stated in Article 105(2). In this court, the contention urged was that the immunity granted under Article 105(2) was confined to "relevant Parliament business" and not to something which is utterly irrelevant. This contention was rejected by Hidayatullah, C.J. through observations in Para 8 that read as under:-

> "8. In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity *inter alia* in respect of "anything said ... in Parliament". The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in *Lok Sabha.* Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."

378. The Ld. Additional Solicitor General has also placed reliance on certain observations of this court in *Indira Nehru Gandhi* v. *Raj Narain* [1975] Suppl. SCC 1, in the context of application of Article 122 on the contentions regarding unconstitutionality of the Constitution (30th Amendment) Act 1975. Beg J. in the course of his judgment in Paras 506

A & 507 observed as under:-

> *"506.* Article 122 of the Constitution *prevents this Court from going into any question relating to irregularity of proceedings* "in Parliament".
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> xxxx xxxx xxxx
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> *507.* What is alleged by the election petitioner is that the opposition members of Parliament, who had been detained under the preventive detention laws, were entitled to get notice of the proposed
> C enactments and the Thirty-ninth Amendment, so as to be present "in Parliament", to oppose these changes in the law. I am afraid, such an objection is directly covered by the terms of Article 122 which debars every court from examining the propriety of proceedings "in Parliament". If any privileges of members of
> D Parliament were involved, it was open to them to have the question raised "in Parliament". There is no provision of the Constitution which has been pointed out to us providing for any notice to each member of Parliament. That, I think, is also a matter completely covered by Article 122 of the Constitution. All that this Court can look into, in appropriate cases, is whether the procedure which
> E amounts to legislation or, in the case of a constitutional amendment, which is prescribed by Article 368 of the Constitution, was gone through at all. As a proof of that, however, it will accept, as conclusive evidence, a certificate of the Speaker that a Bill has been duly passed. (see: *State of Bihar* v. *Kameshwar,* AIR [1952] SC 252,
> F 266: 1952 SCR 889)"

(Emphasis supplied)

379. In the same case construing the effect of the judgment in the case of *Pandit Sharma (II)*, Beg J. observed as under in para 508:-

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> *"508.* Again, this Court has held, in *Sharma* v. *Sri Krishna,* AIR (1960) SC 1186, 1189: (1961) 1 SCR 96) that a notice issued by the Speaker of a Legislature for the breach of its privilege cannot be questioned on the ground that the rules of procedure relating to
> H proceedings for breach of privilege have not been observed. All

> these are internal matters of procedure which the Houses of Parliament themselves regulate."

380. The submission of the Ld. Additional Solicitor General is that the court recognized the inhibition against judicial scrutiny of internal matters of procedure in which the Houses of Parliament can rightfully assert the exclusive power to self-regulate.

381. In our considered view, the question before the court in the case of *Indira Nehru Gandhi* essentially pertained to the lawfulness of the session of Parliament that had passed the constitutional amendment measure. The concern of the court did not involve the legality of the act of the legislative body. As regards the views based on the holding in the case of *Pandit Sharma*, it has already been observed that it was rather premature for the court to consider as to whether any illegality vitiated the process of the legislative assembly.

382. The prohibition contained in Article 122 (1) does not provide immunity in cases of illegalities. In this context, reference may also be made to the case of *Smt. S. Ramaswami* v. *Union of India,* [1992] Suppl. 1 SCR 108. The case mainly pertained to Article 124 (4) read with Judges (Inquiry) Act 1968. While dealing, *inter alia*, with the overriding effect of the rules made under Article 124(5) over the rules made under Article 118, this court at page 187 made the following observations:-

> "We have already indicated the constitutional scheme in India and the true import of clauses(4) and (5) of article 124 read with the law enacted under Article 124(5), namely, the Judges (Inquiry) Act, 1968 and the Judges (Inquiry) Rules, 1969, which, *inter alia* contemplate the provision for an opportunity to the concerned Judge to show cause against the finding of 'guilty' in the report before the Parliament takes it up for consideration along with the motion for his removal. Along with the decision in Keshav Singh has to be read the declaration made in Sub-Committee on Judicial Accountability that 'a law made under Article 124(5) will override the rules made under Article 118 and shall be binding on both the Houses of Parliament. *A violation of such a law would constitute illegality and could not be immune from judicial scrutiny under Article 122(1)'.* The scope of permissible challenge by the

A concerned Judge to the order of removal made by the President under Article 124(4) in the judicial review available after making of the order of removal by the President will be determined on these considerations....."

(Emphasis supplied)

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383. The learned counsel for petitioners would refer, in the above context, to a number of decisions rendered by different High Courts adopting a similar approach to construe Article 122 or provisions corresponding thereto in other enactments.

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384. Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of Parliament. The fact that the case of *UP Assembly* dealt with the exercise of the power of the House beyond its four-walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction. Any attempt to read a limitation into Article 122 so as to restrict the court's jurisdiction to examination of the Parliament's procedure in case of unconstitutionality, as opposed to illegality would amount to doing violence to the constitutional text. Applying the principle of "*expressio unius est exclusio alterius*" (whatever has not been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of "irregularity of procedure" does not make taboo judicial review on findings of illegality or unconstitutionality.

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Parameters for Judicial review Re: Exercise of Parliamentary privileges

385. Learned Additional Solicitor General submitted that having regard to the jurisdiction vested in the judicature under Articles 32 and 226 of the Constitution on the one hand and the tasks assigned to the legislature on the other, the two organs must function rationally, harmoniously and in a spirit of understanding within their respective spheres for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilization of the democratic way of life

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in the country. We are in full agreement with these submissions. A

386. The Additional Solicitor General has further submitted that while having regard to the importance of the functions discharged by Parliament under the Constitution and the majesty and grandeur of its task, it being the ultimate repository of the faith of the people, it must be expected that Parliament would always perform its functions and exercise its powers, B privileges and immunities in a reasonable manner, the reasonableness of the manner of exercise not being amenable to judicial review. His submission is that if Parliament were to exercise its powers and privileges in a manner violative or subversive of, or wholly abhorrent to the Constitution, a limited area of judicial scrutiny would be available, which limited judicial review C would be distinct from the area of judicial review that is available when administrative exercise of power under a statute falls for consideration. His argument is that such limited judicial review is distinct from the exercise of powers coupled with a purpose and also distinct from judicial scrutiny on the ground of *mala fides*. It is his contention that the courts of judicature D in India have the power of judicial review to determine the existence of privilege but once privilege is shown to exist, the exercise of that privilege and the manner of exercise that privilege must be left to the domain of Parliament without any interference. Further, learned Additional Solicitor General submits that while what takes place within the walls of the Parliament is not available for scrutiny and even when the Parliament deals with matters E outside its walls, in a matter supported by an acknowledged privilege, there would be little scrutiny and very limited and restricted judicial review.

387. We find substance in the submission that it is always expected, rather it should be a matter of presumption, that Parliament would always F perform its functions and exercise its powers in a reasonable manner. But, at the same time there is no scope for a general rule that the exercise of powers by the legislature is not amenable to judicial review. This is neither the letter nor the spirit of our Constitution. We find no reason not to accept that the scope for judicial review in matters concerning Parliamentary proceedings is limited and restricted. In fact this has been done by express G prescription in the constitutional provisions, including the one contained in Article 122(1). But our scrutiny cannot stop, as earlier held, merely on the privilege being found, especially when breach of other constitutional provisions has been alleged.

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388. It has been submitted by the learned Additional Solicitor General that judicial review is the ability of the courts to examine the validity of action. Validity can be tested only with reference to a norm. He argues that where judicially manageable standards, that is normative standards, are not available, judicial review must be impliedly excluded. He has submitted that Parliament is not a body inferior to the courts. An administrative tribunal in whom statutory jurisdiction has been vested can certainly be subjected to judicial review to discover errors of fact or errors of law within its jurisdiction, but Parliament cannot be attributed jurisdictional errors.

389. We find the submissions substantially correct but not entirely correct. Non-existence of standards of judicial review is no reason to conclude that judicial scrutiny is ousted. If standards for judicial review of such matters as at hand are not yet determined, it is time to do so now. Parliament indeed is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny. While its acts, particularly of the nature involved here ought not to be tested in the same manner as an ordinary administrative action would be tested, there is no foundation to the plea that a Legislative body cannot be attributed jurisdictional error.

390. The learned Additional Solicitor General would further argue that the exercise of powers and privileges must not be treated as exercise of jurisdiction, but in fact exercise of constituent power to preserve its character. He stated that the Constitution did not contemplate that the contempt of authority of Parliament would actually be tried and punished in a Court of Judicature. He submitted that the frontiers of judicial review have now widened in that illegality, irrationality and procedural impropriety could be causes, but such principles have absolutely no basis in judging Parliament's action.

391. While we agree that contempt of authority of Parliament can be tried and punished nowhere except before it, the judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature. As has been noticed, in the context of Article 122(1), mere irregularity of the procedure cannot be a ground of challenge to the proceedings in Parliament or effect thereof, and while same view can be adopted as to the element of "irrationality", but in our constitutional scheme, illegality or unconstitutionality will not save the

Parliamentary proceedings.

392. It is the submission of the learned Additional Solicitor General that the proceedings in question were proceedings which were entitled to protection under Article 105(2). In other words, in respect of proceedings, if a member is offered immunity, Parliament too is offered immunity. The actions of Parliament, except when they are translated into law, cannot be questioned in court.

393. We find the argument to be founded on reading of Article 105(2) beyond its context. What is declared by the said clause as immune from liability "to any proceedings in any court" is not any or every act of the Legislative body or members thereof, but only matters "in respect of anything said or any vote given" by the members "in Parliament or any Committee thereof". If Article 105(2) were to be construed so broadly, it would tend to save even the legislative Acts from judicial gaze, which would militate against the constitutional provisions.

394. The learned Additional Solicitor General would urge that to view Parliament as a body which is capable of committing an error in respect of its powers, privileges and immunities would be an indirect comment that Parliament may act unwarrantedly. There is every hope that the Indian Parliament would never punish one for 'an ugly face', or apply a principle which is abhorrent to the constitution.

395. The learned counsel for the petitioners, on the other hand, have submitted that upon it being found that the plenitude of powers possessed by the Parliament under the written Constitution is subject to legislative competence and restrictions of fundamental rights; the general proposition that fundamental rights cannot be invoked in matters concerning Parliamentary privileges being unacceptable; even a member of legislature being entitled to the protection of Articles 20 & 21 in case the exercise of Parliamentary privilege; and Article 122(1) contemplating the twin test of legality and constitutionality for any proceedings within the four walls of Parliament, as against mere procedural irregularity, thereby displacing the English doctrine of exclusive cognizance of internal proceedings of the House, the restrictions on judicial review propagated by learned Additional Solicitor General do not deserve to be upheld.

A 396. We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent indicated in Article 122(1), that is to say the Court will decline to interfere if the grievance brought before it is restricted to allegations of "irregularity of procedure". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner B by Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the 7th *Lok Sabha* with conclusion that it was "inconsistent with and violative of the well-accepted principles of the law of Parliamentary privilege and the basic safeguards assured to all enshrined in the Constitution", it would be C partisan action in the name of exercise of privilege. We are not going into this issue but citing the incident as an illustration.

397. Having concluded that this Court has the jurisdiction to examine the procedure adopted to find if it is vitiated by any illegality or D unconstitutionality, we must now examine the need for circumspection in judicial review of such matters as concern the powers and privileges of such august body as the Parliament.

398. The learned Counsel for petitioners have submitted that the expanded understanding of the fundamental rights in general and Articles E 14 and 21 in particular, incorporates checks on arbitrariness. They place reliance on the case of *Bachan Singh* v. *State of Punjab,* [1982] 3 SCC 24.

399. In the case of *Bachan Singh*, this court, *inter alia*, held, that "Article 14 enacts primarily a guarantee against arbitrariness and inhibits F State action, whether legislative or executive, which suffers from the vice of arbitrariness" and that "Article 14 ..... was primarily a guarantee against arbitrariness in State action". It was held in the context of Article 21 that :-

G "*17.* The third *fundamental right which strikes against arbitrariness in State action is that embodied in Article 21. . . .*

..... Article 21 affords protection not only against executive action but also against legislation and any law which deprives a person of his life or personal liberty would be invalid H unless it prescribes *a procedure for such deprivation which is*

reasonable, fair and just. The *concept of reasonableness, it was held, runs through the entire fabric of the Constitution....*

.....Every facet of the law which deprives a person of his life or personal liberty would therefore have to stand the test of reasonableness, fairness and justness in order to be outside the inhibition of Article 21."

(Emphasis supplied)

400. It has been submitted by the petitioners that since the validity of the procedure followed in enforcement of the privilege by the Houses of Parliament is to be tested on the touchstone of Article 20 and Article 21, the aforesaid tests of reasonableness, non-arbitrariness, non-perversity, fairness and justice come into play even in relation to the action of the Legislature.

401. On the other hand, learned Additional Solicitor General submits that the full effect of judicial review with reference to Article 21 in matters involving claim of privileges by the legislature was not examined in the cases of *Pandit Sharma* or the case of *UP Assembly*. He further submits that the expanded understanding of Article 21, taking into account its inter-relationship with Articles 14 and 19 pertains to developments subsequent to the aforementioned cases relating to privileges of the legislature and that while scrutinizing the exercise of power by Parliament it would not be possible to employ either the test of "fair, just and reasonable" or the principle of reasonableness in administrative action.

402. The submission further is that the only principle which can afford judicial review is to examine whether the rule of the Constitution which pre-supposes the underlying foundation of separation of powers has not been infringed and a manifest intrusion into judicial power vested in courts of justice has not taken place. To put slightly differently, according to the learned Additional Solicitor General, the limited judicial review would involve an inquiry as to whether the Parliament has not exercised privileges which are really matters covered by a statute and whose adjudication would involve the exercise of judicial power conferred by a statute or the Constitution.

403. According to the learned Additional Solicitor General, the discussion

A with reference to Article 21 in the case of *Pandit Sharma (I)* proceeded upon a demurrer and, therefore, there was no scope for a full-fledged discussion on the amenability of the latter part of article 105(3) or Article 194(3) to the restrictions contained in Article 21.

B 404. In above context, he would refer to the case of *Jatish Chandra Ghosh* v. *Hari Sadhan Mukherjee,* [1961] 3 SCR 486. In that case, *Dr. Ghosh*, a member of the legislative assembly, had published in a journal certain questions which he had put in the assembly but which had been disallowed by the Speaker. The questions disparaged the conduct of the respondent who filed a criminal complaint against him and others alleging C defamation. Dr. Ghosh pleaded privileges and immunity under Article 194 as a bar to criminal prosecution. This claim was negatived, *inter alia*, on the grounds that the matter fell clearly outside the scope of Article 194(1) and Article 194(2) not being applicable since the publication was not under the authority of the legislature nor could be termed as something said or vote D given in the legislature. The claim for immunity under Article 194(3) was also repelled for the reason the immunity enjoyed by a member of House of Commons is clearly confined to speeches made in Parliament and does not extend to the publication of the debate outside. It was held as under:-

> E "There is no absolute privilege attaching to the publication of extracts from the proceedings in the House of Commons and a member, who has absolute privilege in respect of his speech in the House itself, can claim only a qualified privilege in respect of it if he causes the same to be published in the public press."

F 405. The Ld. Counsel for Union of India concluded his submissions stating that in any exercise of judicial scrutiny of acts of the legislature, there would always be a presumption raised in favour of legitimate exercise of power and no motive or *mala fide* can be attributed to it. In this context, he would place reliance on observations of this court in the cases of *K. Nagaraj* v. *State of A.P.,* [1985] 1 SCC 523 and *T. Venkata Reddy* v. *State* G *of A.P.,* [1985] 3 SCC 198.

406. In the case of Nagaraj, this court observed in Para 36 as under:-

> "36. The argument of *mala fides* advanced by Shri A.T. Sampath, H and adopted in passing by some of the other counsel, is without

any basis. The *burden to establish* mala fides *is a heavy burden to discharge.* Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof, both of which are conspicuously absent in these writ petitions. Besides, the Ordinance-making power being a legislative power, the argument of *mala fides* is misconceived. The *Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose.* Its reasons for passing a law are those that are stated in the Objects and Reasons and if, none are so stated, as appear from the provisions enacted by it. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law *mala fide.* This fund of "transferred malice" is unknown in the field of legislation."

(Emphasis supplied)

407. In the case of *T. Venkata Reddy*, the relevant observations in Para 14 read thus:-

"14..... the question is *whether the validity of an Ordinance can be tested on grounds similar to those on which an executive or judicial action is tested.* The *legislative action under our Constitution is subject only to the limitations prescribed by the Constitution and to no other.* Any law made by the Legislature, which it is not competent to pass, which is violative of the provisions in Part III of the Constitution or any other constitutional provision is ineffective. ..... While the courts can declare a statute unconstitutional when it transgresses constitutional limits, they are *precluded from inquiring into the propriety of the exercise of the legislative power.* It has to be assumed that the legislative discretion is properly exercised. The motive of the Legislature in passing a statute is beyond the scrutiny of courts. Nor can the courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. The *propriety, expediency and necessity of a legislative act are for the determination of the legislative authority and are not for determination by the courts.* An Ordinance passed either under Article 123 or under Article 213 of the Constitution stands on the

A same footing..... . It cannot be treated as an executive action or an administrative decision."

(Emphasis supplied)

408. On the question of *mala fide*, in the case of *Pandit Sharma (I)*, B it was noticed that allegations in that nature had been made against the Privileges Committee of the Legislative Assembly. This Court observed "the Committee of Privileges ordinarily includes members of all parties represented in the House and it is difficult to expect that the Committee, as a body, will be actuated by any *mala fide* intention against the petitioner". In the case C of U.P. Assembly, after finding that Article 20 and Article 21 would apply, this Court in Para 125 recognized the permissibility of judicial review in the face of the impugned action being vitiated on account of caprice or *mala fides,* in the following words:-

D "If in a given case, the allegation made by the citizen is that he has been deprived of his liberty not in accordance with law, but for capricious or *mala fide* reasons, this Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry E and scrutiny."

409. The learned counsel for Union of India conceded that there would be a marginal power of correcting abuse and, therefore, for judicial intervention but this necessity would arise only in most outrageous or absurd situations where the power had been abused under the guise of exercise of privilege. F He again referred in this context to the judgment of Canada Supreme Court in the case of *Harvey* v. *New Brunswick,* [1996] 2 SCR 876 in particular to observations at pages 159 as under:-

G "This is *not to say that the courts have no role to play in the debate which arises where individual rights are alleged to conflict with parliamentary privilege..... To prevent abuses cloaked in the guise of privilege from trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege. .....*"

H (Emphasis supplied)

410. While we have already rejected the reliance on the case mentioned above in support of the plea of exclusive cognizance vesting in the Legislature, and restriction of judicial review to the extent of finding the privilege, we find support to the case set up by the petitioners from constitutional provisions and debates thereupon which show that it is the duty of the Court to inquire into the legitimacy of the exercise of the power.

411. Dr. B.R. Ambedkar has described Article 32 as the very soul of the Constitution — very heart of it — most important Article. That the jurisdiction conferred on this court by Article 32 is an important and integral part of the basic structure of the Constitution of India and that no act of parliament can abrogate it or take it away except by way of impermissible erosion of fundamental principles of the constitutional scheme are *settled* propositions of Indian jurisprudence.

412. In the case of *State of Rajasthan* v. *Union of India,* [1977] 3 SCC 592, while dealing with the issues arising out of communication by the then Union Home Minister to the nine States asking them to advise their respective Governors to observe the legislative assemblies and seek fresh mandate from the people, this court observed in Para 40 as under:-

> "*This Court has never abandoned its constitutional function as the final Judge of constitutionality of all acts purported to be done under the authority of the Constitution.* It has not refused to determine questions either of fact or of law so long as it has found itself possessed of power to do it and the cause of justice to be capable of being vindicated by its actions. But, *it cannot assume unto itself powers the Constitution lodges elsewhere or undertake tasks entrusted by the Constitution to other departments of State which may be better equipped to perform them.* The scrupulously discharged duties of all guardians of the Constitution *include the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what is properly the domain of other constitutional organs.* Questions of political wisdom or executive policy only could not be subjected to judicial control. No doubt executive policy must also be subordinated to constitutionally sanctioned purposes. It has its sphere and limitations. But, so long as it operates within that

A sphere, its operations are immune from judicial interference. This is also a part of the doctrine of a rough separation of powers under the Supremacy of the Constitution repeatedly propounded by this Court and to which the Court unswervingly adheres even when its views differ or change on the correct interpretation of a particular constitutional provision."

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(Emphasis supplied)

413. We reaffirm the said resolve and find no reason why in the facts and circumstances at hand this court should take a different view so as to C abandon its constitutional functions as the final judge of constitutionality of all acts purported to be done under the authority of the Constitution, though at the same time refraining from transgressing into the sphere that is properly the domain of the Parliament.

414. Learned Additional Solicitor General submits that in the case of D *UP Assembly*, the court had placed reliance on Articles 208 and 212 which contemplate that rules can be framed by the legislature subject to the provisions of the Constitution which in turn implies that such rules are compliant with the fundamental rights guaranteed by Part III. He submits that if the rules framed under Article 118 (which corresponds to Article 208) E are consistent with Part III of the Constitution then the exercise of powers, privileges and immunities is bound to be a fair exercise and Parliament can be safely attributed such an intention.

415. While it is true that there is no challenge to the Rules of Procedure and Conduct of Business in *Lok Sabha* and Rules of Procedure and F Conduct of Business in the Council of States, as made by the two Houses of Parliament in exercise of enabling powers under Article 118 (1), we are of the opinion that mere availability of Rules is never a guarantee that they have been duly followed. What we are concerned with, given the limits prescribed in Article 122(1), is not "irregularity of procedure" but illegalities G or unconstitutionalities.

416. In the context of the discretionary power conferred on the Central Government by Section 237(b) of the Companies Act, 1956 to order an investigation into the affairs of a company in the event of the Government forming an opinion that circumstances exist suggesting, *inter alia*, that the H

business of the company is being conducted with intent to defraud its creditors, this Court in the case of *Barium Chemicals Ltd.* v. *Company Law Board,* AIR (1967) SC 295 held that the scope for judicial review of the action would be "strictly limited". While no difficulty would arise if it could be shown that no opinion had been formed, it was observed that:-

> ".....there is a difference between not forming an opinion at all and forming an opinion upon grounds, which, if a court could go into that question at all, could be regarded as inapt or insufficient or irrelevant."

417. It was further observed that:-

> "No doubt the formation of opinion is subjective but the *existence of circumstances relevant to the inference as the* sine qua non *for action must be demonstrable."*
>
> (Emphasis supplied)

418. It was observed in Para 60 of the judgment as under:-

> Though an order passed in exercise of power under a statute cannot be challenged on the ground of propriety or sufficiency, it is *liable to be quashed on the ground of* mala fides *dishonesty or corrupt purpose.* Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of that legislation, its order can also be challenged *if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite* under the legislation..... "
>
> (Emphasis supplied)

419. In the case of *Rohtas Industries Ltd.* v. *S.D. Agarwal,* [1969] 1 SCC 325, facing similar issues in the context of same statutory provisions, this Court followed the principle laid down in the case of Barium Chemicals and held that in the event of existence of requisite conditions being challenged:-

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> ".....the courts are entitled to examine whether those circumstances were existing when the order was made. In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the Courts."

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(Emphasis supplied)

420. Holding that there must be a real exercise of the power by the authority, it was further observed that:-

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> "...authority must be exercised honestly and not for corrupt or ulterior purposes. The authority must form the requisite opinion honestly and offer applying its mind to the relevant materials before it."

xxxx xxxx xxxx

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> "It 'must act reasonably and not capriciously or arbitrarily' and that if it were established that there were *no materials* on which requisite opinion could be formed, the Court could legitimately '*infer that the authority did not apply its mind to the relevant facts*'."

E

(Emphasis supplied)

421. The case of *S.R. Bommai* v. *Union of India,* [1994] 3 SCC 1 had given rise to challenge to the constitutional validity of the proclamation under Article 356 issued by the President, *inter alia*, ordering dissolution of the Legislative Assembly of a State, assuming to himself the functions of the Government of the State, upon declaration of satisfaction that a situation had arisen in which government of the said State cannot be carried on in accordance with the provisions of the Constitution. The matter had given rise to questions about the scope of judicial review of the satisfaction recorded by the President in such behalf. It was held through majority by the Constitution Bench (9 Judges) of this Court that the exercise of power by the President under Article 356(1) to issue such a proclamation is subject to judicial review at least to the extent of examining whether the conditions precedent to the issuance of the proclamation have been satisfied or not. For purposes of such examination, the exercise would necessarily involve

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"the scrutiny as to whether there existed material" for such a satisfaction being arrived at. It was held that it was not "any material" but material "which would lead to the conclusion" requisite for such proclamation and therefore, "the material in question has to be such as would induce a reasonable man to come to the conclusion in question". The Court held that although "the sufficiency or otherwise of the material cannot be questioned, the legitimacy of inference drawn from such material is certainly open to judicial review." The following observations appearing in Para 96 of the judgment in the case of *S.R. Bommai* need to be quoted in extenso:

> "*Democracy and federalism are the essential features of our Constitution* and are part of its basic structure. Any interpretation that we may place on Article 356 must, therefore help to preserve and not subvert their fabric. *The power* vested *de jure* in the President but *de facto* in the Council of Ministers under Article 356 *has all the latent capacity to emasculate the two basic features* of the Constitution and hence it is necessary to scrutinise the material on the basis of which the advice is given and the President forms his satisfaction more closely and circumspectly. This can be done by the courts while *confining themselves to the acknowledged parameters of the judicial review as discussed above,* viz., *illegality, irrationality and* mala fides. *Such scrutiny of the material will also be within the judicially discoverable and manageable standards."*
>
> (Emphasis supplied)

422. Ramaswamy, J. in his separate judgment in the case of *S.R. Bommai* observed in Para 255 as under:-

> "Judicial review is a basic feature of the Constitution. This Court/ High Courts have *constitutional duty and responsibility to exercise judicial review as sentinel on the qui vive. Judicial review is not concerned with the merits of the decision, but with the manner in which the decision was taken."*
>
> (Emphasis *supplied)*

423. In Para 256, Ramaswamy, J. clarified that:-

A *"Judicial reveiw must be distinguished from the justiciability* by the court. The two concepts are not synonymous. The power of judicial review is a constituent power and cannot be abdicated by judicial process of interpretation. However, justiciability of the decision taken by the President is one of exercise of the power by the court *hedged by self-imposed judicial restraint.* It is a cardinal principle of our Constitution that *no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution.* Its actions are within the confines of the powers given by the Constitution."

(Emphasis supplied)

424. At the same time, he circumscribed the limits by observing, in Para 260, as under:-

"The *traditional parameters of judicial review, therefore, cannot be extended to the area of exceptional and extraordinary powers* exercised under Article 356. The *doctrine of proportionality cannot be extended* to the power exercised under Article 356 ....."

425. In Para 215, he held that:-

"..... The *doctrine that the satisfaction reached by an administrative officer based on irrelevant and relevant grounds and when some irrelevant grounds were taken into account, the whole order gets vitiated has no application* to the action under Article 356. *Judicial review of the Presidential Proclamation is not concerned with the merits of the decision, but to the manner in which the decision had been reached.* The satisfaction of the President cannot be equated with the discretion conferred upon an administrative agency, of his subjective satisfaction upon objective material like in detention cases, administrative action or by subordinate legislation. ....."

(Emphasis supplied)

Jeevan Reddy and Agrawal, JJ., in their separate but concurring judgment, held that:-

"..... the truth or correctness of the material cannot be questioned

by the court nor will it go into the adequacy of the material. It will also *not substitute its opinion* for that of the President. Even if some of the material on which the action is taken is found to be irrelevant, the court would still *not interfere so long as there is some* relevant *material sustaining the action.* The *ground of* mala fides *takes in* inter alia *situations where the Proclamation is found to be a clear case of abuse of power, or what is sometimes called fraud on power* — cases where this power is invoked for achieving oblique ends. This is indeed merely an elaboration of the said ground."

(Emphasis supplied)

427. They also recognized, in Para 375, the need in such matters for regard being had to the effect that what was under the scanner before the adjudicator was the exercise of power vested in highest constitutional authority. They held as under:-

"It is necessary to reiterate that the *court must be conscious while examining the validity of the Proclamation that it is a power vested in the highest constitutional functionary of the Nation.* The court *will not lightly presume abuse or misuse.* The court would, as it should, tread wearily, *making allowance for the fact that the President and the Union Council of Ministers are the best judges of the situation,* that they alone are in possession of information and material sensitive in nature sometimes and that the Constitution has trusted their judgment in the matter. *But all this does not mean that the President and the Union Council of Ministers are the final arbiters in the matter or that their opinion is conclusive."*

(Emphasis supplied)

428. Jeevan Reddy and Agrawal, JJ., concurred with Ramaswamy J., by observing, in Para 373, as under:-

"So far as the approach adopted by this Court in *Barium Chemicals* is concerned, it is a decision concerning subjective satisfaction of an authority created by a statute. The principles evolved then cannot *ipso facto* be extended to the exercise of a constitutional

power under Article 356. *Having regard to the fact that this is a high constitutional power exercised by the highest constitutional functionary of the Nation, it may not be appropriate to adopt the tests applicable in the case of action taken by statutory or administrative authorities — nor at any rate, in their entirety.*"

(Emphasis supplied)

429. A controversy similar to the one in the case of *S.R. Bommai* arose before this Court in *Rameshwar Prasad* v. *Union of India,* [2006] 2 SCC 1. The questions raised once again concerned the validity of the subjective satisfaction of the President under Article 356 for issue of proclamation. Following the spirit of the judgment of *S.R. Bommai*, with due deference to the exceptional character of the power exercised by the President under Article 356 which cannot be treated on a par with an administrative action and so the validity whereof cannot be examined by applying the grounds available for challenge of an administrative action, this Court held that the power is not absolute but subject to checks & balances and judicial review.

Summary of the Principles relating to Parameter of Judicial Review in relation to exercise of Parliamentary Provisions

430. We may summarize the principles that can be culled out from the above discussion. They are:-

a. Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

b. Constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action which part-take the character of judicial or quasi-judicial decision;

c. The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative

authority and not for determination by the courts; A

d. The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

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e. Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc. have been regularly and reasonably exercised, not violating the law or the Constitutional provisions, this presumption being a rebuttable one; C

f. The fact that Parliament is an august body of co-ordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

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g. While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial E review and within the judicially discoverable & manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

h. The Judicature is not prevented from scrutinizing the validity of F the action of the legislature trespassing on the fundamental rights conferred on the citizens;

i. The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct; G

j. If a citizen, whether a non-member or a member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned H

A action entails civil consequences;

k. There is no basis to claim of bar of exclusive cognizance or absolute immunity to the Parliamentary proceedings in Article 105(3) of the Constitution;

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l. The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other Constitutional provisions, for example Article 122 or 212;

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m. Articles 122 (1) and Article 212 (1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by Constitution of India

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n. Article 122 (1) and Article 212 (1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

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o. The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

p. Ordinarily, the legislature, as a body, cannot be accused of

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having acted for an extraneous purpose or being actuated by caprice or *mala fide* intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging

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being extremely heavy

q. The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

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r. Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

s. The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

t. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

u. An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the *decision but* not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity;

431. It can now be examined if the manner of exercise of the power of expulsion in the cases at hand suffers from any such illegality or unconstitutionality as to call for interference by this Court.

Examination of the individual cases of the Petitioners

432. It is the contention of the petitioners that the impugned action on the part of each House of Parliament expelling them from the membership suffers from the vice of *mala fide* as decision had already been taken to expel them. In this context they would refer, *inter alia*, to the declaration on the part of the Hon'ble Speaker, *Lok Sabha* on the floor of the House on 12th December 2005 that "nobody would be spared". The contention is that the inquiries were sham and the matter was approached with a pre-determined disposition against all the basic cannons of fair play & natural justice.

433. On the other hand, it has been argued by Shri Andhyarujina that no *mala fide* or ulterior motive can be attributed to the Houses of Parliament also for the reason that the impugned decisions were taken by the Houses as a whole, with utmost good faith in the interest of safeguarding the

A standing and reputation of Parliament. Learned counsel would also submit that no member of either House had disputed the findings of misconduct and it was not open to anyone to question anything said or done in the House by suggesting that the actions or words were inspired by improper motives.

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434. As already observed in earlier part of this judgment, the Legislature cannot ordinarily be accused of having acted for an extraneous purpose or being actuated by caprice or *mala fide* intention. The Court would not lightly presume abuse or misuse of authority by such august bodies also because allowance is always to be given to the fact that the legislature is C the best Judge in such matters.

435. In our considered view, conclusions cannot be drawn so as to attribute motive to the Houses of Parliament by reading statements out of the context. The relevant part of the speech of the Hon'ble Speaker made D on the floor of the House on 12th December 2005 has been extracted in the counter affidavit filed on behalf of the Union of India. It is pertinent to note that before stating that nobody would be spared, the Speaker had exhorted the members of the House to rise to the occasion and to see to it that such an event does not occur ever in future and commended that "if anybody is guilty, he should be punished". It is clear that when he stated that no body E would be spared he was not immediately passing a judgment that the petitioners were guilty. He was only giving vent to his feeling on the subject of the proper course of action in the event of inquiry confirming the facts that had been projected in the telecast. The finding of guilt would come later. The fact that he had constituted an Inquiry Committee with members F drawn also from parties in opposition rather goes to show that the resolve at that stage was to find the truth.

436. In these circumstances, we are unable to accept the allegation of *mala fide* on the ground that decision had already been taken to expel them. Even otherwise, it cannot be ignored that the dissent within the respective G Committees of the two Houses essentially pertained to the procedure adopted. Nothing less and nothing more. Further, the reports of the Committees having been adopted by the respective chambers of Parliament, the decision of the Committee got merged into that of the Legislative chamber which being collective body, it is difficult to attribute motive H thereto, in particular, in the face of the fact that the resolutions in question

were virtually unanimous as there was no demand at any stage from any quarter for division of votes.

437. It has been contended by the petitioners that the circumstances did not warrant the exercise by the Houses of Parliament of the power of expulsion inasmuch as the persons behind the sting operations were driven by motives of pelf and profit. In this context, the learned counsel for petitioners would refer repeatedly to the evidence, in particular, of Mr. Aniruddha Bahal as adduced before the Inquiry Committee of *Lok Sabha* wherein he would concede certain financial gains on account of arrangements with the television channels for telecast of the programme in question.

438. We are unable to subscribe to this reasoning so as to find fault with the action that has been impugned before us. We are not concerned here with what kind of gains, financial or otherwise, those persons made as had conceived or engineered the sting operations leading to the material being brought into public domain through electronic media. This was not an area of anxiety even for the Houses of Parliament when they set about probing the matter resulting ultimately in expulsions. The sole question that was required to be addressed by the Inquiry Committees and the Legislative chambers revolved around the issue of misconduct attributed to the individual members bringing the House in disrepute. We, therefore, reject the above contention reiterating what we have already concluded, namely, that the expediency and necessity of exercise of such a power by the Legislature is for determination by the latter and not by the Courts.

439. The petitioners have questioned the validity of the impugned actions on the ground that the settled procedure and mechanism for bringing about cessation of the membership were by-passed.

440. In the above context, reference was first made to the procedure prescribed in Article 103 and the Tenth Schedule. But then, we have already found that the purposes of the procedure prescribed in both the said provisions of the Constitution are entirely different. While Article 103 relates to disqualifications prescribed in Article 102, the tenth schedule pertains to the disqualification on account of defection. These provisions have no nexus whatsoever with the exercise of power of expulsion claimed as a privilege available to the Houses of Parliament under Article 105(3). This argument, therefore, cannot cut any ice in favour of the petitioners.

441. The main thrust of the submissions of the petitioners in the context of avoidance of settled procedure and mechanism, however, was on the fact that the machinery of Privileges Committee for which provision exists in the Rules of Procedure and Conduct of Business for each of the two Houses was not resorted to. It has been contended that the matters were referred, for no just or sufficient reason, to Inquiry Committees other than the Privileges Committees, in the case of *Lok Sabha* to a Committee specially set up for the purpose. This, as per the arguments vociferously advanced on behalf of the petitioners, should be held as sufficient to vitiate the whole process. Mr. Ram Jethamalani, Senior Advocate went to the extent of suggesting that the procedure followed was *ad-hoc* procedure and, therefore, it could not be claimed by anyone that the established procedure had been complied with.

442. We find no substance in the abovesaid grievances of the petitioners. The matters pertaining to the two Members of *Rajya Sabha* were referred to the Committee on Ethics which is also a mechanism provided by the Rules of Procedure and Conduct of Business in the said House. While it is correct that the matters pertaining to the Members of *Lok Sabha* were referred to a Committee specially constituted for the purpose but nothing turns on that fact. It may be observed that under circumstances in question the composition of the Committee itself is sufficient to show that it was not a partisan Committee. The terms of reference for the Committee required it to make investigation into the allegations.

443. The conclusions reached by the Inquiry Committee and recommendations made have been accepted by passing of resolutions by the two Houses that have adopted the reports of the respective Committees.

444. Article 118 empowers each House of Parliament to make rules for regulating its procedure. The rules of the procedure of both Houses permit constitution of Committees. There is no illegality attached to constitution of a Special Committee by the Speaker, *Lok Sabha* for purposes of investigation into the allegations against members of the said House. The argument of *ad-hoc* procedure, therefore, does not appeal to us.

445. The petitioners' case is that the procedures adopted by the Committees of the two Houses were neither reasonable nor fair. Further, they contend that the entire inquiry was improper and illegal inasmuch as rules of natural justice were flouted. In this context, the grievances of the

petitioners are manifold. They would state that proper opportunity was not given to them to defend themselves; they were denied the opportunity of defending themselves through legal counsel or to give opportunity to explain; the request for supply of the material, in particular the un-edited versions of videography for testing the veracity of such evidence was turned down and doctored or morphed video-clippings were admitted into evidence, the entire procedure being unduly hurried. As already noted the scope of judicial review in these matters is restricted and limited. Regarding non-grant of reasonable opportunity, we reiterate what was recently held in *Jagjit Singh* v. *State of Haryana & Ors.,* [WP (C) No. 287 of 2004 decided on 11.12.2006] that the principles of natural justice are not immutable but are flexible; they cannot be cast in a rigid mould and put in a straitjacket and the compliance thereof has to be considered in the facts and circumstances of each case.

446. We outrightly reject the argument of denial of reasonable opportunity and also that proceedings were concluded in a hurry. It has become almost fashionable to raise the banner of "Justice delayed is justice denied" in case of protracted proceedings and to argue "Justice hurried is justice buried" if the results are quick. We cannot draw inferences from the amount of time taken by the Committees that inquired the matters as no specific time is or can be prescribed. Further such matters are required to be dealt with utmost expedition subject to grant of reasonable opportunity, which was granted to the petitioners.

447. As has been pointed out by the learned counsel on behalf of the Union of India, basing his submissions on the main report of the Inquiry Committee of *Lok Sabha*, the request for supply of full-footage of video recordings and audio tapes or extension of time or representation through counsel for such purposes did not find favour with the Inquiry Committee mainly because the Committee had offered to the concerned Members of *Lok Sabha* an opportunity to view the relevant video-footage that was available with the Committee and point out the discrepancies therein, if any, to the it. But, as is mentioned in the report copy of which has been made available by the Union of India to us, the petitioners themselves chose to turn down the said offer. The situation was almost similar to the one in *Jagjit Singh's* case.

448. We agree with the submissions of the learned counsel for Union

of India that the Inquiry Committee in the face of the refusal on the part of the concerned members was fully justified in not giving any credence to the objections that the video-clippings were doctored or morphed. The Committee in these circumstances could not be expected but to proceed to draw conclusions on the basis of the available material.

449. The reports of the Inquiry Committee of *Lok Sabha* and the Committee on Ethics of *Rajya Sabha* indicate that both of the said Committees had called for explanations from each of the Members in question and had given due consideration to the same. The submissions of the learned counsel for Union of India that the proceedings of the respective Committees were open to one and all, including these petitioners who actually participated in the proceedings could not be refuted. Therefore, it is not permissible to the petitioners to contend that evidence had been taken behind their back. The reports further show that the Committees had taken care not to proceed on the edited versions of the video recordings. Each of them insisted and procured the raw video-footage of the different sting operations and drew conclusions after viewing the same. As pointed out by the learned counsel for Union of India, the evidence contained in the video recordings indicating demand or acceptance of money was further corroborated in two cases by the admissions made by the two Members of *Rajya Sabha*. Dr. Chhattrapal Singh Lodha had sought to attribute the receipt of money to a different transaction connected with some organization he was heading. But this explanation was not believed by the Committee on Ethics that unanimously found his complicity in unethical behavior on account of acceptance of money for tabling questions in *Rajya Sabha*. Dr. Swami Sakshiji Maharaj, on the other hand, went to the extent of expressing his regrets and displaying a feeling of shame for his conduct even before the Committee on Ethics.

450. It is the contention of the petitioners that the evidence relied upon by the two Houses of Parliament does not inspire confidence and could not constitute a case of breach of privilege. Their argument is that the decision of expulsion is vitiated since it violated all sense of proportionality, fairness, legality, equality, justice or good conscience, and it being bad in law also because, as a consequence, the petitioners have suffered irreparable loss inasmuch as their image and prestige had been lowered in the eyes of the electorate.

451. We are of the considered view that the impugned resolutions of

Lok Sabha and *Rajya Sabha* cannot be questioned before us on the plea of proportionality. We are not sitting in appeal over the decision of the Legislative chambers with regard to the extent of punishment that deserved to be meted out in cases of this nature. That is a matter which must be left to the prerogative and sole discretion of the legislative body. All the more so because it is the latter which is the best Judge in exercise of its jurisdiction the object of which is self-protection. So long as the orders of expulsion are not illegal or unconstitutional, we are not concerned with the consequences for the petitioners on account of these expulsions.

452. In these proceedings, this Court cannot not allow the truthfulness or correctness of the material to be questioned or permit the petitioners to go into the adequacy of the material or substitute its own opinion for that of the Legislature. Assuming some material on which the action is taken is found to be irrelevant, this Court shall not interfere so long as there is some relevant material sustaining the action. We find this material was available in the form of raw footage of video recordings, the nature of contents whereof are reflected in the Inquiry reports and on which subject the petitioners have not raised any issue of fact.

453. On perusal of the Inquiry reports, we find that there is no violation of any of the fundamental rights in general and Articles 14, 20 or 21 in particular. Proper opportunity to explain and defend having been given to each of the petitioners, the procedure adopted by the two Houses of Parliament cannot be held to be suffering from any illegality, irrationality, unconstitutionality, violation of rules of natural justice or perversity. It cannot be held that the petitioners were not given a fair deal.

454. Before concluding, we place on record our appreciation for able assistance rendered by learned counsel for the parties in the matter.

455. In view of above, we find no substance in the pleas of the petitioners. Resultantly, all the Petitions and Transferred Cases questioning the validity of the decisions of expulsion of the petitioners from the respective Houses of Parliament, being devoid of merits, are dismissed.

C.K. THAKKER, J.:

1. I have had the benefit of reading the erudite judgment prepared by

A my Lord the Chief Justice. I am in agreement with the final order dismissing the petitions. Keeping in view, however, the issue in these matters which is indeed of great public importance having far-reaching consequences to one of the largest democracies of the world, I intend to consider it in detail.

B 2. In these 11 petitions (9 by members of *Lok Sabha* and 2 by members of *Rajya Sabha*), the petitioners have challenged the proceedings initiated against them by Parliament, the reports submitted by the Committees constituted by Parliament holding them guilty of the charges levelled against them and notifications expelling them as members of Parliament.

C 3. The 'unfortunate background' of the case has been dealt with by the learned Chief Justice and I do not intend to repeat it. Suffice it to say that it was alleged against the petitioners that they accepted money for tabling questions/raising issues in Parliament. Committees were appointed to inquire into the allegations and conduct of Hon'ble Members. The allegations D were found to be correct and pursuant to the reports submitted by the Committees, the Members were expelled by Parliament. Those Members have challenged the impugned action of expulsion.

4. The Court had been ably assisted by the learned counsel for the parties on the central question of Parliamentary privileges, the power of the E House to deal with those privileges and the ambit and scope of judicial review in such matters.

5. At the outset, I wish to make it clear that I am considering the controversy whether Parliament has power to expel a member and whether F such power and privilege is covered by clause (3) of Article 105 of the Constitution. I may clarify that I may not be understood to have expressed final opinion one way or the other on several questions raised by the parties and dealt with in this judgment except to the extent they relate or have relevance to the central issue of expulsion of membership of Parliament.

G *PARLIAMENTARY PRIVILEGES : MEANING*

6. An important as also a complicated question is : What do we understand by 'parliamentary privileges'?

H 7. "Nothing", said Dicey, "is harder to define than the extent of the

indefinite powers or rights possessed by either House of Parliament under the head of privilege or law and custom of Parliament". A

8. Though all the three expressions, powers, privileges and immunities are invariably used in almost all Constitutions of the world, they are different in their meanings and also in contents. B

9. 'Power' means 'the ability to do something or to act in a particular way'. It is a right conferred upon a person by the law to alter, by his own will directed to that end; the rights, duties, liabilities or other legal relations either of himself or of other persons. It is a comprehensive word which includes procedural and substantive rights which can be exercised by a person or an authority. C

10. 'Privilege' is a special right, advantage or benefit conferred on a particular person. It is a peculiar advantage or favour granted to one person as against another to do certain acts. Inherent in the term is the idea of something, apart and distinct from a common right which is enjoyed by all persons and connotes some sort of special grant by the sovereign. D

11. 'Immunity' is an exemption or freedom from general obligation, duty, burden or penalty. Exemption from appearance before a court of law or other authority, freedom from prosecution, protection from punishment, etc. are immunities granted to certain persons or office bearers. E

12. Sir Erskin May, in his well-known work '*Treatise on The Law, Privileges, Proceedings and Usage of Parliament*', (23rd Edn.); p. 75 states;

> "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the F G H

power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members".

13. In *Halsbury's Laws of England*, (4th Edn.; Reissue, Vol. 34; p. 553; para 1002); it has been stated;

"*Claim to rights and privileges.* The House of Lords and the House of Commons claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals. In 1705 the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed. Each House is the guardian of its own privileges and claims to be the sole judge of any matter that may arise which in any way impinges upon them, and, if it deems it advisable, to punish any person whom it considers to be guilty of a breach of privilege or a contempt of the House".

14. In the leading case of *Powers, Privileges and Immunities of State Legislatures, Article 143, Constitution of India, Re,* [1965] 1 SCR 413 : AIR (1965) SC 745, Sarkar, J. (as His Lordship then was) stated; "I would like at this stage to say a few general words about "powers, privileges and immunities" of the House of Commons or its members. First I wish to note that it is not necessary for our purposes to make a distinction between "privileges", "powers" and "immunities". They are no doubt different in the matter of their respective contents but perhaps in no otherwise. Thus the right of the House to have absolute control of its internal proceedings may be considered as its privilege, its right to punish one for contempt may be more properly described as its power, while the right that no member shall be liable for anything said in the House may be really an immunity".

15. In '*Parliamentary Privilege – First Report*' (Lord Nicholas Report), it was observed;

"Parliamentary privilege consists of the rights and immunities

> which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished."

RAISON D'ETRE FOR PRIVILEGES

16. The *raison d'etre* for these privileges is again succinctly explained by Sir Erskine May thus;

> "The distinctive mark of a privilege is its ancilliary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded used of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity."

17. Elected representatives, however, are not placed above the law by way of parliamentary privileges; they are simply granted certain advantages and basic exemptions from legal process in order that the House may function independently, efficiently and fearlessly. This is in the interest of the nation as a whole.

PARLIAMENT : WHETHER POSSESSES POWER TO EXPEL MEMBERS

18. The basic and fundamental question raised by the petitioners in all these petitions is the power of Parliament to expel a member. Other incidental and ancillary questions centre round the main question as to authority of a House of Legislature of expulsion from membership. If the sole object or paramount consideration of granting powers, privileges and immunities to the members of Legislature is to enable them to ensure that they perform their functions, exercise their rights and discharge their duties effectively, efficiently and without interference of outside agency or authority, it is difficult to digest that in case of abuse or misuse of such privilege by any member, no action can be taken by the Legislature, the parent body.

19. I intend to examine the question on principle as well as on practice. It would be appropriate if I analyse the legal aspects in the light of constitutional provisions of India and of other countries, factual considerations and relevant case law on the point.

AMERICAN LAW

20. So far as the United States of America is concerned, the Constitution itself recognizes such right. Section 5 of Article 1 of the Constitution of the United States confers such right on each House of the Legislature. Sub-section (2) reads thus;

> "(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member."
>
> (emphasis supplied)

21. Leading Authors on the Constitution have also stated that each House possesses the power to expel a member in appropriate cases.

22. Cooley in his well-known work '*Treatise on the Constitutional Limitations*', (1972 Edn., p. 133); states:

> *" Each House has also the power to punish members for disorderly behaviour, and other contempts of its authority, and also to expel a member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is sometimes conferred by the constitution, but it exists whether expressly conferred or not. It is a necessary and incidental power, to enable the house to perform its high functions and is necessary to the safety of the State.* It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be affected with a contagious disease, or insane, or noisy, violent and disorderly, or in the habit of using profane, obscene, and abusive language. And independently of parliamentary customs and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member and the Courts cannot inquire into the justice of the decision, or look into the proceedings to see whether opportunity for defence was furnished or not."
>
> (emphasis supplied)

23. Another well-known authority on the point is Willoughby, who in his work "*Constitutional Law of the United States*", (Second Edn.; p. 256); says;

> "This right of expulsion is to be sharply distinguished from the right to refuse to admit to membership. In the latter case, as has been seen, the questions involved are, in the main, the perhaps exclusively, those which relate to the Constitutional qualifications of those persons presenting themselves for admission or to the regularity and legality of the elections at which such persons have been selected or appointed. In the former case, that is, of expulsion, these matters may be considered, but, in addition, action may be predicated upon the personal character or acts of the parties concerned; and, as to his last matter, as will presently be seen, the chief point of controversy has been whether the acts of which complaint is made should be only those which have occurred subsequent to election and have a bearing upon the dignity of Congress and the due performance of its functions.
>
> xxxx xxxx xxxx
>
> *In determining whether or not a member of congress has been guilty of such acts as to warrant his expulsion the House concerned does not sit as a criminal trial court, and is not, therefore, bound by the rules of evidence, and the requirements as the certitude of guilt which prevail in a criminal character, but only as to unfitness for participation in the deliberations and decisions of congress."*
>
> (emphasis supplied)

24. Dealing with the question of expulsion by the House and the power of Courts, Pritchett in his book *'American Constitution'* (Third Edn., p. 146); observed;

> *"Expulsion and Censure :* Congressmen are not subject to impeachment, not being regarded as 'civil officers' of the United States. The constitution does not provide, however, that each House may expel its members by a two third vote, or punish them for 'disorderly behaviour'. Congress is the sole judge of the reasons for expulsion. The offence need not be indicatable. In 1797 the Senate expelled William Blount for conduct which was not

A performed in his official capacity not during a session of the Senate nor at the seat of government. The Supreme Court has recorded in a dictum in understanding that *the expulsion power 'extends to all cases where the offence is such as in the judgment of the Senate is inconsistent with the trust and duty of a member".*

B (emphasis supplied)

25. In *'American Jurisprudence'*, (Second Edn., Vol. 77, p. 21); it has been stated;

> "The power of either House of Congress to punish or expel
> C its members for cause is recognized in the Constitution which provides that each House may punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member. Punishment for misbehaviour may in a proper case be by imprisonment and may be imposed for failure to observe a rule for
> D preservation of order. In the case of the Senate, the right to expel extends to all cases where the offence is such as in the judgment of the body is inconsistent with the trust and duty of a member (*Chapman Re*, (1896) 166 US 661 : 41 L Ed 1154)".

26. Attention of the Court was also invited to certain decisions of the
E Supreme Court of the United States. In *Chapman, Re,* 166 US 661 (1891) : 41 L Ed 2nd 1154, the Supreme Court before more than a century, recognized the power of the Senate to expel a member where an act of the Member was such as in the judgment of the Senate was inconsistent with the 'trust and duty' of a member. Reference was made to William Blount, who was expelled
F from the Senate in July, 1797, for 'a high misdemeanor entirely inconsistent with his public trust and duty as a senator.' It was also stated that in July, 1861, during civil war, fourteen Senators and three Representatives were expelled.

27. In *Julion Bond* v. *James Sloppy Floyd,* 385 US 116 (1966) : 17 L
G Ed 2nd 235, William Bond, a Negro, duly elected representative was excluded from membership because he attacked policy of Federal Government in Vietnam. The US Supreme Court held that Bond had right to express free opinion under the first amendment and his exclusion was bad in law.

H 28. In *Powell* v. *McCormack,* 395 US 486 (1969) : 23 L Ed 2nd 491, the

applicant was held entitled to declaratory judgment that action of exclusion of a member of a House was unlawful. The allegation against the applicant was that he deceived the House Authorities in connection with travel expenses and made certain illegal payments to his wife. Referring to *Wilkes* and the Law in England, the Court observed that "unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behaviour and in extreme cases, to expel a member with the concurrence of two-thirds."

29. In *H. Snowden Marshall* v. *Robert B. Gordon,* 243 US 521 (1917), a Member of the House of Representatives levelled serious charges against District Attorney of the Southern District of New York with many acts of misfeasance and nonfeasance. The Select Committee submitted a report holding him guilty of contempt of the House of Representatives of the United States because he violated its privileges, its honor and its dignity.

30. Dealing with the case and referring to *Kielley* v. *Carson,* [1842] 4 MOO PC 63 : 13 ER 225, the Court observed that when an act is of such a character as to subject it to be dealt with as a contempt under the implied authority, Congress has jurisdiction to act on the subject. Necessarily results from that the power to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence, that is to say, the continued existence of the interference or obstruction to the exercise of the legislative power. Unless there is manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.

31. I may also refer to a leading decision in *United States* v. *Daniel Brewster,* 408 US 501 : (1972) 33 L Ed 2nd 507. Keeping in view ground reality that privileges conferred on Members of Parliament are likely to be abused, Burger, CJ stated;

> "The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behaviour on the part of the Members not tolerated and protected when done by other citizens, but *the shield does not extend*

A *beyond what is necessary to preserve the integrity of the legislative process".*

(emphasis supplied)

32. From the above cases, it is clear that in the United States, the House possesses the power of observance of discipline by its members and B in appropriate cases, such power extends to expulsion. It is also clear that such power has been actually exercised for disorderly behavior in the House as also outside the House, where the House was satisfied that the member was 'unfit' physically, mentally or morally even if such conduct could not be a 'statutable offence' or was not committed by him in his official capacity C or during House in Session or at the seat of Government.

AUSTRALIAN LAW

33. The provisions relating Parliamentary privileges under the Constitution of Australia were similar to our Constitution. Section 49 D declared powers, privileges and immunities of the Senate and of the House of Representatives and its Members. It was as follows;

> "The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the Members and the Committees of each House, shall be such as are declared by the Parliament, and E *until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."*
>
> (emphasis supplied)

34. Enid Campbell in his book 'Parliamentary Privilege in Australia', F dealing with 'Expulsion', states;

> "At common law, the House of Commons is recognized to have power to expel a member for misconduct unfitting him for membership even where that misconduct is not such as to disqualify him from parliamentary office. There is no doubt that those G Australian Houses of Parliament invested by statute with the powers and privileges of the House of Commons enjoy the same power, but the position with regard to other Houses is not so clear. At common law, Colonial Legislatures do not possess punitive powers, though there is dictum in *Barton* v. *Taylor* to the effect H that they do have power to expel for aggravated or persistent

misconduct on the ground that this may be necessary for the self protection of the legislature. Where a member is expelled, his seat thereupon becomes vacant. He is not, however, disqualified from being again elected and returned to parliament". A

35. Discussing powers of Colonial Assemblies, the learned author states that though such Assemblies do not possess 'punitive' powers, it is inconceivable that they cannot make rules for the orderly conduct of business. Even if they have no authority to expel a member in absence of specific provision to that effect, they may suspend disorderly members in appropriate cases. B

> *"The dignity of a Colonial Parliament acting within its limits, requires no less than that of the Imperial Parliament* that any tribunal to whose examination its proceedings are sought to be submitted for review should hesitate before it undertakes the function of examining its administration of the law relating to its internal affairs". (emphasis supplied) C D

36. It may also be stated that Odger in his '*Australian Senate Practice*', (11th Edn.; p. 57) observes;

> "The recommendation, and the consequent provision in section 8 of the 1987 Act, was opposed in the Senate. It was argued that there may well be circumstances in which it is legitimate for a House to expel a member even if the member is not disqualified. It is not difficult to think of possible examples. A member newly elected may, perhaps after a quarrel with the member's party, embark upon highly disruptive behaviour in the House, such that the House is forced to suspend the member for long periods, perhaps for the bulk of the member's term. This would mean that a place in the House would be effectively vacate, but the House would be powerless to fill it. Other circumstances may readily be postulated. The House, however, denied themselves the protection of expulsion". E F

37. Lumb and Ryan (*'The Constitution of the Commonwealth of Australia'*; 1974 Edn.) stated that each House of the Federal Parliament has the right to suspend a member for disorderly conduct. The power is exercised to punish persistent interjectors or for refusal to withdraw an offensive remark. *"In extreme cases a member may be expelled"*. G

(emphasis supplied) H

A 38. In 1920, *Hugh Mahon*, Federal Member of Kalgoorlie was expelled from the House of Representatives for making a 'blistering' public speech against British Rule in Ireland.

39. It is no doubt true that pursuant to the report of the Joint Select Committee on Parliamentary Privilege (1984), a specific Act has been enacted, B known as the Parliamentary Privileges Act, 1987 (Act 21 of 1987). Section 8 of the said Act expressly bars a House to expel any of its members. It reads:

> "A House does not have power to expel a member from membership C of a House".

40. It is, therefore, clear that only recently, the power to expel a member from the House has been taken away by a specific statute.

CANADIAN LAW

D 41. The legal position under the Constitution of Canada is different to some extent. Section 18 of the Constitution of the Dominion of Canada, 1867 states;

> "The privileges, immunities, and powers to be held, enjoyed, E and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but *so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities,* F *or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof."*
>
> (emphasis supplied)

G 42. It is thus clear that unlike India, in Canada, the Legislature could not enlarge its privileges by enacting a law investing in it the privileges enjoyed by British Parliament. There is no such limitation under Section 49 of the Australian Constitution nor under Article 105(3) or Article 194(3) of the Indian Constitution.

H 43. In spite of the above provision in the Constitution, the right of the

House to expel a member has never been challenged. Sir John George Bourinot, in his work *'Parliamentary Procedure and Practice in the Dominion of Canada'*, (4th Edn., p.64), states;

> "The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body. Yet expulsion, though it vacates the seat of a member, does not create any disability to serve again in Parliament".

44. The learned counsel for the parties also drew our attention to certain cases from Canada. We may notice only few recent decisions.

45. In *Speaker of the House of Assembly* v. *Canadian Broadcasting Corporation,* [1993] 1 SCR 319, the Broadcasting Corporation made an application to the Nova Scotia Supreme Court, Trial Division for an order allowing it "to film the proceedings of the House of Assembly with its own cameras". The application was based on the Canadian Charter of Rights and Freedoms which guaranteed freedom of expression and freedom of press. The Corporation claimed that it was possible to film the proceedings from the public gallery with modern equipments. The Speaker, however, declined permission on the ground that Corporation's proposal would interfere with "the decorum and orderly proceedings of the House". The Trial Judge granted the claim which was upheld in appeal. The Speaker approached the Supreme Court.

46. One of the questions raised before the Supreme Court was as to whether the House could exercise privilege by refusing access to the media. Lamer, CJ discussed the doctrine of privilege in detail in the light of the doctrine of necessity. Referring to *Stockdale* v. *Hansard,* (1839) 9 Ad & E 1 : 112 ER 1112 (QB), he stated that parliamentary privilege and immunity are founded upon necessity. 'Parliamentary privileges' and the breadth of individual privileges encompassed by that term were accorded to members of the Houses of Parliament and the Legislative Assemblies because they were considered necessary for the discharge of their legislative functions.

47. Mc Lachlin, J. (as she then was) agreed with the learned Chief Justice and observed that Canadian legislative Assemblies could claim as inherent privileges those rights which were necessary to their 'capacity to

A function as legislative bodies'. Necessity was thus the test. Referring to *Kielley* v. *Carson,* (1842), 4 MOO PC 63 : 13 ER 225, it was observed that though the Privy Council held that a Colonial Assembly had no power to commit for a contempt like House of Commons of the United Kingdom, it did not dispute that such powers "as are necessary to the existence of such body and the proper exercise of the functions which it is intended to B execute" were bestowed with the very establishment of the Newfoundland Assembly.

48. The Court also considered the ambit and scope of judicial review and exercise of parliamentary privilege. Referring to Sir Erskine May that C "after some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of either House in matters of privilege is still not entirely determined", the Court observed that originally the Houses of Parliament took the position that they were the exclusive judges of their privileges. They claimed to be 'absolute arbiters' in respect of parliamentary privileges and took the stand that their decisions were not D reviewable by any other Court or Authority. The Courts, on the other hand, treated *lex parliamentis* to be part of the 'law of the land' and as such, within their judicial control. Judiciary exercised the power particularly when issues involved the rights of third party. According to Courts, their role was to interpret the law of Parliament and to apply it.

E

49. Holding the test of 'necessity' for privilege as 'jurisdictional test', the learned Judge stated; "The test of necessity is not applied as a standard for judging the content of a claimed privilege, but for the purpose of determining the necessary sphere of exclusive or absolute 'parliamentary' or 'legislative' jurisdiction. If a matter falls within this necessary sphere of F matters without which the dignity and efficiency of the House cannot be upheld, *courts will not inquire into questions concerning such privilege. All such questions will instead fall to the exclusive jurisdiction of the legislative body.*

(emphasis supplied)

G

50. Keeping in view important roles of different branches of Government, it was observed;

> "Our democratic government consists of several branches: the Crown, as represented by the Governor General and the H provincial counterparts of that office; the legislative body; the

executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other". A

51. Reference was also made to *Fred Harvey* v. *Attorney General for New Brunswick,* [1996] 2 SCR 876. In that case, a Member of provincial Legislature was convicted of illegal practice and was expelled from legislature pursuant to provincial elections legislation. The allegation proved against him was that he had induced a 16-year old female to vote in the election, knowing fully well that she was not eligible to vote. He was also disqualified for a period of five years from contesting any election. The Court of Appeal dismissed the appeal of the appellant. The aggrieved Member approached the Supreme Court. B C

52. Dismissing the appeal and upholding the order of the Court of Appeal, the Supreme Court held that there was no question that the appellant's actions amounted to an attack on the integrity of the electoral process which was at the heart of a free and democratic society and constituted a breach of trust deserving of censure. D

53. Dealing with Parliamentary privileges and jurisdiction of Courts, Mc Lachlin, J. stated: E

"If democracies are to survive, they must insist upon the integrity of those who seek and hold public office. They cannot tolerate corrupt practices within the legislature. Nor can they tolerate electoral fraud. If they do, two consequences are apt to result. First, the functioning of the legislature may be impaired. Second, public confidence in the legislature and the government may be undermined. No democracy can afford either. F

When faced with behaviour that undermines their fundamental integrity, legislatures are required to act. That action may range from discipline for minor irregularities to expulsion and disqualification for more serious violations. *Expulsion and disqualification assure the public that those who have corruptly taken or abused office are removed. The legislative process is purged and the legislature, now restored, may discharge its duties as it should."* (emphasis supplied) G H

A 54. It was, however, added that it was not to say that the courts have no role to play in the debate which arises where individual rights are alleged to conflict with parliamentary privilege. Under the British system of parliamentary supremacy, the courts arguably play no role in monitoring the exercise of parliamentary privilege. In Canada, that has been altered by the Charter of 1926. To prevent abuses cloaked in the guise of privilege from B trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege. As clarified in *Canadian Broadcasting Corporation,* the courts may question whether a claimed privilege exists. This screening role means that where it is alleged that a person has been expelled or disqualified on invalid grounds, the courts must C determine whether the act falls within the scope of parliamentary privilege. *If the court concludes that it does, no further review lies.*

(emphasis supplied)

55. It was also stated that British Jurisprudence makes distinction between privileges asserted by resolution and privileges effected automatically D by statute. In respect of privileges asserted by resolution, British Courts have developed a doctrine of necessity, enabling them to inquire whether the action taken by resolution is necessary to the proper functioning of the House. The 'necessity inquiry' does not ask whether the particular action at issue was necessary, and hence does not involve substantive judicial E review. It rather asks whether the dignity, integrity and efficiency of the legislative body could be maintained if it were not permitted to carry out the type of action sought to be taken, for example to expel a member from the Legislature or disqualify a person from seeking office on ground of corruption.

56. A question was raised as to whether Parliament could expel any of F its members. Upholding such right, the Court stated;

> *"The power of Parliament to expel a member is undoubted.* This power has been repeatedly exercised by the English and Colonial Parliaments, either when members have been guilty of a positive crime, or have offended against the laws and regulations of the G House, or have been guilty of fraudulent or other discreditable acts, which proved that they were unfit to exercise the trust which their constituents had reposed in them, and that they ought not to continue to associate with the other members of the legislature.

H Expulsion may be justified on two grounds: to enforce discipline

within the House; and to remove those whose behaviour has made them unfit to remain as members. A

XXXX XXXX XXXX

The right of expulsion on these two grounds — discipline and unfit behaviour — is a matter of parliamentary privilege and is not subject to judicial review". B

(emphasis supplied)

The Court concluded;

"This protection is now accepted, in Canada as in Britain, as a fundamental tenet of parliamentary privilege. The point is not that the legislature is always right. The point is rather that the legislature is in at least as good a position as the courts, and often in a better position, to decide what it requires to function effectively. In these circumstances, a dispute in the courts about the propriety of the legislative body's decision, with the delays and uncertainties that such disputes inevitably impose on the conduct of legislative business, is unjustified". C D

57. Very recently, in *House of Commons* v. *Satnam Vaid,* [2005] 1 SCR 667, a chauffeur of a Speaker in spite of an order in his favour, was not reinstated in service. He made a complaint to the Canadian Human Rights Commission to investigate into the matter. The Commission accepted the complaint of the employee and referred the matter to the Tribunal. The Speaker challenged the jurisdiction of the Tribunal contending that it was his power of 'hire and fire' and there was no review. The Tribunal dismissed the challenge. The Federal Court upheld the Tribunal's decision. When the matter reached the Supreme Court, the question as to applicability of privileges was raised. It was held that within categories of privilege, Parliament was the sole judge of the occasion and manner of its exercise and such exercise was not reviewable by the courts. However, the existence and scope of the privileges could be inquired into by courts. E F G

58. Binnie J. stated; "It is a wise principle that the courts and Parliament strive to respect each other's role in the conduct of public affairs. *Parliament,* for its part, refrains from commenting on matters before the courts under the H

A *sub judice* rule. The courts, for their part, are careful not to interfere with the workings of Parliament. None of the parties to this proceeding questions the pre-eminent importance of the House of Commons as 'the grand inquest of the nation'. Nor is doubt thrown by any party on the need for its legislative activities to proceed unimpeded by any external body or institution, including the courts. It would be intolerable, for example, if a member of the B House of Commons who was overlooked by the Speaker at question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker's choice of another member of the House discriminated on some ground prohibited by the *Canadian Human Rights Act,* or to seek a ruling from the ordinary courts that the C Speaker's choice violated the member's guarantee of free speech under the *Charter.* These are truly matters 'internal to the House' to be resolved by its own procedures. Quite apart from the potential interference by outsiders in the direction of the House, such external intervention would inevitably create delays, disruption, uncertainties and costs which would hold up the nation's business and on that account would be unacceptable even if, in the D end, the Speaker's rulings were vindicated as entirely proper".

59. Emphasising on resolution of conflict between Parliament and Courts in respect of 'legitimate sphere of activity of the other', the Court observed;

E

> "Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body; the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally F fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other".

ENGLISH LAW

G 60. English Constitution was neither established by any single action nor on any particular day. It has grown from the political institutions of people who respected monarchy but equally insisted for democracy and parliamentary institution. The origins of parliamentary privileges are thus inextricably interwined with the history of Parliament in England; and more H specifically, the battle between English Monarch and Parliament; between

the House of Commons and House of Lords as also between Parliament and Courts. A

61. Parliament emerged in the thirteenth century. English legal history traces its roots in *Magna Carta*. *Magna Carta* had been described as a 'constitutional myth' because it was a document which came into existence on account of grievances of feudal magnates (barons) (Ann Lyon : *'Constitutional history of the United Kingdom,* (2003); p.39). The *Magna Carta* declared that the King was not above the law. B

62. In its creative sense, in England the House did not sit down to build its edifice of the powers, privileges and immunities of Parliament. The C evolution of English Parliamentary institution has thus historical development. It is the story of conflict between Crown's absolute *prerogatives and* Commons' insistence for powers, privileges and immunities; struggle between high handed actions of Monarchs and People's claim of democratic means and methods. Parliamentary privileges are the rights which Houses of D Parliament and members possess so as to enable them to carry out their functions effectively and efficiently. Some of the parliamentary privileges thus preceded Parliament itself. They are, therefore, rightly described by Sir Erskine May as *'fundamental rights'* of the House as against the prerogatives of the Crown, the authority of ordinary Courts of Law and the special rights of the House of Lords. E

63. Initially, the House simply claimed privilege. They neither made request to the Crown for their recognition nor to Courts for their enforcement. Parliamentary privileges in that sense are outside the law, or a law unto themselves. For instance, the House would not go to Crown or to Court for F release of its member illegally detained. It would also not pray for a writ of *habeas corpus.* It would simply command the Sergeant-at-Arms with the ceremonial mace to the prison and get the Member released on its own authority.

64. As Holdsworth (*'A History of English Law'*, Second Edition; pp.92- G 93), stated; "It was the privilege of the House which enabled it to act freely, to carry on the controversy with the King in a Parliamentary way, and thus to secure a continuous development of constitutional principles. *It is,* therefore, not surprising to find that the earliest controversies between James I and his Parliaments turned upon questions of privilege, and that H

A these same questions were always in the forefront of the constitutional controversies all through this period". He also added that Parliament asserted and used its privileges to win for itself the position of a partner with the King in the work of governing the State.

B 65. Sir Edward Coke was in favour of 'High Court of Parliament' having its law and was of the view that the matters decided in Parliament were not part of Common Law. He observed that it was not for a Judge to judge any law, custom or privilege of Parliament. The laws, customs, liberties and privileges of Parliament are better understood by *precedents* and *experience* than can be expressed by a pen.

C As Lord Tennyson stated;

> *"A land of settled government,*
> *A land of just and old renown,*
> *Where Freedom slowly broadens down,*
> D *From precedent to precedent."*

66. Let us consider the view points of learned authors, jurists and academicians on this aspect.

67. In *Halsbury's Laws of England,* (Fourth Edn.; Reissue : Vol. 34; p. E 569; para 1026); it has been stated;

"House of Commons' power of expulsion.

> Although the House of Commons has delegated its right to be the judge in controverted elections, it retains its right to decide F upon the qualifications of any of its members to sit and vote in Parliament.
>
> *If in the opinion of the House a member has conducted himself in a manner which renders him unfit to serve as a member* G *of Parliament, he may be expelled,* but unless the cause of his expulsion by the House constitutes in itself a disqualification to sit and vote in the House, he remains capable of re-election."
>
> (emphasis supplied)

68. From the above statement of law, it is explicitly clear that the two H things, namely, (i) expulsion; and (ii) disqualification are different and

distinct. A member can be expelled by the Legislature if his conduct renders him 'unfit' to continue as such. It, however, does not *ipso facto* disqualify him for re-election. An expelled member may be re-elected and no objection can be raised against his re-election, as was the case of *John Wilkes* in 1769.

69. O. Hood Phillips also states ('*Constitutional and Administrative Law'*, Fourth Edition; p. 180) that the House may also expel a member, who although not subject to any legal disability, is in its opinion unfit to serve as a member. This is commonly done when the Court notifies the Speaker that a member has been convicted of a misdemeanour. The House cannot prevent an expelled member from being re-elected, as happened several times in the case of *John Wilkes* between 1769 and 1794, but it can refuse to allow him to take seat.

70. Wade and Phillips also expressed the same opinion. In *'Constitutional Law'*, (7th Edition; p. 793); it was stated;

> "The House of Commons cannot of course create disqualifications unrecognized by law but it may expel any member who conducts himself in a manner unfit for membership".

71. Sir William Anson in *"The Law and Custom of the Constitution"*, (Fifth Edn; Vol. I; pp. 187-88) states;

> "In the case of its own members, the House has a stronger mode of expressing its displeasure. It can by resolution expel a member, and order the Speaker to issue his warrant for a new writ for the seat from which the member has been expelled. But it cannot prevent the re-election of such a member by declaring him incapable of sitting in that Parliament. In attempting to do this, in the case of Wilkes, the House had ultimately to admit that it could not create a disqualification unrecognized by law".

72. Griffith and Ryle in *"Parliament, functions, practice and procedures"*, (1989), at p. 85 stated;

> "The reconciliation of these two claims the need to maintain parliamentary privileges and the desirability of not abusing them — has been the hall-mark of the House of Commons treatment of privilege issues in recent years".

A 73. Dealing with the penal powers of the House, the learned authors proceeded to state: (pp. 91-92);

> "Laws are meaningless unless there is power to enforce them by imposing penalties on those who wreak them. The House does not rely on the courts but has its own penal jurisdiction.
>
> B
>
> The severest and historically most important power is that of commitment .....
>
> Two other punishments can be ordered for Members who offend the House namely expulsion, or suspension from the
> C service of the House for a specified period or until the end of the session.
>
> *Expulsion is the ultimate sanction against a Member. It is an outstanding demonstration of the House's power to regulate its*
> D *own proceedings, even its composition. The expulsion of a Member cannot be challenged.*"
>
> (emphasis supplied)

74. Consideration of powers, privileges and immunities of the British Parliament would not be complete if one does not refer to relevant statements
E and propositions of law by Sir Erskine May in his celebrated and monumental work titled *'Treatise on the Law, Privileges, Proceedings and Usage of Parliament'*. "This work has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice".

F 75. The attention of the Court was, however, invited to the changed approach by the Revising Authors on the power of Parliament to expel a member. It would, therefore, be appropriate if I refer to both the editions of 1983 and of 2004.

G 76. In Twentieth Edition by Sir Charles Gordon (1983), in Chapter 9 (Penal Jurisdiction of the Houses of Parliament), it had been stated;

"PUNISHMENT INFLICTED ON MEMBERS

> In the case of contempts committed against the House of
> H Commons by Members, two other penalties are available, *viz.*

suspension from the service of the House and expulsion. In some cases expulsion has been inflicted in addition to committal.

There was a sub-topic as under;

Expulsion by the Commons

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it among the methods of punishment at the disposal of the House.

77. In Twenty-third Edition by Sir William McKay (2004), Chapter 9 titles (*Penal jurisdiction of Both Houses*). The relevant discussion reads thus;

PUNISHMENT OF MEMBERS

In the case of contempts committed against the House of Commons by Members, or where the House considers that a Member's conduct ought to attract some sanction (see pp. 132-33), two other penalties are available in addition to those already mentioned : suspension from the service of the House, and expulsion, sometimes in addition to committal.

Under sub-topic 'Expulsion', it was stated;

EXPULSION

The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution, though it is, for convenience, treated here as one of the methods of punishment at the disposal of the House. Members have been expelled for a wide variety of causes."

78. On the basis of above, it was submitted by the learned counsel for the petitioners that the power of expulsion by Parliament as an independent punishment has not been recognized by May. It has now remained as part of power to regulate its own constitution. Since no such power has been

A possessed by Indian Parliament, it cannot expel any member.

79. I must frankly admit that I am unable to agree with the learned counsel. The Revising Author refers to punishment of members and in no uncertain terms states that if the House considers conduct (misconduct) of a Member objectionable attracting sanction, appropriate punishment can be
B imposed on him. Over and above other penalties, *'expulsion'* has been specifically and expressly mentioned therein. As will be seen later on in this judgment, the Framers of our Constitution have also reserved this right with the Parliament/State Legislature. The above argument of the petitioners, in my opinion, therefore, does not carry the case further.

C

ILLUSTRATIVE CASES

80. Though several cases have been cited by the learned counsel for both the sides in support of their contentions and submissions, I will refer to the cases which related to expulsion of membership of Parliament.

D

81. Probably, the earliest case was of *Mr. Hall.* In 1580, Mr. Hall, a Member of House of Commons published a book containing derogatory remarks against the Members of the House. On the basis of a complaint, the matter was referred to the Privilege Committee which found him guilty. In
E spite of apology tendered by him, he was committed to the Tower of London for six months, was fined and also *expelled.*

82. In a subsequent case in 1707, *Mr. Asquill,* a Member of Parliament wrote a book wherein disparaging remarks on Christian Religion were made.
F Though nothing was stated by him against the House or against Members of the House, Mr. Asquill was expelled being 'unfit' as Member.

83. *Asquill* thus established that the House of Commons could expel a Member for his actions even outside the House provided the House finds him unfit to be continued as a Member of Parliament.

G

84. In 1819, *Mr. Hobhouse,* a Member of House of Commons wrote a pamphlet making the following comment;

"Nothing but brute force, or the pressing fear
H *of it would reform Parliament".*

85. Contempt proceedings were initiated against Hobhouse and he was imprisoned. A

86. In 1838, *Mr. O'Connell,* a member of House of Commons said, outside the house of Parliament;

> *"Foul perjury in the Torry Committees of the House of Commons— who took oaths according to Justice but voted for Party."* B

87. He was reprimanded. *Mr. Sandham* was likewise admonished in 1930 for levelling allegations against the Members of the House.

88. Special reference was made to *Bradlough* v. *Gossett,* (1884) 12 QBD 275. In that case, *B,* duly elected Member of Borough was refused by the Speaker to administer oath and was excluded from the House. *B* challenged the action. C

89. It was held that the matter related to the internal management of the House of Commons and the Court had no power to interfere. D

Lord Coleridge, C.J. stated;·

> What is said or done within the walls of Parliament cannot be inquired into in a court of law... The jurisdiction of the Houses over their own Members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and efficiency without it". (*Burdett v. Abbot,* 14 East 148, 152). E

90. Dealing with the contention that the House exceeded its legal process in not allowing *B* to take oath which he had right to take, the learned Chief Justice said; "If injustice has been done, it is injustice for which the courts of law afford no remedy." An appeal should not be made to the Court but to the constituencies. F

91. As observed by His Lordship in *Stockdale* v. *Hansard,* (1839) 9 Ad & E 1 : 112 ER 1112 (QB), "the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity." G H

92. Stephen, J. was much more specific and emphatic. He said;

> "The legal question which this statement of the case appears to me to raise for our decision is this: — Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying cut? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable".

93. It was further stated; "It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly".

His Lordship concluded;

> "In my opinion the House stands with relation to such rights and to the resolutions which affect their exercise, in precisely the same relation as we the judges of this Court stand in to the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it. If they misunderstand it, or (I apologize for the supposition) willfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have

declared the limits of their powers outside of their respective Houses. This is enough to justify the conclusion at which I arrive". A

94. One may not agree with the wider observations of Stephen, J. particularly in the light of written Constitution and power of Judicial Review conferred on this Court which has been held to be 'basic feature' of our Constitution. But it certainly indicates approach of judiciary while dealing with powers, privileges and rights of Parliament over its members. B

95. I may also refer to a case which is very much relevant and was referable to a point in time our Constitution was about to commence.

96. One *Garry Allingham,* a Member of Parliament got published an article on April 3, 1947 (before few months of Independence of India) making derogatory remarks against members of the House. A complaint was made to the House of Commons. Allingham was called upon to explain his conduct by the House. Allingham offered regrets for unfounded imputations against Members and tendered unconditional apology and said; C D

"I have humbly acknowledged my mistake, and nothing could be more sincere and heart-felt than my remorse for my action. Having done all that it is humanly possible to do to put this deeply regretted affair straight, I am content to submit myself to this House, confident that it will act in its traditional spirit of justice and generosity". E

97. After the close of Allingham's speech a resolution was proposed holding him guilty of gross contempt of the House and to 'proceed with utmost severity against such offender'. A motion was moved to suspend Allingham from service of the House for six months and to deprive him of salary for that period. But an amendment to the motion was sought to the effect that Allingham be expelled from the House and finally the amended resolution was passed by the House. F

98. *Allingham* thus clearly established that on the eve of British Empire in this country and on the dawn of Independence of India, one of the powers and privileges enjoyed by British Parliament was power of expulsion of a member from Parliament. G

99. Finally, I may refer to a post-Constitution case of *Mr. Peter Arthus* H

A *David Baker* (1954). He was a Member of House of Commons. A competent Court of Law held him guilty of forgery and convicted and sentenced him. The factum of conviction was officially communicated by the Court to the Speaker of the House. Baker, in his letter to the Speaker of the House, expressed remorse about his conduct which was not connected with his
B position and status as a member of the House.

He, *inter alia*, stated;

> "I must end as I began, by begging the House to accept my most sincere apology. I can only assure you that my regret,
C remorse and repentance during the past three months were doubted by the knowledge that, in addition to my friends and colleagues elsewhere, I had also embarrassed my friends and colleagues in the House of Commons. I can only ask you and, through you, them to accept this expression of these regrets."

D 100. The entire letter was read out to the House. After consideration, the following resolution was passed;

> *"Resolved, that Mr. Peter Arthus David Baker be expelled from this House."*

E 101. *Baker* proved that the House of Commons possessed and continued to possess power to expel a Member for his objectionable activity not only in the House in his capacity as a Member as such but also outside the House if it is found to be otherwise improper, or tarnishing the image of the House in public eye or making him 'unfit' to continue to be a Member
F of an august body.

102. [This case is also relevant inasmuch as the Constitution (Forty-fourth Amendment) Act, 1978 by which Article 105(3) has been amended, lays down that whenever a question of powers, privileges and immunities of Parliament arises, it will be ascertained whether such power, privilege or
G immunity was available to the House of Commons on the day the Amendment came into force, i.e. on June 20, 1979].

103. The petitioners strongly relied upon a decision of the Judicial Committee of the Privy Council in *Edward Keilley* v. *William Carson,* (1842):
H 4 MOO PC 63 : 13 ER 225. *K* was a District Surgeon and Manager of Hospital

while *C* was a Member of Assembly of Newfoundland. *C* made certain adverse remarks in respect of Hospital Management by *K*. *K* threatened *C* for criticizing the management and added; "Your privilege shall not protect you". *C* complained to the House. The Committee of Privilege found *K* guilty of the breach of privilege of the House and committed him to the goal.

104. *K* thereupon brought an action of trespass and false imprisonment against the defendants but failed. Before the Privy Council, one of the questions was as to whether the Assembly of Newfoundland had power to commit for breach of privilege, as incident to the House as a legislative body. According to *K*, the Assembly did not possess such power. Drawing the distinction between (a) conquered colonies, and (b) settled colonies, it was urged that in the former, the power of the Crown was paramount, but in the latter, the Colonists carried with them the great Charter of Liberty (*Magna Carta*) that "No man shall be imprisoned but by the lawful judgment of his peers, or by the law of the land."

105. The Privy Council held that Newfoundland was a settled and not a conquered colony and the settlers carried with them such portion of its Common Law and Statute Law as was conferred and also the rights and immunities of British subjects. The Judicial Committee held that the Crown did not invest upon the Legislative Assembly of Newfoundland the power to commit for its contempt.

106. The Committee then proceeded to consider the question thus:

> "The whole question then is reduced to this—whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incidental to every local Legislature.
>
> The Statute Law on this subject being silent, the Common Law is to govern it; and what is the Common Law, depends upon principle and precedent.
>
> Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given to them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown

A to perform. This is the principle which governs all legal incidents. *"Quando lex aliquid concedit, concedere videtur et illud, sine qua res ipsa esse non potest."** In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary B to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law. But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to C the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not. All these functions may be well performed without this extraordinary power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions. D

These powers certainly do not exist in corporate or other bodies, assembled, with authority, to make bye-laws for the government of particular trades, or united numbers of individuals. The functions of a Colonial Legislature are of a higher character, E and it is engaged in more important objects; but still there is no reason why it should possess the power in question.

It is said, however, that this power belongs to the House of Commons in England and this, it is contended, affords an authority for holding that it belongs as a legal incident, by the Common Law, F to an Assembly with analogous functions. But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the *lex et consuetude Parliamenti,* which forms a part of the Common Law of the land, and according G to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one. And, besides, this argument from analogy would prove too much, since it would be equally available in favour of the assumption by the

H * When the law gives anything to anyone, all incidental things are also tacitly given.

Council of the Island, of the power of commitment exercised by the House of Lords, as well as in support of the right of impeachment by the Assembly a claim for which there is not any colour of foundation.

Nor can the power be said to be incident to the Legislative Assembly by analogy to the English Courts of Record which possess it. This Assembly is no Court of Record, nor has it any judicial functions whatever; and it is to be remarked that all these bodies which possess the power of adjudication upon, and punishing in a summary manner, contempts of their authority, have judicial functions, and exercise this as incident to those which they possess, except only the House of Commons, whose authority, in this respect, rests upon ancient usage.

Their Lordships, therefore, are of opinion, that the principle of the Common Law, that things necessary, pass as incident, does not give the power contended for by the Respondents as an incident to, and included in, the grant of a subordinate Legislature".

(emphasis supplied)

107. The Council, in the light of above legal position did not approve the law laid down earlier in *Beaumont* v. *Barrett,* (1836) 1 MOO PC 80, (in which such right was upheld and it was ruled that Legislative Assembly of Jamaica had inherent power to punish for contempt of the Assembly) and overruled it.

108. It was submitted that distinguished jurists and eminent judges considered the question in *Keilley* and concluded that Assembly of Newfoundland had no power to commit a person for contempt which was exercised by the British Parliament. The ratio in *Keilley* applies with equal force to Indian Parliament and it must be held that the position of our Parliament is not different than that of Newsouthland and it also does not possess such power claimed and exercised by British Parliament.

109. I am unable to agree with the learned counsel for the petitioners. In my judgment, *Keilley* has no application inasmuch as it was decided in the light of factual, political and legal background which was *totally* different. For more than one reason, the ratio in *Keilley* cannot be pressed in service in the case on hand. *Firstly,* India, after 1950, cannot be termed

A as a 'colonial country' nor its Legislature Colonial or subordinate. *Secondly,* it was not to derive powers, privileges or prerogatives from the Crown either expressly or impliedly. *Thirdly,* after January 26, 1950, it is the written Constitution which has conferred powers, privileges and immunities on Parliament/Legislatures and on their members. *Fourthly,* provisions of the Constitution themselves expressly conferred certain powers, privileges and B immunities [Arts.105(1), (2); 194 (1), (2)]. It also allowed Parliament to define them by making an appropriate law and declared that until such law is enacted, they would be such as exercised by British Parliament on January 26, 1950 [Arts. 105(3), 194(3)]. *Fifthly,* the crucial question, in my opinion is not the fact that the Assembly of Newsouthland had no right to commit a C person for contempt but whether or not the British Parliament possessed such power on January 26, 1950. *Sixthly, Keilley* was not a member of Assembly and as such the ruling in that case has no direct bearing on the issue raised before this Court. *Finally, Keilley* was a case of committal of a person to jail and keeping in view the fact situation, the Privy Council D decided the matter which is absent here. For all these reasons, in my considered opinion, reliance on *Keilley* is of no assistance to the petitioners.

110. In fact, in a subsequent case in *Thomas William Doyle* v. *George Charles Falconer,* (1866) LR 1 PC 328, the distinction between power to punish for contempt and power to take other steps had been noted by the E Privy Council. It held that the Legislative Assembly of Dominica did not have the power to punish for contempt as no such power was possessed by a Colonial Assembly by analogy of *lex et consuetude Parliamenti* which was inherent in Houses of Parliament in the United Kingdom as the High Court of Parliament, or in a Court of Justice as a Court of Record. A Colonial F Assembly had no judicial functions.

111. The Judicial Committee, however, after referring to Keilley and other cases, proceeded to state;

> G "If then, the power assumed by the House of Assembly cannot be maintained by analogy to the privileges of the House of Commons, or the powers of a Court of Record, is there any other legal foundation upon which it may be rested. It has not, as both sides admit, been expressly granted. The learned counsel for the Appellants invoked the principles of the Common Law, and as it H must be conceded that the Common Law sanctions the exercise of

the prerogative by which the Assembly has been created, the principles of Common Law, which is embodied in the maxim, *"Quando lex aliquid concedit, concedere videtur et illud, sine qua res ipsa esse non potest,"* applies to the body so created. The question, therefore, is reduced to this : Is the power to punish and commit for contempt for contempts committed in its presence one necessary to the existence of such a body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation. *If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence. The right to remove for self-security is one thing, the right to inflict punishment is another. The former is, in their Lordships' judgment, all that is warranted by the legal maxim that has been cited, but the latter is not its legitimate consequence.* To the question, therefore, on which this case depends, their Lordships must answer in the negative."

(emphasis supplied)

(See also Broom's Legal Maxims, 10th Edn; p.314)

112. With respect, the above observations lay down correct proposition of law.

113. Again, in *Barton* v. *Taylor,* (1886) 11 AC 197, the Privy Council, approving *Doyle* drew a practical line between defensive action and punitive action on the part of the Assembly to be taken against erring members, and said; "Powers to suspend *toties quoties,* sitting after sitting, in case of repeated offences (and, it may be, till submission or apology), and also to *expel* for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a member whose conduct is habitually obstructive or disorderly."

114. An interesting point of law, which has been raised before this Court was also raised before the Supreme Court of New South Wales in

A *Armstrong* v. *Budd,* (1969) 71 SR 386 (NSW). Section 19 of the Constitution Act, 1902 laid down that in certain circumstances, a seat in the Legislative Council would automatically fall vacant. *A* was a member of Legislative Council against whom a suit was filed. During the course of litigation, he gave evidence. The evidence was disbelieved by the Court and in the B judgment, certain strictures were passed by the trial Judge. The Legislative Council, on the basis of comments and adverse observations, passed a resolution and expelled *A* from the Council and declared his seat vacant. *A* sought a declaration that the resolution was *ultra vires.*

115. It was contended by *A* that since his case was not covered by any C of the eventualities enumerated in Section 19, he could not be disqualified. The Court, however, negatived the contention. It observed that the case did not fall in any of the clauses (a) to (f) of Section 19 of the Act but stated that the said section did not constitute a 'complete code' for the vacation of seat.

D Herron, C.J. stated:

> "For there exist well-recognized overriding common-law principles which enlarge parliamentary power. As applying to this case the first or primary essentials may be stated thus: in the E absence of express grant the Legislative Council possesses such powers and privileges as are implied by reason of necessity, the necessity which occasions the implication of a particular power or privilege is such as is necessary to the existence of the Council or to the due and orderly exercise of its functions."

F His Lordship further stated:

> *"This case appears to me to warrant a decision that in special circumstances there is an area of misconduct of a Member of Parliament committed outside the House and disclosed in curial proceedings which may, in special circumstances, form a basis for* G *the exercise of the power of expulsion based upon a finding by the House that such is necessary to its existence or to the orderly exercise of its important legislative functions.* "
>
> (emphasis supplied)

H 116. Wallace, P. agreed with the learned Chief Justice and observed:

> *". . . I am of the opinion that the Legislative Council has an implied power to expel a member if it adjudges him to have been guilty of conduct unworthy of a member.* The nature of this power is that it is solely defensive—a power to preserve and safeguard the dignity and honour of the Council and the power conduct and exercise of its duties. The power extends to conduct outside the Council provided the exercise of the power is solely and genuinely inspired by the said defensive objectives. The manner and the occasion of the exercise of the power are for the decision of the Counsel." (emphasis supplied)

117. Sugerman, J. in concurring opinion formulated the doctrine of necessity in an effective manner by making the following instructive observations;

> "This necessity compels not only the conceded power to expulsion arising from disorderly conduct within the Chamber, but also expulsion arising from conduct outside the chamber, which, in the opinion of the Council, renders a man unfit for service and therefore one whose continued membership of the Council would disable the Council from discharging its duty and protecting its dignity in the sense mentioned. That the proper discharge of the legislative function by the Council demands an orderly conduct of its business is undoubted. That it demands honesty and probity of its members should be equally undoubted. *Indeed, the need for removal and replacement of a dishonest member may be more imperative as a matter of self-preservation, than that of an unruly member".* (emphasis supplied)

118. Mr. Andhyarujina, Sr. Advocate appearing for Union of India placed before this Court particulars of expulsion of members from the House of Commons in the last three and half centuries. The particulars are as under:

Date	**Member and Constituency**	**Reason**
22nd November 1667	John Ashburnham (Sussex)	Accepted a bribe (£500 from merchants who wished to import French wines).

21st April 1668	Hon. Henry Brouncker (New Romney)	Invented orders from the Duke of York to down sail, which prevented England capitalising on its naval victory off Lowestoft in 1665.
1st February 1678	Thomas Wancklyn (Westbury)	Corrupt misuse of the privilege of Parliament against arrest of MP's 'menial servants'.
25th March 1679	Edward Sackville (East Grinstead)	Denunciation of Titus Oates as a 'lying rogue' and disbelief in the 'Popish Plot'.
28th October 1680	Sir Robert Cann, Bt. (Bristol)	Statement that the attempt to exclude the Duke of York from the succession was a 'Presbyterian Plot'.
29th October 1680	Sir Francis Wythens (Westminster)	Presented a petition abhorring the summons of a Parliament which would exclude the Duke of York from the succession.
14th December 1680	Sir Robert Peyton (Middlesex)	Association with the Duke of York and alleged complicity in the 'Meal-Tub Plot' (attempt to implicate exclusionists in a plot to kill the King and establish a Commonwealth).
20th January 1690	Sir Robert Sawyer (Cambridge University)	Leading the prosecution of Sir Thomas Armstrong for treason in the Rye House Plot while Attorney-General. Armstrong was convicted, sentenced to death and eventually hanged, but his conviction was later ruled a miscarriage of justice.

16th March 1695	Sir John Trevor (Yarmouth, Isle of Wight)	Corruption (Speaker of the House of Commons). Paid 1,000 guineas from the Corporation of London on passage of the Orphans Bill.
26th March 1695	John Hungerford (Scarborough)	Paid 20 guineas from the Corporation for his conduct as Chairman of the Committee of the Whole House on the Orphans Bill.
1st February 1698	Charles Duncombe (Downton)	Obliged to pay £10,000 to public funds, Duncombe bought Exchequer Bills at a 5% discount and persuaded the seller (John da Costa) to endorse them as though they had been paid to him for excise duty. This allowed him to pay them in at face value and keep the discount himself.
1st February 1698	John Knight (Weymouth and Melcombe Regis)	Persuaded his brother William and Reginald Marriott, a Treasury Official, falsely to endorse £7,000 of Exchequer Bills as though they were paid to settle tax payments (this meant that the Bills, circulated at a 10% discount, increased to their face value). Tried to persuade Marriott to take the full blame.
10th February 1699	James Isaacson (Banbury)	Commissioner of Stamp Duty; this office was a disqualification under the Lottery Act of 1694.
13th February 1699	Henry Cornish (Shaftesbury)	Commissioner in the Stamp Office managing Duties on Vellum, Paper and Parchment; this office was a disqualification under the Lottery Act of 1694.

14th February 1699	Samuel Atkinson (Harwich)	Commissioner for licensing hawkers and pedlars; this office was a disqualification under the Lottery Act of 1694.
14th February 1699	Sir Henry Furnese (Bramber)	Trustee for circulating Exchequer Bills; acting as Receiver and Manager of the subscription of the new East India Company. These offices were disqualifications under the Lottery Act of 1694.
20th February 1699	Richard Wollaston (Whitchurch)	Receiver-General of Taxes for Hertfordshire; this office was a disqualification under the Lottery Act of 1694.
19th February 1701	Sir Henry Furnese (Sandwich)	Trustee for circulating Exchequer Bills; this office was a disqualification under the Lottery Act of 1694.
22nd February 1701	Gilbert Heathcote (City of London)	Trustee for circulating Exchequer Bills; this office was a disqualification under the Lottery Act of 1694.
1st February 1703	Rt. Hon. Earl of Ranelagh (West Looe)	As Paymaster-General of the Army, appropriated £904,138 of public funds; had severe discrepancies in his accounts, which were only made up to March 1692.
18th December 1707	John Asgill (Bramber)	Indebted to three creditors (among them Colonel John Rice) for £10,000. Author of a book which argued that the Bible proved man may be translated

		from life on earth to eternal life in heaven without passing through death. The House held it to be blasphemous. The same member was also expelled from the Irish Parliament on 11th October 1703.	A B
15th February 1711	Thomas Ridge (Poole)	Having been contracted to supply the fleet with 8,217 tuns of beer, supplied only 4,482 tuns from his brewery and paid compensation at a discounted rate for the non-supplied beer, thereby defrauding public funds.	C
12th January 1712	Robert Walpole (King's Lynn)	Corruption while Secretary at War. Forage contracts he negotiated stipulated payments to Robert Mann, a relation of Walpole's, but Walpole signed for them and therefore received the money.	D
19th February 1712	Rt. Hon. Adam de Cardonnel (Southampton)	While Secretary to the Duke of Marlborough, he received an annual gratuity of 500 gold ducats from Sir Solomon de Medina, an army bread contractor.	E
18th March 1714	Sir Richard Steele (Stockbridge)	Seditious libel. Published an article in *The Guardian* and a pamphlet called *The Crisis* exposing the government's support for French inaction on the demolition of Dunkirk; demolition was required under the Treaty of Utrecht.	F G
2nd February 1716	Thomas Forster (Northumberland)	Participation in the 1715 Jacobite rebellion (he was General of all the pretender's forces in England).	H

23rd March 1716	Lewis Pryse (Cardiganshire)	Refused to attend the House to take oaths of loyalty after the Jacobite rebellion.
22nd June 1716	John Carnegie (Forfarshire)	Participation in the 1715 Jacobite rebellion.
23rd January 1721	Jacob Sawbridge (Cricklade)	Director of the South Sea Company.
28th January 1721	Sir Robert Chaplin, Bt. (Great Grimsby)	Director of the South Sea Company.
28th January 1721	Francis Eyles (Devizes)	Director of the South Sea Company.
30th January 1721	Sir Theodore Janssen, Bt. (Yarmouth, Isle of Wight)	Director of the South Sea Company.
8th March 1721	Rt. Hon. John Aislabie (Ripon)	Negotiated the agreement to take over the national debt between the South Sea Company and the government, as Chancellor of the Exchequer; received £20,000 of South Sea Company stock; destroyed evidence of his share dealings.
10th March 1721	Sir George Caswall (Leominster)	Banker of the South Sea Company; obtained for his company £50,000 stock in the South Sea Company while the South Sea Bill was still before Parliament, and without paying for it.
8th May 1721	Thomas Vernon (Whitchurch)	Attempt to influence a member of the committee on the South Sea bubble in favour of John Aislabie, his brother-in-law.

15th February 1723	Viscount Barrington (Berwick-upon-Tweed)	Involvement in a Lottery held in Hanover, but organized in London. The House declared it illegal.	A
4th February 1725	Francis Elde (Stafford)	Corrupt attempt to compromise an election petition against him.	B
16th May 1726	John Ward (Weymouth and Melcombe Regis)	Involved in a fraud against the estate of the late Duke of Buckingham - compelled to buy Alum from Ward's Alum works, but which Ward kept and sold again to others.	C
30th March 1732	John Birch (Weobley)	Fraudulent sale of the Derwentwater Estate (escheated to the Crown by the Earl of Derwentwater, convicted of High Treason during the 1715 rebellion).	D E
30th March 1732	Denis Bond (Poole)	Fraudulent sale of the Derwentwater Estate (escheated to the Crown by the Earl of Derwentwater, convicted of High Treason during the 1715 rebellion).	F
3rd April 1732	George Robinson (Great Marlow)	Fraudulent use of the funds of the Charitable Corporation for speculation. Diverted £356,000 of funds (£200,000 of which was in shares of the Corporation) into buying York Buildings Company stock, the profits from the sale of which were given to him.	G H

4th May 1732	Rt. Hon. Sir Robert Sutton (Nottinghamshire)	False statement that the Charitable Corporation's authorized capital had been exhausted, allowing it to issue more (and so finance the corrupt speculation of other directors).
5th May 1732	Sir Archibald Grant, Bt. (Aberdeenshire)	Fraudulent use of the funds of the Charitable Corporation for speculation. Arranged for George Robinson (see above) to abscond.
20th January 1764	John Wilkes (Aylesbury)	Absconded to France after being charged with libel over issue no. 45 of the *North Briton*.
3rd February 1769	John Wilkes (Middlesex)	Previous conviction for libel and blasphemy, and a further seditious libel in the Introduction to a letter to Daniel Ponton (Chairman of Quarter Sessions at Lambeth) in the St. James's Chronicle.
(17th February 1769	John Wilkes (Middlesex)	Returned despite his previous expulsion. The House resolved that he "was, and is, incapable of being elected a Member to serve in the present Parliament.")
4th December 1783	Christopher Atkinson (Hedon)	Convicted of perjury after swearing that accusations against him of fraud were untrue. The accusations related to his dealings with the Victualling Board, and were in a letter printed in the *General Advertiser* on 31st January 1781.
2nd May 1796	John Fenton Cawthorne (Lincoln)	Convicted by court martial of fraud and embezzlement of the

		funds of the Westminster Regiment of the Middlesex Militia; cashiered for conduct unbecoming the character of an officer and a gentleman.	A
23rd May 1810	Joseph Hunt (Queenborough)	Absconded to Lisbon after being found to have embezzled public funds as Treasurer of the Ordnance. During his term he left a deficit of £93,296.	B
5th March 1812	Benjamin Walsh (Wootton Bassett)	Convicted (later pardoned) of attempting to defraud Solicitor-General Sir Thomas Plumer. Plumer had given Walsh a draft of £22,000 with which to buy exchequer bills, but Walsh used it to play the lottery, and lost; he then converted his remaining assets into American currency and set off for Falmouth to sail to America, but was brought back. Walsh had been expelled by the Stock Exchange for gross and nefarious conduct in 1809.	C D E
5th July 1814	Hon. Andrew James Cochrane (Grampound)	Convicted of conspiracy to defraud (circulated false rumours of the defeat and death of Napoleon Buonaparte in order to boost share prices); absconded to France before sentence.	F
5th July 1814	Lord Cochrane (Westminster)	Convicted of conspiracy to defraud (circulated false rumours of the defeat and death of Napoleon Buonaparte in order to boost share prices).	G H

16th February 1857	James Sadleir (Tipperary)	Absconded after arrest for fraudulent conversion. He had abstracted £250,000 of stock from the Tipperary Joint-Stock Bank for his brother's use.
22nd February 1882	Charles Bradlaugh (Northampton)	Contempt of orders of the House of Commons excluding him from the Parliamentary estate.
12th May 1891	Edmund Hope Verney (Buckingham)	Convicted of procuring a girl under the age of 21 (Miss Nellie Maud Baskett) for an immoral purpose.
26th February 1892	Edward Samuel Wesley de Cobain (Belfast, East)	Absconded to the United States of America after a warrant for his arrest on charges of commission of acts of gross indecency was issued. On 21st March 1893 he was convicted and sentenced to twelve months' imprisonment with hard labour.
2nd March 1892	George Woodyatt Hastings (Worcestershire, Eastern)	Convicted of fraudulent conversion. As a Trustee for property under the will of John Brown, appropriated to himself over £20,000 from the estate.
1st August 1922	Horatio William Bottomley (Hackney, South)	Convicted of fraudulent conversion. Invited contributions to the Victory Bond Club which were supposed to be invested in government stock, but were actually diverted to his own use.
30th October 1947	Garry Allighan (Gravesend)	Contempt of the House of Commons: breach of privilege over article in 'World's Press

		News' alleging corruption and drunkenness among Members; lying to the committee investigating the allegations.	A
16th December 1954	Peter Arthur David Baker (Norfolk, South)	Convicted of uttering forged documents. Forged signatures on letters purporting to guarantee debts in excess of £100,000 owed by his companies.	B

INDIAN LAW : HISTORIAL BACKGROUND C

119. It is no doubt true that the existing law relating to parliamentary privileges in India is essentially of English origin. But the concept of parliamentary privileges was not unknown to ancient India. Prititosh Roy in his work *'Parliamentary Privilege in India'* (1991) states that even during *Vedic* times, there were two assemblies; *Sabha* and *Samiti* which were keeping check on all actions of the King. Reference of *Sabha* and *Samiti* is found in all *Vedas*. In Buddhist India, we find developed parliamentary system. Members were not allowed to disobey directions of Assemblies. Offenders were answerable to Assemblies and after affording an opportunity to them, appropriate actions used to be taken against erring officers. It has thus 'rudimentary features' of parliamentary privilege of today. D E

120. In 1600, East India Company came to India primarily as 'trader'. The British Parliament effectively intervened into the affairs of the Company by passing the East India Company Act, 1773 (popularly known as 'the Regulating Act, 1773'), which was followed by the Act of 1784. The roots of modern Parliamentary system were laid in various Charter Acts of 1833, 1853, 1854, 1861, 1892, 1909, etc. F

121. During 1915-50, there was remarkable growth and development of Parliamentary privileges in India. For the first time, a limited right of freedom of speech was conferred on the Members of Legislature by the Government of India Act, 1919 (Section 67). By the Legislative Members Exemption Act, 1925, two parliamentary privileges were allowed to Members; (i) exemption from jury service; and (ii) freedom from arrest. G

H

122. The Government of India Act, 1935 extended the privileges conferred and immunities granted. The Indian Independence Act, 1947 accorded sovereign legislative power on the Indian Dominion.

CONSTITUTIONAL PROVISIONS

123. The Constitution of India came into force from January 26, 1950. Part V contains the relevant provisions relating to the Union. Whereas Chapters I and IV deal with the Executive and Judiciary; Chapters II and III relate to Parliament. Articles 79 to 88 provide for constitution, composition, duration, etc. of both the Houses and qualification of members, Articles 89 to 98 make provisions for election of Speaker, Deputy Speaker, Chairman, Deputy Chairman and their salaries and allowances. Article 101 deals with vacation of seats and Article 102 specifies circumstances in which a person is held disqualified to be chosen as or continued to be a Member of Parliament. Article 103 attaches finality to such decisions.

Three Articles are relevant and may be reproduced;

> *"101. Vacation of seats.*— (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.
>
> (2) No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.
>
> (3) If a member of either House of Parliament–
>
> *(a)* becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102, or
>
> *(b)* resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation

is accepted by the Chairman or the Speaker, as the case may be, A

—his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause *(b),* if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation. B

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all C meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days. D

102. Disqualifications for membership. — (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament–

(a) if he holds any office of profit under the Government of India E or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court; F

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State; G

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.—For the purposes of this clause *a person shall not* be deemed to hold an office of profit under the Government of India H

A or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

B

103. Decision on questions as to disqualifications of members.– (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred

C for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

D

124. Article 105 provides for powers, privileges and immunities of the members of Parliament. It is the most important provision as to the controversy raised in the present proceedings, and may be quoted *in extenso*;

"105. Powers, privileges, etc., of the Houses of Parliament and of

E *the members and committees thereof.* –(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.

F (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.

G (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*

H *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. "

(emphasis supplied)

125. Articles 107-22 contain provisions as to legislative procedure. Article 118 enables both the Houses of Parliament to make Rules for regulating procedure and conduct of business. Article 121 puts restriction on discussion in Parliament in respect of conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. Article 122 prohibits courts from inquiring into or questioning the validity of any proceedings in Parliament on the ground of irregularity of procedure. It reads thus:

"*122. Courts not to inquire into proceedings of Parliament.*— (1) The validity of any proceedings in Parliament shall not be called in question *on the ground of any alleged irregularity of procedure.*

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers. "

(emphasis supplied)

EXPULSION OF MEMBERS BY PARLIAMENT

126. There are certain instances wherein Indian Parliament has exercised the power of expulsion of its members.

127. The first case which came up for consideration before Parliament was of *Mr. H.G. Mudgal*, a Member of *Lok Sabha*. He suppressed certain material facts as to his relationship with the Bombay Bullion Association. A Committee of Enquiry found the charges proved and came to the conclusion that the conduct of the Hon'ble Member was 'derogatory of the

A dignity of the House inconsistent with the standard which Parliament is entitled to expect from its members'.

128. While addressing the House, the then Prime Minister Pandit Jawaharlal Nehru referred to the work of Sir Erkskine May, Article 105(3) of the Constitution and practice in the British House.

B

But Pt. Nehru, in my opinion, rightly added;

"Apart from that, *even if the Constitution had made no reference to this, this House as a sovereign Parliament must have inherently* C *the right to deal with its own problems as it chooses* and I cannot imagine anybody doubting that fact".

(emphasis supplied)

Regarding approach of House in such cases, he said;

D

"Indeed, I do not think it is normally possible for this House in a sense to convert itself into a court and consider in detail the evidence in the case and then come to a decision. Of course : the House is entitled to do so : but it is normally not done : nor is it considered, the proper procedure".

E

He then stated;

"The question arises whether in the present case this should be done or something else. I do submit that it is perfectly clear that F this case is not even a case which might be called a marginal case, where people may have two opinions about it, where one may have doubts if a certain course suggested is much too severe. The case, if I may say so, is as bad as it could well be. If we consider even such a case as a marginal case or as one where perhaps a certain amount of laxity might be shown, I think it will be unfortunate from G a variety of points of view, more especially because, this being the first case of its kind coming up before the House, if the House does not express its will in such matters in clear, unambiguous and forceful terms, then doubts may very well arise in the public mind as to whether the House is very definite about such matters or not. H Therefore, I do submit that it has become a duty for us and an

obligation to be clear, precise and definite. The facts are clear and precise and the decision should also be clear and precise and unambiguous. And I submit the decision of the House should be, after accepting the finding of this report, to resolve that the Member should be expelled from the House". A

129. A motion was then moved to expel Mr. Mudgal which was accepted by the House and Mr. Mudgal was expelled. B

130. Likewise, power of expulsion was exercised by Parliament against Mr. Subramanyam Swami (*Rajya Sabha*) and Mrs. Indira Gandhi (*Lok Sabha*). The power was also exercised in case of expulsion from Legislative Assemblies of various States. C

131. Kaul and Shakhder in their book '*Practice and Procedure of Parliament*', (5th Edn., p. 262), stated:

> *"Punishment of Members:* In the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly than by admonition or reprimand, namely, suspension from the service of the House and expulsion." D

EXPULSION OF MEMBERS AND COURTS E

132. Concrete cases have also come before Indian Judiciary against orders of expulsion passed by the Legislature. Let us consider leading decisions on the point.

133. So far as this Court is concerned, probably this is the first case of the type and, therefore, is of extreme importance. Few cases, which had come up for consideration earlier did not *directly* deal with expulsion of membership from Legislature. As already noted above, though in some cases, Parliament had taken an action of expelling its members, the aggrieved persons had not approached this Court*. F G

* [Kaul and Shakhder after referring to conflicting decisions of the High Courts of Madhya Pradesh and Punjab & Haryana, stated; "There are, therefore, two conflicting decisions and the position is uncertain. In the absence of a decision by the Supreme Court, neither decision is a declared law under Article 141 of the Constitution. Law of a certain and binding character can be laid down only by the Supreme Court". '*Practice and Procedure of Parliament*', (5th Edn.); P. 268]. H

A 134. The first case which came to be decided by the Constitution Bench of this Court was *M.S.M. Sharma* v. *Shri Sri Krishna Sinha & Ors.*, [1959] Supp 1 SCR 806 : AIR (1959) SC 395 ('*Searchlight*' for short). The petitioner, who was Editor of English daily newspaper '*Searchlight*' published unedited proceedings of the Assembly. The Legislative Assembly issued a notice for violating privilege of the House and proposed to take action. The petitioner challenged the proceedings *inter alia* contending that they were in violation of fundamental right of free speech and expression guaranteed under Article 19 (1)(a) read with right to life under Article 21 of the Constitution.

C 135. Considering Article 194(3) [which is *pari-materia* to Article 105(3)] of the Constitution, and referring to English Authorities, Das, CJ observed (for the majority);

> The result of the foregoing discussion, therefore, is that the D House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. A *fortiori* the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part E of Art. 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the States, as Art. 105(3) does on the Houses of Parliament.

136. On the construction of Article 194(3), His Lordship stated:

F

> *"Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet* G *to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to re-make it.* Nor do we share the view that it will not be right to entrust our Houses with these powers, privileges and immunities, for we are well persuaded that our Houses, like the House of Commons, will H

appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases. "

(emphasis supplied)

137. Harmoniously interpreting and reconciling Articles 194(3) and 19(1)(a), the Court held that in respect of parliamentary proceedings, Article 19(1)(a) had no application.

138. It is thus clear that *Searchlight* had nothing to do with expulsion of a member, though it was relevant so far as construction of Article 194(3) was concerned.

139. Another leading case of this Court was *Powers, Privileges and Immunities of State Legislatures, Article 143 of the Constitution, Re* ('*Keshav Singh*' for short), (1965) 1 SCR 413 : AIR 1965 SC 745. Though *Keshav Singh* was not a case of expulsion of a member of Legislature, it is important as in exercise of 'advisory opinion' under Article 143 of the Constitution, a larger Bench of seven Judges considered various questions, including powers, privileges and immunities of the Legislature.

140. In that case, *K*, who was not a member of the House, published a pamphlet. He was proceeded against for contempt of the House and breach of privilege for publishing a pamphlet and was sent to jail. *K* filed a petition for *habeas corpus* by engaging S as his advocate and a Division Bench of two Judges of the High Court of Allahabad (Lucknow Bench) released him on bail. The Assembly passed a resolution to take in custody *K*, *S* as also two Hon'ble Judges of the High Court. Both the Judges instituted a writ petition in the High Court of Allahabad. A Full Court on judicial side admitted the petition and granted stay against execution of warrant of arrest against Judges. In the unusual and extraordinary circumstances, the President of India made reference to this Court under Article 143 of the Constitution.

141. One of the questions referred to by the President related to Parliamentary privileges *vis-à-vis* power of Court. It read thus:

"(4) Whether, on the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar

A Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative
B Assembly."

142. Before considering the ambit and scope of Article 194(3) and jurisdiction of the Legislature and the power of judicial review of the High Court under Article 226, the learned Chief Justice gave a golden advice stating:

C

"In coming to the conclusion that the content of Art. 194(3) must ultimately be determined by courts and not by the legislatures, we are not unmindful of the grandeur and majesty of the task which has been assigned to the Legislatures under the
D Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts also have to play an equally significant role in the development of the
E rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life. In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the Judicature, are derived primarily from 'the
F status dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antinovel nor in a spirit of hostility, but rationally, harmoniously and in spirit
G of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic state alone will help the peaceful development, growth and stabilization of the democratic way of life in this country.

But when, as in the present case, a controversy arises between
H the House and the High Court, we must deal with the problem

objectively and impersonally. There is no occasion to import heat into the debate or discussion and no justification for the use of strong language. The problem presented to us by the present reference is one of construing the relevant provisions of the Constitution and though its consideration may present some difficult aspects, we must attempt to find the answers as best as we can. In dealing with a dispute like the present which concerns the jurisdiction, the dignity and the independence of two august bodies in a State, we must remember that the objectivity of our approach itself may incidentally be on trial. It is, therefore, in a spirit of detached objective enquiry which is the distinguishing feature of judicial process that we propose to find solutions to the questions framed for our advisory opinion. If ultimately we come to the conclusion that the view pressed before us by Mr. Setalvad for the High Court is erroneous, we would not hesitate to pronounce our verdict against that view. On the other hand, if we ultimately come to the conclusion that the claim made by Mr. Seervai for the House cannot, be sustained, we would not falter to pronounce our verdict accordingly. *In dealing with problems of this importance and significance, it is essential that we should proceed to discharge our duty without fear or favour, affection or ill-will and with the full consciousness that it is our solemn obligation to uphold the Constitution and the laws."*

(emphasis supplied)

Then analyzing Article 194(3), the Court stated:

"That takes us to clause (3). The first part of this clause empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities; the latter part provides that until such laws are made, the Legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers must have thought that the Legislatures would take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities

A which are contemplated by cl. (3), are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3).

B This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to have subsisted at the commencement of the Constitution, i.e., on January 26, 150. It is well-known that out of a large number o privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of C time, and some virtually faded out by desuetude; and so, in every case where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that if a particular power which is D claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is : is the power in E question shown or proved to have subsisted in the House of Commons at the relevant time ?

It would be recalled that Art. 194(3) consists of two parts. The first part empowers the Legislature to define by law from time to time its powers, privileges and immunities, whereas the second part F provides that until the legislature chooses so to define its powers, privileges and immunities, its powers, privileges and immunities would be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of the Constitution. Mr. Seervai's argument is that G the latter part of Art. 194(3) expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House. Take the privilege of freedom of access H which is exercised by the House of Commons as a body and

through its Speaker "to have at all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favorable construction placed on his words was justly regarded by the Commons as fundamental privilege". It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and the privilege of impeachment cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt. This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that an powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."

143. Referring to conflict between two august organs of the State and complimenting the solution adopted by them in England, the learned Chief Justice said:

"It has been common ground between the Houses and the courts that privilege depends on the "known laws and customs of Parliament", and not on the *ipse dixit* of either House. The question in dispute was whether the law of Parliament was a "particular" law or part of the common law in its wide and extended sense, and in the former case whether it was a superior law which overrode the common law. Arising out of this question another item of controversy arose between the courts and the Parliament and that was whether a matter of privilege should be judged solely by the House which it concerned, even when the rights of third parties were involved, or whether it might in certain cases be decided in the courts, and, if so, in what sort of cases. The points of view adopted by the Parliament and the courts appeared to be irreconcilable. The courts claimed the right to decide for themselves when it became necessary to do so in proceedings brought before them, questions in relation to the existence or extent of these privileges, whereas both the Houses claimed to be exclusive

judges of their own privileges. Ultimately, the two points of view were reconciled in practice and a solution acceptable to both he parties was gradually evolved. This solution which is marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt. May adds that while it cannot be claimed that either House has formally acquiesced in this assumption of jurisdiction by the courts, the absence of any conflict for over a century may indicate a certain measure of tacit acceptance. In other words, 'the question about the existence and extent of privilege is generally treated as justiciable in courts where it becomes relevant for adjudication of any dispute brought before the courts.

In regard to punishment for contempt, a similar process of give and take by convention has been in operation and gradually a large area of agreement has, in practice, been evolved. Theoretically, the House of Commons claims that its admitted right to adjudicate on breaches of privilege implies in theory the right to determine the existence and extent of the privileges themselves. It has never expressly abandoned this claim. On the other hand, the courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction, and to decide it according to their own interpretation of the law. Naturally, as a result of this dualism the decisions of the courts are not accepted as binding by the House in matters of privilege, nor the decision of the House by the courts; and as May points out, on the theoretical plane, the old dualism remains unresolved. In practice, however, "there is much more agreement on the nature and principles of privilege than the deadlock on the question of jurisdiction would lead one to expect" and May describes these general conclusions in the following words :

(1) It seems to be recognized that, for the purpose of

adjudicating on questions of privilege, neither House is by itself entitled to claim the supremacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the King and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.

(2) It is admitted by both Houses that, since neither House can by itself add to the law, neither House can by its own declaration create a new privilege. This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the courts.

On the other hand, the courts admit—

(3) That the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.

(4) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal."

144. Paying tribute to English genius, the learned Chief Justice proceeded to observe:

"It is a tribute to the remarkable English genius for finding pragmatic *ad hoc* solutions to problems which appear to be irreconcilable by adopting the conventional method of give and take. The result of this process has been, in the words of May, that the House of Commons has not for a hundred years refused to submit its privileges to the decision of the courts, and so, it may be said to have given practical recognition to the jurisdiction of the courts over the existence and extent of its privileges. On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognized privileges. That broadly stated, is, the position of

powers and privileges claimed by the House of Commons. "

145. Construing Article 212 in its proper perspective and drawing distinction between 'irregularity' and 'illegality', the Court stated:

> "Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Art. 212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Art. 194(3)."

146. Advisory opinion of this Court in *Keshav Singh* thus is of extreme importance. Though it did not deal with the question of expulsion directly or even indirectly, it interpreted the relevant and material provisions of the Constitution relating to the powers, privileges and immunities of Parliament/ State Legislature keeping in view the powers, privileges and immunities enjoyed by the British Parliament.

147. Let us now consider few High Court decisions on the point which are directly on the point.

148. In *Raj Narain* v. *Atmaram Govind & Anr.*, AIR (1954) All 319, the petitioner who was an elected representative of the Legislative Assembly of Uttar Pradesh wanted to move a motion in connection with forcible removal by police of three teachers who were on hunger-strike. Permission was not

granted by the Speaker. The petitioner, however, continued to 'disturb' proceedings of the House and by use of 'minimum force', he was removed from the House. The Committee of Privileges considered the conduct of the petitioner and resolved to suspend him. The petitioner challenged the resolution in the High Court of Allahabad under Article 226 of the Constitution.

149. Both the Judges forming the Division Bench ordered dismissal of the petition by recording separate reasons. Sapru, J. conceded that withdrawal of a member from the House even for a brief period was a serious matter both for the member as well as for his constituency but disciplinary or punitive action for disorderly behaviour of a member could be taken. Mukherji, J. took the same view. His Lordship further held that 'the House is the sole Judge of its own privileges'.

150. In *Yeshwant Rao Meghawale* v. *Madhya Pradesh Legislative Assembly & Ors.*, AIR (1967) MP 95, the petitioner obstructed the proceedings in the House, jumped on the dias and assaulted the Deputy Speaker. A motion of expulsion of the petitioner was moved and was passed. The petitioner challenged the action by approaching the High Court under Article 226 of the Constitution.

151. It was contended on behalf of the petitioner that the House of Commons has the right to provide for its own constitution and power to fill vacancies. And it was because of that power that it could expel a member. Since the Legislative Assembly of M.P. had no such right, it could not expel a member.

152. The Court, however, negatived the contention. It observed that though Indian Legislature has no right to provide for its own composition nor for filling of vacancies in the House, nor to try election disputes, nevertheless it has power to expel a member for proper functioning, protection and self-preservation. The Court noted that as held by the Privy Council, even Colonial Legislatures have such power.

153. In my opinion, by holding so, the Division Bench has not committed any error of law nor the observations are inconsistent with settled legal position.

154. I must make mention of a Full Bench decision of the High Court

A of Punjab & Haryana in *Hardwari Lal* v. *Election Commission of India,* ILR (1977) 2 P & H 269 (FB). The High Court was expressly and specifically called upon to decide whether a State Legislature has power to expel its member. A Bench of five Judges exhaustively considered the question in detail. Whereas the majority negatived such right, the minority ruled otherwise and upheld it. The petitioners heavily relied upon the reasons B recorded and conclusions reached by Sandhawalia, J. (majority view). The respondents, on the other hand, strongly adverted to observations and considerations of Narula, CJ (minority view). It would, therefore, be appropriate if I deal with both the view-points.

C 155. The learned Chief Justice firstly considered the scope and applicability of clause (3) of Article 194 [similar to clause (3) of Article 105] of the Constitution and held that to determine whether a particular privilege falls in the exceptional category or not is that as soon as a particular privilege is claimed by the Legislature and is disputed or contested, it must D be inquired whether such a privilege was available to the House of Commons on January 26, 1950, and then to decide whether the said privilege is or is not compatible or consistent with the provisions of the Constitution. If it is not inconsistent with the provisions of the Constitution, it can be claimed by the Legislature under Article 194(3).

E 156. It was, therefore, held that "whenever it is found that the Commons did enjoy a particular privilege, power or immunity at the relevant time, it must be deemed to have been written with pen and ink in clause (3) of Article 194, and it is only when a dispute arises whether in the nature of things the particular privilege or power can actually be expressed, F claimed or enjoyed that the Court will scrutinize the matter and without deleting the same from the list hold that notwithstanding the power or privilege being there it cannot be exercised, either because it is humanly impossible to do so or because the extension of the privilege of the Commons would contravene some express or special provision of the Constitution". G

157. Regarding the main question as to the right of the Legislature to expel a member, it was admitted that Indian Legislature had no privilege to provide for its own composition, but it is no ground to deny the right to the House to expel a member as a means of punishment for misconduct. H Referring to a series of cases, it was held that "independent of the power

and privilege of the House of Commons to constitute itself it did have and exercised at the time of coming into force of our Constitution the power to expel its members by way of punishment for misconduct or for breach of privilege or for committing contempt of the House." A

158. The majority, on the other hand, took a contrary view. Sandhawalia, J., considering historical development of law as to parliamentary privileges, observed: B

> "In the context of an unwritten Constitution in England, the House of Commons has undoubtedly claimed and enjoyed the privilege of providing for and regulating its own Constitution from the very earliest times. This privilege in terms and *in effect implies* and includes all powers to control the composition of the House and to determine the identity of its membership." C

159. Unfortunately, however, having held so, the majority adopted an incorrect approach thereafter. Though this Court in *Keshav Singh* held that the privilege enjoyed by the House of Commons in England in regard to its constitution had been expressed in three ways; namely: D

> "(i) by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; E
>
> (ii) by the trial of controversial elections; and
>
> (iii) by determining the questions of its members in cases of doubt; " F

—the High Court (majority) added one more category (*expulsion* of a member) stating that the power of expulsion was another example (fourth category) of the power to the House to determine its own composition.

160. Describing ancient English precedents as 'not only wasteful but dangerous', the majority concluded; G

> *"The uncanalised power of expulsion in the House of Commons stems from its ancient and peculiar privileges of determining its own composition* which in turn arises for long H

A historical reasons and because of the unwritten Constitution in England." (emphasis supplied)

161. With respect, the majority was not right in coming to the aforesaid conclusion and I am unable to read legal position as envisaged by Sandhawalia, J.

B

162. In *K. Anbazhagan & Ors.* v. *Secretary, Tamil Nadu Legislative Assembly, Madras & Ors.*, AIR (1988) Mad 275, some of the members of Tamil Nadu Legislative Assembly were expelled for burning the Constitution considering the conduct as unworthy of members of Legislative Assembly.
C The action was challenged in the High Court.

163. A contention similar to one raised in *Yeshwant Rao* was raised that since the Tamil Nadu Legislative Assembly had no right to provide for its constitution or composition, it had no right to expel a member since a right to expel a member flows from a right to provide for composition of the
D House.

164. The Court observed that in *Keshav Singh*, it was held by the Supreme Court that Indian Legislatures have no privilege to provide for its own constitution. But it rightly proceeded to consider the controversy by
E observing that the question was whether the power of expulsion exercised by the House of Commons was to be 'wholly and exclusively treated as a part of the privilege in regard to its constitution'. Then considering English authorities and various other decisions on the point; the Court held that such power was possessed by the Legislature and was available in appropriate cases.

F

165. In my judgment, the right to expel a member is distinct, separate and independent of right to provide for the due constitution or composition of the House and even in absence of such power or prerogative, right of expulsion is possessed by a Legislature (even a Colonial Legislature), which
G in appropriate cases can be exercised.

166. I am also supported in taking this view from the discussion the Constituent Assembly had and the final decision taken.

167. When the provisions relating to powers, privileges and immunities
H of Parliament and State Legislatures were considered by the Constituent

Assembly, conflicting views were expressed by the Hon'ble Members. One view was in favour of making such provisions exhaustive by incorporating them in the Constitution. The other view, however, was to include few specific and express rights in the Constitution and to adopt the rest as were available to House of Commons in England.

168. The relevant discussion throws light on different views expressed by the Members of Assembly. On May 19, 1949, when the matter came up for consideration, Shri Alladi Krishnaswami Ayyar stated:

> *"Shri Alladi Krishnaswami Ayyar* (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with. In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view. It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and the Colonies and it has been held that by reason of the wide wording in the Australian Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.
>
> I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee

A constituted by the Speaker on the legislative side found very difficult to formulate all the privileges, unless they went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter. I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of *infra dig*. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England?

The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges. The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution". That is all what the article says. It does not in any way fetter your discretion. You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India. Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being *infra dig*, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no *infra dig* in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England.

> You are saying that it will be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self-respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain."

169. It is thus clear that when draft Article 85 (Present Article 105) was considered, different view-points were before the House. It was also aware of various Constitutions, particularly, Constitutions of Canada and Australia. The Members expressed their views, made suggestions and sought amendments and finally, the draft Article 85 was approved as amended.

170. Likewise, when draft Article 169 (Present Article 194) came up before the House on June 3, 1949, again, the matter was discussed at length.

171. I would like to refer to in particular the considerations weighed with the House in the speech of Hon'ble the President, Dr. B.R. Ambedkar, who said:

> "The privileges of Parliament extend, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. *Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace.* These are very grave matters-*e.g.*, to commit to prison. the right to lack up a citizen for what parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring

A Parliament into disrepute. "

(emphasis supplied)

He further stated:

B "Let me proceed. It is not easy, as I said, to define what are the acts and deeds which may be deemed to bring Parliament into disgrace. That would require a considerable amount of discussion and examination. That is one reason why we did not think of enumerating, these privileges and immunities.

C But there is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt D and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

I have referred to one difficulty why it has not been possible to categorise. Now I should mention some other difficulties which E we have felt.

It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, F namely to set out in detail the privileges and immunities of Parliament and its members. I have very carefully gone over May's Parliamentary Practice which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index of May's Parliamentary Practice and I have noticed that practically 8 or 9 columns of the index are devoted to the G privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges H of Parliament. I do not know whether the Members of this House

would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course.

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate. But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament. Consequently that course was not open, because the existing Parliament or Legislative Assembly possess no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it. "

172. Thereafter the House decided to approve the provision relating to powers, privileges and immunities of State Legislatures.

173. The aforesaid discussion clearly and unequivocally indicates that the Members of the Constitution wanted Parliament (and State Legislatures) to retain power and privileges to take appropriate action against any individual member for 'anything that has been done by him' which may

A bring Parliament or Legislative Assembly into 'disgrace'. In my opinion, therefore, it cannot be said that the Founding Fathers of the Constitution were not aware or never intended to deal with individual misdeeds of members and no action can be taken by the Legislature under Article 105 or 194 of the Constitution.

B 174. An authority on the '*Constitutional Law of India*', (H.M. Seervai) pithily puts this principle in one sentence:

> "It is clear, therefore, that the privileges of the British House of Commons were not conferred on the Indian Legislatures *in a fit* C *of absent mindedness*".
>
> (emphasis supplied)

(Constitutional Law of India; Third Edn.; Vol. II; para 20-36)

D *ORDER OF EXPULSION AND JUDICIAL REVIEW*

175. The history of relationship between Parliament and Courts at Westminister is also marked with conflict and controversy.

E 176. Sir Erskine May rightly comments; "After some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of the either House in matters of privilege is still not entirely determined".

F 177. According to the learned author, the earliest conflicts between Parliament and the Courts were about the relationship between the *lex parliamenti* and the common law of England. Both Houses argued that under the former, they alone were the judges of the extent and application of their own privileges, not examinable by any court or subject to any appeal. The courts, on the other hand, professed judicial ignorance of the G *lex parliamenti.* After some time, however, they recognized it, but as a part of the Law of England and, therefore, wholly within the judicial notice.

178. In the middle of the nineteenth century, the conflict, to the large extent, had been resolved. Out of both the claims, (i) whether a privilege H existed; and (ii) whether it had been breached, Parliament yielded the first

to the courts. In turn, courts recognized right of the House to the second.

179. The question was also considered by Anson (*'The Law and Custom of the Constitution'*, Fifth Edition; Vol. I; pp. 190-99). The learned author considered the causes of conflict between Houses and Courts. He noted that the House had asserted that 'it is the sole judge of the extent of its privileges' and the Court had no jurisdiction in the matter. Courts, on the other hand, took the stand that 'when privilege conflicts with rights which they have it in charge of maintain, they will consider whether the alleged privilege is authentic, and whether it governs the case before them'.

180. Then referring to three leading cases, (i) *Ashby* v. *White,* (1704) 14 St Tr 695; (ii) *Stockdale* v. *Hansard,* (1839) 9 Ad & E 1 : 112 ER 1112; and (iii) *Bradlaugh* v. *Gossett,* (1884) 12 QBD 271 : 53 LJQB 200—the author concluded:

> "On the whole, it seems now to be clearly settled that the Courts will not be deterred from upholding private rights by the fact that questions of parliamentary privilege are involved in their maintenance; and that, except as regards the internal regulation of its proceedings by the House, Courts of Law will not hesitate to inquire into alleged privilege, as they would into custom, and determine its extent and application."

181. In *Halsbury's Laws of England*, (4th Edition, Reissue, Vol. 34; pp. 553-54; paras 1004-05), it has been stated:

> "1004. *The position of the courts of law.* Each House of Parliament has traditionally claimed to be the sole and exclusive judge of its own privilege and of the extent of that privilege. The courts of law accept the existence of privileges essential to the discharge of the functions of the two Houses. In 1939, all the privileges required for the energetic discharge of the Commons' trust were conceded by the court without a murmur or doubt; and over 150 years later, the Privy Council confirmed that the courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges. On the other hand, the courts take the view that it is for them to determine whether a parliamentary claim

A to privilege in a particular case falls within that area where what is claimed is necessary to the discharge of parliamentary functions or internal to one or other of the Houses, in which case parliamentary jurisdiction is exclusive, or whether it falls outside that area, especially if the rights of third parties are involved, where the courts would expect to form their own judgments.

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1005. *Limits of agreement regarding jurisdiction.* In spite of the dualism of jurisdiction between the Houses of Parliament and the courts of law, the current measure of agreement on the respective spheres of the two Houses and the courts has, since the mid-
C nineteenth century, prevented the direct conflicts of earlier years.

Although the Houses have never directly admitted the claim of the courts of law to adjudicate on matters of privilege, they appear to recognize that neither House is by itself entitled to claim
D the supremacy which was enjoyed by the undivided High Court of Parliament.

For their part the courts of law acknowledge that the control of each House over its own proceedings is absolute and not subject to judicial jurisdiction; and the courts will not interfere with
E the interpretation of a statute by either House so far as the proceedings of the House are concerned. Neither will the courts inquire into the reasons for which a person has been adjudged guilty of contempt and committed by either House, when the order or warrant upon which he has been arrested does not state the
F causes of his arrest; for in such cases it is presumed that the order or warrant has been duly issued unless the contrary appears upon the face of it."

181A. Holdsworth, in '*A History of English Law*' (Vol. I; pp. 393-94) rightly observed:

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"There are two maxims or principles which govern this subject. The first tells us that "Privilege of Parliament is part of the law of the land;" the second that "Each House is the judge of its own privileges." Now at first sight it may seem that these maxims are
H contradictory. If privilege of Parliament is part of the law of the

land its meaning and extent must be interpreted by the courts, just like any other part of the law; and therefore neither House can add to its privileges by its own resolution, any more than it can add to any other part of the law by such a resolution. On the other hand, if it is true that each House is the sole judge of its own privileges, it might seem that each House was the sole judge as to whether or no it had got a privilege, and so could add to its privileges by its own resolution. This apparent contradiction is solved if the proper application of these two maxims is attended to. The first maxim applies to cases like *Ashby* v. *White*; [1704[14 St Tr 695 and *Stockdale* v. *Hansard;* [1839] 9 Ad & E 1 : 112 ER 1112 in which the question at issue was the existence of a privilege claimed by the House. This is a matter of law which the courts must decide, without paying any attention to a resolution of the House on the subject. The second maxim applies to cases like that of the *Sheriff of Middlesex;* [1840] 11 Ad & E 273 : 113 ER 419 and *Bradlaugh* v. *Gosset;* [1884] 12 QBD 271 : 53 LJQB 200, in which an attempt was made to question, not the existence, but the mode of user of an undoubted privilege. On this matter the courts will not interfere because each House is the sole judge of the question whether, when, or how it will use one of its undoubted privileges."

182. We have a written Constitution which confers power of judicial review on this Court and on all High Courts. In exercising power and discharging duty assigned by the Constitution, this Court has to play the role of a 'sentinel on the *qui vive'* and it is the solemn duty of this Court to protect the fundamental rights guaranteed by Part III of the Constitution zealously and vigilantly.

183. It may be stated that initially it was contended by the respondents that this Court has no *power* to consider a complaint against any action taken by Parliament and no such complaint can *ever* be entertained by the Court. Mr. Gopal Subramaniam, appearing for the Attorney General, however, at a later stage conceded (and I may say, rightly) the jurisdiction of this Court to consider such complaint, but submitted that the Court must always keep in mind the fact that the power has been exercised by a co-ordinate organ of the State which has the jurisdiction to regulate its own proceedings within the four walls of the House. Unless, therefore, this Court is convinced that the action of the House is unconstitutional or wholly unlawful, it may

not exercise its extraordinary jurisdiction by re-appreciating the evidence and material before Parliament and substitute its own conclusions for the conclusions arrived at by the House.

184. In my opinion, the submission is well-founded. This Court cannot be oblivious or unmindful of the fact that the Legislature is one of three organs of the State and is exercising powers under the same Constitution under which this Court is exercising the power of judicial review. It is, therefore, the duty of this Court to ensure that there is no abuse or misuse of power by the Legislature without overlooking another equally important consideration that the Court is not a superior organ or an appellate forum over the other constitutional functionary. This Court, therefore, should exercise its power of judicial review with utmost care, caution and circumspection.

185. The principle has been succinctly stated by Sir John Donaldson, M.R. in *R.* v. *Her Majesty's Treasury, ex parte Smedley,* 1985 QB 657, 666 thus:

> "It .....behoves the courts to be ever sensitive to the paramount need to refrain from trespassing on the province of Parliament or, *so far as this can be avoided, even appearing to do so."*
> (emphasis supplied)

INDIAN PARLIAMENT HAS NO DUAL CAPACITY

186. It was also urged that Indian Parliament is one of the three components of the State and it does not have a 'dual capacity' like the British Parliament which is not only 'Parliament', *i.e.* legislative body, pure and simple, but also 'the High Court of Parliament'. Since Indian Parliament is not a 'Court of Record', it has no power, authority or jurisdiction to award or inflict punishment for Contempt of Court nor it can be contended that such action is beyond judicial scrutiny.

187. In this connection, I may only observe that in *Searchlight* as well as in *Keshav Singh*, it has been observed that there is no doubt that Parliament/State Legislature has power to punish for contempt, which has been reiterated in other cases also, for instance, in *State of Karnataka* v. *Union of India,* [1977] 4 SCC 608, and in *P. V. Narasimha Rao* v. *State,*

[1998] 4 SCC 626. But what has been held is that such decision of Parliament/ State Legislature is not 'final and conclusive'. This Court in all earlier cases held that in view of power of judicial review under Articles 32 and 226 of the Constitution, the Supreme Court and High Courts have jurisdiction to decide legality or otherwise of the action taken by State-authorities and that power cannot be taken away from judiciary. There lies the distinction between British Parliament and Indian Parliament. Since British Parliament is also 'the High Court of Parliament', the action taken or decision rendered by it is not open to challenge in any court of law. This, in my opinion, is based on the doctrine that there cannot be two parallel courts, *i.e.* Crown's Court and also a Court of Parliament ('the High Court of Parliament') exercising judicial power in respect of one and the same jurisdiction. India is a democratic and republican State having a written Constitution which is supreme and no organ of the State (Legislature, Executive or Judiciary) can claim sovereignty or supremacy over the other. Under the said Constitution, power of judicial review has been conferred on higher judiciary (Supreme Court and High Courts). The said power is held to be one of the 'basic features' of the Constitution and, as such, it cannot be taken away by Parliament, even by an amendment in the Constitution. [*Vide Sambamurthy* v. *State of A.P.,* [1987] 1 SCC 362 : AIR (1987) SC 663; *Kesavananda Bharti* v. *State of Kerala,* [1973] 4 SCC 225 : AIR (1973) SC 1461; *Indira Nehru Gandhi* v. *Raj Narain,* [1975] Supp SCC 1 : AIR (1975) SC 2299; *Minerva Mills Ltd.* v. *Union of India,* [1980] 3 SCC 625 : AIR (1980) SC 1789; *L. Chandra Kumar* v. *Union of India,* [1987] 1 SCC 124 : [1987] 1 SCC 124 : [1987] 1 SCR 435, *Kihoto Hollohon* v. *Zachilhu,* [1992] Supp 2 SCC 651 : AIR (1993) SC 412].

188. It has, therefore, been held in several cases that an action of Parliament/State Legislature cannot claim 'total immunity' from judicial review. In fact, this argument had been put forward in *Keshav Singh* which was negatived by this Court. It was opined that an aggrieved party may invoke the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 32 of the Constitution. That, however, does not mean that while exercising extraordinary jurisdiction under the Constitution, the powers of the courts are absolute, unlimited or unfettered. The Constitution which conferred power of judicial review on the Supreme Court and High Courts, with the same pen and ink provided that the validity of proceedings in Parliament cannot be called in question on the ground of 'irregularity in procedure'. It is, therefore, the duty of this Court to give effect to the said

A provision and keeping in view the limitation, exercise the power of judicial review.

189. Moreover, in the instant cases, the Court is called upon to answer a limited question whether Parliament can expel a member. As I have already discussed in earlier part of this judgment, even a Colonial Legislature having limited privileges possesses the power to expel a member if his conduct is found to be not befitting a member of Legislature. If it is so, in my opinion, it goes without saying that Indian Parliament, which has undoubtedly much more powers than a Colonial Legislature, can take such action and it cannot be successfully contended that Parliament does not possess the power to expel a member. I am, therefore, unable to uphold the argument of the petitioners.

DISQUALIFICATION AND EXPULSION

190. The petitioners also submitted that the law relating to disqualification and vacation of seats has been laid down in Articles 101 to 104 (and 190-93) read with Schedule X to the Constitution and of the Representation of the People Act, 1951. Those provisions are 'full and complete'. In other words, they are in the nature of 'complete Code' as to disqualification of membership and vacation of seats covering the field in its entirety. No power of expulsion *de hors* the above provisions exists or is available to any court or authority including Parliament. The action of Parliament, hence, is without jurisdiction and is liable to be set aside.

191. I am unable to uphold the contention. As already discussed earlier, every legislative body–Colonial or Supreme–possesses power to regulate its proceedings, power of self-protection, self-preservation and maintenance of discipline. It is totally different and distinct from the power to provide the constitution or composition which undoubtedly not possessed by Indian Parliament. But every legislative body has power to regulate its proceedings and observance of discipline by its members. In exercise of that power, it can suspend a member as also expel him, if the circumstances warrant or call for such action. It has nothing to do with disqualification and/or vacation of seat. In fact, a question of expulsion arises when a member is not disqualified, his seat has not become vacant and but for such expulsion, he is entitled to act as a member of Parliament.

PARLIAMENT HAS NO CARTE BLANCHE POWER

192. The counsel for the petitioners submitted that every power has its limitations and power conferred on Parliament is not an exception to this rule. It has, therefore, no absolute right to take any action or make any order it likes. It was stated that this Court has accepted this principle in several cases by observing that absolute power is possible 'only in the moon' [*vide Ahmedabad St. Xavier's College Society & Anr.* v. *State of Gujarat & Anr.*, [1975] 1 SCR 173 : [1974] 1 SCC 717 : AIR (1974) SC 1389]. I admit my inability to express any opinion on the larger issue. But I have no doubt and I hold that Parliament, like the other organs of the State, is subject to the provisions of the Constitution and is expected, *nay*, bound to exercise its powers in consonance with the provisions of the Constitution. But I am unable to hold that the power to expel a member is a *carte blanche* in nature and Parliament has no authority to expel any member. In my view, Parliament can take appropriate action against erring members by imposing appropriate punishments or penalties and expulsion is one of them. I may, however, hasten to add that under our Constitution, every action of every authority is subject to law as nobody is above law. Parliament is not an exception to this 'universal' rule. It is, therefore, open to an aggrieved party to approach this Court raising grievance against the action of Parliament and if the Court is satisfied within the limited parameters of judicial review that the action is unwarranted, unlawful or unconstitutional, it can set aside the action. But it is not because Parliament has no power to expel a member but the action was not found to be in consonance with law.

PROCEDURAL IRREGULARITY : EFFECT

193. It was then contended that the impugned actions taken by *Lok Sabha* and *Rajya Sabha* are illegal and unconstitutional. It was stated that the immunity granted by clause (1) of Article 122 of the Constitution ('Courts not to inquire into proceedings of Parliament') has been made expressly limited to 'irregularity of procedure' and not to substantive illegality or unconstitutionality. If the action taken or order passed is *ex facie* illegal, unlawful or unconstitutional, Parliament cannot take shelter under Article 122 and prevent judicial scrutiny thereof. Neither *ad hoc* Committees have been contemplated by the Constitution nor such committees have power to inquire into conduct or misconduct of Members of Parliament. All proceedings, therefore, have no legal foundation. They were without

A jurisdiction or lawful basis and are liable to be ignored altogether.

194. In this connection, the attention of the Court was invited to Constituent Assembly Debates when draft Article 101 (present Article 122) was discussed. Mr. Kamath suggested an amendment in clause (1) of Article 101 by inserting the words "in any court" after the words "called in question".

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195. Dealing with the amendment and jurisdiction of Courts, Dr. B.R. Ambedkar stated (CAD : Vol.VIII; pp. 199-201):

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> "With regard to the amendment of Mr. Kamath, I do not think it necessary, because *where can the proceedings of Parliament be questioned in a legal manner except in a Court?* Therefore, the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the Court."

D

(emphasis supplied)

196. Reference was also made to *Pandit M.S.M. Sharma* v. *Shree Krishna Sinha & Ors.* (*Pandit Sharma II*); (1961) 1 SCR 96 : AIR 1960 SC 1186, wherein a Bench of eight Hon'ble Judges of this Court held that "the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed".

E

197. In *Keshav Singh* also, this Court reiterated the above proposition of law and stated;

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> "Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Art. 212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court

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of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. *If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."*

(emphasis supplied)

[See also *Kihoto Hollohan* v. *Zachillhu & Ors.*, [1992] Supp 2 SCC 651, 711].

198. The learned counsel for the respondents have, in my opinion, rightly not disputed the above statement of law made in the larger Bench decisions of this Court. They, however, stated that a Committee was appointed by Parliament, which went into the allegations against the petitioners. Adequate opportunity had been afforded to the members and after considering the relevant material placed before it, a decision was taken holding them guilty. The said action was approved by the House and as such, the law laid down in the above decisions has no application to the fact-situation and no grievance can be made against it.

199. In my view, the submission of the respondents deserves acceptance. Taking into account serious allegations against some of the members of the House, Parliament decided to inquire into correctness or otherwise of the charges by constituting an 'Inquiry Committee'. The members were asked to offer their explanation and considering the evidence and material on record, the Committee appointed by Parliament decided the matter. It, therefore, cannot be said that the case is covered by exceptional part of clause (1) of Article 122. It cannot be overlooked that this Court is exercising power of 'judicial review', which by its nature limited to serious infirmities of law or patent illegalities. It cannot, therefore, enter into sufficiency of material before the authority nor can substitute its own opinion/finding/ decision for the opinion/finding/decision arrived at by such authority. Hence, even if there is any irregularity in adopting the procedure or in appreciating evidence by the Committee or in approving the decision by Parliament, it squarely falls under the 'protective umbrella' of Article 122(1) of the Constitution and this Court cannot interfere with the decision in view of the constitutional protection granted by the said provision.

200. Neither the Committee appointed by Parliament can be said to be a 'Court' *stricto sensu*, nor it is bound by technical rules of evidence or procedure. It is more in the nature of 'fact-finding' inquiry. Since the dignity, decorum and credibility of Parliament was at stake, the Committee was appointed which was required to act with a view to restore public faith, confidence and honour in this august body without being inhibited by procedural impediments.

201. In this connection, it is profitable to refer to *Mudgal.* In that case also, a Committee was appointed to inquire into charges leveled against a member of Parliament. Certain directives were issued to the Committee. Directive No.2 issued by the Speaker was relevant and read thus:

> *"The Committee on the Conduct of a Member that has been constituted is a Court of Honour and not a Court of Law in the strict sense of the term.* It is therefore not bound by technical rules. It has to mould its procedure so as to satisfy the ends of justice and ascertain the true facts of the case. In Courts of Law, excessive cross-examination eventually turns into a battle of wits and that should not be the atmosphere of a Court of Honour. Here the effort should be to simplify the procedure and to lay down clear rules which ensure ascertainment of Truth, fairplay and justice to all concerned. I am, therefore, of opinion that normally the questions should be put by the Chairman and the Members but that does not mean that the counsel appearing in the case is debarred from putting any questions whatsoever. It is open to the Committee in the light of particular circumstances, of which they alone are the best judges, to permit the counsel to put questions to a witness with the permission of the Chairman. I feel that this should meet the requirements of the present case."
>
> (emphasis supplied)

OBSERVANCE OF NATURAL JUSTICE

202. It was also urged that the Committee had not given sufficient opportunity to the petitioners to defend them and had not complied with the principles of natural justice and fair play. It was submitted that the doctrine of natural justice is not merely a matter of procedure but of substance and any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution. Reference

in this connection was made to *Maneka Gandhi* v. *Union of India,* [1978] 1 SCC 248 : AIR (1978) SC 597; *Kihoto Holohan* and other decisions. A

203. So far as principle of law is concerned, it is well-settled and cannot be disputed and is not challenged. In my opinion, however, in the facts of the case, it cannot successfully be contended that there is breach or non-observance of natural justice by the Committee. Reading of the Reports makes it clear that adequate opportunity had been afforded to the petitioners and thereafter the action was taken. Notices were issued to the members, CDs were supplied to them, evidence of witnesses was recorded, defence version was considered and 'findings and conclusions' were reached. B C

204. So far as the Committee constituted by the *Lok Sabha* is concerned, it stated:

> *"IV. Findings and Conclusions*
>
> 32. The Committee viewed the VCDs comprising the relevant video footage aired on the 'Aaj Tak' TV Channel on 12 December, 2005, perused the transcripts thereof, considered the written statements submitted by each of the said ten members and their oral evidence and also the oral evidence of Shri Aniruddha Bahal, Kumar Badal and Ms. Sushasini Raj of Cobrapost.Com who conducted the 'Operation Duryodhan'. D E
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> 33. The Committee note that the concerned representatives of the Portal Cobrapost.Com namely Shri Aniruddha Bahal, Ms. Suhasini Raj and Shri Kumar Badal approached the members posing as representatives of a fictitious company, through a number of middlemen, some of whom were also working as Private Secretaries/ Personal Assistants of the members concerned. They requested the members to raise questions in *Lok Sabha* and offered them money as a consideration thereof. Money was accepted by the members directly and also through their Private Secretaries. They deposed on oath that in the money sequences shown on TV Channel Aaj Tak there was no misrepresentation. They have also given to the Committee the raw footage covering the situation before and after the scene in question. While the Aaj Tak clippings have gone through video cleaning and sound enhancement, corresponding F G H

thereto are extended versions of unedited raw footage of the tapes to make it apparent that nothing had been misrepresented. Besides this Shri Aniruddha Bahal also submitted the "Original tapes of money acceptance of whatever length the incident it may be". There are 20-25 tapes and the total footage pertains to money acceptance. Each tape is a complete tape showing the whole incident. In the course of her evidence Ms. Suhasini Raj has given the details of the money given to the MPs directly as also through the middlemen.

34. As against this evidence are the statements of all the said ten members. The Committee note that all the members have denied the allegations leveled against them. The common strain in their testimony is that the clippings are morphed, out of context and a result of 'cut and paste'. The clippings of a few minutes, they averred, do not present full picture and they needed full tapes including the preceding and succeeding scenes to prove what they termed as the falsehood thereof. They claimed that the entire exercise was aimed to trap them and lower the prestige of the Parliament.

35. The Committee have given serious consideration to the requests made by the said members for being provided the full footage of video recordings, all the audio tapes and their request for extension of time and being allowed to be represented through their counsels.

In this context the Committee would like to bring it on record that all the ten members while deposing before the Committee were asked whether they would like to view the relevant video footage so that they could point out the discrepancies therein if any. All the members, refused to view the relevant video footage. The Committee, therefore, feel that the requests by the members for unedited and entire video footage would only lead to delaying the consideration of the matter and serve no useful purpose.

36. The Committee having given in-depth consideration to the evidence and statements of the representatives of Cobrapost.com and the members, are of the view that the evidence against the

members is incriminating. The Committee note that the Cobrapost.com representatives gave their statement on oath and would be aware of the consequences of making any false or incorrect statement. They have also supplied the unedited copies of original video situations where money changed hands. Transcripts of the said videos have also been supplied. Had the Cobrapost.com been reluctant in supplying the original unedited video tapes there could have been scope for some adverse inference about the authenticity of the "money sequences" as telecast by Aaj Tak. But that is not so.

37. The Committee are also of the view that the plea put forth by the said ten members that the video footages are doctored/ morphed/edited has no merit. If the members had accepted the offer of the Committee to view the relevant footage and pointed out the interpolated portions in the tape, there would have been justification for allowing their plea for more time for examining the whole tapes. Having seen the unedited raw footage of the Cobrapost.com pertaining to some of the members, the Committee have no valid reason to doubt the authenticity of the video footages.

38. In view of the totality of the facts and circumstances of the case, the Committee are of the opinion that the allegations of accepting money by the said ten members have been established. The Committee further note that it is difficult to escape the conclusion that accepting money had a direct connection with the work in Parliament.

39. The Committee feel that such conduct of the said members was unbecoming of members of Parliament and also unethical. The Committee are, therefore, of the view that their conduct calls for strict action.

40. The Committee feel that stern action also needs to be taken against the middlemen, touts and persons masquerading as Private Secretaries of members since they are primarily responsible for inducing members to indulge in such activities.

41. The Committee note that in the case of misconduct or contempts committed by its members, the House can impose these

A punishments: admonition, reprimand, withdrawal from the House, suspension from the service of the House, imprisonment, and expulsion from the House."

The Committee, according to me, rightly made the following observations:

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"V. Observations

42. The Committee feel that credibility of a democratic institution like Parliament and impeccable integrity of its members are imperative for the success of any democracy. In order to maintain the highest traditions in parliamentary life, members of Parliament are expected to observe a certain standard of conduct, both inside the House as well as outside it. It is well recognised that conduct of members should not be contrary to the Rules or derogatory to the dignity of the House or in any way inconsistent with the standards which Parliament is entitled to expect of its members.

43. The Committee wish to emphasise that ensuring probity and standards in public life is *sine qua non* for carrying credibility with the public apart from its own intrinsic importance. The waning confidence of the people in their elected representatives can be restored through prompt action alone. Continuous fight against corruption is necessary for preserving the dignity of the country. The beginning has to be made with holders of high public offices as the system is, and ought to be, based on morality. When the Committee say so, they are also aware of and wish to put on record that a large number of leaders spend their life time in self-less service to the public.

44. The Committee find it pertinent to note the following observations made by the Committee of Privileges of Eleventh *Lok Sabha* in their Report on 'Ethics, Standards in Public Life, Privileges, Facilities to members and related matters':

"Voicing the constituents' concerns on the floor of the House is the primary parliamentary duty of an elected representative. Any attempt to influence members by improper means in their parliamentary conduct is a breach of privilege. Thus, offering to a

member a bribe or payment to influence him in his conduct as a member, or any fee or reward in connection with the promotion of or opposition to, any Bill, resolution, matter or things submitted or intended to be submitted to the House or any Committee thereof, should be treated as a breach of Code of Conduct. Further, any offer of money, whether for payment to an association to which a member belongs or to a charity, conditional on the member taking up a case or bringing it to a successful conclusion, is objectionable. Offer of money or other advantage to a member in order to induce him to take up an issue with a Minister may also constitute a breach of Code. Similarly, acceptance of inducements and gratification by members for putting questions in the House or for promotion of or opposition to any Bill, resolution or matters submitted to the House or any Committee thereof involves the privileges and contempt proceedings.

The privilege implications apart, the Committee is constrained to observe that such attempts and acts are basically unethical in nature."

45. The Committee are, therefore, deeply distressed over acceptance of money by members for raising parliamentary questions in the House, because it is by such actions that the credibility of Parliament as an institution and a pillar of our democracy is eroded."

(emphasis supplied)

205. The Committee accordingly recommended (by majority of 4 : 1) expulsion of all the ten members from the membership of *Lok Sabha*.

206. The recommendation was accepted by the House and consequential notification was issued on December 23, 2005 expelling all the members from *Lok Sabha* with effect from afternoon of December 23, 2005.

207. So far as *Rajya Sabha* is concerned, the Committee on Ethics recorded a similar finding and observed that it was convinced that the member had accepted money for tabling questions in *Rajya Sabha* and the pleas raised by him in defence were not well-founded.

The Committee rightly stated:

A "Parliamentary functioning is the very basis of our democratic structure upon which the whole constitutional system rests. Anything, therefore, that brings the institution of parliament into disrepute is extremely unfortunate because it erodes public confidence in the credibility of the institution and thereby weaken the grand edifice of our democratic polity."

B

The Committee then observed:

"The Committee has applied its mind to the whole unfortunate incident, gave full opportunity to the Member concerned to make C submissions in his defence and has also closely examined witnesses from Cobrapost.Com and Aaj Tak. The Committee has also viewed the video tapes and heard the audio transcripts more than once. After taking all factors into consideration, the overwhelming and clinching evidence that the member has, in fact, contravened para 5 of the code of conduct for members of the *Rajya Sabha* and D having considered the whole matter in depth, the committee, with great sadness, has come to the conclusion that the member has acted in a manner which has seriously impaired the dignity of the house and brought the whole institution of parliamentary democracy into disrepute. The Committee therefore recommend that Dr. E Chhattrapal Singh Lodha be expelled from the membership of the House as his conduct is derogatory to the dignity of the House and inconsistent with the code of conduct which has been adopted by the House."

208. The Committee thus recommended expulsion of Dr. Lodha. One F member of the Committee suggested (clarifying that it was not a 'dissent note'), to seek opinion of this Court under Article 143(1) of the Constitution.

209. The House agreed with the recommendation and expelled Dr. Lodha. A notification was issued on December 23, 2005 notifying that Dr. G Lodha had ceased to be a member of *Rajya Sabha* with effect from afternoon of December 23, 2005.

ISSUE : WHETHER PRE-JUDGED

210. One of the grievances of the petitioners is that the issue had H already been pre-judged even before a Committee was appointed by

Parliament. In support of the said complaint, the counsel drew the attention of the Court to a statement by the Hon'ble Speaker of *Lok Sabha* on December 12, 2005:

"Nobody would be spared".

211. An attempt was made that the Hon'ble Speaker, even before the constitution of Committee had proclaimed that the petitioners would not be spared. Appointment of Committee, consideration of allegations and recording of findings were, therefore, in the nature of an 'empty formality' to 'approve' the tentative decision taken by the Hon'ble Speaker and for that reason also, the action is liable to be interfered with by this Court.

212. In my opinion, the contention has no force. The petitioners are not fair to the Hon'ble Speaker. They have taken out one sentence from the speech of Hon'ble Speaker of *Lok Sabha* and sought to create an impression as if the matter had already been decided on the day one. It was not so. The entire speech wherein the above sentence appears is part of the Report of the Committee and is on record. It reads thus:

> "Hon. Members, certain very serious events have come to my notice as also of many other hon. Members. It will be looked into with all importance it deserves. I have already spoken to and discussed with all Hon. Leaders of different Parties, including the Hon. Leader of the Opposition and all have agreed that the matter is extremely serious if proved to be correct. I shall certainly ask the hon. Members to explain what has happened. In the meantime, I am making a personal request to all of them 'please do not attend the Session of the House until the matter is looked into and a decision is taken'.... I have no manner of doubt that all sections of the House feel deeply concerned about it. *I know that we should rise to the occasion and we should see that such an event does not occur ever in future and if anybody is guilty, he should be punished. Nobody would be spared. We shall certainly respond to it in a manner which behoves as.* Thank you very much."
>
> (emphasis supplied)

213. It is thus clear that what was stated by the Hon'ble Speaker was that "if anybody is guilty, he would be punished. Nobody would be spared".

A In other words, an assurance was given by the Hon'ble Speaker to the members of august body that an appropriate action will be taken without considering the position or status of an individual member and if he is found guilty, he will not be spared. The statement, in my judgment, is a responsible one, expected of the Hon'ble Speaker of an august body of the largest democracy. I, therefore, see nothing in the above statement from which it B can be concluded that the issue had already been decided even before the Committee was constituted and principles of natural justice were violated.

CASH FOR QUERY : WHETHER MERE MORAL WRONG

C 214. It was also urged that taking on its face value, the allegations against the petitioners were that they had accepted money for tabling of questions in Parliament. Nothing had been done within the four walls of the House. At the most, therefore, it was a 'moral wrong' but cannot fall within the mischief of 'legal wrong' so as to empower the House to take any action. D According to the petitioners, 'moral obligations' can neither be converted into 'constitutional obligations' nor non-observance thereof would violate the scheme of the Constitution. No action, therefore, can be taken even if it is held that the allegations were well-founded.

215. I am unable to uphold the contention. It is true that Indian E Parliament is not a 'Court'. It cannot try anyone or any case directly, as a court of justice can, but it can certainly take up such cases by invoking its jurisdiction concerning powers and privileges.

216. Dealing with '*Corruption or impropriety*', Sir Erskine May stated:

F

> "The acceptance by a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee, is a G contempt. Any person who is found to have offered such a corrupt consideration is also in contempt. A transaction of this character is both a gross affront to the dignity of the House concerned and an attempt to pervert the parliamentary process implicit in Members' free discharge of their duties to the House and (in the case of the H Commons) to the electorate".

217. Hilaire Burnett, ('*Constitutional and Administrative Law*', Fourth Edn.; pp.571-72) also refers to "Cash for questions", which started in 1993. It was alleged that two members of Parliament, Tim Smith and Neil Hamilton received payments/gifts in exchange for tabling parliamentary questions. Both of them had ultimately resigned. A

218. The rapidly accelerating and intensifying atmosphere of suspected corruption-sleaze-in public life caused the Prime Minister to appoint a judicial inquiry into standards of conduct in public life. B

219. The author also observed; "The cash for questions affair also raises issues concerning the press". C

220. The Committee went into the allegations against the officers of Parliament and recommended punishment. It criticized the role of the Press as well, but no action had been taken against the newspaper.

221. Solomon Commission and Nolan Committee also considered the problem of corruption and bribery prevailing in the system and made certain suggestions and recommendations including a recommendation to clarify the legal position as to trial of such cases. D

222. I may state that I am not expressing any opinion one way or the other on the criminal trial of such acts as also the correctness or otherwise of the law laid down in *P.V. Narsimha Rao*. To me, however, there is no doubt and it is well-settled that in such cases, Parliament has power to take up the matter so far as privileges are concerned and it can take an appropriate action in accordance with law. If it feels that the case of 'Cash for query' was made out and it adversely affected honesty, integrity and dignity of the House, it is open to the House to attempt to ensure restoration of faith in one of the pillars of democratic polity. E F

223. I am in agreement with what has been stated by Mc Lachlin, J. (as she then was) in *Fred Harvey*, already referred to: G

> "If democracies are to survive, they must insist upon the integrity of those who seek and hold public office. They cannot tolerate corrupt practices within the legislature. Nor can they tolerate electoral fraud. If they do, two consequences are apt to result. First, H

A the functioning of the legislature may be impaired. Second, public confidence in the legislature and the government may be undermined. *No democracy can afford either".*

(emphasis supplied)

B *DOCTRINE OF PROPORTIONALITY*

224. It was contended that expulsion of a member of Parliament is a drastic step and even if the House possesses such power, it cannot be lightly restored to. It is against the well established principle of C proportionality. According to the petitioners, such a step would do more harm to the constituency than to the member in his personal capacity. It was, therefore, submitted that proper exercise of power for misbehaviour of a member is to suspend him for the rest of the day, or at the most, for the remaining period of the session. If a folly has been committed by some D members, the punishment may be awarded to them but it must be commensurate with such act which should not be severe, too harsh or unreasonably excessive, depriving the constituency having its representation in the House.

225. Now, it cannot be gainsaid that expulsion of a member is a grave E measure and normally, it should not be taken. I also concede that Palriament could have taken a lenient view as suggested by the learned counsel for the petitioners. But it cannot be accepted as a proposition of law that since such action results in deprivation of constituency having its representation in the House, a member can *never* be expelled. If representation of the constituency F is taken to be the sole consideration, no action can be taken which would result in absence of representation of such constituency in the House. Such interpretation would make statutory provisions (the Representation of the People Act, 1951) as also constitutional scheme (Articles 84, 102, 190, 191, 192, Tenth Schedule, etc.) non-workable, nugatory and otiose. If a member is disqualified or has been convicted by a competent court, he has to go G and at least for the time being, till new member is elected, there is no representation of the constituency in the House but it is inevitable and cannot be helped.

226. There is one more aspect also. Once it is conceded that an action H of suspension of a member can be taken (and it was expressly conceded),

I fail to unde stand why in principle, an action of expulsion is impossible or illegal. In a given case, such action may or may not be lawful or called for, but in theory, it is not possible to hold that while the former is permissible, the latter is not. If it is made referable to representation of the constituency, then as observed in *Raj Narain*, withdrawal of a member from the House even for a brief period is a serious matter both for the member and his constituency. Important debates and votes may take place during his absence even if the period be brief and he may not be able to present his view-point or that of the group or that of the constituency he represented. It is, however, in the nature of disciplinary or punitive action for a specific parliamentary offence, namely, disorderly behaviour. Moreover, if the House has a right to expel a member, non-representation of the constituency is merely a consequence, nothing more. "If the constituency goes unrepresented in the Assembly as a result of the act of an elected member inconsistent with the dignity and derogatory of the conduct expected of an elected member, then it is the voters who alone will have to take the blame for electing a member who indulges in conduct which is unbecoming of an elected representative".

POSSIBILITY OF MISUSE OF POWER BY PARLIAMENT

227. Finally, it was strenuously urged that Parliament/ State Legislature should not be conceded such a drastic power to expel a member from the House. As Maintland has stated, it is open to Parliament to expel a member on the ground of 'ugly face'. Even in such case, no Court of Law can grant relief to him. Considering ground-realities and falling standards in public life, such an absolute power will more be abused than exercised properly.

228. I am unable to accept the submission. Even in England, where Parliament is sovereign and supreme and can do everything but 'make woman a man and a man a woman', no member of Parliament has ever been expelled on the ground of 'ugly face'. And not even a single incident has been placed before this Court to substantiate the extreme argument. Even Maitland himself has not noted any such instance. On the contrary, he had admitted that normally, the power of expulsion can be exercised for illegalities or misconduct of a serious nature.

229. Again, it is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision *ultra vires* or

A bad in law. There is distinction between *existence* (or availability) of power and *exercise* thereof. Legality or otherwise of the power must be decided by considering the nature of power, the extent thereof, the body or authority on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected only on the ground that it is likely to be misused.

230. In *State of Rajasthan* v. *Union of India,* [1977] 3 SCC 592, 658 : AIR (1977) SC 1361 dealing with an identical contention, Bhagwati, J. (as His Lordship then was) stated:

> "It must be remembered that merely because power may some time be abused, is no ground for denying the existence of power. *The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief*".
>
> (emphasis supplied)

[see also *Ajit Kumar Nag* v. *Indian Oil Corporation,* [2005] 7 SCC 764].

231. I am reminded what Chief Justice Marshall stated before about two centuries in *Providence Bank* v. *Alphens Billings,* 29 US 504 [1830] : 7 Law Ed 939:

> "This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State Governments. *The interest, wisdom, and justice of the representative body, and its relations with its constituents furnish the only security* where there is no express contract against unjust and excessive taxation, as well as *against unwise legislation generally."*
>
> (emphasis supplied)

CONCLUDING REMARKS

232. I have already held that the decisions taken, orders made, findings recorded or conclusions arrived at by Parliament/State Legislature are

subject to judicial review, *albeit* on limited grounds and parameters. If, therefore, there is gross abuse of power by Parliament/ State Legislature, this Court will not hesitate in discharging its duty by quashing the order or setting aside unreasonable action.

233. I am reminded what Justice Sarkar stated in *Keshav Singh*:

> "I wish to add that I am not one of those who feel that a Legislative Assembly cannot be trusted with an absolute power of committing for contempt. The Legislatures have by the Constitution been expressly entrusted with much more important things. During the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power. I would point out that though Art. 211 is not enforceable, the Legislatures have shown an admirable spirit of restraint and have not even once in all these years discussed the conduct of Judges. We must not lose faith in our people, we must not think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction. Such correct may produce friction and cause more harm than good. In a modern State it is often necessary for the good of the country that parallel powers should exist in different authorities. It is not inevitable that such powers will clash. It would be defeatism to take the view that in our country men would not be available to work these powers smoothly and in the best interests of the people and without producing friction. I sincerely hope that what has happened will never happen again and our Constitution will be worked by the different organs of the State amicably, wisely, courageously and in the spirit in which the makers of the Constitution expected them to act".

234. I am in whole-hearted agreement with the above observations. On my part, I may state that I am an optimist who has trust and faith in both these august units, namely, Legislature and Judiciary. By and large, constitutional functionaries in this country have admirably performed their functions, exercised their powers and discharged their duties effectively, efficiently and sincerely and there is no reason to doubt that in coming years also they would continue to act in a responsible manner expected of them. I am equally confident that not only all the constituents of the State will keep

A themselves within the domain of their authority and will not encroach, trespass or overstep the province of other organs but will also act in preserving, protecting and upholding the faith, confidence and trust reposed in them by the Founding Fathers of the Constitution and by the people of this great country by mutual regard, respect and dignity for each other. On the whole, the situation is satisfactory and I see no reason to be disappointed for future.

235. With the above observations and pious hope, I dismiss the Writ Petition as also all transferred cases, however, without any order as to costs.

C **RAVEENDRAN, J.:**

> "Those three great institutions – the Parliament, the Press (Media) and the Judges – are safeguards of justice and liberty, and they embody the spirit of the Constitution."
>
> – *Lord Denning*

D

I have had the privilege of reading the exhaustive and erudite judgment of the learned Chief Justice and the illuminating concurring judgment of learned brother Thakker J., upholding the expulsion of ten E members of *Lok Sabha* and one member of *Rajya Sabha*. I respectfully disagree.

Factual Background :

F 2. On 12.12.2005, a TV News Channel — Aaj Tak showed some video-footage of some persons, alleged to be members of Parliament accepting money for tabling questions or raising issues in the House, under the caption 'operation Duryodhana' ("Cash for Questions"). On the same day when the House met, the Hon'ble Speaker made the following statement :-

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> "Hon. Members, certain very serious events have come to my notice as also of many other Hon. Members. It will be looked into with all importance it deserves. I have already spoken to and discussed with all Hon. Leaders of different parties, including the Hon. Leader of the Opposition, and all have agreed that the matter H is extremely serious if proved to be correct. I shall certainly ask the

> Hon. Members to explain what has happened. In the meantime, I am making a personal request to all them 'please do not attend the Sessions of the House until the matter is looked into and a decision is taken'..... I have no manner of doubt that all sections of the House feel deeply concerned about it. I know that we should rise to the occasion and we should see that such an event does not occur ever in future and if anybody is guilty, he should be punished. Nobody would be spared. We shall certainly respond to it in a manner which behaves us. Thank you very much."

3. On the same day, at about 6 P.M., the Hon'ble Speaker made another statement on the issue, announcing the constitution of an Enquiry Committee consisting of five Parliamentarians. Relevant portion of that statement is extracted below :

> "I have decided, which has been agreed to by the Hon. Leaders, that all the concerned Members will be asked to submit their individual statements/explanations regarding the allegations made against them today on the TV Channel Aaj Tak before 10.30 a.m. on 14th December, 2005. The statements/explanations given by those members will be placed before the Enquiry Committee consisting of the following Hon. Members -
>
> 1. Shri Pawan Kumar Bansal (Chairman)
> 2. Prof. Vijay Kumar Malhotra
> 3. Md. Salim
> 4. Prof. Ram Gopal Yadav
> 5. Thiru C. Kuppusami
>
> The Committee is requested to give its Report by 4 p.m. on 21st December, 2005. The Committee is authorized to follow its own procedure. The Report will be presented before the House for its consideration. "

4. The *Lok Sabha* Secretariat sent communications dated 12.12.2005 to the ten members calling for their comments in regard to the improper conduct

shown in the video footage. They were also instructed not to attend the sitting of the House till the matter was finally decided. The members submitted their responses and denied any wrong doing on their part. The Speaker secured VCDs containing the video footage showing 'improper conduct' from the News Channel. The ten members were supplied copies thereof. The Enquiry Committee examined on oath Shri Aniruddha Bahl, Ms. Suhasini Raj and Shri Kumar Badal of the Portal "Cobrapost.Com" who had carried the sting operation. The Committee viewed all the VCDs containing the relevant video footage as also the unedited raw video footage and perused the transcripts. The ten members alleged that the video tapes were morphed/manipulated, but, however, refused to view the video clippings in the presence of the Committee and point out the portions which according to them were morphed/manipulated. They were not given any opportunity to cross-examine the sting operators, nor granted copies of the entire unedited video footage and other documents requested by them.

5. After considering the said material, the committee submitted its report dated 22.12.2005 to the Speaker. It was tabled in the House on the same day. The said report contained the following findings :

"(a) The representatives of the Portal "Cobrapost.com" namely Shri Aniruddha Bahal, Ms. Suhasini Rajand and Shri Kumar Badal approached the members posing as representatives of the fictitious company, through a number of middlemen, some of whom were working as Private Secretaries/Personal Assistants of the members concerned. They requested the members to raise questions in *Lok Sabha* and offered them money as consideration. Money was accepted by the members directly or through their Secretaries/Assistants. Acceptance of money by the ten members was thus established.

(b) The plea put forth by the ten members that the video footages were morphed/manipulated has no merit. Their conduct was unbecoming of members of Parliament, unethical and called for strict action.

(c) Stern action also needs to be taken against the middlemen, touts and persons masquerading as Private Secretaries of members since they are primarily responsible for inducting members of Parliament into such activities.

The Committee was of the view that in the case of misconduct by the members or contempt of the House by the members, the House can impose any of the following punishments : (i) admonition; (ii) reprimand; (iii) withdrawal from the House; (iv) suspension from the House; (v) imprisonment; and (vi) expulsion from the House. The Committee concluded that continuance of the ten persons as members of *Lok Sabha* was untenable and recommended their expulsion."

On 23.12.2005, the Leader of the House moved the following Motion in the House :

> "That this House having taken note of the Report of the Committee to inquire into the allegations of improper conduct on the part of some members, constituted on 12th December, 2005, accepts the finding of the Committee that the conduct of the ten members of *Lok Sabha* namely, Shri Narendra Kumar Kushawaha, Shri Annasaheb M. K. Patil, Shri Manoj Kumar, Shri Y. G. Mahajan, Shri Pradeep Gandhi, Shri Suresh Chandel, Shri Ramsevak Singh, Shri Lal Chandra Kol, Shri Rajaram Pal and Shri Chandra Pratap Singh was unethical and unbecoming of members of Parliament and their continuance as members of *Lok Sabha* is untenable and resolves that they may be expelled from the membership of *Lok Sabha*."

An amendment to the Motion for referring the matter to the Privileges Committee, moved by a member (Prof. Vijay Kumar Malhotra), was rejected. After a debate, the Motion was adopted by voice vote. As a consequence on the same day, a notification by the *Lok Sabha* Secretariat was issued notifying that 'consequent on the adoption of a Motion by the *Lok Sabha* on the 23rd December, 2005 expelling the ten members from the membership of the *Lok Sabha*', the ten members ceased to be members of the *Lok Sabha*, with effect from the 23rd December, 2005 (afternoon).'

7. Similar are the facts relating to Dr. Chhattrapal Singh Lodha, Member of *Rajya Sabha*. On 12.12.2005, the Chairman of the *Rajya Sabha* made a statement in the House that the dignity and prestige of the House had suffered a blow by the incidents shown on the TV Channel, that it was necessary to take action to maintain and protect the integrity and credibility

A of the House, and that he was referring the episode to the Ethics Committee for its report. On the same day, Ethics Committee held a meeting and took the view that the member had *prima facie* contravened Part V of the Code of Conduct which provided :

B

> "Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House, for introducing a Bill, for moving a resolution or desisting from moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the house or a Parliamentary Committee."

C

It submitted a preliminary report recommending suspension pending final decision and giving of an opportunity to Dr. Lodha to explain his position. The said report was accepted. By letter dated 13.12.2005. Dr. Lodha was required to give his comments by 1 P.M. on 15.12.2005. Thereafter the Committee gave a report holding that the member had contravened Part V of the Code of Conduct and had acted in a manner which seriously impaired the dignity of the House and brought the whole institution of Parliamentary democracy into disrepute. The Committee recommended Dr. Lodha to be expelled from the membership of the House. On 23.12.2005, the Chairman of the Ethics Committee moved that its final report be accepted. After debate, the House agreed with the recommendation in the report by voice vote. As a consequence, the Secretary General of *Rajya Sabha* issued a notification dated 23.12.2005 declaring that Dr. Lodha had ceased to be a member of the *Rajya Sabha* with effect from that date.

D

E

F *The Issue :*

8. The petitioners contend that there can be cessation of membership of either House of Parliament only in the manner provided in Articles 101 and 102; and that cessation of membership by way of expulsion is alien to the constitutional framework of Parliament. It is submitted that a person can be disqualified for being a member of Parliament on the ground of corruption, only upon conviction for such corruption as contemplated under section 8 of Representation of People Act, 1951 read with clause (1)(e) of Article 102. It is submitted that there can be no additions to grounds for cessation of membership under Articles 101 and 102, unless it is by a law made by Parliament as contemplated under Article 102(1)(e), or by an

G

H

amendment to the Constitution itself. It is further submitted that reading the power of expulsion, as a part of parliamentary privilege under Article 105(3) is impermissible. It is, therefore, submitted that Parliament has no power of expulsion (permanent cessation of membership). On the other hand, the Union of India and the Attorney General assert that Parliament has such power. The assertion is based on two premises. First is that Article 101 relating to vacancies is not exhaustive. The Second is that the power of Parliament to expel a member is a part of the powers, privileges and immunities conferred on the Parliament, under Article 105(3), and it is distinct and different from 'disqualifications' contemplated under Article 102.

9. When the incident occurred, the response of the Hon. Speaker and the Parliament, in taking prompt remedial action, against those who were seen as betraying the confidence reposed by the electors, showed their concern to maintain probity in public life and to cleanse Parliament of elements who may bring the great institution to disrepute. But, howsoever *bona fide* or commendable the action is, when it is challenged as being unconstitutional, this Court as the interpreter and Guardian of the Constitution has the delicate task, nay the duty, to pronounce upon validity of the action. There is no question of declining to or abstaining from inquiring into the issue merely because the action is sought to be brought under the umbrella of parliamentary privilege. The extent of parliamentary power and privilege, and whether the action challenged is in exercise of such power and privilege, are also matters which fall for determination of this Court. In this context, I may usefully refer to the words of Bhagwati, J. (as His Lordship then was) in *State of Rajasthan* v. *Union of India,* AIR (1977) SC 1361:

> "But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination....., the Court cannot fold its hands in despair and declare "Judicial hands off." *So long as a question arises whether an authority under the constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so.....* This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and

A if so, what are the limits and whether any action of that branch transgresses such limits. *It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law."*

B *Where there is manifestly unauthorized exercise of power under the Constitution, it is the duty of the Court to intervene.* Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in the cases that C reach the Court..... The Court cannot and should not shirk this responsibility...."

[emphasis supplied]

D 10. The question before us is not whether the petitioners are guilty of having taken money for asking questions, or raising issues in the Parliament. The question is, irrespective of whether they are guilty or not, Parliament has the power to expel them, thereby effecting permanent cessation of their membership. On the contentions raised, the questions that therefore arise for consideration are :

E

"(i) Whether Article 101 and 102 are exhaustive in regard to the modes of cessation of membership of Parliament; and whether expulsion by the House, not having been specified as a mode of cessation of membership, is impermissible.

F

(ii) If the answer to the above question is in the negative, whether the Parliament has the power to expel its members (resulting in permanent cessation of membership) as a part of its powers, privileges and immunities under Article 105(3)."

G *Relevant Principles :*

11. I may first refer to the basic principles relevant for the purpose of constitutional interpretation in the context of the first question.

H *I. Unlike British Parliament, Indian Parliament is not sover-*

eign. It is the Constitution which is supreme and sovereign and Parliament will have to act within the limitations imposed by the Constitution :

12. There is a marked distinction between British Parliament and the Indian Parliament. British Parliament is sovereign. One of the hallmarks of such sovereignty is the right to make or unmake any law which no court or body or person can set aside or override. On the other hand, the Indian Parliament is a creature of the Constitution and its powers, privileges and obligations are specified and limited by the Constitution. A legislature created by a written Constitution must act within the ambit of its power as defined by the Constitution and subject to the limitations prescribed by the Constitution. Any act or action of the Parliament contrary to the constitutional limitations will be void.

13. In *re Art. 143, Constitution of India and Delhi Laws Act,* AIR (1951) SC 332, this Court observed thus :

> "There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but *the Indian Parliament qua legislative body is fettered by a written constitution and it does not possess the sovereign powers of the British Parliament. The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself."*
>
> *[emphasis supplied]*

In *Special Reference No.1 of 1964 UP Assembly Case,* [1965] 1 SCR 413, a Bench of seven Judges observed thus :

> "In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognized by the law of England is having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to

every part of the Queen's dominion. On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each others". *The supremacy of the constitution is fundamental to the existence of a federal State* in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. *This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers."*

"Therefore, it is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.... In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign.... Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense.... We feel no difficulty in holding that the decision about the construction of Article 194(3) must ultimately rest exclusively with the Judicature of this country."

"Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."

[emphasis supplied]

In *Kesavananda Bharati* v. *State of Kerala,* [1973] 4 SCC 225, it was observed that the Constitution being supreme, all the organs owe their existence to it. Each organ has to function within the four corners of the

constitutional provisions. The doctrine of parliamentary sovereignty as it obtains in England does not prevail in India except to the extent provided by the Constitution. The judiciary is entrusted the task of construing the provisions of the Constitution and safeguarding the fundamental rights.

Subsequently, in *State of Rajasthan* (supra), this Court reiterated :

> "It is necessary to assert in the clearest terms, particularly in the context of recent history, that *the Constitution is supreme lex, the paramount law of the land,* and there is no department or branch of Government above or beyond it. *Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority."*
>
> [emphasis supplied]

In *Sub-Committee on Judicial Accountability* v. *Union of India,* [1991] 4 SCC 699, a Constitution Bench of this Court held :

> "But where, as in this country and unlike in England, there is a written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial Review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation."
>
> "In a federal set up, the judiciary becomes the guardian of the Constitution.... The interpretation of the Constitution as a legal instrument and its obligation is the function of the Courts."

A *II. When a Statute, having made specific provisions for certain matters, also incorporates by reference an earlier statute, to avoid reproduction of the matters provided for in the earlier statute, then what is deemed to be incorporated by such reference, are only those provisions of the earlier statute which relate to matters not expressly provided in the latter statute, and which are compatible with the express provisions of the latter statute."*

B

14. The legislative device of incorporation by reference is a well-known device where the legislature, instead of repeating the provisions of a particular statute in another statute, incorporates such provisions in the C latter statute by reference to the earlier statute. It is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier statute into the later. [See *Mary Roy* v. *State of Kerala*, [1986] 2 SCC 209]. *Lord Esher M. R.* stated the effect of incorporation in *Clarke* v. *Bradlaugh*, (1881) (8) QBD 63] thus :-

D

> "If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed on it."

E 15. In *U.P. Assembly* case (supra), this Court while considering Article 194(3), identical in content to Article 105(3) of the Constitution, referred to its scope thus :

> "Mr. Seervai's argument is that the latter part of Art. 194(3) F expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House. Take the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "to have G at all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded by the Commons as fundamental privilege." It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the H privilege to pass acts of attainder and the privilege of impeachment

cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualification of its members in cases of doubt. This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all power and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."

16. In *Chhabildas Mehta* v. *The Legislative Assembly, Gujarat State,* 1970 Guj. LR 729, a Division Bench of Gujarat High Court speaking through Chief Justice Bhagwati (as he then was) held :

"The problem before us is whether the privilege can be read in Article 194(3). It is no answer to this problem to say 'read the privilege in Article 194(3) and then harmonise it with the other provisions'. *If the privilege is inconsistent with the scheme of the Constitution and its material provisions, it cannot and should not be read in Article 194(3).* The presumed intention of the Constitution-makers in such a case would be that such a privilege should not belong to the House of the Legislature."

[Emphasis supplied]

17. In *Hardwari Lal* v. *The Election Commission of India,* (1977) 2 Punj. & Har. 269, the validity of expulsion of a member of legislature came up for consideration. After an elaborate discussion, the majority found that the power of British House of Commons, to expel any of its members, flowed from its privilege to provide for and regulate its own constitution. It was held that such power of expulsion was not available to the Indian Parliament, having regard to the fact that the written constitution makes detailed provision for the constitution of the Parliament, elections, vacation of seats and disqualifications for membership. Sandhawalia, J. (as he then was) speaking for the majority of the Full Bench observed thus :

"It was submitted that in view of the language of Article 194(3) each and every parliamentary privilege enjoyed by the House of

A Commons without any exception whatsoever must be deemed as if it were in fact written with pen and ink into the Constitution itself. According to the respondents, one must at the outset unreservedly read every power, privilege and immunity of the House of Commons within clause (3) and consequently exercisable by the State Legislatures in India as well. However, having done that, one B should thereafter proceed to scrutinize the remaining provisions of the Constitution and if some power, privilege or immunity directly conflicts with or contravenes some express or special provision thereof then the same may be *eroded* on the ground that it is not possible for the House to exercise the same. Nevertheless it was C dogmatically stated that even in the case of a direct or irreconciliable conflict, the privilege must be read into the Constitution and should not be deemed as necessarily deleted or excluded therefrom. In short, the learned Advocate-General for a while canvassed for the acceptance of what may be conveniently called as 'pen and ink D theory' for the construction of Article 194(3) of the Constitution.

(237) On the other hand, the petitioner forthrightly argued that some of the parliamentary privileges of the House of Commons by their very nature are so inherently alien to our Republican Constitution that they can never possibly be deemed to be part thereof.... E It was submitted that the only reasonable and consistent canon of construction in this situation was that all the parliamentary privileges of the House of Commons which in their very essence and by their intrinsic nature were patently contradictory to the Indian Constitution, then these must necessarily be excluded therefrom at F the very threshold.

(238) I believe, that the fallacy of the argument on behalf of the respondent is highlighted, the moment one particularizes the same and refers to some of the well-known and admitted privileges of the House of Commons. It was conceded before us that not one but G innumerable parliamentary powers and privileges of the House of Commons were inextricably linked with the Sovereign, that is, King or Queen of England, as the case may be. Can one imagine that the word 'King' or 'Queen' mentioned therein should be deemed to have been written in pen and ink in our Constitution also when its H very preamble solemnly declares that the people of India have

constituted themselves into a Sovereign, Socialist Secular Democratic Republic ? In particular, one may consider the accepted parliamentary privilege of the freedom of access to the Sovereign including a right at all times to petition, counsel or remonstrate with the King through their chosen representatives. This is admitted on all hands to be a parliamentary privilege which was considered fundamental by the House of Commons and undoubtedly enjoyed by it. Can one for a moment conceive that the Republican Constitution of India would incorporate this privilege for its State Legislatures. How can even one imagine that the founding fathers in the Constituent Assembly had intended to write such a privilege also into our Constitution and to deem it as part and parcel thereof? If so, to whom were the State Legislatures supposed to petition and with whom were they to counsel or remonstrate with through their chosen representatives in the obvious absence of even the institution of the Monarchy herein ?

(239) Similarly not one but there are tens of parliamentary privileges of the House of Commons which are closely linked with the hereditary House of Lords in England. In particular the power of the House of Lords to punish the contemners of the House by passing judgment as a Court was undoubted. Can one read or even imagine a House of Lords within our polity when the very Constitution itself disapproves even a reference to any titles on the basis of heredity and blood alone? Other examples of this nature could perhaps be multiplied *ad infinitum* but it would perhaps suffice to mention two other undoubted privileges of the House of Commons. It is not in dispute that the said House had a relatively unrestricted power of impeachment whereby it acted as the prosecutor whilst the House of Lords was the final Court or adjudicator for the same. Would it be possible to assume within our Constitution any such general parliamentary privilege of impeachment (apart from those which the Constitution in terms confers) or by analogy to place the *Rajya Sabha* in the peculiar historical position which the House of Lords as the final Court in England? Again closely inter-related to this general power of impeachment in the House of Commons was the privilege to pass Acts or Attainder which in terms and effect meant an unrestricted right to pass judgment during the course of impeachment. Can one for a moment read such a power or privilege

A in favour of the State Legislatures in India?

(240) I am of the view that it is essentially tautologous to first read something into the Constitution and in the next breath to proceed to erase the same. This exercise becomes inevitable, if, as suggested on behalf of the respondents, one is to first read the King, the Queen, the House of Lords or the Acts of Attainder into the Constitution and thereafter to proceed to nullify them on the plain ground that by the very nature of things they cannot form part of a Republican Constitution. The pen and ink theory, therefore, in effect becomes indeed a pen, ink and India Rubber theory whereby one first writes something entirely alien to the Constitution within it and the next moment proceeds to rub it off. *It is well-settled that when a statute includes something in it by a reference to another provision then only that can be deemed to be included which is compatible with the parent provision. To my mind, therefore, the plain method of construing Article 194(3) is the usual and the settled one of not reading something into it which is glaringly anomalous, unworkable and irrational."*

[emphasis supplied]

III. Decisions of foreign courts, though useful to understand the different constitutional philosophies and trends in law, as also common law principles underlying Indian Statutes, are of limited or no assistance in interpreting the special provisions of Indian Constitution, dissimilar to the provisions of foreign constitutions.

19. Constitution of India differs significantly from Constitutions of other countries. It was made in the background of historical, social and economic problems of this country. Our Constitution-makers forged solutions and incorporated them. They made exhaustive provisions relating to Executive, Legislature, and Judiciary with checks and balances. While making specific and detailed provisions regarding Parliament, the Constitution also earmarked the areas where further provisions could be made by the Parliament by law. On the other hand, the Constitution of England is unwritten and flexible. The distribution and regulation of exercise of governmental power has not been reduced to writing. Further British Parliament was, at one time, also the highest court of justice and because

of it, regarded as a superior court of record, with all its attendant trappings. United States has a short and rigid Constitution, expounded considerably by courts. Indian Constitution is exhaustive and sufficiently expounded by the Constitution makers themselves. In fact, with 395 Articles and 12 Schedules, it is the longest among world's Constitutions.

20. In *Re. the C.P. and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938* — the *Central Provinces* case AIR (1939) FC 1, the Federal Court observed thus :

> "for in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting and since no two Constitutions are in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases, for a word or phrase may take a colour from its context and bear different senses accordingly."

In *M.P.V. Sundaramier & Co.* v. *State of Andhra Pradesh,* AIR (1958) SC 468, this Court cautioned :

> "the threads of our Constitution were no doubt taken from other Federal Constitutions but when they were woven into the fabric of our Constitution their reach and their complexion underwent changes. Therefore, valuable as the American decisions are as showing how the question is dealt with in sister Federal Constitution great care should be taken in applying them in the interpretation of our Constitution."

The note of caution was reiterated in *Atiabari Tea Co. Ltd.* v. *State of Assam,* AIR (1961) SC 232 and *Automobile Transport Ltd.* v. *State of Rajasthan,* AIR (1962) SC 1406, *U.P.Assembly* case (supra), and several other subsequent decisions.

Provisions of Indian Constitution :

21. Chapters I, II and IV of Part V relate to Executive, Parliament and Union Judiciary. Detailed reference is necessary to the provisions of Chapter II dealing with Parliament.

A 21.1) Article 79 relates to Constitution of Parliament and provides that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People. Article 80 provides that the composition of Council of States shall be made up of twelve members nominated by the President and
B not more than 238 representatives of the States and Union Territories. It also provides that the representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State. Article 81 relates to composition of *Lok Sabha* and provides that *Lok Sabha* shall consist of not more than 530 members chosen by direct election from territorial constituencies in the States and not more than 20 members to
C represent the Union Territories, chosen in such manner as Parliament may by law provide. Article 83 prescribes the duration of Houses of Parliament. Relevant portions thereof are extracted below :

> "83. Duration of Houses of Parliament.- (1) The Council of States
> D shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.
>
> E (2) The House of the People, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House. :

F Article 85 provides for the sessions of Parliament, prorogation of the Houses and dissolution of the House of the people.

21.2) Article 84 enumerates the qualifications for membership of Parliament. Article 102 deals with disqualifications for membership. Clause (1) of
G Article 102 provides that a person shall be disqualified for being chosen as, *and for being*, a member of either House of Parliament :

> "a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

H

b) if he is of unsound mind and stands so declared by a competent court; A

c) if he is an undischarged insolvent;

d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; B

e) if he is so disqualified by or under any law made by Parliament. "

C

Clause (2) of Article 102 provides that a person shall be disqualified for being a member of either House of Parliament, if he is so disqualified under the Tenth Schedule.

21.3) Article 101 deals with vacation of seats. Clause (1) thereof bars a person being a member of both Houses of Parliament, and requires the Parliament to make a provision by law for the vacation by a person who is chosen as member of both Houses, of his seat in one House or the other. Clause (2) bars a person from being a member both of Parliament and of a House of the Legislature of a State. It provides that if a person is chosen as a member both of Parliament and of a House of the Legislature of a State, then at the expiry of such period as may be specified in the rules made by the President, that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State. Clause (3), which is relevant, reads thus : D E

F

"(3) If a member of either House of Parliament —

a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102; or

b) resigns his seat by writing under his hand addressed to the Chairman or Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, G

his seat shall thereupon become vacant." H

A Clause (4) provides that if for a period of 60 days, a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

21.4) Article 103 relates to decision on questions as to disqualifications of members. It is extracted below :

B

"103. Decision on questions as to disqualifications of members :

(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications C mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion. "

D

Corresponding provisions in regard to the State Legislatures are found in Articles 168, 170, 171, 172, 174, 173, 191, 190 and 192 of the Constitution.

21.5) It is to be noted expulsion is not mentioned as a mode of E cessation of membership of the Parliament under the Constitution. Nor does it give rise to a vacancy.

21.6) Article 105 deals with powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof. Clauses (1) to (3) F which are relevant, extracted below :

"105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.- (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 G Parliament.

(2) 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 Parliament or any committee thereof, and no person shall be so H liable in respect of the publication by or under the authority of

either House of Parliament of any report, paper, votes or proceedings. A

(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. " B

The corresponding provision in regard to State Legislatures and its members, is Article 194. The words "shall be those of the House and of its members and Committees immediately before coming into force of section 15 of Constitution (Forty Forth Amendment) Act, 1978" in clause (3) of Articles 105 and 194 have replaced the earlier words "shall be those of the House of Commons of Parliament of the United Kingdom, and of its members and Committees, at the commencement of the Constitution". The position even after amendment is the same as the position that existed at the commencement of the Constitution. C D

21.7) The other provisions of Chapter II, relating to Parliament also require to be noticed. Article 106 relates to salaries and allowances of members. Articles 86 to 88 relate to the rights of the President, Ministers and Attorney General to address the Houses. Articles 89 to 98 relate to the officers of Parliament. Article 99 provides for oath of office and Article 100 provides for voting in Houses. Articles 107 to 111 relate to legislative procedure. Article 107 contains the provisions as to introduction and passing of Bills. Article 108 relates to joint sitting of both Houses in certain cases. Article 109 relates to special procedure in respect of Money Bills. Article 110 defines "Money Bills". Article 111 requires the presentation of Bills passed by the Houses of Parliament to the President for his assent. Articles 112 to 117 relate to the procedure in financial matters. Article 112 relates to annual financial statement. Article 113 relates to the procedure with respect to estimates. Article 114 relates to appropriation bills. Article 115 relates to supplementary, additional or excess grants. Article 116 relates to votes on account, votes of credit and exceptional grants. Article 117 contains special provisions as to financial bills. Articles 118 to 122 govern the rules of procedure generally to be adopted by the Houses of Parliament. E F G H

A Article 118 enables each House of Parliament to make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business.

Article 119 relates to regulation by law of procedure in Parliament in relation to financial business. Article 120 relates to the language to be used in B Parliament. Article 121 places a restriction on discussion in Parliament (in regard to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge). Article 122 bars courts from inquiring into proceedings of Parliament and it is extracted C below :

> "122. Courts not to inquire into proceedings of Parliament.—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
>
> D
>
> (2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."
>
> E

22. We have referred in detail to the various provisions to demonstrate that as far as the Indian Constitution is concerned, Chapter II of Part V is F a complete Code in regard to all matters relating to Parliament. It provided for every conceivable aspect of Parliament. It contains detailed provisions in regard to the constitution of Parliament, composition of Parliament, sessions, prorogation and dissolution of Parliament, Officers of Parliament, duration of the Houses of Parliament, qualifications for membership, disqualifications for being chosen as, and for being members, vacancies of G seats, decision on questions of disqualification, powers, privileges and immunities of the Parliament, its Members and Committees, manner of conducting business, the procedure to be adopted by the Parliament in regard to the enactment of laws, persons who can address the Parliament, the language to be used, and the Officers of the Parliament. The entire field H in regard to the legislature is covered fully in the following manner :

"Subject	(Parliament) Articles	(State Legislature) Articles
Constitution & Composition of Houses and election/nomination of members	79 to 82	168 to 171
Duration of Houses and Tenure of Office of Members	83	172
Sessions, Prorogation and dissolution	85	174
Qualification for Membership	84	173
Cessation of membership (Disqualifications for being chosen as, and for being a member, and vacancies) and decision on questions of disqualification	102, 101 & 103	192, 190 & 192
Powers, privileges and immunities of the Legislature, members and Committees, and salaries & allowances	105, 122 & 106	194, 212 & 195
Restriction on Powers	121	211
Offices of Legislature	89 to 98	178 to 187
Rules of Procedure and Language	118, 119 & 120	208, 209 & 210
Legislative Procedure and Conduct of Business	107 to 111 112 to 117 99 & 100	196 to 201 202 to 207 188 & 189
Persons who can address the Parliament	86 to 88	175 to 177 "

23. The Constitution also makes express provisions for cessation of

A tenure of office or removal of every constitutional functionary referred to in the Constitution. I will refer to them briefly :

"(i) Article 61 refers to the procedure for impeachment of President. Clause (4) of Article 61 provides that if the resolution is passed by a majority of not less than two-third of the Members of the House declaring the charge against the President has been sustained, such resolution shall have the effect of removing the President from the office.

(ii) Clause (b) of Article 67 deals with the term of office of Vice President and provides for removal of Vice President from office by a resolution of Council of States passed by majority of all the then members of the Council and agreed to by the House of People.

(iii) Article 75(2), Article 76(4) and Article 156(1) refer to the Ministers, Attorney General and Governor holding office during the pleasure of the President.

(iv) Article 124 provides that no Judge of Supreme Court shall be removed from his office except by an order of President passed after impeachment. Articles 148 and 324 provide that the Comptroller & Auditor General of India and the Chief Election Commissioner shall not be removed from their office except in like manner and on like grounds of a Judge of the Supreme Court.

(v) Article 315 read with Article 317 provides how a Chairman or a Member of a Public Service Commission can be removed from office."

Similarly provisions are made in regard to cessation/termination of tenure of office or removal of all constitutional functionaries with reference to the States. Article 156(1) relates to Governor, Article 164(1) relates to Ministers, Article 165(3) relates to Advocate General, Article 179 relates to Speaker and Deputy Speaker, Article 183 relates to Chairman and Deputy Chairman of Legislative Council, Articles 190 to 192 relate to Members of Legislatures and Article 217 relates to High Court Judges.

Whether Articles 101 and 102 are exhaustive of the circumstances in which there will be cessation of membership ?

24. The word 'disqualified' means to 'make ineligible' or debarred. It also means divested or deprived of rights, powers or privileges. The term 'expel' means to deprive a person of the membership or participation in any 'body' or 'organization' or to forcibly eject or force a person to leave a building premises etc. The enumeration of disqualifications is exhaustive and specifies all grounds for debarring a person from being continuing as a member. The British Parliament devised expulsion as a part of its power to control its constitution, (and may be as a part of its right of self-protection and self-preservation) to get rid of those who were unfit to continue as members, in the absence of a written Constitutional or statutory provision for disqualification. Historically, therefore, in England, 'expulsion' has been used in cases where there ought to be a standing statutory disqualification from being a Member. Where provision is made in the Constitution for disqualifications and vacancy, there is no question of exercising any inherent or implied or unwritten power of 'expulsion'.

25. A person cannot be disqualified unless he suffers a disqualification enumerated in Article 102. Article 102 refers to 6 types of disqualifications:

"(i) If he holds any office of profit, vide Article 102(1)(a);

(ii) If he is of unsound mind and stands so declared, vide Article 102(1)(b);

(iii) If he is an undischarged solvent, vide Article 102(1)(c);

(iv) If he is not a citizen of India, vide Article 191(1)(d);

(v) If he is disqualified by or under any law made by Parliament.

(vi) If he is disqualified under the Tenth Schedule, vide Article 102(2)."

Disqualifications have also been prescribed by the Parliament in the Representation of People Act, 1951 as contemplated under Article 102(1)(e). The grounds of disqualifications under the said Act are :

A "(i) if he is convicted and sentenced for any offence as provided/ enumerated in Section 8 of the Act;

(ii) if he is found guilty of corrupt practices by an order under Section 99 of the Act vide Section 8-A of the Act;

B (iii) if he is dismissed for corruption or for disloyalty to the State, vide Section 9 of the Act;

(iv) if he has a subsisting contract with the appropriate Government for the supply of goods to or for the execution of any works, vide C Section 9-A of the Act;

(v) if he is a managing agent, manager or secretary of any company or corporation, in which the appropriate Government has a share, vide Section 10 of the Act;

D (vi) if he is a person who has been declared as disqualified by the Election Commission, vide Section 10-A of the Act."

The Constitution thus expressly enumerates certain grounds of disqualification (sub-clauses (a) to (d) of clauses (1) and (2) of Article 102). It has also E permitted the Parliament to add disqualifications, by making a law. Passing a resolution by one House, is not of course, making a law.

26. In the case of Members of Parliament, the Constitution has consciously used the word disqualification, both for 'being chosen as a F member' and for 'being a member'. That means that when a member becomes disqualified as mentioned in Article 102, he becomes disentitled to continue as a Member of the House.

27. Article 101 specifically provides the circumstances in which a seat of Member of Parliament becomes vacant —

G

"(a) when a person is member of both Houses of Parliament;

(b) when a person is elected both as a Member of Parliament and also as a Member of the State Legislature, and does not resign H his seat in the legislature of a State within the time specified;

(c) when a person becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102; A

(d) when he resigns his seat and his resignation is accepted.

(e) when a member is absent from all meetings for a period of 60 days without permission of the House and the House declares his seat as vacant. " B

28. An analysis of Article 101 shows that the Constitution makers provided specifically for three types of vacancies :

C

"(i) Occurrence of vacancies, for reasons specifically stated in the Constitution itself (vide clauses (2) and (3) of Article 101).

(ii) Occurrence of vacancies, to be provided by a law made by the Parliament (vide clause (1) of Article 101). D

(iii) Occurrence of vacancy, on a declaration by the House (vide clause (4) of Article 101). "

If the Constitution makers wanted a vacancy to occur on account of 'expulsion' on a decision or declaration by the House, they would have E certainly provided for it, as they have provided for vacancy on the ground of unauthorized absence, arising on a declaration by the House under clause (4) of Article 101. The Constitution makers did not contemplate or provide for any cause, other than those mentioned in Article 101, for giving rise to a vacancy. Thus a seat held by a Member of Parliament does not become F vacant, in any manner, other than those stated in Article 101.

29. One argument advanced to contend that Article 101 cannot be considered as exhaustive as to the circumstances in which vacancy occurs in respect of a seat in the Parliamentary, was that it does not provide for vacation of seat by death of a Member. Article 101 refers to vacation of seat G by a 'person' who is a member of the House, that is, a person who is alive. When a person is dead, obviously he is not a Member of the House. It would be absurd to contend that a person even after death will continue to hold the seat. The obvious effect of death did not require to be stated and therefore the non-mention of death as a ground for vacancy does not make H

A Article 101 any less exhaustive.

30. Articles 102 and 101 together include all circumstances in which a membership comes to an end and the seat becomes vacant. The Constitution does not contemplate or provide for the membership of an MP coming to an end in any manner other than what is specifically provided in Articles B 101 and 102. Therefore there cannot be cessation of membership, *de hors* Articles 101 and 102, by 'expulsion' or otherwise.

Conclusions :

C 31. The Constitution-makers have made detailed and specific provisions regarding the manner in which a person becomes a Member of Parliament (elected/nominated), the duration for which he continues as a member and the manner in which he ceases to be a member and his seat becomes vacant. Therefore neither the question of election or nomination, D nor tenure, nor cessation/termination of membership of the House covered by the express provisions in the Constitution, can fall under 'other powers, privileges and immunities' of the House mentioned in Article 105(3).

32. We have also noticed above that the Constitution makes express provisions for election/appointment and removal/cessation of service of the E Executive (President and Vice-President), Judiciary (Judges of the Supreme Court and High Court) and all other constitutional functionaries (Attorney General, Auditor and Comptroller General, Chief Election Commissioner etc.). It is, therefore, inconceivable that the Constitution-makers would have omitted to provide for 'expulsion' as one of the methods of cessation of F membership or consequential vacancy, if it intended to entrust such power to the Parliament.

33. In view of the express provisions in the Constitution, as to when a person gets disqualified to be a member of either House of Parliament (and thereby ceases to be a member) and when a consequential vacancy arises, G it is impermissible to read a new category of cessation of membership by way of expulsion and consequential vacancy, by resorting to the incidental powers, privileges and immunities referred to in Article 105.

34. Clause (3) of Article 105 opens with the words 'in other respects'. H The provision for 'powers, privileges and immunities' in clause (3) occurs

after referring to the main privilege of freedom of speech in Parliament, in clause (1) of Article 105, and the main immunity against court proceedings in clause (2) of Article 105. Therefore, clause (3) is intended to provide for 'non-main' or 'incidental' or miscellaneous powers, privileges and immunities which are numerous to mention. Two things are clear from clause (3). It is not intended to provide for the matters relating to nomination/election, term of office, qualifications, disqualification/cessation, for which express provisions are already made in Articles 80, 81, 83, 84, 101 and 102. Nor is it intended to provide for important privilege of freedom of speech or important immunity from court proceedings referred to in Clause (1) and (2) of Article 105. This Court in *U.P. Assembly* (supra) referred to this aspect :

> "There can be little doubt that the powers, privileges and immunities which are contemplated by clause (3) are *incidental* powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3)."
>
> [emphasis supplied]

By no stretch of imagination, the power to expel a member can be considered as an 'incidental' matter. If such a power was to be given, it would have been specifically mentioned.

35. The appropriate course in case of allegation of corruption against a Member of Parliament, is to prosecute the member in accordance with law (The immunity under Article 105(2) may not be available, as the decision in *P.V.Narasimha Rao* v. *State,* [1998] 4 SCC 626 recognizes immunity to a member who is a bribe taker only where the 'bribe' is taken in respect of a 'vote' given by him in Parliament and not otherwise). Such cases can be fast tracked. Pending such criminal proceedings, the member can be suspended temporarily, if necessary, so as to prevent him from participating in the deliberations of the Houses. On being tried, if the member is convicted, he becomes disqualified for being or continuing as a Member under Article 102(1)(e). If he is acquitted, he is entitled to continue as a member. Though it may sound cumbersome, that apparently is what the Constitution intends.

36. I am, therefore, of the considered view that there is no power of expulsion in the Parliament, either inherent or traceable to Article 105(3).

A Expulsion by the House will be possible only if Article 102 or Article 101 is suitably amended or if a law is made under Article 102(1)(e) enabling the House to expel a member found unworthy or unfit of continuing as a member. The first question is thus answered in the affirmative. Therefore the second question does not survive for consideration.

B

37. In view of the above, I hold that the action of the two Houses of Parliament, expelling the petitioners is violative of Articles 101 to 103 of the Constitution and therefore invalid. Petitioners, therefore, continue to be Members of Parliament (subject to any action for cessation of their membership). Petitions disposed of accordingly.

C

ORDER

In view of the majority opinion, all the Petitions and Transferred Cases are dismissed.

D

G.N. Writ petitions and transferred cases dismissed.