Chapter IV
Constitutionality and Desirability of the Power to Expel the Members of Parliament and State Legislatures under Articles 105 (3) and 194 (3)

In United Kingdom, the House of Commons has been exercising a power to expel its own members since the beginning of eighteenth century. The power is regarded as a corollary of House of Common’s power to regulate its own constitution. It is also regarded as one of the ways of punishment but according to O. Hood Philips, “expulsion of a member is regarded rather as a declaration of unfitness than a punishment”.\(^{183}\) The expulsion of a member has the effect of vacation of the seat but the member so expelled can be re-elected as the expulsion does not create any disability\(^{184}\).

Before 1782, the expelled members did not have a right to be re-elected on the House of Commons. It was John Wilkes, whose popular campaign against the House of Commons in the later half of the eighteenth century that compelled the House to expunge the resolutions passed to expel him in spite of his re-election to the House three times. John Wilkes, a Member of Parliament, published an article criticizing the peace treaty with France and leveled the allegations of corruption against the Ministers, in 1763. He was expelled from the Commons in 1764 on ground of publishing a libel. After that, he went into exile and again re-elected to the next Parliament in 1768. In the same year, he was convicted for publishing seditious libel. He was subsequently re-elected to the House for three times to fill the vacant seat and each time he was expelled by the House by passing resolutions. He was again re-elected in 1774 and 1780 from Middlesex Constituency. Under the pressure of public opinion, the House of Commons in 1782, passed a resolution and admitted that earlier actions of the House were ‘subversive of the rights of the whole body of electors of this kingdom’.\(^{185}\)

\(^{183}\) O. Hood Philips, \textit{Constitutional and Administrative Law}, (5\textsuperscript{th} edn, Sweet & Maxwell, London 1973) 210


\(^{185}\) Ibid, 166
The reasons for which the members have been expelled over the years include- open rebellion, forgery, fraud, breach of trust, conspiracy to defraud, misappropriation of public money, corruption, professional misconduct, contempt of the House, libel against the House etc. The last occasion when the House of Commons expelled any of its Members was Allighan’s Case (1947). Allighan, a Labour Party Member of the House of Commons, published an article in a News Paper about a private party in which, he alleged, confidential information was leaked by M Ps to the newspapers. He was called before the Privileges Committee before which he made false statements to drag the innocent persons into the controversy. He was expelled for the contempt of the House of Commons. Commenting upon the power of expulsion enjoyed by the House of Commons, Prof. Hardwari Lal, an ardent supporter of British Political institutions, in his legendary literary work, *Myth and Law of Parliamentary Privileges*, said:-

The representative government of modern times postulates nothing so commandingly as the right of people to be governed by the persons of their own choice. The Structure of the principle of representation, even in U. K. has at last been immaculately evolved over the past one century. The representative of a particular constituency must not, therefore, be unseated by the representatives of other constituencies. And yet the House of Commons retains the right to expel its duly elected members. Once upon a time, any reason could reason could be reason enough for expulsion and the expelled member could be debarred from entering the Parliament, temporarily or even permanently. Since, 1782 the House has been acting under serious self-imposed restraints. It can expel a member but cannot create a disability. That it can expel a member at its sweet will also remains a mere theory. No member who has not been legally convicted or who has not behaved himself in an inexcusably disgraceful manner can be expelled …. All the same, the power of the House to expel a member is a dangerous power.

186 Ibid
In comparison, Article 1, Section 5, clause 1 of the Constitution of U. S. A. says that each House of Congress shall be the judge of the Elections, Returns and Qualifications of its own members and by virtue of the Clause 2, each House may determine the rules of its Proceedings, punish its members for disorderly behaviour, and, with the Concurrence of two thirds, expel a member.\textsuperscript{189} The special majority prescribed for expelling a member from the House is a safeguard against any political misuse of the power of expulsion by the majority party.

In \textit{Powell v. McCormack}\textsuperscript{190}, the U. S. Supreme Court has, however, held that the House of Representative has no power to exclude a member who meets the requirements of Article 1 of the Constitution for membership. Adam Powell was excluded and his seat was declared vacant by way of a resolution passed by the House during 90\textsuperscript{th} Congress by a vote of 307 to 116 on the ground that he had deceived the House authorities as to travel expenses and made certain illegal salary payments to his wife, when acting as the Chairman of the House Committee on Education and Labor during the 89\textsuperscript{th} Congress. The House contended before the Court that House had power to expel a member for any reason whatsoever provided that two-third votes was obtained. The Supreme Court held that Powell was not administered the oath of Office and prevented from taking his seat. He was not expelled but excluded from the 90\textsuperscript{th} Congress. The Court, however, expressed no view as to limitations on the Power of the Congress to expel or otherwise punish a member.

In Australia, by virtue Section 49 of the Commonwealth Australian Constitution Act, all the privileges, including power of expulsion, enjoyed by the members of House of Commons of the U. K. Parliament were applicable to the Parliament of the Commonwealth. However, Section 8 of the Parliamentary Privileges Act, 1987\textsuperscript{191} abolished the power to expel a member from the House. The provision was made in accordance with the recommendation of the 1984 Report of the Joint Committee on Parliamentary Privileges which felt that the disqualification of members is determined by the Constitution and the electoral law and if the member is qualified but otherwise

\textsuperscript{189} Article 1, Section 5 of Constitution of United States of America

\textsuperscript{190} Powell v. McCormack 395 U. S. 486 (1969)

\textsuperscript{191} See Annexure III for more details.
unfit, the matter should be left to the electorate.\textsuperscript{192} It seems that the enactment of Section 8 of the Parliamentary Privileges Act, 1987 abolishing the power of expulsion has regarded the power to expel a member of the House as an attribute of the power to regulate its own constitution and not power to punish for the contempt.

\textbf{II. The Power of Expulsion and Constitutional Practice in India}

In India, a question whether the power of expulsion enjoyed by the House of Commons at the commencement of the Constitution can be read into Article 105 (3) and 194 (3) like other privileges, has raised controversies in the past. The argument against the application of the of power of expulsion in India is that the Indian Legislatures including the Parliament do not have power to regulate their own constitution as the power of expulsion is a corollary of that power. The Indian Constitution lays down the qualification and disqualifications for the membership of the Parliament and State Legislatures by express provisions of the Constitution and these matters are not left to the discretion of the Legislative bodies. It is also argued that the people have the constitutional right to be governed by the persons of their choice which may be affected by exercise of the power of expulsion. The counter view is that the power of expulsion is an attribute of the power of the House of Commons to punish for a contempt or for a breach of privilege and hence it could be exercised by the Indian Legislatures under Articles 105 (3) and 194 (3).

In India, the power of expulsion was exercised for the first time by the Constituent Assembly itself, in its capacity as the ‘Provisional Parliament’ in 1951, when Mr. H. G. Moudgil was expelled from the Lok Sabha for abusing his position as a Member of Parliament\textsuperscript{193}. It was alleged that Mr. Moudgil had accepted bribes from the bullion market of Bombay to represent their cause in Parliament. A Select Committee was appointed by the House to inquire into the charges brought out against Mr. Moudgil and he was given an opportunity to defend himself. The recommendations of the Committee were debated in the House and consequently, a resolution to expel him


\textsuperscript{193} See, Raja Ram Pal v. Hon’ble Speaker, Lok Sabha (2007) 3 SCC 184, para 189
from Parliament was passed. The expulsion did not become subject matter of judicial scrutiny as Mr. Moudgil had himself resigned even before his expulsion which he did not challenge in a Court of Law.

The power of expulsion was used by the Parliament again in 1976 during the National Emergency, when Mr. Subramanium Swamy was expelled from Rajya Sabha for making anti-Emergency speeches abroad and allegedly referring to the Parliament as ‘a captive House’. A ten-member Committee was appointed by the Rajya Sabha to ‘investigate the conduct and activities of Shri Subramaniunm Swamy during the past one year and more within and outside the country including anti-Indian propaganda calculated to bring the Parliament and the country’s democratic institutions into disrepute and generally behaving in a manner unworthy of a member of the House’. The Committee directed Shri Swamy to appear in person before the Committee but he failed to do so. In its report submitted to the House on 12th November, 1976, the Committee made the following observations:-

These are all acts which no Member of Parliament should indulge in keeping in view the dignity of office of such membership. These acts seriously impair a member’s right to represent his constituents in Parliament and detract from the trust reposed in him as such Member……. His description of Parliament as ‘our captive Parliament’ and the innuendoes he has made against the Members show his utter disrespect to the parliamentary institutions in the country and amount to contempt of the House and its Members. All these facts constitute a grave breach of the elementary standards of conduct expected of a Member of Parliament.

On the recommendation of the Privilege Committee of the House, Mr. Swamy was expelled from Rajya Sabha with effect from 15th November, 1976. According to Hardwari Lal, the resolution passed by the House to expel Mr. Swamy was “a complete travesty of the privileges and the powers of the House of Commons, even as the imposition of internal Emergency was a total negation of democracy”. The matter, however, did not reach the court.

195 Ibid, 276, 277
196 See, Hardwari Lal (n 188) 197
In 1978, Mrs. Indira Gandhi, Former Prime Minister, was expelled from the Lok Sabha under a resolution passed by the House on 19th December 1978, for allegedly committing a breach of privilege and contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against certain Government Officers collecting information for preparing an answer to question raised by one M. P. during the ‘previous Lok Sabha’ on 16th April, 1975.197 She was also held guilty of not taking oath and affirmation and not deposing before the Privileges Committee. Mrs. Indira Gandhi was committed to jail till the prorogation of the House and expelled from the membership of the House for alleged breach of privilege of the House. Later, the 7th Lok Sabha reversed the resolution passed by the 6th Lok Sabha to expel Mrs. Indira Gandhi. At the State level, The Maharashtra Legislative Assembly was the first to follow the Parliamentary practice of expelling its own members and expelled Shri J. V. Dhote in August 1964 for disorderly conduct in the House but he did challenge the constitutionality of the same in court.198

III. Judicial Review of the Power of Expulsion: The early trends

1. *Yeshwant Rao Meghawale v. Madhya Pradesh Legislative Assembly*199

On 17th March 1966, during a session of Madhya Pradesh Legislative Assembly one Member, Yeshwant Rao Meghawale, allegedly assaulted the Deputy Speaker who was presiding over the sitting of the House. During course of the proceedings of the House another Member, Pandhari Rao Kridutta, allegedly abused the Chair and hurled two chappals (footwear) at the Deputy Speaker. The House then passed two resolutions for expulsion of both the members. On 19th March, 1966, by virtue of two notifications, bearing the signature of the Secretary of the Assembly, published in the Official Gazette declared that consequent upon the expulsion of the said Members by the Assembly, the constituencies they represented had fallen vacant with effect from

---


198 *Hardwari Lal* (n 188) 194

199 *Yeshwant Rao Meghawale v. Madhya Pradesh Legislative Assembly* AIR 1967 MP 95
the afternoon of 17th March 1966. In *Yeshwant Rao Meghawale v. Madhya Pradesh Legislative Assembly*\(^{200}\), the expelled Members challenged the validity of resolutions passed by the Assembly expelling them before the Madhya Pradesh High Court. They asked for directions of the Court to be issued to the Secretary of the Assembly and the State of Madhya Pradesh restraining them from carrying out the effect of the resolutions passed by the Assembly. They also prayed that the direction be issued to the Election Commission, New Delhi to prevent it from holding bye-elections for filling their seats.

The petitioners contended that the resolutions passed by the Assembly expelling them are unconstitutional, *ultra vires* and void in law for the reason that under Article 194 (3) of the Constitution the Assembly did not have the power to expel any member and make his seat vacant; and that the seat of a member could become vacant only in the circumstances mentioned in Arts. 190, 191 and 192. They also contended that the privilege and power of expelling a member enjoyed by the House of Commons of the Parliament of the United Kingdom was not available to the Assembly as that power exercised by the House of Commons was an adjunct of the privilege and power to regulate its own constitution and the Legislative Assembly had no such power. It was also submitted by them that in the Rules of Procedure and Conduct of Business framed by the Assembly under Article 208 of the Constitution there was no rule for expulsion of members though there were rules for dealing with withdrawal and suspension of members. The applicants also made a grievance that the resolutions were passed by the Assembly without giving them any opportunity to explain the allegations.

The State, on the other hand, argued that the validity of the proceedings within the four walls of the Assembly could not be challenged in Courts whether by a petition under Article 226 of the Constitution or otherwise. It was also contended on its behalf that by virtue of Article 194 (3) of the Constitution the powers, privileges and immunities of the Assembly were those of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution; and that on 26th January 1950 the House of Commons exercised the privilege and power of expelling

\(^{200}\) Ibid
any member not as an adjunct of its privilege and power to regulate its own constitution but as a power to punish a member found guilty of a breach of privilege or contempt of the House. It was submitted that the power to expel a member was inherent in every legislative body and it was a power of self-protection and the House was necessarily the sole Judge of the exigency which justified and required its exercise; that articles 190 (3) and (4) and 192 of the Constitution were not exhaustive of all cases of vacation of seats. It was further argued that Article 194 (3) conferred additional power on the State Legislature to bring about vacation of a seat and is not abrogated by anything contained in other provisions of the Constitution dealing with disqualifications.

The Court formulated the following questions for the determination of the Case:

1. Whether this Court can enquire whether the Assembly has the power and privilege of expelling a member found guilty of a breach of privilege or contempt of the House so as to render his seat vacant;

2. Whether, if such a privilege is found to exist in the House, the Court can judge of the occasion and of the manner of its exercise; and

3. Whether the Legislative Assembly and its Secretary are amenable to the jurisdiction of this Court.

The Court accepted the preliminary objection raised by the respondents that the Court did not have any jurisdiction in the matter and observed that the Court could only enquire into the existence of a power or privilege claimed by the House but the occasion and the manner of the exercise of the power were matters of which the House alone could be the Judge. The Court held that in the light of Article 212, which laid 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, the validity of the proceedings in the Legislature leading to the passing of the resolutions expelling the petitioners could not be called in question in the Court. The Court clarified that there was no dispute as to whether, at the commencement of the Constitution, the House of Commons had the power of expelling a member found guilty of contempt of the House. It was held that the House of Commons exercised the power of expelling a member not because it had the power to regulate its own proper

---

201 Ibid, Para 10
constitution but the exercise of the power of expulsion was necessary for its proper functioning, protection and self-preservation and for preventing any obstruction to the deliberations of the House during its sitting.

So far as the application of the provisions of the Constitution dealing with the disqualification for membership of the Assembly to Article 194 (3) is concerned, the Court made the following observations:-

Articles 190 and 191 deal with disqualifications of members and the result of the disqualifications. They are not general provisions dealing exhaustively with all cases of vacation of seats. When a member is expelled by a House, he does not become subject to any disqualification. He is entitled to contest the election again and it is open to his constituency to re-elect him. The exercise of the power of expulsion by the Legislature does not create a disqualification. Thus, articles 190 and 191 have no bearing in the construction of Article 194 (3) and do not in any way touch the power of the State Legislature to expel a member so as to render his seat vacant.202

It is submitted that the view taken by the High Court that the Court could only determine whether a particular privilege existed in United Kingdom at the commencement of the Constitution and hence it could be enjoyed by the Legislature in India but it could decide upon the validity of the actual exercise of the power by the legislature, is not correct. This is contrary to the decision of the Supreme Court in the President's Reference No.1 of 1965 in which it was held that the exercise of the penal power to punish for contempt was controlled by Article 21 and hence open to judicial review. The High has itself held that power of expulsion was part of the power of the House to punish its own Members and not the power to regulate its own constitution. The High has completely ignored the argument made by the petitioner that they were not given the opportunity to defend themselves before the expulsions. Had the Court correctly applied the ratio of the decision of the Supreme Court in the President's Reference No.1 of 1965, it would have considered the said argument by applying the requirement of Article 21 of the Constitution. Similarly, reference made to Article 212 for not interfering with the internal proceedings of the House on the ground of irregularity of any procedure is also not very sound. The Court has power to take cognizance of any patent ‘illegality’ of the procedure adopted by the House in exercising the penal powers, if not any ‘irregularity’ of the said procedure.

202 Ibid, Para 24

On November 12, 1973, a privilege motion was moved in Haryana Legislative Assembly against Shri Hardwari Lal, elected Member of the House for allegedly publishing derogatory remarks lowering the dignity of House and casting aspersions on the Speaker and other Members of the House. The Assembly then refereed the matter to the Committee of Privileges for examination, investigation and report. The Committee held him guilty of breach privilege and contempt of the House and recommended that he be expelled from the House and his seat be declared vacant. The House unanimously adopted a motion for the expulsion of Shri Hardwari Lal from the House and the copy of the relevant notification was forwarded to the Election Commission of India so that necessary steps can be taken to fill the vacancy created by his expulsion.

Shri Hardwari Lal filed a writ petition in the Punjab and Haryana High Court and prayed for the issuance of appropriate writ, direction or order for declaring the decision of the Assembly to him as *mala fide*, illegal and void as well as for restraining the Election Commission of India from proceeding to fill the vacancy by the reason of his expulsion from the Assembly. The High granted interim stay order in which the Election Commission was asked not to proceed to hold a by-election to fill the said vacancy and the petitioner was permitted to attend the session of Haryana Legislative Assembly but restrained from taking part in the proceedings or vote.

The five judges’ bench of the High Court allowed the petition with 3:2 majority in favour of Shri Hardwari Lal. The Court held that the powers vested in the statutory body could be struck down by the Court if the *mala fide* was proved by the petitioner. The Majority further observed that the uncanalised power of expulsion in the House of Commons stemmed from its ancient and peculiar privilege of determining its own composition. The power of expulsion cannot descend to the State Legislatures in India as the power to regulate their own constitution was not available to them under the written Constitution. The Majority Judges believed that in the peculiar context of an unwritten Constitution in England, the Parliament might override and claim precedence over the right of representation, which was merely a legal or municipal

---

right. In India, on the contrary, the legal and political sovereignty was vested in the People of India and the Constitutional right of representation enjoyed by the People could not be overridden by a single House of the Legislature in the name of the privilege. The Court, in this regard, observed:

….. Expulsion by the House, therefore, invalidates and repudiates a choice by the People of the constituency which they themselves cannot change for the duration of the Assembly. The Indian Constitution does not visualize that the electors of one constituency should be forced to be put to a second choice at the will or behest of the representatives of the majority of legislators of other constituencies.\(^\text{204}\)

The Court finally held that the resolution of the Haryana Legislative Assembly dated January 8, 1975, expelling the petitioner, to be unconstitutional, illegal and inoperative, and directed the Election Commission of India not to proceed to fill the vacancy supposedly resulting from the action of the Assembly.

The Minority Judges, however, held that the resolution to exclude a Member of a Legislature from the House constitutes “a proceeding in the House” and the validity of the same could not be challenged in any Court. The Minority relied upon the decision of 8 judges’ bench of the Supreme Court in \textit{M. S. M. Sharma’s Case}\(^\text{205}\) in which it was held that no court could go into the question of validity of a privilege motion or a notice given by the Committee of Privileges to its members and the Legislature was the exclusive power to conduct its own business. They also held that the Indian Legislatures had the power to expel their Members under Article 194 (3) as enjoyed by the House of Commons at the commencement of the Indian Constitution. It was also clarified that the power of expulsion was a corollary of the power of the House of Commons to punish for its own contempt and not the power to regulate its own composition. Chief Justice R. S. Narula observed:

I would, therefore, hold that the even if the power to constitute itself can be expressed by the Commons in any number of other ways including resorting to expulsion of its Members, it would make no material difference as the existence of one ground on which expulsion

\(^{204}\) Ibid

\(^{205}\) \textit{AIR 1960 SC 1186}
can be ordered by the Commons cannot be 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.\textsuperscript{206}

It is submitted that the in the light of the non-codification of the privileges in India, the operation of the transitory provision under Article 194 (3) making the privileges of the House of Commons applicable to the Indian Legislatures and Constitutional practice and precedents in United Kingdom, the power of expulsion is devolved upon the Parliament and State Legislatures in India. Legally speaking, the decision of the Minority sound more correct so far as the exercise of the power of expulsion is concerned except the view taken by the Minority Judges that the Court could not interfere with procedure followed by the Assembly in expelling its Member. If the House does not follow the principles of natural justice in expelling the Member and give an opportunity to show cause then the Courts can invalidate the action of the House as violative of Article 14 and 21 of the Constitution.

It is also submitted that the Parliament and State Legislatures must implement the Constitutional mandate under Article 105 (3) and 194 (3) and codify the privileges in order to remove all the ambiguities of law in this regard. In doing so, the fact that in Australia the power of expulsion has been removed from the Parliament under the Parliamentary Privileges Act, 1987, should not be ignored. The rationale for the said provision is that the matters relating to the disqualification of the members have been elaborately dealt under the written Constitution and the question whether the member became unfit for the membership, for any reasons, whatsoever can be left to the discretion of the electorate. So far as the maintenance of the discipline in the House is concerned, the Legislative body can suspend the Member for any duration of time from participating in the proceedings of the House. If the Member is suspended for the remaining period of the life of the Assembly then his seat may remain vacant till the next general elections.

\textsuperscript{206} Hardwari Lal (n 203)
2. K. Anbazhagan v. The Secretary, Tamil Nadu Legislative Assembly, Madras[^207]

On 22nd December, the Tamilnadu Legislative Assembly passed a resolution declaring that the petitioners were unfit to continue as members of the House and that they were expelled from the membership of the House and that they could not continue to be members of the House and their seats became vacant. Thiru K. Anbazhagan and other 9 Members of the House belonging to ‘Dravida Munnetra Kazhagam’ party allegedly burnt a copy of the Part XVII of the Constitution of India, which provides for Hindi to be the Official Language of the Union, in public place. They were held guilty of violating the oath or affirmation made and subscribed as Members bearing true faith and allegiance to the Constitution of India under Article 188 of the Constitution of India read with R. 4(l) of the Legislative Assembly Rules. The House felt that said conduct amounted to lowering the regard for the Constitution and the House constituted by it and it was wholly inconsistent with the standards which this House expected from its Members. Subsequently, a notification was published declaring that the said ten members had ceased to be members of the Assembly with effect from the 22nd December, 1986 afternoon and that their seats had become Vacant.

The petitioners challenged the action of the Assembly in the High Court of Madras and sought declaration that the resolution expelling them from the House and declaring their seats in the Assembly as vacant was unconstitutional, null and void. The petitioners argued that the State Legislature did not have power to expel a Member of the Assembly as the power of expulsion was exercised by the House of Commons was part of the power of the House to regulate its own composition. A reference was made to the decision of the Supreme Court in the President’s Reference No.1 of 1965 in which it was held that there were some powers which cannot obviously be claimed by the Legislatures in India including the power to regulate its own composition. It was contended that if the power of expulsion was a part of the power of the House of Commons as to regulate its own composition then it could not be claimed by the Tamilnadu Assembly. According to the petitioner, a seat of an

[^207]: K. Anbazhagan v. The Secretary, Tamil Nadu Legislative Assembly, Madras AIR 1988 Mad 275
elected member could fall vacant only in accordance with the provisions of Arts. 190 and 191 read with a S. 8 of the Representation of the People Act. The Constitution according to the petitioner was exhaustive with regard to the circumstances in which a seat of an elected member would be vacated. Therefore, a new ground for vacating a seat in the nature of expulsion of the members of the Legislative Assembly was not contemplated by the Constitution.

The respondent no.1 and 2, the Secretary, Tamil Nadu Legislative Assembly, the Speaker of the Tamil Nadu Legislative Assembly refused accept the notices issued by the Court and did not appear in the Court. The Court then requested the Advocate General of the State of Tamilnadu to assist in the proceedings. The Advocate General contended that the power of expulsion was exercised by the House of Commons as a punitive power and such a power was not incompatible with Articles 190 and 191 of the Constitution of India.

The Court observed that the conduct of the petitioners amounted to an offence under Section 2 of the Prevention of Insults to National Honour Act, 1971 by virtue of which burning of the Constitution of India may attract the maximum punishment of imprisonment of three years. The Court also referred to Article 188 of the Constitution which lays down that the person elected as a member of the Legislative Assembly or the Legislative Council of a State cannot take his seat unless he makes and subscribes an oath or affirmation according to the VII-8 of the Third Schedule of the Constitution. According the said oath and affirmation, the Member of the Legislature is bound bear true, faith and allegiance to the Constitution of India as by law established and burning a part of the Constitution was in terms a breach of this oath.

In so far as the power of expulsion enjoyed by the House of Commons was concerned, the Court referred to the observations made by *Erskine May*:

> 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.\textsuperscript{208}

Relying upon the same, the High Court concluded that May had therefore preferred to treat the power of expulsion as a part of the power of punishment and as a part of the power to regulate its own composition. The Court, referring to the constitutional practice in India, pointed out that when H. G. Mudgal was expelled from the Lok Sabha in 1951 for the conduct derogatory to the dignity of the House, the architect of the Indian Constitution Dr. Ambedkar as well as the first Prime Minister of the Country Pandit Jawarharlal Nehru were members of the Lok Sabha. The Court also rejected the argument that the power of expulsion under Article 194 (3) is inconsistent with the other provisions of the Constitution dealing with the disqualifications for the membership of the Assembly like Articles 190 and 191. The Court observed that vacation of seat of the expelled member therefore did not occur as a result of incurring a disqualification as contemplated by Art. 190 or 191, but is the direct result of the exercise of a privilege by the Legislature which is neither controlled nor regulated by the said provisions.

The Court also clarified that the resolution of expulsion was not in the nature of punishment for violation of the oath, but it was the expression of the decision of the House not to have among its members a person, who had conducted himself in a manner derogatory of the dignity of the House and of the conduct which was expected from a member of the House.\textsuperscript{209} The Court while dealing with the argument of the petitioners that the procedure adopted by the Assembly to expel the Members was illegal and arbitrary and hence violative of Articles 14 and 21, held that Article 212\textsuperscript{210} (1) created a complete bar for the Court to go into the validity of the ‘irregularity’ of the proceedings of the Legislature. The non-observance of the principles of natural justice was characterized as ‘irregularity’ of the procedure distinct from the ‘illegality’ of the procedure and in support of this principle the decision of the


\textsuperscript{209} K. Anbazhagan (n 207) Para 90

\textsuperscript{210} See Annexure I for the Full Text of Article 212 and 122
Supreme Court in *M. S. M. Sharma v. Shree Krishna Sinha* was referred. The High Court summarized its decision as follows:²¹¹

(1) The adoption of a written Constitution which is given by the people of India to themselves as long as the Constitution of India which represents the will of the people and is the supreme law of the land, is in force, it is an imperative obligation of every citizen of the Indian Republic, including those who want to voice their dissent in respect of any particular provision, to abide by the provisions of the Constitution and notwithstanding their dissent in respect of some provisions they are bound to respect it, apart from the express provision made in Art. 51 A of the Constitution.

(2) The impugned resolution does not have the effect of expulsion of a member on the ground that he has incurred a disqualification for having committed a breach of oath, but it is founded on the conduct of the -elected members, which the Assembly considered to be derogatory to the dignity of the Constitution as well as the dignity of the Assembly and they were considered unfit to be members of the Assembly. This expulsion does not disqualify the expelled members from seeking re-election.

(3) The conduct of any person including an elected representative of the people in burning the Constitution can hardly be treated as permissible method of expressing disapprobation of a constitutional provision assuming for a moment that some provision is not to the liking of some citizens.

(4) Burning of the Constitution or any part of it is not in keeping with the norms and conduct expected of a member of the Legislative Assembly and is highly derogatory of the expected norms of conduct.

(5) Burning or defiling the Constitution or the National Flag or doing any act specified in S. 2 of the Prevention of Insults to the National

²¹¹ Ibid, Para 112
Honour Act, 1971 does not fall within Explanation I of S. 2 and will amount to an offence under the said Act and when an elected representative of the people who but for the provisions of the Constitution of India and the Representation of the People Act would not have been able to claim the representative status, goes to the extent of burning or defiling or destroying the very Constitution or a part of the constitution, it would be for the House to decide how to deal with such a member.

(6) An elected representative of the people who makes an oath or affirmation Under Art. 188 is duty bound to bear true faith and allegiance to the Constitution of India and uphold the sovereignty and of India, and burning a part of the Constitution is in terms a breach of the oath.

(7) The effect of the Constitution (Forty-fourth Amendment) Act, 19718 amending Art. 194(4) is that whenever a question of privilege arises, the relevant point of time for ascertaining whether a similar privilege was exercised by the House of its members and Committees has to be determined with reference to 20th June. 1979.

(8) The power of expulsion apart from being a part of the power of the House of Commons to regulate its Own composition, was essentially a power which was in the nature of exercising a disciplinary control over the membership of the House with a view to see that such of the members who are unfit in the opinion of the House to continue to be its members, could be expelled from membership. What is important is not that the power of expulsion so exercised was a part of the powers of the House of Commons to regulate its composition but that the power of expulsion was in fact exercised by the House of Commons also as a part of power to punish a member by expelling him.

(9) The House of Commons possessed and exercised the power and privilege to expel a member for an action which the House considered to be misconduct even though the misconduct was committed outside
the House. This power subsisted not only at the commencement of the constitution but in the absence of anything to show that this power was given up between the commencement of the Constitution and the commencement of the Constitution (Forty fourth Amendment) Act, such a power must be held to be subsisting, at the material time for the purposes of 194(3) of the Constitution of India.

(10) By enacting, Art. 194 (3) what was intended to be adopted was the powers and privileges of the house of commons as set out in May's Parliamentary Practice which included the power of expulsion.

(11). The power of expulsion is not inconsistent with any of the other provisions of the constitution of India. Such power cannot be negatived on the ground that an elected member as entitled to continue as a member as a period of five years or that a particular constitution may go unrepresented because of the expulsion of the elected representative.

(12) A conduct which is expressly made penal cannot be justified on the ground of a fundamental right under Art. 19 (1) (a) and in any case burning the Constitution would not fall within 'Freedom of speech and expression'.

(13) Even in the United States, the power of expulsion has been recognised in respect of the conduct of an elected member of a House inconsistent with the position and dignity and inconsistent with the trust and duty of a member and has been held to exist in a legislative body, whether expressly conferred or not. as being a necessary and incidental power to enable the House to perform its high functions and necessary to the safety of the State.

(14) The resolution of expulsion is not open to challenge on the ground that it amounts to a Bill of Attainder or that it is a punishment for violation of oath.
(15) The Resolution of expulsion is not 'law' within the meaning of Art. 13 of the Constitution of India and is not open to challenge on the ground of violation of Art. 19 (1) (c) or 29 (1) of the Constitution of India, apart from the fact that no right under Art. 19 (1) (c) or Art. 29 (1) of the petitioners is affected.

(16) The resolution is not open to challenge on the ground that the concerned members were not heard as such a challenge would be a challenge on the ground of failure to follow a procedure which would amount to an 'irregularity' and not an 'illegality' having regard to the provisions of Art. 212 of the Constitution of India.

(17) The Resolution of expulsion is not open to challenge on the ground that a seat becoming vacant on account of expulsion of a member is not expressly contemplated by S. 150 of the Representation of the People Act because the opening part of S. 150 will also cover a case of seat becoming vacant as a result of expulsion.

(18) Rules made under Art. 208 of the Constitution have to be construed as regulating the procedure of the House and the conduct of its business, and R. 312 when it refers to the 'residuary power' of the Speaker, must be exercised only with regard to the procedure and conduct of the business of the House.

It is submitted that the decision of the High Court is correct so far as the undisputed power of the Indian Legislatures to expel their members under Article 194 (3) is concerned. So far as the view expressed by the Court that non-observance of the principles of natural justice and following the arbitrary procedure by the Assembly amounts to merely the ‘irregularity’ of the proceedings as contemplated by Article 212 and does not amount to ‘illegality’ of the proceedings, is not correct. Arbitrariness has been held to be antithetic to the equality clause under Article 14 of the Constitution which is the substantive provision of the Constitutional Law. Any arbitrary exercise of the power of expulsion under Article 194 (3) by violating the principles of natural justice contravenes Articles 14 and 21 and hence ‘illegal’ and not merely ‘irregular. The Courts can scrutinize the proceedings of the Legislature on the
ground of patent illegality. The resolution passed by the Assembly in this case was not preceded by any hearing given to the expelled members, which render the proceedings violative of Article 14 and 21 of the Constitution. The solution for the problem lies in the immediate codification of the Parliamentary privileges by the Parliament and State Legislatures as mandated by the framers of the Constitution under first part of Articles 105 (3) and 194 (3).

IV. The ‘Cash for Query’ Scandal and the Supreme Court’s Response in Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Others\textsuperscript{212}

On 12\textsuperscript{th} December, 2005, a private News-Channel telecasted a programme entitled “Operation Duryodhan” showing 10 members of the Lok Sabha and 1 member of the Rajya Sabha receiving money as consideration for raising certain questions in the House. Subsequently on 19th December, 2005, another private channel telecasted a programme titled “Operation Chakravyuh” alleging improper conduct of 1 member of the Rajya Sabha in the implementation of ‘MPLAD Scheme (Member of Parliament Local Area Development Scheme). Both the Houses of the Parliament constituted separate Inquiry Committees to investigate and report the alleged incidents of bribery by the members. The conscience of the entire nation was shocked as the bribe-taking MPs made the mockery of the democratic process and lowered the dignity of the Parliament in the eyes of the common citizens. The Committee appointed by the Speaker of the Lok Sabha established the charges made against the indicted 10 Members of Parliament and held them guilty of unethical conduct eroding the credibility of Parliament as an institution. The Committee recommended that the guilty Members of Parliament be expelled from the House. On 23rd December, 2005, the Lok Sabha adopted a motion accepting the said recommendations and expelled the concerned Members of Parliament accordingly. Consequently, a notification was issued on the same day by the Lok Sabha Secretariat declaring their seats as vacant. The Ethics Committee of the Rajya Sabha also made a thorough inquiry into the similar allegations made against its 2 members. On the recommendations of the ‘Ethics Committee’, the concerned MPs were also expelled from the Rajya Sabha.

\textsuperscript{212} Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Others (2007) 3 SCC 184
The expelled MPs filed a petition challenging the decision in the Supreme Court which came to be decided in *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha and Others*\(^2\)\(^1\). The petitioners contented that the power of expulsion exercised by the House of Commons was a facet of the power to regulate its own composition and the Indian Parliament did not inherit such a power under Article 105 (3). As the Indian Constitution by virtue of Articles 101, 102 and 103 exhaustively provided for the termination of membership of the Parliament, no additional ground could exist for the disqualification of a member. The Parliament could create an additional disqualification only by way of making a law and not through a resolution of the House purporting to act under Article 105 (3). The next contention was that in the democratic set-up adopted by India, every citizen had a fundamental right to vote and hence expelling a member duly elected by the people would violate democratic principles. It was further contended that the principles of natural justice were denied to the petitioners in the inquiry proceedings amounting to gross and patent illegalities which were not protected from judicial review by Article 122\(^2\)\(^1\) on plea of procedural irregularities. The Contentions made on behalf of the petitioners were summarized by the Court as follows:\(^2\)\(^1\)\(^5\):

(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 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

---

\(^2\)\(^1\) Ibid

\(^2\)\(^1\)\(^4\) Article 122 of the Constitution provides that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

\(^2\)\(^1\)\(^5\) (2007) 3 SCC 184, Para 11
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.

The two Houses of Parliament did not appear before the Supreme Court and the above-stated contentions made by the petitioners were defended by the Union of India through the Attorney General of India. The Union of India contended that the conduct on the part of the expelled Members of the Parliament to accept the bribes was unbecoming of members of the House rendering them unfit for being members of the respective Houses. It was urged that the Houses had inherent right to expel its members for imposing the disciplinary measures and the validity of the internal proceedings of the Houses could not be challenged in Courts.

The majority held that the House of Commons did not derive its power to expel a member only from its privilege ‘to provide for its own Constitution’ but also from its privilege ‘to control its own proceedings’. The Articles 101 and 102 were held not to be exhaustive with respect to termination of membership as terms ‘disqualification’ and ‘expulsion’ had different meanings. According to the Court, Articles 101 and 102 dealt with ‘disqualification’ for and continuance of membership and they operate independently of Article 105 (3) which demands equal weight; both the conflicting
provisions were not being ‘Subject to the other provisions of Constitution, superiority could not be accorded to the one over the other. Rejecting the argument based on the right to vote and be represented, the Court held that it was merely a statutory right subject to certain limitations. The expulsion is related to the conduct of the member that lowers the dignity of the House of which the voters may not have aware at the time of election. The Court says that the protection of the dignity of Parliament before the people of the country is also an integral aspect of the democratic set-up. It was also held on facts that proper opportunity to explain and defend had been given to each of the petitioners.

The Court laid down the following broad principles in regard to the exercise power of expulsion by the Parliament:-

1) The Legislatures in India are not sovereign bodies like the British Parliament and their powers are controlled by the Supreme and Written Constitution. The Supremacy of the Constitution is protected by the independent Judiciary and the Constitutional Courts are the final interpreters of the Constitutional provisions including Article 105 (3).

2) The Courts have the jurisdiction to examine and determine the existence and extent of power and privileges enjoyed by the Parliament or State Legislatures contemplated under Articles 105 (3) and 194 (3), respectively.

3) The Court referred to the statements made by Sir Alladi Krishnaswamy Iyer and Dr. B. R. Ambedkar in the Constituent Assembly wherein they opposed to the idea of limiting the existing privileges of pre-independence legislatures in India instead of making reference to the British House of Commons. The Court concluded that the Constituent Assembly referred to the ‘House of Commons’ in Articles 105 (3) and 194 (3) because it was in favour of the broader privileges to conferred on the Indian Legislatures including the power of expulsion.

4) The Court reiterated the view taken by the Constitutional bench of the Supreme Court in *the President’s Reference No.1 of 1965* that the contents of Clause (3) may

---

216 AIR 1965 SC 745
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’.

5) The power of expulsion enjoyed by the House of Commons was not solely derived from the power to regulate its own composition but also from the privilege of the House to have complete control over its proceedings including the right to punish a member by expulsion that by his conduct interferes with the proper conduct of Parliament business.

6) The power of expulsion under Articles 105 (3) and 194 (3) does not violate the other provisions of the Constitution relating to ‘vacancy’ and ‘disqualification’. Articles 101, 102 and 103 are not exhaustive regarding the termination of membership of the Parliament as the terms ‘expulsion’ and ‘disqualification’ 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”217

7) The expulsion of the members does not violate the constitutional provisions dealing with their salary (Article 106) and the duration of the term of the House [Article 83 (2)]. The constitutional right with respect to the salary of the members does not create an independent right which could be given supremacy over the power of expulsion of the House. Right to salary is dependent on the membership and the termination of the membership can also be caused by variety of the other reasons. The provision regarding the normal duration of 5 years does not guarantee to the members a term of five years.

8) The expulsion of the member is not contrary to a democratic process and the right of the people to be represented as it an action of the House to protect its dignity before the people of the country which is also an integral aspect of our democratic set-up.

217 (2007) 3 SCC 184, Para 90
The power of expulsion does not bar a member from standing for re-election or the constituency from electing that member once again.

9) The power of expulsion does not violate the fundamental right of the member under Article 19(1) (g), which guarantees the right to 'practice any profession, or to carry on any occupation trade of business'. Article 105 (3) is itself a constitutional provision which provides for the implied power of the expulsion and thereby create a valid exception to the right under Article 19 (1) (g). No specific law needs to be made Article 19 (6) in this regard.

10) Fundamental Rights can be invoked in the matters concerning the Parliamentary Privileges and a member as well as a non-member should be entitled to the protection of Article 20 and 21 even in cases where the exercise of Parliamentary privilege contemplates a sanction other than that of committal.

11) Article 122 merely prohibits the Courts from examining the ‘irregularity of the procedure’ in the House and by applying the principle of "expressio unius est exclusio alterius" (whatever has not been included has by implication been excluded), it is clear that the judicial review is not excluded on the grounds of ‘illegality or unconstitutionality’ of the procedure in the House.

The Court, after clarifying the legal questions pertaining to the validity of the power of the expulsion, examined the individual cases of the petitioners. The petitioners contended that the impugned action on the part of each House of Parliament expelling them from the membership suffered from the vice of mala fide as decision had already been taken to expel them. They referred to the statement made by the Speaker of the Lok Sabha on the floor of the House on 12th December 2005 in which he said that "nobody would be spared". The Court held that the said statement should not be read out of the context without considering the entire declaration made by the Speaker. The declaration made by the Speaker had indicated that if anybody was found guilty then he would be punished. The fact that Inquiry Committee constituted by the Speaker also included the members of the opposition, according to the Court, itself negates any mala fide on the part of the Speaker. The Court also rejected the argument made by the petitioners that the procedures adopted by the Committees of the two Houses were neither reasonable nor fair and that proper opportunity was not given to them to
defend themselves as the entire procedure was unduly hurried. The Court said that no inference could be inferred from the amount of time taken by the Committees so long as reasonable opportunity was granted to the petitioners. The contention of the petitioners that the decision of expulsion was vitiated since it violated all sense of proportionality, fairness, legality, equality, justice or good conscience, was also rejected by the Court. It was held that the Court could not sit as an appellate authority over the House and determine the extent of punishment that deserved to be meted out in such cases. Justice C. K. Thakker, in his concurring decision, agreed with the majority decision delivered by the Chief Justice Sabharwal and held that the petitions should be dismissed. Justice Raveendran, in his dissenting judgment, held that the power of expulsion enjoyed by the House of Commons cannot be imported to India as the constitutional scheme elaborately deals with the exhaustive provisions for disqualification and vacancy.

Commenting on the Cash-for-query Scam, Shubhankar Dam has observed:-

The alacrity with which Parliament acted to expel the fallen MPs was unprecedented in recent political memory. For once, the political process seemed determined not to shield tainted politicians. In some sense, the Parliament acted exactly in the way the Supreme Court would have wanted it to. To allow them immunity subsequently would tantamount to turning the Constitution into a protective den for criminals. Would the Supreme Court have done it? It did so once before and suffered an ignominy that is best forgotten. To do so again would have been a public relations disaster of unimaginable proportions: the popular support that legitimizes its “constitutional antics” may have been irreparably damaged. And in this sense, the MPs never had a chance in the Supreme Court even before they had petitioned it.218

It is submitted, with due respect to the Parliament of India and the then presiding officers of both the Houses of Parliament, that the decision of the Houses to refuse to file the returns and not to appear before the Supreme Court was unfortunate. The legislatures in India, including the Parliament, cannot claim to be sovereign bodies as they are subordinated to and controlled by the Supreme Constitution. The judicial powers are vested exclusively in the constitutional courts like the High Courts and the Supreme Court and they are the final interpreters of the Constitution. The legislatures

218 Shubhankar Dam, ‘Parliamentary Privileges as Façade: Political Reforms and the Indian Supreme Court Raja Ram Pal v Hon’ble Speaker, Lok Sabha and Others’, 2007 Sing. J. Legal Stud. 162
cannot arrogate to themselves the judicial power to determine whether a particular power, privilege or immunity is available to them under the Constitution by usurping the power of interpreting the provisions of the Constitution. They cannot be judge in their own cause. All the privileges enjoyed by the British House of Commons cannot be claimed by the Indian Legislatures because of the inherent differences between the two. In case of any conflict between the privileges and the express provisions of the Constitution, the latter will prevail over the former. The Parliament and the State Legislatures have rather failed to give effect to the constitutional mandate under first part of Articles 105 (3) and 194 (3) by not codifying their powers, privileges and immunities. Had they done so, such a law would have been subject to the Fundamental Rights under Chapter III of the Constitution and hence amenable to the jurisdiction of the Courts. The Australian Parliament has codified the privileges and abolished, on its own initiative, the wider power of expulsion enjoyed by it before the enactment of Parliamentary Privileges Act, 1987.

V. The Recent Development: *Amarinder Singh v. Special Committee, Punjab Vidhansabha*\(^{219}\)

Recently, Supreme Court in *Amarinder Singh v. Special Committee, Punjab Vidhansabha*\(^{220}\) declared the expulsion of a Member of Punjab State Legislative Assembly and the former Chief Minister of Punjab Shri Amarinder Singh as unconstitutional. On 10-09-2008 the Punjab Legislative Assembly, during its 13\(^{th}\) term, passed a resolution and expelled the appellant on the ground of criminal conduct, and declared his seat in the Assembly as vacant. A Special Committee of the Punjab Assembly had found him guilty of improper exemption of a vacant plot in his capacity as the Chief Minister of Punjab during the 12\(^{th}\) term of the Assembly. The appellant then moved the High Court of Punjab and Haryana and challenged the validity of the Special Committee's report as well as the impugned resolution dated 10.9.2008. The High Court refused to stay the operation of the impugned resolution. Aggrieved by the High Court’s order, the appellant approached the Supreme Court by way of a petition seeking special leave to appeal.

\(^{219}\) MANU/SC/0298/2010

\(^{220}\) Ibid
The appellant made the following contentions: (a) the allegations of misconduct on part of the appellant were relatable to his executive actions, which in no way disrupted or affected the legislative functions of the Punjab State Assembly. (b) The legislative privileges were exercised to safeguard the integrity of legislative proceedings and the alleged misconduct did not threaten the same in any manner. (3) As the matter relating to the alleged misconduct had already been seized by the High Court, it was improper for the legislature to act in respect of subject matter, which was pending for adjudication, thereby violating the norm of not interfering in sub judice matters. (4) The legislative privileges were exercised to ensure the dignity and discipline of the House, the same could not encroach into the judicial domain by recording a finding of guilt and recommending punitive action in respect of the alleged misconduct. (5) He had not been given a fair opportunity to contest or meet the allegations against them and hence the proceedings of the Special Committee were violative of the principles of natural justice.

On the other hand, the respondent contended that the Punjab Legislative Assembly had legitimately exercised its privileges to recommend punitive action, since the alleged misconduct on part of the appellant had brought disrepute to the House as a whole. It was also argued that the appellant had committed a breach of privilege as well as contempt of the house since he had previously suppressed efforts of the legislature to inquire into the alleged misconduct.

In the light of the contentions made by the parties, the Court formulated following questions for its consideration:

I. Whether the alleged misconduct on part of the appellant and the petitioners warranted the exercise of legislative privileges under Article 194(3) of the Constitution?

II. Whether it was proper for the Punjab Vidhan Sabha to take up, as a matter of breach of privilege, an incident that occurred during its previous term?

III. Whether the impugned acts of the Punjab Vidhan Sabha violated the norms that should be respected in relation to sub judice matters?221

221 Ibid, Para 11
In respect of the first contention, the Court referred to its earlier decision in *Raja Ram Pal v. The Hon’ble Speaker, Lok Sabha* and held that the Parliament and the State Legislatures have power to expel their own member under Article 105 (3) and 194 (3) for protecting the integrity of their functions provided that the alleged misconduct by the member has a direct connection with his legislative functions. The members can also be expelled for acts committed by them ‘outside the four walls of the house’ having the effect of distorting, obstructing or diluting the integrity of legislative functions - For example, a legislator accepting bribe in lieu of asking questions or voting on the floor of the House. The Court, however, observed that the alleged misconduct of the appellant in the instant case did not have the effect of distorting, obstructing or diluting the integrity of legislative functions and the appellant's expulsion in the present case was beyond the legitimate exercise of the privilege power of the House. It was held that the act of recommending the appellant's expulsion through the impugned resolution could not be justified as a proper exercise of 'powers, privileges and immunities' conferred by Article 194(3); the allegations of wrongdoing in the present case pertained to an executive act and there was no conceivable obstruction caused to the conduct of routine legislative business.

Moreover, the Court cautioned that:

............expressions such as 'lowering the dignity of the house', 'conduct unbecoming of a member of the House' and 'unfitness of a member' are openly-worded and abstract grounds which if recognized, will trigger the indiscriminate and disproportionate use of legislative privileges by incumbent majorities to target their political opponents as well as dissidents.

In response to the second contention, the Court held that although the legislature has a power to inquire into acts and events that have taken place in the past including the executive decisions taken in the past, it cannot to punish those who have held executive office in the past under Article 194 (3). Responding to the third contention, the Court noted that ordinarily the content of legislative proceedings should not touch on *sub judice* matters and expressed its concerns over about the overreach into the judicial domain.

---

222 *Raja Ram Pal* (n 212)

223 Amarinder Singh (n 219) Para 38
The Supreme Court in this case has made it clear that the power of expulsion implicitly vested in the State Legislative Assemblies under Article 194 (3) is not an absolute power and the Court can, in an appropriate case, scrutinize whether the power of expulsion is exercised in proper manner or not. The scope of the said power has now been restricted by the court only to such cases of misconduct by the members, which have the effect of distorting, obstructing or diluting the integrity of legislative functions. The uncertainty and ambiguity about the nature and scope of the parliamentary privileges in India because of the non-codification of the privileges has been highlighted by this case. The Court has, once again, clarified that all the privileges enjoyed by the British Parliament cannot be automatically claimed by the Indian Legislative Bodies because 'Indian legislatures are controlled by a written constitution and hence they do not have an absolute power of self-composition, unlike the British House of Commons which is controlled by an unwritten constitution'.

The Court, by way judicial creativity has narrowed the scope of English law relating the Parliamentary Privileges in its application to the Indian Legislative Bodies including Parliament.

**VI. Power of Suspension**

Under Article 105 (3) and 194 (3), the Parliament and State Legislatures have inherited the power to suspend their Members, which was exercised by the House of Commons at the commencement of the Constitution. This power can be exercised by the said legislatures if any member is guilty of contempt of the house, breach of privilege or creating an obstruction in the proceedings of the House. In *Jai Singh Rath v. State of Haryana* 225, 4 members of the Haryana Legislative Assembly filed a writ petition in the High Court to challenge the proceedings of the Assembly during the course of which they were suspended for the disorderly bahaviour and prevented from attending the remainder of the session of the Assembly. The petitioners challenged the legality of their suspension from the service of the House, *inter alia*, on the grounds that: -

---

224 Ibid, Para 31

1) Under Rule 140 of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly authorized only the Speaker to suspend a member for disorderly conduct so the power to suspend a member having been vested in Mr. Speaker by law could not be exercised by the House under article 194 (3); By making Rule 104, the Haryana Legislative Assembly forever lost the power of suspension of a member of it as a measure of punishment for its contempt because of his disorderly conduct or disobedience of the Chair;

2) The Haryana State Legislature could not claim the power to suspend a member under Article 194 (3) of the Constitution as such power was inconsistent with the rights of the members given to them by Articles 189 and 194 (1) and the basic concepts of Parliamentary Government recognized by the Constitution;

3) Even if the Haryana Legislative Assembly had such a power, its exercise in the present case had been *mala fide* and amounts to an abuse of power and bad faith as that was done with the ulterior object of ensuring a majority for the ruling party.

In response to the first argument, the Court observed that unlike Sub-article (1) of Article 194, Sub-article (3) was not subject to the provisions of the Constitution and hence the powers and privileges so far given were complete and could not be controlled by any rules made under Article 208 (including Rule 140 in the instant case). The Court referred to *May’s Parliamentary Practice* and ruled that the British House of Commons had retained its inherent power to suspend the member as a measure of punishment for its contempt, in spite of the standing order (Standing Order No. 24) dealing with the matter of suspension. It was held that the argument on the side of the petitioners, that by making Rule 104 the Haryana Legislative Assembly forever lost the power of suspension of a member of it as a measure of punishment for its contempt because of his disorderly conduct or disobedience of the Chair, was untenable.

The Court also rejected the second argument based on Article 189 which gave a right of vote to a member in determination of questions before the House of Legislature of a State. It was held that the suspension of a member from the House in exercise of its

---

226 Article 89 provides that “Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by majority of votes of the members present and voting other than the Speaker or Chairman, or person acting as such”
power and privilege under Article 194 (3) was not causing any vacancy in the House in the sense in which the same was used in the remaining Sub-articles of Article 189. In this regard, the Court made the following observations:-

Suspension does not cause a vacancy in the House of Legislature, and it merely enforces absence from service of the House as a measure of punishment for contempt of the House, as in this case, on account of a member's disobedience and defiance of the Chair and for disorderly conduct. When such absence is enforced by the House in exercise of its power and privilege under Article 194 (3) then the right of vote is not taken away from that member but he is only placed in the same position as if he was not present in the House. What is guaranteed as a right of vote is to a member present in the House. 227

The Court further clarified that the right of freedom of speech in the House as referred to in Sub-article (1) of Article 194 was subject not only to the provisions of the Constitution [e.g. Power to punish for contempt under Article 194 (3)] but also to the Business Rules of a House of Legislature which required a member to obey the Chair and to conduct himself in the House in an orderly manner. It was held that the suspension of the petitioners was not illegal and so the jurisdiction of the Court with regard to the proceedings of the House was expressly barred by Article 212 (1).

As to the argument based on *mala fide*, the Court ruled that no motive can be attributed to the vote in the House of Legislature and if the House surpassed its constitutional limitations, its action would be open to question on the ground of unconstitutionality, but even then it would not be described as *mala fide*.

The power to suspend the members of the legislative bodies is derived by the Parliament and State Legislature under the second part of Articles 105 (3) and 194 (3) of the Constitution. The non-codification of the Parliamentary and Legislative Privileges, as required under first part of Articles 105 (3) and 194 (3), has resulted into absolute exercise of powers by the Legislative bodies in India. So far as the power to suspend a member of the legislature is concerned, there is no minimum or maximum period, for which the member may be suspended, is prescribed. Suspension of a member for long period may severely affect the right of the constituency people represented by the concerned member.

227 *Jai Singh Rathi* (n 225) Para 17
When a member of a legislative body is suspended for long/indefinite period, no vacancy is created in the constituency represented by such member and re-election cannot be held. This may violate the right of the representation of the people of the concerned constituency. If the legislature chooses to impose the penalty other than suspension (e.g. expulsion or imprisonment for contempt of the house) then no such situation will arise. The only solution to the problem is the codification of the privileges by the Parliament and State Legislatures. The codified law can regulate the power of suspension and it can also lay down the minimum and maximum period for which a member can be suspended. This aspect has been dealt in detailed manner in the following chapter.