PARLIAMENTARY PRIVILEGES AND JUDICIARY

The question of Parliament-court relationship often arises in privilege matters. This involves several postulates:

(1) Who, whether the court or the legislature, decides whether a particular privilege claimed by a House exists or not?

(2) When a privilege is held to exist, is a House the final judge of how, in practice, that privilege is to be exercised?

(3) Can the courts go into the question of validity or propriety of committal by a House for its contempt or breach of privilege?

(4) Can the courts interfere with the working of the Committee of Privileges?

In Britain, there has been a good deal of controversy and animosity in the past between the House of Commons and the courts on these questions. Difficulties arose because the parliamentary privileges are largely unmodified and are based on the non-statutory common law. There was a time in the British History when the position of the House of Commons had not been stabilized as it had to fight against the Monarch as well as the House of Lords for its-recognition, and the judges at times gave opinions which the House did not like. Therefore, controversies arose between the House and the courts.

In 1689, the House of Commons called two judges of the King’s Bench to its bar to explain their conduct and later these judges were ordered to be imprisoned. Their fault was that, seven years earlier, they
had ordered Jay to be released from the custody of the Sergeant at arms of the House\textsuperscript{1}.

The most notable controversy between the House of commons and the courts in a privilege matter was \textit{Stockdale V. Hansard} in the early nineteenth century\textsuperscript{2}.

The era of legislative-judiciary conflict in matter of privileges is now past in Britain. A balance between the two institutions has now been established along the following lines :-

(1) The courts recognize the common law privileges;

(2) A new privilege can be created for the House only by a law passed by Parliament and not merely by a resolution of one House;

(3) Whether a particular privilege claimed by a House exists or not is a question for the courts to decide. The courts have the right to determine the nature and limits of parliamentary privileges, should it be necessary to determine the same;\textsuperscript{3}

(4) When a privilege is recognized as being existent, the question whether it has been infringed or not in a particular set of circumstances is a question for the House to determine. The court do not interfere with the way in which the House exercises its recognized privileges.

The position, therefore, is that while the courts deny to the House of Commons the right to determine the limits of its own privileges, they allow it exclusive jurisdiction to exercise its privileges within the established limits.

\textsuperscript{1} Jay v. Topham, 12St. Tr. 821
\textsuperscript{2} Supra
\textsuperscript{3} Stockdale v. Hansard, (1839) 9 Ad. & E. I: Supra 104.
As regards committal by the House of Commons for its ‘contempt’ or ‘breach of privilege’, the present position appears to be that if the House mentions specific grounds for holding a person guilty of its contempt or breach of privilege, and the warrant ordering imprisonment is a speaking warrant, then the courts can go into the question whether in law it amounts to a breach of privilege; whether the grounds are sufficient or adequate to constitute “contempt” or “breach of privilege” of the House. But if the warrant putting the contemnor under arrest mentions contempt in general terms, but does not mention the specific grounds on which the House has held that its contempt has been committed, then the courts have nothing to go into, and they cannot question the same in any way. To this extent, therefore, the powers of the House would appear to be autocratic.

The point was clearly established in the case of Sheriff of Middlesex. The House of Commons confined the sheriff into custody: the warrant did not mention the facts constituting the contempt of the House. The court refused to issue the writ of habeas corpus to discharge the Sheriff from imprisonment saying that “if the warrant merely states a contempt in general terms, the court is bound by it.”

A very striking case of assertion of parliamentary power to commit for contempt occurred in Australia in 1955. The proprietor an the editor of the ‘Banstown Observer’ were imprisoned for breach of privilege of the Australian House of Representatives. The High Court of Australia refused to issue the writ of habeas corpus saying that it was not entitled to look behind the warrant which was conclusive of what stated, namely, that a breach of privilege had been committed.

4. (1840) 11 Ad. & E. 273. Also, Bradlaugh v. Gossett, supra, notes, 20 and 47.
The Privy Council characterized the High Court decision as “unimpeachable”. The House of Commons has power to commit any person for its contempt and if it issues a general warrant which does not state the grounds on which it regards its contempt having been committed, the courts would be helpless to do anything about the matter. The House of Commons thus has practically an absolute power to commit a person for its contempt, since the facts constituting the alleged contempt need not be stated by it on its warrant of committal and the courts would not go behind the same.

The right of committal through a general warrant can be used by the House to punish a person for its contempt for infringing what it regards as its privilege, even though the courts may not have accepted the same as such. This, means that ultimately it is the view of the House that will prevail in the matter of its privileges. It is thus quite possible that there may be two views as to a privilege of the House. The House may act upon one view while regulating its own proceedings and committing some one for contempt, while the courts may act upon another view when privileges arise in civil disputes.

In the words of KEIR and LAWSON, by conceding to the House of Parliament “the right of committing for contempt without cause shown, the courts have really yielded the key of the fortress, by giving them the power of enforcing against the world at large their own views of the extent of their privileges.”

The reason why the courts in Britain have not interfered with the House of Commons in privilege matters is that they have treated the House as a court and its warrant as that of a superior court. But the

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7. WADE and PHILIPS, op cit, 209.

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practice has been that a return has always been made when a person imprisoned under orders of the House has moved a petition for habeas corpus. The House accepts the summons from the courts and is represented there.

When the return sets out the general warrant of commitment issued by the House, the courts do not go behind the same as orders of the superior courts are never re-examined. Also, since 1689, there has not been a case of the House taking action against a party, his counsel, or a judge for moving or entertaining a habeas corpus petition. Under the Habeas Corpus Acts, the courts are bound to entertain petitions for habeas corpus, but the courts respect the general warrant of the House and treat it as conclusive answer to the rule nisi.⁹

So far as India is concerned, a House of Parliament may claim a privilege if – (i) the Constitution grants it specifically; or (ii) it has been created by a law of Parliament; or (iii) it was enjoyed by the House under Art. 105(3). This naturally brings the courts into the area of parliamentary privileges. When a question arises whether a particular privilege exists or not, it is for the courts to give a definitive answer by finding out whether it falls under any of the sources mentioned above.

Parliament has not passed any law defining its privileges, and the Constitution specifically grants only a few privileges. Therefore, in the main the question which arises is whether the privilege claimed by the House is one which was enjoyed by the House of Commons on January 26, 1950. This envisages that any privilege claimed by the House of Commons in the remote past but which has later fallen into disuse, cannot be claimed by any House in India, nor can it claim any new privilege

⁹. HIDAYATULLAH, op. cit., 27, 32.
which may be conferred on the House of Commons after January 26, 1950.

In a number of cases the courts have decided the question whether a particular privilege claimed by a House exists or not on the basis whether the House of Commons had enjoyed the same on January 26, 1950. Thus, in Keshav Singh the Allahabad High Court did assert that it was its duty to find out whether the privilege claimed by the House was a privilege enjoyed by the House of Commons on the date of commencement of the Constitution.

The matter was put in the right perspective by the Supreme Court in Searchlight I. On the one hand, the Court decided the general question whether a breach of privilege occurs when a newspaper prints a report on a member’s speech including the portions ordered to be expunged by the Speaker. The Court answered the question in the affirmative. But, on the other hand, when the question arose whether the expunged portion had been printed by the newspaper or not, the Court refused to express any opinion on this controversy saying that “it must be left to the House itself to determine whether there has, in fact, been any breach of its privilege”. Of course, when once it is held that a particular privilege exists, then it is for the House to judge the occasion and the manner of its exercise and the courts would not sit in judgment over the way the House has exercised its privilege.

Each House of Parliament in India has power to commit a person for its contempt. But the position remains vague on the question whether such committal is immune from judicial scrutiny or not.

11. AIR 1965 All 349; supra, note 90.
12. Supra, note 83.
The question whether courts can interfere with the power of a House to commit for its contempt arose most dramatically in 1964 in the *Keshav Singh case*,¹³ where the U.P. Legislative Assembly claimed an absolute power to commit a person for its contempt and a general warrant issued by it to be conclusive and free from judicial scrutiny.

The question however arises whether such a claim can be accepted in India in view of the fact that, unlike England, India has a written constitution containing Fundamental Rights, and the doctrine of judicial review of legislative action forms a part of the country’s constitutional jurisprudence. *Keshav Singh’s case* may be regarded as the high water mark of legislative-judiciary conflict in a privilege matter in which the relationship between the two was brought to a very critical point,¹⁴ and the whole episode was reminiscent of the conflict between the House of Commons and the judiciary in Britain in 1968 when two Judges were committed by the House.¹⁵

Keshav Singh printed and published a pamphlet against a member of the State Legislative Assembly. The House adjudged him guilty of committing its contempt and sentenced him to be reprimanded. On March 16, 1964, when the Speaker administered a reprimand to him, he behaved in the House in an objectionable manner. Accordingly, the House directed that he be imprisoned for seven days for committing contempt of the House by his conduct in the House at the time of his being reprimanded by the Speaker.

¹³. AIR 1965 SC 745.
¹⁴. A sort of controversy arose between Lok Sabha and the Supreme Court in 1969. Some remarks were made in the Lok Sabha against the Sankaracharya. A suit for damages against the members was filed in the Delhi High Court but was dismissed. An appeal was then filed in the Supreme Court. Notice of lodgement of the appeal was sent to the concerned members and the Speaker. This was debated in the Lok Sabha in Aug. 1969. The Speaker and advised the members concerned not to appear before the Court. The Court later explained the position saying that the notice of lodgement of an appeal was not a summons to appear before it.
¹⁵. Supra, note 95.
On March 19, 1964, Advocate Solomon presented a petition under Art. 226 to the Allahabad High Court for a writ of habeas corpus on behalf of Keshav Singh alleging that his detention was illegal as the House had no authority to do so; he had not been given an opportunity to defend himself and that his detention was mala fide and against natural justice.

The Court passed an interim bail order releasing Keshav Singh pending a full hearing of the petition on merits. Instead of filing a return to Keshav Singh’s petition, the House resolved pre-emptorily that Keshav Singh, Advocate Solomon and the two Judges of the High Court who had passed the interim bail order, had committed contempt of the House and that they be brought before it in custody.

The Judges moved petitions under Art. 226 in the High Court asserting that the resolution of the House was wholly unconstitutional and violated the provisions of Art. 211 [Art. 121 in case of Parliament],\(^{16}\) that in ordering release of Keshav Singh on the habeas corpus petition, the Judges were exercising their jurisdiction and authority vested in them as Judges of the High Court under Art. 226. A full Bench consisting of all the 28 Judges of the High Court ordered stay of the implementation of the resolution of the House till the disposal of the said petition.

Thereafter, the House then passed a clarificatory resolution saying that its earlier resolution had given rise to misgivings that the concerned persons would be decided only after giving an opportunity to explain to the Judges. The warrants of arrest against the two Judges were withdrawn, but they were placed under an obligation to appear before the House and explain why the House should not proceed against them for its contempt. The High Court again granted a stay order against the

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\(^{16}\) For Art. 226.
implementation of this resolution. Thus, there emerged a complete legislative–judiciary deadlock.

At this stage, the President of India referred the matter to the Supreme Court for its advisory opinion under Art. 143. By a majority of 6 to 1, the Court held that the two Judges had not committed contempt of the legislature by issuing the bail order. The judges had jurisdiction and competence to entertain Keshav Singh’s petition and to pass the orders as they did. The Assembly was not competent to direct the custody and production before itself of the advocate and the judges. The keynote of the Court’s opinion is the advocacy of harmonious functioning of the three wings of the democratic state, viz., legislature, executive and the judiciary. The Court emphasized that these three organs must function “not in antinomy nor in a spirit of hostility, but rationally harmoniously.” Only a harmonious working of the three constituents of the democratic state will help the peaceful development, growth and stabilization of the democratic was of life in this country.

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17. Question framed -

The Presidential reference framed the following five questions for the Court’s advisory opinion.

(i) The first question in substance was whether the High Court was competent to entertain and deal with a petition for habeas corpus, and to issue bail, when the petitioner had been committed to imprisonment by the assembly for the infringement of its privileges and for its contempt.

(ii) The second question in substance was whether by ordering release of Keshav Singh on bail the judges had committed contempt of the Assembly.

(iii) The Third question was whether it was competent for the Assembly to direct the arrest of the Judges and their production before the House for rendering explanation for its contempt.

(iv) The fourth question was whether the full bench of the Allahabad High Court was competent to pass interim orders restraining the Speaker and others, from implementing the orders of the Assembly against the Judges and the advocate.

(v) Whether a High Court Judge dealing with the petition challenging the order of a House of the State Legislature imposing punishment for contempt thereby commits contempt of the Legislature. And, also, whether in case it is held that the Judge does commit contempt of the Legislature. And, also, whether in case it is held that the Judge does commit contempt in the aforesaid situation, is the Legislature competent to take proceedings against such Judge and punish him for contempt?
Article 211 debars the State Legislature [Art. 121 in case of Parliament]\(^\text{18}\) from discussing the conduct of a High Court Judge. Therefore, on a party of reasoning, one House, a part of the Legislature, cannot take any action against a High Court Judge for anything done in the discharge of his duties. The existence of a fearless and independent Judiciary being the basic foundation of the constitutional structure in India, no Legislature has power to take action under Art. 194(3) or 105(3) against a Judge for its contempt alleged to have been committed by the Judge in the discharge of his duties.

The Court also held that the right of the citizens to move the judicature and the right of the advocates to assist that process must remain uncontrolled by Art. 105(3) or Art. 194(3). It is necessary to do so for enforcing the Fundamental Rights and for sustaining the rule of law in the country. Therefore, a House could not pass a resolution for committing a High Court Judge for contempt.

The Court rejected the contention of the Assembly that it had absolute power to commit a person for its contempt and a general warrant issued by it would be conclusive and free from judicial scrutiny. The Court declared that the House of Commons enjoyed the privilege to commit a person for contempt by a non-justiciable general warrant, as a superior court of record in the land and not as a Legislature. Therefore, Parliament and the State Legislatures in India, which have never been courts, cannot claim such a privilege.

Even if the House of common has this privilege as a legislative organ, Parliament and the State Legislatures in India cannot still claim it because of the existence of the Fundamental Rights and the doctrine of judicial review, particularly, Art. 32, which not only empowers the

\(^\text{18}\) Supra, 101.
Supreme Court but imposes a duty on it to enforce Fundamental Rights,\textsuperscript{19} and Art. 226 which empowers the High Court to enforce these rights.\textsuperscript{20} Thus, a court can examine an unspeaking warrant of the House to ascertain whether contempt had in fact been committed. The legislative order punishing a person for its contempt is not conclusive. The court can go into it. The order can be challenged, for instance, under Art. 21, one of the Fundamental Rights which is applicable to the area of a legislative privileges, on the ground that the act of the legislature is mala fide, capricious of perverse.\textsuperscript{21}

The \textit{Keshav Singh} case represents the high-water mark of legislature-judiciary conflict in a privilege matter in India. The relationship between the two institution was brought to a very critical point. However, the Supreme Court’s opinion in Keshav Singh seeks to achieve two objectives.\textsuperscript{22}

First and foremost it seeks to maintain judicial integrity and independence, for if a House were to claim a right to question the conduct of a judge, then judicial independence would be seriously compromised; the constitutional provisions safeguarding judicial independence largely diluted and the rule of law neutralized. The Constitution has sought to preserve the integrity of the judiciary, and by no stretch of imagination

\textsuperscript{19} Art. 32, \textsuperscript{20} Art. 226. \textsuperscript{21} Art. 21, \textsuperscript{22} D.C. JAIN, JUDICIAL REVIEW of PARLIAMENTARY PRIVILEGES; FUNCTIONAL RELATIONSHIP OF COURTS AND LEGISLATURES IN INDIA, 9 JILI 205 (1967); P.K. TRIPATHI, MR. JUSTICE GAJENDRAGADKAR AND CONSTITUTIONAL INTERPRETATION, 8 JILI 479, 532 (1966); D.N. BANERJEE, SUPREME COURT ON THE CONFLICT OF JURISDICTION BETWEEN THE LEG. ASSS. AND THE HIGH COURT OF U.P. AN EVALUATION (1966); FORRESTER, PARLIAMENTARY PRIVILEGE – AN INDIAN CONSTITUTIONAL CRISIS, 18 Parl. Affairs 196 (64-65); IRANI, COURT AND THE LEGISLATURE IN INDIA, 14 INTERNATION AND COMPARATIVE LAW QUATERLY, 950, 950; M.P. JAIN, CONTROVERSY BETWEEN THE JUDICIARY AND THE LEGISLATURE, I Conspectus, 47 (1965); SEERVAI, CONSTITUTIONAL LAW OF INDIA, 1175-1184 (1976).
could this be compromised in any way. The Supreme Court has sought to promote this value through the Keshav Singh pronouncement.

In the second place, the Court seeks to concede to the House quite a large power to commit for its contempt or breach of its privilege for, even though the judiciary can scrutinize legislative committal for its contempt, in actual practice, this would not amount to much as the courts could interfere with the legislative order only in very extreme situations.

As has already been seen, Fundamental Rights guaranteed by Arts. 19(1)(a) to 19(1)(g) do not control legislative privilege. Art. 21 also is not of much importance for the proceedings before the Committee of Privileges of a House are held under the rules of procedure made by the House under its rule-making powers and this would be considered as procedure established by law. It appears doubtful if the courts would interfere when the rules of the House specifically deny a hearing to the person charged for contempt in certain situations, e.g., when the contempt or breach of privilege is committed in the actual view of the House (as happened in Keshav Singh’s case) for the rules will be applied as procedure established by law under Art. 21.

As a matter of practice, the Committee of Privileges invariably conducts an inquiry and gives the party concerned an opportunity to defend himself before it decides the matter. The charge of mala fides against the House is extremely difficult to substantiate and later the Allahabad High Court disposing of Keshav Singh’s case \(^{23}\) refused to infer mala fides in the Assembly merely from the fact that the person charged belonged to a political party different from the majority party in the House. Also, the High Court held, dismissing Keshav Singh’s petition on merits, that whether there had been contempt of the House or not in a

\(^{23}\) Keshav Singh V. Speaker, Legislative Assembly, AIR 1965 All. 349;
particular situation is a matter for the House to decide and the court would not go into the question of propriety or legality of the commitment. Nor would the court go into the question whether the facts found by the Legislature constitute its contempt or not and the court cannot sit in appeal over the decision of the House committing a person for its contempt.

The High Court, however, did go into the question whether the act of the House in the specific situation was mala fide or whether there was an infringement of Art. 21, and held in the negative. The sum and substance of the discussion is that although the judiciary has asserted its power to interfere with a legislative committal of a person for its contempt, yet in practice, the grounds on which the judiciary can do so are extremely narrow and restricted. In effect, therefore, it is difficult to get much of a relief from the court when a person is committed by a House for its contempt.

The Supreme Court’s opinion in the *Keshav Singh case*, it was suggested by the Speakers of the State Legislatures and Lok Sabha, denied to a House the power to punish for its contempt. This, however, is not a correct view to take of the Supreme Court opinion. It does nothing of the kind. It only denies to a House a power to commit the judges for its contempt; it also denies that a House is free from all Fundamental Rights in a matter of privilege.

These are unexceptionable principles. The first is necessary to maintain the integrity of the judiciary. The second can be justified on the ground that if a law of the Legislature is not immune from the Fundamental Rights, why should an act of only one part of the Legislature claim such an immunity. But, even in this respect, as discussed above, courts have been very circumspect for the
susceptibilities of the Legislatures and have held a number of Fundamental Rights inapplicable to privilege matters.

Under Art. 21, courts can scrutinize the legislative action on the ground of mala fides or perversity, but these grounds are very difficult to substantiate. The courts are very reluctant to interfere with the internal working of the Legislature.\textsuperscript{24} It appears difficult to argue that even such an extreme ground should not be available to challenge a legislative action. There may be an exceptional case in which a House has exercised its powers not to uphold its dignity but with an ulterior motive, and if it can be established then the courts should be able to say so. After all, a House is a politically oriented organ; it is fragmented in various political parties and there is possibility, however remote, that the power of the House may be used by the majority party for political aggrandizement.

As the law relating to legislative privileges stands today, a House has power to decide whether or not its contempt has been committed; courts would not interfere with its internal working, or when it imposes a punishment short of imprisonment; in case of imprisonment, courts would interfere only in case of mala fides or perversity. On the whole, powers of the House are so broad as to even enable it to enforce its own views regarding its privileges. The courts have exhibited an extreme reluctance to interfere with the proceedings of a House in privilege issues. The review power claimed by the Supreme Court in Keshav Singh is extremely restrictive and it would be extremely difficult in practice to get much of a relief from the courts in case of committal by a House for its contempt.

Even in the \textit{Keshav Singh case}, the Allahabad High Court considering the petition on merits, after the Supreme Court’s opinion\textsuperscript{24. Supra, 23.}
threw it out and refused to interfere with the judgment of the House.\textsuperscript{25} The High Court rejected the argument that the facts found by the Assembly against the petitioner did not amount to contempt of the Assembly. The court refused to go into the question of the “correctness, propriety or legality of the commitment”. The court observed:

“This court cannot, in a petition under Art. 226 of the Constitution, sit in appeal over the decision of the Legislative Assembly committing the petitioner, for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not”.\textsuperscript{26}

The High Court ruled that neither there was violation of Art. 21 nor of natural justice because the legislature had formulated the rules of procedure to investigate complaints of breach of privileges.

The petitioner had also argued that his committal by the Assembly was mala fide as the Assembly was dominated by the Congress party which was hostile to the Socialist Party of which the petitioner was a leading member. The High Court refused to infer mala fides from these facts. There was nothing on the record to establish mala fides on the part of the Assembly in committing the petitioner. “The mere fact that the person committed for contempt belongs to the party other than the majority parity in the Legislature is no indication of the fact that the Assembly acted mala fide.”\textsuperscript{27}

The above observation shows how reluctant the courts are to impute mala fides to the Legislative Assembly in the matter of committal by it of a person for its contempt. Reference may also be made in this

\textsuperscript{25} Supra, note 23.
\textsuperscript{26} Supra, note 23.
\textsuperscript{27} Ibid,
connection to Searchlight I.\textsuperscript{28} In that case, an allegation of mala fides was raised by the petitioner against the Committee of Privileges. The Supreme Court ruled that the charge was not made out. The Court observed on this point.\textsuperscript{29}

“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. Further the business of the Committee is only to make a report to the House and the ultimate decision will be that of the House itself. In the circumstances, the allegation of bad faith cannot be readily accepted.”

The courts have taken the view that as a House has power to initiate proceedings for breach of its privileges, it must be left free to determine whether in fact breach of its privileges has occurred or not.

The courts have thus refused to give any relief at the inquiry state in a privilege matter by the Privileges Committee of a House.\textsuperscript{30}

The courts do not like to interfere with the proceedings of the House, or the Committee of Privileges in the matter of adjudication whether the privilege of the House has been infringed.

Thus, in Searchlight I,\textsuperscript{31} the Committee of Privileges, Bihar Legislative Assembly, served a notice on the petitioner calling upon him to show cause why appropriate action should not be recommended against him for breach of privilege of the Speaker and the Assembly. The petitioner came to the Supreme Court under Art. 32 seeking a writ of prohibition against the committee restraining it to proceed further in the

\textsuperscript{28} Supra, note 23.
\textsuperscript{29} AIR 1959 SC at 412.
\textsuperscript{30} Jagdish Gandhi V. Legislative Council, AIR 1966 All. 291. L.N. Phukan V. Mohendra Mohan, AIR 1965 Ass. 75.
\textsuperscript{31} M.S.M. Sharma V. S.K. Sinha, AIR 1959 SC 395: 1959 Supp (1) SCR 806 ;
matter. The Court rejected the petition holding that it was for the House to decide on the advice of the Committee of Privileges whether there was a breach of privilege or not in the circumstances of the case.

Again, in Subramanian, the Madras High Court refused to issue a writ of prohibition against the Committee of Privileges. In pursuance of a resolution passed by the Assembly, the Speaker had issued a notice to Subramanian to show cause why he should not be held to have committed contempt of the House. Subramanian filled a petition in the High Court under Art. 226 for the issue of a writ of prohibition restraining the Speaker from proceeding further in the matter. Refusing to interfere in the matter at this stage saying that the court was concerned, “purely and simply, with a notice to the petitioner to show cause….“ “[I] it is clearly premature, and even impossible, to judge now, upon the matter of the alleged contempt itself.” The petitioner was asking the court to issue prohibition restraining the Speaker from proceeding further virtually on the “ground of absence of an ab initio jurisdiction”.

This was merely the state of assumption of jurisdiction. Therefore, the court refused to issue the writ as Art. 194(3)[or Art. 105(3)] invests the Speaker empowered by a resolution of the legislature, “with the right to call upon a third party, like the petitioner, to show cause why he should not be held to have committed a breach of the privilege of the Legislature, by way of contempt.” A writ of prohibition need not be issued to stifle the very exercise of that jurisdiction.”

There have been frequent conflicts between the courts and the legislatures in the matter of privileges. This has happened much more frequently in the case of the State Legislature rather than in the case of

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32. C. Subramanian V. Speaker, Madras Legislative Assembly, AIR 1969 Mad. 10.
33. Ibid at 12.
34. Ibid at 13.
35. For Writ of Prohibition,
House of Parliament. These cases are taken note of in the discussion under Art. 194.\(^\text{36}\) One or two cases may however be mentioned here to illustrate the point.

In Tej Kumar Jain, a suit for damages was filed in the Delhi High Court against some members of Lok Sabha for remarks made by them on the floor of the House against Sankaracharya, but the court dismissed the suit. Thereafter, an appeal was filled in the Supreme Court against the High Court decision. A notice of judgment of the appeal was sent to the concerned members and the Speaker advising them to appear before the Supreme Court either in person or by an advocate.

At this stage, a question of privilege was raised in the House and the matter was debated in Aug., 1969. The Speaker advised the members concerned not to appear before the Supreme Court otherwise they may themselves be guilty of breach of privilege of the House. Later while delivering its decision in the case, the Court explained the position. The Court stated that as the suit for damages was for Rs. 26,000, an appeal to the Supreme Court under Art. 133 on the High Court granting a certificate for the purpose.\(^\text{37}\) The appellant has to take out notice of judgment of appeal to inform the respondents so that they may take action considered appropriate or necessary. Thereafter, the Court could proceed to hear the appeal. “The notice which is issued is not a summons to appear before the Court. It is only an intimation of the fact of the judgment of the appeal. It is for the party informed to choose whether to appear or not”.\(^\text{38}\)

A summons is different from such a notice. If a summons is issued to a defendant and he does not appear, the Court may proceed ex parte

\(^{36}\) Infra 23
\(^{37}\) Infra 23 for Appellate Jurisdiction of the Supreme Court.
\(^{38}\) AIR 1970 SC at 1575.
and may even regard the plaintiff’s claim to be admitted. This consequence does not flow in case of notice of judgment of appeal.\(^{39}\) After this clarification, the matter was discussed again by the House. The Speaker then ruled that whether the Court issued a summons or a notice, it made no difference, as ultimately the privileges of the House were involved.

This shows how jealously the House seeks to defend its own privileges and to be the final judges thereof and does not brook any judicial interference in the respect. In the State; the House have often asserted that they are the sole judge of their privileges. For example, in Keshav Singh, to which a reference has already been made, when hearing was being held before the Supreme Court on the presidential reference under Art. 143, the Assembly, whose claim to the privilege was sub-judice, did not want to submit to the Court’s jurisdiction on the plea that the House, and not the Court, is the final judge of its own privileges. The U.P. Legislative Assembly made it clear to the Supreme Court that by appearing in the hearing on the reference, the House was not submitting to the Jurisdiction of the Court in respect of the area of controversy and that it was not submitting “its powers, privileges and immunities” for the opinion and decision of the Supreme Court.

The House asserted that it was the sole and exclusive judge of its won powers, privileges and immunities and its decisions were not examinable by any other court or body; and whatever the Court may say would not preclude the House from deciding for itself the points referred to the court under reference. The House maintained; “it is the privilege of the House to construe the relevant provisions of Art. 194(3) and determine for itself what its powers privileges and immunities are”.

\(^{39}\) Ibid.
This position adopted by the houses in the matter of their privilege does not appear to be tenable. When the question arises whether a recognized and established privilege of the House has been breached or not in the context of the specific factual situation, it is for the House to decide the question. The courts do not interfere with such a decision of the House except in the rare case of mala fides etc.

But when the question is whether a privilege exists or not, then it appears that it is a matter for the courts to decide, for a privilege is claimed by a House under a constitutional provision. It is the constitutional function of the Supreme Court and the High Court to interpret constitutional provision. No legislature can claim any such power.

A House cannot claim an entirely new privilege even in Britain, this position is recognized. In India, the case for the courts is even stronger. India is different from Britain as in India legislative privilege flow the written constitution, whereas in Britain, the same flow from common law.

In Britain, the rule that the House is the final judge of its privileges arose when the House of Commons was locked in a struggle with an arbitrary Monarch, and had little confidence in the judges who then held office during the Crown’s pleasure. That period was very different from the present position prevailing in India when legislative privileges are claimed mostly against the people, especially, the press. A democratic House functioning under a written constitution cannot claim uncontrolled power to be a judge in its own cause.

In a written constitution, the interpretation of the constitution is ultimately in the hands of the courts. In Britain, the House of Commons

40. Infra, under “Constitutional Interpretation”.

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always files a return in the court whenever committal by it is in question.\textsuperscript{41} While the House has not relinquished expressly its claims to be the sole judge of the extent of its privileges, in practice, judicial rulings on these matters are treated as binding.\textsuperscript{42}

In 1958, the House of Commons took the unprecedented step of passing a resolution calling on the government to request the Privy Council to advise on the interpretation of the Parliamentary Privileges Act of 1770.\textsuperscript{43} In other privilege matters where an action is not against the House, but where a question may arise as regards the privilege of the House, on the request of the court, the Solicitor-General has appeared as amicus curiae to throw light on the issue involved.

A democratic legislature and an independent judiciary are two pillars of a democratic system. Both have to function in co-operative spirit to further the cause of rule of law in the country.

In \textit{P.V. Narsimha Rao V. State},\textsuperscript{44} the Supreme Court has held that the Members of Parliament accepting bribe and voting are entitled to the protection of Article 105(2) and are not answerable in a Court of law therefore but the bribe-givers Members of Parliament are not entitled to the protection of Article 105(2) and may be prosecuted therefore.\textsuperscript{45}

The Court has observed further that a Member of Parliament holds an office and is required to perform public duties and therefore he is a public servant and falls within the ambit of sub-clause (viii) of Clause (c) of Section 2 of the Prevention of Corruption Act, 1988. The Court has observed that a Member of Parliament has to be treated as a public servant for the purposes of Prevention of Corruption Act, 1988, even

\textsuperscript{41} ENID CAMPBELL, PARLIAMENTARY PRIVILEGES IN AUSTRALIA, 9 (1966).
\textsuperscript{42} Ibid, 6.
\textsuperscript{43} In re Parliamentary Privilege Act, 1770, [1958] AC 331.
\textsuperscript{44} AIR 1998 SC 2120.
\textsuperscript{45} Ibid
though there is no authority who can grant sanction for his prosecution under Section 19(1) of the said Act of 1988.

The case relates to Article 105 of the Constitution of India and also to certain provision of the Prevention of Corruption Act. The facts of the case are as follows :-

In the General Election for the 10th Lok Sabha held in 1991, the Congress (I) Party emerged as the single largest party and it formed the Government with P.V. Narsimha Rao as the P.M. In the Mansoon Session of Lok Sabha in July, 1993 a ‘No-confidence motion’ was moved against the Government. The Congress (I) Party was short of 14 members for simple majority. The motion was put to vote and was defeated.

The complaint was made that certain Members of Parliament entered into criminal conspiracy to defeat the no-confidence motion by bribing certain Members of Parliament. The Members were punished by the Special Judge and the High Court. The appeal was preferred to the Supreme Court against the order of the High Court. The main issues involved were as to whether Article 105(2) of the Constitution confers any immunity on the Member of Parliament from being prosecuted in a Court for the offence involving offer or acceptance of a bribe an whether a Member of Parliament cannot be prosecuted under the Prevention of Corruption Act because he is not public servant under Section 2(c) of the said Act and there is not authority to grant sanction for his prosecution for the offences mentioned under Section 19 of the Act.

The majority held that the alleged bribe-takers Members of Parliament who voted on the no-confidence motion are entitled to the immunity from criminal prosecution for the offences of bribery and criminal conspiracy conferred on them by Article 105(2) of the Constitution. The majority also held that a Member of Parliament holds
an office which involves the performance of public duties and therefore he is a public servant. As per the majority view a Member of Parliament has to be treated as a public servant for the purposes of the Prevention of Corruption Act, 1988, even though there is no authority who can grant sanction for his prosecution under Section 19(1) of the said Act. The majority has also opined that Lok Sabha may proceed against the bribe-takers for breach of its privileges or contempt.

Article 105(2) provides that 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 liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. On the basis of these provisions the Court held that the bribe-takers MPs who have voted in Parliament against no-confidence motion are not punishable under the Prevention of Corruption Act.

The majority view that the bribe-takers MPs are entitled to the protection of Article 105(2) does not appear to be sound and correct. The offence was committed outside the House. While holding the public office they demanded and accepted bribe and the conspiracy as to it was committed outside the House and therefore they were not entitled to the Protection of Article 105(2).

The Court has observed that Section 16 of the Contempt of Courts Act does not apply to the Judges of the Court of Record. It applies only to the Judges of the subordinate judiciary. Consequently, a Judge of the High Court or Supreme Court cannot be held liable for contempt of Court. It is respectfully submitted that this view is not very sound. Since the object of the contempt law is not to protect the Judge personally but to safeguard the dignity of the seat of Justice the Judge who lowers the seat

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of justice in such a manner that it shakes the confidence of the people in the administration of Justice should also be held liable for the contempt Court.

It is notable that the privilege from arrest is confined to civil proceedings only. This indicates that the Constitution-makers have never intended to provide the MPs the immunity from criminal proceedings. The act of criminal conspiracy to give bribe or to take bribe was a criminal offence and therefore the MPs may be prosecuted and punished and they cannot be allowed the protection of Article 105(2).

The protection of Article 105(2) is available only when the Member of Parliament performs his functions as a member. Taking the bribe or giving the bribe does not fall within the categories of their function as Members were not entitled to protection of Article 105(2).

The Constitution-makers has made provisions for the establishment and protection of rule of law in India and therefore it may be concluded that they has never intended to create the Members of Parliament as super class above the law. Allowing such conduct like taking or giving bribe will be injurious to the democracy and rule of law which are considered parts of the basic structure of the Constitution.

On this issue the minority view appears to be correct and pragmatic. The minority view is that the object of immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of Parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basic structure of the Constitution. An interpretation of the provisions of Article 105(2) which would enable a member of Parliament to claim immunity from prosecution in criminal Court for an offence of bribery in connection with
anything said by him or a vote given by him in Parliament or any of the committee thereof and thereby place such Members above the law would not only be repugnant to healthy functioning of Parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the Constitution.

According to the Minority view the expression “in respect of” precedes “the words, “anything said or any vote given” in Article 105(2). The words “anything said or any vote given” can only mean speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given.

The offence of bribery is complete with the acceptance of the money or on agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. Similarly the offence of criminal conspiracy would be committed if two or more persons enter into an agreement to commit the offence of bribery. The criminal liability incurred by a Member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner, thus, arises independently of the making of the speech or giving of vote by the Member and the said liability cannot, therefore, be regarded as a liability in respect of anything said or any vote given in Parliament.

The minority view is that the words “in respect of” in Article 105(2) have to be construed as arising out of; so construed the immunity conferred under Article 105(2) would be confined to liability that arises out of as is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the
vote that has been given is an essential and integral part of the cause of action for the proceedings given rise to the liability.

The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member of Parliament even though it may have a connection with the speech made or the vote given by the Members if such an act gives rise to a liability which arises independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Member in parliament. The liability for which the immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament.

The majority view that the bribe-takers Members of Parliament are entitled to the protection of Article 105(2) requires to be modified by the competent Bench of the Supreme Court.

In *P.V. Narsimha Rao V. State*, the Supreme Court has held that the freedom of speech that is available to Members of Parliament under Article 105(1) is wider in amplitude than the right to freedom of speech and expression guaranteed under Article 19(1)(a) since the freedom of speech under Article 105(1) is not subject to the limitation contained in Article 19(2).

Raja Ram Pal vs. Hon’ble Speaker, Lok Sabha And Others46

A private channel had telecast a programme on 12-12-2005 based on sting operations conducted by it depicting 1 MPs of the House of People (Lok Sabha) and one of the Council of States (Rajya Sabha)

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accepting money, directly or through middlemen, 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 the media. The Presiding officers of each House of Parliament instituted inquiries through separate committees. Another private channel telecast a programme on 19-12-2005 alleging improper conduct of another MP of Rajya Sabha in relations to the implementation of the Member of Parliament Local Area Development Scheme (“MPLAD Scheme”). This incident was also referred to a committee.

The report of the inquiry concluded, inter alia, that the evidence against the 10 Members of Lok Sabha was incriminating; 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 allegation 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 that the House can impose punishment in the nature of admonition, reprimand, withdrawal from the House suspension from service of the 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 from 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.

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 Members of Parliament and their continuance as MPs was untenable. On the same day i.e. 23312.2005, the Lok Sabha Secretariat issued the impugned notification notifying the expulsion of those MPs with effect from the same date. In the present writ petitions/transfer cases, the expelled MPs challenged the constitutional validity of their respective expulsions.

Almost a similar process was undertaken by Rajya Sabha in respect of its Member. The matter was referred to the Ethics Committee of Rajya Sabha. As per the majority report, the Committee found that the Member had accepted money for tabling questions 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 Committee as to the factual finding expressed the opinion that in view, amongst others, of the divergent opinions regarding the law on the subject in judgments of different High Courts, to which confusion was added by the Ruled of Procedure inasmuch as Rule 297(d) did not provide for expulsion as one of the punishments there was a need for clarity to rule out any margin of error and thus there was a necessity to seek the opinion of the Supreme Court under Article 143(1) of the Constitution.
The report of the Ethics Committee was adopted by Rajya Sabha concurrings with the recommendation of expulsion and on the same date i.e. 23.12.2005, a notification notifying expulsion of the Member from membership of Rajya Sabha was issued with immediate effect.

The case of the petitions in Writ Petition (C) No. 129 of 2006 arose out of different, though a 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 19-12-2005. The report 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 conclusion that the conduct of the Member amounted to violation of the code of conduct for Member of Rajya Sabha and it was immaterial whether and money changed hands or not or whether any money changed hands or not or whether any commission was actually paid or not. It was found that the Member had not only committed a gross misdemeanor but by his conduct he had also impaired the dignity of the House and its Members and acted in a manner which was 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 had forfeited his rights to continue as Member and, therefore, recommended his expulsion from the membership of the House.

Rajya Sabha accepted the recommendations of the Ethics Committee and a motion agreeing with the recommendation was adopted.
12-3-2006 thereby expelling the Member from the membership bringing to and end his membership. On the same date a notifications was issues y Rajya Sabha Secretariat. The two Members of Rajya Sabha also challenged the constitutional validity of their expulsions.

It was the contention of the petitioners. Inter alia, that the impugned action on the part of each House of Parliament expelling them from the membership suffered from the vice of mala fides as the decision had already been taken to expel them even before examination of the evidence. In this context they referred, inter alia, to the declaration on the part of the Hon’ble Speaker Lok Sabha on the floor of the House on 12-12-2005 that “nobody would be spared”. The contention was that the inquiries were a sham and the matter was approached with a predetermined disposition, against all the basic cannon of fair play and natural justice.

It was further contended, inter alia, by the petitioner that the circumstances did not warrant the exercise by the House 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 petitioners referred repeatedly to the evidence, in particular, of one Aniruddha Bahal as adduced before the Inquiry Committee of Lok Sabha wherein he conceded certain financial gains on account of arrangements with the television channels for telecast of the programme in question.

The question that arose before the Supreme Court were:

1. Does the Supreme Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privilege and immunities of the legislatures and its Members?
2. If the first question is answered in the affirmative, can it be found that the power and privileges of the legislatures in India, in particular with reference to Article 105, include the power of expulsion of its Members?

3. In the event of such power of expulsion being found, does the Supreme Court have the jurisdiction to interfere in the exercise of the said power or privilege conferred on Parliament and its Member of committees and, if so, is this jurisdiction circumscribed by certain limits? In other words if the power of expulsion exists, is it subject to judicial review and if so, the scope of such judicial review.

Answering all the questions in the affirmative and dismissing the writ petitions and transfer cases, the Supreme Court.

Parliamentary privilege, though not part of the law of the land, is to a certain extent an exemption from the ordinary law. The power of expulsion can be claimed by the Indian legislatures, that is Parliament and the State Legislature, as one of the privileges inherited from the House of Commons through Article 105(3) and Article 194(3).

The powers, privileges and immunities of Parliament under Article 105(3) are other than those covered by the earlier two clauses of Article 105. Powers, privileges, etc. under Article 105(3) have thus far not been defined by Parliament by law, inasmuch as there is no law enacted till date that can be referred to as cataloguing the power, privileges and immunities of each House of Parliament and of their Members and committees. This consequence leads to continuity of the life of the second part of Article 105(3) to trace the powers, privileges, etc., available to Indian legislatures with reference to the powers, privileges and immunities recognized as vesting in the House of Commons of
Parliament of the United Kingdom as on the date of commencement of the Constitution of India, that is 26-1-1950.

The terms “vacancy” “disqualification” and “expulsion” 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, is unworthy of membership. While disqualification operates to prevent a candidate from reelection, expulsion occurs after the election of the Members and there is not 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 anyone of the several possible reasons which prevent the Members from continuing membership, for example disqualification, death or expulsion.

While these article (Articles 101 and 102) 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 none of them being “subject to the provisions of the Constitution”, it is impossible to accord to one superiority over the other.

While Article 103 relates to disqualifications prescribed in Article 102, the Tenth Schedule pertains to the disqualifications on account of defection. 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 hi “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.
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 for the constitution or composition which undoubtedly is not possessed by the 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. Suspension or expulsion 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.

The word “disqualified” means to “make ineligible” or debarred. It also means divested or deprived of rights, powers or privileges. The term “expels 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 or continuing as a Member.

Where provision is made in the Constitution for disqualifications and vacancy, there is no question of exercising any inherent or impelled or unwritten power of “expulsion”.

The Constitution thus expressly enumerates certain grounds of disqualifications [sub-clauses (a) to (d) of clauses (1) and (2) of Article 102]. It has also permitted Parliament to add disqualifications, by making a law. Passing a resolution by one House, is not course, making a law.
In the case of Members of Parliament, the Constitution has consciously used the word disqualification, both for “being chosen as a 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.

An analysis of Article 101 shows that the Constitution-makers provided specifically for three types of vacancies:

(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 Parliament [vide clause (2) and (3) of Article 101].

(iii) Occurrence of vacancy, on a declaration by the House [vide clause (4) of Article 101].

Article 105(3) opens with the words “in other respects”. The provision for “powers, privileges and immunities” in Article 105(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, Article 105(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 Article 105(3). It is not intended to provide for the matters relating to nomination/election, term of office, qualifications, disqualifications/ cessation, for which express provision are already made in Article 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 clauses (1) and (2) of Article 105. By no stretch of imagination, can the power to expel a Member by considered as
an “incidental” matter. If such a power was to be given, it would have been specifically mentioned.

Hence there is no power of expulsion in Parliament, either inherent or traceable to Article 105(3), Expulsion by the House will be possible only if Article 102 or Article 101 is suitable amended or if law is made under Article 102(1) (e) enabling the House to expel a Member found unworthy or unfit of continuing as a Member.

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.

Shekhar Tiwari case

This writ petition has been filed by a sitting member of Uttar Pradesh Legislative Assembly who is detained in prison facing criminal charge under Sections 323, 342, 457, 364, 302, 201, 120-B IPC and 7th Criminal Law Amendment Act praying for a writ of mandamus commanding the respondents to permit the petitioner to participate in the session of Uttar Pradesh Legislative Assembly. Brief facts of the case necessary for deciding the controversy raised in the writ petition are: The petitioner contested the general election of Legislative Assembly from the State of U.P. in the year 2007 as a ruling party candidate from Auraiya Sadar Constituency No.285 and was declared elected. On 24/12/2008, an F.I.R. was lodged by one Smt. Shashi Gupta wife of Manoj Kumar Gupta an Engineer working with the State Government under Sections 323, 342, 457 and 364 I.P.C. with the allegation that in the intervening night three persons came at their residence and had beaten the husband of the petitioner and had abducted

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him. Police after investigation submitted a charge-sheet against several other persons for charges of murder and criminal conspiracy. Petitioner was arrested by Police Station Akbarpur and was lodged in jail.

The petitioner claims that he is still a Member of Legislative Assembly of U.P. from Constituency No. 285 and his seat is not vacant under Article 190 of the Constitution of India. Petitioner further claims that he is not subject to any disqualification for being member of State Assembly of U.P. as mentioned under Article 191 of the Constitution of India. The membership of the petitioner as M.L.A. has not been suspended till date. A notification dated 14/1/2009 was issued by the Secretariat, Vidhan Sabha, U.P., Lucknow for holding proceedings of Legislative Assembly for discussion and passing of demands for Second Supplementary grants for the financial year 2008-2009 which was informed to all the members of the Legislative Assembly of State of U.P. The petitioner moved an application dated 07/2/2009 in the Court of Chief Judicial Magistrate with a prayer to grant permission for his participation in the proceedings of the Legislative Assembly of the State of U.P.

The judgments in the cases of Pillalamarri Venkateswarlu and Ansumali Majumdar (supra) lays down a similar proposition and fully supports the view that a M.L.A. detained in a prison has no right or privilege to claim participation in the proceedings of the assembly. The submission of the counsel for the petitioner that in case the petitioner is not permitted to participate in the proceedings of the assembly then his constituency shall remain unrepresented also has no substance. Non-participation in the proceedings of the assembly by the petitioner is a natural consequence of his detention in prison on criminal charges. Right of participation in the proceedings of the assembly by a member and the

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privileges in the assembly given to members are rights and privileges of those members who are participating in the proceedings. When the petitioner is detained in prison by lawful order, he cannot claim a writ of mandamus permitting him to participate in the proceedings of the Assembly. The judgment of the Apex Court in *Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav & Anr*\(^{48}\), also deserves to be noted in which case the petitioner was detained in Tihar jail an elected M.P. was permitted by the Apex Court to take oath in the House as a Member of Parliament. The said case was with a different prayer and has no bearing on the right of a M.L.A. or M.P. to participate in the proceedings of the Parliament or Assembly. The Apex Court in the said judgement in the facts of that case permitted the petitioner to take oath and it does not help the petitioner in the present case.

In view of the foregoing discussions, the petitioner is not entitled for the relief claimed in the writ petition.

In regard to a question whether a disclosure of information under to right to information Act-2005 amounts the breach of privilege or not the Central Information Commission in *Shri Bashanti Lal Singhavi v/s Ministry of Home Affairs (mha)*\(^{49}\) held as follow in the instant case, the then Minister(Home) has refuse to disclose information in Parliament on the ground that the information happens to be a private one. What has been refuse to be disclosed in Parliament, if made public at the stage, may be considered to be a breach of privilege. Of course, the commission does not have the jurisdiction and would not choose to pass a verdict as to whether it will actually amount to either breach of privilege or contempt of the Parliament because it is for the Parliament to decide and determine that. The Commission can only see and examine whether the concerned

\(^{48}\) Kalyan Chandra Sarkar Vs.Rajesh Ranjan Alias Pappu Yadav & Arr., 2005 (3) SCC 311

\(^{49}\) Bashanti Lal Singhavi v/s Ministry of Home Affairs (mha)(2009)
Public Authority denying the information has a prime facie apprehension as to whether disclosure of information in the given case may amount to commission of contempt or breach of privilege and if a prime facie case is so made out, the Commission has to uphold the same. Parliament may, however, examine the matter in the light of the provisions of the Right to Information Act and the objectives that this legislation intends to achieve of bringing transparency and accountability in the working of all public authorities. In this case, the Commission would like to make a reference, and to request the Hon'ble Speaker of the Lok Sabha, Shri Somnath Chatterjee to consider the issue and decide as to whether it would be a breach of privilege if the information, which has been refused to be disclosed to Parliament by the Executive at one point of time, is now disclosed to an applicant under the Right to Information Act, 2005.

The same issue was raised in case of Shri George Fernandes, M.P. vs Ministry Of Defence (Mod)\(^{50}\) and the ruling given in Bashanti Lal Case was upheld.

The case of Amrindra Singh v/s Spl comniteit, Punjab Vidhan Sabha\(^{51}\) is an important case on breach of privileges decided by the Hon’ble Supreme Court. The brief facts of the case are that Mr. Amrinder Singh, the appellant petitioner, was the Chief Minister of State of Punjab during the 12\(^{th}\) term of the Punjab Vidhan Sabha and was also duly elected as member of Punjab Vidhan Sabha for its 13\(^{th}\) term. Some members of 13\(^{th}\) Punjab Legislative Assembly moved a privilege motion in respect of allegations of tampering in the proceeding of the 12\(^{th}\) Vidhan Sabha. These allegations were in regard to a starred question relating to the grant of exemption of 32.10 acres of land. The notice of motion was referred to the privilege committee of the House by the Speaker. The

\(^{50}\) Shri George Fernandes, M.P. vs Ministry Of Defence (Mod) (2009)
\(^{51}\) Amrinder Singh vs Spl.Committee,Punjab Vidhan Sabha, 2009
report of the Privilege Committee was tabled before the House. Following the motion initiated by the incumbent Chief Minister, the Speaker of the House approved the constitution of a Special Committee to enquire into the alleged misconduct. The Special Committee submitted its report with the findings that Mr. Amrinder Singh had been involved in corruption, conspiracy to cause wrongful loss and abuse of public office in relation to the exemption of land. After considering these findings, the house recommended the expulsion of Sri Amrindra Singh for the remaining term of 13th Punjab Vidhan Sabha and to initiate the Criminal proceedings against him. In pursuance of the said resolution Mr Amrinder Singh was expelled from the membership of the 13th Vidhan Sabha and his assembly constituency seat was rendered vacant, thereby setting aside his election to the same.

Sri Amrinder Singh instituted a petition before the High Court of Punjab and Haryana challenging the Special Committee report and impugned resolution. The High Court did not grant a stay on the operation of the impugned resolution. Dissatisfied with the High Court order the Sri Amrinder Singh initiated an special leave to appeal in Supreme Court. The three judges bench did not grant a stay on the operation on the impugned resolution which had directed the expulsion of the appellant from the Vidhan Sabha. However, relief was granted to the extent that even though the appellant could not participate in the legislative proceedings, his seat would not fall vacant until the adjudication of the case.

The three judges bench found that the subject matter touched on substantial question of law requiring the interpretation of Article 194(3) of the Constitution, thereby deeming it fit to refer these matters to a constitution bench.
The main issues before the court were

1- Whether the alleged misconduct on the part of the appellant and the petitioners warranted the exercises of Legislative privileges under Article 194(3) of the constitution?

2- 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?

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

Dealing with the first issue of above mentioned issue, the Hon,ble Supreme Court viewed that the Punjab Vidhan Sabha exceeded its powers by expelling the appellant on the ground of a breach of privilege when there existed none. The allegedly improper exemption of land was an executive act attributed to the appellant and it did not distort, obstruct or threaten the integrity of legislative proceeding in any matter. Hence, the exercise of Legislative privileges under Article 194(3) of the Constitution was not proper in the present case.

In relation to second issue, Hon,ble Supreme Court held that it was not proper for the Assembly to inquire into actions that took place during its previous term, especially when there was no relatable business that had lapsed from the previous term. As far as third issue is concerned, the Hon,ble Court viewed that the Punjab Vidhan Sabha should have refrained from dealing with the same subject matter which was pending before the High Court.
At the end, the Supreme Court held that the resolution passed by Vidhan Sabha directing the expulsion of the appellant for the remainder of 13th term of the Vidhan Sabha was Constitutionally invalid. Hence, the Court directed the restoration of the appellants membership in the Vidhan Sabha and ordered that, criminal proceeding for alleged misconduct may go on.

In The case of Advocate M.L.George v/s High Court of Kerala52 the petitioner a practicing lawyer requested the court to issue a writ of mandamus commanding the rule making authorities to amend the existing rule of Holydays in Courts by opening the courts even on Saturday/holydays to expedite the cases pending before the subordinate courts.

The Court observe that “It is well-settled in law that the High Court under Article 226 of the Constitution of India cannot issue a mandamus to the rule- making authority to frame or amend rules. Even assuming this Court issues a mandamus, it is going to be a futile exercise, because in matters of subordinate legislation, the rules framed by the State Government will have to be placed before the Legislature. If the Legislature by resolution undo the rule framed, the issuance of a writ by this Court will become futile. Members of the Legislature are protected by the privileges under Article 194 of the Constitution of India and they are not answerable to the court for voting in a particular manner in the Legislature. So, the prayer for mandamus fails.

In the case of shri Manohar Parrikar v/s Department of revenue53 on 10th June 2010 the petitioner the requested for the enclosure of information which went into the making of an audit report

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52 Advocate M.L.George v/s High Court of Kerala(2010)
53 shri Manohar Parrikar v/s Department of revenue on (2010)
such as audit observation marginal notes, audit notes and audit memos etc. which were not supplied to him. The appeal against this non disclosure of information was made before the central Information Commissioner. The question before the Central Information Commissioner was that whether disclosure of this variety of information would constitute premature relation of matters before the parliament of state legislature? In this regard it was observed that premature publicity in the Press to notices of questions, adjournment motions, resolutions, answers to questions and other similar matters connected with the business of the House did not comprise breach of privilege, although it may be "improper". It was nodsoubt breach of privilege to publish any part of the proceeding or evidence given before a Parliamentary Committee before such proceedings or evidence or documents had been reported before the House, unless the Committee itself decides that either all or part of its proceedings may be publicized .

According to the Secretary General, "it is doubtful whether the report of C&AG qualifies to be treated as the report of Parliamentary Committee or evidence tendered before a Parliamentary Committee. Half margins, draft audit notes, etc., as already stated, do not have any relevance insofar as Parliamentary papers are concerned".

The same issue was also raised in shri Milap Choraria v/s Central Bureau Of Investigation\(^{54}\)

In the case of Suresh Kalmadi v/s Union Of India & ors\(^{55}\), has been booked the appellant, a Member of the Parliament for offences punishable under Sections 420/467/468/471 read with Section 120B of

\(^{54}\) shri Milap Choraria v/s Central Bureau Of Investigation(2009)

\(^{55}\) Suresh Kalmadi v/s Union Of India & ors (2011)
the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The appellant after being taken into custody moved an application under Section 439 of the Code of Criminal Procedure and the learned Special Judge rejected the application for bail after referring to the material brought on record.

Thereafter, the appellant has not approached any superior forum for enlargement on bail. When the matter stood thus, the appellant invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issue of a direction for permission to attend the Parliament as the President of India has summoned the Parliament to session on 14th July, 2011 and he has been issued the intimation to attend the 8th session of the 15th Lok Sabha commencing 1st August, 2011. In the said communication, it was stated that as he is in prison, he can seek permission from the competent court of law and attend the parliamentary session. Before this court, it was asserted that the appellant-petitioner has a constitutional right to participate in the parliamentary proceedings and that the appellant has the constitutional obligation and duty to attend the sittings in the Parliament and if the permission is not granted, the privilege conferred on a Member of Parliament under Article 105 of the Constitution would be defeated; that though a Member of Parliament can be arrested and taken into custody for criminal offences, yet he has been exempted from arrest under Section 135A of Code of Civil Procedure and the same would go a long way to show how the Legislature has granted certain privileges to Parliamentarians; that in case the appellant is not allowed to attend the parliamentary session, there is a possibility of forfeiture of his membership of the Lok Sabha; and that in fitness of things, it is requisite that the appellant should be extended the benefit subject to imposition of certain reasonable conditions.
The writ petition filed by the appellant-petitioner was combated by the Union of India as well as the Central Bureau of Investigation contending, inter alia, that when the petitioner has been arrayed as an accused in a case having tremendous gravity, it would not be appropriate to grant him permission to attend the parliamentary session; that the writ petitioner has no indefeasible right to attend the Parliament; that though democracy is the basic feature of the Constitution of India, yet it is nowhere envisaged that a Member of Parliament who is facing a trial for grave offences pertaining to corruption can be allowed or granted permission to attend the parliamentary session.

The Court observed that the arrest and incarceration is valid in law and the appellant has not been enlarged on bail. True it is, in the case of K. Ananda Nambiar (supra), the Apex Court was dealing with preventive detention but the present case relates to arrest and custody. When the appellant's custody is valid and the allegations are of great magnitude, it would be totally inappropriate to exercise the discretion under Article 226 of the Constitution of India to grant him the permission to attend the parliamentary session solely on the foundation that he has the freedom of speech inside the Parliament or on the foundation that he enjoys exclusive privilege in the Parliament as its Member or on the substratum that he has to participate in the proceedings to meet the Constitutional obligation.