SUPREME COURT OF INDIA

Raja Ram Pal

Vs.

Speaker, Lok Sabha

(C.K. Thakker J.)

10.01.2007

JUDGMENT

C.K. THAKKER, J.

I have had the benefit of reading the erudite judgment prepared by my Lord the Chief Justice. I am in agreement with the final order dismissing the petitions.

Keeping in view, however, the issue in these matters which is indeed of great public importance having far- reaching consequences to one of the largest democracies of the world, I intend the consider it in detail.

In these 11 petitions (9 by members of Lok Sabha and 2 by members of Rajya Sabha), the petitioners have challenged the proceedings initiated against them by Parliament, the reports submitted by the Committees constituted by Parliament holding them guilty of the charges levelled against them and notifications expelling them as members of Parliament.

The 'unfortunate background' of the case has been dealt with by the learned Chief Justice and I do not intend to repeat it. Suffice it to say that it was alleged against the petitioners that they accepted money for tabling questions/raising issues in Parliament.

Committees were appointed to inquire into the allegations and conduct of Hon'ble Members. The allegations were found to be correct and pursuant to the reports submitted by the Committees, the Members were expelled by Parliament. Those Members have challenged the impugned action of expulsion.

The Court had been ably assisted by the learned counsel for the parties on the central question of Parliamentary privileges, the power of the House to deal with those privileges and the ambit and scope of judicial review in such matters.

At the outset, I wish to make it clear that I am considering the controversy whether Parliament has power to expel a member and whether such power and privilege is covered by clause (3) of Article 105 of the Constitution. I may clarify that I may not be understood to have expressed final opinion one way or the other on several questions raised by the parties and dealt with in this judgment except to the extent they relate or have relevance to the central issue of expulsion of membership of Parliament.

PARLIAMENTARY PRIVILEGES : MEANING An important as also a complicated question is :

What do we understand by 'parliamentary privileges'? "Nothing", said Dicey, "is harder to define than the extent of the indefinite powers or rights possessed by either House of Parliament under the head of privilege or law and custom of Parliament".

Though all the three expressions, powers, privileges and immunities are invariably used in almost all Constitutions of the world, they are different in their meanings and also in contents.

'Power' means 'the ability to do something or to act in a particular way'. It is a right conferred upon a person by the law to alter, by his own will directed to that end;

the rights, duties, liabilities or other legal relations either of himself or of other persons. It is a comprehensive word which includes procedural and substantive rights which can be exercised by a person or an authority.

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

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

Sir Erskin May, in his well-known work 'Treatise on The Law, Privileges, Proceedings and Usage of Parliament', (23rd Edn.); p. 75 states;

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law. Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other such rights and immunities such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members".

In Halsbury's Laws of England, (4th Edn.; Reissue, Vol. 34; p. 553; para 1002); it has been stated;

"Claim to rights and privileges. The House of Lords and the House of Commons claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals. In 1705 the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed. Each House is the guardian of its own privileges and claims to be the sole judge of any matter that may arise which in any way impinges upon them, and, if it deems it advisable, to punish any person whom it considers to be guilty of a breach of privilege or a contempt of the House".

In the leading case of Powers, Privileges and Immunities of State Legislatures, Article 143, Constitution of India, Re, (1965) 1 SCR 413 : AIR 1965 SC 745, Sarkar, J. (as His Lordship then was) stated; "I would like at this stage to say a few general words about "powers, privileges and immunities" of the House of Commons or its members. First I wish to note that it is not necessary for our purposes to make a distinction between "privileges", "powers" and "immunities". They are no doubt different in the matter of their respective contents but perhaps in no otherwise. Thus the right of the House to have absolute control of its internal proceedings may be considered as its privilege, its right to punish one for contempt may be more properly described as its power, while the right that no member shall be liable for anything said in the House may be really an immunity".

In 'Parliamentary Privilege First Report' (Lord Nicholas Report), it was observed;

Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their members and officers possess to enable them to carry out their parliamentary functions effectively. Without this protection members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.

RAISON D'ETRE FOR PRIVILEGES The raison d'etre for these privileges is again succinctly explained by Sir Erskine May thus;

"The distinctive mark of a privilege is its ancilliary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'.

They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded used of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

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

PARLIAMENT : WHETHER POSSESSES POWER TO EXPEL MEMBERS The basic and fundamental question raised by the petitioners in all these petitions is the power of Parliament to expel a member. Other incidental and ancillary questions centre round the main question as to authority of a House of Legislature of expulsion from membership. If the sole object or paramount consideration of granting powers, privileges and immunities to the members of Legislature is to enable them to ensure that they perform their functions, exercise their rights and discharge their duties effectively, efficiently and without interference of outside agency or authority, it is difficult to digest that in case of abuse or misuse of such privilege by any member, no action can be taken by the Legislature, the parent body.

I intend to examine the question on principle as well as on practice. It would be appropriate if I analyse the legal aspects in the light of constitutional provisions of India and of other countries, factual considerations and relevant case law on the point.

AMERICAN LAW So far as the United States of America is concerned, the Constitution itself recognizes such right. Section 5 of Article 1 of the Constitution of the United States confers such right on each House of the Legislature. Sub-section (2) reads thus;

"(2) Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member." (emphasis supplied) Leading Authors on the Constitution have also stated that each House possesses the power to expel a member in appropriate cases.

Cooley in his well-known work 'Treatise on the Constitutional Limitations', (1972 Edn., p. 133); states;

Each House has also the power to punish members for disorderly behaviour, and other contempts of its authority, and also to expel a member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is sometimes conferred by the constitution, but it exists whether expressly conferred or not. It is a necessary and incidental power, to enable the house to perform its high functions and is necessary to the safety of the State. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be affected with a contagious disease, or insane, or noisy, violent and disorderly, or in the habit of using profane, obscene, and abusive language. And independently of parliamentary customs and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member and the Courts cannot inquire into the justice of the decision, or look into the proceedings to see whether opportunity for defence was furnished or not." (emphasis supplied) Another well-known authority on the point is Willoughby, who in his work "Constitutional Law of the United States", (Second Edn.; p. 256); says;

"This right of expulsion is to be sharply distinguished from the right to refuse to admit to membership. In the latter case, as has been seen, the questions involved are, in the main, the perhaps exclusively, those which relate to the Constitutional qualifications of those persons presenting themselves for admission or to the regularity and legality of the elections at which such persons have been selected or appointed. In the former case, that is, of expulsion, these matters may be considered, but, in addition, action may be predicated upon the personal character or acts of the parties concerned; and, as to his last matter, as will presently be seen, the chief point of controversy has been whether the acts of which complaint is made should be only those which have occurred subsequent to election and have a bearing upon the dignity of Congress and the due performance of its functions.

In determining whether or not a member of congress has been guilty of such acts as to warrant his expulsion the House concerned does not sit as a criminal trial court, and is not, therefore, bound by the rules of evidence, and the requirements as the certitude of guilt which prevail in a criminal character, but only as to unfitness for participation in the deliberations and decisions of congress." (emphasis supplied) Dealing with the question of expulsion by the House and the power of Courts, Pritchett in his book 'American Constitution' (Third Edn., p. 146); observed;

"Expulsion and Censure : Congressmen are not subject to impeachment, not being regarded as 'civil officers' of the United States. The constitution does not provide, however, that each House may expel its members by a two third vote, or punish them for 'disorderly behaviour'. Congress is the sole judge of the reasons for expulsion. The offence need not be indicatable. In 1797 the Senate expelled William Blount for conduct which was not performed in his official capacity not during a session of the Senate nor at the seat of government. The Supreme Court has recorded in a dictum in understanding that the expulsion power 'extends to all cases where the offence is such as in the judgment of the Senate is inconsistent with the trust and duty of a member".

(emphasis supplied) In 'American Jurisprudence', (Second Edn., Vol. 77, p. 21); it has been stated;

"The power of either House of Congress to punish or expel its members for cause is recognized in the Constitution which provides that each House may punish its members for disorderly behaviour, and, with the concurrence of two-thirds, expel a member.

Punishment for misbehaviour may in a proper case be by imprisonment and may be imposed for failure to observe a rule for preservation of order. In the case of the Senate, the right to expel extends to all cases where the offence is such as in the judgment of the body is inconsistent with the trust and duty of a member (Chapman Re, (1896) 166 US 661 : 41 L Ed 1154)".

Attention of the Court was also invited to certain decisions of the Supreme Court of the United States. In Chapman, Re, 166 US 661 (1891) : 41 L Ed 2nd 1154, the Supreme Court before more than a century, recognized the power of the Senate to expel a member where an act of the Member was such as in the judgment of the Senate was inconsistent with the 'trust and duty' of a member.

Reference was made to William Blount, who was expelled from the Senate in July, 1797, for 'a high misdemeanor entirely inconsistent with his public trust and duty as a senator.' It was also stated that in July, 1861, during civil war, fourteen Senators and three Representatives were expelled.

In Julion Bond v. James Sloppy Floyd, 385 US 116 (1966) : 17 L Ed 2nd 235, William Bond, a Negro, duly elected representative was excluded from membership because he attacked policy of Federal Government in Vietnam. The US Supreme Court held that Bond had right to express free opinion under the first amendment and his exclusion was bad in law.

In Powell v. McCormack, 395 US 486 (1969) : 23 L Ed 2nd 491, the applicant was held entitled to declaratory judgment that action of exclusion of a member of a House was unlawful. The allegation against the applicant was that he deceived the House Authorities in connection with travel expenses and made certain illegal payments to his wife. Referring to Wilkes and the Law in England, the Court observed that "unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behaviour and in extreme cases, to expel a member with the concurrence of two-thirds." In H. Snowden Marshall v. Robert B. Gordon, 243 US 521 (1917), a Member of the House of Representatives levelled serious charges against District Attorney of the Southern District of New York with many acts of misfeasance and nonfeasance. The Select Committee submitted a report holding him guilty of contempt of the House of Representatives of the United States because he violated its privileges, its honor and its dignity.

Dealing with the case and referring to Kielley v.

Carson, (1842) 4 MOO PC 63 : 13 ER 225, the Court observed that when an act is of such a character as to subject it to be dealt with as a contempt under the implied authority, Congress has jurisdiction to act on the subject. Necessarily results from that the power to determine in the use of legitimate and fair discretion how far from the nature and character of the act there is necessity for repression to prevent immediate recurrence, that is to say, the continued existence of the interference or obstruction to the exercise of the legislative power.

Unless there is manifest and absolute disregard of discretion and a mere exertion of arbitrary power coming within the reach of constitutional limitations, the exercise of the authority is not subject to judicial interference.

I may also refer to a leading decision in United States v. Daniel Brewster, 408 US 501 : (1972) 33 L Ed 2nd 507. Keeping in view ground reality that privileges conferred on Members of Parliament are likely to be abused, Burger, CJ stated;

"The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerates and protects behaviour on the part of the Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process". (emphasis supplied) From the above cases, it is clear that in the United States, the House possesses the power of observance of discipline by its members and in appropriate cases, such power extends to expulsion. It is also clear that such power has been actually exercised for disorderly behavior in the House as also outside the House, where the House was satisfied that the member was 'unfit' physically, mentally or morally even if such conduct could not be a 'statutable offence' or was not committed by him in his official capacity or during House in Session or at the seat of Government.

AUSTRALIAN LAW The provisions relating Parliamentary privileges under the Constitution of Australia were similar to our Constitution. Section 49 declared powers, privileges and immunities of the Senate and of the House of Representatives and its Members. It was as follows;

"The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the Members and the Committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth." (emphasis supplied) Enid Campbell in his book 'Parliamentary Privilege in Australia', dealing with 'Expulsion', states;

"At common law, the House of Commons is recognized to have power to expel a member for misconduct unfitting him for membership even where that misconduct is not such as to disqualify him from parliamentary office. There is no doubt that those Australian Houses of Parliament invested by statute with the powers and privileges of the House of Commons enjoy the same power, but the position with regard to other Houses is not so clear. At common law, Colonial Legislatures do not possess punitive powers, though there is dictum in Barton v. Taylor to the effect that they do have power to expel for aggravated or persistent misconduct on the ground that this may be necessary for the self protection of the legislature. Where a member is expelled, his seat thereupon becomes vacant. He is not, however, disqualified from being again elected and returned to parliament".

Discussing powers of Colonial Assemblies, the learned author states that though such Assemblies do not possess 'punitive' powers, it is inconceivable that they cannot make rules for the orderly conduct of business. Even if they have no authority to expel a member in absence of specific provision to that effect, they may suspend disorderly members in appropriate cases.

"The dignity of a Colonial Parliament acting within its limits, requires no less than that of the Imperial Parliament that any tribunal to whose examination its proceedings are sought to be submitted for review should hesitate before it undertakes the function of examining its administration of the law relating to its internal affairs". (emphasis supplied) It may also be stated that Odger in his 'Australian Senate Practice', (11th Edn.; p.57) observes;

"The recommendation, and the consequent provision in section 8 of the 1987 Act, was opposed in

the Senate. It was argued that there may well be circumstances in which it is legitimate for a House to expel a member even if the member is not disqualified. It is not difficult to think of possible examples. A member newly elected may, perhaps after a quarrel with the member's party, embark upon highly disruptive behaviour in the House, such that the House is forced to suspend the member for long periods, perhaps for the bulk of the member's term. This would mean that a place in the House would be effectively vacate, but the House would be powerless to fill it.

Other circumstances may readily be postulated. The House, however, denied themselves the protection of expulsion".

Lumb and Ryan ("The Constitution of the Commonwealth of Australia'; 1974 Edn.) stated that each House of the Federal Parliament has the right to suspend a member for disorderly conduct. The power is exercised to punish persistent interjectors or for refusal to withdraw an offensive remark. "In extreme cases a member may be expelled". (emphasis supplied) In 1920, Hugh Mahon, Federal Member of Kalgoorlie was expelled from the House of Representatives for making a 'blistering' public speech against British Rule in Ireland.

It is no doubt true that pursuant to the report of the Joint Select Committee on Parliamentary Privilege (1984), a specific Act has been enacted, known as the Parliamentary Privileges Act, 1987 (Act 21 of 1987).

Section 8 of the said Act expressly bars a House to expel any of its members. It reads:

"A House does not have power to expel a member from membership of a House".

It is, therefore, clear that only recently, the power to expel a member from the House has been taken away by a specific statute.

CANADIAN LAW The legal position under the Constitution of Canada is different to some extent. Section 18 of the Constitution of the Dominion of Canada, 1867 states;

"The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the members thereof." (emphasis supplied) It is thus clear that unlike India, in Canada, the Legislature could not enlarge its privileges by enacting a law investing in it the privileges enjoyed by British Parliament. There is no such limitation under Section 49 of the Australian Constitution nor under Article 105(3) or Article 194(3) of the Indian Constitution.

In spite of the above provision in the Constitution, the right of the House to expel a member has never been challenged. Sir John George Bourinot, in his work 'Parliamentary Procedure and Practice in the Dominion of Canada', (4th Edn., p.64), states;

"The right of a legislative body to suspend or expel a member for what is sufficient cause in its own judgment is undoubted. Such a power is absolutely necessary to the conservation of the dignity and usefulness of a body. Yet expulsion, though it vacates the seat of a member, does not create any disability to serve again in Parliament".

The learned counsel for the parties also drew our attention to certain cases from Canada. We may notice only few recent decisions.

In Speaker of the House of Assembly v. Canadian Broadcasting Corporation, (1993) 1 SCR 319, the Broadcasting Corporation made an application to the Nova Scotia Supreme Court, Trial Division for an order allowing it "to film the proceedings of the House of Assembly with its own cameras". The application was based on the Canadian Charter of Rights and Freedoms which guaranteed freedom of expression and freedom of press. The Corporation claimed that it was possible to film the proceedings from the public gallery with modern equipments. The Speaker, however, declined permission on the ground that Corporation's proposal would interfere with "the decorum and orderly proceedings of the House". The Trial Judge granted the claim which was upheld in appeal. The Speaker approached the Supreme Court.

One of the questions raised before the Supreme Court was as to whether the House could exercise privilege by refusing access to the media. Lamer, CJ discussed the doctrine of privilege in detail in the light of the doctrine of necessity. Referring to Stockdale v.

Hansard, (1839) 9 Ad & E 1 : 112 ER 1112 (QB), he stated that parliamentary privilege and immunity are founded upon necessity. 'Parliamentary privileges' and the breadth of individual privileges encompassed by that term were accorded to members of the Houses of Parliament and the Legislative Assemblies because they were considered necessary for the discharge of their legislative functions.

Mc Lachlin, J. (as she then was) agreed with the learned Chief Justice and observed that Canadian legislative Assemblies could claim as inherent privileges those rights which were necessary to their 'capacity to function as legislative bodies'. Necessity was thus the test. Referring to Kielley v. Carson (1842), 4 MOO PC 63 :

13 ER 225, it was observed that though the Privy Council held that a Colonial Assembly had no power to commit for a contempt like House of Commons of the United Kingdom, it did not dispute that such powers "as are necessary to the existence of such body and the proper exercise of the functions which it is intended to execute" were bestowed with the very establishment of the Newfoundland Assembly.

The Court also considered the ambit and scope of judicial review and exercise of parliamentary privilege.

Referring to Sir Erskine May that "after some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of either House in matters of privilege is still not entirely determined", the Court observed that originally the Houses of Parliament took the position that they were the exclusive judges of their privileges. They claimed to be 'absolute arbiters' in respect of parliamentary privileges and took the stand that their decisions were not reviewable by any other Court or Authority. The Courts, on the other hand, treated lex parliamentis to be part of the 'law of the land' and as such, within their judicial control. Judiciary exercised the power particularly when issues involved the rights of third party. According to Courts, their role was to interpret the law of Parliament and to apply it.

Holding the test of 'necessity' for privilege as 'jurisdictional test', the learned Judge stated; "The test of necessity is not applied as a standard for judging the content of a claimed privilege, but for the

purpose of determining the necessary sphere of exclusive or absolute 'parliamentary' or 'legislative' jurisdiction. If a matter falls within this necessary sphere of matters without which the dignity and efficiency of the House cannot be upheld, courts will not inquire into questions concerning such privilege. All such questions will instead fall to the exclusive jurisdiction of the legislative body.

(emphasis supplied) Keeping in view important roles of different branches of Government, it was observed;

"Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body;

the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other".

Reference was also made to Fred Harvey v. Attorney General for New Brunswick, (1996) 2 SCR 876. In that case, a Member of provincial Legislature was convicted of illegal practice and was expelled from legislature pursuant to provincial elections legislation. The allegation proved against him was that he had induced a 16-year old female to vote in the election, knowing fully well that she was not eligible to vote. He was also disqualified for a period of five years from contesting any election. The Court of Appeal dismissed the appeal of the appellant. The aggrieved Member approached the Supreme Court.

Dismissing the appeal and upholding the order of the Court of Appeal, the Supreme Court held that there was no question that the appellant's actions amounted to an attack on the integrity of the electoral process which was at the heart of a free and democratic society and constituted a breach of trust deserving of censure.

Dealing with Parliamentary privileges and jurisdiction of Courts, Mc Lachlin, J. stated;

If democracies are to survive, they must insist upon the integrity of those who seek and hold public office. They cannot tolerate corrupt practices within the legislature. Nor can they tolerate electoral fraud. If they do, two consequences are apt to result. First, the functioning of the legislature may be impaired.

Second, public confidence in the legislature and the government may be undermined. No democracy can afford either.

When faced with behaviour that undermines their fundamental integrity, legislatures are required to act. That action may range from discipline for minor irregularities to expulsion and disqualification for more serious violations. Expulsion and disqualification assure the public that those who have corruptly taken or abused office are removed. The legislative process is purged and the legislature, now restored, may discharge its duties as it should.

(emphasis supplied) It was, however, added that it was not to say that the courts have no role to play in the debate which arises where individual rights are alleged to conflict with parliamentary privilege. Under the British system of parliamentary supremacy, the courts arguably play no role in monitoring the exercise of parliamentary privilege.

In Canada, that has been altered by the Charter of 1926.

To prevent abuses cloaked in the guise of privilege from trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege. As clarified in Canadian Broadcasting Corporation, the courts may question whether a claimed privilege exists. This screening role means that where it is alleged that a person has been expelled or disqualified on invalid grounds, the courts must determine whether the act falls within the scope of parliamentary privilege. If the court concludes that it does, no further review lies.

(emphasis supplied) It was also stated that British Jurisprudence makes distinction between privileges asserted by resolution and privileges effected automatically by statute. In respect of privileges asserted by resolution, British Courts have developed a doctrine of necessity, enabling them to inquire whether the action taken by resolution is necessary to the proper functioning of the House. The 'necessity inquiry' does not ask whether the particular action at issue was necessary, and hence does not involve substantive judicial review. It rather asks whether the dignity, integrity and efficiency of the legislative body could be maintained if it were not permitted to carry out the type of action sought to be taken, for example to expel a member from the Legislature or disqualify a person from seeking office on ground of corruption.

A question was raised as to whether Parliament could expel any of its members. Upholding such right, the Court stated;

"The power of Parliament to expel a member is undoubted. This power has been repeatedly exercised by the English and Colonial Parliaments, either when members have been guilty of a positive crime, or have offended against the laws and regulations of the House, or have been guilty of fraudulent or other discreditable acts, which proved that they were unfit to exercise the trust which their constituents had reposed in them, and that they ought not to continue to associate with the other members of the legislature.

Expulsion may be justified on two grounds: to enforce discipline within the House; and to remove those whose behaviour has made them unfit to remain as members.

The right of expulsion on these two grounds -- discipline and unfit behaviour -- is a matter of parliamentary privilege and is not subject to judicial review". (emphasis supplied) The Court concluded;

"This protection is now accepted, in Canada as in Britain, as a fundamental tenet of parliamentary privilege. The point is not that the legislature is always right. The point is rather that the legislature is in at least as good a position as the courts, and often in a better position, to decide what it requires to function effectively. In these circumstances, a dispute in the courts about the propriety of the legislative body's decision, with the delays and uncertainties that such disputes inevitably impose on the conduct of legislative business, is unjustified".

Very recently, in House of Commons v. Satnam Vaid, (2005) 1 SCR 667, a chauffeur of a Speaker in spite of an order in his favour, was not reinstated in service. He made a complaint to the Canadian Human Rights Commission to investigate into the matter. The Commission accepted the complaint of the employee and referred the matter to the Tribunal. The Speaker challenged the jurisdiction of the Tribunal contending that it was his power of 'hire and fire' and there was no review. The Tribunal dismissed the challenge. The Federal Court upheld the Tribunal's decision. When the matter reached the Supreme Court, the question as to applicability of privileges was raised. It was held that within categories of privilege, Parliament was the sole judge of the occasion and manner of

its exercise and such exercise was not reviewable by the courts. However, the existence and scope of the privileges could be inquired into by Courts.

Binnie J. stated; "It is a wise principle that the courts and Parliament strive to respect each other's role in the conduct of public affairs. Parliament, for its part, refrains from commenting on matters before the courts under the sub judice rule. The courts, for their part, are careful not to interfere with the workings of Parliament.

None of the parties to this proceeding questions the pre- eminent importance of the House of Commons as 'the grand inquest of the nation'. Nor is doubt thrown by any party on the need for its legislative activities to proceed unimpeded by any external body or institution, including the courts. It would be intolerable, for example, if a member of the House of Commons who was overlooked by the Speaker at question period could invoke the investigatory powers of the Canadian Human Rights Commission with a complaint that the Speaker's choice of another member of the House discriminated on some ground prohibited by the Canadian Human Rights Act, or to seek a ruling from the ordinary courts that the Speaker's choice violated the member's guarantee of free speech under the Charter. These are truly matters 'internal to the House' to be resolved by its own procedures. Quite apart from the potential interference by outsiders in the direction of the House, such external intervention would inevitably create delays, disruption, uncertainties and costs which would hold up the nation's business and on that account would be unacceptable even if, in the end, the Speaker's rulings were vindicated as entirely proper".

Emphasising on resolution of conflict between Parliament and Courts in respect of 'legitimate sphere of activity of the other', the Court observed;

"Our democratic government consists of several branches: the Crown, as represented by the Governor General and the provincial counterparts of that office; the legislative body;

the executive; and the courts. It is fundamental to the working of government as a whole that all these parts play their proper role. It is equally fundamental that no one of them overstep its bounds, that each show proper deference for the legitimate sphere of activity of the other".

ENGLISH LAW English Constitution was neither established by any single action nor on any particular day. It has grown from the political institutions of people who respected monarchy but equally insisted for democracy and parliamentary institution. The origins of parliamentary privileges are thus inextricably interwined with the history of Parliament in England; and more specifically, the battle between English Monarch and Parliament;

between the House of Commons and House of Lords as also between Parliament and Courts.

Parliament emerged in the thirteenth century.

English legal history traces its roots in Magna Carta.

Magna Carta had been described as a 'constitutional myth' because it was a document which came into existence on account of grievances of feudal magnates (barons) (Ann Lyon : 'Constitutional history of the United Kingdom, (2003); p.39). The Magna Carta declared that the King was not above the law.

In its creative sense, in England the House did not sit down to build its edifice of the powers,

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

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

As Holdsworth ('A History of English Law', Second Edition; pp.92-93), stated; "It was the privilege of the House which enabled it to act freely, to carry on the controversy with the King in a Parliamentary way, and thus to secure a continuous development of constitutional principles. It is, therefore, not surprising to find that the earliest controversies between James I and his Parliaments turned upon questions of privilege, and that these same questions were always in the forefront of the constitutional controversies all through this period".

He also added that Parliament asserted and used its privileges to win for itself the position of a partner with the King in the work of governing the State.

Sir Edward Coke was in favour of 'High Court of Parliament' having its law and was of the view that the matters decided in Parliament were not part of Common Law. He observed that it was not for a Judge to judge any law, custom or privilege of Parliament. The laws, customs, liberties and privileges of Parliament are better understood by precedents and experience than can be expressed by a pen.

As Lord Tennyson stated;

"A land of settled government, A land of just and old renown, Where Freedom slowly broadens down, From precedent to precedent." Let us consider the view points of learned authors, jurists and academicians on this aspect.

In Halsbury's Laws of England, (Fourth Edn.;

Reissue : Vol. 34; p. 569; para 1026); it has been stated;

House of Commons' power of expulsion.

Although the House of Commons has delegated its right to be the judge in controverted elections, it retains its right to decide upon the qualifications of any of its members to sit and vote in Parliament.

If in the opinion of the House a member has conducted himself in a manner which renders him unfit to serve as a member of Parliament, he may be expelled, but unless the cause of his expulsion by the

House constitutes in itself a disqualification to sit and vote in the House, he remains capable of re-election. (emphasis supplied) From the above statement of law, it is explicitly clear that the two things, namely, (i) expulsion; and (ii) disqualification are different and distinct. A member can be expelled by the Legislature if his conduct renders him 'unfit' to continue as such. It, however, does not ipso facto disqualify him for re-election. An expelled member may be re-elected and no objection can be raised against his re-election, as was the case of John Wilkes in 1769.

O. Hood Phillips also states ('Constitutional and Administrative Law', Fourth Edition; p. 180) that the House may also expel a member, who although not subject to any legal disability, is in its opinion unfit to serve as a member. This is commonly done when the Court notifies the Speaker that a member has been convicted of a misdemeanour. The House cannot prevent an expelled member from being re-elected, as happened several times in the case of John Wilkes between 1769 and 1794, but it can refuse to allow him to take seat.

Wade and Phillips also expressed the same opinion.

In 'Constitutional Law', (7th Edition; p.793); it was stated;

"The House of Commons cannot of course create disqualifications unrecognized by law but it may expel any member who conducts himself in a manner unfit for membership".

Sir William Anson in "The Law and Custom of the Constitution", (Fifth Edn; Vol. I; pp. 187-88) states;

"In the case of its own members, the House has a stronger mode of expressing its displeasure. It can by resolution expel a member, and order the Speaker to issue his warrant for a new writ for the seat from which the member has been expelled. But it cannot prevent the re-election of such a member by declaring him incapable of sitting in that Parliament. In attempting to do this, in the case of Wilkes, the House had ultimately to admit that it could not create a disqualification unrecognized by law".

Griffith and Ryle in "Parliament, functions, practice and procedures", (1989), at p.85 stated;

"The reconciliation of these two claims the need to maintain parliamentary privileges and the desirability of not abusing them has been the hall-mark of the House of Commons treatment of privilege issues in recent years".

Dealing with the penal powers of the House, the learned authors proceeded to state: (pp.91-92);

"Laws are meaningless unless there is power to enforce them by imposing penalties on those who wreak them. The House does not rely on the courts but has its own penal jurisdiction.

The severest and historically most important power is that of commitment .

Two other punishments can be ordered for Members who offend the House namely expulsion, or suspension from the service of the House for a specified period or until the end of the session.

Expulsion is the ultimate sanction against a Member. It is an outstanding demonstration of the House's power to regulate its own proceedings, even its composition. The expulsion of a Member cannot be challenged.

(emphasis supplied) Consideration of powers, privileges and immunities of the British Parliament would not be complete if one does not refer to relevant statements and propositions of law by Sir Erskine May in his celebrated and monumental work titled 'Treatise on the Law, Privileges, Proceedings and Usage of Parliament'. "This work has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice".

The attention of the Court was, however, invited to the changed approach by the Revising Authors on the power of Parliament to expel a member. It would, therefore, be appropriate if I refer to both the editions of 1983 and of 2004.

In Twentieth Edition by Sir Charles Gordon (1983), in Chapter 9 (Penal Jurisdiction of the Houses of Parliament), it had been stated;

PUNISHMENT INFLICTED ON MEMBERS In the case of contempts committed against the House of Commons by Members, two other penalties are available, viz.

suspension from the service of the House and expulsion. In some cases expulsion has been inflicted in addition to committal.

There was a sub-topic as under;

Expulsion by the Commons The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution.

But it is more convenient to treat it among the methods of punishment at the disposal of the House.

In Twenty-third Edition by Sir William McKay (2004), Chapter 9 titles (Penal jurisdiction of Both Houses). The relevant discussion reads thus;

PUNISHMENT OF MEMBERS In the case of contempts committed against the House of Commons by Members, or where the House considers that a Member's conduct ought to attract some sanction (see pp. 132-33), two other penalties are available in addition to those already mentioned :

suspension from the service of the House, and expulsion, sometimes in addition to committal.

Under sub-topic 'Expulsion', it was stated;

EXPULSION The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution, though it is, for convenience, treated here as one of the methods of punishment at the disposal of the House.

Members have been expelled for a wide variety of causes.

On the basis of above, it was submitted by the learned counsel for the petitioners that the power of expulsion by Parliament as an independent punishment has not been recognized by May. It has now remained as part of power to regulate its own constitution. Since no such power has been possessed by Indian Parliament, it cannot expel any member.

I must frankly admit that I am unable to agree with the learned counsel. The Revising Author refers to punishment of members and in no uncertain terms states that if the House considers conduct (misconduct) of a Member objectionable attracting sanction, appropriate punishment can be imposed on him. Over and above other penalties, 'expulsion' has been specifically and expressly mentioned therein. As will be seen later on in this judgment, the Framers of our Constitution have also reserved this right with the Parliament/State Legislature. The above argument of the petitioners, in my opinion, therefore, does not carry the case further.

ILLUSTRATIVE CASES Though several cases have been cited by the learned counsel for both the sides in support of their contentions and submissions, I will refer to the cases which related to expulsion of membership of Parliament.

Probably, the earliest case was of Mr. Hall. In 1580, Mr. Hall, a Member of House of Commons published a book containing derogatory remarks against the Members of the House. On the basis of a complaint, the matter was referred to the Privilege Committee which found him guilty. In spite of apology tendered by him, he was committed to the Tower of London for six months, was fined and also expelled.

In a subsequent case in 1707, Mr. Asquill, a Member of Parliament wrote a book wherein disparaging remarks on Christian Religion were made. Though nothing was stated by him against the House or against Members of the House, Mr. Asquill was expelled being 'unfit' as Member.

Asquill thus established that the House of Commons could expel a Member for his actions even outside the House provided the House finds him unfit to be continued as a Member of Parliament.

In 1819, Mr. Hobhouse, a Member of House of Commons wrote a pamphlet making the following comment;

"Nothing but brute force, or the pressing fear of it would reform Parliament".

Contempt proceedings were initiated against Hobhouse and he was imprisoned.

In 1838, Mr. O'Connell, a member of House of Commons said, outside the house of Parliament;

"Foul perjury in the Torry Committees of the House of Commonswho took oaths according to Justice but voted for Party." He was reprimanded. Mr. Sandham was likewise admonished in 1930 for levelling allegations against the Members of the House.

Special reference was made to Bradlough v. Gossett, (1884) 12 QBD 275. In that case, B, duly elected Member of Borough was refused by the Speaker to administer oath and was excluded from the House. B challenged the action.

It was held that the matter related to the internal management of the House of Commons and the Court had no power to interfere.

Lord Coleridge, C.J. stated;

What is said or done within the walls of Parliament cannot be inquired into in a court of law The jurisdiction of the Houses over their own Members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into

utter contempt and efficiency without it". (Burdett v. Abbot, 14 East 148, 152).

Dealing with the contention that the House exceeded its legal process in not allowing B to take oath which he had right to take, the learned Chief Justice said; "If injustice has been done, it is injustice for which the courts of law afford no remedy." An appeal should not be made to the Court but to the constituencies.

As observed by His Lordship in Stockdale v.

Hansard, (1839) 9 Ad & E 1 : 112 ER 1112 (QB), "the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity." Stephen, J. was much more specific and emphatic.

He said;

"The legal question which this statement of the case appears to me to raise for our decision is this:Suppose that the House of Commons forbids one of its members to do that which an Act of Parliament requires him to do, and, in order to enforce its prohibition, directs its executive officer to exclude him from the House by force if necessary, is such an order one which we can declare to be void and restrain the executive officer of the House from carrying cut? In my opinion, we have no such power. I think that the House of Commons is not subject to the control of Her Majesty's Courts in its administration of the control of Her Majesty's Courts in its administration of that part of the statute-law which has relation to its own internal proceedings, and that the use of such actual force as may be necessary to carry into effect such a resolution as the one before us is justifiable".

It was further stated; "It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly".

His Lordship concluded;

"In my opinion the House stands with relation to such rights and to the resolutions which affect their exercise, in precisely the same relation as we the judges of this Court stand in to the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it.

If they misunderstand it, or (I apologize for the supposition) willfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses. This is enough to justify the conclusion at which I arrive".

One may not agree with the wider observations of Stephen, J. particularly in the light of written Constitution and power of Judicial Review conferred on this Court which has been held to be 'basic feature' of our Constitution. But it certainly indicates approach of judiciary while dealing with powers, privileges and rights of Parliament over its members.

I may also refer to a case which is very much relevant and was referable to a point in time our Constitution was about to commence.

One Garry Allingham, a Member of Parliament got published an article on April 3, 1947 (before few months of Independence of India) making derogatory remarks against members of the House. A complaint was made to the House of Commons. Allingham was called upon to explain his conduct by the House. Allingham offered regrets for unfounded imputations against Members and tendered unconditional apology and said;

"I have humbly acknowledged my mistake, and nothing could be more sincere and heart-felt than my remorse for my action. Having done all that it is humanly possible to do to put this deeply regretted affair straight, I am content to submit myself to this House, confident that it will act in its traditional spirit of justice and generosity".

After the close of Allingham's speech a resolution was proposed holding him guilty of gross contempt of the House and to 'proceed with utmost severity against such offender'. A motion was moved to suspend Allingham from service of the House for six months and to deprive him of salary for that period. But an amendment to the motion was sought to the effect that Allingham be expelled from the House and finally the amended resolution was passed by the House.

Allingham thus clearly established that on the eve of British Empire in this country and on the dawn of Independence of India, one of the powers and privileges enjoyed by British Parliament was power of expulsion of a member from Parliament.

Finally, I may refer to a post-Constitution case of Mr. Peter Arthus David Baker (1954). He was a Member of House of Commons. A competent Court of Law held him guilty of forgery and convicted and sentenced him.

The factum of conviction was officially communicated by the Court to the Speaker of the House. Baker, in his letter to the Speaker of the House, expressed remorse about his conduct which was not connected with his position and status as a member of the House.

He, inter alia, stated;

"I must end as I began, by begging the House to accept my most sincere apology. I can only assure you that my regret, remorse and repentance during the past three months were doubted by the knowledge that, in addition to my friends and colleagues elsewhere, I had also embarrassed my friends and colleagues in the House of Commons. I can only ask you and, through you, them to accept this expression of these regrets." The entire letter was read out to the House. After consideration, the following resolution was passed;

"Resolved, that Mr. Peter Arthus David Baker be expelled from this House." Baker proved that the House of Commons possessed and continued to possess power to expel a Member for his objectionable activity not only in the House in his capacity as a Member as such but also outside the House if it is found to be otherwise improper, or tarnishing the image of the House in public eye or making him 'unfit' to continue to be a Member of an august body.

[This case is also relevant inasmuch as the Constitution (Forty-fourth Amendment) Act, 1978 by which Article 105(3) has been amended, lays down that whenever a question of powers, privileges and immunities of Parliament arises, it will be ascertained whether such power, privilege or

immunity was available to the House of Commons on the day the Amendment came into force, i.e. on June 20, 1979].

The petitioners strongly relied upon a decision of the Judicial Committee of the Privy Council in Edward Keilley v. William Carson, (1842) : 4 MOO PC 63 : 13 ER 225. K was a District Surgeon and Manager of Hospital while C was a Member of Assembly of Newfoundland. C made certain adverse remarks in respect of Hospital Management by K. K threatened C for criticizing the management and added; "Your privilege shall not protect you". C complained to the House. The Committee of Privilege found K guilty of the breach of privilege of the House and committed him to the goal.

K thereupon brought an action of trespass and false imprisonment against the defendants but failed. Before the Privy Council, one of the questions was as to whether the Assembly of Newfoundland had power to commit for breach of privilege, as incident to the House as a legislative body. According to K, the Assembly did not possess such power. Drawing the distinction between (a) conquered colonies, and (b) settled colonies, it was urged that in the former, the power of the Crown was paramount, but in the latter, the Colonists carried with them the great Charter of Liberty (Magna Carta) that "No man shall be imprisoned but by the lawful judgment of his peers, or by the law of the land." The Privy Council held that Newfoundland was a settled and not a conquered colony and the settlers carried with them such portion of its Common Law and Statute Law as was conferred and also the rights and immunities of British subjects. The Judicial Committee held that the Crown did not invest upon the Legislative Assembly of Newfoundland the power to commit for its contempt.

The Committee then proceeded to consider the question thus;

The whole question then is reduced to this,--whether by law, the power of committing for a contempt, not in the presence of the Assembly, is incidental to every local Legislature.

The Statute Law on this subject being silent, the Common Law is to govern it; and what is the Common Law, depends upon principle and precedent.

Their Lordships see no reason to think, that in the principle of the Common Law, any other powers are given to them, than such as are necessary to the existence of such a body, and the proper exercise of the functions which it is intended to execute. These powers are granted by the very act of its establishment, an act which on both sides, it is admitted, it was competent for the Crown to perform. This is the principle which governs all legal incidents.

"Quando lex aliquid concedit, concedere videtur et illud, sine qua res ipsa esse non potest."W In conformity to this principle we feel no doubt that such an Assembly has the right of protecting itself from all impediments to the due course of its proceeding. To the full extent of every measure which it may be really necessary to adopt, to secure the free exercise of their Legislative functions, they are justified in acting by the principle of the Common Law.

But the power of punishing any one for past misconduct as a contempt of its authority, and adjudicating upon the fact of such contempt, and the measure of punishment as a judicial body, irresponsible to the party accused, whatever the real facts may be, is of a very different character, and by no means essentially necessary for the exercise of its functions by a local Legislature, whether representative or not. All these functions may be well performed without this extraordinary

power, and with the aid of the ordinary tribunals to investigate and punish contemptuous insults and interruptions.

These powers certainly do not exist in corporate or other bodies, assembled, with authority, to make bye-laws for the government of particular trades, or united numbers of individuals. The functions of a Colonial Legislature are of a higher character, and it is engaged in more important objects;

but still there is no reason why it should possess the power in question.

It is said, however, that this power belongs to the House of Commons in England and this, it is contended, affords an authority for holding that it belongs as a legal incident, by the Common Law, to an Assembly with analogous functions. But the reason why the House of Commons has this power, is not because it is a representative body with legislative functions, but by virtue of ancient usage and prescription; the lex et consuetude Parliamenti, which forms a part of the Common Law of the land, and according to which the High Court of Parliament, before its division, and the Houses of Lords and Commons since, are invested with many peculiar privileges, that of punishing for contempt being one. And, besides, this argument from analogy would prove too much, since it would be equally available in favour of the assumption by the Council of the Island, of the power of commitment exercised by the House of Lords, as well as in support of the right of impeachment by the Assemblya claim for which there is not any colour of foundation.

Nor can the power be said to be incident to the Legislative Assembly by analogy to the English Courts of Record which possess it.

This Assembly is no Court of Record, nor has it any judicial functions whatever; and it is to be remarked that all these bodies which possess the power of adjudication upon, and punishing in a summary manner, contempts of their authority, have judicial functions, and exercise this as incident to those which they possess, except only the House of Commons, whose authority, in this respect, rests upon ancient usage.

Their Lordships, therefore, are of opinion, that the principle of the Common Law, that things necessary, pass as incident, does not give the power contended for by the Respondents as an incident to, and included in, the grant of a subordinate Legislature".

(emphasis supplied) The Council, in the light of above legal position did not approve the law laid down earlier in Beaumont v.

Barrett, (1836) 1 MOO PC 80, (in which such right was upheld and it was ruled that Legislative Assembly of Jamaica had inherent power to punish for contempt of the Assembly) and overruled it.

It was submitted that distinguished jurists and eminent judges considered the question in Keilley and concluded that Assembly of Newfoundland had no power to commit a person for contempt which was exercised by the British Parliament. The ratio in Keilley applies with equal force to Indian Parliament and it must be held that the position of our Parliament is not different than that of Newsouthland and it also does not possess such power claimed and exercised by British Parliament.

I am unable to agree with the learned counsel for the petitioners. In my judgment, Keilley has no application inasmuch as it was decided in the light of factual, political and legal background which was totally different. For more than one reason, the ratio in Keilley cannot be pressed in service in the case on hand. Firstly, India, after 1950, cannot be termed as a 'colonial country' nor its

Legislature Colonial or subordinate.

Secondly, it was not to derive powers, privileges or prerogatives from the Crown either expressly or impliedly. Thirdly, after January 26, 1950, it is the written Constitution which has conferred powers, privileges and immunities on Parliament/Legislatures and on their members. Fourthly, provisions of the Constitution themselves expressly conferred certain powers, privileges and immunities [Arts.105(1), (2); 194 (1), (2)]. It also allowed Parliament to define them by making an appropriate law and declared that until such law is enacted, they would be such as exercised by British Parliament on January 26, 1950 [Arts. 105(3), 194(3)]. Fifthly, the crucial question, in my opinion is not the fact that the Assembly of Newsouthland had no right to commit a person for contempt but whether or not the British Parliament possessed such power on January 26, 1950. Sixthly, Keilley was not a member of Assembly and as such the ruling in that case has no direct bearing on the issue raised before this Court. Finally, Keilley was a case of committal of a person to jail and keeping in view the fact situation, the Privy Council decided the matter which is absent here. For all these reasons, in my considered opinion, reliance on Keilley is of no assistance to the petitioners.

In fact, in a subsequent case in Thomas William Doyle v. George Charles Falconer, (1866) LR 1 PC 328, the distinction between power to punish for contempt and power to take other steps had been noted by the Privy Council. It held that the Legislative Assembly of Dominica did not have the power to punish for contempt as no such power was possessed by a Colonial Assembly by analogy of lex et consuetude Parliamenti which was inherent in Houses of Parliament in the United Kingdom as the High Court of Parliament, or in a Court of Justice as a Court of Record. A Colonial Assembly had no judicial functions.

The Judicial Committee, however, after referring to Keilley and other cases, proceeded to state;

If then, the power assumed by the House of Assembly cannot be maintained by analogy to the privileges of the House of Commons, or the powers of a Court of Record, is there any other legal foundation upon which it may be rested. It has not, as both sides admit, been expressly granted.

The learned counsel for the Appellants invoked the principles of the Common Law, and as it must be conceded that the Common Law sanctions the exercise of the prerogative by which the Assembly has been created, the principles of Common Law, which is embodied in the maxim, "Quando lex aliquid concedit, concedere videtur et illud, sine qua res ipsa esse non potest," applies to the body so created. The question, therefore, is reduced to this : Is the power to punish and commit for contempt for contempts committed in its presence one necessary to the existence of such a body as the Assembly of Dominica, and the proper exercise of the functions which it is intended to execute? It is necessary to distinguish between a power to punish for a contempt, which is a judicial power, and a power to remove any obstruction offered to the deliberations or proper action of a Legislative body during its sitting, which last power is necessary for self-preservation. If a Member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed, or excluded for a time, or even expelled; but there is a great difference between such powers and the judicial power of inflicting a penal sentence for the offence.

The right to remove for self-security is one thing, the right to inflict punishment is another. The former is, in their Lordships' judgment, all that is warranted by the legal maxim that has been cited, but the latter is not its legitimate consequence. To the question, therefore, on which this case depends, their Lordships must answer in the negative.

(emphasis supplied) (See also Broom's Legal Maxims, 10th Edn; p.314) With respect, the above observations lay down correct proposition of law.

Again, in Barton v. Taylor, (1886) 11 AC 197, the Privy Council, approving Doyle drew a practical line between defensive action and punitive action on the part of the Assembly to be taken against erring members, and said; "Powers to suspend toties quoties, sitting after sitting, in case of repeated offences (and, it may be, till submission or apology), and also to expel for aggravated or persistent misconduct, appear to be sufficient to meet even the extreme case of a member whose conduct is habitually obstructive or disorderly." An interesting point of law, which has been raised before this Court was also raised before the Supreme Court of New South Wales in Armstrong v. Budd, (1969) 71 SR 386 (NSW). Section 19 of the Constitution Act, 1902 laid down that in certain circumstances, a seat in the Legislative Council would automatically fall vacant. A was a member of Legislative Council against whom a suit was filed. During the course of litigation, he gave evidence. The evidence was disbelieved by the Court and in the judgment, certain strictures were passed by the trial Judge. The Legislative Council, on the basis of comments and adverse observations, passed a resolution and expelled A from the Council and declared his seat vacant. A sought a declaration that the resolution was ultra vires.

It was contended by A that since his case was not covered by any of the eventualities enumerated in Section 19, he could not be disqualified. The Court, however, negatived the contention. It observed that the case did not fall in any of the clauses (a) to (f) of Section 19 of the Act but stated that the said section did not constitute a 'complete code' for the vacation of seat.

Herron, C.J. stated.

For there exist well-recognized overriding common-law principles which enlarge parliamentary power. As applying to this case the first or primary essentials may be stated thus: in the absence of express grant the Legislative Council possesses such powers and privileges as are implied by reason of necessity, the necessity which occasions the implication of a particular power or privilege is such as is necessary to the existence of the Council or to the due and orderly exercise of its functions.

His Lordship further stated;

This case appears to me to warrant a decision that in special circumstances there is an area of misconduct of a Member of Parliament committed outside the House and disclosed in curial proceedings which may, in special circumstances, form a basis for the exercise of the power of expulsion based upon a finding by the House that such is necessary to its existence or to the orderly exercise of its important legislative functions.

(emphasis supplied) Wallace, P. agreed with the learned Chief Justice and observed;

I am of the opinion that the Legislative Council has an implied power to expel a member if it adjudges him to have been guilty of conduct unworthy of a member. The nature of this power is that it is solely defensivea power to preserve and safeguard the dignity and honour of the Council and the power conduct and exercise of its duties. The power extends to conduct outside the Council provided the exercise of the power is solely and genuinely inspired by the said defensive objectives. The manner and the occasion of the exercise of the power are for the decision of the Counsel. (emphasis supplied) Sugerman, J. in concurring opinion formulated the doctrine of necessity in an effective manner by making the following instructive observations;

"This necessity compels not only the conceded power to expulsion arising from disorderly conduct within the Chamber, but also expulsion arising from conduct outside the chamber, which, in the opinion of the Council, renders a man unfit for service and therefore one whose continued membership of the Council would disable the Council from discharging its duty and protecting its dignity in the sense mentioned. That the proper discharge of the legislative function by the Council demands an orderly conduct of its business is undoubted. That it demands honesty and probity of its members should be equally undoubted. Indeed, the need for removal and replacement of a dishonest member may be more imperative as a matter of self-preservation, than that of an unruly member". (emphasis supplied) Mr. Andhyarujina, Sr. Advocate appearing for Union of India placed before this Court particulars of expulsion of members from the House of Commons in the last three and half centuries. The particulars are as under;

Date Member and Constituency Reason 22nd November 1667 John Ashburnham (Sussex) Accepted a bribe (#500 from merchants who wished to import French wines).

21st April 1668 Hon. Henry Brouncker (New Romney) Invented orders from the Duke of York to down sail, which prevented England capitalising on its naval victory off Lowestoft in 1665.

1st February 1678 Thomas Wancklyn (Westbury) Corrupt misuse of the privilege of Parliament against arrest of MP's 'menial servants'.

25th March 1679 Edward Sackville (East Grinstead) Denunciation of Titus Oates as a 'lying rogue' and disbelief in the 'Popish Plot'.

28th October 1680 Sir Robert Cann, Bt. (Bristol) Statement that the attempt to exclude the Duke of York from the succession was a 'Presbyterian Plot'.

29th October 1680 Sir Francis Wythens (Westminster) Presented a petition abhorring the summons of a Parliament which would exclude the Duke of York from the succession.

14th December 1680 Sir Robert Peyton (Middlesex) Association with the Duke of York and alleged complicity in the 'Meal-Tub Plot' (attempt to implicate exclusionists in a plot to kill the King and establish a Commonwealth).

20th January 1690 Sir Robert Sawyer (Cambridge University) Leading the prosecution of Sir Thomas Armstrong for treason in the Rye House Plot while Attorney- General. Armstrong was convicted, sentenced to death and eventually hanged, but his conviction was later ruled a miscarriage of justice.

16th March 1695 Sir John Trevor (Yarmouth, Isle of Wight) Corruption (Speaker of the House of Commons). Paid 1,000 guineas from the Corporation of London on passage of the Orphans Bill.

26th March 1695 John Hungerford (Scarborough) Paid 20 guineas from the Corporation for his conduct as Chairman of the Committee of the Whole House on the Orphans Bill.

1st February 1698 Charles Duncombe (Downton) Obliged to pay #10,000 to public funds, Duncombe bought Exchequer Bills at a 5% discount and persuaded the seller (John da Costa) to endorse them as though they had been paid to him for excise duty. This allowed him to pay them in at face value and keep the discount himself.

1st February 1698 John Knight (Weymouth and Melcombe Regis) Persuaded his brother William and Reginald Marriott, a Treasury Official, falsely to endorse #7,000 of Exchequer Bills as though they were paid to settle tax payments (this meant that the Bills, circulated at a 10% discount, increased to their face value).

Tried to persuade Marriott to take the full blame.

10th February 1699 James Isaacson (Banbury) Commissioner of Stamp Duty; this office was a disqualification under the Lottery Act of 1694.

13th February 1699 Henry Cornish (Shaftesbury) Commissioner in the Stamp Office managing Duties on Vellum, Paper and Parchment; this office was a disqualification under the Lottery Act of 1694.

14th February 1699 Samuel Atkinson (Harwich) Commissioner for licensing hawkers and pedlars; this office was a disqualification under the Lottery Act of 1694.

14th February 1699 Sir Henry Furnese (Bramber) Trustee for circulating Exchequer Bills;

acting as Receiver and Manager of the subscription of the new East India Company. These offices were disqualifications under the Lottery Act of 1694.

20th February 1699 Richard Wollaston (Whitchurch) Receiver-General of Taxes for Hertfordshire; this office was a disqualification under the Lottery Act of 1694.

19th February 1701 Sir Henry Furnese (Sandwich) Trustee for circulating Exchequer Bills; this office was a disqualification under the Lottery Act of 1694.

22nd February 1701 Gilbert Heathcote (City of London) Trustee for circulating Exchequer Bills; this office was a disqualification under the Lottery Act of 1694.

1st February 1703 Rt. Hon. Earl of Ranelagh (West Looe) As Paymaster- General of the Army, appropriated #904,138 of public funds; had severe discrepancies in his accounts, which were only made up to March 1692.

18th December 1707 John Asgill (Bramber) Indebted to three creditors (among them Colonel John Rice) for #10,000.

Author of a book which argued that the Bible proved man may be translated from life on earth to eternal life in heaven without passing through death. The House held it to be blasphemous. The same member was also expelled from the Irish Parliament on 11th October 1703.

15th February 1711 Thomas Ridge (Poole) Having been contracted to supply the fleet with 8,217 tuns of beer, supplied only 4,482 tuns from his brewery and paid compensation at a discounted rate for the non-supplied beer, thereby defrauding public funds.

12th January 1712 Robert Walpole (King's Lynn) Corruption while Secretary at War.

Forage contracts he negotiated stipulated payments to Robert Mann, a relation of Walpole's, but Walpole signed for them and therefore received the money.

19th February 1712 Rt. Hon. Adam de Cardonnel (Southampton) While Secretary to the Duke of Marlborough, he received an annual gratuity of 500 gold ducats from Sir Solomon de Medina, an army bread contractor.

18th March 1714 Sir Richard Steele (Stockbridge) Seditious libel.

Published an article in The Guardian and a pamphlet called The Crisis exposing the government's support for French inaction on the demolition of Dunkirk; demolition was required under the Treaty of Utrecht.

2nd February 1716 Thomas Forster (Northumberland) Participation in the 1715 Jacobite rebellion (he was General of all the pretender's forces in England).

23rd March 1716 Lewis Pryse (Cardiganshire) Refused to attend the House to take oaths of loyalty after the Jacobite rebellion.

22nd June 1716 John Carnegie (Forfarshire) Participation in the 1715 Jacobite rebellion.

23rd January 1721 Jacob Sawbridge (Cricklade) Director of the South Sea Company.

28th January 1721 Sir Robert Chaplin, Bt. (Great Grimsby) Director of the South Sea Company.

28th January 1721 Francis Eyles (Devizes) Director of the South Sea Company.

30th January 1721 Sir Theodore Janssen, Bt.

(Yarmouth, Isle of Wight) Director of the South Sea Company.

8th March 1721 Rt. Hon. John Aislabie (Ripon) Negotiated the agreement to take over the national debt between the South Sea Company and the government, as Chancellor of the Exchequer; received #20,000 of South Sea Company stock;

destroyed evidence of his share dealings.

10th March 1721 Sir George Caswall (Leominster) Banker of the South Sea Company;

obtained for his company #50,000 stock in the South Sea Company while the South Sea Bill was still before Parliament, and without paying for it.

8th May 1721 Thomas Vernon (Whitchurch) Attempt to influence a member of the committee on the South Sea bubble in favour of John Aislabie, his brother- in-law.

15th February 1723 Viscount Barrington (Berwick- upon-Tweed) Involvement in a Lottery held in Hanover, but organized in London. The House declared it illegal.

4th February 1725 Francis Elde (Stafford) Corrupt attempt to compromise an election petition against him.

16th May 1726 John Ward (Weymouth and Melcombe Regis) Involved in a fraud against the estate of the late Duke of Buckingham - compelled to buy Alum from Ward's Alum works, but which Ward kept and sold again to others.

30th March 1732 John Birch (Weobley) Fraudulent sale of the Derwentwater Estate (escheated to the Crown by the Earl of Derwentwater, convicted of High Treason during the 1715 rebellion).

30th March 1732 Denis Bond (Poole) Fraudulent sale of the Derwentwater Estate (escheated to the Crown by the Earl of Derwentwater, convicted of High Treason during the 1715 rebellion).

3rd April 1732 George Robinson (Great Marlow) Fraudulent use of the funds of the Charitable Corporation for speculation.

Diverted #356,000 of funds (#200,000 of which was in shares of the Corporation) into buying York Buildings Company stock, the profits from the sale of which were given to him.

4th May 1732 Rt. Hon. Sir Robert Sutton (Nottinghamshire) False statement that the Charitable Corporation's authorized capital had been exhausted, allowing it to issue more (and so finance the corrupt speculation of other directors).

5th May 1732 Sir Archibald Grant, Bt.

(Aberdeenshire) Fraudulent use of the funds of the Charitable Corporation for speculation.

Arranged for George Robinson (see above) to abscond.

20th January 1764 John Wilkes (Aylesbury) Absconded to France after being charged with libel over issue no. 45 of the North Briton.

3rd February 1769 John Wilkes (Middlesex) Previous conviction for libel and blasphemy, and a further seditious libel in the Introduction to a letter to Daniel Ponton (Chairman of Quarter Sessions at Lambeth) in the St.

James's Chronicle.

(17th February 1769 John Wilkes (Middlesex) Returned despite his previous expulsion.

The House resolved that he "was, and is, incapable of being elected a Member to serve in the present Parliament.") 4th December 1783 Christopher Atkinson (Hedon) Convicted of perjury after swearing that accusations against him of fraud were untrue. The accusations related to his dealings with the Victualling Board, and were in a letter printed in the General Advertiser on 31st January 1781.

2nd May 1796 John Fenton Cawthorne (Lincoln) Convicted by court martial of fraud and embezzlement of the funds of the Westminster Regiment of the Middlesex Militia;

cashiered for conduct unbecoming the character of an officer and a gentleman.

23rd May 1810 Joseph Hunt (Queenborough) Absconded to Lisbon after being found to have embezzled public funds as Treasurer of the Ordnance.

During his term he left a deficit of #93,296.

5th March 1812 Benjamin Walsh (Wootton Bassett) Convicted (later pardoned) of attempting to defraud Solicitor- General Sir Thomas Plumer. Plumer had given Walsh a draft of #22,000 with

which to buy exchequer bills, but Walsh used it to play the lottery, and lost;

he then converted his remaining assets into American currency and set off for Falmouth to sail to America, but was brought back. Walsh had been expelled by the Stock Exchange for gross and nefarious conduct in 1809.

5th July 1814 Hon. Andrew James Cochrane (Grampound) Convicted of conspiracy to defraud (circulated false rumours of the defeat and death of Napoleon Buonaparte in order to boost share prices); absconded to France before sentence.

5th July 1814 Lord Cochrane (Westminster) Convicted of conspiracy to defraud (circulated false rumours of the defeat and death of Napoleon Buonaparte in order to boost share prices).

16th February 1857 James Sadleir (Tipperary) Absconded after arrest for fraudulent conversion. He had abstracted #250,000 of stock from the Tipperary Joint- Stock Bank for his brother's use.

22nd February 1882 Charles Bradlaugh (Northampton) Contempt of orders of the House of Commons excluding him from the Parliamentary estate.

12th May 1891 Edmund Hope Verney (Buckingham) Convicted of procuring a girl under the age of 21 (Miss Nellie Maud Baskett) for an immoral purpose.

26th February 1892 Edward Samuel Wesley de Cobain (Belfast, East) Absconded to the United States of America after a warrant for his arrest on charges of commission of acts of gross indecency was issued. On 21st March 1893 he was convicted and sentenced to twelve months' imprisonment with hard labour.

2nd March 1892 George Woodyatt Hastings (Worcestershire, Eastern) Convicted of fraudulent conversion. As a Trustee for property under the will of John Brown, appropriated to himself over #20,000 from the estate.

1st August 1922 Horatio William Bottomley (Hackney, South) Convicted of fraudulent conversion. Invited contributions to the Victory Bond Club which were supposed to be invested in government stock, but were actually diverted to his own use.

30th October 1947 Garry Allighan (Gravesend) Contempt of the House of Commons:

breach of privilege over article in 'World's Press News' alleging corruption and drunkenness among Members; lying to the committee investigating the allegations.

16th December 1954 Peter Arthur David Baker (Norfolk, South) Convicted of uttering forged documents. Forged signatures on letters purporting to guarantee debts in excess of #100,000 owed by his companies.

INDIAN LAW : HISTORIAL BACKGROUND It is no doubt true that the existing law relating to parliamentary privileges in India is essentially of English origin. But the concept of parliamentary privileges was not unknown to ancient India. Prititosh Roy in his work 'Parliamentary Privilege in India' (1991) states that even during Vedic times, there were two assemblies; Sabha and Samiti which were keeping check on all actions of the King. Reference of Sabha and Samiti is found in all Vedas. In Buddhist India, we find developed parliamentary system. Members were not allowed to

disobey directions of Assemblies. Offenders were answerable to Assemblies and after affording an opportunity to them, appropriate actions used to be taken against erring officers. It has thus 'rudimentary features' of parliamentary privilege of today.

In 1600, East India Company came to India primarily as 'trader'. The British Parliament effectively intervened into the affairs of the Company by passing the East India Company Act, 1773 (popularly known as 'the Regulating Act, 1773'), which was followed by the Act of 1784. The roots of modern Parliamentary system were laid in various Charter Acts of 1833, 1853, 1854, 1861, 1892, 1909, etc.

During 1915-50, there was remarkable growth and development of Parliamentary privileges in India. For the first time, a limited right of freedom of speech was conferred on the Members of Legislature by the Government of India Act, 1919 (Section 67). By the Legislative Members Exemption Act, 1925, two parliamentary privileges were allowed to Members; (i) exemption from jury service; and (ii) freedom from arrest.

The Government of India Act, 1935 extended the privileges conferred and immunities granted. The Indian Independence Act, 1947 accorded sovereign legislative power on the Indian Dominion.

CONSTITUTIONAL PROVISIONS The Constitution of India came into force from January 26, 1950. Part V contains the relevant provisions relating to the Union. Whereas Chapters I and IV deal with the Executive and Judiciary; Chapters II and III relate to Parliament. Articles 79 to 88 provide for constitution, composition, duration, etc. of both the Houses and qualification of members, Articles 89 to 98 make provisions for election of Speaker, Deputy Speaker, Chairman, Deputy Chairman and their salaries and allowances. Article 101 deals with vacation of seats and Article 102 specifies circumstances in which a person is held disqualified to be chosen as or continued to be a Member of Parliament. Article 103 attaches finality to such decisions.

Three Articles are relevant and may be reproduced;

101. Vacation of seats. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State, and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102, or (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the

House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102.Disqualifications for membership. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation.For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

103. Decision on questions as to disqualifications of members. (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

Article 105 provides for powers, privileges and immunities of the members of Parliament. It is the most important provision as to the controversy raised in the present proceedings, and may be quoted in extenso;

105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of any thing said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and

committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament. (emphasis supplied) Articles 107-22 contain provisions as to legislative procedure. Article 118 enables both the Houses of Parliament to make Rules for regulating procedure and conduct of business. Article 121 puts restriction on discussion in Parliament in respect of conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. Article 122 prohibits courts from inquiring into or questioning the validity of any proceedings in Parliament on the ground of irregularity of procedure. It reads thus;

122. Courts not to inquire into proceedings of Parliament. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

(emphasis supplied) EXPULSION OF MEMBERS BY PARLIAMENT There are certain instances wherein Indian Parliament has exercised the power of expulsion of its members.

The first case which came up for consideration before Parliament was of Mr. H.G. Mudgal, a Member of Lok Sabha. He suppressed certain material facts as to his relationship with the Bombay Bullion Association. A Committee of Enquiry found the charges proved and came to the conclusion that the conduct of the Hon'ble Member was 'derogatory of the dignity of the House inconsistent with the standard which Parliament is entitled to expect from its members'.

While addressing the House, the then Prime Minister Pandit Jawaharlal Nehru referred to the work of Sir Erkskine May, Article 105(3) of the Constitution and practice in the British House.

But Pt. Nehru, in my opinion, rightly added;

"Apart from that, even if the Constitution had made no reference to this, this House as a sovereign Parliament must have inherently the right to deal with its own problems as it chooses and I cannot imagine anybody doubting that fact".

(emphasis supplied) Regarding approach of House in such cases, he said;

"Indeed, I do not think it is normally possible for this House in a sense to convert itself into a court and consider in detail the evidence in the case and then come to a decision. Of course : the House is entitled to do so : but it is normally not done : nor is it considered, the proper procedure".

He then stated;

"The question arises whether in the present case this should be done or something else. I do submit that it is perfectly clear that this case is not even a case which might be called a marginal case, where people may have two opinions about it, where one may have doubts if a certain course suggested is much too severe. The case, if I may say so, is as bad as it could well be. If we consider

even such a case as a marginal case or as one where perhaps a certain amount of laxity might be shown, I think it will be unfortunate from a variety of points of view, more especially because, this being the first case of its kind coming up before the House, if the House does not express its will in such matters in clear, unambiguous and forceful terms, then doubts may very well arise in the public mind as to whether the House is very definite about such matters or not. Therefore, I do submit that it has become a duty for us and an obligation to be clear, precise and definite. The facts are clear and precise and the decision should also be clear and precise and unambiguous. And I submit the decision of the House should be, after accepting the finding of this report, to resolve that the Member should be expelled from the House".

A motion was then moved to expel Mr. Mudgal which was accepted by the House and Mr. Mudgal was expelled.

Likewise, power of expulsion was exercised by Parliament against Mr. Subramanyam Swami (Rajya Sabha) and Mrs. Indira Gandhi (Lok Sabha). The power was also exercised in case of expulsion from Legislative Assemblies of various States.

Kaul and Shakhder in their book 'Practice and Procedure of Parliament', (5th Edn., p.262), stated;

Punishment of Members: In the case of its own members, two other punishments are also available to the House by which it can express its displeasure more strongly than by admonition or reprimand, namely, suspension from the service of the House and expulsion.

EXPULSION OF MEMBERS AND COURTS Concrete cases have also come before Indian Judiciary against orders of expulsion passed by the Legislature. Let us consider leading decisions on the point.

So far as this Court is concerned, probably this is the first case of the type and, therefore, is of extreme importance. Few cases, which had come up for consideration earlier did not directly deal with expulsion of membership from Legislature. As already noted above, though in some cases, Parliament had taken an action of expelling its members, the aggrieved persons had not approached this Court?.

The first case which came to be decided by the Constitution Bench of this Court was M.S.M. Sharma v.

Shri Sri Krishna Sinha & Ors., 1959 Supp (1) SCR 806 :

AIR 1959 SC 395 ('Searchlight' for short). The petitioner, who was Editor of English daily newspaper 'Searchlight' published unedited proceedings of the Assembly. The Legislative Assembly issued a notice for violating privilege of the House and proposed to take action. The petitioner challenged the proceedings inter alia contending that they were in violation of fundamental right of free speech and expression guaranteed under Article 19 (1)(a) read with right to life under Article 21 of the Constitution.

Considering Article 194(3) [which is pari materia to Article 105(3)] of the Constitution, and referring to English Authorities, Das, CJ observed (for the majority);

The result of the foregoing discussion, therefore, is that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a

true and faithful report of the debates or proceedings that take place within the House. A fortiori the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part of Art. 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the States, as Art. 105(3) does on the Houses of Parliament.

On the construction of Article 194(3), His Lordship stated;

Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to re-make it. Nor do we share the view that it will not be right to entrust our Houses with these powers, privileges and immunities, for we are well persuaded that our Houses, like the House of Commons, will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases.

(emphasis supplied) Harmoniously interpreting and reconciling Articles 194(3) and 19(1)(a), the Court held that in respect of parliamentary proceedings, Article 19(1)(a) had no application.

It is thus clear that Searchlight had nothing to do with expulsion of a member, though it was relevant so far as construction of Article 194(3) was concerned.

Another leading case of this Court was Powers, Privileges and Immunities of State Legislatures, Article 143 of the Constitution, Re ('Keshav Singh' for short), (1965) 1 SCR 413 : AIR 1965 SC 745. Though Keshav Singh was not a case of expulsion of a member of Legislature, it is important as in exercise of 'advisory opinion' under Article 143 of the Constitution, a larger Bench of seven Judges considered various questions, including powers, privileges and immunities of the Legislature.

In that case, K, who was not a member of the House, published a pamphlet. He was proceeded against for contempt of the House and breach of privilege for publishing a pamphlet and was sent to jail. K filed a petition for habeas corpus by engaging S as his advocate and a Division Bench of two Judges of the High Court of Allahabad (Lucknow Bench) released him on bail. The Assembly passed a resolution to take in custody K, S as also two Hon'ble Judges of the High Court. Both the Judges instituted a writ petition in the High Court of Allahabad. A Full Court on judicial side admitted the petition and granted stay against execution of warrant of arrest against Judges. In the unusual and extraordinary circumstances, the President of India made reference to this Court under Article 143 of the Constitution.

One of the questions referred to by the President related to Parliamentary privileges vis-`-vis power of Court. It read thus;

(4) Whether, on the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly.

Before considering the ambit and scope of Article 194(3) and jurisdiction of the Legislature and the

power of judicial review of the High Court under Article 226, the learned Chief Justice gave a golden advice stating;

In coming to the conclusion that the content of Art. 194(3) must ultimately be determined by courts and not by the legislatures, we are not unmindful of the grandeur and majesty of the task which has been assigned to the Legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts also have to play an equally significant role in the development of the rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life.

In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the Judicature, are derived primarily from 'the status dignity and importance of the respective causes that are assigned to their charge by the Constitution.

These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antinovel nor in a spirit of hostility, but rationally, harmoniously and in spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic state alone will help the peaceful development, growth and stabilization of the democratic way of life in this country.

But when, as in the present case, a controversy arises between the House and the High Court, we must deal with the problem objectively and impersonally. There is no occasion to import heat into the debate or discussion and no justification for the use of strong language. The problem presented to us by the present reference is one of construing the relevant provisions of the Constitution and though its consideration may present some difficult aspects, we must attempt to find the answers as best as we can. In dealing with a dispute like the present which concerns the jurisdiction, the dignity and the independence of two august bodies in a State, we must remember that the objectivity of our approach itself may incidentally be on trial. It is, therefore, in a spirit of detached objective enquiry which is the distinguishing feature of judicial process that we propose to find solutions to the questions framed for our advisory opinion. If ultimately we come to the conclusion that the view pressed before us by Mr. Setalvad for the High Court is erroneous, we would not hesitate to pronounce our verdict against that view. On the other hand, if we ultimately come to the conclusion that the claim made by Mr. Seervai for the House cannot, be sustained, we would not falter to pronounce our verdict accordingly. In dealing with problems of this importance and significance, it is essential that we should proceed to discharge our duty without fear or favour, affection or ill-will and with the full consciousness that it is our solemn obligation to uphold the Constitution and the laws.

(emphasis supplied) Then analyzing Article 194(3), the Court stated;

That takes us to clause (3). The first part of this clause empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities; the latter part provides that until such laws are made, the Legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers must have thought that the Legislatures would take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers,

privileges and immunities which are contemplated by cl. (3), are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3).

This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to have subsisted at the commencement of the Constitution, i.e., on January 26, 150. It is well-known that out of a large number o privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time, and some virtually faded out by desuetude; and so, in every case where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is : is the power in question shown or proved to have subsisted in the House of Commons at the relevant time ? It would be recalled that Art. 194(3) consists of two parts. The first part empowers the Legislature to define by law from time to time its powers, privileges and immunities, whereas the second part provides that until the legislature chooses so to define its powers, privileges and immunities, its powers, privileges and immunities would be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of the Constitution. Mr. Seervai's argument is that the latter part of Art. 194(3) expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House. Take the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "to have at all times the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favorable construction placed on his words was justly regarded by the Commons as fundamental privilege". It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and the privilege of impeachment cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt. This privilege again, admittedly, cannot be claimed by the House.

Therefore, it would not be correct to say that an powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House.

Referring to conflict between two august organs of the State and complimenting the solution adopted by them in England, the learned Chief Justice said;

It has been common ground between the Houses and the courts that privilege depends on the "known laws and customs of Parliament", and not on the ipse dixit of either House. The question in dispute was whether the law of Parliament was a "particular" law or part of the common law in its wide and extended sense, and in the former case whether it was a superior law which overrode the common law. Arising out of this question another item of controversy arose between the courts and the Parliament and that was whether a matter of privilege should be judged solely by the House which it concerned, even when the rights of third parties were involved, or whether it might in

certain cases be decided in the courts, and, if so, in what sort of cases. The points of view adopted by the Parliament and the courts appeared to be irreconcilable. The courts claimed the right to decide for themselves when it became necessary to do so in proceedings brought before them, questions in relation to the existence or extent of these privileges, whereas both the Houses claimed to be exclusive judges of their own privileges.

Ultimately, the two points of view were reconciled in practice and a solution acceptable to both he parties was gradually evolved. This solution which is marked out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt. May adds that while it cannot be claimed that either House has formally acquiesced in this assumption of jurisdiction by the courts, the absence of any conflict for over a century may indicate a certain measure of tacit acceptance.

In other words, 'the question about the existence and extent of privilege is generally treated as justiciable in courts where it becomes relevant for adjudication of any dispute brought before the courts.

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

(1) It seems to be recognized that, for the purpose of adjudicating on questions of privilege, neither House is by itself entitled to claim the supremacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the King and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.

(2) It is admitted by both Houses that, since neither House can by itself add to the law, neither House can by its own declaration create a new privilege.

This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the courts.

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

(4) That a committal for contempt by either House is in practice within its exclusive jurisdiction,

since the facts constituting the alleged contempt need not be stated on the warrant of committal.

Paying tribute to English genius, the learned Chief Justice proceeded to observe;

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

Construing Article 212 in its proper perspective and drawing distinction between 'irregularity' and 'illegality', the Court stated;

Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Art.

212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Art. 194(3).

Advisory opinion of this Court in Keshav Singh thus is of extreme importance. Though it did not deal with the question of expulsion directly or even indirectly, it interpreted the relevant and material provisions of the Constitution relating to the powers, privileges and immunities of Parliament/State Legislature keeping in view the powers, privileges and immunities enjoyed by the British Parliament.

Let us now consider few High Court decisions on the point which are directly on the point.

In Raj Narain v. Atmaram Govind & Anr., AIR 1954 All 319, the petitioner who was an elected representative of the Legislative Assembly of Uttar Pradesh wanted to move a motion in connection with forcible removal by police of three teachers who were on hunger-strike.

Permission was not granted by the Speaker. The petitioner, however, continued to 'disturb' proceedings of the House and by use of 'minimum force', he was removed from the House. The Committee of Privileges considered the conduct of the petitioner and resolved to suspend him. The petitioner challenged the resolution in the High Court of Allahabad under Article 226 of the Constitution.

Both the Judges forming the Division Bench ordered dismissal of the petition by recording separate

reasons. Sapru, J. conceded that withdrawal of a member form the House even for a brief period was a serious matter both for the member as well as for his constituency but disciplinary or punitive action for disorderly behaviour of a member could be taken.

Mukherji, J. took the same view. His Lordship further held that 'the House is the sole Judge of its own privileges'.

In Yeshwant Rao Meghawale v. Madhya Pradesh Legislative Assembly & Ors., AIR 1967 MP 95, the petitioner obstructed the proceedings in the House, jumped on the dias and assaulted the Deputy Speaker.

A motion of expulsion of the petitioner was moved and was passed. The petitioner challenged the action by approaching the High Court under Article 226 of the Constitution.

It was contended on behalf of the petitioner that the House of Commons has the right to provide for its own constitution and power to fill vacancies. And it was because of that power that it could expel a member.

Since the Legislative Assembly of M.P. had no such right, it could not expel a member.

The Court, however, negatived the contention. It observed that though Indian Legislature has no right to provide for its own composition nor for filling of vacancies in the House, nor to try election disputes, nevertheless it has power to expel a member for proper functioning, protection and self-preservation. The Court noted that as held by the Privy Council, even Colonial Legislatures have such power.

In my opinion, by holding so, the Division Bench has not committed any error of law nor the observations are inconsistent with settled legal position.

I must make mention of a Full Bench decision of the High Court of Punjab & Haryana in Hardwari Lal v.

Election Commission of India, ILR (1977) 2 P & H 269 (FB). The High Court was expressly and specifically called upon to decide whether a State Legislature has power to expel its member. A Bench of five Judges exhaustively considered the question in detail. Whereas the majority negatived such right, the minority ruled otherwise and upheld it. The petitioners heavily relied upon the reasons recorded and conclusions reached by Sandhawalia, J. (majority view). The respondents, on the other hand, strongly adverted to observations and considerations of Narula, CJ (minority view). It would, therefore, be appropriate if I deal with both the view- points.

The learned Chief Justice firstly considered the scope and applicability of clause (3) of Article 194 [similar to clause (3) of Article 105] of the Constitution and held that to determine whether a particular privilege falls in the exceptional category or not is that as soon as a particular privilege is claimed by the Legislature and is disputed or contested, it must be inquired whether such a privilege was available to the House of Commons on January 26, 1950, and then to decide whether the said privilege is or is not compatible or consistent with the provisions of the Constitution. If it is not inconsistent with the provisions of the Constitution, it can be claimed by the Legislature under Article 194(3).

It was, therefore, held that "whenever it is found that the Commons did enjoy a particular privilege,

power or immunity at the relevant time, it must be deemed to have been written with pen and ink in clause (3) of Article 194, and it is only when a dispute arises whether in the nature of things the particular privilege or power can actually be expressed, claimed or enjoyed that the Court will scrutinize the matter and without deleting the same from the list hold that notwithstanding the power or privilege being there it cannot be exercised, either because it is humanly impossible to do so or because the extension of the privilege of the Commons would contravene some express or special provision of the Constitution".

Regarding the main question as to the right of the Legislature to expel a member, it was admitted that Indian Legislature had no privilege to provide for its own composition, but it is no ground to deny the right to the House to expel a member as a means of punishment for misconduct. Referring to a series of cases, it was held that "independent of the power and privilege of the House of Commons to constitute itself it did have and exercised at the time of coming into force of our Constitution the power to expel its members by way of punishment for misconduct or for breach of privilege or for committing contempt of the House." The majority, on the other hand, took a contrary view. Sandhawalia, J., considering historical development of law as to parliamentary privileges, observed;

In the context of an unwritten Constitution in England, the House of Commons has undoubtedly claimed and enjoyed the privilege of providing for and regulating its own Constitution from the very earliest times. This privilege in terms and in effect implies and includes all powers to control the composition of the House and to determine the identity of its membership.

Unfortunately, however, having held so, the majority adopted an incorrect approach thereafter.

Though this Court in Keshav Singh held that the privilege enjoyed by the House of Commons in England in regard to its constitution had been expressed in three ways;

namely;

(i) by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament;

(ii) by the trial of controversial elections; and (iii) by determining the questions of its members in cases of doubt;

the High Court (majority) added one more category (expulsion of a member) stating that the power of expulsion was another example (fourth category) of the power to the House to determine its own composition.

Describing ancient English precedents as 'not only wasteful but dangerous', the majority concluded;

"The uncanalised power of expulsion in the House of Commons stems from its ancient and peculiar privileges of determining its own composition which in turn arises for long historical reasons and because of the unwritten Constitution in England." (emphasis supplied) With respect, the majority was not right in coming to the aforesaid conclusion and I am unable to read legal position as envisaged by Sandhawalia, J.

In K. Anbazhagan & Ors. V. Secretary, Tamil Nadu Legislative Assembly, Madras & Ors., AIR 1988 Mad 275, some of the members of Tamil Nadu Legislative Assembly were expelled for

burning the Constitution considering the conduct as unworthy of members of Legislative Assembly. The action was challenged in the High Court.

A contention similar to one raised in Yeshwant Rao was raised that since the Tamil Nadu Legislative Assembly had no right to provide for its constitution or composition, it had no right to expel a member since a right to expel a member flows from a right to provide for composition of the House.

The Court observed that in Keshav Singh, it was held by the Supreme Court that Indian Legislatures have no privilege to provide for its own constitution. But it rightly proceeded to consider the controversy by observing that the question was whether the power of expulsion exercised by the House of Commons was to be 'wholly and exclusively treated as a part of the privilege in regard to its constitution'. Then considering English authorities and various other decisions on the point; the Court held that such power was possessed by the Legislature and was available in appropriate cases.

In my judgment, the right to expel a member is distinct, separate and independent of right to provide for the due constitution or composition of the House and even in absence of such power or prerogative, right of expulsion is possessed by a Legislature (even a Colonial Legislature), which in appropriate cases can be exercised.

I am also supported in taking this view from the discussion the Constituent Assembly had and the final decision taken.

When the provisions relating to powers, privileges and immunities of Parliament and State Legislatures were considered by the Constituent Assembly, conflicting views were expressed by the Hon'ble Members. One view was in favour of making such provisions exhaustive by incorporating them in the Constitution. The other view, however, was to include few specific and express rights in the Constitution and to adopt the rest as were available to House of Commons in England.

The relevant discussion throws light on different views expressed by the Members of Assembly. On May 19, 1949, when the matter came up for consideration, Shri Alladi Krishnaswami Ayyar stated;

Shri Alladi Krishnaswami Ayyar (Madras : General) : Sir, in regard to the article as it stands, two objections have been raised, one based upon sentiment and the other upon the advisability of making a reference to the privileges of a House in another State with which the average citizen or the members of Parliament here may not be acquainted with.

In the first place, so far as the question of sentiment is concerned, I might share it to some extent, but it is also necessary to appreciate it from the practical point of view.

It is common knowledge that the widest privileges are exercised by members of Parliament in England. If the privileges are confined to the existing privileges of legislature in India as at present constituted, the result will be that a person cannot be punished for contempt of the House. The actual question arose in Calcutta as to whether a person can be punished for contempt of the provincial legislature or other legislatures in this country.

It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has the inherent right to punish for contempt. The question arose in the Dominions and the Colonies and it has been held that by reason of the wide wording in the Australian Commonwealth Act as well as in the Canadian Act the Parliament in the both places have powers similar to the powers possessed by

the Parliament in England and therefore have the right to punish for contempt. Are you going to deny to yourself that power? That is the question.

I will deal with the second objection. If you have the time and if you have the leisure to formulate all the privileges in a compendious form, it will be well and good. I believe a Committee constituted by the Speaker on the legislative side found very difficult to formulate all the privileges, unless they went in detail into the whole working of parliamentary institution in England and the time was not sufficient before the legislature for that purpose and accordingly the Committee was not able to give any effective advice to the Speaker in regard to this matter.

I speak subject to correction because I was present at one stage and was not present at a later stage. Under these circumstances I submit there is absolutely to question of infra dig. We are having the English language. We are having our Constitution in the English language side by side with Hindi for the time being. Why object only to reference to the privileges in England? The other point is that there is nothing to prevent the Parliament from setting up the proper machinery for formulating privileges.

The article leaves wide scope for it. "In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution". That is all what the article says.

It does not in any way fetter your discretion.

You may enlarge the privileges, you may curtail the privileges, you may have a different kind of privileges. You may start on your own journey without reference to the Parliament of Great Britain. There is nothing to fetter the discretion of the future Parliament of India.

Only as a temporary measure, the privileges of the House of Commons are made applicable to this House. Far from it being infra dig, it subordinates the reference to privileges obtained by the members of Parliament in England to the privileges which may be conferred by this Parliament by its own enactments. Therefore there is no infra dig in the wording of class (3).

This practice has been followed in Australia, in Canada and in other Dominations with advantage and it has secured complete freedom of speech and also the omnipotence of the House in every respect. Therefore we need not fight shy of borrowing to this extent, when we are borrowing the English language and when we are using constitutional expressions which are common to England. You are saying that it will be the same as those enjoyed by the members of the House of Commons. It is far from that. Today the Parliament of the United Kingdom is exercising sway over Great Britain, over the Dominions and others. To say that you are as good as Great Britain is not a badge of inferiority but an assertion of your own self- respect and also of the omnipotence of your Parliament. Therefore, I submit, Sir, there is absolutely no force in the objection made as to the reference to the British Parliament. Under these circumstances, far from this article being framed in a spirit of servility or slavery or subjection to Britain, it is framed in a spirit of self-assertion and an assertion that our country and our Parliament are as great as the Parliament of Great Britain.

It is thus clear that when draft Article 85 (Present Article 105) was considered, different view-points were before the House. It was also aware of various Constitutions, particularly, Constitutions of Canada and Australia. The Members expressed their views, made suggestions and sought

amendments and finally, the draft Article 85 was approved as amended.

Likewise, when draft Article 169 (Present Article 194) came up before the House on June 3, 1949, again, the matter was discussed at length.

I would like to refer to in particular the considerations weighed with the House in the speech of Hon'ble the President, Dr. B.R. Ambedkar, who said;

The privileges of Parliament extend, for instance, to the rights of Parliament as against the public. Secondly, they also extend to rights as against the individual members. For instance, under the House of Commons' power and privileges it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised the jurisdiction of the court is ousted. That is an important privilege. Then again, it is open to Parliament to take action against any individual member of Parliament for anything that has been done by him which brings Parliament into disgrace. These are very grave matters-e.g., to commit to prison. the right to lack up a citizen for what parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute. (emphasis supplied) He further stated;

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

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

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

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

The other course is to say, as has been said in many places in the Constitution, that Parliament may make provision with regard to a particular matter and until Parliament makes that provision the

existing position would stand. That is the second course which we could have adopted. We could have said that Parliament may define the privileges and immunities of the members and of the body itself, and until that happens the privileges existing on the date on which the Constitution comes into existence shall continue to operate.

But unfortunately for us, as honourable Members will know, the 1935 Act conferred no privileges and no immunities on Parliament and its members. All that it provided for was a single provision that there shall be freedom of speech and no member shall be prosecuted for anything said in the debate inside Parliament.

Consequently that course was not open, because the existing Parliament or Legislative Assembly possess no privilege and no immunity. Therefore we could not resort to that course.

The third course open to us was the one which we have followed, namely, that the privileges of Parliament shall be the privileges of the House of Commons. It seems to me that except of the sentimental objection to the reference to the House of Commons I cannot see that there is any substance in the argument that has been advanced against the course adopted by the Drafting Committee. I therefore suggest that the article has adopted the only possible way of doing it and there is no other alternative way open to us. That being so, I suggest that this article be adopted in the way in which we have drafted it.

Thereafter the House decided to approve the provision relating to powers, privileges and immunities of State Legislatures.

The aforesaid discussion clearly and unequivocally indicates that the Members of the Constitution wanted Parliament (and State Legislatures) to retain power and privileges to take appropriate action against any individual member for 'anything that has been done by him' which may bring Parliament or Legislative Assembly into 'disgrace'. In my opinion, therefore, it cannot be said that the Founding Fathers of the Constitution were not aware or never intended to deal with individual misdeeds of members and no action can be taken by the Legislature under Article 105 or 194 of the Constitution.

An authority on the 'Constitutional Law of India', (H.M. Seervai) pithily puts this principle in one sentence;

"It is clear, therefore, that the privileges of the British House of Commons were not conferred on the Indian Legislatures in a fit of absent mindedness". (emphasis supplied) (Constitutional Law of India; Third Edn.; Vol. II;

para 20-36) ORDER OF EXPULSION AND JUDICIAL REVIEW The history of relationship between Parliament and Courts at Westminister is also marked with conflict and controversy.

Sir Erskine May rightly comments; "After some three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of the either House in matters of privilege is still not entirely determined".

According to the learned author, the earliest conflicts between Parliament and the Courts were about the relationship between the lex parliamenti and the common law of England. Both Houses argued that under the former, they alone were the judges of the extent and application of their own privileges, not examinable by any court or subject to any appeal. The courts, on the other hand, professed judicial ignorance of the lex parliamenti.

After some time, however, they recognized it, but as a part of the Law of England and, therefore, wholly within the judicial notice.

In the middle of the nineteenth century, the conflict, to the large extent, had been resolved. Out of both the claims, (i) whether a privilege existed; and (ii) whether it had been breached, Parliament yielded the first to the courts. In turn, courts recognized right of the House to the second.

The question was also considered by Anson ('The Law and Custom of the Constitution', Fifth Edition; Vol. I;

pp. 190-99). The learned author considered the causes of conflict between Houses and Courts. He noted that the House had asserted that 'it is the sole judge of the extent of its privileges' and the Court had no jurisdiction in the matter. Courts, on the other hand, took the stand that 'when privilege conflicts with rights which they have it in charge of maintain, they will consider whether the alleged privilege is authentic, and whether it governs the case before them'.

Then referring to three leading cases, (i) Ashby v.

White, (1704) 14 St Tr 695; (ii) Stockdale v. Hansard, (1839) 9 Ad & E 1 : 112 ER 1112; and (iii) Bradlaugh v.

Gossett, (1884) 12 QBD 271 : 53 LJQB 200the author concluded;

On the whole, it seems now to be clearly settled that the Courts will not be deterred from upholding private rights by the fact that questions of parliamentary privilege are involved in their maintenance; and that, except as regards the internal regulation of its proceedings by the House, Courts of Law will not hesitate to inquire into alleged privilege, as they would into custom, and determine its extent and application.

In Halsbury's Laws of England, (4th Edition, Reissue, Vol. 34; pp. 553-54; paras 1004-05), it has been stated;

1004. The position of the courts of law. Each House of Parliament has traditionally claimed to be the sole and exclusive judge of its own privilege and of the extent of that privilege.

The courts of law accept the existence of privileges essential to the discharge of the functions of the two Houses. In 1939, all the privileges required for the energetic discharge of the Commons' trust were conceded by the court without a murmur or doubt; and over 150 years later, the Privy Council confirmed that the courts will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges. On the other hand, the courts take the view that it is for them to determine whether a parliamentary claim to privilege in a particular case falls within that area where what is claimed is necessary to the discharge of parliamentary functions or internal to one or other of the Houses, in which case parliamentary jurisdiction is exclusive, or whether it falls outside that area, especially if the rights of third parties are involved, where the courts would expect to form their own judgments.

1005. Limits of agreement regarding jurisdiction. In spite of the dualism of jurisdiction between the Houses of Parliament and the courts of law, the current measure of agreement on the respective spheres of the two Houses and the courts has, since the mid- nineteenth century, prevented the direct conflicts of earlier years.

Although the Houses have never directly admitted the claim of the courts of law to adjudicate on matters of privilege, they appear to recognize that neither House is by itself entitled to claim the supremacy which was enjoyed by the undivided High Court of Parliament.

For their part the courts of law acknowledge that the control of each House over its own proceedings is absolute and not subject to judicial jurisdiction; and the courts will not interfere with the interpretation of a statute by either House so far as the proceedings of the House are concerned.

Neither will the courts inquire into the reasons for which a person has been adjudged guilty of contempt and committed by either House, when the order or warrant upon which he has been arrested does not state the causes of his arrest; for in such cases it is presumed that the order or warrant has been duly issued unless the contrary appears upon the face of it.

Holdsworth, in 'A History of English Law' (Vol. I; pp.

393-94) rightly observed;

There are two maxims or principles which govern this subject. The first tells us that "Privilege of Parliament is part of the law of the land;" the second that "Each House is the judge of its own privileges." Now at first sight it may seem that these maxims are contradictory. If privilege of Parliament is part of the law of the land its meaning and extent must be interpreted by the courts, just like any other part of the law; and therefore neither House can add to its privileges by its own resolution, any more than it can add to any other part of the law by such a resolution. On the other hand if it is true that each House is the sole judge of its own privileges, it might seem that each House was the sole judge as to whether or no it had got a privilege, and so could add to its privileges by its own resolution. This apparent contradiction is solved if the proper application of these two maxims is attended to. The first maxim applies to cases like Ashby v. White; (1704) 14 St Tr 695 and Stockdale v. Hansard; (1839) 9 Ad & E 1 : 112 ER 1112 in which the question at issue was the existence of a privilege claimed by the House. This is a matter of law which the courts must decide, without paying any attention to a resolution of the House on the subject. The second maxim applies to cases like that of the Sheriff of Middlesex;

(1840) 11 Ad & E 273 : 113 ER 419 and Bradlaugh v. Gosset; (1884) 12 QBD 271 : 53 LJQB 200, in which an attempt was made to question, not the existence, but the mode of user of an undoubted privilege. On this matter the courts will not interfere because each House is the sole judge of the question whether, when, or how it will use one of its undoubted privileges.

We have a written Constitution which confers power of judicial review on this Court and on all High Courts.

In exercising power and discharging duty assigned by the Constitution, this Court has to play the role of a 'sentinel on the qui vive' and it is the solemn duty of this Court to protect the fundamental rights guaranteed by Part III of the Constitution zealously and vigilantly.

It may be stated that initially it was contended by the respondents that this Court has no power to consider a complaint against any action taken by Parliament and no such complaint can ever be entertained by the Court.

Mr. Gopal Subramaniam, appearing for the Attorney General, however, at a later stage conceded (and I may say, rightly) the jurisdiction of this Court to consider such complaint, but submitted that

the Court must always keep in mind the fact that the power has been exercised by a co-ordinate organ of the State which has the jurisdiction to regulate its own proceedings within the four walls of the House. Unless, therefore, this Court is convinced that the action of the House is unconstitutional or wholly unlawful, it may not exercise its extraordinary jurisdiction by re-appreciating the evidence and material before Parliament and substitute its own conclusions for the conclusions arrived at by the House.

In my opinion, the submission is well-founded.

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

The principle has been succinctly stated by Sir John Donaldson, M.R. in R. v. Her Majesty's Treasury, ex parte Smedley, 1985 QB 657, 666 thus;

It behoves the courts to be ever sensitive to the paramount need to refrain from trespassing on the province of Parliament or, so far as this can be avoided, even appearing to do so. (emphasis supplied) INDIAN PARLIAMENT HAS NO DUAL CAPACITY It was also urged that Indian Parliament is one of the three components of the State and it does not have a 'dual capacity' like the British Parliament which is not only 'Parliament', i.e. legislative body, pure and simple, but also 'the High Court of Parliament'. Since Indian Parliament is not a 'Court of Record', it has no power, authority or jurisdiction to award or inflict punishment for Contempt of Court nor it can be contended that such action is beyond judicial scrutiny.

In this connection, I may only observe that in Searchlight as well as in Keshav Singh, it has been observed that there is no doubt that Parliament/State Legislature has power to punish for contempt, which has been reiterated in other cases also, for instance, in State of Karnataka v. Union of India, (1977) 4 SCC 608, and in P. V. Narasimha Rao v. State, (1998) 4 SCC 626. But what has been held is that such decision of Parliament/State Legislature is not 'final and conclusive'. This Court in all earlier cases held that in view of power of judicial review under Articles 32 and 226 of the Constitution, the Supreme Court and High Courts have jurisdiction to decide legality or otherwise of the action taken by State- authorities and that power cannot be taken away from judiciary. There lies the distinction between British Parliament and Indian Parliament. Since British Parliament is also 'the High Court of Parliament', the action taken or decision rendered by it is not open to challenge in any court of law. This, in my opinion, is based on the doctrine that there cannot be two parallel courts, i.e. Crown's Court and also a Court of Parliament ('the High Court of Parliament') exercising judicial power in respect of one and the same jurisdiction. India is a democratic and republican State having a written Constitution which is supreme and no organ of the State (Legislature, Executive or Judiciary) can claim sovereignty or supremacy over the other. Under the said Constitution, power of judicial review has been conferred on higher judiciary (Supreme Court and High Courts).

The said power is held to be one of the 'basic features' of the Constitution and, as such, it cannot be taken away by Parliament, even by an amendment in the Constitution. [Vide Sambamurthy v. State of A.P., (1987) 1 SCC 362 : AIR 1987 SC 663; Kesavananda Bharti v.

State of Kerala, (1973) 4 SCC 225 : AIR 1973 SC 1461;

Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1 :

AIR 1975 SC 2299; Minerva Mills Ltd. V. Union of India, (1980) 3 SCC 625 : AIR 1980 SC 1789; L. Chandra Kumar v. Union of India, (1987) 1 SCC 124 : (1987) 1 SCC 124 : (1987) 1 SCR 435, Kihoto Hollohon v.

Zachilhu, 1992 Supp (2) SCC 651 : AIR 1993 SC 412].

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

Moreover, in the instant cases, the Court is called upon to answer a limited question whether Parliament can expel a member. As I have already discussed in earlier part of this judgment, even a Colonial Legislature having limited privileges possesses the power to expel a member if his conduct is found to be not befitting a member of Legislature. If it is so, in my opinion, it goes without saying that Indian Parliament, which has undoubtedly much more powers than a Colonial Legislature, can take such action and it cannot be successfully contended that Parliament does not possess the power to expel a member. I am, therefore, unable to uphold the argument of the petitioners.

DISQUALIFICATION AND EXPULSION The petitioners also submitted that the law relating to disqualification and vacation of seats has been laid down in Articles 101 to 104 (and 190-93) read with Schedule X to the Constitution and of the Representation of the People Act, 1951. Those provisions are 'full and complete'. In other words, they are in the nature of 'complete Code' as to disqualification of membership and vacation of seats covering the field in its entirety. No power of expulsion de hors the above provisions exists or is available to any court or authority including Parliament. The action of Parliament, hence, is without jurisdiction and is liable to be set aside.

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

PARLIAMENT HAS NO CARTE BLANCHE POWER The counsel for the petitioners submitted that every power has its limitations and power conferred on Parliament is not an exception to this

rule. It has, therefore, no absolute right to take any action or make any order it likes. It was stated that this Court has accepted this principle in several cases by observing that absolute power is possible 'only in the moon' [vide Ahmedabad St. Xavier's College Society & Anr. V. State of Gujarat & Anr., [(1975) 1 SCR 173 : (1974) 1 SCC 717 :

AIR 1974 SC 1389]. I admit my inability to express any opinion on the larger issue. But I have no doubt and I hold that Parliaemnt, like the other organs of the State, is subject to the provisions of the Constitution and is expected, nay, bound to exercise its powers in consonance with the provisions of the Constitution. But I am unable to hold that the power to expel a member is a carte blanche in nature and Palriament has no authority to expel any member. In my view, Parliament can take appropriate action against erring members by imposing appropriate punishments or penalties and expulsion is one of them. I may, however, hasten to add that under our Constitution, every action of every authority is subject to law as nobody is above law. Parliament is not an exception to this 'universal' rule. It is, therefore, open to an aggrieved party to approach this Court raising grievance against the action of Parliament and if the Court is satisfied within the limited parameters of judicial review that the action is unwarranted, unlawful or unconstitutional, it can set aside the action. But it is not because Parliament has no power to expel a member but the action was not found to be in consonance with law.

PROCEDURAL IRREGULARITY : EFFECT It was then contended that the impugned actions taken by Lok Sabha and Rajya Sabha are illegal and unconstitutional. It was stated that the immunity granted by clause (1) of Article 122 of the Constitution ('Courts not to inquire into proceedings of Parliament') has been made expressly limited to 'irregularity of procedure' and not to substantive illegality or unconstitutionality. If the action taken or order passed is ex facie illegal, unlawful or unconstitutional, Parliament cannot take shelter under Article 122 and prevent judicial scrutiny thereof. Neither ad hoc Committees have been contemplated by the Constitution nor such committees have power to inquire into conduct or misconduct of Members of Parliament. All proceedings, therefore, have no legal foundation. They were without jurisdiction or lawful basis and are liable to be ignored altogether.

In this connection, the attention of the Court was invited to Constituent Assembly Debates when draft Article 101 (present Article 122) was discussed. Mr.

Kamath suggested an amendment in clause (1) of Article 101 by inserting the words "in any court" after the words "called in question".

Dealing with the amendment and jurisdiction of Courts, Dr. B.R. Ambedkar stated (CAD : Vol.VIII; pp.

199-201);

With regard to the amendment of Mr.

Kamath, I do not think it necessary, because where can the proceedings of Parliament be questioned in a legal manner except in a Court? Therefore, the only place where the proceedings of Parliament can be questioned in a legal manner and legal sanction obtained is the Court. (emphasis supplied) Reference was also made to Pandit M.S.M. Sharma v.

Shree Krishna Sinha & Ors. (Pandit Sharma II); (1961) 1 SCR 96 : AIR 1960 SC 1186, wherein a Bench of eight Hon'ble Judges of this Court held that "the validity of the proceedings inside the

Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed".

In Keshav Singh also, this Court reiterated the above proposition of law and stated;

Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. Art.

212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. (emphasis supplied) [See also Kihoto Hollohan v. Zachillhu & Ors., 1992 Supp (2) SCC 651, 711].

The learned counsel for the respondents have, in my opinion, rightly not disputed the above statement of law made in the larger Bench decisions of this Court. They, however, stated that a Committee was appointed by Parliament, which went into the allegations against the petitioners. Adequate opportunity had been afforded to the members and after considering the relevant material placed before it, a decision was taken holding them guilty. The said action was approved by the House and as such, the law laid down in the above decisions has no application to the fact-situation and no grievance can be made against it.

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

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

In this connection, it is profitable to refer to Mudgal.

In that case also, a Committee was appointed to inquire into charges leveled against a member of Parliament.

Certain directives were issued to the Committee.

Directive No.2 issued by the Speaker was relevant and read thus;

"The Committee on the Conduct of a Member that has been constituted is a Court of Honour and not a Court of Law in the strict sense of the term. It is therefore not bound by technical rules. It has to mould its procedure so as to satisfy the ends of justice and ascertain the true facts of the case. In Courts of Law, excessive cross-examination eventually turns into a battle of wits and that should not be the atmosphere of a Court of Honour. Here the effort should be to simplify the procedure and to lay down clear rules which ensure ascertainment of Truth, fairplay and justice to all concerned. I am, therefore, of opinion that normally the questions should be put by the Chairman and the Members but that does not mean that the counsel appearing in the case is debarred from putting any questions whatsoever. It is open to the Committee in the light of particular circumstances, of which they alone are the best judges, to permit the counsel to put questions to a witness with the permission of the Chairman. I feel that this should meet the requirements of the present case." (emphasis supplied) OBSERVANCE OF NATURAL JUSTICE It was also urged that the Committee had not given sufficient opportunity to the petitioners to defend them and had not complied with the principles of natural justice and fair play. It was submitted that the doctrine of natural justice is not merely a matter of procedure but of substance and any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution.

Reference in this connection was made to Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : AIR 1978 SC 597; Kihoto Holohan and other decisions.

So far as principle of law is concerned, it is well- settled and cannot be disputed and is not challenged. In my opinion, however, in the facts of the case, it cannot successfully be contended that there is breach or non- observance of natural justice by the Committee. Reading of the Reports makes it clear that adequate opportunity had been afforded to the petitioners and thereafter the action was taken. Notices were issued to the members, CDs were supplied to them, evidence of witnesses was recorded, defence version was considered and 'findings and conclusions' were reached.

So far as the Committee constituted by the Lok Sabha is concerned, it stated;

IV. Findings and Conclusions

32. The Committee viewed the VCDs comprising the relevant video footage aired on the 'Aaj Tak' TV Channel on 12 December, 2005, perused the transcripts thereof, considered the written statements submitted by each of the said ten members and their oral evidence and also the oral evidence of Shri Aniruddha Bahal, Kumar Badal and Ms.

Sushasini Raj of Cobrapost.Com who conducted the 'Operation Duryodhan'.

33. The Committee note that the concerned representatives of the Portal Cobrapost.Com namely Shri Aniruddha Bahal, Ms. Suhasini Raj and Shri Kumar Badal approached the members posing as representatives of a fictitious company, through a number of middlemen, some of whom were also working as Private Secretaries/Personal Assistants of the members concerned. They requested the

members to raise questions in Lok Sabha and offered them money as a consideration thereof.

Money was accepted by the members directly and also through their Private Secretaries.

They deposed on oath that in the money sequences shown on TV Channel Aaj Tak there was no misrepresentation. They have also given to the Committee the raw footage covering the situation before and after the scene in question. While the Aaj Tak clippings have gone through video cleaning and sound enhancement, corresponding thereto are extended versions of unedited raw footage of the tapes to make it apparent that nothing had been misrepresented. Besides this Shri Aniruddha Bahal also submitted the "Original tapes of money acceptance of whatever length the incident it may be". There are 20-25 tapes and the total footage pertains to money acceptance. Each tape is a complete tape showing the whole incident. In the course of her evidence Ms. Suhasini Raj has given the details of the money given to the MPs directly as also through the middlemen.

34. As against this evidence are the statements of all the said ten members. The Committee note that all the members have denied the allegations leveled against them.

The common strain in their testimony is that the clippings are morphed, out of context and a result of 'cut and paste'. The clippings of a few minutes, they averred, do not present full picture and they needed full tapes including the preceding and succeeding scenes to prove what they termed as the falsehood thereof.

They claimed that the entire exercise was aimed to trap them and lower the prestige of the Parliament.

35. The Committee have given serious consideration to the requests made by the said members for being provided the full footage of video recordings, all the audio tapes and their request for extension of time and being allowed to be represented through their counsels.

In this context the Committee would like to bring it on record that all the ten members while deposing before the Committee were asked whether they would like to view the relevant video footage so that they could point out the discrepancies therein if any. All the members, refused to view the relevant video footage. The Committee, therefore, feel that the requests by the members for unedited and entire video footage would only lead to delaying the consideration of the matter and serve no useful purpose.

36. The Committee having given in-depth consideration to the evidence and statements of the representatives of Cobrapost.com and the members, are of the view that the evidence against the members is incriminating. The Committee note that the Cobrapost.com representatives gave their statement on oath and would be aware of the consequences of making any false or incorrect statement. They have also supplied the unedited copies of original video situations where money changed hands. Transcripts of the said videos have also been supplied. Had the Cobrapost.com been reluctant in supplying the original unedited video tapes there could have been scope for some adverse inference about the authenticity of the "money sequences" as telecast by Aaj Tak. But that is not so.

37. The Committee are also of the view that the plea put forth by the said ten members that the video footages are doctored/morphed/edited has no merit. If the members had accepted the offer of the Committee to view the relevant footage and pointed out the interpolated portions in the tape, there would have been justification for allowing their plea for more time for examining the whole

tapes. Having seen the unedited raw footage of the Cobrapost.com pertaining to some of the members, the Committee have no valid reason to doubt the authenticity of the video footages.

38. In view of the totality of the facts and circumstances of the case, the Committee are of the opinion that the allegations of accepting money by the said ten members have been established. The Committee further note that it is difficult to escape the conclusion that accepting money had a direct connection with the work in Parliament.

39. The Committee feel that such conduct of the said members was unbecoming of members of Parliament and also unethical.

The Committee are, therefore, of the view that their conduct calls for strict action.

40. The Committee feel that stern action also needs to be taken against the middlemen, touts and persons masquerading as Private Secretaries of members since they are primarily responsible for inducing members to indulge in such activities.

41. The Committee note that in the case of misconduct or contempts committed by its members, the House can impose these punishments: admonition, reprimand, withdrawal from the House, suspension from the service of the House, imprisonment, and expulsion from the House.

The Committee, according to me, rightly made the following observations;

V. Observations

42. The Committee feel that credibility of a democratic institution like Parliament and impeccable integrity of its members are imperative for the success of any democracy.

In order to maintain the highest traditions in parliamentary life, members of Parliament are expected to observe a certain standard of conduct, both inside the House as well as outside it. It is well recognised that conduct of members should not be contrary to the Rules or derogatory to the dignity of the House or in any way inconsistent with the standards which Parliament is entitled to expect of its members.

43. The Committee wish to emphasise that ensuring probity and standards in public life is sine qua non for carrying credibility with the public apart from its own intrinsic importance. The waning confidence of the people in their elected representatives can be restored through prompt action alone.

Continuous fight against corruption is necessary for preserving the dignity of the country. The beginning has to be made with holders of high public offices as the system is, and ought to be, based on morality. When the Committee say so, they are also aware of and wish to put on record that a large number of leaders spend their life time in self-less service to the public.

44. The Committee find it pertinent to note the following observations made by the Committee of Privileges of Eleventh Lok Sabha in their Report on 'Ethics, Standards in Public Life, Privileges, Facilities to members and related matters':

"Voicing the constituents' concerns on the floor of the House is the primary parliamentary duty of an elected representative. Any attempt to influence members by improper means in their parliamentary

conduct is a breach of privilege. Thus, offering to a member a bribe or payment to influence him in his conduct as a member, or any fee or reward in connection with the promotion of or opposition to, any Bill, resolution, matter or things submitted or intended to be submitted to the House or any Committee thereof, should be treated as a breach of Code of Conduct. Further, any offer of money, whether for payment to an association to which a member belongs or to a charity, conditional on the member taking up a case or bringing it to a successful conclusion, is objectionable.

Offer of money or other advantage to a member in order to induce him to take up an issue with a Minister may also constitute a breach of Code. Similarly, acceptance of inducements and gratification by members for putting questions in the House or for promotion of or opposition to any Bill, resolution or matters submitted to the House or any Committee thereof involves the privileges and contempt proceedings.

The privilege implications apart, the Committee is constrained to observe that such attempts and acts are basically unethical in nature."

45. The Committee are, therefore, deeply distressed over acceptance of money by members for raising parliamentary questions in the House, because it is by such actions that the credibility of Parliament as an institution and a pillar of our democracy is eroded.

(emphasis supplied) The Committee accordingly recommended (by majority of 4 : 1) expulsion of all the ten members from the membership of Lok Sabha.

The recommendation was accepted by the House and consequential notification was issued on December 23, 2005 expelling all the members from Lok Sabha with effect from afternoon of December 23, 2005.

So far as Rajya Sabha is concerned, the Committee on Ethics recorded a similar finding and observed that it was convinced that the member had accepted money for tabling questions in Rajya Sabha and the pleas raised by him in defence were not well-founded.

The Committee rightly stated;

Parliamentary functioning is the very basis of our democratic structure upon which the whole constitutional system rests.

Anything, therefore, that brings the institution of parliament into disrepute is extremely unfortunate because it erodes public confidence in the credibility of the institution and thereby weaken the grand edifice of our democratic polity.

The Committee then observed;

The Committee has applied its mind to the whole unfortunate incident, gave full opportunity to the Member concerned to make submissions in his defence and has also closely examined witnesses from Cobrapost.Com and Aaj Tak. The Committee has also viewed the video tapes and heard the audio transcripts more than once. After taking all factors into consideration, the overwhelming and clinching evidence that the member has, in fact, contravened para 5 of the code of conduct for members of the Rajya Sabha and having considered the whole matter in depth, the committee, with great sadness, has come to the conclusion that the member has acted in a manner which has seriously impaired the dignity of the house and brought the whole institution of parliamentary

democracy into disrepute. The Committee therefore recommend that Dr. Chhattrapal Singh Lodha be expelled from the membership of the House as his conduct is derogatory to the dignity of the House and inconsistent with the code of conduct which has been adopted by the House.

The Committee thus recommended expulsion of Dr.

Lodha. One member of the Committee suggested (clarifying that it was not a 'dissent note'), to seek opinion of this Court under Article 143(1) of the Constitution.

The House agreed with the recommendation and expelled Dr. Lodha. A notification was issued on December 23, 2005 notifying that Dr. Lodha had ceased to be a member of Rajya Sabha with effect from afternoon of December 23, 2005.

ISSUE : WHETHER PRE-JUDGED One of the grievances of the petitioners is that the issue had already been pre-judged even before a Committee was appointed by Parliament. In support of the said complaint, the counsel drew the attention of the Court to a statement by the Hon'ble Speaker of Lok Sabha on December 12, 2005;

"No body would be spared".

An attempt was made that the Hon'ble Speaker, even before the constitution of Committee had proclaimed that the petitioners would not be spared.

Appointment of Committee, consideration of allegations and recording of findings were, therefore, in the nature of an 'empty formality' to 'approve' the tentative decision taken by the Hon'ble Speaker and for that reason also, the action is liable to be interfered with by this Court.

In my opinion, the contention has no force. The petitioners are not fair to the Hon'ble Speaker. They have taken out one sentence from the speech of Hon'ble Speaker of Lok Sabha and sought to create an impression as if the matter had already been decided on the day one.

It was not so. The entire speech wherein the above sentence appears is part of the Report of the Committee and is on record. It reads thus;

"Hon. Members, certain very serious events have come to my notice as also of many other hon. Members. It will be looked into with all importance it deserves. I have already spoken to and discussed with all Hon. Leaders of different Parties, including the Hon. Leader of the Opposition and all have agreed that the matter is extremely serious if proved to be correct. I shall certainly ask the hon. Members to explain what has happened. In the meantime, I am making a personal request to all of them 'please do not attend the Session of the House until the matter is looked into and a decision is taken' I have no manner of doubt that all sections of the House feel deeply concerned about it. I know that we should rise to the occasion and we should see that such an event does not occur ever in future and if anybody is guilty, he should be punished.

Nobody would be spared. We shall certainly respnd to it in a manner which behoves as.

Thank you very much." (emphasis supplied) It is thus clear that what was stated by the Hon'ble Speaker was that "if anybody is guilty, he would be punished. Nobody would be spared". In other words, an assurance was given by the Hon'ble Speaker to the members of august body that an appropriate action will be taken without considering the position or status of an individual member

and if he is found guilty, he will not be spared. The statement, in my judgment, is a responsible one, expected of the Hon'ble Speaker of an august body of the largest democracy. I, therefore, see nothing in the above statement from which it can be concluded that the issue had already been decided even before the Committee was constituted and principles of natural justice were violated.

CASH FOR QUERY : WHETHER MERE MORAL WRONG It was also urged that taking on its face value, the allegations against the petitioners were that they had accepted money for tabling of questions in Parliament.

Nothing had been done within the four walls of the House. At the most, therefore, it was a 'moral wrong' but cannot fall within the mischief of 'legal wrong' so as to empower the House to take any action. According to the petitioners, 'moral obligations' can neither be converted into 'constitutional obligations' nor non-observance thereof would violate the scheme of the Constitution. No action, therefore, can be taken even if it is held that the allegations were well-founded.

I am unable to uphold the contention. It is true that Indian Parliament is not a 'Court'. It cannot try anyone or any case directly, as a court of justice can, but it can certainly take up such cases by invoking its jurisdiction concerning powers and privileges.

Dealing with 'Corruption or impropriety', Sir Erskine May stated;

"The acceptance by a Member of either House of a bribe to influence him in his conduct as a Member, or of any fee, compensation or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to either House, or to a committee, is a contempt.

Any person who is found to have offered such a corrupt consideration is also in contempt. A transaction of this character is both a gross affront to the dignity of the House concerned and an attempt to pervert the parliamentary process implicit in Members' free discharge of their duties to the House and (in the case of the Commons) to the electorate".

Hilaire Burnett, ('Constitutional and Administrative Law', Fourth Edn.; pp.571-72) also refers to "Cash for questions", which started in 1993. It was alleged that two members of Parliament, Tim Smith and Neil Hamilton received payments/gifts in exchange for tabling parliamentary questions. Both of them had ultimately resigned.

The rapidly accelerating and intensifying atmosphere of suspected corruption-sleaze-in public life caused the Prime Minister to appoint a judicial inquiry into standards of conduct in public life.

The author also observed; "The cash for questions affair also raises issues concerning the press".

The Committee went into the allegations against the officers of Parliament and recommended punishment. It criticized the role of the Press as well, but no action had been taken against the newspaper.

Solomon Commission and Nolan Committee also considered the problem of corruption and bribery prevailing in the system and made certain suggestions and recommendations including a recommendation to clarify the legal position as to trial of such cases.

I may state that I am not expressing any opinion one way or the other on the criminal trial of such

acts as also the correctness or otherwise of the law laid down in P.V. Narsimha Rao. To me, however, there is no doubt and it is well-settled that in such cases, Parliament has power to take up the matter so far as privileges are concerned and it can take an appropriate action in accordance with law. If it feels that the case of 'Cash for query' was made out and it adversely affected honesty, integrity and dignity of the House, it is open to the House to attempt to ensure restoration of faith in one of the pillars of democratic polity.

I am in agreement what has been stated by Mc Lachlin, J. (as she then was) in Fred Harvey, already referred to;

"If democracies are to survive, they must insist upon the integrity of those who seek and hold public office. They cannot tolerate corrupt practices within the legislature. Nor can they tolerate electoral fraud. If they do, two consequences are apt to result. First, the functioning of the legislature may be impaired.

Second, public confidence in the legislature and the government may be undermined. No democracy can afford either".

(emphasis supplied) DOCTRINE OF PROPORTIONALITY It was contended that expulsion of a member of Parliament is a drastic step and even if the House possesses such power, it cannot be lightly restored to. It is against the well established principle of proportionality. According to the petitioners, such a step would do more harm to the constituency than to the member in his personal capacity. It was, therefore, submitted that proper exercise of power for misbehaviour of a member is to suspend him for the rest of the day, or at the most, for the remaining period of the session. If a folly has been committed by some members, the punishment may be awarded to them but it must be commensurate with such act which should not be severe, too harsh or unreasonably excessive, depriving the constituency having its representation in the House.

Now, it cannot be gainsaid that expulsion of a member is a grave measure and normally, it should not be taken. I also concede that Palriament could have taken a lenient view as suggested by the learned counsel for the petitioners. But it cannot be accepted as a proposition of law that since such action results in deprivation of constituency having its representation in the House, a member can never be expelled. If representation of the constituency is taken to be the sole consideration, no action can be taken which would result in absence of representation of such constituency in the House. Such interpretation would make statutory provisions (the Representation of the People Act, 1951) as also constitutional scheme (Articles 84, 102, 190, 191, 192, Tenth Schedule, etc.) non-workable, nugatory and otiose. If a member is disqualified or has been convicted by a competent court, he has to go and at least for the time being, till new member is elected, there is no representation of the constituency in the House but it is inevitable and cannot be helped.

There is one more aspect also. Once it is conceded that an action of suspension of a member can be taken (and it was expressly conceded), I fail to understand why in principle, an action of expulsion is impossible or illegal. In a given case, such action may or may not be lawful or called for, but in theory, it is not possible to hold that while the former is permissible, the latter is not. If it is made referable to representation of the constituency, then as observed in Raj Narain, withdrawal of a member from the House even for a brief period is a serious matter both for the member and his constituency. Important debates and votes may take place during his absence even if the period be brief and he may not be able to present his view-point or that of the group or that of the constituency he represented. It is, however, in the nature of disciplinary or punitive action for a

specific parliamentary offence, namely, disorderly behaviour. Moreover, if the House has a right to expel a member, non-representation of the constituency is merely a consequence, nothing more. "If the constituency goes unrepresented in the Assembly as a result of the act of an elected member inconsistent with the dignity and derogatory of the conduct expected of an elected member, then it is the voters who alone will have to take the blame for electing a member who indulges in conduct which is unbecoming of an elected representative".

POSSIBILITY OF MISUSE OF POWER BY PARLIAMENT Finally, it was strenuously urged that Parliament/ State Legislature should not be conceded such a drastic power to expel a member from the House. As Maintland has stated, it is open to Parliament to expel a member on the ground of 'ugly face'. Even in such case, no Court of Law can grant relief to him. Considering ground-realities and falling standards in public life, such an absolute power will more be abused than exercised properly.

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

Again, it is well-established principle of law that the mere possibility or likelihood of abuse of power does not make the provision ultra vires or bad in law. There is distinction between existence (or availability) of power and exercise thereof. Legality or otherwise of the power must be decided by considering the nature of power, the extent thereof, the body or authority on whom it has been conferred, the circumstances under which it can be exercised and all other considerations which are relevant and germane to the exercise of such power. A provision of law cannot be objected only on the ground that it is likely to be misused.

In State of Rajasthan v. Union of India, (1977) 3 SCC 592, 658 : AIR 1977 SC 1361 dealing with an identical contention, Bhagwati, J. (as His Lordship then was) stated;

"It must be remembered that merely because power may some time be abused, is no ground for denying the existence of power. The wisdom of man has not yet been able to conceive of a Government with power sufficient to answer all its legitimate needs and at the same time incapable of mischief". (emphasis supplied) [see also Ajit Kumar Nag v. Indian Oil Corporation, (2005) 7 SCC 764].

I am reminded what Chief Justice Marshall stated before about two centuries in Providence Bank v. Alphens Billings, 29 US 504 (1830) : 7 Law Ed 939;

"This vital power may be abused; but the Constitution of the United States was not intended to furnish the corrective for every abuse of power which may be committed by the State Governments. The interest, wisdom, and justice of the representative body, and its relations with its constituents furnish the only security where there is no express contract against unjust and excessive taxation, as well as against unwise legislation generally." (emphasis supplied) CONCLUDING REMARKS I have already held that the decisions taken, orders made, findings recorded or conclusions arrived at by Parliament/State Legislature are subject to judicial review, albeit on limited grounds and parameters. If, therefore, there is gross abuse of power by Parliament/ State Legislature, this Court

will not hesitate in discharging its duty by quashing the order or setting aside unreasonable action.

I am reminded what Justice Sarkar stated in Keshav Singh;

"I wish to add that I am not one of those who feel that a Legislative Assembly cannot be trusted with an absolute power of committing for contempt. The Legislatures have by the Constitution been expressly entrusted with much more important things. During the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power. I would point out that though Art. 211 is not enforceable, the Legislatures have shown an admirable spirit of restraint and have not even once in all these years discussed the conduct of Judges.

We must not lose faith in our people, we must not think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction.

Such correct may produce friction and cause more harm than good. In a modern State it is often necessary for the good of the country that parallel powers should exist in different authorities. It is not inevitable that such powers will clash. It would be defeatism to take the view that in our country men would not be available to work these powers smoothly and in the best interests of the people and without producing friction. I sincerely hope that what has happened will never happen again and our Constitution will be worked by the different organs of the State amicably, wisely, courageously and in the spirit in which the makers of the Constitution expected them to act".

I am in whole-hearted agreement with the above observations. On my part, I may state that I am an optimist who has trust and faith in both these august units, namely, Legislature and Judiciary. By and large, constitutional functionaries in this country have admirably performed their functions, exercised their powers and discharged their duties effectively, efficiently and sincerely and there is no reason to doubt that in coming years also they would continue to act in a responsible manner expected of them. I am equally confident that not only all the constituents of the State will keep themselves within the domain of their authority and will not encroach, trespass or overstep the province of other organs but will also act in preserving, protecting and upholding the faith, confidence and trust reposed in them by the Founding Fathers of the Constitution and by the people of this great country by mutual regard, respect and dignity for each other. On the whole, the situation is satisfactory and I see no reason to be disappointed for future.

With the above observations and pious hope, I dismiss the Writ Petition as also all transferred cases, however, without any order as to costs.