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THE POWER TO PUNISH FOR CONTEMPT UNDER PARLIAMENTARY PRIVILEGES: AN ANALYSIS OF THE INHERENT LIMITATIONS

> Nothing 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.
>
> — *Dicey*

I INTRODUCTION

THE TERM 'privilege', in relation to parliamentary privilege, refers to immunity from the ordinary law, which is recognised by the law as a right of the houses and their members. Privilege in this restricted and special sense is often confused with privilege in the colloquial sense of a special benefit or special arrangement.[1] The privileges and immunities of Parliament and its members constitute an important part of their inherent rights under the Constitution and are designed to enable them to discharge their functions as representatives of the people and as members of the supreme legislature and to preserve its dignity and prestige.[2]

The concept of parliamentary privileges, has originated in England. There, privileges have been evolved for the purpose of maintaining the independence and dignity of the house and its members. In the words of Sir Thomas Erskine May, "the distinctive mark of a privilege is its ancillary character. They are enjoyed by individual members because the House cannot perform its functions without unimpeded use of the service of its members, and by each House for the protection of its members and the vindication of its own authority and dignity."[3] These privileges do not accrue by reason of any exalted position of the house or its members, but because they are absolutely necessary for the proper and effective discharge of the functions of a legislative body.

The provisions in the Indian Constitution on the privileges and immunities of the Indian Parliament and its members have been modelled

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1. Harry Evans (ed.), *Odgers' Australian Senate Practice* (11th ed.).
2. C.V.H. Rao, "Privileges and Immunities of Parliament", in A.B. Lal, (ed.), *The Indian Parliament* (1956).
3. Sir Thomas Erskine May, *Parliamentary Practice: The Law, Privileges, Proceedings and Usage of Parliament* (2004).

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on the pattern of privileges and immunities enjoyed by the British Parliament.[4] In the Indian Constitution, the privileges of the Parliament and its members have been left to be determined by law, and until so determined, they have been stated to be the same as those possessed by the British House of Commons on the day of the commencement of the Constitution.[5]

Since the law on privileges in India has not been codified, there still exists a considerable amount of confusion as to the scope of the undefined "powers, privileges and immunities" of the legislature. Normally, it is believed that a breach of privilege may amount to contempt of the house.[6] It is also believed that legislature acts as a quari-Judicial authority while exercising its contempt power.

In our country, the British law on parliamentary privileges remains the guiding factor as we do not have any specific law on this subject. This article examines the question as to whether we can adopt the British law in its entirety in the matter of privileges or are there any differences between the two constitutions so as to limit the scope of applicability of the British law. The article argues that the English common law is not applicable to us specifically with regard to the power to expel a Member of Parliament as a punishment for contempt of the house.

II Difference in the Indian and British Constitutions

Some significant differences between the British and the Indian constitutions may be recorded at the outset. Whereas the British Constitution is unwritten and is a compendium of conventions and usages that have developed in the course of a long and eventful history, India has adopted a written Constitution. The Indian Constitution clearly defines in detail the powers and functions of the legislative, executive and judicial organs of the state and the relations between them.[7] Every organ works in the designated sphere under the doctrine of separation of powers.

4. For detailed study on parliamentary privileges see M.P. Jain, 1 *Indian Constitutional Law* (2003); Erskine May, *Ibid.*; H.M. Seervai, 2 *Constitutional Law of India* (4th ed.) Enid Campbell, *Parliamentary Privilege in Australia* (1966).

5. Clauses (1) and (2) of articles 105 and 194 of the Indian Constitution deal with the freedom of speech and expression and right to vote in the houses and committees thereof. Clause (3) says that the powers, privileges and immunities of the members and of each house, "shall be those of the House of Commons" at the commencement of the Constitution unless defined by law.

6. Subash C. Kashyap, *Our Parliament* (1989).

7. C.V.H. Rao, *supra* note 2 at 43.

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In England the Parliament is sovereign. The three distinguishing features of the principle of parliamentary sovereignty are that the Parliament has the right to make or unmake any law whatever; that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament, and that the right or power of Parliament extends to every part of the Queen's dominions.[8] On the other hand, the essential characteristic of Indian federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other".[9]

The three organs in our country owe their origin to the Constitution. Therefore, they are compelled to work within the confines of the Constitution. The observations of the Supreme Court in this regard have been clearly stated in the *UP Assembly case*:[10] "The supremacy of the Constitution is fundamental to the existence of a federal state in order to prevent either the legislature of the federal unit or those of the member states from destroying or impairing that delicate balance of power… This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers… Thus the dominant characteristic of the British Constitution cannot be claimed by a Federal Constitution like ours."

Canada is another example whose law has been modelled on the British pattern specifically the law relating to privileges. The Supreme Court of Canada in *New Brunswick Broadcasting Co.* v. *Nova Scotia (Speaker of the House of Assembly)*[11] with regard to parliamentary privileges has observed: "The privileges attaching to colonial legislatures arose from common law. Modelled on the British Parliament, they were deemed to possess such powers and authority as are necessarily incidental to their proper functioning. These privileges were governed by the principle of necessity rather than by historical incident, and thus may not exactly replicate the powers and privileges found in the United Kingdom." The concept of parliamentary supremacy is inconsistent with the written Constitution of India which has imposed prohibitions on Parliament to pass certain kinds of legislations.[12] Such a Parliament thus cannot pretend, under the cover of article 105(3), to have unlimited powers and privileges.

8. Dicey, *The Law of the Constitution* (1959).

9. *U.P. Assembly case,* Special Reference No. 1 of 1964, (1965) 1 SCR 413.

10. *Ibid*.

11. (1993) 1 SCR 319. A leading Supreme Court of Canada decision wherein the court has ruled that parliamentary privilege is a part of the unwritten convention in the Constitution of Canada.

12. These prohibitions are the result of the existence of constitutionally guaranteed fundamental rights as well as the division of powers between the Union of India and the constituent states. See in this connection parts III and XI of the Indian Constitution.

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Another important distinction lies in the possession of judicial powers by the British Parliament, which is not so under the Indian constitution. Accordingly, it would be wrong to characterise the House of the Indian Parliament as "the High Court of Parliament" as the Speaker did when the *Blitz* editor was summoned at it's bar.[13] Here again the expression is borrowed from British constitutional practice but has little relevance to the position of the Indian Parliament under the existing constitutional scheme. The British House of Commons was once "the Grand Inquest of the Nation". The House of Lords had powers of a 'court of first instance' and is still a 'court of appeal'. The Indian Parliament has never exercised any judicial functions. Therefore, in view of a written Constitution and the fundamental rights of freedom of speech and expression guaranteed by the Constitution, it may not be wholly appropriate to adopt bodily the basic concepts of the privileges of the House of Commons as they developed in England.[14]

Also if we look at the evolution of privileges in England as first conceived, the Parliament's privileges originated in the fourteenth and fifteenth centuries out of a conception of Parliament as a *judicial* body, the highest court of the land, and a concomitant assertion that lower courts could not entertain actions challenging the propriety of deliberations in a higher court.[15] In addition to freedom of speech, a number of other privileges

13. This was the first case to test the nature of parliamentary privileges which arose a year after the inauguration of the Constitution on January 26, 1950. Significantly, that case too was the consequence of an article published by *Blitz* in which the Speaker of the Legislative Assembly of Uttar Pradesh (one of the constituent states) was the target of attack. The privileges committee of the assembly considered the article, found it objectionable and recommended action against the editor then in charge of the journal. The assembly approved of the committee's recommendations and accordingly the Speaker of the assembly issued a warrant of arrest. The editor was arrested at Bombay, taken to Lucknow and detained in a hotel pending the appointed day for him to be brought before the house. On the following day a *habeas corpus* petition on his behalf was moved before the Supreme Court of India alleging that his fundamental right guaranteed under article 22(2) of the Constitution had been violated. The Court upheld the contention and ordered his immediate release. *The Blitz* case, ILR 1957 Bom 239.

14. M.V. Pylee, "Free Speech and Parliamentary Privileges in India", 35 *Pacific Affairs* 11-23 (1962).

15. See C. H. Mcilwain, *The High Court of Parliament and its Supremacy: A Historical Essay on the Boundaries between Legislation and Adjudication in England* (1910); Neale, "The Commons' Privilege of Free Speech in Parliament", in 2 *Historical Studies of the English Parliament*, 147-176; (1970); Cella, "The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Criminal Prosecutions in the Courts", 2 *Suffolk L. Rev*., 3-5 (1968).

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were claimed, including freedom from civil arrest and the right to punish members and outsiders for contempt, rights which also derived from judicial antecedents.[16] In India the legislature never possessed and still does not enjoy any judicial powers.

III Power to punish for contempt

It is an established fact in England that every breach of the privileges of the House of Commons would amount to contempt of the house. The house has an undoubted power to commit for contempt. This power is recognised as being justified on essentially the same grounds as the corresponding powers of superior courts of record.[17] Lord Ellenborough, Chief Justice, in the case of *Burdett v. Abbott* decided by the Court of King's Bench, in 1811, said:[18]

> The privileges which belong to them (the Houses of Parliament) seem at all times to have been, and necessarily must be, inherent in them, independent of any precedent; it was necessary that they should have the most complete personal security, to enable them freely to meet for the purpose of discharging their important functions, and also that they should have the right of *self-protection*. . . . The right of self-protection implies, as a consequence, a right to use the necessary means for rendering such self-protection effectual. Independently, therefore, of any precedents or recognized practice on the subject, such a body must *apriori* be armed with a competent authority to enforce the free and independent exercise of its own proper functions, whatever those functions might be.

From the above quotation and from the law in practice, it is clear that the power to punish for contempt is not a substantive power conferred upon legislative bodies by fundamental law, but is inherent and ancillary. It is not an end in itself but a means to an end, a part of the mechanism, so to speak, by which the legislature is enabled to carry out its functions.

Additionally as discussed earlier, the legislature of England is a judicial as well as a legislative body, which is not so in the case of the Indian Parliament. This aspect of separation of powers in India is quite similar to the Constitution of the United States. The American case of *Kilbourn* v.

16. See generally C. Wittke, *The History of English Parliamentary Privilege,* (1921). The privilege against arrest was first codified in a statute of Henry IV, which provided that members of Parliament and their servants were immune from arrest during session and shortly before and after.

17. *See Burdett* v. *Abbott* 14 East 1 (1811) at 472.

18. *Id.* at 137-138.

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Thompson[19] is relevant in this regard. The United States Supreme Court, speaking through Miller J, admitted that the power of the House of Commons to imprison for contempt of its authority had been fully sustained by the courts of *Westminster* hall, but contended that such precedents were of no value to us for the reason that the House of Commons was a court as well as a legislative body, and that in punishing for contempt, it was exercising a judicial power that had come down from the days when the two houses sat as one body, the High Court of Parliament. Miller J states the position as follows:[20]

> We are of the opinion that the right of the House of Representatives to punish the citizen for a contempt of its authority or a breach of its privileges can derive no support from the precedents and practices of the two Houses of the English Parliament, nor from the adjudged cases in which the English courts have upheld these practices.

Sir Thomas Erskine May, the great authority on parliamentary procedure, quotes a resolution of the Commons of 1592, to the effect that that body was a court of record.[21] Further it has also been held in *Kielly v. Carson*[22] that the power to commit for contempt, which the House of Commons had, was not inherent in the house as a body exercising legislative functions but was derived from the power it once had as the High Court of Parliament.[23] From the above analysis it seems clear that the power of the House to punish for its contempt was exercised by it as a judicial body and not as the legislature.

The privileges of the House of Commons to punish for contempt is available to it by virtue of the *lex et consuetude parliamenti*, which is a law peculiar to and inherent in the two Houses of Parliament of the United Kingdom. It cannot, therefore, be inferred from the possession of certain powers of the House of Commons, by virtue of that ancient usage and prescription, that the like powers belong to legislative assemblies of comparatively recent creation in the dependencies of the crown.[24] There is therefore no ground for saying that the powers of punishment for contempt, because it is admitted to be inherent in the one, must be taken by analogy to be inherent in the other.[25]

19. 103 U.S. 168 (1880).
20. *Id.* at 189.
21. Sir Thomas Erskine May, *Privileges, Proceedings and Usage of Parliament 101* (1924).
22. (1842) 4 *Moore's Privy Council Reports* 63.
23. *Id.* at 373, para 1.
24. Jagdish Swarup, 2 *Constitution of India* (2006).
25. *Ibid.*

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It is a historical fact that our legislatures under the Government of India Act, 1935 were not superior courts of record as in the case of the English courts. Accordingly the Parliament or the state legislatures cannot claim the same status. Neither can such legal fiction be presumed under article 105. They, therefore, do not possess the general power to punish for contempt.

Some legislatures of the British dominions and colonies have specifically availed the power to punish for contempt by express enactment.[26] India is not one of them. It is interesting to note in this connection that the Government of India Act of 1919[27] and the Government of India Act of 1935[28] also, while conferring on the Indian legislatures the powers to legislate regarding privileges, specifically excluded the power to assume to themselves any penal jurisdiction.[29]

The Supreme Court in its advisory opinion in *Re under Article 143*[30] has observed: "Since in India, neither Parliament nor the State Legislature is a court of record, unlike the House of Commons, it cannot claim the privilege to commit a person for contempt by a general warrant. The existence of the fundamental rights and doctrine of judicial review further prevent existence of such a right."

It follows from the above contentions that since the legislatures in India are not courts of record, as was the case with the Parliament in England, the power to punish for contempt cannot be claimed in totality by them. The power of the house to punish for its contempt is of course considered necessary to enable the house to discharge its functions and safeguard its authority and privilege and to enforce discipline within the Parliament. However this contempt power is available to the legislature only for that restricted purpose.

IV Power to expel as a part of power to punish for contempt

Houses of Parliament in India also have the power to punish a person, whether its member or outsider, for its 'contempt' or 'breach of privilege'.

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26. Western Australia, 54 Vict. No. 4, 1891; Tasmania Parliamentary Privileges Act, 1853; Victoria Act, 1705, 20 Vict no. 1; Quebec Act, 53 Vict. C. 5; Queensland Constitution Act, 1867; South Africa, Powers and Privileges of Parliament Act, 1911; British Columbia, 35 Vict. C. 4, 36; Ontario, 1876, C. 9; Manitoba C.12, 1876; Nova Scotia C. 22, 1876; New Brunswick and Prince Edward Island, Alberta, 1904, C. 2; Saskatchewan, 1908, C. 4; Southern Rhodesia, no. 4 of 1924.

27. S. 67(7) of the Government of Indian Act, 1919.

28. S. 28(3) of the Government of India Act, 1935.

29. VIII *Constituent Assembly Debates*. 143, 582.

30. AIR 1965 SC 745.

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A House can impose the punishment of admonition, reprimand, suspension from the service of the house for the session, fine or imprisonment.[31]

Recently the Supreme Court in *Raja Ram Pal* v. *The Hon'ble Speaker, Lok Sabha*[32] upheld the action of the Parliament in expelling the members for the cash for query scam (an act of contempt of the house). This decision would have been right in the United Kingdom. However it seems erroneous in the Indian context. The houses of the Indian Parliament possess only a restricted power to punish for contempt as seen from the above discussion. Therefore the question which arises is does this restricted power to punish an offender for its contempt include the right to expel the members of the House? The houses of *Westminster*-style parliaments do have the power to expel members who are adjudged unfit or unworthy to remain members. The power is one of the well-established privileges of the British House of Commons.[33] Other houses of parliament however possess powers and privileges no greater than those reasonably necessary for their self-protection and to secure the free exercise of their legislative functions and these necessary inherent powers do not, the Judicial Committee of the Privy Council has held, extend to the imposition of punitive sanctions.[34]

In United States the power of expulsion vests in the Houses of Congress, by virtue of article I, section 5, clause 2 of the Constitution. It provides that "Each House may determine the rules of its proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member." Therefore in the US the power to expel a member has been specifically provided in the Constitution. It may be noted that the same is not true for India. We do not have any specific provision in the Constitution providing for expulsion as a means of punishing an offending member for committing contempt of the house.

In the matter of privileges, reliance is usually placed on the two great English authorities--of Anson and May. Expulsion, Anson said, "amounts to no more than an expression of opinion that the person expelled is unfit to be a member of the House of Commons."[35] May agrees that 'the purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as to rid the House of persons who are unfit for membership,' but suggests that "it is ... convenient to treat it among the methods of punishment

31. *Hardwari Lal* v. *Election Commission of India*, ILR (1977) 2 P&H 269.

32. *Raja Ram Pal* v. *The Hon'ble Speaker, Lok Sabha*, (2007) 3 SCC 184.

33. May, *supra* note 3.

34. *Kielley* v. *Carson supra* note 24; *Fenton* v. *Hampton*. (1858) 11 Moo. P.C. 347; *Doyle* v. *Falconer* (1866) L.R. 1 P.C. 328; *Barton* v. *Taylor* (1886) 11 App. Cas. 197; *Chenard & Co.* v. *Joachim Arissol*, (1949) A.C. 127.

35. Anson, 1 *The Law and Custom of the Constitution,* 188 (1922).

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at the disposal of the House."[36] Since the house is recognized to have power to punish breaches of privilege and contempt of parliament, it has apparently never been found necessary to consider whether the power to expel is limited in any way, and it is clear that expulsion has in fact been used as a sanction in circumstances in which a house possessing only self-protective powers would be powerless to act.[37]

So what is the extent of this limited power to punish for its contempt in India? The English cases, namely *Kielly* v. *Carson,*[38] *Fenton* v. *Hampton,*[39] *Doyle* v. *Falconer*[40] and *Barton* v. *Taylor*[41] are important in this regard. These cases refer to the distinction between the punitive powers of contempt and the self-protective powers. These four cases hold that the other legislatures, that is to say bodies other than the House of Commons, can only claim the protective powers of the house. This distinction has been explained in *Doyle* v. *Falconer*[42] as follows: "It is necessary to distinguish between a power to punish for 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."

Consequently this limited self-protective power can never include the power of expulsion, as expulsion is not necessary for the protection of the house. We can here distinguish between 'expulsion' and 'exclusion'. The power of exclusion would be a sufficient remedy for safeguarding the dignity of the house. It would be right to assume that the power of the legislature to punish for contempt would be available to them as a limited right. Therefore, for preserving the dignity of the house and for maintaining its discipline, it is enough if the house enjoys the limited power of 'exclusion'. Due to the difference between the British common law system and the Indian constitutional system, this power to expel is not available to the Indian Parliament as a matter of right. Also, this power to expel a member cannot be exercised by the legislature as it has not been specifically provided in the Constitution.

In India the law relating to expulsion or rather disqualification and vacation of seats has been laid down in articles 101 to 104 and 190 to 193

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36. May, *supra* note 3, at 105.

37. Enid Campbell, "Expulsion of Members of Parliament" 21 *The University of Toronto Law Journal*, 15-43 (1971).

38. *Supra* note 22.

39. *Supra* note 34.

40. *Supra* note 34.

41. *Supra* note 34.

42. *Supra* note 34.

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read with schedule X of the Constitution and of the Representation of People's Act, 1951.[43] However, it has been contended that articles. 101 and 102 are not exhaustive as to the ways in which termination of membership can be affected.[44] If the legislature feels that the provisions contained in articles 101 and 102 are not full and complete then the legislature has the authority to prescribe additional disqualifications, the nature of which is described in the Constitution. However since it has not been done so, it follows that the Parliament does not possess the power to expel a member in cases other than those provided. The provision relating to disqualifications in the Constitution are in the nature of a complete code. No power of expulsion *de hors* the above provisions exists or is available to any authority including Parliament. Further in the *Raja Ram Pal's* case it has been asserted that articles 101 and 102 operate independently of article 105(3) and do not restrict in any way the scope of article 105(3).[45] This is not true as every provision of the Constitution has to be read harmoniously giving equal weightage to each provision of the Constitution. There is no question of some articles operating independently of the other.

Raveendran J in his dissenting judgement in *Raja Ram Pal* v. *The Hon'ble Speaker, Lok Sabha*[46] has rightly held: "The enumeration of disqualifications is exhaustive and specifies all grounds for debarring a person from continuing as a member. The British Parliament devised expulsion as a part of its power to control its constitution, (and may be as a part of its right of self-protection and self-preservation) to get rid of those who were unfit to continue as members, in the absence of a written constitutional or statutory provision for disqualification. Historically, therefore, in England, 'expulsion' has been used in cases where there ought to be a standing statutory disqualification from being a member. Where provision is made in the Constitution for disqualification and vacancy, there is no question of exercising any inherent or implied or unwritten power of 'expulsion'."

Two cases that are of relevance in the context of this article are *Yeshwant Rao* v. *Madhya Pradesh Legislative Assembly*[47] and *K. Anbazhagan* v. *Tamil Nadu Legislative Assembly*.[48] *Yeshwant Rao's* case

43. S. 149(1) and 150 of the Representation of People's Act, 1951, deal with filling up of casual vacancies in the Lok Sabha.
44. *Supra* note 32.
45. *Ibid.*
46. *Id.* at 61.
47. AIR 1967 M P 95.
48. AIR 1988 Mad. 275.

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involved the expulsion of two members of the state legislative assembly for obstructing the business of the house and defying the chair. The expulsion was challenged in the high court. It was argued that the house had no power to expel, as the power to expel in England was part of the power to regulate its own constitution, and which power is not available to the legislature in India. The high court dismissed the petition holding that it had the limited jurisdiction to examine the existence of the power to expel and found that the house did in fact have the power. The court viewed the power to expel not as part of the power to regulate its own constitution, but as part of the inherent power of the legislature for its proper functioning and self-security for the proper conduct of its business. In the case of *Anbazhagan*, where a similar dispute arose regarding the power of expulsion the Madras High Court also held a view similar to that of the Madhya Pradesh High Court in *Yeshwant Rao*. The point to be noted here is that in both the cases courts never did examine the scope of the power of the legislature to punish for contempt.

It was, however, in *Hardwari Lal's* case[49] that a bench of 5 judges gave the majority decision saying that the power of expulsion was not available to the legislature. The majority judgment prepared by Sandhawalia J found that the power of the House of Commons to expel one of its members is rooted in its basic privilege to provide for and regulate its own constitution. The power of expulsion stems from the basic privilege, which the Indian system does not provide for, due to the very fact that the Constitution provides for detailed provisions for constitution of the parliament, such as vacation of seats and disqualification for membership. In the face of these observations, the high court decided that the expulsion was illegal and beyond the powers of the Haryana legislature.

Expulsion is an extreme punishment. It involves penal consequences. It therefore follows that these matters of expulsion of members of the legislature need to be dealt with by a forum exercising judicial functions. The members are appointed by the mandate of the people of the country. Their colleagues have no authority whatsoever to remove them from this position. To expel them means to reconstitute the house. It has however been stated in the *Raja Ram pal's* case that "to enforce a privilege against a member by expulsion is not a way of expressing the power of House to constitute itself, though such expulsion would incidentally affect the composition of the house".[50] This statement is contradictory in itself. To change the composition of the house means to change its constitution. The members of the legislature cannot be expelled without at least being heard

49. *Hardwari Lal* v. *Election Commission of India.* ILR (1977) 2 P&H 269.
50. *Supra* note 34, at 194.

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by an impartial, non-prejudiced and an experienced forum. No individual or a collective body whatsoever can assume authority to dismiss or expel the members. To do so would be violative of the principles of democracy.

Further if a member is expelled because he has been found to be of unsound mind and unfit to be a member we would not say that he had been punished, for the simple reason that the condition of being unsound mind would not be regarded as constituting a wrong.[51] However if a member commits a crime, for example accepts a bribe to vote or ask questions in the house, it is a matter wherein the guilt of the accused needs to be established. It is an act which results in punitive consequences. This obviously can only be done by the judiciary and not the legislature. Such cases of expulsion cannot be characterized as non punitive just to provide justification to the act of expulsion of a member by the legislature. When a body is empowered to impose punishment, its authority to do so may be limited with respect to the occasions on which it is imposed and the reasons for which it is imposed.

The right forum to decide the issue of expulsion of members especially for crimes committed by them (for example accepting bribes and assault on other members) would be the judiciary, which possesses the means and powers to try such issues.[52] The job of the legislature is to perform legislative functions. It does not possess any contempt power to punish for a crime, which is a judicial function.[53] The legislature can under no circumstances assume upon itself the power to enforce the criminal law.

The recent *cash-for-question* scam decided by the Supreme Court[54] gave rise to the question as to whether the house can expel a member for accepting bribes. The case was decided in favour of the house. It is apparent that accepting a bribe is not a legislative act. Accepting bribes seriously subverts the legislative process. Such cases need to be dealt with under the ordinary criminal law since the legislature is not capable of dealing with it.

Specifically dealing with such a matter, the Report of the Royal Commission on Standards in Public life (chaired by Lord Salmon) states "neither the statutory nor the common law applies to bribery or attempted bribery of a Member of Parliament in respect of his parliamentary activities. Investigation into matters involving corrupt transactions could be too complex, would require special expertise and go beyond the investigative

51. The problem was discussed by Frankfurter J in *United States* v. *Lovett* (1945) 328 U.S. 303, 323-324.

52. See *Raja Ram Pal* v. *The Hon'ble Lok Sabha Speaker, supra* note 32.

53. Determination of guilt and adjudication in disputes are judicial functions. In many countries therefore, questions of breach of privilege, contempt of the house, etc. and punishment therefore are decided only by courts of law.

54. See *Raja Ram Pal* v. *The Hon'ble Lok Sabha Speaker, supra* note 32.

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capacities of the House."[55]

Further, Buckley J in *R.* v. *Greenway*[56] has stated: "… a Member of Parliament against whom there is a prima facie case of corruption should be immune from prosecution in the courts of law, is to my mind an unacceptable proposition at the present time. The Committee of Privileges is not well equipped to conduct an enquiry into such a case, nor is it an appropriate or experienced body to pass sentence." It would be an anomaly to clothe the legislative body with judicial functions, which are not inherent to its nature. For that reason the power to punish for contempt possessed by the Indian legislature does not include the power to expel a member especially for criminal wrongs.

Conclusion

In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. Legislators, ministers and judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe their allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any legislature in India in the literal absolute sense.[57]

The Indian Parliament has not codified its privileges. As a result the contempt power of the house is as yet undefined. It is due to this reason that the Parliament does not enjoy an absolute power to commit a person for its contempt. Since the Parliament is not a body equipped to deal with contempt of a criminal nature, it would not possess the power to expel a member on such ground.

It is the traditional function of the judiciary to protect the rights of the people. This is so because the courts are non-political. The legislative body is a political body which may be tempted to act for political considerations. Moreover legislative privileges adversely affect the rights of the people. It is for this reason that they should never be given an extended interpretation so as to stifle and curtail the voice of democracy.

*Shruti Bedi**

55. Justice P.K. Balasubramanyam, "Parliamentary Privilege: Complementary Role of the Institutions", 2 *Supreme Court Cases* (2006, J-4).

56. Quoted in "Parliamentary Privilege and the Common Law of Corruption: R. v. Greenway", *Public Law* 356 (1998).

57. *UP Assembly* case, *supra* note 9, para 40.

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