

CASE NO.:
Writ Petition (civil) 1 of 2006

PETITIONER:
Raja Ram Pal

RESPONDENT:
The Hon'ble Speaker, Lok Sabha & Ors

DATE OF JUDGMENT: 10/01/2007

BENCH:
R. V. Raveendran

JUDGMENT:
J U D G M E N T

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

RAVEENDRAN J.,

"Those three great institutions \026 the Parliament, the Press (Media) and the Judges \026 are safeguards of justice and liberty, and they embody the spirit of the Constitution."
- Lord Denning

I have had the privilege of reading the exhaustive and erudite judgment of the learned Chief Justice and the illuminating concurring judgment of learned Brother Thakker J., upholding the expulsion of ten members of Lok Sabha and one member of Rajya Sabha. I respectfully disagree.

Factual Background :

2. On 12.12.2005, a TV News Channel - Aaj Tak showed some video-footage of some persons, alleged to be members of Parliament accepting money for tabling questions or raising issues in the House, under the caption 'operation Duryodhana' ("Cash for Questions"). On the same day when the House met, the Hon'ble Speaker made the following statement :-

"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 them 'please do not attend the Sessions of the House until the matter is looked into and a decision is taken'\005\005 I have no manner of doubt that all sections of the House feel deeply concerned about it. I know that we should rise to the occasion and we should see that such an event does not occur ever in future and if anybody is guilty, he should be punished. Nobody would be spared. We shall certainly respond to it in a manner which behaves us. Thank you very much."

On the same day, at about 6 P.M., the Hon'ble Speaker made another statement on the issue, announcing the constitution of an Enquiry Committee consisting of five Parliamentarians. Relevant portion of that statement is extracted below :

"I have decided, which has been agreed to by the Hon. Leaders, that all the concerned Members will be asked to submit their individual statements/explanations regarding the allegations made against them today on the TV Channel Aaj Tak before 10.30 a.m. on 14th December, 2005. The statements/explanations given by those members will be placed before the Enquiry Committee consisting of the following Hon. Members -

1. Shri Pawan Kumar Bansal (Chairman)
2. Prof. Vijay Kumar Malhotra
3. Md. Salim
4. Prof. Ram Gopal Yadav
5. Thiru C. Kuppasami

The Committee is requested to give its Report by 4 p.m. on 21st December, 2005. The Committee is authorized to follow its own procedure. The Report will be presented before the House for its consideration.

4. The Lok Sabha Secretariat sent communications dated 12.12.2005 to the ten members calling for their comments in regard to the improper conduct shown in the video footage. They were also instructed not to attend the sitting of the House till the matter was finally decided. The members submitted their responses and denied any wrong doing on their part. The Speaker secured VCDs containing the video footage showing 'improper conduct' from the News Channel. The ten members were supplied copies thereof. The Enquiry Committee examined on oath Shri Aniruddha Bahl, Ms. Suhasini Raj and Shri Kumar Badal of the Portal "Cobrapost.Com" who had carried the sting operation. The Committee viewed all the VCDs containing the relevant video footage as also the unedited raw video footage and perused the transcripts. The ten members alleged that the video tapes were morphed/manipulated, but, however, refused to view the video clippings in the presence of the Committee and point out the portions which according to them were morphed/manipulated. They were not given any opportunity to cross-examine the sting operators, nor granted copies of the entire unedited video footage and other documents requested by them.

5. After considering the said material, the committee submitted its report dated 22.12.2005 to the Speaker. It was tabled in the House on the same day. The said report contained the following findings :

a) The representatives of the Portal "Cobrapost.com" namely Shri Aniruddha Bahl, Ms. Suhasini Raj and Shri Kumar Badal approached the members posing as representatives of the fictitious company, through a number of middlemen, some of whom were working as Private Secretaries/Personal Assistants of the members concerned. They requested the members to raise questions in Lok Sabha and offered them money as consideration. Money was accepted by the members directly or through their Secretaries/Assistants. Acceptance of money by the ten members was thus established.

b) The plea put forth by the ten members that the video footages were morphed/manipulated has no merit. Their conduct was unbecoming of members of Parliament, unethical and called for strict action.

c) Stern action also needs to be taken against the middlemen, touts and persons masquerading as Private Secretaries of members since they are primarily

responsible for inducting members of Parliament into such activities.

The Committee was of the view that in the case of misconduct by the members or contempt of the House by the members, the House can impose any of the following punishments : (i) admonition; (ii) reprimand; (iii) withdrawal from the House; (iv) suspension from the House; (v) imprisonment; and (vi) expulsion from the House. The Committee concluded that continuance of the ten persons as members of Lok Sabha was untenable and recommended their expulsion.

On 23.12.2005, the Leader of the House moved the following Motion in the House :

"That this House having taken note of the Report of the Committee to inquire into the allegations of improper conduct on the part of some members, constituted on 12th December, 2005, accepts the finding of the Committee that the conduct of the ten members of Lok Sabha namely, Shri Narendra Kumar Kushawaha, Shri Annasaheb M. K. Patil, Shri Manoj Kumar, Shri Y. G. Mahajan, Shri Pradeep Gandhi, Shri Suresh Chandel, Shri Ramsevak Singh, Shri Lal Chandra Kol, Shri Rajaram Pal and Shri Chandra Pratap Singh was unethical and unbecoming of members of Parliament and their continuance as members of Lok Sabha is untenable and resolves that they may be expelled from the membership of Lok Sabha."

An amendment to the Motion for referring the matter to the Privileges Committee, moved by a member (Prof. Vijay Kumar Malhotra), was rejected. After a debate, the Motion was adopted by voice vote. As a consequence on the same day, a notification by the Lok Sabha Secretariat was issued notifying that 'consequent on the adoption of a Motion by the Lok Sabha on the 23rd December, 2005 expelling the ten members from the membership of the Lok Sabha', the ten members ceased to be members of the Lok Sabha, with effect from the 23rd December, 2005 (afternoon).'

7. Similar are the facts relating to Dr. Chhatrapal Singh Lodha, Member of Rajya Sabha. On 12.12.2005, the Chairman of the Rajya Sabha made a statement in the House that the dignity and prestige of the House had suffered a blow by the incidents shown on the TV Channel, that it was necessary to take action to maintain and protect the integrity and credibility of the House, and that he was referring the episode to the Ethics Committee for its report. On the same day, Ethics Committee held a meeting and took the view that the member had prima facie contravened Part V of the Code of Conduct which provided :

"Members should never expect or accept any fee, remuneration or benefit for a vote given or not given by them on the floor of the House, for introducing a Bill, for moving a resolution or desisting from moving a resolution, putting a question or abstaining from asking a question or participating in the deliberations of the house or a Parliamentary Committee."

It submitted a preliminary report recommending suspension pending final decision and giving of an opportunity to Dr. Lodha to explain his position. The said report was accepted. By letter dated 13.12.2005, Dr. Lodha was required to give his comments by 1 P.M. on 15.12.2005. Thereafter the Committee gave a report holding that the member had contravened Part V of the Code of Conduct and had acted in a manner which seriously impaired the dignity of the House and brought the whole institution of Parliamentary democracy into disrepute. The Committee recommended Dr. Lodha to be expelled from the membership of the House. On 23.12.2005, the Chairman of the Ethics Committee moved that its final report be accepted. After debate, the House agreed with the recommendation in the report by voice vote. As a consequence, the Secretary General of Rajya Sabha issued a

notification dated 23.12.2005 declaring that Dr. Lodha had ceased to be a member of the Rajya Sabha with effect from that date.

The Issue :

8. The petitioners contend that there can be cessation of membership of either House of Parliament only in the manner provided in Articles 101 and 102; and that cessation of membership by way of expulsion is alien to the constitutional framework of Parliament. It is submitted that a person can be disqualified for being a member of Parliament on the ground of corruption, only upon conviction for such corruption as contemplated under section 8 of Representation of People Act, 1951 read with clause (1)(e) of Article 102. It is submitted that there can be no additions to grounds for cessation of membership under Articles 101 and 102, unless it is by a law made by Parliament as contemplated under Article 102(1)(e), or by an amendment to the Constitution itself. It is further submitted that reading the power of expulsion, as a part of parliamentary privilege under Article 105(3) is impermissible. It is, therefore, submitted that Parliament has no power of expulsion (permanent cessation of membership). On the other hand, the Union of India and the Attorney General assert that Parliament has such power. The assertion is based on two premises. First is that Article 101 relating to vacancies is not exhaustive. The Second is that the power of Parliament to expel a member is a part of the powers, privileges and immunities conferred on the Parliament, under Article 105(3), and it is distinct and different from 'disqualifications' contemplated under Article 102.

9. When the incident occurred, the response of the Hon. Speaker and the Parliament, in taking prompt remedial action, against those who were seen as betraying the confidence reposed by the electors, showed their concern to maintain probity in public life and to cleanse Parliament of elements who may bring the great institution to disrepute. But, howsoever bonafide or commendable the action is, when it is challenged as being unconstitutional, this Court as the interpreter and Guardian of the Constitution has the delicate task, nay the duty, to pronounce upon validity of the action. There is no question of declining to or abstaining from inquiring into the issue merely because the action is sought to be brought under the umbrella of parliamentary privilege. The extent of parliamentary power and privilege, and whether the action challenged is in exercise of such power and privilege, are also matters which fall for determination of this Court. In this context, I may usefully refer to the words of Bhagwati, J. (as His Lordship then was) in *State of Rajasthan v. Union of India* [AIR 1977 SC 1361]:

"But merely because a question has a political complexion, that by itself is no ground why the Court should shrink from performing its duty under the Constitution if it raises an issue of constitutional determination. \005\005, the Court cannot fold its hands in despair and declare "Judicial hands off." So long as a question arises whether an authority under the constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. Indeed it would be its constitutional obligation to do so. \005 This Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the rule of law."

Where there is manifestly unauthorized exercise of power under the Constitution, it is the duty of the Court to intervene. Let it not be forgotten, that to this Court as much as to other branches of Government, is committed the conservation and furtherance of democratic values. The Court's task is to identify those values in the constitutional plan and to work them into life in

the cases that reach the Court\005.. The Court cannot and should not shirk this responsibility\005\005\005\005"
[emphasis supplied]

10. The question before us is not whether the petitioners are guilty of having taken money for asking questions, or raising issues in the Parliament. The question is, irrespective of whether they are guilty or not, Parliament has the power to expel them, thereby effecting permanent cessation of their membership. On the contentions raised, the questions that therefore arise for consideration are :

(i) Whether Article 101 and 102 are exhaustive in regard to the modes of cessation of membership of Parliament; and whether expulsion by the House, not having been specified as a mode of cessation of membership, is impermissible.

(ii) If the answer to the above question is in the negative, whether the Parliament has the power to expel its members (resulting in permanent cessation of membership) as a part of its powers, privileges and immunities under Article 105(3).

Relevant Principles :

11. I may first refer to the basic principles relevant for the purpose of constitutional interpretation in the context of the first question.

I. Unlike British Parliament, Indian Parliament is not sovereign. It is the Constitution which is supreme and sovereign and Parliament will have to act within the limitations imposed by the Constitution :

12. There is a marked distinction between British Parliament and the Indian Parliament. British Parliament is sovereign. One of the hallmarks of such sovereignty is the right to make or unmake any law which no court or body or person can set aside or override. On the other hand, the Indian Parliament is a creature of the Constitution and its powers, privileges and obligations are specified and limited by the Constitution. A legislature created by a written Constitution must act within the ambit of its power as defined by the Constitution and subject to the limitations prescribed by the Constitution. Any act or action of the Parliament contrary to the constitutional limitations will be void.

13. In re Art. 143, Constitution of India and Delhi Laws Act [AIR 1951 SC 332], this Court observed thus :

"There is a basic difference between the Indian and the British Parliament in this respect. There is no constitutional limitation to restrain the British Parliament from assigning its powers where it will, but the Indian Parliament qua legislative body is fettered by a written constitution and it does not possess the sovereign powers of the British Parliament. The limits of the powers of delegation in India would therefore have to be ascertained as a matter of construction from the provisions of the Constitution itself."
[emphasis supplied]

In Special Reference No.1 of 1964 \026 UP Assembly Case [1965 (1) SCR 413], a Bench of seven Judges observed thus :

"In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake

any law whatever; that no person or body is recognized by the law of England is having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to every part of the Queen's dominion. On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with and independent of each others". The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers."

"Therefore, it is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution. \005 In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. \005. 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\005. We feel no difficulty in holding that the decision about the construction of Article 194(3) must ultimately rest exclusively with the Judicature of this country. "

"Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinized in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular."

[emphasis supplied]

In *Kesavananda Bharati vs. State of Kerala* [1973(4) SCC 225], it was observed that the Constitution being supreme, all the organs owe their existence to it. Each organ has to function within the four corners of the constitutional provisions. The doctrine of parliamentary sovereignty as it obtains in England does not prevail in India except to the extent provided by the Constitution. The judiciary is entrusted the task of construing the provisions of the Constitution and safeguarding the fundamental rights.

Subsequently, in *State of Rajasthan (supra)*, this Court reiterated :

"It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is supreme lex, the paramount law of the land, and there is no department or branch of Government above or beyond it. Every organ of Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority."

[emphasis supplied]

In *Sub-Committee on Judicial Accountability vs. Union of India* [1991 (4) SCC 699], a Constitution Bench of this Court held :

"But where, as in this country and unlike in England, there is a

written Constitution which constitutes the fundamental and in that sense a "higher law" and acts as a limitation upon the legislature and other organs of the State as grantees under the constitution, the usual incidents of parliamentary sovereignty do not obtain and the concept is one of 'limited government'. Judicial Review is, indeed, an incident of and flows from this concept of the fundamental and the higher law being the touchstone of the limits of the powers of the various organs of the State which derive power and authority under the Constitution and that the judicial wing is the interpreter of the Constitution and, therefore, of the limits of authority of the different organs of the State. It is to be noted that the British Parliament with the Crown is supreme and its powers are unlimited and courts have no power of judicial review of legislation."

"In a federal set up, the judiciary becomes the guardian of the Constitution\005\005 The interpretation of the Constitution as a legal instrument and its obligation is the function of the Courts."

II. When a Statute, having made specific provisions for certain matters, also incorporates by reference an earlier statute, to avoid reproduction of the matters provided for in the earlier statute, then what is deemed to be incorporated by such reference, are only those provisions of the earlier statute which relate to matters not expressly provided in the latter statute, and which are compatible with the express provisions of the latter statute.

14. The legislative device of incorporation by reference is a well-known device where the legislature, instead of repeating the provisions of a particular statute in another statute, incorporates such provisions in the latter statute by reference to the earlier statute. It is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier statute into the later. [See *Mary Roy v. State of Kerala* \026 1986 (2) SCC 209]. Lord Esher M. R. stated the effect of incorporation in *Clarke vs. Bradlaugh* [1881 (8) QBD 63] thus :-

"If a subsequent Act brings into itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act as if they had been actually written in it with the pen, or printed on it."

15. In U.P. Assembly case (supra), this Court while considering Article 194(3), identical in content to Article 105(3) of the Constitution, referred to referred to its scope thus :

"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 favourable construction placed on his words was justly regarded by the Commons as fundamental privilege." It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and the privilege of impeachment cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualification of its members in cases of doubt. This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all power and

privileges which were possessed by the House of Commons at the relevant time can be claimed by the House."

16. In Chhabildas Mehta v. The Legislative Assembly, Gujarat State [1970 Guj.LR 729], a Division Bench of Gujarat High Court speaking through Chief Justice Bhagwati (as he then was) held :

"The problem before us is whether the privilege can be read in Article 194(3). It is no answer to this problem to say 'read the privilege in Article 194(3) and then harmonise it with the other provisions'. If the privilege is inconsistent with the scheme of the Constitution and its material provisions, it cannot and should not be read in Article 194(3). The presumed intention of the Constitution-makers in such a case would be that such a privilege should not belong to the House of the Legislature."

[Emphasis supplied]

17. In Hardwari Lal v. The Election Commission of India [1977 (2) Punj. & Har. 269], the validity of expulsion of a member of legislature came up for consideration. After an elaborate discussion, the majority found that the power of British House of Commons, to expel any of its members, flowed from its privilege to provide for and regulate its own constitution. It was held that such power of expulsion was not available to the Indian Parliament, having regard to the fact that the written constitution makes detailed provision for the constitution of the Parliament, elections, vacation of seats and disqualifications for membership. Sandhawalia, J. (as he then was) speaking for the majority of the Full Bench observed thus :

"It was submitted that in view of the language of Article 194(3) each and every parliamentary privilege enjoyed by the House of Commons without any exception whatsoever must be deemed as if it were in fact written with pen and ink into the Constitution itself. According to the respondents, one must at the outset unreservedly read every power, privilege and immunity of the House of Commons within clause (3) and consequently exercisable by the State Legislatures in India as well. However, having done that, one should thereafter proceed to scrutinize the remaining provisions of the Constitution and if some power, privilege or immunity directly conflicts with or contravenes some express or special provision thereof then the same may be eroded on the ground that it is not possible for the House to exercise the same. Nevertheless it was dogmatically stated that even in the case of a direct or irreconcilable conflict, the privilege must be read into the Constitution and should not be deemed as necessarily deleted or excluded therefrom. In short, the learned Advocate-General for a while canvassed for the acceptance of what may be conveniently called as 'pen and ink theory' for the construction of Article 194(3) of the Constitution.

(237) On the other hand, the petitioner forthrightly argued that some of the parliamentary privileges of the House of Commons by their very nature are so inherently alien to our Republican Constitution that they can never possibly be deemed to be part thereof. It was submitted that the only reasonable and consistent canon of construction in this situation was that all the parliamentary privileges of the House of Commons which in their very essence and by their intrinsic nature were patently contradictory to the Indian Constitution, then these must necessarily be excluded therefrom at the very threshold.

(238) I believe, that the fallacy of the argument on behalf of the respondent is highlighted, the moment one particularizes the same and refers to some of the well-known and admitted privileges of

the House of Commons. It was conceded before us that not one but innumerable parliamentary powers and privileges of the House of Commons were inextricably linked with the Sovereign, that is, King or Queen of England, as the case may be. Can one imagine that the word 'King' or 'Queen' mentioned therein should be deemed to have been written in pen and ink in our Constitution also when its very preamble solemnly declares that the people of India have constituted themselves into a Sovereign, Socialist Secular Democratic Republic ? In particular, one may consider the accepted parliamentary privilege of the freedom of access to the Sovereign including a right at all times to petition, counsel or remonstrate with the King through their chosen representatives. This is admitted on all hands to be a parliamentary privilege which was considered fundamental by the House of Commons and undoubtedly enjoyed by it. Can one for a moment conceive that the Republican Constitution of India would incorporate this privilege for its State Legislatures. How can even one imagine that the founding fathers in the Constituent Assembly had intended to write such a privilege also into our Constitution and to deem it as part and parcel thereof? If so, to whom were the State Legislatures supposed to petition and with whom were they to counsel or remonstrate with through their chosen representatives in the obvious absence of even the institution of the Monarchy herein ?

(239) Similarly not one but there are tens of parliamentary privileges of the House of Commons which are closely linked with the hereditary House of Lords in England. In particular the power of the House of Lords to punish the contemners of the House by passing judgment as a Court was undoubted. Can one read or even imagine a House of Lords within our polity when the very Constitution itself disapproves even a reference to any titles on the basis of heredity and blood alone? Other examples of this nature could perhaps be multiplied ad infinitum but it would perhaps suffice to mention two other undoubted privileges of the House of Commons. It is not in dispute that the said House had a relatively unrestricted power of impeachment whereby it acted as the prosecutor whilst the House of Lords was the final Court or adjudicator for the same. Would it be possible to assume within our Constitution any such general parliamentary privilege of impeachment (apart from those which the Constitution in terms confers) or by analogy to place the Rajya Sabha in the peculiar historical position which the House of Lords as the final Court in England? Again closely inter-related to this general power of impeachment in the House of Commons was the privilege to pass Acts or Attainder which in terms and effect meant an unrestricted right to pass judgment during the course of impeachment. Can one for a moment read such a power or privilege in favour of the State Legislatures in India?

(240) I am of the view that it is essentially tautologous to first read something into the Constitution and in the next breath to proceed to erase the same. This exercise becomes inevitable, if, as suggested on behalf of the respondents, one is to first read the King, the Queen, the House of Lords or the Acts of Attainder into the Constitution and thereafter to proceed to nullify them on the plain ground that by the very nature of things they cannot form part of a Republican Constitution. The pen and ink theory, therefore, in effect becomes indeed a pen, ink and India Rubber theory whereby one first writes something entirely alien to the Constitution within it and the next moment proceeds to rub it off. It is well-settled that when a statute includes something in it by a reference to another provision then only that can be deemed to be included which is compatible with the parent provision. To my mind, therefore, the plain method of construing Article 194(3) is the usual and the settled one of not reading something into it which

is glaringly anomalous, unworkable and irrational."

[emphasis supplied]

III. Decisions of foreign courts, though useful to understand the different constitutional philosophies and trends in law, as also common law principles underlying Indian Statutes, are of limited or no assistance in interpreting the special provisions of Indian Constitution, dissimilar to the provisions of foreign constitutions.

19. Constitution of India differs significantly from Constitutions of other countries. It was made in the background of historical, social and economic problems of this country. Our Constitution-makers forged solutions and incorporated them. They made exhaustive provisions relating to Executive, Legislature, and Judiciary with checks and balances. While making specific and detailed provisions regarding Parliament, the Constitution also earmarked the areas where further provisions could be made by the Parliament by law. On the other hand, the Constitution of England is unwritten and flexible. The distribution and regulation of exercise of governmental power has not been reduced to writing. Further British Parliament was, at one time, also the highest court of justice and because of it, regarded as a superior court of record, with all its attendant trappings. United States has a short and rigid Constitution, expounded considerably by courts. Indian Constitution is exhaustive and sufficiently expounded by the Constitution makers themselves. In fact, with 395 Articles and 12 Schedules, it is the longest among world's Constitutions.

20. In Re. the C.P. and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938 -- the Central Provinces case [AIR 1939 FC 1], the Federal Court observed thus :

"for in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting and since no two Constitutions are in identical terms, it is extremely unsafe to assume that a decision on one of them can be applied without qualification to another. This may be so even where the words or expressions used are the same in both cases, for a word or phrase may take a colour from its context and bear different senses accordingly."

In M.P.V. Sundaramier & Co. v. State of Andhra Pradesh (AIR 1958 SC 468), this Court cautioned :

"the threads of our Constitution were no doubt taken from other Federal Constitutions but when they were woven into the fabric of our Constitution their reach and their complexion underwent changes. Therefore, valuable as the American decisions are as showing how the question is dealt with in sister Federal Constitution great care should be taken in applying them in the interpretation of our Constitution."

The note of caution was reiterated in Atiabari Tea Co. Ltd. v. State of Assam (AIR 1961 SC 232) and Automobile Transport Ltd. v. State of Rajasthan (AIR 1962 SC 1406), U.P. Assembly case (supra), and several other subsequent decisions.

Provisions of Indian Constitution :

21. Chapters I, II and IV of Part V relate to Executive, Parliament and Union Judiciary. Detailed reference is necessary to the provisions of Chapter II dealing with Parliament.

21.1) Article 79 relates to Constitution of Parliament and provides that there shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People. Article 80 provides that the composition of Council of States

shall be made up of twelve members nominated by the President and not more than 238 representatives of the States and Union Territories. It also provides that the representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State. Article 81 relates to composition of Lok Sabha and provides that Lok Sabha shall consist of not more than 530 members chosen by direct election from territorial constituencies in the States and not more than 20 members to represent the Union Territories, chosen in such manner as Parliament may by law provide. Article 83 prescribes the duration of Houses of Parliament. Relevant portions thereof are extracted below :

"83. Duration of Houses of Parliament.- (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for [five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House. :

Article 85 provides for the sessions of Parliament, prorogation of the Houses and dissolution of the House of the people.

21.2) Article 84 enumerates the qualifications for membership of Parliament. Article 102 deals with disqualifications for membership. Clause (1) of Article 102 provides that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament :

- a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
- 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 acknowledgement of allegiance or adherence to a foreign State;
- e) if he is so disqualified by or under any law made by Parliament.

Clause (2) of Article 102 provides that a person shall be disqualified for being a member of either House of Parliament, if he is so disqualified under the Tenth Schedule.

21.3) Article 101 deals with vacation of seats. Clause (1) thereof bars a person being a member of both Houses of Parliament, and requires the Parliament to make a provision by law for the vacation by a person who is chosen as member of both Houses, of his seat in one House or the other. Clause (2) bars a person from being a member both of Parliament and of a House of the Legislature of a State. It provides that if a person is chosen as a member both of Parliament and of a House of the Legislature of a State, then at the expiry of such period as may be specified in the rules made by the President, that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State. Clause (3), which is relevant, reads thus :

(3) If a member of either House of Parliament \026

- a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102; or

b) resigns his seat by writing under his hand addressed to the Chairman or Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.

Clause (4) provides that if for a period of 60 days, a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

21.4) Article 103 relates to decision on questions as to disqualifications of members. It is extracted below :

"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.

Corresponding provisions in regard to the State Legislatures are found in Articles 168, 170, 171, 172, 174, 173, 191, 190 and 192 of the Constitution.

21.5) It is to be noted expulsion is not mentioned as a mode of cessation of membership of the Parliament under the Constitution. Nor does it give rise to a vacancy.

21.6) Article 105 deals with powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof. Clauses (1) to (3) which are relevant, extracted below :

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

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

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

The corresponding provision in regard to State Legislatures and its members, is Article 194. The words "shall be those of the House and of its members and Committees immediately before coming into force of section 15 of Constitution (Forty Forth Amendment) Act, 1978" in clause (3) of Articles 105 and 194 have replaced the earlier words "shall be those of the House of Commons of Parliament of the United Kingdom, and of its members and Committees, at the commencement of the Constitution". The position even after amendment is the same as the position that existed at the commencement of the Constitution.

21.7) The other provisions of Chapter II, relating to Parliament also require

to be noticed. Article 106 relates to salaries and allowances of members. Articles 86 to 88 relate to the rights of the President, Ministers and Attorney General to address the Houses. Articles 89 to 98 relate to the officers of Parliament. Article 99 provides for oath of office and Article 100 provides for voting in Houses. Articles 107 to 111 relate to legislative procedure. Article 107 contains the provisions as to introduction and passing of Bills. Article 108 relates to joint sitting of both Houses in certain cases. Article 109 relates to special procedure in respect of Money Bills. Article 110 defines "Money Bills". Article 111 requires the presentation of Bills passed by the Houses of Parliament to the President for his assent. Articles 112 to 117 relate to the procedure in financial matters. Article 112 relates to annual financial statement. Article 113 relates to the procedure with respect to estimates. Article 114 relates to appropriation bills. Article 115 relates to supplementary, additional or excess grants. Article 116 relates to votes on account, votes of credit and exceptional grants. Article 117 contains special provisions as to financial bills. Articles 118 to 122 govern the rules of procedure generally to be adopted by the Houses of Parliament. Article 118 enables each House of Parliament to make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business.

Article 119 relates to regulation by law of procedure in Parliament in relation to financial business. Article 120 relates to the language to be used in Parliament. Article 121 places a restriction on discussion in Parliament (in regard to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge). Article 122 bars courts from inquiring into proceedings of Parliament and it is extracted below :

"122. Courts not to inquire into proceedings of Parliament.\027(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."

22. We have referred in detail to the various provisions to demonstrate that as far as the Indian Constitution is concerned, Chapter II of Part V is a complete Code in regard to all matters relating to Parliament. It provided for every conceivable aspect of Parliament. It contains detailed provisions in regard to the constitution of Parliament, composition of Parliament, sessions, prorogation and dissolution of Parliament, Officers of Parliament, duration of the Houses of Parliament, qualifications for membership, disqualifications for being chosen as, and for being members, vacancies of seats, decision on questions of disqualification, powers, privileges and immunities of the Parliament, its Members and Committees, manner of conducting business, the procedure to be adopted by the Parliament in regard to the enactment of laws, persons who can address the Parliament, the language to be used, and the Officers of the Parliament. The entire field in regard to the legislature is covered fully in the following manner :

Subject

(Parliament)

Articles

(State

Legislature)

Articles

Constitution & Composition of
Houses and election/nomination
of members

79 to 82
168 to 171
Duration of Houses and Tenure
of Office of Members
83
172
Sessions, Prorogation and
dissolution
85
174
Qualification for Membership
84
173
Cessation of membership
(Disqualifications for being
chosen as, and for being a
member, and vacancies) and
decision on questions of
disqualification
102, 101 & 103
192, 190 & 192
Powers, privileges and immunities
of the Legislature, members and
Committees, and salaries &
allowances
105, 122 & 106
194, 212 & 195
Restriction on Powers
121
211
Offices of Legislature
89 to 98
178 to 187
Rules of Procedure and Language
118, 119 & 120
208, 209 & 210
Legislative Procedure and Conduct
of Business
107 to 111
112 to 117
99 & 100
196 to 201
202 to 207
188 & 189
Persons who can address the
Parliament
86 to 88.
175 to 177

23. The Constitution also makes express provisions for cessation of tenure of office or removal of every constitutional functionary referred to in the Constitution. I will refer to them briefly :

(i) Article 61 refers to the procedure for impeachment of President. Clause (4) of Article 61 provides that if the resolution is passed by a majority of not less than two-third of the Members of the House declaring the charge against the President has been sustained, such resolution shall have the effect of removing the President from the office.

(ii) Clause (b) of Article 67 deals with the term of office of Vice President and provides for removal of Vice President from office by a resolution of Council of States passed by majority of all the then members of the Council and agreed to by the House of

People.

(iii) Article 75(2), Article 76(4) and Article 156(1) refer to the Ministers, Attorney General and Governor holding office during the pleasure of the President.

(iv) Article 124 provides that no Judge of Supreme Court shall be removed from his office except by an order of President passed after impeachment. Articles 148 and 324 provide that the Comptroller & Auditor General of India and the Chief Election Commissioner shall not be removed from their office except in like manner and on like grounds of a Judge of the Supreme Court.

(v) Article 315 read with Article 317 provides how a Chairman or a Member of a Public Service Commission can be removed from office.

Similarly provisions are made in regard to cessation/termination of tenure of office or removal of all constitutional functionaries with reference to the States. Article 156(1) relates to Governor, Article 164(1) relates to Ministers, Article 165(3) relates to Advocate General, Article 179 relates to Speaker and Deputy Speaker, Article 183 relates to Chairman and Deputy Chairman of Legislative Council, Articles 190 to 192 relate to Members of Legislatures and Article 217 relates to High Court Judges.

Whether Articles 101 and 102 are exhaustive of the circumstances in which there will be cessation of membership ?

24. The word 'disqualified' means to 'make ineligible' or debarred. It also means divested or deprived of rights, powers or privileges. The term 'expel' means to deprive a person of the membership or participation in any 'body' or 'organization' or to forcibly eject or force a person to leave a building premises etc. The enumeration of disqualifications is exhaustive and specifies all grounds for debarring a person from being continuing as a member. The British Parliament devised expulsion as a part of its power to control its constitution, (and may be as a part of its right of self-protection and self-preservation) to get rid of those who were unfit to continue as members, in the absence of a written Constitutional or statutory provision for disqualification. Historically, therefore, in England, 'expulsion' has been used in cases where there ought to be a standing statutory disqualification from being a Member. Where provision is made in the Constitution for disqualifications and vacancy, there is no question of exercising any inherent or implied or unwritten power of 'expulsion'.

25. A person cannot be disqualified unless he suffers a disqualification enumerated in Article 102. Article 102 refers to 6 types of disqualifications :

- i) If he holds any office of profit, vide Article 102(1)(a);
- ii) If he is of unsound mind and stands so declared, vide Article 102(1)(b);
- iii) If he is an undischarged solvent, vide Article 102(1)(c);
- iv) If he is not a citizen of India, vide Article 191(1)(d);
- v) If he is disqualified by or under any law made by Parliament.
- vi) If he is disqualified under the Tenth Schedule, vide Article 102(2).

Disqualifications have also been prescribed by the Parliament in the Representation of People Act, 1951 as contemplated under Article 102(1)(e). The grounds of disqualifications under the said Act are :

- (i) if he is convicted and sentenced for any offence as provided/enumerated in Section 8 of the Act;
- (ii) if he is found guilty of corrupt practices by an order under Section 99 of the Act vide Section 8-A of the Act;

(iii) if he is dismissed for corruption or for disloyalty to the State, vide Section 9 of the Act;

(iv) if he has a subsisting contract with the appropriate Government for the supply of goods to or for the execution of any works, vide Section 9-A of the Act;

(v) if he is a managing agent, manager or secretary of any company or corporation, in which the appropriate Government has a share, vide Section 10 of the Act;

(vi) If he is a person who has been declared as disqualified by the Election Commission, vide Section 10-A of the Act."

The Constitution thus expressly enumerates certain grounds of disqualification (sub-clauses (a) to (d) of clauses (1) and (2) of Article 102). It has also permitted the Parliament to add disqualifications, by making a law. Passing a resolution by one House, is not of course, making a law.

26. In the case of Members of Parliament, the Constitution has consciously used the word disqualification, both for 'being chosen as a member' and for 'being a member'. That means that when a member becomes disqualified as mentioned in Article 102, he becomes disentitled to continue as a Member of the House.

27 Article 101 specifically provides the circumstances in which a seat of Member of Parliament becomes vacant \026

(a) when a person is member of both Houses of Parliament;

(b) when a person is elected both as a Member of Parliament and also as a Member of the State Legislature, and does not resign his seat in the legislature of a State within the time specified;

(c) when a person becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of Article 102;

(d) when he resigns his seat and his resignation is accepted.

(e) when a member is absent from all meetings for a period of 60 days without permission of the House and the House declares his seat as vacant.

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

(i) Occurrence of vacancies, for reasons specifically stated in the Constitution itself (vide clauses (2) and (3) of Article 101).

(ii) Occurrence of vacancies, to be provided by a law made by the Parliament (vide clause (1) of Article 101).

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

If the Constitution makers wanted a vacancy to occur on account of 'expulsion' on a decision or declaration by the House, they would have certainly provided for it, as they have provided for vacancy on the ground of unauthorized absence, arising on a declaration by the House under clause (4) of Article 101. The Constitution makers did not contemplate or provide for any cause, other than those mentioned in Article 101, for giving rise to a vacancy. Thus a seat held by a Member of Parliament does not become vacant, in any manner, other than those stated in Article 101.

29. One argument advanced to contend that Article 101 cannot be considered as exhaustive as to the circumstances in which vacancy occurs in respect of a seat in the Parliamentary, was that it does not provide for

vacation of seat by death of a Member. Article 101 refers to vacation of seat by a 'person' who is a member of the House, that is, a person who is alive. When a person is dead, obviously he is not a Member of the House. It would be absurd to contend that a person even after death will continue to hold the seat. The obvious effect of death did not require to be stated and therefore the non-mention of death as a ground for vacancy does not make Article 101 any less exhaustive.

30. Articles 102 and 101 together include all circumstances in which a membership comes to an end and the seat becomes vacant. The Constitution does not contemplate or provide for the membership of an MP coming to an end in any manner other than what is specifically provided in Articles 101 and 102. Therefore there cannot be cessation of membership, *de hors* Articles 101 and 102, by 'expulsion' or otherwise.

Conclusions :

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

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

33. In view of the express provisions in the Constitution, as to when a person gets disqualified to be a member of either House of Parliament (and thereby ceases to be a member) and when a consequential vacancy arises, it is impermissible to read a new category of cessation of membership by way of expulsion and consequential vacancy, by resorting to the incidental powers, privileges and immunities referred to in Article 105.

34. Clause (3) of Article 105 opens with the words 'in other respects'. The provision for 'powers, privileges and immunities' in clause (3) occurs after referring to the main privilege of freedom of speech in Parliament, in clause (1) of Article 105, and the main immunity against court proceedings in clause (2) of Article 105. Therefore, clause (3) is intended to provide for 'non-main' or 'incidental' or miscellaneous powers, privileges and immunities which are numerous to mention. Two things are clear from clause (3). It is not intended to provide for the matters relating to nomination/election, term of office, qualifications, disqualification/cessation, for which express provisions are already made in Articles 80, 81, 83, 84, 101 and 102. Nor is it intended to provide for important privilege of freedom of speech or important immunity from court proceedings referred to in Clause (1) and (2) of Article 105. This Court in U.P. Assembly referred to this aspect :

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

[emphasis supplied]

By no stretch of imagination, the power to expel a member can be considered as an 'incidental' matter. If such a power was to be given, it would have been specifically mentioned.

35. The appropriate course in case of allegation of corruption against a Member of Parliament, is to prosecute the member in accordance with law (The immunity under Article 105(2) may not be available, as the decision in P.V.Narasimha Rao v. State [1998 (4) SCC 626] recognizes immunity to a member who is a bribe taker only where the 'bribe' is taken in respect of a 'vote' given by him in Parliament and not otherwise). Such cases can be fast tracked. Pending such criminal proceedings, the member can be suspended temporarily, if necessary, so as to prevent him from participating in the deliberations of the Houses. On being tried, if the member is convicted, he becomes disqualified for being or continuing as a Member under Article 102(1)(e). If he is acquitted, he is entitled to continue as a member. Though it may sound cumbersome, that apparently is what the Constitution intends.

36. I am, therefore, of the considered view that there is no power of expulsion in the Parliament, either inherent or traceable to Article 105(3). Expulsion by the House will be possible only if Article 102 or Article 101 is suitably amended or if a law is made under Article 102(1)(e) enabling the House to expel a member found unworthy or unfit of continuing as a member. The first question is thus answered in the affirmative. Therefore the second question does not survive for consideration.

37. In view of the above, I hold that the action of the two Houses of Parliament, expelling the petitioners is violative of Articles 101 to 103 of the Constitution and therefore invalid. Petitioners, therefore, continue to be Members of Parliament (subject to any action for cessation of their membership). Petitions and transferred cases disposed of accordingly.