
THE SUPREME COURT ON PARLIAMENTARY EXPULSIONS: A DIVIDED VERDICT

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I. Introduction

This essay examines the controversial ‘Cash-for-Query’ scandal in the Indian Parliament and the subsequent legal case challenging the expulsion of implicated members. This essay focuses on Justice Raveendran’s dissenting judgment that should have been followed. For this, we will first examine the facts concerning the case. Second, we will analyse the dissenting judge’s holding and the rationale behind it by closely examining the relevant Constitutional provisions. Third, we will argue why the dissenting judgment is the correct interpretation in this instance through emphasis on Constituent Assembly Debates and the difference between the British and Indian Parliaments. Finally, we will advocate for immediate legal reforms to codify parliamentary privileges, emphasizing the importance of balancing legislative independence with constitutional limitations and judicial oversight.

II. Factual Background of the case

In 2005, 1 member of the Rajya Sabha and 10 members of the Lok Sabha were caught on camera accepting money from undercover journalists in exchange for raising questions in Parliament.¹ The news channel *Aaj Tak* broadcasted this episode, quickly making the ‘Cash-for-Query’ scam a national headline. In a swift response, both Houses of Parliament established committees to investigate the matter. The committees, finding no reason to doubt the authenticity of the video footage, recommended the expulsion of the implicated members. Acting on these recommendations, both Houses adopted motions to expel them. Aggrieved by this decision, the members approached the Supreme Court, alleging that Parliament lacked the jurisdiction to expel them and claiming a violation of their fundamental rights. Additionally, the Speaker and Chairman of the two Houses refused to be named as respondents, asserting that the matter of parliamentary privileges was the ‘exclusive’ domain of the Parliament beyond

¹ *Raja Ram Pal v. Speaker, Lok Sabha* (2007) 3 SCC 184 (“*Raja Ram Pal*”).

judicial review. Consequently, the Union of India was tasked with defending the Parliament's collective decision.

III. The Dissenting Judgment: How is it different?

The Supreme Court Bench hearing this case comprised C.J. Y.K. Sabharwal, J. K.G. Balakrishnan, J. C.K. Thakker, J. R.V. Raveendran, and J. D.K. Jain. While C.J. Sabharwal, J. Balakrishnan, and J. Jain constituted the majority, J. Thakker concurred with them, and J. Raveendran dissented.

The majority held that Parliament possesses the power to expel its members, subject to judicial review. However, J. Raveendran dissented, asserting that the privilege of expulsion from the House of Commons could not be incorporated under *Article 105(3)*.

Article 105 provides for the powers, privileges and immunities of the Indian Parliament. Specifically, *Article 105(3)* originally stated: “*that the powers, privileges and immunities of each House of Parliament, and 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 the British House of Commons at the commencement of the Constitution.*”² The 44th Amendment in 1978 removed the reference to the ‘House of Commons’, without materially altering the legal position.³ This amendment stipulates that privileges should be defined by Parliament through legislation. It was also made clear that until such legislation is enacted, pre-amendment privileges remain in effect, thus continuing the influence of British norms.

The petitioners argued that membership cessation in either House of Parliament is governed exclusively by *Articles 101* and *102*. *Article 101* outlines circumstances under which a seat of a member of either House of Parliament becomes vacant.⁴ Similarly, *Article 102* specifies grounds for disqualification.⁵ Expulsion as a ground for disqualification is not mentioned in both of these articles. The majority differentiated between ‘disqualification’ and ‘expulsion’, stating that while both were different, they were not mutually exclusive. Therefore, the Parliament can expel a member to disqualify him from the House.⁶ J. Raveendran disagreed,

² The Constitution of India, art. 105(3).

³ Constitution (Forty-fourth Amendment) Act 1978, art. 15.

⁴ The Constitution of India, art. 101.

⁵ *ibid*, art. 102.

⁶ *Raja Ram Pal* (n 1) [145].

emphasizing that, unlike the British Parliament which had the right to create or repeal any law without judicial interference, the Indian Parliament operates within constitutional limits.⁷ Since the Indian Constitution is detailed and comprehensive, that which had not been expressly included was necessarily excluded. Not having been expressly provided for, expulsion as a ground for vacancy could not be impliedly read in. He pointed out that the British Parliament's expulsion power was developed in the absence of a written Constitutional or statutory provision for disqualification, whereas the Indian Constitution's detailed provisions for disqualifications and vacancy leaves no room for implied powers of expulsion.

One argument extended by the respondents to prove that *Article 101* is not exhaustive was that it does not address seat vacation due to a member's death. J. Raveendran countered that death obviously ends membership, rendering its mention unnecessary, thus not making Article 101 any less exhaustive."⁸

Additionally, J. Raveendran referred to the *Keshav Singh* and *Hardwari Lal* cases to come to his conclusion. In *Keshav Singh v. Speaker, Legislative Assembly*, it was held that not all powers of the House of Commons could be claimed by the Indian Parliament.⁹ Further, in *Hardwari Lal v. Election Commissioner of India*, the majority determined that the British Parliament's expulsion power derived from its privilege to regulate its constitution, a power not available to the Indian Parliament due to its written Constitution.¹⁰

Apart from this, J. Raveendran disagreed with the majority and concurring judges on their reliance on the decisions of foreign courts of Britain and America to interpret the Indian Constitution.¹¹

J. Raveendran then goes on to explain how the Constitution intended members to get disqualified by referring to *Article 103*, which specifies that disqualification decisions should be referred to the President, who acts based on the Election Commission's opinion.¹² He says that the appropriate course in case of an allegation of corruption against a member of Parliament is to prosecute the member following the law as immunity under *Article 105(2)* may

⁷ *ibid* (n 1) 720].

⁸ *Raja Ram Pal* (n 1) [745].

⁹ *Keshav Singh v. Speaker, Legislative Assembly & Others* AIR 1965 SC 745.

¹⁰ *Hardwari Lal v. Election Commission of India*, ILR (1977) 2 P&H 269 (FB).

¹¹ *Raja Ram Pal* (n 1) [731].

¹² The Constitution of India, art. 103.

not be available as the decision in *P.V. Narasimha Rao v. State* recognises 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.¹³ While the criminal case is pending against the accused member, he can be suspended temporarily. If the member is convicted, he becomes disqualified for being or continuing as a member under *Article 102(1)(e)*.¹⁴

In conclusion, J. Raveendran held that *Articles 101* and *102* are exhaustive concerning parliamentary membership cessation, thereby precluding Parliament from expelling members under its powers and privileges defined in *Article 105(3)*.

IV. Why is the dissenting judgment correct?

The majority and the concurring judgments relied on Constituent Assembly debates to support their conclusion that the power to expel was included within *Article 105(3)*. However, when *Article 105(3)* was discussed in the Constituent Assembly Debates as *Article 85(3)*, it sparked significant disagreements among members. H.V. Kamath, Naziruddin Ahmad, and P.S. Deshmukh argued defining privileges as those of the House of Commons was vague and unclear. They advocated for defining these privileges based on Indian precedents and traditions.¹⁵ Additionally, Alladi Krishnaswami Ayyar, while defending *Article 85(3)* stated that the adoption of the House of Commons privileges was only a temporary measure.¹⁶ Rohini Kumar Chaudhuri also dismissed the proposal of inheriting privileges from the House of Commons, arguing that proponents of the provision cannot claim these privileges existed in India merely because they did in Canada and Ireland as well. The Honourable Judge asserted that the principles of Canada and Ireland do not apply to India as both of the former countries are English, unlike India.¹⁷

The constitutional debates reveal substantial opposition to *Article 105(3)*. Regardless of their stance on *Article 105(3)*, all the constituent assembly members desired that the privileges of both Houses be defined by the Parliament itself in the future. The reference to the privileges of the House of Commons was intended only as a temporary measure.

¹³ *P.V. Narasimha Rao v. State* (1998) 4 SCC 626.

¹⁴ *Raja Ram Pal* (n 1) [751].

¹⁵ Constituent Assembly Debates, Vol 8, 19 May 1949 available at: <https://www.constitutionofindia.net/debates/19-may-1949/> (last visited on Aug. 09, 2024).

¹⁶ *ibid.*

¹⁷ *ibid.*

Furthermore, not all the privileges of the House of Commons can be transferred to the Indian Parliament due to significant differences between the British and the Indian constitutions. The primary difference lies in the concept of parliamentary supremacy in the UK, which is inconsistent with India's written constitution that imposes restrictions on Parliament regarding certain types of legislation. Thus, under the guise of *Article 105(3)*, the Indian Parliament cannot claim to have unlimited powers and privileges.¹⁸

Another important distinction is the judicial powers possessed by the British Parliament, which the Indian Parliament does not and has never enjoyed.¹⁹ The British Parliament's right to self-protection, derived from being a superior court of record with the power to punish for contempt, is an inherent and ancillary power, not a substantive one.²⁰ The Supreme Court has also observed that since neither the Indian Parliament nor the State Legislature are courts of record, unlike the House of Commons, they cannot claim the privilege to commit a person for contempt by a general warrant.²¹ The English cases, such as *Kielly v. Carson*, *Fenton v. Hampton*, *Doyle v. Falconer*, and *Barton v. Taylor* establish that the legislatures other than the House of Commons can only claim protective powers necessary for self-preservation. Consequently, this limited self-protective power does not include the power of expulsion, as expulsion is not necessary for the protection of the house.²²

In India, the law relating to disqualification and vacation of seats is detailed in *Articles 101* and *102*, which constitute a complete code. If the legislature feels that these provisions are incomplete, then it has the authority to prescribe additional disqualifications. However, since this has not been done, it follows that the Parliament does not possess the power to expel a member in cases other than those provided.²³

In conclusion, J. Raveendran is correct in holding that the Parliament cannot use expulsion as a ground to disqualify a member. Further, textualism, a mode of legal interpretation focusing on the plain meaning of the text of a legal document, also supports J. Raveendran's reasoning.

¹⁸ Shruti Bedi, 'The Power to Punish for Contempt under Parliament Privileges: An Analysis of the Inherent Limitations' (2009) 51 JILI 79, 81.

¹⁹ *ibid*, 82.

²⁰ *ibid*, 83.

²¹ *Keshav Singh v. Speaker, Legislative Assembly & Others* AIR 1965 SC 745.

²² Shruti Bedi, 'The Power to Punish for Contempt under Parliament Privileges: An Analysis of the Inherent Limitations' (2009) 51 JILI 79, 87.

²³ *ibid*, 88.

V. Need for Legal Reforms

In *Pandit M.S.M. Sharma v. Shri Krishna Sinha and Others*, the Honourable Supreme Court ruled that *Articles 105 and 194* of the Indian Constitution are special provisions that take precedence over *Article 19(1)(a)* of the Indian Constitution.²⁴ This judgment emphasizes that until parliamentary privileges are defined by law under *Article 105(3)*, Parliament can assume any privilege that the House of Commons had, as per *Article 15* of the Constitution (Forty-fourth Amendment) Act, 1978.

There have been numerous instances where parliamentary privileges have been abused to suppress democratic voices in India. Codifying legislative privileges can prevent such abuses, as we currently lack a clear definition and specific punishments for violating these privileges. Parliament has not yet sought to codify its privileges, possibly out of fear of losing its ultimate power if the codified law is subjected to judicial scrutiny.²⁵ Parliamentary members are appointed by the mandate of the people of the country, and therefore, their removal should not be in the hands of their colleagues.

Hence, it is imperative that parliamentary privileges be defined by law, as they adversely impact the rights of the people. The National Commission to Review the Working of the Constitution (NCRWC) Report in 2002 also highlighted that the members of the Constituent Assembly envisaged the codification of parliamentary privileges by Parliament by law. The Commission recommends that the time has come to define and delimit privileges deemed to be necessary for the free and independent functioning of Parliament.²⁶ This would prevent their broad interpretation, which could otherwise suppress and undermine the voice of democracy.

VI. Conclusion

The ‘*Cash-for-Query*’ scam case underscores the complexities of parliamentary privileges within the framework of the Indian Constitution. J. Raveendran’s dissenting opinion highlights the need for explicit legal boundaries regarding parliamentary powers, emphasising the importance of adhering to constitutional limits. This case illustrates the urgent need for legal

²⁴ *Pandit M.S.M. Sharma v. Shri Krishna Sinha and Others* AIR 1959 SC 395.

²⁵ Anwesha Panda & Satyaroop Kar, ‘A Privileged Legislature or a Weapon to Stifle the Voice of the Republic?’ (2022) 5 Int’l JL Mgmt & Human 241, 248.

²⁶ Government of India, “National Commission to Review The Working of The Constitution Report” (Ministry of Law, Justice and Company Affairs, 2002).

reforms to define and codify parliamentary privileges, ensuring they serve democratic principles rather than undermine them. The essay concludes that codifying these privileges will help prevent abuses and align parliamentary functions with constitutional mandates, thereby strengthening India's democratic institutions.

Reference List

Case Laws:

1. *Raja Ram Pal v. Speaker, Lok Sabha* (2007) 3 SCC 184.
2. *Keshav Singh v. Speaker, Legislative Assembly & Others* AIR 1965 SC 745.
3. *Hardwari Lal v. Election Commission of India*, ILR (1977) 2 P&H 269 (FB).
4. *P.V. Narasimha Rao v. State* (1998) 4 SCC 626.
5. *Pandit M.S.M. Sharma v. Shri Krishna Sinha and Others* AIR 1959 SC 395.

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6. Shruti Bedi, 'The Power to Punish for Contempt under Parliament Privileges: An Analysis of the Inherent Limitations' (2009) 51 JILI 79.
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11. Government of India, "National Commission to Review The Working of The Constitution Report" (Ministry of Law, Justice and Company Affairs, 2002).