

LEGISLATURE: PRIVILEGES AND PROCESS

Sidharth Chauhan

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Introduction

The core of the rationale for recognising legislative privileges is to protect law-makers from interference by others in the discharge of their essential functions. This broadly entails their use as a shield against undue intrusions by the executive branch, the courts and private parties. In medieval England, they were initially asserted by legislators to resist arrest and prosecution on account of words spoken on the floor of the house. They include a legislative chamber's powers to control the publication of its proceedings, since unauthorized publication could expose legislators to unwelcome scrutiny and hamper their performance. They have also been used punitively, including instances of imprisonment and fines being imposed on non-members as well as to remove members. In the framework of representative democracy, their scope is intrinsically linked to the objective of ensuring unfettered deliberation inside the legislature. In India's post-independence period, their invocation has been controversial in several instances and the open-textured nature of the relevant constitutional provisions has precipitated calls for codification.¹

¹ The Indian Press Commission made such a demand as early as 1954. For a sample of writings favouring codification of legislative privileges in India, See: P. Govinda Menon, 'Parliamentary Privileges and their Codification', 2(3) JCPS 1-28 (1968); L.M. Singhvi, 'The Question of Codification of Privileges in India', 9(3) JCPS 295-301 (1975); S.H. Shakhder, 'The Codification of Legislative Privileges in India' in Alice Jacob (ed.), *Constitutional Development since Independence* (1975); Akhtar Ali Khan, 'Powers, Privileges and Immunities: Need for codification', 41(2) IJPS 309-319 (1980); K.N. Goyal, 'Codification of Privileges – Search for an Alternative', (1985) 3 SCC (Jour) 21; Anirudh Prasad, 'Do the Indian Legislatures Enjoy A Privilege Not To Codify Their Privileges?', 29(2) CMLJ 81-95 (1991); K. Madhusudana Rao, 'Codification of Parliamentary Privileges in India – Some Suggestions', (2001) 7 SCC (Jour) 21; There is an ongoing research project under the aegis of the Indian Law Institute (ILI), New Delhi which seeks to generate a 'Restatement of the Law'. The subject of legislative privileges was among the first to be included. Even though some historically established privileges are usually enumerated in the rules for conduct of business for legislative bodies, there remains considerable anxiety about their invocation in unforeseen situations.

The Indian Supreme Court's rulings in this area have exacerbated the uncertainty about their relationship with fundamental rights, especially speech and personal liberty. This prompts us to ask whether the exercise of legislative privileges is justiciable and if so, to what extent? While constitution bench decisions have favoured limited judicial scrutiny, there is room for debate in light of the broader principle of 'separation of powers'. A strict separationist view would favour an absolute bar on judicial scrutiny, an intermediate position would allow for a historical inquiry into the existence of a privilege and an expansive view would imply that courts can inquire both into the existence of a privilege and the merits of its use.²

Incumbents have invoked legislative privileges to target political opponents and critics, often in cases that are better suited for adjudication by the courts. They have also been used as a method of disciplinary control in response to allegations of wrongdoing by law-makers. The doctrinal debate has centered on whether this is proper when there are other remedies available. Such substitution appears to be a faster response to corrupt practices by legislators when compared with the slow pace and dilatory nature of judicial proceedings. Accordingly, privileges can be viewed as instruments to combat wrongdoing within the legislature apart from serving as a shield against undue external pressures. However, the discretionary use of privileges by legislative committees has often deviated from the procedural safeguards expected of adversarial settings. The stakes are high when they adopt inquisitorial methods to suspend or remove serving legislators.

There is considerable writing on the functioning of legislative bodies in India,³ including book-length studies on the present subject.⁴ It is not possible for this chapter to comprehensively

² These approaches can be flagged as the 'on the face' view, the 'existence' view and the 'reviewability' view. See: Shubhankar Dham, 'Parliamentary Privileges as a façade: Political Reforms and the Indian Supreme Court – Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others', SING. J. LEG. STUD. 162-183, 164 (2007); Also see: Anirudh Prasad, 'Jurisprudential Study of Legislative Privileges in India', 16(3/4) IBR 398-436 (1989); P.K. Balasubramanyan, 'Parliamentary Privilege: Complementary Role of the Institutions', (2006) 2 SCC (Jour) 1.

³ See for instance: Subhash C. Kashyap, *Parliamentary Procedure – The Law, Privileges, Practices and Precedents*, 3rd ed. (2014); Subhash C. Kashyap, *Anti-Defection Law and Parliamentary Privileges*, 3rd ed. (2011); M.N. Kaul & S.N. Shakhder (P.D.T. Achary ed.), *Practice and Procedure of Parliament*, 6th ed. (2009).

⁴ For example: V.R. Krishna Iyer & Vinod Sethi, *Parliamentary Privileges: An Indian Odyssey* (1995); M.A. Qureshi, *Indian Parliament: Powers, Privileges and Immunities* (1994); Prititosh Roy,

survey these materials. Part I presents an overview of the justifications for legislative privileges and Part II engages with prominent judgments related to their scope. This part also references some instances where their invocation has been politically contentious but not litigated.

I. The justifications for legislative privileges

The ideal of the ‘rule of law’ implies that lawmakers should be subjected to the laws which they create, just as they would bind other citizens. By that standard, the conferral and exercise of legislative privileges appears to be an anomaly. However, the differential treatment accorded to incumbent legislators is justified in light of their duties as a particular class of public officials. The ability to speak and vote inside the legislature without the fear intimidation or punishment is considered to be intrinsic to the role of an elective representative.⁵ In the United Kingdom, parliamentary privileges were first asserted as pre-existing rights that were enforceable against the prerogatives of the Crown as well as judicial authority. For the House of Commons, they included protections against the special rights of the House of Lords. This can be characterised as an effort to resist the powers of the other branches that were closely aligned with royal authority. Through the decades leading up to the English Civil War and thereafter, parliamentary privileges emerged as a significant check on excesses by the Crown. They evolved through specific assertions, often recognized by way of litigation.⁶ Their early history suggests that they were chiefly used to protect legislators from arbitrary arrests, prosecution and suspensions at the behest of the monarch. As a reflection of this history, Article 9 of the Bill of Rights of 1689 provided ‘*That the freedom of speech and debates and proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament*’. Similar language can be found in Article 1(6) of the United States Constitution which was framed nearly a century later. Subsequent history includes situations where the British Parliament invoked its privileges to

Parliamentary Privileges in India (1991); Ranjana Arora, *Parliamentary Privileges in India: Jawaharlal Nehru to Indira Gandhi* (1984); M.P. Jain, *Parliamentary Privileges and the Press* (1984); Hans Raj, *Privileges of Members of Parliament in India* (1979); P.S. Pachauri, *The Law of Parliamentary Privileges in U.K. and in India* (1971).

⁵ See: Erskine May (Douglas Miller ed.), *Parliamentary Practice*, 24th ed. (2011), See ‘What constitutes privilege?’ in Chapter III - General View on Parliamentary Privileges.

⁶ For a concise account of some important cases from this period, see: Robert J. Reinstein & Harvey A. Silverglate, ‘Legislative Privilege and the Separation of Powers’, 86 HARV. L. REV. 1113, 1120-1135 (1973).

impose penal consequences such as imprisonment and fines on outsiders as well as expulsion of its own members.

In the Indian context, legislatures created during the colonial period looked to British parliamentary practices. The earliest instances of the use of legislative privileges have been traced back to the rule of the East India Company in Bengal. During the direct rule of the British government, the provincial legislatures invoked them to insulate themselves from judicial scrutiny, particularly to protect serving legislators from impending arrests.⁷ Section 71 of the Government of India Act, 1935 was the precursor to the relevant provisions in the Indian Constitution. During the Constituent Assembly debates, some members led by H.V. Kamath had demanded the codification of legislative privileges in order to mark a clean break from the British precedents. Responding to these demands, B.R. Ambedkar described the difficulty of including a detailed schedule to list out permissible actions and defended the incorporation of the privileges available to the House of Commons at the time, while also empowering the future Indian Parliament to legislate on the subject.⁸

In the Constitution, Article 105 deals with the powers and privileges of the Houses of Parliament, their members and committees.⁹ Article 194 is the corresponding provision for State

⁷ See: P.N. Malhan, 'Legislative Privileges in India', 3(3) IJPS 337-359 (1942); L.R. Sethi, 'Privileges of the Members of the Legislature in India in matters of freedom from Arrest', 3(4) IJPS 515-516 (1942); Salil Kumar Nag, *Evolution of Parliamentary Privileges in India Till 1947* (1978).

⁸ Vinod Sethi, 'Press and the Parliament', 41(4) IJPS 657-681 (1980) at 663-665.

⁹ The language is as follows:

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 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.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Legislatures and includes identical language. Clause (1) assures freedom of speech inside the legislature and Clause (2) explicitly protects the act of speaking and voting by members inside the legislature from judicial proceedings of any kind. Clause (2) further pre-empts liability for the publication of matters connected to legislative business, provided the same is done under the authority of the chamber.¹⁰ Much disputation has arisen from Clause (3) which empowers Parliament to define its ‘powers, privileges and immunities’ in other respects. For ascertaining the existence of privileges, the original language of Clause (3) stated that they “*shall be the same as those of the House of Commons of the United Kingdom as on the coming into the force of the Constitution*”. This clause was amended to its current form in 1978. Even though the explicit reference to the House of Commons was removed, judicial interpretation has favoured the view that legislative chambers in India continue to enjoy the powers, privileges and immunities that were available to the former on January 26, 1950 (i.e. the date on which the Constitution of India came into force). This position enables the identification of implicit limits for their permissible use, subject to the inherent differences in the structure of government contemplated by the Indian Constitution.¹¹ Consequently, the predominant strategy in litigation about their scope has been that of establishing or denying comparisons with British precedents.

II. Contestations over the scope of legislative privileges

Law-makers face pressures of different kinds during the discharge of their official functions. While the routine demands of constituents, lobbyists and interest groups may play on their minds, they can hardly be described as impermissible influences. Given the largely unspecified nature of legislative privileges in India, the courts have been frequently called in to identify the kinds of pressures that can be properly resisted through this route and those which should not. Such judicial scrutiny has itself been contentious.

Relationship with fundamental rights

¹⁰ This is a clarificatory clause since the unauthorized publication of parliamentary proceedings had been a frequent source of litigation in the United Kingdom. The Parliamentary Proceedings (Protection of Publication) Act, 1956 was enacted at the urging of Feroze Gandhi. It conferred a statutory protection for publishing substantially true reports of legislative discussions. This Act was repealed during the internal emergency of 1975-1977 but re-introduced soon thereafter.

¹¹ *State of Karnataka v. Union of India*, (1977) 4 SCC 608, Para. 57; *Raja Ram Pal v. Speaker, Lok Sabha & Others*, (2007) 3 SCC 184, Paras. 112 and 123 [Hereinafter ‘*Raja Ram Pal*’].

The first Supreme Court decision reported on this subject is *Gunupati Keshavram Reddy v. Nafisul Hasan*.¹² It dealt with the arrest of Homi Dinshaw Mistri (a deputy editor of 'Blitz' magazine at the time) in Bombay who was subsequently taken to Lucknow and detained at a hotel, ostensibly for production before the Speaker of the Uttar Pradesh Legislative Assembly to answer a charge of breach of privilege. There was no discussion on the scope of privileges because the question pertained to the validity of the detention, which was held to be improper since Mr. Mistri had not been produced before a Magistrate within twenty-four hours of arrest, as required under Article 22(2) of the Constitution.¹³

The first substantive judgment was *M.S.M. Sharma v. Sri Krishna Sinha*.¹⁴ A member of the Bihar Legislative Assembly had criticized the incumbent Chief Minister (respondent) during the budget discussions for 1957-1958. The remarks made on May 30, 1957 suggested that the respondent had appointed ministers and improperly transferred civil servants on the advice of another politician who had previously served as Industry Minister but had lost the most recent elections. Allegations were also made about how this former minister had been appointed as the Chairperson of the Bihar State Khadi Board to make him eligible for accommodation in a large bungalow in Patna, the state's capital city. These attacks were objected to and the Speaker decided to expunge most of the references to the name of the former minister from the official records. On May 31, 1957, 'The Search Light' newspaper carried a news-item which reported the contents of the previous day's speech and published the name of the former minister. While there was no immediate response, on August 18, 1958 the Assembly issued a notice of breach of privileges to the editor and publisher of 'The Search Light' for reporting the redacted remarks. They were given time till September 8, 1958 to appear before the Assembly's privileges committee which was headed by the respondent. Apprehending penal consequences, the editor

¹² AIR 1954 SC 636.

¹³ For a contemporaneous comment, see: R.C. Ghosh, 'Parliamentary Privilege, Civil Liberty and Homi Dinshaw Mistri's case', 13(3/4) IJPS 38-56 (1952). Ghosh argued that the legislative privileges conferred by Article 194 were co-ordinate to the protections contemplated by Article 22(2) and that it was erroneous for the Court to have relied upon the latter provision to invalidate the detention.

¹⁴ AIR 1959 SC 395 (Hereinafter '*Search Light I*'). In the intervening period, there were at least two cases where High Courts refused to scrutinise the exercise of privileges by Legislative Assemblies in Orissa (*Godavaris Misra v. Nandakisore Das*, AIR 1953 Ori 111, the Speaker had disallowed questions asked by a member) and Uttar Pradesh (*Raj Narain Singh v. Atmaram Govind*, AIR 1954 All 319, disciplinary action had been taken against a member) respectively.

initially approached the Patna High Court, but withdrew his petition to approach the Supreme Court under its writ jurisdiction.

The petitioner's argument was that the exercise of legislative privileges and a consequent punishment would violate his 'freedom of speech and expression' [Article 19(1)(a)] and deprive him of his 'personal liberty' (Article 21). The majority opinion by S.R. Das, C.J., framed two legal questions, namely (i) whether the legislature could use its privileges to restrict reportage of openly conducted proceedings and (ii) whether these privileges would prevail over the freedom of speech and expression of the petitioner? The majority opinion upheld the exercise of privileges, largely by referring to English precedents where Parliament had proceeded against those who had reported proceedings in a manner that deviated from the official records. The reasoning was that while there was a public interest in being informed about legislative proceedings through the press, the legislature should retain control over such publication to prevent inaccurate reporting or commentary that might cause or contribute to hindrances in its functioning. The majority also favoured the respondents on the second question, by observing that the exercise of legislative privileges under Article 194(3) could trump the freedom of speech and expression under Article 19(1)(a) since the former was a special protection accorded to legislatures in contrast to the general applicability of the latter provision.¹⁵ There was a sharp dissent from K. Subba Rao, J., who argued that the protections accorded to legislators under Article 194(1) were constrained by other provisions in the Constitution, including the fundamental rights. Hence, Article 194(3) should also be construed in light of limitations placed by the freedom of speech and expression that is available to all citizens. The dissenting judge opined that Article 194(3) was better described as a transitory provision which should not be preferred over a fundamental right.

If one considers the facts, the invocation of privileges appears to be a substitute for a defamation suit since the presumptive legal injury was caused by the publication of the former minister's name. It is difficult to fathom how the reportage had threatened the exercise of

¹⁵ On the prospective violation of 'personal liberty' (Article 21), the majority held that this question was redundant since the privileges committee was bound by the Assembly's rules for conduct of business which had been laid down in advance and therefore met the requisite standard of 'procedure established by law'.

legislative functions. The publication of the expunged remarks might have been a journalistic impropriety but it cannot be described as an act that was calculated to obstruct the legislative process. The Court did not look past the bar on scrutinising procedural matters inside the State legislature (Article 212) even though the substantive reasons for invoking privileges were doubtful.¹⁶ As the dissent points out, the records of the proceedings did not corroborate the Speaker's instructions to expunge some of the remarks made on the floor of the house. It was probable that the correspondent who reported the proceedings may not have understood or ascertained the Speaker's oral instructions.

Ordinarily, the fundamental rights are accorded primacy over other provisions in the constitutional text. However, in *Search Light I*, the majority engaged in a misconceived attempt at purposive interpretation. The unstated claim was that the importance of carrying out legislative functions without hindrances was at the same pedestal as that of the state's enumerated powers to regulate speech and expression.¹⁷ The majority relied on an expansive reading of a liberty-limiting provision whereas the same is usually done for widening the ambit of liberty-enhancing provisions.¹⁸ Soon thereafter, the Bihar Assembly reconstituted a privileges committee for the matter. The petitioners initiated another round of litigation by submitting that since the incumbent Chief Minister was heading the privileges committee, there was a much higher

¹⁶ Article 212 reads: "(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure; (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect to the exercise by him of these powers." Article 122 is the corresponding provision for the Union Parliament.

¹⁷ Article 19(2) reads:- "(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

¹⁸ A recent piece has argued that a search for reconciliation between seemingly conflicting provisions is only required when they have the same pedigree. Since the provisions dealing with legislative privileges have undergone amendments in 1976 and 1978, they now have a lower pedigree than the original text of the Constitution which included the fundamental rights. Hence, press freedoms should be prioritized over legislative privileges. See: Shivprasad Swaminathan, 'The Conflict between Freedom of the Press and Parliamentary Privileges: An unfamiliar twist in a familiar tale', 22(1) NLSIR 123-133 (2010).

likelihood of punitive action against them. The case was considered by an eight-judge bench which refused to re-open the questions that had been answered earlier.¹⁹

The Supreme Court's vacuity on press freedoms vis-à-vis legislative privileges left the field open for the unpredictable use of the latter. On August 29, 1961, the Lok Sabha issued a reprimand to R.K. Karanjia, the editor of 'Blitz' magazine at the time. This was in response to an article titled 'The Kripaloony Impeachment' which had commented upon Mr. J.B. Kripalani's criticism of V.K. Krishna Menon, the Defence Minister at the time. The Privileges Committee of the House observed that this article "*in its tenor and contents libelled an honourable member of this House (J. B. Kripalani) and cast reflections on him on account of his speech and conduct in the House and referred to him in a contemptuous and insulting manner*". This development provoked considerable debate about the freedom of journalists to comment on the performance of individual legislators. Eventually the situation was diffused when the New Delhi correspondent of the magazine tendered an apology to the House on March 23, 1962.²⁰ A comparable instance took place in the Madras Legislature in March 1961. The Assembly had proceeded against the editor of 'The Mail', a newspaper which had carried editorial comments on speeches given by two opposition legislators during the budget discussions. The Privileges Committee found fault with the editor for not having read the entire record of the proceedings. However, it did not take any punitive action after receiving an explanation.²¹

The next apex court ruling was *Dr. Jatin Chandra Ghosh v. Hari Sadhan Mukherjee*.²² The petitioner had served as a legislator in the West Bengal Legislative Assembly. In January 1954, he gave notice to ask some questions but they were not allowed under the Assembly's rules for the conduct of business. On February 28, 1955 he published these questions in a local journal called 'Janamat'. They related to the conduct of a Sub-Divisional Magistrate, who subsequently filed a criminal complaint of defamation. The petitioner argued that he was immune from prosecution on account of his privileges as a legislator. This was not accepted in the trial court, nor in the Calcutta High Court and neither in the Supreme Court. B.P. Sinha, C.J. explained that

¹⁹ *Pandit M.S.M. Sharma v. Sri Krishna Sinha*, AIR 1960 SC 1186 (Hereinafter 'Search Light II').

²⁰ M.V. Pylee, 'Free Speech and Parliamentary Privileges in India', 35(1) PAC. AFF. 11-23 (1962) at 22.

²¹ *Id.*, at 16-17.

²² AIR 1961 SC 613.

since the petitioner had acted in his private capacity to publish the disallowed questions, he could not invoke Article 194 which protected materials published under the legislature's authority.²³

*Special Reference No. 1 of 1964*²⁴ dealt with some facts that illustrated the dangers of subordinating fundamental rights to legislative privileges. On March 14, 1964 the Speaker of the Uttar Pradesh Legislative Assembly issued a notice for breach of privileges against one Keshav Singh who had circulated a pamphlet that criticized a serving legislator. Later that day, the Speaker issued an arrest warrant against Keshav Singh, citing the latter's disruptive behaviour on receiving the notice as well as a previous letter sent to the Speaker which was described as disrespectful. Consequently, Keshav Singh was detained for seven days at the District Jail in Lucknow. On March 19, 1964 Keshav Singh's lawyer approached the Lucknow Bench of the Allahabad High Court through a writ of habeas corpus. A two-judge bench (N.U. Beg and G.D. Sahgal, JJ.) heard the matter and directed the detainee's release on the next day. However, on March 21, 1964 the Assembly responded aggressively by issuing a fresh notice of breach of privileges to the two judges, Keshav Singh and his lawyer. They were found to be in contempt of the legislature and the notice required them to be produced in custody before the House. Keshav Singh was required to be presented afresh after completing the initial period of detention. The affected parties approached the Allahabad High Court to challenge the validity of the Assembly's actions. The matter was considered by a full court meeting of twenty-eight judges which issued an interim order restraining the Assembly from acting on the notice until its validity was adjudicated upon. This unprecedented situation was diffused since the Assembly eventually revoked the arrest warrants against the two judges and Keshav Singh's lawyer. It also issued a clarificatory resolution to explain that the intent was to give the affected parties a reasonable opportunity to explain their conduct before the House. Nevertheless, the situation was considered grave enough for the Union Government to seek an advisory opinion from the Supreme Court under Article 143(1).

²³ This case is similar to an earlier decision of the Calcutta High Court where a legislator's speech had been published in 'Lok Sevak', a Bengali newspaper. The legislator was part of the editorial board for the newspaper and had published his own speech in that capacity. The Court had ruled that he could not avoid charges of criminal defamation by invoking legislative privileges. *Dr. Suresh Chandra Banerji v. Punit Goala*, AIR 1951 Cal 176.

²⁴ AIR 1965 SC 745 (Hereinafter '*Keshav Singh*').

The legal questions pertained to the validity of invoking privileges against acts committed outside the house and the permissibility of judicial review over them (*Keshav Singh*, Paragraph 28). H.M. Seervai argued that the legislature had broad powers to define the scope of its privileges through specific resolutions, while M.C. Setalvad appeared on behalf of the High Court judges to defend judicial scrutiny of such acts of the legislature. It was held that it was proper for the two High Court judges to have entertained Keshav Singh's petition and that the full Bench of the High Court was also competent to consider the validity of the Legislature's resolution. Gajendragadkar, C.J. opined that the Assembly was not competent to direct the production of the two judges and Keshav Singh's lawyer in custody. This was because their respective acts of adjudication and legal representation were not closely connected to the initial acts on part of Keshav Singh which were found to be contemptuous. The concurring opinion (A.N. Sarkar, J.) flagged the court's difficulty in scrutinizing the exercise of privileges through warrants that did not disclose reasons.²⁵

Mr. Seervai sought a broader reading of the legislature's powers to punish for its contempt. He drew analogies with precedents from the British Parliament to show that it had consolidated its powers to include those of self-composition. The extension to this claim was that legislative bodies in India had inherited comparable powers and it would be wrong to endorse judicial scrutiny over them. However, the majority favoured Mr. Setalvad's argument that there were fundamental differences in the structure of government created by the Indian Constitution. Unlike the British Parliament which addresses election disputes and matters related to the disqualifications of members through specific resolutions, the composition of the Indian Parliament is controlled by constitutional provisions which contemplate judicial involvement.²⁶

²⁵ This case attracted substantial scholarly commentary. See for instance: Duncan B. Forrester, 'Parliamentary Privilege – An Indian Constitutional Crisis', 18(2) PARL. AFF. 196-200 (1964); Phiroze K. Irani, 'The Courts and the Legislature in India', 14(3) ICLQ 950-968 (1965); Dalip Singh, 'Parliamentary Privileges in India', 26(1) IJPS 75-85 (1965); N.K.P. Sinha, 'The nature of Parliamentary Privileges in the Indian Constitution', 26(3) IJPS 58-66 (1965); D.N. Banerjee, *Supreme Court on the conflict of jurisdiction between the Legislative Assembly and the High Court of Uttar Pradesh: An evaluation* (1966); P.K. Tripathi, 'Mr. Justice Gajendragadkar and Constitutional Interpretation', 8(4) JILI 479 (1966); D.C. Jain, 'Judicial Review of Parliamentary Privileges: Functional relationship of Courts and Legislatures in India', 9 JILI 205 (1967); M. Hidayatullah, 'Parliamentary Privileges: The Press and the Judiciary', 2(2) JCPS 1-33 (1968).

²⁶ In particular, Article 102(1)(e) and Article 191(1)(e) respectively contemplate disqualification of legislators under laws made by Parliament. This includes disqualification on account of conviction for

Furthermore, the House of Lords has historically acted in a judicial capacity while one cannot point to comparable functions in the Indian context. It was observed that the ‘powers, privileges and immunities’ available to legislative bodies in India were bounded by other parts of the written Constitution and since the judiciary performs the primary role in enforcing them, it should have the power to review a privileges motion. These views rest on the premise that the legislature’s powers to punish for contempt are not absolute and are considerably narrower than the analogous power of the courts. The facts demonstrated how legislative privileges could be used without giving a fair hearing to those who face the prospect of detention, which is a direct curtailment of the liberty interest enumerated under Article 21.

The next Supreme Court decision was *Tej Kiran Jain v. N. Sanjeeva Reddy*,²⁷ where the followers of a religious leader had filed a defamation suit against some Members of Parliament (MPs). The defendants included a former Lok Sabha Speaker and the incumbent Union Home Minister. On April 2, 1969 the MPs had been informed about the religious leader’s conduct at a religious conference. The seer had apparently stated that untouchability was compatible with Hinduism and had walked out of a gathering when the national anthem was played. This report had prompted some sharp and derisive comments by the parliamentarians. Both the High Court and the Supreme Court ruled that these remarks were immune from litigation since they were made during parliamentary proceedings.

Apart from the cases surveyed above, there are other notable instances of legislative privileges being invoked against non-members. In 1960, the appointment of a government pleader in Madras contributed to one such controversy. When the appointment was challenged by another lawyer, the High Court did not interfere with it but one of the judges suggested that the State Law Minister had an excessive influence in such appointments. This Minister was the leader of the Legislative Assembly at the time and consequently a privileges motion was initiated against the judge for the extraneous remarks. In turn, retaliatory proceedings for contempt of court were sought by the lawyer who had earlier approached the High Court. The issue was de-

any of the offences enumerated in Section 8 of the Representation of People Act, 1951. Article 329 empowers a High Court to directly entertain an election petition.

²⁷ AIR 1970 SC 1573.

escalated when the Chief Justice explained that the judge's remarks related to an executive function of the Minister and were hence unsuited for redress through legislative privileges.²⁸

In 1988, the Maharashtra Assembly issued several notices to publications that had covered its discussions on the report of a commission of inquiry headed by Justice Bakhtawar Lentin of the Bombay High Court. The commission had inquired into the deaths of fourteen patients at J.J. Hospital in January 1986 and found that they had been caused by the administration of contaminated glycerol. This implicated several public officials for their complicity in the distribution of adulterated drugs. The media coverage suggested that the State government was reluctant to act on these findings. Interestingly, Justice Lenin and the lawyers who assisted him in the commission also received such notices, ostensibly for misrepresenting the Assembly's discussions on their report. The matter snowballed further when the Assembly initiated privileges motions against some prominent lawyers who had supported Justice Lentin. However, they were not acted upon owing to vehement protests by bar associations all over the State.²⁹

The Tamil Nadu Legislative Assembly passed a resolution on November 7, 2003 directing the arrest and imprisonment of six individuals working in different capacities with 'The Hindu' and its sister publication 'Murasoli' for a period of fifteen days. This resolution also prohibited the journalists belonging to these newspapers from reporting on the legislature's proceedings for 15 days. This was in response to an editorial titled 'Rising Intolerance' which had been published on April 25, 2003. This editorial defended three previously published reports which had criticized Chief Minister Ms. J. Jayalalitha's use of strong language in her speeches. The Assembly had constituted a privileges committee which recommended the punitive steps. However, the Assembly's directives met with stiff resistance and the Supreme Court intervened by issuing a stay order against them. The legislature's attempt to punish outsiders through this

²⁸ Pylee, *Free Speech and Parliamentary Privileges in India* (1962) (n. 20) at 17-18.

²⁹ See: P.A. Sebastian, 'Legislative Privileges: People versus their elected representatives', 23(37) EPW 1878-1879 (Sept. 10, 1988); M. Rahman, 'Legislature guns for Justice Bakhtawar Lentin', *India Today* (May 15, 1988).

method was certainly disproportionate and more so if we keep in mind that the British parliament last used it to order an imprisonment in 1880.³⁰

Use in relation to corruption

After *Keshav Singh*, the next major ruling came more than three decades later in *P.V. Narasimha Rao v. State (CBI/SPE)*.³¹ The lead petitioner, P.V. Narasimha Rao was the Prime Minister of India between 1991 and 1996. He headed the Congress party which occupied the highest number of seats in the Lok Sabha at the time but did not enjoy a simple majority. The demolition of a mosque at a disputed site by Hindu right-wing extremists in Ayodhya, Uttar Pradesh (in December 1992) had provoked communal violence in several parts of the country. The Union Government faced considerable criticism for its inability to prevent and control this violence. Consequently, it dismissed several state governments run by opposition parties, principally the Bharatiya Janata Party (BJP), whose leadership had catalyzed the movement to build a temple at the disputed site. In this environment of distrust, a no-confidence motion was moved against the Union government on July 26, 1993 and put to vote in the Lok Sabha on July 28, 1993. The government went on to complete its full term since 265 MPs supported its continuance while 251 MPs voted against it. Subsequently, the Central Bureau of Investigation (CBI) uncovered evidence implicating the petitioner and some party colleagues for offering bribes to MPs from two smaller parties, namely the Jharkhand Mukti Morcha (JMM) and the Janata Dal Ajit Singh group (JDAS). This was allegedly done to procure their votes or to ensure abstentions during the no-confidence motion. Without their cooperation, the government could have lost the motion.

³⁰ See: T.R. Andhyarujina, 'Need for reformulating the law', *The Hindu* (Nov. 14, 2003); V.R. Krishna Iyer, 'House Privileges and the Courts', *The Hindu* (Nov. 27, 2003); A.G. Noorani, 'The enormity of the threat', 20(24) *Frontline* (Nov. 22-Dec. 5, 2003); Anupam Gupta, 'Power and Restraint', 20(24) *Frontline* (Nov. 22-Dec. 5, 2003); Ajit Sharma, 'The Privileged Legislature', 38(48) EPW 5018-5020 (Nov. 29-Dec. 5, 2003); N.B. Rakshit, 'Parliamentary Privileges and Fundamental Rights', 39(13) EPW 1379-1383 (Mar. 27-Apr. 2, 2004).

³¹ AIR 1998 SC 2120.

The CBI initiated proceedings and sought the requisite sanction to prosecute the legislators.³² The accused legislators resisted this by arguing that the acts related to the no-confidence motion were immune from prosecution owing to their legislative privileges. This objection was refuted by a lower court but the affected parties approached the higher courts through writ jurisdiction.³³ In a decision that is difficult to comprehend, the majority opinion (S.P. Bharucha, J.) concluded that most of the legislators could not be prosecuted since the alleged misconduct was closely connected to voting inside the legislature and was hence protected by Article 105(2). A distinction was drawn between ‘bribe-givers’ and ‘bribe-takers’ to hold that the former could be prosecuted but those who accepted bribes and voted in the no-confidence motion could not be proceeded against. The dissenting opinion (S.C. Agarwal, J.) explained that legislative privileges could not bar prosecution for accepting bribes even if that was closely connected to legislative functions such as speaking and voting inside the chamber. Understandably, this judgment attracted widespread criticism in the press and scholarly commentaries.³⁴ Even though the majority opinion surveyed a large number of foreign precedents, it ignored decisions which held privileges to be inapplicable when bribes are given to influence voting inside legislatures.³⁵ As a response to this judgment, The National Commission to Review the Working of the Constitution (NCRWC) had recommended an amendment to Article 105 to explicitly exclude corrupt acts from its ambit.³⁶

³² Section 19 of the Prevention of Corruption Act, 1988 lays down a requirement for obtaining a prior sanction from a superior authority to prosecute public officials. This requirement has been inherited from colonial-era legislation owing to apprehensions about frivolous complaints against civil servants. In the post-independence context, it has been a formidable obstacle in prosecuting corruption.

³³ The other legal question was whether MPs came within the definition of ‘public servants’ for the purpose of prosecution under the Prevention of Corruption Act, 1988. On this point, both the majority and the dissenting opinions agreed that they would be so covered, but a sanction for prosecution was needed from the Speaker of the respective legislative chamber.

³⁴ See: Balwant Singh Malik, ‘P.V. Narasimha Rao v. State: A critique’, (1998) 8 SCC (Jour) 1; Praveen Swami, ‘The JMM case—The givers and the takers’, 15(9) *Frontline* (April 25–May 8, 1998); A.G. Noorani, ‘Bribes in Parliament: A Shocking Ruling by the Supreme Court’ in *Constitutional Questions in India* (2000) at 222-225; Shobha Saxena, ‘Parliamentary Privileges and the JMM Case’, AIR 2000 Jour 26.

³⁵ For example, in *United States v. Daniel Brewster*, 408 U.S. 501 (1972), the U.S. Supreme Court refused to apply the ‘speech and debate clause’ to protect a Senator from prosecution for accepting bribes in relation to his official acts. Warren Burger, C.J. said that the clause was not meant “to make Members of the Congress super-citizens, immune from criminal responsibility.”

³⁶ One of the bribe-takers was subsequently tried for his involvement in the murder of an aide who had demanded a share in the amount after threatening public disclosure of the details. See: T.R. Andhyarujina, ‘Shibu Soren’s unpunished act of bribery’, *The Hindu* (Dec. 16, 2006).

The use of legislative privileges in relation to corruption came to the foreground again in *Raja Ram Pal v. Speaker, Lok Sabha & Others*³⁷. In a television programme carried by a private news-channel on December 12, 2005, a Rajya Sabha MP and ten Lok Sabha MPs were identified as accepting money or favours in lieu of asking questions during parliamentary proceedings. The ‘cash for queries’ scam received widespread attention in the press and the Lok Sabha Speaker promptly constituted a privileges committee to inquire into it. The privileges committee acted swiftly on the basis of videographic evidence and recommended the expulsion of the ten members, which was effected on December 23, 2005. The Ethics Committee of the Rajya Sabha initiated action against its member and recommended his expulsion. Another Rajya Sabha member was the subject of a programme telecasted on December 19, 2005 wherein he was demanding money from an NGO to set-up projects in his constituency and for the release of discretionary funds under the Member of Parliament Local Area Development Scheme (MPLADS). This was reported to the Ethics Committee of the Rajya Sabha and the concerned member was expelled on March 21, 2006. These twelve MPs then approached the Supreme Court to question their expulsions.

Their main contention was that Parliament was not competent to expel them in such a manner since the Constitution explicitly enumerates the conditions under which MPs can be disqualified. In particular, attention was drawn to Article 102(1)(e) read with Section 8(1)(m) of the Representation of People Act, 1951 which contemplates the removal of legislators convicted under the Prevention of Corruption Act, 1988. The extension to this argument was that a privileges committee is far less likely to adhere to considerations of natural justice such as impartiality, reason-giving and giving a fair hearing to those accused of wrongdoing. The implicit claim was that the legislature should not use unguided discretionary powers in matters where judicial involvement was explicitly contemplated. The majority (Y.K. Sabharwal, C.J. and C.K. Thakker, J.) answered this question in favour of the legislative chambers. The gist was that in addition to the explicit conditions for disqualification, privileges can be used in a discretionary manner to act against the misconduct of members which brings disrepute to the entire chamber and thereby obstructs the legislative process. A distinction was drawn between ‘expulsion’

³⁷ (2007) 3 SCC 184.

through this route and ‘disqualification’ in terms of their consequences. It was observed that expulsion by way of privileges would not disentitle the affected individuals from seeking membership again whereas disqualification would have a lasting effect.³⁸ The dissenting opinion (R.V. Raveendran, J.) maintained that the use of privileges to expel the MPs was improper since the conditions for their disqualification were enumerated in the Constitution and formed a self-contained code.

The decision also built upon the position in *Keshav Singh* that courts could exercise a limited degree of scrutiny over privileges, owing to their primacy in interpreting the constitutional text. It explained that while Articles 122 and 212 prohibited judicial scrutiny of legislative proceedings on account of allegations of procedural impropriety, there remained scope for examining allegations of ‘substantial illegality’. It was observed that, “*there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error.*”³⁹ This reiteration of the permissibility of judicial review was a response to the unwillingness of the Speakers of the Lok Sabha and the Rajya Sabha to be impleaded as respondents in this case. They maintained that the expulsions concerned the Legislature alone and could not be examined by the courts. Their position highlights a glaring conceptual inconsistency in *Raja Ram Pal*. The majority opinions liberally cited foreign decisions to support the use of legislative privileges for expelling errant members but ignored the comparatively restricted scope for judicial scrutiny which is a concomitant of the same. A legislature’s power to expel its members through an uncodified route flows from a broader view of its powers of self-composition. At the same time, the position refined from *Keshav Singh* was that judicial scrutiny of a ‘substantial illegality’ in legislative proceedings is proper since the composition of Indian legislatures is controlled by a written constitution.⁴⁰

³⁸ For commentary on this point, See: A.G. Noorani, ‘Privilege to Expel’, 24(2) *Frontline* (Jan. 27- Feb. 9, 2007). For an earlier discussion, Refer: Anirudh Prasad, ‘Do the Indian Legislatures Possess Power to Expel their Members’, 28(4) CMLJ 296-307 (1990).

³⁹ *Raja Ram Pal*, Paragraph 431.

⁴⁰ See: Dham, *Parliamentary Privilege as façade* (2007) (n. 2) at 174-175.

The most recent constitution bench ruling on this subject is *Amarinder Singh v. Special Committee, Punjab Vidhan Sabha*.⁴¹ The petitioner belonged to the Indian National Congress (INC) party and was the Chief Minister of Punjab during the twelfth term of the Legislative Assembly between 2002 and 2007. During its thirteenth term, he became the Leader of Opposition since the Shiromani Akali Dal (SAD) had formed the government after elections in February 2007. On December 18, 2007 a majority of the Assembly's members resolved to constitute a special legislative committee to inquire into the improper exemption of a plot of land (that belonged to a private developer) from an urban development scheme in Amritsar. The same had been allegedly done during the petitioner's rule. The Special Committee submitted its report on September 3, 2008 and recommended his expulsion for the remainder of the Assembly's term. Meanwhile, criminal proceedings had also been initiated in respect of these allegations. On September 10, 2008 another resolution was passed to act on these recommendations and orders for expulsion were handed down to Amarinder Singh. He then approached the High Court of Punjab and Haryana to challenge his expulsion from the State Legislature. The High Court issued an order which appeared to endorse the Assembly's position but accepted that the matter involved a question of constitutional interpretation and transferred it to the Supreme Court.

Before the Supreme Court, the lawyers appearing for the Punjab Vidhan Sabha compared the facts to those in *Raja Ram Pal*. They urged that the use of legislative privileges was proper since Amarinder Singh's alleged complicity in the irregular exemption of land had brought disrepute to the legislative assembly as a whole. The court unanimously favoured the petitioner and restored his membership to the State Legislature. K.G. Balakrishnan, C.J. held that legislative privileges could not be used to tackle allegations of corruption related to purely executive functions.⁴² It was also observed that the special committee had inquired into allegations connected to acts committed during the previous term of the Punjab Assembly. Therefore, it was misplaced to use privileges since the past actions did not threaten the discharge

⁴¹ (2010) 6 SCC 113 (Hereinafter '*Amarinder Singh*').

⁴² In *Raja Ram Pal*, one of the expelled MPs had accepted bribes in lieu of discretionary grants from the MPLADS, which resembles an executive function. Since the expulsion in that case was upheld, in *Amarinder Singh* the Court could have clarified that such supplementary functions performed by legislators are not protected by privileges. Given that the constitutionality of the MPLADS was later upheld in *Bhim Singh v. Union of India*, (2010) 5 SCC 538, future improprieties in these discretionary grants could be shielded by characterizing them as core legislative functions.

of legislative functions during the current term.⁴³ It was further opined that since proceedings had been initiated before a criminal court, it was advisable to persist with them instead of using privileges as an instrument of political vendetta.

The situations examined above are not exhaustive of instances where legislatures have either tried or succeeded in removing members through this uncodified route. An early example is that of Mr. H.G. Mudgal's resignation from the Lok Sabha on September 24, 1951. He was accused of receiving monetary benefits from the Bombay Bullion Association in return for mobilizing support for the latter and advancing its interests in Parliament. A privileges motion was moved by Prime Minister Nehru wherein his conduct was described as '*derogatory to the dignity of the House and inconsistent with the standards which Parliament was entitled to expect from its members*'. Further discussions on this resolution prompted him to resign.⁴⁴

Another instance is that of Mr. Subramaniam Swamy's expulsion from the Rajya Sabha in 1976. The House had constituted a committee on September 2, 1976 to investigate Mr. Swamy's conduct which was described as "*alleged anti-India propaganda calculated to bring into disrepute Parliament and other democratic institutions of the country and generally behaving in a manner unworthy of a member*". In its report submitted on November 12, 1976 the privileges committee recommended Mr. Swamy's expulsion which was approved by the House three days later.⁴⁵ It must be highlighted that this was done during the imposition of the internal emergency between June 1975 and March 1977. The Congress government led by Mrs. Indira Gandhi at that time had detained thousands of political opponents and considerably muzzled civil liberties.

After the Congress Party's defeat in the 1977 elections, Mrs. Indira Gandhi had entered the Lok Sabha by winning a bye-election. On November 18, 1977 the House initiated a

⁴³ It is worth considering whether this observation has implicitly overruled the decision in *A.M. Paulraj v. Speaker, Tamil Nadu Legislative Assembly*, AIR 1986 Mad 248. In that case, the Madras High Court had cited Article 212 to defer to the Assembly's decision to order the 7-day imprisonment of an editor for an act of contempt dating back to its previous term.

⁴⁴ C.f. M.P. Jain (Samaraditya Pal and Ruma Pal eds.), *Indian Constitutional Law*, 6th ed. (2013) at 133.

⁴⁵ *Id.*; These instances have also been cited in *Raja Ram Pal* (Paras. 301-317) and *Amarinder Singh* (Para. 36).

privileges motion against Mrs. Gandhi and two others. It cited obstructions in the collection of information by officials in the Industry Ministry which was being done to answer some questions asked in the Lok Sabha. These questions related to her son Sanjay Gandhi's involvement in the establishment of a car-manufacturing plant. It was alleged that she had used her previous office to resort to intimidation, harassment and institution of false cases against these officials, thereby obstructing legislative functioning. A privileges committee found her guilty but left the punitive action to the House which adopted a motion on December 19, 1978 to expel Mrs. Gandhi and the other two members.⁴⁶ However, the resolution was withdrawn during the next term of the Lok Sabha in 1981, by which time the Congress party had regained incumbency. There was a substantive debate on the whether the House had the power to expel its members in such a fashion and concerns were expressed about the lack of jurisdiction and impartiality in this instance. Even though the parliamentary debates at the time did not favour expulsions through this route, the decision in *Raja Ram Pal* reflects an opposite view.

In 1978, the Haryana Legislative Assembly had expelled Hardwari Lal from its membership, without giving him an opportunity to explain his conduct before the privileges committee. He challenged his expulsion in the High Court which ruled in his favour by holding that the legislature was not competent to enforce such expulsions.⁴⁷ Even though the expulsion in that particular case was highly questionable, the High Court's ruling on the broader issue now stands overturned by *Raja Ram Pal*. A similar question was considered by the Madras High Court in *K. Anbazhagan v. Secretary, Tamil Nadu Legislative Assembly*,⁴⁸ wherein ten legislators had been expelled on December 22, 1986 for burning copies of the Constitution during a protest. The Court recognised the legislature's powers to expel members by treating such conduct as a breach of its privileges even though it could have been tried as an offence under the Prevent of Insults to National Honour Act, 1971. However, the High Court was unwilling to scrutinise the validity of the expulsions owing to the import of Article 212. As mentioned earlier, *Raja Ram Pal* took a different view on this issue as well.

⁴⁶ See: S. Sahay, 'A close look: Parliament Privileges', *The Statesman* (May 31, 1979); Arun Shourie, 'Their privileges and our duty', *The Indian Express* (Aug. 18, 1980).

⁴⁷ *Hardwari Lal v. Election Commission of India*, ILR (2) P&H 269. The petitioner went on to publish a book about the case. See: Hardwari Lal, *Myth and Law of Parliamentary Privileges* (1979).

⁴⁸ AIR 1988 Mad 277.

Conclusion

The constitution bench decisions mentioned in the preceding sections can be roughly grouped into two clusters. While *Search Light I* and *Keshav Singh* dealt with the disproportionate use of legislative privileges against non-members, *P.V. Narasimha Rao*, *Raja Ram Pal* and *Amarinder Singh* examined their applicability when members were accused of corruption.

The discussion on the first cluster has highlighted the court's ambiguous position on conflicts between the legislature's privileges and the fundamental rights of outsiders. While the majority in *Search Light I* had subordinated the freedom of speech and expression to the exercise of legislative privileges, the advisory opinions in *Keshav Singh* seemingly protected 'personal liberty' from their untrammelled use. Yet, there was no explicit overturning of the earlier decision. Instead, feeble attempts were made to differentiate between the liberties at stake in the two cases. An apparent textual difference is that while Article 19(2) explicitly enumerates the grounds for placing 'reasonable restrictions' on the freedom of speech and expression under Article 19(1)(a), there are no comparable restraints on 'personal liberty' under Article 21. By this logic, legislative privileges can prevail over press freedoms which are subject to enumerated restraints but would have to yield to claims of 'personal liberty' since the countervailing state interests were not explicitly enumerated and left to judicial interpretation. This position has led to considerable confusion. Given that subsequent decisions have recognized the intersections between the fundamental rights (especially between Articles 14, 19 and 21), it has become difficult to prioritise one over another. Another dimension of the Court's inconsistency is that while *Search Light I* endorsed restrictions on the reporting of legislative proceedings, *Keshav Singh* favoured a liberty interest when the affected parties included fellow judges. This feeds the pervasive criticism of judicial behaviour that it is shaped by the social status and identity of litigants rather than the consistent application of principles.

In the second cluster, *P.V. Narasimha Rao* stands out as an egregious decision where the Supreme Court comes across as an apologist for corruption by law-makers. In doing so, the majority in that case had overstressed the utility of privileges for shielding legislators from bribery prosecutions by an ill-motivated executive branch. A close consideration of the facts

shows that those concerns were misplaced. In *Raja Ram Pal*, legislative privileges were used as a ‘sword’ against corruption rather than as a ‘shield’. With respect to the facts, the majority opinions held that privileges had been collectively exercised by the legislative chambers against individual members to preserve the integrity of their functions. This begs the question as to why they did not explicitly overrule the erroneous decision in *P.V. Narasimha Rao*. The decisive use of privileges was probably chosen to avoid the implications of the previous ruling which had made it virtually impossible to prosecute serving legislators for accepting bribes. Another notable point is that the time taken for effecting expulsions was much less than what might have been taken for disqualification after conviction. The legislature’s term would have probably ended by the time the matter would be adjudicated, thereby making the possibility of removal redundant. So in that sense, the use of privileges can be characterised as a form of summary justice against dishonest legislators. While such steps may attract public approval in the short-run, they can easily sidestep the elements of natural justice. This concern was reinforced in *Amarinder Singh* where the decision was largely an exercise in distinguishing the impugned facts from those in *Raja Ram Pal*. It tried to articulate a limiting principle for the use of privileges by emphasizing that they should be used to respond to direct and proximate causes for the obstruction of legislative functions rather than those which may be vaguely construed as disrespectful.

If we examine the two clusters together, the umbrella question is whether trenchant criticism of legislators or any other act that contributes to a poor public estimation of their performance should be treated as obstructions to their official functions, thereby justifying the use of privileges? From the prism of speech guarantees, the answer for most of us would be in the negative. In modern democracies, law-makers need to take on board a broad variety of opinions, including those that are deeply critical of their antecedents and abilities. If we turn to the familiar comparison between legislative privileges and the power of courts to punish for their contempt, the extrapolation is that legislators ought to be cautious in using this power in response to external criticism while judges require stronger protections from external influences in order to function effectively. On this count, the Indian Supreme Court’s position exemplified in the first cluster is far from satisfactory. With respect to the second cluster, it has allowed room for improvisation in the legislature’s response to corrupt acts by its own members. Should privileges

be construed narrowly so as to allow these acts to be prosecuted before the courts or should they be used proactively to tackle corruption from within? The decision in *Raja Ram Pal* veered towards the view that self-dealing acts by individual members bring disrepute to the entire legislature and hence they can be redressed promptly through this route. On the other hand, there are serious anxieties about the structure and functioning of legislative committees when compared with that of the courts. Privileges committees constituted at the behest of incumbents have frequently turned into self-interested inquisitorial bodies that take disproportionate action against political opponents and other critics. On balance, it is hard to make a definitive case for their invocation as a method of disciplinary control.

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