

(2010) 04 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal No. 6053 of 2008, T.C. (C) No. 1 of 2009 and W.P. (C) No"s. 442 and 443 of 2008

Amarinder Singh

APPELLANT

Vs

Special Committee, Punjab Vidhan Sabha and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Constitution Of India, 1950 — Article 20, 21, 101, 102, 105, 105(3), 122, 107(3), 122(1), 172(1), 174(2)(a), 174(2)(b), 190, 191, 194, 194(3), 196, 212, 212(1), 356
Rules Of Procedure And Conduct Of Business In The Punjab Vidhan Sabha (Punjab Legislative Assembly), — Rule 39(10), 50, 93(2)(iv), 150(d)
Rules Of Business And Conduct Of the Lok Sabha, — Rule 173, 188, 352
Constitution (Forty- fourth Amendment) Act, 1978 — Section 15, 26
Punjab Town Improvement Act, 1922 — Section 36, 56
Punjab Apartment And Property Regulation Act, 1995 — Section 5

Citation : (2010) 4 JT 350 : (2010) 4 SCALE 354 : (2010) 6 SCC 113 : (2010) 4 SCR 1105 : (2010) 4 UJ 1917

Hon'ble Judges : K. G. Balakrishnan, C.J;R. V. Raveendran, J;R. M. Lodha, J;P. Sathasivam, J;J. M. Panchal, J

Bench : Full Bench

Advocate : Gopal Subramaniam, ASG, K. Parasaran, Ashok H. Desai, Ravi Shankar Prasad, Shyam Diwan K. Parasaran, Uday Umesh Lalit, Jayshree Anand, AAG, Atul Nanda, Rameeza Hakeem, Abhijat P. Medh, Law Associates and Co., K.K. Mahalik, Nitu Kumari Sinha, Kuldeep Singh Singh, Gaurav Agrawal, Ajay Pal, Aprajita Singh, Nikhil Jain, Aman Pal, Sukhda Pritam, Ardendu Mauli K. Prasad, Gorminder Singh, Anuradha Biundra, Menka Guruswamy, Charu Sangwan, Paruthi K. Goswamy, Chaman Lal Premi, Jai Shree Anand, Ajay Bansal, Aman Ahluwalia, Balaji Subramanian, for B.K. Prasad, for the Appellant;

Final Decision : Disposed Of

Judgement

K.G. Balakrishnan, C.J.—The appellant was the Chief Minister of the State of Punjab during the 12th term of the Punjab Vidhan Sabha. The appellant was duly elected as a member of the Punjab Vidhan Sabha for its 13th term.

2. The Punjab Vidhan Sabha on 10-9-2008 passed a resolution which directed

the expulsion of the appellant for the remainder of the 13th term of the same Vidhan Sabha. This resolution was passed after considering a report submitted by a Special Committee of the Vidhan Sabha (Respondent No. 1) on 3-9-2008 which recorded findings that the appellant along with some other persons (petitioners in the connected matters) had engaged in criminal misconduct. The Special Committee had itself been constituted on 18-12- 2007 in pursuance of a resolution passed by the Vidhan Sabha. It had been given the task of inquiring into allegations of misconduct that related back to the appellant's tenure as the Chief Minister of the State of Punjab during the 12th term of the Punjab Vidhan Sabha. More specifically, it was alleged that the appellant was responsible for the improper exemption of a vacant plot of land which was licensed to a particular private party (measuring 32.10 acres) from a pool of 187 acres of land that had been notified for acquisition by the Amritsar Land Improvement Trust on 5-12-2003. The Amritsar Land Improvement Trust is a statutory body which had notified the plan for acquisition in pursuance of a developmental scheme, as contemplated u/s 36 of the Punjab Land Improvement Act, 1922. Earlier, on 23-6-2003, a private party (M/s. Veer Colonizers) had applied for a licence u/s 5 of the Punjab Apartment and Property Regulation Act, 1995 to develop the above-mentioned plot of 32.10 acres which was situated in the proximity of the Amritsar-Jalandhar road. At the time of the colonizer's application for a development licence, the said plot was not covered by any acquisition scheme, though it had been covered by two schemes in the past which had lapsed by then. After the notification of the scheme, the colonizer approached the concerned authorities, seeking an exemption from the proposed acquisition of land. Subsequently on 7-10-2005, the Amritsar Land Improvement Trust granted a No-objection certificate, thereby permitting the exemption of the said plot of 32.10 acres from the scheme for acquisition. This decision to exempt the said plot of 32.10 acres was notified by the State Government on 13-01-2006 u/s 56 of the Punjab Town Improvement Act. Since the appellant was serving as the Chief Minister of the State at the time, it was alleged that the decision to exempt the plot was an executive act that could be attributed to him.

3. However, some other private parties who owned plots in the pool of land that had been notified for acquisition by the Amritsar Land Improvement Trust on 5-12-2003, raised objections against the exemption referred to above. The gist of their objections is that the State Government had unduly favoured one private party by exempting the said plot of 32.10 acres from the scheme for acquisition. In fact the validity of the exemption was questioned in several cases instituted before the High Court of Punjab and Haryana, namely those of Major General Sukhdip Randhawa (Retd.) and Ors. v. State of Punjab CWP No. 16923 of 2006; Daljit Singh v. State of Punjab CWP No. 20266 of 2006; Sudarshan Kaur v. State of Punjab CWP No. 2929 of 2007 and Basant Colonisers & Builders (P) Ltd. v. State of Punjab CWP No. 7838 of 2008. All of these cases were pending before the High Court at the time of the hearings in the present case.

4. Following the elections held to re-constitute the Punjab Vidhan Sabha in

February 2007, there was a transition in power in the State. The 13th Vidhan Sabha was constituted on 1-3-2007. The appellant who had served as the Chief Minister of the State during the 12th term of the Vidhan Sabha, became the leader of the opposition in the 13th term. In pursuance of a news report dated 22.3.2007, some members of the Legislative Assembly moved a privilege motion in respect of allegations of tampering in the proceedings of the 12th Vidhan Sabha (dated 1-3-2006). These allegations were in regard to a starred question relating to the grant of exemption of 32.10 acres of land. On 5-4-2007 the notice of motion was referred to the Privileges Committee of the House by the Speaker. Thereafter, questions were raised on the floor of the house which cast aspersions on the appellant's past conduct. On 18-12-2007, the report of the Privileges Committee was tabled before the House. The incumbent Chief Minister brought a motion which specifically questioned the appellant's role in the exemption of the 32.10 acre plot from the acquisition scheme notified by the Amritsar Improvement Trust. Following this motion, the Speaker of the House approved the constitution of a Special Committee to inquire into the alleged misconduct. The terms of reference for the Special Committee required it to examine as to what were the reasons for exempting the said plot measuring 32.10 acres of land. As part of this inquiry, the Special Committee had to examine whether any rule/norms had been violated on account of this exemption and whether it had caused monetary losses to the State exchequer. The stated objective was to identify those responsible for such losses.

5. The Special Committee submitted its report on 3-9-2008 which was presented to the House on 5-9-2008. The report included findings that Captain Amarinder Singh (former Chief Minister, appellant in Civil Appeal No. 6053 of 2008), Choudhary Jagjit Singh [former Local Bodies Minister, petitioner in Writ Petition (Civ.) No. 443 of 2008], Late Sh. Raghunath Sahai Puri [former Housing Minister, since deceased] and Sh. Jugal Kishore Sharma [former Chairman of Amritsar Land Improvement Trust, petitioner in Writ Petition (Civ.) No. 442 of 2008] had been involved in 'corruption, conspiracy to cause wrongful loss and abuse of public office' in relation to the exemption of land from the above-mentioned acquisition scheme. It must be noted that out of the four individuals named in the report, only Captain Amarinder Singh was elected as a member of the 13th Punjab Vidhan Sabha. After considering these findings, the Punjab Vidhan Sabha passed the impugned resolution on 10-9-2008 which is extracted below:

After accepting the report submitted by the Special Committee appointed by this House, this august House recommends the following action:

*** ** (i) Captain Amarinder Singh is expelled for the remaining term of the 13th Punjab Vidhan Sabha. The Secretary of the Vidhan Sabha is instructed to approach the Election Commission of India to have his seat declared as vacant.

(ii) The recommendations of the Privilege Committee have been tabled in the House on 18.12.2007 and they be forwarded to Chief Secretary, Punjab Government with the under mentioned instructions:

Because this House does not possess any facility to investigate and find out where the accused have stashed away the ill gotten wealth or how it has been distributed, it is essential to have custodial interrogation. Director Vigilance Department, Punjab which deals with corruption cases and is an arm of the Punjab Government be instructed to file a FIR keeping in mind the various instructions of the CrPC.

The vigilance department is to investigate and submit its report to the Speaker of this House within two months from today.

6. In pursuance of the said resolution, the secretariat of the Punjab Vidhan Sabha issued a notification on 10-9-2008 which declared that Captain Amarinder Singh had been expelled from the membership of the 13th Vidhan Sabha for the remaining term of the State Legislature, (that is 3.5 years). It was also declared that his assembly constituency seat (76-Patiala Town) was rendered vacant, thereby setting aside his election to the same. Aggrieved by the findings of the report submitted by the Special Committee on 3-9-2008, the appellant moved the High Court of Punjab and Haryana (C.W.P. 11548 of 2008). Following the impugned resolution on 10-9-2008, the said petition was withdrawn and C.W.P. 16216 of 2008 was instituted before the High Court to challenge the Special Committee's report as well as the impugned resolution dated 10.9.2008. On 15-9-2008, a division bench of the High Court issued an order directing that the case be heard on merits on 1-12-2008. The High Court did not grant a stay on the operation of the impugned resolution, but granted protection to Captain Amarinder Singh from custodial interrogation and directed further listing on 1-12-2008. Dissatisfied with the High Court's order, the appellant approached this Court by way of a petition seeking special leave to appeal. The appellant contended that the High Court ought to have stayed the report dated 3.9.2008 and the Resolution and Notification dated 10.9.2008. He apprehended that a fresh election would be conducted in the intervening period, thereby compromising his rights.

7. A division bench of this Court directed notice on 26-9- 2008 and referred the case for hearing by a three judge bench. On 3-10-2008, a three judge bench (B.N. Agarwal, G.S. Singhvi and Aftab Alam, JJ.) granted leave in the SLP (C.A. No. 6053/2008). It allowed Transfer Petition (C) No. 1087/2008 for transfer of CWP No. 16216/2008 from the Punjab and Haryana High Court (the transferred case is T.C. (C) No. 1 of 2009,) and directed the same to be heard with the Civil Appeal along with W.P. (C) No. 442/2008 and W.P. (C) No. 443/ 2008. The three judge bench did not grant a stay on the operation of the impugned resolution which had directed the expulsion of the appellant from the Vidhan Sabha. However, relief was granted to the extent that even though the appellant could not participate in the legislative proceedings, his seat would not fall vacant until the adjudication of this case. A stay was also granted in respect of the Vidhan Sabha's specific directions to the Punjab Vigilance Department, but it was clarified that the appellant and the petitioners could be investigated in

accordance with law. Subsequently, the three judge bench found that the subject matter touched on substantial questions of law requiring the interpretation of Article 194(3) of the Constitution, thereby deeming it fit to refer these matters to a constitution bench by way of an order dated 11-2-2009.

OVERVIEW OF CONTENTIONS

8. The counsel appearing for the appellant and the petitioners have prayed that the impugned resolution as well as the report submitted by the Special Committee be invalidated in their entirety. Accordingly, the appellant has sought restoration of his membership for the remainder of the 13th term of the Punjab Vidhan Sabha. The main thrust of the appellant's contentions is that the acts of constituting the Special Committee on 18-12-2007, the submission of its report on 3-9-2008 and the impugned resolution passed by the Assembly on 10-9-2008 cannot be defended as a proper exercise of legislative privileges under Article 194 of the Constitution. It was urged that the allegations of misconduct on part of the appellant and the petitioners were relatable to their executive actions which in no way disrupted or affected the legislative functions of the Punjab Vidhan Sabha. It was reasoned that legislative privileges are exercised to safeguard the integrity of legislative proceedings and the alleged misconduct did not threaten the same in any manner. Another contention was whether it was proper for the 13th Vidhan Sabha to exercise its privileges to inquire into acts that had occurred during the 12th term of the Vidhan Sabha. It was also pointed out that the alleged misconduct on the part of the appellant and the petitioners had already been questioned before the High Court of Punjab Haryana by private parties whose lands had not been exempted from the Amritsar Improvement Scheme. Thus, it was argued that it was improper for the legislature to act in respect of subject-matter which was pending adjudication, thereby violating the norm of not interfering in sub judice matters. It was further argued that even though legislative privileges are exercised to ensure the dignity and discipline of the House, the same cannot encroach into the judicial domain by recording a finding of guilt and recommending punitive action in respect of the alleged misconduct. To support this objection, it was urged that the appellant and the petitioners had not been given a fair opportunity to contest or meet the allegations against them and hence the proceedings of the Special Committee were violative of the principles of natural justice.

9. The respondents' case is that the Punjab Vidhan Sabha had legitimately exercised its privileges to recommend punitive action in the present case, since the alleged misconduct on part of the appellant and the petitioners had brought disrepute to the House as a whole. It was reasoned that even though the power of expulsion for such misconduct has not been enumerated in Articles 190 and 191 of the Constitution [which prescribe the grounds for disqualification of MLAs] the legislature had a broad power to take punitive action for the breach of its privileges which includes the power to punish for its own contempt. It was submitted that the appellant and the petitioners had committed a breach of

privilege as well as contempt of the house since they had previously suppressed efforts of the legislature to inquire into the alleged misconduct in relation to the Amritsar Improvement Scheme. Since legislative privileges have not been codified and are shaped by precedents, the counsel for the respondents have cited some English precedents in support of their contention that privileges can be exercised to punish mala fide acts which do not directly obstruct the proceedings of the House, but impede its dignity nevertheless.

10. In the course of the hearing on merits before this constitution bench, Shri K. Parasaran and Shri U.U. Lalit, Sr. Advs. appeared on behalf of the appellant. Thereafter, Shri Ashok Desai, Sr. Adv. appeared for the respondent whose submissions were supplemented by Shri Ravi Shankar Prasad, Sr. Adv., while Shri Gopal Subramaniam, (Additional Solicitor General, now Solicitor General) represented the views of the Union government.

11. In light of the facts of this case and the contentions outlined above, the following questions arise for consideration:

I. Whether the alleged misconduct on part of the appellant and the petitioners warranted the exercise of legislative privileges under Article 194(3) of the Constitution?

II. Whether it was proper for the Punjab Vidhan Sabha to take up, as a matter of breach of privilege, an incident that occurred during its previous term?

III. Whether the impugned acts of the Punjab Vidhan Sabha violated the norms that should be respected in relation to sub judice matters?

Re: Question I.

12. Learned Counsel appearing for the respondents have submitted that it was proper for the Punjab Vidhan Sabha to constitute the Special Committee and pass the impugned resolution which recommended the expulsion of the appellant. The core of their argument is that the misconduct on part of the appellant had brought disrepute to the Vidhan Sabha and it was justifiable to exercise legislative privileges for mitigating the same. The respondents have adopted a two-pronged line of reasoning. Firstly, they have asserted that the alleged misconduct on part of the appellant amounted to a breach of privilege as well as contempt of the House. Secondly, they have contended that since the 'powers, privileges and immunities' conferred on State Legislatures by Article 194(3) of the Constitution have not been codified, it would not be proper to place limitations on their exercise. The implicit rationale is that legislative assemblies should retain flexibility in the exercise of their privileges and the power to punish for contempt, so that they can tackle new and unforeseen impediments to their reputation and functioning. The respondents' submissions have dwelt at length with the idea that the legislature's power to punish for its own contempt cannot be trammled since it is different from the remedial objective of exercising privileges to maintain the dignity and discipline of the house. The respondents

have extensively relied on the constitution bench decision in *Raja Ram Pal Vs. The Hon'ble Speaker, Lok Sabha and Others*, where this Court had upheld the Lok Sabha's power to expel its members in view of misconduct in the nature of accepting bribes to ask specified questions on the floor of the House. However, the majority opinions of this Court had also clarified that the exercise of parliamentary privileges in such cases was open to judicial scrutiny.

13. As outlined earlier, the appellant has questioned the impugned resolution since it recommends punitive action in respect of his misconduct which was allegedly committed in his capacity as the Chief Minister of the State of Punjab. It was submitted that the alleged irregularity in exempting a plot of land from an acquisition scheme was entirely relatable to the discharge of executive functions. The act of exempting land did not in any way obstruct the functions of the Punjab Vidhan Sabha. It was urged that even though the exercise of legislative privileges and the concomitant power to punish for contempt have not been codified, they cannot be construed as unlimited powers since that could lead to their indiscriminate and disproportionate use. The counsel appearing for the appellant and the petitioners have also submitted that when the Special Committee was constituted on 18-12-2007 it did not bear the nomenclature of a privileges committee and at the time it was not apparent to the appellant and the petitioners that they were facing such an action. However, the respondent submits that the incumbent Chief Ministers' motion brought on 18-12-2007 was in the nature of a privileges motion. Irrespective of the contested facts, it will be proper for us to view this controversy from the prism of legislative privileges. Mr. Gopal Subramaniam drew our attention to the two main considerations that should guide the adjudication of this case, namely those of 'history' and 'necessity'. Considerations of history require us to examine whether there are any applicable precedents for the exercise of legislative privileges in similar circumstances. The consideration of necessity entails that the scope of privileges should be identified on the basis of what is necessary to prevent or punish obstructions to legislative functioning.

14. Before addressing these contentions, we can take a bird's eye view of the law on legislative privileges. The State Legislatures are conferred with 'powers, privileges and immunities' by way of Article 194 of the Constitution which reads:

194. Powers, privileges, etc., of the Houses of Legislatures 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 the Legislature, there shall be freedom of speech in the Legislature of every State.

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

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 26 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 the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

15. The powers and privileges conferred on the State Legislatures are akin to those conferred on the Union Parliament by Article 105. Therefore, the principles and precedents relatable to the exercise of parliamentary privileges are relevant for deciding this case. Both Articles 105 and 194 explicitly refer to the freedom of speech in the House and the freedom to publish proceedings without exposure to liability. However, other legislative privileges have not been enumerated. Article 105(3) and 194(3) are openly worded and prescribe that the powers, privileges and immunities available to the legislature are those which were available at the time of the enactment of the Constitution (Forty-Fourth) Amendment Act, 1978. Subhash C. Kashyap has elaborated on the Indian position with these words [In Parliamentary Procedure - The Law, Privileges, Practice and Precedents, Vol. 2 (New Delhi, Universal Law Publishing Co. Pvt. Ltd., 2000) at p. 1555]:

As regards other privileges, Article 105(3) as originally enacted provided that that in other respects, the powers, privileges and immunities of Parliament, its committees and members, until defined by Parliament by law, 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 on 26 Jan. 1950. This clause was however, amended in 1978, to provide that in respect of privileges other than those specified in the Constitution, the powers, privileges and immunities of each House of Parliament, its members and Committees 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, its members and Committees immediately before coming into the force of Section 15 of the Constitution (44th Amendment), 1978 (w.e.f. 20 June 1978). This amendment has in fact made only verbal changes by omitting all references to the British House of Commons but the substance remains the same. In other words, each House, its Committees and members in actual practice, shall continue to enjoy the powers, privileges and immunities (other than those specified in the Constitution) that were available to the British House of Commons as on 26 Jan. 1950.

16. Since the scope of 'powers, privileges and immunities' available under Article 105(3) and 194(3) has not been codified by way of statute till date, it is open for us to consider the principles and precedents relatable to the British House of Commons. In Raja Ram Pal's case (supra.) C.K. Thakkar, J. in his concurring

opinion had described Parliamentary Privileges as those fundamental rights which the House and its Members possess so as to enable them to carry out their functions effectively and efficiently. It was observed:

519. In its creative sense, in England the House did not sit down to build its edifice of the powers, privileges and immunities of Parliament. The evolution of the English parliamentary institution has thus historical development. It is the story of conflict between the Crown's absolute prerogatives and the Common's insistence for powers, privileges and immunities; struggle between high handed actions of monarchs and people's claim of democratic means and methods. Parliamentary privileges are the rights which the Houses of Parliament and Members possess so as to enable them to carry out their functions effectively and efficiently. Some of the parliamentary privileges thus preceded Parliament itself. They are, therefore, rightly described by Sir Erskine May as "fundamental rights" of the Houses as against the prerogatives of the Crown, the authority of ordinary courts of law and the special rights of the House of Lords.

17. The evolution of legislative privileges can be traced back to medieval England when there was an ongoing tussle for power between the monarch and the Parliament. In most cases, privileges were exercised to protect the members of parliament from undue pressure or influence by the monarch among others. Conversely, with the gradual strengthening of parliament there were also some excesses in the name of legislative privileges. However, the ideas governing the relationship between the executive and the legislature have undergone a sea change since then. In modern parliamentary democracies, it is the legislature which consists of the people's representatives who are expected to monitor executive functions. This is achieved by embodying the idea of 'collective responsibility' which entails that those who wield executive power are accountable to the legislature. However, legislative privileges serve a distinct purpose. They are exercised to safeguard the integrity of legislative functions against obstructions which could be caused by members of the House as well as non-members. Needless to say, it is conceivable that in some instances persons holding executive office could potentially cause obstructions to legislative functions. Hence, there is a need to stress on the operative principles that can be relied on to test the validity of the exercise of legislative privileges in the present case. In his widely cited work, Sir Erskine May (1950) has answered the question 'What constitutes privilege?' in the following manner [See: Erskine May, Parliamentary Practice, 16th edn. (London: Butterworths, 1957) in 'Chapter III: General View of the Privilege of Parliament' at p. 42]:

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land is, to a certain extent an exemption from the ordinary law.

The privileges of individual members of the House of Lords may be distinguished from, the privileges of individual members of the House of Commons; both again have common privileges as members of the Parliament; and the Lords have special privileges as peers, distinct from those which they have as members of a House co-ordinate with the House of Commons. [Stubbs, Constitutional History, iii (4th edn.) p.504]

The particular privileges of the Commons have been defined as:

The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords.

Distinction between function and Privilege proper-

It is more convenient to reserve the term 'privilege' to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions.

Ancillary nature of Privilege - A necessary means to fulfillment of functions- The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers.

In Halsbury's Laws of England, 4th edn. (Reissue Vol. 34, at p. 553) it has been stated:

Claims to rights and privileges- The House of Lords and the House of Commons claim for their Members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions and which exceed those possessed by other bodies and individuals. In 1705, the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed....

18. It would be instructive to refer to the following extracts from a lecture on Parliamentary Privileges by Viscount Kilmer - The Lord High Chancellor of Great Britain, [Delivered on May 4, 1959 at the University of London]:

The first question which springs to the mind is, 'What precisely is Parliamentary Privilege?'- and its question which is not altogether easy to answer. A privilege is essentially a private advantage in law enjoyed by a person or a class of persons or an association which is not enjoyed by others. Looked at from this aspect, privilege consists of that bundle of advantages which members of both Houses enjoy or have at one time enjoyed to a greater extent than their fellow citizens: freedom to access to Westminster, freedom from arrest or process, freedom from liability in the courts for what they say or do in Parliament. From another point of view, Parliamentary Privilege is the special dignity and authority and enjoyed by each House in its corporate capacity such as its right to control its own

proceedings and to punish both members and strangers for contempt. I think these are really two sides of the coin. Any Parliament, it is to function properly, must have some privileges which will ensure freedom (to a greater or lesser degree) from outside interference. If the business of Parliament is of supreme importance, then nobody else must be allowed to impede it, whether by throwing fireworks from the gallery or bringing actions against members for what they say in debate.

A close parallel is provided by the powers of the superior courts to punish for contempt. If you try to interfere with the administration of justice either by throwing tomatoes at the judge or by intimidating a witness you will be liable to be proceeded against for contempt. Once again, a body whose functions are of paramount importance can be seen making certain that outside interference is reduced to a minimum.

19. In Australia, the scope of Parliamentary Privileges was enunciated in the 76th Report of the Senate Committee of Privileges, wherein it was observed:

The word "privilege", modern usage, connotes a special right accorded to a select group which sets that group apart from all other persons. The Macquarie Dictionary's primary definition of privilege is as follows: "A right of immunity enjoyed by a person or persons beyond the common advantage of others. The privileges of Parliament are immunities conferred in order to ensure that the duties of members as representatives of their constituents may be carried out without fear of intimidation or punishment, and without improper impediment. These immunities, established as part of the common law and recognized in statutes such as the Bill of Rights of 1688, are limited in number and effect. They relate only to those matters which have common to be recognized as crucial to the operation of a fearless Parliament on behalf of the people. As pointed out in a submission by the Department of the Senate to the Joint Select Committee on Parliamentary Privilege, a privilege of Parliament is more properly called an immunity from the operation of certain laws, which are otherwise unduly restrictive of the proper performance of the duties of members of Parliament.

20. In a Canadian case reported as *New Brunswick Broadcasting Co. v. Nova Scotia* (1993) 100 DLR (4th) 212 Lamer, C.J. had cited the following extract from an academic commentary [See: Joseph Maingot, *Parliamentary Privilege* (Toronto: Butterworths, 1982) at p. 12]:

Parliamentary privilege is the necessary immunity that the law provides for members of Parliament and for members of the legislatures of each of the ten provinces and two territories, in order for these legislators to do their legislative work. It is also necessary immunity that the law provides for anyone while taking part in a proceeding in Parliament or in a legislature. Finally, it is the authority and power of each House of Parliament and of each legislature to enforce that immunity.

Parliamentary privilege and immunity with respect to the exercise of that

privilege are founded upon necessity. Parliamentary privilege and the breadth of individual privileges encompassed by that term are accorded to members of the House of Parliament and the legislative assemblies because they are judges necessary to the discharge of their legislative function.

The contents and extent of parliamentary privileges have evolved with reference to their necessity. In *Precedents of Proceedings in the House of Commons*, Vol. I, 3rd Ed. (London: T Payne, 1796), John Hatsell defined at p. 1 the privileges of parliament as including those rights which are absolutely necessary for the due execution of its power". It is important to note that, in this context, the justification of necessity is applied in a general sense. That is, general categories of privilege are deemed necessary to the discharge of the Assembly's function. Each specific instance of the exercise of a general privilege needs to be shown to be necessary.

21. In the past, this Court has adopted a similar conception of legislative privileges to interpret Article 194(3). For example in *In the matter of: Under Article 143 of the Constitution of India*, (also known as the *U.P. Assembly case*) Gajendragadkar C.J. had held, at Para. 33:

...The Constitution-makers must have thought that the legislatures will take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by 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).

22. In *State of Karnataka Vs. Union of India (UOI) and Another*, a seven judge bench of this Court construed the powers contained in Article 194(3) as those 'necessary for the conduct of the business of the House', at Para. 57:

57. It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the 'powers' meant to be indicated here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons for all purposes... We need not travel beyond the words of Article 194 itself, read with other provisions of the Constitution, to clearly read such a conclusion.

23. Y.K. Sabharwal, C.J. (majority opinion) in Para. 471 of *Raja Ram Pal's case* (supra.) has quoted from *Parliamentary Privilege- First Report* (Lord Nicholas) which describes Parliamentary Privilege as:

Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their Members and officers possess to enable them to carry out their parliamentary functions effectively. Without this protection

Members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.

In U.P. Assembly case (*supra.*), this Court had also drawn a distinction between the exercise of legislative privileges and that of ordinary legislative functions in the following manner:

There is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reserve the term 'privilege' to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are absolutely necessary for the due execution of its powers. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity.

In Hatsell's Collection of Cases of Privileges of Parliament (1776), Parliamentary privileges have been defined as those rights which are 'absolutely necessary for the due execution of its powers'. A similar definition has also been quoted in Sir Erskine May's Parliamentary Practice (1950) and is also found in Ramanatha Aiyar, Advanced Law Lexicon, 2nd edn. Vol. 3 (New Delhi: Wadhwa & Co. Nagpur, 1997) which defines privilege as:

The distinctive mark of a Parliamentary Privilege is its ancillary character. They are rights which a sovereign legislature must possess for the due execution of its powers. Some of them are enjoyed by individual members of the House.

24. The observations cited above make it amply clear that the exercise of legislative privileges is not an end in itself. They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions. These functions include the right of members to speak and vote on the floor of the house as well as the proceedings of various legislative committees. In this respect, privileges can be exercised to protect persons engaged as administrative employees as well. The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions. We are also expected to look to precedents involving the British House of Commons. The most elaborate list of Parliamentary Privileges exercised by the British House of Commons has been compiled by Pritiosh Roy in his work Parliamentary Privilege in India which has been quoted in Raja Ram Pal's case (*supra.*) at Paragraphs 94-97 and has been reproduced below:

1) Privilege of freedom of speech, comprising the right of exclusive control by the House over its own proceedings. It is a composite privilege which includes:

- (i) the power to initiate and consider matters of legislation or discussion in such order as it pleases;
- (ii) the privilege of freedom in debate proper- absolute immunity of members for statements made in debate, not actionable at law;
- (iii) the power to discipline its own members;
- (iv) the power to regulate its own procedure- the right of the House to be the sole judge of the lawfulness of its own proceedings;
- (v) the right to exclude the jurisdiction of the Courts;
- (vi) the right to exclude strangers;
- (vii) the right to ensure privacy of debate;
- (ix) the right to control or prohibit publication of its debates and proceedings;

2) Privilege of freedom from arrest or molestation the claim of the Commons to freedom of members from arrest in civil action or suits during the time of the Parliament and during the period when a member journeys to or returns from the Parliament. This privilege includes:

- (i) exemption of a member from attending Court as a witness- service of a civil or criminal process within the precincts of the House is a breach of privilege.
- (ii) a member cannot be admitted as bail;
- (iii) exemption of a member from jury service
- (iv) no such privilege claimed in respect of criminal offences or statutory detention;
- (v) right of the House to be informed of arrest of members on criminal charges;
- (vi) extension of the privilege to witnesses summoned to attend before the House or its committees, and to officers in immediate attendance upon the service of the House.

3) Privilege of freedom of access to the sovereign through the Speaker.

4) Privilege of the House of receiving a favourable construction of the proceedings of the House from the sovereign.

5) Power of the House to inflict punishment for contempt on members or strangers- a power akin to the powers possessed by the superior courts of justice to punish for contempt.

It includes:

- (i) the power to commit a person to prison, to the custody of its own officers or to one of the State prisons, [the keystone of parliamentary privilege] the commitment being for any period not beyond the date of the prorogation of the

House;

(ii) the incompetence of the courts of justice to admit a person committed by the House to bail;

(iii) when the person is committed by the House upon a general or unspeaking warrant which does not state the particular facts constituting the contempt the incompetence of the courts of justice to inquire into the nature of contempt;

(iv) the power of the House to arrest an offender through its own officers or through the aid and power of the civil government;

(v) the power of the officers of the House to break open outer doors to effect the execution of the warrant of arrest;

(vi) the power of the House to administer reprimand or admonition to an offender;

(vii) the power of the House to secure the attendance, whether in custody or not, of persons whose conduct is impugned on a matter of privilege;

(viii) the power of the House to direct the Attorney General to prosecute an offender where the breach of privilege is also an offence at law and the extent of the power of the House to inflict punishment is not considered adequate to the offence;

(ix) the power of the House to punish a member by (a) suspension from the service of the House, or (b) expulsion, rendering his seat vacant.

6) Privilege of the House to provide for its own due constitution or composition. It includes:

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

(ii) the power of the House in respect of the trial of controverted elections of members of the Commons;

(iii) the power of the House to determine the qualifications of its members to sit and vote in the House in cases of doubt- it includes the power of expulsion of a member. A major portion of this ancient privilege of the House of Commons has been eroded by the statute.

7) The power of the House to compel the attendance of witnesses and the production of papers.

25. However, we are only obliged to follow British precedents to the extent that they are compatible with our constitutional scheme. This is because the legislatures in India do not have a wide power of self-composition in a manner akin to the British House of Commons. This position was clarified in Raja Ram Pal's case, (Supra.) at Para. 87:

87. In U.P. Assembly Case (Special Reference No. 1 of 1964) it was settled by this Court that a broad claim that all the powers enjoyed by the House of Commons at the commencement of the Constitution of India vest in an Indian Legislature cannot be accepted in its entirety because there are some powers which cannot obviously be so claimed. In this context, the following observations appearing at SCR p.448 of the judgment should suffice: (AIR 1965 SC 745, p.764, para. 45)

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' [Sir Erskine May's Parliamentary Practice, (16th Edn.), p.86]. It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and impeachments cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a Parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualifications of its members in cases of doubt (May's Parliamentary Practice, p.175). This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House.

26. Hence, it is a well-settled position that all the privileges claimed by the House of Commons cannot be automatically claimed by legislative bodies in India. With respect to the examples noted above, it is quite apparent that vacancies arising in the legislative bodies (Union Parliament and State Legislative Assemblies) are duly filled up through the election procedures contemplated by the Constitution that have been fleshed out in detail through the Representation of People Act, 1951. Similarly disputes relating to elections are heard by the competent courts and disqualifications are effected as per the grounds enumerated in the Constitution. While Articles 101 and 102 enumerate the grounds for vacation of seats and the disqualification of Members of Parliament (MPs) respectively, Article 190 and Article 191 deal with these aspects in relation to Members of State Legislatures. The manner of effecting disqualifications has also been laid down in relation to the various grounds for the same.

27. In Raja Ram Pal's case (supra.) the majority had decided that the parliamentary privileges available under Article 105(3) could be legitimately exercised to expel members for grounds other than those prescribed for disqualification of members under Article 102. This Court had upheld the validity of the proceedings of a privileges committee of the Lok Sabha which had inquired into the improper acts of some MPs and recommended their expulsion. In that case, the misconduct was in the nature of accepting bribes in return for asking

specified questions on the floor of the house. One of the expelled MPs had been reported for accepting gratification in lieu of improper allocation of funds under the Member of Parliament Local Area Development Scheme (MPLADS). The acceptance of bribes had been recorded on camera by some journalists and later on the video-footage was treated as conclusive evidence of guilt by the privileges committee. In the present case, the respondents have cited this decision in support of their contention that it was proper for the Punjab Vidhan Sabha to have exercised its' power to punish for contempt [derived from Article 194(3) of the Constitution] in order to recommend the expulsion of the appellant. It was argued that the Vidhan Sabha was empowered to expel members on grounds other than those prescribed for disqualification of members under Article 191. However, an important consideration in that case was that the misconduct which was the ground for the MPs' expulsion had a direct connection with their legislative functions, namely those of asking questions at the behest of vested interests and the improper allocation of funds under the MPLADS scheme respectively. With respect to the allegations against the appellant in the present case, it is quite difficult to see how the improper exemption of a particular plot of land from an acquisition scheme caused an obstruction to the conduct of legislative business. If it is indeed felt that the allegations of misconduct on part of the former Chief Minister had brought disrepute to the entire House, then the proper course is to pursue criminal investigation and prosecution before the appropriate judicial forum.

28. At this juncture, we must reiterate the principles which guide judicial scrutiny of the exercise of legislative privileges (including the power to punish for contempt of the House). In Raja Ram Pal's case, Y.K. Sabharwal, C.J. had framed the following guidelines, at Para. 431:

431. Summary of the Principles relating to Parameters of Judicial Review in relation to exercise of Parliamentary Provisions

We may summarize the principles that can be culled out from the above discussion. They are:

- a. Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;
- b. Constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action which part-take the character of judicial or quasi-judicial decision;
- c. The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

- d. The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;
- e. Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc have been regularly and reasonably exercised, not violating the law or the Constitutional provisions, this presumption being a rebuttable one;
- f. The fact that Parliament is an august body of co-ordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;
- g. While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;
- h. The Judicature is not prevented from scrutinizing the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;
- i. The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;
- j. If a citizen, whether a non-member or a member of the Legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;
- k. There is no basis to claim of bar of exclusive cognizance or absolute immunity to the Parliamentary proceedings in Article 105(3) of the Constitution;
- l. The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other Constitutional provisions, for example Article 122 or 212;
- m. Articles 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by Constitution of India
- n. Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure;

o. The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

p. Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging being extremely heavy

q. The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

r. Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

s. The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

t. Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

u. An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity;

29. Hence, we are empowered to scrutinize the exercise of legislative privileges which admittedly include the power of a legislative chamber to punish for contempt of itself. Articles 122(1) and 212(1) make it amply clear that Courts cannot inquire into matters related to irregularities in observance of procedures before the legislature. However, we can examine whether proceedings conducted under Article 105(3) or 194(3) are 'tainted on account of substantive or gross illegality or unconstitutionality'. The facts before us do not merely touch on a procedural irregularity. The appellant has contended that the Punjab Vidhan Sabha has committed a substantive jurisdictional error by exercising powers under Article 194(3) to inquire into the appellant's actions which were taken in his executive capacity. As explained earlier, the relevant fact here is not only that the allegations of wrongdoing pertain to an executive act, but the fact that there is no conceivable obstruction caused to the conduct of routine legislative business.

30. Before commenting further on the merits of the contentions, we must draw attention to the specific guidelines in Raja Ram Pal's case (supra.) that advocate

due deference to the actions of the legislature in the ordinary course of events. We do recognize that the threshold for exercising judicial review in a case such as the present one is indeed very high and we must begin with a presumption that the legislatures' actions were valid. However, the counsel for the appellant and the petitioners have produced sufficient materials to demonstrate that it was not necessary for the Punjab Vidhan Sabha to have exercised its powers under Article 194(3) to recommend and then notify the expulsion of the appellant. We fail to see how the alleged misconduct on part of the appellant had the effect of obstructing the ordinary legislative functions of the Vidhan Sabha. In its role as a deliberative body which is expected to monitor executive functions in line with the idea of 'collective responsibility', the Punjab Vidhan Sabha was of course free to inquire into the alleged misconduct and examine its implications. However, the act of recommending the appellant's expulsion through the impugned resolution cannot be justified as a proper exercise of 'powers, privileges and immunities' conferred by Article 194(3).

31. In their submissions, the counsel for the respondents have cited some English precedents in an attempt to draw an analogy with the facts in the present case. The intended purpose of doing so is to demonstrate the exercise of legislative privileges in the past to punish conduct that took place outside the 'four walls of the house' and yet diminished the reputation of the legislature. We have already explained that all British precedents cannot be automatically followed in the Indian context. One reason for this is that Indian legislatures are controlled by a written constitution and hence they do not have an absolute power of self-composition, unlike the British House of Commons which is controlled by an unwritten constitution. Another reason is that some of the English precedents involving the exercise of privileges were clear instances of overbreadth. Far from being good law as contended by the respondents, these old English cases have been subsequently described by authors as examples of arbitrary exercise of privileges. In fact Para. 217 of Raja Ram Pal's case (supra.) conveys this position in the following words:

217. Constitutional History of England by Professor F.W. Maitland (1st Edn. 1908, reprinted 1941), based on his lectures, is divided chronologically. In the last and most contemporary 'Period V' titled "Sketch of Public Law at the Present Day (1887-88)", he deals with the House of Commons in Part III. It has been opined by him that the earlier exercise of privileges from the fourteenth to the eighteenth century have fallen into utter desuetude and may furnish only an example of an arbitrary and sometimes oppressive exercise of uncanalised power by the House. After mentioning the membership and the qualification of the voters as also principles and the mode of election and dealing with the power of the voters as also principles and the mode of election and dealing with the power of determining disputed elections by the House of Commons, one of the facets of the privilege of the House of Commons to provide for and regulate its own constitution, in the context of the vacation of seats in the House by incurring disqualifications, he refers in sub-para (6) to the power of expulsion. His words

may be extracted:

The House has an undoubted power of expelling a Member, and the law does not attempt to define the cases in which it may be used. If the House voted the expulsion of A.B. on the ground that he was ugly, no court could give A.B. any relief. Probably it would not be exercised now- a days, unless the Member was charged with crime or with some very gross misbehaviour falling short of crime, and in general the House would wait until he had been tried and convicted by a court of law. In 1856, a Member who had been indicted for fraud and who had fled from the accusation was expelled.

32. The respondents have quoted Para. 215 of Raja Ram Pal's case (supra.) to contend that even in cases of criminal offences such as forgery, perjury, breach of trust, corruption in public offices etc. wherein there may be no direct obstruction to legislative business, members have been expelled from the British House of Commons through the exercise of Parliamentary privileges. In fact, Para. 215 paraphrases a passage from Sir Erskine May's prominent work which touches on the power of the House to expel its' members. However, the exact passage dealing with the power of expulsion, [See Erskine May, Parliamentary Practice, 15th Edn. (1950)] states that at the time of writing (i.e. 1950) the power of expulsion was reserved only for cases involving conviction for grave misdemeanors. A reading of the original passage makes it amply clear that Sir Erskine May was referring to grounds on which members had been expelled in the past. However, citing the same does not amount to their endorsement and the respondent's reliance on the said passage is quite misplaced. The original passage is reproduced below:

EXPULSION BY THE COMMONS

The purpose of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership. It may justly be regarded as an example of the House's power to regulate its own constitution. But it is more convenient to treat it among the methods of punishment at the disposal of the House. At the present time expulsion is practically reserved for the punishment of persons convicted of grave misdemeanors, whose seats are not, as in the case of Members convicted of treason or felony, automatically vacated.

Members have been expelled as being in open rebellion; as having been guilty of forgery; of perjury; of frauds and breaches of trust; of misappropriation of public money; of conspiracy to defraud; of fraudulent conversion of property; of corruption in the administration of justice, or in public offices, or in the execution of their Members of the House; of conduct unbecoming the character of an officer and a gentlemen; and contempt, libels and other offences committed against the House itself.

33. At this juncture, we must clarify that if a sitting member of a legislature in India is found guilty of committing a statutory offence, then disqualification can

be a consequence as per the scheme contemplated in the Representation of People Act, 1951. The respondents have also referred to the Table produced in Para. 582 of Raja Ram Pal's case (supra.) which surveys the exercise of privileges by the British House of Commons between 1667 and 1954. They have drawn our attention to some of the instances to contend that members were indeed expelled for acts that took place outside the 'four walls of the house' and had no direct bearing on legislative functions. However as we have explained above, it is not appropriate to mechanically rely on all of these precedents. If we must look to English precedents for guidance, we find a far more appropriate sample set in the table of cases from the period 1945-1965 which forms an Appendix to the Report of the Select Committee on Parliamentary Privilege (1967) in the United Kingdom. The same has been reproduced below:

RECENT CASES OF PRIVILEGE (1945-65)

DATE

Subject of Complaint

Report and Recommendation of the Committee of Privileges

Action by the House

March 1945 H.C. 63 (1944-45)

Offer of a bribe (Henderson's Case)

Offer was a conditional donation- no question of bribery arose and no breach of privilege

Tacit acceptance

October 1945 H.C. 31(1945-46)

Service of summons within the precincts on a sitting day (Verney's Case)

Breach of privilege but particular circumstances did not require further action

Tacit Acceptance

July 1946 H.C. 181(1945-46)

Poster designed to intimidate Members (Mrs. Tennant's Case)

Breach of privilege but too petty in scale to justify, further action by House

Tacit Acceptance

December 1946 H.C. 36(1946- 47)

Assault on Member (Piratin's Case)

Member and assailant both guilty of contempt

Resolution: Member guilty of gross contempt, assailant guilty of contempt (10

February 1947)

March 1947 H.C. 118 (1946-47)

Improper pressure on Member by Trade Union (W.J. Brown's Case)

Nothing improper and no breach of privilege

Resolution: Inconsistent with duty of Member to enter contractual agreements. limiting his independence in Parliament

April 1947 H.C. 138 (1946-47)

Newspaper suggested Members accepted payments for information (Gary Allighan's Case)

1) Grave contempt by newspaper and. by Mr. Allighan

2) Disclosure of information from party meetings for payment constitutes breach of privilege

(1) Member expelled; Editor summoned to Bar and reprimanded (30 October, 1947)

(2) This view not accepted by House

July 1947 H.C. 137 (1946- 47)

Refusal by witnesses before Committee of Privileges to answer certain questions (Cas'e of Schofield and Dobson)

House to take such steps as may seem necessary left

Witnesses ordered to attend at Bar of House and examined by Mr. Speaker: Resolution: Refusal to answer constitutes contempt " (12 August 1947)

August 1947 H.C. 142 (1946-47)

Personal statement by Member about acceptance of payments by newspaper referred to Committee (Walkden's Case)

Member guilty of privilege

Member. ordered to be reprimanded for dishonourable conduct (House did riot confirm the view of the Committee . on breach of privilege) 30 October and 10 December 1947)"

March 1948 H.C.112 (1947-48)

Broadcast reflecting on allegiance of Members (Colm Brogan's Case)

Inconsistent with dignity of House to examine further

Tacit acceptance

July 1949 H.C. 261 (1948-49)

Misrepresentation by newspaper of Member's speech (Case of "Daily Worker")

Technical breach of privilege but no action called for

Tacit acceptance

March 1951 H.C. 149 (1950-51)

Broadcast commenting on future decision by House on privilege matter (B.B.C. case)

No contempt

Tacit acceptance

March 1951 H.C. 227 (1950-51)

Letter reflecting on integrity of Members (Clan Briton case)

Letters did not. reflect on Members in their capacity as such and therefore no breach of privilege

Tacit acceptance

June 1951 H.C. 227 (1950-51)

Disclosure by newspaper of evidence given to Estimates Committee(Case of Daily Telegraph)

An inquiry into the facts did not reveal any intention any intention to infringe privilege

Tacit Acceptance

June, 1951 H.C. 235 ' (1950-51)

Speech by Lady Mellor imputed partially to the Deputy Speaker (Lady Mellor's Case)

Words constituted a breach of privilege but circumstances did not require further action by House

Tacit Acceptance

July 1951 H.C. 244 (1950-51)

Obstruction by police of Member driving to attend House and subsequent summons (John Lewis's Case)

No breach of privilege

Tacit Acceptance

April 1953 H.C. 171 (1952-53)

Lady Member's disrespect in "Sunday Express" article describing other Members

(Mrs. Ford's case)

Unauthorized reports of proceedings in House amount to breach of privilege; but normally House waives its privileges. Apologies having been made, no further action needed

Tacit acceptance

December 1953 H.C. 31(1953-54)

Reflection , on Members in newspaper article imputing motives in voting (Case of "Daily Worker")

Breach of privilege; but matter not worthy of occupying further time of the House

Tacit Acceptance

March 1955 H.C. 112 (1954-55)

Deputy Assistant Chaplain General threatens a subordinate with a view to influencing proceedings in Parliament

No precedent for regarding it as breach of privilege; but matter for responsible Minister

Tacit Acceptance

November 1956 H.C. 27 (1956-57)

Molestation of Member by telephone (Editor of Sunday Graphic's case)

Serious breach of privilege; but in view of humble apology, no further action needed

Tacit acceptance

November 1956 H.C. 38 (1956-57)

Imputation in newspaper article that Members were receiving "prodigious" supplementary petrol allowances (Case of "Sunday Express")

Editor of "Sunday Express" guilty of serious contempt and should be reprimanded

Editor ordered to attend at Bar and apology made at Bar of House Resolution: He was guilty of serious contempt (24 January 1957)

December 1956 H.C. 39 (1956-57)

Offensive newspaper cartoon reflecting on conduct of Members (Case of "Evening News")

Cartoon "constituted reflection on Members and contempt, but in view of withdrawal of cartoon from later editions and publication of unqualified apology, no further action needed

Tacit Acceptance

January 1957 H.C. 74 (1956- 57)

Broadcast and newspaper comment on matter under consideration by Committee of Privileges (Case of B.B.C. and "Romford Recorder" newspaper)

No contempt by B.B.C. or by newspaper

Tacit acceptance

April-1957 H.C. 305 (1956-57)

Action by London Electricity Board in threatening to institute proceedings for libel respecting statement in letter by Member to Minister (Strauss Case)

Breach of privilege

Resolution: London Electricity Board had not committed any breach of privilege
Division: Ayes 219; Noes 196 (8 July 1958)

July 1960 H.C. 284 (1959-60)

'Letter containing threat to Member (Colin Jordan's case)'

Breach of privilege; but no further action needed as offence had not been repeated

Tacit acceptance

March 1964 H.C. 247 (1963-64)

Reflection on allegiance of Members made outside House (Quintin Hogg's Case)

No breach of privilege and no contempt of the House; no further action needed

Tacit acceptance

February 1965 H.C. 129 1964-65

Imputation against Member's drunkenness (Duffy's case)

Gross contempt of House and breach of privilege; 'but no further action needed following letter from Member with drawing remarks

Tacit acceptance

May 1965 H.C. 228 (1964-65)

Letter threatening Members of House (case of anonymous threatening letters)

Breach of privilege and improper attempt to influence Members; in their parliamentary conduct; but dignity of House best maintained by taking no further action

Tacit acceptance

July 1965 H.C. 269 (1964-65)

Speech by Chancellor of the Exchequer outside House reflecting on Members (Callaghan's case)

No contempt and no further action needed

Tacit acceptance

34. A perusal of the above-mentioned table reveals the following:

(i) The only cases in this Table where the House was of the view that a breach of privileges had taken place were those in which the questionable conduct bore a direct nexus to the functioning or the proceedings of the House or the functioning of a member within the House. Even in such cases no serious action followed, much less an action of expulsion. These were:

? Service of summons in the precincts of the House without permission of the House (Verney's case 1945-46)

? Misrepresentation by a newspaper of the speech of a Member within the House (Walkden's Case 1946-47)

? Speech by a Member imputing impartiality to the Deputy Speaker of the House

? Unauthorized reports of proceedings of the House (Mrs. Ford's case 1952-53)

? Intimidation/molestation/threat of a Member in the House (Mrs. Tennant's case 1945-46) and (Editor of "Sunday Graphic's" case 1956-57) and (Colin Jordan's case 1959-60)

(ii) The instances where the House was of the view that contempt of the House had taken place were those where there were direct obstructions and imputations against members, namely when:

? There was an assault on the Member in the House (Piratin's case 1946-47)

? There was a refusal by a witness to answer questions before a Privileges Committee (Case of Schofield and Dobson 1946-47)

? There was an imputation by a newspaper that members were receiving unusually large petrol allowances (case of "Sunday Express" 1956-57)

? There was an imputation regarding a Member's drunkenness (Duffy's case 1964-65)

(iii) In the one instance where the Privileges Committee did indeed recommend the expulsion of a member (Gary Allighan, 1947) the House ultimately did not accept the same recommendation.

35. It would be safe to say that a breach of privilege by a member of the legislature can only be established when a member's act is directly connected with or bears a proximity to his duties, role or functions as a legislator. This test

of proximity should be the rule of thumb, while of course accounting for exceptional circumstances where a person who is both a legislator and a holder of executive office may commit a breach of privilege. It is our considered view that such a breach has not occurred in the present case.

36. Even if we turn to parliamentary practice in India, it is quite apparent that the expulsion of members should only be sustained if their actions have caused obstructions to legislative functions or are likely to cause the same. The following examples have been discussed in Raja Ram Pal's case (*supra.*) at Paragraphs 301-317:

? One can refer to the chain of events leading up to the resignation of Mr. H.G. Mudgal from the Lok Sabha on 24-9-1951. Mr. H.G. Mudgal was charged with having engaged himself in 'certain dealings with the Bombay Bullion Association which included canvassing support and making propaganda in Parliament on problems like option business, stamp duty etc. and receipt of financial or business advantages from the Bombay Bullion Association' in the discharge of his duty in Parliament. Subsequently, a Committee appointed by Parliament to inquire into the said member's activities found his conduct to be derogatory to the dignity of the House and inconsistent with the standard which Parliament was entitled to expect from its members. In pursuance of these findings, a motion for expulsion was brought before the House which prompted the member to submit his resignation. [See: Kaul and Shakdher, *Practice and Procedure of Parliament*, 5th edn. (New Delhi: Metropolitan Book Co. Pvt. Ltd. 2001) at p. 262] It is pertinent to note that the misconduct which triggered a recommendation for expulsion had a clear nexus with legislative functions.

? Another relevant instance is that of the expulsion of Mr. Subramaniam Swamy from the Rajya Sabha. On 2-9-1976 the Rajya Sabha adopted a motion appointing a committee to investigate the conduct and activities of Mr. Swamy, within and outside the country, including 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. The Committee presented its report on 12-11-1976 recommending expulsion and on 15- 11-1976 the Rajya Sabha adopted a motion to expel the said member. [See: Subhash C. Kashyap, *Parliamentary Procedure- Law Privileges, Practice & Precedents Vol. 2*, (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2000) at p. 1657]

? We can also invite attention to the instance when Mrs. Indira Gandhi and two others were expelled from the Lok Sabha by way of a motion adopted on 19-12-1978. The background was that on 18-11-1977, a motion was adopted by the House referring to the Committee of privileges a question of breach of privilege and contempt of the House against Mrs. Gandhi and others regarding obstruction, intimidation, harassment and institution of false cases by Mrs. Gandhi and others against certain officials. The Committee of Privileges recorded a finding that Mrs. Indira Gandhi had committed a breach of privilege and

contempt of the House by causing obstruction, intimidation, harassment and institution of false cases against the officers concerned who were collecting information for the purpose of an answer to a certain question that had been asked in the House. The nature of punitive action to follow was left to the wisdom of the House. On 19-12-1978, the House adopted a motion which recommended Mrs. Gandhi's expulsion among other things. However, this expulsion was undone during the term of the Seventh Lok Sabha, wherein there was a substantive debate on whether the House had the power to expel its members in the exercise of privileges. At that point of time, the majority of the House had resolved that there was no power of expulsion in such circumstances. However, the position has since been clarified in Raja Ram Pal's case (*supra*.) which has recognised the power of legislatures to expel their members, subject to the judicially prescribed guidelines. Nevertheless, what is relevant for the present case is that the initial recommendation for expulsion was triggered by conduct that bore a direct causal link to legislative functions.

? Another comparable instance was noted by S.C. Agarwal, J. in his dissenting opinion in *P.V. Narsimha Rao Vs. State (CBI/SPE)*, wherein it was observed:

25. It does not, however, constitute breach or contempt of the House if the offering of payment of bribe is related to the business other than that of the House. In 1974, the Lok Sabha considered the matter relating to offer or payment of bribe in the import licences case wherein it was alleged that a Member of Lok Sabha had taken bribe and forged signatures of the Members for furthering the cause of certain applicants. The question of privilege was disallowed since it was considered that the conduct of the Member, although improper, was not related to the business of the House. But at the same time it was held that as the allegation of bribery and forgery was very serious and unbecoming of a Member of Parliament, he could be held guilty of lowering the dignity of the House.

(See: Kaul and Shakdher at pp. 254, 255).

37. As outlined earlier, the respondents have also contended that the power of a legislature to punish for its own contempt should not be seen as incidental to its' power of self-composition and that it should have a wider import than the remedial power of preventing obstructions to legislative functions. It will be useful to refer to the following extract from the respondents' written submissions:

...Even if the House of Legislature has limited powers, such power is not only restricted to *ex facie* contempts, but even acts committed outside the House. It is open to the Assembly to use its power for protective purposes, and the acts that it can act upon are not only those that are committed in the House, but upon anything that lowers the dignity of the House. Thus, the petitioners' submission that the House only has the power to remove obstructions during its proceedings cannot be accepted.

In pursuance of this line of reasoning, the respondents have argued that the

appellant's actions have lowered the dignity of the house and the same amounts to conduct unbecoming of a member of the House, even though such conduct had no bearing on legislative functions. It was urged that the underlying motive behind the expulsion was not merely that of punishment but also to remove a member who was seen as unfit to continue as a member of the legislature.

38. We are unable to agree with this line of reasoning presented on behalf of the respondents. Expressions such as 'lowering the dignity of the house', 'conduct unbecoming of a member of the House' and 'unfitness of a member' are openly-worded and abstract grounds which if recognised, will trigger the indiscriminate and disproportionate use of legislative privileges by incumbent majorities to target their political opponents as well as dissidents. The various grounds for disqualification of members of legislative assemblies (MLAs) have been enumerated in Articles 190 and 191 of the Constitution. For most circumstances, there is an elaborate machinery in place to decide questions pertaining to the disqualification of members and the vacancy of seats. However, it is for the purpose of tackling unforeseen and novel impediments to legislative functioning that the 'powers, privileges and immunities' contemplated by Article 194(3) of the Constitution have not been codified. In Raja Ram Pal's case (*supra.*) the majority decision of this Court did recognise that the legislature's power to punish for its contempt could be exercised to expel legislators for grounds other than those prescribed in the Constitution, but it was not the intention of this Court to prescribe an untrammelled power. By laying down a clear set of guidelines for judicial review over the exercise of parliamentary privileges, this Court had made its intentions quite clear. Accordingly, we are of the view that the power of a legislative chamber to punish for its own contempt should broadly coincide with the legislature's interest in protecting the integrity of its functions. There can of course be some exceptional circumstances where acts that take place outside the 'four walls of the house' could have the effect of distorting, obstructing or diluting the integrity of legislative functions. An obvious example is that of legislators accepting bribes in lieu of asking questions or voting on the floor of the House. However, with respect to the facts before us, the respondents have failed to demonstrate how the alleged misconduct on part of the appellant and the petitioners could have a comparable effect. Using the route of legislative privileges to recommend the appellant's expulsion in the present case is beyond the legitimate exercise of the privilege power of the House.

Re: Question II.

39. The next aspect that merits our attention is whether it was proper for the Punjab Vidhan Sabha to consider the alleged misconduct as a breach of privilege in spite of the fact that it took place during the Vidhan Sabha's previous term. The allegedly improper exemption of a plot of land (measuring 32.10 Acres) from the Amritsar Improvement Scheme had been notified on 13-1-2006, during the 12th term of the Punjab Vidhan Sabha. On 22-02-2006, a question pertaining to this allegedly improper exemption was raised in the House and the same was

discussed on 22-02-2006, 28- 02-2006 and 1-3-2006 respectively. At this juncture it must be clarified that there were separate allegations in the respondent's submissions which suggest that the appellant had played a part in suppressing some materials when questions had been asked about the allegedly improper exemption. However, the said suppression of materials had been inquired into by another Committee and there were no findings against the appellant.

40. As mentioned earlier, the House was subsequently dissolved and a new regime was voted to power in the elections held in February 2007. It was during the present term of the House (i.e. the 13th term of the Punjab Vidhan Sabha) that the allegedly improper exemption was made the subject-matter of an inquiry by a Special Committee which was constituted in pursuance of a resolution passed by the House on 18-12-2007. The Special Committee presented its report on the floor of the House on 3-9-2008, which in turn became the basis of the impugned resolution of the Punjab Vidhan Sabha that was passed on 10-9-2008. Before addressing the contentious issue, it is necessary to understand the implications of the dissolution of a legislative chamber, since the Punjab Vidhan Sabha had been dissolved and re-constituted during the period between the operative dates, i.e. the date of notification of the allegedly improper exemption of land from the Amritsar Improvement Scheme (13-1-2006) and the constitution of the Special Committee to inquire into the said allegations of misconduct (18-12-2007).

41. The literal meaning of 'dissolution' is listed in Black's Law Dictionary, 8th edn. [(West Group) at p. 506] as 'the act of bringing to an end; termination'. P. Ramanatha Aiyar, Advanced Law Lexicon, 3rd edn., Vol. 2D-I, (Wadhwa & Co., 2005) furnishes the following definition, at p. 1435:

Dissolution and prorogation.- Constitution of India, Article 107(3), 174(2)(a) & (b), 196. Dissolution of Parliament is invariably proceeded by prorogation, and what is true about the result of prorogation, is, it is said a fortiori true about the result of dissolution. Dissolution of Parliament is sometimes described as "a civil death of Parliament". Ilbert in his work on 'Parliament' has observed that 'prorogation' means the end of a Session (not of parliament)'; and adds that "like dissolution it kills all bills which have not yet been passed". He also describes dissolution as "an end of Parliament (not merely of a session) by royal proclamation", and observes that "it wipes the slate clean of uncompleted bills or other proceedings.

The effects of dissolution have also been discussed in the following manner [Cited from: Kaul and Shakhder, Practice and Procedure of Parliament, 5th edn. (New Delhi: Metropolitan Book Co. Pvt. Ltd., 2001) at pp. 191-193]:

EFFECTS OF DISSOLUTION

Dissolution, as already stated, marks the end of the life of a House and is followed by the constitution of a new House. One the House has been dissolved,

the dissolution is irrevocable. There is no power vested in the president to cancel his order of dissolution and revive the previous House. The consequences of dissolution are absolute and irrevocable. In Lok Sabha, which alone is subject to dissolution under the Constitution, dissolution "passes a sponge over the Parliamentary slate". All business pending before it or any of its committees lapses on dissolution. No part of the records of the dissolved House can be carried over and transcribed into the records and registers of the new House. In short, dissolution draws the final curtain upon the existing House.

Business before a Committee: All business pending before Parliamentary Committees of Lok Sabha lapse on dissolution of Lok Sabha. Committees themselves stand dissolved on dissolution of a Lok Sabha. However, a Committee which is unable to complete its work before the dissolution of a House may report to the house to that effect, in which case any preliminary memorandum or note that the committee may have prepared or any evidence that it may have taken is made available to the new Committee when appointed.

42. Coming to judicial observations, the effect of dissolution of a House were discussed by this Court in the Ref. by President, . V.N. Khare, J. (as His Lordship then was) had made the following observations:

40. ...Dissolution ends the life of the legislature and brings an end to all business. The entire chain of sittings and sessions gets broken and there is no next session or the first sitting of the next session after the House itself has ceased to exist. Dissolution of Legislative Assembly ends the representative capacity of legislators and terminates the responsibility of the Cabinet to the Members of the Lok Sabha or the Legislative Assembly, as the case may be.

Furthermore, Pasayat, J. had explained:

135. Dissolution brings a legislative body to an end. It essentially terminates the life of such body and is followed by constitution of a new body (a Legislative Assembly or a House of People, as the case may be). Prorogation on the other hand relates to termination of a session and thus precludes another session, unless it coincides with the end of the legislative term. The basic difference is that prorogation unlike dissolution does not affect a legislative body's life which may constitute from session to session, until brought to an end by dissolution. Dissolution draws the final curtain upon the House. Once the House is dissolved it becomes irrevocable. There is no power to recall the order of dissolution and/or revive the previous House. Consequently effect of dissolution is absolute and irrevocable. It has been described by some learned authors that dissolution "passes a sponge over the parliamentary slate". The effect of dissolution is in essence termination of current business of the legislative body, its sittings and sessions. There is a cessation of chain of sessions, sittings for a dissolved legislative body and there cannot be any next session or its first sitting. With the election of a legislative body a new chapter comes into operation. Till that is done the sine qua non of responsible government i.e. accountability is non-

existent. Consequentially, the time stipulation is non-existent. Any other interpretation would render use of word "its" in relation to "last sitting in one session" and "first sitting in the next session" without significance.

43. In *Purushothaman Nambudiri Vs. The State of Kerala*, Gajendragadkar J. (as His Lordship then was) had reflected on the effects of the dissolution of the House. The context in that case was that a Legislative Assembly had passed a bill and later the President had sent the bill back for reconsideration by the successor assembly. The question of whether the successor assembly needed to consider the bill afresh and pass it again was answered in the affirmative:

6. ...The duration of the Legislative Assembly is prescribed by Article 172(1), and normally at the end of five years the life of the Assembly would come to an end. Its life could come to an end before the expiration of the said period of the five years if during the said five years the President acts under Article 356. In any case there is no continuity in the personality of the Assembly where the life of one Assembly comes to an end and another Assembly is in due course elected. If that be so, a bill passed by one Assembly cannot, on well recognized principles of democratic government be brought back to the successor Assembly as though a change in the personality of the Assembly had not taken place. The scheme of the Constitution in regard to the duration of the life of State Legislative Assembly, it is urged, supports the argument that with the dissolution of the Assembly all business pending before the Assembly at the date of dissolution must lapse. This position would be consonant with the well recognized principles of democratic rule. The Assembly derives its sovereign power to legislate essentially because it represents the will of the citizens of the State, and when one Assembly has been dissolved and another has been elected in its place, the successor Assembly cannot be required to carry on with the business pending before its predecessor, because that would assume continuity of personality which in the eyes of the Constitution does not exist. Therefore, sending the bill back to the successor Assembly with the message of the President would be inconsistent with the basic principles of democracy.

In *Sub-Committee of Judicial Accountability Vs. Union of India and others*, G.N. Ray, J. had discussed the effect of dissolution of the Lok Sabha:

51. Adverting to the effect of dissolution on other business such as motions, resolutions etc. the learned authors say:

All other business pending in Lok Sabha e.g. motions, amendments, supplementary demands for grants etc., at whatever stage, lapses upon dissolution, as also the petitions presented to the House which stand referred to the Committee on Petitions.

44. On the basis of the authorities cited above, it is evident that ordinarily legislative business does not survive the dissolution of the House. The exception to this norm is covered by the 'doctrine of lapse' wherein the successor House can choose to take up a pending motion or any order of business after the re-

constitution of the House. However, this exception is not applicable in the facts of the present case. At the time of the reconstitution of the Punjab Vidhan Sabha following the State elections in February 2007, there was no pending motion, report or any other order of business which had a connection with the allegedly improper exemption of land. It was much later, i.e. on 18-12-2007 that a Special Committee was constituted to inquire into the same. Hence, in this case the Special Committee proceeded to enquire into the executive acts of the appellants and petitioners which had taken place during the previous term of the Punjab Vidhan Sabha. It is quite untenable to allow the exercise of legislative privileges to punish past executive acts especially when there was no pending motion, report or any other order of business that was relatable to the said executive acts at the time of the re- constitution of the House.

45. While the legislature is free to inquire into acts and events that have taken place in the past, the same is ordinarily done in the nature of fact-finding to improve the quality of law-making. Legislative oversight over executive actions is an important facet of parliamentary democracy and such oversight can extend to executive decisions taken in the past. However, it is altogether another matter if privileges are purportedly exercised to punish those who have held executive office in the past. It is quite inconceivable as to how the allegedly improper exemption of land (notified on 13-1-2006) had the effect of obstructing the legislative business in the 13th term of the Punjab Vidhan Sabha. Hence, it is our considered view in respect of the facts in the present case, that it was improper for the 13th Punjab Vidhan Sabha to claim a breach of privileges on account of the alleged misconduct which actually took place during the 12th term of the Vidhan Sabha. However, our view should not be mistaken for a general proposition since it is within our imagination that in some circumstances the acts that have taken place during the previous terms of a Legislature could actually have the effect of distorting, obstructing or diluting the integrity of legislative business in the present term. Evidently, no such consequence or tendency has been demonstrated in the present case.

Re: Question III.

46. As noted in the survey of facts at the beginning of this opinion, the allegedly improper exemption of land from the Amritsar Improvement Scheme is the subject-matter of disputes that are pending before the High Court of Punjab and Haryana. Admittedly, these proceedings had been instituted soon after the notification of the said exemption (dated 13-1-2006) and the fact of their pendency was well known at the time of the constitution of the Special Committee by the Punjab Vidhan Sabha on 18-12-2007. This begs the question as to whether it was proper for the Punjab Vidhan Sabha to inquire into subject-matter which was already in question before a judicial forum.

47. The norms to be followed by a legislature in respect of sub judice matters have been discussed in the following words [Cited from: Griffith and Ryle, Parliament, Functions and Procedure (2003), Chapter 6 at Para 6-075]:

A more significant reason for not allowing a notice of motion is if the matter is sub judice (awaiting decision in the courts); the same rule applies to debate and questions. The sub judice rule does not, however, apply to legislative business or where a ministerial decision is in question (e.g. in an application for judicial review). It applies only to cases in UK courts, not ones in courts elsewhere, even if they concern UK matters (e.g. the European Court of Human Rights). The Speaker has discretion to waive the rule and would normally do so when the case in question concerned issues of national importance such as the economy, public order or essential services.

This long standing practice has been confirmed by resolutions of the House. Cases which are active in a criminal court in the United Kingdom must not be referred to; this applies from the moment charges are made until the verdict is given. The same applies to civil actions once arrangements are made for a hearing. Cases which have been decided can become sub judice again if one party applies for leave to appeal. Under this rule, which comes into operation in relation to some half-dozen cases a session, motions (or questions) may not be tabled until the case is decided. If a motion has been tabled before the matter became sub judice it is taken off the Order Paper until the case ceases to be sub judice.

48. In fact, the relevant rules of the Rules of Business and Conduct of the Punjab Vidhan Sabha themselves incorporate these norms. Reference may be made to the language of Rule 39(10), 50, 93(2)(iv) and 150(d) which lay down the following:

39. In order that a question may be admissible it shall satisfy the following conditions, namely:

....

(10) It shall not ask for information on any matter which is under adjudication by a court of law having jurisdiction in any part of India;

...50. The right to move the adjournment of the business of the Vidhan Sabha (Assembly) for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely:

**** (ix) the motion shall not deal with a matter on which a resolution could not be moved;

**** (xi) the motion shall not deal with any matter which is under adjudication by a Court of law;

93. (1) The matter of every speech shall be strictly relevant to the matter before the House.

(2) A member while speaking shall not-

**** (iv) refer to a matter of fact on which a judicial decision is pending;

...150. In order that a resolution may be admissible, it shall satisfy the following conditions, namely-

**** (d) it shall not relate to any matter which is under adjudication by a Court of law having jurisdiction in any part of India.

49. The above-mentioned rules which govern the business and conduct of the Punjab Vidhan Sabha are quite categorical in laying down a prohibition on the taking up of any matter which is pending adjudication before a court of law. Analogous provisions control the business and conduct of the Lok Sabha See Rules 173, 188 and 352 of the Rules of Business and Conduct of the Lok Sabha. While Articles 122(1) and 212(1) of the Constitution prohibit judicial scrutiny over questions relating to compliance with these rules, our attention has been drawn to the fact that the Punjab Vidhan Sabha proceeded to inquire into the allegedly improper exemption of land from the Amritsar Improvement Scheme, even though the same had been questioned before the High Court of Punjab and Haryana.

50. Subhash C. Kashyap [in Parliamentary Procedure- Law Privileges, Practice & Precedents Vol. 1, (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2000)] has described a prominent example where the Speaker of the Lok Sabha had disallowed discussion on subject-matter that was pending before the courts. The following extract also touches on arguments for allowing the legislature to discuss sub judice matters in exceptional cases (at pp. 1225- 1226):

(iii) The following motion tabled by a member (Madhu Limaye) was included in the List of Business for 7 May 1968:

That this House disapproves of the statements made by Shri Ranganathan, Under Secy., Ministry Of External Affairs, on behalf of the Government of India in his affidavit in opposition on the 21 Apr. 1968, before the Delhi High Court which are contrary to the statements made by the Minister of Home Affairs in the House on the 28 Feb. 1968 in regard to implementation of Kutch Award.

When Limaye was called to move his motion, a point of order was raised by a member (Narayan Rao) and Law Minister (P. Govinda Menon) that discussion on affidavit would mean discussing a sub judice matter. The Speaker reserved his ruling. On 9 May 1968, the Speaker ruled inter alia as follows:

The rule on whether a motion which relates to a matter which is under adjudication by a court of law should be admitted or discussed in the House has to be interpreted strictly. While on the one hand the Chair has to ensure that no discussion in the House should prejudice the course of justice, the Chair has also to see that the House is not debarred from discussing an urgent matter of public importance on the ground that a similar, allied or linked matter is before a court of law. The test of sub judice in my opinion should be that the matter sought to be raised in the House is substantially identical with the one which a court of law has to adjudicate. Further, in case the Chair holds that a matter is sub judice the

effect of this ruling is that the discussion on the matter is postponed till the judgment of the court is delivered. The bar of sub judice will not apply thereafter, unless the matter becomes sub judice again on an appeal to a higher court. Applying these two tests to the present notice of motion by Shri Limaye, I consider that in view of the statement by the Law Minister, that 'the question that the affidavit filed by the Under Secretary is slightly at variance with what the Home Minister has stated has been raised in the court and is under adjudication by the court' the very matter which is sought to be raised by the member is awaiting adjudication by the court of law.

Hence I consider that discussion on the notice of motion should be postponed until the court has delivered its judgment. I am however, clear that the matter is of public importance which should be discussed in the House and its importance will not be lost if the House awaits until the Court has adjudicated in the matter. [LS Deb. 6.5.1968, cc 2198- 2203; 7.5.1968, cc. 2649- 65; 9.5.1968, cc. 3149-56]

51. It is a settled principle that ordinarily the content of legislative proceedings should not touch on sub judice matters. As indicated in the extract quoted above, the rationale for this norm is that legislative debate or scrutiny over matters pending for adjudication could unduly prejudice the rights of the litigants. In the case at hand, the allegedly improper exemption of land (measuring 32.10 acres) from the Amritsar Improvement Scheme had already been questioned before the High Court of Punjab and Haryana. Thus, the Punjab Vidhan Sabha ought not to have constituted a committee to inquire into the same.

CONCERNS ABOUT INTRUSION INTO THE EXECUTIVE AND JUDICIAL DOMAIN

52. The doctrine of separation of powers is an inseparable part of the evolution of parliamentary democracy itself. Renowned French philosopher Montesquieu had drawn the attention of political theorists to the dangers inherent in the concentration of legislative, executive and judicial powers in one authority and stressed on the necessity of checks and balances in constitutional governance. Our institutions of governance have been intentionally founded on the principle of separation of powers and the Constitution does not give unfettered power to any organ. All the three principal organs are expected to work in harmony and in consonance with the spirit and essence of the Constitution. It is clear that a legislative body is not entrusted with the power of adjudicating a case once an appropriate forum is in existence under the constitutional scheme. It would be pertinent to cite the following observations made by M.H. Beg J. (as His Lordship then was) in *The State of Assam Vs. Bhubhan Chandra Dutta and Another*, :

392. ...One of these basic principles seems to me to be that, just as courts are not constitutionally competent to legislate under the guise of interpretation, so also neither our Parliament nor any State Legislature, in the purported exercise of any kind of law- making power, perform an essentially judicial function by virtually withdrawing a particular case, pending in any court, and taking upon

itself the duty to decide it by an application of law or its own standards to the facts of that case. This power must at least be first constitutionally taken away from the court concerned and vested in another authority before it can be lawfully exercised by that other authority. It is not a necessary or even a natural incident of a "constituent power". As Hans Kelsen points out, in his "General Theory of Law and the State" (see p.143), while creation and annulment of all general norms, whether basic or not so basic, is essentially a legislative function their interpretation and application to findings reached, after a correct ascertainment of facts involved in an individual case, by employing the judicial technique, is really a judicial function. Neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries of its own constitutionally assigned sphere or orbit of authority into that of the other. This is the logical meaning of the principle of supremacy of the Constitution.

53. The impugned resolution (dated 10-9-2008) passed by the Punjab Vidhan Sabha contains directions as to how the investigation into the appellant's and petitioners' alleged wrongdoing should be conducted. The resolution directs the filing of First Information Reports (FIRs) and custodial interrogation in addition to directing the Vigilance Department, Punjab to find out where the appellant and the others have stored their 'ill gotten wealth' and further directs the Vigilance Department to report back to the Speaker of the Punjab Vidhan Sabha. These functions are within the domain of the executive. It is up to the investigating agencies themselves to decide how to proceed with the investigation in a particular case. The role of the legislature in this regard can at best be recommendatory and the Speaker of a Legislature may not assume the responsibility of monitoring an ongoing investigation. A determination of guilt or innocence by way of fact-finding is a role properly reserved for the trial judge. The only exception to this principle is when the impugned acts have the effect of distorting, obstructing or threatening the integrity of legislative proceedings or are likely to do the same, thereby warranting the exercise of privileges. As we have already noted above, there was an obvious jurisdictional error on part of the Punjab Vidhan Sabha in the present case.

54. A decision of the United States Supreme Court which raised similar concerns was that of *Kilbourn v. Thompson* 103 US 168 (1881). In that case, the House of Representatives of the United States Congress had appointed a Special Committee to investigate into activities related to a 'real estate pool', since it had attracted investments from one Jay Cook & Co. who was a debtor-in-bankruptcy to the Government of the United States. The Special Committee was set up and it had served a sub poena to Kilbourn, requiring the latter to present himself before the Special Committee and to answer questions and produce documents. Kilbourn appeared but he refused to cooperate with the Committee's proceedings. The House of Representatives passed a resolution directing that Kilbourn be arrested and placed under custody until such time as he purged himself of the contempt and communicated to the House his willingness to

submit to the jurisdiction of the Special Committee. The matter reached the Supreme Court of the United States by way of a writ of habeas corpus filed by Kilbourn. The relevant observations by Miller, J. are produced as follows:

In looking to the preamble and resolution under which the committee acted, before which Kilbourne refused to testify, we are of the opinion that the House of Representatives not only exceeded the limit of its own authority, but assumed a power which could only be properly exercised by another branch of the government, because it was, in its nature, clearly judicial.

The Constitution declares that the judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. If what we have said of the division of the powers of the government among the three departments be sound, this is equivalent to a declaration that no judicial power is vested in the Congress or either branch of it, save in cases specifically enumerated to which we have referred. If the investigation which the committee was directed to make was judicial in its character, and could only be properly and successfully made by a court of justice, and if it related to a matter wherein relief or redress could be had only by a judicial proceeding, we do not, after what has been said, deem it necessary to discuss the proposition that the power attempted to be exercised was one confided by the Constitution to the judicial, and not to the legislative, department of the government. We think it equally clear that the power asserted is judicial, and not legislative. (103 US 168, 192- 193)

**** How could the House of Representatives know, until it had been fairly tried, that the courts were powerless to redress the creditors of Jay Cook & Co.? The matter was still pending in a court, and what right had the Congress of the United States to interfere with a suit pending in a court of competent jurisdiction? Again, what inadequacy of power existed in the court, or, as the preamble assumes, in all courts, to give redress which could lawfully be supplied by an investigation by a committee of one House of Congress, or by any act or resolution of Congress on the subject? The case being one of a judicial nature, for which the power of the courts usually afford the only remedy, it may well be supposed that those powers were more appropriate and more efficient in said of such relief than the powers which belong to a body whose function is exclusively legislative. If the settlement to which the preamble refers as the principal reason why the courts are rendered powerless was obtained by fraud, or was without authority, or for any conceivable reason could be set aside or avoided, it should be done by some appropriate proceeding in the court which had the whole matter before it, and which had all the power in that case proper to be entrusted to any body, and not by Congress or by any power to be conferred on a committee of one of the two Houses. (103 US 168, 194)

The observations cited above are self-explanatory and we echo the concerns about the overreach into the judicial domain in the fact-situation before us.

CONCLUSION

55. In the light of the preceding discussion we have arrived at the following conclusions:

(i) If there were any irregularities committed by the appellant and the petitioners in relation to the exemption of land (notified on 13-1-2006) from the Amritsar Improvement Scheme, the proper course of action on part of the State Government should have been to move the criminal law machinery with the filing of a complaint followed by investigation as contemplated under the Code of Criminal Procedure. It is our considered view that the Punjab Vidhan Sabha exceeded its powers by expelling the appellant on the ground of a breach of privilege when there existed none. The allegedly improper exemption of land was an executive act attributable to the appellant and it did not distort, obstruct or threaten the integrity of legislative proceedings in any manner. Hence, the exercise of legislative privileges under Article 194(3) of the Constitution was not proper in the present case.

(ii) Furthermore, the allegedly improper exemption of land took place during the 12th term of the Punjab Vidhan Sabha, whereas the constitution of the Special Committee to inquire into the same took place during the 13th term. It was not proper for the Assembly to inquire into actions that took place during its previous term, especially when there was no relatable business that had lapsed from the previous term. If we were to permit the legislature to exercise privileges for acting against members for their executive acts during previous terms, the Courts are likely to be flooded with cases involving political rivalries. One can conceive that whenever there is a change of regime, the fresh incumbents would readily fall back on the device of legislative privileges to expel their political opponents as well as dissidents. Such a scenario would frustrate some of the basic objectives of a parliamentary democracy.

(iii) When it was well known that the allegedly improper exemption of land from the Amritsar Improvement Scheme was the subject-matter of proceedings instituted before the High Court of Punjab and Haryana, the Punjab Vidhan Sabha should have refrained from dealing with the same subject-matter.

56. We accordingly declare that the resolution passed by the Punjab Vidhan Sabha on 10-9-2008, directing the expulsion of the appellant for the remainder of the 13th term of the Vidhan Sabha is constitutionally invalid. Hence, we direct the restoration of the appellant's membership in the Punjab Vidhan Sabha. However, nothing in this judgment should act as a hurdle against the investigation, if any, into the alleged role of the appellant and the petitioners in the improper exemption of land from the Amritsar Improvement Scheme that was notified on 13-1-2006. To repeat a cliché, the law will take its own course.

57. This appeal and the connected petitions are disposed off accordingly, however with no order as to costs.