A.K. Bose, M.L.A., 225-B, Jeeva Nagar, Second Street, Jaihindpuram, Madurai -11 Vs Tamil Nadu Legislative Assembly and The Speaker, Tamil Nadu Legislative Assembly

Court: Madras High Court

Date of Decision: Feb. 1, 2008

Acts Referred: Commissions of Inquiry Act, 1952 â€" Section 3(1), 8B
Constitution of India, 1950 â€" Article 100, 101, 102, 103, 105
Land Acquisition Act, 1894 â€" Section 50(2)
Representation of the People Act, 1951 â€" Section 10, 62, 62(1), 7, 72

Hon'ble Judges: V. Dhanapalan, J

Bench: Single Bench

Advocate: N. Jothi, Mr. S. Venkatesh and Mr. L.P. Shanmugasundaram, for the Appellant; G. Masilamani, Advocate General (as Amicus Curiae) assisted by Mr. V. Arun, Addl. Govt. Pleader, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V. Dhanapalan, J.
The petitioner who is a Member of the Tamil Nadu Legislative Assembly (in short ""the Legislative Assembly"") has filed

this petition, calling in question the resolution dated 19.10.2007 passed by the Legislative Assembly and to quash the same. The main issue

between the parties is the consequence of an incident that took place on 18.10.2007 and 19.10.2007 leading to passing of the aforesaid

resolution.

2. According to the petitioner who belongs to All India Anna Dravida Munnetra Kazhagam, he has been the Member of the Legislative Assembly

representing 141, Tirupparankundram Assembly Constituency right from 13.05.2006, by defeating a candidate belonging to the Communist Party

of India (M); by the punishment imposed against him by way of the impugned resolution, he has been prevented from discharging his duties as an

elected representative of the Tirupparankundram Assembly Constituency and the impugned resolution has been passed by the first respondent

even without serving any notice on him or without calling for any explanation or even without issuing any notice to him and as such, no formal order

was ever served on him; however, the official residence allotted to him, like any other Member of the Legislative Assembly, was closed, locked

and sealed, none of the privileges or payments was issued to him and he has waited so far, hoping that some kind of order would be issued on him,

but, till the date of filing of this writ petition, no order has been issued.

3. It is the further case of the petitioner that the Legislative Assembly is scheduled to be convened with the Governor"s Address on 23.01.2008

and in order to have an effective participation in the Assembly, he has filed this petition; from the newspapers, he came to know that a debate was

made on his alleged role in throwing the hat of the Watch and Ward of the Legislative Assembly close to the table of the Speaker and this is denied

by him.

4. He has also stated that by way of the impugned resolution dated 19.10.2007 passed by the first respondent, (i) he has been suspended from the

Legislative Assembly with effect from 19.10.2007 onwards till the first ten days of the next Session likely to be convened on 23.01.2008 and (ii)

he is not to have the benefit of any privilege or salary or indeed the very functioning as a Member of the Legislative Assembly and if the Session to

be started on 23.01.2008 will not last for ten days, then the remaining unexpired days of suspension have to be counted during the Budget Session

likely to commence during March 2008; the period of ten days has to be counted not as per the Gregorian calendar but the ten days of actual

sittings of the House and as a consequence of the impugned Resolution, he is deprived of his pay, Compensatory Allowance, Telephone

Allowance, Constituency Allowance, Postal Allowance, Consolidated Allowance, Transit by Train Allowance and Medical Allowance and he

cannot act as a representative of the Constituency which elected him as a Member of the Legislative Assembly.

5. It is his case that no written order was ever issued by the Legislative Assembly Secretariat based on the resolution passed by the Legislative

Assembly and he is given to understand that it was done deliberately so as to prevent him from challenging the same in the court of law; instead, it

is so planned to make use of Article 212 of the Constitution of India in the event of any challenge to the resolution of the Legislative Assembly

which has got nothing to do with the issue on hand; from 19.10.2007 to March 2008, i.e. for a period of five months, he is deprived of discharging

his duties as an elected Member of the Legislative Assembly; the impugned resolution shakes the very foundation of democracy and the elected

representative system besides challenging the constitutional provisions, Representation of the People Act, 1951 and the Tamil Nadu Legislative

Assembly Rules framed by virtue of Article 208(1) of the Constitution of India; in a simple majority governance of the country, if a party gets the

chance of ruling, the State also could elect its elected member as the Speaker and in the same way, if the Committee of Privileges could consist of

majority of that party, it looks that any kind of order could be passed, unmindful of the legal position in this regard; in a democracy, there will be a

ruling party, the alliance parties and the opposition parties and a democratic form of governance does not mean majority members of the front only

but also includes opposition.

6. According to him, the impugned resolution virtually disqualifies him for a period of five months which cannot be made even under the

Constitution except by means of post-disqualification (after having got elected) by virtue of Article 194 of the Constitution of India and as an

elected Member of the Legislative Assembly, he is authorised to function and discharge his duties to the electorate and the Constituency which

returned him to the Assembly by virtue of the powers available under the Constitution and under the Representation of the People Act and not at

the mercy of the chosen few who claimed to be the ruling front; the circumstances leading to the passing of the impugned resolution are reflected in

the newspapers and the proceedings of the Legislative Assembly dated 18 and 19.10.2007 as enclosed in the typedset of papers are taken from

the records available in the library with the help of his colleague in the House belonging to his party and the same has been challenged in this writ

petition.

7. The main grounds of challenge in this writ petition are that:

a. the proceedings for a breach of privilege can be initiated only in terms of Chapter XX (4) of the Tamil Nadu Legislative Assembly Rules (in

short ""the Rules"") which have been framed by exercise of powers under clause (1) of Article 208 of the Constitution of India;

b. under Rule 219, a Member may, with the consent of the Speaker, raise a question involving a breach of privilege on privilege relating to a

Member, privilege relating to the House and privilege relating to a Committee constituted by the House and the moving of a motion in the House

with respect to a privilege can be permitted to be raised in the House only if the privilege relates to the House and when it relates to a Member or a

Committee, it cannot be raised in the House if Rule 225 is considered in a proper manner;

c. the procedure contemplated in the issue of privilege can be considered under Rule 219 which provides that a member may, with the consent of

the Speaker, raise a question involving a breach of privilege, either of a Member or of the House or of a Committee thereof and to raise such a

breach of privilege, notice of motion to raise a question of privilege together with a brief statement shall be given by the member, at least one hour

before the commencement of the sitting on the day as per Rule 220 and under Rule 221, the Speaker may give his consent to raise the issue and

under Rule 222, a question of privilege can be raised if it shall be of a specific matter of recent occurrence and if the matter, in the opinion of the

speaker, requires the intervention of the House; if the Speaker gives his consent under Rules 219 and 223, the Member concerned can make a

short statement relevant thereto and under Rule 224, the Speaker can refuse to give his consent and under Rule 225, if the Speaker holds that the

matter raised affects the privilege or amounts to a contempt of the House and requires the intervention of the House, he may allow a motion to be

made by any member that the alleged breach of privilege be referred to the Committee of Privileges or in the alternative that it be dealt with by the

House itself.

d. also under Rule 226, the Speaker, on his own accord, may suo motu refer any question of privilege to the Committee of Privileges and when the

Rules position remains so, something abnormal has happened with respect to the issue of the impugned resolution; though Privilege is not defined in

the Rules, under Article 194 of the Constitution of India, subject to its provisions, certain powers and privileges are given to the Legislature and the

Members of the House and in fact, under 194(3) of the Constitution, a statement is made that the term Privilege is yet to be defined;

e. whatever may be the Privilege of the House or that of a Member, it cannot independently exceed or go beyond what is contemplated in the

Constitution and the view expressed by a seven-member Bench of the Supreme Court as early as in the year 1965 is quite clear in stating that the

rules enumerated for the procedure of the Legislature are subject to the fundamental rights enshrined in the Constitution and the privilege conferred

on the Members of the Legislature is with respect to the performance of the functions of the Member of a Legislative Assembly and there could be

no separate privilege or complete immunity overriding the Constitution; of course, the Legislature may possess plenary powers but, even those

powers are subject to the basic concept of the Constitution and any rule framed to guide the Legislature can draw power only from the

Constitution and any supremacy which the Legislature enjoys is always subject to the Constitution, more especially with respect to Part-Ill vis-a-vis

the Fundamental Rights enumerated in the Constitution and if the Legislature steps beyond the field assigned to it and if any proceedings connected

with the Legislature trespasses on the fundamental rights of a citizen, then, the Court can always rectify the same by means of issuing a suitable writ

in this context.

f. Any excessive act of the Legislature cutting into the fundamental rights guaranteed under the Constitution is liable to be struck down by the Court

as our country is governed by a written Constitution which is supreme and sovereign and the distinct and rigid separation of powers among the

three pillars viz., the Executive, the Judiciary and the Legislature are entrusted with their respective roles in their place and whatever the power

each may enjoy is always subject to the Fundamental Rights guaranteed under the Constitution;

g. the issue has been deliberately raised with mala fide intentions to wreak political vengeance, knowing fully well that such an issue cannot be

raised either within the Rules or by any of the powers conferred under the Constitution or in any other manner and as such, the impugned resolution

of the first respondent is void ab initio apart from being nullified at the very inception itself;

h. the petitioner has got freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution of India and by the present

resolution, his role as a Member of the House is deprived; the impugned resolution is violative of Article 21 of the Constitution of India and the

Rules or the privilege of any Member cannot infringe the provisions of the Constitution of Inida;

i. before the award of any punishment, that too to the extent of deterring him from discharging his duties as an elected representative of his

Constituency, he should have been given an opportunity to state his case and no such opportunity has been given to him and instead, he has been

thrown out of the House and the ruling front itself, in a concerted manner, discussed among them-selves and passed the impugned resolution which

is arbitrary, unreasonable and violative of Articles 14, 19(1)(a) and 21 of the Constitution of India, apart from the non-existent power to the

Assembly to deter an MLA from discharging his functions unless and until he is disqualified under Article 194 of the Constitution of India by

reference from the Governor to the Election Commission of India;

j. in the impugned resolution dated 19.10.2007, various kinds and level of punishments contrary to law were made against the petitioner and he

was not put on notice either by the House or by the Speaker or by the Legislative Assembly Secretariat before the issue was being decided and

neither any explanation was ever sought from him nor was he heard and given show cause notice and no reply was sought from him and also no

debate took place with his participation;

k. he was not put on notice of the charges against him nor was he given any opportunity to show cause against the proposed action and also no

explanation was ever sought from him either prior to the issue having been culminated for debate or while awarding punishment and as such, it is

clear that a pre-determined decision about the guilt and the move to impose punishment has been taken by the respondents without giving him any

opportunity and in gross violation of the principles of natural justice resulting in disqualification and punishment;

l. the impugned resolution passed by the House is liable to be annulled as the one non-est in law and it is violative of Article 21 of the Constitution

of India and the punishment has caused gross infringement of his fundamental rights apart from the agony and mental sufferings that have been

caused to him due to the impugned resolution and hence, he is liable to be compensated with respect to the salary to which he is entitled to and

which he proposes to disburse to the poor people and orphans;

m. there is no question of adjudication involved in this context since he was not heard and no notice was issued to him and hence, this Court has to

protect the fundamental rights guaranteed to him under the Constitution and under the Representation of the People Act; as an elected

representative and as a citizen of this country, he is bound to function as a Member of the Legislative Assembly in the manner known to law and

the gross infringement of his privileges and rights and duties to function as a Member of the Legislative Assembly have been curtailed due to

political enmity without observing natural justice or without seeking any clarification or explanation from him.

n. the genuineness of video clippings based on which punishment has been imposed on him, the concoctions or artificial insertion or articulation of

such videography was never put to test nor was he permitted to see such video clippings as one claimed to have seen the same and everything

went as hearsay, mere assertion and claims and the Members who spoke to disqualify him are not experts to find out as to how the incident could

have happened or who has done the same and therefore, the personal life and liberty guaranteed under Article 21 of the Constitution of India was

fully violated and the privileges and rights of an elected representative in terms of the Constitution as well as the Representative of the People Act,

1951 have been thrown up to the winds.

o. this Court has got every power to ensure that the constitutional guarantees are fully adhered to in every walk of life and in every exercise of

power by any authority and the impugned resolution lacks competency to prevent an elected representative from pursuing his functions as such and

the Legislature has to function within the limits prescribed by the material and relevant provisions of the Constitution;

p. the adjudication of any dispute as to whether he has acted contrary to the rules or convention of the House, shall be done only in such a manner

known to law and not in an arbitrary manner by a fiat of the ruling front and the privileges, powers and immunities claimed or action taken in

vindication thereof cannot be the exclusive domain of a few or the sole or absolute discretion vested in the hands of a few and his fundamental right

to function as the elected representative has been curtailed and suspended at least for a period of five months, which is nothing but non-est in law.

q. the punishment imposed on him results in negation of his functions as a Member of the Legislative Assembly and the Rules prescribe the

procedure for dealing with the question of privilege of the House or its Members and the residuary powers of the Speaker vide Rule 286 were not

followed properly and as such, the impugned resolution is incorrect in law and is not sustainable;

r. the proceedings of the House filed in the typed-set of papers leads no room for any doubt or any serious controversy wherein natural justice has

been totally violated and no opportunity has been given to him to defend or state his case nor had he been put on notice about the nature of

punishment and he had not all been shown the video clippings and photographs of him and hence, for want of proper adherence to natural justice,

the impugned resolution may be annulled and quashed as non-est in law.

8. Mr. N. Jothi, learned counsel appearing for the petitioner has strenuously contended that the Articles guaranteeing fundamental rights under the

Constitution, the Rules framed by the Legislative Assembly under Article 208(1) of the Constitution of India and the principles of natural justice

were not followed by the first respondent while passing the impugned resolution. In addition to what is pleaded in the petitioner''s affidavit, he has

narrated certain events in connection with the facts and circumstances of the case and also the applicability of the above Rules.

9. While questioning the involvement of the petitioner in the incident which is claimed to have occurred on 18.10.2007, the learned counsel for the

petitioner has contended that though several leaders had spoken on the floor of the House on 18.10.2007 on the subject issue, none pointed out

the petitioner''s name and only on 19.10.2007, it is claimed that the videograph indicates the role played by the petitioner. In this regard, he has

pointed out that the way in which the petitioner had thrown the hat or cap on the table of the Speaker is not indicated anywhere. It is also his

vehement contention that it has not been explained by anybody as to whether the petitioner pulled the cap or hat from the head of the Watch and

Ward and threw it on the table or it fell accidentally on the table of the Speaker or as to how it landed, in what manner, through what means and

by what action. It is also his contention that the petitioner is disputing his role in the matter; his identity was not fixed on 18.10.2007 but was stated

only on 19.10.2007; as to how the petitioner acted has not so far been revealed anywhere in the entire record and the facts are neither explained

to the petitioner nor admitted. He has also contended that whenever the matter is not admitted and it is disputed and the petitioner claims

innocence, the duty of the accusers is to give an opportunity to state the petitioner''s response on the allegations and this has not been followed in

this case. While referring to the judgments relied on by the learned Advocate General, he has remarked that they themselves indicate that one kind

of natural justice or the other or at least a semblance of natural justice has been followed and whereas in the case of the petitioner, nothing has

been followed.

10. The learned counsel for the petitioner has contended that the Court''s jurisdiction and intervention has been accepted in several of the

judgments and if the Parliament or the Assembly does any act of illegality and acts in violation of the guarantees given in the Constitution under

Articles 14, 20 and 21, certainly judicial review is permissible as held by the Supreme Court in its judgment reported in Raja Ram Pal Vs. The

Hon''ble Speaker, Lok Sabha and Others, . He has further contended that the prohibition contained in Article 212 of the Constitution will be

applicable only with respect to ""irregularity"" and not with respect to ""illegality"" and if an Assembly commits an illegality and violates fundamental

rights, certainly, the proceedings can be analysed by means of judicial review under Article 226 of the Constitution by the High Courts and under

Article 32 by the Supreme Court. It has also been contended by him that the manner in which the proceedings have been conducted can be

examined by the Court if the proceedings of the Assembly make inroads of the fundamental rights and act contrary to them. While distinguishing

the judgment in the case of K. Anbazhagan & others v. The Secretary, The Tamil Nadu Legislative Assembly, Madras & others reported in AIR

1988 Madras 275 = 1988- 2-L.W.35 S.N. (Anbazhagan case), he has contended that the disqualification resulting in violation of Schedule III

oath by burning the Constitution in the said case is not an issue that could be compared with the facts of this case and further, the Constitution

Bench judgment in Raja Ram Pal''s case makes a clear distinction between such matters and matters pertaining to violation of observance of

natural justice and infringement of fundamental rights guaranteed under the Constitution.

11. An argument was advanced by the learned counsel for the petitioner in respect of judicial review by this Court in a matter of this nature.

Referring to Raja Ram Pal''s case, he has contended that the effect of the said judgment is clearly illustrated and guidelines have been given therein

as to under what circumstances and in what manner, the Court can have judicial review by lifting the veil of Parliamentary privilege as against

fundamental rights. In this context, he has argued that a Member of Legislative Assembly like the petitioner, like any other citizen, is entitled to have

his fundamental rights being protected. Pointing out the provision of the Constitution under Article 122 and paragraph 386 of the decision of the

Supreme Court in Raja Ram Pal''s case, he has contended that any proceedings leading to illegality or unconstitutionality wherein the principle of

natural justice is not being followed, judicial review is always possible and Article 212 applicable to a Legislative Assembly which is equivalent to

Article 122 in case of Parliament, will not stand in the way inasmuch as the entire judgment is relied upon by the petitioner, especially, with

reference to the various guidelines as enunciated in paragraph 431 from (a) to (u) are guidelines issued by the Supreme Court which permit judicial

review and warrant judicial interference.

12. While arguing that there is a violation of Constitutional rights, the learned counsel for the petitioner has contended that the sweep of Article 21

of the Constitution has got developed vastly as it was understood from early 50s and 60s and as on date, it has changed to the extent that the rights

guaranteed under Article 21 are not restricted only to life and liberty but also to other facets of law. In this connection, he has placed strong

reliance in the judgment reported in State of Bihar Vs. Lal Krishna Advani and Others, wherein it has been held that right to reputation is a facet of

right to life and is enshrined in Article 21 of the Constitution and if that right to reputation is inroaded without providing an opportunity, certainly,

the protection under Article 21 will come to the rescue and therefore, it is a classic example for observation of principles of natural justice also;

whereas, in the case on hand, the petitioner was not given any opportunity nor a letter, notice or order was served on him and no explanation was

called for from him and consequently, the petitioner has been deprived of discharging his duties as a Member of Legislative Assembly.

13. It is the further contention of the learned counsel for the petitioner that the Rules framed by the Legislative Assembly under Article 208(1) of

the Constitution with reference to Rules 219 to 230 were not followed by the first respondent while passing the impugned resolution. With regard

to the failure on the part of the first respondent to comply with the Rules, it is his foremost contention that a Notice of Motion to raise a question of

privilege, accompanied by a brief statement together with a document if any relied upon, shall be given at least one hour before the commencement

of the sitting and the affected party against whom the privilege is being raised is entitled to notice along with the statement of facts and being served

on him through the Legislative Assembly Secretariat. In this regard, he has further contended that if the Speaker so feels, he may dispense with or

waive the above procedure and on receipt of such notice, the Speaker may either refer the matter to the Privilege Committee or may decide that

the matter may be dealt with by the House itself. While interpreting Rule 225, he has contended that the word ""hold"" means that a decision is to be

made by the Speaker on this and he further submitted that at any rate, the person against whom a privilege issue is being raised is entitled to be

heard and to explain his case as per second proviso to Rule 223 and the above Rules cannot be dispensed with by the Speaker as they are

mandatory in nature that are to be followed while dealing with the privilege motion.

14. On the aspect as to whether the word ""may"" occurring in the Rules could be deemed as ""must"" or ""shall"", the learned counsel for the petitioner

has contended that as per the Rules, the Speaker plays a pre-dominant role on issuance of notice, admitting the motion, deciding whether to adopt

in the House or to send it to the Select Committee; in all these matters, the Speaker has to decide and the word ""may"" occurs at least in five places

in the above said Rules i.e. from Rule 219 to Rule 230. According to him, the term ""may"" shall mean only ""must"" or ""shall"" inasmuch as the

Speaker is not only exercising power to dispense with the notice but also decides the issue as to whether to send it to the Select Committee or it

has to be adopted on the floor of the House and as such, the power entrusted could mean power coupled with duty. While questioning the role of

the Speaker, he has contended that none of the proceedings indicated how, why and when and in what manner the Speaker exercised his

discretion and that the Speaker while conducting the proceedings should have acted judiciously aiming to achieve fairplay and not vindictively,

arbitrarily or capriciously. To substantiate this contention of his, reliance has been placed by him on the following judgments:

i 1980 LW (Crl.) 155 (State (Delhi Admn.) v. I.K. Nangia and another) - paragraph No. 15

ii N. Nagendra Rao and Co. Vs. State of Andhra Pradesh,

iii Wasim Beg Vs. State of Uttar Pradesh and Others,

iv Dinkar Anna Patil and Others Vs. State of Maharashtra and Others,

v Orissa Textile and Steel Ltd. Vs. State of Orissa and Others,

15. About the observance of principles of natural justice, the learned counsel for the petitioner has contended that while the Rules do provide for

observance of principles of natural justice, non-observance of those Rules and arbitrary exercise of power by the first respondent have prejudiced

the petitioner to a great extent. He has further contended that in a matter where the fundamental rights are violated and natural justice not having

been followed, the person approaching the Court need not show any separate prejudice independent to the violation of natural justice and

fundamental rights. It has been strenuously contended by him that whenever civil consequences are visited, a Member is certainly entitled to have

the protection of the Court as any other citizen and that the judgment of the Supreme Court in Raja Ram Pal''s case is a treatise on the subject

issue and the petitioner is entitled to the protection of principles of natural justice.

16. The learned counsel for the petitioner has further contended strongly that in the case of R. Thamaraikani O.S. Manian v. the State of Tamil

Nadu represented by the Chief Secretary to the Government, Fort. St. George, Chennai - 9 and 2 others reported in 2001-1-L.W. (Crl.) 155

(Thamaraikani case) is on different footing altogether wherein conviction was awarded and the same was questioned by means of a Habeas

Corpus Petition and the role of natural justice or the sweeping of fundamental rights was not discussed therein as in the case of Raja Ram Pal''s

case. According to him, in Thamaraikani''s case, the leaders of the political parties were called by the Speaker who held a meeting among them

regarding the quantum of punishment to be given to Thamaraikani. He has further contended that above all, Thamaraikani was indeed given an

opportunity to speak on the floor of the House and therefore, the contention of the learned Advocate General that the incident in question occurred

on the floor of the House and no opportunity was given is not correct inasmuch as the said judgment itself illustrates that opportunity was provided

to Thamaraikani, after the occurrence of the incident and before awarding of punishment.

17. On the question of authenticity of videography and as to how far it can be pressed into service, the learned counsel for the petitioner has

submitted that a copy of the alleged videography has not been given to the petitioner whereas in the case of Raja Ram Pal, the video recorded was

given to the Member who appeared before the Committee and he cross-examined the witnesses, let in evidence and an opportunity was given to

him. He has further contended that in the Rules of the Legislative Assembly, for its proceedings to be covered, there is no sanction by means of any

authenticated rule that videography is a material object that could be pressed into service regarding the record of proceedings and there-fore, an

unauthenticated and unauthorised version, the authenticity of which is not free from doubt about doctoring, manipulating, interpolating or editing,

could have been mischievously done by any interested person and as such, it cannot be the sole basis for award of punishment and at any rate, the

incident having allegedly taken place on the floor of the House, an opportunity should have been given to the petitioner to defend the allegations

against him.

18. It has been vehemently argued by the learned counsel for the petitioner that the Members representing the ruling front alone spoke and none of

the opposition party members was allowed to participate in the debate while awarding punishment to the petitioner and they were en masse

suspended till the end of session. While concluding his arguments to the effect that the writ petition has to be allowed, he has contended that

admittedly, nothing has been served on the petitioner and till date, not a single piece of paper, either by way of proceedings or order or intimation

has ever been served on the petitioner and as such, natural justice has been fully blocked out to the petitioner and the rules guiding the issue have

not at all been followed, thereby leading to visiting of civil consequences on the petitioner in a manner not known to law.

19. The learned counsel for the petitioner, in support of his contentions has placed reliance on the following judgments.

i. K.A. Mathialagan Vs. P. Srinivasan and Others, - Full Bench judgment of Madras High Court:

11. At this stage it is convenient to refer particularly to the incidents which happened on 2-12.72, inside the House. No doubt, the version of the

petitioner is totally denied by the respondents. The petitioner concedes that he received the message from the Governor required by Art.175(2),

which included item 8 therein. We have also expressed our opinion that under item 8 the notice of motion, of which notice was issued on

16.11.1972, was in order and could be taken up for discussion on the resummoned day. After the question hour was over, according to the

petitioner, the five notices of no confidence motion against the Ministry given notice of on that day under Rule 55 by Thiru M.G. Ramachandran,

Thiru. K.T.K. Thangamani, Smt. T.N. Ananthanayaki, Dr. hande and Mr. James were sought to be moved. He took up that motion, and,

according to him, he secured the necessary leave of the House and consequent thereto he allowed Thiru M.G. Ramachandran to speak on it. But

he concedes that there was shouting inside the House and in spite of his attempt to call the House to order there was confusion. The petitioner''s

case is that it was in this state of affairs the notice of motion of Thiru N. Veerasami, of which notice was given on 16.11.1972 was moved and the

members insisted that that motion should be taken up first. The petitioner concedes that as the said motion involved the consideration of a

resolution for the removal of the speaker, the Leader of the House wanted the Deputy Speaker to occupy the chair as eo instanti when the

resolution for the removal of the Speaker is under consideration, a deemed vacancy is said to arise within the meaning of Clauses (1) and (2) of

Art.180 of the Constitution.

The petitioner''s case is that he would not heed to the request of the member to move the resolution for his removal and he directed the expunging

of all the speeches in connection thereto. According to him, during all the time, Thiru M.G. Ramachandran was addressing the House. We would

also refer to the removal of the mike in front of Thiru M.G. Ramachandran and occupation of the Chair by the Deputy Speaker. The Deputy

Speaker sought the leave of the House to occupy the chair, occupied it and, at the instance of the Leader of the House, accepted the resolution to

dispense with R.53 and the petitioner claims that in such parallel proceedings the leave of the House is said to have been secured for such

dispensation. According to him, he directed expunging of all these proceedings as well. He concedes that there was continuous shouting and

disturbances all the time, whilst he would say that Thiru M.G. Ramachandran was continuously addressing the House on his original notice of

motion of no confidence against the Ministry. The petitioner would also refer to the bell on his table being taken away by the Chief Whip of the

Government and placed on the table of the Deputy Speaker. Certain minor incidents such as taking away of the records and breaking of his

spectacles are all referred to. Thiru N. Veerasami was allowed by the Deputy Speaker, who was then occupying the Chair and who obtained the

leave of the House in due form to move the resolution and it was put to the House and the Deputy Speaker declared that the motion was carried

with a voice vote. Thereafter the business of the House was conducted in accordance with the mandate of the Ministry. The petitioner still would

say that he asked the permission of the House for extension of the proceedings beyond 1-30 p.m. and allowed Thiru M.G. Ramachandran and

others to speak on the no confidence motion against the Ministry till 2 p.m. He would claim that he had already advised the Business Advisory

Committee to meet at 1-30 p.m. to discuss the fixing of the date for discussion of motion for his removal. This is expressly denied by the third

respondent. The Speaker would also add in his supplemental affidavit that he was not given an opportunity to speak in the proceedings for his

removal from office, and he would add that, there was preplanned conspiracy to usurp his functions. The above particular facts are relevant for

consideration in these writ petitions.

12. Countering these facts the Leader of the House, Thiru V.R. Nedunchezhian, would say that on 2-12-1972, 183 members belonging to

different political parties expressed that the Speaker had already lost the confidence of the majority of the Assembly and it was in that atmosphere

the Assembly met after being summoned by the Governor. He made an attempt to dispense with the question hour, but he was not successful.

Immediately after the question hour was over, according to the third respondent, Thiru N. Veerasami stood up and wanted that the removal notice

given by him and others must be taken into consideration and given preference. He supported the mover having regard to the saturated atmosphere

in the Assembly which was against the Speaker continuing in office. As the resolution for the removal of the Speaker was taken up for

consideration, the moment it was moved by Thiru N. Veerasami, the third respondent moved that the Deputy Speaker should preside over the

House. The House agreed and it was only thereafter that the Deputy Speaker occupied the Chair. Rule 53 was thereafter dispensed with by

invoking R.244 of the Tamil Nadu Legislative Assembly rules. The leave of the House was secured to take up the resolution to remove the

Speaker and after some speeches by the members and when the petitioner did not express his anxiety to participate in the discussion or speak

against it, the Deputy Speaker put the motion to vote and it was carried by a large majority. The third respondent therefore says that the resolution

of Thiru N. Veerasami was moved immediately after the question hour and the no confidence motion against the Ministry which the Speaker

allowed Thiru M.G. Ramachandran to move and speak on cannot be one of the subjects, which could be discussed at all on that date as it ran

contra to the catalogued items in the message. It is claimed that the petitioner did not participate in the proceedings conducted by the Deputy

Speaker nor did he desire to speak or vote on the motion for his removal. The third respondent is emphatic that no sooner the motion of no

confidence against the Speaker was tabled in the House, the Speaker had no right to occupy the Chair or strike the bell and thereby disturb the

proceedings of the House. The bell was removed since he had no authority to strike it. The resolution to remove him was validly moved and

passed. There was no necessity for the Business Advisory Committee to meet and fix a date for the resolution as item 8 of the message of the

Governor itself included the resolution for the removal of the Speaker within its pale and the motion of Thiru N. Veerasami became a valid

discussable motion on the floor of the house on 2-12.1972.

14. What emerges from the versions of the events that happened on 2-12-1972 is that there was undoubtedly pandemonium and confusion during

the session. The petitioner who was presiding over the Assembly was aware that there was a resolution for his removal which was to be

considered at that session. This is because the draft message of the Governor and the business to be undertaken by the Assembly was seen by him

and approved by him. He should therefore be deemed to be conscious of the fact that there was a certain possibility of such a resolution for his

removal being taken up for consideration by the House on 2-12-1972. With this consciousness he occupied the Chair and he has therefore to face

the limitations of such occupancy. The motion of Thiru M.G. Ramachandran which was given notice of on that date, no doubt, was an item which

could be discussed normally in normal situations. But in view of the fact that the agenda of the summoned Assembly has been fixed by the

Governor under Art.175(2), it was the primordial duty of the Speaker as the holder of office under the Constitution to obey such a mandate and

act in accordance with the itemised agenda therein. In our view, he ought not to have allowed the no confidence motion against the Ministry to be

moved at that stage before he began transacting the other business as set in the message. Even so, he had not the requisite control and authority to

allow Thiru M.G. Ramachandran to move or discuss about the no confidence motion against the Ministry when he could not preside over the

House.

A vacancy in the office of the speaker is created by Thiru N. Veerasami''s rising after question hour and moving the resolution for removal of the

Speaker. There was no occasion or necessity for him to fix up a date for the discussion of the resolution for his removal from office. The date has

already been fixed by himself giving assent to item 8 of the agenda which included one such resolution of which valid notice was given on

16.11.1972. In our view, it was not even necessary for the Leader of the House to seek for a dispensation of Rule 53 by invoking Rule 244.

Apparently the Leader of the House by way of abundant caution sought for its dispensation. That by itself would not make any difference in the

eye of law or in the wake of the constitutional provisions. The undeniable fact is that there was a resolution for the removal of the Speaker which

could be validly taken up for consideration on 2-12.1972, and it was this which was sought to be done immediately after the question hour. The

petitioner, for reasons better known to himself, did not allow such a motion. Under Art.181(1), if at any sitting of the Legislative Assembly while,

any resolution for the removal of the Speaker from this office is under consideration, the Speaker shall not, though he is present, preside. In such

contingency, the provisions of Art.180(2) shall apply in relation to every such sitting as if the Speaker is absent.

It is in those circumstances that the deemed vacancy was appreciated by the House and the Leader of the House in consequence thereof sought

the leave of the House through the Deputy Speaker for the latter to occupy the chair and conduct the proceedings thereafter. We are of the

opinion that the attitude of the petitioner in not having allowed the resolution of Thiru N. Veerasami and others to be moved when it was sought to

be moved was not in order and it was repugnant to the Constitution and its duly set norms. His attempt to continue to occupy the Chair when a

resolution for his removal was under consideration is yet again a constitutional violation. The expression "for the removal of the Speaker" has to be

given its full significance. The resolution for the removal of a Speaker is undoubtedly elastic in its content and somewhat different from a resolution

to remove a Speaker. A resolution for the removal of the Speaker becomes operative when a notice of motion for the removal of the Speaker is

given and is taken up for consideration. Eo instanti when such a resolution comes up for consideration there is deemed vacancy under the

provisions of the Constitution and the Speaker even though he is physically present is said to be constitutionally absent and cannot therefore be the

Presiding Officer of the Assembly from that moment. It was this position that was correctly understood by the Leader of the House and the

majority of the members when they allowed the Deputy Speaker to occupy the Chair. The minor incidents that followed such a switching off of the

mike and the removal of the bell are all matters which happened inside the Assembly. Whether this Court can review such events, we shall

consider presently. On a reasonable review of the events that happened inside the Assembly we have no hesitation to hold that there was vacancy

in the office of the Speaker when Thiru N. Veerasami and others moved the resolution and the occupation of the Chair by the Deputy Speaker

was in order. The proceedings as reflected in the printed book published by the Legislative Assembly department on 15.12.1972, gives the

indelible impression that the motion of no confidence against the Speaker moved by Thiru N. Veerasami, was moved, discussed and decided upon

in a manner provided for both under the Constitution and under the rules. Firstly, in accordance with the text as contained in the printed leaflet the

leave of the House was sought and it was obtained. There was a further discussion thereon in which the petitioner did not participate nor does it

appear that he was anxious to speak on it. Ultimately, by a voice vote, the majority resolved to accept the mover"s resolution. Even otherwise, the

145 affidavits filed by the Assembly members reiterating what is reflected in the printed pamphlet regarding the debates that ensued in the

Assembly on 2-12-1972, which are accepted by us, prompt us to hold that the resolution to remove the Speaker was carried with a majority and

that it is an effective, valid and a legally implementable resolution.

15. Thus highlighted by the events that happened on 2-12-1972, the order of the petitioner to expunge certain proceedings from the debates is

without power. He ceased to be a Speaker when the motion for his removal was taken up for consideration. It therefore follows that anything done

by him in the capacity as Speaker, when he could not occupy the constitutional office during the time when the motion for his removal was under

consideration, is a nullity and has no legal force or recognition. If the Deputy Speaker who was occupying the Chair did not permit him to use the

mike, there is nothing unnatural about it. The Speaker failed to realise that the constitutional machinery of Government in our country has the phase

of a democratic set up. As Mclver says ""democracy is not a way of governing, whether by majority or otherwise, but primarily a way of

determining who shall govern and, broadly to what ends"" (The Web of Government page 198). After all the Ruling Party and the power in a

democratic forum of Government go hand in glove. It is here the force of majority demonstrates and asserts itself. As the eminent author Philip

Laundy says in his book, ''The Office of Speaker"" 1964 Edn. at page 102-

The moving of a resolution of censure against the Chair is necessarily a distasteful procedure, but the right to do so is indispensable to the

machinery of a free Parliament. If such a resolution is carried a Speaker would have no alternative but to resign..... In fact, in these days, he would

probably feel compelled to do so if the motion receives the support of a substantial majority. He would find it difficult to fulfil the functions of the

Chair knowing that he lacked the confidence of a sizeable body of opinion in the House.

It is axiomatic that without the support of the House a Speaker can do nothing; with the support there is little he cannot do. Under our Constitution,

he has to step down from authority if a resolution for his removal is taken up for consideration. We accept the debates as printed and exhibited

before us and hold that the petitioner ought to have so stepped down when Thiru N. Veerasami and others moved such a resolution. He has also

visibly lost the confidence of the majority and this was exemplified by the voice vote given by the majority of the members of the Assembly.

25. We may at once notice In re under Art.143 of the Constitution, In the matter of: Under Article 143 of the Constitution of India, cited by Mr.

N.C. Raghavachari to support his contention that this Court could interfere with the legislative process if any irregularity in it is brought to the notice

of the Court. The above decision was rendered by the Supreme Court in its advisory jurisdiction under Art. 143(1) of the Constitution. On a

perusal of the advice given by the Supreme Court there is no doubt whatsoever that the courts in India have the power to set right any decision of

the Legislature if there is an illegality or infringement of the constitutional provisions. But the Supreme Court itself has made it clear in the said

judgment that it was an advisory opinion rendered by them in that reference and it is not adjudication properly so called and would bind no parties

as such. It also expressly pointed out that they were not dealing with any matter relating to the internal management of the House in that case. With

special reference to the power of the Court under Art.226 of the Constitution as against State Legislatures the Supreme Court accepted in

principle that the legislatures have undoubtedly plenary powers but those powers are controlled by the basic concepts of the written Constitution

itself. If the Legislatures step beyond the Legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental

rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be

struck down by courts in India. No such situation has arisen in the instant case. All that is said against the State Assembly is than an irregular

procedure was adopted which is not warranted under the rules and the singular manner in which the affairs were steered through ought to be

corrected by the issue of a judicial process. This is not possible even according to the Supreme Court in that very case and as spoken to by them

in the other cases cited above. We are therefore of the view that even if there has been any irregularity in the procedure adopted by the House in

its deliberations on 2-12-1972, as contended by the petitioner such a scheme not having any impact upon the competency of the Legislature to act

and decide or on any fundamental right of a citizen or the substantive law spoken to through its articles in the Constitution, is beyond the purview or

scrutiny by a Court under Art.226. In the light of this conclusion, it is unnecessary to go into the further question raised by Mr. M.K. Nambiyar,

whether the petitioner is an affected party and whether he could seek a rule under Art.226 at all.

26. Before parting with this case we are constrained to point out that though the first respondent claimed privilege that he would not submit himself

to the jurisdiction of this Court, yet, as the person who was piloting the affairs of the Legislature on that date, could have certainly given the best of

assistance to the Court if he gave some hypothesis or material on the facts of the case. Immunity from appearance in courts is certainly the highest

privilege which could be availed of by a citizen or a person in authority. But when events in a particular situation compel him to assist the Court by

affording such material which is exclusively to his knowledge, it would be in the best interests of the society at large and the Government in

particular to render such assistance. Unfortunately this has not been done.

27. Again, we are rather surprised that the Secretary of the Legislative Assembly has also claimed such an immunity and privilege. When he was

summoned under the rule nisi to appear and answer the writ, the situation did not contemplate the infraction of any powers vested in such an officer

by or under the Constitution. It is only in a case where the officer of the Legislature of a State in whom powers are vested by or under the

Constitution for carrying on regulating procedure or conduct of business he shall not be subject to the jurisdiction of any Court in respect of the

exercise by him of those powers. In the instant case, the Secretary of the Legislature is exercising certain ministerial functions inside the House and

he has been summoned under the writ to state what happened inside the Legislature and it cannot be said as urged by the learned Advocate

General that in the exercise of such official duties he was one who was exercising powers vested in him by the Constitution for regulating the

procedure or conduct of business or for maintaining order therein.

ii. 1980 LW (Crl.) 155 (State (Delhi Admit.) v. I.X. Nangia and another) - 2 Judge Bench judgment of the Supreme Court:

15. We are clear that the Explanation to Section 17(2), although in terms permissive, imposes a duty upon such a company to nominate a person in

relation to different establishments or branches or units. There can be no doubt that this implies the performance of a public duty, as otherwise, the

scheme underlying the section would be unworkable. The case, in our opinion, comes within the dictum of Lord Cairns in Julius v. Lord Bishop of

Oxford:

There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the

conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may

couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do

so.

The Explanation lays down the mode in which the requirements of Section 17(2) should be complied with. Normally, the word ""may"" implies what

is optional, but for the reasons stated, it should in the context in which it appears, mean ""must"". There is an element of compulsion. It is a power

coupled with a duty. In Maxwell on Interpretation of Statutes, 11th Edn. at p. 231, the principle is stated thus:

Statutes which authorise persons to do acts for the benefit of others or, as it is sometimes said, for the public good or the advancement of justice,

have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they ''may'' or ''shall,

if they think fit'', or, ''shall have power'', or that ''it shall be lawful'''' for them to do such acts, a statute appears to use the language of mere

permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have - to say the least - a

compulsory force, and so would seem to be modified by judicial exposition.

(emphasis supplied)

Though the company is not a body or authority, there is no reason why the same principle should not apply. It is thus wrong to suggest that the

Explanation is only an enabling provision, when its breach entails in the consequences indicated above. It is not left to one"s choice, but the law

makes it imperative. Admittedly, M/s Ahmed Oomer Bhoy had not at the material time nominated any person, in relation to their Delhi branch. The

matter is, therefore, squarely covered by Section 17(1)(a)(ii).

iii. AIR 1984 Kerala 1 (State of Kerala v. R. Sudarsan Babu and others) - a Full Bench judgment of Kerala High Court:

26. To say that the act of the Legislature of the State or any of its members or the Speaker would be immune from scrutiny by courts under any

circumstances is to pitch the claim too high. The Indian Constitution concieves the judiciary and the legislature as different organs of the State

having independent specified functions. Just as it is within the power of the Legislature to exercise all functions conferred on it there are functions

conferred on the judiciary by the Constitution which it is expected to perform in accordance with the Constitution. Immunity from action would be

desirable if proper functioning is to be secured and such immunity has been conferred on the Legislature by Art.194 read with Art.212 of the

Constitution while immunity of the judiciary from discussion by the Legislature despite the very wide amplitude of the right of discussion by the

Legislature has been conferred by Art.211 of the Constitution. True democratic spirit calls for mutual respect by these institutions and avoidance of

trespass. The decision in the reference case has to a considerable extent, resolved the controversy as to the scope of powers of the Legislature

under the articles adverted to here in this judgment, but that cannot be understood as in any way contemplating immunity from examination by

courts of any act of the legislature. In fact one of the functions of the courts is to examine the validity of legislative acts. Whether the Legislature has

been functioning within the permissible limits of its legislative power is a matter which quite often arises for examination before courts. Even so

immunity is conferred on the legislature under cl.(1) of Art.212. The proceedings in the Legislature may not be challenged on the ground of mere

irregularity but may be challenged as illegal or unconstitutional. The proceedings of the Legislature may become unconstitutional if it violates the

provisions of the Constitution and then there would be a case for examination as observed in the reference case at para 64 of the opinion.

Article 12 of the Constitution defines the State as including the Legislature of the State and so prima facie the power conferred under Art.226 of

the Constitution on the High Court can be exercised even against the Legislature3. The Supreme Court observed in the opinion rendered in the

reference case that if an application is made to the High Court for the issue of a writ of habeas corpus it would not be competent to the House to

raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House.

Art.226 (1) read by itself does not seem to permit such a plea to be raised. Art.32 which deals with the power of this Court puts the matter still on

a higher pedestal. The question here is not under what circumstances the Court would be justified in interfering, but whether under any

circumstances, it is open to the court to examine the validity of the proceedings of the Legislature. It may be that such validity is challenged on the

ground of violation of the fundamental rights under Art.20 or 21 of the Constitution. In such cases they are open to examination is settled. It may

be that there is challenge on the ground that such proceedings violate Art.14. If there is such violation as renders the act unconstitutional there is no

reason why the Court should not consider the question of such trespass in proceedings under Art.226 of the Constitution. Reference may again be

made to the opinion in the reference case at para 129 at page 787 of the report:

If the power of the High Courts under Art.226 and the authority of this Court under Art.32 are not subject to any exceptions, then it would be

futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights

have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to

move the Court in that behalf; otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless. Let it not

be forgotten that the judicial power conferred on the High Courts and this Court is meant for the protection of the citizens" fundamental rights, and

so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case.

29. The principles deducible from the above discussion with reference to the decisions of the Supreme Court may be summed up thus:

1. A petition under Art. 226 of the Constitution of India would be maintainable even against the Legislature of the State as such Legislature is

within the definition of the term ''state'' in Art.12 of the Constitution.,

2. The freedom of speech in the Legislature of every State is absolute and it is not controlled by Art.19(1)(a) of the Constitution. It is unfettered or

absolute subject to the limitation in Article 211 of the Constitution, which provision insulates Judges of the High Courts and Supreme Court acting

in the discharge of their duties, against discussion by the Legislature.

3. The law made by the Legislature under Art.194(3) of the Constitution defining the powers, privileges and immunities of a House of the

Legislature of the members and the Committees of the House of such Legislature cannot contravene fundamental rights. It is open to the court to

examine the validity of a plea that such laws are void to the extent they infringe the fundamental rights of the citizens.

4. The rules framed under Art. 208 of the Constitution for regulating the procedure of a House of the Legislature and the conduct of its business

are liable to judicial review if there is a case of infringement of the fundamental rights.

5. Till the legislature frames laws to define powers, privileges and immunities those asserted and recognised in the House of Commons in the

United Kingdom as on the 26th Jan. 1950 will be in force.

6. In regard to such powers, privileges and immunities as are mentioned in (5) above, it cannot be said that whenever there is a conflict between

them and the fundamental rights in Part III of the Constitution the latter will yield to the former. An examination may be called for in respect of each

of such fundamental rights asserted to determine whether it will survive against such powers, privileges and immunities.

6. The fundamental rights guaranteed under Art.19(1)(a) of the Constitution will not to survive, but fundamental rights secured to citizens under

Arts. 20 and 21 will survive.

8. The immunity envisaged in Art.212 (1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was

irregular. If the impugned proceedings are challenged as illegal or unconstitutional such proceedings would be open to scrutiny in a court of law.

31. We have to indicate here that the issue of notice to the Speaker is only an intimation to the Speaker of the proceedings pending in this Court

and of the date fixed for considering the respective cases of the parties. It would not require the Speaker or for that matter the 3rd respondent, the

Secretary, to appear in the Court nor would it even compel them to file a return unless they dispute the petitioners" case. If it be the duty of the

Court to adjudicate, that duty cannot be performed except by bringing the institution of the proceedings to the notice of respondents 2 and 3 and

giving them an opportunity to have their say in the matter.

iv. 1994-WLR 638 = 1994-2-L.W.424 (S. Balasubramanian v. State of Tamil Nadu represented by the Chief Secretary to Govern-ment,Fort.

St. George,Madras-600 009 and two others) (Full Bench judgment of Madras High Court)

9. These and the other writ petitions initially came up before a learned single judge of this Court (S. Mohan, J. as the learned Judge, then was) and

the learned judge by an order dated 27.4.1987, having regard to the vital and important nature of the issues involved, referred the following

questions for being placed for the consideration of a Division Bench or Full Bench of this Court:-

i. Whether the collective will of the Assembly albeit it deprives a citizen of his fundamental right conferred under Article 21 of the Constitution

would be immune to attack in proceedings before a Court?

ii. Whether, by reason of the petitioner in W.P. Nos.4202 and 4203 of 1987 having been set at liberty, the infringement of Article 21 could not be

complained of?

iii. Whether the individuals, namely, Messrs. P. Ramamurthi, P. Manickam, N.V.N. Somu and R.R. Dalavai could question the validity of the

impugned proceedings and consequently whether the writ petitions filed by them are maintainable?

As noticed earlier, the other writ petitions filed by M/s. P. Ramamurthi, P. Manickam, N.V.N. Somu and R.R. Dalavai were dismissed already by

us and these writ petitions alone have been now taken up for consideration of questions (i) and (ii) alone by us.

15. In the decision reported in Asif Hameed and others Vs. State of Jammu and Kashmir and Others, the Apex Court was concerned with the

scope and doctrine of Judicial Review in the context of the scheme of separation of powers and functions of various organs of the State enshrined

in the Constitution of India. It was observed therein, although the doctrine of separation of powers has not been recognised under the Constitution

in its absolute rigidity, but the Constitution makers have meticulously defined the functions of various organs of the State, viz., Legislature,

Executive and Judiciary which have to function within their own spheres demarcated under the Constitution and that no organ can usurp the

functions assigned to another. While emphasising the fact that the functions of democracy depends upon the strength and independence of each of

its organs who have all powers including that of finance, and the Judiciary has no power over sword or the purse nonetheless, it was held that the

Judiciary has the power to ensure that the aforesaid two main organs of the State function within the constitutional limits, it being the sentinel of

democracy and Judicial review being a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. Their

Lordships have also declared the position in unmistakable terms that the expanding horizon of judicial review has taken in its fold the concept of

social and economic justice and that while exercise of powers by the Legislature and Executive is subject to judicial restraint the only check on the

exercise of power by the Judiciary is the self imposed discipline of judicial restraint.

20. On a careful consideration of the submissions of the learned counsel appearing on either side in the light of the principles laid down in the above

decisions, we propose to take up first for consideration the question as to the scope and extent of interference by Courts exercising jurisdiction

under Article 226 of the Constitution of India in matters of the nature concerning the legality, propriety and constitutionality of the action taken in

the purported exercise of the privileges of the House of legislature engrafted in Article 194(3) of the Constitution of India. It is by now well settled

and there could be no serious controversy over the position reiterated by more than one decision of the Supreme Court that the Constitution reigns

supreme and the rights, powers and privileges of the various limbs of the State are subject to the provisions contained in the Constitution, the basic

and fundamental law which provides for the governance of the State. It is equally well settled that the final authority to state the meaning of the

Constitution and to settle constitutional controversies exclusively belongs to the Supreme Court and the High Courts which are constituted as the

sentinels of both the Constitution and democracy, as well as the fundamental rights of the citizen - inclusive of their life, liberty and freedom. That

apart, the Legislatures in India have to function within the limits prescribed by the material and relevant provisions of the Constitution of India and

adjudication of any dispute as to whether legislative authority has been exceeded or fundamental rights have been contravened is solely and

exclusively left to the Judicature of this country and, therefore, inevitably the decision about the construction of Article 194(3) of the Constitution,

the privileges, powers and immunities claimed or action taken in vindication thereof cannot be said to be in the exclusive domain or of the sole

arbitral or absolute discretion of the House of Legislature. Of course, the Courts having regard to their own self imposed limits would honour the

sentiments particularly keeping in view the plenary powers of the Legislature within the constitutionally permitted limits so long as such action of the

Legislature does not result in the negation of the fundamental rights secured under the Constitution or the life, liberty, freedom and dignity of the

citizen. The all powerful postures or claims of sky-high powers or suzerain claims of sovereignty or over-Lordism are to be brushed aside as

nothing but fossils of the tyrannical and anarchical past and not keeping in tune with the basic and fundamental principle of rule of law, the bedrock

of the Constitution or the democratic ideals which are the avowed object of the Republic ushered in by the Constitution of India. The contentions

to the contrary have no basis or recognition of law and do not have no basis or recognition of law and do not have the merit of acceptance by

courts in this country.

21. The further question that requires to be considered before ever embarking upon the issue relating to the propriety of the decision taken in the

case by the House of the alleged breach of privilege or the contempt of the authority of the House or its members on the peculiar facts and

circumstances of the case, is as to whether the House has acted in conformity with the Rule of law in taking an action or resolving to decide and

impose a punishment on a citizen resulting in the deprivation of his life or personal liberty. It is an axiomatic principle firmly incorporated in and

which permeates the provisions of our Constitution that no person shall be deprived of his life or personal liberty except according to procedure

established by law and the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of

India. Consequently, no law or procedure laid down by law or the action taken thereunder can be arbitrary or irrational or oppressive and the

requirement of compliance with the principles of natural justice are implicit in Article 21 and every action of the State has to be tested on the anvil

of Article 14, 19 and 21 read together. (Vide Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and A.R. Antulay Vs. R.S. Nayak

and Another, . No immunity can be claimed from the scrutiny of this Court to see whether any Act or action of the Legislature, as in the case of the

other limb of the State, violates the above cardinal principles.

22. Shorn of the merits of the claim made as to whether the publication in question constitutes actually a breach of privileges of the House or the

members of the House or amounts to contempt of the authority of the House, it becomes necessary to consider whether there was due observance

of law within the meaning of Article 14 and 21 of the Constitution of India before visiting the petitioner with the punishment indisputably resulting in

the negation of his personal liberty. The Tamil Nadu Legislative Assembly Rules prescribe the procedure for dealing with the question of privilege

of the House or its members (vide:Rules 219 to 229) and the residuary powers of the Speaker (vide: Rule 286). The rule relating to the residuary

powers stipulates that all matters not specially provided in the Constitution or in those rules and question relating to the derailed working of those

Rules shall be regulated in such manner as the Speaker may from time to time direct. The rules relating to Privileges Committee provided that a

member may with the consent of the Speaker giving his consent it should be raised at the appropriate stage of the proceedings, specified therein.

On being so allowed a motion may be allowed to be made that the alleged breach of privilege be referred to the Committee of Privileges or in the

alternative that it be dealt with by the House itself. Notwithstanding those provisions the Speaker was also enabled to suo motu refer any question

of privilege to the Committee of Privileges for examination, investigation and report. The report of the Committee of Privileges shall be presented to

the Assembly and thereafter, a motion may be made that the report be taken into consideration and after such motion has been carried, a move

shall be made that the Assembly agrees or disagrees or agrees with amendments, if any, with the recommendations contained in the report.

v. N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, - 2 Judge Bench judgment

6.... Even though the section uses the word ''may'' but keeping in view the objective of the Act and the context in which it has been used it should

be read as ''shall'' otherwise it would frustrate the objective of the sub-section...

vi. Wasim Beg Vs. State of Uttar Pradesh and Others, - 2 Judge Bench

20....Although the word used is ""may"", in the context it has to be construed as ""shall"" so that the principles of natural justice are complied with

when the competent authority considers the question of discharge of an employee for reasons which are set out in the Rule.

vii. Dinkar Anna Patil and Others Vs. State of Maharashtra and Others, - 2 Judge Bench judgment

17. The Rules under consideration are framed by the Government of Maharashtra in exercise of its powers under Article 309 of the Constitution

of India and, therefore, they are statutory rules holding the field....

In view of the aforesaid provisions, the question would be as to whether the period during which the private respondents continued to hold the

posts of Sales Tax Officers Class I on fortuitous basis, until further orders and until approval by the Government could be reckoned for the

purposes of determining their seniority in the said cadre. The answer obviously is in the negative unless the regularisation is in conformity with Rule

4-A. As stated earlier, the respondents were unable to point out from the records any order passed by the Government of Maharashtra

regularising the private respondents and if this be so, their appointments must be deemed to have been continued as fortuitous until further orders

and on trial basis. Resultaritly, this period of fortuitous service will have to be excluded in terms of the second proviso to Rule 4 of the Seniority

Rules.

18. Coming to the interpretation of Rule 4-A, it is no doubt true that the language used therein indicates that the said Rule is made applicable

retrospectively from the date when the Rules were made applicable w.e.f. 10-10-1982 (sic 15-10-1982). Rule 4-A opens with a non obstante

clause and provides that if in the opinion of the State Government, the exigencies of service so require, the Government may in consultation with

MPSC wherever necessary make appointments to the post in relaxation of the percentage prescribed in Rule 4 of the Rules by promotion and

nomination. The Tribunal held that the word ""may"" used in this Rule is directory but in our considered view, to give such a meaning would render

the very object of consultation with MPSC wherever necessary nugatory. It would give unbridled power to the Government to dispense with the

consultation with MPSC which may result into arbitrary exercise of powers by the authority. This could never be the object of Rule 4-A. In our

considered view, the word ""may"" must mean ""shall"" and this is also obvious from the correspondence between the State Government and MPSC.

The Government of Maharashtra wanted to relax the quota rule but MPSC was not agreeable and ultimately it relented to the request of the

Government of Maharashtra and suggested amended Rule 4-A. This suggestion was accepted and accordingly the amendment was inserted in the

Rules. We also find support to our view from the decision of this Court in Keshav Chandra Joshi v. Union of India. This Court was dealing with

the interpretation of Rule 27 of the U.P. Forest Service Rules, 1952 and the said Rule is similar to Rule 4-A. While construing the word ""may

used in Rule 27, this Court held that the word ""may"" has to be read as ""shall"" and, therefore, consultation is mandatory. It must, therefore, follow

that MPSC gave its approval to the relaxation vide its letter dated 28-3-1989 but by that time, several appointments of the departmental

candidates on similar terms in the cadre of Sales Tax Officers Class I were made exceeding the quota rule. As far as the regularisation process is

concerned, it is quite clear from the letter dated 28-3-1989 by MPSC to the Secretary, Finance Department calling upon the latter to furnish the

details about the availability of posts yearwise with confidential records thereof in order to enable the Commission to take the decision on the

pending select list and to regularise the promotions of the Sales Tax Officers Class I from 1982 to 31-12-1986. As state d earlier, the respondents

did not produce any order regularising these private respondents. The appellants were appointed by nomination on or after September 1988 and,

therefore, their placement in the seniority vis-a-vis the promotees will have to be determined on the basis of date of regular appointment in the

cadre excluding the period of fortuitous appointment. Consequentiy, the impugned seniority lists as on 1991, 1993 and 1994 shall be modified

suitably. In our considered view, Rule 4-A will have to be construed as indicated above and any other construction to the said Rule would violate

the very object of the quota rule.

viii. AIR 2002 Gauhati 7 (Nipamacha Singh and others v. Secretary, Manipur Legislative Assembly and others)

14. In the decisions cited by Mr. Potsangbum, the Court had not found that the Speaker had exercised powers not vested in him under the

Constitution. In Saradhakar Supakar v. Speaker, Legislative Assembly (supra), (AIR 1952 Orissa 234), Shri Saradhakar Supakar, a member of

the Orissa Legislative Assembly prayed for a writ on the Speaker and the Secretary of the Orissa Legislative Assembly directing them to exclude

the address of the Governor followed by discussion thereof as provided under Article 176 of the Constitution from the list of business fixed for the

7th and 8th March, 1952 and directing them not to hold any meeting of the Assembly on these dates for that purpose. The point of order raised for

this very purpose was overruled by the acting Speaker on 6th of March, 1952. The Court held that Article 176 of the Constitution had not been

violated and that the order of business fixed for the Assembly on 7th and 8th of March, 1952, did not constitute infringement of any provisions of

the Constitution. The Court also held that Article 212 of the Constitution operates as a bar to the jurisdiction of this Court being invoked for issue

of a writ under Article 226 of the Constitution against the Speaker of the Assembly or the Secretary of the Assembly in a case of this kind. In

Godavaris Misra v. Nandakisore Das (supra), a member of the Orissa Legislative Assembly, filed a petition under Article 226 of the Constitution

against the Speaker for disallowing two questions raised by Shri Misra in notices dated 5-9-52 and 6-9-52 and the Court held that the Speaker

had the authority to disallow the two questions and once he had such authority he could decide it either rightly or wrongly and so long as he was

within his jurisdiction, he was immune from interference by the Court and was protected under Clause (2) of Article 212 of the Constitution. In

Harendra Nath Barua v. Dev Kanta Barua (supra), Shri Harendra Nath Barua moved the Assam High Court for a writ against the Speaker,

Secretary and the members of the Committee of Privileges of Assam Legislative Assembly as he had been summoned to appear before the

Privilege Committee by a notice of the Speaker and the Court held that under Article 194 of the Constitution, a House of a Legislature and the

members of a Committee thereof had the same powers, privileges and immunities as those of the House of Commons of the Parliament of United

Kingdom and its members. Committees and the Speaker as the chief custodian of powers and privileges of the Legislature could exercise the said

powers and take notice of contempt or breach of privilege of the House by the offending publication made by the petitioner and summon him to the

House. The Court further held that the action taken by the Speaker was not unwarranted under the Rules and cannot be challenged before the

Court. In MSM Sharma v. Dr. Sri Krishna Sinha (supra), a Journalist had filed a petition under Article 32 of the Constitution before the Supreme

Court challenging the proceedings initiated against him for breach of privilege of the House of the Assembly in respect of an offending publication

and his contention was that his fundamental right under Articles 19(1)(a) and 21 of the Constitution had been affected. The Supreme Court held

that Article 19(1)(a) of the Constitution must yield to Clauses (1) and (3) of Article 194 of the Constitution. The Supreme Court further held that

the Legislative Assembly had power, privilege and immunity of the House of Commons and if the petitioner was eventually deprived of his personal

liberty as a result of proceedings before the Committee of Privilege, such deprivation will be in accordance with the procedure established by law

and the petitioner cannot complain of breach of or threat to his fundamental right under Article 21 of the Constitution. The petitioner again moved

the Supreme Court under Article 32 of the Constitution contending that his right under Article 19(1)(a) of the Constitution had been affected and

that the procedure adopted inside the House of the Legislature was not regular and not strictly in accordance with law. The Supreme Court held

that according to its previous decision, the petitioner had no such fundamental right under Article 212 of the Constitution and the validity of the

proceedings in the said Legislature cannot be called in question on an allegation that the procedure laid down by law had not been strictly followed.

The Court further observed that Courts have always recognised the basic difference between the complete want of jurisdiction and improper or

irregular exercise of jurisdiction and mere non-compliance with the rules of procedure cannot be aground for issue of a writ under Article 32 of the

Constitution. In J. Singh Rathi v. State of Haryana (supra), Mr. J. Singh Rathi and others were members of the Haryana Legislative Assembly and

were suspended from the Session of the Legislative Assembly and they filed a writ petition under Articles 226 and 227 of the Constitution for

quashing the proceedings of the Haryana Vidhan Sabha suspending them and for quashing the subsequent proceedings of the said Legislative

Assembly leading to the passage of the publication bill 1969-70 on Feb. 12, 1969. The Full Bench of the Punjab and Haryana High Court held

that the Haryana Legislative Assembly was neither a Court nor a Tribunal subordinate to the High Court over which the High Court could exercise

the jurisdiction of the Superintendence under Article 227 of the Constitution and that the power of the Speaker to regulate the procedure and to

conduct the business in the House to maintain order in it was immune from the jurisdiction of the Court under Clause (2) of Article 212 of the

Constitution. It is thus clear from the discussion from the aforesaid decisions cited by Mr. Potsangbum that in each of the cases the Court found

that the Speaker or the other authorities of the Legislature were acting within their jurisdiction or did not violate the constitutional right of the

petitioner and held that the Court could not interfere in the decisions taken by the Speaker and other authorities of the Legislature acting within their

jurisdictions on the ground that the procedure laid down under rules or law had not been strictly followed. But in the present case, the Court has

come to a finding that the Speaker in rejecting the motion in the notice dated 18.11.2000 of the petitioners for removal of the Speaker from office

exercised a jurisdiction not vested on him but in the Legislative Assembly and had violated the constitutional rights of the petitioners. Unlike in

England where Parliament is sovereign and there is no written Constitution and each authority, howsoever, high he may be has to act within the

powers vested in it by the written Constitution and cannot usurp the power vested in some other authority and the Court under Article 226 of the

Constitution can issue appropriate writ/direction when an authority exercises a power not vested in it under the Constitution and protect the

constitutional right of a person. 16. In the result, the writ petition is allowed and the impugned order of the Speaker of the Manipur Legislative

Assembly rejecting the motion for removing him from office in the notice dated 18.11.2000 of the petitioners is quashed and the respondent Nos.

1 and 2 are directed to place the said motion before the House of Manipur Legislative Assembly unless the said motion is withdrawn by the

petitioners...

ix Orissa Textile and Steel Ltd. Vs. State of Orissa and Others, 5 Judge Bench judgment

16. In our view, the learned Attorney-General is right. A proper reading of subsection (5) of the amended Section 25-0 shows that, in the context

in which it is used, the word ""may"" necessarily means ""shall"". Thus the appropriate government ""shall"" review the order if an application in that

behalf is made by the employer or the workmen. Similarly, if so required by the employer or the workman, it shall refer the matter to a tribunal for

adjudication. As submitted by the learned Attorney-General, in a review the appropriate government would have to make an enquiry into all

necessary facts, particularly into the genuineness and adequacy of the reasons stated by the employer....

x. State of Bihar Vs. Lal Krishna Advani and Others, - 2 Judge Bench judgment

6.. ..It is thus amply clear that one is entitled to have and preserve one''s reputation and one also has a right to protect it. In case any authority, in

discharge of its duties fastened upon it under the law, traverses into the realm of personal reputation adversely affecting him, it must provide a

chance to him to have his say in the matter. In such circumstances right of an individual to have the safeguard of the principles of natural justice

before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the

scrutiny of judicial review...

xi. Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, - 5 Judge Bench judgment in the ratio of 4:1

62. In view of the above clear enunciation of law by Constitution Benches of this Court in case after case, there ought not be any doubt left that

whenever Parliament, or for that matter any State Legislature, claims any power or privilege in terms of the provisions contained in Article 105(3),

or Article 194(3), as the case may be, it is the Court which has the authority and the jurisdiction to examine, on grievance being brought before it,

to find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said

constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of the

Parliament of the United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian

Legislatures.

260. K. Anbazhagan v. Secy., T.N. Legislative Assembly had similar dispute concerning powers of the State Legislative Assembly in Tamil Nadu.

The view taken by the Madras High Court is similar to the one in Yeshwant Rao decided by the Madhya Pradesh High Court and the minority

view in Hardwari Lal decided by the Punjab and Haryana High Court. It was held by the Madras High Court that the power of expulsion is

available as a method of disciplining Members. However, at no point did the Court examine the power to punish for contempt. The Court upheld

the power of expulsion independently of the contempt jurisdiction.

263. In above context, it is necessary to recognise the special circumstances in which U.P. Assembly case (Special Reference No. 1 of 1964)

arose. It involved the resolutions of the Legislative Assembly in Uttar Pradesh finding that not only had Keshav Singh committed contempt of the

House, but even the two Judges of the High Court, by admitting Keshav Singh"s writ petition, and indeed his advocate, by petitioning the High

Court, were guilty of contempt of the legislature. The resolution further ordered the judges of the High Court to be brought before the House in

custody. In response to this resolution, petitions were filed by the Judges under Article 226. In the wake of these unsavoury developments

involving two organs of the State, the President of India decided to make a reference to the Supreme Court under Article 143(1) formulating

certain questions on which he desired advice.

304. The facts of the case of expulsion of Mr Subramanian Swamy from Rajya Sabha are narrated by Subhash C, Kashyap in his Parliamentary

Procedure (Vol. 2, p.1657). It appears that Rajya Sabha adopted a motion on 2-9-1976 appointing a committee to investigate the conduct and

activities of the said Member, 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 as his conduct was found to be derogatory to the dignity of the House and inconsistent with the standards

which it was entitled to expect from its Members. On 15-11-1976, a motion was adopted by Rajya Sabha expelling the Member.

305. Coming to the cases of expulsion from Lok Sabha, the facts of the case of Mr H.G. Mudgal have been summarised at p. 262 in Practice and

Procedure of Parliament by Kaul and Shakdher (5th Edn.). Mr H.G. Mudgal was charged with having engaged himself in ""certain dealings with the

Bombay Bullion Association which include 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. On 8-6-

1951, a motion for appointment of a committee to investigate the conduct and activities of the Member was adopted by Lok Sabha. The

Committee, after inquiry, held that the conduct of the Member was derogatory to the dignity of the House and inconsistent with the standard which

Parliament was entitled to expect from its Members. In pursuance of the report of the Committee, a motion was brought before the House on 24-

9-1951, to expel Mr Mudgal from the House. The Member, after participating in the debate, submitted his resignation to the Deputy Speaker.

312. Mr A.K. Sen, in his speech was more concerned about the fairness of the procedure that had been adopted by the Committee on Privileges

before ordering expulsion of Mrs Gandhi and others. He stated as under: ""I remember when Charles the First was arraigned before the court

which was set up by Cromwell''s Government, at the end of the trial, he was asked whether he had anything to plead by way of defence. The

famous words he uttered were these. I do not think I can repeat them word by word, but I would repeat the substance. He said, ''To whom shall I

plead my defence? I only find accusers and no Judges.'' So this is what happened when Mrs Gandhi appeared before this august Committee.

Excepting a few who had the courage to record their notes of dissent, the minds of the rest had already been made up. This is very clear from the

utterances which came from them outside Parliament, before and after the elections and from the way they were trying to manipulate the entire

matter.

* * *

Sir, the Supreme Court in a series of decisions started from Sharma case laid down very clearly that the privileges cannot violate the fundamental

rights of a citizen. Therefore, if a citizen has the right not to be a witness against a sin or not to be bullied into cross-examination, then that right

cannot be taken away in the name of a privilege. You can convict her or you can verdict him by only evidence, but not by her own hand. Our law

forbids a person to be compelled to drink a cup of poison. The plutonic experiment would not be tolerated under our laws. No accused can be

said: "You take the cup of poison and swallow it." He has to be tried and he has to be sentenced according to the law.

313. Mr Jagan Nam Kaushal also referred to Hardwari Lal and then said:

When Mrs Gandhi"s case was before Parliament, that judgment was in the field. But nobody just cared to look at that. The reason is obvious, and

the reason has been given by the friends who have spoken. The reason is, we had a predetermined judge who was not in a mood to listen to any

voice of reason and I say it is a very sad day when we have to deal with predetermined judges. I can understand a judge not knowing the law, but

it is just unthinkable that a judge should come to the seat of justice with a predetermined mind to convict the person who is standing before him in

the capacity of an unfortunate accused. It is the negation of notions of justice. Therefore, what happened at that time was that not only Mrs Gandhi

was punished with imprisonment, but she was also expelled.

Judicial review - Manner of exercise - Law in England

318. Having held that the power of expulsion can be claimed by Indian legislatures as one of the privileges inherited from the House of Commons

through Article 105(3), the next question that arises is whether under our jurisprudence is it open to the court to examine the manner of exercise of

the said power by Parliament as has been sought by the petitioners.

332. In our view, the above observation of this Court in U.P. Assembly case (Special Reference No. 1 of 1964) 12 paraphrasing the position of

law and practice in England on the authority of May"s Parliamentary Practice, refers to enforcement by the legislature of privileges which had been

recognised by the courts. The observation has no relevance on the question under consideration in these matters since the law in England of

exclusive cognizance has no applicability in India which is governed and bound by the Constitution of India.

Parliamentary privileges vis-a-vis fundamental rights

333. Before considering judicial review in the Indian context, it is appropriate to first examine this aspect. In the face of arguments of illegalities in

the procedure and the breach of fundamental rights, it has been strongly contended on behalf of the Union of India that parliamentary privileges

cannot be decided against the touchstone of other constitutional provisions, in general, and fundamental rights, in particular.

346. The hollowness of the proposition of total immunity of the action of the legislatures in such matters is brought out vividly in the following

words: (AIR p. 787, para 128)

It would indeed be strange that the judicature should be authorised to consider the validity of the legislative acts of our legislatures, but should be

prevented from scrutinising the validity of the action of the legislatures trespassing on the fundamental rights conferred on the citizens.

(emphasis supplied)

351. We are unable to accept the argument of the learned counsel for the Union of India for the simple reason that what this Court ""deliberately

omitted"" to do in U.P. Assembly case (Special Reference No. 1 of 1964) was consideration of the powers, privileges and immunities other than

the contempt jurisdiction of the legislature. The views expressed as to the applicability of Article 20 and Article 21 in the context of manner of

exercise of the powers and privileges of the Legislative Assembly are of general import and cannot be wished away. They would hold good not

merely against a non-Member as was the case in that reference but even against a Member of the legislature who also is a citizen of this country

and entitled to the protection of the same fundamental rights, especially when the impugned action entails civil consequences.

352. In the light of law laid down in the two cases Pandit Sharma (I) and Pandit Sharma (II) and in U.P. Assembly case (Special Reference No. 1

of 1964) we hold that the broad contention on behalf of the Union of India that the exercise of parliamentary privileges cannot be decided against

the touchstone of fundamental rights or the constitutional provisions is not correct. In Pandit Sharma the manner of exercise of the privilege claimed

by the Bihar Legislative Assembly was tested against the ""procedure established by law"" and thus on the touchstone of Article 2.1. It is a different

matter that the requirements of Article 21, as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is

that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in U.P. Assembly case

(Special Reference No. 1 of 1964) 12 which added the enforceability of Article 20 to the fray.

354. The enforceability of Article 21 in relation to the manner of exercise of parliamentary privilege, as affirmed in Pandit Sharma (I) and Pandit

Sharma (II) and U.P. Assembly case (Special Reference No. 1 of 1964) has to be understood in light of the expanded scope of the said

fundamental right interpreted as above.

355. It is to be remembered that the plenitude of powers possessed by Parliament under the written Constitution is subject to legislative

competence and restrictions of fundamental rights and that in case a Member''s personal liberty was threatened by imprisonment of committal in

execution of parliamentary privilege, Article 21 would be attracted.

356. If it were so, we are unable to fathom any reason why the general proposition that fundamental rights cannot be invoked in matters concerning

parliamentary privileges should be accepted. Further, there is no reason why the Member, or indeed a non-Member, should not be entitled to the

protection of Article 21, or for that matter Article 20, in case the exercise of parliamentary privilege contemplates a sanction other than that of

committal.

360. The question of extent of judicial review of parliamentary matters has to be resolved with reference to the provision contained in Article

122(1) that corresponds to Article 212 referred to in Pandit Sharma (II) 20. On a plain reading, Article 122(1) prohibits ""the validity of any

proceedings in Parliament"" from being ""called in question"" in a court merely on the ground of ""irregularity of procedure"". In other words, the

procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the legislature. But then, ""procedural

irregularity"" stands in stark contrast to ""substantive illegality'' which cannot be found included in the former. We are of the considered view that this

specific provision with regard to check on the role of the judicial organ vis-a-vis proceedings in Parliament uses language which is neither vague nor

ambiguous and, therefore, must be treated as the constitutional mandate on the subject, rendering unnecessary search for an answer elsewhere or

invocation of principles of harmonious construction.

386. Article 122(1) thus must be found to contemplate the twin test of legality and constitutionality for any proceedings within the four walls of

Parliament. The fact that U.P. Assembly case (Special Reference No. 1 of 1964) dealt with the exercise of the power of the House beyond its four

walls does not affect this view which explicitly interpreted a constitutional provision dealing specifically with the extent of judicial review of the

internal proceedings of the legislative body. In this view, Article 122(1) displaces the English doctrine of exclusive cognizance of internal

proceedings of the House rendering irrelevant the case-law that emanated from courts in that jurisdiction. Any attempt to read a limitation into

Article 122 so as to restrict the court''s jurisdiction to examination of the Parliament''s procedure in case of unconstitutionality, as opposed to

illegality would amount to doing violence to the constitutional text. Applying the principle of ""expressio unius est exclusio alterius"" (whatever has not

been included has by implication been excluded), it is plain and clear that prohibition against examination on the touchstone of ""irregularity of

procedure"" does not make taboo judicial review on findings of illegality or unconstitutionality.

Parameters for judicial review re: Exercise of parliamentary privileges

389. ... In fact this has been done by express prescription in the constitutional provisions, including the one contained in Article 122(1). But our

scrutiny cannot stop, as earlier held, merely on the privilege being found, especially when breach of other constitutional provisions has been alleged.

393. while the same view can be adopted as to the element of ""irrationality"", but in our constitutional scheme, illegality or unconstitutionality will not

save the parliamentary proceedings.

397. ...Article 122(1) contemplating the twin test of legality and constitutionality for any proceedings within the four walls of Parliament as against

mere procedural irregularity, thereby displacing the English doctrine of exclusive cognizance of internal proceedings of the House, the restrictions

on judicial review propagated by the learned Additional Solicitor General do not deserve to be upheld.

398. We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent

indicated in Article 122(1), that is to say the court will decline to interfere if the grievance brought before it is restricted to allegations of ""irregularity

of procedure"". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by

Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the Seventh

Lok Sabha with the conclusion that it was ""inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and

the basic safeguards assured to all enshrined in the Constitution"", it would be a partisan action in the name of exercise of privilege. We are not

going into this issue but citing the incident as an illustration.

399. Having concluded that this Court has the jurisdiction to examine the procedure adopted to find if it is vitiated by any illegality or

unconstitutionality, we must now examine the need for circumspection in judicial review of such matters as concern the powers and privileges of

such august body as Parliament.

Summary of the principles relating to parameters of judicial review in relation to exercise of parliamentary provisions

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

(h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on

the citizens;

(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;

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

(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.

450. The reports of the Inquiry Committee of Lok Sabha and the Committee on Ethics of Rajya Sabha indicate that both of the said Committees

had called for explanations from each of the Members in question and had given due consideration to the same.

613. Construing Article 212 in its proper perspective and drawing distinction between ""irregularity"" and ""illegality"", the Court stated: [U.P.

Assembly case (Special Reference No. 1 of 1964) 12, AIR pp. 767-68, para 62]

... Article 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the legislature of a State shall not be

called in question on the ground of any alleged irregularity of procedure. Article 212(2) confers immunity on the officers and members of the

legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in

the legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212(1) seems to make it

possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that

the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it

would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that

the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers

conferred on the House by Article 194(3).

651. We have a written Constitution which confers power of judicial review on this Court and on all High Courts. In exercising power and

discharging duty assigned by the Constitution, this Court has to play the role of a ""sentinel on the qui vive "" and it is the solemn duty of this Court to

protect the fundamental rights guaranteed by Part III of the Constitution zealously and vigilantly.

652. It may be stated that initially it was contended by the respondents that this Court has no power to consider a complaint against any action

taken by Parliament and no such complaint can ever be entertained by the Court. Mr Gopal Subramanium, appearing for the Attorney General,

however, at a later stage conceded (and I may say, rightly) the jurisdiction of this Court to consider such complaint, but submitted that the Court

must always keep in mind the fact that the power has been exercised by a coordinate organ of the State which has the jurisdiction to regulate its

own proceedings within the four walls of the House. Unless, therefore, this Court is convinced that the action of the House is unconstitutional or

wholly unlawful, it may not exercise its extraordinary jurisdiction by reappreciating the evidence and material before Parliament and substitute its

own conclusions for the conclusions arrived at by the House.

653. In my opinion, the submission is well founded. This Court cannot be oblivious or unmindful of the fact that the legislature is one of the three

organs of the State and is exercising powers under the same Constitution under which this Court is exercising the power of judicial review. It is,

therefore, the duty of this Court to ensure that there is no abuse or misuse of power by the legislature without overlooking another equally

important consideration that the Court is not a superior organ or an appellate forum over the other constitutional functionary. This Court, therefore,

should exercise its power of judicial review with utmost care, caution and circumspection.

Observance of natural justice

671. It was also urged that the Committee had not given sufficient opportunity to the petitioners to defend them and had not complied with the

principles of natural justice and fair play. It was submitted that the doctrine of natural justice is not merely a matter of procedure but of substance

and any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution.

Reference in this connection was made to Maneka Gandhi v. Union of India, Kihoto Hollohan and other decisions.

672. So far as principle of law is concerned, it is well settled and cannot be disputed and is not challenged. In my opinion, however, in the facts of

the case, it cannot successfully be contended that there is breach or non-observance of natural justice by the Committee. Reading of the reports

makes it clear that adequate opportunity had been afforded to the petitioners and thereafter the action was taken. Notices were issued to the

Members, CDs were supplied to them, evidence of witnesses was recorded, de fence version was considered and ""findings and conclusions"" were

reached.

20. After hearing the submissions of the learned counsel for the petitioner and considering the fact that the question involved in this case is to be

decided based on important Constitutional issues, when this matter was listed for admission, this Court requested the learned Advocate General to

assist this Court as ""Amicus Curiae"" and accordingly, he had made his elaborate submissions on the legal provisions of the Constitution besides

pointing out the relevant provisions in the Rules and the decisions rendered by the Supreme Court as well as various High Courts on the subject

matter of this case.

21. At the outset, the learned Advocate General, while narrating the summary of facts which led to the passing of the impugned resolution,

submitted that on 18.10.2007, when another privilege motion was sought to be taken up in the Legislative Assembly, there was a commotion in the

Assembly; therefore, the Hon''ble Speaker had ordered the removal of the Members of a particular party on account of their disorderly behaviour

and they were removed from the House for the remaining period of the Assembly Session namely 18,19 and 22nd October 2007; while they were

being evicted by the Watch and Ward staff of the Legislature, one of the Members, viz., the petitioner, while thus being evicted, threw a cap of the

Watch and Ward staff and the same landed on the table of the Hon''ble Speaker; hence, it was considered that the hurling of the cap towards the

Hon''ble Speaker would amount to affecting the privilege of the House amounting to contempt of the House and the Hon''ble Speaker; the act

complained of was done in the presence and in the view of not only the Hon''ble Speaker, Deputy Speaker but also in the presence of a large

number of Members of the House present at that point of time; two Members of the House, viz., Mr. Doraisamy, Deputy Speaker and Mr.

Duraimurugan, Hon''ble Minister for Law, raised the privilege issue immediately on 18.10.2007 and the Hon''ble Speaker replied that after viewing

the video recording of the proceedings of the House, he would inform the House about his decision; thereafter, the said video recording was

viewed by the Speaker and the leaders of the other political parties and then, on 19.10.2007, the subject matter was taken up by the Hon''ble

Speaker in the House; after due deliberation, a motion was moved by the Floor Leader of the House to deprive the petitioner from functioning as a

Member of Legislative Assembly for a specific period including depriving him from enjoying any privilege and monetary benefit attached to the

office of a Member of Legislative Assembly; this motion was unanimously adopted by the House as a resolution and it is this resolution which is

impugned in this writ petition.

22. Next, the learned Advocate General started placing his submissions stating that the impugned resolution of the first respondent is challenged on

various grounds such as that it violates the principles of natural justice since neither a resolution nor an opportunity was given to him, a copy of the

resolution of the House dated 19.10.2007 and video record copy were never served on him, it violates the freedom of speech guaranteed under

Article 19(1)(a) of the Constitution of India and also Article 14 of the Constitution of India inasmuch as the procedure contemplated in the Rules

has not been followed and as such, the said action of the first respondent is totally arbitrary, unconstitutional and illegal. It is his submission that the

impugned resolution is further challenged on other grounds Such as that the fundamental right guaranteed under Article 21 of the Constitution had

been violated and so also the right to reputation which is one of the facets of Article 21; the provisions of the Rules particularly, Rule 219, 220,

221, 223, 225 and 226 and more particularly, the Rules pertaining to the Privilege Motion were not strictly followed and hence, the impugned

resolution is illegal; the video recording of the House was not a reliable evidence since such recording is not contemplated in the said Rules;

privileges and perks like residential accommodation at MLA''s hostel, compensatory allowance, telephone allowance, constituency allowance and

various other allowances were deprived and the same would amount to multiple punishments. It is the Advocate General''s further submission that

the impugned resolution has also been challenged on the ground that unless disqualified under Article 194 of the Constitution, a Member cannot be

prevented from discharging his functions as a Member of Legislative Assembly and Assembly has no power to deter or deprive a Member even

for a limited period, his privileges, tenure and perquisites granted under the Constitution and the Rules.

23. In respect of judicial review by this Court, the learned Advocate General has contended that it should be left to the wisdom of the legislature to

decide as to on what occasion, and, in what manner, the power is to be exercised especially as the Constitution gives to it the liberty of making

rules for regulating its procedure and the conduct of its business. In support of this contention, reliance has been placed by the learned Advocate

General on the decision of the Supreme Court in Raja Ram Pal''s case. In this regard, he has referred to Article 212 of the Constitution to argue

that the validity of proceedings in Parliament is a matter which is expressly beyond scrutiny by the judicature and also that the principle of exclusive

cognizance of the Legislature in relation to its privileges under Article 194 of the Constitution constitutes a bar on the jurisdiction of the Court which

is of equal weight as other provisions of the Constitution including those contained in Part III and therefore, the manner of enforcement of the

privilege cannot be tested on the touchstone of other constitutional provisions.

24. A consistent plea was raised by the learned Advocate General before this Court that this Court can examine and scrutinise the action of the

Legislature only when there is a violation of fundamental right and whatever the procedural irregularity cannot be a ground to entertain a petition

under Article 226 of the Constitution of India and particularly, when there is no illegality or unconstitutionality, this Court has no power to examine

any issue which transpires inside the House of Legislature. It is his strenuous contention that in the absence of any constitutional violation

guaranteed under Article 14, 19(1)(a) and 21 of the Constitution, there is no scope for interference by this Court to test a resolution passed by the

Legislative Assembly as the incident in question had transpired during the hour of sitting of the House and as such, the power exercised by the

Speaker cannot be taken away by a judicial interpretation and the discretionary power is vested with constitutional functionary to deal with

exigencies of innumerable situations that arrive from time to time and vesting of such power is valid under the constitutional law.

25. It is strongly contended by the learned Advocate General that the Parliament and Legislature, while dealing with the privilege issues and

contempt of House, exercise special plenary power to protect their privileges and as such, the impugned resolution passed by the House with

reference to matter of privilege of contempt of House is special and plenary exercise of power and jurisdiction as that of House of Commons as

per Article 194(3) of the Constitution. It is his further contention that the Speaker and the House are constitutional authorities exercising special

power conferred under the Constitution to protect and preserve the House and they are the only and proper authority to do so and the Judiciary

seldom, ordinarily and normally, shall not sit over or decide the judgment of the House and Speaker and in any event, the facts and circumstances

of the case on hand do not warrant judicial interdiction.

26. It has been further contended by the learned Advocate General that while clause (1) of Article 212 grants immunity to the proceedings of a

Legislature of a State from any challenge on the ground of irregularity of procedure in a Court of law, Clause (2) of Article 212 grants immunity to

an officer or a member of a Legislature of a State in respect of exercise of powers vested in him for regulating procedure and the conduct of

business for maintaining order in the Legislature. In support of his contention, reliance has been placed by him on paragraph 357, 363 and 366 of

the judgment of the Supreme Court in Raja Ram Pal"s case in which the parameters of judicial review have been laid down.

27. Coming to the question of violation of Article 14 of the Constitution of India, the learned Advocate General has contended that there is no

arbitrariness in the impugned action of the Legislature inasmuch as procedures were followed in the manner as provided in Rule 223 and 225

which are not under challenge whereas the same are relied upon by the petitioner. In this context, he has pointed out that the Rules contemplate

two situations regarding privilege issue, one being the acts complained of, taking place during the sitting of the House and the other being the acts

complained of taking place otherwise and for each situation, separate procedure is contemplated in the said Rules and in the instant case, the act

complained of, took place during the sitting of the House and the appropriate procedure was followed by the Speaker of the Assembly exercising

his discretion and therefore, there is no violation of Article 14 of the Constitution and the procedure followed by the Speaker cannot be faulted and

even if faulted, the same will be protected under Article 212 of the Constitution of India.

28. On the aspect as to whether there is violation of Article 19(1)(a) of the Constitution, the learned Advocate General has strenuously contended

that Article 194(1) of the Constitution provides for the powers, privileges of the House of Legislatures and of the members and committees

thereof. The said Article reads that 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. He has argued that from a reading of this Article, it is clear that there

is absolute freedom of speech within the Legislature and those are subjected to the Constitution and the Rules framed thereunder. It is also his

contention that clauses 2 to 4 of Article 194 are not controlled inasmuch as freedom of speech as guaranteed under Article 19(1)(a) and 194(1)

are two different species of freedom of speech and the same cannot be equated, interchanged or interlinked. It has been contended by him that

Article 19(1)(a) is subject to reasonable restriction under Article 19(2) and available to all citizens and the same is not the case in Aritlcle 194(1) of

the Constitution since it is available only to a Member of a Legislature and more so, being a Member of a Legislative Assembly is not a

fundamental right and hence, there is no violation of Article 19(1)(a) of the Constitution as has been held by the Supreme Court in the case of in

M.S.M. Shartna v. Sri Krishan Sinha reported in AIR 1950 SC 395 (Sharma-I) that the principle of harmonious construction must be adopted,

and so construed, the provisions of Article 19(1)(a), which are general, must yield to Article 194(1) and the latter part of its clause (3) which are

special and as such, the freedom of speech of the petitioner under Article 19(1)(a) outside the House is not curtailed by the impugned resolution

and in such a case, the petitioner cannot be heard to complain of violation of Article 19(1)(a) of the Constitution of India.

29. Next, an analysis of events and legal position and the precedence set by the Supreme Court has been pointed out by the learned Advocate

General on the aspect as to whether Article 21 of the Constitution has been violated. While doing so, he has taken me through the judgment of the

Supreme Court reported in Raja Ram Pal''s case in which in paragraphs 164 and 165, it has been held that even if it were to be assumed that these

rights apply, we do not believe that they could prevent reading the power of expulsion within Article 105(3). Thus, by placing strong reliance on

this, he has argued that there is no violation of Article 21 of the Constitution of India as contended by the petitioner.

30. The learned Advocate General has contended that every facet of Article 21 cannot be tested against Article 194 (1), (2), (3) and (4) for the

reason that the same would amount to restricting the freedom, power and jurisdiction of the Legislature including to deal with privilege and

contempt of the House effectively and that if all facets of Article 21 are pressed against Article 194 as controlling provision, then, it will result in the

undoing of House itself in course of time. He has further argued that the freedom enshrined under Article 194(1) and the protection under Article

194(2) of the Constitution cannot be diminished either directly or indirectly by giving liberal meaning to Article 21 of the Constitution as to its

application to the former said Articles. It has also been argued that the freedom of discussion within the Parliament and Legislature would be at

stake and the entire Article 194 (1) and (2) would become otiose and therefore, the liberal interpretation of Article 21 of the Constitution to test

executive, legislative, quasi-judicial and even judicial acts may not be applied with similar or same vigour to the acts of Parliament and Legislature

while dealing with privilege and contempt power and jurisdiction.

31. The learned Advocate General has assisted the Court by pointing out the relevant provisions of Rules of Legislature and according to him, in

exercise of powers conferred under Art. 208(1) of the Constitution of India, the Legislative Assembly had framed the Rules which prescribe the

procedure to be followed by the Assembly including while dealing with privilege of the House and that while Chapter XX pertains to constitution of

Committees, Rules 219 to 230 pertain to issues relating to privileges. He has further submitted that the relevant rules for consideration are Rule

219 which provides that a member may, with the consent of the Speaker, raise a question involving the breach of privilege either involving the

House or of a Committee thereof and the proviso to Rule 221 which reads that a question of the privilege arising during the sitting of the House

shall be entitled to immediate precedence over all other business. He has also brought to the notice of this Court Rule 222(2) which provides that

the matter, in the opinion of the Speaker requires the intervention of the House and also the second proviso to Rule 223 which states that the

Speaker may give an opportunity to the Member against whom the matter is sought to be raised to briefly explain his case. Also, Rule 225 has

been pointed out by the learned Advocate General and it reads that if the Speaker holds that the matter raised affects the privilege or amounts to a

contempt of the House and requires the intervention of the House, he may allow a motion to be made by any member that the alleged breach of

privilege be referred to the Committee of privileges or in the alternative that it be dealt by the House itself.

32. As per the above Rules, the learned Advocate General has brought to the notice of this Court that in respect of raising a question of privilege,

the Speaker may allow a motion to be made by a Member which may either be referred to the Privilege Committee or dealt with by the House

itself and this being the position, it is open for the House to take up the matter by itself. In reply to the argument of the learned counsel for the

petitioner as to the interpretation of the word ""may"" found in the Rules, the learned Advocate General has argued that the case law in State (Delhi

Admin.) I.K. Nangia and another deals with the commercial organistion and its discretion vested with its officials and therefore, the same cannot be

compared with the Speaker who is discharging Constitutional functions. In respect of reliance made in the case of N. Nagendra Rao & Co. v.

State of A.P., it is the Advocate General"s contention that the said judgment deals with Essential Commodities Act, the object of which is to

achieve disposal of goods that could decay speedily and failure to observe the same shall frustrate the objects of the said Act and as such, reliance

on this judgment also cannot be of any help to the petitioner. While justifying that the judgment in Wasim Beg v. State of Uttar Pradesh and others

and Orissa Textile & Steel Ltd. v. State of Orissa & others also are not applicable to the case on hand, it is his argument that both the cases arise

out of the Industrial Disputes Act and in the former case, the discharge of confirmed employees is dealt with and the latter one, power of Review

by the Government, its duty and obligation are considered and as such, the word ""may"" in those judgments have to be considered only as ""shall

and not otherwise.

33. Coming to the applicability of principles of natural justice, the learned Advocate General has pointed several propositions and submitted that

the Supreme Court, in the case of Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, has been held that

natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all and if fairness is shown by the decision-maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each

situation and therefore, the principles of natural justice need not be followed always and it depends on the facts and circumstances of each situation

and in the present case, the House had adopted the procedure as contemplated under the Rules and had pro-ceeded to deal with the matter

accordingly in the facts and circumstances of this case and that the following are the special circumstances which are apparent in the case on hand:

1. The act complained of happened during the sitting of the House to the view and knowledge of the Members present including the Speaker and

Deputy Speaker.

2. The Deputy Speaker who has seen it has raised the privilege issue and the same was discussed then and there.

3. The Act complained of was a serious misconduct on the part of the petitioner violating the privilege, dignity, decorum, safety, etc. of the House

and Speaker and amounts to contempt of the House.

4. The act complained of has been video-recorded in the official and simultaneous recording of the proceedings of the House. This practice of

simultaneous video-recording of the proceedings at the House has been in vogue since August 2001.

5. The video-recording containing the alleged act of the petitioner was viewed by the Speaker and the Leaders of various political parties in the

House. No worthwhile allegations or materials placed before Court to disbelieve them.

6. The Rules of the House framed under Article 208 enable the procedure adopted for the deliberation and the passing of the Resolution in that

manner.

7. The Resolution was adopted after deliberation and unanimously.

34. While narrating the exemptions to the rule of natural justice, the learned Advocate General has contended that though the petitioner has denied

about the incident and his involvement about the act that is being complained of, before the Court for the first time after more than two months,

there was neither justifying nor compelling need to give him an opportunity since the role of the petitioner had happened during the sitting of the

House which was undisputable and there were members as eye-witnesses and there was also official electronic record by way of simultaneous

video recording of the House proceedings and therefore, in the facts and circumstances of this case, the Speaker, being a constitutional

functionary, exercised the discretion vested in him and decided that there was no need to give an opportunity to the petitioner, particularly when he

along with other Members, had witnessed the said act on 18.10.2007 which had occurred ""during the proceedings"" of the House and the same

was also confirmed by viewing the video recording; in the said circumstances, on 19.10.2007, after viewing the video recording, the Assembly had

unanimously passed the resolution sought to be impugned in this writ petition. As regards the practice of video recording of the Assembly

proceedings, he has brought to the notice of this Court that this has been done from 16.08.2001 onwards as per the orders of the then Speaker

and such video recording has been in vogue for more than six years and not disputed or objected by any Member of Legislature or political parties

till now and nor its veracity, reliability and authenticity ever questioned or disputed and thus, even providing an opportunity would not have made

any difference and issuance of notice to the petitioner would be nothing but an ""empty formality"" which would only cause needless delay in dealing

with the situation in question when the ultimate object remains that the situation should be dealt with then and there to preserve the dignity and

respect for the House in public interest, lest, the honour of the House and confidence of the people in the House as the repository of Legislative

authority will be lost.

35. Further, he has placed reliance on Erskine May''s commentary as extracted in 2001(1) LW (Crl.) 155 with regard to the act complained of

which took place in the House and the same reads thus:

PUNISHMENTS INFLICTED ON MEMBERS

In the case of contempts committed against the House of Commons by Members two other penalties are available viz., suspension from the

service of the House and expulsion. In some cases expulsion has been inflicted in addition to committal.

xxxxxxxxxxxxxxxxxxxxxxx

PROCEEDINGS IN CASE OF CONTEMPT

Where the contempt is committed in the actual view of either House, as for example, where a witness prevaricates, gives false evidence or refuses

to answer, the House proceeds at once, without hearing the offender, unless by way of apology or to manifest his contrition, to punish him for his

contempt. But, save some times where a contempt committed in the actual view of the committee is reported by the committee, neither House will

punish a contempt committed out of such House or not in its actual view without hearing the party implicated in his defence.

Both Houses of Parliament have power to send for persons to answer charges of breach of privilege or contempts without specifying in the order

for their attendance the object or the causes whereon their attendance is required. They have also power to send for supposed offenders in

custody and all civil officers and magistrates, and indeed all subjects of the Queen, are bound to assist, when required, in executing their warrants

and orders.

36. By citing the above, the learned Advocate General has contended that the House has plenary power to maintain and uphold its privileges and

reputation and to punish any person, either member or non-member, for violating the same and as such, exercise of such power by the House

cannot be found fault with in the facts and circumstances of this case on the ground of violation of Article 14 or principles of natural justice. He has

further submitted that the principle indicated in the judgment of Raja Ram Pal''s case has also been expressed by a Division Bench of this Court in

its judgment in Anbazhagan''s case at para 73 while rejecting the contention that a Member cannot be disqualified by exercise of power under

Article 194 and that the Legislature is invested with necessary power. Thus, he has contended that in India, both the Parliament and the State

Legislatures are possessed of and invested with necessary power to expel a Member from the Membership of the House concerned,

notwithstanding any other provisions contained in the Constitution and all other laws.

37. With regard to the reliance placed on the side of the petitioner on the judgment reported in State of Bihar Vs. Lal Krishna Advani and Others,

in L.K. Advani''s case, the learned Advocate General has contended that such a plea of loss of reputation was not at all taken in the affidavit but

the same was argued. In this connection, it is his further contention that the said case cannot be made applicable to the facts and circumstances of

the case on hand inasmuch as it was governed by Commission of Inquiry Act in which Section 8B provides for issuance of a notice and they are

statutory in nature and the facts are different and therefore, the case of Legislature exercising its power and jurisdiction with regard to protection

and preservation of its privileges stands in a different footing and pedestal and the Speaker and Legislature, being constitutional authorities, cannot

be equated to the Commission of Inquiry or any other Executive authority or even to legislative exercise of Legislature and therefore, the anology

and the ratio laid down in that case is not applicable to the case on hand.

38. As regards the theory of ""empty formality"", the learned Advocate General has pointed out that this aspect has been dealt with by the Supreme

Court in (a) M.C. Mehta Vs. Union of India (UOI) and Others, (b) Aligarh Muslim University and Others Vs. Mansoor Ali Khan, (c) Canara

Bank and Others Vs. Shri Debasis Das and Others, and (d) S.L. Kapoor Vs. Jagmohan and Others, . He has contended that the observation in

S.L. Kapoor''s case that facts admitted, disputable and there is only one penalty to the offence may not apply to the facts of this case especially

when this case relates to the exercise of powers and jurisdiction by the Speaker and Legislature while exercising the same with reference to

privilege and contempt of the House as enabled by the practice of House of Commons by legal fiction attributed to Indian Legislatures under

Article 194(3) of the Constitution. His further contention is that the said power and jurisdiction is exercised by constitutional authorities only to

preserve the honour, integrity and discipline of the House and this cannot be questioned.

39. On the point of interference in quantum of punishment imposed by the Legislature, the learned Advocate General has contended that the

resolution impugned in this writ petition disentitles the petitioner to function as a Member of Legislative Assembly only for a certain period as a

consequence of which he loses the benefits flowing from the office of M.L.A. and that in any event, this is not a punishment for an offence attracting

double jeopardy. The learned Advocate General, on the aspect as to whether non-furnishing of the impugned resolution to the petitioner warrants

interference by this Court, has contended that the punishment imposed on the petitioner was widely published in the print and electronic media on

18th and 19th October 2007 and the following days which he is well aware of and yet, till the filing of this writ petition on 08.01.2008, he had kept

quiet without conveying his objections to the respondents 1 and 2 nor sought a copy of the resolution or video recording but had admittedly

obtained the verbatim copy of the deliberations of the House through another Member and as such, he is not at all prejudiced by non-serving of the

impugned resolution on him.

40. To substantiate his contentions in the process of assisting this Court, the learned Advocate General has placed reliance on the following

judgments:

i. Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and Others, 8 Judge Bench judgment of the Supreme Court

10. It now remains to consider the other subsidiary questions raised on behalf of the petitioner. It was contended that the procedure adopted

inside the House of the Legislature was not regular and not strictly in accordance with law. There are two answers to this contention, firstly, that

according to the previous decision of this Court, the petitioner has not the fundamental right claimed by him. He is, therefore, out of Court.

Secondly, the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid

down by the law had not been strictly followed. Article 212 of the Constitution is a complete answer to this part of the contention raised on behalf

of the petitioner. No Court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to

conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the petitioner is that it is yet premature to

consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be observed that once it has been held that

the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its

privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business. Even though it

may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for

interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic difference between complete want of

jurisdiction and improper or irregular exercise of jurisdiction. Mere non- compliance with rules of procedure cannot be a ground for issuing a writ

under Article 32 of the Constitution vide Janardan Reddy and Others Vs. The State of Hyderabad and Others,

ii. AIR 1968 Punjab & Haryana 217 (S. Sher Singh v. Raghu Pati Kapur and another) - Full Bench

26. There is then the argument of respondent 1 that the summary procedure provided in contempt matters in this Court is discriminatory inasmuch

as it is a procedure entirely different from the procedure for the trial of a criminal offence under the Code of Criminal Procedure and thus it is

violative of Article 14 of the Constitution. He has referred to Section 3(1) of Act 32 of 1952 that the High Court has to follow "the same

procedure and practice" in the matter of contempt proceedings, which as has been pointed out by Their Lordships in Sukhdev Singh Sodhi Vs.

The Chief Justice and Judges of The Pepsu High Court, is a summary procedure and has been followed under the law throughout and continues to

be so under Act. 32 of 1952. Article 215 of the Constitution provides that ""Every High Court shall be a Court of Record and shall have all the

powers of such a Court including the power to punish for contempt of itself"". In a way even the Constitution has recognised the power of a Court

of record to punish for contempt of Court summarily as has always been the case. It is a peculiar type of an offence which is a class by itself and,

therefore, it has a procedure for itself. The classification is intelligible as also the classification has rational relation to the object in that in the matter

of contempt the punishment is awarded summarily for that is done not with the object of providing protection to individual Judges but in the interest

of administration of justice so that the public confidence in the impartiality of the Judges be not shaken. It is this object with which the proceedings

in contempt of Court have been classified as proceedings of a class by themselves with a procedure of their own. So the procedure provides for

the summary trial of the contempt of Court is not violative of Article 14.

iii. S.L. Kapoor Vs. Jagmohan and Others, 3 Judge Bench judgment of the Supreme Court:

24. The matter has also been treated as an application of the general principle that justice should not only be done but should be seen to be done.

Jackson''s Natural Justice (1980 Edn.) contains a very interesting discussion of the subject. He says:

The distinction between justice being done and being seen to be done has been emphasised in many cases.

....

The requirement that justice should be seen to be done may be regarded as a general principle which in some cases can be satisfied only by the

observance of the rules of natural justice or as itself forming one of those rules. Both explanations of the significance of the maxim are found in Lord

Widgery, C.J.''s judgment in R. v. Home Secretary, Ex. P. Hosenball, (1977) 1 WLR 766, 772, where after saying that ""the principles of natural

justice are those fundamental rules, the breach of which will prevent justice from being seen to be done"" he went on to describe the maxim as ""one

of the rules generally accepted in the bundle of the rules making up natural justice"".

It is the recognition of the importance of the requirement that justice is seen to be done that justifies the giving of a remedy to a litigant even when it

may be claimed that a decision alleged to be vitiated by a breach of natural justice would still have been reached had a fair hearing been given by

an impartial tribunal. The maxim is applicable precisely when the court is concerned not with a case of actual injustice but with the appearance of

injustice or possible injustice. In Altco Ltd. v. Sutherland, (1971) 2 Lloyd''s Rep.515, Donaldson, J., said that the court, in deciding whether to

interfere where an arbitrator had not given a party a full hearing was not concerned with whether a further hearing would produce a different or the

same result. It was important that the parties should not only be given justice, but, as reasonable men, know that they had had justice or ""to use the

time hallowed phrase"" that justice should not only be done but be seen to be done. In R. v. Thames Magistrates'' Court, ex. p. Polemis (1974) 1

WLR 1371, the applicant obtained an order of certiorari to quash his conviction by a stipendiary magistrate on the ground that he had not had

sufficient time to prepare his defence. The Divisional Court rejected the argument that, in its discretion, it ought to refuse relief because the

applicant had no defence to the charge.

It is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. If justice was so clearly not

seen to be done, as on the afternoon in question here, it seems to me that it is no answer to the applicant to say: "Well, even if the case had been

properly conducted, the result would have been the same. That is mixing up doing justice with seeing that justice is done (per Lord Widgery, C.J.

at p. 1375).

In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice

had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of

natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As

we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the

court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because

courts do not issue futile writs. We do not agree with the contrary view taken by the Delhi High Court in the judgment under appeal.

iv. AIR 1988 Madras 275 = 1988-2-L.VV.33 S.N. (K. Anbazhagan & others v. The Secretary, The Tamil Nadu Legislative Assembly, Madras

and others) - First Bench judgment of Madras High Court:

112. We would summarise our conclusions in the form of the following propositions:

7. The effect of the Constitution (Forty fourth Amendment) Act, 1978 amending Art.194(3) is that whenever a question of privilege arises, the

relevant point of time for ascertaining whether a similar privilege was exercised by the House or its members and Committees has to be determined

with reference to 20th June, 1979.

8. The power of expulsion apart from being a part of the power of the House of Commons to regulate its own composition, was essentially a

power which was in the nature of exercising a disciplinary control over the membership of the House with a view to see that such of the members

who are unfit in the opinion of the House to continue to be its members, could be expelled from membership. What is important is not that the

power of expulsion so exercised was a part of the powers of the House of Commons to regulate its composition but that the power of expulsion

was in fact exercised by the House of Commons also as a part of the power to punish a member by expelling him.

10. By enacting Art.194(3) what was intended to be adopted was the powers and privileges of the House of Commons as set out in May"s

Parliamentary Practice, which included the power of expulsion.

11. The power of expulsion is not inconsistent with any of the other provisions of the Constitution of India. Such power cannot be negatived on the

ground that an elected member was entitled to continue as a member for a period of five years or that a particular constituency may go

unrepresented because of the expulsion of the elected representative.

16. The resolution of expulsion is not open to challenge on the ground that the concerned members were not heard as such a challenge would be a

challenge on the ground of failure to follow a procedure which would amount to an ''irregularity'' and not an ''illegality'' having regard to the

provisions of Art.212 of the Constitution of India.

17. The Resolution of expulsion is not open to challenge on the ground that a seat becoming vacant on account of expulsion of a member is not

expressly contemplated by S.150 of the Representation of the People Act, because the opening part of S.150 will also cover a case of seat

becoming vacant as a result of expulsion.

v. M.C. Mehta Vs. Union of India (UOI) and Others, : - 2 Judge Bench judgment of the Supreme Court

18. We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused

even though there was breach of natural justice. The first one is Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, There

the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25-8-1960 to locate a primary health centre at Dharmajigudem.

Later, it passed another resolution on 29-5-1961 to locate it at Lingapalem. On a representation by the villagers of Dharmajigudem, the

Government passed orders on 7-3-1962 setting aside the second resolution dated 29-5-1961 and thereby restoring the earlier resolution dated

25-8-1960. The result was that the health centre would continue at Dharmajigudem. Before passing the orders dated 7-3-1962, no notice was

given to the Panchayat Samithi. This Court traced the said order of the Government dated 7-3-1962 to Section 62 of the Act and if that were so,

notice to the Samithi u/s 62(1) was mandatory. Later, upon a review petition being filed, the Government passed another order on 18-4-1963

cancelling its order dated 7-3-1962 and accepting the shifting of the primary centre to Lingapalem. This was passed without notice to the villagers

of Dharmajigudem. This order of the Government was challenged unsuccessfully by the villagers of Dharmajigudem in the High Court. On appeal

by the said villagers to this Court, it was held that the latter order of the Government dated 18-4-1963 suffered from two defects, it was issued by

the Government without prior show-cause notice to the villagers of Dharmajigudem and the Government had no power of review in respect of

government orders passed u/s 62(1). But that there were other facts which disentitled the quashing of the order dated 18-4-1963 even though it

was passed in breach of the principles of natural justice. This Court noticed that the setting aside of the latter order dated 18-4-1963 would

restore the earlier order of the Government dated 7-3-1962 which was also passed without notice to the affected party, namely, the Panchayat

Samithi. It would also result in the setting aside of a valid resolution dated 29-5-1961 passed by the Panchayat Samithi. This Court refused relief

and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, J. (as he then

was) observed (at SCR p. 189) as follows:

Both the orders of the Government, namely, the order dated 7-3-1962, and that dated 18-4-1963, were not legally passed: the former, because

it was made without giving notice to the Panchayat Samithi, and the latter, because the Government had no power u/s 72 of the Act to review an

order made u/s 62 of the Act and also because it did not give notice to the representatives of Dharmajigudem village.

His Lordship concluded as follows:

In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the Government dated 18-4-1963? If

the High Court had quashed the said order, it would have restored an illegal order - it would have given the Health Centre to a village contrary to

the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary

discretionary power in the circumstances of the case.

The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the

order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its

discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and

against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.

21. It is true that in Ridge v. Baldwin, 1964 AC 40, it has been held that breach of the principles of natural justice is in itself sufficient to grant relief

and that no further de facto prejudice need be shown. It is also true that the said principles have been followed by this Court in several cases but

we might point out that this Court has not laid down any absolute rule. This is clear from the judgment of Chinnappa Reddy, J. in Juwarsingh and

Others Vs. State of Madhya Pradesh, . After stating (at SCC p. 395, para 24) that ''principles of natural justice know of no exclusionary rule

dependent on whether it would have made any difference if natural justice had been observed'' and that ''non-observance of natural justice is itself

prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary'', Chinnappa Reddy, J. also laid

down an important qualification as follows: (SCC p. 395, para 24)

As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible,

the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because

courts do not issue futile writs.

25. In our view, on the admitted and indisputable facts set out above, namely, the recall of our earlier order of the Court, it becomes mandatory for

the Court to restore the status quo ante prevailing on the date of its first order. Restitution is a must. Further Bharat Petroleum having got back its

plot at the Ridge it cannot lay further claim to the one at San Marten Marg which was given to it only in lieu of the Ridge plot. Similarly, HPCL has

to get back its plot in San Marten Marg inasmuch, otherwise, it will have none and Bharat Petroleum will have two. Bharat Petroleum cannot retain

the advantage which it got from an order of this Court which has since been withdrawn. Thus what is permissible and what is possible is a single

view and the case on hand comes squarely within the exception laid down by Chinnappa Reddy, J. in S.L. Kapoor Vs. Jagmohan and Others,

vi. Aligarh Muslim University and Others Vs. Mansoor Ali Khan, -2 Judge Bench judgment of the Supreme Court:

24. The ""useless formality"" theory, it must be noted, is an exception. Apart from the class of cases of ""admitted or indisputable facts leading only

to one conclusion"" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views

expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta Vs. Union of India (UOI) and Others, = 2001-

1-L.W.449 referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord

Woolf, Lord Bingham, Megarry, J. and Straughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner,

Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court

will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied

via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a

particular case.

25. It will be sufficient, for the purpose of the case of Mr Mansoor Ali Khan to show that his case will fall within the exceptions stated by

Chinnappa Reddy, J. in S.L. Kapoor Vs. Jagmohan and Others, , namely, that on the admitted or indisputable facts, only one view is possible. In

that event no prejudice can be said to have been caused to Mr Mansoor Ali Khan though notice has not been issued.

vii. 2001-1-L.W. (Crl.) 155 (R. Thamaraikani O.S. Manian v. The State of Tamil Nadu represented by the Chief Secretary to the Government,

Fort St. George, Chennai -600 009) - a Division Bench judgment of Madras High Court:

97 The larger issue advanced in respect of the second impugned action which has been challenged in the second Habeas Corpus Petition is

violation of Article 21 of The Constitution. As already pointed out there is no difficulty in holding that the Habeas Corpus Petition is maintainable

and an aggrieved party could invoke the jurisdiction of this Court under Article 226 and this Court has got the authority or jurisdiction to quash as

a centennial to enforce the fundamental rights, if procedure adopted is irregular or illegal or the proceedings have to be set aside on any other valid

ground. It is not necessary to refer to the decision of the Apex Court in detail once again M.S.M. Sharma Vs. Sri Krishna Sinha and Others, or the

Full Bench judgment of this Court in D. Murugesan Vs. The Hon''ble Speaker (Thiru Sedapatti R. Muthiah) Tamil Nadu Legislative Assembly, or

the Full Bench Judgment of this Court in S. Balasubramanian vs. State of Tamil Nadu etc. & 2 others reported in 1994 WLR 638.

99. That apart, a Full Bench of this Court in S. Balasubramanian vs. State of Tamil Nadu etc. & 2 others referred to supra while affirming the

earlier view taken in A.M. Paulraj Vs. The Speaker, Tamil Nadu Legislative Assembly, Madras and Another,) held that Article 21 of the

Constitution is not excluded and there cannot be a provision depriving a person''s life or personal liberty without following the minimum procedure

or a modicum of procedure. In the present case with respect to the second impugned action as rightly pointed out by the counsel for the first

respondent on the floor of the Assembly there had been a discussion and a motion was tabled and it had been carried out, based upon which the

second set of impugned proceedings had been issued. Though it is vehemently contended that such a resolution relates to a criminal offence

punishable under the Indian Penal Code and it is only the criminal courts which are conferred with the power under criminal procedure alone could

impose such a punishment or sentence, we are of the considered view that the Legislative Assembly on whose floor the unfortunate incident

occurred has the authority to take action. The Legislative Assembly in our considered view is the authority with respect to the resolution passed by

it and such a resolution is a ""law"" falling within the scope of Article 21 of the Constitution and therefore it is a valid procedure by which the detenu

had been detained by way of sentence in prison for his alleged misconduct and breach of privilege of the House. It is true there is some reference

to criminal misconduct. But it is only an expression referring to conduct of the detenu and it is not for a criminal offence and the resolution has been

passed imposing fifteen days incarceration for breach of privilege or contempt of the House alone and not for the criminal offence of assault, etc.

Even now, if the House decides, it could very well set the criminal action in motion.

100. The resolution of the Legislative Assembly as seen from the Official Report of the Legislative Assembly Debates, published, for violation of

the privilege of the House, the Legislative Assembly had unanimously resolved and with respect to such unanimous resolution in the absence of any

irregularity or any illegality or violation of the procedure prescribed, this Court would not be justified in interfering and this Court will decline to

exercise the power of judicial review under Article 226 in such maters. In respect of such sentence it is the Assembly which has got the authority or

power or privilege to reconsider or modify or recall by its resolution and it enjoys the immunity to the extent indicated above. The detention of the

petitioner based upon the second impugned communication is not liable to be interfered either as violative of Article 21 or violative of Article 14 of

the Constitution. Further, it is based upon the unanimous motion carried out by the Assembly. The detenu had also not chosen to challenge the

motion carried out with respect to the suspension of the detenu from the proceedings of the House and rightly too.

101. As extracted already, based upon a resolution dated 23.3.1999 of the Assembly, the detenu had been sentenced to undergo imprisonment

for fifteen days. Hence the above minutes of the recordings as reported and as already pointed out and the detenu not having controverted and as

the rule of presumption applies and being a resolution in respect of matters which took place on the floor of the Assembly, the question of following

principles of natural justice recedes to ground and it cannot also be invoked, nor it is available. In the circumstances, this Court holds that with

respect to the resolution dated 23.3.1999 and the consequential orders of committal and imprisonment ordered by the Hon"ble Speaker of the

Legislative Assembly is not liable to be interfered, nor any case has been made out for interference, nor there is any violation of Articles 14 or 21

of the Constitution and all the contentions advanced in this respect has to necessarily fail.

102. The suspension of the detenu from the Assembly proceedings is not a punishment, but is only debars or exclude him from taking part in any of

the proceedings during the period of suspension. The punishment imposed by the resolution of the Assembly will not amount to double punishment

as sought to be contended and such a contention cannot be sustained at all. It is for the breach of privilege and / or contempt of the House of

which the detenu is a Member and as seen from the resolution passed by majority of the Members present in the Assembly. The contention that

the Legislature has no authority to impose the punishment after having suspended him also cannot be sustained.

viii Sohan Lal Gupta (Dead) thr. L.Rs. and Others Vs. Smt. Asha Devi Gupta and Others, 2 Judge Bench judgment

29. The principles of natural justice, it is trite, cannot be put in a straitjacket formula. In a given case the party should not only be required to show

that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was seriously prejudiced thereby.

In Chairman, Board of Mining Examination and Chief Inspector of Mines v. Ramjee 5 this Court held: (SCC p. 262, para 13)

Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded

against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each

situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities

and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction, No

man shall be hit below the belt - that is the conscience of the matter."" (See also Union of India v. Anand Kumar Pandey 6 and R.S. Dass v. Union

of India)

30. In Anand Kumar Pandey case 6 this Court again reiterated that the rules of natural justice cannot be put in a strait-jacket and applicability

thereof would depend upon the facts and circumstances relating to each particular given situation.

31. In M.C. Mehta v. Union of India, this Court held that in a case of natural justice upon admitted or indisputable factual position, only one

conclusion is possible, a writ of certiorari may be issued.

32. In State of U.P. v. Harendra Arora, this Court followed, inter alia, Managing Director, ECIL v. B. Karunakar and State Bank of Patiala v.

S.K. Sharma and held that an order passed in a disciplinary proceeding cannot ipso facto be quashed merely because a copy of the enquiry report

has not been furnished to the delinquent officer, but he is obliged to show that by non-furnishing of such a report he has been prejudiced, would

apply even to cases where there is requirement of furnishing a copy of enquiry report under the statutory rules.

33. In Aligarh Muslim University v. Mansoor Ali Khan, it was held: (SCC pp. 539-40, para 24)

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K.L. Tripathi

v. State Bank of India 13 Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de

facto prejudice (other than non-issue of notice) had to be proved. It was observed, quoting Wade''s Administrative Law (5th Edn., pp. 472-75),

as follows: (SCC p. 58, para 31)

''[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must

also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements

of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the

subject-matter to be dealt with, and so forth.''

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same

view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma 11. In that case, the principle of ''prejudice'' has been further

elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P. "" (emphasis in original)

34. In U.P. Awas Evam Vikas Parishad v. Gyan Devi the Constitution Bench observed: (SCC p. 337, para 9)

In other words the right conferred u/s 50(2) of the LA Act carries with it the right to be given adequate notice by the Collector as well as the

Reference Court before whom the acquisition proceedings are pending of the date on which the matter of determination of the amount of

compensation will be taken up. Service of such a notice, being necessary for effectuating the right conferred on the local authority u/s 50(2) of the

LA Act, can, therefore, be regarded as an integral part of the said right and the failure to give such a notice would result in denial of the said right

unless it can be shown that the local authority had knowledge about the pendency of the acquisition proceedings before the Collector or the

Reference Court and has not suffered any prejudice on account of failure to give such notice. "" (emphasis supplied)

35. In Graphite India Ltd. v. Durgapur Projects Ltd. it has been held that the principles of natural justice can be waived.

36. In Administrative Law, 8th Edn., by William Wade and Christopher Forsyth, at p. 491, it has been stated:

... At the other end of the spectrum of power, public authorities themselves are now given the benefit of natural justice, as illustrated at the end of

this section. Basically the principle is confined by no frontiers.

On the other hand it must be a flexible principle. The judges, anxious as always to preserve some freedom of manoeuvre, emphasise that ''it is not

possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the

subject-matter''. Their application, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with

the subject-matter of the case. ''In the application of the concept of fair play there must be real flexibility.'' There must also have been some real

prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice.

37. In Khaitan (India) Ltd. v. Union of India, one of us said: (Cal LT p. 482, para 11)

11. The concept of principles of natural justice has undergone a radical change. It is not in every case, that the High Courts would entertain a writ

application only on the ground that violation of principles of natural justice has been alleged. The Apex Court, in State Bank of Patiala v. S.K.

Sharma 11 has clearly held that a person complaining about the violation of the principles of natural justice must show causation of a prejudice

against him by reason of such violation. The Apex Court has held that the principles of natural justice, may be said to have been violated which

require an intervention when no hearing, no opportunity or no notice has been given. Reference in this connection may also be made to Managing

Director, ECIL v. B. Karunakar 10. The question as to the effect of non-grant of enough opportunity to the learned counsel for the appellant by

the Commission to meet the allegations made in the supplementary affidavit requires investigation. As to what extent the appellant has suffered

prejudice would be a question which would fall for a decision of a higher court. Where such a disputed question arises, in the considered opinion

of this Court a writ application will not be entertained only because violation of natural justice has been alleged and more so, in a case of this nature

where such a contention can also be raised before the highest court of India. A distinction has to be borne in mind between a forum of appeal

which is presided by an administrative body and the Apex Court as an appellate court.

38. The principles of natural justice, it is trite, must not be stretched too far.

ix. Canara Bank and Others Vs. Shri Debasis Das and Others, 2 Judge Bench judgment of the Supreme Court

12. Residual and crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what

extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in

terms of principles of natural justice does not improve the situation, ""useless formality theory"" can be pressed into service.

13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into

the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals

and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a

formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions ""natural justice"" and ""legal justice"" do not present a watertight classification. It is the substance of justice which is to be

secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice

relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As

Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant''s defence.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body

embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well

settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard.

Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet.

Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such

reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before

any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory

recognition of this principle found its way into the ""Magna Carta"". The classic exposition of Sir Edward Coke of natural justice requires to ""vocate,

interrogate and adjudicate"". In the celebrated case of Cooper v. Wandsworth Board of Works (1963 (143) ER 414), the principle was thus

stated:

Even God himself did not pass sentence upon Adam before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast

thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the

concept, like polishing of a diamond.

22. What is known as ""useless formality theory"" has received consideration of this Court in M.C. Mehta Vs. Union of India (UOI) and Others,). It

was observed as under:

Before we go into the final aspects of this contention, we would like to state that cases relating to breach of natural justice do also occur where all

facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether

relief can be refused even if the court thinks that the case of the applicant is not one of ''real substance'' or that there is no substantial possibility of

his success or that the result will not be different, even if natural justice is followed see Malloch v. Aberdeen Corpn. (1971) 2 All ER 1278, HL)

(per Lord Reid and Lord Wilberforce), Glynn v. Keek University (1971) 2 All ER 89, Cinnamond v. British Airports Authority (1980 2 All ER

368 CA) and other cases where such a view has been held. The latest addition to this view is R. v. Ealing Magistrates'' Court, ex p Fannaran

(1996 (8) Admn. LR 351, 358) where Straughton, L.J. held that there must be'' demonstrable beyond doubt'' that the result would have been

different. Lord Woolf in Lloyd v. McMohon (1987 (1) All ER 1118 CA) has also not disfavoured refusal of discretion in certain cases of breach

of natural justice. The New Zealand Court in McCarthy v. Grant (1959 NZLR 1014) however goes halfway when it says that (as in the case of

bias), it is sufficient for the applicant to show that there is ''real likelihood - not certainty - of prejudice''. On the other hand, Garner''s

Administrative Law (8th Edn., 1996, pp. 271-72) says that slight proof that the result would have been different is sufficient. On the other side of

the argument, we have apart from Ridge v. Baldwin (1964 AC 40 : (1963) 2 All ER 66 HL), Megarry, J. in John v. Rees (1969 (2) All ER 274)

stating that there are always ''open and shut cases'' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for

the authority to consider. Ackner, J. has said that the ''useless formality theory'' is a dangerous one and, however inconvenient, natural justice must

be followed. His Lordship observed that ''convenience and justice are often not on speaking terms''. More recently, Lord Bingham has deprecated

the ''useless formality theory'' in R. v. Chief Constable of the Thames Valley Police Forces, ex p Cotton (1990 IRLR 344) by giving six reasons.

(See also his article ''Should Public Law Remedies be Discretionary ?'' 1991 PL, p. 64.) A detailed and emphatic criticism of the ''useless formality

theory" has been made much earlier in "Natural Justice, Substance or Shadow" by Prof. D.H. Clark of Canada (see 1975 PL, pp. 27-63)

contending that Malloch 19 and Glynn 20 were wrongly decided. Foulkes (Administrative Law, 8th Edn., 1996, p. 323), Craig (Administrative

Law, 3rd Edn., p. 596) and others say that the court cannot prejudge what is to be decided by the decision-making authority, de Smith (5th Edn.,

1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court Wade (

Administrative Law, 5th Edn., 1994, pp. 526-30) says that while futile writs may not be issued, a distinction has to be made according to the

nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of

opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can

prove a "real likelihood" of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that

even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their

"discretion", refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet

another line of cases as in State Bank of Patiala and others Vs. S.K. Sharma, Rajendra Singh Vs. State of Madhya Pradesh and others, that even

in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit

and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

We do not propose to express any opinion on the correctness or otherwise of the "useless formality" theory and leave the matter for decision in an

appropriate case, inasmuch as in the case before us, "admitted and indisputable" facts show that grant of a writ will be in vain as pointed out by

Chinnappa Reddy, J.

x. Jagjit Singh Vs. State of Haryana and Others, 3 Judge Bench judgment of the Supreme Court:

14. At the outset, we may mention that while considering the plea of violation of principles of natural justice, it is necessary to bear in mind that the

proceedings under the Tenth Schedule are not comparable to either a trial in a court of law or departmental proceedings for disciplinary action

against an employee. But the proceedings here are against an elected representative of the people and the judge holds the independent high office

of a Speaker. The scope of judicial review in respect of proceedings before such Tribunal is limited. We may hasten to add that howsoever limited

may be the field of judicial review, the principles of natural justice have to be complied with and in their absence, the orders would stand vitiated.

The yardstick to judge the grievance that reasonable opportunity has not been afforded would, however, be different. Further, if the view taken by

the Tribunal is a reasonable one, the Court would decline to strike down an order on the ground that another view is more reasonable. The

Tribunal can draw an inference from the conduct of a Member, of course, depending upon the facts of the case and totality of the circumstances.

41. In the impugned orders, Respondent 2 has further noted that while examining and considering the aforenoted electronic evidence, he was

fortified by the fact that being the Speaker of the Haryana Vidhan Sabha, on many occasions as well as during the sessions of the House, he has

seen and heard these Members. He found that these Members as seen and heard in the electronic evidence are genuinely identified as also their

voices which are easily and clearly identified. The Speaker, thus, held that in view of the. irrefutable and overwhelming documentary and electronic

evidence, no other conclusion was possible other than that on 14-6-2004 these independent Members of the Haryana Vidhan Sabha joined the

Congress Party. He has also referred to the documentary evidence regarding CLP meeting held on 16-6-2004 in the form of original sheet of

proceedings'' register of CLP containing the signatures of the petitioners. In respect of the signatures also, the Speaker has noted that the signatures

of the petitioners on the original sheet of the CLP proceedings are the same as their signatures on the vakalatnama filed by their counsel as is clear

after comparison.

42. It was strenuously contended by learned counsel for the petitioners that the Speaker while passing the impugned orders has relied upon his

personal knowledge which is wholly impermissible for a tribunal and contrary to the principles of fair play and violative of principles of natural

justice. In support, reliance is placed on Dewan Singh v. Champat Singh where this Court considered misconduct of the arbitrators who decided

the disputes referred to them on the basis of their personal knowledge. On consideration of the arbitration agreement, it was held by this Court that

it does not empower the arbitrators either specifically or by necessary implication to decide the disputes referred to them on the basis of their

personal knowledge.

43. The principles laid down in the above case, have no application to the facts of the present case. The two situations have no similarity. The

Speaker has only noticed that he has had various opportunities to see the petitioners in the Assembly and those shown in the recording are the

same persons. We are unable to find fault with this course adopted by the Speaker. There is also nothing wrong or illegal in comparing signatures

and coming to the conclusion that the same, are that of the petitioners. These proceedings before the Speaker are not comparable with the

arbitration proceedings before arbitrators

44. Undoubtedly, the proceding before the Speaker which is also a tribunal albeit of a different nature have to be conducted in a fair manner and

by complying with the principles of natural justice. However, the principles of natural justice cannot be placed in a straitjacket. These are flexible

rules. Their applicability is determined on the facts of each case. Here, we are concerned with a case where the petitioners had declined to avail of

the opportunity to watch the recording on the compact disc. They had taken vague pleas in their replies. Even in respect of signatures on CLP

register their reply was utterly vague. It was not their case that the said proceedings had been forged. The Speaker, in law, was the only authority

to decide whether the petitioners incurred or not, disqualification under the Tenth Schedule to the Constitution in his capacity as Speaker. He had

obviously opportunity to see the petitioners and hear them and that is what has been stated by the Speaker in his order. We are of the view that the

Speaker has not committed any illegality by stating that he had on various occasions seen and heard these MLAs. It is not a case where the

Speaker could transfer the case to some other tribunal. The doctrine of necessity under these circumstances would also be applicable. No illegality

can be inferred merely on the Speaker relying upon his personal knowledge of having seen and heard the petitioners for coming to the conclusion

that persons in the electronic evidence are the same as he has seen and so also their voices. Thus, even if the affidavit of Ashwani Kumar is ignored

in sub-stance it would have no effect on the questions involved.

xi. Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, Constitution Bench judgment of the Supreme Court:

Plea of negation by other constitutional provisions

139. Before we consider the question whether the power of expulsion can be read within Article 105(3) or not, it is necessary first to decide the

question: Will reading such a power under Article 105(3) violate any other provisions of the Constitution? In other words, whether power of

expulsion would be inconsistent with other provisions of the Constitution of India.

140. According to the petitioners the power of expulsion is inconsistent with the following provisions of the Constitution:

(i) the provisions relating to vacancy and disqualifications (Articles 101-103);

(ii) the provisions relating to salaries and allowances of Members and their right to hold office till the end of the term [Article 106 and Article

82(3)];

(iii) citizen''s right to vote and right of representation of their constituency in Parliament; and

(iv) the fundamental rights of the MPs.

(i) Provisions relating to vacancy and disqualification

141. The petitioners have relied on Articles 101, 102 and 103 of the Constitution in support of their contention. The submission is that these

articles (relating to vacancy and disqualification) are exhaustive regarding the termination of membership of Parliament and that no additional

ground can exist based on which the membership of a sitting Member of Parliament can be terminated. Articles 101, 102 and 103 appear under

the sub-heading ""Disqualifications of Members"" in Chapter II of Part V of the Constitution.

142. Learned counsel for the petitioners submit that since Parliament can create an additional disqualification by law, it was open to it to pass a law

seeking to disqualify from continuing the membership of such Members as are guilty of conduct unworthy of a Member. Such a law not having

been passed, the petitioners submit, the termination of membership cannot take place through a resolution of the House purporting to act under

Article 105(3). Articles 190 and 191 which pertain to the vacation of seats and disqualifications for membership of the State Legislatures,

correspond to, and are on identical terms as, Articles 101 and 102.

143. It is necessary to understand the exact import of the terms ""vacancy"", ""disqualification"" and ""expulsion"".

144. These terms have different meanings and they do not overlap. Disqualification strikes at the very root of the candidate''s qualification and

renders him or her unable to occupy a Member''s seat. Expulsion, on the other hand, deals with a person who is otherwise qualified, but in the

opinion of the House of the legislature, unworthy of membership. While disqualification operates to prevent a candidate from re-election, expulsion

occurs after the election of the Member and there is no bar on re-election. As far as the term ""vacancy"" is concerned, it is a consequence of the

fact that a Member cannot continue to hold membership. The reason may be any one of the several possible reasons which prevent the member

from continuing membership, for example disqualification, death or expulsion.

145. In view of above, it is not possible to accept the submission that the termination of membership can be effected only in the manner laid down

in Articles 101 and 102. While these articles do speak of qualifications for and continuation of membership, in our view they operate independently

of Article 105(3), Article 105(3) is also a constitutional provision and it demands equal weight as any other provision, and neither being ""subject to

the provisions of the Constitution"", it is impossible to accord to one superiority over the other. We cannot accept the submission that the provisions

in Article 101 or 102 restrict in any way the scope of 194(3) "". There is no reason for them to do so. Though disqualification and expulsion both

result in the vacancy of a seat, there is no necessity to read one in a way that restricts the scope of the other. The expulsion on being found unfit for

functioning within the House in no way affects the qualifications that a Member must fulfil, and there is no reason for the latter to affect expulsion.

Both of the provisions can operate quite harmoniously. We fail to see any inconsistency between the two. Nor do we find any reason to support

the claim that provisions under Articles 101 and 102 are exhaustive and for that reason, Article 105(3) be read as not to include the power of

expulsion. Further, death as a cause for vacancy of a seat is also not mentioned in the relevant provisions. Similarly, it is not necessary for expulsion

to be mentioned, if there exists another constitutional provision that provides for such a power. It is obvious that upon expulsion, the seat of the

Member is rendered vacant and so no specific recognition of this provision is necessary within the provision relating to vacancy. Thus, the power

of expulsion cannot be held to be inconsistent with these provisions.

146. While interpreting Article 194, three High Courts have rightly rejected similar contentions (Yeshwant Rao Meghawale v. M.P. Legislative

Assembly, Hardwari Lal, K. Anbazhagan v. Secy., T.N. Legislative Assembly). An almost identical question was raised in an Australian case of

Armstrong v. Budd. The question in that case was whether Section 19 of the Constitution Act which provided for circumstances of vacation of

seats of Legislative Councillors was exhaustive so as to prevent the power of expulsion. The Court rejecting the argument that Section 19 was

exhaustive stated:

... but cannot be argued that Section 19 constitutes a complete code for the vacation of a seat or contains the only criteria upon which a vacancy

can occur....

147. Thus, we are unable to accept the petitioners'' contention that Articles 101 and 102 are exhaustive with respect to termination of membership.

Therefore, power of expulsion cannot be said to be inconsistent with these provisions.

148. In connection with this issue, the petitioners have also relied on two other provisions. First, they would submit that Sections 7 to 10-A of the

Representation of the People Act, 1951 lay down exhaustive provisions on disqualification, implying that all disqualifications must be made by law.

Indeed, there is no quarrel with this position. In fact, it has been held by this Court in Shrikant v. Vasantrao that: (SCC p. 690, para 11)

It is not possible to add to or subtract from the disqualifications, either on the ground of convenience, or on the grounds of equity or logic or

perceived legislative intention.

However, as discussed earlier, disqualification and expulsion are two different concepts altogether, and recognising Parliament''s power to expel

under Article 105(3) does by no means amount to adding a new ground for disqualification.

149. The other provision that the petitioners have relied upon is Article 327 of the Constitution. This article enables Parliament, subject to the other

provisions of the Constitution, to make provisions by law for ""all other matters necessary for securing the due constitution of such House"". They

would also refer to Entry 74 of List I of the Seventh Schedule which confers upon Parliament the competence to legislate on the power, privileges

and immunities of the Houses of Parliament. The argument is that Parliament can only claim additional powers by making a law. However, we are

unable to accept this contention, since Article 105(3) itself provides the power to make a law defining powers and privileges and further the

position that all the privileges of the House of Commons vest in Parliament until such a law is passed. Article 327 pertains to the constitution of the

House insofar as election matters, etc. are concerned. It does not refer to privileges that Parliament enjoys.

(ii) Provisions relating to salary, etc. and the right to a fixed term

151. It was further argued by the petitioners, that provisions in the Constitution relating to salary and the term for which they serve in the House are

constitutional rights of the Members and the power of expulsion, by terminating their membership violates these constitutional rights.

152. The relevant provisions in the Constitution are Article 106 on the subject of salaries and Article 83(2) in relation to the duration of the Houses

of Parliament.

153. The petitioners have relied on these above constitutional provisions and submitted that an expulsion of a Member of Parliament would result

in the violation of the above rights guaranteed to him. The claim of the other side is that the decision to expel does not violate these rights. Firstly, it

has been argued that the article laying down the duration of the House does not guarantee a term for the Member. Various circumstances have

been pointed out under which the term held by a Member can be much less than five years, regardless of what is stated in Article 83(2). Secondly,

it has been argued that Article 106, which lays down provisions for the salary of the Member, is dependent upon the person''s membership. It is

only as long as the person continues to be a Member that he can draw the salary. When the membership terminates, the provisions of Article 106

become inapplicable.

154. Similar arguments were made in K. Ananda Nambiar v. Chief Secy., Govt. of Madras. In that case, certain Members of Parliament were

detained by the Government of Madras and one of the grounds on which they challenged their detention was the violation of their constitutional

rights. In support of this contention, the petitioners relied on various provisions relating to Members and proceedings of Parliament including

Articles 79, 85, 86 and 100. They claimed that they continued to exercise all the ""constitutional rights"" that flow from membership unless the

member is disqualified. The contention was that: (AIR p. 662, para 11)

If a Member of Parliament incurs a disqualification, he may cease to be such Member, but if he continues to be qualified to be a Member, his

constitutional rights cannot be taken away by any law or order.

This Court rejected this argument holding that (AIR p. 664, para 18)

... they are not constitutional rights in the strict sense, and quite clearly, they are not fundamental rights at all"".

(emphasis supplied)

155. Although this case involved detention and the arrest of the Members of Parliament, which are matters relating to a field distinct from that of

the rights claimed in the cases at hand, we are of the view that the logic in the case applies equally to the present situation. In this case certain

provisions regarding Members and their functioning within Parliament were held not to create independent rights which could be given supremacy

over a legal detention. Similarly, in the present case, where there is a lawful expulsion, the Members cannot claim that the provisions relating to

salaries and duration of the House create such rights for the Members that would have supremacy over the power of expulsion of the House.

156. With specific reference to the power of expulsion, a similar argument with respect to the duration of the Legislative Assembly of a State was

rejected by the Madras High Court in K. Anbazhagan. The High Court rightly held that such a provision could not negate the power of expulsion.

It stated: (AIR p. 303, para 73)

Therefore, it cannot be said that merely because Article 172 provided for a period of five years to be the duration of the Legislative Assembly

each Member must necessarily continue to be a Member for five years irrespective of the other provisions of the Constitution."" 157. As far as the

provision for the duration of the House is concerned, it simply states that the normal duration of a House is to be five years. It cannot be

interpreted to mean that it guarantees to the Members a term of five years. The respondents have correctly pointed out that a Member does not

enjoy the full five-year term under various circumstances; for example when he or she is elected mid-term, when the term of the House is cut short

by dissolution, when the Member stands disqualified or the seat is rendered vacant. We find that a correct view in this regard has been taken in K.

Anbazhagan in line with the view expressed by this Court in K. Ananda Nambiar. If the provisions mentioned by the petitioners were actually to

create rights in respect of Members, then each of the above situations would be liable to be challenged for their violation. This quite obviously is

not what is intended by the Constitution. Expulsion is only an additional cause for the shortening of a term of a Member.

158. Further, as far as the provision relating to the salary of the Member is concerned, it is quite absurd to claim that because the Constitution

makes a provision for salaries, the power of the House to expel is negated since the result would be that the Member would no longer be paid.

Salaries are obviously dependent upon membership, and the continuation of membership is an independent matter altogether. The termination of

membership can occur for a variety of reasons and this is at no point controlled by the fact that salaries are required to be paid to a Member.

159. Thus, in our view, the above provisions do not negate the power of expulsion of the House, and there is no inconsistency between the

House"s power of expulsion and the said provisions.

(iii) The right of the constituency to be represented and the right to vote

160. The next contention on behalf of the petitioners has been that in the democratic set-up adopted by India, every citizen has a right to vote and

to be duly represented. It was argued that expelling a Member who has been elected by the people would violate the democratic principles and the

constituency would go unrepresented in Parliament. They submit that the right to vote ought to be treated as a fundamental right and that the power

of expulsion violates various democratic principles. On the other hand, the learned counsel for the Union of India submitted that the right to be

represented is not an absolute right, and that expulsion does not create a bar for re-election.

161. We are unable to accept the contentions of the petitioners. In this regard, it is first important to note that the right to vote has been held to be

only a statutory right, and not a constitutional or a fundamental right (see Shrikant v. Vasantrao and Kuldip Nayar v. Union of India).

162. While it is true that the right to vote and be represented is integral to our democratic process, it must be remembered that it is not an absolute

right. There are certain limitations to the right to vote and be represented. For example, a citizen cannot claim the right to vote and be represented

by a person who is disqualified by law or the right to be represented by a candidate he votes for, even if he fails to win the election. Similarly,

expulsion is another such provision. Expulsion is related to the conduct of the Member that lowers the dignity of the House, which may not have

been necessarily known at the time of election. It is not a capricious exercise of the House, but an action to protect its dignity before the people of

the country. This is also an integral aspect of our democratic set-up. In our view, the power of expulsion is not contrary to a democratic process. It

is rather part of the guarantee of a democratic process. Further, expulsion is not a decision by a single person. It is a decision taken by the

representatives of the rest of the country Finally, the power of expulsion does not bar a Member from standing for re-election or the constituency

from electing that Member once again.

163. Thus, we hold that the power of expulsion does not violate the right of the constituency or any other democratic principles.

(iv) Fundamental rights of the Member

164. Lastly, it has been contended by the petitioners that the power of expulsion violates the fundamental rights of the Member. It was argued that

the power of expulsion violates Article 19(1)(g), which guarantees the right to ""practise any profession, or to carry on any occupation, trade or

business"". It was submitted that this right can only be curtailed by a law in the interest of general public and that producing the same result by a

resolution of the House is impliedly barred. It was also contended that Article 21, which includes the right to livelihood was violated, since it can

only be restricted by a ""procedure established by law"".

165. We are not impressed with any of these contentions of the petitioners. Even if it were to be assumed that these rights apply, we do not believe

that they could prevent reading the power of expulsion within Article 105(3).

166. First, it is to be remembered that Article 105(3) is itself a constitutional provision and it is necessary that we must construe the provisions in

such a way that a conflict with other provisions is avoided. We are of the view that where there is a specific constitutional provision as may have

the effect of curtailing these fundamental rights, if found applicable, there is no need for a law to be passed in terms of Article 19(6). For example,

Article 102 relating to disqualifications provides that Members who are of unsound mind or who are undischarged insolvents as declared by

competent courts are disqualified. These grounds are not mentioned in the Representation of the People Act, 1951. Though this provision would

have the effect of curtailing the rights under Article 19(1)(g), we doubt that it can ever be contended that a specific law made in public interest is

required. Similarly, if Article 105(3) provides for the power of expulsion (though not so expressly mentioned), it cannot be said that a specific law

in public interest is required. Simply because Parliament is given the power to make law on this subject is no reason to say that a law has to be

mandatorily passed, when the Constitution itself provides that all the powers of the House of Commons vest until such a law is made. Thus, we find

that Article 19(1)(g) cannot prevent the reading of power of expulsion under Article 105(3).

167. Finally, as far as Article 21 is concerned, it was submitted that the ""procedure established by law"" includes the rules relating to the Privileges

Committee, etc., which were not followed and thus the right was violated. In our view, this does not prevent the reading of the power to expel in

Article 105(3). It is not possible to say that because a ""procedure established by law"" is required, it will prevent the power of expulsion altogether

and that every act of expulsion will be contrary to the procedure established by law. Whether such a claim is maintainable upon the specific facts of

each case is something that will have to be considered when the question of judicial review is taken up. At this stage, however, a blanket ban on

the power of expulsion based on Article 21 cannot be read in the constitutional provisions. This is an issue that may have a bearing on the legality

of the order. But, it cannot negate the power of expulsion.

168. In the light of the above discussion, we hold that the power of expulsion does not come into conflict with any of the constitutional provisions

and thus cannot be negated on this basis.

169. Let us now consider the argument in relation to the power of self-composition of the House of Commons. Parliamentary privileges vis-a-vis

fundamental rights

333. Before considering judicial review in the Indian context, it is appropriate to first examine this aspect. In the face of arguments of illegalities in

the procedure and the breach of fundamental rights, it has been strongly contended on behalf of the Union of India that parliamentary privileges

cannot be decided against the touchstone of other constitutional provisions, in general, and fundamental rights, in particular.

334. In this context, again it is necessary to seek enlightenment from the judgments in the two cases of Pandit Sharma (I) and Pandit Sharma (II) as

also U.P. Assembly case (Special Reference No. 1 of 1964) where breach of fundamental rights had been alleged by the persons facing the wrong

end of the stick.

335. In Pandit Sharma (I) one of the two principal points canvassed before the Court revolved around the question as to whether the privilege of

the Legislative Assembly under Article 194(3) prevails over the fundamental rights of the petitioner (non-Member in that case) under Article 19(1)

(a). This contention was sought to be supported on behalf of the petitioner through a variety of arguments including the plea that though clause (3)

of Article 194 had not, in terms, been made ""subject to the provision of the Constitution"" it would not necessarily mean that it was not so subject,

and that the several clauses of Article 194, or Article 105, should not be treated as distinct and separate provisions but should be read as a whole

and that, so read, all the clauses should be taken as subject to the provisions of the Constitution which would include Article 19(1)(a). It was also

argued that Article 194(1), like Article 105(1), in reality operates as an abridgement of the fundamental rights of freedom of speech conferred by

Article 19(1)(a) when exercised in Parliament or the State Legislature, as the case may be, but Article 194(3) does not purport to be an exception

to Article 19(1)(a). It was then submitted that Article 19 enunciates a transcendental principle and confers on the citizens of India indefeasible

fundamental rights of a permanent nature while the second part of Article 194(3) was of the nature of a transitory provision which, from its very

nature, could not override the fundamental rights. Further, the contention raised was that if in pursuance of Article 105(3), Parliament were to

make a law under Entry 74 in List I to the Seventh Schedule defining the powers, privileges and immunities of the Houses of Parliament and if the

powers, privileges and immunities so defined were repugnant to the fundamental rights of the citizens, such law will, under Article 13, to the extent

of such repugnancy be void and this being the intention of the Constitution-makers and there being no apparent indication of a different intention in

the latter part of the same clause, the powers and privileges of the House of Commons conferred by the latter part of clause (3) must also be taken

as subject to the fundamental rights.

336. The arguments of the petitioner to above effect, however, did not find favour with the Court. It was, inter alia, held that the subject-matter of

each of the four clauses of Article 194 (which more or less correspond to Article 105) was different. While clause (1) had been expressly made

subject to the provisions of the Constitution, the remaining clauses had not been stated to be so subject, indicating that the Constitution-makers did

not intend clauses (2) to (4) to be subject to the provisions of the Constitution. It was ruled that the freedom of speech referred to in clause (1)

was different from the freedom of speech and expression guaranteed under Article 19(1)(a) and the same could not be cut down in any way by

any law contemplated by Article 19(2). While agreeing with the proposition that a law made by Parliament in pursuance of the earlier part of

Article 105(3) would not be a law made in exercise of constituent power but would be one made in exercise of ordinary legislative powers under

Article 246 read with the relevant entries of the Seventh Schedule and that consequently, if such a law takes away or abridges any of the

fundamental rights, it would contravene the peremptory provisions of Article 13(2) and would be void to the extent of such contravention, it was

observed that this did not lead to the conclusion that if the powers, privileges or immunities conferred by the latter part of the said article are

repugnant to the fundamental rights they must also be void to the extent of repugnancy. It was pointed out that: [Pandit Sharma (I) case, AIR p.

410, para 28]

It must not be overlooked that the provisions of Article 105(3) and Article 194(3) are constitutional laws and not ordinary laws made by

Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III.

Interestingly, it was also observed in the context of amenability of a law made in pursuance of first parts of Article 105(3) and Article 194(3) to the

provisions of Article 13(2) that

it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers,

privileges and immunities... ."" [Pandit Sharma (I) case 19, AIR p. 410, para 28].

337. On the basis of conclusions so reached, this Court reconciled the conflict between fundamental right of speech and expression under Article

19(1)(a) on one hand and the powers and privileges of the Legislative Assembly under Article 194(3) on the other by holding thus: [Pandit

Sharma (I) case 19, AIR p. 410, para 28]

The principle of harmonious construction must be adopted, and so construed, the provisions of Article 19(1)(a), which are general, must yield to

Article 194(1) and the latter part of its clause (3) which are special.

338. Pandit Sharma had also invoked Article 21 to contend that the proceedings before the Committee of Privileges of the Legislative Assembly

threatened to deprive him of personal liberty otherwise than in accordance with the procedure established by law. This Court, however, found that

the Legislative Assembly had framed rules of procedure under Article 208 and, therefore, if the petitioner was eventually deprived of his personal

liberty as a result of the proceedings before the Committee of Privileges, such deprivation would be in accordance with the procedure established

by law and, therefore, a complaint of breach of fundamental rights under Article 21 could not be made. The Court then proceeded to examine the

case to test the contention that the procedure adopted by the Legislative Assembly was not in accordance with the standing orders laying down the

rules of procedure governing the conduct of its business made in exercise of powers under Article 208.

351. We are unable to accept the argument of the learned counsel for the Union of India for the simple reason that what this Court ""deliberately

omitted"" to do in U.P. Assembly case (Special Reference No. 1 of 1964) was consideration of the powers, privileges and immunities other than

the contempt jurisdiction of the legislature. The views expressed as to the applicability of Article 20 and Article 21 in the context of manner of

exercise of the powers and privileges of the Legislative Assembly are of general import and cannot be wished away. They would hold good not

merely against a non-Member as was the case in that reference but even against a Member of the legislature who also is a citizen of this country

and entitled to the protection of the same fundamental rights, especially when the impugned action entails civil consequences.

352. In the light of law laid down in the two cases Pandit Sharma (I) and Pandit Sharma (II) and in U.P. Assembly case (Special Reference No. 1

of 1964) we hold that the broad contention on behalf of the Union of India that the exercise of parliamentary privileges cannot be decided against

the touchstone of fundamental rights or the constitutional provisions is not correct. In Pandit Sharma the manner of exercise of the privilege claimed

by the Bihar Legislative Assembly was tested against the ""procedure established by law"" and thus on the touchstone of Article 21. It is a different

matter that the requirements of Article 21, as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is

that Article 21 was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in U.P. Assembly case

(Special Reference No. 1 of 1964) 12 which added the enforceability of Article 20 to the fray.

353. When Pandit Sharma and U.P. Assembly case (Special Reference No. 1 of 1964) were decided. Article 21 was construed in a limited

sense, mainly on the strength of the law laid down in A.K. Gopalan v. State of Madras in which a Constitution Bench of this Court had held that

operation of each article of the Constitution and its effect on the protection of fundamental rights was required to be measured independently. The

law underwent a total transformation when a Constitution Bench (11 Judges) in Rustom Cavasjee Cooper v. Union of India held that all the

provisions of the Constitution are required to be read conjointly as to the effect and operation of fundamental rights of the citizens when the State

action infringed the rights of the individual. The jurisprudence on the subject has been summarised by this Court in para 27 of the judgment in

Ashok Kumar Gupta v. State of U.P. in the following words: (SCC pp. 226-27)

27. In A.K. Gopalan v. State of Madras 51, per majority, the Constitution Bench had held that the operation of each article of the Constitution

and its effect on the protection of fundamental rights is required to be measured independently and not in conjoint consideration of all the relevant

provisions. The above ratio was overruled by a Bench of 11 Judges in Rustom Cavasjee Cooper v. Union of India. This Court had held that all the

provisions of the Constitution conjointly be read on the effect and operation of fundamental right of the citizens when the State action infringes the

right of the individual. In D.T.C. case (SCC at pp. 750-51, paras 297 and 298) it was held that:

''It is well-settled constitutional law that different articles in the chapter on Fundamental Rights and the Directive Principles in Part IV of the

Constitution must be read as an integral and incorporeal whole with possible overlapping with the subject-matter of what is to be protected by its

various provisions particularly the fundamental rights.

... The nature and content of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the

individual but by its objects. The validity of the State action must be adjudged in the light of its operation upon the rights of the individuals or groups

of individuals in all their dimensions. It is not the object of the authority making the law impairing the right of the citizen nor the form of action taken

that determines the protection he can claim; it is the effect of the law and of the action upon the right which attract the jurisdiction of the court to

grant relief. In Minerva Mills Ltd. v. Union of India the fundamental rights and directive principles are held to be the conscience of the Constitution

and disregard of either would upset the equibalance built up therein. In Maneka Gandhi case it was held that different articles in the chapter of

fundamental rights of the Constitution must be read as an integral whole, with possible overlapping of the subject-matter of what is sought to be

protected by its various provisions particularly by articles relating to fundamental rights contained in Part III of the Constitution do not represent

entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters

must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity

which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. The fundamental rights protected by Part

III of the Constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of executive as well as legislative

actions when these actions are subjected to judicial scrutiny. Fundamental rights are necessary means to develop one''s own personality and to

carve out one''s own life in the manner one likes best, subject to reasonable restrictions imposed in the paramount interest of the society and to a

just, fair and reasonable procedure. The effect of restriction or deprivation and not of the form adopted to deprive the right is the conclusive

test...."

(emphasis supplied)

354. The enforceability of Article 21 in relation to the manner of exercise of parliamentary privilege, as affirmed in Pandit Sharma (I) and Pandit

Sharma (II) and U.P. Assembly case (Special Reference No. 1 of 1964) has to be understood in light of the expanded scope of the said

fundamental right interpreted as above.

355. It is to be remembered that the plenitude of powers possessed by Parliament under the written Constitution is subject to legislative

competence and restrictions of fundamental rights and that in case a Member"s personal liberty was threatened by imprisonment of committal in

execution of parliamentary privilege, Article 21 would be attracted.

356. If it were so, we are unable to fathom any reason why the general proposition that fundamental rights cannot be invoked in matters concerning

parliamentary privileges should be accepted. Further, there is no reason why the Member, or indeed a non-Member, should not be entitled to the

protection of Article 21, or for that matter Article 20, in case the exercise of parliamentary privilege contemplates a sanction other than that of

committal. Judicial review - Effect of Article 122

357. It is the contention of the learned counsel for the Union of India that it should be left to the wisdom of the legislature to decide as to on what

occasion and in what manner the power is to be exercised especially as the Constitution gives to it the liberty of making rules for regulating its

procedure and the conduct of its business. He would refer to Article 122(1) to argue that the validity of proceedings in Parliament is a matter which

is expressly beyond the gaze of, or scrutiny by, the judicature. It has been the contention on behalf of the Union of India that the principle of

exclusive cognizance of Parliament in relation to its privileges under Article 105 constitutes a bar on the jurisdiction of the court which is of equal

weight as other provisions of the Constitution including those contained in Part III and, therefore, the manner of enforcement of the privilege cannot

be tested on the touchstone of other such constitutional provisions, also in view of the prohibition contained in Article 122.

363. That the English cases laying down the principle of exclusive cognizance of Parliament, including Bradlaugh, arise out of a jurisdiction

controlled by the constitutional principle of sovereignty of Parliament cannot be lost sight of. In contrast, the system of governance in India is

founded on the norm of supremacy of the Constitution which is fundamental to the existence of the Federal State. Referring to the distinction

between a written Federal Constitution founded on the distribution of limited Executive, Legislative and Judicial authority among bodies which are

coordinate with and independent of each other on the one hand and the system of governance in England controlled by a sovereign Parliament

which has the right to make or unmake any law whatever, this Court in U.P. Assembly case (Special Reference No. 1 of 1964) concluded thus in

paras 40 and 41: (AIR pp. 762-63)

40. Our legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and

can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the

legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the

powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative

supremacy of our legislatures including Parliament is normally controlled by the protance of the functions discharged by Parliament under the

Constitution and the majesty and grandeur of its task, it being the ultimate repository of the faith of the people, it must be expected that Parliament

would always perform its functions and exercise its powers, privileges and immunities in a reasonable manner, the reasonableness of the manner of

exercise not being amenable to judicial review. His submission is that if Parliament were to exercise its powers and privileges in a manner violative

or subversive of, or wholly abhorrent to the Constitution, a limited area of judicial scrutiny would be available, which limited judicial review would

be distinct from the area of judicial review that is available when administrative exercise of power under a statute falls for consideration. His

argument is that such limited judicial review is distinct from the exercise of powers coupled with a purpose and also distinct from judicial scrutiny

on the ground of mala fides. It is his contention that the courts of judicature in India have the power of judicial review to determine the existence of

privilege but once privilege is shown to exist, the exercise of that privilege and the manner of exercise of that privilege must be left to the domain of

Parliament without any interference. Further, the learned Additional Solicitor General submits that while what takes place within the walls of

Parliament is not available for scrutiny and even when Parliament deals with matters outside its walls, in a matter supported by an acknowledged

privilege, there would be little scrutiny and very limited and restricted judicial review.

389. We find substance in the submission that it is always expected, rather it should be a matter of presumption, that Parliament would always

perform its functions and exercise its powers in a reasonable manner. But, at the same time there is no scope for a general rule that the exercise of

powers by the legislature is not amenable to judicial review. This is neither the letter nor the spirit of our Constitution. We find no reason not to

accept that the scope for judicial review in matters concerning parliamentary proceedings is limited and restricted. In fact this has been done by

express prescription in the constitutional provisions, including the one contained in Article 122(1). But our scrutiny cannot stop, as earlier held,

merely on the privilege being found, especially when breach of other constitutional provisions has been alleged.

390. It has been submitted by the learned Additional Solicitor General that judicial review is the ability of the courts to examine the validity of

action. Validity can be tested only with reference to a norm. He argues that where judicially manageable standards, that is normative standards, are

not available, judicial review must be impliedly excluded. He has submitted that Parliament is not a body inferior to the courts. An administrative

tribunal in whom statutory jurisdiction has been vested can certainly be subjected to judicial review to discover errors of fact or errors of law within

its jurisdiction, but Parliament cannot be attributed jurisdictional errors.

391. We find the submissions substantially correct but not entirely correct. Nonexistence of standards of judicial review is no reason to conclude

that judicial scrutiny is ousted. If standards for judicial review of such matters as at hand are not yet determined, it is time to do so now. Parliament

indeed is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny. While its acts, particularly of

the nature involved here ought not to be tested in the same manner as an ordinary administrative action would be tested, there is no foundation to

the plea that a legislative body cannot be attributed jurisdictional error.

392. The learned Additional Solicitor General would further argue that the exercise of powers and privileges must not be treated as exercise of

jurisdiction, but in fact exercise of constituent power to preserve its character. He stated that the Constitution did not contemplate that the

contempt of authority of Parliament would actually be tried and punished in a court of judicature. He submitted that the frontiers of judicial review

have now widened in that illegality, irrationality and procedural impropriety could be causes, but such principles have absolutely no basis in judging

Parliament"s action.

393. While we agree that contempt of authority of Parliament can be tried and punished nowhere except before it, 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. As has been noticed;

in the context of Article 122(1), mere irregularity of the procedure cannot be a ground of challenge to the proceedings in Parliament or effect

thereof, and while the same view can be adopted as to the element of ""irrationality"", but in our constitutional scheme, illegality or unconstitutionality

will not save the parliamentary proceedings.

394. It is the submission of the learned Additional Solicitor General that the proceedings in question were proceedings which were entitled to

protection under Article 105(2). In other words, in respect of proceedings, if a Member is offered immunity, Parliament too is offered immunity.

The actions of Parliament, except when they are translated into law, cannot be questioned in court.

395. We find the argument to be founded on reading of Article 105(2) beyond its context. What is declared by the said clause as immune from

liability ""to any proceedings in any court"" is not any or every act of the legislative body or Members thereof, but only matters ""in respect of anything

said or any vote given"" by the Members ""in Parliament or any committee thereof. If Article 105(2) were to be construed so broadly, it would tend

to save even the legislative Acts from judicial gaze, which would militate against the constitutional provisions.

396. The learned Additional Solicitor General would urge that to view Parliament as a body which is capable of committing an error in respect of

its powers, privileges and immunities would be an indirect comment that Parliament may act unwarrant-edly. There is every hope that the Indian

Parliament would never punish one for ""an ugly face"", or apply a principle which is abhorrent to the Constitution.

397. The learned counsel for the petitioners, on the other hand, have submitted that upon it being found that the plenitude of powers possessed by

Parliament under the written Constitution is subject to legislative competence and restrictions of fundamental rights; the general proposition that

fundamental rights cannot be invoked in matters concerning parliamentary privileges being unacceptable; even a Member of legislature being

entitled to the protection of Articles 20 and 21 in case the exercise of parliamentary privilege; and Article 122(1) contemplating the twin test of

legality and constitutionality for any proceedings within the four walls of Parliament, as against mere procedural irregularity, thereby displacing the

English doctrine of exclusive cognizance of internal proceedings of the House, the restrictions on judicial review propagated by the learned

Additional Solicitor General do not deserve to be upheld.

398. We are of the view that the manner of exercise of the power or privilege by Parliament is immune from judicial scrutiny only to the extent

indicated in Article 122(1), that is to say the court will decline to interfere if the grievance brought before it is restricted to allegations of ""irregularity

of procedure"". But in case gross illegality or violation of constitutional provisions is shown, the judicial review will not be inhibited in any manner by

Article 122, or for that matter by Article 105. If one was to accept what was alleged while rescinding the resolution of expulsion by the Seventh

Lok Sabha with the conclusion that it was ""inconsistent with and violative of the well-accepted principles of the law of parliamentary privilege and

the basic safeguards assured to all enshrined in the Constitution"", it would be a partisan action in the name of exercise of privilege. We are not

going into this issue but citing the incident as an illustration.

399. Having concluded that this Court has the jurisdiction to examine the procedure adopted to find if it is vitiated by any illegality or

unconstitutionality, we must now examine the need for circumspection in judicial review of such matters as concern the powers and privileges of

such august body as Parliament.

400. The learned counsel for the petitioners have submitted that the expanded understanding of the fundamental rights in general and Articles 14

and 21 in particular, incorporates checks on arbitrariness. They place reliance on Bachan Singh v. State of Punjab.

401. In Bachan Singh 68 this Court, inter alia, held, that ""Article 14 enacts primarily a guarantee against arbitrariness and inhibits State action,

whether legislative or executive, which suffers from the vice of arbitrariness"" and that ""Article 14. .. was primarily a guarantee against arbitrariness

in State action"". It was held in the context of Article 21 that: (SCC pp. 54-55, para 17)

17. The third fundamental right which strikes against arbitrariness in State action is that embodied in Article 21.... Article 21 affords protection not

only against executive action but also against legislation and any law which deprives a person of his life or personal liberty would be invalid unless it

prescribes a procedure for such deprivation which is reasonable, fair and just. The concept of reasonableness, it was held, runs through the entire

fabric of the Constitution. ...

Every facet of the law which deprives a person of his life or personal liberty would therefore have to stand the test of reasonableness, fairness and

justness in order to be outside the inhibition of Article 21.

(emphasis supplied)

402. It has been submitted by the petitioners that since the validity of the procedure followed in enforcement of the privilege by the Houses of

Parliament is to be tested on the touchstone of Article 20 and Article 21, the aforesaid tests of reasonableness, non-arbitrariness, non-perversity,

fairness and justice come into play even in relation to the action of the legislature.

403. On the other hand, the learned Additional Solicitor General submits that the full effect of judicial review with reference to Article 21 in matters

involving claim of privileges by the legislature was not examined in the cases of Pandit Sharma or U.P. Assembly case (Special Reference No. 1 of

1964). He further submits that the expanded understanding of Article 21, taking into account its interrelationship with Articles 14 and 19 pertains

to developments subsequent to the aforementioned cases relating to privileges of the legislature and that while scrutinising the exercise of power by

Parliament it would not be possible to employ either the test of ""fair, just and reasonable"" or the principle of reasonableness in administrative action.

404. The submission further is that the only principle which can afford judicial review is to examine whether the rule of the Constitution which

presupposes the underlying foundation of separation of powers has not been infringed and a manifest intrusion into judicial power vested in courts

of justice has not taken place. To put it slightly differently, according to the learned Additional Solicitor General, the limited judicial review would

involve an inquiry as to whether Parliament has not exercised privileges which are really matters covered by a statute and whose adjudication

would involve the exercise of judicial power conferred by a statute or the Constitution.

405. According to the learned Additional Solicitor General, the discussion with reference to Article 21 in Pandit Sharma (I) proceeded upon a

demurrer and, therefore, there was no scope for a full-fledged discussion on the amenability of the latter part of Article 105(3) or Article 194(3) to

the restrictions contained in Article 21.

406. In above context, he would refer to Jatish Chandra Ghosh (Dr.) v. Hari Sadhan Mukherjee. In that case, Dr. Ghosh, a Member of the

Legislative Assembly, had published in a journal certain questions which he had put in the Assembly but which had been disallowed by the

Speaker. The questions disparaged the conduct of the respondent who filed a criminal complaint against him and others alleging defamation. Dr.

Ghosh pleaded privileges and immunity under Article 194 as a bar to criminal prosecution. This claim was negatived, inter alia, on the grounds that

the matter fell clearly outside the scope of Article 194(1) and Article 194(2) not being applicable since the publication was not under the authority

of the legislature nor could be termed as something said or vote given in the legislature. The claim for immunity under Article 194(3) was also

repelled for the reason that the immunity enjoyed by a Member of the House of Commons is clearly confined to speeches made in Parliament and

does not extend to the publication of the debate outside. It was held as under: (SCR p. 487)

There is no absolute privilege attaching to the publication of extracts from the proceedings in the House of Commons and a Member, who has

absolute privilege in respect of his speech in the House itself, can claim only a qualified privilege in respect of it if he causes the same to be

published in the public press.

407. The learned counsel for the Union of India concluded his submissions stating that in any exercise of judicial scrutiny of Acts of the legislature,

there would always be a presumption raised in favour of legitimate exercise of power and no motive or mala fides can be attributed to it. In this

context, he would place reliance on observations of this Court in K. Nagaraj v. State of A.P. and T. Venkata Reddy v. State of A.P.

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

(a) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(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;

(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;

(I) 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;

(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;

(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.

432. It can now be examined if the manner of exercise of the power of expulsion in the cases at hand suffers from any such illegality or

unconstitutionality as to call for interference by this Court.

446. The petitioners" case is that the procedures adopted by the Committees of the two Houses were neither reasonable nor fair. Further, they

contend that the entire inquiry was improper and illegal inasmuch as rules of natural justice were flouted. In this context, the grievances of the

petitioners are manifold. They would state that proper opportunity was not given to them to defend themselves; they were denied the opportunity

of defending themselves through legal counsel or to give opportunity to explain; the request for supply of the material, in particular the unedited

versions of videography for testing the veracity of such evidence was turned down and doctored or morphed video-clippings were admitted into

evidence, the entire procedure being unduly hurried. As already noted the scope of judicial review in these matters is restricted and limited.

Regarding non-grant of reasonable opportunity, we reiterate what was recently held in Jagjit Singh v. State of Haryana that the principles of natural

justice are not immutable but are flexible; they cannot be cast in a rigid mould and put in a straitjacket and the compliance therewith has to be

considered in the facts and circumstances of each case.

41. At this stage, it would be worthwhile to refer to the In the matter of: Under Article 143 of the Constitution of India, referred to by the learned

counsel for the petitioner and relied on by the learned Advocate General in which a 7 Judge Bench of the Supreme Court has observed as under:

32. Having conferred freedom of speech on the legislators, clause(2) emphasises the fact that the said freedom is intended to be absolute and

unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Leigslature or any committee thereof. In

other words, even if a legislator exercises his right of freedom of speech in violation, say, of Art.211, he would not be liable for any action in any

Court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the

Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any Court. If the impugned speech amounts to

libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any Court by

this clause, he may be answerable to the house for such a speech and the Speaker may take appropriate action against him in respect of it; but that

is another matter. It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the

legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any Court in respect of their

speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators

within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered.

42. I have heard, with heedful attention, Mr. N. Jothi, learned counsel for the petitioner and Mr. G. Masilamani, learned Advocate General who

has assisted this Court as Amicus Curiae. I have also perused all the material records including the proceedings of the Legislative Assembly dated

18.10.2007 and 19.10.2007 and also the impugned resolution dated 19.10.2007 besides the Rules and authorities relied on by either side.

43. Before proceeding to deal with the matter, it would be useful to refer to the Constitutional provisions and the Rules relevant for consideration.

Relevant Constitutional provisions

Article 14- Equality before law:

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 19- Protection of certain rights regarding freedom of speech, etc.

1. All citizens shall have the right-

a. to freedom of speech and expressions

Article 21- Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 189- Voting in Houses, power of Houses to act notwithstanding vacancies and quorum:

1. Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a

majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

Article 194- Powers, privileges, etc. of the House 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.

Article 208- Rules of procedure

(1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the

conduct of its business.

Article 212- Courts not to inquire into proceedings of the Legislature:

1 The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity or procedure.

2 No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the

conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of

those powers.

Relevant Rules of the Legislative Assembly

COMMITTEE OF PRIVILEGES

219. A member may, with the consent of the Speaker, raise a question involving a breach of privilege, either of a Member or of the House or of a

Committee thereof.

220. Notice of a motion to raise a question of privilege together with a brief statement shall be given at least one hour before the commencement of

the sitting on the day on which the question is proposed to be raised to (i) the Speaker (ii) the Secretary and (iii) the Leader of the House. If the

question raised is based on a document, the notice shall be accompanied by the document.

Provided that the notice intended for the Leader of the House may be handed over to the Secretary for being forwarded to the Leader of the

House:

Provided further that if it is against any other Member of the House (including a Minister) a copy of such notice shall be given to him through the

Legislative Assembly Secretariat:

Provided further that in respect of a matter of privilege arising during the sitting of the House the Speaker may waive such notice and deal with the

matter as he deems fit.

221. On the Speaker giving his consent to raise a question of privilege it must be raised after the questions and before the list of business for the

day is entered upon: Provided that a question of privilege arising during the sitting of the House shall be entitled to immediate precedence over all

other business.

222. The right to raise a question of privilege shall be governed by the following conditions, namely:-

(1) The question shall be restricted to a specific matter of recent occurrence;

(2) the Matter, in the opinion of the Speaker requires the intervention of the House

If these conditions are satisfied the Speaker may give his consent under rule 219.

223. The Speaker if he gives his consent under Rule 219 and holds that the matter proposed to be discussed warrants intervention of the House he

may at his discretion call the Member concerned to make a short statement relevant thereto.

Provided that in a fit case before deciding whether the matter warrants intervention of the House, he may give an opportunity to the Member to

explain briefly why the matter requires the intervention of the House:

Provided further the Speaker may give an opportunity to the Member against whom the matter is sought to be raised to briefly explain his case.

224. The Speaker, if he refuses consent or is of opinion that the matter does not warrant cognizance by the House, the same shall be

communicated to the Member concerned and that the matter shall not be raised in the House in any form thereafter.

225. If the Speaker, holds that the matter raised affects the privilege or amounts to a contempt of the House and requires the intervention of the

House he may allow a motion to be made by any Member that the alleged breach of privilege be referred to the Committee of privileges or in the

alternative that it be dealt with by the House itself.

226. Notwithstanding anything contained in these rules, the Speaker may suo motu refer any question of privilege to the Committee of Privileges

for examination, investigation and report.

227. (1) A Committee of Privileges shall be constituted which will consist of the Leader of the House and the Leader of the Opposition and the

Deputy Speaker who shall be Members ex-officio and fourteen other members to be elected by the Assembly on a date to be fixed by the

Speaker according to the principle of proportional representation by means of the single transferable vote and in accordance with the regulations

framed in this behalf by the Speaker.

(2) The Members of the Committee so elected will cease to hold office at the end of each financial year but any member shall be eligible for re-

election. There shall be a fresh election before the end of the financial year for constituting the Committee for the ensuing financial year. If under any

circumstances such an election is not held the existing members of the Committee will continue to hold office until new members are elected.

(3) The Deputy Speaker shall be the ex-officio Chairman of the Committee.

(4) In order to constitute a meeting of the Committee, the quorum shall be five including the Chairman or the member presiding.

228(1) A member of the Committee who has a personal or direct interest of such a character that it may prejudicially affect the consideration of

the matter of privilege to be considered by the Committee shall not sit on the Committee when the matter is under consideration.

(2) Whether a member of the Committee has a personal or direct interest as stated in sub-rule(1) shall be decided by the Chairman of the

Committee; if it involves the Chairman of the Committee himself, the matter shall be referred to the Speaker and his decision shall be final.

229(a) The report of the Committee of Privileges shall be presented to the Assembly by the Chairman of the Committee or by any member of the

Committee so authorised.

(b) As soon as may be, after the report has been presented a motion in the name of the Chairman of the Committee or any member of the

Committee may be made that the report be taken into consideration.

(c) Any member may give notice of amendment to the motion for consideration of the report referred to above in such form as may be considered

appropriate by the Speaker

Provided that an amendment may be moved that the question be recommitted to the Committee either without intimation or with reference to any

particular matter;

(d) After the motion for consideration of the report has been carried, the Chairman or any member of the Committee or any other member as the

case may be, move that the Assembly agrees, or disagrees, or agrees with amendments, with the recommendations contained in the report.

230. Except as aforesaid the rules applicable to a Select Committee of the Assembly shall apply.

44. Having referred to the relevant Constitutional provisions and also the relevant Rules for consideration, it is necessary to examine the impugned

resolution which is challenged before this Court and the version of the impugned resolution, translated by the T & P Department of this Court is as

under:

19.10.2007

Resolution

Professor K. Anbazhagan:""Therefore, since it had been decided by this House that an appropriate punishment should be awarded to Thiru. Bose

for his indecent activities, it was resolved at first to suspend him for a period of 6 months from this House and from all his activities as a Member of

the Legislative Assembly, as written down in this Resolution, but instead, now I would like to ask on the basis of the advice given by the Speaker. I

am of the view that, instead of ''six months, it could be reduced as, ''for the first 10 days beginning from the next Assembly session''. It is resolved

that during the period of this suspension, Thiru. Bose could not get any salary, facilities, monetary benefits and other eligibilities whatsoever"". I

propose this resolution for consideration.

The Hon''ble Speaker: I place the Resolution brought forward for the decision of the Members of the Assembly.

If agreed, say ''yes'' (Yes)

If disagreed, say ''no'' (No)

I opine the persons who agree are more.

Persons agreed are more. Resolution is passed.

45. The important happenings which have led to the passing of the impugned resolution would reveal that on 18.10.2007, another privilege motion

was sought to be taken up in the Assembly. There was a commotion in the Assembly and several leaders had spoken on the floor of the House on

the subject issue. Therefore, the Hon''ble Speaker had ordered removal of the members of the particular party on account of their disorderly

behaviour and they were removed from the House for the remaining period of the Assembly Session namely 18, 19 and 22.10.2007. While they

were being evicted by the Watch and Ward staff of the Legislature, one of the Members pulled the cap from the head of the Watch and Staff and

threw it and the same landed on the table of the Speaker and this act was considered as it would amount to affecting the privilege of the House

amounting to contempt of the House and the Speaker. The act complained of was done in the presence and in the view of the Speaker and Deputy

Speaker and also in the presence of a large number of Members of the House present at that point of time.

46. It is further seen that two of the Members, Mr. Doraisamy, the Deputy Speaker and Mr. Duraimurugan, the Hon''ble Minister for Law raised a

privilege issue immediately on 18.10.2007 and there was a reply from the Speaker that after viewing the video recording of the proceedings of the

House, he would inform the House of his decision. Thereafter, the said video recording had been viewed by the Speaker and the leaders of the

other political parties and on 19.10.2007, after viewing the video recording to find out as to how the Member threw the cap on the table of the

Speaker and how the petitioner acted, the subject matter was taken up by the Speaker in the House and a deliberation was made and moved by

the Floor Leader of the House and in that context, the impugned resolution has come to be passed.

47. To decide on the validity or otherwise of the impugned resolution, the petitioner has annexed the following material documents in the typed set

of papers:

a Concerned proceedings of the Legislative Assembly dated 18.10.2007

b Concerned proceedings of the Legislative Assembly dated 19.10.2007

c Impugned resolution dated 19.10.2007

and similarly, the learned Advocate General also has placed the following material documents before this Court:

a. A book on the Tamil Nadu Legislative Assembly Rules published by the Legislative Assembly Secretariat.

b. Official Report of Tamil Nadu Legislative Assembly debates dated 18.10.2007 published by the Legislative Assembly Secretariat

c. Official Report of the Tamil Nadu Legislative Assembly debates dated 19.10.2007 published by the Legislative Assembly Secretariat

48. In the facts and circumstances of the case, the challenges made in this petition and upon hearing the arguments made on either side and in the

light of the above material documents, the following questions need to be examined:

i whether this Court, within the Constitutional scheme, has the jurisdiction to decide the scope of powers, privileges and immunities of the

Legislature and its Members; and

ii whether the manner of exercise of power of suspension as done by the Legislature in the impugned resolution suffers from any such illegality or

unconstitutionality as to call for interference by this Court or procedural irregularity.

49. Before analysing the various contentions and consideration of the respective submissions of the learned counsel on either side, I consider it

necessary to advert to some of the relevant decisions and the principles laid down therein that this Court has the jurisdiction to exercise the power

of judicial review in a case of this nature where another coordinate organ of the State has asserted and claimed power, privilege and immunities of

the State Legislature vis a vis the exercise of the jurisdiction conferred upon this Court under Article 226 of the Constitution of India.

50. At the outset, it has to be said that some of the decisions of the British Court have underlined the principles and the prevalent law in the United

Kingdom in respect of the jurisdiction of the Court to decide the question of privilege and it is now all questions of privilege arising in litigation

before them and the Court to insist on their right in principle to decide. But with certain large exceptions in favour of the Parliamentary jurisdiction

exclusive jurisdiction of each House over its own internal proceedings and right of either House to commit and punish for contempt are supported

by great weight of authority. While it cannot be claimed that either House commits in this assumption of jurisdiction by the Courts, the absence of

any conflict for over a century may indicate a certain measure of tacit acceptance.

51. On the commencement of our Constitution which has the great authority and jurisdiction to examine, on grievance being brought before it, to

find out if the particular power or privilege that has been claimed or asserted by the legislature is one otherwise contemplated by the said

Constitutional provisions as can be said to have been vested in the House of Commons of the Parliament of the United Kingdom as on the date of

commencement so as to become available to the Indian legislatures. Prof. F.W. Maitland, in his Constitutional History of England (1st Edition,

1908) deals with the House of Commons in Part III. He has opined that the earlier exercise of privileges from the fourteenth to the eighteenth

century may have fallen into utter desuetude and indeed 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 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 as thus:

...The House''s own discretion is the only limit to this power. Probably it would not be exercised nowadays 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.

Further, in Halsbury''s Laws of England, III Edition, Volume 28, under the heading ""Privileges peculiar to the House of Commons"", while dealing

with the power of expulsion, it was stated thus:

Although the House of Commons has delegated its right to be the judge in controverted elections, it retains its right to decide upon the

qualifications of any of its Members to sit and vote in Parliament. If in the opinion of the House, therefore, a Member has conducted himself in a

manner which renders him unfit to serve as a Member of Parliament, he may be expelled from the House.

52. As far as the Indian Constitution is concerned, Chapter III of Part VI is a complete code in regard to matters relating to State Legislature. It

provides for every conceivable aspect of State Legislature. It contains detailed provision in regard to the constitution of Legislative Assembly,

composition of the Assembly, Sessions, prorogation, dissolution, officers of the State Legislature, duration of House of Assembly, qualifications for

membership, disqualifications for being chosen as, and for being Members, vacancies of seats, decision on questions of disqualification, powers,

privileges and immunities of legislatures, its Members and Committees, manner of conducting business, procedure to be adopted by the Assembly

in regard to enactment of laws, persons who can address the Assembly, the language to be used and the officers of the Assembly. The entire field

in regard to the legislature is covered fully.

53. At the first instance, the Supreme Court has ruled in its decision Sharma-I case wherein it was held that where the Legislative Assembly, after

accepting the report of Committee of Privilege on the matter of breach of privilege, decided that the person found guilty of breach of privilege

should be detained in prison to undergo imprisonment for two weeks, the decision could not be challenged on the ground that the aggrieved party

was not given a hearing even when his personal liberty guaranteed under Article 21 of the Constitution was violated and that the term of detention

was enhanced by the Assembly from one week as recommended by the Committee of Privileges to two weeks.

54. Further, in an eight Judge Bench judgment of the Supreme Court in the case of Pandit M.S.M. Sharma Vs. Dr. Shree Krishna Sinha and

Others, , an authoritative ruling was considered. There was a question that the procedure adopted inside the House of the Legislature was not

regular and not strictly in accordance with law. There are two answers to this contention, firstly, that according to the previous decision of this

Court, the petitioner has got the fundamental right claimed by him. He is therefore, out of Court. Secondly, the validity of the proceedings inside the

Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. The

Supreme Court considered this question and answered the above point holding that Article 212 of the Constitution is a complete answer to this

part of the contention raised on behalf of the petitioner. No Court can go into those questions which are within the special jurisdiction of the

Legislature itself, which has the power to conduct its own business. Possibly, a third answer to this part of the contention raised on behalf of the

petitioner is that it is yet premature to consider the question of procedure as the Committee is yet to conclude its proceedings. It must also be

observed that once it has been held that the Legislature has the jurisdiction to control the publication of its proceedings and to go into the question

whether there has been any breach of its privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance

with its rules of business. Even though it may not have strictly complied with the requirements of the procedural law laid down for conducting its

business, that cannot be a ground for interference by this Court under Article 32 of the Constitution. Courts have always recognised the basic

difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. Mere non-compliance with rules of procedure

cannot be a ground for issuing a writ under Article 32 of the Constitution vide Janardan Reddy and Others Vs. The State of Hyderabad and

Others,

55. It is a privilege of the Legislative Assembly to conduct its internal proceedings within the walls of the House free from interference including its

right to impose disciplinary measures upon its Members. The power of the Court to examine the action of the House over a Member within the

walls of the House. When a Member is excluded from participating in the proceedings of the House, it is a matter concerning the House and the

power of suspension is in regard to the proceedings within the walls of Legislature and in regard to rights to be exercised within the walls of the

House, the House itself is the final Judge. This question came up for consideration before the Supreme Court and a 7 Judge Bench of the Supreme

Court, on a Presidential reference reported in 1965 SC 745 (in re: Under Article 143 of the Constitution of India), the ruling of the Supreme Court

as per the majority opinion rendered therein was that there can be little doubt that the powers, privileges and immunities which are contemplated by

Clause 3 of Article 194 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) and that they should be shown to have subsisted in the House at the

commencement of the Constitution. The House is to consider the relevant provisions of Article 194(3) and determine for itself what its powers,

privileges and immunities are, unfettered by the view of the Court and that the Constitution confers on the House the sole and exclusive jurisdiction.

The ruling of the Supreme Court was that the Supremacy of the Constitution is fundamental to the existence of a Federal State and this supremacy

is protected by the authority by an independent judicial body to act as interpreter of a scheme of distribution of powers. It was further held that the

Legislatures in India function within the limits prescribed by the material and relevant provisions of the Constitution and therefore cannot claim the

nature and type of sovereignty which can be claimed by the Parliament in England. It was also held therein that the authority and their functions are

normally confined to legislative functions and the functions and authority of the Executive lie within the domain of Executive Authority the

jurisdiction and authority of the Judicature in this country was held to be within the domain of adjudication and adjudication of any dispute as to

whether legislative authority has been exceeded or fundamental rights have been contravened is entrusted solely and exclusively to the Judicature of

this country and therefore, the decision about the construction of Article 194(3) and content thereof must ultimately rest exclusively with the

Judicature in this country and not the Legislatures.

56. In a Full Bench judgment of this Court reported in AIR 1973 Madras 371 in the matter of K.A. Mathialagan vs. P. Srini-vasan and others, in

paragraph 25, it was held that on a perusal of the advice given by the Supreme Court there is no doubt whatsoever that the courts in India have the

power to set right any decision of the Legislature if there is an illegality or infringement of the constitutional provisions. But the Supreme Court itself

has made it clear in the said judgment that it was an advisory opinion rendered by them in that reference and it is not adjudication properly so

called and would bind no parties a such. It also expressly pointed out that they were not dealing with any matter relating to the internal management

of the House in that case. With special reference to the power of the Court under Article 226 of the Constitution as against State Legislatures the

Supreme Court accepted in principle that the legislatures have undoubtedly plenary powers but those powers are controlled by the basic concepts

of the written Constitution itself.

57. The Kerala High Court, in its Full Bench decision reported in AIR 1984 Kerala 1 in the case of State of Kerala v. R. Sudarsan Babu and

others, held that the law made by the Legislature under Article 194(3) of the Constitution defining the powers, privileges and immunities of a House

of the Legislature, of the members and the Committees of the House of such Legislature cannot contravene fundamental rights. It is open to the

court to examine the validity of a plea that such laws are void to the extent they infringe the fundamental rights of the citizens. It was also held that

the immunity envisaged in Article 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was

irregular. If the impugned proceedings are challenged as illegal or unconstitutional, such proceedings would be open to scrutiny in a court of law.

Therefore, it would be futile to contend that a citizen cannot move the High Courts or the Supreme Court to invoke their jurisdiction in cases where

his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a

right in the citizen to move the court in that behalf.

58. A similar question fell for consideration before this Court in the case of S. Balasubramanian v. State of Tamil Nadu, etc. and 2 others

challenging the validity of resolution passed by the Tamil Nadu Legislative Assembly under the Rules 219 to 229 and 286 and a Full Bench of this

Court, in its decision reported in 1994-WLR 638, has held that while considering the question as to the scope and extent of interference by Courts

exercising jurisdiction under Article 226 of the Constitution of India in matters of the nature concerning the legality, propriety and constitutionality of

the action taken in the purported exercise of the privileges of the House of legislature engrafted in Article 194(3) of the Constitution of India. It is

by now well settled and there could be no serious controversy over the position reiterated by a number of decisions of the Supreme Court that the

powers and privileges of the various limbs of the State are subject to the provisions contained in the Constitution, the basic and fundamental law

which provides for the governance of the State. It is equally well settled that the final authority to state the meaning of the Constitution and to settle

constitutional controversies exclusively belongs to the Supreme Court and the High Courts which are constituted as the sentinels of both the

Constitution and democracy, as well as the fundamental rights of the citizen - inclusive of their life, liberty and freedom. That apart, the Legislatures

in India have to function within the limits prescribed by the material and relevant provisions of the Constitution of India and adjudication of any

dispute as to whether legislative authority has been exceeded or fundamental rights have been contravened is solely and exclusively left to the

Judicature of this country and, therefore, inevitably, the decision about the construction of Article 194(3) of the Constitution, the privileges, powers

and immunities claimed or action taken in vindication thereof cannot be said to be in the exclusive domain or of the sole arbitral or absolute

discretion of the House of Legislature. Of course, the Courts having regard to their own selfimposed limits would honour the sentiments particularly

keeping in view the plenary powers of the Legislature within the constitutionally permitted limits so long as such action of the Legislature does not

result in the negation of the fundamental rights secured under the Constitution or the life, liberty, freedom and dignity of the citizen.

59. In Raja Ram Pal Vs. The Hon''ble Speaker, Lok Sabha and Others, Constitution Bench of the Supreme Court, while dealing with the aspect

of judicial review in happenings of the Parliament, has held in paragraph 431 of its judgment that Parliament is a coordinate organ and its views do

deserve deference even while its acts are amenable to judicial scrutiny; the constitutional system of government abhors ab-solutism 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

coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle the Supreme Court from exercising

its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision; 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; and 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. It

was further held that 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; the fact that Parliament is an august body of

coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power; 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 and the judicature is not prevented from scrutinising

the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens.

60. In the judgment of the Supreme Court in Raja Ram Pal''s case, it was further analysed that 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. The touchstone upon which parliamentary actions within the four walls of the legislature are to be examined are both the constitutional as well

as substantive law. The proceedings which may be tainted on account of substantive illegality or unconstitutionality, as opposed to those suffering

from mere irregularity thus cannot be held protected from judicial scrutiny by Articles 122(1) inasmuch as Article 122(1) and 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. The said doctrine has no application to the system of governance provided by

the Constitution of India wherein no organ is sovereign and each organ is amenable to Constitutional checks and controls in which the Supreme

Court is entrusted with the duty to be watchdog and guarantor of the Constitution. Hence, there is no basis to the claim of bar of exclusive

cognizance or absolute immunity to Parliamentary proceedings in Article 105(3) of the Constitution.

61. Article 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside

the House if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality and if the impugned procedure

is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the

procedure is no more than that the procedure was irregular.

62. Further, in the judgment referred to above, the decision of the Supreme Court in Sharma-I and Sharma-II have been taken into consideration

along with Special Reference case and the Supreme Court while elaborately discussing these two judgments, has held that in the light of law laid

down in the two cases Pandit Sharma (I) and Pandit Sharma (II) and in U.P. Assembly case (Special Reference No. 1 of 1964), we hold that the

broad contention on behalf of the Union of India that the exercise of parliamentary privileges cannot be decided against the touchstone of

fundamental rights or the constitutional provisions is not correct. In Pandit Sharma,the manner of exercise of the privilege claimed by the Bihar

Legislative Assembly was tested against the ""'procedure established by law"" and thus on the touchstone of Article 21. It is a different matter that the

requirements of Article 21, as at the time understood in its restrictive meaning, were found satisfied. The point to be noted here is that Article 21

was found applicable and the procedure of the legislature was tested on its anvil. This view was followed in U.P. Assembly case (Special

Reference No. 1 of 1964) which added the enforceability of Article 20 to the fray.

63. In the light of the above settled proposition and the principles laid down in the above catena of decisions, it is now well settled that there can be

no serious controversy over the position asserted by the various decisions of the Supreme Court, other High Courts and this Court that the

Constitution reigns supreme and the rights, powers and privileges of the various limbs of the State are subject to the provisions contained in the

Constitution, the basic and fundamental law which provides for the governance of the State. Therefore, the Legislature as a coordinate organ its

acts are amenable to judicial scrutiny and the judicial review of manner of exercise of power of contempt or privileges are also amenable to judicial

review. Thus, in conclusion, I find that this Court is not prevented from scrutinising the validity of the action of the Legislature trespassing on the

fundamental rights conferred on a citizen. Accordingly, the first question stands answered in affirmative.

64. The next point arising for consideration is whether this Court can examine as to whether the manner of exercise of power of suspension as

done by the Legislature in the impugned resolution suffers from any such illegality or unconstitutionality as to call for interference by this Court.

65. On the above score, it was contended by the learned counsel for the petitioner that the impugned resolution passed by the Legislative

Assembly is illegal and unconstitutional. In this context, it was argued that the immunity granted by clause (1) of Article 212 of the Constitution has

been made expressly limited to irregularity of procedure and not to substantive illegality or unconstitutionality and legislature cannot take shelter in

Article and prevent judicial scrutiny thereof and the impugned resolution has no legal foundation when the action is not in accordance with law. A

reference was made to the case of Sharma-II in which an 8 Judge Bench of the Supreme Court held that no Court can go into those questions

which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business and once it has been held that the

Legislature has the jurisdiction to control the publication of its proceedings and to go into the question whether there has been any breach of its

privileges, the Legislature is vested with complete jurisdiction to carry on its proceedings in accordance with its rules of business and even though it

may not have strictly complied with the requirements of the procedural law laid down for conducting its business, that cannot be a ground for

interference by this Court under Article 32 of the Constitution. It was also stressed therein that the Courts have always recognised the basic

difference between complete want of jurisdiction and improper or irregular exercise of jurisdiction. This ruling of the Supreme Court has laid down

a law that the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure by law

has not been strictly followed.

66. Further, from para 62 of the judgment of the Supreme Court in the Special Reference case, it can be seen that Article 212(1) makes a

provision which is relevant and it lays down that the validity of any proceedings in the legislature of a State shall not be called in question on the

ground of any irregularity of procedure. It can further be seen that Article 212(2) confers immunity on the officers and members of the legislature in

whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the

legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Article 212 seems to make it

possible for a citizen to call in question, in the appropriate court of law, the validity of any proceedings inside the legislative chamber if his case is

that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and

unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no

more than this that the procedure was irregular.

67. It was brought to the notice of this Court by the learned Advocate General that in para 363 of the judgment in Raja Ram Pal"s case, it was

held that the English cases laying down the principle of exclusive cognizance of Parliament, including Bradlaugh"s case reported in (1884) 12 ABD

271, arise out of a jurisdiction controlled by the constitutional principle of sovereignty of Parliament cannot be lost sight of. In contrast, the system

of governance in India is founded on the norm of supremacy of the Constitution which is fundamental to the existence of the Federal State.

Referring to the distinction between a written Federal Constitution founded on the distribution of limited Executive, Legislative and Judicial authority

among bodies which are coordinate with and independent of each other on the one hand and the system of governance in England controlled by a

sovereign Parliament which has the right to make or unmake any law whatever, this Court in the above referred to Special Reference case. He had

further pointed out that in paragraph 366 of the said judgment, it was held that the touchstone upon which parliamentary actions within the four

walls of the legislature were examined was both the constitutional as well as substantive law. The proceedings which may be tainted on account of

substantive illegality or unconstitutionality, as opposed to those suffering from mere irregularity thus cannot be held protected from judicial scrutiny

by Article 122(1) inasmuch as the broad principle laid down in Bradlaugh''s case acknowledging exclusive cognizance of the legislature in England

has no application to the system of governance provided by our Constitution wherein no organ is sovereign and each organ is amenable to

constitutional checks and controls, in which scheme of things, this Court is entrusted with the duty to be watchdog and guarantor of the

Constitution. It has been pointed out by him that under Art. 208(1) of the Constitution of India, the Legislative Assembly had framed the Rules

which prescribe the procedure to be followed by the Assembly including while dealing with privilege of the House and that while Chapter XX

pertains to constitution of Committees and Rules 219 to 230 pertain to issues relating to privileges. He has further submitted that the relevant rules

for consideration are Rule 219 which provides that a member may, with the consent of the Speaker, raise a question involving the breach of

privilege either involving the House or of a Committee thereof and the proviso to Rule 221 which reads that a question of the privilege arising

during the sitting of the House shall be entitled to immediate precedence over all other business.

68. It is to be seen that there are two conditions to raise a question of privilege. One is that the question shall be restricted to a specific matter of

recent occurrence and the other one is that the matter, in the opinion of the Speaker requires the intervention of the House. If these conditions are

satisfied, the Speaker may give his consent under Rule 219. Further, Rule 223 provides that if the Speaker gives his consent under Rule 219 and

holds that the matter proposed to be discussed warrants intervention of the House, he may at his discretion, call the Member concerned to make a

short statement relevant thereto provided that in a fit case before deciding whether the matter warrants intervention of the House, he may give an

opportunity to the Member to explain briefly why the matter requires the intervention of the House and he may also give an opportunity to the

Member against whom the matter is sought to be raised to briefly explain his case. Also, under Rule 225, the procedure contemplated is that if the

Speaker, holds that the matter raised affects the privilege or amounts to a contempt of the House and requires the intervention of the House, he

may allow a motion to be made by any Member that the alleged breach of privilege be referred to the Committee of privileges or in the alternative

that it be dealt with by the House itself.

69. An analytical reading of the above procedure of Rules contemplated under Rule 219 to 225 would reveal that these are all the procedures to

be followed by the Speaker and the House concerned and when a matter which affects the privilege of the House, the options available are that the

matter may be referred to the Committee of Privileges or in the alternative it may be dealt with by the House itself. In the instant case, it appears

that after viewing the video recorded proceedings, the House itself has decided as the incident in question has occurred inside the House and in the

presence and view of a large number of Members of the House.

70. It is also placed before this Court that the procedure contemplated under Rule 223 and its two provisos are in one form which say that if the

Speaker gives his consent under Rule 219 and holds that the matter proposed to be discussed warrants intervention of the House, he may, at his

discretion, call the Member concerned to make a short statement relevant thereto. This is a discretionary power given to the Speaker and also if

the matter warrants intervention, he may give an opportunity to the Member concerned to explain briefly as to why the matter requires intervention

of the House. But, in the case on hand, it seems that this procedure has been waived as the incident in question had occurred inside the House of

the Assembly. Therefore, a Member may, with the consent of the Speaker, raise a question involving breach of privilege either of a Member or of

the House or of Committee thereof. Here, two of the Members of the House namely, Mr. Doraisamy, the Deputy Speaker and Mr. Duraimurugan,

the Hon''ble Minister for Law have raised the question of breach of privilege and on that basis, a motion was moved by the Leader of the House

and a debate was made in which the leaders of various political parties like Dravida Munnetra Kazhagam, Congress, Paattali Makkal Katchi,

Communist Party of India (M), Communist Party of India, Viduthalai Ciruthaigal Katchi, etc. participated and the impugned resolution came to be

passed. It is seen that the petitioner, being a Member, has not agitated the non-observance of the above referred to Rules till date either before the

House or the Speaker and has also not demanded that the relevant procedure has to be followed in his case either to waive, modify or reduce the

punishment imposed on him. In other words, it is seen that he has not attempted to demand the Speaker or the House to follow the Rules in

compliance of the procedure contemplated. At least, he could have demanded that the matter could be referred to the Committee of Privileges and

it appears that this has not been done by the petitioner. From a pragmatic and analytical approach to the applicability of the Rules position, it can

be seen that the non-observance of procedure contemplated and the manner of exercise of power by the House itself are purely procedural in

nature and as such cannot be termed as an ""illegality"" inasmuch as they can be termed only as ""irregularity"". Thus, in short, non-observance of the

relevant Rules contemplated, in my considered opinion, is only a procedural irregularity for which the settled legal position is that this Court has no

power to interfere with the procedural irregularity.

70(a) While arguing that the word ""may"" in the Rules can be interpreted and deemed to mean ""shall"" or ""must"", the learned counsel for the

petitioner argued that the Speaker plays a pre-dominant role on issuance of notice, admitting the motion, deciding whether to adopt in the House

or to send it to the Select Committee and in all these matters, the Speaker has to decide and the word ""may"" occurs at least in five places in the

Rules and as such, the Speaker is not only exercising power to dispense with the notice but also decides the issue. In this context, he has further

argued the word ""may"" has to be construed only as ""must"" or ""shall"" in the context of this case as the Speaker has exercised his sole discretion

while conducting the proceedings. Reliance has been placed by him in this regard on five judgments viz., (i) 1980 LW (Crl.) 155 (State (Delhi

Admn.) v. I.X. Nangia and another, (ii) N. Nagendra Rao and Co. Vs. State of Andhra Pradesh, (iii) Wasim Beg Vs. State of Uttar Pradesh and

Others, (iv) Dinkar Anna Patil and Others Vs. State of Maharashtra and Others, (v) Orissa Textile and Steel Ltd. Vs. State of Orissa and Others,

The relevant paragraphs in these judgments on which reliance has been placed by the learned counsel for the petitioner have already been

extracted in the reliance portion.

70(b) In reply, the learned Advocate General has argued that the case law in State (Delhi Admin.) I.K. Nangia and another deals with the

commercial organistion and its discretion vested with its officials and therefore, the same cannot be compared with the Speaker who is discharging

Constitutional functions. In respect of reliance made in the case of N. Nagendra Rao & Co. v. State of A.P. it is the Advocate General''s

contention that the said judgment deals with Essential Commodities Act, the object of which is to achieve disposal of goods that could decay

speedily and failure to observe the same shall frustrate the objects of the said Act and as such, reliance on this judgment also cannot be of any help

to the petitioner. While justifying that the judgment in Wasim Beg v. State of Uttar Pradesh and others and Orissa Textile & Steel Ltd. v. State of

Orissa & others also are not applicable to the case on hand, it is his argument that both the cases arise out of the Industrial Disputes Act and in the

former case, the discharge of confirmed employees is dealt with and the latter one, power of Review by the Government, its duty and obligation

are considered and as such, the word ""may"" in those judgments have to be considered only as ""shall"" and not otherwise.

70(c) While examining the above to the facts of this case and the context in which the power of the Speaker, a Constitutional functionary has to be

construed, particularly keeping in mind his power to protect the privilege and decorum of the House and the circumstances under which he has

exercised his power, I am of the view that the word ""may"" used in the Rules cannot be deemed to mean ""shall"" or ""must"" and it is only regulatory in

nature and not mandatory and it has been construed keeping in mind the context and the facts and circumstances of the case.

71. The view of the Supreme Court in the Special Reference case has been taken into consideration in the judgment in Raja Ram Pal"s case in

paragraph 705 in which one of the learned Judges, while concurring with the majority view, has expressed his satisfaction as under:

I am in wholehearted agreement with the above observations. On my part, I may state that I am an optimist who has trust and faith in both these

august units, namely, legislature and judiciary. By and large, constitutional functionaries in this country have admirably performed their functions,

exercised their powers and discharged their duties effectively, efficiently and sincerely and there is no reason to doubt that in coming years also

they would continue to act in a responsible manner expected of them. I am equally confident that not only all the constituents of the State will keep

themselves within the domain of their authority and will not encroach, trespass or overstep the province of other organs but will also act in

preserving, protecting and upholding the faith, confidence and trust reposed in them by the Founding Fathers of the Constitution and by the people

of this great country by mutual regard, respect and dignity for each other. On the whole, the situation is satisfactory and I see no reason to be

disappointed for the future.

72. The ultimate ruling of the Supreme Court in Raja Ram Pal"s case is that 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; 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; and the truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the materia] or

substitute its opinion for that of the legislature. It was further ruled therein that 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. It was further held that 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 and 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 but they have been duly followed.

73. In the light of the above ruling, the procedure followed though not fully observed by the first respondent, this Court has no power to interfere

with such procedural irregularity and it is open to the petitioner to agitate the same before the House or the Speaker by availing such an

opportunity for waiver/modification or reduction of punishment imposed on him and also seeking payment of salary and other applicable

allowances which have been deprived to him by way of the impugned resolution.

74. On the contention of the learned counsel for the petitioner that there is illegality in the procedure and breach of fundamental rights and the

arguments of the learned Advocate General that the legislative privileges cannot be tested on the touchstone of other Constitutional provisions in

general and the fundamental rights in particular, it is necessary to seek enlightenment from some of the rulings of the Supreme Court. In this regard,

in the decision of a Division Bench of this Court in K. Anbazhagan case, it was held that the resolution of expulsion is not open to challenge on the

ground that the concerned members were not heard as such a challenge would be a challenge on the ground of failure to follow a procedure which

would amount to an "irregularity" and not an "illegality" having regard to the provisions of Art.212 of the Constitution of India and this decision was

also discussed in Raja Ram Pal"s case.

75. In Sharma-I and Sharma-II as well as in the Special Reference case, the breach of fundamental rights has been contended. In Sharma-I, the

question as to whether the privilege of Legislative Assembly under Article 194(3) prevails over the fundamental rights of the petitioner under Article

191(a) fell for consideration, it was settled by the Supreme Court by holding that Article 194(which more or less correspond to Article 105) was

different. While clause (1) had been expressly made subject to the provisions of the Constitution, the remaining clauses had not been stated to be

so subject, indicating that the Constitution-makers did not intend clauses (2) to (4) to be subject to the provisions of the Constitution. It was ruled

that the freedom of speech referred to in clause (1) was different from the freedom of speech and expression guaranteed under Article 19(1)(a)and

the same could not be cut down in any way by any law contemplated by Article 19(2). Therefore, in para 28 of the decision in Sharma-I case, it

was held that it must not be overlooked that the provisions of Article 105(3) and Article 194(3) are constitutional laws and not ordinary laws made

by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III.

76. In Sharma-II, the question which fell for consideration was whether the procedure adopted inside the House of the Legislature was not regular

and not strictly in accordance with law. The Supreme Court considered this question and held that Article 212 of the Constitution is a complete

answer to this part of the contention raised on behalf of the petitioner and that no Court can go into those questions which are within the special

jurisdiction of the Legislature itself, which has the power to conduct its own business.

77. Thus, from the judgment of the Supreme Court in Sharma-I, Sharma-II, Special Reference case and Raja Ram Pal''s case, it is now a settled

proposition that the exercise of Parliamentary privileges cannot be tested against the touchstone of fundamental rights is not correct. In Sharma-I

and II, the manner of exercise of the privilege claimed by the Bihar Legislative Assembly was tested against the ""procedure established by law"" and

thus on the touchstone of Article 21. It is a different matter that the requirements of Article 21, as at the time understood in its restrictive meaning,

were found satisfied. The point to be noted here is that Article 21 was found applicable and the procedure of the legislature was tested on its anvil.

This view was followed in the Special Reference case also. Thus, it is now well settled that there can be no serious controversy over the position

asserted by the various decisions of the Supreme Court, other High Courts and this Court that the Constitution reigns supreme.

78. It is equally well settled that the freedom enshrined under Article 194(1) and the protection under Article 194(2) of the Constitution cannot be

diminished either directly or indirectly by giving liberal meaning to Article 21 of the Constitution as to its application to the former said Articles.

Therefore, liberal interpretation of Article 21 of the Constitution to test the executive, legislature, quasi-judicial and even judicial acts may not be

applied with same or similar vigour to the acts of Parliament and Legislature while dealing with privilege and contempt power and jurisdiction.

79. In the case on hand, it appears that the petitioner''s right to life and liberty has not been infringed in any manner and the period for which the

punishment is imposed was three days of the then ongoing session and ten days of the subsequent session and during that period, he is at liberty

and he can move freely and there is no bar for his right to life and liberty. He has also made it clear that if at all he gets his salary and other

allowances, he proposes to give the same to the poor and orphans. Therefore, the claim of the petitioner that his right guaranteed under Article 21

has been infringed does not have legs to stand inasmuch as it remains un-established and as such, there is no room to hold that his right to life and

liberty is deprived by the action of the Legislature while considering the punishment of suspension which is only for a limited period because of

breach of privilege.

80. An argument was advanced by the learned counsel for the petitioner that the petitioner has been denied equal protection of laws insofar as the

Rules provided are equally available to the petitioner and they have not been followed and in fact, waived and as such, the non-application of the

relevant Rules is in violation of Article 14 of the Constitution.

81. From a careful approach to the procedure contemplated under the Rules, it appears that the only point for concern is that the impugned

resolution has been passed without following the procedure contemplated in the Rules and this lapse is only procedural in nature and another

important aspect is that the petitioner has not been given opportunity to explain his position about the conduct of the acts committed in respect of

breach of privilege of the House. Under Rule 223, the Speaker has got a discretion and in Rule 225, there is an alternative to deal with the matter

by the House itself and these provisions of the Rules appear to have been followed and this being the position and in the absence of any clear case

of violation of Article 14 of the Constitution and in no manner the equal protection of law is denied to the petitioner, I find no reason to hold that

there is violation of Article 14 of the Constitution.

82. Looked at from the above angle, it appears that the Constitutional guarantees under Article 14, 19(1)(a) and 21 of the Constitution are in no

way infringed and thus, in the absence of any ""illegality"" or ""unconstitutionality"" which this Court may examine and test the action of the legislature

warranting interference, in my opinion, the scope of examining the impugned resolution in the context that it is ""illegal"" or ""unconstitutional"" cannot

be answered in favour of the petitioner.

83. Yet another important contention put forth by the petitioner is that the extent of rights guaranteed under Article 21 is not restricted only to life

and liberty but also to other facets of law. In this regard, reliance was placed on a judgment of the Supreme Court in (2003) 8 SCC 351 in L.K.

Advani''s case wherein it has been held that right to reputation is a facet of right to life and is enshrined in Article 21 of the Constitution and if that

right to reputation is inroaded without providing an opportunity, certainly the protection under Article 21 will come to the rescue and therefore, it is

a classic example for observance of principles of natural justice also and whereas, in the case on hand, the petitioner was not given any opportunity

nor a letter, notice or order was served on him and no explanation was called for from him and consequently, the petitioner has been deprived of

discharging his duties as a Member of Legislative Assembly.

84. In reply to the above, it has been submitted by the learned Advocate General that such a plea of loss of reputation was not taken in the

affidavit but however, the same was argued. According to him, the case relied on by the petitioner is not applicable to the facts and circumstances

of the case since the said case was governed by Commission of Inquiry Act in which Section 8-B provides for issuance of a notice and they are

statutory in nature and the facts are also different; whereas the Legislature which exercises its power and jurisdiction with regard to protection and

preservation of its privileges, stands in a different footing and pedestal; the Speaker and the Legislature, while exercising the power and jurisdiction

cannot stand on a special status and these being Constitutional authorities, cannot be equated to Commission of Enquiry or any other Executive

authority or even to legislative exercise of legislature and hence, the same is not applicable to the facts of this case. There is certainly a force in the

argument advanced by the learned Advocate General in this regard and moreover, trite it is, that a person approaching the Court of law has to

plead his case and in the absence of such a plea in the affidavit by the petitioner to this effect the argument of the learned counsel for the petitioner,

though good, has to fall to ground.

85. With regard to non-observance of principles of natural justice, it was strenuously contended that while the Rules do provide for observance of

principles of natural justice, non-observance of those Rules and arbitrary exercise of power by the first respondent have prejudiced the petitioner

to a great extent. It was further contended that in a matter where the fundamental rights are violated and natural justice not having been followed,

the person approaching the Court need not show any separate prejudice independent to the violation of natural justice and fundamental rights. In

this regard, strong reliance has been placed by the learned counsel for the petitioner on para 431(u) of Raja Ram Pal"s case wherein it was held

that 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, From a clear understanding of the case of the petitioner pleaded in the affidavit, the

arguments advanced by the learned counsel for the petitioner and also the learned Advocate General, it appears that opportunity of hearing has not

been afforded to the petitioner by taking a statement from him as to explain his case. Further, neither a copy of the resolution was served on him

nor a statement was taken from him as contemplated in the Rules. The learned Advocate General''s reply in this regard is that no prejudice

whatsoever has been caused to the petitioner by non-observance of procedure contemplated under the Rules and as such, no right guaranteed

under the Constitution is infringed inasmuch as the period of punishment is only for a short period and his continuance as a Member of the

Legislative Assembly for ever is not in stake. It is his further reply that paragraph 431(u) of the judgment in Raja Ram Pal''s case should be read

conjointly with paragraph 446 of the same judgment which reads that the grievances of the petitioners are manifold. They would state that proper

opportunity was not given to them to defend themselves; they were denied the opportunity of defending themselves through legal counsel or to give

opportunity to explain; the request for supply of the material, in particular the unedited versions of videography for testing the veracity of such

evidence was turned down and doctored or morphed video-clippings were admitted into evidence, the entire procedure being unduly hurried. As

already noted the scope of judicial review in these matters is restricted and limited. Regarding non-grant of reasonable opportunity, we reiterate

what was recently held in Jagjit Singh v. State of Haryana that the principles of natural justice are not immutable but are flexible; they cannot be

cast in a rigid mould and put in a straitjacket and the compliance therewith has to be considered in the facts and circumstances of each case.

86. In regard to the above, the point to be noted is that though the act complained of on the part of the petitioner, took place on 18.10.2007 and

the procedure was adopted on 19.10.2007, no reason whatsoever has been assigned by the petitioner as to why he had not approached this

Court for about more than two months from the date of incident. That apart, there was neither justifying nor compelling need on the part of the

Speaker to give him an opportunity since his role had occurred during the sitting of the House which was undisputable and in fact, there were

members as eye-witnesses and there was also official electronic record by way of simultaneous video recording of the House proceedings and

therefore, in the facts and circumstances of this case, the Speaker, being a constitutional functionary exercised the discretion vested in him and

decided that there was no need to give an opportunity to the petitioner. It is also to be stated that the Speaker along with other Members, had

witnessed the said act on 18.10.2007 which had occurred ""during the course of the proceedings"" of the House and the same was also confirmed

by viewing the video recording. In the said circumstances, on 19.10.2007, after viewing the video recording, the Assembly had unanimously

passed the resolution which is under challenge. Last but not the least, the petitioner, being a Member of the Legislative Assembly, aggrieved by the

non-observance of procedure contemplated under the Rules, could have very well moved the Speaker or the House as he has got the right to

demand a copy of the resolution, video record, etc. The note-worthy point in this context is that when he had taken pains to get a copy of the

proceedings from the library through his colleague, no reason has been assigned as to why he has not moved the Speaker or the House with regard

to waiver/modification/reduction of the punishment imposed on him, even though his right to continue as a Member of the Legislative Assembly

after the expiry of the punishment period is certain.

87. While harping on the above point, the learned counsel for the petitioner has questioned the authenticity of the procedure of video recording.

But, it has been brought to the notice of this Court that simultaneous recording of proceedings of the House has been done from 16.08.2001

onwards as per the orders of the then Speaker and such video recording has been in vogue for more than six years and the same has not been

disputed or objected by any Member of Legislature or political parties till now and nor its veracity, reliability and authenticity ever questioned or

disputed. Accordingly, the act of the petitioner in throwing the cap of the Watch and Ward towards the table of the Speaker has been witnessed

by the Speaker himself and other Members as well on 19.10.2007 subsequent to which a motion was moved and the impugned resolution was

passed.

88. It appears that no notice whatsoever was served on the petitioner with regard to the allegation levelled against him nor any explanation called

for from him. Of course, the Speaker has the power to exercise his discretion to waive the procedure. The point to be answered in regard to the

above issue is whether the non-observance of procedure contemplated constitutes an act of ""irregularity"" or ""illegality"". On a perusal of the entire

materials available before this Court and upon analysing the various decisions and after giving due credence to the contentions raised and the

procedure adopted by the first respondent in passing the impugned resolution, it cannot be said that the impugned resolution is a result of illegality

inasmuch it is only a procedural irregularity which is involved in the matter. In such view of the matter, I do not find any merit or substance in the

plea of the petitioner in this regard.

On the aspect of proportionality of punishment, taking into account the situation under which the power has been exercised by the constitutional

functionary to impose punishment on the petitioner only for a temporary period, I am of the view that this Court has no power to go into the same

for the reason that imposition of punishment on a Member is in the domain of the said constitutional functionary and moreover, as stated earlier, the

petitioner"s continuance as a Member of Legislative Assembly after the expiry of the prescribed period is not at stake taking into account the

behaviour of the petitioner, he has been suspended only for a limited period and it appears that proportionate punishment has been decided by the

House. Thus, in view of the settled proposition that a Court would not go into the proportionality or quantum of punishment, there is no scope for

interference in this aspect as well.

89. In view of the aforesaid findings, the challenge to the impugned resolution cannot be sustained and consequently, this petition questioning the

suspension of the petitioner for a shorter period of time is liable to be dismissed for being devoid of any merit.

90. However, as already stated, it appears that the relevant procedure contemplated, i.e. calling the member to make a short statement and giving

him an opportunity to explain his case has not been complied with by the Speaker or the House which amounts to procedural irregularity. Of

course, the Speaker has the power to exercise his discretion to waive the procedure. This procedural irregularity can be set right if the petitioner

approaches the Speaker or the House to give him an opportunity of being heard so that he could convince the Speaker or the House in respect of

waiver/modification/reduction of the punishment imposed on him and also for payment of his salary and allowances withheld which is well within

the power and competence of the Speaker or the House. Accordingly, in view of my discussion on the aspect of procedural irregularity, I am

inclined to direct the petitioner to approach the House or the Speaker at the earliest with regard to redressal of his grievance as stated above and I

sincerely hope that the Legislative Assembly will be conscious of its role in this regard.

91. Before parting with the matter, I am obliged to follow the findings of Sarkar, J. (as he then was) in the Special Reference case and also the

judgment of the Supreme Court in Raja Ram Pal"s case in which one of Their Lordships has expressed satisfaction and the relevant portion runs

thus: ""At this juncture, on my part, let me state that I am an optimist who has trust and faith in both legislature and judiciary. By and large,

constitutional functionaries in this country have admirably performed their functions, exercised their powers and discharged their duties effectively,

efficiently and sincerely and there is no reason to doubt that in coming years also they would continue to act in a responsible manner which is

expected of them. I am equally confident that not only all the constituents of the State will keep themselves within the domain of their authority and

will not encroach, trespass or overstep the province of their organs but will also act in preserving, protecting and upholding the faith, confidence

and trust reposed in them by the makers of the Constitution and by the people of this great country by mutual regard, respect and dignity for each

other. On the whole, the situation is satisfactory and I see no reason to be disappointed for the future."" In obedience to the same sentiments and

feelings, I feel that an analytical and microscopic view of all the features and propositions and the fundamentals of the functioning of the three

organs namely the Legislature, the Executive and the Judiciary have given a clear vision and wisdom to the people of this country for about six

decades and mandated the very basic principle enshrined in the Constitution of our country which shows the path of the good governance and

development of this country into a popular democracy. On the whole, it is to be said that the situation is satisfactory and all the three organs have

exercised their powers and discharged their duties effectively and efficiently and there is no reason to doubt that in the coming years also, they

would continue to act in a responsible manner which is expected of them and as such, I see no reason to be disappointed for the future.

92. CONCLUSION

a. In view of my conclusion arrived at as discussed above after analysing the facts and circumstances of the case and on giving due consideration to

the various rulings of the Supreme Court, other High Courts and this Court, I hold that this Court is not prevented from scrutinising the validity of

the action of the Legislature in trespassing on the fundamental rights of a citizen as the Legislature is a coordinate organ and its views and acts are

amenable to judicial scrutiny.

b. Also, from a pragmatic and microscopic approach to the facts and circumstances of the case and also the impugned resolution, it would be clear

that the non-observance of certain procedure contemplated is only ""irregular"" in nature and not ""illegal"" or ""unconstitutional"". Therefore, there is no

scope to interfere with the impugned resolution.

c. While holding so and in view of my stand taken in one of the earlier paragraphs, I direct the petitioner to approach the House or the Speaker at

the earliest with regard to redressal of his grievance in respect of waiver/modification/reduction of the punishment imposed on him and also for

payment of his salary and and allowances withheld which is well within the power and competence of the Speaker or the House and also for

compliance of the procedure. I hope that the Speaker or the House will look into the matter as expeditiously as possible in the event of being

approached by the petitioner.

93. Resultantly, the writ petition is dismissed with the above direction and observation without any order as to costs. Consequently, connected

Miscellaneous Petitions are closed. While winding up, I record my appreciation to the learned counsel for the petitioner for having guided me in the

process of arriving at a conclusion. My great appreciation is also due to the learned Advocate General who has assisted this Court, on request, as

Amicus Curiae in his own style of patience and good spirit. Accordingly, it is directed that the learned Advocate General shall be given appropriate

remuneration by the Government of Tamil Nadu for his invaluable assistance to this Court.