

Parliament's Power to Expel Its Member's From House

Juhi Pawa*

Research Scholar, Sunrise University, Alwar, Rajasthan

Abstract – The House has the right to punish its members for their misconduct in the House or outside. In cases of misconduct or contempt committed by the members, the House can impose punishment in the form of admonition, reprimand, withdrawal from the House, suspension from the service of the House, imprisonment and expulsion from the House. The Madhya Pradesh High Court upheld expulsion of two members of the Madhya Pradesh Legislative Assembly observing that since the Legislative Assembly had the power and privilege of expelling a member resulting in the vacation of his seat, the correctness, legality or propriety of the resolutions expelling the concerned members could not be challenged in courts of law.

However, the Punjab and Haryana High Court held that a State Legislature was not clothed with any power to expel duly elected members as a measure of punishment for contempt of the House.

Keywords: Parliament, Power, Expel, Member

-----X-----

INTRODUCTION

The Court, inter alia, observed that the punishment for contempt of the House was "known and well settled as being reprimand, suspension, fine and lastly the keystone in this context being the power to commit the contemner to prison."⁶ The Supreme Court of India while upholding the Parliament's power to expel the members involved in cash for query scam and in the alleged irregularities in the MPLAD Scheme, considered the question whether the powers and privileges of the Legislatures in India, particularly with reference to clause (3) of article 105 of the Constitution, include the power of expulsion of their members. While answering the question affirmatively, the Apex Court held that the power of expulsion can be claimed by Indian legislatures as one of the privileges inherited from the British House of Commons through articles 105(3) and 194(3) of the Constitution. The Court opined that the power of expulsion is not solely derived from the power of the British House of Commons of regulating its constitution or composition. It also held that the right to enforce privileges either by imposition of fine or confinement to prison or by expulsion is not part of any other privileges but is by itself a separate and independent power or privilege.

The Chairman may direct any member whose conduct is grossly disorderly to withdraw from the House immediately.²⁰ There have been instances in the Rajya Sabha when members have been directed to withdraw for disorderly behaviour: When during

Question Hour a member went on interrupting the House and said that he would not keep quiet and would raise his voice, the Chairman directed him to withdraw as his conduct was, in the opinion of the Chairman, grossly disorderly. When the member persisted, the Chairman said that he would have to name the member whereupon the member withdrew.²¹ On 25 July 1989, during the Question Hour, a member was physically prevented from putting a supplementary question by another member. The Chairman remarked, "No manhandling of any member by anybody is permitted."

The matter was raised during zero hour on 27 July 1989. Some members wanted that the erring member should apologize to the House. The member concerned explained that he had already regretted the incident in the Chairman's room and would not regret again on the floor of the House. Thereupon, the Deputy Chairman observed that if the member did not regret, he should not sit in the House. The member thereafter withdrew from the House.

In an extreme case of misconduct, the House may expel a member from the House. As observed by May, "The expulsion by the House of Commons of one of its Members may be regarded as an example of the House's power to regulate its own constitution, though it is, for convenience, treated here as one of the methods of punishment at the

disposal of the House. Members have been expelled for a wide variety of causes”.

PARLIAMENT'S POWER TO EXPEL ITS MEMBER'S FROM HOUSE

There have been three instances of expulsion of members of the Rajya Sabha. Shri Subramanian Swamy was expelled on 15 November 1976 on the basis of the Report of the Committee appointed to investigate his conduct and activities. The Committee found his conduct derogatory to the dignity of the House and its members and inconsistent with the standards which the House expects from its members.

Dr. Chhatrapal Singh Lodha was expelled on 23 December 2005, for his conduct being derogatory to the dignity of the House and inconsistent with the Code of Conduct, consequent on the adoption of a motion by the House agreeing with the recommendation contained in the Seventh Report of the Committee on Ethics.

Dr. Swami Sakshi Ji Maharaj was expelled on 21 March 2006, for his gross misconduct which brought the House and its members into disrepute and contravened the Code of Conduct for members of Rajya Sabha, consequent on the adoption of a motion by the House agreeing with the recommendation of the Committee on Ethics contained in its Eighth Report.

Privilege is that which sets hon. members apart from other citizens giving them rights which the public do not possess... In my view, parliamentary privilege does not go much beyond the right of free speech in the House of Commons and the right of a member to discharge his duties in the House as a member of the House of Commons.

The origins of the privileges enjoyed by the House of Commons in the United Kingdom were a product of a direct and real threat from the Crown and the House of Lords. As the threat subsided, the thrust of the history of privilege has been towards defining those rights and immunities in their narrowest sense, reflecting the reality that all privileges enjoyed by the House and its Members ultimately derive from the electorate. Fortunately, the privileges of the Canadian House of Commons were inherited without the need to overcome physical threats and challenges. They enable the institution of Parliament to flourish and individual Members to fulfil the functions for which they were elected.

In modern parlance, the term “privilege” usually conveys the idea of a “privileged class”, with a person or group granted special rights or immunities beyond the common advantages of others. This is not, however, the meaning of privilege in the parliamentary context. “Parliamentary privilege” refers more appropriately to the rights and

immunities that are deemed necessary for the House of Commons, as an institution, and its Members, as representatives of the electorate, to fulfil their functions. It also refers to the powers possessed by the House to protect itself, its Members, and its procedures from undue interference, so that it can effectively carry out its principal functions which are to inquire, to debate, and to legislate. In that sense, parliamentary privilege can be viewed as special advantages which Parliament and its Members need to function unimpeded.

The House has the authority to invoke privilege where its ability has been obstructed in the execution of its functions or where Members have been obstructed in the performance of their duties. It is only within this context that privilege can be considered an exemption from the general law. Members are not outside or above the law which governs all citizens of India. The privileges of the Commons are designed to safeguard the rights of each and every elector. For example, the privilege of freedom of speech is secured to Members not for their personal benefit, but to enable them to discharge their functions of representing their constituents without fear of civil or criminal prosecution for what might be said in the House and committees. When a constituency has returned a candidate, it is the electors' right that this chosen representative should be protected from any kind of improper pressure, and particularly from crude violence.

DISCUSSION

Privilege essentially belongs to the House as a whole; individual Members can only claim privilege insofar as any denial of their rights, or threat made to them, would impede the functioning of the House. In addition, individual Members cannot claim privilege or immunity on matters that are unrelated to their functions in the House.

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed, is referred to as a contempt of the House. Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or a Member, it merely has to have the tendency to produce such results.

What Parliament has considered as “absolutely necessary” privileges has varied over the centuries. Nevertheless, certain basic principles relating to privilege have become established. Neither House individually can extend its privileges, though either House can, formally by resolution, decide not to claim or apply privileges it has hitherto claimed.

No one House of Parliament has a right to claim for itself new privileges; new privileges can only be created or old privileges extended by Act of

Parliament. Either House can apply its rights to new circumstances, thereby in some cases creating new instances of contempt. [14] And finally, each House can individually adjudicate and punish breaches of its privileges.

Parliamentary privileges were first claimed centuries ago when the English House of Commons was struggling to establish a distinct role for itself within Parliament. In the earliest days, Parliament functioned more as a court than as a legislature, and the early claims to some of these privileges were originally made in this context. [15] In any case, these privileges were found to be necessary to protect the House and its Members, not from the people, but from the power and interference of the King and the House of Lords. Over time, as the House of Commons gained stature and power as a deliberative assembly, these privileges were established as part of the statute and common law of the land.

The House of Commons in India has not had to challenge the Crown, its executive, or the Upper House in the same manner as the British House of Commons. The privileges of the British House of Commons were formally transferred to the Canadian Parliament at the time of Confederation through the *Constitution Act, 1867* and were put into force by the enactment of a statute now known as the *Parliament of India Act*. Nonetheless, the privileges enjoyed by the House and its Members are of the utmost importance; they are in fact vital to the proper functioning of Parliament. This is as true now as it was centuries ago when the English House of Commons first fought to secure these privileges and rights.

The privileges of the House can be examined from two vantage points: the rights and immunities of its individual Members and the rights of the House in its collective capacity. Within this framework, the individual Member's rights are subordinate to those of the House as a whole in order to protect the collectivity against any abuses by individual Members. For instance, a Member's individual privileges may be considered suspended if the House orders that Member to attend in his or her place and answer questions demanded by the House. It is extremely rare, however, that the rights of the House collectively will be used to override those of an individual.

Indiscipline and disruptions in Parliament are much talked about issues. Not only are disruptions a waste of Parliament's valuable time, these significantly taint the image of this esteemed institution. Commotion in Rajya Sabha over the introduction of Women's Reservation Bill and the subsequent suspension of 7 MPs has brought this issue back to the forefront. We thought it might be useful to research and highlight instances in the past when the House had had to deal with similar situations.

CONCLUSION

According to the Rules of Conduct and Parliamentary Etiquette of the Rajya Sabha, *"The House has the right to punish its members for their misconduct whether in the House or outside it. In cases of misconduct or contempt committed by its members, the House can impose a punishment in the form of admonition, reprimand, withdrawal from the House, suspension from the service of the House, imprisonment and expulsion from the House."* Mild offences are punished by admonition or reprimand (reprimand being the more serious of the two). Withdrawal from the House is demanded in the case of gross misconduct. 'Persistent and wilful obstructions' lead the Chairman to name and subsequently move a motion for suspension of the member. A member can be suspended, at the maximum, for the remainder of the session only. In an extreme case of misconduct, the House may expel a member from the House. According to a comment in the above rule book, *"The purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as to rid the House of persons who are unfit for membership."*

REFERENCES

- [i] Oxford dictionary, 10th Edition, p.1138.
- [ii] Sir Thomas Erskine May: Parliamentary Practice, 16th Edition., Chapter III, p.42.
- [iii] 1686
- [iv] 1970 AIR 1573.
- [v] Article 118 and 208 empower each house to make rules of procedure to be followed therein. The freedom of speech is subjected to these rules. *In Re Under Article 143*, AIR 1965 SC 745.
- [vi] AIR 1998 SC 2120.
- [vii] (1868) LR 4 QB 73.
- [viii] See Section 135-A of Civil Procedure Code, 1908.
- [ix] *Kalyan Chandra Sarkar v. Rajesh Ranjan*, 2005 (3) SC 307.
- [x] Sir Thomas Erskine May: Parliamentary Practice, 16th Edition., Chapter III, p.82
- [xi] *Smt. Indira Gandhi v Raj Narain*, AIR 1975 SC 2299.

Corresponding Author

Juhi Pawa*

Research Scholar, Sunrise University, Alwar,
Rajasthan