



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Parliament, Privilege, and the Limits of Self-Governance: A Case

Commentary on Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others

-Muskan

ABSTRACT

Raja Ram Pal is the case in which the Supreme Court of India was finally compelled to answer a question the Constitution had left conspicuously open since 1950: does Parliament's power to regulate its own privileges under Article 105 include an unwritten power to expel its own members, and if so, is the exercise of that power reviewable by a court at all? The petitioners — ten Lok Sabha members and one Rajya Sabha member expelled after a televised sting operation showed them accepting money to ask questions in the House — argued that no such power existed outside the textually exhaustive disqualification machinery of Articles 101 to 103 and the Tenth Schedule, and that even if it did, Article 122 could not convert Parliament into a body immune from constitutional scrutiny. A five-judge Constitution Bench, by a 4:1 majority, upheld both the existence of the power and the validity of its exercise, while simultaneously — and this is the holding's more durable contribution — rejecting the proposition that Articles 105 and 122 place parliamentary proceedings beyond judicial reach altogether. This commentary sets out the facts, the constitutional questions, the reasoning of the majority and of Justice Raveendran's dissent, and offers a critical assessment of what the judgment settled and what, sixteen years on, it still leaves unresolved: the absence of any codified standard governing when expulsion is a proportionate response, and the tension between removing a corrupt member and overriding the electorate that chose him.

Keywords: Parliamentary Privilege, Article 105, Judicial Review, Basic Structure, Expulsion of Members, Separation of Powers, Cash-for-Questions Scandal.

I. INTRODUCTION

Few provisions of the Constitution have generated as much interpretive anxiety, in proportion to their brevity, as Article 105. The article grants each House of Parliament, and its members, "such powers, privileges and immunities" as Parliament may from time to time define by law, and until so defined, those enjoyed immediately before the commencement of the Constitution by the House of Commons of the United Kingdom.¹ Parliament has never enacted the codifying law Article 105(3) contemplates, leaving the content of those privileges to judicial reconstruction from British constitutional history — an exercise fraught with difficulty in a republic that, unlike the United Kingdom, is founded on a written and supreme Constitution rather than parliamentary sovereignty. *Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others* brought that difficulty to a head.² The Court was asked, in effect, to decide whether Parliament possesses a power nowhere expressly conferred on it — expulsion of its own members — and, if it does, whether Articles 105(3) and 122 together immunise the exercise of that power from any judicial check. The Court's answer to the first question was a qualified yes; its answer to the second was an unambiguous no. It is that second answer, more than the specific holding on expulsion, that gives the judgment its continuing constitutional significance.

II. FACTS AND PROCEDURAL BACKGROUND

On 12 December 2005, the news portal Cobrapost conducted a sting operation, broadcast by the television channel Aaj Tak under the title "Operation Duryodhana," which showed ten members of the Lok Sabha and one member of the Rajya Sabha apparently accepting cash, directly or through intermediaries, in exchange for agreeing to table questions in Parliament.³ The broadcast generated immediate and widespread public outrage. The Speaker of the Lok Sabha constituted a five-member Special Inquiry Committee, and the Rajya Sabha referred the matter to its Committee on Ethics. Both committees examined the unedited footage, transcripts, and the explanations offered by the implicated members, and both concluded that the allegations stood established.⁴ On

¹INDIA CONST. art. 105, cl. 3.

²*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Ors.*, (2007) 3 SCC 184 (India), <https://indiankanoon.org/doc/61480953/>.

³*Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Ors.*, (2007) 3 SCC 184 (India), <https://indiankanoon.org/doc/61480953/>.

⁴*Id.*

23 December 2005, each House adopted a motion, by voice vote, accepting its committee's findings and expelling the members concerned with immediate effect; the Lok Sabha expelled ten members, and the Rajya Sabha expelled one.

Raja Ram Pal, one of the expelled Lok Sabha members, filed a writ petition under Article 32 challenging the validity of his expulsion; connected petitions from other expelled members, transferred from various High Courts, were heard together by a Constitution Bench of the Supreme Court. The petitions raised, in substance, a single constitutional question with two parts: did the power to expel exist at all, and if it did, could its exercise be examined by a court.

III. CONSTITUTIONAL PROVISIONS IN ISSUE

A. Article 105: Parliamentary Privilege

Article 105 confers on Parliament, its members, and its committees the powers, privileges, and immunities necessary for the effective conduct of legislative business. Article 105(3) is the operative sub-clause: privileges are to be "such as may from time to time be defined by Parliament by law," and, until so defined, are those of the House of Commons of the United Kingdom, its members, and its committees, at the commencement of the Constitution.⁵ Since Parliament has never enacted a defining law, the content of the privilege has remained tethered to an inherited, undefined body of British parliamentary practice — including, on the respondents' case, the power to expel a member for conduct that damages the dignity of the House.

B. Article 122: Courts Not to Inquire into Proceedings of Parliament

Article 122 bars courts from inquiring into the validity of any proceeding in Parliament on the ground of an alleged irregularity of procedure, and further provides that no officer or member of Parliament in whom powers are vested for regulating procedure or the conduct of business shall be subject to the jurisdiction of any court in respect of the exercise of those powers.⁶ The central interpretive question was whether this provision immunises parliamentary action from judicial scrutiny altogether, or whether it protects Parliament only from being second-guessed on questions of internal procedural regularity, leaving substantive constitutional violations open to review.

⁵INDIA CONST. art. 105, cl. 3.

⁶INDIA CONST. art. 122.

C. Article 32 and the Structure of Judicial Review

The petitions were filed under Article 32, which guarantees the right to move the Supreme Court directly for enforcement of fundamental rights. Invoking Article 32 necessarily placed before the Court the question of its own institutional role as guardian of those rights, and whether that guardianship role could be displaced by Article 105 or Article 122.

D. The Basic Structure Doctrine

The doctrine was not directly under challenge in this litigation, but it supplied the interpretive gravity behind the majority's reasoning. Judicial review, constitutional supremacy, and the rule of law had been recognised in *Kesavananda Bharati v. State of Kerala* as components of the Constitution's basic structure, immune even from constitutional amendment.⁷ If judicial review is that fundamental, a merely inherited, judge-made body of privilege could not plausibly be read to oust it.

IV. ISSUES BEFORE THE COURT

The Constitution Bench distilled the dispute into four questions: first, whether Parliament possesses the power to expel its own members; second, whether that power, if it exists, falls within the privileges recognised under Article 105; third, whether Articles 105 and 122 operate to exclude judicial review of the exercise of that power altogether; and fourth, whether the specific expulsions before the Court violated constitutional guarantees or principles of natural justice.

V. ARGUMENTS OF THE PARTIES

A. The Petitioners' Contentions

The petitioners argued that the Constitution's own text is exhaustive on the question of how a member may lose their seat: Articles 101 and 102 set out the grounds of disqualification, and the Tenth Schedule adds defection as a further, specifically legislated ground.⁸ Nowhere does the constitutional text confer on either House a freestanding power to expel a member for misconduct. Permitting Parliament to locate such a power in the undefined privileges preserved by Article 105(3) would, on this argument, allow the House to override the electorate's choice without any

⁷*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India), <https://indiankanoon.org/doc/257876/>.

⁸INDIA CONST. arts. 101–103; INDIA CONST. sch. X.

textual constitutional authorisation, and would additionally violate the principle that no body may be judge of the extent of its own power — a principle the petitioners argued was especially important where the body in question was determining the scope of a power it proposed to exercise against its own dissenting members.

B. The Respondents' Contentions

The respondents — the Speakers of the two Houses and the Union of India — argued that the power to expel is not merely permissible but essential to the effective functioning of a legislative body, since a House incapable of removing a member who has brought it into disrepute cannot protect its own institutional integrity. They relied on British parliamentary history, in which expulsion has long been a recognised incident of the House of Commons's authority to regulate its own membership and discipline, and argued that Article 105(3) imports precisely this history into Indian practice in the absence of a defining law. They further submitted that corruption of the kind revealed by the sting operation struck at the foundation of representative democracy, and that the two Houses were entitled — indeed, institutionally obliged — to exercise disciplinary jurisdiction over members whose conduct had compromised public confidence in Parliament.

VI. THE JUDGMENT

A. The Majority

The majority — delivered by Sabharwal, C.J., for himself, Balakrishnan and Jain, JJ., with Thakker, J. concurring separately — held that Article 105(3) does import the power of expulsion as it existed in the House of Commons at the commencement of the Constitution, and that this power is ancillary and remedial in character: it exists to protect the credibility and functioning of Parliament as an institution, not to punish individual members for their own sake.⁹ The majority rejected the petitioners' argument that Articles 101 to 103 and the Tenth Schedule are exhaustive, holding that those provisions address eligibility and continuation of membership on wholly distinct grounds — age, citizenship, defection — and are simply not addressed to, and therefore do not

⁹Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Ors., (2007) 3 SCC 184 (India), <https://indiankanoon.org/doc/61480953/>.

foreclose, disciplinary expulsion for misconduct; the two schemes, in the majority's analysis, serve different constitutional purposes and can coexist without conflict.

On the second and, for present purposes, more significant question, the majority held that Articles 105 and 122 do not create what one might call a constitutional black hole in which parliamentary action becomes wholly insulated from scrutiny.¹⁰ Article 122 bars inquiry into mere irregularities of procedure; it does not bar inquiry into substantive illegality, unconstitutionality, mala fide exercise of power, violation of fundamental rights, or jurisdictional error. Applying that standard to the facts, the majority found that the expelled members had been afforded a reasonable opportunity to respond to the allegations against them, that the committees' procedures disclosed no illegality or perversity, and that no fundamental right — including under Articles 14, 20, or 21 — had been violated. The petitions were accordingly dismissed.

B. Justice Raveendran's Dissent

Justice R.V. Raveendran dissented on the threshold question of the power's existence, though not on the availability of judicial review, which he affirmed as firmly as the majority did.¹¹ In his view, neither Article 105(3) nor any inherent authority of the House extends to expulsion; the Constitution's scheme for the loss of membership is found in Articles 101 to 103, and any additional ground — including expulsion for misconduct — would require either a constitutional amendment or specific legislation enacted pursuant to Article 102(1)(e), neither of which existed. On his reading, the two Houses had, in substance, legislated a new disqualification into existence through the back door of privilege, exercising a power the Constitution had not given them. The dissent is important not because it prevailed, but because it demonstrates that the judgment's more consequential holding — the availability of judicial review — commanded unanimous support across the Bench, while its narrower holding on the existence of the expulsion power itself was genuinely, and reasonably, contested.

VII. PRECEDENTS RELIED UPON

A. Special Reference No. 1 of 1964 (Keshav Singh's Case)

¹⁰Id.

¹¹Id. (Raveendran, J., dissenting).

In this earlier reference under Article 143, arising from a stand-off between the Uttar Pradesh Legislative Assembly and the Allahabad High Court over the Assembly's contempt power, the Supreme Court had already held that legislative privilege under Article 194(3) — the state-legislature analogue of Article 105(3) — could not be read as superior to the Constitution itself, and that its exercise remained subject to constitutional limits.¹² Raja Ram Pal extended this principle from the narrower context of contempt proceedings to the wider context of expulsion, applying essentially the same logic: privilege inherited from the House of Commons is received into a written constitutional order, and takes on the qualified character of every other constitutional power exercised within that order.

B. Kesavananda Bharati v. State of Kerala

The Court did not apply Kesavananda directly, since no constitutional amendment was in issue, but its reasoning on judicial review as an element of the basic structure supplied the premise for the majority's conclusion that Article 122 could not be read to defeat that review altogether.¹³ If judicial review cannot be excluded even by a constitutional amendment enacted through the Article 368 process, it could hardly be excluded by a general privilege clause inherited, undefined, from a foreign parliamentary tradition.

VIII. CRITICAL ANALYSIS

The principal contribution of Raja Ram Pal lies not in its narrow holding — that Parliament may expel a member for gross misconduct — but in its reconciliation of an inherited, common-law notion of privilege with a written, supreme Constitution. Parliamentary privilege in England developed historically as a shield against monarchical and executive interference, a doctrine calibrated to a constitutional order in which Parliament is, in a formal sense, sovereign.¹⁴ India's constitutional order inverts that premise: all public power, including the power exercised by Parliament, derives its legitimacy from the Constitution, and no organ of government is beyond the reach of that document's supremacy. The majority's central achievement was recognising that

¹²In re Special Reference No. 1 of 1964 (Keshav Singh's case), AIR 1965 SC 745 (India),

<https://www.latestlaws.com/latest-caselaw/1964/september/1964-latest-caselaw-209-sc/>.

¹³Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 (India), <https://indiankanoon.org/doc/257876/>.

¹⁴See generally Erskine May, Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament (Malcolm Jack ed., 24th ed. 2011); A.G. Noorani, Constitutional Questions and Citizens' Rights (Oxford University Press, 2006).

Article 105(3) could import the content of British privilege — the existence of the power — without importing the British premise of parliamentary supremacy that made that power, in its country of origin, effectively unreviewable. That distinction, between borrowing a power and borrowing the immunity that historically accompanied it, is the judgment's most durable doctrinal contribution, and it is one that later commentary on parliamentary privilege in India continues to draw upon.

The judgment also performs real work for democratic accountability. A legislature that cannot discipline members who accept money for asking questions has little claim to public trust, and the Court was right to recognise that institutional self-preservation is a legitimate constitutional interest, not merely a euphemism for institutional self-protection. Had the Court accepted the respondents' argument that Article 122 renders expulsion wholly unreviewable, it would have licensed exactly the kind of majoritarian abuse the petitioners feared — a House able to remove inconvenient or dissenting members under the guise of disciplinary action, with no external check whatsoever. The Court's insistence that judicial review survives, confined to substantive illegality, *mala fides*, unconstitutionality, and jurisdictional error, strikes a defensible balance between institutional autonomy and constitutional accountability.

That said, the judgment leaves two questions substantially unresolved, and both have grown more, rather than less, pressing in the years since. First, the Court articulated no standard by which future Houses are to judge what conduct justifies expulsion, as opposed to censure, reprimand, or some lesser sanction. "Gross misconduct" is doing a great deal of work in the judgment without ever being defined, and a bench willing to defer to Parliament's judgment on where that line falls has, in practice, left the line to be drawn anew by whichever majority happens to control the House at a given moment — a degree of discretion in real tension with the rule-of-law values the judgment otherwise champions. Second, the judgment engages only lightly with the representational cost of expulsion. An expelled member is not merely disciplined; the constituency that elected him is left without representation for the remainder of the term, a consequence that falls on voters who had no part in the misconduct. The majority treated this as an acceptable incident of Parliament's disciplinary authority; Justice Raveendran's dissent, by insisting that only a constitutionally or legislatively created ground could displace a member chosen by the electorate, took the representational interest more seriously, even though his opinion did not carry the day. A fuller

reckoning with that interest — perhaps through a requirement that expulsion be reserved for the clearest cases, or reviewed against a codified threshold — would have strengthened the judgment's claim to have struck the right balance rather than merely a defensible one.

IX. CONCLUSION

Raja Ram Pal v. Hon'ble Speaker, Lok Sabha & Others remains one of the clearest judicial statements on the relationship between parliamentary privilege and constitutional supremacy in Indian law. Its narrower holding — that Parliament may expel a member for conduct destructive of its institutional credibility — is defensible but incompletely reasoned, resting on an undefined standard that leaves considerable discretion to future Houses. Its broader holding — that no privilege inherited under Article 105(3), and no immunity conferred by Article 122, can place parliamentary action beyond the reach of judicial review for substantive illegality, mala fides, or constitutional violation — is the judgment's lasting achievement, and it is the one on which every judge on the Bench, dissenting or otherwise, ultimately agreed. In an era in which legislative bodies across democracies periodically test the limits of self-governance, Raja Ram Pal stands as a considered demonstration that institutional autonomy and constitutional accountability are not opposites to be traded off against each other, but conditions that a mature constitutional order must learn to hold together.