Chapter III

Power to Punish for Contempt vis-à-vis Fundamental Rights

Unlike the freedom of speech and immunity from legal proceedings, which have been discussed in the preceding chapter, the power to punish for contempt is not explicitly guaranteed under the Indian Constitution. By virtue of Clause 3 of Articles 105 and 194, the Indian Parliament and State Legislatures inherit certain powers, including the power to punish for their contempt, enjoyed by the British House of Commons at the commencement of the Indian Constitution as an interim measure until they are codified in India.

In the U.K., both the Houses of the British Parliament have the power to punish the members as well as the strangers for the contempt of the House or for the breach of privilege. According to Erskine May, “any act or omission which obstructs or impedes either House of Parliament in the performance of functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results may be treated as a contempt even though there is no precedent of the offence”\(^{120}\). The power to punish for the contempt is essentially a judicial power inherited by both Houses of the British Parliament from its predecessor-High Court of Parliament, which had the judicial powers, besides the legislative powers. This power is indispensable to protect the dignity and authority of the House from being attacked by the contemptuous reflections, undermining the public confidence in Parliament. It also guarantees that the proceedings of the Houses are conducted smoothly without any obstruction.

The examples of the contempt of the Parliament include\(^{121}\) - Misconduct by the strangers in presence of either House or a Committee, disobedience to rules or orders of either House or of a Committee, misconduct (corruption or impropriety) of members or officers, reflections on either House, publication of false or perverted


\(^{121}\) Ibid., pp. 128-154
reports of debates, premature publication or disclosure of Committee proceedings, obstructing members, officers, witnesses or either House in the discharge of their duty etc. The House of Commons has power to imprison until the end of the current parliamentary session and the House of Lords has power to imprison indefinitely\textsuperscript{122}. Other penalties include reprimand, admonition, suspension and expulsion.

The Joint Committee of House of Lords and House of Commons on Parliamentary Privileges in its First Report published in 1999 expressed the view that the penal sanctions made it particularly important that the scope of contempt should be clear and easily understood\textsuperscript{123}. It also took the view that Imprisonment as a penalty for contempt, not used for many years, should be abolished. The Committee observed that the last time the House of Commons imprisoned a non-member for unruly behavior in the galleries, was in 1880. However, the Committee suggested that the each House should retain its jurisdiction over its own members provided that the disciplinary procedures of both Houses should be revised to bring them into line with contemporary standards of fairness, including rights guaranteed by the European Convention of Human Rights. The Committee has proposed following reforms in regard to the disciplinary and penal powers of the U. K. Parliament:\textsuperscript{124}

1. Contempt of Parliament should be codified in statute. Contempts comprise any conduct which improperly interferes with the performance by either House of its functions, or the performance by a member or officer of the House of his duties.

2. Parliament's power to imprison persons, whether members or not, who are in contempt of Parliament should be abolished, save that Parliament should retain power to detain temporarily persons misconducting themselves within either House or elsewhere within the precincts of Parliament.

3. For practical reasons Parliament's penal powers over non-members should, in general, be transferred to the High Court. Parliament should retain a residual jurisdiction, including power to admonish a non-member who

\textsuperscript{122} United Kingdom Parliament <http://publications.parliament.uk/pa/> accessed 23 October, 2008

\textsuperscript{123} See Annexure II for more details

\textsuperscript{124} Ibid
accepts that he acted in contempt of Parliament. Proceedings should be initiated on behalf of either House by the Attorney General, at the request of the Speaker, advised by the standards and privileges committee or of the Leader of the House of Lords acting on the advice of the committee for privileges. The court should have power to impose a fine of unlimited amount.

4. Willful failure to attend committee proceedings or answer questions or produce documents should be made criminal offences, applicable to members and non-members, punishable in the courts by a fine of unlimited amount or up to three months' imprisonment.

5. Parliament should retain its existing disciplinary powers over members, except that the power to imprison should be replaced with a power to fine.

6. In the interests of fairness, some of the disciplinary procedures of the Commons committee of standards and privileges need to be revised, as would those of the Lords committee for privileges if the need arose for that committee to consider contempts. The minimum requirements of fairness should be those set out above.

7. Each House should retain power to itself to make the decision on contempt matters, save that the House should not have power to increase the penalty above that recommended by the relevant committee. Members of the relevant committee should be eligible to participate in any debate in the House but should not vote.

8. The power of the House of Lords to suspend its members should be clarified and confirmed.

9. Each House should resolve that unauthorised disclosure of embargoed copies of reports presented to the House but not yet published, and the unauthorised use of committee material, may be treated as contempt.

10. Section 1 of the Parliamentary Privilege Act 1770 should be amended so as to include, but without prejudice to Article 9 of the Bills of Rights, court proceedings brought against members of Parliament in respect of statements made or acts done in the course of proceedings in Parliament.
In comparison, in Australia, by virtue of Section 49 of the Commonwealth Australian Constitution Act read with Section 5 of the Parliamentary Privileges Act, 1987, the power to punish for the contempt or for the breach of privilege enjoyed by the House of Commons in U.K. is also available to both the Houses of Parliament of Commonwealth of Australia. Section 4 of the Act gives the statutory definition of Contempt:

Conduct (including the use of words) does not constitute an offence against a House unless it amounts, or is intended or likely to amount, to an improper interference with the free exercise by a House or Committee of its authority or functions, or with the free performance by a member of the member’s duties as a member. \(^\text{125}\)

Thus, it is no more discretionary with the Australian Parliament to consider any act as contempt and the Courts can make the judicial scrutiny as to whether a particular act falls within the ambit of Section 4. Section 9 of the Act has now made it obligatory for the House to specify the particulars of the matters determined by the House to constitute the offence in the resolution of the House imposing the penalty and the warrant committing the person to custody, if a House imposes a punishment of imprisonment for that offence against the House. \(^\text{126}\) Section 6 of the Parliamentary Privileges Act, 1987 has, however, abolished contempts by Defamation. \(^\text{127}\) Under Section 7 of the Act, the penalties have been rationalized and clearly defined in order to prevent arbitrary use of the power to punish for contempt. An imprisonment for a period not exceeding 6 months or fine not exceeding $5000 in case of natural person and $25,000 in case of a corporation can be imposed by the House.

In USA, the Constitution does not explicitly confer any general power on the Houses of the Congress to punish for the contempt. Section 5, Clause 2 of the U.S. Constitution, however, provides that: Each House may determine the rules of its proceedings, punish its own Members for disorderly behaviour, and, with the concurrence of two-thirds, expel a Member. A question whether the House of

\(^{125}\) Parliamentary Privileges Act, 1987 (Australia), S. 4 See Annexure III for the Full Text of the Act

\(^{126}\) Ibid, S. 5

\(^{127}\) It provides that: (1) Words or acts shall not be taken to be an offence against a House by reason only that those words or acts are defamatory or critical of the Parliament, a House, a Committee or a Member (2) Subsection (1) does not apply to words spoken or acts done in the presence of a House or a Committee.
representative had inherited the right to punish the citizen for a contempt of its authority or a breach of privilege from the Parliament of England was raised in *Kilbourn v. Thompson*\(^{128}\). In this case, the plaintiff, Mr. Hallett Kilbourn brought an action for false imprisonment against the sergeant-at-arms who, by the order of the House, imprisoned him for 45 days in the jail of the District of Columbia. He was adjudged to be guilty of refusing to answer certain questions put to him as witness by the House of Representatives and thereby committing the contempt of the House. The U.S. Supreme Court applied the doctrine of ‘Separation of Powers’ and held that the House could not exercise the judicial power of the United States, which was vested in the Supreme Court, in the absence of any express grant of power to punish for contempt by the Constitution. But, in *Barenblatt v. United States*\(^{129}\), conviction of Prof. Barenblatt for the contempt of the Congress for refusing to answer the questions put by the House Committee as a part of investigation into Communist infiltration into the education system was held to be valid and not violative of the First Amendment protections of speech and association. The investigation was held to be in aid of the legislative power of the Congress and hence the petitioner’s conviction did not violate the First Amendment.

It is worthwhile to note here that the power to punish for contempt is essentially a judicial power. In U.K., there is no written Constitution, which provide for strict separation of powers and fundamental rights, restricting the Parliament’s power to punish for its own contempt. On the contrary, the U. S. Constitution provides for absolute separation of powers between the Congress and the Courts. The Congress cannot exercise the judicial power of the state by punishing the outsiders for its contempt. However, the Congress in exercise of its legislative functions may take necessary action against the persons who fail to co-operate with the House Committees as witnesses.

\(^{128}\) Kilbourn v. Thompson 103 U.S. 168 (1880)

\(^{129}\) Barenblatt v. United States 360 U.S. 109 (1959)
II. The Un-codified Penal Power of the Indian Legislatures

During the British Rule in India, Section 28 of the Government of India Act 1935, which expressly conferred the freedom of speech and immunity from legal proceeding in respect of the same, specifically restrained the Federal Legislature from exercising any punitive or disciplinary powers.\(^{130}\) It appears that this provision was in consonance with the decision of the Privy Council in *Kielly v. Carson and others* (1841) in which it was decided that colonial legislative assembly of Newfoundland could not claim the judicial power to punish for the contempt enjoyed by the House of Commons because the power was vested in the Commons not by virtue of its legislative character but by virtue of its ancient usage as part of ‘High Court of Parliament’. However, according to Salil Kumar Nag, the British did not confer the power of punishing for any breach of privileges to the Indian Legislatures because they apprehended that it would destroy their own authority. He has observed:

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\ldots\text{In 1935, when a new installment of constitutional reform in India was voted in the British Parliament, no provision for granting the Indian Legislature the privilege of punishing for any breach of privileges found place in this Reforms Act. The British authorities were afraid that the Legislature which already the most powerful of the two wings of Government would, if empowered to enforce their own privileges, soon pave the way for pulling down the executive (which was to the latter a symbol of alien rule over the country) from the “tottering pinnacle of glory”} \ldots\text{. By granting the Indian Legislature the privilege of punishing any person for the breach of their privileges and thereby conferring on them the stats of a court, British policy-makers were apprehensive that they would thereby completely destroy their own authority. Therefore, till the bell tolled they withheld this privilege from the Indian Legislature.}\]

Articles 105 (3) and 194 (3) lay down the Constitutional mandate for the Parliament and State Legislatures to codify the other privileges by making a law under the relevant legislative entries in the Union List (entry 74) and the State List (entry 39), as

\(^{130}\) Clause (3) of Section 28 of the Government of India Act, 1935 provided that: Nothing in any existing Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act shall be construed as conferring or empowering the Federal Legislature to confer, on either chamber or on officer of the legislature, the status of the court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.

the case may be. Until the legislative bodies in India make such laws, the privileges enjoyed by the House of Commons at the commencement of the Constitution would be applied in India. In the Constituent Assembly, Shri Alladi Krishna Iyer strongly advocated for the application of the wide privileges exercised by the sovereign legislature –House of Commons including the power to punish for contempt. He was against granting of limited powers and privileges exercised by the pre-independence colonial legislatures in India under the Government of India Act, 1935. He argued that:

….If the privileges are confined to the existing privileges of the legislatures in India at present constituted, the result will be that a person cannot be punished for the contempt of the House (emphasis supplied). The actual question arouse in Calcutta as to whether a person can be punished for contempt of the provincial legislature or the other legislatures in this country. It has been held that there is no power to punish for contempt any person who is guilty of contempt of the provincial or even the Central Legislature, whereas the Parliament in England has inherent right to punish for contempt……. Are you going to deny to yourself that power?

The power to punish for the contempt or for the breach of privilege, being enjoyed by the House of Commons at the commencement of the Constitution, was to be exercised by the Indian Legislatures until the scope of the power was formally defined in the codified law.

The exercise of the penal power the Legislatures has always been the subject matter of legal controversies in India as evident from the issues discussed below. Unlike United Kingdom, there is a charter of constitutionally recognized and judicially enforceable Fundamental Rights in India enshrined under the Supreme and written Constitution. These Fundamental Rights are intended to control the arbitrary powers of the State including the Parliament and the State Legislatures and protect the inviolable human dignity from the excesses of the governmental bodies. The legal principle of ‘Parliamentary Sovereignty’ prevailing in United Kingdom has no place in the Indian Constitutional System governed by the principle of ‘Supremacy of the Constitution’. The application of the power to punish for contempt or for breach of privilege, inherited from the ‘foreign Parliament’ under the temporary provisions of the Constitution, has been responsible for conflicts between the legislatures on the one

132 Constituent Assembly Debates (Vol. 8, 4th Reprint, Lok Sabha Secretariat, New Delhi, 2003) 148
hand and the citizens and the courts on the other. This has led to the consistent demand from the civil society and the press in India for the codification of the legislative privileges on the lines of the Australian law.

In this regard, it would be particularly pertinent to note the following strong views expressed by one of the greatest legal luminaries in India, Justice V. R. Krishna Iyer, in his incomparable style:-

In England, the House of Commons has unlimited power, uncommon in written Constitutions. We must be wary of borrowing from such a nidus with a history incompatible with our story of swaraj……….. An angry Commons may for gross contempt sentence a victim to go to the gallows; an outrage if we transplant such punitive atrocity to the Indian Parliament oblivious of the fact that (a) we have a Bill of Rights in Part III, (b) that our Parliament is not and can never be a court, (c) that we have a judiciary as a separate and coordinate branch of the State, and (d) that whatever the historical reasons in Great Britain for the House of Commons to have acted as a court in the past, the punishments meted out did impinge on the liberty of the subject and no court could save him.\(^{133}\)

III. The Parliamentary Procedure on the Matters of Breach of Privilege

Any question involving a breach of privilege can be raised by a member of the Lok Sabha only with the consent of the Speaker (Chairman, in case of Rajya Sabha).\(^ {134}\) If the Speaker gives his consent, the member raising the matter shall be asked to make a short statement relevant thereto before granting him leave to raise the question of privilege. If objection to leave being granted is taken, the Speaker shall ask those Members who are in favour of the leave being granted to rise in their places, and if not less than twenty five members rise accordingly, the Speaker shall declare that leave being granted and if less than twenty five members rise, he shall inform the concerned member that he has not the leave of the House.\(^ {135}\) If leave is granted, the House may consider the question and come to a decision or refer it to a Committee of Privileges on a motion made either by the member who has raised the question of

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\(^{134}\) Rule 222 of the Rules of the Procedure and Conduct of Business in Lok Sabha (Corresponding Rule of the Rajya Sabha: 187)

\(^{135}\) Rule 225 of the Lok Sabha Rules (Corresponding Rajya Sabha Rule: 190)
privilege or by any other member. The Speaker has the power to refer any question of privilege to the Committee of Privileges for examination, investigation or report on his own, independently of the foregoing procedure.

At the commencement of the Lok Sabha or from time to time, as the case may be, the Speaker shall nominate a Committee of Privileges consisting of not more than fifteen members. The Committee shall examine every question referred to it and determine with reference to the facts of the each case whether a breach of privilege is involved and, if so the nature of the breach, the circumstances leading to it and make such recommendations as it may deem fit and procedure to be followed by the house in giving effect to the recommendations. The report made by the Committee may be considered by the House and motion of acceptance may be passed accordingly. The rules of procedure made by the State Legislature, in this regard, are more or less same as the Rules of the Parliament.

A cursory survey of the Rules of Procedure and Conduct of Business in both the Houses of Parliament would show that they do not explicitly provide for the principles of natural justice to the person guilty of either contempt or breach of privilege of the House. In practice, a reasonable opportunity to defend oneself is generally given by the Houses or the Committee of privileges to the person indicted of contempt or a breach of privilege. However, the procedural requirement of *audi alteram partem*, affording an opportunity to the alleged contemnor to defend himself before any adverbial action is taken against him, has not been formally incorporated in the said rules. This makes it discretionary for the houses whether to follow the basic principles of natural justice or not. It is submitted, with the great respect to the Parliament that the omission on the part of it to prescribe for such principles of natural justice is against the established principle of criminal justice i.e. no person should be condemned unheard as well as the requirement of fundamental right to right to life and personal liberty enshrined under Article 21 of the Constitution, which has been

136 Rule 226 of the Lok Sabha Rules  (Corresponding Rajya Sabha Rule: 191)
137 Rule 227 of the Lok Sabha Rules  (Corresponding Rajya Sabha Rule: 203)
138 Rule 313 of the Lok Sabha Rules  (Corresponding Rajya Sabha Rule: 192)
139 Rule 314 of the Lok Sabha Rules  (Corresponding Rajya Sabha Rule: 195)
held to be applicable to the power of the legislatures to punish for their contempt in *Keshav Singh’s Case*.

The power to punish for contempt or a breach of privilege is essentially a judicial power to be exercised by the legislative bodies under Article 105(3) and 194(3). A question, whether the Parliament and State Legislatures are bound to follow the principles of natural justice when exercising the judicial powers under these provisions, can be answered by referring to the judicial response to other constitutional provisions vesting similar judicial powers. Under Article 124(4), the Parliament has power to remove a Supreme Court Judge by passing an address supported by a special majority of both the Houses on the ground of proved misbehavior or incapacity. In *Mrs. Sarojini Ramaswami v. Union of India*[^40], the Supreme Court has held that the concerned Judge should be given opportunity to show cause when the parliament takes up for consideration the motion for his removal. The Court has further observed that such an opportunity is consistent with and is also the requirement of fairness, an essential attribute of procedure any decision having civil consequences. It is submitted that there is no reason why the judicial principle evolved by the Court in respect of judicial power of Parliament under article 124(4) should not be applied to the similar power under Article 105 (3). The logical conclusion is that if the Parliament/State Legislature fails to follow the principles of natural justice when condemning any person guilty of the contempt, it would amount to violation of his right under Article 21 and subject to judicial review.

In United Kingdom, the Joint Committee of House of Lords and House of Commons on Parliamentary Privileges, in its report published in 1999, has recommended that Contempt of Parliament should be codified in statute and Parliament's power to imprison persons, whether members or not, who are in contempt of Parliament should be abolished[^41]. The Committee further recommends that Parliament's penal powers over non-members should be transferred to the High Court but existing disciplinary powers over members should be retained. In case of members, some of the disciplinary procedures of the Committees for Privileges in both the Houses of the

[^40]: Sarojini Ramaswami v. Union of India (1992) 4 SCC 506, Para 49

Parliament should be revised, in the interest of fairness.\textsuperscript{142} The Committee has suggested that the accused member should be provided with the clear statement of allegations against him; opportunity to take legal advice and assistance; the opportunity to be heard in person; opportunity to call and examine witnesses; opportunity to receive transcripts of evidence against him etc\textsuperscript{143}.

IV. Power to award Sentence of Imprisonment: Nature and Scope

The duration for which the contemnor can be imprisoned is limited by the duration of the session of the House. The person is set free as soon as the House is prorogued. A question whether the contemnor can file a \textit{habeas corpus} petition in the Court if he is imprisoned even after the House is prorogued was raised in \textit{Sushanta Kumar Chand v. The Speaker, Orissa Legislative Assembly}\textsuperscript{144}. In this case, 8 members of the Samajwadi Yubak Sabha, Utkal were sentenced by to 7 days' simple imprisonment under a warrant issued by the Speaker for shouting slogans and disturbing the proceedings of the Orissa Legislative Assembly on 8th October, 1969. A \textit{habeas corpus} petition was presented to the Orissa High Court on 10\textsuperscript{th} October, 1969 in which the petitioners were asked to be released on bail but the bail was refused. The Orissa Legislative Assembly was prorogued on 13th of October 1969 under Article 174 (2) (a) of the Constitution. The petitioners were released after serving the sentence on 15\textsuperscript{th} October, 1969 and the petition became \textit{in-fructuous}.

The High Court, however, expressed the view that even in United Kingdom by 1950 the position was well settled that the unexpired portion of the sentence awarded to the contemnor was to lapse as and when the session during which the detention order was made ended. As the same law was applicable in India by virtue of 194 (3), the petitioners were entitled to be released on 13-10-1969 when admittedly the autumn session of the Orissa Legislative Assembly came to an end and was prorogued\textsuperscript{145}. The

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{142} Ibid
  \item \textsuperscript{143} Ibid
  \item \textsuperscript{144} \textit{Sushanta Kumar Chand v. The Speaker, Orissa Legislative Assembly} AIR 1973 Orissa 111
  \item \textsuperscript{145} Ibid
\end{itemize}
\end{footnotesize}
remarks made by the Court, though constitute the *obiter* and not the *ratio*, indicate that if the person imprisoned by the order of the Legislature is not released on a prorogation of the session, it would be open for him to file the *habeas corpus* petition in the Court for the immediate discharge. This may act as an effective check against the Legislature to awarding arbitrary and long sentences to the contemnor.

It is undisputed that the Parliament and the State Legislatures have power to punish for their contempt and even to award the sentence of imprisonment. The penal power is generally exercised rarely and with restraint. As a matter of tradition, the unconditional and unqualified apologies expressed by the contemnor are generally accepted by the Houses of Parliament. This is evident from the following report presented to the House by the Committee of Privileges of Seventh Lok Sabha on 8 May, 1981:-

> The Committee feels that it adds to the dignity of one and all if power in a democratic system is exercised with restraint; the more powerful a body or institution, the greater restraint is called for particularly in exercising its penal jurisdiction.\(^{146}\)

### V. Judicial Review of the Power to Punish for Contempt or for Breach of Privilege

#### 1. Right under Article 22 and the Penal Power: *The Blitz Case*

In *Gunupati Reddy v. Nafisul Hasan*\(^ {147}\), a question was raised before the Supreme Court whether the power to punish for the contempt, enjoyed by the State Legislatures under Article 194(3), was controlled by Article 22. *Blitz*, a weekly news magazine of Bombay, published an article in its issue dated the 29\(^{th}\) September, 1951 in which some doubts were raised about the impartiality of the Speaker of the U. P. Legislative Assembly. The Committee of the Privileges summoned the Acting Editor of *Blitz*, Shri D. H. Mistry, to clarify his position. He neither replied to the letter nor appeared before the Committee. The Speaker issued a warrant for his arrest to enforce his presence before the House. On 11 March 1952, Shri Mistry was arrested in Bombay.

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\(^{146}^{Parliamentary Privileges, Digest of Cases 1950-2000 (Vol.I, Lok Sabha Secretariat, New Delhi, 2001) 7}

\(^{147}^{Gunupati Reddy v. Nafisul Hasan  AIR 1954 SC 636}
and taken in custody to Lucknow for being produced before the Speaker of U. P. Assembly to answer the charges of breach of privilege. He was not produced before a Magistrate within 24 hours of his arrest. He filed petition for issuance of habeas corpus under Article 32 in the Supreme Court alleging that he was kept in illegal detention in violation of Article 22 (2) of the Constitution. The Attorney General admitted before the Court that the allegation was well founded. The Court held that the petition succeeded and the petitioner was entitled for release.

In the instant case, the Supreme Court, however, did not decide a general question whether the Parliamentary privileges under Articles 105 (3) and 194(3) were controlled by all the Fundamental Rights in Chapter III of the Constitution. In M. S. M. Sharma v. Shri Krishna Sinha\(^{148}\), a case which has been discussed in the preceding chapter, the Supreme Court refused to treat the decision in the Blitz Case as a considered opinion on the subject as it was proceeded entirely on a concession of the counsel (i.e. Attorney General).

2. Relation of the Penal Power with Articles 21 and 211: The President’s Reference No.1 of 1965\(^{149}\) (Keshav Singh’s Case)

One Mr. Keshav Singh and two others printed and published a leaflet containing false and defamatory allegations against a Member of the U. P. Legislative Assembly. The concerned Member made a complaint to the Assembly alleging that they had made contempt of the House and on 7 March 1963, the assembly referred the matter to the Privilege Committee of the House. The Committee held Keshav Singh and others guilty of a breach of privilege and contempt of the House and recommended that they be reprimanded. The House ordered them to present themselves before the House to receive the reprimand on the 19 February 1964. Keshav Singh did not comply with the same but sent a letter to the Speaker, which was worded in a language derogatory to the dignity of the House, and the Speaker. The House ordered to issue a warrant for his arrest and he was arrested on 13 March 1964. When he was produced before the House on the next day, he behaved in a disrespectful manner.

\(^{148}\) M. S. M. Sharma v. Shri Krishna Sinha AIR 1959 SC 395. See Chapter II for more details

\(^{149}\) The President’s Reference No.1 of 1965 AIR 1965 SC 745
The House then passed a resolution and sentenced Keshav Singh to 7 days imprisonment. The Superintendent of Lucknow Jail was directed by the House to keep Keshav Singh in jail as a prisoner of the House. On 19 March 1964, Keshav Singh filed presented a writ petition in the Lucknow bench of Allahabad High Court and represented by Adv. Solomon. The High Court admitted the petition and granted interim bail to Keshav Singh. On 21 March 1964, the Legislative Assembly adopted a resolution saying that the two judges of the High court who granted relief to the petitioner, Adv. Solomon and Keshav Singh had committed the contempt of the House. The Assembly ordered that they be taken into custody and produced before the House. The two judges of the Allahabad High Court and Adv. Solomon filed petitions in the Allahabad High Court under Article 226 of the Constitution on 23 March 1964 for a writ of mandamus for restraining the Speaker from implementing the resolution passed by the House. The High Court consisting of a full bench of 28 judges issued orders for restraining the Speaker from issuing the warrant in pursuance of the resolution. In the meanwhile, the Speaker had already issued the warrants of arrests and they had been handed over the Marshal on the evening of 23 March 1964.

On 25 March 1964, the Assembly passed another resolution declaring that it did not intend to deprive the two judges and Adv. Solomon, of an opportunity of giving their explanations before a final decision was taken as to the contempt of the House. The Speaker subsequently withdrew the warrants of arrest and notices were issued to the two judges and Adv. Solomon to appear before the House on 6 April 1964. The two judges filed fresh petitions before the High Court for staying the implementation of the aforesaid resolution. A full Bench of the High Court issued an interim order to restrain the Speaker and the House from implementing the resolution. On 26 March 1964, the President of India made a special reference to the Supreme Court under Article 143 (1) of the Constitution. The Court was asked to its opinion about the constitutional Crisis created by the conflict between the State Legislature and the High Court in U.P.

The President of India had referred the following questions for the advisory opinion of the Supreme Court:\(^\text{151}\) :-

(1) Whether, on the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh consisting of the Hon'ble Mr. Justice N. U. Beg and the Hon'ble Mr. Justice G. D. Sahgal, to entertain and deal with the petition of Mr. Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Mr. Keshav Singh on bail pending the disposal of his said petition;

(2) Whether, on the facts and circumstances of the case, Mr. Keshav Singh, by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Soloman, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Shri Keshav Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh;

(3) Whether, on the facts and circumstances of the case, it was competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Soloman, Advocate, before it in custody or to call for their explanation for its contempt;

(4) Whether, on the facts and circumstance of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Soloman, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly; and

(5) Whether a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt of for infringement of its privileges and immunities or who passes any order on

\(^{151}\) Ibid, Para 14
such petition commits contempt of the said Legislature and whether the said Legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities.

The U. P. Assembly argued that in England the general warrant (i.e. without stating the facts constituting the contempt) issued by the House of Commons, in exercise of its power to punish for contempt, was regarded as final and conclusive and its validity could not be challenged in courts. It was argued that only the speaking warrants issued by the Commons could be examined by the courts. Hence, under Article 194 (3), the validity of the general resolution passed and general warrants issued by the Assembly against the two judges of the Allahabad High Court and Adv. Solomon could not be challenged. On the other hand, on behalf of the High Court, it was contended that Article 194 (3) should be read and interpreted in its context as well as in the light of other important constitutional provisions like Articles 32, 211 and 226. It was further contended that the High Court had jurisdiction to entertain a Habeas Corpus petition filed by the citizen and consequently, to examine the validity of the order passed by any authority including the legislature, irrespective of whether it was an unspeaking warrant.

The Majority decision was delivered by the Chief Justice P. B. Gajendragadkar on behalf of five other brother Judges and Justice Sarkaria gave a dissenting judgment. The Court observes that though Article 194 (3) does not open with the words, “Subject to the other provisions of Constitution”, the contents of the Article can not be interpreted by excluding the applicability of certain other relevant provisions of the Constitution (e.g. Fundamental Rights and Prohibition under Article 211)\textsuperscript{152}. According to the Court, if a law to codify the privileges is made by the State Legislature, such a law would be subject to Article 13 and ultimately controlled by the Fundamental Rights in the Chapter III of the Constitution. The framers of the Constitution did not intend that only the law made under the first of Article 194 (3) would be subject to Fundamental Rights but not the latter part of the same provision, which temporarily made the privileges of the House Commons applicable in India. Unlike in England where the Parliament is sovereign, the Supremacy of Constitution

\textsuperscript{152} Ibid, Para 36
in India was protected by the authority of an independent judicial body to act as the interpreter of the Constitution.

The Court held that the content of Article 194 (3) must ultimately be determined by courts and not by legislatures. The Court further held that, unlike British Parliament, the Indian Legislature could not be the sole and exclusive judge in defining its own powers and privileges and the decision about the construction of Article 194(3) rested exclusively with the Judicature of the Country. The Court also held that the prohibition under Article 211, saying that no discussion should take place in the Legislature as to the conduct of any Judge of a High Court or Supreme Court, is not directory but mandatory. In interpreting the scope of the penal powers of the legislatures under Article 194 (3), Article 211 cannot be ignored. It implies that the judge cannot be held guilty of contempt of the legislatures merely on the ground that he has entertained a petition against the order of the legislature to punish for its contempt. A Judge is deemed to be discharging his constitutional duty under Article 226 to give relief to the aggrieved person if his Fundamental Rights are violated.

The Court, however, did not consider the larger issue as to whether latter part of Article 194 (3) was subject to the fundamental rights in general but held that Article 21 would apply. The Court held that if an application were made to the Court for issue of *Habeas Corpus*, it would not be competent for the House of the Legislature to raise the preliminary objection that the Court has no jurisdiction in the matter. The Court said that Article 211 was mandatory in nature and if a judge in discharge of his duties passed an order, which in the opinion of the House amounted to contempt, any action taken against the judge would not be justified.

It was held that it was competent for the Lucknow Bench of the U.P. High Court consisting of N.U. Beg and G.D. Sahgal, JJ, to entertain and deal with petition of Keshav Singh. Keshav Singh by causing the petition to be presented on his behalf to the High Court, Adv. B. Solomon by presenting the said petition, and the said two judges did not commit contempt of the Legislative Assembly of U.P. The Court further observed that it was not competent for the Assembly to direct the production of the said two Hon,ble Judges and Adv. Solomon before it in custody or to call for their explanation for its contempt.
The Supreme Court answered the five questions referred to it by the President in the following manner: 153

(1) On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N. U. Beg and G. D. Sahgal JJ., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition.

(2) On the facts and circumstances of the case, Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon Advocate, by presenting the said petition, and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh.

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Solomon Advocate, before it in custody or to call for their explanation for its contempt.

(4) On the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said Legislative Assembly; and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four-walls of the legislative chamber. A judge of a High Court who entertains or deals with a

153 Ibid, Para 143
petitions challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities. In this answer, we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference.

Justice Sarkar in his dissenting judgment held that the right to commit for contempt by a general warrant with the consequent deprivation of jurisdiction of the courts of law to enquire into that committal was a privilege of the House of Commons and that privilege was possessed by the Uttar Pradesh Assembly under Article 194(3) of the Constitution. He further held that the privileges were not subject to fundamental rights and reaffirmed the decision of the Supreme Court in *M. S. M. Sharma v. Shri Krishna Sinha*.154

In response to the first question, he concluded that the Lucknow Bench of the High Court was certainly competent to deal with habeas corpus petitions till the Bench was apprised of the fact that the detention complained of was under a general warrant. The second question of the reference was also answered in the negative as he observed that the Judges of the High Court and Adv. Solomon did not commit any contempt of the Assembly because they did not have any knowledge that the imprisonment was under a general warrant and mere presentation of the petition could not be held to be a willfully illegal act. In respect of the third question, Justice Sarkar expressed the view that it was not competent for the Assembly to direct their production in custody. The fourth question was answered in the affirmative and he said that the Full Bench of the High Court responding to petitions by the two Judges and B. Solomon complaining of the resolution of the Assembly finding them guilty of contempt had the power to pass the interim orders that it did. As to the fifth question, he refused give any general opinion but on the facts and circumstances of the given case, he concluded that the

154 *M. S. M. Sharma* (n 148)
Judges did not commit any contempt by entertaining a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner.

Justice Sarkar disapproved of any attempt to redefine the scope of the privileges enjoyed by the House of Commons at the commencement of the Indian Constitution by innovative interpretation of Article 194 (3) and opined that the privileges were applicable in India as they existed in 1950. He observed:

…….I will take the liberty of observing that it is not for us to start new ideas about the privileges of the House of Commons, ideas which had not ever been imagined in England. Our job is not to start an innovation as to privileges by our own researches. It would be unsafe to base these novel ideas on odd observations in the judgments in the English cases, torn out of their context and in disregard of the purpose for which they were made…..Researches into old English history are wholly out of place in the present context and what is more, are likely to lead to misconception. To base our conclusion as to misconceptions; to base our conclusion as to the privileges on researches into antiquities, will furthermore be an erroneous procedure for the question is what the privileges of the House of Commons were recognized to be in 1950.155

It is submitted that the advisory opinion rendered by the Supreme Court in the President’s Reference No.1 of 1965, though not binding on the President to follow under Article 143 (1), constitutes a binding precedent under Article 141. In, In re the Special Courts Bill, in 1978, the Supreme Court has clarified that the advisory opinion of the Court under Article 143 is of binding nature so far as the courts other than Supreme Court are concerned. Some of the constitutional experts like Mr. H. M. Seervai, who also happened to be counsel appearing on behalf of the U. P. Assembly in the Keshav Singh’s Case, feel that the advisory opinion in the instant case as laying down the principles of law would be valueless because the questions referred were limited to the facts and circumstances of the case as set out in the President’s

155 The President’s Reference (n 149) [Para 185]

156 In re the Special Courts Bill, in 1978 AIR 1979 SC 478
Reference. However, the opinions expressed by the Court as to the general questions posed in the said reference ought to be binding on the other courts.

So far as the correctness of the Majority View in the Reference is concerned, it is consistent with the established principles of the interpretation of the Constitution as the provisions like Article 194 (3) cannot be and should not be interpreted in a mechanical manner ignoring its context and other relevant Constitutional provisions like Fundamental Rights. The privileges of the House of Commons were made applicable to the Indian Legislatures by the Founding Fathers of the Constitution as a temporary measure in the diamond bright hope that they would soon be codified. The law of Parliamentary Privileges cannot be frozen to 1950 when it has undergone a sea change itself in its place of origin i.e. the Westminster (U.K.) Mr. H. M. Seervai, however, argues that the framers of the Constitution clearly intended contempt against the Legislatures to be excluded from the Court’s interference. He refers to the statement made by Dr. Ambedkar in the Constituent Assembly that it was open to the British Parliament to convict any citizen for contempt and when such privilege was exercised, the jurisdiction of the court was ousted. The author feels that Dr. Ambedkar made the said remarks in order to justify the conferment of broader privileges on the Indian Legislatures like those enjoyed by the British Parliament. The remarks should not be read in isolation but in the context of the transitory provision under Articles 105(3) and 194(3). In any case, the principle adopted by the Indian Judiciary in regard to rules of Constitutional interpretation, summarized in the following words by the great Constitutional Jurist-Mr. S. P. Sathe, can not be ignored:

The original intentions of the founding fathers do not bind a constitutional court. Rather, the Court is free to interpret the Constitution in terms of what the framers would have intended under the circumstances that exist at the time of interpretation.

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158 Ibid, 2180

159 See, *Constituent Assembly Debates* (Vol. 8, 4th Reprint, Lok Sabha Secretariat, New Delhi, 2003) 578

The view taken by the Majority that Article 21 would apply to the power of the Legislature to punish for contempt is, however, not based on any general proposition saying that the privileges of the Legislature under Article 194 (3) are controlled by all the Fundamental Rights under Chapter III of the Constitution. The court has referred to its decision in *M. S. M. Sharma v. Shri Krishna Sinha*\(^1\) in which it was held that in case of any conflict between Articles 19 (1) (a) and 194 (3), the latter would prevail by applying the rule of ‘harmonious construction’. According to the Court, Article 19 (1) (a) would not apply to the privileges under Article 194 (3) but Article 21 would apply. One fails to understand the reasoning behind the view expressed by the Court because if the same principle of ‘harmonious construction’ is applied then even Article 21 should not prevail over the power to punish for contempt read under Article 194 (3). It would have been proper on the part of the Court to say that since the future law made by the Legislature under first part of Article 194 (3) would be subject to the Fundamental Rights, in the same manner, the privileges of the House of Commons enjoyed by the Legislatures in India as temporary measure under second part of Article 194 (3) should also be controlled by the Fundamental Rights.

The *Keshav Singh’s Case* was an attempt by the Judiciary to tame the unrestricted and wide power to punish for the contempt enjoyed by the Indian Legislatures. The Court also endeavored to insulate the Judges of the Superior Courts, as against holding them guilty of contempt of the Legislatures, when discharging their judicial functions. The privileges under Article 194 (3) were held to be controlled by the other equally significant provisions like 211, which prohibit any discussion in regard to the conduct of the Judges in the Houses of the Legislatures. In the instant case, the conflict between the two important constitutional organs of the State i.e. the State Legislature and the State High Court, had virtually led to the to grave constitutional crisis. The decision significant from the point of view of avoiding such tussles between the legislature and the judiciary in future as it has demarcated their spheres with greater clarity. The doctrine of ‘Separation of Powers’ has also been upheld by the Supreme Court by making it clear beyond all doubts that the final interpreters of the Constitutional provisions, dealing with the Parliamentary and Legislative Privileges, are the Courts. The privileges enjoyed by the British House of Commons cannot be claimed by the Indian Legislatures to the same extent and absoluteness because of the

\(^1\) *M. S. M. Sharma* (n 148), See Chapter II for more details
inherent differences between the two. The Court has clarified that the Indian Legislative bodies are not sovereign and supreme as the British Parliament but they are controlled by the Supremacy of the Constitution. Similarly, the written Constitutional guarantees in the form of Fundamental Rights make each and every power, immunity and privilege of the legislatures subjected to the jurisdiction of the Courts under Articles 32 and 226.

It is worthwhile to note the following remarks made by Dr. D. D. Basu in the context of the judicial review against the exercise of the privilege powers by the legislative bodies in India:-

The task of harmonizing or balancing the public and private interests should be left to the Supreme Court or the High Court when the matter is thus brought before that court. There should be no obsession in respect of the action of the legislature in particular, when it is undoubted function of the court to make such adjustment and balancing when any other category of ‘State’ action (say, by the Executive or administrative authorities) is impugned before the highest tribunal of the land. To shrink from this logical conclusion only shows that the exponent of Parliamentary absolutism is haunted by the spirit of the same ‘Leviathan’ which characterized the absolute monarch in England—which is hardly compatible with the ideal of ‘limited government’ as has been installed in India by the fathers of our Constitution—by adopting Art. 13 and numerous other limitations to circumscribe the British doctrine of ‘Parliamentary sovereignty’.162

3. Arbitrary use of the Penal Power under Article 194 (3) and Judicial Review

A question whether decision of the Privilege Committee of the State Legislature to punish person for breach of its privilege can be challenged on ground that such person is not given an opportunity of being heard was considered by the Madras High Court in *D. Murugesan v. The Hon’ble Speaker (Thiru Sedapatti R. Muthiah) Tamil Nadu Legislative Assembly*163. The General Manager of *Dinakaran*, a Tamil daily newspaper published from Madras, filed a writ petition challenging the validity of the detention of Mr. A. Muthupandian, News Editor of the said daily. Mr. A. Muthupandian was guilty of allegedly publishing a portion of the proceedings of the


163 D. Murugesan v. The Hon’ble Speaker (Thiru Sedapatti R. Muthiah) Tamil Nadu Legislative Assembly AIR 1995 Mad 260
Assembly which had been ordered to be expunged by the Speaker exercising his authority under Rule 281 of the Tamil Nadu Legislative Assembly Rules framed under Art. 208 (1) of the Constitution of India. The Privilege Committee of the House found the News Editor of the newspaper guilty of breach of privilege and recommended seven days simple imprisonment to him. This report of the Privilege Committee was placed before the House on 28-4-1994, which, by a resolution, accepted the same and sentenced the News Editor, A. Muthupandian, to simple imprisonment for seven days for breach of privilege.

Mr. Muthupandian filed a writ petition in the High Court on 2-5-1994 challenging the legal validity of the aforesaid sentence. On the same day, the Chief Minister of the State requested the Speaker of the Assembly to drop the proceedings by showing magnanimity towards the newspaper and its News Editor Muthupandian. Consequently, the House passed a resolution revoking its resolution dated 30-4-1994 and the sentence imposed on Mr. Muthupandian. Later, on 5-5-1994, the concerned News Paper published the news saying that because of the admission of the Writ Petition by the High Court, the House reconsidered the earlier resolution imposing the penalty on the petitioner. The House did not approve the said news article and concluded that the magnanimity shown by the House had not been appreciated by Mr. Muthupandian. On 5-5-1994, the Assembly adopted a resolution revoking its resolution dated 2-5-1994 and restoring the punishment imposed on Muthupandian by its resolution dated 30-4-1994. Mr. Muthupandian was arrested on 5-5-1994 and detained in the Central Jail, Madras. He filed the petition in the Court on 6-5-1994 and the Court directed release of Mr. Muthupandian on bail pending disposal of this writ petition. He was released on 7-5-1994.

The Legislative Assembly did not respond to the notices sent by the High Court on the ground that it had been decided on a resolution of the Assembly not to accept such notices. The petitioner argued that Assembly had no privilege against publication of the proceedings of the Assembly in a newspaper in as much as the proceedings were of a public body and held in public. It was also contented that as a result of the impugned conviction and sentence of the News Editor, his fundamental right under Art. 21 had been violated. The Court held that the British House of Commons had on the date of commencement of our Constitution, the privilege of prohibiting
publication of even a true and correct version of its proceedings and under Article 194 (3), the Assembly had the power and the privilege of prohibiting publication of its proceedings and punish the person found guilty of breach of this privilege. The Court, however, conceded that when a legislative Assembly held a person guilty of breach of this privilege and imposed punishment on him, the said person would be entitled to challenge the constitutionality of his conviction and sentence under Art. 21.

The Court referred to its earlier decisions in *Maneka Gandhi v. Union of India*\(^ {164} \) and *A. R. Antulay v. R. S. Nayak*\(^ {165} \) and held that a decision which violated the basic principles of natural justice i.e., an order passed behind the back of a party, was contrary to the ‘procedure established by law’ and violative of Art. 21 of the Constitution. It was further held that the resolution dated 2-5-1994 revoking the sentence imposed on the petitioner had the effect of finally closing the privilege issue and the resolution dated. 5-5-1994, passed by the Legislative Assembly was constitutionally valid. The Assembly was not entitled to re-impose the sentence on a person held guilty of breach of privilege only because he had moved the High Court under Art. 226 of the Constitution of India challenging the validity of sentence impose upon him. The Court observed that the right to move the High Court under Art. 226 was a constitutional right of a person which could be taken away by any one and punishing a person for invoking jurisdiction of the High Court was unconstitutional and violative of Articles 14 and 21.

It is submitted that the decision is in compliance with the principles laid down by the Supreme Court in *The President’s Reference No.1 of 1965*\(^ {166} \) (*Keshav Singh’s Case*) in which the Court held that the power under Article 194 (3) to punish for its own contempt could not be exercised by the Assembly to punish any person for filing a writ petition under Article 226 against the assembly. The Assembly is required under Article 14 to exercise its privilege powers in non-arbitrary manner and only on the basis of relevant considerations. The Assembly is also required to follow, under Article 21, the principles of natural justice before imposing any punishment for

\(^{164}\) *Maneka Gandhi v. Union of India* (1978) 1 SCC 248

\(^{165}\) *A. R. Antulay v. R. S. Nayak* (1988) 2 SCC 602

\(^{166}\) *The President’s Reference* (n 149)
contempt. The above-discussed decision has also endorsed the view that the privileges of the legislatures in India are controlled by the Fundamental Rights.

4. Manjit Singh s/o Moolsingh Sethi v Maharashtra Assembly

Recently in Manjit Singh s/o Moolsingh Sethi v Maharashtra Assembly, constitutional validity of the punishment of 90 days jail term awarded by the Legislative Assembly of State of Maharashtra for breach of privilege was challenged. The petitioner, Manjit Singh Sethi was President of Mumbai Bar Owners Association. The Government of Maharashtra imposed a ban on the Dance Bars in various hotels in Mumbai and to protest the said decision of the Government, a meeting of ‘Bar Girls’ was convened. According to the news item published by daily “Sakal”, in the said meeting, the petitioner allegedly warned that the girls performing in Dance Bars would come on streets and would not allow the wives of the Ministers to move on streets. He also allegedly used unparliamentarily words and abused the Deputy Chief Minister and the Home Minister of the State Shri R. R. Patil. Mr. Sudhir Mungatiwar, a Member of the Assembly, submitted a breach of privilege motion against the petitioner. The matter was then referred to the Special Privilege Committee for inquiry and a show cause notice was thereafter issued to the petitioner along with the copy of the breach of privilege motion. The petitioner submitted his reply to the said notice on 6-6-2005.

The petitioner also filed applications in which he requested that- a) he may be allowed to engage a lawyer to defend him; b) the summons may also be issued against the editor of daily “Sakal” for a breach of privilege; c) some of the Dance Bar Girls may be summoned during the inquiry as witnesses and d) he may be supplied with a copy of the Maharashtra Legislative Rules. The assembly did not accept the request made by him in regard to engaging a lawyer. The copy of the Maharashtra Legislative Rules was also supplied to him. The petitioner was also allowed to produce his witnesses during the inquiry. One of the important issues framed against him was whether the statement of the petitioner was critical note on the proceedings of the House which prevented the members and the House from discharging their statutory functions. On the recommendation of the Privilege Committee, the petitioner was sentenced to 90 days jail term.

167 Manjit Singh s/o Moolsingh Sethi v Maharashtra Assembly, [2006(4) Mh. L. J.]
The petitioner argued before the Court that there was a breach of principles of natural justice as he had not been permitted to engage an advocate to defend himself. He also submitted that the complainant who had filed the breach of privilege motion had taken part in the proceedings and acted as a prosecutor and a judge in his own case. He further argued that the Privilege Committee did not follow the procedure laid down under the Rules and the procedure adopted by the Committee was violative of the Evidence Act and the Criminal Procedure Code.

The Court formulated the following questions for determination:  

(i) Whether a Writ Petition under Article 226 of the Constitution, challenging the decision which is taken by the House, convicting a person on the ground of breach of privilege of the Assembly is maintainable?

(ii) Whether the Court can determine the existence or otherwise of a privilege which is enjoyed by the members of the Assembly?

(iii) What is the scope and extent of judicial review by the Court while exercising its jurisdiction under Article 226 of the Constitution?

(iv) Whether the Court can go into the question of procedure which is followed in the House in respect of the breach of privilege?

(v) Whether any case is made out by the petitioner for interfering with the impugned order?

The Court referred to the decision of the Supreme Court in Keshav Singh and held that the High Court was entitled to entertain a petition under Article 226 of the Constitution, where the order was passed by the House, alleging breach of privilege. The Court clarified that in the light of non-codification of the privileges, it was entitled to consider whether the privileges claimed by the House, existed or not. It was also held that the High Court could also consider and examine whether the order which was passed was ex facie mala fide or was utterly capricious. The Court, however, rejected the argument that the court could go into the question of irregularity of the procedure which was followed in the House in respect of the breach of privilege. According to the Court, because of the prohibition laid down under Article

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168 Ibid, 840
212, the procedure followed by House could not be the subject-matter of the inquiry in any Court of law.

The refusal on the part of the Privilege Committee of the House to permit the petitioner to appoint an advocate was not held to be violative of the principles of natural justice on the ground that the rules of procedure of the House vested discretion in the Privilege Committee either to permit or not to permit a person to engage an advocate. The Court observed that the procedure followed by the Committee was violative of Article 21 and the sufficient opportunity was given to the petitioner to represent his case and hence the decision was not based on extraneous consideration.

**VI. The Proceedings on Contempt in the House and the Writ of Prohibition**

The foregoing discussion indicates that the power of the House to penalize any person for its contempt or for breach of privilege is not absolute but subject to the judicial scrutiny on ground of violation of Article 21. But a further question still arises that at what stage the Court can intervene in the proceedings on contempt in the House. Is the court entitled to issue a writ of prohibition to the Speaker/Chairman of the House and restrain him from proceeding further with the contempt proceedings on certain grounds? This question was raised in *C. Subramaniam v. Speaker of the Madras, Legislative Assembly*\(^{169}\) before the Full Bench of Madras High Court in 1968. The petitioners C. Subramanian allegedly made a public speech in which he referred to the Language Resolution passed by the Tamiladu Assembly as ‘the biggest political fraud’. The Assembly then adopted a motion in which the speech by the petitioner was termed as a ‘breach of privilege’ and the Speaker was directed to issue him a notice. The Speaker held that there was prima facie case of breach of privilege and issued the petitioner a notice asking him to show cause as why the action should not be taken against him for the contempt of the House.

The petitioner filed a petition under Article 226 for the issue of a writ of Prohibition restraining the Speaker of the Madras Legislative Assembly from proceeding further with the notice. The petitioner submitted that he being a Member of the Legislative

\(^{169}\) C. Subramaniam v. Speaker of the Madras, Legislative Assembly MANU/TN/0139/1969
Assembly of Madras, a Member of the Parliament, a Minister of the Madras Government and the Leader of the House in the Madras Assembly, and also a Minister of the Union Government, had a duty towards the public, particularly in the field of political matters, which he must discharge fearlessly, and by virtue of his right under Article 19 of the Constitution of India. It was argued that by virtue of the Supreme Court’s decision in the President’s Reference No. 1 of 1965\(^{170}\) Article 194 (3) did not prevail over Article 21, which required that no person can be proceeded against with regard to any offence, except for the violation of a law in force, and "according to procedure established by law". The proceeding asking the petitioner to show cause against a conviction for contempt of the Legislature was essentially in criminal jurisdiction and infringed Article 21.

The Court observed that until an enactment for codifying the privileges is made under first part of Article 194 (3), the latter part of that Article making the privileges House of Commons applicable in India, would be ‘a law in force’ in accordance with the terminology used under Article 20 (1) and hence fulfill the requirement of Article 21. The Court, however, made it clear that a final order imposing a disability on a subject, for alleged breach of privilege or contempt of the Legislature, will be justiciable. The Court held that it was premature for the court to intervene at the stage of notice being served to the petitioner to come to any conclusion. The court further held that the right to call upon a third party to the petitioner show cause why he should not be held to have committed a breach of the privilege of the Legislature, by way of contempt, was invested in the Speaker by Article 194 (3) and a Resolution of the Legislature.

It submitted that the interpretation placed on term ‘Law’ used in Article 21 so as include the transitory Constitutional provision i.e. the second part of Article 194 (3) is correct. Though the said provision temporarily vests all the privileges enjoyed by the British House of Commons in the Indian Legislatures until they are codified by ‘law’, it continues to a ‘Law’ within the meaning of Article 21. The refusal to make premature intervention with the proceedings on contempt in the Assembly was also justified. But the Court has not laid down any general principle that writ of Prohibition cannot be issued to the Speaker or the Assembly if the proceedings suffers

\(^{170}\) The President’s Reference (n 149)
from any patent illegality or procedural *ultra vires*. Much water has flown under the bridge since this case was decided and the Supreme Court in *Maneka Gandhi v. Union of India*\(^{171}\) has interpreted the expression ‘Procedure established by Law’ as incorporating a just, fair and reasonable procedure. It is possible, in changed circumstances due to growing judicial activism and in the light of the radical interpretation placed on Article 21, that Court can issue a writ of prohibition if the proceedings adopted by the legislature are violative of basic principles of natural justice or arbitrary in nature.

**VII. Right to Compensation for Wrongful Punishment**

The Right to monetary compensation for the violation of a person’s right to life and personal liberty under Article 21 for the wrongful detention by the State has been recognized and enforced by the Supreme Court in cases like *Rudal Shah v. State of Bihar*\(^{172}\) and *Bhim Singh v. State of Jammu and Kashmir*\(^{173}\). In no case, however, the direction to pay the compensation was issued by the Court to any Legislature. In all such cases, the executive was asked to pay the monetary compensation to the victims of wrongful detention under the Public Law remedy under Article 32. A Full Bench of High Court of Madras in *S. Balasubramanian v. State of Tamil Nadu*\(^{174}\), in a very bold decision, awarded compensation to the Editor of "Ananda Vikadan" a Tamil weekly who was unconstitutionally imprisoned under the warrant issued by the Speaker of the Tamilnadu Assembly for the alleged contempt of the House. The petitioner in this case had allegedly published a cartoon in "Ananda Vikadan" on 29-3-1987 in which two persons were shown to be sitting on the dais and a conversation between the two persons sitting in the audience was printed in Tamil which if translated in English reads as hereunder\(^{175}\):

‘Of the two persons on the stage, who is the M.L.A. and who is the Minister?’

\(^{171}\) *Maneka Gandhi v. Union of India* AIR 1978 SC 597  
\(^{174}\) *S. Balasubramanian v. State of Tamil Nadu* AIR 1995 Mad 329  
\(^{175}\) Ibid, Para 2
‘The person who looks like a pick-pocket is the M.L.A. and the person who looks like a masked dacoit is the Minister .....’

The above-mentioned cartoon was condemned by the Speaker of the Tamilnadu Assembly because in his opinion it was derogatory and aimed to damage the reputation of the members of the House in general and the ministers in particular. The Speaker ordered "Ananda Vikatan" to publish in the front page their apology for the said publication and warned that failure to do would attract summary sentence passed by the House itself. The magazine then published an article in which it was clarified that ‘the caricature was a mere and an ordinary of fenceless joke with no one in mind or to offend any one’ and M. L. A. referred in the same need not be taken as belonging particularly to the State of Tamil Nadu or any other State. The Magazine claimed that it merely intended to generally refer to ‘a politician who had come to power by using democracy and betrayed the confidence of the citizen’. The Petitioner-Editor also expressed surprise at the action of the Speaker in instantly delivering a judgment finding the petitioner guilty of an offence against the House and threatening him to impose the punishment also without even giving an opportunity to explain the charge proposed to be levelled against the petitioner.176 Later, the Assembly on 4-4-1986 passed a resolution in which the petitioner was held guilty of breach of privilege of the House and awarded three months rigorous imprisonment to him.

The petitioner contended that the punishment of three months rigorous imprisonment imposed was arbitrary, unreasonable and violative of Articles 14, 19 (1) (g) and 21 of the Constitution of India. It was further argued that the Speaker did not put the petitioner on notice of the charge against him and he was not given an opportunity to show cause against the proposed action and considering the explanation. It was submitted that the decision to impose the punishment was taken in gross violation of the principles of natural justice resulting into a conviction of the petitioner even before trial and hence Article 21 was violated. The petitioner demanded monetary damages for the wrongful detention in violation of his Fundamental Rights and for the mental agony suffered by him.

176 Ibid, Para 5
The High Court held that the constitution was Supreme and the rights, powers and privileges of the various limbs of the State were subject to the provisions contained in the Constitution and the final authority to state the meaning of the constitution and to settle constitutional controversies exclusively belonged to the Supreme Court and the High Courts. The Court observes:

….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 Judiciary of this Country and, therefore, inevitably the decision about the construction of 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

The ruled that the procedure prescribed in the Rules framed by the House was not followed by the Speaker who was only authorized to refer the matter to the privilege committee of the House and not to record a verdict on the issue of breach of privilege. There was gross violation of the principles of natural justice in dealing with the case of the petitioner and punishing him. The Court held the procedure adopted by the House was arbitrary, oppressive and unreasonable. As the petitioner had not claimed any particular sum to awarded as compensation, the Court ordered the respondents to pay Rs. 1,000/- as a notional or token compensation by way of 'monetary amends' to the breach of the fundamental rights of the petitioner.

The decision of the High Court is a trend-setting judgment instilling the confidence of the citizens in the Higher Judiciary and reposing their belief in ‘the Supremacy of the Constitution’ as against the arbitrary exercise of the penal power by the Legislature. The judgment reflects that the legislatures cannot act in an unreasonable manner under the garb of exercise of their privileges, particularly when the liberty of the person is at stake. The Court has asserted that it cannot be the mute spectator of gross violation of principles of natural justice incorporated under Article 21 of the Constitution by the legislative bodies in exercising their power to punish for the contempt or for the breach of privilege.

177 Ibid, Para 20
VIII. The Impact of the Penal Power on the Relations between the Press and the Legislatures

The exercise of the un-codified penal powers by legislatures against the journalists and editors of the newspapers has always been controversial in India. The following recent controversy in this regard is truly illustrative of this tussle between the ‘Fourth Estate’ of democracy and the law-making bodies. On 7 November 2003, the Tamilnadu Legislative Assembly passed a resolution sentencing 6 senior journalists of The Hindu Newspaper for 14 days imprisonment for breach of privilege of the House. The charges were made against them because of an editorial published on the conduct of the Speaker and other members of the House. Arrests warrants were issued against them could not be executed as they went absconding. The Hindu filed a Writ Petition in the Supreme Court and the Court, on November 9, 2003, without going into the legality of a resolution stayed the arrests warrants. Speaking on the matter Justice Y. K. Sabharwal and Justice S.B. Sinha said: “Every Institution, be it Legislature, Executive, Judiciary or Media, has to respect the other institutions. None of the institutions should cross the Lakshman Rekha or be hyper-sensitive to harsh words of criticism”. The Bench issued notices to the Speaker, Secretary of the Assembly, Jayalalitha Government, and State Director General of Police. The matter is presently pending in the Court. Speech and Expression guaranteed under Article 19 (1) (a) being of general nature is controlled by Articles 105 (3) and 194 (3).

The Hindu Episode invoked strong criticism from all quarters of the public life in India, particularly the press. On 8th November, 2008, the Press Club of India and various Newspaper Employees Unions, including ‘Delhi Union of Journalists’, organized a protest demonstration in New Delhi. They demanded that the order of imprisonment passed by the Tamil Nadu assembly should be rescinded and the arrested journalists should be released. The Hindu, in its editorial, observed that the penal power to punish for contempt “ought to be used only rarely when there is real obstruction to its functioning ……to invoke it lightly or to ward off innocuous, even if flattering, comments on individual legislators would be grossly offensive to the democratic spirit and would inhibit independent reporting and assessment of the

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178 The Indian Express (November 11, 2003)
performance of legislators”\(^\text{179}\). Anupam Gupta, in his article published in *Frontline*, remarked that “Legislative behaviour such as the November 7 resolution of the Tamil Nadu Assembly……… can, in the ultimate analysis, serve only to set the parliamentary clock back and reinvigorate efforts to strip the legislature of its contempt power altogether”\(^\text{180}\).

Commenting upon the said incident, Justice K. T. Thomas, Former Judge, Supreme Court of India, in his article about “The Constitution of India and Rule of Law”, has observed:-

It is contextually relevant to make note of the recent decision adopted by the Tamil Nadu Legislative Assembly, as per which the editors of *The Hindu* were sentenced to certain term of imprisonment. This was done in exercise of the power of privilege. This episode is an eye-opener of how the absence of provision for filing appeal against the decision of the Legislature involving the life or liberty of any individual would be unjust, unfair and unreasonable. At present none of the sentenced persons can file an appeal against the said decision of the Legislative assembly. Of course they moved the Supreme Court by a writ petition. It is a different matter\(^\text{181}\).

Justice Thomas has further suggested\(^\text{182}\) that a provision providing for an appeal against the decision of Parliament or the State Legislature, depriving any person from his life or liberty, should be inserted in the Constitution and the jurisdiction to hear such an appeal should be vested in a judicial body.

In the next chapter, another controversial power implicit under Articles 105 (3) and 194 (3) of the Constitution, power of the Parliament and State Legislatures to expel their members, is discussed.


\(^{182}\) Ibid, 35