CHAPTER V

PRESS AND PARLIAMENTARY PRIVILEGES

A) Privileges in England

B) Privileges in India
PRESS AND THE PARLIAMENTARY PRIVILEGES

The Parliamentary privileges is one of the most sensitive area where a journalist has to tread warily. In democracy people have the right to know what their representatives are doing both inside as well as outside the Parliament. The press in its efforts to keep the people informed about the matters being transacted by Parliament, its Committees and its members some times incroaches upon their privileges. This often leads towards a conflict between the press and the parliamentary privileges.

The concept of parliamentary privileges has been defined by various eminent jurists. May defines the privileges as, "The sum of peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege though part of the law of the land, is to a certain extent an exception from the ordinary law".¹

According to Halsbury's Law of England "Any act or Omission which obstructs any member or officer of the House in the discharge of their duties, or which has a tendency to produce such a result would constitute contempt of legislature".²

1. Erskine May: Parliamentary Practice at p. 67
Earl Jowitt, (Lord Chancellor of Great Britian since 1945-51) defines the privilege in the following words, “An exceptional right of advantage, an exemption from some duty, burden or attendance to which certain persons are entitled, from a supposition of the law that the stations they fill or the offices they are engaged in, are such as require all their care, and that therefore, without this indulgence, it would be impracticable to execute such offices so advantageously as the public good requires”.

Thus the privileges may be called as those special rights which are essential for the Parliament, its Committees and individual members for the smooth functioning of this institution. The Indian Constitution provides for the parliamentary privileges on the pattern of British System, it is, therefore, essential to discuss the privileges, in brief, being enjoyed by the House of Commons.

PRIVILEGES IN ENGLAND: The powers, privileges and immunities of the House of Commons in England have not been defined anywhere. They are a part of Common Law of England and have to be pieced together from numerous precedents. Historically speaking, the king of England claimed all the privileges and they were enjoyed by his servants who acted in his name. With the passage of time, however, people wrested these rights from the King claiming them for the House of Commons. In the later period (Stuart Kings time) lawyers and judges were frequently punished for committing the contempt of the House who claimed to be the sole judge of the nature, existence and extent of privileges. But the courts in England did not concede this right.
The decisions of the court are not accepted as binding by the House in matters of privileges, nor the decisions of the House by the courts. This old dualism remained unresolved. The Ashby V. White, Stockdale V. Hansard and Bradlaugh V. Gosset are glaring example of such dualism⁴. This dualism, later on, was resolved amicably and has become a history. House of Commons and the Courts now seldom encroach upon the sphere of others.

The various privileges claimed by the House of Commons in earlier days have fallen into disuse and faded out of existence and till date, are not readily ascertainable. In his book *Law Custom and Constitution* Anson points out that, “The rules of which they (the privileges) consists are not readily ascertainable, for they obtain legal definition when they are cast in statutory form, or when a conflict between the House and the Courts have resulted in some questions of privilege being settled by judicial decisions”.⁴

Nevertheless, the House of Commons has certain well-known privileges. These may be divided into two groups. The first group contains those privileges which are claimed by any member in the individual capacity of being a member of House of Commons.

**This include:**

a) Freedom of speech;
b) Freedom from arrest;
c) The right having most favourable construction placed upon its proceedings; and
d) The right of access to the Crown as well as other rights and immunities which have come to be recognised as part of the law and custom of Parliament.

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3. Op Cit note (1)at p.p. 184 - 190
The second group consists of the privileges claimed by the House in its corporate capacity and include.

a) The right to provide for the due composition of its body;
b) The right to regulate its own proceedings;
c) The right to exclude strangers;
d) The right to prohibit the publication of its debates;
e) The right to exercise penal jurisdiction and to punish breaches of privileges and contempt.\textsuperscript{5}

\textsuperscript{5} Ibid
PRIVILEGES IN INDIA: India was ruled by English people for a long time. For the proper functioning of the government, they made laws, while adopting their own pattern prevailing in England with certain modifications i.e. they made laws in accordance with situations and circumstances at that time. The system copied or based on English pattern exercised a great influence upon the members of the Constituent Assembly who drafted the Indian Constitution. So, naturally, this Constitution carries with it the British concept of Parliamentary privileges.

In India, the privileges, immunities etc. of Parliament and its members are provided under Article 105 and that of State Legislatures under Article 194 of the Constitution. The position under clause (1) & (2) of Article 105 is that subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in the Parliament. And that no person can be made liable in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or the proceedings of the Parliament or any Committee thereof. Similar provision exist under Article 194 Clause (1) & (2) which is applicable to the House of State Legislatures. Thus it is also clear that under clause (1) & (2) of the aforesaid Articles of the Constitution, full freedom is accorded to the committees and the members of the Parliament as well as State Legislatures. But at the same time it is also clear that such immunities are provided only when anything is said inside the parliament. Secondly nobody can be made liable in a proceeding before a court of law in respect of the publication under the authority of either House of Parliament or State Legislature.

5-A. Article - 105 Provides - (1) subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(3) In other respect, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

5-B. Article 194 provides for identical provision using the word legislature in place of Parliament.
In other respects under clause (3) of Article 105 (As it stands today after 44th Amendment of 1978) the powers, privileges and immunities of each House of Parliament and of its members and committees shall be such as may be defined from time to time by Parliament and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (44th Amendment) Act, 1978. Article 194 (3) contains identical provision in respect of State Legislature.\(^6\)

Under Article 105(3) of the Constitution, therefore, the privileges of our Parliament are identical with those of the **House of Commons** as they existed on the Jan 26th 1950. The Supreme Court, however, in special reference no 1 of 1964 held that the Parliament can not claim all the privileges as enjoyed by the House of Commons at the Commencement of the Constitution. It can exercise only those privileges of the House of Commons which are incidental to legislative functions.\(^7\)

As a House continues to enjoy the same privileges as it enjoyed at the commencement of the Constitution, the answer to the question that, what were the privileges of parliament and the State Legislature being enjoyed at the commencement of 44 Amendment is that they enjoyed the same privileges which were being enjoyed by House of Commons at the commencement of Constitution.\(^6\)

\(^6\) In 1976, 42nd Amendment to the Constitution was enacted by which Article 105(3) and 194(3) were amended. The net result of this amendment was that a House could have "evolved" its own privilege. Before this, it was possible only through a law to define privilege. 42nd Amendment done away with this need of passing any law to define the privilege. Consequently it also done away with the need of president's assent which is necessary, if a law is to be made. Moreover, it also authorised either House of the Parliament, as well as State Legislature, to evolve its privilege and it was no more necessary that both Houses should be agree for evolving a new privilege.

Later on in 1978, 44th Amendment was incorporated in the Constitution. This amendment in the first place cancelled the amendments made by the Constitution (42nd Amendment) Act, 1976. It then amended Article 105(3) and 194(3) so as to drop completely any reference to the House of Commons in future. But even this new phraseology did not bring any change in the circumstances.

\(^7\) A.I.R. 1965 S.C. 745.
This amendment, therefore, merely excluded the name or reference of the House of Commons from Article 105 and 194 but retained the same position to continue which was existing at the commencement of the Constitution.

The parliamentary privileges restrict the freedom of press and while publishing the reports of proceedings of a House of Parliament or of its committees or on a conduct of a member or members inside or outside the House, a lot of caution is required to be undertaken by the press.

The following privileges of the parliament affect the freedom of press.

1) **Right to Exclude Strangers**:- The parliament has the privilege to exclude the strangers.

   The Speaker or Chairman, as the case may be, whenever thinks fit under the rules of the House, may order the withdrawal of strangers from any part of the House, including the representatives of the press. The Parliament has not yet exercised this right. However, it may exclude press whenever holding a secret session. Though such chances are quite rare. The Parliament is also empowered to withdraw press cards of any particular journalist if any default is committed by him. The Lok Sabha has, in fact, withdrawn press cards twice. Once of a special correspondent of *Blitz* and on another occasion of a special correspondent of *Hindustan* New Delhi. Any person including a press representative

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8. The rule 387 - A made by the House of People provide for the expulsion.

   **Rule 387** Says That the speaker may, when ever he thinks fit order the withdrawal of strangers from any part of the House.

   **Rule 387 - A** - An officer of the Secretariat authorised in this behalf by the speaker shall remove from the pricincts of the House or take into custody, any stranger whom he may seem or who may be reported to him to be, in any portion of the pricincts of the House which is reserved for exclusive use of members, and also any stranger, who having been admitted into any portion of the pricincts of the House, misconducts himself or wilfully infringes the regulation made by the speaker under rule 386 or does not withdraw when the strangers are directed to withdraw under rule 387 while the House is sitting.
is excluded from the House under rule 248 of the House when it sits in a secret session.⁹

2) **Right to prohibit the publication of its proceedings**: It is another important privilege which has been enforced by the Parliament on various occasions with a specific intention, only to prevent malafid publication of any inaccurate report or expunged portions of any proceeding.

Unlike England, in India, there is no rule or standing order of the Parliament prohibiting the publication of its proceedings. In **Searchlight** case¹⁰ the question before the Court was whether the legislature is empowered to prohibit the publication of expunged portion of the proceeding of the House. The Supreme Court gave the answer in affirmative and held that Article 105 (3) and Article 194(3) confer all those powers and privileges on Parliament and State Legislature.

3) **Power to Commit for Contempt**: One of the most important privileges available to Parliament is the power to commit for its contempt and also defined as the ‘**keystone of Parliamentary privilege**’. The power is identical with that of House of Commons in England. The power to punish for contempt was not available to the legislature under the Government of India Act, 1919. For the first time, **Government of India Act, 1935** conferred such powers. The question that whether the existence of such punitive powers affects the freedom of press. To answer such question it is to be kept in mind the difference between the existence of power and

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⁹. Rule 248 (1) - On a request made by the leader of the House, the speaker shall fix a day or part thereof for sitting of the House in secret.

Rule 248 (2) - When the House sits in secret no stranger shall be permitted to be present in the Chamber, Lobby or Galleries provided that members of the Council may be present in their Gallery. Provided further that persons authorised by the Speaker may be present in the Chamber, Lobby or Galleries.

mind the difference between the existence of power and the exercise of that power. In India, like the House of Commons, it has been the practice of each of the House to exercise privilege under great limitation and conditions. In majority of the cases the Parliament though oversensitive to its privileges did not take any action when the editor or person making the defamatory statement as the case may be expressed his sincere regret. In the Blitz case the editor of the newspaper was reprimanded by the Lok Sabha but the Privilege Committee recognised the right of fair comment and observed as following.

"Nobody would deny the members or as a matter of fact, any citizen, the right of fair comment. But if the comments contain personal attack on individual members of parliament on account of their conduct in Parliament, or if the language of the comment is vulgar or abusive, they can not be deemed to come within the bounds of fair comment or justifiable criticism."

It is, therefore, clear that the privileges of the Parliament as discussed above are of extreme importance for the smooth and proper functioning of the parliament and State Legislatures and whenever, these privileges are violated by the press, it would be guilty of committing contempt of parliament or State Legislature. Under the following circumstances the press has been held guilty of committing the contempt:

1) Comments in a newspaper casting reflections on the character or proceedings of the House, or of its committees, or member or members collectively and thereby lowering their prestige in the eyes of the public.

2) Pre-mature publication of a motion tabled before the House and of proceedings of a Committee of a House or the proceedings of a meeting thereof.

by a newspaper before the committee completes its task and presents its report to the house.

3) Publication of proceedings of a committee of a House before it is presented to the House concerned.

4) Misreporting of the proceeding of the House, or of a report of a Parliamentary Committee or, of a member of the House by newspaper.

5) Casting aspersions on the impartiality of the speaker attributing malafides to him in discharge of his duties in the House.

6) Publication of expunged portion of the proceedings of a House.

7) Publication of a document or paper presented to a committee before the committee’s report is presented to the House.

8) Comments on the officers of the House casting reflections.

The position of the parliamentary privileges when they are in conflict with the freedom of press has been settled in re-under Article 143 of the Constitution of India. The advisory opinion of the Supreme Court in this case however has made Article 105 (3) quite ambiguous in its approach as if and when a law is made defining the privileges it would be subject to Article 19 (1) (a) but in case if no law is made then the same provision would yield to parliamentary privileges. However, inspite of the fact that freedom of press is subject to privileges of the House, there are certain enactments which give protection to press against a third party if substantial and true report of the proceeding of either House is published. In 1956 Parliamentary Proceedings (Protection of Publication), Act was passed. Under the Act, no liability, Civil or Criminal, attaches to the publication of proceedings of either House, provided it is true and without malice and also for public good. This Act was repealed in Dec. 1975 during Emergency but re-enacted in April 1977 and currently is the law relating to the publication of proceeding of either House of Parliament. The law also extends
to the radio broadcasts. The Act of 1977 therefore, provides immunity from any civil or criminal liability for publishing any proceedings of either House of Parliament, if the following conditions are fulfilled.

i) The report of the proceedings is substantially true;

ii) It is not made with malice; and

iii) It is made for public good.

The protection thus, extended by the aforesaid Act is confined not only to the wrong or offence of defamation but also comprehends any other wrong or offence which might possibly be caused by such publication, eg. obscenity, incitement to an offence, sedition etc. notwithstanding that they are otherwise punishable under Indian Penal Code or any other law in force.

In the year 1978 Article 361 - A was inserted into the Constitution through the 44th Constitutional Amendment. The amendment provided the constitutional protection to the Parliamentary Proceedings (Protection of Publication) Act, 1977 and to the similar state enactments.12

Article 361-A, therefore, extends to the press absolute immunity from any legal proceedings, civil or criminal under the following conditions.

a) The first condition, the press is required to fulfill in order to protect itself against any civil or criminal proceeding in respect of a publication is that it must be related to the proceedings of either House of Parliament or State Legislature.

12. Article 361 - A provides that, (I) "No person shall be liable to any proceeding, Civil or Criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either house of Parliament or Legislative Assembly, or as the case may be, either House of Legislature of a state unless the publication is proved to have been made with malice. Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament, or the Legislative Assembly or, .......................................................... Contd:
The word "proceedings" has not been defined either in India or England itself but the Select Committee in Duncan's case explained the expression as.

"......it covers both the asking of a question and giving written notice of such question, and includes everything said or done by a Member in a committee of either House, as everything said or done in either House in the transaction of parliamentary business.""¹³

It is therefore, clear that in order to constitute the proceeding it must relate to some business of the House. The Supreme Court in Tej Kiran's case¹⁴ has held that the absolute immunity of a Member for 'anything said' in the legislature, under Article 105 (2) or 194 (2) extend to everything said by a Member during the course of business in a House of Legislature while it was sitting and its business was being transacted, even though what was said might not be relevant to business before the House. Consequently if the report of such speech is published it is immune from any liability civil or criminal provided the other conditions are also fulfilled.

Though the Clause (2) of Article 105 and Clause (3) of Article 194 use both the words 'House' and its 'committees' but Article 361 - A mentions only the 'House' and consequently the constitutional protection can not be claimed in respect of the proceedings in a committee of a House of Legislature however bonafide and correct it might be. The only remedy, therefore, under such circumstances would be the precedents of the British House of Commons as adopted with supplement or modification by Indian precedents, if any.

Contd:............ as the case may be, either House of the Legislature of a state
2) Clause (I) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.
Explanation: In this Article "Newspaper" includes a news agency report containing material for publication in a newspaper.
In order to seek the protection under Article 361-A it is essential that the publication must be a report which is the narration of the proceedings as they took place in the House. No other material i.e. article, comment etc. is therefore, protected under the aforesaid provision.

C) The publication of the report of the proceedings must be substantially true and must not be made with malice. Consequently if any publication is false, no protection is available. Similarly if the publication is actuated with malice, it is not protected though the report might be true.

d) The report must not be of any proceedings of a secret sitting of the House. Any newspaper who publishes report of a secret sitting of a House of Legislature can not claim protection under Article 361 - A as the report of said sitting has been expressly excluded from the protection of aforesaid provision of the Constitution and would constitute a breach of privilege of the House under rule 252.15

The immunity provided under Article 361 - A would thus be available even in the cases where speech or other material forming part of the proceeding in the House offends against.

a) The Official Secret Act;
b) The law of defamation;
c) The law of sedition;
d) Other offences provided under IPC, eg. obscenity.

The protective umbrella of Article 361-A whether provides any immunity in respect of contempt of Supreme Court or of the High Court as their power to

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15- Rule 252 Provides "……………..disclosure of proceedings or decisions of a secret sitting by any person in any manner shall be treated as a gross breach of privilege of House."
punish for contempt are recognised under Article 129 and 215 respectively of the Constitution. The Supreme Court has held that there may be proceedings which are neither civil nor criminal such as proceeding for the contempt of the court. The jurisdiction conferred by Article 129 and 215 of the Constitution is a special jurisdiction and, therefore, not governed by the criminal procedure code.

The net result in this regard is that while no proceeding can be initiated by the Supreme Court or a High Court for any speech made inside the Parliament because the expression any proceeding in any court under Article 105 (2) or 194 (2) would confer immunity from the 'proceeding' far contempt of court as well, nevertheless a proceeding may be initiated under Article 129 and 215 of the Constitution if the same speech is published outside Parliament and Article 361 - A would not confer any immunity.

The Indian Constitution thus adopts a mean between the two extremes: the American system of judicial supremacy and the English principle which provides for the ascendancy of Parliament. Kania, C.J in re Delhi Acts observed: 'The principal point of distinction between British Parliament remains and that is the Indian Parliament is the creature of the Constitution of India, and its powers, rights, privileges and obligations have to be found in the relevant articles of the Constitution of India. It is not a sovereign body, uncontrolled, with unlimited powers. The Constitution of India has conferred on the Indian Parliament powers to make laws in respect of matters specified in the appropriate place and schedules, and curtailed its rights and powers under other articles and in particular by the articles found in Chapter IIIrd dealing with the fundamental rights.'

The first case in which the Supreme Court dealt with such issue was Nafisul Hasan's case. The facts of the case are following: In September 1951 issue the Blitz a Bombay Weekly, had published a news item which contained certain derogatory aspersions on the speaker of U.P. Legislative Assembly. He was served with a notice by the Committee of privileges of the House to appear before it and explain the position. The editor, however, neither appeared before the committee of the House nor sent any reply. The Committee found that the editor was guilty of breach of privilege of the House. Legislative Assembly by a resolution authorised the Speaker to issue a warrant of arrest against the editor. He was arrested and taken into custody but not produced before a Magistrate within twenty-four hours of his arrest and was in detention of Speaker's custody. On his behalf a writ of habeas corpus was filed under Article 32 of the Constitution on the ground that the fundamental rights guaranteed under Article 22(2), which says that any person arrested must be produced before a Magistrate within 24 hours of his arrest has been violated. The Supreme Court upheld the contention and declared the action as a clear breach of provision of Article 22(2) and ordered his release.

Arising out of the above case as a sequel the matter went to the Bombay High Court because after his release the editor was again served with a notice by the speaker to appear at the bar of the House and again he failed to comply. But no further action was taken in the matter by the Legislative Assembly. On the other hand the editor Mr. Mistry filed a civil suit in Bombay High Court claiming damages for wrongful arrest and detention against the speaker of U.P. Legislative Assembly contending that the speaker had no authority to issue a warrant of arrest against him. The Bombay High Court, however, dismissed the suit on the following grounds.

1) The power to punish for contempt is expressly conferred under Article 194(3) and the House is a sole judge or on a question of admitted privilege.

2) In pursuant to Article 194, by virtue of the resolution passed by the Legislatures under Article 212(2) of the Constitution, the protection is provided to the speaker who signed the warrant as an officer of the House and in performance of his duties arising in con-

nection with the internal affairs of the House. This immunity is ab­solute even if the warrant is wrongfully executed by others 19

3) The privileges of the State Legislatures can be exercised against every citizen of India, therefore, it can not be imagined that this power can be exercised only within the state, as in such case any person living outside the state would be free to assail the dignity of the House.

In Search Light Case 20 the Speaker of a House of Bihar Legislature had directed certain parts of the speech made by a member, to be expunged. The newspaper 'searchlight' ignored this order and published the entire speech including the expunged portion. A notice was, therefore, issued to him by the House to show cause why steps should not be taken against him for the breach of privilege of the House prohibiting publication of certain parts of its proceeding. The editor moved to the Supreme Court under Article 32 of the Constitution. He contended that under Article 19 (1) (a) he was at liberty to publish whatever he wanted and any restriction upon his right can be imposed only by a law enacted under Article 19 (2) of the Constitution. In support of his case, the editor referred the case of G.K. Reddy V. Nafisul Hasan where the Parlia­mentary privilege yielded to the fundamental right guaranteed under Article 22 (2) of the Constitution. It was, therefore, on his behalf contended that on the same analogy Article 19 (1)(a) could be held applicable to the area of legislative privi

19. Article 212 (2) provides.

" No officer or member of the Legislature of a state in whom powers are vested by or under this Constitution for regulating procedure or conduct of business. or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

20. Supra note. 10
leges. By a majority the Court ruled that privileges enjoyed by a House of Parliament or a State Legislature under Article 105 (3) and 194 (3) respectively on the analogy of the House of Commons in England, were not subject to Article 19 (1)(a). The House, therefore, has the full authority to prohibit the publication of any report of its debate or proceeding though the same may contravene the fundamental right guaranteed under Article 19 (1) (a) of the Constitution. It was pointed out by the Court that any inconsistency between Article 105 (3) or Article 194 (3) and the Article 19 (1) (a) could be and ought to be resolved by harmonious construction and consequently Article 19 (1) (a), being a provision of general nature must yield to the special provisions of Article 105(3) or Article 194 (3). The Court, however, made it clear that if Parliament or State Legislature enacted a law under aforesaid provision then such a law would be subject to Article 19 (1)(a) of the Constitution.

The Court also rejected the plea of Article 21 on the ground that rules of the House are supposed to be in accordance with the requirements of Article 21 of the Constitution.

K. Subba Rao, J. however, adopted dissenting view. In his opinion in case of a conflict between Article 19 (1) (a) and the Article 105(3) or 194(3), the privilege must yield to the extent it violates fundamental right as, if and when any law is made to define the privileges of parliament or state legislature it would be subject to fundamental rights. He observed, “I would not have ventured to do so, but for the conviction that the reasoning adopted therein would unduly restrict and circumscribe the wide scope and content of one of the cherished fundamental rights Viz; the freedom of speech in its application to the press”.
It may be submitted that the present case is not decided on merits. On the question that whether House of Commons, at the commencement of the Constitution, was having the privilege of prohibiting a true report of the proceedings, the majority answered in positive. Once it is established, the House was well within her right to punish the contemnor under Article 194(3) of the Constitution.

The most important case which came before the Supreme Court, involving the freedom of press and parliamentary privilege is Keshav Singh's case, where he along with few others printed and published a pamphlet against a member of the House. While being administered a reprimand, he behaved in an objectionable manner. In accordance with the decision taken by the House later on the same day, the speaker directed that Keshav Singh be jailed for seven days for committing contempt of the House. This led to a number of events. On 19th March 1964 an advocate, Mr. M.B. Soloman presented a habeas corpus petition before the Allahabad High Court on behalf of Keshav Singh. He was ordered to be released on bail. The House pre-emptorily passed a resolution holding that Keshav Singh, the advocate Soloman and the two judges who had made the orders had committed its contempt and they should be brought before it in custody. The two judges filed the petition before the High Court under Article 226 of the Constitution contending that resolution of the House was unconstitutional and violative of Article 211 of the Constitution and that resolution passed by the Legislative Assembly amounted to the contempt of the Court.

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21. Article 211 says that no discussion can take place in a state legislature with respect to the conduct of a Supreme Court or a High Court judge in the discharge of his duties except when a motion for removal is under consideration in a House.
A full bench of Allahabad High Court consisting all the twenty-eight judges ordered the stay of implementation of resolution of the House till the disposal of the petition.

On the same day the House passed another resolution making it clear that the House does not intend to dispose of the charge of privilege against the High Court judges without providing them an opportunity of explanation as provided under the rules (Under Article 208 of the Constitution)\(^{21-A}\). Thereafter, the House withdrew the arrest warrants issued against the judges but they were placed under the obligation to appear before the House and explain why the House should not proceed against them for its contempt. The bench of twenty three judges again granted stay of the resolution passed by the House. This brought face to face judiciary and the legislature. At this stage the president of India referred the matter to Supreme Court for its advisory opinion under Article 143 of the Constitution.\(^{22}\)

The main issues before the Supreme Court were whether the House is the sole and exclusive judge of its privilege and whether it is competent to punish a person for its contempt taking place outside the four walls of the House? And whether if in enforcement of its decision the House issues a general or unspeaking warrant, is the High Court empowered to entertain a habeas corpus petition challenging the validity of the detention of the person sentenced by the House?

The Court gave its opinion 6:1. The majority opinion delivered by Gajendragadkar, C.J, held that House of Commons enjoyed the privilege to commit a person for its contempt by a general warrant, which is non-justiciable.\(^{21-A}\) Article 208 (1) provides that a House of the Legislature of a State may make rule for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

\(^{22}\) In re under Article 143 of the Constitution of India AIR 1965 S.C. 745
as a Superior Court of Record and not as a legislature. Even if the House of Commons has this privilege as a legislative organ, the legislature can not claim it as Indian Constitution also envisages fundamental rights and doctrine of judicial review, particularly, Article 32 and 226 impose a duty to enforce the fundamental rights by Supreme Court and the High Court respectively. Thus the House can not claim those privileges existing in the House of Commons at the Commencement of Constitution as a Superior Court of Record. But only those powers of House of Commons which are integral part of its privileges and which are incidental to legislative function. Whether a particular privilege exist or not, it is for the courts to give definitive answer by finding out if such a privilege was being enjoyed by House of Commons at the commencement of the Constitution. Once it comes to conclusion that such privilege exists, then it is for the House to judge the occasion and manner of its exercise and the courts would not sit in judgement over the way the House has exercised its privilege.

On the question whether High Court is empowered to entertain a habeas corpus petition against the detention order passed by the House. Supreme Court said that the searchlight case excluded the application of Article 19 (1) (a) so as to control the legislative privileges, but it did not exclude the possibility of application of Article 21. Referring the aforesaid case the Chief Justice observed, "Therefore, we do not think it would be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by part III, the latter must always yield to the former. The majority decision, therefore, must be taken to have settled that Article 19 (1) (a) would not apply, Article 21 would."\(^{23}\)

23. Id at p. 765
Regarding the contempt of House by a judge it was held that Article 226 confers on High Court the power to issue a writ of habeas corpus. A person may complain, under Article 21 that he has been deprived of his personal liberty not in accordance with law but for capricious or malafide reasons. The Court will then be bound to look into the matter. Similarly Article 211 of the Constitution debars the State Legislature from discussing the conduct of a High Court Judge for anything done in the discharge of his duties. The net result of Article 226 and 211 is that, "Judicial conduct can never become the subject matter of contempt proceedings under the latter part of Article 194(3), even if it is assumed that such conduct can become the subject matter of contempt proceeding under the powers and privileges passed by the House of Commons in England."²⁴

The opinion given by the Supreme Court, thus may be summarised as following.

1) The legislature has the sole and exclusive power to punish anyone for its contempt, but the order of the legislature can not be non-justiciable.

2) The order of committee for contempt of House is not subject to Article 19 (1) (a), but under Article 21 and 22, the court can review such order (Thus the scope of judicial review is very limited).

3) No action can be taken against a judge of a High Court on the plea of contempt for anything done in official capacity.

The Allahabad High Court on the basis of the advisory opinion of the Supreme Court disposed off the petition on merits. Based on the observations it was argued on behalf of petitioner that though the House of Commons enjoy the privilege to commit anyone for its contempt by a general warrant which is non-justiciable such privileges can not be claimed in India as the power is vested

²⁴ Id at p. 770
in the House of Commons as a Court of Record and not as legislative organ. But the Allahabad High Court ignored this plea by saying that once it is established that particular privilege existed in the House of Commons at the commencement of the Constitution, then whatever is its origin the state legislature also possess the same privilege. The Allahabad High Court, therefore, adopted only in part the opinion of the Supreme Court that House of Commons enjoyed privilege of committing any person by general warrant, which is non-justiciable, but ignored the other part that these privileges can not be claimed in India as the House is not a Court of Record.

The advisory opinion of the Supreme Court in re under Article 143 of the Constitution reaffirmed the view taken in search light case that whenever there is a conflict between the provisions contained under Article 19(1)(a) and Article 105(3) or 194(3), the provisions of Article 19 (1) (a) which are general in nature had to yield to the special provisions of Article 105 (3) or 194 (3) and it is a well settled law. But the earlier view of the apex court in Search Light case and Allahabad High Court in Keshav Singh's case that a person, committed for contempt under the rules of the House can not claim the protection of Article 21 as such rules are supposed to stand the test of fairness enshrined under the constitutional provision has come under the shadow of doubt after Maneka Gandhi's case.

The Eanadu Privilege issue 25 once again brought the judiciary and the legislature face to face. The Chief Editor of a Telgu Newspaper was found guilty of contempt of Andhra Pradesh Legislative Council for publishing an item "Peddlalu Golaba" (elders's commotion) and was ordered by the House to appear before it for admonition. Instead of complying with the summons, the editor

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25. The Hindustan Times, March 30, 1984
approached the Supreme Court for relief who issued a show cause notice to the Council and also passed an interim order to the effect that editor is not to be arrested in pursuance of any process or warrant, if issued against the editor. The House ignored the Supreme Court's order and directed the Police Commissioner to produce the editor before the House on March 28. Then on March 25 the Supreme Court passed an order directing the Police Commissioner not to arrest, and should not cause to arrest to be made. The Police Commissioner under such circumstances sought the clarification of the House who reiterated its earlier stand. The controversy was diffused for the time being as the Governor on the advice of the Chief Minister prorogued the Council on March 30, 1984. Consequently the motion lapsed.

The experience in India shows that our Houses, like the House of Commons do not exercise these powers except in gross cases. The aforesaid episode clearly demonstrates that our legislature are over-sensitive in the matter of their privileges. By not complying the Supreme Court's order the House simply showed the lack of patience since the apex court has issued only an interim order. There was no harm had the House waited till the Court decided the matter on merits.

The Parliamentary privileges thus, are special rights available to legislative organ of the Government at Centre as well as in the states, their committees and the individual members. Such rights have been conferred to enable these bodies to play their role effectively. The privileges at present, being enjoyed by Parliament and State Legislature are identical to the privileges the House of Commons enjoyed at the commencement of the Constitution. In India the courts are empowered to look into the existence of a particular privilege but once it is affirmed then only the Parliament or State Legislature are competent
to decide whether commission or omission of any act amounts breach of privilege or not. The Parliamentary privileges are not subject to Article 19 (1)(a) of the Constitution. The press, therefore, can not publish any matter relating to Parliament or State Legislature if it is in conflict with the legislative privileges nevertheless, Article 21 may be invoked on the ground that the act of the legislature is malafide capricious, perverse or violative of natural justice. The press though protected under certain circumstances from any liability civil or criminal before any court of law can not claim immunity against the legislatures itself under the same circumstances. Further any proceeding under Article 129 or 215 which is neither civil nor criminal in nature is not saved under Article 361-A of the Constitution.