CHAPTER IV
THE SUPREMACY OF PARLIAMENT AND THE COMPOSITION OF LOAK SABHA

Parliament is the representative of the nation and the most important and vital governmental institution in India. But the Indian Constitution does not establish what is commonly called the 'Sovereignty of Parliament'. The authority of the Indian parliament, though vast, is limited. It is as some one has said of the American Congress, "A Leviathan in chains." The British Parliament is sovereign and its will is supreme. Sir Edward Coke described its power and jurisdiction as "transcends and absolute". Black Stone asserts that it can, in short, "do everything that is not naturally impossible. The parliament doth, no authority upon earth can undo." Professor Diecy expressed the same idea when he said that in England parliament has the right to make or unmake any law whatever and further, that no person or body is recognised by the law of England as having the right could claim to set aside or override the legislation of parliament.


2. Ibid., Quoted by Panth, p.24.


The consequence is that not only the courts but everybody in the United Kingdom regards that as binding law which parliament has enacted. It is not possible for any person to refuse to obey the orders of parliament because they are not law, though it is possible for him to disobey on the ground that they ought not to be law.

The parliament in India is given the same powers and functions on its counterpart in England, but it does not mean, that either in theory or in practice, the Indian parliament is sovereign as the English is. In England, constitutional experts agree, the sovereignty of parliament is a legal fact. As one writer has quoted it, the English parliament can do anything under the sun except convert a man into woman in vice versa, the latter to emphasise that its only limitation is set by nature. Dicey's remark that "the sovereignty of parliament is from the legal point of view the dominant characteristics of our political institutions is resolved by himself into three propositions:

1. There is no law which the parliament can make.
2. There is no law which the parliament cannot repeal or modify.
3. And there is under the English constitution no distinction between laws which are fundamental or

5. Parliamentary Sovereignty is an undoubted legal fact, it is complete both on its positive as well as its negative side. pp. 66-68.
constitutional and laws which are not, i.e. as

merriot sume-up, the English parliament is both a constitutional assembly and legislative body.

If that is the meaning of sovereignty, then emphatically the Indian parliament is not sovereign. The laws it can make (and repeal) are limited, by the constitution. Because in India the constitution is the fundamental law of the land. Any law passed by parliament not in accordance with the constitution is void. The constitution is the embodiment of the real and permanent will of the people and parliament is bound by it.

Though it is not narrowly limited to what only the constitution grants as in the U.S.A., still the powers of the Union Parliament are limited by the various administrative details by part III (fundamental rights) and by the state list in schedule VII. This limitation is expressly made effective by giving the power to the court to declare the laws of the parliament unconstitutional. In this respect, therefore, our parliament is more like the Congress of America than like the English Parliament. But there is one difference in U.S.A. the bill of rights is illustrative and the IX

amendment to the constitution clearly says that, "The enumeration in this constitution of certain rights shall not be constructed to deny or disparage others retained by the people." While there is no such limitation of national rights in our constitution.

The Indian parliament is the legislature of a federal Government, hence its authority extends only to the union and concurrent lists. It is true that in a period of emergency the subjects enumerated in the state list will come within the jurisdiction of Parliament and even in normal times its power may be extended to include a subject in the state list, for temporary period, in the national interest. But there are exceptions. It is true that unlike the U.S. congress, it could legislate state list and amend the constitution without the concurrences of the state legislature. But still it is not the same thing as Diecys third prepositions with regard to the English Parliament that is to say the Indian Parliament is not fully a constitutional assembly.

The Indian Constitution expressly confers upon the judiciary the power to declare the acts of parliament ultra

9. Ibid., p.28.
veres if they are contrary to constitutional provisions. In the constitution of the United States there is no such specific provision. The power of judicial review was assumed by the American Supreme Court and was for a long time regarded as usurpation.

But sovereignty may be understood in different ways and thus the maker of the constitution claimed that the Indian legislature is a sovereign body looking at the context in which it is used we may take sovereignty to mean the following:

i. **External Sovereignty:**

The Indian Parliament is free from all external control as are the legislatures of all the free countries. The Indian used it again and again that they wanted to emphasise the significance of India's newly won freedom.

ii. **Supreme Power:**

Parliament is the source of all authority and nothing can be done without its law in the sphere which is allotted to the union.

iii. **Unlimited by any Mandate:**

The English Parliament is some time considered the sovereign as it belongs to the electors, once elected the

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members of parliament are free to do any thing they deem fit. Thus diecy's writing with reference to the septennial acts as an instance, says that from legal angle "Parliament is neither the agent of the electors nor in any sense a trustee of the constitution. It is legally sovereign power of the state from the legal point of view, our constitution also does not make the parliament of the Union trustee or agent, it is a supreme or sovereign as the British Parliament is in the sense, as it is not tied down by any other device of initiative of referendum. But that is strictly from the legal point of view, and from the realistic point of view, neither the British nor the Indian Parliament is sovereign, as both are bound down by mandate for example at the time of Hindu code Bill. Pt. Nehru with a huge majority in Parliament said that the passing of the bill was a question of confidence yet the opposition grew around the point that the parliament at that time launched mandate, from the people and the president also played the role of the guardian of the constitution (advised his government to drop the bill on the same ground and the bill was dropped.

12. A.V.Diecy, op.cit., p.44.

13. Quoted by K.V.Rao Parliament Democracy of India p.108. As A.B.Keith considered that is one of the essential characteristic of English Democracy that it is, the duty of the Cabinets to conduct the Government of the country in accordance with the mandate from which they asked of a general election to which they owe their power op.cit. VIII.
The English Parliament is sovereign in another sense because it has de facto control over the king, the de jure sovereign, and hence its powers are co-extensive with those of the sovereign himself whom it controls. The sovereign enjoys inherent and unlimited powers in the U.K. and thus also the English Parliament. But the Indian Parliament is a creation of the constitution by whose provisions, therefore, it is bound. It enjoys powers and functions by virtue of the constitution and not by virtue of its control over the president who himself is a creation of the constitution and bound it and nothing more or less and whom the control of the Parliament neither de jure nor de facto, nor complete.

While theoretically in every constitution, it is the legislature that legislates and the executive that executes accordingly, there is one lesson that the working of all the constitution in the world teaches us 'that power is a matter of fact, but not one of new legal fiction, and that between the legislature and the executive planned as they are in particular positions and endowed with certain functions, it is the executive that plays the greater part than the legislative branch.

As far as legislature is concerned in India, ultimately all of its will have to be made by the parliament and in this sense, except for the few ordinances that the executive could promulgate, the country will be ruled by laws made by the
legislature. As far as finance is concerned, the parliament will have to sanction the same. Though money could be appropriated temporarily through the contingency fund and by ordinances. In both these matters parliamentary approval is finally required. But considering its relation with executive function, even in England, we have seen that parliament does not govern. It only acts as a liaison body between the people and the government and superintendents its executive action as to make it ultimately correspond to popular will, nor does it choose the executive in England. Thus in England the parliament has lost its old prestige and power. It is only a registering body, and it has lost its initiative on the one hand to the cabinet (party-losses) and, the other, to the 'electors to the party supporters) its functions are only nominal however vital and numerous they look on papers.

The maker of our constitution in India not only created a parliament of that type, but also put in all the features of the British system, which made parliament subservient to the executive, and worse still, they have given the executive some more powers - emergency powers, ordinance making powers which the executive in England does not posses. The constitution thus makes executive supremacy definite and complete and it is a peculiar characteristic of our system.

Vis-a-vis, the executive, our parliament is a powerless body in fact it has no power of auto-actions, no power of self
propulsion. It can meet only if summoned by the Executive

its bills become laws only if the executive is pleased to
arrest, it can deal in financial matters only if the exe-
cutive points in short. There is nothing which the legis-
lature can do without the executive where as the latter can
do many things and got on for a long time, promulgate,
ordinances, declare emergencies and spend money. It, with-
out these powers in England the cabinet has become despotic
and the parliament has faded away, what would happen in
India, where the constitution itself beASSES the executive
with despotic powers.

COMPOSITION OF THE LOK SABHA

After discussing the constitutional position of Union
Parliament, our aim now will be an effort to describe the
composition of Indian Parliament with special reference to
lower house or 'Lok Sabha'. In India the Union Legislature
called parliament by our constitution is the most important
government organ.

Article 79 of the Indian Constitution states, "there
shall be a parliament for the Union which shall consist of
the president and two houses to be known respectively as the
Council of states and the House of the People." The Indian

15. See Constitution of India, Article No.79.
legislature thus is incomplete without the president and our constitution follows the example of England in this respect and not that of America where the president is not a part of congress.

Our Parliament is a bicameral assembly although there is much truth in the statement that, 'if the upper chamber agrees with the lower it is superfluous and if it disagrees it is michevious, yet in a federal constitution a second chamber has been generally regarded as essential, as it represents the state principle. The lower chamber, on the other hand, is representative of the people as a whole. In India the upper house, which has been the council of states, contains representatives of the state,' whose maximum number be not more than 250.

Its compositions does not give equal weight to the units. It consists of twelve members nominated by the President as having special knowledge or practical experience in such matters as literature, science, art and social service. The rest, up to a maximum of 238 are allocated by the forth schedule among the various states in rough proportion to population. From part A and B states the members are chosen by state assembly in accordance with proportional representation with single transferable vote. From part C states

members were similarly chosen by state assemblies or, where is they did not exist, by electoral congress. The council is not subject to dissolution but one third of its members retire every two years. The age qualification for members is placed at thirty years.

HOUSE OF PEOPLE (LOK SABHA):

Franchise:— The house of the people is constituted by direct election on the basis of universal sufferage, which has truly laid the foundation of responsible government in the country. There were many who thought that this extension of franchise would not be in the interest of the country as the illiterate and ignorant masses of India who had not training in democratic government could not exercise this right properly. The general elections have put at rest all such doubts. The constitution entitles every citizen who is 21 years of age to exercise the right to vote, provided he, "is not other wise disqualified under this constitution of any law made by the appropriate legislature on the ground of non-residence, unsoundedness of mind or crime or corrupt or illegal practice "these disqualifications of the people Act, 1950 and the representation of the people Act 1951 section 16


of the former act states "A person shall be disqualified for registration in an electoral roll if he is of the sound mind and stands so declared by a competent court; or is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections." The representation of the people act 1951, in section 62 lays down.

"(1) No person who is not, and except as expressly provided by this act, every person who is, for the time being entered on the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to the disqualifications referred to in section 16 of the representation of the people act 1950."

There are many other disqualifications which will debar a citizen from exercising the right of franchise. A person convicted of certain specified offences of found guilty of any corrupt practices at a parliamentary election shall be disqualified for a period of six years. Persons found guilty of illegal practices during union or state

19. See The representative peoples act 1950 Sec.16.
elections shall be debarred from voting for a period of four years. And all those who fail to lodge a return of election expenses or who submit a false election return will be disqualified for a period of five years. But any of these disqualification may be removed by the election commission for reasons to be recorded by it in writing.

The constitution abolished the system of separate electorate, and thus destroyed the very root of communal politics in India. But seats have been reserved for scheduled castes and scheduled tribes. Moreover, if the president feels that the Anglo-Indian community has not been adequately represented, he may nominate not more than two members of the community to the House of the People. All these provisions relating to the reservation of seats and especially representations, will cease to have effect after the expiry of a period of ten years from the commencement of the constitution. No one has taken any exception to these temporary provisions.

11. Constituencies:

The membership of the House is distributed among the various constituent states on the basis of their population. For the purpose of election as the whole country is divided into a number of territorial constituencies most of which send

one representatives. But there are some which return more than one number. In all such constituencies there is a general seat and the other seat is reserved for schedule castes or scheduled tribes. The constituencies are to be so framed that there shall be not less than one member for every 750,000 of the population and not more than one member for every 500,000 of the population. "But the upper limit was removed by the constitution (second amendment) October 1952. The ratio between the number of members allotted to each constituency and the population of that constituency should be, as far practicable, the same throughout the country. After each census the representation of the several territorial constituencies will be readjusted. For this purpose a commission was constituted by the delimitation commission October of 1952, section 4 of which states." It shall be the duty of the commission to readjust the representation of the several territorial constituencies in the legislative assembly of each state other than Jammu and Kashmir on the basis of the latest census figures and to do limit the said constituencies.

As it is maintained above that a member would represent as low as 500,000 and at the same time to have the membership of the house double the size of the council of states whose member roughly came to 250, and thus it was found that 500 suited both the calculation.

The maximum of 4 500 was considered in the assembly both too high and too low and arguments could be addressed for a smaller as well as a biggest house. A large House would have been even more unwieldy. At the same time, the principle of parliamentary democracy implies that there is a close contact between the representatives and the electors of his constituency. The smaller the areas and the population, the closer would be the contact and greater would be the feeling of responsibility of the members to his electors. We have also to remember the difficulties caused by distances and absence of any communication to some places in bad weather.

In the house of the people, ten seats have been filled by nomination by the president. Six members representing Jammu & Kashmir, two members of the Anglo Indian Community. One representatives the tribal areas in Part B states and one representing the part D territories of Andaman & Nicobar.

iii. Qualifications for Candidates:

No person can be a candidate for the house of the people if he is not a citizen of India and is not 25 five years of age. He must also possess such other qualification, as are laid down by parliament by law. Art. 102 of the constitution lays down the disqualifications for membership of

parliament. It states, "A person shall be disqualified for being chosen as, and for being a member of either House of Parliament:— "If he holds any office of profit under the government of India and the government of any states, other than an office declared by parliament by law not to disqualify its holders.

(b) If he is of unsound mind and stand so declared by a competent court.
(c) If he is an undischarged insolvency,
(d) If he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign state, or is under any acknowledgement of allegiance or adherence to a foreign state;
(e) If he is so disqualified by or under any law made by Parliament.

The offices of ministers, Deputy Ministers, Parliamentary secretaries and under secretaries are not regarded as offices of profit. For this purposes. The prevention of disqualifications (Parliament and part C states legislatures) act 1954 exempts certain other offices also from being regarded as offices of profit, e.g. the chairman and members of a committee set up for the purpose of advising the government or any other authority, provided the holder of any such offices is not entitled to any fee or remuneration other than

27. See Indian Constitution Art. 102 Clause 102 (disqualification for membership).
a compensatory allowances, vice chancellors of universities, Deputy-chief Whips in parliament officers of the national cadet corps etc.

The representation of the people Act 1951, disqualified a person from the membership of a legislature if he has been convicted or found to have been guilty of any offences or corrupt or illegal practice in an election 'b, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for a no less than two years; 'c, he has failed to lodge a return of election expenses within the time and in the manner required by this act, 'd, he has any share or interest in a general contract for the supply of goods, or for the execution of any work, or the performances of any service, 'e, he is a director or managing agent or holds any office of profit in a government corporation or 'f, he has been dismissed from government service for corruption or diloyalty to the state. But none of these disqualifications operates for a period of more than five years.

A person who is elected to both the houses of Parliament and State Legislature, must vacate one of these seats.

If a member of either house of parliament absent himself from its meetings without permission for a period of 60 days, his

seat may be declared vacant by the house to which he belongs.

**Duration of the 'House':**

The term of the House of the people is five years. If it is not dissolved earlier, this period may be extended by law by parliament in case of a proclamation of emergency. But this extension will in no case be more than a year at a time and will not go beyond a period of six months of the proclamation has ceased to operate.

But the time of duration is short in view of the makers because in the Parliamentary government minister goes to gain experience and for fighting election fields. But here are three points against it. First, ministers are not administrative head, they make policy but actually do not execute them. Secondly, when ministers come to power, they are not picked up from the street. They gain or train themselves for the job as member of parliament and parliamentary committee. Thirdly, the policy of the departments is largely made by the party and the cabinet. But if it has a long time a system of referendum would be better than dissolution in a country like India where elections would be costly and tedious. But our makers definitely ruled out these direct democratic elections and in their absence the present system looks all right.

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29. Ibid., A.B.Lal, pp. 21-22. See Constitution of India Art. 101(4) also see Art. 83 (1)(2).
30. Ibid., A.B.Lal, p.22.
The president has given the power to summon each house of parliament to meet at such time and place as he shall decide. But the interval between two session of parliament should not be more than six months. The president has also been empowered by the constitution to prologue parliament or any of its House and to dissolve the House of the people. The first session of parliament after each general election and the first session of every years shall be addressed by the president at its commencement. The president may also address any House of Parliament or a joint sitting of both the houses at time he decides.

iv. Offices of Parliament:

Each House of Parliament has a principal presiding officers, a deputy to assist him and a secretary who is the principal adviser to the presiding officer on parliamentary procedure and practices, the custodian of all parliamentary records and the executive head of the secretariat staff of the house. The presiding officers of the house of people are called the Speaker and the Deputy Speaker and of the Council of states the Chairman and the Deputy Chairman.

The Speaker is the all important conventional and ceremonial head of the house of the people. Any question which relates to the well being of the house if always

32. See The Indian Constitution Art. 85, 86 and 87 of part V.
a matter on which the speaker is consulted and he naturally takes a very direct interest in it. The speaker is chosen by the house of the people from among its members. He holds office until he ceases to be a member of the house or until he himself resigns his office or is removed from his office by a resolution of the house passed by a majority of all the members of the house. If continues in office notwithstanding the fact that the house has been dissolved — and vacates it immediately before the first meeting of the new house after the dissolution.

The speaker is a symbol of impartiality. He is the principal spokesman of the House and represents its (collective) voice. But the speaker of the House of peoples has followed a middle course. Though it is conceded that the speaker in India should stand apart from party strife, it is maintained that he should not keep himself entirely aloof from politics as the British speaker does. As a first step, he has evolved the formula that though the speakers may continue to be members of these parties, they should not attend the party meetings where various subjects are discussed nor should they actively participate publicly in controversial matters that are likely to come up for discussion before the house. According to this view, the final aim is unchanged.


34. Ibid., p.30.
In course of time, we shall be able to evolve from this a sound convention on the lines of British Speaker. But the lead given by the speaker of the house of the people does not in any way entail a silent or neutral attitude on certain general public questions. The speaker, for instance, has not hesitated to give his views in public speeches on such burning issues as the formation for linguistic states, usually, however, he has restricted himself to remark on the broad features of the developing political life of the country.

As regards the function of the speaker, his main duty is the maintenance of order and decorum and the smooth conduct of business; the decisions on the admissibility of questions and motions; the establishment of the scope of different kinds of debates and their regulation - all this and more is already obvious from a few hours in the galleries or from a perusal of a day's proceedings in the house. And if matters appear to proceed smoothly, it is usually because a difficulty has already been well handled in the past. The influence of the speaker in his own chamber is no less significant. We have already noted the present rules of procedure are practically the creation of the speaker-usually tentatively tried out in conventions, compared with those of the house of commons and if found suitable in practice, incorporated informal business terms. His Chairmanship of the advisory committee is central to the planning of the House's work and to the fostering of

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reasonably harmonious relations between the government and the opposition groups. The emerging policy of the House matters of privileges the cautious consolidation and resistance to ambitious extensions - is largely of the speaker's making. The working of the whole range of parliamentary committees is conducted under the guidance of the speaker, who in some cases has issued special directives and who is on every occasion the person to whom a worried committee Chairman would go for advice.

The very constitutional frame work within which the House operates owes much to the speaker's influence advice. Many of the provisions of the constitution which relate to Parliament were indeed the direct results of the speaker's recommendations. This can be said, for instance, if the inauguration of each budget session with a presidential address and the radical transformation of financial procedure. More important the vital section on privileges were the consequence of his intervention.

In short all messages on behalf of the House are sent or carried with the authority of the speaker. He enforces the rules of debate and decides question of order. He admits notices of question, resolution and motions. He also exercise his duties partly under the constitution and partly under the

rules of procedure, formed by the House, the speaker is the guardian of the privileges of the House and rights of minorities. The speaker communicate the decisions of the house to the authorities concerned and requires them to comply with the terms of such decisions. It is also responsible for providing accommodation for the sittings of the House and its committees and the residence of the members, for telephones payment of salary and allowance to the members, the printing of parliamentary papers and records, refreshment and retiring 'room in the parliament House and allied matters. He is also responsible for security arrangement in the parliament House. He interprets the constitution relating to parliamentary matters and the rules of procedure and his decisions is final. He determines when a member should be called upon to speak and how long he should be allowed to speak. He can order a member to discontinue a speech or to withdraw words or expressions which he feels are unparliamentary or undignified. Lastly he includes measures which should be taken by him to increase the knowledge of members in the various fields of national activity in order that there is informed and constructive criticism in the House. Conclusions are drawn from accepted facts and the levels of debates is maintained at a reasonably high standard. He is also the supreme head of all parliamentary committee set up by him or by the House.

37. A.B.Lal, op.cit., pp. 30-34.
Like the speaker, the deputy speaker is elected by the House of people from amongst its members. He holds office until he ceases to be a member of the House or until he himself resigns his office, or is removed by the resolution of the House passed by a majority of the members of the House. Whenever the speaker is absent, the deputy speaker presides over the deliberation of the House and for the time being exercises all the powers of the speaker under the rules of procedure. He is automatically appointed as Chairman of that committee whenever he is nominated or appointed a member of a committee. His duties are as onerous on those of the speaker. Unlike the speaker, the deputy speaker has however a right to speak on the House to take part in its deliberation and to vote on any proposition before the House as a member, but this he can do only when the speaker is presiding.

v. Privileges and Immunities of Parliament

The constitution of India has drawn truly on the constitution of western democratic nations, particularly the British constitution, besides borrowing of course from the government of India Act, 1935. Consequently, the provisions in the Indian Constitution bearing on the privileges and

38. Ibid., p. 37.
immunities of the Indian parliament and of its members have been modelled on the pattern of the privileges and immunities enjoyed by the British Parliament. One clause of the Indian constitution in fact specifically lays down that 'until the privileges and immunities of the parliament in India are defined by law, they should be those of the House of Commons of the United Kingdom and its members and committees at the commencement of this constitution.'

In India, as explained earlier, the privileges and immunities of the two houses of Parliament, the Lok Sabha and the Rajya Sabha, as well as of the state legislatures, are for the present the same as those of the British House of Commons, and their scope is covered by article 105 of the constitution so far as parliament is concerned, and by article 194 so far as the state legislature are concerned. Article 105 reads as follows:

"Subject to the rules and standing orders relating to the procedure of parliament, there shall be freedom of speech in parliament.

"2. No member of parliament shall be liable to any proceedings in any court of law in respect of any thing said or any vote given by him in parliament or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament or
any report, paper, vote or proceedings.

"3. In other respects the powers, privileges and immunities of each House of Parliament and of the members and committees of each House, should be such as may, from time to time by defined by the parliament by law and, until so defined will be those of the House of Commons of the parliament of the United Kingdom and of its members and committees, at the commencement of this constitution.

"4. The provisions of clause (I) and (3) shall apply in relation to persons who, by virtue of the constitution, have the right to speak in or otherwise to take part in the proceedings of a house of parliament or any committee thereof as they apply in relation to members of parliament."

The article is self explanatory and its language is clear. A preliminary point to remember is that under the Indian constitution the two houses of parliament the Lok Sabha and the Rajya Sabha have co-ordinate powers, except in regard to certain matters like the initiation of money bills and the voting of grants and supplies, which are the exclusion privileges of the Lok Sabha. The privileges and immunities of both Houses are also identical.

39. See Indian Constitution, Part V Art. 103 as far as parliament is concerned and Part VI Art. 194 as far as the state legislature unconcerned.

Briefly, the concerned Article is 105 for the parliament and Art. 194 for the legislature of the states. It confers some specific privileges of freedom of speech and freedom from arrest on all members and members of committees thereof, as well as on some non-members also saying that, "No person shall be liable in respect of the publication by or under the authority of either House of any report, paper, votes or proceedings." In all other respects, "the powers, privileges and immunities of each house shall be such as many from time to time be defined by parliament by law, and until so defined shall be those of the house of commons of the parliament of the United Kingdom and of its members and committees at the commencement of this constitution."

In this connection, two questions arises that first it is dangerous to give a blank cheque to parliament to define its own rights which means leaving it to the majority party. Secondly, the most vital right of any member, freedom of speech should be subject to the rules and standing orders of the parliament, which again means those made by the majority party and enforced by its spokesman, the speaker.

Let us now argue, as an example, the right to freedom of speech conferred by the constitution. Against whom is this freedom given? Originally in England it meant freedom

41. See Indian Constitution art. 7 Part V (105) and Part VI (194).
from the king and his court; and later in some constitution. Like Weimar, it was meant as freedom from party mandate that means a member can say any thing in the House without fear of the executive, and any thing which he cannot say outside for fear of legal action.

But can he say any thing? Actual experience in India as well as outside has shown that an ordinary individual has greater freedom, being free from partyships, than member, and the latter has greater freedom outside the house than inside being subject to rules and standing orders enforced specially in India by our zealous presiding officers. For instance, Dr. Ambedkar was not allowed to explain his resignation (1950 in the House, Hinduism was not allowed to be criticised in the House.

Similarly, the other freedom, freedom from arrest, "it means that an M.P. is free from civil proceedings as well as from non-indictable offences. But not free from his indictable offences in which case his arrest is not notified to the speaker. While we agree that no M.P. quo M.P. should escape any punishment, we ask the question whether the same could not be abused by the party in power for its own purposes. Experience so far indicates that opposition members could be arrested and detained for maintaining government majority in the House. There is nothing protections
against this abuse in our constitution. Therefore a simple amendment that an imprisoned member also should be allowed to be presented in the House, just as under trial prisoners are brought to the courts.

Thus we see that the powers conferred on individual members are not adequate and do not serve the purpose intended. We will now prove that the powers conferred on the House as a whole are too much and liable to be misused to stifle democracy.

These privileges of the House, as in England, are of these laws (1) the right to regulate its own internal proceedings (ii) right to punish members, including expulsion, for parliamentary misbehaviour; and (iii) the right to punish non-members for contempt.

All these, right can be grouped under two heads for our own purpose. In the first category comes all those powers that are essential for any assembly to conduct its own proceedings in an orderly manner, without obstruction from any body outside or inside. This kind of power can be called preventive power. In the second category comes powers that are required to furnish people who will fully and knowingly obstruct its business, and lay to bring its down in public esteem, i.e. what is called, for its contempt this power may be called punitive power.

Parliament should have the limited power to regulate its own procedure unhindered by any outside agency and from
any internal disturbances is a right which no body needs question. As a matter of fact, this is a right that should be given to every institution the cabinet, the president, the Supreme Court, the Public Service Commission and so on and is actually enjoyed by all assemblies even by colleges, debating societies and business meetings of political parties, where the presiding officer has the right to take certain steps, including ordering of a person to go out of the meeting, if his presence causes any disturbances. Therefore, we have no quarrel with what may be called the preventative powers of the parliament.

But should the parliament have the punitive citizens for contempt? We can prevent a great abuse of power by the majority of the parliament is denied this power completely as otherwise, the majority right stifle the minority, as it happened else where, and we have already had several instances which give us an indication of the direction in which they could be used.

There is an overwhelming reasons why parliament should not be given this power, without this power legislature functioned well in India between 1921 and 1947. The only reason why the parliament should possess the power is not the reasons which existed in England. But that it should be free from others and others should not lower its dignity. If that
is the only reason, the question naturally arises why this power to take punitive action should not have the right, but that it should not have the power to punish; where its right are violated by others; the matter should be adjudicated by the judiciary otherwise, this very power of the parliament that was used as the instrument of democracy in England, might prove to be the instrument of dictatorship in India.

Therefore, in India so long as privileges remain these of the House of Commons, the Supreme Court would probably uphold this power and protect it against restriction even by the fundamental rights. If the privileges were codified, however, if they were set out and defined in acts of Parliament, the courts would at once feel entitled to enquire into the constitutionality of such privileges. Clearly the immunity of members from civil and criminal proceedings arising out of things said in parliament must be protected if there is to be free debate. Again, each House must be able to exercise disciplinary powers over its members. Doubts arises mainly in regard to the powers of the House to punish non-members for contempt of the House; for the consequences of this power so that citizen may be sent to prison without a trial before a judge in an ordinary court of law. We have seen the assertion of parliamentary power of this kind occurred in 1955 where the proprietor and the editor of the Bark stown

42. K.V.Rao, op.cit., pp. 100-104.
observer were imprisonment on a warrant issued by the speaker of the Australian House of Representatives for break of privileges of the House, and the High Court of Australia refused application for writs of habeas corpus and the privy council rejected the application of appeal; same is the case in England. But, "in the context of the Indian constitution, is parliamentary privileges more fundamental than the fundamental rights? There are the important questions which lie behind the controversy as to whether the privileges of Indian legislative bodies should now be defined by law? For, once deprived by law, the privileges became unambiguously subject to the constitution and it will be the duty of the Supreme Court to determine cases where privileges and fundamental right conflict."

The question will naturally be asked if it would be repugnant to our ideas of sovereignty of the parliament that the judiciary should be given power to interfere in such matters concerning the parliament; Because it need not to be the sole instrument through which democracy has to be established and preserved in India. Our answer to this question is that the parliament in India is neither 'sovereign' nor is there any need that it should be so, nor are we giving the judiciary any power to interfere with the working of the Parliament. All that we are taking away is its power to sting—we are not killing the cobra, we are only taking away its power to inject poison, which is not necessary where the owners supplies it with food.

44. K.V. Rao, Parliamentary Democracy in India, pp. 100-104.