2.

The Indian Constitution and Parliamentary Privileges.
In Parliamentary parlance in India the term privilege implies certain rights and immunities enjoyed by each House of Parliament and committees of each House collectively, and by members of each House individually. The aim of the privileges is to protect and implement the independence, integrity, authority and prestige of the Parliament.

The true context against which parliamentary privileges had developed in Britain has undergone major modifications when the Constitution of India was enacted. No longer are the days of struggle of Parliament against the autocratic authority of the executive. The executive is now responsible, both individually and collectively, to the Parliament. Not only that the executive is charged with the responsibility of securing the dignity of the Parliament, but the members of the Parliament and the people at large could also hold the government responsible for any infringement of the dignity of the Parliament. There is another important factor to reckon with. For four decades since independence India has been experiencing, with a minor interregnum, monolithic rule of a single party and this made the members of the Parliament, particularly those belonging to the opposition, over-sensitive about their privileges. The dynamics of electoral politics threw the members in such a quandary that they became too much obsessed with their rights and immunities.

The Constituent Assembly had three options with regard to parliamentary privileges. The provisions of the Government of India Act, 1935, could be reinforced. The privileges and the immunities


2. The Constituent Assembly, an elected body, began its almost three-year task of framing the Constitution of India on 9 December, 1946.
of the two Houses of the Parliament and their members could be clearly defined and enacted in the Constitution. Finally, as in the case of many Commonwealth countries the privileges may be declared to be analogous to those of the British House of Commons at the time of the commencement of the Indian Constitution. The founding Fathers preferred to combine the second and the third alternatives in Articles 105 and 194 of the Constitution.

Article 105 lays down the following provisions under the general caption 'Powers, Privileges and Immunities of Parliament and its members' :-

(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.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything 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 of any report, paper, votes or proceedings.

(3) In other respects, 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 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 clauses (1), (2) and (3) shall apply in relation to persons who, by virtue of this Constitution, have the right to speak in and 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 Constitution Forty-Fourth Amendment Act, 1971,
made certain changes in clause (3) of the above Article. The reference to the British House of Commons was omitted and the part after the clause 'until so defined' was revised as '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, 1970.

Under the sub-title 'Powers, Privileges and Immunities of State Legislatures and their Members' Article 194 of the Constitution of India has laid down the following provisions :-

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 commence-
ment of this Constitution.

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons, who by virtue of this Constitution, have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

As in the case of Article 105, so also in the case of Clause (3) of Article 194, the last portion after the clause 'until so defined' was amended into 'shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-Fourth Amendment) Act, 1973'.

The two questions which strike us at the very onset are: first, why did the Founding Fathers of the Constitution proper to include such a direct reference to the House of Commons in the text of the Constitution of a free country particularly when they knew it well that the privileges of the British House of Commons had been the product of evolution for two hundred years and ours is a nascent democracy born of the niceties of the British political culture? Second, what stood in the way of enumerating a few more privileges in the Constitution?

The members of the Constituent Assembly were vociferous against the inclusion of a reference to the House of Commons.

R.V. Kamath led the tirade. He said in the Constituent Assembly 3. "This is the first instance of its kind where reference is

3. R.V. Kamath represented C.P. and Berar in the Assembly.
made in the Constitution of a free country to certain provisions obtaining in the Constitution of another state ............ "But we do not know what are the privileges of the members of the House of Commons. Therefore, it is far better to build on our own solid ground, rather than to rely on the practices obtaining in other countries."  

Shibnath Lal Saran, Hamiruddin Ahamed and Dr. H. S. Deshmukh were also critical of the articles dealing with privileges. They considered them to be derogatory and vague.

The matter again came to the floor when the subject relating to privileges of the state legislature came before the Constituent Assembly. In clause 20 of the report of the committee appointed by the President of the Constituent Assembly in pursuance of the resolution of the Assembly of 50th April, 1947, to report on the principles of a model Provincial Constitution with Vallabhbhai Patel as its chairman, there was a reference to privileges and immunities. According to it, "Privileges of the Provincial Legislature shall be on the lines of the corresponding provisions in the Act of 1935."  

Alladi Krishnaswami Ayyar moved an amendment -  

"Sir, I have an amendment to the clause as proposed. It contains 2 parts.  

4. S.L. Saran suggested that an appendix should be added concerning the privileges of the House of Commons.  

5. H. Ahamed wanted a schedule to be added at the end of the Constitution.  

6. Dr. Deshmukh contended that the privileges should be well defined in the Constitution.  

7. Constituent Assembly Debates, Vol. 2, 1946-47. This particular matter was raised on Friday, the 10th July, 1947.  

With regard to the first part of it there was some difference of opinion in certain quarters, as to whether it should be pressed at this stage and whether it could not be taken up at a later stage. On that ground for the present I am not insisting upon it, though I think there is a good deal to be said in regard to that of it. The first part of it is."

"That at the end of clause 20 the following be added (with the following changes in the provisions of Section 71 of the Government of India Act, 1935)'.

After the words 'in respect of the publication by or under the authority of a chamber of such a Legislature' in subsection (1) of section 71 add 'or any accurate reports of such proceedings'.

The second part of my amendment is: For subsections (3) and (4) of section 71 of the Government of India Act, 1935, substitute the following:

'The powers, privileges and immunities of the members of the Legislature of the Province shall be such as are declared by the Provincial Legislature and until so declared shall be those of the members of the Commons of the House of Parliament of the United Kingdom and of its members and committees at the establishment of this Constitution'.

If you will refer, Sir, to section 71 you will notice that the privileges are very restricted. The Legislature has no power to punish its own members and there are various other restrictions too..... If there is any feeling that in an independent India's Constitution there need not be any reference to the House of Commons, later on we
might collect all the materials with reference to the privileges of the House of Commons and they might be substituted. For the present I would press this, because the House of Commons is the Assembly which has the widest privileges of all the Assemblies of the World.

Both the amendments were accepted without any further discussion.

In course of time the following amendment was also passed.

"That the following new clause be inserted after clause 20:

20A. (1) the validity of any proceedings in Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the 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."

Although the motion was adopted without any further deliberations, much heat was generated in the course of discussion, particularly when Dr. Ambedkar made replies to the arguments of Thakur Das Bhardava. Dr. Ambedkar argued that the privileges relating to individual members are simple enough to define, but not so simple are those relating to the Parliament. For instance, under the House of Commons' powers and privileges it is open to Parliament to take

10. B.B. Ambedkar was the Chairman of the Drafting Committee of the Indian Constitution.
any action, including conviction, against any individual member of Parliament for anything that has been done by him which bring Parliament into disgrace. The right to look up a citizen for what Parliament regards as contempt of itself is not an easy matter to define. Nor is it easy to say what are the acts and deeds of individual members which bring Parliament into disrepute.

It is mainly due to the insistence of Dr. Ambedkar that the reference to the British House of Commons was ultimately retained in the Constitution. But in doing so the framers of the Indian Constitution made things unusually complicated. The expression 'in other respects' occurring in the two articles is highly misleading. The Supreme Court truly pointed out\(^{11}\) that the Indian Legislature could never claim all the privileges of the House of Commons and that is for a host of reasons. First, there is no reference to any source material in terms of which the privileges and immunities of the House of Commons are to be ascertained. The only possible source-book may be the Journals of the House of Commons containing the resolutions of the House, the rulings of the Speakers at different points of time, the findings and recommendations of the Committees of Privileges. But we have not a single library in India where we can have all these materials. As a result the privileges of the House of Commons have remained largely uncertain and vague and our legislatures, both at the union and state levels, have made wide claims all these years.

Second, privileges are essentially related to the political and constitutional systems of a state, and because the

\(^{11}\) All India Reporter, 1965, Supreme Court, P.745, para 45 - Presidential Reference.
two systems differ in important respects, some of the privileges of
the British House of Commons are by nature, non-importable in India.

In the United Kingdom itself, no attempt has so far been made to codify the entire law of privilege. There, the privileges of Parliament are based “partly upon custom and precedents which are to be found in the Rolls of Parliament and the Journals of the two Houses and partly upon certain statutes which have been passed from time to time for the purpose of making clear particular matters wherein the privileges claimed by either House of Parliament have come in contact either with the prerogatives of the Crown or with the rights of individuals.”12 This position obtaining in England has made the Indian position more difficult and complicated.

In some other Commonwealth countries notably Australia and Canada, although Parliament has been empowered under the Constitution to define by law its powers, privileges and immunities no such legislation has so far been enacted.

In the case of Australia, the powers privileges and immunities of Parliament are governed by Section 49 of the Commonwealth of Australia Constitution Act 1900, which is in similar terms as Article 105(3) of the Constitution of India.

In the case of Canada, Section 18 of the British North America Act, 1867 as substituted by the Parliament of Canada Act, 1875, empowers the Parliament of Canada to define from time to time by Act the privileges, immunities and powers of each House of Parliament and of the Members thereof.

In some Commonwealth countries notably Ceylon, Kenya, Zambia, Mauritius, Nyasaland, Trinidad and Tobago and Malaysia the privileges of Parliament have been specifically defined by law. Similarly in the Union of South Africa, a former member of the Commonwealth, the Parliament has, in pursuance of Section 57 of the South Africa Act, 1909, enacted the powers and privileges of the Parliament in an Act in 1911. Section 4 of the said Act constitutes both Houses separately or jointly a 'Court of Record', which may impose fines for contempt. Further, Section 5 provides machinery for removing all questions of Parliamentary Privilege from the jurisdiction of the Courts of Law. 13 Burma has also made an act in 1959 defining the powers and privileges of its Parliament.

In the United States the privileges of the Congress members are primarily drawn from the Constitution, which gives them a conditional immunity from arrest and an unconditional freedom of debate in the House. Article 1, Section 6 of the U.S. Constitution provides, "They (the Senators and Representatives) shall in all cases, except Treason, Felony, and Breach of the peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same, and for any Speech or Debate in either House, they (the Senators and Representatives) shall not be questioned in any other place."

In the United States of America each House of the Congress has the power to punish its Members for disorderly behaviour and other contempts of its authority, as well as to expel a member for

13. A brilliant exposition of the problem is to be found in Parliamentary Procedure in South Africa by Ralph Kilpin.
any cause which seems to the House to render it unfit that he continue to occupy one of its seats. 14 This power is derived from Article 11, Section 5, Clause 2 of the U.S. Constitution.

The power of the Congress to punish non-contempt "for contumacy" contents of their authority is derived not from the text of the Constitution, but from a judicial decision in the case of Cooley v. Bennett in 1871. 15 But in recent years the modern Congress in practically abandoned its practice of utilizing the contempt power of contempt proceedings at the bar of the relevant House against contumacious witnesses, and has instead invoked the aid of the Courts in protecting itself against contumacious conduct. 16 To Chief Justice Warren of the U.S. Supreme Court once stated, "Unlike the British practice, from the very outset the use of the contempt power by the legislature was deemed subject to judicial review." 17

Now turning back to India we find that some of the privileges of Parliament, and of its members and committees are specified in Articles 105 and 194 of the Constitution, contain rules and the Rules of Procedure of the House, while others continue to be based on precedents of the British House of Commons, and on conventions which have grown in this country. Some of the more important of these privileges are:


15. "Cont. 204 (1871); Mind's Precedents, Vol. 11, p. 1696-97.


(1) **Privileges specified in the Constitution.**

(a) Freedom of speech in Parliament\(^\text{18}\).  

(b) Immunity to a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof\(^\text{19}\).  

(c) Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings\(^\text{20}\).  

(d) Prohibition on the courts to inquire into proceedings of Parliament\(^\text{21}\).

(11) **Privileges specified in statutes.**

(a) Freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion\(^\text{22}\).  

(b) Immunity to a person from any proceedings, civil or criminal, in any court in respect of the publication in newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice\(^\text{23}\).

\(^{18}\) Article 105(1) of the Indian Constitution.  
\(^{19}\) Article 105(2)  
\(^{20}\) Ibid.  
\(^{21}\) Article 122.  
\(^{22}\) Civil Procedure Code, Section 155A.  
(iii) **Privileges specified in the Rules of Procedure and Conduct of Business of the House.**

(a) Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.\(^{24}\)

(b) Exemption of a member from service of legal process and arrest within the precincts of the House.\(^{25}\)

(c) Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House.\(^{26}\)

(iv) **Privileges based upon precedents.**

(a) Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House.\(^{27}\)

(b) Members or officers of the House cannot be compelled to attend as witness before the other House or a Committee thereof or before a House of State Legislature or a committee thereof without the permission of the House and without the consent of the member whose attendance is required.\(^{28}\)

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27. Internal Rules, Committee of Privileges of the First Lok Sabha.

In addition to the above privileges and immunities each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are:

(a) to commit persons, whether they are members or not, for breach of privilege or contempt of the House.  
(b) to compel the attendance of witnesses and to send for papers and records.  
(c) to regulate its procedure and the conduct of its business,  
(d) to prohibit the publication of its debates and proceedings and to exclude strangers.

**Freedom of Speech** - The basic reason for attaching so much importance to the freedom of speech has been nicely put by White, "Unless Parliament could keep its membership intact, from outside interference, whether or not the interference was with the motive of embarrassing its section, it could not be confident of any accomplishment." A democratic government is government by discussions and it is essential that parliamentary deliberations should be free, frank and without any interference from extraneous agencies.

In India the Montagu-Chelmsford Reforms first granted freedom of speech to the members of the Indian Legislature and

31. Article 118(1) of the Indian Constitution.  
33. Rule 387.  
34. L.D.White - English Constitution, P.439.
sub-section (7) of section 72 D of the Government of India Act, 1919 first gave the privilege a statutory recognition. The Government of India Act, 1935, also assured freedom of speech, though it was subject to certain limits to be set up by the Governor General or the Provincial Governors and to be mentioned in the standing orders. Under the present Constitution the specific position was strengthened by the provision that no Member of Parliament/State Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given in the said legislature, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament/State Legislature of any report, paper, votes or proceedings.

Article 1, Section 6(1) of the Constitution of the United States reads, "The Senators and Representatives ..... for any speech or debate in either House, they shall not be questioned in any other place". Similarly Article 51 of the Japanese Constitution says, "Members of both houses of Diet shall not be held liable outside the House for speeches, debates or votes cast inside the House". Freedom of speech in England which came to be settled since the Bill of Rights, 1689 is absolute for debates and proceedings in the House. In England the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament. Hence no action or proceedings lies for words spoken or written within the walls of Parliament, e.g. ; (a) for defamation, (b) for

contravention of the Official Secrets Act\(^38\) and (c) for uttering words which are criminal in nature and would have been punishable if uttered outside the House\(^39\).

According to Section 9 of the Bill of Rights the privilege of freedom of speech protects not only members but also strangers in certain circumstances. The select committee of the British House of Commons on the Official Secrets Act (1959)\(^40\) in their report (paragraph 3) observed: "While the term 'proceedings in Parliament' has never been construed by the courts, it covers both the asking of a question and the giving of written notice of such question, and includes everything said or done by a member in exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of Parliamentary business".

In a case known as the Strauss's case the question arose whether a letter from a member to a minister about the administration of a nationalised industry could be treated as or included within the scope of 'Proceedings in Parliament'. As questions relating to day-to-day administration of nationalised industries could not be asked in the House, a practice had grown up whereby members addressed letters to the minister if they wanted to elicit information about the working of any nationalised industry. One such letter was written on February 8, 1957, by Jr. C.R. Strauss to the Paymaster-General about

the day-to-day maladministration of the London Electricity Board, and for this he was threatened by the Chairman and Solicitors of the Board with legal action. He thereupon raised a question of privilege, the essence of which was whether his letter to the "Minister was covered by the term 'proceedings in Parliament'. As the question and speeches in the House were considered to be within the scope of this term, it was contended that a letter from the member to the Minister should also stand on the same footing. The Privileges Committee came to the conclusion that the letter was well covered by the term41. But after a good deal of debate the House disagreed with the conclusion of the Privileges Committee and on July 8, 1958 resolved that Mr. Strauss's letter was not a 'proceeding in Parliament42.

Not all things which are done or said within the House are protected. A casual conversation between two members on any subject not connected with any matter pending in the House would not be privileged.

In India the supreme court held43 that the immunity granted by Article 105(2) related to what was relevant to the business of Parliament and not to something which was utterly irrelevant. Once it is proved that the Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. That the members say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the speaker. The Courts have no say in the matter and should really have none.

The provisions of Article 105(2) also apply to persons who have the right to speak in and otherwise, to take part in the proceedings of either House or any committee thereof as they apply in relation to members of Parliament. However, the freedom from external influence or control does not involve any unrestrained licence of speech within the walls of the House. The right to freedom of speech in the House is circumscribed by the constitutional provisions, and the Rules which also guard against making of unwarranted allegations against a person, and the procedure for inviting attention to incorrect statements made by Ministers or members is governed by Directions.44

The freedom of speech conferred on members under Article 105(2) is thus subject only to those provisions of the Constitution which regulate the procedure of Parliament, and to the rules and standing orders of the House, but is free from any restrictions which may be imposed by any law made under Article 19(2) upon the freedom of speech of any ordinary citizen.45

Interpreting clause (1) of Article 194 the Supreme Court observed:46

"the words 'regulating the procedure of the Legislature' occurring in Clause (1) of Article 194 should be read as governing both 'the provision of the Constitution' and the rules and standing orders. So read freedom of speech in the Legislature

44. Direction in Directions by the speaker under the Rules of Procedure of Lok Sabha (2nd Edition) - 115(1), Lok Sabha Debates (11), 22, 12, 1956, cc. 4089-90; 4, 12, 1957, cc. 3550-51; 17, 3, 1959, cc. 6669-69.

45. M.S.M. Sharma v. Shri Krishna Sinha, (Searchlight Case), All India Reporter 1959, Supreme Court 395.

46. Ibid.
becomes subject to the provisions of the Constitution regulating
the procedure of the Legislature, that is to say, subject to the
articles relating to procedure in Part VI including Articles 208
and 211; just as freedom of speech in Parliament under Article 105(1),
on a similar construction, will become subject to the articles relat-
ing to procedure in Part V including articles 118 and 121.

Though a speech delivered by a member in the House
may amount to contempt of court, no action may be taken against him
in court. Proceedings for breach of privilege are not allowed in
Parliament for speeches reflecting on MPs delivered by members of
State legislatures in those legislatures.

Having regard to the fundamental purpose for which
freedom of speech is guaranteed, the correct position seems to have
been laid down in the case of R. v. Bunting. A member is not liable
in ordinary court for anything he may say or do within the scope of
his duties in the course of parliamentary business for in such matters
he is privileged and protected by 'lex et consuetudo parliament'. The
same principle that a member would be protected for anything done in
the execution of his duties as a member whether done in the House or
out of it, was again confirmed by the two American decisions, Milbourn
V. Thomson and Coffin V. Coffin.

48. Lok Sabha Debates, 26 March, 1959, c. 7965.
   (Law Reports, King’s Bench)
50. 103, United States Supreme Court Reports. 168.
51. 4. Massachusetts Law Reports No.1.
Long back in the case of Khin Maung V Au Bu Wa it was held that the privilege of members was absolute, and the words 'subject to rules and standing orders' conferred a right upon the House to control its debates, and did not mean that if any speech offended against any rule or standing order the privilege could not be claimed.

A member both in Britain and India, is subject only to the discipline of the House itself and no proceedings, civil or criminal, may be instituted against him in any court in respect of the same. The right of the House of Commons to enforce its own discipline upon its members is derived from the Bill of Rights which lays down that freedom of speech ought not to be questioned in any court or place 'outside Parliament'.

A very interesting point arises when we consider the inter-relationship between parliamentary privileges and the Official Secrets Act. In 1939 in the British House of Commons one, Mr. Duncan Sandys put down for answer by the Home Secretary a question which showed that Mr. Sandys was in possession of certain official secrets. Mr Sandys was summoned to appear before a court of enquiry so that he might be interrogated as to the source of his information of the secrets. He raised the matter in the House of Commons as a matter of privilege and the matter was referred to a Select Committee. The Committee held that disclosures by members in the course of debate or proceedings in Parliament cannot be made the subject of proceedings under the Official Secrets Acts. The Committee also observed that as no evidence could be

52. AIR, 1936, Rangoon 425.
given in relation to any debates or proceedings in Parliament, except by leave of the House, it might well be that the prosecution would be unable to show that the member had information relevant to the investigation of an offence or suspected offence unless they could give evidence of his statement in Parliament. The same position also holds good in the case of Official Secrets Act in India, because the Official Secrets Act of 1923 is similar to the English statutes. In an identical case\textsuperscript{55} proceedings were started against the Chief "Minister of Orissa. The Orissa High Court observed, "...the language of Clause (2) of Article 194 is quite clear and unambiguous and is to the effect that no law court can take action against a Member of the Legislature for any speech by him there".

It follows then that the freedom of speech is absolute as a parliamentary privilege. The only limitations are the relevant rules framed by the Lok Sabha\textsuperscript{56} to regulate its own internal procedure. If a member violates these, the Speaker may take action against the Member by directing the withdrawal of the Member from the House\textsuperscript{57}, or his suspension or ordering expunction of the offending words from the proceedings of the House\textsuperscript{58}. Thus even a Minister who once made a derogatory remark about a member was asked to withdraw his remarks\textsuperscript{59}. It is, therefore, expected that a member while speaking shall not - (1) refer to any matter of fact which is sub judice;

56. Rules 352 to 356.
57. Rules of Procedure and Conduct of Business in Lok Sabha; Rule 375.
58. Ibid, Rule 374.
(2) make a personal charge against another member;
(3) use offensive expressions about the other House or a state legislature;
(4) reflect on the conduct of personnel in high authority except on a substantive motion;
(5) utter treasonable, seditious or defamatory words;
(6) make any allegations of defamatory or criminal nature against any person without previous intimation to the Speaker.
(7) use his right of speech for the purpose of wilfully and persistently obstructing the business of the House.

Again only such speeches which are published along with the reports of other Members are only privileged. The words 'by or under the authority of either house of Parliament in Clause (2) indicate that Articles 105 and 194 of the Indian Constitution give protection to the publication of all reports, papers on proceedings under the authority of the House, i.e. to official publication only. In this respect the provision is the same as that of the British Constitution. If an individual member publishes his speech without such authority he cannot claim any immunity later on from the ordinary law relating to publication of a statement to which ordinary citizens are subject. 60.

The right of the Parliament to prohibit publication of its proceedings is not enforced in practice unless the report published is inaccurate. The privilege asserted is that no inaccurate report of parliamentary proceedings should be published, but when there is a breach of the privilege, the form in which such breach is taken notice of is, for historical reasons, that the publication infringes the privilege that no publication should take place at all.

60. A.P. Chatterjee, Parliamentary Privileges in India (1971), p. 36.
In India a question of privilege was raised in the House by "Mr. Frank Anthony\textsuperscript{61}, a member of the Lok Sabha, regarding misrepresentation of his speech delivered in the Lok Sabha on 25 August, 1956, in a news item appearing on the front page of the daily newspaper Hindustan Times. In view of the regret expressed by the Joint Editor of the newspaper, the House did not take any action.

In another case "Mr. Bhupesh Gupta, a member of the Rajya Sabha, raised a question of privilege, for wilfully unfair and mendacious reporting of the proceedings of the House in the weekly journal Thought. The matter was referred to the Privileges Committee which recommended that, in view of the explanations offered and the regrets expressed by the Editor of Thought, no further time should be occupied by the House in consideration of the matter. The recommendations of the Committee were accepted by the House\textsuperscript{62}.

In Lok Sabha there have been two cases of persons having been summoned to the bar of the House and reprimanded by the speaker - one for breach of privilege and contempt of the House, for a libellous despatch appearing in a weekly magazine\textsuperscript{63} and the other for contempt of the House in deliberately misrepresenting facts and giving false evidence before a parliamentary committee\textsuperscript{64}. In another case, two police officers of the State of Maharashtra were summoned to the bar of the House to answer the charge of breach of privilege and contempt of the House for allegedly assaulting and abusing a member\textsuperscript{65}.

\textsuperscript{61} Lok Sabha Debates, 28 August, 1956, Vol.8, part ii, c. 4699.


\textsuperscript{64} Case of S.C.Mukherjee, Lok Sabha Debates, 6.3.1969, c.c.219-226; Minutes (Committee on Petitions), 16.7.1969, para 5.

The two officers expressed apologies to the member concerned and to the House for whatever happened on that day. In view of the apologies tendered by them, the House decided to treat the matter as closed.

In Britain the Parliamentary Papers Act, 1840, enacted upon the court judgment in the case of Stockdale v. Hansard which had held that there was no protection for the publication of any speech outside the House, protected the official publication of debates, proceedings etc. The publication of a fair and faithful report of proceedings otherwise than in official papers has been held to be a qualified privilege on the analogy of the publication of proceedings in courts of law, and is not actionable. But the publication of a single speech apart from the rest of the debate would not be privileged.

In India before the passing of the Parliamentary Proceedings (Protection of Publication) Act of 1956 the Indian press had no privilege. The Calcutta High Court submitted in Suresh Chandra Banerji v. Punit Gosala that the British Court decision in the case of Wason v. Walter was not applicable in India. But Section 3(1) of the Act clearly altered the situation by providing "no person shall be liable to any proceedings, 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, unless the publication is proved to have been made with malice". Section 4 of the Act extends

66. 3 State Trial New series, U.K. 861.
67. Wason v. Walter, 4 Law Reports Queen's Bench.
68. All India Reporter (30) 1951, Cal-176.
69. Law Reports, 4 Queen's Bench, 73.
this privilege to broadcasts from radio stations situated within the territories to which the Act applies. It is to be noted here that this Act protects only the proceedings of the Parliament and not those of the state legislatures. The Parliamentary Proceedings (Protection of Publication) Act, 1956, was repealed in 1976, but was re-enacted in 1977.

Disclosure of budget proposals is an important issue in the field of privileges. In Britain two such disclosures happened in the twentieth century. In the first case in 1936\(^7\), a tribunal was appointed under the Tribunal of Enquiry (Evidence) Act of 1921 to enquire into the disclosures. In the second case in 1943\(^7\), a select committee of the House was appointed to enquire into the circumstances leading to the disclosure of the Budget by Mr. Hugh Dalton.

In India Sir Charles Trevelyan, Governor of Madras, was held responsible for a budget disclosure in 1860\(^7\), and two other similar cases occurred in 1956 and 1959. The legal position in both Britain and India is that the House takes note of budget disclosures and institutes enquiry, but does not treat the matter as breach of privilege and does not send it to the Committee of privileges.

71. Ibid. 1948, Vol 444 c.c. 821-823.
72. C.A. Campbell - The Civil Service in Britain. P. 27.
The privilege of freedom from arrest implies two things. First, it means freedom from arrest under process of law, second, it involves freedom from illegal detention or molestation. The second one is not really a privilege, but is calculated to prevent a breach of privilege and to punish an infringement thereof.

Freedom from arrest under process of law extends only to arrest under civil process. No privilege may be claimed in respect of criminal acts within the House. As Mr Justice Stephen put it in Bradlaugh v Gosset73 'I knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice. But a distinction has to be made for cases when the criminal act complained of is in the discharge of Parliamentary duties. In the case of Bradlaugh v Erskine74 the Deputy Sergeant-at-Arms, who was charged with committing an assault when he tried to exclude Bradlaugh from the House, was held to be justified on the ground that he was taking part in the proceedings of the House.

The same position also holds good in the United States. It is evident from the Wording of Article 1, Section 6(1), that the exception takes away from the privilege of freedom from arrest all criminal offences. The privilege is confined to arrest in execution of civil decrees for it has been held that it does not give immunity from arrest in execution of a process in a criminal case.75

73. 12 Law Reports, Queen's Bench Division, 234.
74. Ibid. 276.
75. Long v Ausell (1934), United States.
In India the freedom from arrest is equated with that of the United Kingdom i.e. forty days before and after a session of the House. It is important to note here that the 40 days principle is absent in most of the other states of the World. While providing for freedom from arrest Article 50 of the Constitution of Japan, 1946, says: 'Except in cases provided by law members of both Houses shall be exempt from apprehension while the Diet is in session and member apprehended before the opening of the session shall be freed during the term of the session upon demand of the House. In view of articles 105(3) and 194(3) and the interpretation placed on these articles by the Supreme Court in the M.S.H. Sharma's case the constitutional provisions ensuring the privileges of the British House of Commons shall prevail over the ordinary legislation. So, the provisions in section 135(A) of the Code of Civil Procedure stands void to that extent and should be suitably amended to comply with Articles 105(3) and 194(3).

The arrest of a member of any of the Indian legislatures in civil proceedings during the session of the Legislature and 40 days before and after the adjournment of the House, is a breach of privilege. Any executive order passed for arresting a member in civil proceedings will constitute contempt of the House. Not only is a member immune from arrest in civil proceedings, a person who has been already arrested in execution of a civil process is entitled to be released if he becomes a member of Parliament during the period of imprisonment. Again the exemption applies to a person who was a member of the old Parliament but is not a member of the new one. This practice comes down from the United Kingdom. Thus Nay states that where it is a case of dissolution of the House "the privilege even after a dissolution is
still enjoyed for a convenient time for returning home. Further a member accused of a bailable offence and arrested in connection therewith is to be released for attending the meetings of the Assembly.

The privilege, however, cannot be claimed when the Legislature has been prorogued or has as yet not been summoned for the next session. As regards methods of enforcing this privilege, precedents are yet to be established. In India so far there has been no occasion forcing Parliament to use its authority to get the release of an illegally detained member of the House. The method of issuing writs of privilege or orders of the House direct to the jail authorities is absent in India. As in the case of freedom of speech the privilege from arrest has been extended to witnesses summoned to attend before the House or any committee thereof and also the officers of the House in immediate attendance.

In the sphere of the privilege of freedom from arrest two problems still remain inconclusive for want of precedents. The first problem posed is that as to what shall happen if a member standing surety for an ordinary citizen is ditched and the citizen concerned jumps bail. Second, whether privilege of freedom from arrest accrues to the employees of the member, particularly when they are acting under the instructions of the member helping him in the discharge of his parliamentary duties.


77. Report of the Committee of Privileges, Orissa Legislative Assembly, on the Arrest and Detention of a Member, Maheswar Naik, for a civil liability, 1965, P.1.
The privilege of freedom from arrest suffers from certain limitations. It cannot extend or be contended to operate, where the member of Parliament is charged with an indictable offence. The House will not allow even the sanctuary of its walls to protect a member from the process of criminal law, though service of a criminal process on a member within the precincts of Parliament may be a breach of privilege. A member released on parole cannot attend the sittings of the House.

In the Dasaratha Deb case (1952) the Committee of Privileges of Lok sabha held that the arrest of a member of Parliament in the course of administration of criminal justice did not constitute a breach of privilege of the House.

On December 24, 1969, a question of privilege was raised in the Lok sabha regarding arrest of some members while they were stated to be on their way to attend the House. The chair ruled, that since the members were arrested under the provisions of the Indian Penal Code and had pleaded guilty, no question of privilege was involved.

So long as the detention is legal the danger of the petitioner losing his seat or the certainty of his losing his daily allowance cannot be the foundation for relief, against the normal consequences of the detention. In short, there is no immunity if a member

79. Lok sabha Debates, 24-11-1965, c. 3615.
is arrested under due process of law. Members of Parliament cannot claim any special status higher than that of an ordinary citizen in this regard.

No privilege can be claimed in respect of arrest or detention without trial under Preventive Detention Act or Maintenance of Internal security Act.

In Deshpande case (1952) the Committee of Privileges of Lok Sabha reported that the arrest of a member under the Preventive Detention Act, 1950, did not constitute a breach of the Privilege of the House. The Committee inter alia observed:

Preventive Detention is in its essence as much a penal measure as any arrest by the police, or under an order of a Magistrate, on suspicion of the commission of a crime, or in course of or as a result of the proceedings under the relevant provisions of the Criminal Procedure Code and no substantial distinction can be drawn on the ground that preventive detention may proceed merely on suspicion and not on the basis of commission of an offence on the part of the person directed to be detained. The Constitution authorizes preventive detention in the interests of the state and it is well settled that the privileges of parliament is granted in regard to the service of the Commonwealth and is not to be used to the danger of the Commonwealth, and further every detention by whatever name it is called - preventive, punitive, or any other, as was pointed out by the committee of privileges in the House of Commons in Ramsay's case has this in common: 'the protection of community as a whole'.

The same position was taken by the Calcutta High Court in the case of Ansumali Majumdar V State of West Bengal.32.

The Court submitted that the preventive detention partakes more of a criminal than of a civil character. The Preventive Detention Act only allows persons to be detained who are dangerous or are likely to be dangerous to the State. It is true that such orders are made when criminal charges possibly could not be established but the basis of the orders are a suspicion of nefarious and criminal or treasonable activities.

In a case before the Madras High Court, a member of the Madras Legislative Assembly, who was in detention under the Maintenance of Public Order Act when he received the summons for a session of the Madras Legislative Assembly, prayed to the court for the issue of a writ by way of a mandamus or other appropriate writ to declare and enforce his right to attend the sittings of the Madras Legislative Assembly either freely or with such restrictions as might be reasonably imposed. The Court held that a member could not claim any privilege from arrest and detention under the preventive detention legislation.

Again there is no privilege if arrest is made under section 151 of the Criminal Procedure Code. In A.K. Gopalan v State of Kerala it was held that the discretion to exercise section 151 of the Criminal Procedure Code is that of the police officer and the High Court has no power to interfere unless it is shown that the exercise of power was fraudulent.

All actions, arrests or detentions on account of seditious libel are criminal in nature and as such freedom from arrest does not extend to such cases. While accepting the reasoning of the British House of Commons in the case of Wilkes, the Committee of

Privileges of Lok sabha inter alia observed, "Privilege of Parliament does not extend to cases of writing and publishing seditious libel nor ought to be allowed to obstruct the ordinary course of the law in the speedy and effectual prosecution of so heinous and dangerous an offence."

Immunity from arrest cannot be claimed in respect of contempt of a Court of Justice which is of a criminal offence. Though in India there is no existing precedent to guide us it can be inferred that like that of United Kingdom freedom from arrest cannot be claimed in respect of (a) commitment of contempt of court for publishing articles calculated to prejudice the court of Justice", (b) imprisonment for contempt in appropriating money received by a member as Receiver.

However, the authorities concerned are expected to maintain certain niceties while arresting the legislators in view of their high status and prestige. Thus, for example, they are exempted from being handcuffed.

Similarly when a member is arrested on a civil or criminal charge the House should be informed of the charge and the arrest. The intervening authorities should intimate the presiding officer even when the arrested member is subsequently released on bail. A jailed legislator must be allowed to correspond with the presiding officer of the House or with the Chairman of the Privileges Committee about his detention and treatment meted out to him by the jail authorities.

85. Davis's Case, 1838 (May, P.83)
The Committee of Privileges of Lok sabha while examining the case of arrest of Kansari Balder, M.P. observed that detained legislators should have the right of corresponding freely with the presiding officer.

The Committee of privileges recommended in 1958 that provisions might be incorporated in the Jail Codes, Security of Prisoners Rules etc. of State Governments and Administrations to the effect that all communications addressed by a member of Parliament, under arrest or detention or imprisonment for security or other reasons, to the Speaker of Lok sabha or the Chairman of Rajya Sabha or to the Chairman of a Parliamentary Committee or of a Joint Committee of both Houses of Parliament, should be immediately forwarded by the Superintendent of the Jail concerned to the Government so as to be dealt with by them in accordance with the rights and privileges of the prisoner as member of the House to which he belongs. The Ministry of Home Affairs accordingly advised all State Governments and Administrations to make necessary provisions in their relevant rules. Most of the State Governments and Administrations have since made required provisions in this regard and suitably amended their relevant rules.

In Jambuwanth Dhotre Case (1973) the Committee of Privileges recommended that when a member is arrested and detained under the Maintenance of Internal Security Act, 1971, or under any other law providing for preventive detention, the authorities should, besides sending to the Speaker immediate information regarding the arrest


88. Ibid, P.12.

89. Ministry of Home Affairs Letter "o.35/6/53-P.11, dated 24-1-1959."
and detention of the member together with the reasons for arrest and
detention, send a copy of the detailed 'grounds' to the Speaker,
Lok Sabha, simultaneously, when those grounds are supplied to the
detenu as per law for preventive detention.\textsuperscript{90}

The failure on the part of a judge or a magistrate or other authority to inform the House of the arrest, detention or imprisonment of a member would constitute a breach of the privileges of the House.

On March 1, 1950, a member raised a question of privilege in the Lok Sabha regarding the removal from Delhi of another member, under the East Punjab Public Safety Act, 1949, without communicating the fact to the Speaker of the House. The matter was discussed by the House and when the Government expressed their regret, the House on a motion moved by a member, decided to drop the matter.\textsuperscript{91}

The Hyderabad Legislative Assembly held a sub-inspector of police guilty of breach of privilege for a failure to intiate to the Speaker of the Assembly the arrest of a member. The sub-inspector was called to the bar of the Andhra Pradesh Legislative Assembly (the principal successor of the Hyderabad Legislative Assembly on re-organization of states) where he tendered an unconditional apology.\textsuperscript{92}

The legislators are immune from arrest and service of process within the precincts of the House. Keeping in line with the

\textsuperscript{90} Parliamentary Debates, 1975, Vol.XX, 2, p.37-41.

\textsuperscript{91} Parliamentary Debates (11), 1-5-1950, p. 1019-45.

\textsuperscript{92} Hyderabad Legislative Assembly Debates, 13-6-1952 and 19-6-1952, p.353, 393-99; 10-12-1952, p.1106-24 and Andhra Pradesh Legislative Assembly Debates 25-3-1957, p.327-30; and 15-4-1957, p.96.
English Practice Rules 232 and 233 of the Rules of Procedure of
Lok Sabha prohibit the arrest of and service of summons on any person
within the precincts of the House without the permission of the Speaker.
The Canadian Parliament and the American Congress also preserve their
sanctity and dignity in similar ways. However, the residence of the
member is not covered under the definition of 'precincts of the House'.

So far as the British House of Commons is concerned,
there is one case referred to in 'May where Lord Cochrane, a member of
Parliament, was taken into custody by the Marshal of the King's Bench
while he was sitting on the Privy Councillor's bench. The House was
not sitting at that time. This case, however, is not in point as it
was not an instance of serving or executing a process. Lord Cochrane
had been convicted of an offence and had escaped from prison and he
was retaken into custody. In these circumstances the observation of
'May seems to be correct, that 'the House will not allow even the sanctu-
ary of its walls to protect a member from the process of criminal
law'.

A warrant of arrest under provisions of law similar
in nature to the Preventive Detention 'act has been held to be in the
nature of a criminal process in Captain Ramsay's case. This view has
been taken also by the law courts. Judge Dorbyshire observed in the
case of In re Bifaroondu Dutt 'Ajudgar,

93. 'Precincts of the House' includes Chamber, Lobbies, Gallaries,
Central Hall, Waiting Rooms, Committee Rooms, Library, Refresh-
ment Rooms of Members, Lok Sabha Secretariat, Corridors and
passages leading to the various rooms, Parliament House Estate.

94. E. May - parliamentary Practice, 13th edition, Lord Cochrane's
Case, P. 101.

95. House of Commons Papers, Paper 164 of 1940.
"If it were necessary for me to decide what it (arrest and detention under Regulation III of 1813 similar to the Preventive Detention Act) was, I should hold that it was something sui generis more akin to criminal process than civil process because it is a restraint on the freedom on the subject imposed by the State purporting to be for the safety of the state, which is one of the chief features of arrest on criminal process." 96.

The reason why the service of process within the precincts of the House is considered to be a breach of privilege is, according to the Committee 97, not that such a service is an insult to the member but that it is deemed disrespectful to the House. For a stranger admitted within parliamentary precincts with the permission, express or tacit, of the House, to presume to serve the process of inferior tribunal in the presence, actual or constructive, of the House, is clearly an abuse of the privilege of admission to the House and a violation of the dignity of Parliament.

If a member of the House of Commons is summoned as a witness in any suit or proceeding, he may resist the summons to attend the court by claiming privilege. But this privilege is now normally waived on the ground that non-attendance of a witness would interfere with the administration of justice. On the other hand, it appears, members are granted leave of absence for attending courts as witnesses should a subpoena be served frivolously, leave may be refused 98. In earlier times privilege of exemption from being impleaded

96. Calcutta Weekly Notes, 854.


98. The Table (Journal of the Society of Clerks at the Table) Vol.XXII, PP. 129-50; Madras Legislative Assembly Debates, 17 December 1959.
as a party in a civil action was also claimed. But this privilege has been taken away by later statutes.

Under Section 153 of the Civil Procedure Code of 1908 the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, the Speakers of the State Legislative Assemblies and the Chairman of the State Legislative Councils are exempted from personal appearance in civil courts.

Another minor privilege enjoyed by the Indian legislators is exemption from jury service. It is based on the same principle that a member's duties in the House have a prior claim over any obligation of attendance in the Courts of law. This privilege was first granted in Britain under the Juries Act, 1870. It was introduced in India in 1925 with the passing of Legislative Members Exemption Act, XVIII, 1925. After independence apart from the importing of English law by virtue of Articles 105(3) and 194(3), section 320 of the Indian Criminal Procedure Code under its clause (a) exempts Members of Parliament and State Legislatures from liability to serve as jurors. It is, however, of no use now as the system of jury trials gets abolished in all the States.

Witnesses, petitioners and their counsel, who appear before any House or any Committee thereof are protected, under Article 105(3), from suits and molestation in respect of what they say in the House or a Committee thereof. This privilege may be considered as an extension of the privilege of freedom of speech as its purpose is to ensure that information is given to the House freely and without interference from outside.
Each house has the right to exclude strangers and to debate within closed doors. This right also flows as a necessary corollary to the privilege of freedom of speech, as it enables the House to obtain, when necessary, such privacy as may secure freedom of debate.

The House is the sole judge of the lawfulness of its own proceedings. It has also the privilege of deciding what matter it will discuss and in what order without any interference by the Court. The validity of any proceeding of the legislature may not be called in question in any court on the ground of any irregularity of procedure and no officer is subject to the jurisdiction of the court in regard to the exercise of his powers in the House. No member or officer of the House may give evidence as to the proceedings in the House without the leave of the House.

In 1957 the Lok Sabha Secretariat was requested to produce documents relating to the proceedings in the House and also to send an officer to give evidence in the court. The Privileges Committee of the Lok Sabha made the following recommendations:

"............the Committee are of the opinion that no member or officer of the House should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House or any other document connected with the proceedings of the House or in the custody of the Secretary of the House without the leave of the House being first obtained."

99. Surendra V. Babakrishna, All India Reporter, 1958, Orissa 168.
When a similar occasion arose in the Rajya Sabha in Biren Roy's case the Privileges Committee arrived at the same conclusions about the procedure to be adopted for production of documents connected with the proceedings of the House before courts of law and the House agreed. Prerilege may be claimed with regard to proceedings in the House; but it may be argued that the evidence which was called for in the Biren Roy's case was not in regard to any proceedings in the House but to certain contracts of installation of machineries in the Chamber.

It appears that the Government of India has issued instructions to all State Governments to discuss the matter with their respective Chief Justices and issue suitable directions along the following lines:

(a) When Parliamentary records are required to be produced before courts of law a proper form of address should be adopted,

(b) in most cases it may be sufficient to call for certified copies of the documents only at any rate in the first instance, and original documents may be called for at a later stage if the parties insist upon strict proof; and

(c) the courts should bear in mind the provisions of Section 78 (Clause 2) of the Evidence Act under which proceedings of the legislatures are public documents and may be proved by the production of authorized parliamentary publications, and should ensure that the legislatures are troubled only when unpublished documents in their custody are required in evidence.


Where a request is received for the production of any document the practice in the Lok Sabha is to refer the matter to the Privileges Committee and act on its report.

A question was raised in Parliament in 1974 August whether it was necessary to refer to the Committee of Privileges every such request received and whether the Speaker himself could not grant such permission. The speaker considered it correct, in the light of provisions of Article 105(3), that the present procedure should continue to be followed.

From the right to regulate its internal affairs follows the right of the House to maintain order and discipline and to reprimand disorderly conduct on the part of the members. Political as well as personal reasons often encourage a member to behave in a manner prejudicial to the dignity of the House. The power to punish such misbehaviour is exercised by the House through the Speaker. The common methods used are reprimand and admonition of the conduct and behaviour of the member concerned. In some cases the House expresses its displeasure more strongly by suspending the member from the service of the House and through expulsion.

In 1955 Lok Sabha suspended its member H.V. Karath for disrespect shown to the Chair. In 1962 Rameswarananda and Maniram Bagri were suspended from Lok Sabha for defying authority of the chair, B.P. Maurya, a Lok Sabha member was suspended for disturbing the proceedings of the House in 1966. On 7th November, 1970, Swami Rameswarananda, a member of Lok Sabha, was suspended for 10 days when he did not let the proceedings go on till his demand of a discussion on cow slaughter was allowed. When the defiant member refused to leave the House services
of Marshal were requisitioned to remove him by force. Duration of sus-
pension can be of any period from 'the rest of the day' to the 'prorog-
gation of the House'.

But still the standard of discipline in the Lok Sabha
has been better than that in the state legislatures, where the oppo-
tion members even dare to kick the chair. Naturally the quantum of
punishment is higher. In 1966 Orissa Legislative Assembly suspended its
member, Gadadhar Dutta, U.P. Vidhan Sabha suspended 4 members and Mahara-
shtra Legislature 21 members. In 1974 four members of Karnataka Assembly
were suspended for the remainder of the session for their 'Dharna' inside
the House. The same Assembly again suspended seven members on July 24,
1978, for not apologising for their unseemly behaviour.

Sometimes members are expelled. Thus Lok Sabha expelled
its member H.G. Mudgal on the ground of his scandalous dealings with
the Bombay Bullion Association which included canvassing support and
raising the matter regarding Bullion Association in the Parliament on
receipt of financial and business advantages. On September 25, 1951, the
House observed: "......... the conduct of Shri Mudgal is derogatory to
the dignity of the House and inconsistent with the standard which Par-
liament is entitled to expect from its members,....."105

Mudgal's case provides a sharp contrast to American
practice where lobbying is permitted. The American law provides the
right of the House to "punish its members for disorderly behaviour and
with the concurrence of two thirds expel a member".106 Each House of the
Congress has the sole authority to determine what conduct on the part of

105. Debates of the Provisional Parliament, 8-6-1951, c.c. 10444-65.
106. U.S. Constitution, Article 1, Section 5(2).
a member is "in consistent with the 'trust and duty of a member" and Courts will not interfere with authority of Congress even to make it a legal offence. Still if a member of the American Congress re-enacts. Huddgal's episode he would not invite expulsion as lobbying in the United States is permitted and also regulated by law.

In 1978 Madhya Pradesh Legislature terminated the membership of a member for leading a crowd of outsiders into the Assembly during the lunch interval and hitting the chair of the Speaker with shoes. The Madhya Pradesh High Court upheld the action and ruled that: "The state Legislature has power not only to expel a member but also to create a vacancy in the Constituency. Expulsion would not debar, however, a member if he is re-elected as happened in the case of John Wilkes. Way back in March, 1966, the same Assembly expelled two members and their seats were declared vacant. On writ petitions by the two ex-M.L.As the Madhya Pradesh High Court upheld their expulsion.

But in India wide differences exist. Thus the Punjab and Maryana High Court in the Harwari Lal case (1977) declared that the Houses in India have no power of expulsion.

Against this perspective we could bring into our discussion Indira Gandhi case, that had created sensation both inside and outside the country. "Madhu Limaye and Harsvar Lal Gupta, two Lok Sabha members, raised in the house on November 15, 16 and 17, 1977 a

question of breach of privilege and contempt of the House against Indira Gandhi, former Prime Minister of India, and two other officers of the Government, for alleged obstruction, intimidation, harassment and instigation of false cases against certain Government officers who were collecting information for answer to a certain question in the Fifth Lok Sabha on Maruti Limited. Since, the officers were 'the agents of the Minister' doing service to the House of the people this was a case of breach of privilege and contempt of the house. After discussion the matter was referred to the Committee of Privileges on November 18, 1977.

While submitting that the allegations against her were 'utterly untrue' Indira Gandhi made the following four important points in her written statement to the Committee:

1) The matter concerns the 5th Lok Sabha which is now dissolved. Rule 222 of Lok Sabha Rules of Procedure says that the question of privilege can be raised only by a present member and not a former member and the House means the present House and not a dissolved House.

2) In order to attract the disciplinary action of the House the disobedience or obstruction must be to a servant or agent of the House acting in course of duty of the House. But the officers were neither officers of the House nor acting for the execution of any of its orders.

3) The Privilege Committee has to hold an independent enquiry, record evidence by itself without reference to the proceedings of the Shah Commission, give the accused the right of cross examination of each witness and full defence.
4) Article 20(3) of the Indian Constitution lays down 'no person accused of an offence shall be compelled to be a witness against himself'. Mrs. Gandhi has been accused of a criminal offence and so she could not be compelled to be a witness against herself or give evidence before the Privilege Committee. Moreover only a witness can take an oath, not the accused.

The matter was referred to the Attorney General. He maintained that breach of privilege in one Parliament may be punished by another succeeding. He further submitted that the Government Officers were not officers or servants of the House. However the vital question would remain whether the orders made by certain persons to carry out raids or arrests obstructed or impeded the Lok Sabha in the discharge of its duties.

The Privileges Committee after a scrutiny of the points raised by Indira Gandhi and the submissions made by the Attorney General concluded as follows:

1) The Committee had the power to administer oath under rule 272(1) and refusal by a witness to take oath amounted to breach of privilege and contempt of the House.

2) Since Mrs. Gandhi had not been prosecuted for breach of privilege she was not an accused.

3) The dissolution of the 5th Lok Sabha does not imply discontinuity of the institution of Parliament. May has cited 3 cases during the 16th and 17th centuries in support of this contention.

110. In the British House of Commons in the debate on the privilege case of Sri R.F.ward in 1625 it was decided that Parliament was continuity and the present House could take up a case which was actually committed during the life-time of a former House. Now if this position holds good to-day and May does not say that it has fallen into desuetude the next question is whether such power subsisted at the time of the commencement of the Constitution. This possibly existed, because such occasions do not arise too often.
Also in a very recent case of John Cordle, a House of Commons Select Committee on conduct of Members, reporting on July 13, 1977 found him guilty of a contempt in taking part in a debate in 1964 without declaring an interest. The House of Commons unanimously agreed with the finding.

4) Although technically it is the responsibility of the minister to make replies, he always does on the basis of information collected by his officers. So to deter them from doing their duty would amount to impede and obstruct the process of the Parliament.

The Privileges Committee recommended that Indira Gandhi and the two former officials were guilty of breach of privilege and the House should decide what punishment it deemed fit.111

The Report of the Committee of Privileges presented on November 21, 1978, and the question of action thereon were considered by the House on December 7, 8, 12, 13 and 19. The Prime Minister's motion adopted on December 19, 1978 expressed agreement of the House with the findings and recommendations of the Committee and said that Indira Gandhi be 'committed to jail till the prorogation of the House and also be expelled from the membership of the House', and that the two ex-officials namely Shri D. Sen and Shri R.K. Dhawan be 'committed to jail till the prorogation of the House'.

The Gazette of India and the Lok Sabha Bulletin of December 19, 1978, carried a notification to the effect that 'consequent upon the adoption of a Motion by the Lok Sabha expelling Shrimati Gandhi from the membership of the House, she had ceased to be a member of the Lok Sabha with effect from afternoon of December 18, 1978'.

111. Committee of Privileges (Sixth Lok Sabha), Third Report, Lok Sabha Secretariat, New Delhi, 1978.
Any attempt to influence members by improper means in their parliamentary conduct is a breach of privilege. Thus, the offer to a member of a bribe or payment to influence him in his conduct as a member or of any fee or reward in regard to the promotion of or opposition to any bill or resolution may also constitute a contempt of the House.

It will, however, not constitute a breach of privilege or contempt of the House if the bribe is related to a business other than that of the House. For instance in the Import Licences case it was alleged that a member of Lok Sabha had taken bribe and forged signature of the members for furthering the cause of certain applicants. The question of privilege was disallowed in this case, since it was considered that the conduct of the member although improper was not related to the business of the House.112.

In India, each House of the Legislature has a Committee of Privileges to whom all prima facie cases of breach of privilege are referred by the Presiding Officer. It has been a practice with the British House of Commons to appoint a Privileges Committee at the start of every session. On the model of this convention the Rules of Procedure and Conduct of Business, both in Lok Sabha113 and Rajya Sabha114 provide that the Speaker or the Chairman shall from time to time, nominate a committee of privilege consisting of fixed number of members of the House. The Chairman of the Committee shall be appointed by the Presiding Officer. The Committee is free to formulate its own rules and regulations for its internal working.115

The Privileges Committee's procedure is 'that of a Court of Honour rather than a Court of Law?116 Because while a Court of Law is an autonomous and independent body whose decisions are final and obligatory, a privilege committee is appointed by the House, functions under the direction of the House and has only an advisory jurisdiction. But even if a Court of Honour the Committee can summon, examine witness on oath and ask for production of relevant documents in their possession. At its discretion the Committee may allow a party to get the case represented through a Counsel. Decisions of the Committee are to be taken by a majority of votes of the members present and voting117. In case of a tie the Chairman of the Committee has a casting vote.

The final deliberations of the Committee are presented to the House in the form of a report duly signed by the Chairman. The house then discusses the report at length. The case comes to a close only after the House has taken decision in this regard either in accordance with or contrary to or in partial modification of the recommendations of the Committee of Privileges.

Questions of privilege may be raised in the House with the consent of the Presiding Officer. Previous notice in writing has to be given of the intention of raising a matter of privilege. If the Presiding Officer gives his consent the member who had given notice asks for leave of the House to raise a matter of privilege. If no objection is taken, leave is deemed to be granted. If there is any objection the Presiding Officer asks the members who are in favour of granting

leave to rise in their places. If the requisite number of members rise, as fixed by the rules of the particular legislature, the leave is deemed to be granted.

If leave is granted the matter may be referred to the Committee of Privileges on a motion being made to that effect. The matter may also be considered by the House itself without reference to the Committee. But it is usual to refer the matter to the Committee of Privileges.

A motion for breach of privilege may be made against strangers and also against another member. If another member is involved he has to be given notice as a matter of courtesy.

There have been occasions in Britain when one House has complained that a member of the other House has, by words or acts, committed a breach of privilege of the House. For instance it was reported that the Earl of Suffolk had, in conversation with a member of the House of Lords, said that Mr. Selden, a member of the House of Commons, deserved to be hanged for erasing a record. The House of Commons immediately sent a message to the Lords to complain of the conduct of Lord Suffolk.

In another case Sir John Epealy, a member of the House of Commons, was forbidden by the House to answer a petition filed against him in the House of Lords. The House of Commons sent a message to the House of Lords requesting them to inform the House of Commons whether certain words were spoken by Lord Digby in the House of Lords regarding the House of Commons. The matter was then referred to a Committee.

118. Rule 225(2). In the case of Lok Sabha the number is 25 or more.
120. Ibid, P.49,51.
It may be seen here that the procedure laid down by Hatsell was thought to be applicable to the case where remarks had been made not in the House but outside.

The two Houses are, however, agreed that each should respect the privileges of the other. When a message was sent by the House of Commons to the House of Lords 'desiring the Lords to have a regard to the privileges of this House therein', the Lords returned the answer 'that the House of Commons need not doubt but that the Lords would have as due regard to their privileges as they had to their own' 121.

A similar question was raised in the Lok Sabha when a Minister who was a member of the Rajya Sabha was asked by the Lok Sabha to explain his conduct. There was some controversy between the two Houses but ultimately no decision was reached 122. Subsequently, the question of the procedure to follow in such cases was referred to a Joint Committee of the two Houses. The Committee prescribed the following procedure 123:

1. When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document he is satisfied that no breach of privilege has been committed, or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.

121. Ibid. P.61, 65.
2. Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof.

3. The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised, a report about the enquiry, if any, and the action taken on the reference.

4. It is the intention of the committee that if the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which the question of privilege is raised or the presiding officer of the other House to which the reference is made, no further action in the matter may be taken after such apology is tendered.

Both in United Kingdom and India certain cases had very often been brought wrongly as cases of breach of privilege or contempt of the House. Giving of premature publicity, for example, to various matters related to the business of the House is an act of impropriety but not a breach of privilege or contempt of the House124. If any statement is made on the floor of the House by a member or Minister which another member believes to be untrue, incomplete or incorrect it does not constitute a breach of privilege. In order to constitute a breach of privilege or contempt of the House, it has to be proved that the statement was not only wrong or misleading, but it was made deliberately to mislead the House. A breach of privilege can arise only when the member or the minister makes a false statement or an incorrect statement wilfully, deliberately and knowingly125.

125. Lok Sabha Debates, 10-3-1964, c.c. 4644-46.
When two members sought to raise a question of privilege against the Minister of Food and Agriculture on the ground that he had suppressed the truth and mislead the Public Accounts Committee, when he appeared before them, the speaker ruled:

Incorrect statements made by a Minister cannot make any basis for a breach of privilege. It is only a deliberate lie that would certainly bring the offence within the meaning of a breach of privilege. Other lapses other mistakes do not come under this category, because every day we find that "Ministers make their statements in which they make mistakes and which they often correct afterwards."

There exist some misconceptions about what is a matter of privilege. Often points of order are raised as points of privilege. Mr. L.A. Abraham, Principal Clerk of the House of Commons' Committees, in a memorandum submitted to the Select Committee on Parliamentary Privileges, has explained the distinction between the two.

"A question of order concerns the interpretation to be put upon the rules of procedure and is a matter for the speaker or, in a Committee, for the Chairman to determine. A question of privilege on the other hand, is a question partly of fact and partly of law - the Law of contempt of Parliament - and is a matter for the House to determine."

It follows that though the speaker can rule on a question of order, he cannot rule on a question of privilege. His function

127. Select Committee on Parliamentary Privilege, Memorandum submitted by Mr. L.A. Abraham before the select Committee of the House of Commons, PP.89-112; House of Commons, Parliamentary Papers, 1967-68.
when a question of privilege is raised is limited to deciding whether the matter is of such a character as to entitle the motion, which the member, who has raised the question desires to have priority over the order of the day. He may refuse to concede precedence to such a motion on the ground that, in his opinion, the act complained of is not a breach of privilege; but the opinion he thus expresses, though entitled to great respect is merely a dictum. It would be incorrect to say that it has been held that the act in question is not a breach of privilege.

The question whether an Indian Legislature has the power to expel any of its members on any ground, is not so simple as it seems to be. The entire range of federal legislative provisions is to be traversed to drive home the point that the Constitution confers extra-territorial jurisdiction on Parliament only and not on State Legislatures. It has to be noted that a warrant of contempt of the House is neither a civil nor a judicial proceeding.

It is true that on the basis of Articles 105(3) and 194(3) the privileges and immunities of Indian Legislatures will be the same as those of House of Commons of the United Kingdom. But in India the Constitution, and not the Parliament, is supreme and sovereign. The Indian Constitution clearly prohibits the State Legislature to make laws having extra-territorial jurisdiction. Similarly powers of the Houses of State Legislature to commit persons for contempt are also limited to its territorial jurisdiction.

But contrary to the constitutional provisions and the intention of the founding fathers the Houses of State Legislature

128. Clause(2) of Article 245 lays down, "No law made by Parliament of India shall be deemed to be invalid on the ground that it would have extra-territorial jurisdiction".
have sometimes claimed extra-territorial powers to punish for contempt. In Rajagopalachari's case the Andhra Pradesh Legislative Assembly held that the Assembly had jurisdiction to punish the offender for the alleged breach of its privilege or contempt although he resides outside the territorial limits of the state. It also held that each legislature in India has power to punish for contempt irrespective of the fact where it was committed or whether the offender resides either within or beyond the state territory.

The Committee of Privileges of the House held that if the speech as reported was either proved or admitted it might amount technically to a breach of privilege. As Mr. Rajagopalachari's remarks referred to Congress representatives in the Legislatures, it follows, therefore, that all the State Legislatures in India could have handled him up and punished for contempt. This observation of the Committee is strange and a clear case of violation of the written provision and established convention of the Constitution.

Again the Committee held that if an act had been passed under Article 194(3) defining the privileges of Legislature such legislation would have effect only within the state. It is illegal that because such legislation has not been passed the state Legislature has extra-territorial rights.

The issue was raised in the case of Reddy V Hassan before the Supreme Court. But as the Court disposed of the case on the ground that there was an infringement of Article 22(2), the question of jurisdiction to execute on Uttar Pradesh Legislature's warrant in

129. All India Reporter, 1954 Supreme Court 636.
Bombay was not considered at all. So in the absence of an authoritative ruling of the Supreme Court there are only conflicting views regarding extra-territorial power to punish for contempt.

The very power of the Legislature, Union or State, to punish for breach of privilege or contempt of the house has been a point of much-heated controversy and confusion since the commenceinent of the Constitution. The central question in this case is whether the Legislature while acting in its judicial capacity is subject to the jurisdiction of the high court and the supreme court. The matter is really serious particularly when the Legislature commits some one to prison for violation of its privilege or contempt of the House. So the entire question of parliamentary privileges calls for a close scrutiny from this standpoint particularly when the fundamental rights of an Indian citizen are involved herein.
Legislature, Judiciary and Parliamentary Privileges.
The question whether the legislatures in India have the power to commit any person for contempt of the House, and how far the Law Courts have the jurisdiction to examine the legality of proceedings taken by the legislatures, arise in Uttar Pradesh in 1964 with a direct confrontation between the judiciary and the legislature.

In March 1964, Keshav Singh, a resident of Gorakhpur, published a pamphlet which contained a reflection on a Member of the Legislative Assembly of Uttar Pradesh. The matter was raised as an issue of privilege in the House and it was decided that Keshav Singh had committed a breach of the privileges of Narsim Harayyan Pandey, member of the House. Keshav Singh was summoned to receive a reprimand at the bar of the House. His conduct in the House was judged to be unseemly. A letter written by him to the speaker earlier was also disrespectful. For all this, he was found guilty of contempt of the House and sentenced to seven days imprisonment. Pursuant to a warrant issued by the Speaker, Keshav Singh was lodged in the District Jail of Lucknow. On 19th March, 1964, Solomon, an advocate presented petition before the Lucknow Bench of the Allahabad High Court, on behalf of Keshav Singh, under section 491 of the C.P.C. as well as under Article 226 of the Indian Constitution. In the petition it was alleged that Keshav Singh's detention was illegal on various grounds and was also malafide. The Court ordered that the petitioner should be released on bail. On this fact being brought to the notice of the legislature, the legislature asked the Judges who had issued the notice to explain their conduct, and the Marshal of the House was

directed to bring the Judges under arrest before the House. The High Court also issued notice to the legislature to show cause why its order against the Judges should not be set aside, and in the mean time, stayed operation of the order issued by the legislature. The dispute was heading for a crisis when the President referred the matter to the Supreme Court for its opinion.

Five questions were referred to the Supreme Court:

1. Whether, on the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh 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 U.P., for its contempt and for infringement of privileges, and to pass orders releasing Keshav Singh on bail pending disposal of his Petition?

2. Whether, on the facts and circumstances of the case, Keshav Singh by causing a petition to be presented on his behalf to the High Court, the advocate by presenting the petition and the two Judges by entertaining the dealing with the petition and ordering the release of Keshav Singh on bail pending disposal of the petition, committed contempt of the Legislative Assembly of U.P.?

3. Whether, on the facts and circumstances of the case, it was competent for the Legislative Assembly of U.P., to direct the production of the Judges and the advocate before it in custody or to call for their explanation for its contempt?
4. Whether, on the facts and recommendations of the case, it was competent for the Full Bench of the High Court of U.P. to entertain and deal with the petition of the two Judges and the advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of U.P. and other respondents to the said petitions, from implementing the aforesaid direction of the said Legislative Assembly.

5. Whether a Judge of the 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, or for infringements of its privileges and immunities, or who passes any order on such a petition, commits contempt of the said legislature, and whether the legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities?

On the facts the Supreme Court held that the Judges, while issuing notices upon the application for writ of habeas corpus, did not commit contempt of the House and also that they did not commit contempt by staying the order of the Legislative Assembly.

The question was whether clause (3) of Article 194 is subject to other provisions of the Constitution. The Supreme Court held that even though Clause (3) has not been expressed as subject to the provisions of the constitution in terms, yet it would be so subject if for any other valid considerations it appears that the operation of Article 21 may be affected. It seems to be the opinion
of the Supreme Court that as Article 21 occurs in the chapter on fundamental rights, all the other particulars of the constitution should be read as subject to the fundamental rights whether they are expressly made subject or not.

The Supreme Court after discussing British cases on the same subject came to the finding that in Britain the Court may go into the question whether Parliament has in fact the power to commit for contempt. The Judges relied on the observation of Judge Ellenborough in Sir Francis Burdett's case, 104, E.R.501, to the effect that even if valid warrant signed by the Speaker is produced, the courts will be entitled to enquire into the sufficiency of the ground if, on the facts of the warrant, it appears that the commitment is an abuse of the power of the Parliament or is a fraudulent use thereof. The substance of the Supreme Court's opinion appeared to be that the court, if called upon to decide whether the legislature has validly committed any person to prison, will be entitled to enquire whether the legislature has such power or not.

If it is a speaking warrant, that is to say, if the warrant states on the fact of it the reasons for committal, it seems to be the opinion of the Supreme Court that the court may enquire into the sufficiency of the reasons. If the warrant is not a speaking one, that is to say, the warrant does not state on the fact of it the reasons for committal, - the Supreme Court has said that the warrant need not be a speaking one - it appears that the aforesaid opinion of the Supreme Court will not be of any avail. If the legislature does not choose to give any reason the court will have no material before it to judge the sufficiency or otherwise
of the reasons for committed.

The Supreme Court negatived the assertion of the U.P. Legislature that it was the supreme judge of its own actions. In fact Article 194, Clause (5) itself points to the conclusion that the court may enquire whether the privileges of the legislature would be the same as those of the House of Commons.

There must be somebody to find out that the powers of the House of Commons are and in this respect the legislature will not be in a better position than the court. Therefore, it is logical that it will be the court which will be entitled to enquire what powers the House of Commons has. Besides, it will also be relevant to enquire whether by the language used in Clause (5) the Indian legislatures have inherited all the powers including that of committed of the House of Commons. As has been already stated, the decision of the Australian Privy Council in the 'Bankstown Observer case' is conclusive on this point. In this case the House of Representatives of Australia hold the proprietor and the editor of the weekly newspaper Bankstown Observer guilty of breach of privileges for publishing an article intended to influence and intimidate a member of the House, and committed them to the custody of the Chief Commissioner of Police of Canberra. The offenders' application for bail of habeas corpus came up before the High Court of Australia. In his judgment, dismissing the application for bail, the Chief Justice referred to Section 49 of the Commonwealth of Australia Constitution Act. He also pointed out that Parliament had not declared by law the powers, privileges and immunities.

As regards the question whether the law as obtaining in the United Kingdom applied under section 49 of the Constitution to the Australian House of Representatives, the Chief Justice stated as follows:

'If you take the language of the latter part of Section 49 and read it apart from any other considerations, it is difficult in the extreme to see how any other answer could be given to the question than that law is applicable in Australia to the House of Representatives. The language is such as to be apt to transfer to the House the full powers, privileges and immunities of the House of Commons.'

It was also argued that the Australian Constitution was based upon the separation of powers, and the judicial power reposed exclusively in the judiciary. It restricted the legislature to the legislative power. It was urged that the House of Representatives in issuing a warrant for the arrest of two persons exercised judicial power which it did not possess.

In reply to the above argument the Chief Justice observed: The consideration we have already mentioned is of necessity an answer to this contention, namely, that in unequivocal terms the powers of the House of Commons have been bestowed upon the House of Representatives. It should be added to that very simple statement that throughout the course of English history there has been a tendency to regard those powers as not strictly judicial but as belonging to the legislature, rather as something essential or, at any rate, proper for its protection.
The offenders petitioned the Judicial Committee of the Privy Council for special leave to appeal against the decision of the High Court. The Privy Council was of the view that the judgment of the Chief Justice of Australia was impeachable and leave to appeal was refused.

The language of Articles 105(3) and 194(3) in the Indian Constitution follows the language used in Section 49 of the Commonwealth of Australia Constitution word for word. It would therefore be correct to presume that the intention of the constitution - makers of India was to vest very wide powers in the legislatures, so that they could, like the Australian Parliament, take penal action against offenders for breach of privilege or contempt of the legislature.

In the Keshev Singh case the Supreme Court confined its reference only to the facts of the case and only to the case of strangers. Whether in the case of members also the position is same on that point, the Supreme Court has expressed no opinion.

After discussing the cases which arose in Britain, the Supreme Court went on to say:

'Having examined the relevant decision on the point, it would, we think, not be inaccurate to observe that the right claimed by the House of Commons not to have its general warrant examined in the habeas corpus proceedings has been based more on the consideration that the House of Commons is in the position of a superior court of record and has the right like other superior courts
of record, to issue a general warrant for commitment of persons found guilty of contempt. In this connection we ought to add that even while recognising the validity of such general Warrant Judges have frequently observed that if they were satisfied upon the warrant that such general warrant were issued for frivolous or extravagant reasons it would be open to them to examine their validity.'

(1) The conclusion of the Supreme Court was that neither the Judge, nor the advocate, nor the party was guilty of contempt, and, therefore, it followed that it was competent for the High Court of Allahabad to entertain the petition filed before it by the two Judges and by the advocate, and it was within its jurisdiction to pass the interim orders restraining the operation of the impugned orders passed by the House. Prima facie, the power conferred on the High Court under Article 226(1) can, in a proper case, be exercised even against the legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House.

(2) If a citizen moves the High Court on the ground that his fundamental right under Article 21 has been contravened, it shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

3. Article 226(1) - Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

4. Article 21 - "No person shall be deprived of his life or personal liberty except according to procedure established by law."
the High Court would be entitled to examine his claim, and that itself would introduce some limitations on the extent of the powers claimed by the House in the present proceedings. Article 213(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from the irregularity of procedure but from an illegality.

(3) The position is that the conduct of a judge in relation to the discharge of his duties cannot legitimately be discussed inside the House, though if it is, no remedy lies in a court of law. But such conduct cannot be made the subject matter of any proceedings under the latter part of Article 194(3). If this were not the true position, Article 211 would amount to a meaningless declaration and that clearly could not have been the intention of the founding fathers of the Constitution.

(4) The House, and indeed all the Legislative Assemblies in India, never discharged any judicial functions and their historical and constitutional background does not support the claim that they can be regarded as courts of record in any sense. If that be so, the very basis on which the English Courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record,

5. Article 212(1) : "The validity of any proceedings in the Legislature of a state shall not be called in question on the ground of any alleged irregularity of procedure".

6. Article 211 : "No discussion shall take place in the Legislature of a state with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties."
is absent in the present case, and so, it would be unreasonable to contend that the relevant power to claim conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the House. On this view of the matter, the claim made by the House must be rejected.

Assuming, however, that the right claimed by the House can be treated as an integral part of the privileges of the House of Commons, the question to consider would be whether such a right has been conferred on the House by the latter part of Article 194(3).

On this alternative hypothesis it is necessary to consider whether this part of the privilege is consistent with the material provisions of our Constitution. Article 32 emphatically brings out the significance of the fundamental right conferred on the citizens of India to move this court if their fundamental rights are contravened either by the Legislature or the Executive. Now, Article 32 makes no exception in regard to any encroachment at all, and it would appear illogical to contend that even if the right claimed by the House may contravene the fundamental rights of the citizen, the aggrieved citizen cannot successfully move this court under Article 32. To the absolute constitutional right conferred on the citizens by Article 32 no exception can be made and no exception is intended to be made by the Constitution by reference to any power or privilege vesting in the Legislatures of this country.

The crux of the matter is the construction of the latter part of Article 194(3), and in the light of the assistance
which we must arrive from the other relevant and material provisions of the Constitution, it is necessary to hold that the particular power claimed by the House that its general warrants must be held to be conclusive, cannot be deemed to be the subject matter of the latter part of Article 194(3).

(5) It may be conceded that in England it appears to be recognized that in regard to habeas corpus proceedings commenced against orders of commitment passed by the House of Commons on the ground of contempt, bail is not granted by courts. As a matter of course during the last century and more in such habeas corpus proceedings returns are made according to law by the House of Commons but "the general rule is that the parties who stand committed for contempt cannot be admitted to bail". But it is difficult to accept the argument that in India the position is exactly the same in this matter. If Article 226 confers jurisdiction on the court to deal with the validity of the order of commitment even though the commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings?

The Majority Opinion gave the following answers to the five questions referred to the Supreme Court by the President:

(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

7. The Majority Opinion was delivered by 30th September, 1964, by the Chief Justice of India for himself and five other judges.
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 petitions from implementing the aforesaid direction of 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 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, 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.

Mr. Justice Sarkar, in his 'Minority Opinion, inter alia, made the following important points:

"(1) The privilege which I take up first is the power to commit for contempt. It is not disputed that the House of Commons has this power ..........

The possession of this power by the House of Commons is, therefore, undoubted....

That takes me to the language used in Cl.(3) of Article 194. The words there appearing are "the powers, privileges, and immunities of a House...... shall be those of the House of Commons". I cannot imagine more plain language than this. That language can only have one meaning and that is that it was intended to confer on the State Legislatures the powers, privileges and immunities which the House of Commons in England had."
It would, therefore, appear that Article 194(3) conferred on the Assembly the power to commit for contempt and it possessed that power.

(2) The next question is as to the privilege to commit by a general warrant. There is no dispute in England that if the House of Commons commits by a general warrant without stating the facts which constitute the contempt then the courts will not review that Order.

I find no authority to support the contention that the power to commit by a general warrant with the consequent deprivation of the jurisdiction of the courts of law in respect of that committal is something which the House of Commons had because it was a superior court ....... I think in this state of the authorities it would at least be hazardous to hold that the House of Commons was a court of record. If it was not, it cannot be said to have possessed the power to commit for its contempt by a general warrant as a court of record. ... 

I then come to the conclusion 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 is a privilege of the House of Commons. That privilege is, in my view, for the reasons earlier stated, possessed by the Uttar Pradesh Assembly by reason of Article 194(3) of the Constitution.


9. Article 194(3): "In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 26 of the Constitution (Forty-Fourth Amendment) Act, 1978."
(3) In the present case the conflict is between the privilege of the House to commit a person for contempt without that committal being liable to be examined by a court of law and the personal liberty of a citizen guaranteed by Article 21 and the right to move the courts in enforcement of that right under Article 32 or Article 226. If the right to move the courts in enforcement of the fundamental right is given precedence, the privilege which provides that if a House commits a person by a general warrant that committal would not be reviewed by courts of law will lose all its effect and it would be as if that privilege had not been granted to a House by the second part of Article 194(3). This, in my view, cannot be. That being so, it would follow that when a House commits a person for contempt by a general warrant that person would have no right to approach the courts nor can the courts sit in judgment over such order of committal.

(4) I wish to add that I am not one of those who feel that a Legislative Assembly cannot be trusted with an absolute power of committing for contempt. The Legislatures have by the Constitution been expressly entrusted with much more important things. During the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power.

I would point out that though Article 211 is not enforceable the Legislatures have shown an admirable spirit of restraint and have not even once in all those years discussed the conduct of judges. We must not lose faith in our people, we must not

10. Articles 32 and 226 lay down the power of the Supreme Court and the High Courts respectively to issue writs.
think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction. Such correction may produce friction and cause more harm than good. In a modern state it is often necessary for the good of the country that parallel powers should exist in different authorities. It is not inevitable that such powers will clash. It would be defeatism to take the view that in our country men would not be available to work these powers smoothly and in the best interests of the people and without producing friction. I sincerely hope that what has happened will never happen again and our Constitution will be worked by the different organs of the state amicably, wisely, courageously and in the spirit in which the makers of the Constitution expected them to act."

In his minority judgment Mr. Justice Sarkar gave the following answers to the five questions referred to the Supreme Court by the President:

"(1) This question should in my opinion, be answered in the affirmative. The Lucknow Bench was certainly competent to deal with habeas corpus petitions generally. .... Till the Lucknow Bench was apprised of the fact that the detention complained of was under a general warrant, it had full competence to deal with the petition and make orders on it. ....

(2) The first thing I observe is that the question whether there is a contempt of the Assembly is for the Assembly to determine. If that determination does not state the facts, courts of law cannot review the legality of it. Having made that observation, I proceed to deal with the question.
The question should be answered in the negative. I suppose for an act to amount to contempt, it has not only to be illegal but also wilfully illegal. Now in the present case it does not appear that any of the persons mentioned had any knowledge that the imprisonment was under a general warrant. That being so, I have no material to say that the presentation of the petition was an illegal act much less a wilfully illegal act. No contempt was, therefore, committed by the Hon'ble Judges or B. Solomon or Keshav Singh for the respective parts taken by them in connection with the petition.

(3).....For one thing it would not be competent for the Assembly to find the Hon'ble Judges and B. Solomon to be guilty of contempt without giving them a hearing. Secondly, in the present case I have already shown that they were not so guilty. That being so, it was not competent for the Assembly to direct their production in custody.

As to the competence of the Assembly to ask for explanation from the two Judges and B. Solomon, I think it had. That is one of the privileges of the House. As it has power to commit for contempt, it must have power to ascertain facts concerning contempt.

(4) I would answer the question in the affirmative. The Full Bench had before it petitions by the two Judges and B. Solomon complaining of the resolution of the Assembly finding them guilty of contempt. I have earlier stated that on the facts of this case they cannot be said to have been so guilty. It would follow that the Full Bench had the power to pass the interim orders that it did.
(5) This is too general a question and is not capable of a single answer, the answers would vary as the circumstances vary, and it is not possible to imagine all the sets of circumstances. Nor do I think we are called upon to do so. As learned advocates for the parties said this question has to be answered on the facts of this case. On those facts the question has to be answered in the negative.

On analysis it appears that the majority judgment does not vitally differ from the minority judgment. As regards the first point both agree in that the Lucknow Bench was competent to deal with habeas corpus petitions. So far as the second point is concerned, the answer is definitely in the negative. No contempt of the Legislature has been committed either by the Judges or by Solomon or by Keshav Singh in moving the court. But Hon'ble Justice Mr. Sarkar is very clear on the point that the question whether there is a contempt of the Assembly is for the Assembly to determine. On the third point of reference the Judges differed. The majority view dismissed the right of the Legislative Assembly to direct the production of the Judges and the Advocate before it or to call for their explanation for its contempt. But Mr. Justice Sarkar thinks that the Judges should have been given a right of hearing and if found not guilty should not have been ordered to be produced in custody. Moreover he thinks that it is within the competence of the Legislative Assembly to ascertain facts concerning contempt. This is one of its most important privileges. On the question of the right of the Full Bench to pass interim orders while dealing with the petition of the two Judges both answered in the affirmative. Finally, with regard to the power of the Judge of a High Court the majority opinion is clear and specific, but the
minority opinion is not so specific. While Mr. Justice Sarkar thinks that the question is too general to merit a single answer the majority of the Judges submit a Judge of a High Court does not commit contempt of the Legislature in entertaining and dealing with a petition challenging any decision of the said Legislature and the Legislature also cannot initiate proceedings against such a Judge.

Immediately after the case was cleared by the Supreme Court the decision of the Supreme Court was discussed by the Conference of Presiding Officers of Legislative Bodies in India held at Bombay on 11th and 12th January, 1965. Speaking at that Conference Mr. Hukam Singh, the Chairman, submitted that the intention of the Founding Fathers of the Constitution was to make the Legislature all powerful in privilege cases by withholding the jurisdiction of Courts in cases of contempt. He said: "If you go to the history of the provisions contained in Articles 105 and 194 of the Constitution you will find that the intention has all along been that the Legislatures in India should have the same powers and privileges as are enjoyed by the British House of Commons, more particularly the privilege of committing for contempt by a general warrant without the scrutiny of courts."

For a moment we can go back to the deliberations in the Constituent Assembly and quote the speech of Dr. Ambedkar, who sponsored the relevant provisions in the Constitution - "Under the House of Commons Powers and Privileges, it is open to Parliament

to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of the Court is ousted. That is an important privilege. ..... There is not the slightest doubt in my mind and I am sure also in the mind of the Drafting Committee that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the Parliamentary institutions in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate. 13

The Presiding Officers' Conference adopted the following resolutions unanimously 14:

(a) Whereas it is not possible for Legislatures to function successfully without their having the powers to adjudge in case of their own contempt, whether committed by a Member or a stranger, whether inside the chamber or outside it, and to punish that contempt without interference by Courts under any article of the Constitution or otherwise;

(b) Whereas such ouster of jurisdiction of courts was intended by the Constitution makers as is clear from the statements of Dr. Ambedkar and Sir Alladi Krishnaswamy Iyer made in the Constituent Assembly when Articles 105 and 194 were adopted;

(c) Whereas the language of these articles is so clear that according to Justice Sarkar (Minority opinion) the language can only have one meaning and that is that it was intended to confer on the Legislatures

13. Constituent Assembly Debates - 12 Volumes, 9 December 1946 to 26 January, 1950; including two records of confidential debates (held in camera) and not yet officially made public, although readily available at the Indian National Archives.

the powers, privileges and immunities which the House of Commons in England had at the commencement of the Constitution; and

(d) Whereas the opinion of the Supreme Court has reduced Legislatures to the status of inferior Courts, and has implications that would deter the Legislatures from discharging their functions efficiently, honestly and with dignity.

Now, therefore, the Conference considers that suitable amendments to Articles 105 and 194 should be made in order to effect the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and committees could not, in any case be construed as being subject or subordinate to any other articles of the Constitution.

The Conference further authorises the Chairman of the Conference to take all steps necessary to give effect to this Resolution.

Meanwhile the Allahabad High Court delivered its judgment on the writ petition of Shri Keshav Singh on 10th March, 1965. The petition was pending before it since 19th March, 1964. The High Court dismissed the writ petition of Keshav Singh and ordered him to surrender to his bail and serve out the remaining portion of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh.

In its judgment the Allahabad High Court stated inter alia:15

"1) In our opinion both upon authority and upon a consideration of the relevant provisions of the Constitution it must be held that the Legislative Assembly has by virtue of Article 194(3), the same power to commit for its contempt as the House of Commons has.

2) In our opinion, the provisions of Article 22(2) of the Constitution cannot apply to a detention in pursuance of a conviction and imposition of a sentence of imprisonment by a competent authority ......

Article 22(2) is applicable only at a stage when a person has been arrested and is accused of some offence or other act and it can have no application after such person has been adjudged guilty of the offence and is detained in pursuance of such adjudication ....

Article 22(2) was not intended to apply to a case of detention following conviction and sentence by the Legislative Assembly.

3) So far as the question of violation of Article 21 is concerned, the matter is concluded by the decision of the Supreme Court in Sharma's Case 16. ... 

Since we have already held that the Legislative Assembly has the power to commit the petitioner for its contempt and since the Legislative Assembly has framed rules for the procedure and conduct of its business under Article 208(1), the commitment and deprivation of the personal liberty of the petitioner cannot but be held to be according to the procedure laid down by law within the meaning of Article 21 of the Constitution.

4) Once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempt and to impose the sentence passed on the petitioner, we cannot go into the question of the correctness, propriety or legality of the commitment. The Court cannot in a petition under Article 226 of the Constitution sit in appeal over the decision of the Legislative Assembly committing the petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not.

5) Since the House of Commons has the power to commit any one for its contempt and to confine him in one of Her Majesty's prisons, the Legislative Assembly also has a similar power to confine any person, whom it commits for breach of its privilege, in any prison. Since the Legislative Assembly has, under Article 194(3) of the Constitution, the Constitutional right to direct that the petitioner, who has been committed for its contempt, be detained in the District Jail, Lucknow, the Superintendent of that Jail was bound to receive the petitioner and to detain him in accordance with the warrant issued by the speaker.

6) In our opinion, no question of violation of Article 14 can at all arise in such a case. Every person, who commits contempt of the Legislative Assembly, is subject to the same procedure and to the same punishments."

Shri Keshav Singh was, accordingly, taken into custody subsequently, and he served 17 out the remaining portion (namely one day) of the sentence of imprisonment which has been imposed upon him earlier by the U.P. Legislative Assembly.

As we compare the four sets of judgments delivered, first, by the majority in the Supreme Court, second, by the minority in the Supreme Court, third, by the Presiding Officers' Conference and finally by the Allahabad High Court we are placed between the horns of a dilemma. That the Legislative Assembly is competent to frame its own rules of procedure, to decide upon its privileges, to decide upon a case of breach of privilege and to punish if necessary, a case of breach of privilege there is unanimity. But opinions diverge on the question of the jurisdiction of the High Court in entertaining a petition from the convicted person under Articles 32 or 226 of the Constitution and on the question whether Articles 105 and 194 are subject to Articles 21 and 22 of the Constitution or not. Could the Legislative Assembly violate these two Articles, either in framing its own rules of procedure or in committing a person for its contempt and in withholding the jurisdiction of the Courts in such a case? Even the masters of the Legislative bodies in India think that the Constitution has not given clear answer to these questions and so suitable amendments should be made immediately. Even the Supreme Court and the Allahabad High Court differ on these two vital questions. Moreover, we have seen how the minority opinion in the Supreme Court in a case has been turned into the majority opinion in a separate but almost identical case at a subsequent moment of time.

This becomes evident when we compare the majority and the minority opinions in five cases - Shankari Prasad V Union of India\(^\text{18}\), State of Bombay V United Motors\(^\text{19}\), Bengal Immunity Co V State of Bihar\(^\text{20}\).

Sajjan Singh v State of Rajasthan\textsuperscript{21} and Golaknath v State of Punjab\textsuperscript{22}.

In all these cases the majority opinion of to-day has been changed into the minority opinion of to-morrow and vice versa. For instance, in Golak Nath case a majority of six judges of a special Bench of eleven over-ruled its previous decisions in Shankari Prasad and Sajjan Singh cases and took the view that though there is no express exception from the ambit of Article 368, the Fundamental Rights included in Part III of the Constitution cannot, by their very nature, be subject to the process of amendment provided for in Article 368 and that if any of such rights is to be amended, a new Constituent Assembly must be convened for making a new Constitution or radically changing it. Again the minority judgment in the Golak Nath case has been confirmed by the majority in their judgment in Keshavananda v State of Kerala\textsuperscript{23}. Again in Bengal Immunity Co v State of Bihar the Supreme Court overruled its previous majority decision in State of Bombay v United Motors as regards the power of a state in which goods are delivered for consumption to tax the sale or purchase of such goods though it is in the course of inter-state trade or commerce.

It was observed in this case that there was no provision in the Constitution to bind the Supreme Court by its own decisions. On the question of the 'basic feature' of the Constitution the Swaran Singh committee maintained in 1975 that in a developing and emerging state like India there cannot be any such thing and the Government of India also stoutly confirmed this view. But the Supreme Court stated first in Keshavananda case that the basic feature could not be amended and then went on laying down the exact basic features of the Constitution.

in Minerva Mills V Union of India. One of the basic features as laid down by the Supreme Court, is judicial independence. If in future the Supreme Court or a state High Court maintains in a case of contempt of Parliament or a state Legislature that in a case of conviction or punishment the Legislature exercises its judicial power and therefore acts as an inferior court, much in line with the submission in the Keshav Singh reference case, a constitutional deadlock is likely to arise. For if the Constitution of a Country is based on the socio-economic reality confusion and conflict is bound to emerge. For instance, Part III of the Indian Constitution enumerating the fundamental rights enshrine the liberal democratic value, but the taking away of the Right to Property from this chapter is likely to cut at the very spirit of the liberal tradition of the Constitution. Similarly in our legal and constitutional march towards socialism a time may come when we shall face serious difficulty with the principle of judicial independence, which again is a liberal democratic value. Naturally in such an uncertain situation caused by the strains of a period of transformation we cannot leave aside the question of Parliamentary privileges in its present Constitutional formulation. At the back of a case of privilege there is bound to be a question of good or bad, right or wrong or in a word, the question of a value and in a society where values are at cross-roads the privileges should be codified and all imaginations and confusions set at rest.

Causes of contempt are decided by the House of Commons in England as and when occasions arise and it would be difficult to enumerate all the acts which have been construed to be contempt.

of the House. The general principle in such cases has been stated by Hay as follows:

"...... any act or omission which obstructs or impedes either House of Parliament in the performance of its 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."

Hence if any act though not tending directly to obstruct or impede the House in the performance of its function has a tendency to produce this result indirectly by bringing the House into odium, contempt or ridicule or by lowering its authority it constitutes a contempt. N.A. Palkhiwala, the noted jurist, feels that any disorderly or dis-respectful conduct in the presence of either House or any Committee thereof, whether by strangers, parties or witnesses or even by a member or members would constitute a contempt of the House.

But no uniform pattern has been established in India over the four decades since the commencement of the Constitution. In a number of cases judgment by one high court has been set aside by another. The Madhya Pradesh High Court's ruling was overruled by the Punjab and Haryana High Court. On 17th March, 1966, two members were expelled by the Madhya Pradesh Assembly, and they challenged their expulsion in the High Court. In the cases the petitioners contended that their expulsion was unconstitutional and void because the state Assembly did not have the power to expel any member under Article 194(3) and that a particular seat could become vacant only in

the circumstances mentioned in Articles 190, 191 and 192 of the Constitution. In the matter of ascertaining the power of a State Assembly to expel a member the Court found that the Assembly had this power. This conclusion was based mainly on two grounds: first, that the power of expulsion is inherent in every Legislature to enable it to perform its high functions; secondly, the House of Commons has the power to expel members not because it had the power to control its own constitution, but it has the power to punish its members for breach of any of its privileges or for its contempt and that the punishment can take the form of expulsion.

M.P. High Court's ruling was overruled by the Punjab and Haryana High Court in Hardwari Lal's Case. Hardwari Lal, a member of the Haryana Assembly, took to pamphleteering after the fashion of Junious and Wilkes pamphleteers of the 18th Century Britain, in the belief that the working of Indian democracy was in danger. He brought out two pamphlets, namely, (a) The Chief Minister Runs Amuck; and (b) Emergence of Rough and Corrupt Politics in India, which contained certain derogatory and damaging remarks against the speaker and Haryana Assembly. The privilege motion was moved and carried out in the absence of the alleged contender without giving him any chance to explain his conduct.

The expelled member filed a petition under Article 226 of the Constitution in the Punjab and Haryana High Court on numerous grounds. A Division Bench of the Punjab and Haryana High Court passed the following significant orders on 26 March, 1975:

Significant constitutional issues are raised. Admitted to full Bench

Hardwari Lal Case, Hindusthan Times, April 9, 1977.
of 5 Judges. The right of the people to representation in the Legislature is involved and, therefore, the matter does not brook of any delay. After hearing the parties at some length, the full Bench of 5 Judges passed 'stay' orders on 7 May, 1975, restraining the Election Commission from filling the seat, which the Haryana Assembly had declared to have become vacant.

In the writ petition and the returns filed by the respondent, the High Court saw only two salient issues arising for determination: (a) Whether the Assembly has the power to expel, by majority, of its duly elected members, one who is otherwise, fully qualified to be a member according to the provision of the Constitution, (b) Assuming that the power of expulsion belongs to the Assembly, whether the power has been lawfully and properly exercised.

The Court first examined the petitioner's plea of malafides in order to solve the second question. But it concluded that the facts and evidence adduced by the petitioner did not substantiate the plea. As to the central point of the petition that the among the privileges and powers of the House of Commons which do not come to the Indian Legislatures is the privilege of the Commons to control and regulate their own Constitution. Thus the Court upheld the stand taken by the petitioner. Firmly rejecting the view of Madhya Pradesh High Court, the Court observed that the Madhya Pradesh High Court's view has been influenced by a cursory reference to May's statement of the Law. The Judgment of the Court was not unanimous. Two of the five judges held, in a minority judgment, that the state Assembly had the power to expel any of its members. The majority judgment, however, controve-
the resolution of the Haryana Assembly to be unconstitutional, void and inoperative. The Court also upheld the petitioner's plea that he had been denied natural justice.

Against this backdrop the Supreme Court's judgment in the Searchlight case\(^{29}\) requires a bit more elucidation. S.M. Sharma, the editor of Searchlight, Patna, had published, in his paper the full speech delivered by a member at the sitting of the Bihar Assembly, including the portions which had been expunged by the speaker. An issue of privilege had been raised against the Editor and he had been asked to show cause why action should not be taken against him for publishing expunged portions. The Editor filed a petition under Article 52 of the Constitution, contending that the notice and the action proposed to be taken against him by the Privileges Committee of the House would contravene his fundamental right of freedom of speech and expression under Article 19(1)(a) and would also trespass upon the protection of his personal liberty guaranteed under Article 21. The Legislative Assembly contended that, under Article 194(3), it had the privilege of taking action against anybody publishing the proceedings of the House.

The Supreme Court felt the necessity of deciding three questions:

(a) Did the privilege claimed by the Assembly subsist in the House of Commons on 26th January, 1950, and could it be claimed under Article 194(3) ?

(b) Could the petitioner who had published the expunged portion of the speech in dispute claim the protection of the fundamental right of freedom of speech and expression guaranteed by Article 19(1)(a) ?

(c) Whether there was any violation of Article 21?

The Court's answer to the first question was that the privilege of prohibiting the publication of its debates belonged to the House of Commons on 26th January, 1950, and it came to the Indian Legislatures by reason of Article 194(3). The majority judgment held that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debate or proceedings that take place within the House. Such view was given ignoring the sense in the minority judgment which submitted that such a privilege of the House of Commons had long fallen into disuse, even for more than 100 years. The Court also held that Article 194(3) gives to state Legislatures in India, all the immunities, powers and privileges of the House of Commons. Here again, the Court laid down a proposition which was later over ruled by a bench of 7 judges of the Supreme Court30.

As to the second question the Court held that Article 194 of the Constitution is not subject to Article 19. The majority judgment made out that Article 19(1)(a) guarantees the general right of freedom of speech and expression while the privilege of the House to prohibit the publication of its debates guaranteed under Article 194(3) is a special right. The general right cannot override the special right.

Finally, the Court held that deprivation of personal liberty as a result of proceedings before the Committee of Privileges was deprivation in accordance with procedure established by law and that Article 21 was not violated. Because the only right given by

Article 21 is that no person shall be deprived of his life or personal liberty except 'according to procedure established by law'.

The courts of law in India have thus generally recognised that a House of Parliament or a State Legislature is the sole authority to judge as to whether or not there has been a breach of privilege in a particular case. It has also been held that the power of the House to commit for contempt is identical with that of the House of Commons, and that a court of law would be incompetent to exercise any authority to scrutinise it.\textsuperscript{34}

The Punjab and Haryana High Court's judgment in Hardwari Lal's case, however, is an exception.

As regards exclusive control of either House over its internal proceedings, Article 105(2) specifically bars the jurisdiction of courts of law in respect of anything said or any vote given by a member in Parliament or any Committee thereof. The Orissa High Court in 1958 held that no law court can take action against a member of the Legislature for any speech made by him there, even when a member in a speech in the House casts reflection on a High Court.\textsuperscript{32} The Courts have also held that they have no jurisdiction to interfere in any way with the control of the House over its internal proceedings, or call in question the validity of its proceedings on the ground of any alleged irregularity of procedure.\textsuperscript{33}

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When some members of the House, including a former speaker, were given notice to appear before the Supreme Court in a case relating to Jagadguru Shankaracharya, either in person or by an advocate, a question of privilege was raised. The members concerned were directed by the Speaker to ignore the notice and the Attorney General was asked to bring to the Notice of the Court that "what is contained in the case is something which is covered by Article 105 of the constitution".  

On some observations having been made by the Court with regard to the stand taken by the House inasmuch as the members had not been served with a 'summons' but only a 'notice of lodgment' had been sent to them, the matter was again discussed in the House. Thereupon, the Speaker ruled:

Whether the Court issues a summons or a notice does not make any difference to us. Ultimately, the privileges of the House are involved when members are asked to defend themselves for what they said in the House.

When one of the members who had been served with the notice of lodgment of appeal by the Supreme Court expressed a desire to go and defend himself in the Court, the Speaker observed:

"If he appears before the Court, fully knowing Article 105, I think we will have to bring a privilege motion against him".

37. Ibid. 22.4.1970.
Summons were received from the Court, requiring the Chairman, Public Accounts Committee, to appear before the Court to answer all material questions relating to certain observations made in the 71st Report of the Committee. The Speaker thereupon observed:

As had been the practice of the House he was asking the Chairman of the Committee to ignore the summons and not to put in any appearance in the Court. However, he was passing on the relevant papers to the Minister of Law for taking such action as he might deem fit to apprise the Court of the correct constitutional position in this regard\(^{38}\).

As regards privileges of Parliament vis-a-vis fundamental rights guaranteed to the citizen under the Constitution, the Supreme Court in 1959 in a case involving freedom of speech and expression held:

The provisions of Cl.(2) of Article 194 indicate that the freedom of speech referred to in Cl.(1), is different from the freedom of speech and expression guaranteed under Article 19(1)(a) and cannot be cut down in any way by any law contemplated by Cl.(2) of Article 19.

The Supreme Court also held that the provisions of Articles 105(3) and 194(3) are constitutional laws and not ordinary laws made by Parliament or State Legislatures and that, therefore, they are as supreme as the provisions of articles relating to fundamental rights\(^{39}\).

In this context we may refer to the position of the Parliamentary Privileges vis-a-vis the fundamental rights during

38. Ibid. 1.8.1975.
national emergencies under Article 352 of the Constitution. National emergency has been proclaimed thrice so far in our country. Article 352 was first invoked in 1962 following Chinese aggression on the Indian territory. Then again it was applied in 1971 when we had a war against Pakistan. But the third invocation of National Emergency in June 1975 was made in the name of grave danger to internal security. It heralded the darkest hour of our Parliamentary democracy. Parliamentary privileges were used as instruments of political persecutions. The age old privileges of legislators, the freedom of speech and expression and freedom from arrest were virtually abrogated. Parliament was reduced to a pack of yes - men. Centuries ago Queen Elizabeth warned the Commons in the following words: "To your demand the Queen answereth, privilege of speech is granted, but you must know what privilege you have - not to speak every one what he listenth or what cometh in his brain to utter that; but your privilege is yes or no. So to know one's privilege and apply it in a rational frame of mind is the essence of democracy. But during 1975 emergency an attempt was made to suffocate all such institutions, and members were afraid to exercise their privilege.

The Allahabad High Court's judgment in the election case had gone against the Prime Minister, Mrs. Indira Gandhi, and the case went to the Supreme Court. The Supreme Court had not yet decided the case. At this crucial hour the 39th Constitution Amendment Act was passed which in effect, decided the case in Mrs. Gandhi's favour. The Amendment Act ensured that matters relating to the election of the President, Vice President, the Prime Minister and the Speaker cannot be 40. May : Parliamentary Practice, P.186.
brought before a Court of Law. At this the Statesman editorial wrote
"It is a moot point whether Parliament would not in the normal cause have
let the constitutional position rest where the Supreme Court had left it
in the Keshavananda Bharati's case, but for the developments following
the Allahabad High Court's Judgment in Mrs. Gandhi's election dispute"41.

In fact, with opposition members clamped in jail and
the press and public opinion ruthlessly suppressed the condition did not
exist for a free and fearless debate within the Parliament. Senior Cabinet
Ministers like Sardar Swaran Singh and Gujral were dislodged for express-
ing dissatisfaction with the proclamation of emergency. Dr. Seyid Muhammad,
a former Minister of State for Law, submitted that within the ruling party
there was no democracy, no freedom of speech and expression42. The plight
of the Members in the opposition was equally sad. The institution of
Parliamentary Privileges was abused to retard the growth of Parliamentary
democracy. "If a privilege issue clicked, so much the better, if not,
the motion of breach of privilege would hang like the proverbial Damocles
sword over their heads and would not only serve to shut their mouths but
to produce demoralisation among the critics"43. Censorship imposed on the
press on one hand and the ban on platform speeches on the other left the
Legislatures as the sole forum of expression of people's grievances. But
there also the legislators were pressed into silence in utter disregard
for their freedom of speech. The privilege of freedom from arrest was
evaded through the promulgation of Maintenance of Internal Security Act
(MISA). It was held that since members of legislatures are not immune from

42. Excerpts from the Law Minister's Interviews with the Press,
43. The Statesman, 12.9.1975 Editorial comments.
preventive detention, those who are likely to disturb the exercise of power by the Government could easily be arrested and put behind bars under 'ISA. Any reason was enough for such arrest. Most of the members of the opposition and many within the ruling party were lodged in Tihar Jail. The bureaucracy was either indifferent or too much enthusiastic about carrying out orders from their political bosses. When the political atmosphere was sapped in this way the privileges of the Parliament was a mockery. The press became the worst sufferer.

Originally statutory protection was given to the publication in newspapers or broadcasts by wireless telegraphy of substantially true reports of any proceedings of either House of Parliament, provided the reports are for the public good and are not actuated by malice. But the protection was withdrawn when the Parliamentary Proceedings (Protection of Publication) Act, 1956, was repealed by the Parliamentary proceedings (Protection of Publication) Repeal Act, 1976.44

During the Emergency Rajya Sabha also abused its penal powers by expelling one of its members, Dr. Subramaniam Swamy, a staunch opponent of the Emergency fled the country to evade arrest. He started writing and speaking against Emergency while abroad. In one of his writings he referred to the Indian Parliament as a captive House. A question of privilege was raised in the Rajya Sabha to which he belonged on September 2, 1976 under the privilege jurisdiction of the House. The charge against him was that he had brought Parliament into disrepute and lowered its prestige in the public eye. But contrary to natural justice Dr. Swamy was not given any chance to defend himself. But strangely enough he once was found attending the meeting

44. The privilege was, however, restored to the Press by enacting. The Parliamentary Proceedings (Protection of Publication) Act, 1977 in April 1977.
of the Rajya Sabha and then again managed to avoid arrest possibly
with the active co-operation of some security personnel in the Parlia-
ment. He later sent a written reply, but did not participate in the
proceedings of the House or of its Privilege Committee and the like.
In a manner which fully pertook of the high handed nature of many
things done during the Emergency, Dr. Swamy was expelled from the Rajya
Sabha. The stated grounds of expulsion were that by his speeches
abroad, he, had brought the Indian Parliament and 'democracy' into
disrepute, and had also drawn some allowance from the secretariat of
the Parliament, to which he was not entitled. There is hardly any
doubt that he had done nothing to deserve such harsh punishment. A
similar case before the House of Commons would never have resulted in
expulsion and termination of membership. But ironically the Indian
Parliament tied to the apron strings of the House of Commons thought
it proper to expel him.

Dr. Swamy remained outside India and never challenged
his expulsion. Had, he done that the expulsion might have been held
unconstitutional. As political prejudice was easily discernible in th
report of the Privileges Committee which the Rajya Sabha readily accepted
and as there were some procedural flaws the expulsion violated the
Constitution. The Privileges Committee had appointed a sub-committee,
with the then Attorney General as its convenor, to examine the consti-
tutional position. But it appeared that the sub-committee had not given
any written reply and the Privileges Committee decided without insist-
ing on the written reply. All this smacks of the political overtone in
the whole game.

45. The Illustrated weekly of India, May 22-28, 1977. "Emergency -
who were the guilty by Shamin Ahmed Shamini."
So a very sinister example was set during the Emergency over the question of privileges. "The resolution of expulsion was a complete travesty of the privileges and the powers of the House of Commons, even as the imposition of internal Emergency was a total nega-
tion of democracy". Two years later the action taken by the Rajya Sabha was to recoil on Mrs Gandhi herself. In spite of their different political outlook the Janata Party applied the same standard to her and expelled her from the membership of the Lok Sabha. In any case, Dr Swamy was expelled on the ground that the Rajya Sabha had the power of the House of Commons as on 26th January, 1950, to expel any member guilty of contempt of the House. His fault was his opposition to the authorita-
rianism abhorrent to the letter and the spirit of the Indian Constitution and repugnant to the political culture of the United Kingdom from which the Indian Constitution, the Indian Parliament and the state Legislatures import their privileges and powers. This and similar other instances are proof positive about the contention that emergency provisions of the Constitution may at times be used for party purposes and there is a risk of the Parliament playing "the role of second fiddle to the Cabinet manoeuvres". It is most unfortunate that when the Indian Constitution differs fundamentally both in terms of letter and spirit from the British Constitution, and when our political culture is also different from its British counterpart the institution of parliamentary privileges should be laid according to the British Constitution.

The 44th Amendment Act, 1978, introduced minor changes in the relevant articles. The amended Article 105(5) now read; "In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be

46. The Illustrated Weekly of India - "Emergency - who were the guilty ?" May 22-28, 1977.
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 commit immediately before the coming into force of section 15 of the Constitution (Forty forth Amendment) Act, 1976". Similar changes have been introduced also in Article 194(3) of the Constitution with Section 26 in place of Section 15 referred to above. But virtually so long as no act is passed either by the Parliament or the state legislature the position remained as ever before. The privileges remained as they were in 1950.

Against this background the real position of the Parliament or a State Legislature vis-a-vis the Court over the question of Parliamentary Privileges depends to a large extent on the neutrality or otherwise of the Speaker and the level of Politicization of the people.

In Britain the Speakership is noted for impartiality with sound and firm conventions behind it. He is nominated to the chair by the Government with the consent of the opposition and the candidate falls upon an obscure back-member, who has neither controversial political background nor political ambitions. His nomination is to be moved and seconded by back-benchers from both sides. His candidature is not opposed either to the chair or to a seat in the House. This is quite unique and unthinkable in India. After retirement, he enjoys a sumptuous pension and is conferred with a peerage, - "the first commoner in Realm"; taking his place behind the Prime Minister and the Lord President of the Council as the sixth subject in the land.

Political neutrality is the linch-pin of the institution of Speakership in Britain. The Speaker renounces his party membership.
once he has been elected to this august office. So the British speaker generally contests as an independent in the General Elections. No political party offers a candidate against him. However, there were exceptions as in 1885 (Peel), 1895 (Gulley), 1935 (Fitz Roy), 1945 and 1950 (Clifton Brown) and 1955 (Morrison).

The British institution of Speakership was transplanted in the House of Representatives of the U.S.A. and the House of the people in India, but the environment and behavioural tendency of the people have had its impact on the evolution. In the United States the establishment of the Presidential form of government made the speaker the leader of the majority party in the House. The revolutionary birth of the nation had its impact on the institutions created there and the people had no traditional approach. Consequently, the Speaker of the House of Representatives was not only political but also partisan in practice. As the leader of the majority party in the House, he had to guide and influence it to enact the legislation beneficial to his own party. Unlike his British counterpart, even to-day he is not only non-impartial but also intervenes in the debates and casts his casting vote for the benefit of his own party.

In India, except Sri V.J. Patel, and Sri Shanmukham Chetty before independence, and Sri N. Sanjeeva Reddy and Sri G.S. Bhillon after independence, all other Speakers retained their political moorings. Since 1950 the opposition parties have been demanding the adoption of this British convention of political neutrality and several times they offered their sincere cooperation to the individual speakers in the General Elections. Inspite of that, the Speakers themselves refused to follow this well-intentioned conventions. Speaker G.V. Mavalankar indeed thought it proper to declare and affirm his party
attachment. Therefore, to enjoy the confidence of all it is better to establish this convention by the individual Speakers, or the political parties, particularly the party-in-power, should take initiative in convincing the speakers to renounce their political affiliations. If not, however impartial an individual Speaker might be, never can he win the confidence of the members of the House. As Erskine May put it: "Confidence in the impartiality of the Speaker is an indispensable condition of the successful working for this institution. Every Speaker must follow the observation of Speaker Clifton Brown:” I am not the Government’s man, nor the opposition’s man and I am the House of Commons’ man”.

A British Speaker is one who never speaks in the House. Though we have followed this convention of Westminster as far as possible, lately the Indian Speakers have been participating in the debates of the House either consciously or unconsciously. It is not at all a healthy convention and the boat may not be unduly rocked. Though sometimes, the interventions are well-intentioned or useful, they are fraught with danger. At present American Speakers too are not intervening in the deliberations in order to maintain strict impartiality, though there is a convention that they can participate in the deliberations of the House as freely as an ordinary member. Therefore, the Indian speakers must be restrained in this respect.

So much importance is laid on the impartiality of the speaker because in privilege cases his role is most crucial. He has an inherent power to interpret the rules and procedures of the

House on the basis of established conventions, precedents and traditions. He has to follow and interpret the rules laid down by the House. A privilege motion to be moved depends on his ruling. In the United States, the Speaker of the House of Representatives very often tries to use the Rules of Procedure for the benefit of his own party. In India, however, the speakers are not so much partisan, but owing to their political affiliations, the opposition is not kind enough to accept them. Whenever a ruling of the Speaker is against it, invariably the opposition stages a walk-out. In 1967, the Speaker of the West Bengal Legislative Assembly, Sri Bijoy Kumar Banerjee, by a ruling, refused to recognise the validity of the Profulla Chandra Ghosh Ministry and questioned the validity of the dismissal of the United Front Ministry headed by Sri Ajoy Kumar Mukherjee, by Governor Dharma Veera. In spite of an adverse judgment by the Calcutta High Court, he not only persisted in his stand but refused to preside over the deliberations of the Assembly. The Speaker behaved in a partisan way to help a Ministry which installed him in power. Therefore, a sound convention must be established in order to bar Speakers to usurp the powers of others and question the legality or otherwise of the duly constituted Ministry. Definitely, it should be decided either on the floor of the House or by a competent Court of Justice.

'Once a Speaker, always a Speaker' is another well-fortified convention in Britain. In India and America, it is a stepping-stone to higher power and position. In the centre, in 1962, Speaker Ayyangar who was elected to the House was not re-elected to the Chairman. Speaker Ayyangar and Sardar Hukam Singh became Governors of Bihar and

Rajasthan, respectively after relinquishing the speakership. In the states there is hardly a rule regarding the re-election of the Speaker who often aspires for Ministership. Generally the Chief Minister selects a candidate for speakership, who cannot be otherwise accommodated with a ministerial berth or who is too dangerous to be entrusted with one. Most of the speakers in the states became "ministers subsequently. A recent example is Syed Mansur Nabibullah who became a "minister in the Left Front Ministry in West Bengal in 1987 after serving as Speaker for long ten years.

Thus the institution of Speakership in India has been wholly politicized. A Member wishing to raise the question, after the Question Hour, must stand and make a short statement of the case and ask for leave being granted. If the Speaker is satisfied, he may grant leave provided twenty-five members rise in support of the matter. If leave is granted, the House may then consider and decide the matter or a motion may be moved to refer it to a Committee of Privileges nominated by the speaker. In the Fourth Lok Sabha, on two occasions privilege motions were lost by the number of votes of the ruling party when the speaker retreated from using his own power under the rules to decide whether the matter was fit for reference to the Privileges Committee. On 5th April 1967 a question of privilege was raised in the Lok Sabha alleging that the Prime Minister, Minister of Commerce, and Minister of External Affairs misled the House by making false statements on its floor. A motion was thus moved to refer this matter for investigation to the Privileges Committee. But the Minister of Parliamentary Affairs moved a counter motion stating that the Ministers involved

51. House of the people Rules - R44.
52. House of the People Rules - R225(1).
53. House of the People Rules - Rule 225(2).
had committed no breach of privilege of the House. The Speaker observed
that both the motions were in order and, therefore, be put to the vote
of the House one after the other.\textsuperscript{54} The Opposition failed to get its
motion (145 Votes to 78) and referred it to the Privileges Committee
of the House.\textsuperscript{55} If the Committee opines there is a case of breach of
privilege, either the Chairman or any other Member of the Committee
moves the report to the consideration of the House whereupon the Speaker
puts the question to the House.\textsuperscript{56} Before putting the question, the
Speaker may permit a debate on the motion, not exceeding a half-hour
duration and such debate shall not refer to the details of the report
further than is necessary to make out a case for the consideration of
the report of the House.\textsuperscript{57}

In India and the United States the laws passed by
the Legislature are tested by the Judiciary whether they are constitu-
tional or unconstitutional. In Britain, by Article 9 of the Bill of
Rights, the Parliament is freed from outside interference. It has
"freedom of speech and debate or Proceedings in Parliament ought not
to be impeached or questioned in any court or place outside Parliament".\textsuperscript{58}
This declaration armed the Parliament with privileges by which each
House has the right to be the sole judge of the lawfulness of its own
proceedings and in turn each House has the right to lay down and settle
its own code of procedure. This is the outcome of the leading case,
Bradlaugh V Gossett.

54. Lok Sabha Debates, 5 April 1967, CC 293-436.
56. House of the People Rules - R 315(1).
In India several courts in interpreting Article 212, which is similar in wording to Article 122, have unequivocally affirmed that the Indian Courts have no power to call in question the validity of proceedings in the Legislature. What the Speaker does in discharging his functions inside the Legislature is beyond the jurisdiction of Courts.\(^59\)

In another important case the power of suspending a Member by the Speaker has been upheld by the Court. Sri Rajnarayan Singh was first sent out of the U.P. Assembly by the Speaker for unruly behaviour, and later for the same offence, was suspended for the remaining period of session by the Privileges Committee. Sri R.N. Singh moved the Court praying for a writ on the ground that the action of the Committee of Privileges was against Article 20(2) of the Constitution. The High Court held that it could not interfere with the internal working of a Legislature and it further remarked that suspension of a Member by the Legislative Assembly was not 'punishment' for the purpose of Article 20(2). An important query was, however, raised by the Court on which opinion was divided: whether privileges of the Legislative Assembly coming under Articles 105 and 194 could override Fundamental Rights\(^60\).

Any irregularity committed regarding the election of a speaker is also outside the jurisdiction of the Courts as it is a part of the proceedings of the Legislature\(^61\), and as it has been made so by the Thirty-ninth Amendment Act. But when the matter in controversy has nothing to do with the exercise by an officer of the


\(^{60}\) Case of Raj Narain and other Members in U.P. Vidhan Sabha(1959).

Legislature such as the Speaker, of the powers vested in him, but is concerned with the interpretation of a relevant provision of law which is alleged to effect his legal right to continue in office, the Courts of law do have jurisdiction irrespective of Article 312(2). The control of each of the Houses over its proceedings is so complete that no Member or official of either House is at liberty to give evidence in relation to any debate or proceedings in the House except by the leave of the House of which he is a Member or an officer. The Indian Parliament had also claimed this right. In April 1970, the Lok Sabha Speaker has asked five members of Parliament to ignore summons from the Supreme Court, in connection with their speeches in Parliament concerning the Jagadguru Shankaracharya's case.

So in every respect the Speaker is the kingpin in Parliamentary Privileges whether we consider the problem from the standpoint of the House or in terms of the Judiciary. In May 1987 the budget session of the Tamil Nadu Assembly would go down in the history of Parliamentary democracy in India as one of its darkest chapters. Though elected to the Assembly on an AIADMK ticket, P. Pandian, the Speaker, should have ceased to be a partyman the moment he became the Speaker. But even in the House he continued to refer to Ramachandran, the Chief Minister, as 'my leader' and never hesitated to participate in the proceedings like any other regular AIADMK member instead of conducting its business in a non-partisan manner. In the process Pandian often had to expunge his own remarks and exchanges with the Opposition members in the name of upholding the 'dignity' of the House.

The Press had been bete noire of Ramachandran. Because of a nation-wide agitation, he was forced to annul the notorious anti-Pres
law enacted by his Government in the early 1980s. But that did not deter him from gagging the Press in so many other ways. S. Bala Subramaniam, editor of the Tamil weekly, Ananda Vikatan, was arrested at his farm house at Padappai, 30 Kms from the Madras town on the evening of April 4, 1997, following a resolution passed by the Tamil Nadu Assembly on the same day sentencing him to three months' rigorous imprisonment.

N.S.V. Chithan, a Congress (I) member raised the issue saying that the joke in the cover picture of Ananda Vikatan was a derogatory reflection on Tamil Nadu Ministers and MLAs. The Assembly sentenced the editor on a motion moved by the leader of the House and Finance Minister, V.R. Nedunchezhiyan for depicting Ministers as dacoits and legislators as pickpockets. It had impinged on the rights and privileges of the House. The Minister also said that in provisions in the Indian Penal Code were deterrent in nature and it was necessary to exercise them to put an end to such journalism. The speaker gave his ruling that the editor of the magazine was guilty of the charge, and unless an unqualified apology was published in its next issue the House would sentence the editor without referring the matter to the Privileges Committee. The Speaker all along acted as a political being.

A Rajasthan case is equally unfortunate, Niranjana Nath Acharya was a Congress MLA who was elected as the Speaker after the 1967 elections. In 1972 he was denied Congress ticket, although a few months earlier, the Opposition parties in Rajasthan had jointly decided not to oppose, Acharya in the forthcoming elections. The Speaker decided to contest as an independent candidate and won from Masauli constituency with a handsome margin, and is now a leading member of the opposition. To some this instance may sound to be a glowing example of
the institutional viability of the Indian parliamentary and constitutional institutions, but to the present author it heralds a danger to the institution of the Speaker itself which in its wake may jeopardise the working of Parliamentary democracy in India.

It is clear that in India neither the speaker nor the party-in-power has taken the initiative in establishing sound conventions. The Constitution also has not provided requisite provisions to make this institution effective. The Speaker is the nominee of the party-in-power, and invariably a prominent politician with high political ambitions. During the last thirty-five years or so, despite their protestations, the Speakers never severed their connections with political parties. There is no continuity of office for the individual elected Speaker and it is an act of patronage conferred by the party-in-power. Most speakers, after relinquishing their offices, have become Ministers or Governors. The office has not yet got the confidence of the Opposition. At the slightest refusal of the speaker in admitting adjournment motions, or supplementary questions, the Opposition stages a walk-out to the accompaniment of the historic political outbursts. Besides the Speakers in the State Assemblies have almost lost the confidence of all owing to their partisan rulings and abrupt adjournments of the House.

The entire institution of Privileges of the Parliament depends largely on the effectiveness of the role of the Speaker. The principal duty of the Speaker is to regulate the proceedings of the House and to enable it to deliberate on and decide the various matters coming before it. Thus in considering, the various notices or points raised before him, the speaker should always bear this in mind and where in doubt he should act in favour of giving an opportunity to the House to express
itself. The Speaker should not so conceive his duties or interpret his powers as to act independently of the House or to override its authority, or to nullify its decisions. The Speaker is a part of the House, drawing his powers from the House, and in the ultimate analysis, a servant of the House.

But in many a case the Speaker takes a lead in initiating discussion and this has been particularly manifest in few privilege cases. The Speakers have misused their powers in Harsharan Verma V.C.B. Gupta case and again in Keshab Singh case. A meeting of the presiding officers held early in April 1968 emphasized the necessity of evolving healthy conventions and practices to ensure harmonious relationship between the speaker, the House and other constitutional functionaries in the interest of smooth working of the parliamentary institution. It was suggested that the rules of procedure of Legislature be so amended that the speaker will not have the power to frustrate the admission of no-confidence motion against himself by exercising his power of adjourning the House. The principle underlying this suggestion is that of natural justice. Similarly the Speaker should not get into the controversy over the conflict of jurisdiction between the Court and the Legislature sacrificing his impartiality and the dignity of his position.