PARLIAMENTARY PRIVILEGES AND THE COURTS

INSTITUTE OF JUDICIAL TRAINING & RESEARCH
UTTAR PRADESH

PREFACE

The law relating to Parliamentary Privileges is one of the most polemical areas in the Indian legal system. It is, perhaps, essential for the effective functioning of the legislatures undaunted by the looming shadows of legal actions. Yet when it comes to the extent and the mode of enforcement of the privileges, the cracks are clearly visible between the two pillars of our system.

The genesis of the problem relating to parliamentary privileges stems from the contradictions between environment in which these privileges sprouted and the one in which they have been transplanted. The soil provided by the English Parliament with its supremacy unhampered by any constricting parameters can hardly be substituted by the one provided by the Indian legislatures functioning within the limits circumscribed by the Constitution, with the higher courts as its articulative organs, and hedged by the fundamental rights guaranteed under it.

The questions agitating the minds mainly relate to the possible scope of judicial review - whether the English hands off principle, or reviewing only cases arising outside the walls of legislature, or only where fundamental rights are allegedly violated, should be decisive of the jurisdiction of the court

The perplexity of this situation, especially about the role of the courts relating to these, was the reason to request Mr Fali S. Nariman to explain the existing law to the judges in a programme conducted for them by the Institute. Mr Nariman being not only one of the well known Senior Advocates of the Supreme Court but also one who occupies

a prominent position amongst the jurists in the country has in his inimitable lucid manner dealt with the problems relating to this segment of the law. His exposition is so informative, and yet so clear that the Institute is publishing it for the benefit of those judges who could not have the opportunity to be present in the training programme in which this lecture was delivered.

The clarity with which Mr Nariman has dealt with the origin and the development of the law and its present state, uncovering all the pitfalls around its use deserves appreciation.

The Institute is grateful to Mr Nariman.

Dec. 1989, Lucknow

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PARLIAMENTARY PRIVILEGES AND THE COURTS

Actually it is quite fortunate that I am speaking to you about parliamentary privileges, because but for the fact that I was a privileged passenger who landed at Lucknow, we wouldn't have been here at all at least my baggage wouldn't have been here, because, apparently, they gave us a tag for Ranchi and they wouldn't have bothered had I not been a privileged passenger. A number of 'important persons' had come to the airport. Fortunately they dug up the baggage from the Ranchi-hold and this is how we are here. As you rightly said, Judge,[1] this is a very important topic.

But before I come to the topic, let me say a word about something which is not on the topic. And that is that we are all, you, I, and the Judges here, we are all students of the law and it is very important at all stages of our careers, whether we are lawyers or senior lawyers or District Judges, High Court Judges or Supreme Court Judges, to realise the essential element in this branch of activity, and that is, humility to legal learning. Because unless you humbly accept, even when you sit pontifically on a bench, that you are still learning, you won't make a good judge, just as if you think you know the law you won't make a good lawyer. In fact, you won't get on at all in this field of activity. Much as you may be spoiled by the

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[Recorded transcript of an address by Mr. Fali S. Nariman, Senior Advocate, Supreme Court, former President, LAWASIA and ex-Addl. Solicitor General of India, to Senior District Judges of U.P. at the refresher course organised by the Institute of Judicial Training & Research, U.P. Lucknow on October 1, 1988.]

1. i.e., the Honorary Director, Mr Justice K.N. Goyal, who was in the chair.

VVIP or the VIP culture which is endemic in our country. Please remember that when you wear your black gown and your black coat, wherever you are, however high a bench or however high a pedestal you sit on, you are still a votary of the law, you are still a person who is learning the law. I remember my senior, Sir Jamshedji Kanga in Bombay, who died at 94 and who used to attend his chambers almost till the end, (although he stopped active practice ten years before), he always said right till the end and with a genuine degree of earnestness; when you told him something which he didn't know, he would spontaneously say: "Oh, I am still learning the law". That is a very important lesson. That's why I gladly accepted your indefatigable Director's invitation to come and speak here because I believe that in all these matters the more we know, the more we realise that there is so much more to be known. It is only a small minded pedant who thinks that he knows everything; we don't. And it is very good to speak at least in Lucknow about parliamentary privileges because, as the Judge just told you, the row started here, the big row[2] before which there were only a few small skirmishes.

Now what is so important about parliamentary privileges or writ jurisdiction under article 226 ? The basic problem here, perhaps as in no other field of legal activity, is the problem of positions, which is higher : Parliament or the Court? In Japan, if you go to Tokyo, you will find that they have built a new Supreme Court building, and the Chief Justice was at pains to point out to us that it was made clear from the start that this magnificient structure should not be even half an inch higher or half an inch lower than the Houses of Parliament. And they were very very strict about it, so that it exactly measures in height what the Houses of Parliament measure,- not an inch less, not an inch more.

2.referring to *Keshav Singh's case*, which led to the Presidential Reference, on which Supreme Court's opinion is reported in AIR 1965 SC 745.

Now our problem of course is that with a written Constitution and with fundamental rights there is, shall I say, 'friction' or 'play at the joints' between the great institutions of the Constitution, namely, Parliament on the one hand (including State Legislatures of course) and the Judiciary on the other. It has always excited the attention of students of the law and the question always has been, "which is higher or which is superior, the Court or Parliament"? And the answer is, "Neither." The Constitution is superior to both. And it so happens that the sole interpreter of that Constitution is the Court - the highest Court.

This is something which most parliamentarians and most legislators just will not accept. At the same time we have had quite a few guideposts laid down in the skirmishes that have taken place over the years. Parliament, as you know, and also the State Legislatures, are law making bodies. They do not adjudicate on rights between parties, or between States on the one hand and the Centre on the other. The Court, the Supreme Court does. And it is this underlying scheme of the Constitution which has been responsible for throwing up this seeming conflict which has its origins in the Halls of Westminster in England.

About parliamentary privileges Gladstone spoke many centuries ago, and what he said has not been put in simpler language. He said, "Whatever matter arises concerning either House of Parliament, ought to be examined, discussed and then adjudged in that House to which it relates, not elsewhere". Neatly put, simply put, without any confrontational approach. About a hundred years later, another distinguished Chief Justice, Lord Coleridge, spoke, as you know, in *Bradlaugh's case.*[3] Bradlaugh was a member of Parliament, member of the House of Commons. He was a Catholic, and in Protestant England they didn't like Catholics. He was repeatedly prevented by reso-

3. Bradlaugh v. Gossett (1884) 12 QBD 271

lutions of Parliament,-of the then Parliament to take the oath, because they wouldn't let a Catholic take the oath. It was wrong It was contrary to the Parliamentary Oaths Act. He then petitioned the Courts and in the celebrated case of *Bradlaugh* v. *Gossett*,[3] Lord Coleridge said that Bradlaugh had no case in court; his remedy,-was in Parliament. "What is said or done", they said, "within the walls of Parliament cannot be inquired into in a court of law". "On this point," said the Chief Justice,-"all the judges in the two great cases exhausted the learning on the subject,- we are agreed and are emphatic." The two great cases, of course, are Stockdale and Hansard, the two Stockdale and Hansard cases[4] and their sequel, the Sheriff of Middlesex.[5]

I have brought for you what I consider a brilliant exposition. A gentleman called Mr Heuston,[5A] who has written the lives of the Lord Chancellors, has also written a book called "Essays in Constitutional Law". In it he deals with the subject of parliamentary privilege in about 15 or 20 pages, that is, the parliamentary privileges in England, from where it all started, in a manner which is not only elucidating but also edifying. And it also has its amusing moments. As, you may remember, in *Stockdale* and *Hansard* (and this is just a background before we come to our Constitution). Stockdale was the man who sued the official publication of Parliament because Hansard reproduced a speech from a member of Parliament which said that Mr Stockdale circulated a lot of scurrilous material amongst members in the form of pamphlets and books. Stockdale sued Hansard, the

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4. Stockdale v. Hansard, (1839) 112 ER 1112.
5. In the case of Sheriff of Middlesex, (1840) 11A & E 273
5A. R.J.V. Heuston, M.A. Fellow of Pembroke College, Oxford of Gray's Inn and King's Inns, Dublin Barrister-at-Law.

official publisher, and it was held in that case that he was entitled to damages. The damages were nominal, but the costs were quite a lot because he got about 600 pounds. As he was very pleased with his victory in this case, he went and sued Hansard for costs in execution. He tried to get the sheriffs of Middlesex, - to execute the warrant of attachment on the properties of Hansard – their books and their furniture and so on and that is how the case comes to be known as the case of the *Sheriff of Middlesex*. And, for this, Parliament rose up and committed him for contempt. They committed him though he was only executing an order which the court had passed, the court let him down: They suddenly retreated and said that Parliament was right and though entitled to commit him for contempt and the courts had no power to interfere in that jurisdiction; which of course, must have upset the old man quite a bit because he had to spend a few months in jail. In those days the House of Commons, though it had power to commit for contempt, but it could not confine for any stated period. It could only confine till the session was over, unlike the House of Lords: Because the House of Lords could commit you for contempt, that is to say, the legislative wing of the Hosue of Lords, could commit you for contempt of Parliament and confine you for as many years as they chose to do though they haven't done it. The important thing in Heuston's essay is that in all our great cases which deal with this question they always go back to English law and they always cite the famous cases in order to determine how or what are the privileges of Parliament and how they should enforce them. It is mentioned that in the *Sheriffs of Middlesex* they took in not only Mr. Stockdale but also some of his people who went to execute the warrant, such as the sheriff himself! But fortunately, unlike the common jail, they treated them so exceedingly well and gave them so much

food and drink that when they came out they were noticeably unhealthy because their livers were totally upset with excessive food and the excessive drink that they had. That is what you will find, as Mr. Heuston mentions in his Essays on Constitutional law.' But so much for the English version. Mr. Ley, who was the Clerk of the House of Commons[6] for thirty years from 1820 to 1850, could snap his fingers at the courts in those days and say, "What do precedents signify too? Nothing. The House can do what it likes. Who can stop it?" Or that at least was how it appeared since the courts had refrained from encroaching upon the sphere of Parliament.

This is all in the last century. But then there were innumerable British colonies being set up all over and naturally everyone likes the panoply of power. Everyone likes the panoply of patronage, you and I do as well. We all love VVIP treatment. Whether a parliamentarian has greater privileges than a judge, it is a matter which I am sure all parliamentarians love to discuss and dwell upon. And in the 1840's the Privy Council had to consider this in a case which came from Canada : It had something to do with Newfoundland. It was a new colony which was founded and they claimed — those who administered that colony – the Parliament of that colony, that although there were no special privileges announced, they were after all an emanation from the Crown. They had their own self-governing colony. They had their own elected Parliament and it was argued that this Parliament of Newfoundland should have the privileges not dissimilar to the privileges exercised by the House of Commons. The Privy Council (it's a judgment worth reading, it is a leading judgment known as *Kielley* v. *Carson* and it is reported in (1842) 4 Moore's Privy Council Cases 63,) -said

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6. This post corresponds to that of Secretary General of our Lok Sabha.

"No". And the reason that they said 'No' was best described in the words of Baron Parke. This case incidentally was argued twice before the Privy Council. Once the three Privy Councillors were present, and when they found that it was too hot for them to handle they called in all the Privy Councillors – and this was the full Privy Council, - it is very rare, - which dealt with this case. They first said that the House of Assembly of Newfoundland did not possess the power to arrest with a view to adjudicate on a complaint of contempt committed outside its doors. Mark the words, "outside its doors". This is really the genesis of our Lucknow case. Although our Judges didn't refer to this case, but it is the genesis of it. And, consequently, Baron Parke said that an action of trespass for false imprisonment by the House was justified. Then it was argued, and this is a very interesting point because the same sort of argument came in in the *Presidential Reference*,[7] that if the power wasn't a power which was necessarily incidental to a supreme legislature, how else could it exercise its authority? And the answer that they gave again was in the negative. They said, if that power was incidental as an essential attribute to a legislative assembly of a dependency of the British Crown, the concession on both sides that the Crown had a right to establish such an assembly puts an end to the case. But if it is not a legal incident then it was not conferred on the colonial assembly unless the Crown had authority to give such a power and actually did give it. You see they had no Article 194(3). The Crown never gave them the privileges which we conferred in the Constitution on Parliament and the State Legislature. So the argument was that something which is necessarily incidental to the creation, of the legislature, must be attached to it, and since this was part of the House of Commons, and

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7. AIR 1965 SC 745.

since they were really an emanation of that House in a sense, legislating in a colony, they were entitled to those privileges. Again the Privy Council said, "No". The power of punishing anyone for past misconduct as a contempt of its authority, and adjudicating about the fact of such contempt, and the measure of punishment, is of a very different character and by no means essentially necessary for the exercise of its functions as a local legislature, whether representative or not. All these functions, said Baron Parke, may well be performed without this extraordinary power and with the aid of ordinary tribunals to investigate and punish contemptuous insults and interruptions. And then they gave the reason – why the House of Commons exercised its power, and this was the reason the Chief Justice Gajendragadkar gave in our case from Lucknow, in the Presidential Reference. The reason why the House of Commons has this power is not because it is a representative body with legislative functions but by virtue of ancient usage and prescriptions. The *lex et consuetudo parliamenti*, which forms part of the law of the land,[8] and according to which the High

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8. See the opinion of the judges summoned by the Lords for their assistance in *Thorpe's case*, 1452 (3 State Trials) :- "And as every court of justice hath laws and customs for its direction, some by the common law, some by the civil and canon law, some by peculiar laws and customs, etc., so the high court of Parliament *suis propris legibus et consuetudinibus subsistit*. It is *lex et consuetudo parliamenti* that all weighty matters in any Parliament moved concerning the peers of the realm, or commons in Parliament assembled, ought to be determined, adjudged and discussed by the course of parliament, and not by the civil law, nor yet by the common laws of this realm, used in more inferior courts ... And this is the reason that judges ought not to give any opinion of a matter of parliament, because it is not to be decided by the common laws, but *secundum legem et consuetudinem parliamenti*: and so the judges in divers parliaments have confessed.

Court of Parliament, before its division into the Lords and Commons wings, was invested with many peculiar privileges, that of punishment for contempt being one. So they distinguished the powers of the House of Commons on the ground that it had the trappings of the High Court of Parliament from which it derives its authority by custom and usage which the Parliament of Newfoundland or the Legislative Assembly of Newfoundland did not. And then they said "The assembly is no court of record nor has it any judicial functions whatever". And it is to be remarked that all those bodies which possess the power of adjudication upon and punishing in a summary manner contempts of their authority, have judicial functions and exercise this as an incident to those which they possess, except only the House of Commons whose authority in this respect rests upon ancient usage. And then the Privy Council said that the local legislature which has every power reasonably necessary for the proper exercise of their functions and duties have not what

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And some hold that every offender committed in any court punishable by that court must be punished (proceeding criminally) in the same court, or in some higher, and not in any inferior court, and the court of parliament hath no higher."

((Coke on Lex Parliamenti, Fourth Institute, 15).

In discussing the work of the Judges summoned to assist the Lords in matters of the common law, Coke observed : "Neither doth it belong to them... to judge of any law, custom, or privilege of parliament. And to say the truth, the laws, customs, liberties, and privileges of parliament are better to be learnt out of the rolls of parliament and other records, and by precedents and continual experience, then can be expressed by anyone man's pen." (Fourth Institute, F. 50).

Blackstone also argued in favour of keeping the privileges of the two Houses indefinite (1 Comm. 164).

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they have erroneously supposed themselves to possess, namely, the same exclusive privileges which the ancient laws of England annex to the House of Parliament, and then they sent the matter back for inquiry as to the quantum of damages for false imprisonment by the House.

This case establishes what before the Constitution was the charter for all courts, -to deny the rights of Legislative Assemblies in any part of His Majesty's dominions, as they were then known or later the Commonwealth, the authority of the House of Commons to commit for contempt. And mark you, the reason given here was, -and that is important, -the legislature has no adjudicatory function. You will remember early on our Supreme Court in 1953 or '54 decided the famous *Nizam's case.*[9] It is quite an amusing case, actually because the Nizam, it appears, in some fit of intoxication, not intoxication with drinks but in a fit of power intoxication, disinherited one branch of a family -one of his own family and gave possession of certain properties to another whilst the matter was pending in the Nizam's courts for adjudication! And he did this by a Firman, his legislative act at that time. And the Supreme Court had to consider its validity immediately after the Constitution in 1952 or '53, and they struck down that Firman. Because otherwise it was good law, a Firman under (article) 372, would have continued.[10] They struck it down on the ground that no legislative body, whether in the Indian States or elsewhere, had adjudicatory functions. They could not adjudicate between A and B. Thus for instance, today Parliament cannot pass a law saying that we hereby declare that the suit, however important that suit may be by A against B or State A against State B, is hereby decreed or is hereby dismissed.

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9. *Ameerunnissa Begum* v. *Mehboob Begum*, AIR 1953 SC 91.

10. as "law in force"

They cannot say that because that is not law. They have power to make laws. They have no power to adjudicate.[11] And that is where the distinction lay. And that is the distinction which is pointed out by the Privy Council. And it is a matter of some regret, at least to me, that the judges of the Supreme Court, nine of them, who sat, never adverted to the case from Newfoundland, which has put so pithily in about four or five pages what the entire position is and the differentiation between this and the House of Commons. Of course we have - and that's a matter which has to be considered and that was considered,- we have fundamental rights, we have article 32, to enforce them, which is itself a fundamental right, and we have (article) 226 which many of you gentlemen will be enforcing as and when you get elevated to the High Court bench. Now the question therefore that directly arises, and that directly arose then, can be determined in the post-Constitution era by looking at, shall we say, three cases and one precedent, I will come to the precedent later. That is not a case. That is a matter which went on and a stay was granted in connection with the Legislative Council of Andhra Pradesh, which I will come to explain later.

The first of course is the decision in *Keshavram Reddy's* case.[12] There was a Parsi gentleman Mr. Mistry who was detained under orders passed by the Speaker of the U.P. Legislative Assembly for a breach of privilege and his detention was challenged under article 22 (2) saying that "Produce him before a magistrate within 24 hours. That's a fundamental right": He wasn't produced and the matter came before the Supreme Court. The Attorney General, Mr. Setalvad immediately conceded that he had been

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11. of *Indira Nehru Gandhi* v. *Raj Narain*, AIR 1975 SC 2299 (paras 59-60).
12. *G. Keshavram Reddy* v. *Nafisul Hasan*, AIR 1954 SC 636.

detained for more than 24 hours and the great constitutional lawyer that he was, he virtually conceded the case because he said that if his constitutional right was infringed, then he could be set at liberty and Mr. Mistry was set at liberty. When this case came to be cited in the later *Sharma's case,*[13] the Searchlight case from Bihar, some of the judges took the view that this was not a binding precedent at all because there was a concession of the Attorney General. Now here I must take your leave to tell you something about Attorneys General and Law Officers - how law officers conduct themselves and used to conduct themselves. And it was a treat to see the great law officers,- Motilal, Daphtary[14] or Niren De, who happened to be my leader when I was Additional Solicitor General,- the manner in which they would act, when once they considered a particular question and were in a position to pronounce upon it, by saying this is right and this is wrong or this is legal and this is not. They would immediately stand up and say that this is not right or this is not legal. Mr. Seervai[15] used to do this constantly in Bombay, in Maharashtra, and he is perhaps today regarded, though no longer the Advocate General, as one of the greatest the country produced for many many years. And that is the hall-mark of a law officer who is expected,-particularly a Constitutional law officer, because the Attorney General in India and the Advocate General in a State, are, by the Constitution, independent constitutional authorities. They

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13. *M.S.M. Sharma* v. *Sri Krishna Sinha,* AIR 1959 SC 395.

14. Sri Motilal Chimanlal Setalvad (first Attorney General of India) and Sri C.K. Daphtary (second Attorney General of India).

15. Sri H.M. Seervai, then Advocate General of Maharashtra.

are not employees of their Governments, though they happen to represent their Governments in their cases. They not only have the right, in my opinion but they have a duty to safeguard the interest certainly of their State and at the same time they have a dual function, the constitutional function of when being asked of saying the right thing. In fact they have a very nebulous function in that sense that any member can call upon them to come into the Assembly or in Parliament[16] and ask him what is the true constitutional position and he is bound to tell them what it is and this is what was done by Setalvad in the 1954 case, though it was the court that he addressed. Unfortunately, in *Sharma's case*,[16] they said, this was on a concession. But it makes no difference whether it was on a concession or not because it was on a concession by a constitutional authority, which had a much greater force than a concession by any advocate who merely appears as an advocate, for the party concerned. And although this was not the basis on which it was put, but in the later decision, namely, the Presidential Reference, Chief Justice Gajendragadkar had to revive the basis of this authority and to say that it is good law. It may have to be re-considered again by this court as and when occasion arises but it is good law. Now that was the first case which as I said was decided on a concession.

The second great challenge came in *Sharma's case*[17] AIR 1956 Supreme Court 395 where the editor of the English language newspaper Searchlight was called upon by the Secretary of the Patna Legislative

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16. See articles 88 and 177 of the Constitution.

17. Parliamentary Proceedings (Protection of Publication) Act, 1956, which was repealed during the Emergency and was re-enacted as the Parliamentary Proceedings (Protection of Publication, Act, 1977 : Article 361-A of the Constitution.

Assembly as to why action for breach of privilege should not be taken by him against the editor since he had published in his paper the entire speech of a member including portions which had been expunged by the Speaker. It was a clear case of something done within the four walls of the House. Mark it, this is really going to be ultimately the dividing line,- within the four walls of the legislature, that is to say, expunged by the House, and yet published by the person concerned. Now, naturally, it did not have the benefit, it would not have the benefit of Parliamentary Privilege Act, but that was not the point. The point was that, was he or was he not free to say or repeat what the Minister or the member of the Legislative Assembly said even though it had been expunged. If a remark is made about a judge of a High Court in the country and the Speaker looking at the relevant article 211 says, "No, nobody can discuss the conduct of a judge, that is deleted", and then if a paper publishes it, as Searchlight did, what is to happen? And Sharma's case said that although he could rely upon article 21, that is to say he could invoke it, the court would only see whether his conviction was in accordance with law. And they held that his committal by the House was in accordance with law or would be in accordance with law. The House has the right to investigate into it, and therefore they dismissed his writ petition under article 32.

Now one significant aspect in the Searchlight case, was that both the majority and the minority held that if a law relating to privileges were to be made by Parliament then the provisions of that law could be questioned under part III of the Constitution. Both the majority and the minority, held unanimously on this point. And that was obvious because under article 13, every law made which would infringe any part of the fundamental rights chapter would be void, that is to say, (article) 19(1)(a) or 21 etc. And

perhaps it is this case more than any other that has made any plea to codify privileges, say, a totally counterproductive plea; it is never going to be listened to. No legislature in the country is going to pass a Bill by virtue of which, virtually, they commit Harakiri with respect to their own privileges. The government of Mr. Hegde in the South, Karnataka, did to their credit move a Bill which was called the Karnataka Privileges, Bill[18] where they attempted the codification of the privileges. That is a good sign. But it has never seen the light of day. I don't think it was ever discussed or it will ever come up for discussion, much less passed by any member of the Legislative Assembly. No elected member in this country of any House, of whichever party, is going to subscribe to the view that the privileges should be codified. They love the privileges which the House of Commons had and they still gnash their teeth that they are not the High Court of Parliament, as is the High Court of (British) Parliament, as the House of Commons is, and that is the great contribution I think which the Chief Justice Gajendragadkar made to settling the law on this point. Because but for that law, just imagine, what could have happened for breaches of privileges committed outside the House, we are not now talking of inside the House. Parliament could pull up anybody, virtually anybody, at any time, call him to the bar of the House, push him to the committee of privileges and sentence him for as long as they please, with no recourse. Now that was and is anathema to citizens, greater anathema to the press of course, because the bugbear of all legislatures, as of the executive, is always the press. It is they who commit in their view the largest breaches, of the greatest breaches of privileges, - more than any other individual does. Because they disseminate information. They tell you about what's happening and they tell you in no uncertain terms.

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18. The Karnataka Legislature Powers, Privileges and Immunities Bill, 1988.

Now and that is where we come to the incident which arose from Lucknow and you are all very familiar with, *Keshav Singh's case*, which necessitated the Presidential Reference. That poor gentleman unfortunately, I don't know if any of you know him, I don't either, but if you do, I would be very interested because he was made a pawn in this entire game between Parliament and the Court. If you look at the whole conspectus of it, because ultimately - before we get into it, what happened, was that the judges took care of themselves, that is to say, the two judges of the High Court who were called up by the Speaker for contempt were held to be wrongly called up but poor Keshav Singh the man, who started it all, who really originated this whole case for the benefit of the legal profession, for the citizenery of the country, as a consequence of the decision, had to undergo his full term of imprisonment imposed by the Legislative Assembly. He was the sacrificial lamb as it were. If he had not, very probably there would have been a Constitutional amendment to article 194. So, they thought it much better to sacrifice poor Keshav Singh rather than sacrifice the principle, namely, that Parliament should not have that degree of privilege that the High Court of Parliament in England, that is, the House of Commons, has. The difference of course is that not for a hundred years has any House of Parliament in the U.K. attempted to convict anybody, much less to send him to jail. That is the reticence of great power. That is the wisdom of people who know their power and who will not exercise it, come what may, because there is some constitutional scheme of things which they have to preserve, and that is one of the great traditions of Parliamentary democracy in the U.K. and that is what is real.

We have a parliamentary form of government. Unfortunately we have not as yet, but we will I

think, in due course achieve a tradition of Parliamentary government, - which is an entirely different thing. Everyone has to know - and that includes judges of course, that confrontation between Parliament and the Judiciary, has to be avoided at all costs except at the cost of fundamental rights, that is how one would attempt to phrase it, if one could.

As you know, the Speaker of the Assembly administered a reprimand at first to Keshav Singh and committed him for contempt of the House because he had thrown some pamphlets. They issued a warrant for arrest and for his detention in prison for seven days. The Allahabad High Court Justice Beg and another Judge Sehgal ordered his release on bail and the answer of the Legislative Assembly was to commit them also for contempt. So was Mr. Solomon, a Lawyer of the Allahabad High Court, who drafted the petition. He was also committed for contempt and this was the resolution which was passed by the U.P. Legislature. Mr. Keshav Singh, the two judges and the two advocates were all committed and sentenced to prison. When the judges heard about it from All India Radio, - in those days there was no television, - they rushed up overnight to Allahabad and a writ petition was filed on their behalf. The Chief Justice constituted, for the first time, a bench of twenty-eight judges, all in that main hall of your High Court which is one of the largest halls in the country. Twenty-eight judges solemnly sat and then granted the two judges interim relief, much to their relief I suppose, and also issued a writ against the Marshal of the House. Following this Mr. Solomon who seemed to have been a very astute advocate, because he didn't go before the judges, he went after the judges. He also filed a writ and he got off likewise. And the full bench prohibited the implementation of the resolution of the House. Then the House seemingly retreated passed a clarificatory resolution. They said, "No, we have not

meant to commit these gentlemen, worthy as they are, of contempt. If there has been any misunderstanding on that score, - we withdraw the warrants of arrest against all of them, - and we only issue them notices to please show cause why they should not be committed for contempt". Again the warrants were issued, notices rather, to the judges, but before the notices were issued, the Centre moved with a Presidential Reference.[19] And that is how the Presidential Reference came to be heard.

Now the constitutional lawyer Mr. Seervai appeared for the U.P. Vidhan Sabha,[20] he also appeared for the Maharashtra Legislative Assembly and if you read his book, he has very set views on this question. He is of the view that the decision of eight, I think, of the judges of the majority is wrong in the Presidential Reference and the judgment of Justice Sarkar, who held that he could not interfere, is right. But I beg to demur, I think the judgment clearly put the thing in a very even conspectus and it has been more of a statesmanlike decision than any other that one can imagine, and perhaps whilst taking away something from the privileges or so-called privileges of the Legislative Assembly it has still maintained their supremacy in certain fields.

Mr. Seervai's argument was that when Keshav Singh and his advocate presented the petition to the High Court, that is to say, against their detention, they themselves committed contempt. Similarly, when the two judges entertained the petition and granted interim bail they also committed contempt. And this was because his argument which, I think fortunately, didn't find favour with majority of the court in the

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19. Under Article 143 of the Constitution.

20. The judges were represented by Sri M.C. Setalvad, the Attorney General.

Presidential Reference, was that the view of the House as to the propriety, correctness and validity of its decision or its punishment could not be examined by the judiciary.

In the alternative, he argued that as in England, so in India, it is recognised that though the existence and extent of the privilege could not be examined by the court, no new head of privilege can be claimed under it. You will remember in the celebrated resolution passed by both the Houses of Parliament in the U.K. way back in 1704, more than two and a half centuries ago in which they said, "Neither House of Parliament shall have power by any vote or declaration to create to themselves new privileges not warranted by the known laws and customs of Parliament". They themselves denied to themselves this right to create any new head of privileges. So Seervai argued that the jurisdiction of courts was confined to seeing whether this was a new head of privilege or an established head of privilege. If it was an established privilege, then the nature of the punishment, was just not open to judicial scrutiny. This argument again was rejected. The court said that when under article 194(3) the framers of the Constitution bestowed upon the Houses of Parliament and State Legislatures the same jurisdiction with respect to privileges as the House of Commons enjoyed, they didn't intend to incorporate the rule that they were the final judges of that privilege.

Thirdly, Seervai's argument was that the power to issue an unspeaking general warrant, a warrant of the Speaker saying, so and so is hereby detained in civil prison for seven days, an unspeaking warrant which gave no reasons, would not entitle a court either to call for reasons or to quash it. That's the view which still prevails in England, but that, (I think wisely) was not adopted as the view in India on the ground that when the House of Commons and the House of Lords perform this function of

issuing a general warrant they are acting as the High Court of Parliament. It was like the warrant of the Supreme Court saying "Please arrest this man and put him into jail." No Judge or Magistrate could examine the validity of that warrant because it was the warrant of the highest court of the country which the High Court of Parliament was but the powers which our Parliament were conferred with, could never be equated with the High Court of Parliament, particularly because of the inclusion of fundamental rights and the two searchlights in the Constitution which protected these fundamental rights, namely, article 32 and article 226 which conferred powers on the courts, the Supreme Court and the High Court, to issue writs for infringement of fundamental rights. No other court in the country can do it. No other authority in the country can do it, save and except the superior judiciary, that is to say, the High Court and the Supreme Court of India. Therefore, the consequence of *Keshav Singh's case*, of the Presidential Reference,[7] was that articles 226 and 32 were placed on a pedestal and not by reason of any thing very special in the Constitution itself, but by reason of the nature of the function which the court had to perform. On the one hand the court did it not for its own dignity, it did it in order to safeguard the rights of citizens and that's very important. If a person had the right to liberty and the right to life, it was guaranteed under article 21, it could not be taken away except in accordance with law. What was meant was that it could not be taken away save and except if the established courts in the country, said, it was taken away in accordance with well-established procedures which were sanctified by law. And since Parliament was not a court, nor a branch of a court nor a High Court of Parliament, it was denied this power. Otherwise the confrontation had necessarily to continue and the question would then have been, which is supreme, the Supreme Court or Parliament?

In fact two Cabinet Ministers a few years ago said, "What do these seventeen gentlemen in the Supreme Court think and who do they think they are? Do they think they are supreme or more supreme than we five hundred and odd members of Parliament?" Then some of us were constrained to say and write that it is not that the seventeen gentlemen are supreme who because they sat in the Supreme Court, but it was because the Constitution is supreme, and they fortunately or unfortunately are the ultimate interpreters of what the Constitution says and means. No one can interpret the Constitution, save and except the highest court. They may interpret it wrongly; quite often they do, believe me. But interpreting it wrongly, and the power to interpret it, are two entirely different things, and the power is confined to the judge. That is why you will find and this is a very important lesson for all of you to know, that when a judge, whether Chief Justice of India or Chief Justice of a High Court, demits his office and the next day gives an opinion to you or to me that such and such a thing is unconstitutional, you can treat it as waste paper because that has no authority of law. The Constitution pays no regard to personalities. The Constitution only pays regard to the office, whoever fills that office. He may think he is the most brilliant man in the world but the moment he demits the office he demits the power which attends to that office and the individual, howsoever high he may be, his opinion is not worth anything at all save and except that you may accept it or not find an argument on it. You cannot cite it, you cannot annex it, you cannot even quote from it. And that is the distinction which the Constitution recognises, and that is why it is not seventeen men who are supreme, it is the Constitution which is supreme and it is the persons for the time being filling the resposible positions which they do and these are the persons

who speak for the court. And it is therefore the court in essence which is supreme and never the people who fill that or who are for the time being members of the court, for they are only passengers in the court. Some are more distinguished than others, and others are less distinguished, and so on,- in every court you will find that.

So, the historical origin of the doctrine of privileges was the reason the Supreme Court in *Keshav Singh's case* denied our Parliament the same historical authority which the House of Commons enjoyed.

I must tell you that in Australia the position is different. This article 194(3) was taken almost verbatim, from Section 49 of the Constitution Act of Australia, as it is called, passed by the British Parliament in 1901. It has stood the test of time of eighty odd years, and whenever anybody talks of codifying privileges - you ask any member of Parliament, he will know this branch of the law very well, and he will tell you immediately "Has the Australian Parliament ever codified it?" It has been in existence for eighty seven years and nobody has ever bothered to codify it and they never will. They never will, because you have given to them a power which at once is a little vague, a little nebulous, but it is best left that way. And I think it is best left that way, quite frankly though I know that here I am in a total minority. The Press Council said that the privileges should be codified. The Law Commission said that it should be codified. I do not agree. My own view is that let ill alone or let well alone, depending upon how you look at it. Because this is like almost pushing the great animals of the jungle to fight each other. The tiger and the elephant never fight each other in the jungle. You will never see them fight unless they are pushed into a corner. So do not push these great organs of State into a confrontational position, if

possible, - as far as possible. There is of course that gentleman who is a Speaker of the Legislative Assembly in Madras, Mr. Pandyan I think, he is and he takes the cake for not being at all reasonable. He commits people to prison and does all manners of things. The High Court releases them and he issues a writ against the High Court, and things of that sort, and it goes on. But then you will get people like this. You get odd people. You have to. We are made up of odd people. We are all hordes of so many different types of people coming from different walks of life, different upbringing etc. We have to, I think, deal with it. I think we can't just make a big issue about one gentleman suddenly losing his entire sense of responsibility and doing something absurd. And therefore, if you talk of codifying privileges it will boomerang, because you will get back the amendment which professor K.T. Shah had moved in the Constituent Assembly. And the amendment he moved which was fortunately rejected was that any question of privileges or breach or contempt would not be inquired into in any court of law. Now suppose that was (article) 194(5) or (6), what would you do ? It would be a disaster because this is a Constitutional mandate as much as your power under 226. Your powers are clipped because the Constitution says it shall not be inquired into. And it would be very difficult to say that it could be inquired into where there is evidence of malafides because it is very rare, very difficult at least, to attribute malafides to a large body of people like the legislators or the members of Parliament. In fact it has never been done and the courts have never attempted even to do that. Therefore, there is a danger of codifying privileges by a constitutional amendment - and it is very easy, as you can as well see, how easy it is for brute majority to push through constitutional amendments which perhaps would be an extremely alarming state of affairs.

Of course you must have read this morning's newspaper and I was myself quite amazed how the Supreme Court of Pakistan has stayed the Speaker's summons to their Parliament which has the same privileges as we do in our Parliament although they have not had the functioning of Parliament for more than say about five or six years of their entire tenure because most of it is spent on martial law and things like that. So they don't have that parliamentary tradition. But how the Supreme Court of Pakistan on vacation day or some such thing, issued an injunction against the Speaker not to do something. That would be quite impossible for us to consider in this country,- for a judge to issue an injunction against the Speaker.

But, and this is where I come to the last case which has not found its way into the law reports but which I request you to please listen to carefully, because you won't find it written anywhere. I will unravel it because I happened to have been in the case. I happened to know a few facts and we have the orders of the court. There was a Telugu newspaper called "Eenadu", quite well-known and published in Andhra Pradesh. Now the editor of the "Eenadu" was a great friend of the Chief Minister Mr. N.T. Rama Rao and Mr. N.T.R. was very keen,- this was in the eighties,- to abolish the Legislative Council of A.P.. The reason was not any inhibition against another chamber. The reason was purely political because the upper House in A.P. had more Cong. (I) members than in the lower House. That was why he said, "Abolish the upper House," because otherwise none of our legislation can get passed because the Cong. (I) had a majority in the upper House whereas the Telugu Desam had a majority in the lower House. Now "Eenadu", this newspaper, used to carry on this campaign on behalf of the political party, and constantly would be pinpricking the Legislative Council. Sometime in March 1983, in one of its issues, it reproduced some proceedings about

some Bill or the other in the Legislative Council with a caption, and the caption was "Pegalu Galaba". Now Pegalu Galaba in Telugu means "elders in commotion". But it is a derogatory expression just like many of our Indian languages have certain derogatory meanings to words. If you say 'elders in commotion' no one is going to bother too much about it. But if you say 'those damn elders in commotion', or you say it in a particular way, now this is the way in which it is said in Telugu which excites the attention of people, and people get very upset when you say, "these wretched elders in commotion", in a sense derogatory. Now immediatley of course they were looking for something to get hold of Mr. Ranoji Rao who happened to be my client and who was the editor of this newspaper. So they immediately issued a notice to him asking for his explanation. In his explanation of course he said all manner of things and the Privileges Committee which consisted mainly of the (Cong.-I) men, found him guilty of breach of privilege. And they were determined to send him to jail. There was no doubt about that as well. It was not a warning. It was just to make him eat humble pie because they had suffered quite a lot because of his critical and semi-humorous writings in Telugu. So, then of course he got the wind up and Mr. Ranoji Rao, wondered what should be done. He knew that the Privileges Committee would table their resolution in the House, which they did, and the next thing was that the Chairman of the Legislative Council, issued a warrant addressed to the Commissioner of Police, Hyderabad, the seniormost Commissioner, directing him to bring Mr. Ranoji Rao before the House. Promptly we moved the court, the Supreme Court, and there are only a series of orders which have been passed which I have clipped together- it was the Constitutional Bench of the Supreme Court which meant to hear this matter. Naturally it involved wider issues than merely Mr. Ranoji Rao being sent or not sent to prison. The Bench consisted of the

Chief Justice and the other seniormost judges then on the Bench including the present Chief Justice. So when we moved a writ petition they issued a show cause notice,- after hearing all the facts etc. because we said "Pegalu Galaba" does not mean anything and it is really not disrespectful and so on,- addressed to the Secretary, Government, Legislative Department and directed that the petitioner shall not be arrested in persuance of any warrant or process issued by the Council or by the Committee of Privileges, in case such a process or warrant is issued because it was not quite sure whether the Chairman had issued the warrant. The Editors' Guild intervened, and their intervention was allowed and this order was passed on the 20th of March, 1984. The court directed that the writ petition should come up a week later. A week thereafter we filed an affidavit saying that we attempted to serve this but neither the Chairman, nor the Secretary of the Legislative Council,- would accept service of this court summons.

And rightly so as you know they take a very strong view : No member of Parliament if he is served with respect to something that happened in Parliament, is expected to accept any court service because there is a resolution of Parliament,- of our Parliament,- which says that if he does so, he will be guilty of the contempt of the House. So his first duty is to send it to the Speaker and the Speaker decides what to do. So, similarly, these people were served, attempted to be served, copies were left, they said you do what you like, we refuse the summons. So, we reported this back to the Court and then we thought the best thing was to ask for a communication to the Commissioner of Police because he was the executing authority. So at our request a telegram was sent to the Commissioner of Police not to execute it. And he was the most miserable man in Hyderabad that day because here he had a warrant

from the Speaker, "Arrest Ranoji Rao and bring him to us", and there was the Supreme Court, five judges saying, "If you do any such thing, you will be held for contempt of the Supreme Court," and the poor fellow had to go for contempt either to one house or the other and it was quite a pitiable business. In fact Mr. Ranoji Rao told us later that the Commissioner formally,- because he had to keep his record clean,- went taking the warrant of the Chairman even after this stay to Mr. Ranoji Rao; he offered him tea and had a nice chat etc. with Ranoji Rao and said, "Incidentally there is this warrant of the Chairman",- which Ranoji Rao refused,- "but of course, if you do not want to come, please say so". And that is how he saved his skin. Because he tried to execute the warrant, he would not come, and he could not physically take him away, and that is how the Commissioner who was a wise old chap, managed to deal with this matter. Then, of course, on the next day, the Advocate General, the Attorney General, all sorts, hordes of big guns, appeared, and they went on for an hour or so before the Supreme Court five judges' bench, and ultimately the court issued a rule, maintaining and confirming the stay,- that is the order which was passed on the 1st of August, 1984,- they maintained the stay, and in the meanwhile they directed that parties should file written views and there the matter rests. But of course the hearing has become infructuous because the Legislative Council of Andhra Pradesh, as you know, was abolished pursuant to a resolution passed by the Legislative Assembly under the relevant article in the Constitution[21] submitted to Parliament, and Parliament when such a resolution is submitted, is bound[22] to abolish the Council. And so that put an

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21. Art. 169.

22. The article, however, says, "Parliament may", etc. There is controversy as to whether Parliament is so bound or the resolution has merely enabling effect.

end to the warrant. But the case established, or rather it took into cognizance, and is an example of the effectiveness of the decision in *Keshav Singh's case* because in *Keshav Singh's case*, they said in the last paragraph, please remember. "Nothing we have said here applies to anything that is done within the walls of the House". Everything that is said, namely, bringing people across, committing them for contempt, like Keshav Singh, who published something etc., etc., is all matters relating to outside the walls of the House. Therefore, for anything done outside the walls of the House, *Keshav Singh's case* is the settled law on the subject and in *Eenadu's case* which I have just recited to you all what the court did was, broadly speaking, to follow the law that is already declared by it, that is to say, if they were entitled to question the warrant of the Speaker, they were entitled to question the decision of the House if it concerned the liberty of the citizen. Therefore, article 21, as *Sharma's case* said, always applies to a party who comes and complains before the Court, and that article is not denuded of its authority, because it happens to be against the Speaker of the Legislative Assembly or even of Parliament. Therefore, whilst article 19(1)(a) has been put into cold storage so far as article 194 is concerned, that is to say, you cannot say that article 19(1)(a), which gives a right to free speech or to write anything you like etc., etc., subject only to the restrictions mentioned, would include a right to say anything that has happened in Parliament or, of Parliament or of Speaker. You could not do that, if your liberty came into question you could always petition a court under article 21, and the court would grant you relief. And of course, I must mention lastly about poor *Keshav Singh's case*, because when the matter came up once again, there was no brief for him. He was the fellow who committed the contempt. He was not a judge. He was not an

advocate. No one bothered too much about him. When his petition came up,- after the answers given in the *Presidential Reference*?- before the Allahabad High Court, the two judges of the Allahabad High Court [23] said that since what he said in a newspaper was something which happened inside the walls of the House, although we may have power to do something, we do not, and we think that the House is justified in committing him for seven days and therefore we direct that he go into jail for seven days. The way they got over the other decision of AIR '54, Supreme Court, *Reddy's case*[12], namely, "Produce the man before the magistrate in twenty-four hours", breach of that Constitutional mandate, they said that, that only applies to a charge, when you are charged of doing a thing and you are arrested pending the charge. But when you are put in jail- when you are actually punished, there is no question of producing him in court within twenty-four hours. When all of you[24] commit somebody or convict somebody to imprisonment for six months or four months there is no question of producing him within twenty-four hours. So that is how the division bench of the Allahabad High Court got out of that [article 22(2)], and said that there was no breach of any Constitutional right because the man had been convicted and after conviction, [article 22(2)] is impossible to operate. It operates before conviction, not after conviction.

Now these are some of the highlights of proceedings that have taken place in Parliament, the extent to which our Parliament has gone, our Courts have gone.

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23. AIR 1965 All 349 (per Takru and G.C. Mathur JJ) (The Bench was different from the one which had granted bail,- N.V. Beg and Sehgal JJ).

24. namely, the district and sessions judges (the audience).

In spite of all, including the U.K. Parliamentary Commission having recommended codification of privileges, privileges will never be codified. But the important thing that could be said, or if there is one word in which one could describe the attitude, that all should proceed with "circumspection". It is a delicate matter, very grey area. It is a very difficult area and when judges pronounce upon matters which pertain to Parliament, they normally respect what Parliament does, just as they expect Parliament not to discuss the conduct of a judge, (for instance, article 121 in respect of Parliament and article 211 in respect of State Legislature).

But, of course, the most recent case, and once again that's not a case, because nothing has come into court, was the one about the Lentin Commission in Bombay. You must have read about it. Mr. Justice Lentin, one of the distinguished judges in the Bombay High Court, is quite a senior judge, 4th or 5th in the hierarchy, was appointed as a Commission of Inquiry to look into the death in the J.J. Hospital, and he went at it with quite a fervour and ultimately found that there was much more to it than the J.J. Hospital deaths. There was a whole bunch of corrupt people who were permitting all sorts of pharmaceuticals to be palmed off to the J.J. Hospital. Most of it was not only not healthful but definitely injurious to health and many ministers had also been involved,- in fact he named some of them. Now this of course got the State Assembly up in arms and after he compiled his report, one gentleman got up in the State Assembly and said that Justice Lentin was a pervert, and a crackpot and a crook, and he ought to be thrown out or words to that effect. Of course, when things like that happen, then the bar association in Bombay (in fact there are two bar associations, the Western India Bar Association and the Bombay Bar Association) passed resolutions condemning the House for behaving in such a fashion and for calling the judge a crook and such and such.

To this of course the immediate response of the entire House was to summon all the members who passed that resolution for breach of privilege, they issued contempt notices to everybody including Mr. Palkhivala who sponsored that resolution. The Supreme Court Bar Association has done it more recently, and perhaps some of us will be hauled up there once again in Maharashtra. Or probably nothing may ultimately come of it.

But the disquieting thing is not that anybody is likely to be committed for anything by the State Assembly,- but that the resolutions of the House on both occasions were passed unanimously, that is to say, by all political parties-not by the Cong.(I) alone, not by the BJP, but by the whole combination of them. That is why, you see there is a certain trade unionism amongst Parliamentarians. Just as there is a trade unionism amongst lawyers, amongst judges, so also there is a trade unionism amongst Parliamentarians. It does not matter which side of the coin you are on, that is, the colour of political affiliation, but you happen to want to save your institution. Just like that absurd strike which the lawyers in Delhi staged some months ago, I say absurd because that is my own view and I have said it before as well. Just because you have a good cause to complain,-you caannot go on complaining by going on strike. That is my own view and in any case, once we strike too often a gentleman like Mr. Justice Goyal and his colleagues on the Bench may think that we can dispose of cases far better without advocates than with them and I think that is something we should heartily avoid because for centuries they have given the impression that without a lawyer a man just does not stand a chance; but now-a-days it has become a fashion that without a lawyer you perhaps stand a slightly better chance than you do with one! But that is neither here nor there,- that has nothing to do with the question at hand.

The important thing therefore to remember is that the problem is a live one and I am very glad that Justice Goyal asked me to speak on it because it is very rare to find people who are interested in it, but it is a topical one because now everybody is interested in it. The moment something happens and people issue contempt notices against judges or lawyers, and things like that, then everybody wants to know what it is all about, how does it all come about? But so far as you are concerned, it is a matter which concerns all of you. It concerns the powers which you will exercise or not exercise or refrain from exercising. But never fear to exercise that power. This is most important. No Judge, I believe, once he knows what the law is, once he is convinced that a particular position is the law, should ever be afraid to do anything, no matter what happens,no matter which newspaper writes what. Because that is the only salvation that we have in this country, namely, not to bother too much about what these gentlemen of the press or people in the streets etc., do, because they are all ephemeral. There will be a hartal today for you, there will be a hartal against you the next day. So, never bother too much about what the public is; it is very very ephemeral. It will support you on one day, it will throw you down the drain on another day, and therefore, the far better thing is to stick to what you believe is the law and let everybody do exactly as they please. That is the only way in which you safeguard the lives, the liberty, and protect the lives and liberty of the citizens of this great country.

There is one little bit which I must show to you and it comes from Australia,- the way they have dealt with the problems of parliamentary privilege. They have not codified that privilege, but what they have said is that whenever anybody in the House defames somebody outside the House, it

often happens, you say such and such a group of industrialists are a bunch of crooks, it all comes the next day in the press that such and such industrialists are a bunch of crooks, because it is free reporting, and then the paper is completely protected under the Act, and there is just nothing anybody can do except to say "Come outside and utter it again and see how I sue you" and things of that sort, and short of that you cannot do a thing. So what they have done, and it is a very useful thing. I am reading from an article in the Economist and the heading of the article is "Dear dishonourable member". That is how the article starts. "Dear dishonourable member:" What they have done is that, you have a right to reply, and this is what it says : "A politician gets up in Parliament and makes an attack on an ordinary citizen. What he says may be defamatory and untrue but the citizen cannot sue the politician. He is protected by the system of privilege in operation in most Parliaments of the Westminster sorts. In Australia, where politicians' language is as rough as anywhere, to put it mildly, the offended citizens are at least to be given a chance to answer back.

The politicians' privilege is the fruit of English Parliament's victory over the king in the seventeenth century. Most Parliaments have unlimited - although rarely used,- powers to punish a citizen foolhardy enough to make an intemperate reply to something Parliament utters. Most would-be reformers have abandoned the idea of tinkering with the system for fear of undermining a member of Parliament's fearlessness, ability to expose matters of importance. Instead, they have preferred to look at the palliatives, the politicians' sense of fair play; the censure of his colleagues, frowns from the Speaker.

In Australia, way back in 1984, a Parliamentary Committee suggested a right to reply. A judgment by an Australian court which curtailed the powers of

the Senate Committee prodded the Senate into reform. Now anyone who believes that he has been injured by a senator's words can ask to have a response written into Senate's records. The lower chamber, the House of Representative is expected to adopt a similar procedure in the fairly near future. The right to reply is a limited one. The reply is scrutinised first by the Senate President, then by the Privileges Committee. It can be rejected if it is trivial, vexatious, or offensive. It has to be succinct and avoid rude references to other people. No judgment is made about the truth of either the original statement or the reply, but the reply, if accepted, becomes a privileged part of the Senate record for what that is worth.

If the reform seems to work, cautious Parliamentarians in at least a few other countries may be tempted to copy it. In New Zealand the Attorney General and the Deputy Prime Minister, Mr. Geoffrey Polmer had long railed against excessive parliamentary privilege." That is how the Australian view is, and it perhaps would meet a large number of problems that have arisen.

I don't think I can add anything more except to say how pleased I am to see you all, to meet you all, and speak to you all, and I am very glad that Justice Goyal asked me to come here and speak. There is this paper[25] on Parliamentary Privilege which gives a historical background which I am leaving for you so that you can have a glance at it. I think there are more than one copy I brought here, yes there are three copies, which would be quite interesting to some of you.

Thank you one and all.

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25. appendix - 3.

Appendix - I

IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION

WRIT PETITION NO. 1394 OF 1984

Shri Ranoji Rao ... Petitioner

- Versus -

Secretary to Govt. Legislature Department, Andhra Pradesh Legislature & Others ... Respondents

20.3.1984

ORDER

Issue show cause notice to Respondent No. 1, (Secretary to Government, Legislature Department, Andhra Pradesh Legislature (Council Secretariat), Public Gardens, Hyderabad) returnable on March 27, 1984. We direct that the petitioner shall not be arrested in pursuance of any process or warrant issued by the Legislative Council, Andhra Pradesh, or by the Committee on Privileges of the Legislative Council, in case such a process or warrant is issued.

Intervention application filed by the Editors' Guild of India, is allowed.

The Writ Petition will be listed on March 27, 1984.

Sd/- Chief Justice
Sd/- V.D. Tulzapurkar J
Sd/- R.S. Pathak J
Sd/- D.P. Madon J
Sd/- M.P. Thakkar J

SUBSEQUENT ORDERS OF THE SAME BENCH

27.3.1984

Counsel for the petitioner has filed affidavit in the Court today which is taken on record.

We direct that the notice shall be served on the Secretary to Government, Legislature Department, Andhra Pradesh Legislature through the Registrar of the High Court of Andhra Pradesh returnable in two weeks from today.

CMP No. 6821/84 is allowed.

-o-

27.3.1984

A telegram be sent to the Commissioner of Police, Hyderabad and Respondent No. 1, Secretary to Govt. Legislature Department, Andhra Pradesh Legislature that they shall not arrest the petitioner or cause him to be arrested.

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15.4.1984

Counsel for the petitioner has filed an application for amendment of the writ petition today in Court which is allowed.

Issue notice to the Attorney General for India and Advocate General for the State of Andhra Pradesh returnable on 31st July, 1984.

The interim orders already granted by this Court will continue until further orders of this Court.

The intervention applications will be listed along with the writ petition on 31st July, 1984.

-o-

1.8.1984

Issue Rule Nisi, Stay confirmed.

We direct that the parties to this writ petition and interveners whose applications for intervention have already been allowed will file their respective written briefs within two months from today.

Amendment of the writ petition is allowed.

Application for intervention filed by Anil K. Nauriya is adjourned to the hearing of the writ petition.

THE KARNATAKA LEGISLATURE (POWERS, PRIVILEGES AND IMMUNITIES) BILL, 1988

(L.A. BILL NO. 14 OF 1988)

A Bill to declare and define the powers, privileges and immunities of the two Houses of the State Legislature and of the members and the committees thereof; to secure freedom of speech and debate or proceedings in the Houses; to provide for the punishment of breaches of the privileges of the Legislature; to give protection to persons employed in the publication of the Reports, papers, minutes, votes or proceedings of the Houses and matters connected therewith.

Whereas by Article 194(3) of the Constitution of India 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 an Act of the State Legislature;

Whereas it is expedient, necessary and desirable to declare and define the powers, privileges and immunities, of the two Houses of the State Legislature and of the members and the committees of the Houses;

Whereas it is expedient, necessary and desirable to make other provisions, so that the State Legislature and the members and the committees thereof may duly and properly discharge their duties and functions;

Where as it is expedient, necessary and desirable that the powers, privileges and immunities of the Houses of the State Legislature should be clearly known and declared and defined to the people of the State and to all concerned in conformity with the rights of the citizens.

Be it enacted by the Karnataka State Legislature in the Thirty-ninth year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. Short title and commencement

(1) This Act may be called the Karnataka Legislature (Powers, Privileges and Immunities) Act, 1988.

(2) It shall come into force at once.

2. Definitions

(1) In this Act, unless the context otherwise requires,—

(a) "Committee" means a committee, which is appointed or elected by the State Legislature or nominated by the Speaker or the Chairman, and which works under the directions of the Speaker or the Chairman and presents its reports to the State Legislature or to the Speaker or the Chairman;

(b) "House" means the Karnataka Legislative Council or the Karnataka Legislative Assembly, and includes a committee;

(c) "Members" means a member of the House, and includes the Chairman of the Legislative Council, the Speaker of the Legislative Assembly and any member presiding in the House or in the committee;

(d) "Officer of the House" means any person, who may, from time to time, be appointed to the staff of the House, either permanently or temporarily, and includes any police officer on duty within the precincts of the House; and

(3) "Speaker" or "Chairman" includes the member for the time being presiding over the House.

(2) Words and expressions used but not defined in this Act shall have meaning assigned to them in the Constitution of India.

CHAPTER II

PRIVILEGES AND IMMUNITIES

3. Freedom of speech in the Legislature

There shall be freedom of speech in the House as provided in clause (1) of Article 194 of the Constitution.

4. Immunity from legal action

No member shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the House and no person shall be so liable in respect of any publication by or under the authority of the House of any report, paper, vote or proceeding.

5. Exemption from personal appearance

A member shall be exempt from personal appearance in any civil or revenue court or before any tribunal during the sittings of the House.

6. Arrest of member etc.

No arrest shall be made of a member and no process, civil or criminal, shall be served on a member within the precincts of the House without obtaining the permission of the Speaker or the Chairman, as the case may be.

7. Procedure after arrest, detention etc. of member

(1) Any member is arrested, detained, convicted or imprisoned, information of such arrest, detention, conviction or imprisonment together with the charges against or grounds of detention, the place of detention of such member shall forthwith be sent to the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, in the form specified in the Schedule-I by the person under whose authority or order the arrest, detention, conviction or imprisonment is effected.

(2) If any member so arrested, detained, imprisoned or convicted is enlarged on bail pending investigation or trial or is released after conviction pending an appeal, or otherwise released such fact shall be intimated to the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be, in the form specified in the Schedule.

(3) If the Speaker or the Chairman, as the case may be, is of opinion, on receipt of information under sub-section (1) or otherwise, and after consulting the wishes of the House that the presence of such member is essential for the purposes of the proceedings of the House, he shall inform the State Government accordingly, and the State Government shall take necessary steps forthwith to bring such member on such escort as it may consider necessary or in such manner as it may deem necessary, to the House and such member may attend such meeting or meetings of the House on such day or days as specified by the Speaker or the Chairman :

Provided that the State Government may take such steps as it may consider fit for the custody of the member during the time the presence of such member is not necessary in the House.

8. Protection for giving evidence

No statement made by a person in the course of giving evidence before the House shall subject him to, or be used against him in any civil or criminal proceedings except a prosecution for giving false evidence by such statement.

Provided that the statement,-

(a) is made in reply to a question, which he is required by the House to answer, or

(b) is relevant to the subject matter of the inquiry.

9. No member or officer to give evidence elsewhere in respect of the contents of evidence given before the House

No member or officer of the House shall give evidence elsewhere in respect of the contents of evidence given or of the contents of any manuscript or document laid before the House or in respect of any proceedings of, or examination had at the Bar or before the House without the special leave of the House first had and obtained.

10. Exemption of salaries and allowances from attachment

Salaries and allowances payable to a member under the Karnataka Legislature Salaries, Pension and Allowances Act, 1956 (Karnataka Act 2 of 1957), to the extent of four hundred rupees and two-thirds of the remainder, shall not be liable to attachment in execution of decree under the provisions of the Code of Civil Procedure.

11. Immunity in respect of act done in obedience to authority of House

No person shall be liable to any proceedings in any court for any act done in obedience to, or by or under the authority of the House.

12. Power to appear before the House and to produce book etc.

(1) The House may direct any person to attend before the House and to produce any paper, book, record or document in the possession or under the control of such person.

(2) Any order to attend or to produce documents shall be notified to the person by summons under the hand of the Secretary to the House under the orders of the Speaker or the Chairman of the House, as the case may be, and in every such summons there shall be stated the date, time and place where the person summoned is required to attend.

(3) Such summons shall be served by the delivery thereof or leaving at the usual or the last known place of residence of the person concerned, through the District Magistrate, within whose jurisdiction the said residence lies, who shall get it served by any person authorised by him in this behalf.

(4) Any person so summoned to attend shall be entitled to receive from the Secretary to the House, such travelling and daily allowance, as may be admissible under rules framed in this behalf.

(5) The House may require any such witness appearing before it to be examined upon on oath or affirmation and it shall thereupon be lawful for the Secretary of the House or any person authorised by the Speaker or the Chairman, as the case may be, to administer an oath or affirmation.

(6) Any person summoned to appear who refuses or fails without reasonable cause, to appear to produce on requisition any paper, book, record or document, as the case may be, which may be in his possession, power or control, shall be punished with imprisonment which may extend to one year and with fine which may extend to one thousand rupees.

(7) Any person appearing as a witness who intentionally gives a false answer to any question or examination, shall be punished with simple imprisonment which may extend to two years and with fine which may extend to two thousand rupees.

(8) Every witness so summoned and examined, shall answer fully and faithfully any question put to him before the House and shall not be liable in civil or criminal law for any such answer given or tendered by him and all proceedings arising thereof in any court shall be terminated on the production of a certificate signed by Speaker or Chairman of the House under seal of the House that the witness was so required to answer.

13. Suspension or expulsion of member for disorderly conduct

(1) A member who disregards the authority of the chair or abuses the rules of the House by persistently and wilfully obstructing the business thereof may be suspended from the service of the House after a resolution for such suspension is adopted by the House in accordance with the Rules of Procedure and Conduct of Business of the House.

(2) A member, who after due enquiry by the committee of privileges constituted under the Rules of Procedure and Conduct of Business, is found guilty of disgraceful, disreputable or heinous conduct or a breach of privilege of the House, may be expelled from the House after the House adopts a resolution for his expulsion therefrom.

(3) A member, who is suspended from the service of or expelled from the House shall not be entitled to enter the House and shall not be entitled to any of the privileges and powers of a member or to draw any salary or allowance payable to him as a member of the House for the period of suspension or expulsion :

Provided that the period of such suspension shall not be deemed to be absence under clause (4) of Article 190 of the Constitution of India.

14. Arrest of member, for causing disturbances in the House

Any person creating, or joining in any disturbance or demonstration in the House or in its precincts during its actual sitting may be arrested without warrant on the verbal or written order of the Chairman or the Speaker, as the case may be, and may be detained in the custody of an officer of the House pending the determination by the House whether or not such person shall be punished for contravention of the provisions under Chapter III of this Act, but no such person shall be kept in custody after the termination of the House.

15. Power of House to punish for breach of privilege

(1) The House shall have power and jurisdiction to punish any member or other person for breach of any of its privileges.

(2) The Rules of Procedure and Conduct of Business of the House may contain incidental or supplemental provisions with respect to the procedure to be followed by the House or by the Speaker or Chairman, as the case may be, in cases where it is alleged that contravention of any of the provisions under Chapter III of this Act has taken place and may, in particular, provide for the appointment of committees of privileges and their powers, functions and procedure.

(3) No person shall be punished by the House for contravention of any of the provision of Chapter III of this Act unless he is informed of the charges made against him and is given a reasonable opportunity of being heard in respect of the charges and he shall have the right to be defended by a legal practitioner of his choice and to confront and cross-examine witnesses against him and to adduce evidence in his defence.

CHAPTER III

PENALTIES

16. Penalties that may be imposed by the House

The House may punish the contemnor by imposing any one or more of the following penalties, namely : -

(a) imposing a sentence of imprisonment;

(b) imposing a sentence of fine;

(c) administering admonition or reprimand at the Bar of the House;

(d) ordering, in the case of an offence committed by a member of the House, the suspension from the service of the House for a period not exceeding one month or his expulsion from the House;

(e) ordering, in the case of an offence committed by a person who is not a member, that he remove himself or be removed from the precincts of the House or by prohibiting such person from entering the precincts of the House for a period not exceeding six months.

17. Wilful obstruction of member in the discharge of his duties

Any person wilfully obstructing in any manner a member or officer of the House from coming to or going out of the House or otherwise in the lawful discharge or executions of his duties and functions as such member or such officer shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

18. Wilful disobedience of order etc.

Whoever wilfully refuses or fails to obey any order or resolution of the House under this Act or any order of the Speaker or Chairman, which is duly made under this Act shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

19. Assault etc.

Whoever assaults, insults or threatens a member or an officer of the House in order to restrain him from or influence him in the discharge of his duties and functions as such member or officer shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

20. Disturbance of proceedings in the precincts of the House

Whoever creates any disturbance within the precincts of the House whereby the proceedings of the House are or likely to be interrupted or obstructed shall be punishable with imprisonment for a term which may extend to six months or with fine of two thousand rupees or both.

21. False imputation etc.

Whoever makes any maliciously false or scandalous charge or imputation or defamatory statement or casts any reflection concerning a member in his character or conduct as a member of the House shall be punished with rigorous imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both :

Provided that no such imputation, statement or reflection shall be an offence if,--

(i) it is true or is made for public good;

(ii) it is made in good faith concerning the conduct or character of a member in his capacity as such member.

22. Publication of false report etc.

Any person who wilfully publishes a false or perverted report of the debates or proceedings of the House or wilfully misrepresents any speech made or vote given by a member in two House shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

23. Publication of proceedings of secret sitting

Whoever wilfully publishes a report of the proceedings of an incamera sitting of a House shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to two thousand rupees or with both.

24. Molesting etc. of witness

Whoever molests, threatens, causes any bodily harm or deters or in any way unduly influences any witness in regard to any evidence given or required to be given by him before the House shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both.

25. Bribery

(1) Whoever being a member or an officer of the House accepts any bribe, whether in money or in kind or services, to influence him in his conduct as such member or officer, or any fee, compensation, gift or reward for or in respect of any promotion, support or opposition to any Bill, resolution, motion, question, petition, rule, matter or thing submitted to or intended to be submitted to the House shall be punished with rigorous imprisonment for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both.

(2) Whoever gives or offers any such bribe or fee, compensation, gift, reward or money shall be punished with rigorous imprisonment for a term which may extend to five years or with fine, which may extend to fifty thousand rupees or with both.

26. False statement etc.

Whoever wilfully and intentionally makes any statement in or to the House which he knows to be false or presents to the House any document which he knows to be false or forged, with intent to decieve the House shall be punished with rigorous imprisonment for a term which may extend to five years or with fine which may extend to fifty thousand rupees or with both.

27. Publication of report before presentation to House

Whoever publishes a summary, extract or substance of any report or part thereof of a Committee of the House before the same is presented to the House shall be punished with imprisonment for a term which may extend to one month or with fine which may extend to one thousand rupees or with both.

28. Abetment

Whoever conspires or attempts to commit or aids or abets in the commission of any of the offences punishable under this Act shall be punished in the same manner as if he had committed the offence.

CHAPTER IV

MISCELLANEOUS

29. Application of the Act to other persons

The provisions of this Act and in particular sections 3 and 4, shall apply to persons, who by virtue of the Constitution of India have a right to speak in and otherwise take part in the proceedings of the House as they apply in relation to the members of the House.

30. Power to make rules

The Board consisting of the Chairman of the Legislative Council and the Speaker of the Legislative Assembly may, after previous publication, make rules to carry out the purposes of this Act.

SCHEDULE

I have the honour to inform you the Sri... .. .. Member of the Legislative Council, who was arrested and released on .... is enlarged on bail on ..... pending investigation/trial of the case and who was convicted on .... and imprisoned for .... (period) for ..... (reasons for conviction) was released on bail pending appeal (or, as the case may be, released on the sentence being set aside on appeal) on the ....

STATEMENT OF OBJECTS AND REASONS

The powers, privileges etc., of the Houses of the Legislature and of the members and committees thereof are provided for under Article 194 of the Constitution. Freedom of Speech in the Legislature of every State has been guaranteed in accordance with clause (1) of this Article. Immunity against court proceedings in respect of anything said or any vote

given by a member in the Legislature or any committee thereof is provided by clause (2). This immunity is also extended in respect of publication by or under the authority of a House of any report, paper, votes or proceedings.

The powers, privileges and immunities in other respects, as provided by clause (3), shall be such as may from time to time be defined by the Legislature by law. It is only until such time as the Legislature may choose to so define them, that the powers, privileges and immunities shall be those which existed before the commencement of the Constitution (44th Amendment) Act, 1978.

In view of this constitutional provision, the aforesaid powers, privileges and immunities are now governed by the precedents and convention and rules of the House.

It is deemed expedient, necessary and desirable that the powers, privileges and immunities of the Houses should be clearly known and declared and defined to the people of the state and to all concerned in conformity with the rights of the citizens. It is also deemed expedient and necessary and desirable to define them and to make other provisions so that the State Legislature and the members and the committee thereof may properly discharge their duties and functions.

Hence the Bill.

A. Lakshmi Sagar,
Minister for Law &
Parliamentary Affairs

Appendix-3

EXTRACT FROM 'ESSAYS IN CONSTITUTIONAL LAW'

R.F.V. Heuston

[Publishers-Stevens & Sons, 1964]

PARLIAMENTARY PRIVILEGE

Around parliamentary privilege some of the great battles of the Constitution have been fought. Every schoolboy knows how King Charles I in his high-crowned black hat was met by muttered cries of "privilege, privilege" as he walked up the floor of the House of Commons to address to Speaker Lenthall his request for the arrest of the five Members who opposed his policy of taxation. Equally every first-year student of law has come across the rather unattractive characters of John Wilkes and Joseph Stockdale, who are always represented as heroes of the struggle for civil and religious liberty. Parliamentary privilege began as a means of ensuring to the Crown the unhampered attendance of its servants when engaged on public affairs. Its enforcement lay largely with the Crown until Henry VIII permitted the Commons to assume jurisdiction. Thereafter it served to enhance the prestige of the Commons and under the Stuarts was a weapon often used against the Crown itself. In the eighteenth century the harsh and reckless use of parliamentary privilege, for example, to stop poaching on a Member's property, brought about a reaction. It was in this period too, that we come across the first of the great series of cases which lay down the proper place of privilege in the Constitution. For if the royal prerogative may be defined as that law for the monarch which is no law for the subject, so parliamentary privilege can be defined as that law for the Member of Parliament which is no law for the electorate. But it is law; both prerogative and privilege are part of the common law. It is for the ordinary courts to decide whether or not the prerogative or privilege claimed exists and what its limits are, although it is true that in niether case will they inquire into the mode of user of an admitted prerogative or privilege.

We shall see that this position was not reached without much argument and that for many years the House of Commons claimed and in the opinion of some, still claims, the right to determine not merely the breach of an admitted privilege but also whether or not the privilege in question exists. The better opinion today is, however, that it is for the courts alone to determine questions relating to the existence and extent of parliamentary privilege. The great cases on this matter centre in the main round the privilege of freedom of speech which the Bill of Rights, 1689, conferred in the following terms : "That 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." Something will also be said about the well-recognised privilege of the House to commit Members or strangers for breach of privilege or contempt and its right to take exclusive cognizance of matters arising within the House itself.

The story starts with Sir John Holt, who said that "the privileges of the House of Commons are well-known, and are founded upon the law of the land, and are nothing but the law. And if they declare themselves to have privileges, which they have no legal claims to, the people of England will not be estopped by that declaration."[1] In *Ashby* v. *White*,[2] Ashby sued White and other returning officers for maliciously refusing to accept his vote in an election for the borough of Aylesbury. It will be noted that it was an ordinary action of tort in the ordinary courts. The Court of Queen's Bench held, Holt C.J. dissenting, that no action lay. Holt's great dissenting judgment is one of the masterpieces of the law reports. It is notable for three main points. First, he laid down the principle *ubi jus ibi remedium* : where there is a right there the law gives a remedy to vindicate that right. The plaintiff has a right to the franchise and therefore the law would give a remedy

1 ***Paty's Case*** (1705) 2 Ld. Raym. 1105 at p. 1114.
2 (1704) 2 Ld. Raym. 938.

for breach of that right. Secondly, he rebutted the argument that the action could not lie because no similar action had ever been brought in the past. Mere novelty was in itself no reason for refusing to give a remedy. Thirdly, he rebutted the argument that this was a parliamentary matter over which the House of Commons had exclusive jurisdiction. He was prepared to admit that in matters falling within the internal management of the House the House would have exclusive jurisdiction. But the right to vote was a right to be exercised independently of and outside the House and therefore questions relating to the existence of that right and its infringement must be determined before the ordinary courts. Holt's dissenting judgment was upheld in the House of Lords. The Commons, however, did not acquiesce in this judgment and when one Paty and four other electors of Aylesbury brought similar actions against the returning officers the plaintiffs and their counsel were committed to prison by order of the Commons for breach of privilege. On *habeas corpus* proceedings brought to secure their release, the Court of Queen's Bench held, Holt C.J. again dissenting, that the court had no jurisdiction. Holt C.J. stated that where the return to the writ was insufficient in law to constitute a breach of privilege or contempt the plaintiffs ought to be released, a view which, as we shall see, has been upheld in subsequent cases. Difficulties having arisen as to whether a writ of error lay to the House of Lords, Queen Anne resolved the deadlock by proroguing Parliament, which set the plaintiffs at liberty, and they went on to win their actions against the returning officer. The principle of these cases is well summed up in the following words : "It is the birthright of every Englishman who apprehends himself to be injured to seek for redress in your Majesty's courts of justice; and if there be any power that can control this right and can prescribe when he shall and when he shall not be allowed the benefit of the laws, he ceases to be a free man and his liberty and property are precarious."[3]

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3 *Case of the Five Aylesbury Men* (1704) 17 Lo. Jo. 698.

The next case is *Burdett* v.*Abbot*,[4] an action for tresspass against an officer of the Commons for breaking into the plaintiff's house and carrying him to the Tower. Lord Ellenborough agreed with Holt's opinion in *Paty's* case to the effect that if facts are stated in the return to the writ of habeas corpus which could not reasonably be considered a contempt, the court "must act upon it as justice may require."

THE COURTS AND PARLIAMENT IN CONFLICT

We now come to the great cases, which go under the names of *Stockdale* v. *Hansard*[5] and the case of the *Sheriff of Middlesex*.[6] In November 1836, Joseph Stockdale sued Messrs Hansard for a libel alleged to be contained in a report of prison inspectors which had been printed by order of the House of Commons and not only laid before the House but also put on sale to the public. The inspectors of prisons had commented in serious terms upon the nature of a certain work published by Stockdale which they had found in Newgate Prison. It was described as "a book of the most disgusting nature and the plates are obscene and indecent in the extreme." The defendants put in two pleas. The first was one of not guilty. It was argued that the report had been ordered by the House to be printed and published and was therefore covered by parliamentary privilege. The second plea was one of justification. On February 7, 1837, the plaintiff in person addressed the jury at great length on the second plea and "called their attention to the exceedingly high character he had at all times enjoyed in society and to the almost incalculable benefit he had heaped upon the public at large. He also alluded to the various instances where he had been persecuted by mankind in general and to the unparalleled courage, manliness and fortitude with which he had suffered those inflictions."[7] His reply at the end of the case occu-

4 (1811) 14 East 1.

5 (1839) 9 A. & E. 1.

6 (1840) 11 A. & E. 273.

7 At different times Sockdale and his father had been prosecu-

pied no less than three hours. It is perhaps not surprising that the jury found for the defendant on the plea of justification. The interest of this case, however, lies in the direction given by Denman C.J. to the effect that the plea of parliamentary privilege was no defence. The next step in the proceedings was that the House appointed a select committee to investigate the matter which in May 1837 reported, and the House thereupon resolved, that the publication of parliamentary reports and proceedings was essential to the functions of Parliament, that the House had sole and exclusive jurisdiction to determine the existence and extent of this privilege, that to dispute those privileges by legal proceedings was in itself a breach of privilege, and finally that for any court to decide on matters of privilege inconsistent with the determination of either House was contrary to the law of Parliament.

Then, in the same month, Stockdale instituted a second action against Hansard in respect of the same publication. (It should be noted here that in the law of tort every publication of a defamatory libel gives rise to a separate cause of action. Therefore every time anyone purchased a copy of the report a tort had been committed.) In this second action Hansard, on the instruction of the House of Commons, pleaded privilege alone as a defence[8] and the validity of this was argued on demurrer in the Court of Queen's Bench. Stockdale by this time had been permitted by the Court to sue as a pauper and counsel had been assigned to him. He was a stuff gownsman called Curwood, and

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cuted or sued for libel in respect of their various publications. Stockdale senior had been the publisher of the notorious *Memoirs* of Harriette Wilson, the opening sentence of which reads : "I shall not say why and how I became, at the age of fifteen the mistress of the Earl of Craven."

8 The vexation and expense of all this litigation is well revealed in P. and G. Ford. *The Diary of Luke Hansard* (Oxford, 1962).

on the first day his heart must have sunk when he saw arrayed opposite him the formidable battery of counsel for Hansard. There were both law officers, Campbell, the Attorney-General, and Wilde, the Solicitor-General, each of them later to become Lord Chancellor; there was Follett, later to become Attorney-General; Pollock, later to become Lord Chief Baron of the Court of the Exchequer; and two future puisne judges of the Queen's Bench, Maule and Wightman. The case was argued throughout Easter and Trinity terms of 1839,[9] and on May 28 Curwood made

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9 "I had spent many weeks in preparing for it during the two preceding long vacations. My great difficulty was to manage my materials, and to bring my address to the court within some reasonable limits. I had read everything that had the smallest bearing on the subject, from the earliest year book to the latest pamphlet - not confining myself to mere legal authorities, but diligently examining historians, antiquaries and general jurists, both English and foreign. Joseph Hume told the House of Commons that he grievously grudged my fee of three hundred guineas; but if I had been to be paid according to my time and labour, I ought to have received at least three thousand. I had myself read and abstracted every case which I cited, I had written and rewritten all that I had to say. But when in court, except in quoting authorities, I trusted entirely to memory. I occupied the time of the court exactly sixteen hours - for the first day, eight the second, and four the third. I received great applause for my address, particularly from Peel, and even Sir Edward Sugden generously said in the House of Commons that, 'after all the debates upon the subject in Parliament were forgotten, this would remain to posterity as a monument of Sir John Campbell's fame.' In any future dispute about parliamentary privilege, it will certainly be referred to as a repertory of all the learning on the subject; for, not confining myself to answer what was openly urged by the counsel for the plaintiff, I referred to and answered every authority and argument that could be urged against one." So wrote Lord Campbell in his memoirs: Vol. II, pp. 112-113. At one stage in his argument he felt weak and the court permitted him to remove his wig.

his final speech for the plaintiff. His peroration, couched in the language of a forgotten era, may perhaps be quoted : "My Lords, I have never been thought worthy to change the texture of my gown; whether I wear stuff or whether I wear silk, whether in office or out of office, I should not surrender the rights of my brethren at the Bar, I would not surrender the rights of my profession : no, not for personal emolument[10] or family aggrandisement; no, not for personal safety. I have spoken in the spirit of honest independence which I hope may cleave to me to the last, and if I have transmitted an unsullied character and that spirit to my children, I hold it a fairer inheritance that wealth or title basely and sordidly acquired. My Lords, I have done".[11] But he must then indeed have been delighted when the court proceeded to deliver lengthy judgments supporting all his arguments. The court held that privilege was part of the law of the land, that it was for the ordinary courts of law to determine whether or not any particular privilege claimed existed, and that the privilege claimed by the House in this particular case was not a privilege known to the law. The court pointed out that to permit the House by resolution to authorise the publication of defamatory matter outside the House would be to enable one House to alter the law of the land, whereas a statute required the consent of the three component parts of Parliament.

The damages in the case were then assessed before a sheriff's jury at Pound 100 and on the order of the House of Commons this sum was paid over to Stockdale,

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10 This phrase is particularly meaningful, as Curwood's wife was notoriously extravagant. He had been the successful defendant in two actions brought by tradesmen for alleged necessaries supplied to her : *Montague* v. *Benedict* (1824) 3 B. & C. 631; *Seaton* v. *Benedict* (1828) 5 Bing. 28. Curwood chose to be sued under the name of Benedict "with saturnine humour": (1922) 153 L.T. Newspaper 285.

11 3 St Tr. at p. 849.

the House very properly taking the view that as the question had been submitted to the jurisdiction of the ordinary courts they ought not to refuse to pay simply because the decision had been against them. This, however, was not the end of the story. In August 1839 Stockdale began a third action against Hansard. To the writ Hansard did not appear, but simply sent Stockdale a copy of the resolution of the House of 1837. In November of the same year, Stockdale obtained judgment in default of appearance and a sheriff's jury assessed damages at Pound 600. (It should here be mentioned that the two sheriffs of London, Messrs. Evans and Wheelton, jointly filled the single office of sheriff of Middlesex.) The next step was to issue a writ to the sheriffs calling upon them to levy execution upon the judgment. They duly entered Hansard's office and procured a sum of money sufficient to satisfy it but did not pay the sum over to Stockdale, retaining it in their hands because they feared the consequences of the displeasure of the House. They also were afraid of the displeasure of the court whose officers they were : "the sheriff thus had the pleasant alternative of two prisons, either Newgate on the committal of the Speaker of the House of Commons or the Marshalsea by virtue of an attachment from the Queen's Bench."

At the beginning of January 1840, events moved swiftly towards a climax. It became known that towards the end of the month the court would be called upon to make a rule absolute calling on the sheriffs to show cause why they should not pay over the sum of money in their hands to Stockdale. It also became known that Parliament, which had met on January 16, was likely to assert its view in the most definite and authoritative manner. In the result the House of Commons moved more quickly than the court. On January 20, the sheriffs essed in their scarlet robes, were called to Bar and asked by the Speaker if they had anything to say on the matter. To this they only bowed and withdrew without speaking. They were duly committed the following day to the custody of the Serjeant-at-Arms on a warrant signed by the Speaker which

stated simply that they were committed for contempt of the House of Commons. The sheriffs then obtained a writ of habeas corpus from the Court of Queen's Bench, and Sir William Gossett, the Serjeant-at-Arms, appeared in court on January 25 with them to make a return to the writ. With him were his prisoners the sheriffs, once again dressed in their full robes of office. When the imposing procession arrived in court at 4 p.m. it was found that no judges were present, and there was a somewhat awkward delay before a court was finally assembled. Argument on the return began at once and by 8.30 p.m. the same evening Lord Denman C.J. had delivered the judgment of the court. In brief, it adopts the principle laid down by Holt C.J. in *Paty's* case (1705), namely, that if the House commits for contempt generally, without stating reasons, then the court is unable to look behind the return. But if, in the warrant of committal, facts are stated which on no reasonable ground could be considered as a contempt but rather a ground of commitment "palpable and evidently arbitrarily unjust and contrary to every principle of positive law or natural justice," then the court "must look at it and act upon it as justice may require."

This is indeed a remarkable judgment. The officers concerned, the two sheriffs, were engaged in executing the judgment of the court in *Stockdale v. Hansard* which Lord Denman had himself delivered only six months before. Nevertheless, the court held that the House of Commons was entitled under the common law to act as it had done and the sheriffs were accordingly remanded into the custody of the Serjeant-at-Arms.[12] It is no doubt true, as is

12 Campbell (Vol II, p. 130) says: "They lived some time very luxuriously having every morning a levee of Tory members, who congratulated them on their patriotism, and exhorted them to persevere. Every evening we had motions for their discharge, and at last one of them was set at liberty on the score of ill health, which he said in his petition arose from confinement, but which Mr. Wakley, the member for Finsbury, a medical man and coroner for Middlesex, alleged was caused by high living, and might be cured by abstinence."

pointed out in most authorities, that the *Case of the Sheriff of Middlesex* enables the House to avoid the consequences of the ruling in *Stockdale v. Hansard*, for by committing for contempt without giving any reason the House of Commons may choose to treat as a breach of privilege that which no court would recognise as a privilege. All that can be said in answer is that the House is most unlikely ever to defy public opinion to such an extent. "Indeed," as Lord Denman said in the *Sheriff of Middlesex's* case, "it would be unseemly to suspect that a body, acting under such sanctions as a House of Parliament, would, in making its warrant, suppress facts which, if discussed, might entitle the person committed to his liberty." In any event the House impliedly abandoned its claim to determine by resolution the extent of its own privileges by its concurrence in the passing of the Parliamentary Papers Act, 1840, which conferred absolute privilege on documents published by order of the House. For if such a privilege could have been conferred by the resolution of one House, there would have been no need for its enactment by the legislature as a whole. Nevertheless, it is of interest to note that the result of the decision is that the House of Commons successfully claimed from the courts precisely the same privilege which it had denied to the Stuart Kings in 1628, namely, the right to imprison at pleasure without giving reasons.

COURTS CANNOT REVIEW INTERNAL PROCEDURE

The nineteenth century also saw the courts concerned with another fundamental aspect of privilege - namely, whether the House had got the exclusive right to regulate its own internal proceedings. The great case on this matter arose out of the activities of Charles Bradlaugh, a prominent represen-

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The other sheriff, Evans, remained in custody until March 5 - the day on which the Parliamentary Papers Bill was introduced. Campbell took some credit to himself for the fact that he had dissuaded the House from committing the Queen's Bench judges.

tative of that forgotten class, the Victorian free-thinker. He had been elected to Parliament by the people of Northampton on successive occasions, but the House had taken the view that he was not entitled to sit, since as an atheist he could not properly take the oath required of members under the Parliamentary Oaths Act, 1866. Bradlaugh was at one stage willing to make an affirmation instead of an oath, but in a series of cases culminating in *Bradlaugh* v. *Clarke*,[13] it was held that he was not entitled to do so. Having been re-elected by the same constituency he then attempted to take the oath, but the House resolved that he should not be permitted to do so and that, if necessary, he should be excluded by actual force from the House until he desisted in his attempts.The Queen's Bench Division was asked to declare this order void and to restrain the Serjeant-at-Arms from enforcing it.[14] The plaintiff in person argued that the resolution of the House deprived him and the electors of Northampton of their constitutional rights, but the court, whose leading judgment was delivered by Stephen J., held that the House was not subject to control by the courts in its administration of that part of the statute law which had reference to its own internal proceedings. The right of the plaintiff to take the oath and the resolution to exclude him were matters concerning the House itself, done within its own four walls. It might well be that the electors of Northampton had legal rights which had been interfered with, but these rights were not of a kind which were exercisable outside the walls of the House so as to fall within the ambit of the protection given by the ordinary courts. So far as rights exercisable within the

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13 (1883) 8 App. Cas. 354. The best account of these cases is the chapter by W. Ivor Jennings in the Bradlaugh memorial volume entitled *Champion of Liberty* (London, 1933).

14 *Bradlaugh* v. *Gossett* (1884) 12 Q.B.D. 271. The Serjeant-at-Arms in this case was the grandson of the Serjeant-at-Arms in the *Case of the Sheriff of Middlesex.*

House were concerned, Stephen J. said : "The House stands with relation to such rights, in precisely the same relation as we, the judges of this court, stand into the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say; they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it. If they misunderstand it, or (I apologise for the supposition) wilfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their decision." The matter would have been different if the House of Commons had permitted Bradlaugh to sit and had purported by resolution to protect him from any statutory penalties to which he might be liable in the courts. It should be noted, however, that Stephen J. said : "I know 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," and he stated that the accused in *R. v. Eliot, Hollis and Valentine*[15] might have been properly charged in a separate indictment with assaulting the Speaker in the House.

These observations were cited to the Divisional Court without success in a remarkable case in 1934, in which Mr. A.P. Herbert (not yet a Member of Parliament) attempted to institute criminal proceedings against the Kitchen Committee of the House of Commons.[16] What happened was that Mr. Herbert and a friend, the licensee of the Doves Inn, Hammersmith, bought "a glass of lager beer and a glass of gin and mixed vermouth"[17] in a bar at the House of Commons. Mr. Herbert then applied to the Chief Magistrate at Bow Street, Sir Rollo Graham-Campbell, for summonses

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15 (1629) 3 St. Tr. 294.

16 *R. v. Graham-Campbell, ex p. Herbert* [1935] 1 K.B. 594.

17 [1935] 1 K.B. at p. 595.

to be directed to the Kitchen Committee and the manager of the refreshment department for retailing intoxicating liquor which they were not licensed to sell, contrary to section 65(1) of the Licensing (Consolidation) Act, 1910. The Chief Magistrate stated that he was not satisfied that he had jurisdiction to issue such summonses and Mr. Herbert then sought an order of mandamus from the Divisional Court on the ground that the Chief Magistrate had erroneously held that his jurisdiction was excluded by the privileges of Parliament. The application was rejected in a somewhat unsatisfactory judgment delivered by Lord Hewart C.J. on December 15, 1934.[18] The court held that the Chief Magistrate was justified in refusing to interfere, as the House was acting collectively in a matter falling within the ambit of its own internal affairs. Avory J. also stated that it was in his opinion impossible for the provisions of the licensing legislation to be applied to the House of Commons.[19]

THE STRAUSS CASE

In July 1958, the House of Commons debated one of the most important cases of privilege which had arisen for many years. In February 1957, the Rt. Hon. G.R. Strauss, M.P., a former Minister of Supply,

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18 December 1934 was an eventful month in Lord Hewart's life. On the 11th and 14th he had intervened in the debates of the House of Lords on the Administration of Justice Bill in order to expose what he believed to be an insidious attack on the position of the judges in general and Slesser L.J. in particular, and had made unsubstantiated charges of the most wounding kind against a number of eminent public servants: 95 H.L. Deb. 5s., col. 224 *et seq.*

19 As Sir Alan Herbert remarks in his autobiography (*Independent Member*, p. 18), the judgment of Avory J. "had a particular and charming interest for the legal connoisseur," for the point which he made was one which he had unsuccessfully pressed on the court as junior counsel in *Williamson v. Norris* [1899] 1 Q.B. 7.

wrote to the Paymaster-General, the appropriate Minister, a letter making grave allegations against the London Electricity Board. The Board, through their solicitors, told Mr. Strauss that if these allegations were not withdrawn and an apology made, proceedings for libel would be instituted against him. This was not in fact done, and instead the matter was referred by the House of Commons to the Committee of Privileges. After some delays the House had before it two reports from the Committee of Privileges : these stated (1) that Mr. Strauss's letter to the Paymaster-General was "a proceeding in Parliament" within the meaning of Article 9 of the Bill of Rights, and so the subject of absolute privilege; (2) that the London Electricity Board, in threatening to begin a libel action, had acted in breach of that privilege, in that they were threatening to question in a court or place out of Parliament the freedom of speech within Parliament.

Eventually the House decided, by 218 votes to 213 on a free vote, not to accept the report of the Committee. The effect of this seems to be that letters to Ministers written in similar circumstances to those of the Strauss case will not be absolutely privileged under the Bill of Rights but be entitled only to such qualified privilege as is given by the common law, a privilege which of course is defeasible on proof of actual malice in the author. It is difficult to be more precise than this, for the Speaker certainly said that the absolute privilege conferred by the Bill of Rights covers a letter written to a Minister in response to his invitation made during a parliamentary debate.[20] It was, indeed, generally agreed that a Member of Parliament was performing his proper functions when he approached a Minister on a departmental matter affecting his constituency; the disagreement was on the point whether such an action fell within the scope of the statutory phrase "proceeding in Parliament."[21]

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20 591 H.C. Deb. 5 s., cols. 811-813.

21 *Att.-Gen. of Ceylon* v. *De Livera* [1963] A.C. 103.

What is notable here is that during the debate both Mr. Butler, the Home Secretary, who supported the report, and Sir R. Manningham-Buller, the Attorney-General, who opposed it, agreed that the privileges of the House could be extended only by statute. The Attorney-General emphatically stated that it was not competent for the House by resolution to create a new privilege or to extend the boundaries of an existing one. All it was competent to do was to determine whether a novel set of facts fell within the ambit of an existing privilege. This is particularly important because the Committee of Privileges had cited with approval the resolution of 1837 in which the House had proclaimed that it had "the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges."

It is clear, therefore, that no final ruling was given on the second issue considered by the Committee, namely, whether the mere issue of the writ could be a breach of privilege. But naturally something was said about it in the debate, and in any case the House had the advantage of a report by the Judicial Committee of the Privy Council, made on special reference under the Judicial Committee Act, on whether the House would be acting contrary to the Parliamentary Privilege Act, 1770 if it treated the issue of such a writ as a breach of privilege.[22] The Judicial Committee held that it would not, the Act of 1770 applying only to proceedings against Members of Parliament in respect of their debts and actions as individuals. In short, the Act of 1770 had not impliedly repealed the Bill of Rights; it referred only to the institution of proceedings against Members of Parliament in their private capacity. It should be noted, however, that the Judicial Committee was most careful not to express any

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22 [1958] A.C. 331. The Act (s. 1) provided that actions brought against Members should not be stayed "by or under colour or pretence of any privilege of Parliament."

opinion whether the House would otherwise be justified in treating the mere issue of writ as a breach of privilege. The better opinion seems to be that it would be a hard thing to hold that the mere institution of proceedings amounted to a breach of privilege. It would deter persons who honestly believed that they had been defamed on an occasion not covered by the statutory privilege from bringing proceedings in the ordinary courts. There is, under the existing law, an adequate deterrent against those who are vexatious litigants or habitually bring hopeless actions. It would seem that the true view is that a breach of privilege does not take place until the court entertains the action. For two hundred years the House has not treated the issue of legal proceedings as a breach of privilege; so to do would be to interfere with "the inalienable right of Her Majesty's subjects to have recourse to the courts of law for the remedy of their wrongs." [23]

COMMITTAL FOR CONTEMPT

Something more may be said about the privilege to commit for contempt either Members of the House or strangers because, as we have seen, it may, in effect, enable the House to evade the control of the ordinary law courts. It has already been seen that one may be committed for breach of privilege or for a contempt. The conduct which constitutes a contempt is not definable in advance by the ordinary law but is determined by the House upon the facts of the particular case. Erskine May says that "actions which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to legitimate commands or libels upon itself, its officers or members, though often called 'breaches of privilege,' are more properly distinguished as 'contempts.'" [24] The nature of offences against the authority or dignity of the House cannot clearly be

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23 *Ibid.* at p. 353.

24 *Parliamentary Practice* (5th ed.), p. 42.

laid down in advance. The House reserves the right to punish any kind of dishonourable conduct which in its view tends to bring it into contempt. Many people have thought that the House of Commons was a trifle too sensitive on this matter during the 1950s. We may just refer to two cases to illustrate this. In 1951, Mr. John Lewis, the Labour Member for Bolton West, was held up by a policeman on point duty while attempting to enter the Victoria Gate from the Bayswater Road. Mr. Lewis contended unsuccessfully that the Committee of Privileges should take notice of this as it was a hindrance of the privilege of Members to attend the House freely. Again, in 1957, the editor of the *Sunday Express*, Mr. John Junor, was solemnly summoned to the Bar of the House and reprimanded by the Speaker for material published in his newspaper suggesting that the petrol ration given to Members of Parliament was an unduly generous one. On the other hand, in the four years after the *Strauss* case the Speaker only once ruled that a prima facie case had been made out, and even then the House ultimately took no punitive action.

It will be generally agreed that some disciplinary power of this kind is necessary if the authority and dignity of the House is to be upheld. The tactfulness of its use in any particular case can properly be left to the sound judgment of individual members at the time. If they fall below the standard which the public in general expects of them it will be quickly brought to their attention. It is certainly difficult to see that the ordinary courts would exercise this power any better than the House itself. It is unlikely that the judiciary would be willing even to contemplate the conferment on them of the power at present exercised by the House. Such analysis as has been made of the nature of the power to commit for contempt suggests that it is not really judicial in nature but rather incidental to the legislative function.[25] It may be, however, that the House should

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25 See Sir Owen Dixon C.J. in *R. v. Richards, ex p. Fitzpatrick and Browne* (1955) 92 C.L.R. 157.

consider whether the existing procedure for dealing with cases of privilege is entirely satisfactory. This procedure is that a Member wishing to complain of an alleged breach of privilege must raise the matter at the earliest moment. The Speaker may, if he wishes, take twenty-four hours to consider the matter. If he rules that a prima facie case of privilege has been made out, the matter is referred to the Committee of Privileges. This is a select committee of the House set up at the beginning of each session. It is composed of a number of Members who, in general, represent the elder statesman's approach to public affairs. The committee has power to summon Members or strangers before it. Refusal to appear or to answer or knowingly to give false answers is in itself a contempt, as Mr. Allighan, the Member for Gravesend, discovered in 1947. The Committee's report is discussed by the House which may or may not agree with it and the House then decides to act as it thinks fit. It appears that the Committee does not feel obliged to observe those elementary procedural rules of natural justice which the Queen's Bench Division insists upon being followed by the most insignificant magistrates' court in the country. In the *Strauss* case, no representative of the London Electricity Board was heard by the Committee at any stage of the proceedings and yet an independent inquiry later established that there was no truth in the allegations made against it.[26]

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26 See Cmnd. 605 of 1958.

TWO MORE CONTROVERSIES

New Delhi, Sept.22 : A Division bench of the Supreme Court, headed by the Chief Justice, Mr. Justice E.S. Venkataramiah on Thursday stayed until further orders of this court the warrant of two-day arrest ordered by the Andhra Pradesh Legislative Assembly Speaker, Mr. G. Narayan Rao, in September against Sri Paramariah, a revenue divisional officer, Rengareddy, for breach of privileges of a member of the House and committing contempt of the Privileges Committee of the House.

Chief Justice Venkataramiah sitting with Mr. Justice K.N. Singh and Mr. Justice S. Natrajan while staying the imprisonment, issued notices to the State of Andhra Pradesh, the Secretary to the Andhra Pradesh Legislative Assembly and the Commissioner of Police, Hyderabad city.

The judges in their interim order in the writ petition filed by Sri Paramariah stated : "We have gone through all the papers placed before us. In the circumstance we feel that this petition should be admitted for further consideration having regard to the facts and circumstances of the same. In this case there is an allegation that the fundamental right of the petitioner under Article 21 of the Constitution has been violated".

In a lengthy order the judges quoted extensively from Keshav Singh case wherein it has been held that the State legislatures in India could not by virtue of Article 194 (3) claim to be the sole judges of their powers and privileges. Their powers and privileges were to be found in Article 194(3) alone and nowhere else, and the power to interpret that Article lay under the scheme of the Indian Constituion, exclusively with the judiciary of this country.

The judges began their four-page order by stating that the judgment dealing with the privileges of the legislature delivered by the seven-judge constitution bench of this court in the leading case of Keshav Singh was binding on them and then went on to write the pertinent extracts.

In a significant extract the court stated, "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.

In another extract the court stated, "If a citizen moves this court and complains that his fundamental right under Article 21 has been contravened, it would plainly be the duty of this court to examine the merits of the said contention and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law".

The court order further extracted from the case of Keshav Singh "If in a given case the allegation made by the citizen is that he has been deprived of his liberty not in accordance with law but for capricious or malafide reasons, this court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. In our opinion, therefore, the impact of the fundamental constitutional right conferred on Indian citizens by Article 32 on the construction of the latter part of Article 194(3), is decisively against the view that a power or privileges can

be claimed by the House though it may be inconsistent with Article 21.

In the concluding extract, the Supreme Court judges have stated : "The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the court in that behalf, otherwise the power conferred on the High Courts and this court would be rendered virtually meaningless. Let it not be forgotten that the judicial power conferred on the High Courts and this court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in proper case".

In the instant case Mr. P. Ramchandra Reddy, MLA, gave a motion of privilege against the petitioner and Paramaraiah on May 10, 1988 to the Secretary of Andhra Pradesh Assembly that the petitioner had insulted him. On May 19 the Speaker referred the matter to the Committee of Privileges.

The Privileges Committee after going into the matter held the petitioner guilty of belittling the prestige of Mr. Reddy and also held him guilty about commenting against the Privileges Committee which amounted to offence of contempt.

The Privileges Committee recommended that the petitioner should be sentenced to undergo simple imprisonment of two days for the contempt committed against Mr. Reddy and also against the committee.

The recommendation of the Privileges Committee was adopted by the Andhra Pradesh Assembly on September 14, 1989, under the warrant and signature of the Assembly Speaker, Mr. G. Narayan Rao, and warrant was issued to the Hyderabad city Police Commissioner to arrest Shri Paramariah and

commit him to the custody of Superintendent of the Mushearabad jail to undergo two days' imprisonment.

According to the writ petition Mr. Reddy (MLA) in a press statement made allegation against the petitioner, Shri Paramariah that the latter had received a bribe of Rs. 70,000 from the owners in a land acquisition case.

The petitioner in his petition stated that in reply he told the press that the MLA bore a grudge against him and was carrying on relentless vendetta against him. Denying the allegation of bribe, he said that on the other hand, the MLA had received a bribe of Rs. 15 Lakhs from the land owners to get the compensation enhanced.

The petitioner submitted that the MLA twisted the petitioner's press statement and got it referred to the Privileges Committee for making a case of alleged defamation. The committee did not issue any notice to the petitioner to show cause.

The petitioner contended that the sentence passed against him by the Privileges Committee is illegal, void and violative of Articles 14 and 21 of the Constitution. The privilege of freedom cannot be claimed in respect of a private quarrel between the petitioner and the MLA, he added.

Referring to a case of altercation between himself and the MLA, the petitioner raised the issue in his petition whether the alleged exchange of words between him and the MLA during the course of the proceedings of the district food advisory committee, Sangareddy amounted to breach of privileges of the Assembly or its members.

Raising yet another issue the petitioner stated whether the Speaker and the Privileges Committee followed the principles of natural justice or acted in an arbitrary manner in holding the petitioner guilty of contempt of the committee when no such

charge was made by the MLA also and without giving notice of the allegation to the petitioner.

(News Report, National Herald dated Sept., 27th 1989.)

New Delhi, Sept. 26: The Supreme Court on Tuesday issued a notice to the Andhra Pradesh Assembly Speaker, Mr. G. Narayan Rao, and four State police officials to show cause why contempt proceedings should not be initiated against them in the contempt petition filed by Mr. P. Sudhir Kumar, President of the Youth Congress-I alleging violation of this court's order of April 25, 1989.

This court on April 25 nad ordered immediate release of 32 Youth Congress-I members on the 29th day of their imprisonment in a special leave petition challenging the March 29 resolution of the AP Assembly sentencing Youth Congress members to 30 days' imprisonment for committing contempt of Assembly following an agitation by them. The detenus were released forthwith but later, on September 14 the AP Speaker issued warrants of arrest against them to undergo the remaining one-day imprisonment that has already been carried out in the case of the 15 detenus.

A five-judge constitution bench headed by Mr. Justice Sabyasachi Mukherjee ordered on Tuesday that the warrant of arrest issued against the remaining 17 Congress-I members shall not be executed. Accordingly, the court ordered that directions to that effect be issued to the State police officials concerned.

Justice Mukherjee sitting with Mr. K.N. Singh, Mr. S. Ranganathan, Mr. A.M. Ahmadi and Mr. K.N. Saikia clarified in their order that the notice to the Speaker shall be issued in the form of a letter addressed to him through the secretary to the AP Assembly. The notice is returnable on October 24.

The four police officials against whom a show cause notice for contempt has been issued for

effecting the arrest of 15 Youth Congress-I members so far are the Commissioner of Police, Saifabad, Mr. K. Vijaya Rama Rao, Asst. C.P. Mr. M. Satyanarayan Reddy, Inspector Mr. B.K. Dubey and SI Mr. Ashok Kumar Singh.

The judges stated that the above order was being passed in view of the action taken prima facie in disobedience of this court's interim order dated April 25, 1989, and in view of the fact that this court order is binding on all authorities civil and judicial under Article 144 of the Constitution.

In a lengthy order passed in a packed court, Justice Mukherjee referring to the September 14 ruling of the Speaker in which he had made certain observations about proceedings in this court while ordering the release of Youth Congress members on April 25, stated that the question had to be understood in the light of the special reference in Keshav Singh's case (1964).

Pointing out that this case had been referred to in the April 25 order of this court, Justice Mukherjee stated that in the Keshav Singh case the court had made it categorically clear that it had to examine a plea of a petitioner or a person when he complains of a violation of fundamental rights even in respect of an order made under Article 194(3) of the Constitution.

Referring to the constitution bench ruling in the Keshav Singh case, Justice Mukherjee stated that the judicature in this country has been entrusted with the task of safeguarding the fundamental rights. "It is beyond doubt that when a citizen complains of violation of Article 21, it is plainly the duty of this court to examine the contents", he added.

Justice Mukherjee giving reasons for the notice issued to the AP Speaker and others earlier stated that this was done in discharge of this court's constitutional duty. The court wanted assistance

of all concerned including the Speaker and Secretary of the Assembly, Attorney General and the State Advocates General.

This court had passed an interim order on April 25 after hearing the parties and on the basis of Keshav Singh's case. In their petition, the Youth Congress-I members had alleged violation of their fundamental right to life and liberty under Article 21 and had averred that their detention was ordered without giving them an opportunity to explain. They had submitted that they had not committed an act of contempt in the Assembly.

The court also issued a notice in an accompanying writ petition challenging the Assembly's right to confiscate or seize the vehicles of the petitioner. The court adjourning the main SLP directed deletion of the names of AP CM, Mr. N.T. Rama Rao and the jail superintendent of Mushearabad from the list of respondents in that petition.

During the proceedings, Dr. Y.S. Chitlay, senior counsel for the petitioner, Mr. Sudhir Kumar, submitted that the warrant of re-arrest issued by the AP Speaker on September 14 amounted to defiance of this court's order of April 25 and was a case of civil contempt

In reply to a query from Justice Singh, Dr. Chitlay stated that all authorities are to aid the Supreme Court in carrying out its order under Article 144 and the Speaker is such an authority under that article.

The Attorney General, Mr. K. Parasaran, submitted that the Speaker is an authority under Article 144 and the Assembly is an authority under Article 12. He stated that this case was covered by the seven-judge bench decision in the leading case of Keshav Singh.

Mr. Parasaran contended that when Keshav Singh's case was decided in 1964, Article 21 guaran-

teeing that life and liberty shall not be taker away without procedures established by law was suspendable, but by the Constitution 44th amendment now it is not suspendable.

He further pleaded that new dimensions had been added to this case in view of the Menaka Gandhi case and the international covenant on civil and political rights which declared right to life and liberty as inalienable. India is a signatory to the covenant, he added.

(News report, National Herald dated 27 Sept., 1989)