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Wanchoo J.

the Punjab Government would have authority to institute the enquiry against him. The Central Government would only come into the picture after the enquiry is concluded and if it is decided to impose one of the three punishments mentioned in r. 4(1). This contention must also be rejected.

We, therefore, dismiss the appeal with costs to the State of Punjab.

Appeal dismissed.

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December 12.

PANDIT M. S. M. SHARMA

v.

SHRI SRI KRISHNA SINHA AND OTHERS

(S. R. Das, C. J., N. H. Bhagwati, B. P. Sinha, K. Subba Rao and K. N. Wanchoo, JJ.)

State Legislature, Privilege of—Power to prohibit publication of proceedings including portions expunged by the Speaker—Publication, if a breach of privilege—If can prevail over the fundamental right to freedom of speech and expression—Freedom of the Press—Scope and extent—Constitution of India, Arts. 194(3), 19(1)(a).

The petitioner, the Editor of the English daily newspaper Searchlight of Patna, was called upon by the Secretary of the Patna Legislative Assembly to show cause before the Committee of Privileges of the Assembly why appropriate action should not be taken against him for the breach of privileges of the Speaker and the Assembly for publishing in its entirety a speech delivered in the Assembly by a member thereof, portions of which were directed to be expunged by the Speaker. It was contended on behalf of the Petitioner that the said notice and the proposed action by the Committee were in violation of his fundamental right to freedom of speech and expression under Art. 19(1)(a) and of the protection of his personal liberty under Art. 21 of the Constitution, and that, as an editor of a newspaper, he was entitled to all the benefits of the freedom of the Press. The respondents relied on Art. 194(3) of the Constitution and claimed that the proceedings in the House as those in the British House of Commons were not usually meant to be published, and in no circumstances was it permissible to publish the parts of a

speech which were directed to be expunged and, therefore, formed no part of the official report and such publication was in clear breach of the privileges of the Assembly. The points for determination were:

(1) Could the British House of Commons entirely prohibit the publication of its proceedings or even of such portions of them as had been directed to be expunged?

(2) Assuming that the British House of Commons had such power and consequently the State Legislature also had such power under Article 194(3), could the privileges of the Legislature under that Article prevail over the fundamental right guaranteed by Art. 19(1)(a)?

The Bihar Legislature not having admittedly made any law governing its powers and privileges under Entry 39 of List II of the Seventh Schedule to the Constitution, the question naturally was as to what were the powers, privileges and immunities of the British House of Commons at the commencement of the Constitution.

Held (*per Das, C. J., Bhagwati, Sinha and Wanchoo, JJ.*) that, there could be no doubt that the liberty of the Press was implicit in the freedom of speech and expression guaranteed to a citizen under Art. 19(1)(a) of the Constitution and that must include the freedom of propagation of ideas ensured by the freedom of circulation.

Romesh Thappar v. *State of Madras*, [1950] S.C.R. 594, *Brijbhushan* v. *The State of Delhi*, [1950] S.C.R. 605 and *Express Newspaper Ltd.* v. *Union of India*, [1959] S.C.R. 12, relied on.

The liberty of the Press in India flowed from this freedom of speech and expression of a citizen and stood on no higher footing and no privilege attached to the Press as such.

Arnold v. *King Emperor*, (1914) L.R. 41 I.A. 149, referred to.

A survey of the evolution of Parliamentary privileges in England showed beyond doubt that at the commencement of the Indian Constitution, the British House of Commons had the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that took place in the House, and with greater reason, the power and privilege of prohibiting publication of an inaccurate or garbled version of such debates and proceedings. These were the powers and privileges that Art. 194(3) conferred on State Legislatures and Art. 105(3) conferred on the Houses of Parliament in India.

It would not be correct to contend that Art. 19(1)(a) of the Constitution controlled the latter half of Art. 194(3) or of Art. 105(3) of the Constitution and that the powers, privileges and immunities conferred by them must yield to the fundamental right of the citizen under Art. 19(1)(a). As Arts. 194(3) and 105(3) stood in the same supreme position as the provisions of Part III of the Constitution and could not be affected by Art. 13, the principle of harmonious construction must be adopted.

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So construed, the provisions of Art. 19(1)(a), which were general, must yield to Art. 194(1) and the latter part of its cl. (3), which are special, and Art. 19(1)(a) could be of no avail to the petitioner.

Ramjilal v. *Income-tax Officer, Mohindergarh,* [1951] S.C.R. 127 and *Laxamanappa Hanumantappa* v. *Union of India,* [1955] 1 S.C.R. 769, applied.

Anand Bihari Mishra v. *Ram Sahay,* A.I.R. (1952) M.B. 31, disapproved.

Gunapati Keshavram Reddy v. *Nafisul Hasan,* A.I.R. (1954) S.C. 636, explained as having proceeded on concession by counsel.

Nor could the petitioner complain of any breach, actual or threatened, of his fundamental right under Art. 21 of the Constitution since Art. 194(3) read with the rules, framed by the Bihar Legislative Assembly in exercise of its power under Art. 208 of the Constitution, laid down the procedure for enforcing its powers, privileges and immunities under that Article and any deprivation of his personal liberty as a result of the proceedings before the Committee of Privileges would be in accordance with procedure established by law.

Held, further, that it was not for this Court to prescribe any particular period for moving a privilege motion so as to make the subject matter of the motion a specific matter of recent occurrence within the meaning of the said rules. This was a matter for the speaker alone to decide.

The time within which the Committee of privileges was to submit its report was a matter between the House and its Committee and the party whose conduct was the subject-matter of investigation could have no say in the matter.

The effect in law of the order of the Speaker to expunge a portion of the speech of a member might be as if that portion had not been spoken and a report of the whole speech despite the speaker's order might be regarded as a perverted and unfaithful report and *prima facie* constitute a breach of the privilege of the Assembly. Whether there had in fact been a breach of the privilege of the Assembly was, however, a matter for the Assembly alone to judge.

Per *Subba Rao, J.*—The second part of Art. 194(3) was clearly a transitory provision and had no higher sancitity than that of the first. While a law when made by the State Legislature under the first part would, by virtue of Art. 13(2), be void to the extent it contravened the provisions of 19(1)(a), unless saved by Art. 19(2), there could be no reason why the powers, privileges and immunities conferred under the second part should be free from the impact of the fundamental rights.

As there was no inherent inconsistency between Arts. 19(1)(a) and the second part of Art. 194(3), full effect must be given to them both on the principle of harmonious construction. The

wide powers and privileges enjoyed by the Legislature and its members should, therefore, be so exercised as not to impair the fundamental rights of the citizen, particularly of one who was not a member of the Legislature. In case of a conflict, Art. 19(1)(a) must prevail over Art. 194(3) and not *vice versa* and the privilege must yield to the extent it affected the fundamental right.

Gunupati Keshavram Reddy v. *Nafisul Hasan*, A.I.R. (1954) S.C. 636, applied.

At the commencement of the Constitution the House of Commons had no privilege to prevent the publication of a correct and faithful report of its proceedings, save those in respect of secret sessions held under exceptional circumstances, and had only a limited privilege to prevent *mala fide* publications of garbled, unfaithful and expunged reports of the proceedings. In the instant case, neither the notices nor the documents enclosed therewith disclosed any *mala fides* on the part of the petitioner or that he had knowledge that any portion of the speech had been expunged by the Speaker. Consequently, even supposing Art. 194(3) prevailed over Art. 19(1)(a), the petitioner was entitled to succeed.

Wasan v. *Walter*, (1868) L.R. 4 Q.B. 73, relied on.

ORIGINAL JURISDICTION: Petition No. 122 of 1958.

Petition under Article 32 of the Constitution of India for the enforcement of Fundamental rights.

1958, Oct. 16, 17, 28, 29, 30. *Basdeva Prasad* and *Naunit Lal*, for the petitioner :—The main question to be considered in the case is as to whose privilege has been involved and violated—those of the press or the House of the Legislature. Notice served on the petitioner by the Privileges Committee of the Bihar Assembly is illegal and invalid and the Constitution of the Privileges Committee is illegal as the Chief Minister of the State Dr. S. K. Sinha himself has been the Chairman of the Committee.

On May 30. 1957, there was a debate in the Bihar Legislative Assembly when M. P. N. Singh, one of the oldest members of the Assembly, made a speech the gist of which was a criticism of the administration of Bihar as run by Dr. S. K. Sinha, the Chief Minister, and cited certain instances of favouritism. At this stage the Speaker held that a portion of the speech was objectionable and ordered it to be struck off and expunged. It was a general statement. No specific

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direction was given to the Press. The opposite party was claiming the right to prohibit all publication of proceedings—a right which the House of Commons possesses with its own history, but never exercises it. The speech was made on May 30, 1957, and the official authorised report was published and made available on January 2, 1958. 'The Search Light', being a daily newspaper, came out on May 31 with what happened in the Assembly. A privilege motion was said to have been moved and referred to the Committee of Privileges; no voting was taken and no time limit was given for the presentation of the report which was required under the rules of the House. If no time limit was prescribed then under rule 215 the report was to be submitted within a month.

It was after more than a year i.e. on August 18, 1958, that the petitioner received a notice to show cause why appropriate action should not be taken against him for the breach of privilege. This showed malice on the part of the Privileges Committee.

The action of the Privileges Committee raised constitutional points affecting the petitioners' fundamental right of freedom of expression.

The Legislature cannot have such a privilege as will deprive the citizens of their fundamental rights which are guaranteed by the Constitution, specially the right of freedom of expression under Art. 19(1)(a). In the actual motion the charge was that the speech was published in its entirety, "Jyon ka Tyon"; but the motion adopted by the Privileges Committee, the charge against the Editor was that he published a perverted and unfaithful report of the proceeding, and the expunged portions of the speech was also published in derogation of the order of the Speaker.

[*Wanchoo, J.*—If the publication of expunged portions would make a report false, how could it be anything other than perverted and unfaithful?]

[*Daphtary*: It was unfaithful as it was not a true report, as portions expunged had also been published].

The reference was not by the House but by the Speaker. It was open to the petitioner to challenge the procedure, as one of the grounds of his objection

was that the motion was not put to vote. Important questions arose as a result of the proceedings, one of them being :—

Can a Committee presided over by a Chief Minister who has such an interest in the matter as might give him a real bias be deemed to be empowered to carry on the investigation and recommend punishment ?

[*Daphtary* : I object to the use of the word ' bias '. It is not supported by the petition or the plea].

The allegation of mala fide is much stronger than bias.

[*Chief Justice.*—Art. 19(1) had granted fundamental rights against law made by the State. There were no fundamental rights against the Constitution itself. If the Constitution provided that the House shall have certain privileges then it was clear that there cannot be a question of fundamental rights against the Constitution. If the Constitution provided that the House shall have the privileges that so much shall be published then Art. 19(1) will not prevail against the Constitution].

I rely on Amendment One of the American Constitution on which the fundamental rights in Art. 19(1) are based. *Cooley's "Constitutional Law"* (P. 350).

Express Newspapers (Private) Ltd. v. *Union of India*, [1959] S. C. R. 12, 121.

[*Sinha, J.*—In America people were more forthright in their views and opinions and that we could have better guidance from English precedents than from American.]

Article 194 (3) which dealt with powers, privileges and immunities of the Legislatures were subject to the provisions of the Constitution. Article 194(3) cannot be said to abridge the provisions of Art. 19(1) which guaranteed fundamental rights. Article 194(3) of the Constitution provided the procedure of the British House of Commons in regard to powers, privileges and immunities. Even then any power or privilege which militated against the fundamental rights cannot be deemed to be valid. The Legislature can follow the procedure of the British House of Commons, but this

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privilege of legislature cannot go contrary to the fundamental rights. If such a privilege is allowed, the Legislature would assume sovereignty as against the Constitution itself under the garb of privileges.

Even in England, the ban on the publication of the proceedings in Parliament had ceased to exist in practice after the 16th century.

The proceedings of legislatures are open to the public and the citizens have a right to know whatever happens in the House and also to know as to how any portion of the proceedings is ordered to be expunged.

The Blitz case *Gunupati Keshavram Reddy* v. *Nafisul Hasan*, A. I. R. 1954 S. C. 636 in which the Supreme Court ordered the release of a correspondent who had been arrested by the Speaker of the U. P. Assembly in connection with breach of privilege. He was not produced before the Magistrate and on Habeas Corpus petition, he was released. Article 20 prevailed and it was established that Art. 194(3) could not go against Art. 20 guaranteeing a person's liberty.

[*Chief Justice.*—If the privileges were given by the Constitution itself, then the question of fundamental rights does not come at all. Article 19(1) is against law made by the State Government. Fundamental rights do not prevail against the Constitution. The counsel could take the stand that Bihar Legislative Assembly has not got the powers which it claims. The question was whether the Assembly had such powers under the Constitution].

In England there was no written constitution. The House of Commons had claimed the right to prohibit publication but in fact and in actual practice never exercised that right. The American Constitution also granted full freedom to publish the proceedings of the House including the expunged portions. That being so, it was for the Court to interpret Art. 194(3) harmoniously with Art. 19(1) and the provisions of the former had to be consistent with fundamental rights granted under the Constitution. In England the Parliament is supreme and there is no written constitution, but here the Constitution is supreme. The right to expunge could be claimed only for the purpose of

official record. They could not claim a total prohibition. There was a common basis for this in both American and English democratic systems. The people had the right to know as to what was happening in the House to enable them to exercise their franchise properly. If people have a right to see and hear the proceedings, other people who are not able to be in the House have a right to know through published proceedings.

Wason v. *Walter, (1868) L. R. IV Q. B. 73, 95.*

(The counsel refers to the standing orders in the British House of Commons quoting May's Parliamentary Practice).

Article 194(1) in its entirety was subject to the provisions of the Constitution and under Art. 19 to the provisions of the Constitution. If under Art. 194(3) the application of the House of Commons' laws provided complete immunity, then it was impossible to continue the consistency of Art. 194(1) and Art. 194(3). Article 194(1) provided clearly that it was subject to the provisions of the Constitution in the matter of freedom of speech, etc., in the State Legislature. It was impossible to contend that Art. 194(3) was not subject to the provisions of the Constitution. Under Art. 194(1) it was made clear that a member of the House of Legislature did not have the same immunity as had a member of the House of Commons who enjoyed complete freedom and had no restriction of whatever sort. Here Art. 194(1) made the freedom of speech in the House subject to the provision of the Constitution.

[*The Chief Justice.*—It might be that one of the immunities was singled out and made subject to the provisions of the Constitution].

Privileges and rights of the House of Commons extended also to elections. The power of the House of Commons to fix its own elections could not be challenged in a tribunal or a court. Here in India, elections were held under a separate authority provided by the Constitution under Ch. XV and such elections could be challenged and appealed against in the High Court, tribunals, etc. In England, the validity of an election was to be determined by the House

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of Commons itself or its tribunal. Such a privilege could not be claimed by a House of Legislature here.

[*The Chief Justice.*—Here we had powers, privileges and immunities which may be prescribed by law by legislation under Art. 194(3) and it was Part XV in the Constitution which provided for elections. It showed that powers, privileges and immunities had been separated and dealt with separately].

The whole scheme of the Constitution had to be taken into account. The reasonable interpretation of Art. 194(3) was that, like Art. 194(1) it was also in its entirety made subject to the provisions of the Constitution.

The next point was that the Chief Minister could not be the Chairman of the Committee of Privileges with quasi-judicial powers to summon witness and demand production of evidence. In this case, the Chief Minister had a certain interest in the matter and this was against all principles of natural justice.

[*The Chief Justice.*—Whether Counsel claimed that the Chief Minister could not be at all the Chairman of the Committee or that the Chief Minister or anybody should not be the Chairman or in the Committee if he had an interest].

I put it on the ground of interest only. Voting took place in the Committee and if the Chief Minister had not been there, there might be a tie. (Quoted Rule 62 of the Standing Orders of the House of Commons to show that the Chief Minister could not be the Chairman of the Committee of Privileges).

I will now deal with and challenge the procedural aspect of the matter. It was the House alone which had a right to refer the matter of breach of privilege. Rule 207 of the Assembly clearly laid down that the matter must be of recent occurrence. In the House of Commons, it was accepted that "recent occurrence" could not go beyond ten days.

The privilege motion got precedence over even adjournment motions. Then under r. 215, no time limit was fixed by the House for the report to be submitted, as such the report was to be submitted within

a month. The House had not extended the date for the submission of the Report by the Privileges Committee and in the absence of such extension, the reference not being reported, the Committee became "functus officio". It was against this that the petitioner sought to move the Honourable Court for prohibition of the proceedings against him and for the vindication of his fundamental rights. Either the Committee had become "functus officio" or the non-submission of the report within the stipulated time under r. 215 first proviso could only mean that the Committee had nothing to recommend. Regarding the procedure adopted, Rules 208 and 209 had to be taken together. There were objections to the motion at the time it was moved. The publication of a true and full account could not be termed unfaithful and perverted. It was for the court to determine whether there has been a breach of privilege committed.

[*Sinha, J.*—Is it our jurisdiction? Is it not the exclusive function of the Parliament?]

[*The Chief Justice.*—What was a privilege and what was not could be stated but whether there was a breach of privilege or not it was for the House to say].

There was no breach of privilege. What we are claiming is that the reporting of proceedings is not a privilege the House can claim. Then my other point is that I have not published the expunged portion.

[*Daphtary*, Solicitor-General: It is for the House to decide].

Am I not entitled to come to this Court as custodian of my fundamental rights, that powers are claiming to punish and proceed against me and coerce me? The question was whether one was not entitled to bring a petition under Art. 32 against it?

C. K. Daphtary, Solicitor-General for India, *B. K. P. Sinha* and *S. P. Varma*, for the respondents. The question to be considered is how much of the portion which contained all the allegations fell under Art. 32. The Article could deal only with breach of fundamental rights. If any of the powers or exercise of the

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powers and privileges and the defence and assertion of any of the immunities involved, were a breach of fundamental rights or were something contrary to fundamental rights, even then the powers and the privileges were good. They could not be considered bad as offending those rights. It was not open for someone to come and say that there was no such power and immunity when such powers and immunities were provided under Art. 194(1) and was made part of the Constitution. Every citizen had been given the right of freedom of speech by the Constitution. A member of the House of a Legislature also enjoys that freedom by virtue of being a citizen. Only rules and regulations made in excess of legislative powers could be questioned and not the powers themselves. Then there was the question of amendment of the Constitution which was not affected by fundamental rights. The result would be that by amendments of the Constitution fundamental rights could be modified or removed. That was what was done by amendments in Arts. 31(a) and 31(b) where the rights were modified. Article 194 was put there in the Constitution by the framers simultaneously with other provisions. It therefore had an equal footing with other provisions of the Constitution and unless expressly stated in the provision itself could not be made subject to other provisions of the Constitution. All parts of the Constitution were made by the same people and were equal. One could not be made more important than the other.

[*Subba Rao, J.*—What was the idea then in giving a paramount position to fundamental rights in our Constitution ?]

They are fundamental to human beings.

[*Subba Rao, J.*—If the legislature had made a law defining its powers and privileges, could that law be valid if it infringed the fundamental rights ?]

The Constitution itself said that powers, privileges and immunities would be such as the Legislature would lay down. Even such a law would not be against the fundamental rights. It would be in exercise of the constituent law. The Constitution makers

thought it best that they would not define the powers of the Legislature and left to the Legislature to decide what powers it will have.

[*Subba Rao, J.*—When a law was made by the Legislature it was subject to fundamental rights under Art. 19 but when the Legislature made laws relating to its powers, etc., it was not subject to Art. 19. Was that not an anomalous situation ?]

There was no anomaly at all. The Constitution makers themselves had said what powers and privileges of the Legislature were. When it was so made as a law by virtue of powers granted by the Constitution then it could not be subject to fundamental rights. That what the Constitution itself had chosen to give was subject to fundamental rights was not a sound argument.

[*Bhagwati, J.*—The fundamental rights were on a high pedestal and any other provisions should not infringe them].

What was constitutional was constitutional. Unless there were provisions made expressly subject to other provision or provisions they had all the same footing and were on the same plane. Wherever the Constitution makers wanted to say it, they said so. They were otherwise independent of each other, unless stated to the contrary. No part of the Constitution could be said to be void and if one part was struck down then it would mean that the Constitution itself was being struck down. Article 194 had to be given the status of Constitution law.

The first point was that powers, privileges and immunities given by Art. 194(3), were not subject to Art. 19. Having established that, the second point that would arise would be what were those powers and privileges. What was the ambit of those powers.

In England there were instances to show that breach of privilege was treated as contempt of the House, disobedience of the Speaker's order was contempt. (Refers to the standing order 62 of the House of Commons).

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The argument advanced by the other side was fallacious.

[Quotes from May's Parliamentary Practice].

Standing order 62 did not apply to the Committee of Privileges. It applied to select committees and standing committees but not to the Committee of Privileges, which was a sessional committee appointed at the beginning of each session. The House of Commons had powers to make rules from time to time and regulate its own procedure. All that the court had to satisfy itself about was whether or not the House had the power to follow up a breach of privileges.

[*Bhagwati, J.*—Whether power to make rules had not been within limits. In an effort to protect immunities and privileges one could not expand the privileges and immunities].

All the precedents of the House of Commons were not available dating back to 16th or 17th Century but there was enough in May's Parliamentary Practice to support the argument. So long as the debates were correctly and faithfully reported the right to prevent publication was not enforced. Journalists were present in the House galleries by the leave and licence of House and on sufferance. What the Speaker said was not to be published, it could not be published.

[*Subba Rao, J.*—What was the purpose of expunging a portion of the proceedings ?]

The expunged portion was not deemed to have been stated in the House. There was the case in the House of Lords where an expunged portion was published and became breach of privilege. The privilege of the House to control publication was always there though it might not be exercised. The House, was always zealous of its privileges. Even here in India, House privilege had been asserted at the time when Mr. Vithalbhai Patel was President of the Assembly. There was heated debate on the question as to in whom did the control of the precinct of the House vest, the Viceroy or the President of the Assembly. Mr. Patel to assert the Privilege of the House asked the galleries to be cleared. Privilege was not ordinarily exercised if the report was faithful and accurate. But it was

necessary in order to ensure if the member could say things without fear of being misreported. Otherwise his freedom of speech was affected.

It was the power and privilege of the House of Commons to decide what was a breach or not. The courts could go to the extent to find whether a particular privilege existed.

[*The Chief Justice*: If the privilege claimed was excessive would it not affect fundamental rights?]

It depended on the wording of the notice. In the present case the motion and Committee's notice had to be read together. It would not be correct to give fundamental rights paramountcy over other parts of the Constitution.

With reference to the allegations of 'mala fide'. What was the 'mala fide'? Who could deny it except the secretary as the 'mala fides' charge was levelled against the Committee of Privileges?

[*Sinha, J.*—Including the Chief Minister].

"Mala Fides" was alleged against the Committee.

[*Sinha, J.*—The petition says that the committee is influenced by the Chairman].

It is not so. I will confine myself to the petition which says that the Committee of Privileges is proceeding against the petitioner 'mala fide' in order to muzzle him and restrict him from expressing his views.

The Chief Minister was the Chairman of the Committee. There was nothing to show nor was it claimed that the member of the Committee were all his partymen. There were members of other parties. It was not alleged otherwise. It could not also be said that the members of the Committee were all his adherents. In the circumstances, what else could be done except for the Secretary to deny the allegations of 'mala fide' which was levelled against the committee appointed by the Speaker and the Chief Minister was Chairman from long before the matter under consideration was taken up.

[*The Chief Justice.*—What about the time lag? No step was taken for one whole year and the allegation

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is that, when some articles were published, the matter was taken up].

The action was taken after some time to enable the party to correct itself.

Sinha, J.—The point raised was that the Committee did not do anything for one year and then woke up one morning and then pressed the matter].

How is the matter carried any further by these arguments. Ultimately the House would judge and it was composed of 316 members. Where was the question of 'mala fide'? No one in the House opposed the motion. Where was the malice of the Committee, whether it issued the notice immediately or after some time?

[*Sinha, J.*—The argument of the petitioner's Counsel was that the House should have been presumed to have dropped the matter as the House had not done anything at all for one year and all of a sudden the matter was taken up. The point made out was that but for the petitioner's subsequent action, no notice would have been issued by the Committee].

They had issued the notice stating that there was a breach of privilege.

[*Sinha, J.*—Had not the Committee become 'functus officio' by lapse of time?]

No, the Committee had the power to launch the prosecution.

It did not do it immediately. It waited for three or four months.

[*Sinha, J.*—The very essence of these proceedings which are of a summary character is that the matter should be expeditiously dealt with].

Is it not a matter of internal management? The House had decided something and it was for the Committee to take some action. The House did not rescind the decision.

With reference to the claim that rules had not been followed: the standing Order 62 of the House of Commons did not apply to the Privileges Committee which was a sessional committee. Then there was rule 215 about the time limit. What was it that the House had done? It appointed one of its committees to

inquire and submit its report within a period. The House could say that it could extend the time and enlarge the scope of time limit.

[*The Chief Justice.*—But as long as the rule stands .....].

The nature of the rule had to be gone into. It was something fixed by the House for the guidance of the Committee. The rules were made for the benefit of the House. It was a matter for themselves, not for the benefit of an outsider to seek to enforce it.

On the subject of malice, if something was lawful it did not matter how much malice there was, the motive of malice could not make unlawful what was otherwise lawful.

Malice imputed was that the Chief Minister was the Chairman of the Committee. He might not be there. The Speaker might appoint some one else. How can then one presume that the committee would act maliciously? There were responsible persons holding responsible positions.

H. N. Sanyal, Additional Solicitor-General of India, for the Attorney-General for India, cited the powers of the legislature of Nova Scotia and the position there, summed up the law relating to powers and privileges.

Basdeva Prasad, in reply. The main fact to be borne in mind is that the Parliament or the Legislature in India was not really as sovereign as the British Parliament which was supreme in all matters.

Article 194(1) is not a repetition of Art. 19(1)(a), but an abridgement of the freedom of expression and speech which would have otherwise been available to the members of the legislature as ordinary citizens.

Article 194(3) itself does not provide a constitutional exemption to the freedom guaranteed under Art. 19(1)(a) and Art. 194(3) is subject to the provisions of the Constitution in Part III and the other Art. 21.

Article 194(3) does not import into the Indian Constitution the powers, privileges and immunities in their entirety, as for instance the right to prohibit publication altogether could not be imported.

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It had already been made clear that Art. 194(1) was subject to the provisions of the Constitution. The point was that Art. 194(3) in its entirety was subject to the Constitution. Article 32 itself was very significant as to what rights and powers of Part III were more important. Writs could be issued for breach of fundamental rights or other violation of rights, including powers of taxation.

Therefore, Art. 194 did not enlarge but it abridged the scope of application of Art. 19(1)(a), since it was also made subject to the rules and standing orders that might be made by the House.

[*The Chief Justice.*—Whether Parliament could not under the residuary powers of legislation, make a law imposing restrictions on the freedom of speech of members of the State Legislature. It was pointed that Art. 19(1) was a primary right; Art. 19(2) cut it to some extent; Art. 194(1) also made it subject to the provisions of the Constitution but the freedom of speech was further restricted. The Constitution itself appeared to provide those limitations. Would not then Art. 194(1) read with Art. 19(1) equally lead to an anomaly?]

Article 194(2) flowed from Art. 194(1). If Art. 194 imported powers, privileges and immunities wholesale from the House of Commons of Great Britain, how could they be exercised? There was Art. 208. Any other form of restriction arising from the exercise of those powers would be unreasonable restriction.

What Art. 194 gave powers, privileges and immunities. Article 208 gave the power to punish, subject to the provisions of the Constitution. It could not be said that the British House of Commons had the power to punish a man twice. A man could not be held guilty of privilege by an ordinary court of law and at the same time by the House of Commons. But here Art. 208 and Art. 194 came to be subject to Art. 21 in that no one could be deprived of personal liberty without a procedure of law.

[*The Chief Justice.*—But then you have not come to the stage of Art. 21 at all. Your liberty has not been taken away].

My liberty is threatened. The notice says there is a 'prima facie' case. Then there is the allegation of mala fide and bias. I refer to the claim of the House to be the sole Judge of its privileges. I say that they must be subject at least to constitutional rights.

[*The Chief Justice.*—If Art. 194(3) incorporated all the privileges, then could not that privilege itself be taken as procedure established by law ?]

Article 21 never contemplated that there would be no procedure. Supposing none of them was followed and a warrant was issued, could not that be questioned in a court of law ?

[*The Chief Justice.*—If the man is arrested then we shall consider].

It would then be subject to the jurisdiction of their Lordships. Article 21 guaranteed that there would be no interference with the personal liberty of the citizen except according to a procedure enacted by law. There must be a substantive law and such law must be valid.

If your Lordships hold with me that fundamental rights were superior, then Art. 194 would have to be read with Art. 19(1) and the American position would help. If the House was the sole Judge then neither Art. 21 nor Art. 22 would be available.

[*The Chief Justice.*— If one could publish anything that was said in the House there would be no meaning in expunging. Being expunged, meant it was not said].

Yes, but will not the House take notice ? It is the right of the people to know what had been said and what was expunged. Expunction would be for the purposes of official record. Even in 'Hansard', the expunged portion is not removed but only red lines put over it.

[*Sinha, J.*—The argument advanced was that under the language of Art. 194(2) you could not publish anything at all].

Yet, if the claim of total prohibition was accepted, then I would be on velvet. But would that position be allowed in India ? The House of Commons debated

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in the Public, and I have a right to publish what takes place.

[*Sinha, J.*—You claim a total right to publish].

Yes, total right to publish whatever takes place in the House. I will not claim I have a right to publish garbled and unfaithful report. I have a right to publish a faithful report of what was said or done. The argument of the learned Solicitor-General was that Art. 194(3) was not subject to the provisions of the Constitution. In the Constitution, the power was given to the President to make all laws and regulations in Part D States and the provision did not say 'subject to fundamental rights'. Could the President make laws that would have the effect of taking away fundamental rights or that it was said that citizens in Part D states did not have any fundamental rights? All the provisions of the Constitution had to be read in relation to the chapter on fundamental rights.

In the absence of law, the power to make rules could come in conflict with fundamental rights. Law could mean a power or authority.

[*Subba Rao, J.*— Under Art. 194(3), the legislature of a State had all the powers, privileges and immunities of the House of Commons. One of such powers was to prevent publication of a garbled version. If in exercise of that power, the legislature made an order asking someone to appear at its bar, would that order come within the meaning of law ?]

"Law included order, regulation or notification."

[*The Chief Justice.*—What is the meaning of an order ? Does it mean an executive order ?]

It is an executive order. Order flowing from public authority. The definition of the State included Government, Parliament, Legislature and local authority. It would be an order passed by authority. Article 21 would cover acts under the enacted law. Here, a Committee of the House was proceeding to take action to deprive the petitioner of his personal liberty. What was the remedy ? What could be the procedure ?

[*The Chief Justice.*—It would be argued that the Constitution itself was law. It need not be enacted by

the Legislature. If Art. 194 imported all the privileges of the House of Commons, then no question arose at all. That itself prescribed the powers and privileges].

[*Subba Rao, J.*—If in exercise of such a power an order was made by the legislature, would it not be law within the meaning of its definition in the Constitution ?]

Executive order will be included in the expression "law".

[*Subba Rao, J.*—If an order, which would be law as thus defined, be made, would it be valid if it infringed the fundamental rights ?]

[*The Chief Justice.*—The State could make a law relating to contempt of Court. Supposing the State did not make such a law, the Court could still haul up people for contempt. Was not there inherent power ?]

The High Courts had the power to punish. But the question of punitive punishment would arise.

[*The Chief Justice.*—Fundamental rights were fundamental in the sense that human rights which were valuable were fundamental. The other provisions of the Constitution could be equally efficacious].

My point was that any law or action had to be within the constitutional rights guaranteed by the Constitution. Even the right to punish would have to be within the ambit of the fundamental rights chapter. If anyone was committed for contempt of court which was not fully established, could he not seek redress ? Justice was not a cloistered virtue. Could he not then claim a remedy under the ordinary law ?

[*Subba Rao, J.*—A law made by the Legislature in respect of privileges would be subject to fundamental rights. If the law was not made, the privileges were not subject to fundamental rights].

[*Sinha, J.*—This will be a good reason for the Legislature not to make law at all].

Article 194(3) had to be interpreted as coming within the scope of fundamental rights. The first part was admittedly so. The second part was equally subject to the fundamental rights by the very necessary implication.

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Privileges did come within judicial review. They could go into the nature of privilege and on the given facts decide their constitutional validity.

Cur. Adv. Vult.

1958. December 12. The Judgment of Das, C. J., Bhagwati, Sinha and Wanchoo, JJ., was delivered by Das, C. J. Subba Rao, J., delivered a separate Judgment.

DAS, C. J.—The petitioner before us, who is a citizen of India, is by profession a journalist and has at all material times been and is still working as the editor of the Searchlight, one of the well-known English daily newspapers having a large circulation in Patna and other places in the State of Bihar. The first respondent has at all material times been and is the Chief Minister of the State of Bihar and the Chairman of the Committee of Privileges of the Bihar Legislative Assembly. The Committee of Privileges has been impleaded as the second respondent as if it is a legal entity entitled to sue or to be sued in its name. The third respondent is called and described as the Secretary to the Bihar Legislative Assembly as if it also is a legal entity but the incumbent of that office has not been named in the cause title. As no objection has been taken to the way the second and the third respondents have been impleaded as parties nothing further need be said about the propriety of such procedure.

This petition under Art. 32 of the Constitution raises several important questions of far reaching effect. It came to be filed in the following circumstances: In his speech made in the Bihar Legislative Assembly on May 30, 1957, in course of the general discussion on the Budget for the year 1957-58 Shri Maheshwar Prasad Narayan Sinha, a Congress member of that Assembly, delivered what has been described as "one of the bitterest attacks against the way the Chief Minister was conducting the administration of the State". The Chief Minister, who also belongs to the Congress party, is the first respondent before us. Shri Maheshwar Prasad Narayan Sinha

referred to the way the Chief Minister, according to him, was being guided by the advice of a gentleman who was well understood by all to be Shri Mahesh Prasad Sinha, who was an ex-minister of Bihar and had been defeated at the last general elections. The member referred, as common knowledge, to the activities of Shri Mahesh Prasad Sinha in the selection of Ministers and the formation of the Ministry as also to the glaring instances of encouragement of corruption by the Government by, amongst other things, the transfer of a Muslim District Engineer from Darbhanga to Muzaffarpur for exploiting that officer's influence on the Muslim voters of Muzaffarpur. Similar reference was made to the case of a District and Sessions Judge who, notwithstanding the recommendation for his discharge made by the Chief Justice after a regular judicial enquiry had been held by a High Court Judge, was ordered only to be transferred to another place on the intervention of Shri Mahesh Prasad Sinha. The member strongly criticised the appointment of Shri Mahesh Prasad Sinha as the Chairman of the Bihar State Khadi Board as having been made only to enable him to stay in Patna where residential accommodation at Bailey Road had been procured for him. The distribution of portfolios amongst the ministers did not also escape strictures from this member. There is no dispute—indeed it is admitted in paragraph 6 of the present petition—that immediately after Shri Maheshwar Prasad Narayan Sinha referred to the question of appointment of the Chairman of the Khadi Board, a point of order was raised by another member of the Assembly, Shri Satendra Narain Agarwal, and the Speaker stated as follows:—

"Mahesh Babu ke Sambandh Me Jitni Baten Kahi Gain Uske Bare Me Maine Kah Diya Ki Us Tarah Ki Bat Ko Proceeding Se Nikal Diya Jayega Lekin State Khadi Board Ke Chairman Ke Bare Me Jo Kuch Kahenge We Karyawahi Me Rahenge or Iske Bishai Me Manniya Sadasya Ko Kahane Ka Hak Hai."

which translated into English means roughly:—

"I have already ruled with reference to whatever has been said about Mahesh Babu that such words

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would be expunged from the proceedings but that whatever may be said with reference to the Chairmanship of the State Khadi Board will remain in the proceedings and the Hon'ble member has the right to speak on that matter."

In its issue of May 31, 1957, the Searchlight published a report of the speech of Shri Maheshwar Prasad Narayan Sinha which is set out in paragraph 2 of the petition and also reproduced in what has been called "annexure B" in annexure III to the petition. It will suffice, for the purposes of our decision of this petition, to set out the opening part of the report which reads as follows:—

"BITTEREST ATTACK ON CHIEF MINISTER

M. P. Sinha's choice as .Khadi Board chief condemned.

Maheswar Babu's scathing criticism of Government.

(By our Assembly Reporter)
Patna, May 30.

One of the bitterest attacks against the way the Chief Minister was conducting the administration of the State was made in the Bihar Assembly today by Mr. Maheshwar Prasad Narayan Singh, a Congress member who said that contrary to all principles of good Government, the Chief Minister was guided by the advice of a gentleman who had been defeated at the election and stood condemned before the bar of public opinion. He also named the gentleman by whose advice the Chief Minister was allegedly running the administration.

In this sixty-minute speech which was punctuated with frequent applause by Congress as well as Opposition benches, Mr. M. P. N. Singh said that corruption

could not be eradicated from Government unless the Chief Minister refused to be influenced by such undesirable elements.

He said it was common knowledge that during the period of the formation of the new ministry which took unduly long time many aspirants for Ministership and Deputy Ministership went to a defeated Minister for pleading their case so that the defeated Minister concerned could influence the Chief Minister."

It has not been denied by the learned advocate for the petitioner that the references to the gentleman who had been defeated at the election and was said to have stood condemned and by whose advice the Chief Minister (respondent 1) was alleged to be guided, were intended to be and were understood by the public to be references to Shri Mahesh Prasad Sinha, all references to whom had, as hereinbefore mentioned, been directed by the Speaker to be expunged from the proceedings.

On June 10, 1957, one Shri Nawal Kishore Sinha, a member of the Bihar Legislative Assembly, gave notice to the Secretary, Bihar Legislative Assembly (respondent 3) that he wanted to raise a question of the breach of privilege of the House. That notice was in the following terms :—

"To

The Secretary,
Bihar Legislative Assembly,
Patna.

The 10th June, 1957.

Sir,

I give notice that I want to raise the following question involving a breach of privilege of the House, after question hour today.

"That the Hon'ble Speaker ordered that all references regarding Shri Mahesh Prasad Sinha, Ex-Industry Minister, made in the speech of Shri Maheshwar Prasad Narain Sinha on the 30th May, 1957, except that of his appointment as the Chairman of the Khadi

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Board, be expunged but in spite of this the "Searchlight", a local daily, published the entire speech of Shri Maheshwar Prasad Narayan Sinha, containing all references to Shri Mahesh Prasad Sinha which were ordered to be expunged. Hence there has been a breach of the privilege of the House. A copy of the "Searchlight", dated the 31st of May, is filed herewith.

Yours faithfully,

Nawal Kishore Sinha, M.L.A."

An account of the proceedings that took place in the House on June 10, 1957, appears from "annexure D" in annexure III to the petition. It will appear from that account that after Shri Nawal Kishore Sinha had asked for leave to move his motion, the Speaker read out to the members the relevant rule as to the procedure that has to be followed when, on such leave being asked for, an objection is or is not taken. Thereafter, as no objection was raised in accordance with that rule, the Speaker declared that the mover had received the permission of the House to move his motion. One Shri Karpuri Thakur having remarked that he could express no view without knowing what had been printed and what had been directed not to be printed, the Speaker read out the text of the notice sent in by Shri Nawal Kishore Sinha set out above which referred to the issue of the Searchlight in question. As Shri Karpuri Thakur was apparently satisfied by this, the Speaker then requested Shri Nawal Kishore Sinha to move his resolution. The account shows that Shri Nawal Kishore Sinha then said—"Sir, I beg to move: that the matter be referred to the Privilege Committee of the House". No amendment having been moved, the Speaker, according to the report of the proceedings set forth in "annexure D", put the question to the House and, nobody objecting to the same, declared the resolution carried.

It appears that the Committee of Privileges (respondent 2) did not take up the consideration of the matter promptly and while the matter was pending before the

Committee sharp exchanges of charges and counter charges took place between the petitioner and the Chief Minister (respondent 1) as are evidenced by the extracts from the issues of the Searchlight of May 27, 28 and 31, 1958. There appears to have been a debate on June 5, 1958, for two hours in the Bihar Legislative Assembly on the alleged failure of the State Government to protect the petitioner from being assaulted by goondas. It is said that these exchanges roused the Committee of Privileges from slumber into activity on August 10, 1958, when it passed a resolution which, according to annexure II to the petition, ran as follows —

"The question is that Shri M. S. M. Sharma, Editor and Shri Awadhesh Kumar Tiwari, Printer and Publisher of the "Searchlight" be called upon to show cause why appropriate action be not taken against them by reason of the commission of a breach of privilege in respect of the Speaker of the Bihar Legislative Assembly and the Assembly itself by publishing a perverted and unfaithful report of the proceedings of the Assembly relating to the speech of Shri Maheswar Prasad Narain Sinha, M.L.A., expunged portions of whose speech were also published in derogation to the orders of the Speaker passed in the House on the 30th May, 1957, and that they be further directed to be in attendance at the meeting or meetings of the Committee on such date or dates as may be fixed by the Committee for consideration of the case against them."

On August 18, 1958, the petitioner was served with a notice dated August 14, 1958, issued by respondent 3, the Secretary to the Bihar Legislative Assembly, calling upon the petitioner to show cause, on or before September 8, 1958, why appropriate action should not be recommended against him for breach of privilege of the Speaker and the Assembly in respect of the offending publication. It is necessary, in view of one of the points taken by the learned advocate for the petitioner, to set out the full text of this notice which was thus worded :—

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"Government of Bihar,
Legislative Assembly Secretariat.

Confidential No. 3538-IA.

From

Shri Enayetur Rahman, B.A., B.L.,
Secretary to the Legislative Assembly.

To

Shri M. S. M. Sharma,
Editor, "The Searchlight",
Searchlight Press, Patna.

Patna, August 13/14, 1958.

Whereas a question involving breach of privilege of the Bihar Legislative Assembly arising out of the publication of a news item in the Searchlight, dated the 31st May, 1957, under the caption "Bitterest attack on Chief Minister", was raised in the Assembly by Shri Nawal Kishore Sinha, M. L. A. (Patna) on the 10th June, 1957, and whereas the same, having been referred to the Committee of Privileges for examination, investigation and report, was considered by the Committee which has been pleased to find a prima facie case of breach of privilege made out against you.

You are hereby directed to show cause, if any, on or before the 8th September, 1958, why appropriate action should not be recommended against you for breach of privilege of the Speaker and the Assembly. Please also take notice that the question will come up for examination by the Committee on the 8th September, 1958, at 11 a m. in the Official Sitting Room (Ground Floor) of the Assembly Buildings, Patna, and thereafter on such day or days and at such time and

place as the Committee may from time to time appoint. You are also informed that if the matter comes to evidence, you can, if you so choose, adduce evidence, both oral and documentary, relevant to the issue, and you must come prepared with the same on the date fixed in this behalf.

Sd. Enayetur Rehman,
Secretary to the Legislative Assembly."

Finding that things had begun to move and apprehending an adverse outcome of the enquiry to be held by the Committee of Privileges (respondent 2), the petitioner moved the High Court at Patna under Art. 226 for an appropriate writ, order or direction restraining and prohibiting the respondents from proceeding further with the enquiry referred to above. It appears that on August 29, 1958, the Art. 226 petition came up for preliminary hearing and after it had been urged for a day and a half before the High Court for admission, the petitioner on September 1, 1958, withdrew that petition allegedly "with a view to avail the fundamental rights granted to him under Art. 32 of the Constitution."

The present petition under Art. 32 of the Constitution was filed on September 5, 1958. The petitioner contends that the said notice and the proposed action by the Committee of Privileges (respondent 2) are in violation of the petitioner's fundamental rights to freedom of speech and expression under Art. 19(1)(a) and to the protection of his personal liberty under Art. 21 and the petitioner claims by this petition to enforce those fundamental rights.

An affidavit in opposition affirmed by Shri Enayatur Rahman, the present incumbent of the office of respondent 3, has been filed on behalf of the respondents wherein it is maintained that the report contained in the offending publication was not in accordance with the authorised report of the proceedings in the House in that it contained even those remarks which, having been, by order of the Speaker, directed to be expunged, did not form part of the proceedings.

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It is claimed that generally speaking proceedings in the House are not in the ordinary course of business meant to be published at all and that under no circumstances is it permissible to publish the parts of speeches which had been directed to be expunged and consequently were not contained in the official report. Such publication is said to be a clear breach of the privilege of the Legislative Assembly, which is entitled to protect itself by calling the offender to book and, if necessary, by meting out suitable punishment to him. This claim is sought to be founded on the provisions of cl. (3) of Art. 194 which confers on it all the powers, privileges and immunities enjoyed by the House of Commons of the British Parliament at the commencement of our Constitution.

Learned advocate for the petitioner relies upon Art. 19(1)(a) and contends that the petitioner, as a citizen of India, has the right to freedom of speech and expression and that, as an editor of a newspaper, he is entitled to all the benefits of freedom of the Press. It is, therefore, necessary to examine the ambit and scope of liberty of the Press generally and under our Constitution in particular.

In England freedom of speech and liberty of the Press have been secured after a very bitter struggle between the public and the Crown. A short but lucid account of that struggle will be found narrated in the Constitutional History of England by Sir Thomas Erskine May (Lord Farnborough), Vol. II, ch. IX under the heading "Liberty of Opinion". In the beginning the Church is said to have persecuted the freedom of thought in religion and then the State suppressed it in politics. Matters assumed importance when the art of printing came to be developed. The Press was subjected to a rigorous censorship. Nothing could be published without the imprimatur of the licenser and the publication of unlicensed works was visited with severe punishments. "Political discussion was silenced by the licenser, the Star Chamber, the dungeon, the pillory, mutilation and branding." Even in the reign of Queen Elizabeth printing was interdicted save in London, Oxford and Cambridge. "Nothing marked more deeply the tyrannical spirit

of the first two Stuarts than their barbarous persecutions of authors, printers and the importers of prohibited books: nothing illustrated more signally the love of freedom than the heroic courage and constancy with which those persecutions were borne " (1). There was no mention of freedom of speech or of liberty of the Press in the Petition of Rights of 1628. The fall of the Star Chamber augured well for the liberty of the Press, but the respite was short lived, for the Restoration brought renewed trials upon the Press. The Licensing Act (13 & 14 Chs. 11 c. 33) placed the entire control of the Press in the Government. Liberty of the Press was interdicted and even news could not be published without licence. Then came the Revolution of 1688; but even in the Bill of Rights of 1688 there was no mention of freedom of speech or of liberty of the Press. In 1695, however, the Commons refused to renew the Licensing Act and the lapse of that Act marked the triumph of the Press, for thenceforth the theory of free Press was recognised and every writing could be freely published, although at the peril of the rigorous application of the law of libel. William Blackstone in his 4th Book of Commentaries published in 1769 wrote at p. 145:—

"The liberty of the Press is indeed essential to the nature of a free State; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the Press; but if he publishes what is improper, mischievous or illegal, he must take the consequences of his own temerity."

Halam in his Constitutional History of England expresses the same view by saying that liberty of the Press consists merely in exemption from the licenser. To the same effect are the observations of Lord Mansfield, C. J., in *King* v. *Dean of St. Asaph* (2). The liberty of the Press, therefore, primarily consists in

(1) May's Constitutional History of England, Vol. ii, pp. 240-41.

(2) (1784) 3 Tr. 428.

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printing without any previous license subject to the consequences of law. It is, in substance, a mere application of the general principle of the rule of law, namely, that no man is punishable except for a distinct breach of the law (1). It was thus, as a result of a strenuous struggle, that the British people have at long last secured for themselves the greatest of their liberties—the liberty of opinion.

In the United States of America freedom of speech and liberty of the Press have been separately and specifically safeguarded in the Constitutions of most of the different States. Portions of the Constitutions of the 48 federating States, relevant for our purpose, have been collected in Cooley's Constitutional Limitations, Vol. II, ch. 12, pp. 876-880. Fifteen States, only, namely, Alabama, Arizona, Colorado, Idaho, Illinois, Indiana, Kansas, Missouri, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington and Wyoming do not specifically refer to liberty of the Press but content themselves by providing for freedom of speech. The Constitutions of the rest of the federating States separately and specifically mention liberty of the Press in addition to freedom of speech. The first Amendment of the federal Constitution of the United States, which was ratified in 1791, provides that "Congress shall make no law... .....abridging the freedom of speech or of the Press". The Fifth and the Fourteenth Amendments also protect people from being deprived of life, liberty or property without due process of law.

Prior the advent of our present Constitution, there was no constitutional or statutory enunciation of the freedom of speech of the subjects or the liberty of the Press. Even in the famous Proclamation of Queen Victoria made in 1858 after the British power was firmly established in India, there was no reference to the freedom of speech or the liberty of the Press, although it was announced that "none be in any wise favoured, none molested or disquieted by reason of their Religious Faith or Observances; but that all shall alike enjoy the equal and impartial protection

(1) Dicey's Law of the Constitution, 9th Edn., p. 247.

of the law;....." Indeed during the British period of our history the Press as such had no higher or better rights than the individual citizen. In *Arnold* v. *King Emperor* (1) which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under s. 499 of the Indian Penal Code, Lord Shaw of Dunfermline in delivering the judgment of the Privy Council made the following observations at p. 169:—

"Their Lordships regret to find that there appeared on the one side in this case the time-worn fallacy that some kind of privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticisms, or his comments, is as wide as, and no wider than, that of any other subject. No privilege attaches to his position."

Then came our Constitution on January 26, 1950. The relevant portions of Art. 19, as it now stands and which is relied on, are as follows:—

"19 (1) All citizens shall have the right—

(a) to freedom of speech and expression;

.....

.....

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

(1) (1914) L.R. 41 I.A. 149.

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It will be noticed that this Article guarantees to all citizens freedom of speech and expression but does not specifically or separately provide for liberty of the Press. It has, however, been held that the liberty of the Press is implicit in the freedom of speech and expression which is conferred on a citizen. Thus, in *Romesh Thappar* v. *State of Madras* (1) this Court has held that freedom of speech and expression includes the freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. In *Brijbhushan* v. *The State of Delhi* (2) it has been laid down by this Court that the imposition of pre-censorship on a journal is a restriction on the liberty of the Press which is an essential part of the right to freedom of speech and expression declared by Art. 19(1)(a). To the like effect are the observations of Bhagwati, J., who, in delivering the unanimous judgment of this Court in *Express Newspapers Ltd.* v. *Union of India* (3) said at page 118 that freedom of speech and expression includes within its scope the freedom of the Press. Two things should be noticed. A non-citizen running a newspaper is not entitled to the fundamental right to freedom of speech and expression and, therefore, cannot claim, as his fundamental right, the benefit of the liberty of the Press. Further, being only a right flowing from the freedom of speech and expression, the liberty of the Press in India stands on no higher footing than the freedom of speech and expression of a citizen and that no privilege attaches to the Press as such, that is to say, as distinct from the freedom of the citizen. In short, as regards citizens running a newspaper the position under our Constitution is the same as it was when the Judicial Committee decided the case of *Arnold* v. *The King Emperor* (4) and as regards non-citizens the position may even be worse.

The petitioner claims that as a citizen and an editor of a newspaper he has the absolute right, subject, of course, to any law that may be protected by cl. (2) of Art. 19, to publish a true and faithful report of the publicly heard and seen proceedings of Parliament or

(1) [1950] S.C.R. 594.
(2) [1950] S.C.R. 605.
(3) [1959] S.C.R. 12.
(4) (1914) L.R. 41 I.A. 149.

any State Legislature including portions of speeches directed to be expunged along with a note that that portion had been directed to be so expunged. The respondents before us do not contend that the petitioner's freedom of speech and expression is confined only to the publication of his own sentiments, feelings, opinions, ideas and views but does not extend to the publication of news or of reports of proceedings or of views of others or that such last mentioned publications are not covered by the interpretation put upon the provisions of Art. 19(1)(a) by this Court in the three decisions referred to above or that the case of *Srinivasa* v. *The State of Madras* (1), which apparently supports the petitioner, was wrongly decided. For the purposes of this case, therefore, we are relieved of the necessity for examining the larger questions and have to proceed on the footing that the freedom of speech and expression conferred on citizens includes the right to publish news and reports of proceedings in public meetings or in Parliament or State Legislatures. The respondents, however, deny that the petitioner has the absolute right broadly formulated as hereinbefore mentioned. They urge, *inter alia*, that under Art. 194(3) Parliament and the State Legislatures have the powers, privileges and immunities enjoyed by the House of Commons of British Parliament and those powers, privileges and immunities prevail over the freedom of speech and expression conferred on citizens under Art. 19(1)(a).

Besides a few minor miscellaneous points raised by the learned advocate for the petitioner, which will be dealt with in due course, two principal points arising on the pleadings have been canvassed before us and they are formulated thus :—

I. Has the House of the Legislature in India the privilege under Art. 194(3) of the Constitution to prohibit entirely the publication of the publicly seen and heard proceedings that took place in the House or even to prohibit the publication of that part of the proceedings which had been directed to be expunged ?

II. Does the privilege of the House under Art.

(1) A.I.R. (1951) Mad. 70.

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194(3) prevail over the fundamental right of the petitioner under Art. 19(1)(a)?

Re I: Article 194, on which depends our decision not only on this point but also on the next one, may now be set out:—

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

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

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

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

This Article, which applies to the State Legislatures and the members and committees thereof, is a reproduction, *mutatis mutandis*, of Art. 105 which applies to both Houses of Parliament and the members and committees thereof. It is common ground that the Legislature of the State of Bihar has not made any law with respect to the powers, privileges and immunities of the House of the Legislature as enumerated in entry 39 of List II of the Seventh Schedule to the Constitution just as Parliament has made no law with respect to the matters enumerated in entry 74 of List

I of that Schedule. Therefore under the latter part of cl. (3) of Art. 194 the Legislative Assembly of Bihar has all the powers, privileges and immunities enjoyed by the House of Commons at the commencement of our Constitution. What, then, were the powers, privileges and immunities of the House of Commons which are relevant for the purposes of the present petition ?

Parliamentary privilege is defined as " the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals " (1). According to the same author " privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law ". The privileges of Parliament are of two kinds, namely, (i) those which are common to both Houses and (ii) those which are peculiar either to the House of Lords or to the House of Commons (2). The privileges of the Commons, as distinct from the Lords, have been defined as " the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords (3). Learned Solicitor General appearing for the respondents claims that the Legislative Assembly, like the House of Commons, has the power and privilege, if it so desires, to prohibit totally the publication of any debate or proceedings that may take place in the House and at any rate to prohibit the publication of inaccurate or garbled versions of it. In other words, it is claimed that the House of Commons has the power and privilege to prohibit the publication in any newspaper of even a true and faithful report of its proceedings and certainly the publication of any

(1) Sir Thomas Erskine May's Parliamentary Practice, 16th Edn., Ch. III, p. 42.

(2) Halsbury's Laws of England, 2nd Edn., Vol. 24, Art. 698, p. 346.

(3) Redlich and Ilbert on Procedure of the House of Commons, Vol. 1, p. 46.

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portion of speeches or proceedings directed to be expunged from the official record.

As pointed out in May's Parliamentary Practice, 16th Edn., p. 151, in the early days of British History the maintenance of its privileges was of vital importance to the House of Commons. They were necessary to preserve its independence of the King and the Lords and, indeed, to its very existence. The privileges of the House of Commons have been grouped under two heads, namely, (1) those demanded of the Crown by the Speaker of the House of Commons at the commencement of each Parliament and granted as a matter of course and (2) those not so demanded by the Speaker. Under the first heading come (a) freedom from arrest (claimed in 1554), (b) freedom of speech (claimed in 1541), (c) the right of access to the Crown (claimed in 1536) and (d) the right of having the most favourable construction placed upon its proceedings The second head comprises (i) the right to provide for the due composition of its own body, (ii) the right to regulate its own proceedings, (iii) the right to exclude strangers, (iv) the right to prohibit publication of its debates and (v) the right to enforce observation of its privileges by fine, imprisonment and expulsion (1). Admonition and reprimand are milder forms of punishment. The privileges of the House of Commons under the first head are claimed at the commencement of every Parliament by the Speaker addressing the Lord Chancellor on behalf of the Commons. They are claimed as "ancient and undoubted" and are, through the Chancellor "most readily granted and confirmed" by the Crown (2). Of the three things thus claimed, two, namely, the freedom of the person and the freedom of speech and certain consequential rights like the right to exclude strangers from the House and the control or prohibition of publication of the debates and proceedings are common to both Houses (3).

(1) Ridge's Constitutional Law, 8th Edn., p. 61; also Halsbury's Laws of England, 2nd Edn., Vol. 24, p. 351.

(2) Anson's Law and Custom of the Constitution, Vol. 1, Ch. 4, p. 162.

(3) Halsbury's Laws of England, 2nd Edn., Vol. 24, p. 346.

For a deliberative body like the House of Lords or the House Commons, freedom of speech is of the utmost importance. A full and free debate is of the essence of Parliamentary democracy. Although freedom of speech was claimed and granted at the commencement of every Parliament, it was hardly any protection against the autocratic Kings, for the substance of the debates could be and was frequently reported to the King and his ministers which exposed the members to the royal wrath. Secrecy of Parliamentary debates was, therefore, considered necessary not only for the due discharge of the responsibilities of the members but also for their personal safety. "The original motive for secrecy of debate was the anxiety of the members to protect themselves against the action of the sovereign, but it was soon found equally convenient as a veil to hide their proceedings from their constituencies" (1). This object could be achieved in two ways, namely, (a) by prohibiting the publication of any report of the debates and proceedings and (b) by excluding strangers from the House and holding debates within closed doors. These two powers or privileges have been adopted to ensure the secrecy of debates to give full play to the members' freedom of speech and therefore, really flow, as necessary corollaries, from that freedom of speech which is expressly claimed and granted at the commencement of every Parliament.

As to (*a*): "The history of Parliamentary privilege is to a great extent a story of the fierce and prolonged struggle of the Commons to win the rights and freedoms which they enjoy to-day" (2). The right to control and, if necessary, to prohibit the publication of the debates and proceedings has been claimed, asserted and exercised by both Houses of Parliament from very old days. In 1628 and again in 1640 the clerk was forbidden to make notes of "particular men's speeches" or to "suffer copies to go forth of

(1) Taswell-Langmead's Constitutional History, 10th Edn., p. 657.

(2) Encyclopaedia of Parliament by Norman Widling and Laundy, p. 451.

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any arguments or speech whatsoever" (1). The House of Commons of the Long Parliament in 1641 framed a standing order "that no member shall either give a copy or publish in print anything that he shall speak in the House" and "that all the members of the House are enjoined to deliver out no copy or notes of anything that is brought into the House, or that is propounded or agitated in this House". In that critical period it was a necessary precaution. So strict was the House about this privilege that for printing a collection of his own speeches without such leave, Sir E. Derring was expelled from the House and imprisoned in the Tower and his book was ordered to be burnt by the common hangman. This standing order has not up to this date been abrogated or repealed. In 1680 to prevent inaccurate accounts of the business done, the Commons directed their "votes and proceedings, without any reference to the debates, to be printed under the direction of the Speaker. After the Revolution of 1688 frequent resolutions were passed by both Houses of Parliament from 1694 to 1698 to restrain newsletter writers from "intermeddling with their debates or other proceedings" or "giving any account of minute of the debates". But such was the craving of the people for political news that notwithstanding these resolutions and the punishment of offenders imperfect reports went on being published in newspapers or journals. Amongst the papers were Boyer's "Political State of Great Britain", "London Magazine", and "Gentleman's Magazine" in which reports of debates were published under such titles as "Proceedings of a Political Club" and "Debates in the Senate of Magna Lilliputia". In 1722 the House of Commons passed the following resolutions:

"Resolved, That no News Writers do presume in their Letters, or other Papers, that they disperse as Minutes, or under any other Denomination, to intermeddle with the Debates, or any other Proceedings, of this House.

Resolved, That no Printer or Publisher of any printed News Papers, do presume to insert in any such

(1) Hatsell 265 quoted in May's Parliamentary Practice, 10th Edn., p. 55.

Papers any Debates, or any other Proceedings of this House, or any Committee thereof" (1).

In 1738 the publication of its proceedings was characterised in another resolution of the House of Commons as "a high indignity and a notorious breach of privilege". The publication of debates in the "Middlesex Journal" brought down the wrath of the House of Commons on the printers who were ordered to attend the House. The printers not having been found warrants were issued for their arrest and one printer was arrested and brought before Alderman John Wilkes who immediately discharged him on the ground that no crime had been committed. Another printer was arrested and brought before another Alderman who, likewise, discharged the prisoner inasmuch as he was not accused of having committed any crime. By way of reprisal the House of Commons imprisoned the Lord Mayor and an Alderman, both of whom were the members of the House. Both men, on their release, were honoured in a triumphal procession from the Tower of London to the Mansion House. After this political controversy, debates in both Houses continued to be reported with impunity, although technically such reporting was a breach of privilege. Accurate reporting was, however, hampered by many difficulties, for the reporters had no accommodation in the House and were frequently obliged to wait for long periods in the halls or on the stairways and were not permitted to take notes. The result was that the reports published in the papers were full of mistakes and misrepresentations. After the House of Commons was destroyed by fire in 1834, galleries in temporary quarters were provided for the convenience of reporters, and in the new House of Commons a separate gallery was provided for the Press. In 1836 the Commons provided for the publication of parliamentary papers and reports, which led to the conflict between the House of Commons and the courts, which was decided in *Stockdale* v. *Hansard* (2), where Lord Chief Justice Denman held that

(1) 20 Journals of the House of Commons, p. 99; quoted in Frank Thayer's Legal Control of the Press, pp. 28-29.

(2) Moody and Robson, 9. 174 Eng. Rep. 196; also see (1839) 9 A. & E. Reports, Eng. Q.B. 1; 112 Eng. Rep. 1112.

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the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports was no justification for their or for any other bookseller publishing a parliamentary report, containing a libel against any man. Subsequently the House retaliated by committing Stockdale and his attorney and also the sheriff to prison. The deadlock thus brought about was at length removed by the passing of the Parliamentary Papers Act, 1840 (3 and 4 Vic. c. 9).

Learned advocate for the petitioner has drawn our attention to the judgment of Cockburn, C. J., in the celebrated case of *Wason* v. *Walter* (1). The plaintiff in that case had presented a petition to the House of Lords charging a high judicial officer with having, 30 years before, made a statement false to his own knowledge, in order to deceive a committee of the House of Commons and praying enquiry and the removal of the officer if the charge was found true. A debate ensued on the presentation of the petition and the charge was utterly refuted. Allegations disparaging to the character of the plaintiff had been spoken in the course of the debate. A faithful report of the debate was published in the Times and the plaintiff proceeded against the defendant, who was a proprietor of the Times, for libel. It was held that the debate was a subject of great public concern on which a writer in a public newspaper had full right to comment, and the occasion was, therefore, so far privileged that the comments would not be actionable so long as a jury should think them honest and made in a fair spirit, and such as were justified by the circumstances as disclosed in an accurate report of the debate. Learned advocate for the petitioner contends that this decision establishes that the Press had the absolute privilege of publishing a report of the proceedings that take place in Parliament, just as it is entitled to publish a faithful and correct report of the proceedings of the courts of justice, though the character of individuals may incidentally suffer and that the publication of such accurate reports is privileged and entails neither criminal nor civil responsibility. This argument overlooks

(1) (1868) L.R. IV Q.B. 73.

that the question raised and actually decided in that case, as formulated by Cockburn, C. J., himself at p. 82, was simply this :—

" The main question for our decision is, whether a faithful report in a public newspaper of a debate in either House of Parliament, containing matter disparaging to the character of an individual, as having been spoken in the course of the debate, is actionable at the suit of the party whose character has thus been called in question."

The issue was between the publisher and the person whose character had been attacked. The question of the privilege, as between the House and the newspaper, was not in issue at all. In the next place, the observations relied upon as bearing on the question of privilege of Parliament were not at all necessary for deciding that case and, as Frank Thayer points out at p. 32 of his Legal Control of the Press, " this part of the opinion is purely dictum ". In the third place, the following observations of the learned Chief Justice clearly indicate that, as between the House and the Press, the privilege does exist :—

" It only remains to advert to an argument urged against the legality of the publication of parliamentary proceedings, namely, that such publication is illegal as being in contravention of the standing orders of both houses of parliament. The fact, no doubt, is, that each house of parliament does, by its standing orders, prohibit the publication of its debates. But, practically each house not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. Individual members correct their speeches for publication in Hansard or the public journals, and in every debate reports of former speeches contained therein are constantly referred to. Collectively, as well as individually, the members of both houses would deplore as a national misfortune the withholding their debates from the country at large. Practically speaking, therefore, it is idle to say that the publication of parliamentary proceedings is prohibited by parliament. The standing orders which prohibit

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it are obviously maintained only to give to each house the control over the publication of its proceedings, and the power of preventing or correcting any abuse of the facility afforded. Independently of the orders of the houses, there is nothing unlawful in publishing reports of parliamentary proceedings. Practically, such publication is sanctioned by parliament; it is essential to the working of our parliamentary system, and to the welfare of the nation. Any argument founded on its alleged illegality appears to us, therefore, entirely to fail. Should either house of parliament ever be so ill-advised as to prevent its proceedings from being made known to the country—which certainly never will be the case—any publication of its debates made in contravention of its orders would be a matter between the house and the publisher. For the present purpose, we must treat such publication as in every respect lawful, and hold that, while honestly and faithfully carried on, those who publish them will be free from legal responsibility, though the character of individuals may incidentally be injuriously affected."

With the facilities now accorded to the reporters, the practice of reporting has improved, and the House, sensible of the advantage which it derives from a full and clear account of its debates, has even encouraged the publication of reports of debates and proceedings that take place in the House. From this it does not at all follow that the House has given up this valuable privilege. The following passage in Anson's Law and Custom of the Constitution at p. 174 is significant and correctly states the position :—

"We are accustomed, therefore, to be daily informed, throughout the Parliamentary Session, of every detail of events in the House of Commons; and so we are apt to forget two things.

The first is, that these reports are made on sufferance, for the House can at any moment exclude strangers and clear the reporter's gallery; and that they are also published on sufferance, for the House may at any time resolve that publication is a breach of privilege and deal with it accordingly.

The second is, that though the privileges of the House confer a right to privacy of debate they do not confer a corresponding right to the publication of debate."

Frank Thayer at pp. 31-32 expresses the same view in the following terms:—

"Parliamentary privilege as part of the unwritten English Constitution is the exclusive right of either House to decide what constitutes interference with its duties, its dignity, and its independence. Its power to exclude strangers so as to secure privacy of debate closely follows the right of Parliament to prevent the publication of debates. Attendance at Parliamentary debates and the publication of debates are by sufferance only, although it is now recognized that dissemination of information on debates and Parliamentary proceedings is advantageous to English democracy and, in fact, necessary to public safety. By judicial dictum it has been stated that there is a right to publish fair and accurate reports of Parliamentary debates, but actually the traditional privilege of Parliament continues in conflict with judicial opinion. There is still a standing order forbidding the publication of Parliamentary debates, an order that by custom and the right of sufferance has become practically obsolete; yet the threat of such an order and the possibility of a contempt citation for its abuse, should Parliament deem it advantageous to withhold some particular discussion, serve as a check upon careless reporting and distorted comment."

May in his Parliamentary Practice, 16th Edn., p. 118 puts the matter thus:—

"Analogous to the publication of libels upon either House is the publication of false or perverted, or of partial and injurious reports of debates or proceedings of either House or committees of either House or misrepresentations of the speeches of particular members. But as the Commons have repeatedly made orders forbidding the publications of the debates or other proceedings of their House or any committee thereof which, though not renewed in any subsequent

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session, are considered to be still in force, it has been ruled that an alleged misrepresentation is not in itself a proper matter for the consideration of the House, the right course being to call attention to the report as an infringement of the orders of the House, and then to complain of the misrepresentation as an aggravation of the offence."

The fact that the House of Commons jealously guards this particular privilege is amply borne out by the fact that as late as May 31, 1875, when Lord Hartington sponsored a motion in the House of Commons "that this House will not entertain any complaint in respect of the publication of the debates or proceedings of the House, or of any committee thereof, except when such debates or any proceedings shall have been conducted within closed doors or when such publication shall have been expressly prohibited by the House or any committee or in case of wilful misrepresentation or other offence in relation to such publication" the House of Commons rejected the same outright. The conclusion deducible from this circumstance is thus summarised in May's Parliamentary Practice at p. 118:—

"So long as the debates are correctly and faithfully reported, the orders which prohibit their publication are not enforced; but when they are reported mala fide the publishers of newspapers are liable to punishment."

Several instances are given in May's Parliamentary Practice at pp. 118-19 where proceedings have been taken for breach of privilege including a case of the publication in 1801 of a proceeding which the House of Lords had ordered to be expunged from the journal. It is said that that was a case of privilege of the House of Lords and not a case of privilege of the House of Commons and it is pointed out that there has been no instance of such a claim of privilege having been made by the House of Commons for over a century. In the first place, it should be remembered that this privilege, as stated in Halsbury's Laws of England, 2nd Edn., Vol. 24, p. 351, is a common privilege claimed by both Houses and, if the House of

Lords could assert and exercise it in 1801, there is no reason to suppose that the House of Commons will not be able to do so if any occasion arises for its assertion or exercise. If the House of Commons has not done so for a long time it must rather be assumed that no occasion had arisen for the assertion and exercise of this power than that it had ceased to have the power at all (Cf. the observations in *Wason* v. *Walter*) (1) and *In re*: *Banwarilal Roy* (2)). Further the fact that the House of Commons in 1875 rejected Lord Hartington's motion referred to above also clearly indicates that the House of Commons is anxious to preserve this particular privilege. It is interesting also to note the new point that arose in the House of Commons regarding the publication of certain proceedings in August 1947. A Committee of Privileges found that one Mr. Evelyn Walkden, member for Doncaster, had revealed the proceedings of a private party meeting to a newspaper. The Committee thought that the practice of holding party meetings of a confidential character had become well-established and must be taken as a normal and everyday incident of parliamentary procedure. The Committee felt that attendance at such meetings within the precincts of the Palace of Westminster during the session was part of the member's normal duties and the publication by the handing out of a report of the proceedings amounted to a breach of the privilege of the House. It is true that the House only resolved that Mr. Walkden was guilty of dishonourable conduct, but did not expel him but it also passed a resolution that in future any person offering payment for the disclosure of such information would incur the House's grave displeasure (3). In this case the inquiry was with regard to the conduct of a member for having committed a breach of the privilege of the House by publishing the proceedings to an outsider. The point, however, to note is that whatever doubts there might have been as to whether the proceedings of the private party meetings could be equated with the regular proceedings of

(1) (1868) L.R. IV Q.B. 73. (2) 48 C. W. N. 766, 787.

(3) Ridge's Constitutional Law, 8th Edn., p. 70 and May's Parliamentary Practice, 16th Edn., p. 52.

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the House of Commons, there was, nevertheless, no question or doubt about the existence of the power or privilege of the House to forbid publication of the proceedings of the House. This case also shows that the House of Commons had not only not abandoned its power or privilege of prohibiting the publication of its proceedings proper but also considered the question of applying this power or privilege to the publication by a member of the proceedings that took place in a private party meeting held within the precincts of the House.

As to (*b*): It has already been said that the freedom of speech claimed by the House and granted by the Crown is, when necessary, ensured by the secrecy of the debate which in its turn is protected by prohibiting publication of the debates and proceedings as well as by excluding strangers from the House. Any member could in the old days "spy a stranger" and the Speaker had to clear the House of all strangers which would, of course, include the Press reporters. This right was exercised in 1849 and after 20 years in 1870 and again in 1872 and 1874. In 1875, however, this rule was modified by a resolution of the House only to this extent, namely, that, on a member spying a stranger, the Speaker would put the matter to the vote of the House (1). This right was exercised in 1923 and again as late as on November 18, 1958 (2). This also shows that there has been no diminution in the eagerness of the House of Commons to protect itself by securing the secrecy of debate by excluding strangers from the House when any occasion arises. The object of excluding strangers is to prevent the publication of the debates and proceedings in the House and, if the House is tenaciously clinging to this power or privilege of excluding strangers, it is not likely that it has abandoned its power or privilege to prohibit the publication of reports of debates or proceedings that take place within its precincts.

The result of the foregoing discussion, therefore, is that the House of Commons had at the commencement

(1) Taswell-Langmead, p. 660.

(2) The Statesman dated November 20, 1958.

of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. *A fortiori* the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part of Art. 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the States, as Art. 105(3) does on the Houses of Parliament. It is said that the conditions that prevailed in the dark days of British history, which led to the Houses of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United Kingdom or in our country and that there is, therefore, no reason why we should adopt them in these democratic days. Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and Committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to re-make it. Nor do we share the view that it will not be right to entrust our Houses with these powers, privileges and immunities, for we are well persuaded that our Houses, like the House of Commons, will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases.

Re. II: Assuming that the petitioner, as a citizen and an editor of a newspaper, has under Art. 19(1)(a) the fundamental right to publish a true and faithful report of the debates or proceedings that take place in the Legislative Assembly of Bihar and granting that that Assembly under Art. 194(3) has all the powers, privileges and immunities of the House of Commons which include, amongst others, the right to prohibit the publication of any report of the debates or proceedings,

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whose right is to prevail? Learned advocate for the petitioner contends that the powers, privileges and immunities of the Legislative Assembly under Art. 194(3) must give way to the fundamental right of the petitioner under Art. 19(1)(a). In other words, Art. 194 (3), according to him, is subject to Art. 19 (1) (a).

Learned advocate for the petitioner seeks to support his client's claim in a variety of ways which may now be noted seriatim :—

(i) that though cl. (3) of Art. 194 has not, in terms, been made "subject to the provision of the Constitution", it does not necessarily mean that it is not so subject, and that the several clauses of Art. 194 or Art. 105 should not be treated as distinct and separate provisions but should be read as a whole and that, so read, all the clauses should be taken as subject to the provisions of the Constitution, which, of course, would include Art. 19(1)(a);

(ii) that Art. 194(1), like Art. 105(1), in reality operates as an abridgement of the fundamental right of freedom of speech conferred by Art. 19(1)(a) when exercised in Parliament or the State Legislatures respectively, but Art. 194(3) does not, in terms, purport to be an exception to Art. 19(1)(a);

(iii) that Art. 19, which enunciates a transcendental principle and confers on the citizens of India indefeasible and fundamental rights of a permanent nature, is enshrined in Part III of our Constitution, which, in view of its subject matter, is more important, enduring and sacrosanct than the rest of the provisions of the Constitution, but that the second part of Art. 194(3) is of the nature of a transitory provision which, from its very nature, cannot override the fundamental rights;

(iv) that if, in pursuance of the provisions of Art. 105(3), Parliament makes a law under entry 74 in List I to the Seventh Schedule defining the powers, privileges and immunities of the House or Houses of Parliament and its members and committees or if, in pursuance of the provisions of Art. 194(3), the State Legislature makes a law under entry 39 in List II to

the Seventh Schedule defining the powers, privileges and immunities of the House or Houses of the Legislature of a State and its members and committees and if, in either case, the powers, privileges and immunities so defined and conferred on the House or Houses are repugnant to the fundamental rights of the citizens, such law will, under Art. 13, to the extent of such repugnancy, be void and that such being the intention of the Constitution makers in the earlier part of Art. 194(3) and there being no apparent indication of a different intention in the latter part of the same clause, the powers, privileges and immunities of the House of Commons conferred by the latter part of cl. (3) must also be taken as subject to the fundamental rights;

(v) that the observations in *Anand Bihari Mishra* v. *Ram Sahay* (1) and the decision of this Court in *Gunupati Keshavram Reddy* v. *Nafisul Hasan* (2) clearly establish that Art. 194(3) is subject to the fundamental rights.

The arguments, thus formulated, sound plausible and even attractive, but do not bear close scrutiny, as will be presently seen.

Article 194 has already been quoted *in extenso*. It is quite clear that the subject matter of each of its four clauses is different. Clause (1) confers on the members freedom of speech in the Legislature, subject, of course, to certain provisions therein referred to. Clause (2) gives immunity to the members or any person authorised by the House to publish any report etc. from legal proceedings. Clause (3) confers certain powers, privileges and immunities on the House of the Legislature of a State and on the members and the committees thereof and finally cl. (4) extends the provisions of cls. (1) to (3) to persons who are not members of the House, but who, by virtue of the Constitution, have the right to speak and otherwise to take part in the proceedings of the House or any committee thereof. In the second place, the fact that cl. (1) has been expressly made subject to the provisions of the Constitution but cls. (2) to (4) have not been stated to

(1) A.I.R. (1952) M.B. 31, 43. (2) A.I.R. (1954) S.C. 636.

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be so subject indicates that the Constitution makers did not intend cls. (2) to (4) to be subject to the provisions of the Constitution. If the Constitution makers wanted that the provisions of all the clauses should be subject to the provisions of the Constitution, then the Article would have been drafted in a different way, namely, it would have started with the words: "Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of the Legislature—" and then the subject matter of the four clauses would have been set out as sub-cls. (i), (ii), (iii) and (iv) so as to indicate that the overriding provisions of the opening words qualified each of the sub-clauses. In the third place, in may well be argued that the words "regulating the procedure of the Legislature" occurring in cl. (1) of Art. 194 should be read as governing both "the provisions of the Constitution" and "the rules and standing orders". So read freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to the Articles relating to procedure in Part VI including Arts. 208 and 211, just as freedom of speech in Parliament under Art. 105(1), on a similar construction, will become subject to the Articles relating to procedure in Part V including Arts. 118 and 121. The argument that the whole of Art. 194 is subject to Art. 19(1)(a) overlooks the provisions of cl. (2) of Art. 194. The right conferred on a citizen under Art. 19(1)(a) can be restricted by law which falls within cl. (2) of that Article and he may be made liable in a court of law for breach of such law, but cl. (2) of Art. 194 categorically lays down that no member of the Legislature is to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in committees thereof and that no person will be liable in respect of the publication by or under the authority of the House of such a Legislature of any report, paper or proceedings. The provisions of cl. (2) of Art. 194, therefore, indicate that the freedom of speech referred to in cl. (1) is different from the freedom of speech and expression guaranteed

under Art. 19(1)(a) and cannot be cut down in any way by any law contemplated by cl. (2) of Art. 19.

As to the second head of arguments noted above it has to be pointed out that if the intention of cl. (1) of Art. 194 was only to indicate that it was an abridgement of the freedom of speech which would have been available to a member of the Legislature as a citizen under Art. 19(1)(a), then it would have been easier to say in cl. (1) that the freedom of speech conferred by Art. 19(1)(a), when exercised in the Legislature of a State, would, in addition to the restrictions permissible by law under cl. (2) of that Article, be further subject to the provisions of the Constitution and the rules and standing orders regulating procedure of that Legislature. There would have been no necessity for conferring anew the freedom of speech as the words "there shall be freedom of speech in the Legislature of every State" obviously intend to do.

Learned advocate for the petitioner has laid great emphasis on the two parts of the provisions of cl. (3) of Art. 194, namely, that the powers, privileges and immunities of a House of the Legislature of a State and of the members and committees thereof shall be such as may from time to time be defined by the Legislature by law and that until then they shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees. The argument is that a law defining the powers, privileges and immunities of a House or Houses and the members and committees thereof can be made by Parliament under entry 74 in List I and by the State Legislature under entry 39 of List II and if a law so made takes away or abridges the right to freedom of speech guaranteed under Art. 19(1)(a) and is not protected under Art. 19(2), it will at once attract the operation of the peremptory provisions of Art. 13 and become void to the extent of the contravention of that Article. But it is pointed out that if Parliament or the State Legislature does not choose to define the powers, privileges and immunities and the Houses of Parliament or the House or Houses of the State Legislature

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or the members and committees thereof get the powers, privileges and immunities of the House of Commons, there can be no reason why, in such event, the last mentioned powers, privileges and immunities should be independent of and override the provisions of Art. 19 (1)(a). The conclusion sought to be pressed upon us is that that could not be the intention of the Constitution makers and, therefore, it must be held that the powers, privileges and immunities of the House of Commons and of its members and committees that are conferred by the latter part of Art. 105(3) on each House of Parliament and the members and committees thereof and by the latter part of Art. 194(3) on a House of the Legislature of a State and the members and committees thereof must be, like the powers, privileges and immunities defined by law, to be made by Parliament or the State Legislature as the case may be, subject to the provisions of Art. 19(1)(a). We are unable to accept this reasoning. It is true that a law made by Parliament in pursuance of the earlier part of Art. 105(3) or by the State Legislature in pursuance of the earlier part of Art. 194(3) will not be a law made in exercise of constituent power like the law which was considered in *Sankari Prasad Singh Deo* v. *Union of India* (1) but will be one made in exercise of its ordinary legislative powers under Art. 246 read with the entries referred to above and that consequently if such a law takes away or abridges any of the fundamental rights it will contravene the peremptory provisions of Art. 13(2) and will be void to the extent of such contravention and it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliament had not made any under s. 49 of their Constitution corresponding to Art. 194(3) up to 1955 when the case of *The Queen* v. *Richards* (2) was decided. It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the

(1) [1952] S.C.R. 89, 90.

(2) (1955) 92 C.L.R. 57.

extent of such repugnancy. It must not be overlooked that the provisions of Art. 105(3) and Art. 194(3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III. Further, quite conceivably our Constitution makers, not knowing what powers, privileges and immunities Parliament or the Legislature of a State may arrogate and claim for its Houses, members or committees, thought fit not to take any risk and accordingly made such laws subject to the provisions of Art. 13; but that knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers, privileges and immunities subject to the fundamental right conferred by Art. 19(1)(a). We must, by applying the cardinal rules of construction ascertain the intention of the Constitution makers from the language used by them. In this connection the observations made in *Anantha Krishnan* v. *State of Madras* (1) by Venkatarama Aiyar, J., appear to us to be apposite and correct:—

"As against this the learned Advocate for the petitioner urges that the fundamental rights are under the Constitution in a paramount position, that under Art. 13 the Legislatures of the country have no power to abrogate or abridge them, that the power to tax is the power to destroy and that, therefore, part 12 is inoperative in respect of the rights conferred under Part III. I am unable to agree. Art. 13 on which this argument is mainly founded does not support such a wide contention. It applies in terms only to laws in force before the commencement of the Constitution and to laws to be enacted by the States, that is, in future. It is only those two classes of laws that are declared void as against the provisions of Part III. It does not apply to the Constitution itself. It does not enact that the other portions of the Constitution should be void as against the provisions in Part III and it would be surprising if it did, seeing that all of them

(1) A.I.R. (1952) Mad. 395, 405.

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are parts of one organic whole. Article 13, therefore, cannot be read so as to render any portion of the Constitution invalid. This conclusion is also in accordance with the principle adopted in interpretation of statutes that they should be so construed as to give effect and operation to all portions thereof and that a construction which renders any portion of them inoperative should be avoided. For these reasons I must hold that the operation of Part 12 is not cut down by Part III and that the fundamental rights are within the powers of the taxation by the State."

Article 19(1)(a) and Art. 194(3) have to be reconciled and the only way of reconciling the same is to read Art. 19(1)(a) as subject to the latter part of Art. 194(3), just as Art. 31 has been read as subject to Art. 265 in the cases of *Ramjilal* v. *Income-tax Officer, Mohindargarh* (1) and *Laxmanappa Hanumantappa* v. *Union of India* (2), where this Court has held that Art. 31(1) has to be read as referring to deprivation of property otherwise than by way of taxation. In the light of the foregoing discussion, the observations in the *Madhya Bharat case* (3) relied on by the petitioner, cannot, with respect, be supported as correct. Our decision in *Gunupati Keshavram Reddy* v. *Nafisul Hasan* (4), also relied on by learned advocate for the petitioner, proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on the subject. In our judgment the principle of harmonious construction must be adopted and so construed, the provisions of Art. 19(1)(a), which are general, must yield to Art. 194(1) and the latter part of its cl. (3) which are special.

Seeing that the present proceedings have been initiated on a petition under Art. 32 of the Constitution and as the petitioner may not be entitled, for reasons stated above, to avail himself of Art. 19(1)(a) to support this application, learned advocate for the petitioner falls back upon Art. 21 and contends that the proceedings before the Committee of Privileges threaten to deprive him of personal liberty otherwise

(1) [1951] S.C.R. 127.
(2) [1955] 1 S.C.R. 769.
(3) A.I.R. (1952) M.B. 31, 43.
(4) A.I.R. (1954) S.C. 636.

than in accordance with procedure established by law. The Legislative Assembly claims that under Art. 194(3) it has all the powers, privileges and immunities enjoyed by the British House of Commons at the commencement of our Constitution. If it has those powers, privileges and immunities, then it can certainly enforce the same, as the House of Commons can do. Article 194(3) confers on the Legislative Assembly those powers, privileges and immunities and Art. 208 confers power on it to frame rules. The Bihar Legislative Assembly has framed rules in exercise of its powers under that Article. It follows, therefore, that Art. 194(3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be in accordance with procedure established by law and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Art. 21.

We now proceed to consider the other points raised by learned counsel for the petitioner. He argues that assuming that the Legislative Assembly has the powers, privileges and immunities it claims and that they override the fundamental right of the petitioner, the Legislative Assembly, nevertheless, must exercise those privileges and immunities in accordance with the standing orders laying down the rules of procedure governing the conduct of its business made in exercise of powers under Art. 208. Rule 207 lays down the conditions as to the admissibility of a motion of privilege. According to cl. (ii) of this rule the motion must relate to a specific matter of recent occurrence. The speech was delivered on May 30, 1957, and Shri Nawal Kishore Sinha M.L.A. sent his notice of motion on June 10, 1957, that is to say, 10 days after the speech had been delivered. The matter that occurred 10 days prior to the date of the submission of the notice of motion cannot be said to be a specific matter of recent

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occurrence. It is impossible for this Court to prescribe a particular period for moving a privilege motion so as to make the subject matter of the motion a specific matter of recent occurrence. This matter must obviously be left to the discretion of the Speaker of the House of Legislature to determine whether the subject matter of the motion is or is not a specific matter of recent occurrence. The copies of the proceedings marked as Annexure D in Annexure III to the petition do not disclose that any objection was taken by any member on the ground that the matter was not a specific matter of recent occurrence. We do not consider that there is any substance in this objection.

Reference is then made to rr. 208 and 209 which lay down the procedure as to what is to happen if any objection is taken to leave being granted to the mover to move his motion. It is said that Shri Ramcharitra Sinha M.L.A. had raised an objection to leave being granted to Shri Nawal Kishore Sinha to move the privilege motion. This allegation in the petition does not appear to be borne out by the account of proceedings in the House to which reference has been made. Shri Ramcharitra Sinha only wanted to know the convention relating to the question of admissibility of such a motion and the Speaker accordingly read out cl. (ii) of r. 208. After that Shri Ramcharitra Sinha did not say anything further. The Speaker then said that he understood that there was no opposition in the matter and, therefore, the Hon'ble member was to be understood as having received the leave of the House and called upon him to say what he wanted to say. Thereupon, as stated earlier, Shri Karpuri Thakur wanted to know what had been published in the Searchlight of May 31, 1957, and what ought not to have been published. The Speaker thereupon read out the notice submitted by Shri Nawal Kishore Sinha which concisely referred to the subject matter of the motion and contained a reference to the issue of the Searchlight of May 31, 1957, a copy of which was filed along with the notice. After the notice had been read the Speaker permitted Shri Nawal Kishore Sinha to move his privilege motion, which the latter did. There

was no amendment proposed and the Speaker then stated what the question before the House was. Nobody having indicated his opposition, he declared the motion to be carried. There was, in the circumstances, no non-compliance with the provisions of r. 208 read with r. 209.

The next argument founded on non-compliance with the rules is based on r. 215. Clause (i) of that rule provides that the Committee of Privileges should meet as soon as may be after the question has been referred to it and from time to time thereafter till a report is made within the time fixed by the House. In this case the House admittedly did not fix a time within which the report was to be made by the Committee of Privileges. This circumstance immediately attracts the proviso, according to which where the House does not fix any time for the presentation of the report, the report has to be presented within one month of the date on which the reference to the Committee was made. Learned advocate for the petitioner argues that one month's time had long gone past and, therefore, the Committee of Privileges became *functus officio* and cannot, under the rules, proceed with the reference. There is no substance in this contention, because the second proviso to cl. (i) of r. 215 clearly provides that the House may at any time on a motion being made direct that the time for the presentation of the report by the Committee be extended to a date specified in the motion. The words "at any time" occurring in the second proviso quite clearly indicate that this extension of time may be within the time fixed by the House or, on its failure to do so, within the time fixed by the first proviso or even thereafter, but before the report is actually made or presented to the House (Cf. *Raja Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*) (1). Further, the question of time within which the Committee of Privileges is to make its report to the House is a matter of internal management of the affairs of the House and a matter between the House and its Committee and confers no right on the party whose conduct is the subject matter of investigation

(1) (1891) L.R. 18 I.A. 55, 58.

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and this is so particularly when the House has the power to extend time " at any time ".

The next argument is that the Committee cannot proceed to investigate what has not been referred to it. Reference is made to the resolution of the Committee (Annexure II to the petition) and the notice issued to the petitioner (Annexure I to the petition). It is said that while the Committee's resolution speaks of publishing " a perverted and unfaithful report of the proceedings of the Assembly relating to the speech of Maheshwar Prasad Narayan Sinha M.L.A." including the expunged portion thereof, the notice simply refers to " a question involving breach of privilege of the Bihar Legislative Assembly arising out of the publication of the news item " and calls upon the petitioner to show cause why appropriate action should not be recommended against him " for breach of privilege of the Speaker and the Assembly ". We fail to perceive how the two documents can be read as referring to two different charges. The notice served on the petitioner is couched in terms which cover the matters referred to in the Committee's resolution. The effect in law of the order of the Speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances, though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech, i.e., including the expunged portion in derogation to the orders of the Speaker passed in the House may, *prima facie*, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news item and that is precisely the charge that is contemplated by the Committee's resolution and which the petitioner is by the notice called upon to answer. We prefer to express no opinion as to whether there has, in fact, been any breach of the privilege of the House, for of that the House alone is the judge.

The next argument urged by learned advocate for the petitioner is that, after the House had referred the matter to the committee of privileges, nothing was

done for about one year, and after such a lapse of time the committee has suddenly woke up and resuscitated the matter only with a view to penalise the petitioner. In paragraph 17 of the petition the charge of mala fides is thus formulated :—

"17. That the Committee of Privileges aforesaid is proceeding against the petitioner mala fide with a view to victimise and muzzle him since the petitioner has been through his newspaper unsparingly criticising the administration in the State of Bihar of which opposite party No. 1 is the Chief Minister."

It will be noticed that the allegation of mala fides is against the Committee of Privileges and not against the Chief Minister and, therefore, to controvert this allegation an affidavit affirmed by the Secretary to the Bihar Legislative Assembly has been filed. In the affidavit in reply reference is made to certain issues of the Searchlight indicating that charges were being made by the paper against the Chief Minister and the suggestion is that it is at the instance of the Chief Minister that the Committee has now moved in the matter. This is a new allegation. That apart, the Chief Minister is but one of the fifteen members of the Committee and one of the three hundred and nineteen members of the House. The Committee of Privileges ordinarily includes members of all parties represented in the House and it is difficult to expect that the Committee, as a body, will be actuated by any mala fide intention against the petitioner. Further the business of the Committee is only to make a report to the House and the ultimate decision will be that of the House itself. In the circumstances, the allegation of bad faith cannot be readily accepted. It is also urged that the Chief Minister should not take part in the proceedings before the Committee because he has an interest in the matter and reference is made to the decision in *Queen* v. *Meyer* (1). The case of bias of the Chief Minister (respondent 2) has not been made anywhere in the petition and we do not think it would be right to permit the petitioner to raise this question, for it depends

(1) L.R. (1876) 1 Q.B.D. 173.

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on facts which were not mentioned in the petition but were put forward in a rejoinder to which the respondents had no opportunity to reply.

Finally, the petitioner denies that the expunged portions have been published. We do not think we should express any opinion on this controversy, at any rate, at this stage. If the Legislative Assembly of Bihar has the powers and privileges it claims and is entitled to take proceedings for breach thereof, as we hold it is, then it must be left to the House itself to determine whether there has, in fact, been any breach of its privilege. Thus, it will be for the House on the advice of its Committee of Privileges to consider the true effect of the Speaker's directions that certain portions of the proceedings be expunged and whether the publication of the speech, if it has included the portion which had been so directed to be expunged, is, in the eye of the law, tantamount to publishing something which had not been said and, whether such a publication cannot be claimed to be a publication of an accurate and faithful report of the speech. It will, again, be for the House to determine whether the Speaker's ruling made distinctly and audibly that a portion of the proceedings be expunged amounts to a direction to the Press reporters not to publish the same, and whether the publication of the speech, if it has included the portion directed to be so expunged, is or is not a violation of the order of the Speaker and a breach of the privilege of the House amounting to a contempt of the Speaker and the House.

For reasons stated above we think that this petition should be dismissed. In the circumstances, there will be no order for costs.

Subba Rao J.

SUBBA RAO, J.—I have had the advantage of perusing the well considered judgment of my Lord the Chief Justice. It is my misfortune to differ from him and my learned brethren. I would not have ventured to do so but for my conviction that the reasoning adopted therein would unduly restrict and circumscribe the wide scope and content of one of the cherished fundamental rights, namely, the freedom of speech in its application to the Press.

This is an application under Article 32 of the Constitution for quashing the proceedings before the Committee of Privileges of the Bihar Legislative Assembly and for restraining the respondents, i.e., the Chief Minister of Bihar and the said Committee of Privileges, from proceeding against the petitioner for the publication in the issue of the "Searchlight" dated May 31, 1957, an account of the debate in the House (The Legislative Assembly, Bihar) on May 30, 1957, and for other incidental reliefs. The petitioner, Pandit M. S. M. Sharma, is the editor of the "Searchlight", an English daily newspaper published from Patna in the State of Bihar. On May 30, 1957, Shri Maheswara Prasad Narayan Singh, a member of the State Assembly made a bitter attack in the Assembly on the Chief Minister, Shri Sri Krishna Sinha, and on Shri Mahesh Prasad Sinha, a minister in the previous cabinet, who was defeated at the last General Elections. It is said that in regard to that speech the Speaker gave a ruling that certain portions thereof should be expunged from the proceedings. In the issue of the "Searchlight" dated May 31, 1957, an accurate and faithful account of the proceedings of the Bihar Legislative Assembly of May 30, 1957, was published under the caption "BITTEREST ATTACK ON CHIEF MINISTER". It was also indicated in the report that the Speaker had disallowed the member to name Mr. Mahesh Prasad Sinha in respect of the Ministry formation and confined him to his remarks in regard to his chairmanship of the Khadi Board. It is alleged in the affidavit that till May 31, 1957, it was not known to any member of the staff of the "Searchlight", including the petitioner, that any portion of the debate in question had been expunged from the official record of the Assembly proceedings of May 30, 1957, and that in fact the petitioner did not publish the expunged remarks. This fact was denied by the respondents in their counter, but it was not alleged that the Speaker made any specific order or gave any direction prohibiting the publication of any part of the proceedings of the Assembly in any newspaper. On June 10, 1957, Shri Nawal Kishore Sinha moved a privilege motion-

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in the House and it was carried, as, presumably, no one had opposed it. On the same day, the House referred the matter to the Committee of Privileges without fixing any date for the presentation of the report of the Committee. The Committee in due course held its meeting presided over by the Chief Minister and found that a *prima facie* case of breach of privilege had been made out against the petitioner. Then, the Secretary to the Legislative Assembly issued a notice to the petitioner informing him of the fact that the Committee had found a *prima facie* case of breach of privilege made out against him and asking him to show cause, if any, on or before September 8, 1958, why appropriate action should not be taken against him. Along with that notice, a copy of the motion as adopted by the Committee of Privileges in its meeting held on August 10, 1958, and a copy of a booklet containing a collection of the papers relating to the privilege motion moved by Shri Nawal Kishore Sinha, M.L.A., on June 10, 1957, were enclosed for ready reference. The booklet accompanying the notice contained the motion moved in the House, the report published in the "Searchlight" dated May 31, 1957, and the rules of the Assembly relating to the Committee of Privileges. Though there was some argument on the construction of the terms of the resolution passed by the Committee on account of the unhappy language in which it was couched, it is manifest that the breach of privilege pleaded was that the petitioner, by including the expunged portion of the speech of Maheshwar Prasad Narayan Singh, published a perverted and unfaithful report of the proceedings of the Assembly. The petitioner, thereafter, filed a petition under Art. 32 of the Constitution for the aforesaid reliefs.

On the aforesaid facts, the learned Counsel for the petitioner, raised the following points in support of the petition: (1) The petitioner, as a citizen of India, has the fundamental right under Art. 19 (1) of the Constitution to freedom of speech and expression, which includes the freedom of propagation of ideas and their publication and circulation; and the Legislature of a State cannot claim a privilege in such a

way as to infringe that right. This contention is put in two ways: (i) The privilege conferred on the Legislature of a State is subject to the freedom conferred on a citizen under Art. 19 (1) of the Constitution; and (ii) that even if the privilege was not expressly made subject to the fundamental right under Art. 19 (1), having regard to the nature of the fundamental right and the rules of interpretation, this Court should so construe the provisions as to give force to both the provisions. (2) Even if Art. 194 (3) overrides the provisions of Art. 19, the powers, privileges and immunities of the House of Legislature are only those of the House of Commons of the Parliament of the United Kingdom, at the commencement of the Constitution, i. e., January 26, 1950; and the House of Commons on that date had no privilege to prevent the publication of its proceedings or portion expunged by the Speaker in respect of the proceedings. (3) Under Art. 21 of the Constitution, no person is to be deprived of his personal liberty except in accordance with the procedure established by law and that the Privilege Committee, by calling upon the petitioner to appear at the Bar of the Legislature after making an enquiry in violation of the rules, particularly the rr. 207 (2), 208 (3) and 215 of the rules of the Assembly relating to the Committee of Privileges, has infringed his right under that Article. (4) Mr. Maheshwara Prasad Narayan Singh made a bitter attack on the Chief Minister and that report was published in the "Searchlight". The Chief Minister, who has admittedly control over the Legislature or at any rate over the majority of the members of the Assembly, was actuated by *mala fides* in securing the initiation of the proceedings against the petitioner for breach of privilege, and therefore his presiding over the meeting of the Sub-Committee would vitiate its entire proceedings. (5) The Committee of Privileges enquired into an allegation not referred to it by the House. The learned Solicitor General, appearing for the respondents, countered the said arguments and his contentions may be summarized thus: Under the Constitution, no particular Article has more sanctity than the other, even though that

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Article deals with fundamental rights. Article 194 (3) is not made subject to Art. 19 of the Constitution, and, therefore, if the House of Commons of the Parliament of the United Kingdom has the power or privilege to prevent the publication of its proceedings, or at any rate of the expunged portions of it, the Legislature of a State in India has also a similar privilege or power and it can exercise it, notwithstanding the fact that it infringes the fundamental right of a citizen. The House of Commons of the United Kingdom has such a privilege and therefore the Legislature of Bihar can exercise it and take action against the person committing a breach thereof. While a Court of Law can decide on the question of the existence and the extent of the privilege of a House, it has no power or jurisdiction to consider whether a particular person in fact committed a breach thereof. The Legislature in this case has not broken any of the rules of the Assembly relating to the Committee of Privileges, and even if it did, by reason of Art. 212 (1) of the Constitution, the validity of its proceedings cannot be questioned on the ground of any alleged irregularity of the procedure. There was no allegation in the petition that the Committee or the Assembly was actuated by *mala fides* and even if the Chief Minister was acting with *mala fides*—which fact was denied—, the proceedings of the Committee or of the Legislature, which is the final authority in the matter of deciding whether there was a breach of privilege, would not be vitiated. It was also denied that the Committee of Privileges enquired into any allegation not referred to it by the House.

At the outset it would be convenient to clear the ground of the subsidiary ramifications falling outside the field of controversy and focus on the point that directly arises in this case. We are not concerned here with the undoubted right of a State Legislature to control and regulate its domestic affairs. In "Cases in Constitutional Law" by Keir and Lawson, it is stated, at page 126, as follows:

"The undoubted privileges of the House of Commons are of three kinds. They include (i) exclusive

jurisdiction over all questions which arise within the walls of the house, except, perhaps, in case of felony...

.....

(ii) Certain personal privileges which attach to members of Parliament. The most important of these are freedom of debate, and immunity from civil arrest during the sitting of Parliament and for forty days before and after its assembling.....

'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'.

(iii) The power of executing decisions on matters of privilege by committing members of Parliament, or any other individuals, to imprisonment for contempt of the House."

Nor we are called upon to decide on the scope of a Court's jurisdiction to set aside the orders of contempt made by the Legislature or warrants issued to implement the said orders. Reported decisions seem to suggest that if the order committing a person for contempt or the warrant issued pursuant thereto discloses the reasons, the Court can decide whether there is a privilege and also its extent; but, when it purports to issue a bald order, the Court has no power to decide, on the basis of other evidence, whether in fact a breach of privilege is involved. As this question does not arise in this case, I need not express any opinion thereon. The stand taken by the Legislature, as disclosed in the notice issued, the enclosed records sent to the petitioner, in the counter-affidavit filed and the arguments advanced by the respondents, is that the Legislature of a State has the privilege to prevent any citizen from publishing the proceedings of the Legislature or at any rate such portions of it as are ordered to be expunged by the Speaker, and therefore it has a right to take action against the person committing a breach of such a privilege. The main question, therefore, that falls to be decided is whether the Legislature has such a privilege. If this question is answered against the Legislature, no other question arises for consideration.

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The powers, privileges, and immunities of a State Legislature are governed by Art. 194 of the Constitution and the freedom of propagation of ideas, their publication and circulation by Art. 19(1)(a) thereof. For convenience of reference, both these articles may be read in juxtaposition.

Article 19 reads:

"(1) All citizens shall have the right—

(a) to freedom of speech and expression;

.....

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Article 194 states:

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

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

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

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

In *Romesh Thappar* v. *The State of Madras* (1), this Court ruled that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation. This freedom is, therefore, comprehensive enough to take in the freedom of the press. The said view is accepted and followed in *Brij Bhushan* v. *The State of Delhi* (2). To the same effect is the decision of this Court in *Express Newspapers Ltd.* v. *Union of India* (3), where Bhagwati, J., delivering the judgment of the Court, held that freedom of speech and expression includes within its scope the freedom of the Press. In *Srinivasan* v. *The State of Madras* (4) it was held, on the basis of the view expressed by this Court, that the terms "freedom of speech and expression" would include the liberty to propagate not only one's own views but also the right to print matters which are not one's own views but have either been borrowed from someone else or are printed under the direction of that person. I would, therefore, proceed to consider the argument advanced on the basis that the freedom of speech in Art. 19(1)(a) takes in also the freedom of the Press in the comprehensive sense indicated by me supra. The importance of the freedom of speech in a democratic country cannot be over-emphasized, and in recognition thereof, cl. (2) of Art. 19 unlike other clauses of that Article, confines the scope of the restrictions on the said freedom within comparatively narrower limits. Clause (2) enables the State to impose reasonable restrictions on the exercise of the said right in the interest of the security of the State, friendly relations with foreign States, public order, decency or

(1) [1950] S.C.R. 594.
(2) [1950] S.C.R. 605.
(3) [1959] S.C.R. 12, 118.
(4) A.I.R. (1951) Mad. 70.

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morality, or in relation to contempt of Court defamation or incitement to an offence. The said Article finds place in Part III under the heading "Fundamental Rights". Article 13 makes laws that are inconsistent with or in derogation of the fundamental rights void and clause (2) thereof expressly prohibits the State from making laws in contravention of the said rights. In the words of Patanjali Sastri, C. J., the said rights in Part III are "rights reserved by the people after delegation of the rights by the people to the institutions of government". It is true, and it cannot be denied, that notwithstanding the transcendental nature of the said rights, the Constitution may empower the Legislature to restrict the scope of the said rights within reasonable bounds, as in fact it did under cls. (2) to (6) of Art. 19. Such restrictions may be by express words or by necessary implication. But the Court would not and should not, having regard to the nature of the rights, readily infer such a restriction unless there are compelling reasons to do so. The Constitution adopted different and well-understood phraseology to resolve conflicts and prevent overlapping of various provisions. Some Articles are expressly made subject to the provisions of the Constitution—vide Arts. 71(3), 73(1), 105, 131, etc.—, and some to specified Articles—vide Arts. 81, 107(1), 107(2) 114(3), 120(1), etc. Some Articles are made effective notwithstanding other provisions in the Constitution —vide Arts. 120(1), 136(1), 143(2), 169(1), etc. Where the Constitution adopts one or other of the said two devices, its intention is clear and unambiguous; but, there are other Articles which are not expressly made subject to provisions of the Constitution or whose operation is not made effective notwithstanding any other provisions. In such cases, a duty is cast upon the Court to ascertain the intention of the Constituent Assembly. Cooley in his "Constitutional Law" points out that "however carefully constitutions may be made, their meaning must be often drawn in question". He lays down, at page 427, the following rule, among others, as a guide to the construction of these instruments:

"The whole instrument is to be examined, with a view of determining the intention of each part. Moreover, effect is to be given, if possible, to the whole instrument, and to every section and clause. And in interpreting clauses it must be presumed that words have been used in their natural and ordinary meaning."

The rule may also be stated in a different way: If two Articles appear to be in conflict, every attempt should be made to reconcile them or to make them to co-exist before excluding or rejecting the operation of one.

Article 194(3) of the Constitution, with which we are concerned, does not in express terms make that clause subject to the provisions of the Constitution or to those of Art. 19. Article 194 has three clauses. The first clause declares that there shall be freedom of speech in the Legislature of every State and that freedom is expressly made subject to the provisions of the Constitution and to the rules and the standing orders regulating the procedure of the Legislature. Clause (2) gives protection to members of the Legislature of a State from any liability to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof and to every person in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or procedure. The third clause, with which we are now directly concerned, confers upon a House of the Legislature of a State and of the members and the committees thereof certain powers, privileges and immunities. It is in two parts. The first part says that the powers, privileges and immunities of a House of the Legislature of a State and of the members and the committees of a House of such Legislature shall be such as may from time to time be defined by the Legislature by law; and the second part declares that until so defined, they shall be those of the House of Commons of the Parliament of the United Kingdom and its members and committees, at the commencement of the Constitution. The question is whether

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this clause confers on the Legislature powers, privileges and immunities so as to infringe the fundamental right of a citizen under Art. 19(1)(a) of the Constitution. The first thing to be noticed is that while Art. 19(1)(a) of the Constitution deals with the freedom of speech and expression of a citizen, Art. 194(1) declares that there shall be freedom of speech in the Legislature of every State. While Art. 19(1) is general in terms and is subject only to reasonable restrictions made under clause (2) of the said Article, Art. 194(1) makes the freedom of speech subject to the provisions of the Constitution and rules and standing orders regulating the procedure of the Legislature. Clause (2) flows from cl. (1) and it affords protection from liability to any proceedings in a Court for persons in respect of the acts mentioned therein. But these two provisions do not touch the fundamental right of a citizen to publish proceedings which he is entitled to do under Art. 19(1) of the Constitution. That is dealt with by cl. (3). That clause provides for powers, privileges and immunities of a House of the Legislature of a State and of the members and the committees of a House, other than those specified in cl. (2). It is not expressly made subject to the provisions of the Constitution. I find it difficult to read in that clause the opening words of cl. (1), viz., "subject to the provisions of this Constitution", for two reasons: (i) cl. (3) deals with a subject wider in scope than cl.(1) and therefore did not flow from cl. (1); and (ii) grammatically it is not possible to import the opening words of cl. (1) into cl. (3). Therefore, I shall proceed on the basis that cl. (3) is not expressly made subject to Art. 19 or expressly made independent of other Articles of the Constitution. We must, therefore, scrutinize the provisions of that clause in the context of the other provisions of the Constitution to ascertain whether by necessary implication it excludes the operation of Art. 19. The first thing to be noticed in cl. (3) of Art. 194 is that the Constitution declares that the powers, privileges and immunities of a House of Legislature of a State and of the members and committees of a House of such Legislature are such as

defined by the Legislature by law. In the second part, as a transitory measure, it directs that till they are so defined, they shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, at the commencement of the Constitution. I find it impossible to accept the contention that the second part is not a transitory provision; for, the said argument is in the teeth of the express words used therein. It is inconceivable that the Constituent Assembly, having framed the Constitution covering various fields of activity in minute detail, should have thought fit to leave the privileges of the Legislatures in such a vague and nebulous position compelling the Legislatures to ascertain the content of their privileges from those obtaining in the House of Commons at the commencement of the Constitution. The privilege of the House of Commons is an organic growth. Sometimes a particular rule persists in the record but falls into disuse in practice. Privileges, just like other branches of common law, are results of compromise depending upon the particular circumstances of a given situation. How difficult it is to ascertain the privilege of the House of Commons and its content and extent in a given case is illustrated by this case.

Reliance is placed upon other Articles of the Constitution in support of the contention that the second part of cl. (3) is not intended to be transitory in nature. Under Art. 135 of the Constitution, until Parliament by law otherwise provides, the Supreme Court shall have certain appellate jurisdiction. Under Art. 137, subject to the provisions of any law made by Parliament or any rules made under Art. 145, the Supreme Court shall have power to review any judgment pronounced or order made by it. Article 142(2) says: "Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respect the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself." Article 145

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reads: "Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court.....". Under Art. 146(2), "Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose." Under Art. 187(3), "Until provision is made by the Legislature of the State under clause (2), the Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause". Clause (2) of Art. 210 says "Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words 'or in English' were omitted therefrom."

I do not see any analogy between the first part of Art. 194(3) and the provisions of the aforesaid Articles. Firstly, the said Articles do not import into India the law of a foreign country; secondly, they either make the existing law subject to the provisions of any law made by Parliament, or declare a particular law to be in force unless modified by Parliament; whereas in Art. 194(3) the Constitution expressly declares that the law in respect of powers, privileges and immunities is that made by a House of the Legislature from time to time and introduces a rider as a transitory measure that till such law is made, the powers, privileges and immunities of the House of Commons should be those of the Legislature also. I have no doubt, therefore, that part two of cl. (3) of Art. 194 is intended to be a transitory provision and ordinarily,

unless there is a clear intention to the contrary, it cannot be given a higher sanctity than that of the first part of cl. (3). The first part of cl. (3) reads:

"In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law.....". Article 245 enables a State to make laws for the whole or any part of the State. Article 246(3) provides that the Legislature of any State has exclusive power to make laws with respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution referred to as the "State List"). Item 39 of List II of the Seventh Schedule enumerates the following matters among others: "Powers, privileges and immunities of the Legislative Assembly and of the members and the committees thereof.....". Clause (2) of Art. 13, which is one of the Articles in Part III relating to fundamental rights, prohibits the State from making any law which takes away or abridges the rights conferred by that Part and declares that any law made in contravention of that clause shall to the extent of the contravention be void. It is, therefore, manifest that the law made by the Legislature in respect of the powers, privileges and immunities of a House of the Legislature of a State, would be void to the extent the law contravened the provisions of Art. 19(1)(a) of the Constitution, unless it is saved by any law prescribing reasonable restrictions within the ambit of Art. 19(2). So much is conceded by the learned Solicitor General. Then, what is the reason or justification for holding that the second part of that clause should be read in a different way as to be free from the impact of the fundamental rights. When the Constitution expressly made the laws prescribing the privileges of the Legislature of a State of our country subject to the fundamental rights, there is no apparent reason why they should have omitted that limitation in the case of the privileges of the Parliament of the United Kingdom in their application to a State Legislature. We cannot assume that

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the framers of the Constitution thought that the privileges of the House of Commons were subject to the fundamental rights in that country; for, to assume that is to impute ignorance to them of the fact that the Parliament of the United Kingdom was supreme and there were no fetters on its power of legislation. The contention also, if accepted, would lead to the anomaly of a law providing for privileges made by Parliament or a Legislature of our country being struck down as infringing the fundamental rights, while the same privilege or privileges, if no law was made, would be valid. Except the far-fetched suggestion that the Constitution-makers might have thought that all the privileges of the House of Commons, being the mother of Parliaments, would not in fact offend the fundamental rights and that, therefore, they designedly left them untouched by Part III as unnecessary or the equally untenable guess that they thought that for a temporary period the operation and the extent of the said privileges need not be curtailed, no convincing or even plausible reason is offered for the alleged different treatment meted out to the said privileges in the said two parts of cl. (3). If the Constitution intended to make the distinction, it would have opened the second part of cl. (3) with the words " Notwithstanding other provisions of the Constitution or those of Art. 19 ".

I cannot also appreciate the argument that Art. 194 should be preferred to Art. 19(1) and not *vice versa*. Under the Constitution, it is the duty of this Court to give a harmonious construction to both the provisions so that full effect may be given to both, without the one excluding the other. There is no inherent inconsistency between the two provisions. Article 19(1) (a) gives freedom of speech and expression to a citizen, while the second part of Art. 194(3) deals with the powers, privileges and immunities of the Legislature and of its members and committees. The Legislature and its members have certainly a wide range of powers and privileges and the said privileges can be exercised without infringing the rights of a citizen, and particularly of one who is not a member of the Legislature.

When there is a conflict, the privilege should yield to the extent it affects the fundamental right. This construction gives full effect to both the Articles. This Court in *Gunupati Keshavram Reddy* v. *Nafisul Hasan* (1) held that the order of arrest of Mr. Mistry and his detention in the Speaker's custody was a breach of the provisions of Art. 22(2) of the Constitution. In that case, the said Mistry was directed by the Speaker of the U. P. Legislative Assembly to be arrested and produced before him to answer a charge of breach of privilege. Though the question was not elaborately considered, five judges of this Court unanimously held that the arrest was a clear breach of the provisions of Art. 22(2) of the Constitution indicating thereby that Art. 194 was subject to Articles of Part III of the Constitution. I am bound by the decision of this Court. In the result, I hold that the petitioner has the fundamental right to publish the report of the proceedings of the Legislature and that, as no reasonable restrictions were imposed by law on the said fundamental right, the action of the respondents infringes his right entitling him to the relief asked for.

This case does not, as it is supposed or suggested illustrate any conflict between the Legislature and the Court, but it is one between the Legislature and the citizens of the State whose representatives constituted the Legislature. I yield to none in my respect for that august body, the Legislature of the State; but, we are under a duty, enjoined on this Court by Art. 32 of the Constitution, to protect the rights of the citizens who in theory reserved to themselves certain rights and parted only the others to the Legislature. Every institution created by the Constitution, therefore, should function within its allotted field and cannot encroach upon the rights of the people who created the institutions. It may not be out of place to suggest to the appropriate authority to make a law regulating the powers, privileges and immunities of the Legislature instead of keeping this branch of law in a nebulous state, with the result that a citizen will have to

(1) A.I.R. (1954) S.C. 636.

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make a research into the unwritten law of the privileges of the House of Commons at the risk of being called before the Bar of the Legislature.

The said conclusion would be sufficient to dispose of this petition. But as it was argued at some length, it would be as well that I expressed my opinion on the question of the existence and the extent of the relevant privileges of the House of Commons at the commencement of the Constitution. Before considering that question, it would be convenient to notice briefly the scope of a Court's jurisdiction to investigate the nature and the extent of the privilege claimed by the House of Commons. It is often said that each House of Parliament is the sole judge of its own privileges. But early in the history of British Parliament the question of the scope of that equivocal statement was raised and it was contended that the House's jurisdiction was confined only within the limits of the privileges as defined by the Courts of Common Law. The said question was raised and decided in *Ashby* v. *White* (1), *Paty's Case* (2), *Stockdale* v. *Hansard* (3) and in the *Case of the Sheriff of Middlesex* (4). In the said cases, the Common Law rights of a citizen were threatened by the House of Commons on the ground that the person concerned committed a breach of the privilege of the House. The combined effect of these decisions is that "the Courts deny to the Houses the right to determine the limits of their privileges, while allowing them within those limits exclusive jurisdiction". In Anson's Law and Custom of the Constitution, the principle has been neatly stated, at page 190, thus :—

"The Privileges of Parliament, like the prerogative of the Crown, are rights conferred by law, and as such their limits are ascertainable and determinable, like the limits of other rights, by the Courts of Law."

As the learned Solicitor General conceded the said legal position, it would be unnecessary to pursue the matter further or consider the decisions in greater detail.

The main question, therefore, that falls to be decided is the existence and the extent of the privilege

(1) (1703) 2 Ld. Raym. 938.
(2) (1704) 2 Ld. Raym. 1105.
(3) (1839) 9 A. & E. 1.
(4) (1840) 11 A. & E. 809.

claimed by the respondents. As the privilege claimed by the respondents is in derogation of the fundamental right of a citizen, the burden lies heavily upon them to establish by clear and unequivocal evidence that the House of Commons possessed such a privilege. In the words of Coke "as the privilege is part of the law of custom of the Parliament, they must be collected out of the rolls of Parliament and other records and by precedent and continued experience". They can be found only in the Journals of the House compiled in the Journal Office from the manuscript minutes and notes of proceedings made by the clerks at the table during the sittings of the House. Decided cases and the text-books would also help us to ascertain the privileges of the Houses. The words "at the commencement of the Constitution" indicate that the privileges intended to be attracted are not of the dark and difficult days, when the House of Commons passed through strife and struggle, but only those obtaining in 1950, when it was functioning as a model Legislature in a highly democratized country. In the circumstance, a duty is cast upon the respondents to establish with exactitude that the House of Commons possessed the particular privilege claimed at the commencement of the Constitution.

The respondents claimed two privileges: (i) that the House of Commons has the privilege of preventing the publication of its proceedings; and (ii) that it has the privilege to prevent the publication of that part of the proceedings directed by the Speaker to be expunged. Indeed the second privilege is in fact comprehended by the first, which is larger in scope.

A history of the said privilege is given in May's Parliamentary Practice as well as in Halsbury's Laws of England. In Halsbury's Laws of England, 2nd Edition, Volume 24 (Lord Hailsham's Edition), it is stated at pages 350-351 as follows:

"It is within the power of either House of Parliament, should it deem it expedient, to prohibit the publication of its proceedings.

In the House of Lords, it is a breach of privilege for any person to print or publish anything relating to

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the proceedings of the House without its permission. The House of Commons, upon many occasions, has declared the publication of its proceedings without the authority of the House to be a breach of privilege, and the House has never formally rescinded the orders which from time to time it has made with regard to this subject. At the present time, however, neither House will consider a report of its proceedings in a newspaper or other publication to be a breach of its privileges, unless such report is manifestly inaccurate or untrue."

At page 350 in the foot-note (d) the history of the said privilege is given thus:—

"The jealousy of the House of Commons with regard to the privacy of its proceedings dates from the Long Parliament, and was due to the antagonism which existed between that assembly and the King. The object of the House at that time was to prevent its own members or officers from supplying the King with information which might incriminate its members; see Resolutions of the House of Commons of July 13, 1641 (Journals of the House of Commons, 1641, Vol. II, page 209). It was not until after the Revolution of 1689 that the House came in contact with unofficial reporters who furnished, for the news letters of the day, reports, often prejudicial and generally inaccurate, of the proceedings of the Commons. In 1738 the House passed a resolution stating that it was "an high indignity to, and a notorious breach of privilege of, this House, for any news writer, in letters or other papers (as minutes, or under any other denomination), or for any printer or publisher of any printed newspaper of any denomination to insert in the said letters or papers, or to give therein any account of the debates or other proceedings of this House or any committee thereof, as well during the recess, as the sitting of Parliament; and that this House will proceed with the utmost severity against such offenders (Journals of the House of Commons, 1738, Vol. XXIII, p. 148; Parliamentary History, Vol. X, pp. 799-811). This resolution was repeated in 1753 and 1762; see Journals of the House of

Commons, 1753, Vol. XXVI, p. 754; 1762, Vol. XXIX, pp. 206, 207. But, in spite of the attitude of the House, unofficial reports of the proceedings of the House of Commons were still published, and in 1771, during the disturbances caused by John Wilkes, the claim of the House to forbid the publication of its debates led to a struggle between the Commons and the City of London which, although it resulted in the committal to prison of the Lord Mayor and two aldermen, practically put an end to the attempts of the House of Commons to prevent the publication of its debates."

Much to the same effect it is stated in May's Parliamentary Practice: at page 54, the learned author, under the heading "Right to control publication of Debates and Proceedings", observes:

"Closely connected with the power to exclude strangers, so as to obtain, when necessary, such privacy as may secure freedom of debate, is the right of either House to prohibit the publication of debates or proceedings. The publication of the debates of either House has been repeatedly declared to be a breach of privilege, and especially false and perverted reports of them; and no doubt can exist that if either House desire to withhold their proceedings from the public, it is within the strictest limits of their jurisdiction to do so, and to punish any violation of their orders."

After tracing the history of the privilege, the practice obtaining in modern times is described thus:

"The repeated orders made by the House forbidding the publication of the debates and proceedings of the House, or of any committee thereof, and of comments thereon, or on the conduct of Members in the House, by newspapers, newsletters, or otherwise, and directing the punishment of offenders against such rules, have long since fallen into disuse. Indeed, since 1909, the debates have been reported and issued by an official reporting staff under the authority of Mr. Speaker, and are sold to the public by Her Majesty's Stationery Office."

The same idea is repeated at page 56 as follows:—

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"So long as the debates are correctly and faithfully reported, however, the privilege which prohibits their publication is waived."

At page 118, the same result is described in different words thus:

"So long as the debates are correctly and faithfully reported, the orders which prohibit their publication are not enforced; but when they are reported *mala fide*, the publishers of newspapers are liable to punishment."

Then the following eight instances of misconduct in connection with the publication of the debates which is generally treated as a breach of privilege of the House are given by the learned author:

(i) Publishing a false account of proceedings of the House of Lords;

(ii) Publishing scandalous misrepresentation of what had passed in either House or what had been said in debate;

(iii) Publishing gross or wilful misrepresentations of particular Members' speeches;

(iv) Publishing under colour of a report of a Member's speech a gross libel on the character and conduct of another Member;

(v) Suppressing speeches of particular Members;

(vi) Publishing a proceeding which the House of Lords had ordered to be expunged from the Journals;

(vii) Publishing a libel on counsel appearing before a committee under colour of a report of the proceedings of such committee; and

(viii) Publishing a forged paper, publicly sold as His Majesty's speech to both Houses.

It would be seen from the instances that *mala fides* is a necessary ingredient of the publication to attract the doctrine of privilege and that the instances given are of the period between 1756 to 1893. One of the instances on which strong emphasis is laid by the learned Solicitor General is the publishing of a proceeding which the House of Lords had ordered to be expunged from the Journals. Apart from the fact that the instance in question relates to the House of Lords, the Journal is not available for us to ascertain

under what circumstances the publication was made. Further the instance was of the year 1801 and no other instances of that kind appear to have occurred from 1801 to 1950. In the circumstances, on the authority of May, it may be accepted that the House of Lords asserted the privilege in 1801 when its proceedings were published *mala fide*, though they were expressly ordered to be expunged.

Cockburn, C. J., in *Wasan* v. *Walter* (1) forcibly pointed out the irrelevance of the privilege claimed in the modern democratic set up. At page 89, the learned Chief Justice observed :

" It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the houses of Parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there said and done, the welfare of the community depends. Where would be our confidence in the government of the country or in the legislature by which our laws are framed, and to whose charge the great interests of the country are committed,—where would be our attachment to the Constitution under which we live,—if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation ? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing ? What would become of the right of petitioning on all measures pending in Parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house ? Can any man bring himself to doubt that the publicity given in modern times to what passes in Parliament is essential to the maintenance of the relations subsisting between the government, the legislature, and the country at large ? It may, no doubt, be said that, while it may be necessary as a matter of national interest that the

(1) (1868) L.R. 4 Q.B. 73.

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proceedings of Parliament should in general be made public, yet that debates in which the character of individuals is brought into question ought to be suppressed. But to this, in addition to the difficulty in which parties publishing parliamentary reports would be placed, if this distinction were to be enforced and every debate had to be critically scanned to see whether it contained defamatory matter, it may be further answered that there is perhaps no subject in which the public have a deeper interest than in all that relates to the conduct of public servants of the State,—no subject of parliamentary discussion which more requires to be made known than an inquiry relating to it".

At page 95, dealing with the contention based upon the Standing Orders of both the Houses of Parliament prohibiting the publication of the proceedings, the learned Chief Justice proceeded to state as follows:

"The fact, no doubt, is, that each house of Parliament does, by its standing orders, prohibit the publication of its debates. But, practically, each house not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. Individual members correct their speeches for publication in Hansard or the public journals, and in every debate reports of former speeches containing therein are constantly referred to. Collectively, as well as individually, the members of both houses would deplore as a national misfortune the withholding their debates from the country at large. Practically speaking, therefore, it is idle to say that the publication of Parliamentary proceedings is prohibited by Parliament. The standing orders which prohibit it are obviously maintained only to give to each house the control over the publication of its proceedings, and the power of preventing or correcting any abuse of the facility afforded."

I have given the said passages *in extenso* as they give neatly and graphically not only the extent of the privilege in modern times, but the reasons for and the process by which the larger concept of the privilege has been gradually reduced to its present form. These

are weighty observations and, if they were appropriate to the conditions obtaining in the 19th century, they would be more so in 1950, when the parliamentary system of government was perfected in England.

Jennings in his book on "The British Constitution" states at page 82 thus:

"All this assumes, of course, that the House debates in public. Government and Opposition speak to each other, but for the education of the people. The criticisms brought against the Government are the criticisms of ordinary individuals; the answers of the Government are formally answers to the Opposition, but substantially they are replies to the questions raised in the factory, the railway carriage and the office. The members of the House of Commons were not elected for their special qualifications, but because they supported the policies which the majority of their constituents were prepared to accept. They have no authority except as representatives, and in order that their representative character may be preserved they must debate in public. Secret sessions were suited to the oligarchic government of the eighteenth century. They are the negation of democratic principles. No doubt there are exceptional occasions when secrecy is justified."

This passage succinctly gives the principles underlying the doctrine that in a democratic country, debates in Parliament are public and there should not be any prohibition against the publication of the said debates.

The extent of the privilege of the House of Commons in regard to the publication of its proceedings may be stated thus: In the seventeenth century, the House of Commons made standing orders prohibiting the publication of its proceedings. But that was a necessary precaution in that critical period when the representatives of the people were in conflict with the crown and they were careful that their proceedings should not reach the ear of the Crown. In the aristocratic eighteenth century, the opposition to publication was founded not only on the fear of misrepresentation,

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but on impatience of the pressure of public opinion. But gradually and imperceptibly, as a result of conflicts and compromises and as Parliamentary form of government became perfect and broad based, not only publication was allowed but actually encouraged by the House of Commons. In the year 1950, it would be unthinkable and indeed would have been an extraordinary phenomenon for the House of Commons claiming the privilege of preventing the publication of its proceedings. The said orders, though not expressly repealed or modified, were no longer enforced in accordance with their tenor; but were in effect modified by practice and precedents. The stringent part of the orders had fallen into disuse and in practice it was restricted to *mala fide* publication of the proceedings. I, therefore, hold that in the year 1950, the House of Commons had no privilege to prevent the publication of the correct and faithful reports of its proceedings save those in the case of secret sessions held under exceptional circumstances and had only a limited privilege to prevent *mala fide* publication of garbled, unfaithful or expunged reports of the proceedings.

It follows from my view, namely, that the petitioner's fundamental right under Art. 19(1) is preserved despite the provisions of Art. 194(3) of the Constitution, that the petitioner is entitled to succeed. I am further of the opinion that even if Art. 194(3) of the Constitution excludes the operation of Art. 19(1), the petitioner in the circumstances of the present case would not be in a worse position. That apart, the charge as disclosed either in the notice served on the petitioner or in the enclosures annexed thereto does not impute any *mala fide* intention to the petitioner. The notice only says that the Committee of Privileges, on the basis of the publication of the news item in the "Searchlight", found that a *prima facie* case of breach of privilege has been made out against the petitioner. The resolution enclosed therein indicates that the petitioner committed a breach of privilege by printing the expunged portion of the speech of Maheshwara Prasad Narayan Singh and thereby published a perverted and unfaithful report of the proceedings. Other documents

enclosed with the notice contained a motion moved in the House by another member charging the petitioner for publishing the expunged portion of the speech. The petitioner in his petition states that till May 31, it was not known to any member of the staff of the "Searchlight", including the petitioner, that any portion of the debate in question had been expunged from the official record of the Assembly. Though in the official record of the proceedings, portions of the speech reported have been expunged, no order of the Speaker expunging any portions of the speech made on May 30, has been produced. Admittedly there was no order of the Speaker prohibiting the publication of the expunged portion of the speech. In the counter-affidavit filed by the respondents, they did not allege any *mala fides* to the petitioner but they took their stand on the fact that the Legislature had the privilege of preventing the petitioner from publishing the expunged portion of the speech. In the circumstances, neither the notice nor the documents enclosed with the notice disclose that the petitioner published the speech, including the expunged portion *mala fide*, or even with the knowledge that any portion of the speech was directed to be expunged. As I have pointed out, the Legislature has the privilege of preventing only *mala fide* publication of the proceedings of the Legislature and, as in this case the petitioner is not alleged to have done so, the Legislature has no power to take any action in respect of the said publication.

In the result, the petition is allowed. A Writ of Prohibition will issue restraining the respondents from proceeding against the petitioner for the alleged breach of privilege by publishing in the issue of the "Searchlight", dated May 31, 1957, an account of the debate of the House (Legislative Assembly, Bihar) of May 30, 1957.

ORDER

In view of the judgment of the majority, the petition is dismissed. There will be no order as to costs.