Pandit M. S. M. Sharma

Vs

Shri Sri Krishna Sinha and Others

Petition No. 122 of 1958

(CJI S. R. Dass, N. H. Bhagwati, P. B. Sinha, K. Subba Rao, K. N. Wanchoo JJ)

12.12.1958

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 Article 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 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 had 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 aid 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.
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> 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 he 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

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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.
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> "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 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.

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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 to 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 an follows :-

> "The question is that Shri M. S. M. Sharma, Editor and Shri Awadhesh Kumar Tiwari, Printer and Publisher of the "Searchlight" be called up 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 Maheshwar 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 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 pints taken by the learned advocate for the petitioner, to set out the full text of this notice which was thus worded :-

"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.

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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 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.

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Sd. Enayetur Rehman,

Secretary to the Legislative Assembly."

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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 Article 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 Article 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 Article 32 of the Constitution."

The present petition under Article 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 Article 19(1)(a) and to the protection of his personal liberty under Article 21 and the petitioner claims by this petition to enforce those fundamental rights.

An affidavit in opposition affirmed by Sri 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 from part of the proceedings. 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 clause (3) Article 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 Article 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" (May's Constitutional History of England, Vol. ii, pp. 240-41). 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 trial 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 ((1784) 3 Tr. 428). The liberty of the Press, therefore, primarily consists in 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 (Dicey's Law of the Constitution, 9th Edn., p. 247). 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 hall make no law.... abridging the freedom of speech or of the Press". The Fifth and the Fourteenth Amendment 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 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 ((1914) L.R. 41 I.A. 149) which was a case of an appeal by the editor of a newspaper against his conviction for criminal libel under section 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 Article 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."

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 ([1950] S.C.R. 594) 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 ([1950] S.C.R. 605) 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 Article 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 ([1959] S.C.R. 12) said at page 118 that freedom of speech and expression includes within its scope the freedom of the Press. Two things should be notices. 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 ((1914) L.R. 41 I.A. 149) 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 clause (2) of Article 19, to publish a true and faithful report of the publicly heard and seen proceedings of Parliament or 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 Article 19(1)(a) by this Court in the three decisions referred to above or that the case of Srinivasa v. The State of Madras (A.I.R. (1951) Mad. 70), 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 Article 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 Article 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 Article 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 Article 194(3) prevail over the fundamental right of the petitioner under Article 19(1)(a) ?

Re. I : Article 194, on which depends out 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 Article 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 clause (3) of Article 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" (Sir Thomas Erskine May's Parliamentary Practice, 16th Edn., Ch. III, P. 42). 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 (Halsbury's Laws of England, 2nd Edn., Vol. 24, Article 698, p. 346). 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 (Redlich and Ilbert on Procedure of the House of Commons, Vol. 1, P. 46). 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 word, 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 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 (Ridge's Constitutional Law, 8th Edn., p. 61; also Halsbury's Laws of England, 2nd Edn., Vol. 24, p. 351). 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 climbed as "ancient and undoubted" and are, through the Chancellor "most readily granted and confirmed" by the Crown (Anson's Law and Custom of the Constitution, Vol. 1, Ch. 4, p. 162). 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 (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" (Taswell-Langmead's Constitutional History, 10th Edn., p. 657). 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" (Encyclopaedia of Parliament by Norman Widling and Laundy, p. 451). 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 1682 and again in 1640 the clerk was forbidden to make notes of "particular men's speeches" or to "suffer copies to go forth of any arguments or speech whatsoever" (Hatsell 265 quoted in May's Parliamentary Practice, 16th Edn., p. 55). 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 inter-meddle 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 Papers any Debates, or any other Proceedings of this House, or any Committee thereof" (20 Journals of the House of Commons, p. 99; quoted in Frank Thayer's Legal Control of the Press, pp. 28-29).

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 or 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 (Moody and Robson, 9, 174 Eng. Rep. 196; also see (1839) 9 A. & E. Reports, Eng. Q.B. 1; 112 Eng. Rep. 1112), where Lord Chief Justice Denman held that 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 ((1868) L.R. IV Q.B. 73). 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 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 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 the 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 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 willful 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) ((1868) L.R. IV Q.B. 73) and In re : Banwarilal Roy (48 C.W.N. 766, 787)). 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 (Ridge's Constitutional Law, 8th Edn., p. 70 and May's Parliamentary Practice, 16th Edn., p. 52). 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 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 (Taswell-Langmead, p. 660). This right was exercised in 1923 and again as late as on November 18, 1958 (The Statesman dated November 20, 1958). 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, that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the 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 Article 194(3) confers all these powers, privileges and immunities on the House of the Legislature of the State, as Article 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 out 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 Article 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 Article 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, whose right is to prevail ? Learned advocate for the petitioner contends that the powers, privileges and immunities of the Legislative Assembly under Article 194(3) must give way to the fundamental right of the petitioner under Article 19(1)(a). In other words, Article 194(3), according to him, is subject to Article 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 clause (3) of Article 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 Article 194 or Article 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 Article 19(1)(a);

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

(iii) that Article 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 Article 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 Article 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 Article 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 Article 13, to the extent of such repugnancy, be void and that such being the intention of the Constitution makers in the earlier part of Article 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 clause (3) must also be taken as subject to the fundamental rights;

(v) that the observations in Anand Bihari Mishra v. Ram Sahay (A.I.R. (1952) M.B. 31, 43) and the decision of this Court in Gunupati Keshavram Reddy v. Nafisul Hasan (A.I.R. (1954) S.C. 636) clearly establish that Article 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 clause (4) extends the provisions of clauses (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 clause (1) has been expressly made subject to the provisions of the Constitution but clauses (2) to (4) have not been stated to be so subject indicates that the Constitution makers did not intend clauses (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-clauses (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 clause (1) of Article 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 Articles 208 and 211, just as freedom of speech in Parliament under Article 105(1), on a similar construction, will become

subject to the Articles relating to procedure in Part V including Articles 118 and 121. The argument that the whole of Article 194 is subject to Article 19(1)(a) overlooks the provisions of clause (2) of Article 194. The right conferred on a citizen under Article 19(1)(a) can be restricted by law which falls within clause (2) of that Article and he may be made liable in a court of law for breach of such law, but clause (2) of Article 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 clause (2) of Article 194, therefore, indicate that the freedom of speech referred to in clause (1) is different from the freedom of speech and expression guaranteed under Article 19(1)(a) and cannot be cut down in any way by any law contemplated by clause (2) of Article 19.

As to the second head of arguments noted above it has to be pointed out that if the intention of clause (1) of Article 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 Article 19(1)(a), then it would have been easier to say in clause (1) that the freedom of speech conferred by Article 19(1)(a), when exercised in the Legislature of a State, would, in addition to the restrictions permissible by law under clause (2) of that Article, be further subject to the provisions of the Constitution and the rules and sanding 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 clause (3) of Article 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 Article 19(1)(a) and is not protected under Article 19(2), it will at once attract the operation of the peremptory provisions of Article 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 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 Article 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 Article 105(3) on each House of Parliament and the members and committees thereof and by the latter part of Article 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 Article 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 Article 105(3) or by the State Legislature in pursuance of the earlier part of Article 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 ([1952] S.C.R. 89, 90) but

will be one made in exercise of its ordinary legislative powers under Article 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 Article 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 section 49 of their Constitution corresponding to Article 194(3) up to 1955 when the case of The Queen v. Richards ((1955) 92 C.L.R. 57) 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 extent of such repugnancy. It must not be overlooked that the provisions of Article 105(3) and Article 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 Article 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 Article 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 (A.I.R. (1952) Mad, 395, 405) 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 Article 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. Article 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 of Part III and it would be surprising if it did, seeing that all of them 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 Article 194(3) have to be reconciled and the only way of reconciling the same is to read Article 19(1)(a) as subject to the latter part of Article 194(3), just as Article 31 has been read as subject to Article 265 in the cases of Ramjilal v. Income-tax Officer, Mohindargarh ([1951] S.C.R. 127) and Laxmanappa Hanumantappa v. Union of India ([1955] 1 S.C.R. 769), where this Court has held that Article 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 (A.I.R. (1952) M.B. 31, 43), relied on by the petitioner, cannot, with respect, be supported as correct. Our decision in Gunupati Keshavram Reddy v. Nafisul Hasan (A.I.R. (1954) S.C. 636), 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 Article 19(1)(a), which are general, must yield to Article 194(1) and the latter part of its clause (3) which are special.

Seeing that the present proceedings have been initiated on a petition under Article 32 of the Constitution and as the petitioner may not be entitled, for reasons stated above, to avail himself of Article 19(1)(a) to support this application, learned advocate for the petitioner falls back upon Article 21 and contends that the proceedings before the Committee of Privileges threaten to deprive him of personal liberty otherwise than in accordance with procedure established by law. The Legislative Assembly claims that under Article 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 Article 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 Article 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 derived 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 Article 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 Article 208. Rule 207 lays down the conditions as to the admissibility of a motion of privilege. According to clause (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 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 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 clause (ii) of rule 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 rule 208 read with rule 209.

The next argument founded on non-compliance with the rules is based on rule 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 clause (i) of rule 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) ((1891) L.R. 18 I.A. 55, 58). 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 matter between the House and its Committee and confers no right on the party whose conduct is the subject matter of investigation 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 along 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 work 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 (L.R. (1876) 1 Q.B.D. 173). 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 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. - 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 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 a 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 Article 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 Article 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 Article 19(1) of the Constitution; and (ii) that even if the privilege was not expressly made subject to the fundamental right under Article 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 Article 194(3) overrides the provisions of Article 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 Article 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 Article deals with fundamental rights. Article 194(3) is not made subject to Article 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 therefore. 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 Article 212(1) of the Constitution, the validity of its proceedings cannot be questioned on the ground of any alleged irregularity of the procedure. Ther__e 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 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.

The powers, privileges, and immunities of a State Legislature are governed by Article 194 of the Constitution and the freedom of propagation of ideas, their publication and circulation by Article 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 ([1950] S.C.R. 594), 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 ([1950] S.C.R. 605). To the same effect is the decision of this Court in Express Newspapers Ltd. v. Union of India ([1959] S.C.R. 12, 118), 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 (A.I.R. (1951) Mad. 70) 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 Article 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, clause (2) of Article 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 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 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 clauses (2) to (6) of Article 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 Articles 71(3), 73(1), 105, 131, etc. -, and some to specified Articles - vide Articles 81, 107(1), 107(2), 114(3), 120(1), etc. Some Articles are made effective notwithstanding other provisions in the Constitution - vide Articles 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 case 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 Article 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 this clause confers on the Legislature powers, privileges and immunities so as to infringe the fundamental right of a citizen under Article 19(1)(a) of the Constitution. The first thing to be noticed is that while Article 19(1)(a) of the Constitution deals with the freedom of speech and expression of a citizen, Article

194(1) declares that there shall be freedom of speech in the Legislature of every State. While Article 19(1) is general in terms and is subject only to reasonable restrictions made under clause (2) of the said Article, Article 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 clause (1) and it affords protection for 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 Article 19(1) of the Constitution. That is dealt with by clause (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 clause (2). It is not expressly made subject to the provisions of the Constitution. In find it difficult to read in that clause the opening words of clause (1), viz., "subject to the provisions of this Constitution", for two reasons : (i) clause (3) deals with a subject wider in scope than clause (1) and therefore did not flow from clause (1); and (ii) grammatically it is not possible to import the opening words of clause (1) into clause (3). Therefore, I shall proceed on the basis that clause (3) is not expressly made subject to Article 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 Article 19. The first thing to be noticed in clause (3) of Article 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 clause (3) is not intended to be transitory in nature. Under Article 135 of the Constitution, until Parliament by law otherwise provides, the Supreme Court shall have certain appellate jurisdiction. Under Article 137, subject to the provisions of any law made by Parliament or any rules made under Article 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 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 Article 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 Article 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 Article 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 Article 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 Article 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 clause (3) of Article 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 clause (3). The first part of clause (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 Article 13, which is one of the Articles in Part III elating 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 Article 19(1)(a) of the Constitution, unless it is saved by any law prescribing reasonable restrictions within the ambit of Article 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 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 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 clause (3). If the Constitution intended to make the distinction, it would have opened the second part of clause (3) with the words "Notwithstanding other provisions of the Constitution or those of Article 19".

I cannot also appreciate the argument that Article 194 should be preferred to Article 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 Article 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 (A.I.R. [1954] S.C. 636) held that the order of arrest of Mr. Mistry and his detention in the Speaker's custody was a breach of the provisions of Article 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 Article 22(2) of the Constitution indicating thereby that Article 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 entailing 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 Article 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 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 ((1703) 2 Ld. Raym. 938), Paty's Case ((1704) 2 Ld. Raym. 1105), Stockdale v. Hansard ((1839) 9 A. & E. 1) and in the Case of the Sheriff of Middlesex ((1840) 11 A. & E. 809). 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 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 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 it has 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 :-

> "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 ((1868) L.R. 4 Q.B. 73) 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 side that, while it may be necessary as a matter of national interest that the proceedings of Parliament should in general be made public, yet that debates in which the character of individuals is bought 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, 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 Houses 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 Article 19(1) is preserved despite the provisions of Article 194(3) of the Constitution, that the petitioner is entitled to succeed. I am further of the opinion that even if Article 194(3) of the Constitution excludes the operation of Article 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.

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