Special Reference No. 1 of 1964

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(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah, K. Subha Rao, J. C. Shah, A. K. Sarkar, N. Rajgopala Ayyangar JJ)

30.09.1964

GAJENDRAGADKAR C.J.

This is Special Reference No. 1 of 1964 by which the President has formulated five questions for the opinion of this Court under Article 143(1) of the Constitution. The Article authorities the President to refer to this Court questions of law or fact which appear to him to have arisen or are likely to arise and which are of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon them. Article 143(1) provides that when such questions are referred to this Court by the President, the Court may, after such hearing as it thinks fit, report to the President its opinion thereon. In his Order of Reference made on March 26, 1964, the President has expressed his conclusions that the questions of law set out in the Order of Reference are of such a nature and of such public importance that it is expedient that the opinion of the Supreme Court of India should be obtained thereon.

It appears that on March 14, 1964, the Speaker of the Legislative Assembly of Uttar Pradesh administered, in the name of and under the orders of the Legislative Assembly (hereinafter referred to as "the House"), a reprimand to Keshav Singh, who is a resident of Gorakhpur, for having committed contempt of the House and also for having committed a breach of the privileges of Narsingh Narain Pandey, a member of the House. The contempt and the breach of privileges in question arose of a pamphlet which was printed and published and which bore the signature of Keshav Singh along with the signature of other persons. In pursuance of the decision taken by the House later on the same day, the Speaker directed that Keshav Singh be committed to prison for committing another contempt of the House by his conduct in the House when he was summoned to receive the aforesaid reprimand and for writing a disrespectful letter to the Speaker of the House earlier. According to this order, a warrant was issued over the signature of the Speaker of the House, Mr. Verma, directing that Keshav Singh be detained in the District Jail, Lucknow, for a period of seven days, and in execution of the warrant Keshav Singh was detained in the Jail.

On March 19, 1964, Mr. B. Solomon, an Advocate practising before the Lucknow Bench of the Allahabad High Court, presented a petition to the High Court on behalf on Keshav Singh under section 491 of the Code of Criminal Procedure, 1898, as well as under Article 226 of the Constitution. To this petition were impleaded the Speaker of the House, the House, the Chief Minister of Uttar Pradesh and the Superintendent of the District Jail, Lucknow where Keshav Singh was serving the sentence of imprisonment imposed on him by the House, as respondents 1 to 4 respectively. The petition thus presented on behalf of Keshav Singh alleged that his detention in jail was illegal on several grounds. According to the petition, Keshav Singh had been ordered to be imprisoned after the reprimand had been administered to him, and that made the order of imprisonment illegal and without authority. The petition further alleged that Keshav Singh had not been given an opportunity to defend himself and that his detention was mala fide and was against the principles of natural justice. It was also his case that respondents 1 to 3 has no authority to send

him to the District Jail, Lucknow, and that made his detention in jail illegal.

After the said petition was filed before the Lucknow Bench of the Allahabad High Court, the learned Advocates for both the parties appeared before Beg and Sahgal JJ. at 2 p.m. and agreed that the petition should be taken up at 3 p.m. the same day. Mr. Solomon represented Keshav Singh and Mr. K. N. Kapur, Assistant Government Advocate, appeared for all the respondent. Accordingly, the petition was taken up before the Court at 3 p.m. On this occasion, Mr. Solomon appeared for the petitioner but Mr. Kapur did not appear in Court. The Court then passed an Order that the applicant should be released on bail on furnishing two sureties in a sum of Rs. 1,000 each and a personal bond in the like amount to the satisfaction of the District Magistrate, Lucknow. The Deputy Registrar of the Court was asked to take necessary action in connection with the Order. The Court also directed that the applicant shall remain present in Court at every hearing of the case in future. Thus, the petition was admitted and notice was ordered to be issued to the respondents with the additional direction that the case should be set down for hearing as early as possible. This happened on March 19, at 3 P.M.

On March 20, 1964, Mr. Shri Rama, the Government Advocate, wrote to Mr. Nigam, Secretary to Government U.P., Judicial Department, Lucknow, giving him information about the Order passed by the High Court on Keshav Singh's application. In this communication, Mr. Shri Rama has stated that after the matter was mentioned to the Court at 2 P.M. it was adjourned to 3 P.M. at the request of the parties; soon thereafter Mr. Kapur contacted Mr. Nigam on the phone, but while the conversation was going on, the Court took up the matter at 3 P.M. and passed the Order directing the release of Keshav Singh on terms and conditions with have already been mentioned. Mr. Shri Rama sent to Mr. Nigam three copies of the application made by Keshav Singh and suggested that arrangement should be made for making an appropriate affidavit of the persons concerned. He also told Mr. Nigam that the application was likely to be listed for hearing at a very early date.

Instead of complying with the request made by the Government Advocate and instructing him to file a return in the application made by Keshav Singh, the House proceeded to take action against the two learned Judges who passed the order on Keshav Singh's application, as well as Keshav Singh and his Advocate, on March 21, 1964. It appears that two Members of the House brought to the notice of the Speaker before the Court in regard to the application made by Keshav Singh. Taking notice of the order passed by the High Court on Keshav Singh's petition, the House proceeded to pass a resolution on March 21, 1964. This resolution said that the House was of the definite view that M/s. G. D. Sahgal, N. U. Beg, Keshav Singh and B. Solomon had committed contempt of the House and therefore, it was ordered that Keshav Singh should immediately be taken into custody and kept confined in the District Jail, Lucknow, for the remaining term of his imprisonment and M/s. N. U. Beg, G. D. Sahgal and B. Solomon should be brought in custody before the House. The resolution further added that after Keshav Singh completed the term of his imprisonment, he should be brought before the House for having again committed contempt of the House on March 19, 1964.

The two learned Judges heard about this resolution on the radio on the evening of March 21, and read about it in the morning edition of the Northern India Patrika published on March 22, 1964. That is why they rushed to the Allahabad High Court with separate petitions under Art. 226 of the Constitution. These petitions alleged that the impugned Resolution passed by the House was wholly unconstitutional and violated the provisions of Art. 211 of the Constitution. According to the petitions, the application made by Keshav Singh under Art. 226 was competent and in making an order releasing Keshav Singh, the Judges were exercising their jurisdiction and authority as Judges of the High Court under Art. 226. Their contention was that the resolution passed by the House

amounted to contempt of Court, and since it was wholly without jurisdiction, it should be set aside and by an interim order its implementation should be stayed. To these petitions were impleaded as respondents Mr. Verma, the Speaker, Vidhan Sabha, Lucknow, the State of Uttar Pradesh and the Marshal, Vidhan Sabha. These petitions were filed on March 23, 1964.

Apprehending that these developments had given rise to a very serious problem a Full Bench of the Allahabad High Court consisting of 28 Judges took up on the same day the petitions presented before them by their two colleagues at Lucknow, directed that the said petitions should be admitted and ordered the issued of notices against the respondents restraining the Speaker from issuing the warrant in pursuance of the direction of the House given to him on March 21, 1964, and from securing execution of the warrant if already issued, and restraining the Government of U.P. and the Marshal of the House from executing the warrant.

Meanwhile, on March 25, 1964, Mr. Solomon, the learned Advocate of Keshav Singh, presented a similar petition to the High Court under Art, 226. He prayed for a writ of mandamus on the same lines as the petitions filed by the two learned Judges, and he urged that suitable order should be passed against the House, because it has committed contempt of Court. To his petition Mr. Solomon had impleaded seven respondents; they were : the Speaker of the House, Mr. Verma : the Legislative Assembly, U.P.; the Marshal of the U.P. Legislative Assembly; Mr. Saran and Mr. Ahmad, Members of the Legislative Assembly, U.P., who brought to the notice of the House the orders passed by the two learned Judges of the High Court; and the State of Uttar Pradesh.

This application again was heard by a Full Bench of 28 Judges of the Allahabad High Court on March 25, and after admitting the petition, an interim order was passed prohibiting the implementation of the resolution the validity of which was challenged by the petitioner. At the preliminary hearing of this petition, notice had been served on the Senior Standing Counsel who was present in Court. He stated to the Court that he had no instructions at that stage to oppose the application. That is why the Court issued notice of the application and passed what it thought would be appropriate orders.

On the same day, the House passed a clarificatory resolution. This resolution began with the statement that a misgiving was being expressed with regard to the motion passed by the House in that it could be construed as depriving the persons concerned of an opportunity of explanation, and it added that it was never the intention of the House that a charge against a High Court Judge for committing breach of privilege or contempt of that House, should be disposed of in a manner different from that governing breach of privilege or contempt committed by any other person. The House, therefore, resolved that the question of contempt may be decided after giving an opportunity of explanation to the persons named in the original resolution of March 20, 1964 according to rules.

As a result of this resolution, the warrants issued for the arrest of the two learned Judges and Mr. Solomon were withdrawn, with the result that the two learned Judges and Mr. Solomon were placed under an obligation to appear before the House and offer their explanations as to why the House should not proceed against them for their alleged contempt of the House.

When the incidents which happened in such quick succession from March 19 to March 25, 1964, had reached this stage, the President decided to exercise his power to make a reference to this Court under Art. 143(1) of the Constitution on March 26, 1964. The Order of Reference shows that it appeared to the President that the incidents in question had given rise to a serious conflict between a High Court and a State Legislature which involved important and complicated questions of law

regarding the powers and jurisdiction of the High Court and its Judges in relation to the State Legislature and its officers and regarding the powers, privileges and immunities of the State Legislature and its members in relation to the High Court and its Judges in the discharge of their duties. The President was also satisfied that the questions of law set out in his Order of Reference were of such a nature and of such public importance that it was expedient to obtain the opinion of this Court on them. That is the genesis of the present reference.

The questions referred to this Court under this Reference read as follows :-

> (1) Whether, on the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh consisting of the Hon'ble Mr. Justice N. U. Beg and the Hon'ble Mr. Justice G. D. Sahgal, to entertain and deal with the petition of Mr. Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Mr. Keshav Singh on bail pending the disposal of his said petition;
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> (2) Whether, on the facts and circumstances of the case, Mr. Keshav Singh, by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Soloman, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Shri Keshav Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh;
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> (3) Whether, on the facts and circumstances of the case, it was competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Mr. B. Soloman, Advocate, before it in custody or to call for their explanation for its contempt;
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> (4) Whether, on the facts and circumstance of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly; and
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> (5) Whether a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt of for infringement of its privileges and immunities or who passes any order on such petition commits contempt of the said Legislature and whether the said Legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities.

At the hearing of this Reference, Mr. Varma has raised a preliminary objection on behalf of the Advocate-General of Bihar. He contends that the present Reference is invalid under Art. 143(1) because the questions referred to this Court are not related to any of the entries in Lists I and III and as such, they cannot be said to be concerned with any of the powers, duties or functions conferred on the President by the relevant articles of the Constitution. The argument appears to be that it is

only in respect of matters falling within the powers, functions and duties of the President that it would be competent to him to frame questions for the advisory opinion of this Court under Art. 143(1). In our opinion, this contention is wholly misconceived. The words of Art. 143(1) are wide enough to empower the President to forward to this Court for its advisory opinion any question of law or fact which has arisen or which is likely to arise, provided it appears to the President that such a question is of such a nature or of such public importance that it is expedient to obtain the opinion of this Court upon it. It is quite true that under Art. 143(1) even if questions are referred to this Court for its advisory opinion, this Court is not bound to give such advisory opinion in every case. Art. 143(1) provides that after the questions formulated by the President are received by this Court, it may, after such hearing as it thinks fit, report to the Precedent its opinion thereon. The use of the word "may" in contrast with the use of the word "shall" in the provision prescribed by Art. 143(2) clearly brings out the fact that in a given case, this Court may respectfully refuse to express its advisory opinion if it is satisfied that it should not express its opinion having regard to the nature of the questions forwarded to it and having regard to other relevant facts and circumstances. Art. 143(2) deals with cases in which the President may refer a dispute to this Court notwithstanding the prohibition prescribed by the proviso to Art. 131, and it adds that when such a reference is made, the Court shall, after such hearing as it thinks fit, report to the President its opinion thereon. In other words, whereas in the case of reference made under Art. 143(2) it is the constitutional obligation of this Court to make a report on that reference embodying its advisory opinion, in a reference made under Art. 143(1) there is no such obligation. In dealing with this latter class of reference, it is open to this Court to consider whether it should make a report to the President giving its advisory opinion on the question under reference.

This position, however, has no bearing on the question raised by Mr. Varma. The validity of the objection raised by Mr. Varma must be judged in the light of the words of Art. 143(1) themselves and these words are of such wide amplitude that it would be impossible to accede to the argument that the narrow test suggested by Mr. Varma has to be applied in determining the validity of the reference itself. What Art. 143(1) requires is that the President should be satisfied that a question of law or fact has arisen or is likely to arise. He should also be satisfied that such a question is of such a nature and of such public importance that it is expedient to obtain the opinion of this Court on it. Prima facie, the satisfaction of the President on both these counts would justify the reference, and it is only where this Court feels that it would be inadvisable for it to express its advisory opinion on it that it may respectfully refuse to express may opinion. But there can be no doubt that in the present case it would be impossible to suggest that questions of fact and law which have been referred to this Court, have not arisen and they are not of considerable public importance. Therefore, we do not think there is any substance in the preliminary objection raised by Mr. Varma.

The reference made to this Court since the Constitution was adopted in 1950 illustrate how it would be inappropriate to apply the narrow test suggested by Mr. Varma in determining the competence or validity of the reference. The first Special Reference No. 1 of 1951 was made to this Court to obtain the advisory opinion of this Court on the question about the validity and constitutionality of the material provisions of the Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947, and the Part C States (Laws) Act, 1951 (In re : the Delhi Laws Act, 1912, [1951] S.C.R. 747). The second Special Reference (In re : the Kerala Education Bill, 1957, [1959] S.C.R. 995) was made in 1958. This had reference to the validity of certain provisions of the Kerala Education Bill, 1957, which had been passed by the Kerala Legislative Assembly, but had been reserved by the Governor for the consideration of the President. The third Special Reference (In re : the Berubari Union, [1960] 3 S.C.R. 250) was made in 1959, and it invited the advisory opinion of this Court in regard to the validity of the material provisions of an agreement between the Prima Ministers of

India and Pakistan which was described as the Indo-Pakistan Agreement. The fourth Special reference (In re : the Bill to Amend Sea Customes Act etc. [1964] 3 S.C.R. 787) By this reference, the President forwarded for the advisory opinion of this Court questions in regard to the validity of the relevant provisions of a draft Bill which was intended to be moved in the Parliament with a view to amend certain provisions of the Sea Customs Act, 1878 and the Central Excises and Salt Act, 1944. It would thus be seen that the questions so far referred by the President for the uniform pattern and that is quite clearly consistent with the broad and wide words used in Art. 143(1).

It is hardly necessary to emphasise that the questions of law which have been forwarded to this Court on the present occasion are of very great constitutional importance. The incidents which have given rise to this Reference posed a very difficult problem and unless further developments in pursuance of the orders passed by the two august bodies were arrested, they were likely to lead to a very serious and difficult situation. That is why the President took the view that a case for reference for the advisory opinion of this Court had been established and he accordingly formulated five questions and has forwarded the same to us for our advisory opinion. Under Art. 143(1) it may be competent to the President to formulate for the advisory opinion of this Court questions of fact and law relating to the validity of the impunged provisions of existing laws; it may be open to him to formulate questions in regard to the validity of provisions proposed to be included in the Bills which would come before the Legislatures; it may also be open to him to formulate for the advisory opinion of this Court questions of constitutional importance like the present; and it may be that the President may, on receiving our answers consider whether the Union Government or the State Government should be requested to take any suitable or appropriate action, either legislative or executive in accordance with the opinion expressed by this Court. That is why we feel no difficulty in holding that the present Reference is competent.

As we have already indicated, when a Reference is received by this Court under Art. 143(1), this Court may, in a given case, for sufficient and satisfactory reasons, respectfully refuse to make a report containing its answers on the questions framed by the President; such a situation may perhaps arise if the questions formulated for the advisory opinion of this Court are purely socio-economic or political questions which have no relation whatever with any of the provisions of the Constitution, or have otherwise no constitutional significance. It is with a view to confer jurisdiction on this Court to decline to answer questions for such strong and compelling reasons that the Constitution has used the word 'may' in Art. 143(1) as distinct from Art. 143(2) where the word used is 'shall'. In the present case, we are clearly of opinion that the questions formulated for our advisory opinion are questions formulated for our advisory opinion are questions of grave constitutional importance and significance and it is our duty to make a report to the President embodying our answers to the questions formulated by him.

That takes us to the merits of the controversy disclosed by the question formulated by the President for our advisory opinion. This Reference has been elaborately argued before us. The learned Attorney-General opened the proceedings before us and stated the relevant facts leading to the Reference, and indicated broadly the rival contentions which the House and the High Court sought to raise before us by the statements of the case filed on their behalf. Mr. Seervai, the learned Advocate-General of Maharashtra, appeared for the House and presented before the Court a very learned, impressive and exhaustive argument. He was followed by several learned counsel who broadly supported the stand taken by the House. Mr. Setalvad who appeared for the Judges of the Allahabad High Court, addressed to us a very able argument with his characteristic brevity and lucidity; and he was, in turn, followed by several learned counsel who appeared to support the stand taken by the Judges. During the course of the debate, several propositions were canvassed before us

and very large area of constitutional law was covered. We ought, therefore, to make it clear at the outset that in formulating our answers to the questions framed by the President in the present Reference, we propose to deal with only such points as, in our opinion, have a direct and material bearing on the problems posed by the said questions. It is hardly necessary to emphasise that in dealing with constitutional matters, the Court should to deal with question which do not strictly arise. This precaution is all the more necessary in dealing with a reference made to this Court under Art. 143(1).

Let us then begin by stating broadly the main contentions urged on behalf of the House and on behalf of the Judges and the Advocate. Mr. Seervai began his arguments by pointing out the fact that in dealing with reference under Art. 143(1), the Court is not exercising what may be described as its judicial function. There are no parties before the Court in such a reference and there is no lis. The opinion expressed by the Court on the reference is, therefore, advisory; and so, he contends that though he appears before us in the present reference on behalf of the House, he wants to make it clear that the House does not submit to the jurisdiction of this Court in any manner in respect of the area of controversy covered by the questions. In other words, he stated that his appearance before us was without prejudice to his main contention that the question about the existence and extent of the powers, privileges and immunities of the House, as well as the question about the exercise of the powers and privileges were entirely and exclusively within the jurisdiction of the House; and whatever this Court may say will not preclude the House from deciding for itself the points referred to us under this Reference. This stand was based on the ground that the opinion expressed by us is advisory and not in the nature of a judicial adjudication between the parties before the Court as such.

The same stand was taken by Mr. Seervai in regard to Art. 194(3) of the Constitution. Art. 194(3) deals with the question about the powers, privileges and immunities of the Legislatures and of the Members and Committees thereof. We will have occasion to deal with the provisions of this Article later on. For the present, it is enough to state that according to Mr. Seervai, it is the privilege of the House to construe the relevant provisions of Art. 194(3) and determine for itself what its powers, privileges and immunities are, and that being so, the opinion expressed by this Court on the questions relating to the existence and extent of its powers and privileges will not preclude the House from determining the same questions for itself unfettered by the views of this Court.

Having thus made his position clear in regard to the claim which the House proposes to make in respect of its powers and privileges, Mr. Seervai contended that even in England this dualism between the two rival jurisdictions claimed by the Judicature and the Parliament has always existed and it still continues to be unresolved. On some occasions, the dispute between the Judicature and the House of Commons has assumed a very bitter form and it has disclosed a complete antinomy or contradiction in the attitudes adopted by the two respective august bodies. The courts claimed that they had a right to decide the question about the existence and extent of powers and privileges in question and the Parliament consistently refused to recognise the jurisdiction of the courts in that behalf during the 17th, 18th and 19th centuries. The Parliament conceded that it could not create any new privileges, but it insisted on treating itself as the sole and exclusive judge of the existing privileges and was not prepared to part with its authority to determine what they were, or to deal with their breach, and how to punish the delinquent citizens. On the other hand, the courts insisted on examining the validity of the orders passed by the Parliament on the ground of breach of privilege, and the dualism thus disclosed persisted for many years.

Mr. Seervai argues that the House for which he appears adheres to the stand which the House of

Commons took in similar controversies which led to a conflict between the Judicature and itself on several occasions in the past. Consistently with this attitude, he denies the jurisdiction of the Allahabad High Court to deal with the points raised by Keshav Singh in his writ petition. Logically, his argument is that the presentation of the petition by Keshav Singh and his Advocate amounted to contempt of the House, and when the learned Judges entertained the petition and passed an interim order on it, they committed contempt of the House. That is the view taken by the House, and the propriety, correctness, or validity of this view is not examinable by the Judicature in this country.

Alternatively, Mr. Seervai put his argument on a slightly different basis. He conceded that for over a century past, in England, this controversy can be taken to have been settled to a large extent by agreement between the Judicature and the House of Commons. It now appears to be recognised by the House of Commons that the existence and extend of privilege can be examined by the courts. It also appears to be recognised by the House of Commons that if in exercise of its power to punish a person for its contempt, it issues a speaking warrant, it would be open to the court to consider whether the reasons set out in the warrant amount to contempt or not. To this limited extent, the jurisdiction of the Judicature is recognised and consistently, for the last century, whenever it became necessary to justify the orders passed by it for its contempt, a return has always been filed in courts. Mr. Seervai, however, emphasises the fact that even as a result of this large measure of agreement between the Judicature and the House of Commons on the question about the mature and extent of privilege, it appears to be taken as settled that if an unspeaking or general warrant is issued by the House of Commons to punish a person who is guilty of its contempt, the courts would invariably treat the said general warrant as conclusive and would not examine the validity of the order passed by the House. In the present case, according to Mr. Seervai, the resolution which has been passed by the House against the two learned Judges as well as against Mr. Solomon is in the nature of a general resolution and though the warrants issued against the Judges have been withdrawn, it is clear that the decision of the House and the warrants which were initially ordered to be issued in pursuance of the said resolution, were in the nature of general resolution and general warrants, and so, it would not be open to this Court to enquire the reasons for which the said warrants were issued. The resolution in question and the warrants issued pursuant to it are conclusive and must be treated as such. The argument, therefore, is that in answering the question formulated under the present Reference, we should give effect to this position which appears to have been evolved by some sort of implied agreement between the Judicature and the House of Commons. This agreement shows that the right to determine questions of contempt and to decide adequacy of punishment for the said contempt belong exclusively to the House, and if in pursuance of the said exclusive power, a general warrant is issued, the House can never be called upon to explain the genesis or the reasons for the said warrant. This itself is an integral part of the privileges and powers of the House, and this integral part, according to the House, has been brought into India as a result of Art. 194(3) of the Constitution. In other words, the argument is that even if this Court has jurisdiction to determine the scope and effect of Art. 194(3), it should bear in mind the fact that this particular power to issue an unspeaking general warrant and to insist upon the Judicature treating the said warrant as conclusive, is a part of the privileges to which the latter part of Art. 194(3) refers. It is on this broad ground that Mr. Seervai wanted us to frame our answers to the questions which are subject-matter of the Reference.

On the other hand, Mr. Setalvad, for the Judges, contends that there is no scope for importing into our Constitution the dualism which existed in England between the Judicature and the House of Commons. He contends that there can be no doubt that the question of construing Art. 194(3) falls within the exclusive jurisdiction of this Court and the High Courts and that the construction which this Court would place upon the relevant words used in the latter part of Art. 194(3) would finally

determine the scope, extent and character of the privileges in question. According to Mr. Setalvad, Art. 194(3) cannot be read in isolation, but must be read in its context and in the light of other important constitutional provisions, such as Arts. 32, 211 and 226. When the material portion of Art. 194(3) is thus read, it would appear that there is no scope for introducing any antinomy or conflict or dualism between the powers of the High Court and those of the House in relation to matters which have given rise to the present questions. He further urges that it would be idle for the House to adopt an attitude which the House of Commons in England appears to have adopted in the 17th, 18th and 19th centuries when conflicts arose between the said House and the Judicature. For more than a century no attempt has been made by the House of Commons, says Mr. Setalvad, to contend that if a citizen who is punished by the House for its alleged contempt committed by him would be guilty of another contempt if he moved the Court in its habeas corpus jurisdiction, nor has any attempt been made during this period by the House of Commons to proceed against a lawyer who presents an application for habeas corpus or against Judges who entertain such applications; and so, the argument is that we ought to deal with the present dispute on the basis of the common agreement which has, by convention, been evolved between the two august and powerful institutions, the Judicature and the Legislature.

Mr. Setalvad conceded that there appears to be some convention recognised by the English courts by which they treat a general or unspeaking warrant issued by the House as usually conclusive; but this aspect of the matter, according to him, is the result of convention or comity and cannot be treated as an integral part of the privilege of the House itself. The basis for evolving this convention is rooted in the history of England, because the Parliament was the highest Court of Justice at one time and it is because of this history that the House of Commons came also to be regarded as a superior Court of Record. Such an assumption cannot be made in respect of the House in the present proceedings. Besides, in dealing with the question about the effect of a general warrant, the Court cannot ignore the significance of Arts. 32, 211 and 226 of the Constitution. Basing himself broadly on these arguments, Mr. Setalvad contends that the Constitution has resolved the problem of dualism in our country by conferring on the High Courts and this Court the jurisdiction to deal with claims made by the citizens whose fundamental rights have been invaded, and that means that in this country, if an application for habeas corpus is made, it would be competent to this Court or the High Courts to examine the validity of the order passed by any authority including the legislature, and that must necessarily involve the consequence that an unspeaking warrant cannot claim the privilege of conclusiveness. That, in brief, in its broad features, is the approach adopted by Mr. Setalvad before us.

It will thus be seen that the main controversy disclosed by the five questions formulated by the President ultimately lies within a very narrow compass. Is the House the sole and exclusive judge of the issue as to whether its contempt has been committed where the alleged contempt has taken place outside the four walls of the House ? Is the House the sole and exclusive judge of the punishment which should be imposed on the party whom it has found to be guilty of its contempt ? And, if in enforcement of its decision the House issues a general or unspeaking warrant, is the High Court entitled to entertain a habeas corpus petition challenging the validity of the detention of the person sentenced by the House ? The argument urged by Mr. Seervai on behalf of the House is that in the case of a general warrant, the High Court has no jurisdiction to go behind the warrant; and in the present case, since it has entertained the petition and passed an order case, since it has entertained the petition and passed an order releasing Keshav Singh on bail without examining the warrant, and even before a return was filed by the respondents, it has acted illegally and without jurisdiction, and so the learned Judges of the High Court, the Counsel, and the party are all guilty of contempt of the House. Mr. Seervai urges that in any case, in habeas corpus proceedings of this character, the High

Court had no jurisdiction to grant interim bail.

It is not seriously disputed by Mr. Setalvad that the House has the power to inquire whether its contempt has been committed by anyone even outside its four-walls and has the power to impose punishment for such contempt; but his argument is that having regard to the material provisions of our Constitution, it would not be open to the House to make a claim that its general warrant should be treated as conclusive. In every case where a party has been sentenced by the House for contempt and detained, it would be open to him to move the High Court for appropriate relief under Art. 226 and the High Court would be entitled to examine the merits of his pleas, even though the warrant may be general or unspeaking. According to Mr. Setalvad, since the High Court has jurisdiction to entertain a Writ Petition for habeas corpus under Art. 226, it has also the poser to pass an order of interim bail. Thus, the dispute really centres round the jurisdiction of the High Court to entertain a habeas corpus petition even in cases where a general or speaking warrant has been issued by the House directing the detention of the party in contempt.

Though the ultimate solution of the problem posed by the questions before us would thus lie within a very narrow compass, it is necessary to deal with some wider aspects of the problem which incidentally arise and the decision of which will assist us in rendering our answers to the questions framed in the present Reference. The whole of the problem thus presented before us has to be decided in the light of the provisions contained in Art. 194(3) of the Constitution, and in that sense, the interpretation of Art. 194(3) is really the crux of the matter. At this stage, it is necessary to read Article 194 :

> "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 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."

It will be noticed that the first three material clauses of Art. 194 deal with three different topics. Clause (1) makes it clear that the freedom of speech in the Legislature of every State which it prescribes, is subject to the provisions of the Constitution, and to the rules and standing orders, regulating the procedure of the Legislature. While interpreting this clause, it is necessary to

emphasise that the provisions of the Constitution subject to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The rules and standing orders may regulate the procedure of the Legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. The adjectival clause "regulating the procedure of the Legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing orders." Therefore, clause (1) confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. It would thus appeal that by making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Art. 19(1)(a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Art. 19(1)(a), it would have been unnecessary to confer the same right specifically in the manner adopted by Art. 194(1); and so, it would be legitimate to conclude that Art. 19(1)(a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Art. 194.

Having conferred freedom of speech on the legislators, clause (2) emphasises the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or any committee thereof. In other words, even if a legislator exercise his right of freedom of speech in violation, say, of Art. 211, he would not be liable for any action in any court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause. He may be answerable to the House for such a speech and the Speaker may take appropriate action against him in respect of it; but that is another matter. It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered.

That takes us to clause (3). The first part of this clause empowers the Legislatures of States to make laws prescribing their powers, privileges and immunities; the latter part provides that until such laws are made, the Legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers must have thought that the Legislatures would take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by cl. (3), are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3).

This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to have subsisted at the commencement of the Constitution, i.e., on January 26, 1950. It is well-known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time, and some virtually faded out by desuetude; and so, in every case where a power is

claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is : is the power in question shown or proved to have subsisted in the House of Commons at the relevant time ?

Clause (4) extends the provision prescribed by the three preceding clauses to certain persons therein described.

It will thus be seen that all the four clauses of Art. 194 are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is couched in such wide terms that in exercising the rights conferred on them by cl. (1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by Part III, they would not be liable for any action in any court. Nevertheless, if for other valid considerations, it appears that the contents of cl. (3) may not exclude the applicability of certain relevant provisions of the Constitution, it would not be reasonable to suggest that those provisions must be ignored just because the said clause does not open with the words "subject to the other provisions of the Constitution." In dealing with the effect of the provisions contained in cl. (3) of Art. 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction. What would be the result of the adoption of such a rule we need not stop to consider at this stage. We will refer to it later when we deal with the decision of this Court in Pandit M. S. M. Sharma v. Shri Sri Krishna Sinha & Others ([1959] Supp. 1 S.C.R. 806).

The implications of the first part of clause (3) may, however, be examined at this state. The question is, if the Legislature of a State makes a law which prescribed its powers, privileges and immunities, would this law be subject to Art. 13 or not ? It may be recalled that Art. 13 provides that laws inconsistent with or in derogation of the fundamental rights would be void. Clause (1) of Art. 13 refers in that connection to the laws in force in the territory of India immediately before the commencement of the Constitution, and clause (2) refers to laws that the State shall make in future. Prima facie, if the legislature of a State were to make a law in pursuance of the authority conferred on it by clause (2) of Art. 13 would render it void if it contravenes or abridges the fundamental rights guaranteed by Part III. As we will presently point out, that is the effect of the decision of this Court in Pandit Sharma's ([1959] Supp. 1 S.C.R. 806) case. In other words, it must not be taken as settled that if a law is made under the purported exercise of the power conferred by the first part of clause (3), it will have to satisfy the test prescribed by the fundamental rights guaranteed by the Constitution. If that be so, it becomes at once material to enquire whether the Constitution-makers had really intended that the limitations prescribed by the fundamental rights subject to which alone a law can be made by the Legislature of a State prescribing its powers, privileges and immunities, should be treated as irrelevant in construing the latter part of the said clause. The same point may conveniently be put in another form. If it appears that any of the powers, privileges and immunities claimed by the House are inconsistent with the fundamental rights guaranteed by the Constitution, how is the conflict going to be resolved. Was it the intention of the Constitution to place the powers, privileges and immunities specified in the latter part of cl. (3) on a much higher pedestal than the law which the Legislature of State may make in that behalf on a future date ? As a matter of construction of clause (3), the fact that the first part of the said clause refers to future laws which

would be subject to fundamental rights, may assume significance in interpreting the latter part of clause (3). That, in brief, is the position of the first three material provisions of Art. 194.

The next question which faces us arises from the preliminary contention raised by Mr. Seervai that by his appearance before us on behalf of the House, the House should not be taken to have conceded to the Court the jurisdiction to construe Art. 194(3) so as to bind it. As we have already indicated, his stand is that in the matter of privileges, the House is the sole and exclusive judge at all stages. It may be that technically, the advisory opinion rendered by this Court on the Reference made to it by the President may not amount to judicial adjudication properly so-called and since there are no parties as such before the Court in the Reference, nobody would be bound by our answers. But apart from this technical aspect of the matter, it is necessary that we should determine the basic question as to whether even in the matter of privileges, the Constitution confers on the House sole and exclusive jurisdiction as claimed by Mr. Seervai. It is common ground that the powers have to be found in Art. 194(3). That provision is the sole foundation of the powers, and no power which is not included in it can be claimed by the House; and so, at the very threshold of our discussion, we must decide this question.

In dealing with this question, it is necessary to bear in mind one fundamental feature of a federal constitution. In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognised by the law of England is having a right to override or set aside the legislation of Parliament; and that the right or power of Parliament extends to every part of the Queen's dominions (Dicey, The Law of the Constitution 10th ed. pp. xxxiv, xxxv). On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are co-ordinate with an independent of each others." The supremacy of the constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Nor is any change possible in the constitution by the ordinary process of federal or State legislation (Ibid p. lxxvii). Thus the dominant characteristic of the British Constitution cannot be claimed by a federal constitution like ours.

Our Legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the Legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the power conferred on them by the relevant provisions of the Constitution; but the basis of the power is the constitution itself. Besides, the legislative supremacy of our Legislatures including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the Legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant article dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.

In a democratic country governed by a written Constitution, is the Constitution which is supreme and supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validity made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England, cannot be claimed by any Legislature in India in the literal absolute sense.

There is another aspect of this matter which must also be mentioned; whether or not there is distinct and rigid separation of powers under the Indian Constitution, there is no doubt that the Constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens. When a statute is challenged on the ground that it has been passed by Legislature without authority, or has otherwise unconstitutionally trespassed on fundamental rights, it is for the courts to determine the dispute and decide whether the law passed by the legislature is valid or not. Just as the legislatures are conferred legislative functions, and the functions and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie within the domain of adjudication. If the validity of any law is challenged before the courts, it is never suggested that the material question as to whether legislative authority has been exceeded or fundamental rights have been contravened, can be decided by the legislatures themselves. Adjudication of such a dispute is entrusted solely and exclusively to the Judicature of this country; and so, we feel no difficulty in holding that the decision about the construction of Art. 194(3) must ultimately rest exclusively with the Judicature of this country. That is why we must over-rule Mr. Seervai's argument that the question of determining the nature, scope and effect of the powers of the House cannot be said to lie exclusively within the jurisdiction of this Court. This conclusion, however, would not impair the validity of Mr. Seervai's contention that the advisory opinion rendered by us in the present Reference proceedings is not adjudication properly so-called and would bind no parties as such.

In coming to the conclusion that the content of Art. 194(3) must ultimately be determined by courts and not by the legislatures, we are not unmindful of the grandeur and majesty of the task which has been assigned to the Legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts also have to play an equally significant role in the development of the rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life. In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the Judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another importance constituent of a democratic State, must function not in antinomy not in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country.

But when, as in the present case, a controversy arises between the House and the High Court, we must deal with the problem objectively and impersonally. There is no occasion to import heat into the debate or discussion and no justification for the use of strong language. The problem presented to us by the present reference and though its consideration may present some difficult aspects, we must attempt to find the answers as best we can. In dealing with a dispute like the present which concerns the jurisdiction, the dignity and the independence of two august bodies in a State, we must remember that the objectively of our approach itself may incidentally be on trial. It is, therefore, in a spirit of detached objective enquiry which is the distinguishing feature of judicial process that we propose to find solutions to the questions framed for our advisory opinion. If ultimately we come to the conclusion that the view pressed before us by Mr. Setalvad for High Court is erroneous, we would not hesitate to pronounce our verdict against that view. On the other hand, if we ultimately come to the conclusion that the claim made by Mr. Seervai for the House cannot be sustained, we would not falter to pronounce our verdict accordingly. In dealing with problems of this importance and significance, it is essential that we should proceed to discharge our duty without fear or favour, affection or ill-will and with the full consciousness that it is our solemn obligation to uphold the Constitution and the laws.

It would be recalled that Art. 194(3) consists of two parts. The first part empowers the Legislature to define by law from time to time its powers, privileges and immunities, whereas the second part provides that until the legislature chooses so to define its powers, privileges and immunities, its powers, privileges and immunities would be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees, as the commencement of the Constitution. Mr. Seervai's argument is that the latter part of Art. 194(3) expressly provides that all the powers which vested in the House of Commons at the relevant time, vest in the House. This broad claim, however, cannot be accepted in its entirety, because there are some powers which cannot obviously be claimed by the House. Take the privilege of freedom of access which is exercised by the House of Commons as a body and through its Speaker "to have at all time the right to petition, counsel, or remonstrate with their Sovereign through their chosen representative and have a favourable construction placed on his words was justly regarded by the Commons as fundamental privilege (Sir T. Erskine May"s Parliamentary Practice (16th ed.) p. 86" It is hardly necessary to point out that the House cannot claim this privilege. Similarly, the privilege to pass acts of attainder and the privilege of impeachment cannot be claimed by the House. The House of Commons also claims the privilege in regard to its own Constitution. This privilege is expressed in three ways, first by the order of new writs to fill vacancies that arise in the Commons in the course of a parliament; secondly, by the trial of controverted elections; and thirdly, by determining the qualification of is members in cases of doubt (Ibid, p. 175). This privilege again, admittedly, cannot be claimed by the House. Therefore, it would not be correct to say that all powers and privileges which were possessed by the House of Commons at the relevant time can be claimed by the House.

In construing the relevant provision of Art. 194(3), we must deal with the question in the light of the previous decision of this Court in Pandit Sharma's ([1959] Supp. 1 S.C.R. 806) case. It is, therefore, necessary to recall what according to the majority decision in the case, is the position of the provision contained in Art. 194(3). In that case, the Editor of the English daily newspaper, Search Light of Patna, had been called upon by the Secretary of the Patna Legislative Assembly to show cause before the Committee of Privileges why appropriate action should not be taken against him for the breach of privileges of the Speaker and the Assembly in that he had published in its entirety the speech delivered in the Assembly by a Member, portions of which had been directed to be expunged by the Speaker. The Editor who moved this Court under Art. 32, contended that the said notice and the action proposed to be taken by the Committee contravened his fundamental right of

freedom of speech and expression under Art. 19(1)(a), and also trespassed upon the protection of his personal liberty guaranteed under Art. 21. It is on these two grounds that the validity of the notice was impeached by him. This claim was resisted by the House by relying on Art. 194(3). Two questions arose, one was whether the privilege claimed by the House was subsisting privilege in England at the relevant time; and the other was, what was the result of the impact of Articles 19(1)(a) and 21 on the provisions contained in the latter part of Article 194(3) ? The majority decision was that the privilege in question was subsisting at the relevant time and must, therefore, be deemed to be included under the latter part of Art. 194(3). It also held that Art. 19(1)(a) did not apply, because under the rule of harmonious construction, in a case like the present where Art. 19(1)(a) was in direct conflict with Art. 194(3), the particular provision in the latter article would prevail over the general provision contained in the former; it further held that though Art. 21 applied, it had not been contravened.

The minority view, on the other hand, was that the privilege in question had not been established in fact, and that alternatively, if it be assumed that such privilege was established and was, therefore, included under the latter part of Art. 194(3), it must be controlled by Art. 19(1)(a), it must be controlled by Part III of the Constitution were of paramount importance and must prevail over a provision like that contained in Art. 194(3) which may be inconsistent with them.

At this stage, it would be useful to indicate broadly the points decided both by the majority and minority decisions in that case. Before the Court, it was urged by the petitioner that though Art. 194(3) had not been made subject to the provisions of the Constitution, it does not necessarily mean that it is not so subject, and that the several clauses of Art. 194 should not be treated as distinct and separate provisions but should be taken as subject to the provisions of the Constitution which, of course, would include Art. 19(1)(a). This argument was rejected both by the majority and the minority views.

The next argument urged in that case was that Art. 194(1) in reality operates as an abridgment of the fundamental right of freedom of speech conferred by Art. 19(1)(a) when exercised in the State Legislatures, but Art. 194(3) does not, in terms, purport to be an exception to Art. 19(1)(a). This argument was also rejected by both he majority decision that clause (1) of Art. 194 no doubt makes a substantive provision of the said clause subject to the provisions of the Constitution; but in the context, those provisions cannot take in Art. 19(1)(a), because this latter article does not purport to regular the procedure of the legislature and it is only such provisions of the Constitution which regulate the procedure of the legislature which are included in the first part of Art. 194(1).

The third argument urged by the petitioner was that Art. 19 enunciates a transcendental principle and should prevail over the provisions of Art. 194(3), particularly because these latter provisions were of a transitory character. This contention was rejected by the majority view, but was upheld by the minority view.

The fourth argument urged was that if a law is made by the legislature prescribing its powers, privileges and immunities, it would be subject to Art. 13 of the Constitution and would become void to the extent it contravenes the fundamental rights enshrined in Part III. This contention was accepted by both the majority and the minority decisions.

That left one more point to be considered and it had reference to the observations made in an earlier decision of this Court in Gunupati Keshavram Reddy v. Nafisul Hasan and the State of U. P. (A.I.R. 1954 S.C. 636). The majority decision has commented on this earlier decision and had observed that

the said decision was based entirely on a concession and cannot, therefore, be deemed to be a considered decision of this Court. As we will presently point out, the said decision dealt with the applicability of Art. 22(2) to a case falling under the latter part of Art. 194(3). The minority opinion, however, treated that said decision as a considered decision which was binding on the Court.

We ought to add that the majority decision, in terms, held that Art. 21 applied, but, on the merits, it came to the conclusion that its alleged contravention had not been proved. On the minority view it was unnecessary to consider whether Art. 21 as such applied, because the said view treated all the fundamental rights guaranteed by Part III as paramount and, therefore, each one of them would control the provisions of Art. 194(3).

It would thus be seen that in the case of Pandit Sharma ([1959] Supp. 1 S.C.R. 806), contentions urged by the petitioner did not raise a general issue as to the relevance and applicability of all the fundamental rights guaranteed by Part III at all. The contravention of only two articles was pleaded and they were Articles 19(1)(a) and 21. Strictly speaking, it was, therefore, unnecessary to consider the larger issue as to whether the latter part of Art. 194(3) was subject to the fundamental rights in general, and indeed, even on the majority view it could not be said that the said view excluded the application of all fundamental rights, for the obvious and simple reason that Art. 21 was held to be applicable and the merits of the petitioner's arguments about its alleged contravention in his case were examined and rejected. Therefore, we do not think it would be right to read the majority decision as laying down a general proposition that whenever there is a conflict between the provisions of the latter part of Article 194(3) and any of the provisions of the fundamental rights guaranteed by Part III, the latter must always yield to the former. The majority decision, therefore, must be taken to have settled that Art. 19(1)(a) would not apply, and Art. 21 would.

Having reached this conclusion, the majority decision has incidentally commenced on the decision in Gunupati Keshavram Reddy's (A.I.R. [1954] S.C. 636) case. Apart from the fact that there was no controversy about the applicability of Art. 22 in that case, we ought to point out, with respect, that the comment made by the majority judgment on the earlier decision is partly not accurate. In that case, a Constitution Bench of this Court was concerned with the detention of Mr. Mistry's under an order passed by the Speaker of the Uttar Pradesh Legislative Assembly for breach of privilege of the said Assembly. The validity of Mr. Mistry's detention was challenged on the ground that it had contravened Art. 22(2) of the Constitution. The facts alleged in support of this plea were admitted to be correct by the Attorney-General, and on those admitted facts, the Court held that Mr. Mistry's detention was clearly invalid. Referring to this decision, the majority judgment has observed that it "proceeded entirely on a concession of counsel and cannot be regarded as a considered opinion on the subject." There is no doubt that the first part of this comment is not accurate. A concession was made by the Attorney-General not on a point of law which was decided by the Court, but on a point of fact; and so, this part of the comment cannot strictly be said to be justified. It is, however, true that there is no discussion about the merits of the contention raised on behalf of Mr. Mistry and to that extent, it may have been permissible to the majority judgment to say that it was not a considered opinion of the Court. But, as we have already pointed out, it was hardly necessary for the majority decision to deal with the point pertaining to the applicability of Art. 22(2), because that point did not arise in the proceedings before the Court in Pandit Sharma's ([1959] Supp. 1 S.C.R. 806) case. That is why we wish to make it clear that the obiter observations made in the majority judgment about the validity or correctness of the earlier decision of this Court in Gunupati Keshavram Reddy's (A.I.R. 1954 S.C. 636) case should not be taken as having decided the point in question. In other words, the question as to whether Art. 22(2) would apply to such a case may have

to be considered by this Court if and when it becomes necessary to do so.

Before we part with the decision of this Court in Pandit Sharma's ([1959] Supp. 1 S.C.R. 806 case, it is necessary to refer to another point. We have already observed that the majority decision has accepted the contention raised by the Legislature of a State prescribing its powers, privileges and immunities as authorised by the first part of Art. 194(3), it would be subject to Art. 13. Mr. Seervai has attempted to challenge the correctness of this conclusion. He contends that the power conferred on the legislatures by the first part of Art. 194(3) is a constitutional power, and so, if a law is passed in exercise of the said power, it will be outside the scope of Art. 13. We are unable to accept this contention. It is true that the power to make such a law has been conferred on the legislatures by the first part of Art. 194(3), but when the State Legislatures purport to exercise this power, they will undoubtedly be acting under Art. 246 read with Entry 39 of List II. The enactment of such a law cannot be said to be in exercise of a constituent power, and so, such a law will have to be treated as a law within the meaning of Art. 13. That is the view which the majority decision expressed in the case of Pandit Sharma ([1959] Supp. 1 S.C.R. 806), and we are in respectful agreement with that view. Mr. Seervai attempted to support his contention by referring to some observations made by Venkatarama Aiyar J. in Ananthakrishnan v. State of Madras (I.L.R. Mad. 933, 951). In that case, the learned Judge has observed that "[Art. 13] 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 the Part III and it would be surprising if it did, seeing that all of them are parts of one organic whole." This principle is obviously unexceptionable. This principle could have been invoked if it had been urged before us that either the first or the second part of Art. 194(3) itself is invalid because it is inconsistent with the relevant provisions in Part III which provides for fundamental rights. That, however, is not the argument of Mr. Setalvad, nor was it the argument urged before this Court in the case of Pandit Sharma (I.L.R. [1952] Mad. 933, 951). The argument was and is that if in pursuance of the power conferred by the first part of Art. 194(3) a law is made by the legislature, it is a law within the meaning of Art. 13, and this argument proceeds on the words of Art. 13(2), itself. Art. 13(2) provides that the State shall not make any law which takes away or abridges the rights conferred by Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void. The law with which we are dealing does not purport to amend the Constitution and would not, therefore form part of the Constitution when it is passed; like other laws passed by the Legislatures in exercise of the legislative powers conferred on them, this law would also be law within the meaning of Art. 13, and so, it is unreasonable to contend that the view taken by this Court in the case of Pandit Sharma that such a law would be subject to the fundamental rights and would fall within the mischief of Art. 13(2), requires reconsideration. The position, therefore, is that in dealing with the present dispute we ought to proceed on the basis that the latter part of Art. 194(3) is not subject to Art. 19(1)(a), but is subject to Art. 21.

The next question which we ought to consider is : was it the intention of the Constitution to perpetuate the dualism which rudely disturbed public life in England in the 17th, 18th and 19th centuries ? the Constitution-makers were aware of several unhappy situations which arose as a result of the conflict between the Judicature and the Houses of Parliament and they knew that these situations threatened to create a deadlock in the public life of England. When they enacted Art. 194(3), was it their intention to leave this conflict at large, or have they adopted a scheme of constitutional provisions to resolve that conflict ? The answer to this question would obviously depend upon a harmonious construction of the relevant provisions of the Constitution itself.

Let us first take Art. 226. This Article confers very wide powers on every High Court throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, certiorari, or any of them for the enforcement of any of the right conferred by Part III and for any other purpose. It is hardly necessary to emphasise that the language used by Art. 226 in conferring power on the High Courts is very wide. Art. 12 defines the "State" as including the Legislature of such State, and so, prima facie, the power conferred on the High Court under Art. 226(1) can, in a proper case, be exercised even against the Legislature. If an application is made to the High Court for the issue of a writ of habeas corpus, it would not be competent to the House to raise a preliminary objection that the High Court has no jurisdiction to entertain the application because the detention is by an order of the House. Art. 226(1) read by itself, does not seem to permit such a plea to be raised, Art, 32 which deals with the power of this Court, puts the matter on a still higher pedestal; the right to move this Court by appropriate proceedings for the enforcement of the fundamental rights is itself a guaranteed fundamental right, and so, what we have said about Art. 226(1) is still more true about Art. 32(1).

Whilst we are considering this aspect of the matter, it is relevant to emphasise that the conflict which has arisen between the High Court and the House is, strictly speaking, not a conflict between the High Court as and the House as such, but between the House and a citizen of this country. Keshav Singh claims certain fundamental rights which are guaranteed by the Constitution and he seeks to move the High Court under Art. 226 on the ground that his fundamental rights have been contravened illegally. The High Court purporting to exercise its power under Art. 226(1), seeks to examine the merits of the claims made by Keshav Singh and issues an interim order. It is this interim order which has led to the present unfortunate controversy. No doubt, by virtue of the resolution passed by the House requiring the Judges to appear before the Bar of the House to explain their conduct, the controversy has developed into one between the High Court and the House; but it is because the High Court in the discharge of its duties as such Court intervened to enquire into the allegations made by a citizen that the Judges have been compelled to enter the arena. Basically and fundamentally, the controversy is between a citizen of Uttar Pradesh and the Uttar Pradesh Legislative Assembly. That is why in dealing with the question about the extent of the powers of the House in dealing with cases of contempt committed outside its four-walls, the provisions of Art. 226 and Art. 32 assume significance. We have already pointed out that in Pandit Sharma ([1959] Supp. 1 S.C.R. 806 this Court has held that Art. 21 applies where powers are exercised by the legislature under the latter part of Art. 194(3). If a citizen move the High Court on the ground that his fundamental right under Art. 21 has been contravened, the High Court would be entitled to examine his claim, and that itself would introduce some limitation on the extent of the powers claimed by the House in the present proceedings.

There are two other articles to which reference must be made. Art. 208(1) provides that a House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. This provision makes it perfectly clear that if the House were to make any rules as prescribed by it, those rules would be subject to the fundamental rights guaranteed by Part III. In other words, where the House makes rules for exercising its powers under the latter part of Art. 194(3), those rules must be subject to the fundamental rights of the citizens.

Similarly, Art. 212(1) makes a provision which is relevant. It lays down that the validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged

irregularity of procedure. Art. 212(2) confers immunity on the officers and members of the Legislature in whom powers are vested by or under the Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature from being subject to the jurisdiction of any court in respect of the exercise by him of those powers. Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Art. 194(3).

That takes us to Art. 211. This article provides that no discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. This provision amounts to an absolute constitutional prohibition against any discussion in the Legislature of a State in respect of the judicial conduct of a judge of this Court or of the High Court. Mr. Setalvad who appeared for the Judges has, based his argument substantially on the provisions of this article. He contends that the unqualified and absolute terms in which the constitutional prohibition is couched in Art. 211 unambiguously indicate that the conduct of a Judge in the discharge of his duties can never become the subject-matter of any action taken by the House in exercise of its powers or privileges conferred by the latter part of Art. 194(3). If a Judge in the discharge of his duties commits contempt of the House, the only step that can be taken against him is prescribed by Art. 121 Art. 121 provides that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided. Reading Articles 121 and 211 together, two points clearly emerge. The judicial conduct of the Judge. The Constitution-makers attached so much importance to the independence of the Judicature in this country that they thought it necessary to place them beyond any controversy, except in the manner provided by Art. 121. If the judicial conduct of a Judge cannot be discussed in the House, it is inconceivable that the same conduct can be legitimately made the subject-matter of action by the House in exercise of its powers under Art. 194(3). That, in substance, is the principal argument which has been urged before us by Mr. Setalvad.

On the other hand, Mr. Seervai has argued that the effect of the provisions contained in Art. 211 should not be exaggerated. He points out that Art. 211 appears in Chapter III which deals with the State Legislature and occurs under the topic "General Procedure", and so, the only object which it is intended to serve is the regulation of the procedure inside the chamber of the Legislature. He has also relied on the provisions of Art. 194(2) which expressly prohibit any action against a member of the Legislature for anything said or any vote given by him in the Legislature. In other words, if a member of the Legislature contravenes the absolute prohibition prescribed by Art. 211, no action can be taken against him a court of law and that, says Mr. Seervai, shows that the significance of the prohibition prescribed by Art. 211 should not be overrated. Besides, as a matter of construction, Mr. Seervai suggests that the failure to comply with the prohibition contained in Art. 211 cannot lead to any constitutional consequence, and in support of this argument, he has relied on a decision of this Court in State of U. P. v. Manbodhan Lal Srivastava ([1958] S.C.R. 533). In that case, this Court was dealing with the effect of the provisions contained in Art. 320 of the Constitution. Art. 320 prescribes the functions of the Public Service Commissions, and by clause 3(c) it has provided that the Union Public Service Commission or the state Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a person serving under the Government of a

State in a civil capacity, including memorials or petitions relating to such matters. It was held that provisions of this clause were not mandatory and did not confer any right on a public servant, so that the absence of consultation or any irregularity in consultation or any irregularity in consultation did not afford him a cause of action in a court of law. Mr. Seervai's argument is that the words used in Art. 211 should be similarly construed and the prohibition on which Mr. Setalvad relies should be deemed to be merely directory and not mandatory.

We are not impressed by Mr. Seervai's arguments. The fact that Art. 211 appears under a topic dealing with "Procedure Generally", cannot mean that the prohibition prescribed by it is not mandatory. As we have already, in trying to appreciate the full significance of this prohibition, we must read Articles 211 and 121 together. It is true that Art. 194(2) in terms provides for immunity of action in any court in respect of a speech made by a member or a vote given by him in the Legislative Assembly. But this provision itself emphatically brings out the fact that the Constitution was anxious to protect full freedom of speech and expression inside the legislative chamber, and so, it took the precaution of making a specific provision to safeguard this freedom of speech and expression by saying that even the breach of the constitutional prohibition prescribed by Art. 211 should not give rise to any action. Undoubtedly, the Speaker would not permit a member to contravene Art. 211; but if, inadvertently or otherwise a speech is made within the legislative chamber which contravenes Art. 211, the Constitution-makers have given protection to such speech from action in any court. The House itself may and would, no doubt, take action against him.

It is also true that if a question arises as to whether a speech contravenes Art. 211 or not, it would be for the Speaker to given his ruling on the point. In dealing with such a question, the Speaker to may have to consider whether the observations which a member wants to make are in relation to the conduct of a Judge in discharge of his duties, and in that sense, that is a matter for the Speaker to decide. But the significant fact still remains that the Constitution-makers though it necessary to make a specific provision by Art. 194(2) and that is the limit to which the Constitution has gone in its objective of securing complete freedom of speech and expression within the four-walls of the legislative chamber.

The latter part of Art. 194(3) makes no such exception, and so, it would be logical to hold that whereas a speech made in contravention of Art. 211 is protected from action in a court by Art. 194(2), no such exception or protections is provided in prescribing the powers and privileges of the House under the latter part of Art. 194(3). If a Judge in the discharge of his duties passes an order or makes observations which in the opinion of the House amount to contempt, and the House proceeds to take action against the Judge in that behalf, such action on the part of the House cannot be protected or justified by any specific provision made by the latter part of Art. 194(3). In our opinion, the omission to make any such provision when contrasted with the actual provision made by Art. 194(2) is not without significance. In other words, this contrast leads to the inference that Constitution-makers took the view that the utmost that can be done to assure absolute freedom of speech and expression inside the legislative chamber, would be to make a provision in Art. 194(2); and that is about all. The conduct of a Judge in relation to discharge of his duties cannot be the subject-matter of action in exercise of the powers and privileges of the House. Therefore, the position is that the conduct of a Judge in relation to the discharge of his duties cannot legitimately be discussed inside the House, though if it is, no remedy lies in a court of law. But such conduct cannot be made the subject-matter of any proceedings under the latter part of Art. 194(3). If this were not the true position, Art. 211 would amount to a meaningless declaration and that clearly could not have been the intention of the Constitution.

Then, as regards the construction of Art. 211 itself, Mr. Seervai is no doubt in a position to rely upon the decision of this Court in State of U. P. v. Manbodhan Lal Srivastava ([1958] S.C.R. '533). But it would be noticed that in coming to the conclusion that the provision contained in Art. 320(3)(c) was not mandatory, this Court has referred to certain other facts which determined the said construction. Even so, this Court has accepted the principle laid down by the Privy Council in Montreal Street Railway Company v. Normandin (L.R. [1917] A.C. 170) wherein the Privy Council observed that "[t]he question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at." "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one ways or the other." (People v. De Renna (2 N.Y.S.) (2) 694, 166 Misc. (582) cited in Crawford, Statutory Construction p. 516) These principles would clearly negative the construction for which Mr. Seervai contends. It is hardly necessary to refer to other provisions of the Judicature in this country. The existence of a fearless and independent judiciary can be said to be the very basic foundation of the constitutional structure in India, and so it would be idle, we think, to contend that the absolute prohibition prescribed by Art. 211 should be read as merely directory and should be allowed to be reduced to a meaningless declaration by permitting the House to take action against a Judge in respect of his conduct in the discharge of his duties. Therefore, we are satisfied that Mr. Setalvad is right when he contends that whatever may be the extent of the powers and privileges conferred on the House by the latter part of Art. 194(3), the power to take action against a Judge for contempt alleged to have been committed by him, by his act in the discharge of his duties cannot be included in them. Thus, Mr. Setalvad's case is that so far as the Judges are concerned, the position is quite clear that as a result of the impact of the provisions contained in Articles 226 and 211, judicial conduct can never become the subject-matter of contempt proceedings under the latter part of Art. 194(3), even if it is assumed that such conduct can become the subject-matter of contempt proceedings under the powers and privileges possessed by the House of Commons in England.

On the other hand, Mr. Seervai disputes Mr. Setalvad's contention as to the impact of Arts. 226 and 211 on the latter part of Art. 194(3) and further urges that even if Mr. Setalvad be right in respect of that contention, he would not be entitled to dispute the validity of the power and privilege claimed by the House of Commons-which can, therefore, be claimed by the House in the present proceedings-that no court can go behind a general or unspeaking warrant. In order to determine the validity of these rival contentions, it is now necessary to consider very briefly what was the position of this particular power and privilege at the commencement of the Constitution. In dealing with this question, we will also very broadly refer to the wider aspect of the powers, privileges and immunities which vest in both the Houses of Parliament in England.

While considering the question of the powers, privileges and immunities of the English Parliament it would, we think, be quite safe to base ourselves on the relevant statements which have been made in May's Parliamentary Practice. This work has assumed the status of a exposition of parliamentary practice; and so, we think it would be an exercise in futility to attempt to deal with this question otherwise than by reference to May. Parliamentary privilege, according to May, is 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 individuals. Thus, privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law. The particular privileges of the House of Commons 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". There is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reserve the term "privilege" to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers". They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity (May"s Parliamentary Practice pp. 42-43).

May points out that except in one respect, the surviving privileges of the House of Lords and the House of Commons are justifiable on the same ground of necessity as the privileges enjoyed by legislative assemblies of the self-governing Dominions and certain British colonies, under the common law as a legal incident of their legislative authority. This exception is the power to punish for contempt. Since the decision of the Privy Council in Kielley v. Carson (4 Moore P. C. 63) it has been held that this power is inherent in the House of Lords and the House of Commons, not as a body with legislative functions, but as a descendant of the High Court of Parliament and by virtue of the lex et consuetudo parliamenti (May"s Parliamentary Practice pp. 42-43) Historically as originally the weaker body, the Commons had a fiercer and more prolonged struggle for the assertion of their own privileges, not only against the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognised "privileges".

In regard to the fierce struggle by the House of Commons to assert its privileges in a militant way, May has made the significant comment that these claims to privileges established in the late fifteenth and in the sixteenth centuries and were used by the House of Commons against the King in the seventeenth and - arbitrarily - against the people in the eighteenth century. Not until the nineteenth century was equilibrium reached and the limits of privilege prescribed and accepted by Parliament, the Crown and the Courts (May"s Parliamentary Practice, p. 44). The two Houses are thus of equal authority in the administration of a common body of privileges. Each House, as a constituent part of Parliament, exercised its own privileges independently of the other. They are enjoyed however, not by any separate right peculiar to each, but solely be virtue of the law and custom of Parliament, Generally speaking, all privileges properly so - called, appertain equally to both Houses. They are declared and expounded by each House; and breaches of privilege are adjudged and censured by each; but essentially, it is still the law of Parliament that is thus administered. It is significant that although either Houses may expound the law of Parliament, and vindicate its own privileges, it is agreed that no new privilege can be created. This position emerged as a result of the historic resolution passed by the House of Lords in 1704. This resolution declared "that neither House of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament." This resolution was communicated by the House of Lords to Commons and asserted to by them (May"s Parliamentary Practice, p.47). Thus, there can be no doubt that by its resolutions, the House of Commons cannot add to the list of its privileges and powers.

It would be relevant at this stage to mention broadly the main privileges which are claimed by the House of Commons. Freedom of speech is a privilege essential to every free council or legislature, and that is claimed by both the Houses as a basic privilege. This privilege was from 1541 included by established practice in the petition of the Commons to the King at the commencement of the

Parliament. It is remarkable that notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. This privilege received final statutory recognition after the Revolution of 1688. By the 9th Article of the Bill of Rights, it was declared "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"(Ibid., p. 52).

Amongst the other privileges are : the right to exclude strangers, the right to control publication of debates and proceedings, the right to exclusive cognizance of proceedings in Parliament, the right of each House to be the sole judge of the lawfulness of its own proceedings, and the right implied to punish its own Members for their conduct in Parliament (Ibid., pp. 52-53).

Besides these privileges, both Houses of Parliament were possessed of the privilege of freedom from arrest or molestation, and from being impleaded, which was claimed by the Commons on ground of prescription. Although this privilege was given royal and statutory recognition at an early date, ironically enough the enforcement of the privilege was dependent on the Lords and King, who were not always willing to the case of Thorpe who was the Speaker of the House of Commons and was imprisoned in 1452, under execution from the Court of Exchequer, at the suit of the Duke of York. It is an eloquent testimony to the dominance of the House of Lords in response to the application of the Commons adjudged that Thorpe should remain in prison, the Commons so easily acquiesced in this decision that they immediately proceeded to the election of another Speaker (May"s Parliamentary Practice, p.70).

May points out that certain privileges have in course of time, been discontinued. Amongst them may be mentioned the freedom from being impleaded. Similarly, by the Parliamentary Privilege Act, 1770 a very important limitation of the freedom from arrest was affected. A somewhat similar position arises in respect of the privilege of exemption from jury service (Ibid. pp. 75-77). In fact the list of privileges claimed by the House of Commons in early days was a long and formidable list and it showed how the House of Commons was then inclined to claim all kinds of privileges for itself and its members. In course of time, however, many of these privileges fell into disuse and faded out of existence, some were controlled by legislation while the major privileges which can be properly described as privileges essential for the efficient functioning of the House, still continued in force.

In considering the nature of these privileges generally, and particularly the nature of the privilege claimed by the House to punish for contempt, it is necessary to remember the historical origin of this doctrine of privileges. In this connection, May has emphasised that the origin of the modern Parliament consisted in its judicial functions. "One of the principal lines of recent research", says May, "has revealed the importance of the judicial elements in the origins of Parliament. Maitland, in his introduction to the Parliament Roll of 1305, was the first to emphasise the importance of the fact that Parliament at that time was the King's "great court" and was thereby (among other things) the highest court of royal justice. There is now general agreement in recognising the strongly judicial streak in the character of the earliest Parliaments and the fact that, even under Edward III, although Parliaments devoted a considerable part of their time to political and economic business, the dispensation of justice remained one of their chief functions in the eyes of the King's subjects" (May"s Parliamentary Practice, pp. 3-4). As is well-known, the Parliament of the United Kingdom is composed of the Sovereign, the House of Lords, and the House of Commons. These several powers collectively form the Legislature;land, as distinct members of the constitution, they exercise functions and enjoy privileges peculiar to each.

The House of Lords, Spiritual land Temporal, sit together, and jointly constitute the House of Lords (Ibid, pp. 8-9). The exact date of the admission of the Commons to a distinct place in the legislature has always been a subject of controversy; but as it is admitted that they often sat apart for deliberation, particular instances in which they met in different places will not determine whether their separation, at those times, was temporary or permanent. When the Commons deliberated apart, they sat in the chapter house or the refectory of the abbot of Westminster; and they continued their sittings in that place after their final separation (Ibid, p. 12). The House of Lords is their judicature, of which they exercise several kinds. They have the power to sit as a court during prorogation and dissolution; a Court of Appeal is constituted by the House of Lords and final appellate jurisdiction vests in them (Ibid, pp. 38-39). May has also referred to the power claimed by the Parliament in respect of acts of attainder and impeachments, and he has described how this privilege was exercised by the House of Lords and the House of Commons (Ibid, p. 40).i "In impeachments", says May, "the Commons are but accusers and advocates; while the Lords alone are judges of the crime. On the other hand, in passing bills of attainder, the Commons in commit themselves by no accusation, nor are their powers directed against the offender; but they are judges of equal jurisdiction, and with the same responsibility, as the Lords; and the accused can only be condemned by the united judgment of the Crown, the Lords, and the Commons (Ibid, p. 41)." This aspect of the privilege is one of the typical features of the historical development of the constitutional law in England. It would thus be seen that a part of the jurisdiction claimed by the House of Lords as well as the House of Commons can be distinctly traced to the historical origin of the modern Parliament which, as we have just indicated, consisted in the judicial functions of Parliament.

The differences in punishments inflicted by Lords and Commons is also of some significance in this context. "While both Houses agree in regarding the same offences as breaches of privilege", says May, "in several important particulars there is a difference in their modes of punishment. The Lords have claimed to be a court of record and, as such, not only to imprison, but to impose fines. They also imprison for a fixed time, and order security to be given for good conduct; and their customary form of commitment is by attachment. The Commons, on the other hand, commit for no specified period, and during the last two centuries have not imposed fines. There can be no question that the House of Lords, in its judicial capacity, is a court of record; but, according to Lord Kenyon, 'when exercising a legislative capacity, it is not a court of record'. Whether the House of Commons be, in law, a court of record, it would be difficult to determine; for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced" (Ibid., p. 90). This last comment made by May would be of decisive significance when we later have occasion to deal with the question as to whether the privilege claimed by Mr. Seervai that a general warrant cannot be examined by courts is a part of the privilege itself, or is the result of convention established between the courts and the House of Commons.

Let us then briefly indicate, in the words of may, the general features of the power of commitment possessed by the House of Commons. "The power of commitment", says May,"is truly described as the keystone of parliamentary privilege". As was said in the Commons in 1593, "This court for its dignity and highness hath privilege, as all other courts have. And, as it is above all other courts, so it hath privilege above all other courts; and as it hath privilege and jurisdiction too, so hath it also Coercion and Compulsion; otherwise the jurisdiction is nothing in a court, if it hath on Coercion" (Ibid., p. 90). The comment made by May on this power of commitment is very instructive. The origin of this power which is judicial in its nature is to be found naturally in the medieval conception of Parliament as primarily a court of justice - the "High Court of Parliament". As a court functioning judicially, the House of Lords undoubtedly possessed the power of commitment by at least as good a title as any court of Westminster Hall.

But the Commons, "new-comers to Parliament" within the time of judicial memory could not claim the power on grounds of immemorial antiquity. As late as 1399 they had recorded their protest that they were not sharers in the judgments of Parliament, but only petitioners. The possession of the right by the Commons was challenged on this ground, and was defended by arguments which confounded legislative with judicial jurisdiction authority otherwise than as in some sense a court of justice that the Commons succeeded in asserting their right to commit offenders on the same terms as the Lords. That is the genesis of the privilege claimed by the House of Commons in the matter of commitment.

As the history of England shows, the House of Commons had to engage in a fierce struggle in order to arrest recognition for this right from the King, the House of Lords, and in many cases the people themselves. This power was distinctly admitted by the Lords at the conference between the two Houses, in the case of Ashby v. White (L.J. [1701-05], 714), in 1704 and it has been repeatedly recognized by courts of law. In fact this power is also virtually admitted by the stature, I James I, c. 13, s. 3, which provides that nothing therein shall "extend to the diminishing of any punishment to be hereafter, by censure in Parliament, inflicted upon any person (May's Parliamentary Practice, p. 92)."

Now we will refer to the statement of law in May's book on the vexed question about the jurisdiction of courts of law in matters of privilege. May says, it would require a separate treatise to deal adequately with a subject which raises incidentally such important questions of constitutional law. According to him, in cases affecting parliamentary privilege the tracing of a boundary between the competence of the courts and the exclusive jurisdiction of either House is a difficult question of constitutional law which has provided many puzzling cases, particularly from the seventeenth to the nineteenth centuries. It has been common ground between the Houses and the courts that privilege depends on the "known laws and customs of Parliament", and not on the ipse dixit of either House. The question in dispute was whether the law of Parliament was or part of the common law in its wide and extended sense, and in the former case whether it was a superior law which overrode the common law. Arising out of this question another item of controversy arose between the courts and the Parliament and that was whether a matter of privilege should be judged solely by the House which it concerned, even when the rights third parties were involved, or whether it might in certain cases be decided in the courts, and, if so, in what sort of cases (May"s Parliamentary Practice, p. 150). The points of view adopted by the Parliament and the courts appeared to be irreconcilable. The courts claimed the right to decide for themselves when it became necessary to do so in proceeding brought before them, questions in relation to the right to decide for themselves when it became necessary to do so in proceedings brought before them, questions in relation to the existence or extent of these privileges, whereas both the Houses claimed to be exclusive judges of their own privileges. Ultimately, the two points of view were reconciled in practice and a solution acceptable to both out by the courts is to insist on their right in principle to decide all questions of privilege arising in litigation before them, with certain large exceptions in favour of parliamentary jurisdiction. Two of these are the exclusive jurisdiction of each House over its own internal proceedings, and the right of either House to commit and punish for contempt. May adds that while it can-not be claimed that either House has formally acquiesced in this assumption of jurisdiction by the courts, the absence of any conflict for over a century may indicate a certain measure of tacit acceptance (Ibid., p. 152). In other words, the question about the existence and extent of privilege is generally treated as justiciable in courts where it becomes relevant for adjudication of any dispute brought before the courts.

In regard to punishment for contempt, a similar process of give and take by convention has been in

operation land gradually a large area of agreement has, in practice, been evolved. Theoretically, the House of Commons claims that its admitted right to determine the existence and extent of the privileges themselves. It has never expressly abandoned this claim. On the other hand, the courts regard the privileges of Parliament as part of the law of the land, of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their jurisdiction, and to decide it according to their own interpretation of the law (Ibid., p. 172) Naturally, as a result of this dualism the decisions of the courts are not accepted as binding by the House in matters of privilege, nor the decisions of the House by the courts; and as May points out, on the theoretical plane, the old dualism remains unresolved. In practice, however, "there is much more agreement on the nature and principles of privilege than the deadlock on the question of jurisdiction would lead one to expect" and May describes these general conclusions in the following words :

> (1) It seems to be recognized that, for the purpose of adjudicating on questions of privilege, neither House is by itself entitled to claim the supremacy over the ordinary courts of justice which was enjoyed by the undivided High Court of Parliament. The supremacy of Parliament, consisting of the king and the two Houses, is a legislative supremacy which has nothing to do with the privilege jurisdiction of either House acting singly.
>
> (2) It is admitted by both Houses that, since neither House can by itself add to the law, neither House can by its own declaration create a new privilege. This implies that privilege is objective and its extent ascertainable, and reinforces the doctrine that it is known by the courts.
>
> On the other hand, the courts admit :-
>
> (3) That the control of each House over its internal proceedings is absolute and cannot be interfered with by the courts.
>
> (4) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal (May's Parliamentary Practice, p. 173).
>
> It is a tribute to the remarkable English genius for finding pragmatic ad hoc solutions to problems which appear to be irreconcilable by adopting the conventional method of give and take. The result of this process has been, in the words of May, that the House of Commons has not for a hundred years refused to submit its privileges to the existence and extent of its privileges. On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognized privileges. (Ibid., pp. 173-74) That broadly stated, is the position of powers and privileges claimed by the House of Commons.
>
> What now remains to consider is the position in regard to the special privilege with which we are concerned, viz., the privilege to determine whether its contempt has been committed and to punish for such contempt, and to claim that a general order or warrant sentencing a person for its contempt is not examinable in a court of law. Is this last right claimed by Mr. Seervai on behalf of the House a part of the privilege vesting in the House of Commons, or is it the result of an agreement evolved

between the courts and the House by convention, or by the doctrine of comity, or as a matter of legal presumption ? It is to this question that we must now turn.

Even while dealing with this narrow question, it is necessary, we think, to refer broadly to the somewhat tortuous course through which the law on this question has been gradually evolved by judicial decisions in England. Just as in dealing with the question of privileges, on principle we have mainly based ourselves on the statements of May, so in dealing with the evolution of the law on this question, we will mainly rely on the decisions themselves. Both Mr. Seervai and Mr. Setalvad have referred us to a large number of English decisions while urging their respective contentions before us and in fairness, we think we ought to mention some of the important representative decisions to indicate how this doctrine of privilege and its accompaniments has been gradually developed in England.

For our purpose, the story can be said to being in the year 1677 when the Court of King's Bench had occasion to deal with a part of this problem in The Earl of Shaftesbury's case (86 E.R. 792); it develops from time to time when some aspect or the other of this problem of parliamentary privileges came before the courts at Westminster until we reach 1884 when the case of Bradlaugh v. Gossett (L.R. 12 Q.B.D. 721) was decided.

Let us then begin with Shaftesbury's case. In that case, the Earl of Shaftesbury was committed to the Tower of London under an order of the House of Lords which directed the constable of the Tower of London to receive him and keep him in safe custody during the pleasure of the House "for high contempts committed against this House; and this shall be a sufficient warrant on that behalf." The Earl of Shaftesbury took the mater before the Court of Kings' Bench on a writ of habeas corpus and urged that the committal of the Earl was unjustified in law because the general allegation of "high contempts" too uncertain for the court to sustain. It was also argued on his behalf that in respect of the jurisdiction exercised by the Lords the boundaries of the said jurisdiction were limited by common law and it exercise was examinable in the courts. This plea was unanimously rejected by the Court could not question the judgment of the House of Lords as a superior court. Rainford C.J. held "that this Court hath no jurisdiction of the cause, and therefore, the form of the return is not considerable." According to the learned Chief Justice, the impugned commitment was in execution of the judgment given by the Lords for the contempt; and therefore, if the Earl be bailed, he would be delivered out of execution; because for a contempt in facie curiae, there is no other judgment for execution. This case, therefore, accepted the principle that the House of Lords had jurisdiction to issue a warrant for contempt and that since the commitment of the person thus committed was in execution of the judgment given by the House of Lords, the general warrant issued in that behalf was not examinable by the King's Bench Division.

Five years thereafter, Jay moved the King's Bench Division for release from arrest and brought an action against Topham, the Serjeant at Arms, for arresting and detaining him. Topham pleaded to the jurisdiction of the court, but the court rejected his plea and judgment was given in favour of Jay. Seven years thereafter, the House of Commons declared that the said judgment was "illegal, a violation of the privileges of Parliament, and pernicious to the rights of Parliament". Acting on this

view the two Judges were called at the Bar of the House and asked to explain their conduct. Appearing before the Bar, Sir Francis Pemberton mentioned to the House that he had been out of the Court for more than six years and did not exactly remember what had happened in the case. He expressed surprise that he was called to the Bar without giving him enough notice as to what was the charge against him. He also urged that if the defendant should plead he did arrest him by the command of this House, and should plead that to the jurisdiction of the Court of King's Bench, he would satisfy the House that such a plea ought to be overruled. That is why he asked for time to look into the records of the court to make his further pleas. Eventually, the two Judges were ordered to be imprisoned (12 State Tr. 822). This incident has been severely criticised by all prominent writers on constitutional law in England and it would be fairly accurate to that it has been regarded as an unfortunate and regrettable episode in the history of the House of Commons. It is somewhat ironical that what happened as long ago as 1689 is attempted to be done by the House in the present proceedings 14 years after this country has been used to a democratic way of life under a written Constitution !

Before we part with this case, however, it would be material to indicate briefly how succeeding Judges have looked at this conduct of the House of Commons. In Sir Francis Burdett v. Abbot (104 E.R. 501, 541), Lord Ellenborough C.J., observed : "It is surprising upon looking at the record in that case how a Judge should have been questioned, and committed to prison by the House of Commons, for having given a judgment, which no Judge whoever sat in this place could differ from", and he added that the Attorney-General who had appeared in Burdett had conceded that probably the matter was not so well understood at that time, whereupon Lord Ellenborough observed that it was after the Revolution, which makes such a commitment for such a cause a little alarming; and he pointed out that it must recollected that Lord C.J., Pemberton stood under the disadvantage at that period of having been one of the Judges who had sat on the trial of Lord Russel, and therefore did not stand high in popularity after the Revolution, when the judgment and attainder in his case had been recently reversed by Parliament.

Similarly, in Stockdale v. Hansard (112 E.R. 1112, 1163), referring to this incident, Lord Denman C.J. declared : "Our respect and gratitude to the Convenntion Parliament ought not to blind us to the fact that this sentence of imprisonment was as unjust and tyrannical as any of those acts of arbitrary power for which they deprived King James of his Crown".

The next case to which reference may be made is Ashby v. White ((1703-04) 92 E.R. 126). In that case, the plaintiff was a burgess of Aylesbury, and as such entitled to vote for two Members of Parliament. On the day of the election he requested the defendants, who were the Returning Officers of the borough, to receive his vote. This the defendants refused to do, and the plaintiff was not allowed to vote. That led to an action against the Returning Officers for fraudulently and maliciously refusing his vote, and it ended in an award for damages by the jury. In an action before the Queen's Bench in arrest of judgment, it was urged that the claim made by the plaintiff was not maintainable. This action succeeded according to the majority decision Holt C.J., dissenting. Justice Gould held that he was of opinion that the action brought against the defendants was not maintainable, and in support of his conclusion he gave four reasons; first, because the defendants are judges of the, and act herein as judges; secondly, because it is a Property or profit, so that the

hindrance of it is merely damnum sine injuria; and fourthly, it relates to the publick, and is a popular offence (92 E.R. 126, 129).

Holt C.J., however, dissented from the majority opinion and expressed his views in somewhat strong language. Referring to the opinion expressed by his colleagues that the Court cannot judge or the matter because it was a Parliamentary thing, he exclaimed : "O ! by all means be very tender of that. Besides, it is intricate, and there may be contrariety of opinions. But this matter can never come in question in Parliament; for it is agreed that the persons for whom the plaintiff voted were elected; so that the action is brought for being deprived of his vote." (Ibid,. 137) He conceded that the court ought not to encroach or enlarge its jurisdiction; but he thought that the court must determine on a charter granted by the King, or on a matter of custom or prescription, when it comes before the court without encroaching on the Parliament. His conclusion was that if it be a matter with the jurisdiction of the Court, "we are bound by our oaths to judge of it"(Ibid,. 138). This decision, however, has nothing to do with the question of contempt.

The next case which deals with the question of contempt of the House of Commons, is R. v. Paty ((1704) 92 E.R. 232). In that case, Paty and four others were committed to Newgate by warrant issued by the Speaker of the House. The warrant was speaking warrant and showed that the persons detained had committed contempt of the jurisdiction of the House and open breach of its known privileges. The validity of this warrant was challenged by the said persons on the ground that it suffered from many infirmities. The majority decision in the case, however, was that the court had no jurisdiction to deal with the matter, because the House of Commons were the proper judges of their own privileges. Justice Powys referred to the earlier decision in The Earl of Shaftesbury's case (86 E.R. 792) and observed : "If all commitments for contempts, even those by this Court, should come to be scanned, they would not hold water. Our warrants here in such cases are short, as for a contempt, or for a contempt in such a cause. So in Chancery the commitments for contempt are for a contempt in not fully answering, etc., and would not this commitment be sufficient ?" He held that "the House of Commons was a great Court, and all things done by them are to be intended to have been rite acta, and the matter need not be so specially recited in their warrants; by the same reason as we commit people by a rule of Court of two lines, and such commitments are held good, because it is to be intended, that we understand what we do." (92 E.R. 232, 234) It would thus be seen that the majority decision in that case proceeded on the basis that the House of Commons was a great Court and like the superior courts at Westminster, it was entitled to issue a short general warrant for committing persons for its contempt. If such a general warrant was issued and it was challenged before the courts at Westminster, it should be treated with the same respect as is accorded to similar warrants issued by the superior courts. Holt C.J. however, was not persuaded to take the view that the impugned imprisonment was such "as the freeman of England ought to be bound by"; and he added, "for that this, which was only doing a legal act, could not be made illegal by the vote of the House of Commons; for that neither House of Parliament, nor both Houses jointly, could dispose of the liberty or property of the subject; for to this purpose the Queen must join : and that it was in the necessity of their several concurrences to such acts, that the great security of the liberty of the subject consisted." (p. 236). This case, therefore, seems to recognise that it would be inappropriate for the courts at Westminster to examine the validity of a general warrant issued by the House of Commons.

That takes us to the decision in Murray's case (95 E.R. 629) 1750. Murray was committed to prison by the House of Commons for refusal to kneel, when brought up to the bar of the House. It was declared by the House that the refusal of Murray to kneel was "a most dangerous contempt of privilege". When a petition for habeas corpus was moved before the Court, it was rejected on the

ground that "the House of Commons was undoubtedly a High Court and that it was agreed on all hands that they have power to judge to their own privileges, and it need not appear to us what the contempt was, for if it did appear, we could not judge thereof." That is the view expressed by Justice Wright. The learned Judge also added that the House of Commons was superior to his own Court, and that his Court could not admit to bail person committed for a contempt in any other Court in Westminster Hall. Dennison J. agreed and expressed his opinion that the Court at Westminster Hall was inferior to the House of Commons with respect to Judging of their privileges and contempts against them. This case again proceeds on the basis that the House of Commons is a superior court, and as such its warrants cannot be examined.

The next relevant case in point of time is Brass Crosby (95 E.R. 1005) Brass Crosby was Lord Mayor of London and a Member of the House of Commons, and as Magistrate he had admitted to bail a person who had been committed to prison under a warrant issued by the Speaker of the House under the orders of the House itself. The House held that Lord Mayor was guilty of breach of privilege of the House, and as such he was committed to the Tower of London. The validity of this order was challenged by Brass Crosby. The challenge, however, failed on the ground that when the House of Commons adjudges anything to be a contempt or a breach of privilege, their adjudication is a conviction, and their commitment in consequence is in execution. As Lord C.J. de Grey observed, "no court can discharge or bail a person that is in execution by the judgment of any other court," and so, he came to the conclusion that "the House of Commons having authority to commit, and that commitment being an execution, the question is what can this Court do ? He gave the answer with the remark that "it can do nothing when a person is in execution, by the judgment of a court having a competent jurisdiction; in such case, this Court is not a court of appeal." (Ibid., 1011) Concurring with this view, Blackstone J. observed that the House of Commons is a Supreme Court and he was impressed by the argument that "it would occasion the utmost confusion, if every Court of this Hall should have power to examine the commitments of the other Courts of the Hall, for contempts; so that the Judgment and commitment of each respective Court, as to contempts, must be final, and without control." (Ibid., 1014). It would thus be seen that this decision proceeded on the same ground which had by then been recognised that the House of Commons was a superior court and as such had jurisdiction to punish persons adjudged by it to be guilty of contempt. A general warrant issued by the House in respect of such a contempt was treated as of the same status as a similar warrant issued by other superior courts at Westminster Hall.

Before parting with this case, we may incidentally advert to the comment made by Lord Denman C.J. on this decision. Said Lord Denman : "We know now, as a matter of history, that the House of Commons was at that time engaged, in unison with the Crown, in assailing the just rights of the people. Yet that learned Judge [Blackstone J.] proclaimed his unqualified resolution to uphold the House of Commons, even though it should have abused it power (Stockdale v. Hansard, 112 E.R. 1112, 1158)."

The next important decision on this topic is sir Francis Burdett's case (104 E.R. 501). This case arose out of an action of trespass which Sir Francis Burdett commenced against the Speaker of the House of Commons for breaking and entering his house, and imprisoning him in the Tower. The plea raised in defence was that the conduct of the defendant was justified by an order of the House for Burdett's committal after the House had adjudicated that he had been guilty of a contempt of the House by publishing a libellous and scandalous paper reflecting on the just rights and privileges of the House. The case was elaborately argued and as May points out : "This case provides one of the principal authorities for the Commons' power (as Lord Shaftesbury's case does for the Lords') to commit for contempt (May's Parliamentary Practice, p. 159)." the warrant in this case was a

speaking warrant and the contempt was the contempt of the House of Commons. The plea made by Burdett was rejected, but the reasons given for rejecting the plea are significant. Lord Ellenborough C.J. has considered the question exhaustively. He has observed that upon the authority of precedents in Parliament, upon the recognition by statue, and upon the continued recognition of all Judges, he should have thought that there was a quantity of authority enough to have put the question to rest, that is, whether the House of Commons has the power of commitment for a contempt of their privileges ? the House undoubtedly had that power. Proceeding to deal with the matter on that basis, Lord Ellenborough held that the effect of the publication which was held by it to be libellous, and he added that by analogy to the judgment of a Court of law, (and the judgments of either House of Parliament cannot with propriety be put upon a footing less authoritative than those of the ordinary Courts of Law), the House must be considered as having decided both, as far as respects any question thereupon which may arise in other Courts.

The next question which Lord Ellenborough considered was if the warrant itself disclosed a sufficient ground for commitment and an order to the officers of the House to execute it, then the justification means appear to have been afterwards used to carry the warrant into execution." It appears that in that case it was urged before the Court that if the warrant issued appeared to be on the face of it unjustified, illegal or extravagant, the Court would be entitled to entertain the petition for a writ of habeas corpus and grant relief to the petitioner. Lord Ellenborough dealt with this argument and expressed the opinion that if a commitment appeared to be for a contempt of the House of Commons generally, he would neither in the case of that Court, nor of any other of the Superior Courts, inquire further; but if it did not profess to commit for a contempt, but for some matter appearing on the return, which could by no reasonable intendment be considered as a contempt of the Court committing, but a ground of commitment palpably and evidently arbitrary, unjust, and contrary to every principle of positive law, or national justice, in such a case the Court must look at it and act upon it as justice may require from whatever Court it may profess to have proceeded (pp. 558-60). It is thus clear that even while recognising that it would be inappropriate or improper to examine a general warrant issued by the House of Commons, Lord Ellenborough made it clear that this convention would be subject to the exception that wherever it appeared from the return or otherwise that the commitment was palpably unjust, the court would not be powerless to give relief to the party.

This case went in appeal before the Court of Exchequer and the decision under appeal was confirmed. It appears that before the appellate decision was pronounced, Lord Eldon proposed to their Lordships that the counsel for the defendants should not be heard until they received the advice of the Judges on the question which he formulated. This question was : "Whether, if the Court of Common Pleas, having adjudged an act to be a contempt of Court, had committed for the contempt under a warrant, stating such stating such adjudication generally without the particular circumstances, and the matter were brought before the Court of King's Bench, by return to a writ of habeas corpus, the return setting forth the warrant, stating such adjudication of contempt generally; whether in that case the Court of King's Bench would discharge the prisoner, because the particular facts and circumstances, out of which the contempt arose, were not set forth in the warrant." After this question was handed to the Judges and they consulted among themselves for a few minutes, Lord Ch. Baron Richards delivered their unanimous opinion that in such a case the Court of King's Bench would not liberate. (3 E.R. 1289, 1301) This opinion was accepted and Burdett's appeal was dismissed without calling on the respondent. In this case, Lord Erskine observed that "the House of Commons, whether a Court or not, must like every other tribunal, have the power to protect itself from obstruction and insult, and to maintain its dignity and character. If the dignity of the law is not sustained, its sun is set, never to be lighted up again. So much I thought it necessary to say, feeling

strongly for the dignity of the law; and have only to add that I full concur in the opinion delivered by the Judges." This case seems to establish the position that a warrant issued by the House of Commons was treated as a warrant issued by a superior Court and as such, the courts in Westminster Hall could not go behind it.

In 1836-37 began a series of case in which John Joseph Stockdale was concerned. This series of cases ultimately led to the arrest and imprisonment of the Sheriffs of Middlesex. It appears that in one of the reports published by the inspectors of prisons under the order of the House of Commons Stockdale was described in a libellous manner, and so, he brought an action against Messrs. Hansard in 1836. In defence, Hansard pleaded privilege and urged that the reports in question had been published under the orders of the House. The Court held that the order of the House. The Court held that the order of the House supplied no defence to the action. Even so, the verdict of the jury went against Stockdale on a plea of justification on the merits, the jury having apparently held that the alleged libellous description of Stockdale was accurate. At the time when this case was tried, Lord Chief Justice Denman made certain observations which were adverse to the privileges of the House claimed by Hansard. He observed "that the fact of the House of Commons having directed Messrs. Hansard to publish all their parliamentary reports is no justification for them, or for any book-seller who publishes a parliamentary report containing a lible against any man (May's Parliamentary Practice, p. 159)." Incidentally, it may be added that as a result of this controversy, the Parliament ultimately passed the Parliamentary Papers Act, 1840, which overruled this view.

Not deterred by the adverse verdict of the jury on the merits, Stockdale began another action. Before this action was commenced, the House of Commons had passed a resolution in 1837 reaffirming its privileges, and expressing its deliberate view that for any court to assume to decide upon matters of privilege inconsistent with the determination of either House of Parliament was contrary to the law of Parliament. Nevertheless, in this second action brought by Stockdale, the House decided to put in a defence of privilege. This defence was rejected and a decree was passed for payment of damages and costs. Even so, the House of Commons did not act upon its resolutions and refrained from publishing Stockdale and his legal advisers for having taken the matter to a court of law; instead, it decided that the damages and costs be paid under the special circumstances of the case.

Encouraged by this result Stockdale brought a third action for another publication of the said report. This time Messrs. Hansard did not plead; in consequence, the judgment went against them in default, and the damages were assessed by a jury, in the Sheriff's Court, at $ 600. The Sheriffs of Middlesex levied for that amount, but were served with the copies of the resolutions passed by the House; and that naturally made them cautious in the matter. They, therefore, delayed the payment of the money to Stockdale as long as possible, but ultimately the money was paid by them to Stockdale under an attachment. At this stage, the House Commons entered the arena and committed Stockdale to the custody of the Serjeant. It called upon the Sheriffs to refund the money and on their refusal, they were also committed for contempt. That led to proceedings taken by the Sheriffs for their release on a writ of habeas corpus. These proceedings, however, failed and that is the effect of the decision in the Case of the Sheriff of Middlesex (113 E.R. 419).

Naturally, Mr. Seervai has laid considerable emphasis on this decision. He has pointedly drawn our attention to the fact that the Court found itself powerless to protect the Sheriffs of Middle-sex against their imprisonment, though the conduct which gave rise to contempt of the House was, in terms, the result of an order passed by the Court. Lord Denman C.J., who had himself elaborately discussed the question and disputed the validity of the claim made by the House of Commons in regard to its privileges in the case of Stockdale v. Hansard (112 E.R. 1112), was a party to this

decision. He began his judgment by declaring that his earlier judgment delivered in the case of Stockdale v. Hansard was correct in all respects. Even so, the plea raised by the Sheriffs had to be answered against them, because their commitment was sustained by a legal warrant. Lord Denman then examined the three grounds on which the validity of the warrant was impeached and he found that there was no substance in those pleas. The learned Chief Justice considered the previous decisions bearing on the point and observed that the test prescribed by Lord Eldon in the case of Burdett v. Abbot (104 E.R. 501) was relevant; and this test, as we have already seen, proceeds on the assumption that like the general warrants for commitment issued by the superior courts, the general warrants issued by the House of Commons on the ground of contempt should not be examined in proceedings for habeas corpus. Littledale J. concurring with Lord Denman C.J. said : "if the warrant declares the grounds of adjudication, this Court, in many cases, will examine into their validity; but, if it does not, we cannot go into such an inquiry. Here we must suppose that the House adjudicated with sufficient reason; and they were the proper judges". Justice Williams, who also concurred with Lord Denman, thought it necessary to add that "if the return, in a case like this, shewed a frivolous cause of commitment, as for wearing a particular dress, I should agree in the opinion expressed by Lord Ellenborough in Burdett v. Abbot (104 E.R. 501), where he distinguishes between a commitment stating a contempt generally, and one appearing by the return to be made on grounds palpably unjust and absurd. Coleridge J. preferred to put his conclusion on the ground that "[the right of the House of Commons] to adjudicate in this general form in cases of contempt is not founded on privilege, but rests upon the same grounds on which this Court or the Court of Common Pleas might commit for a contempt without stating a cause in the commitment." It is remarkable that Justice Coleridge thought it necessary to make it clear that the right to require a general warrant to be respected when its vaildity is challenged in habeas corpus proceedings, is now a part of the privilege itself; it is the result of a convention by which such warrants issued by superior courts or record are usually respected. This decision was pronounced in 1840, and can be said to constitute a landmark in the development of the law on this topic. Thus, this decision also does not assist Mr. Seervai in contending that it is a part of the privilege of the House to insist that a general warrant issued by it must be treated as conclusive and is not examinable in courts of law.

The next case is Howard v. Sir William Gosset (116 E.R. 139). In that case, by a majority decision a warrant issued by the Speaker of the House against Howard was held to be invalid as a result of certain infirmities discovered in the warrant. Williams J. alone dissented. The warrant in this case was a general warrant and Williams J. held that the technical objections raised against the validity of the warrant could not be entertained, because a general warrant should be treated as conclusive of the fact that the party against whom the warrant had been issued had been properly adjudged to be guilty of contempt. Since the judgment was pronounced in favour of the plaintiff Howard, the matter was taken in appeal, and the majority decision was reversed by the Court of Exchequer. Parke B. considered the several arguments urged against the validity of the warrant and rejected them. The general ground for the decision of the Court of Exchequer was expressed in these words : "We are clearly of opinion that at least as much respect is to be shewn, and as much authority to be attributed, to these mandates of the House as to those of the highest Courts in the country; and, if the officers of the ordinary Courts are bound to obey the process delivered to them, and are therefore protected by it, the officer of the House of Commons is as much bound and equally protected. The House of Commons is a part of the High Court of Parliament, which is without question not merely a Superior but the Supreme Court in this country, and higher than the ordinary courts of law (Ibid,. at 174)."

Thus, the result of this decision is that the House of Commons being part of the High Court of Parliament is a superior Court and the general warrants issued by it cannot be subjected to the close

scrutiny, just as similar warrants issued by other superior courts of record are held to be exempt from such scrutiny. It would be noticed that the Court of Exchequer has observed in this case that the House of Commons as a part of the High Court of Parliament, is a Supreme Court in this country and is higher than the ordinary courts of law; and this recalls the original judicial character of the House of Parliament in its early career and emphasizes the fact that the House of Lords which is a part of the House of Parliament still continues to be the highest court of law in England.

The last case in this series to which we ought to refer is the decision of the Queen's Bench Division in Bradlaugh v. Gossett ((1884) L.R. 12 Q.B.D. 271). This decision is not directly relevant or material but since Mr. Seervai appeared to rely on certain statements of law enunciated by Stephen J., we think it necessary to refer to it very briefly. In the case of Bradlaugh the Court was called upon to consider whether an action could lie against the Serjeant-at-Arms of the House of Commons for excluding a member from the House in obedience to a resolution of the House directing him to do so; and the answer was in the negative. It appears that the material resolution of the House of Commons was challenged as being contrary to law, and in fact the Queen's Bench Division proceeded to deal with the claim of Bradlaugh on the footing that the said resolution may strictly not be in accordance with the true effect of the relevant provision of the law; and yet it was held that the matter in dispute related to the internal management the procedure of the House of Commons, and so, the Court of Queen's Bench had no power to interfere. It was pressed before the Court that the resolution was plainly opposed to the relevant provision of the law. In repelling the validity of this argument, Stephen J., observed that in relation to the rights and resolutions concerning its internal management, the House stood precisely in the same relation "as we the judges of this Court stand into the laws which regulate the rights of which we are the guardians, and to the judgments which apply them to particular cases; that is to say, they are bound by the most solemn obligations which can bind men to any course of conduct whatever, to guide their conduct by the law as they understand it". The learned Judge then proceeded to add "If they misunderstand it, or (I apologize for the supposition) wilfully disregard it, they resemble mistaken or unjust judges; but in either case, there is in my judgment no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in which the Courts have declared the limits of their powers outside of their respective Houses". That, said the learned Judge, was enough to justify the conclusion which he had arrived at (Ibid., 286). Mr. Seervai's argument was that though the resolution appeared to constitute an infringement of the Parliamentary Oaths Act, the Court refused to given any relief to Bradlaugh, and he suggested that a similar approach should be adopted in dealing with the present dispute before us. The obvious answer to this contention is that we are not dealing with any matter relating to the internal management of the House in the present proceedings. We are dealing with the power of the House to punish citizens for contempt alleged to have been committed by them outside the fourwalls of the House, and that essentially raises different considerations.

Having examined the relevant decisions bearing on the point, it would, we think, not be inaccurate to observe that the right claimed by the House of Commons not to have its general warrants examined in habeas corpus proceedings has been based more on the consideration that the House of Commons is in the position of a superior court of record and has the right like other superior courts of record to issue a general warrant for commitment of persons found guilty of contempt. Like the general warrant issued by superior courts of record in respect of such contempt, the general warrants issued by the House of Commons in similar situations should be similarly treated. It is on that ground that the general warrants issued by the House of Commons were treated beyond the scrutiny of the courts in habeas corpus proceedings. In this connection, we ought to add that even while

recognizing the validity of such general warrants, Judges have frequently observed that if they were satisfied upon the return that such general warrants were issued for frivolous or extravagant reasons, it would be open to them to examine their validity.

Realizing that the position disclosed by the decisions so far examined by us was not very favourable to the claim made by him that the conclusive character of the general warrants is a part of the privilege itself, Mr. Seervai has very strongly relied on the decisions of the Privy Council which seem to support his contention, and so, it is now necessary to turn to these decisions. The first decision in this series is in the case of the Speaker of the Legislative Assembly of Victoria v. Hugh Glass ([1869-71] 3 L.R.P.C. 560). In that case by the Constitution Act for the Colony of Victoria power had been given to the Legislative Assembly of Victoria to commit by a general warrant for contempt and breach of privilege of that Assembly. In exercise of that power, Glass was declared by the House to have committed contempt and under the Speaker's warrant, which was in general terms, he was committed to jail. A habeas corpus petition was then moved on his behalf and this petition was allowed by the Chief Justice of the Supreme Court in the Colony, on the ground that the Constitution Statute and the Colonial Act did not confer upon the Legislative Assembly the same powers, privileges and immunities as were possessed by the House of Commons. On appeal by the Speaker of the Assembly, the decision of the Supreme Court in the Colony was reversed and it was held that the relevant Statute and the Act gave to the Legislative Assembly the same powers and privileges as the House of Commons had at the time of the passing of the said Acts.

Having held that the Legislative Assembly had the same powers as the House of Commons, the Privy Council proceeded to consider the nature and extent of these powers. Lord Cairns who delivered the judgment of the Privy Council observed that "[b]eyond all doubt, one of the privileges - and one of the most important privileges of the House of Commons - is the privilege of committing for contempt; and incidental to that privilege, it has .... been well-established in this country that the House of Commons have the right to be the judges themselves of what is contempt, and to commit for that contempt by a Warrant, stating that the commitment is for contempt of the House generally, without specifying what the character of the contempt is." Then he considered the merits of the argument that the relevant Constitution Act did not confer on the Legislative Assembly of Victoria the incidental power of issuing a general warrant, and rejected it. "[Their Lordships] consider", said Lord Cairns, "that there is an essential difference between a privilege of committing for contempt such as would be enjoyed by an inferior Court, namely, privilege of first determining for itself what is contempt, then of stating the character of the contempt upon a Warrant, and then of having that Warrant subjected to review by some superior Tribunal, and running the chance whether that superior Tribunal will agree or disagree with the determination of the inferior Court, and the privilege of a body which determines for itself, without review, what is contempt, and acting upon the determination, commits for that contempt, without specifying upon the Warrant the character or the nature of the contempt." According to Lord Cairns, the latter of the two privileges is a higher and more important one than the former, and he added that it would be strange indeed if, under a power to transfer the whole of the privileges and powers of the House of Commons, that which would only be a part, and a comparatively insignificant part, of this privilege and power were transferred ([1869-71] 3 L.R.P.C. 572, 573]).

In other words, this decision shows that the Privy Council took the view that the power to issue a general warrant and to insist upon the conclusive character of the said warrant it itself a part of the power and privilege of the House. Even so, it is significant that the distinction is drawn between the power and privilege of an inferior Court and the power and privilege of a superior Court; and so, the conferment of the larger power is deemed to have been intended by the relevant provision of the

Constitution Act, because the status intended to be conferred on the Legislative Assembly of Victoria was that of the superior Court. In other words, the Legislative Assembly was treated as a superior Court and the power and privilege conferred on it was deemed to include both aspects of the power. Incidentally, it may be pointed out, with respect, that in considering the question, Lord Cairns did not apparently think it necessary to refer to the earlier English decisions in which the question about the extent of this power and its nature had been elaborately considered from time to time.

The next Privy Council decision on which Mr. Seervai relied is Fielding and Others v. Thomas ([1896] L.R.A.C. 600]). In that case, the question about the extent of the power conferred on the Nova Scotia House of Assembly fell to be considered, and it was held by the Privy Council that the said Assembly had statutory power to adjudicate that willful disobedience to its order to attend in reference to a libel reflecting on its members is a breach of privilege and contempt, and to punish that breach by imprisonment. For our present purpose, it is not necessary to refer to the relevant provisions of the statute on which the argument proceeded, or the facts which gave rise to the action. It is only one observation made by Lord Halsbury which must be quoted. Said Lord Halsbury in that case : "The authorities summed up in Burdett v. Abbot (104 E.R. 501), and followed in the Case of The Sheriff of Middlesex (113 E.R. 419), establish beyond all possibility of controversy the right of the House of Commons of the United Kingdom to protect itself against insult and violence by its own process without appealing to the ordinary courts of law and without having its process interfered with by those courts." ([1896] L.R.A.C. 600, 609) It is the last part of this observation which lends some support to Mr. Seervai's case. All that we need say about this observation is that it purports to be based on two earlier decisions which we have already examined, and that it is not easily reconcilable with the reservations made by some of the Judges who had occasion to deal with this point in regard to their jurisdiction to examine the validity of the imprisonment of a petitioner where it appeared that the warrant issued by the House of Commons appeared on a return made by the House to be palpably frivolous or based on extravagant or fantastic reasons.

The last decision on which Mr. Seervai relies is the case of The Queen v. Richards (92 C.L.R. 157). In that case, the High Court of Australia was called upon to construe the provisions of s. 49 which are similar to the provisions of Art. 194(3) of our Constitution. Section 49 reads thus :-

> "The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth."

One of the points which fell to be considered was what was the nature and extent of the powers, privileges and immunities conferred by s. 49 of the Constitution on the Senate and the House of Representative in Australia ? It appears that in that case Fitzpatrick and Browne were taken into custody by Edward Richards in pursuance of warrants issued by the Speaker of the House of Representatives of the Parliament of the Commonwealth. These warrants were general in character and they commanded Richards to receive the said two persons into his custody. On June 10, 1955, on the application of Fitzpatrick and Browne as prosecutors, the Supreme Court of the Australian Capital Territory (Simpson J.) granted an order nisi for two writs of habeas corpus directed to the said Edward Richards. On June 15, 1955, Simpson J. acting under s. 13 of the Australian Capital Territory Supreme Court Act directed that the case be argued before a Full Court of the High Court

of Australia. That is how the matter went before the said High Court.

The High Court decided that s. 49 operated independently of s. 50 and was not to be read down by implications derived from the general structure of the Constitution and the separation of powers thereunder. Construing s. 49 independently of s. 50, the High Court held that the powers, privileges and immunities of the House of Commons at the establishment of the Commonwealth were conferred on the Parliament and since Parliament had made no declaration within the meaning of the said section, it was necessary to consider what the powers of the House of Commons were at the relevant time in order to determine the question as to whether a general warrant could be issued by Parliament or not, and the High Court held that under s. 49 the Australian Parliament could claim the privilege of judging what is contempt and of committing therefor. It was also held that if the Speaker's warrant is upon its face consistent with the breach of an acknowledged privilege, it is conclusive notwithstanding that the breach of privilege is stated in general terms. In order words, this decision undoubtedly supports Mr. Seervai's contention that a general warrant issued by the House in the present case is not examinable by the High Court.

In appreciating the effect of this decision it is necessary to point out that so far as Australia was concerned, the point in issue had been already established authoritatively by the decisions of the Privy Council in Dill v. Murphy (15 E.R. 784 : (1864) 1 Moo P.C. (N.S.) 487) as well as in Hugh Glass. In fact, fact, Dixon C.J. has expressly referred to this aspect of the matter. Naturally, he has relied on the observations made by Lord Cairns in Hugh Glass and has followed the said observations in deciding the point raised before the High Court of Australia. That is the basis which was adopted by Dixon C.J. in dealing with the question. Having adopted this approach, the learned Chief Justice thought it unnecessary to discuss at length the situation in England, because what the situation in England was, had been conclusively determined for the guidance of the Australian courts by the observations made by Lord Cairns in Hugh Glass ([1869-71] 3 L.R.P.C. 560). Even so, he has observed that the question about the powers, privileges and immunities of the House of Commons is one which the courts of law in England have treated as a matter for their decision, though he has added that "the courts in England arrived at that position after a long course of judicial decision not unaccompanied by political controversy. The law in England was finally settled about 1840." This observation obviously refers to the Case of the Sheriff of Middlesex (113 E.R. 419). To quote the words of the learned Chief Justice : "Stated shortly, it is this : it is for the courts to judge of the existence in either House of Parliament of a privilege, but, given an undoubted privilege, it is for the House to judge of the occasion and of the manner of its exercise. This judgment of the House its expressed by its resolution and by the warrant of the Speaker. If the warrant specifies the ground of the commitment the court may, it would seem, determine whether it is sufficient in law as a ground to amount to a breach of privilege, but if the warrant is upon its face consistent with a breach of an acknowledged privilege it is conclusive and it is no objection that the breach of privilege is stated in general terms. This statement of law appears to be in accordance with cases by which it was finally established, namely, the Case of the Sheriff of Middlesex" (113 E.R. 419). Thus, even according to Chief Justice Dixon, the existence and extent of privilege is a justiciable matter and can be adjudicated upon by the High Court. If the warrant is speaking warrant, the Court can determine whether it is sufficient in law as a ground to amount to breach of privilege, though, if the warrant is unspeaking or general, the court cannot go behind it. In our opinion, it would not be reasonable to treat this decision as supporting the claim made by the House that the conclusive character of its general warrant it a part and parcel of its privilege. The learned Chief Justice in fact did not consider the question on the merits for himself. He felt that he was bound by the observations made by Lord Cairns and he has merely purported to state what in his opinion is the effect of the decision in the Case of the Sheriff of Middlesex (113 E.R. 419).

Besides, there is another aspect of this matter which cannot be ignored. The learned C.J. Dixon was dealing with the construction of s. 49 of the Australian Constitution, and as Gwyer C.J. has observed in In re The Central Provinces and Berar Act No. XIV of 1938 ([1939] F.C.R. 18), "there are few subjects on which the decisions of other Courts require to be treated with greater caution than that of federal and provincial powers, for in the last analysis the decision must depend upon the words of the Constitution which the Court is interpreting; and since no two Constitutions are in identical terms, it is extremely unsafe to assumed that a decision on the of them can be applied without qualification of another." The learned Chief Justice has significantly added that this may be so even where the words or expressions used are the same in both cases for a word or expressions used are the same in both cases for a word or a phrase may take a colour from its context and bear different senses accordingly

(p. 38).

These observations are particularly relevant and appropriate in the context of the point which we are discussing. Though the words used in s. 49 of the Australian Constitution are substantially similar to the words used in Art. 194(3), there are obvious points on which the relevant provisions of our Constitution differ from those of the Australian Constitution. Take, for instance, Art. 32 of our Constitution. As we have already noticed, Art. 32 confers on the citizens of India the fundamental right to move this Court. In other words, the right to move this Court for breach of their fundamental rights is itself a fundamental right. The impact of this provision as well as of the provisions contained in Art. 226 on the construction of the latter part of Article 194(3) has already been examined by us, it may be that there are some provisions in the Australian Constitution which may take in some of the rights which are safeguard under Art. 226 of our Constitution. Art 32 finds no counter-part in the Australian Constitution. Likewise, there is no provision in the Australian Constitution corresponding to Art. 211 of ours : and the presence of these distinctive features contributes to make a substantial difference in the meaning and denotation of similar words used in the two respective provisions. viz., s. 49 of the Australian Constitution and Art. 194(3) of ours. Besides, the declaration to which s. 49 refers may not necessarily suffer to the same extent from the limitation which would govern a law when it is made by the Indian Legislatures under the first part of Art. 194(3). These distinctive features of the relevant and material provisions of our Constitution would make it necessary to bear in mind the words of caution and warning which Gwyer C.J., uttered as early as 1938. Therefore, we think that it would not safe or reason able to rely too much on the observation made by Dixon C.J. in dealing with the question of privileges in the case of Richards (92 C.L.R.157).

Before we part with this topic, however, we may incidentally point out that he recent observations made by Lord Parker C.J. in In re Hunt ([1959] 1 Q.B.D. 378) indicate that even in regard to a commitment for contempt by the superior court of record, the court exercising its jurisdiction over a petition filed for habeas corpus world be competent to consider the legality of the said contempt notwithstanding the fact that the warrant of commitment is general or unspeaking. Dealing with the arguments urged by Kenneth Douglas Hunt who had been commitment for contempt by WynnParry J., Parker C.J. observed : "It may be that the true view is, and I think the cases support it, that though this Court always has power to inquire to inquire into the legality of the committal, it will not inquire whether the power has been properly exercised." He, however, added that in the case before him, he was quite satisfied that the application ought to fail on the merits. These observation tend to show that in exercising habeas corpus jurisdiction, a court at Westminster has jurisdiction to inquire into the legality of the commitment even though the commitment has been ordered by another superior court of record. If that be the true position, it cannot be assumed with certainty that

Courts at Westminster would today concede to the House of Commons the right to claim that its general warrants are unexaminable by them.

Even so, let us proceed on the basis that the relevant right claimed by the House of Commons is based either on the ground that as a part of the High Court of Parliament, the House of Commons is a superior court of record and as such, a general warrant for commitment issued by it for contempt is treated as conclusive by courts at Westminster Hall, or in course of time the right to claim a conclusive character for such a general warrant became an incidental and integral part of the privilege itself. The question which immediately arises is : can this right be deemed to have been conferred on the House in the present proceedings under the latter part of Art. 194(3) ?

Let us first take the basis relating to the status of the House of Commons as a Superior Court of Record. Can the House claim such a status by any legal fiction introduced by Art. 194(3) ? In our opinion, the answer to this question cannot be in the affirmative. The previous legislative history in this matter does not support the idea that our State Legislatures were superior Courts of Record under the Constitution Act of 1935. Section 28 of the said Act which dealt with the privileges of the Federal Legislature is relevant on this point. S. 28(1) corresponds to Art. 194(3) of the present Constitution. Section 28(2) provides that in other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature. It is not disputed that the members of the Indian Legislature could not have claimed the status of being members of a superior Court of Record prior to the Act of 1935. Section 28(3) prescribes that nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a Court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. Section 28(4) is also relevant for our purpose. It provides that provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a Court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the Chairman of the committee so to do. There can be no doubt that these provisions clearly indicate that the Indian Legislature could not have claimed the power to punish for contempt committed outside the four-walls of its Legislative Chamber. Section 71 of the same Act deals with the Provincial Legislatures and contains similar provisions in its clauses (2), (3) and (4).

After the Indian Independence Act, 1947 (10 & 11 Geo. VI, c. 20) was passed, this position was altered by the amendments made in the Government of India Act, 1935 by various amendment orders. The result of the amendment orders including Third Amendment Order, 1948 was that sub-sections (3) and (4) of section 28 of the said Act were deleted and sub-section (2) was amended. The effect of this amendment was that the members of the Federal Chambers of Legislature could until their privileges were defined by Act of Federal Legislature claim the privileges enjoyed by the members of the House of Commons which were in existence immediately before the establishment of the Federation. It is, however, remarkable that he corresponding sub-sections (3) and (4) of section 71 were retained. The question as to where the result of the deletion of sub-sections (3) and (4) and the amendment of sub-section (2) of s. 28 was to confer on the Federal Legislature the same status as that of the House of Commons, does not call for our decision in the present Reference. Prima facie, it may conceivably appear that the conferment of the privileges of the members of the House of Commons on the members of the Federal Legislature could not necessarily make the

Federal Legislature the House of Commons for all purposes; but that is a matter which we need not discuss and decide in the present proceedings. The position with regard to the Provincial Legislatures at the relevant time is, however, absolutely clear and there would obviously be no scope for the argument that at the time when the Constitution was passed the Provincial Legislature could claim the status of the House of Commons and as such of a superior Court of Record. That is the constitutional background of Art. 194(3) insofar as the provincial Legislature are concerned. Considered in the light of this background, it is difficult to accept the argument that the result of the provisions contained in the latter part of Art. 194(3) was intended to be to confer on the State Legislatures in India the status of a superior Court of Record.

In this connection, it is essential to bear in mind the fact that the status of a superior Court of Record which was accorded to the House of Commons, is based on historical facts to which we have already referred. It is a fact of English history that the Parliament was discharging judicial functions in its early career. It is a fact of both historical and constitutional history in England that the House of Lords still continues to be the highest Court of law in the country. It is a fact of constitutional history even today that both the Houses possess powers of impeachment and attainder. It is obvious, we think, that these historical facts cannot be introduced in India by any legal fiction. Appropriate legislative provisions do occasionally introduce legal fiction, but there is a limit to the power of law to introduce such fictions. Law can introduce fictions as to legal rights and obligations and as to the retrospective operation of provisions made in that behalf; but legal fiction can hardly introduce historical facts from one country to another.

Besides, in regard to the status of the superior Court of Record which has been accorded to the House of Commons, there is another part of English history which it is necessary to remember. The House of Commons had to fight for its existence against the King and the House of Lords, and the Judicature was regarded by the House of Commons as a creature of the King and the Judicature was obviously subordinate to the House of Lords which was the main opponent of the House of Commons. This led to fierce struggle between the House of Commons on the one hand, and the King and the House of Lords on the other. There is no such historical background in India and there can be no historical justification for the basis on which the House of Commons struggled to deny the jurisdiction of the Court; that is another aspect of the matter which is relevant in considering the question as to whether the House in the present case can claim the status of a superior Court of Record.

There is no doubt that the House has the power to punish for contempt committed outside its chamber, and from that point of view it may claim one of the rights possessed by a Court of Record. A Court of Record, according to Jowitts Dictionary of English Law, is a court whereof the acts and judicial proceedings are enrolled for a perpetual memory and testimony, and which has power to fine and imprison for contempt of its authority. The House, and indeed all the Legislative Assemblies in India never discharged any judicial function and constitutional background does not support the claim that they can be regarded as Courts of Record in any sense. If that be so, the very basis on which the English Courts agreed to treat a general warrant issued by the House of Commons on the footing that it was a warrant issued by a superior Court of Record, is absent in the present case, and so, it would be unreasonable to contend that the relevant power to claim a conclusive character for the general warrant which the House of Commons, by agreement, is deemed to possess, is vested in the House. On this view of the matter, the claim made by the House must be rejected.

Assuming, however, that the right claimed by the House can be treated as an integral part of the

privileges of the House of Commons, the question of consider would be whether such a right has been conferred on the House by the latter part of Art. 194(3). On this alternative hypothesis, it is necessary to consider whether this part of the privilege is consistent with the material provision of our Constitution. We have already referred to Articles 32 and 226. Let us take Art. 32 because it emphatically brings out the significance of the fundamental right conferred on the citizens of India to move this Court if their fundamental rights are contravened either by the Legislature or the Executive. Now, Art. 32 makes no exception in regard to any encroachment at all, and it would appear illogical to contend that even if the right claimed by the House may contravene the fundamental rights of the citizen the aggrieved citizen cannot successfully move this Court under Art. 32. To the absolute constitutional right conferred on the citizens by Art. 32 no exception can be made and no exception is intended to be made by the Constitution by reference to any power or privilege vesting in the Legislatures of this country.

As we have already indicated we do not propose to enter into a general discussion as to the applicability of all the fundamental rights to the cases where legislative powers and privileges can be exercised against any individual citizen of this country, and that we are dealing with this matter on the footing that Art. 19(1)(a) does not apply and Art. 21 does. If an occasion arises, it may become necessary to consider whether Art. 22 can be contravened by the exercise of the power or privilege under Art. 194(3). But, for the moment, we may consider Art. 20. If Art, 21 applies Art. 20 may conceivably apply, and the question may arise, if a citizen complains that his fundamental right had been contravened either under Art. 20 or Art. 21, can he or can he not move this Court under Art. 32 ? For the purpose of making the point which we are discussing, the applicability of Art. 21 itself would be enough. If a citizen moves this Court and complains that his fundamental right under Art. 21 had been contravened, it would plainly be the duty of this Court to examine the merits of the said contention, and that inevitably raises the question as to whether the personal liberty of the citizen has been taken away according to the procedure established by law. In fact, this question was actually considered by this Court in the case of Pundit Sharma ([1959] Supp. 1 S.C.R. 806). It is true that the answer was made in favour of the legislature; but that is wholly immaterial for the purpose of the present discussion. If in a given case, the allegation made by the citizen is that he has been deprived of his liberty not in accordance with law, but for capricious or mala fide reasons, this Court will have to examine the validity of the said contention, and it would be no answer in such a case to say that the warrant issued against the citizen is a general warrant and a general warrant must stop all further judicial inquiry and scrutiny. In our opinion, therefore, the impact of the fundamental constitutional right conferred on Indian citizens by Art. 32 on the construction of the latter part of Art. 194(3) is decisively against the view that a power or privilege can be claimed by the House though it may be inconsistent with Art. 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution under Art. 208(1).

Then, take the case of Art. 211 land see what its impact would be on the claim of the House with which we are dealing. If the claim of the House is upheld, it means that the House can issue a general warrant against a Judge and no judicial scrutiny can be held in respect of the validity of such a warrant. It would indeed be strange that the Judicature should be authorised to consider the validity of the legislative acts of our Legislatures, but should be prevented from scrutinizing the validity of the action of the legislatures trespassing on the fundamental rights conferred on the citizens. If the theory that the general warrant should be treated as conclusive is accepted, then, as we have already indicated, the basic concept of judicial independence would be exposed to very grave jeopardy; and so the impact of Art. 211 on the interpretation of Art. 194(3) in respect of this particular power is again decisively against the contention raised by the House.

If the power of the High Courts under Art. 226 and the authority of this Courts under Art. 32 are not subject to any exceptions, then it would be futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court in that behalf; otherwise the power conferred on the High Courts and this Court would be rendered virtually meaningless. Let it not be forgotten that the judicial power conferred on the High Courts and this Court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case.

In In re Parliamentary Privilege Act, 1770 ([1985] A.C. 331), the Privy Council was asked to consider whether the House of Commons would be acting contrary to the Parliamentary Privilege Act, 1770, if it treated the issue of a writ against a Member of Parliament in respect of a speech or proceeding by him in Parliament as a breach of its privileges. The said question had given rise to some doubt, and so, it was referred to the Privy Council for its opinion. The opinion expressed by the Privy Council was in favour of Parliament. Confining its answer to the said limited question, the Privy Council took the precaution of adding that "they express no opinion whether the proceedings referred to in the introductory paragraph were 'a proceeding in Parliament', a question not discussed before them, nor on the question whether the mere issue of a writ would in any circumstances be a breach of privilege." "In taking this course", said Viscount Simonds who spoke for the Privy Council, "they have been mindful of the inalienable right of Her Majesty's subjects to have recourse to her courts of law for the remedy of their wrong and would not prejudice the hearing of any cause in which a plaintiff sought relief." The inalienable right to which Viscount Simonds referred is implicit in the provisions of Art. 226 and Art. 32, and its existence is clearly inconsistent with the right claimed by the House that a general warrant should be treated as conclusive in all courts of law; it would also be equally inconsistent with the claim made by the House that Keshav Singh has committed contempt by moving the High Court under Art. 226.

In this connection, is would be interesting to refer to a resolution passed by the House of Lords in 1704. By this resolution, it was declared that deterring electors from prosecuting actions in the ordinary courts of law, where they are deprived of their right of voting, and terrifying attorneys, solicitors, counsellors, and serjeants-at-law, from soliciting, prosecuting and pleading in such cases, by voting their so doing to be a breach of privilege of the House of Commons, is a manifest assuming of power to control the law, to hinder the course of justice, and subject the property of Englishmen to the arbitrary votes of the House of Commons. This was in answer to the resolution passed by the House of Commons in the same year indicating that the House would treat the conduct of any person in moving the court for appropriate reliefs in matters mentioned by the resolution of the House as amounting to its contempt. These resolution and counter resolutions merely illustrate the fierce struggle which was going on between the House of Commons and the House of Lords during those turbulent days; but the interesting part of this dispute is that if a question had gone to the House of Lords in regard to the competence of the House of Commons to punish a man for invoking the jurisdiction of the ordinary courts of law, the House of Lords would undoubtedly have rejected such claim, and that was the basic apprehension of the House of Commons which was responsible of its refusal to recognise the jurisdiction of the courts which in the last analysis were subordinate to the House of Lords.

> Section 30 of the Advocates Act, 1961 (25 of 1961) confers on all Advocates the statutory right to practise in all courts including the Supreme Court, before any tribunal or person legally authorised to take evidence, and before any other authority

> or person before whom such advocate is by or under any law for the time being in force entitled to practice. Section 14 of the Bar Councils Act recognises a similar right. If a citizen has the right to move the High Court or the Supreme Courts against the invasion of his fundamental rights, the statutory right of the advocate to assist the citizen steps in and helps the enforcement of the fundamental rights of the citizen steps in and helps the enforcement of the fundamental rights of the citizen. It is hardly necessary to emphasise that in the enforcement of fundamental rights guaranteed to the citizens the legal profession pays a very important and vital role, and so, just as the right of the Judicature to deal with matters brought before them under Art. 226 or Art. 32 cannot be subjected to the powers and privileges of the House under Art. 194(3), so the rights of the citizens to move the Judicature and the rights of the advocates to assist that process must remain uncontrolled by Article 194(3). That is one integrated scheme for enforcing the fundamental rights and for sustaining the rule of law in this country. Therefore, our conclusion is that the particular right which the House claims to be an integral part of its power or privilege is inconsistent with the material provisions of the Constitution and cannot be deemed to have been included under the latter part of Art. 194(3).

In this connection, we ought to add that there is no substance in the grievance made by Mr. Seervai that Keshav Singh acted illegally in impleading the House to the habeas corpus petition filed by him before the Lucknow Bench. In our opinion, it can not be said that the House was improperly joined by Keshav Singh, because it was open to him to join the House on the ground that his commitment was based on the order passed by the House, and in that sense the House was responsible for, and had control over, his commitment (vide The King v. The Earl of Crewe, Ex parte Sekgome ([1910] 2 K.B. 576) and The King v. Secretary of State for Home Affairs, Ex part O'brien ([1923] 2 K.B. 361). Besides, the fact that Keshav Singh joined the House to his petition, can have no relevance or materiality in determining the main question of the power of the House to take action against the Judges, the Advocate, and the party for their alleged contempt.

As we have indicated at the outset of this opinion, the crux of the matter is the construction of the latter part of Art. 194(3), and in the light of the assistance which we must derive from the other relevant and material provisions of the Constitution, it is necessary to hold that the particular power claimed by the House that its general warrants must be held to be conclusive, cannot be deemed to be the subject-matter of the latter part of Art. 194(3). In this connection, we may incidentally observe that it is some what doubtful whether in power to issue a general inspecting warrant claimed by the House is consistent with s. 554(2)(b) and s. 555 of the Code of Criminal Procedure. It appears that in England, general warrants are issued in respect of commitment for contempt by superior courts of record, and the whole controversy on this point, therefore, rested on the theory on the theory that the right to issue a general warrant which is recognised in respect of superior Courts of Record must be conceded to the House of Commons, because as a part of the High Court of Parliament it is itself a superior Court of Record.

Before we part with this topic, there are two general considerations which we ought to advert. It has been urged before us by Mr. Seervai that the right claimed by the House to issue a conclusive general warrant in respect of contempt is an essential right for the effective functioning of the House itself, and he has asked us to deal with this matter from this point of view. It is true that this right appears to have been recognised by courts in England by agreement or convention or by considerations of comity; but we think it is strictly not accurate to say that every democratic legislature is armed with such a power. Take the case of the American Legislatures. Article 1,

section 5 of the American Constitution does not confer on the American Legislature such a power at all. It provides that each House shall be the judge of the Elections, Returns and Qualifications of its own Members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide. Each House may determine the Rules of its proceedings, punish its Members for disorderly behaviour, and, with the concurrence of two-thirds, expel a Member. Contempt committed outside the four-walls of the legislative chamber by a citizen who is not a Member of the House seems to be outside the jurisdiction of the American Legislature. As Willis has observed, punishment for contempt is clearly a judicial function; yet in the United States, Congress may exercise the power to punish for contempt as it relates to keeping order among its own members, to compelling their attendance, to protecting from assaults or dis-turbances by others (except by slander and libel), to determining election cases and impeachment charges, and to exacting information about other departments in aid of the legislative function (Willis, Constitutional Law, p. 145). Nobody has ever suggested that the American Congress has not been functioning effectively because it has not been armed with the particular power claimed by the House before us.

In India, there are several State Legislatures in addition to the Houses of Parliament. If the power claimed by the House before us is conceded, it is not difficult to imagine that its exercise may lead to anomalous situations. If by virtue of the absolute freedom of speech conferred on the Members of the Legislatures, a Member of the Legislature makes a speech in his legislative chamber which another legislative chamber regards as amounting to its contempt, what would be the position ? The latter legislative chamber can issue a general warrant and punish the Member alleged to be in contempt, and a free exercise of such power may lead to very embarrassing situations. That is one reason why the Constitution-makers thought it necessary that the Legislatures should in due course enact laws in respect of their powers, privileges and immunities, because they knew that when satchels are made, they would be open to examination by the courts in India. Pending the making of such laws, powers, privileges and immunities were conferred by the latter part of Art. 194(3). As we have already emphasised, the construction of this part of the particle is within the jurisdiction of this Court, and in construing this part, we have to bear in mind the other relevant and material provisions of the Constitution, Mr. Seervai no doubt invited our attention to the fact that the Committees of Privileges of the Lok Sabha and the Council of States have adopted a Report on May 22, 1954 with a view to avoid any embarrassing or anomalous situations resulting from the exercise of the legislative powers and privileges against the members of the respective bodies, and we were told that similar resolutions have been adopted by almost all the Legislatures in India. But these are matters of agreement, not matters of law, and it is not difficult to imaging that if the same political party is not in power in all the States, these agreements themselves may not prove to be absolutely effective. Apart from his aspect of the matter, in construing the relevant clause of Art. 194(3), these agreements can play no significant part.

In the course of his arguments, Mr. Seervai laid considerable emphasis on the fact that in habeas corpus proceedings, the High Court had no jurisdiction to grant interim bail. It may be conceded that in England it appears to be recognised that in regard to habeas corpus proceedings commenced against orders of commitment passed by the House of Commons on the ground of contempt, bail is not granted by courts. As a matter of course, during the last century and more in such habeas corpus proceeding returns are made according to law by the House of Commons, but "the general rule is that the parties who stand committed for contempt cannot be admitted to bail." But it is difficult to accept the argument that in India the position is exactly the same in this matter. If Art. 226 confers jurisdiction on the Court to deal with the validity of the order of commitment even though the

commitment has been ordered by the House, how can it be said that the Court has no jurisdiction to make an interim order in such proceedings ? As has been held by this Court in State of Orissa v. Madan Gopal Rungta, and Others ([1952] S.C.R. 28), an interim relief can be granted only in aid of, and as ancillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceeding. Indeed, as Maxwell has observed, when an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (Maxwell on Interpretation of Status, 11th ed., p.350). That being so, the argument based on the relevant provisions of the Criminal Procedure Code and the decision of the Privy Council in Lala Jairam Das and Others v. King Emperor (72 I.A. 120), is of no assistance.

We ought to make it clear that we are dealing with the question of jurisdiction and are not concerned with the propriety or reasonableness of the exercise of such jurisdiction. Besides, in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its own jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. "Prima facie", says Halsbury, "no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court." (Halsbury's Laws of England, Vol., p.349)b We cannot, therefore, accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question is null and void. Besides, the validity of the order has no relation whatever with the question as to whether in passing the order, the Judges have committed contempt of the House.

There is yet one more aspect of this matter to which we may incidentally refer. We have already noticed that in the present case, when the habeas corpus petition was presented before the Lucknow Bench at 2 P.M. on March 19, 1964, both parties appeared by their respective Advocates and agreed that the application should be taken up at 3 P.M. the same day, and yet the House which was impleaded to the writ petition and the other respondents to it for whom Mr. Kapur had appeared at the earlier stage, were absent at that time. That is how the Court directed that notice on the petition should be issued to the respondents and released the petitioner on bail subject to the terms and conditions which have already been mentioned; and it is this latter order of bail which has led to the subsequent developments. In other words, before taking the precipitate action of issuing warrants against the Judges of the Lucknow Bench, the House did not conform to the uniform practice which the House of Commons has followed for more than a century past and did not instruct its lawyer either to file a return or to ask for time to do so, and to request that the Court should stay its hands until the return was filed. It is not disputed that whenever commitment orders passed by the House of Commons are challenged in England before the Courts at Westminster, the House invariably makes a return and if the warrant issued by it is general and unspeaking, it is so stated in the return and the warrant is produced. If this course had been adopted in the present proceedings, it could have been said that the House in exercising its powers and privileges, confirmed to the pattern which, by convention, the House of Commons has invariably followed in England during the last century and more; but that was not done; and as soon as the House knew that an order granting bail had been passed, it proceeded to consider whether the Judges themselves were not in contempt. On these narrow facts, it would be possible to take the view that no question of contempt committed by the Judges arises. In view of the fact that Mr. Kapur had appeared before the Court at 2 P.M. on behalf of all the respondents and had agreed that the matter should be taken up at 3 P.M., it was his duty to have appeared at 3 P.M. and to have either filed a return or to have asked for time to do so on behalf of the House. If the House did not instruct Mr. Kapur to take this step and the Court had

no knowledge as to why Mr. Kapur did not appear, it is hardly fair to blame the Court for having proceeded to issue notice on the petition and granted bail to the petitioner. In these proceedings it is not necessary for us to consider what happened between Mr. Kapur and the House and why Mr. Kapur did not appear at 3 P.M. to represent the House and the other respondents. The failure of Mr. Kapur to appear before the Court at 3 P.M. has introduced an unfortunate element in the proceedings before the Court and is partly responsibly for the order passed by the Court. One fact is clear, and that is that at the time when the Court issued native and released the petitioner on bail, it had no knowledge that the warrant under which the petitioner had been sentenced was a general warrant and no suggestion was made to the Court that in the cases of such a warrant the Court had no authority to make any order of bail. This fact cannot be ignored in dealing with the case of the House that the Judges committed contempt in releasing the petitioner on bail.

But we ought to make it clear that we do not propose to base our answers on this narrow view of the matter, because questions 3 and 5 are broad enough and they need answers on a correspondingly broad basis. Besides, the material questions arising from this broader aspect have been fully argued before us, and it is plain that in making the present Reference, the President desires that we should render our answers to all the questions and not exclude from our consideration any relevant aspect on the ground that these aspect would not strictly arises on the special facts which have happened so far in the present proceedings.

In conclusion, we ought to add that throughout our discussion we have consistently attempted to make it clear that the main point which we are discussing is the right of the House to claim that a general warrant issued by it in respect of its contempt alleged to have been committed by a citizen who is not a Member of the House outside the four-walls of the House, is conclusive, for it is on that claim that the House has chosen to take the view that the Judges, the Advocate, and the party have committed contempt by reference to the conduct in the habeas corpus petition pending before the Lucknow Bench of the Allahabad High Court. Since we have held that in the present case no contempt was committed either by the Judges, or the Advocate, or the party respectively, it follows that it was open to the High Court of Allahabad, and indeed it was its duty, to entertain the petitions filed before it by the two Judges and by the Advocate, and it was within its jurisdiction to pass the interim orders prohibiting the further execution of the impugned orders passed by the House.

Before we part with this topic, we would like to refer to one aspects of the question relating to the exercise of power to punish for contempt. So far as the courts are concerned, Judges always keep in mind she warning addressed to them by Lord Atkin in Andre Paul v. Attorney-General of Trinidad (A.I.R. 1936 P.C. 141). Said Lord Atkin "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary men." We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger of irritation would not help to sustain the dainty or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislatures.

Having thus discussed all the relevant points argued before us and recorded our conclusions on them, we are now in a position to render our answers to the five questions referred to us the President. Our answers are :-

(1) On the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of N. U. Beg and G. D. Sahgal JJ., to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending the disposal of his said petition.

(2) On the facts and circumstances of the case, Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon Advocate, by presenting the said petition, and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail pending disposal of the said petition, did not commit contempt of the Legislative Assembly of Uttar Pradesh.

(3) On the facts and circumstances of the case, it was not competent for the Legislative Assembly of Uttar Pradesh to directs the production of the said two Hon'ble Judges and Mr. B. Solomon Advocate, before it in custody or to call for their explanation for its contempt.

(4) On the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon'ble Judges and Mr. B. Solomon Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said Legislative Assembly; and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four-walls of the legislative chamber. A judge of a High Court who entertains or deals with a petitions challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition, does not commit contempt of the said Legislature; and the said Legislature is not competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities. In this answer, we have deliberately omitted reference to infringement of privileges and immunities of the House which may include privileges and immunities other than those with which we are concerned in the present Reference.

SARKAR J.

This matter has come to us on a reference made by the President under Art. 143 of the Constitution. The occasion for the reference was a sharp conflict that arose and still exists between the Vidhan Sabha (Legislative Assembly) of the Uttar Pradesh State Legislature, hereinafter referred to as the Assembly, and the High Court of that State. That conflict arose because the High Court had ordered the release on bail of a person whom the Assembly had committed to prison for contempt. The Assembly considered that the action of the Judges making the order and of the lawyer concerned in moving the High Court amounted to contempt and started proceedings against them on that basis, and the High Court, thereupon, issued orders restraining the Assembly and its officers from taking

stamps in implementation of the view that the action of the Judges and the lawyer and also the person of whose behalf the High Court had been moved amounted to contempt.

A very large number of parties appeared on the reference and this was only natural because of the public importance of the question involved. These parties were divided into two broad groups, one supporting the Assembly and the other, the High Court.

I shall now state the actual facts which gave rise to the conflict. The Assembly had passed a resolution that a reprimand be administered to one Keshav Singh for having committed contempt of the Assembly by publishing a certain pamphlet libelling one of its members. No question as to the legality of this resolution arises in this case and we are concerned only with what followed. Keshav Singh who was a resident of Gorakhpur, in spite of being repeatedly required to do so, failed to appear before the Assembly which held its sittings in Lucknow, to receive the reprimand alleging inability to procure money to pay the fare for the necessary railway journey. He was thereupon brought under the custody of the Marshal of the Assembly in execution of a warrant issued by the Speaker in that behalf and produced at the Bar of the House on March 14, 1964. He was asked his name by the Speaker repeatedly but he would not answer any question at all. He stood the with his back to the Speaker showing great disrespect to the House and would not turn round to face the Speaker though asked to do so. The reprimand having been administered, the Speaker brought to the notice of the Assembly a letter dated March 11, 1964, written by Keshav Singh to him, in which he stated that he protested against the sentence of reprimand and had absolutely no hesitation in calling a corrupt man corrupt, adding that the contents of his pamphlet were correct and that a brutal attack had been made on democracy by issuing the "Nadirshahi Firman" (warrant) upon him. Keshav Singh admitted having written that letter. The Assembly thereupon passed a resolution that "Keshav Singh be sentenced to imprisonment for seven days for having written a letter worded in language which constitutes contempt of the House and his misbehaviour in view of the House." A general warrant was issued to the Marshal of the House and the Superintendent, District Jail, Lucknow which stated, "Whereas the .... Assembly has decided ..... that Shri Keshav Singh be sentenced to simple imprisonment for seven days for committing the offence of the contempt of the Assembly, it is accordingly ordered that Keshav Singh be detained in the District Jail, Lucknow for a period of seven days." The warrant did not state the fats which constituted the contempt. Keshav Singh was thereupon taken to the Jail on the same day and kept imprisoned there. On March 19, 1964, B. Solomon, an advocate, presented a petition to a Bench of the High Court of Uttar Pradesh then constituted by Beg and Sahgal JJ., which sat in Lucknow, for a writ of habeas corpus for the release of Keshav Singh alleging that he had been deprived of his personal liberty without any authority of law and that this detention was mala fide. This Bench has been referred to as the Lucknow Bench. This petition was treated as having been made under Art. 226 of the Constitution and s. 491 of the Code of Criminal Procedure. On the same date the learned Judges made an order that Keshav Singh be released on bail and that the petition be admitted and notice be issued to the respondents named in it. Keshav Singh was promptly released on bail. This order interfered with the sentence of imprisonment passed by the House by permitting Keshav Singh to be released before age had served the full term of his sentence. On March 21, 1964, the Assembly passed a resolution stating that Beg J., B. Solomon and Keshav Singh had committed contempt to of the House and that Keshav Singh be immediately taken into custody and kept confined in the District Jail for the remaining term of his imprisonment and that Beg J., Sahgal J. and B. Solomon be brought in custody before the House, and also that Keshav Singh be brought before the House after he had served the remainder of his sentence. Warrants were issued on March 23, 1964 to the Marshal of the House and the Commissioner of Lucknow for carrying out the terms of the resolution. On the same day, Sahgal J. moved a petition under Art. 226 of the Constitution in the High Court of Uttar Pradesh at Allahabad

for a writ of certiorari quashing the resolution of the Assembly of March 21, 1964 and for other necessary writs restraining the Speaker and the Marshal of the Assembly and the State Government from implementing that resolution and the execution of the orders issued pursuant to the resolution. The petition however did not mention that he warrants had been issued. That may have been because the warrants were issued after the petition had been presented, or the issue of the warrant was not known to the petitioner. This petition was heard by all the Judges of the High Court excepting Sahgal and Beg JJ. and they passed an order on the same day directing that the implementation of the resolution be stayed. Similar petitions were presented by B. solomon and Beg J. and also by other parties, including the Avadh Bar Association, and on some of them similar orders, as on the petition of Sahgal J., appear to have been made. On March 25, 1964, the Assembly recorded an observation that by its resolution of March 21, 1964 it was not its intention to decide that Beg J., Sahgal J., B. Solomon and Keshav Singh had committed contempt of the House without giving them a hearing, but it had required their position and it resolved that the question may be decided after giving an opportunity to the above-named persons according to the rules to explain their conduct. Pursuant to this resolution, notices were issued on March 26, 1964 to Beg J., Sahgal J. and B. solomon informing them that "they may appear before the Committee at 10 A.M. an April 6, 1964 ..... to make their submissions". The warrants issued on March 23, 1964, which had never been executed, were withdrawn in view of these notices. The present reference was made on March 26, 1964 and thereupon the Assembly with drew the notices of March 26, 1964 stating that in view of the reference the two Judges and Solomon and Keshav Singh need not appear before the Privilege Committee as required.

These facts are set out in the recitals contained in the order of reference. There is however one dispute as to the statement of facts in the recitals. It is there stated that the Assembly resolved on March 21, 1964 that the two Judges, Solomon and Keshav Singh "committed, by their actions aforesaid, contempt of the House." The words "actions aforesaid" referred to the presentation of the petition of Keshav Singh of March 19, 1964 and the order made thereon. It is pointed out on behalf of the Assembly that the resolution does not say what constituted the contempt. This contention is correct.

The main question in this reference is whether the Assembly has the privilege of committing a person for contempt by a general warrant, that is, without stating the facts which constituted the contempt, and if it does so, have the courts of law the power to examine the legality of such a committal ? In other words, if there is such a privilege, does it take precedence over the fundamental rights of the detained citizen. It is said on behalf of the Assembly that it has such a privilege and the interference by the court in the present case was without jurisdiction. The question is then of the privilege of the Assembly, for if it does not possess the necessary privilege, it is not disputed, that what the High Court has done in this case would for the present purposes be unexceptionable.

First then as to the privileges of the Assembly. The Assembly relies for purpose on cl. (3) of Art. 194 of the Constitution. The first three clauses of that article may at this stage be set out.

> Art. 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.

Article 105 contains identical provisions in relation to the Central Legislature. It is not in dispute that the Uttar Pradesh Legislature has not made any law defining the powers, privileges and immunities of its two Houses. The Assembly, therefore, claims that it has those privileges which the House of Commons in England had on January 25, 1950.

I would like at this stage to say a few general words about "powers, privileges and immunities" of the House of Commons or its members. First I wish to note that it is not necessary for our purposes to make a distinction between "privileges", "powers" and "immunities". They are no doubt different in the matter of their respective contents but perhaps in no otherwise. Thus the right of the House to have absolute control of its internal proceedings may be considered as its privilege, its right to punish one for contempt may be more properly described as its power, while the right that no member shall be liable for anything said in the sake of convenience, describe them all as "privileges". Next I note that this case is concerned with privileges of the House of Commons alone, and not with those of its members and its committees. I stree however that the privileges of the latter two are in no respect different from those of the former except as to their contents.

The nature of the privileges of the House of Commons can be best discussed by referring to May's Parliamentary Practice, which is an acknowledged work of authority on matters concerning the English Parliament. It may help to observe here that for a long time now there is no dispute as to the nature of the recognised privileges of the Commons.

I start to explain the nature of the privileges by pointing out the distinction between them and the functions of the House. Thus the financial powers of the House of Commons to initiate taxation legislation is often described as its privilege. This, however, is not the kind of privilege of the House of Commons to which cl. (3) of Art. 194 refers. Privileges of the House of Commons have a technical meaning in English Parliamentary Law and the article uses the word in that sense only. That technical sense has been described in these words : "[C]ertain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions." (May's Parliamentory Practice, 16th ed. p. 42) A point I would like to stress now is that it is of the essence of the nature of the privileges that they are ancillary to the essence of the House of Commons. Another thing which I wish to observe at this stage is that "[s]ome privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded" (Ibid, p.44). In this case we shall be concerned with the former kind of privilege only. The point to note is that this variety of privilege derives its authority from the law and custom of Parliament. This law has been given the name of Lex Parliamenti. It owes its origin to the custom of parliament. It is, therefore, different from the common law of England which, though also based on custom, is based on a separatre set of custom, namely, that which prevails in the rest of the realm. This difference in the origin had given rise to

serious disputes between Parliament and the courts of law but they have been settled there for many years now and except a dispute as to theory, the recurrence of any practical dispute is not considered a possibility. So Lord Coleridge C.J. said in Bradlaugh v. Gossett ((1884) L.R. 12 Q.B.D. 271, 275).

> "Whether in all cases and under all circumstances the Houses are the sole judges of their own privileges, in the sense that a resolution of either House on the subject has the same effect for a court of law as an Act of Parliament, is a question which it is not now necessary to determine. No doubt, to allow any review of parliamentary privilege by a court of law may lead, has led, to very grave complications, and might in many supposable cases end in the privileges of the Commons being determined by the Lords. But, to hold the resolutions of either House absolutely beyond inquiry in a court of law may land us in conclusions not free from grave complications too. It is enough for me to say that it seems to me that in theory the question is extremely hard to solve; in practice it is not very important, and at any rate does not now arise."

This passage should suffice to illustrate the nature of the dispute. It will not be profitable at all, and indeed I think it will be 'mischievous', to enter upon a discussion of that dispute for it will only serve to make turbid, by raking up impurities which have settled down, a stream which has run clear now for years. Furthermore that dispute can never arise in this country for here it is undoubtedly for the courts to interpret the Constitution and, therefore, Art. 194(3). It follows that when a question arise in this country under that article as to whether the House of Commons possessed a particular privilege at the commencement of the Constitution, that question must be settled, and settled only, by the courts of law. There is no scope of the dreaded "dualism" appearing here, that is, courts entering into a controversy with a House of a Legislature as to what its privileges are. I think what I have said should suffice to explain the nature of the privileges for the purposes of the present reference and I will now proceed to discuss the privileges of the Assembly that are in question in this case, using that word in the sense of rights ancillary to the main function of the legislature.

The privilege which I take up first is the power to commit for contempt. It is not disputed that the House of Commons has this power. All the decided cases and text-books speak of such power. "The power of commitment is truly described as the 'keystone of parliamentary privilege'.... without it the privileges of Parliament could not have become self-subsistent, but, if they had not lapsed, would have survived on sufferance." (May, p. 90) In Burdett v. Abbott (104 E.R. 501, 559) Lord Ellenborough C.J. observed,

> "Could it be expected ..... that the Speaker with his mace should be under the necessity of going before a grand jury to prefer a bill of indictment for the insult offered to the House ? They certainly must have the power of self-vindication land self-protection in their own hands ...."

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

It would help to appreciate the nature of the power to commit for contempt to compare it with breach of privilege which itself may amount to contempt. Thus the publication on the proceedings of the House of Commons against its orders is a breach of its privilege and amounts to contempt. All contempts, however, are not breaches of privilege. Offences against the dignity or authority of the House though called "breaches of privilege" are more properly distinguished as contempts. Committing to prison for contempts is itself a privilege of the House of Commons whether the contempt is committed by a direct breach of its privilege or by offending its dignity or authority.

(May, p.43) "The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges." (Ibid.) I may add that it is not in dispute that power to commit for contempt may be exercised not only against a member of the House but against an outsider as well. (Ibid., p. 91)

It was contended on behalf of the High Court that the power of the House of Commons to commit for contempt was not conferred by cl. (3) of Art. 194 on the Houses of a State Legislature because our Constitution has to be read along with its basic scheme providing for a division of power and the power of commit to prison for contempt being in essence a judicial power, can under our Constitution be possessed only by a judicial body, namely, the courts and not by a legislative body like the Assembly. It was, therefore contended that Art. 194(3) could not be read as conferring judicial powers possessed by the House of Commons in England as one of its privileges on a legislative body and so the Assembly did not possess it.

This contention of the High Court is, in my view, completely without foundation; both principle and authority are against it. This Court has on earlier occasions observed that the principle of separation of powers is not an essential part of our Constitution : see for example In re. Delhi Laws Act ([1951] S.C.R. 747, 883). Again the Constitution is of course supreme and even if it was based on the principle of separation of powers, there was nothing to prevent the Constitution-makers, if they so liked, from conferring judicial powers on a legislative body. It they did so, it could not be said that the provision concerning it was bad as our Constitution was based on a division of powers. Such a contention would of course be absurd. The only question, therefore, is whether our Constitution-makers have conferred the power to commit on the Legislatures. The question is not whether they had the power to do so, for there was no limit to their powers. What the Constitution-makers had done can, however, be ascertained only from the words used by them in the Constitution that they made. If those words are plain, effect must be given to them irrespective of whether our Constitution is based on a division of power or not. That takes me to the language used in cl. (3) of Art. 194. The words there appearing are "the powers, privileges and immunities of a House ... shall be those the House of Commons". I cannot imagine more plain language than this. That language can only have one meaning and that is that it was intended to confer on the State Legislatures the powers, privileges and immunities which the House of Commons in England had. There is no occasion here for astuteness in denying words their plain meaning by professing allegiance to a supposed theory of division of powers. So much as to the principle regarding the application of the theory of division of powers.

This question is further completely concluded by the decision of this Court in Pt. M. S. M. Sharma v. Shri Sri Krishna Sinha ([1959] Supp. 1 S.C.R. 806) I will have to refer to this case in some detail later. There Das C.J., delivered the majority judgment of the constitution bench consisting of five Judges and Subba Rao J. delivered his own dissenting opinion. Das C.J., proceeded on the basis that the Houses of a State Legislature had the power to commit for contempt. It was, therefore, held that there was nothing in our Constitution to prevent a legislative body from possessing judicial powers. On this point Subba Rao J. expressed no dissent. Further, the Judicial Committee in England has in two cases held that under provisions, substantially similar to those of Art. 194(3) of our Constitution, the power of the House of Commons to commit for contempt had been conferred on certain legislative bodies of some of the British Colonies. In the Speaker of the Legislative Assembly of Victoria v. Glass ((1869-71) 3 L.R.P.C. 560) it was held that a statute stating. "The Legislative Council of Victoria ..... shall hold, enjoy exercise such and the like privileges, immunities and powers as ..... were held, enjoyed and exercised by the Commons Houses of the

Legislature of the Australian Colony of Victoria the judicial power to commit for contempt. In Queen v. Richards (92 C.L.R. 157) it was held that s. 49 of the Commonwealth of Australia Constitution Act, 1901 which provided that "the powers, privileges and immunities of the Senate and the House of Representatives ... shall be such as are declared by the Parliament, and until declared, shall be those of the Commons House of Parliament of the United Kingdom ...", conferred on the Houses judicial powers of committing a person to prison for contempt. It was observed by Dixon C.J.

> "This is not the occasion to discuss the historical grounds upon which these powers and privileges attached to the House of Commons. It is sufficient to say that they were regarded by many authorities as proper incidents of the Legislative function, notwithstanding the fact that considered more theoretically - perhaps one might even say, scientifically - they belong to the judicial sphere. But our decision is based upon the separation of powers is not a sufficient reason for giving to these words, which appear to us to be so clear, a restrictive or secondary meaning which they do not properly bear." (92 C.L.R. 157, 167)

The similarity in the language of the provisions in the Australian Constitution and our Constitution is striking. It was said however that they were not the same for under s. 49 the Australian Houses might by resolution declare the privileges whereas in our case the privileges had to be defined by law and that in Australia there were no fundamental rights. I confess i do not follow this argument at all. The question is not how the privileges are declared in Australia or what effect fundamental rights have on privileges, but as to the meaning of the words which in the two statutes are identical. In Richard's case (92 C.L.R. 157) an application was made to the Judicial Committee for leave to appeal from the judgment of Dixon C.J. but such leave was refused, Viscount Simonds observing that the judgment of the Australian High Court "is unimpeachable" : Queen v. Richards (92 C.L.R. 157, 171). Reference may also be made to Fielding v. Thomas ([1896] A.C. 600) for the interpretation of a similar provision conferring the privileges of the Commons on the Legislature of Nova Scotia in Canada. It would, therefore, appear that Art. 194(3) conferred on the Assembly the power to commit for contempt and it possessed that power.

The next question is as to the privilege to commit by a general warrant. There is no dispute in England that if the House of Commons commits by general warrant without stating the facts which constitute the contempt, then the courts will not review that order (See Burdett v. Abbot 3 E.R. 1289; May's Paliamentary Practice 16th ed. p. 173). It was however said on behalf of the High Court that this power of the English House of Commons was not one of its privileges but it was possessed by that House because it was a superior court and, therefore, that power, not being a privilege, has not been conferred on the State Legislatures by Art. 194(3) of our Constitution. It is not claimed by the Assembly that it is a superior court and has, therefore, a power to commit for contempt by a general warrant. I would find nothing to justify such a claim if it had been made. This takes me to the question, is the power to commit by a general warrant one of the privileges of the House of Commons, or, is it something which under the common law of England that House possessed because it was a superior court ?

I find no authority to support the contention that the power to commit by a general warrant with the consequent deprivation of the jurisdiction of the Courts of law in respect of that committal is something which the House of Commons had because it was a superior court. First, I do not think that the House of Commons was itself ever a court. The history of that House does not support such a contention. Before proceeding further I think it necessary to observe that we are concerned with

the privileges of the House of Commons as a separate body though no doubt a constituent part of the British Parliament which consists also of the King and the House of Lords. The privileges however with which we are concerned are those which the House of Commons claims for itself alone as an independent body and as apart from those possessed by the Houses of Lords. Indeed it is clear that the privileges of the two Houses are not the same : May Ch. III. It may be that in the early days of English history the Parliament was a court. The House of Commons, however, does not seem to have been a part of this Court. In medieval times the legal conception was that the King was the source of all things; justice was considered to flow from him and, therefore, the court of justice was attached to the King. The King's Court thus was a court of law and that is the origin of what is called "the High Court of Parliament". The history of the High Court of Parliament has been summarised in Potter's outlines of English Legal History (1958 ed.) and may be set out as follows : The King's Council, under its older title of Curia Regis, was the mother of the Common law courts, but still retained some judicial functions even after the common law courts had been well-established. (p. 78). Later however in the 14th and 15th centuries it came to held that appeals from the King's Bench lay to the Parliament and not to the Council. But Parliament had a great deal of work to do and could find little time for hearing petitions or even for hearing rules of Error from the King's Bench and this jurisdiction fell into abeyance in the 15th century. It would appear, however, that of this Parliament, Commons were no part. In 1485 it was held by all the Judges that the jurisdiction in Error belonged exclusively to the House of Lords and not to the whole Parliament. Professor Holdsworth states in explanation of this fact that it was not quite forgotten that the jurisdiction was to the King and his Council in Parliament whereas the Commons were never part of his Council, the King in his Council in Parliament meaning only the King and the House of Lords; p. 95. It is also interesting to point out that when the Commons deliberated apart, they sat in the chapter-house or the refectory of the Abbot of West-minister; and they continued their sittings in that place after their final separation; May p. 12. The separation referred to is the separation between the House of Lords and the House of Commons. It may also be pointed out that when it is said that laws in England are made by the King in Parliament, what happens is that the Commons go to the Bar of the Houses of Lords where the King either in person, or through someone holding a commission from him, assents to an Act. All this would show that the House of Commons when it sits as a separate body it does not sit in Parliament. So sitting it is not the High Court of Parliament. I wish here to emphasis that we are in this case concerned with the privileges of the House of Commons functioning as a separate body, that is, not sitting in parliament. May observes at p. 90, "Whether the House of Commons be, in law, a court of record, it would be difficult determine :" In Anson's Law of the Constitution, 5th ed. Vol. 1 at p. 197, it has been stated that "Whether or not the House of Commons is a court of record, not only has it the same power of protecting itself from insult by commitment for contempt, but the Superior Courts of Law have dealt with it in this matter as they would with one another, and have accepted as conclusive its statement that a contempt has been committed, without asking what that contempt may have been." I think in this state of the authorises it would at least be hazardous to hold that the House of Commons was a court of record. If it was not, it cannot be said to have possessed the power to commit for its contempt by a general warrant as a court of record.

I now proceed to state how this right of the House of Commons to commit by a general warrant has been dealt with by authoritative textbook writers in England. At p. 173, after having discussed the tussle between the Commons and the Courts in regard to the privileges of the former and having stated that in theory there is no way of resolving the real point at issue should a conflict between the two arise. May observes, "In practice however there is much more agreement on the nature and principles of privilege than the deadlock on the question of jurisdiction would lead one to expect."

He then adds, "The courts admit :- (3) that the control of each House, over its internal proceedings is absolute and cannot be interfered with by the courts. (4) That a committal for contempt by either House is in practice within its exclusive jurisdiction, since the facts constituting the alleged contempt need not be stated on the warrant of committal." So May treats the right of the House of Commons to commit by a general warrant as one of its privileges and not something to which it is entitled under the common law as of right as a Court of Record. In Cases on Constitutional Law by Keir and Lawson, (4th ed.) p. 126, it is stated that among the undoubted privileges of the House of Commons is "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. This is exemplified in the case of Sheriff of Middlesex." That is a case where the House of Commons had committed the Sheriff of Middlesex for contempt by a general warrant, the Sheriff having in breach of the orders of the House carried out an order of the King's Bench Division, which he was bound to do and that Court held that it had no jurisdiction to go into the question of the legality of the committal by the House : see Sheriff of Middlesex (113 E.R. 419). In Halsbury's Laws of England, Vol. 28 p. 467, it is stated that the Courts of law will not enquire into the reasons for which a person is adjudged guilty of contempt and committed by either House by a warrant which does not state the causes of his arrest. This observation is made in dealing with the conflict between the House of Commons and the courts concerning the privileges of the former and obviously treats the power to issue a general warrant as a matter of the privilege of the House. Lastly, in Dicey's Constitutional Law (10th ed.) at p. 58 in the footnote it is stated.

> "Parliamentary privilege has from the nature of things never been the subject of precise legal definition. One or two points are worth notice as being clearly established.
>
> (1) Either House of Parliament may commit for contempt; and the courts will not go behind the committal and enquire into the facts constituting the alleged contempt provided that the cause of the contempt is not stated."

I thus find that writers of undoubted authority have treated this power to commit by a general warrant with the consequent deprivation of the court's jurisdiction to adjudicate on the legality of the imprisonment, as a matter of privilege of the House and not as a right possessed by it as a superior court.

I now proceed to refer to recent decisions of the Judicial Committee which also put the right of the House of Commons to commit by a general warrant on the ground of privilege. The first case which I will consider is Glass's ((1869-71) L.R. 3 P.C. 560) case. There the Legislative Assembly of the Colony of Victoria by a general warrant committed Glass to prison for contempt and the matter was brought before the court on a habeas corpus petition. I have earlier stated that under certain statutes the Assembly claimed the same privileges which the House of Commons possessed. The Supreme Court of Victoria held in favour of Glass. The matter was then taken to the Judicial Committee and it appears to have been argued there that "the privilege is the privilege of committing for contempt merely; that the judging of contempt without appeal, and the power of committing by a general Warrant, are mere incidents or accidents applicable to this Country, and not transferred to the Colony." The words "this Country" referred to England. Lord Cairns rejected this argument with the following observations : "The ingredients of judging the contempt, and committing by a general Warrant, are perhaps the most important ingredients in the privileges which the House of Commons in this Country possesses; and it would be strange indeed if, under a power to transfer the whole of the privileges and powers of the House of Commons, that which would only be a part, and a

comparatively insignificant part, of this privilege and power were transferred." (p. 573). He also said, (p. 572) "Beyond all doubt, one of the privileges and one of the most important privileges of the House of Commons - is the privilege of committing for contempt and incidental to that privilege, it has, as has already been stated, been well-established in this Country that the House of Commons have the right to be the judges themselves of what is contempt, and to commit for that contempt by a Warrant, stating that the commitment is for contempt of the House generally, without specifying what the character of the contempt is. It would, therefore, almost of necessity follow, that the Legislature of the Colony having been permitted to carry over to the Colony the privileges, immunities, and powers of the House of Commons, and having in terms carried over all the privileges ad powers exercised by the House of Commons at the Statute, there was carried over to the Legislative Assembly of the Colony the privilege or power of the House of Commons connected with contempt - the privilege or power, namely, of committing for contempt, of judging itself of what is contempt, and of committing for contempt by a Warrant stating generally that a contempt had taken place." In Richard's case (92 C.L.R. 157) the power to commit by a general warrant was considered as a privilege of the House and the observations of Lord Cairns in Glass's ((1869-71) L.R. 3 P.C. 600) case were cited in support of that view. As I have already said this view was upheld by the Judicial Committee : Queen v. Richard (92 C.L.R. 171). It is of some interest to note that Dixon C.J. was of the opinion, as I have earlier shown, that the power to commit was scientifically more properly a judicial power but nonetheless he found that it was a privilege technically so called of the House of Commons and so transferred to the Australian Houses by s. 49 of the Australian Constitution Act of 1901. It is also necessary to state here that this case was of the year 1955 and shows that the view then held was that the right to commit by a general warrant was a privilege of the House. I am pointing out this only because it has been suggested that even if it was a privilege, it had been lost by desuetude. These cases show that that is not so. Fielding v. Thomas ([1896] A.C. 600) also takes the same view.

It was said that the decisions of the Judicial Committee were not binding on us. That may be so. But then it has not been shown that they are wrong and, therefore, they are of value at least as persuasive authorities. The fact that the decisions of the Judicial Committee are not binding on us judgments of a superior court is however to no purpose. The real question for our decision is whether the House of Commons possessed a certain privilege. We may either have to take judicial notice of that privilege or decide its existence as a matter of foreign law. It is unnecessary to decide which is the correct view. If the former, under s. 57 of the Evidence Act a reference to the authorised law reports of England would be legitimate and if the latter, then again under s. 38 of that Act a reference to these reports would be justified. So in either case we are entitled to look at these reports and since they contain decisions of one of the highest Courts in England, we are not entitled to say that what they call a privilege of the House of Commons of their country is not a privilege unless other equally high authority taking a contrary view is forthcoming.

I now come to some of the English case on which the proposition that the right to commit by a general warrant is not a matter of privilege of the House of Commons but a right which it possessed as a superior court is, as I understood the argument of learned advocate for the High Court, based. I will take the cases in order of date. It will not be necessary to refer to the facts of these cases and it should suffice to state that each of them dealt with the right of the House of Commons to commit by a general warrant. First, there is Burdett v. Abbot (104 E.R. 501). In this case, in the first court judgments were delivered by Ellenborough C.J. and Baylay J. With regard to this case, Anson in his book at p. 189 says, "It is noticeable that in the case of Burdett v. Abbot while Beylay J. rests the claim of the House to commit on its parity of position with the Courts of Judicature, Lord Ellenborough C.J. rests his decision on the broader ground of expediency, and the necessity of such

a power for the maintenance of the dignity of the House." Ellenborough C.J., therefore, according to Anson, clearly does not take the view that the House of Commons is a court and all that Bayley J. does, according to him, is to put the House of Commons in parity with a Superior Court. If the House of Commons was a court, there, of course, was no question of putting it in parity with one. There was an appeal from this judgment to the House of Lords and in that appeal after the close of the arguments, Lord Eldon L.C. referred the following question to the Judges for their advice, "Whether, if the Court of Common Pleas, having adjudged an act to be a contempt of Court, had committed for the contempt under a warrant, stating such adjudication generally without the particular circumstances, and the matter were brought before the Court of King's Bench, by return to a writ of habeas corpus the return setting forth the warrant, stating such adjudication of contempt generally; whether in that case the Court of King's Bench would discharge the prisoner, because the particular facts and circumstances, out of which the contempt arose, were not set forth in the warrant" : Burdett v. Abbot (3 E.R. 1289). The Judges answered the question in the negative. Upon that Lord Eldon delivered his judgment with which the other members of the Court agreed, stating that the House of Commons had the power to commit by a general warrant. I am unable to hold that this case shows that Lord Eldon came to that conclusion because the House of Commons was a superior court. It seems to me that Lord Eldon thought that the House of Commons should be treated the same way as one superior court treated another and wanted to find out how the courts treated each other. I shall later show that this is the view which has been taken of Lord Eldon's decision in other cases. But I will now mention that if Lord Eldon had held that the House of Commons was a court, a constitutional lawyer of Anson's eminence would not have put the matter in the way that I have just read from his work.

Then I come to the case of Stockdale v. Hansard (112 E.R. 1112). That case was heard by Lord Denman C.J., Littledale J., Patteson J. and Coleridge J. Lord Denman said,

> (p. 1168),
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> "Before I finally take leave of this head of the argument, I will dispose of the notion that the House of Commons is a separate Court, having exclusive jurisdiction over the subject-matter, on which, for that reason, its adjudication must be final. The argument placed the House herein on a level with the Spiritual Court and the Court of Admiralty. Adopting this analogy, it appears to me to destroy the defence attempted to the present action ..... we are now enquiring whether the subject-matter does fall within the jurisdiction of the House of Commons. It is contended that they can bring it within their jurisdiction by declaring it so. To this claim, as arising from their privileges, I have already stated my answer : it is perfectly clear that none of these Courts could give themselves jurisdiction by adjudging that they enjoy it."

Clearly Lord Denman did not proceed on the basis that the Commons was a court. In fact he refers to the right "as arising from this privilege." Then I find Littledale J. observing at p. 1174 : "But this proceeding in the House of Commons does not arise on adverse claims; there are no proceedings in the Court; there is no Judge to decide between the litigant parties making a declaration of what they say belongs to them." So Littledale J. also did not consider the Commons as a court. Then came Patteson J. who stated at p. 1185, "The House of Commons by itself is not the court of Parliament." Then again at p. 1185 he observes :

> "I deny that mere resolution of the House of Lords ..... would be binding upon the Courts of Law, ... much less can a resolution of the House of Commons, which is

> not a Court of Judicature for the decision of any question either of law or fact between litigant parties, except in regard to the election of its members, be binding upon the Courts of Law."
>
> Lastly I come to Coleridge J. He stated at p. 1196 : "But it is said that this and all other Courts of Law are inferior in dignity to the House of Commons, and that therefore it is impossible for us to review its decision. This argument appears to me founded on a misunderstanding of several particulars; first, in what sense it is that this Court is inferior to the House of Commons; next in what sense the House is a Court at all ...."
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> Then at p. 1196 he stated :
>
> "In truth, the House is not a Court of Law at all, in the sense in which that term can alone be properly applied here; neither originally, nor by appeal, can it decide a matter in litigation between two parties; it has no means of doing so; it claims no such power; powers of enquiry and of accusation it has, but it decides nothing judicially, excepts. As to them no question of degree arises between Courts;"

The observations of Coleridge J. are of special significance for the reasons hereafter to appear. It is obvious that neither Patteson J. nor Coleridge J. thought that the House of Commons was a Court or possessed any power as such.

Next in order of date is the case of the Sheriff of Middlesex (113 E.R. 419). Lord Denman, C.J. said at p. 426 :

> "Representative bodies must necessarily vindicate their authority by means of their own; and those means lie in the process of committal for contempt. This applies not to the Houses of Parliament only, but [as was observed in Burdett v. Abbot (14 East, 138)], to the Courts of Justice, which, as well as the Houses, must be liable to continual obstruction and insult if they were not entrusted with such powers. It is unnecessary to discuss the question whether each House of Parliament be or be not a Court; it is clear that they cannot exercise their proper functions without the power of protecting themselves against interference. The test of the authority of the House of Commons in this respect, submitted by Lord Eldon to the Judges in Burdett v. Abbot (5 Dow, 199) was whether, if the Court of Common Pleas had adjudged an act to be a contempt of Court, and committed for it, stating the adjudication generally, the Court of King's Bench, on a habeas corpus setting forth the warrant, would discharge the contempt were not stated. A negative answer being given, Lord Eldon, with the concurrence of Lord Erskine (who had before been adverse to the exercise of the jurisdiction), and without a dissentient voice from the House, affirmed the judgment below. And we must presume that what any Court, much more what either House of Parliament, acting on great legal authority, takes upon it to pronounce a contempt, is so."

This observation would support what I have said about the judgment of Lord Eldon in Burdett v. Abbot (3 E.R. 1289). Denman C.J. did not think that Lord Eldon considered the House of Commons to be a Court for the himself found it unnecessary to discuss that question. Then why he thought that the House of Commons must possess the right to commit by a general warrant was one of

expediency and of confidence in a body of that stature Coleridge J. observes at p. 427,

> "It appears by precedents that the House of Commons have been long in the habit of shaping their warrants in that manner. Their right to adjudicate in this general form in cases of contempt is not founded on privilege, but rests upon the same grounds on which this Court or the Court of Common Pleas might commit for a contempt without stating a cause in the commitment. Lord Eldon puts the case in this manner in Burdett v. Abbot (5 Dow, 165, 199)."

Great reliance is placed on this observation of Coleridge J. but I think that is due to a misconception. Coleridge J. at p. 427 expressly affirms all that had been said by him and the other Judges in Stockdale v. Hansard (112 E.R. 1112). As I have earlier shown, he had there said that "in truth, the House is not a Court of Law at all." Therefore when he said that the right to adjudicate in the general form was not founded on privilege, whatever he might have meant he did not mean that it was founded on the House of Commons being a court. I think want he meant was that it was a right which the House of Commons had to possess in order to discharge its duties properly and, therefore, not something conceded to it as a sign of honour and respect. He might also have meant that the power was not something peculiar to the House as it was also possessed by the courts for the same reason of expediency, and, therefore, it was not a privilege, a term which has been used in the sense of something which the Parliament Possessed and which exceeded those possessed by other bodies or individuals : Cf. May 42.

Then comes the case of Howard v. Gossett (116 E.R. 139). It will be enough to refer to the judgment of the Court of Exchequer Chamber in appeal which begins at p. 158. That judgment was delivered by Parke B. who observed at p. 171 :

> "the warrant of the Speaker is, in our opinion, valid so as to be a protection to the officer of the House, upon a principle which as it applies to the process and officers of every Superior Court, must surely be applicable to those of the High Court of Parliament and each branch of it."

Here again the House is treated as being entitled to the same respect as a superior court, but it is not being said that the House is a superior court.

Lastly, I come to Bradlaugh v. Gossett ((1884) L.R. 12 Q.B.D. 271) in which at p. 285 Stephen J. said, "The House of Commons is not a Court of justice." I am unable to see how these authorities can be said to hold that the power of the House of Commons to commit by a general warrant is possessed by it because it is a superior court.

It was then said that even if the right to commit by a general warrant cannot be said to have been possessed by the House of Commons because it was superior court, the observations in the cases on the subject, including those to which I have already referred, would establish that the right springs form some rule of comity of courts, or of presumptive evidence or form an agreement between the courts of law and the House or lastly form some concession made by the former the latter. I at once observe that these cases do not support the contention and no text-book has taken the view they do or that right is anything but privilege. The contention further seems to me to be clearly fallacious and overlooks the basic nature of privilege of the House of Commons. I have earlier stated the nature of the privilege but I will repeat it here. All privileges of the House of Commons are based on law. That law is knows as lex Parliamenti. Hence privilege are matters which the House of

Commons possesses as of right. In Stockdale v. Hansard (112 E.R. 1112) all the Judges held that the rights of the House of Commons are based on lex Parliamenti and that law like any other law, is a law of the land which the courts are entitled to administer.

Now if the privilege of committing by a general warrant is a right enforceable in law which belongs to the House of Commons, it cannot be a matter controlled by the rule of comity of courts. Comity of courts is only a self-imposed restraint. It is something which the court on its own chooses not to do. It is really not a rule of law at all. It creates no enforceable right. A 'right' to the privilege cannot be based on it. Besides there is no question of comity of courts unless there are two courts, each extending civility or consideration to the other. Here we have the House of Commons and the courts of law. The former is not a court and the latter needs no civility or consideration from the House for its proper functioning. Here there is no scope of applying any principle of comity of courts.

Next as to the privilege being really nothing more than a rule of presumption that a general warrant of the House of Commons imprisons a person legally, so that the question of the legality of the committal need not be examined by a court of law, I suppose it is said that this is a presumption which the law requires to be made. If it is not so, then the right of the House would depend on the indulgence of the judge concerned and, therefor, be no right at all. That cannot be, nor is it so. What then ? If it is a presumption of law, what is the law on which the presumption is a based ? None has been pointed out and so I know, none exists unless it be lex Parliamenti. Once that is said, it really becomes a matter of privilege for the lex Parliamenti would not create the presumption except for establishing a privilege. A right created by lex Parliamenti is a privilege. This I have earlier said in discussing the nature of privileges.

Lastly, has the right its origin in agreement between the House of Commons and the courts of law, or in a concession granted by the latter to the former ? This is novel argument. I have not known of any instance where a right, and therefore, the law on which it is based, is created by an agreement with courts. Courts do not create laws at all, least of all by agreement; they ascertain them and administer them. For the same reason, courts cannot create a law by concession. A court has no right to concede a question of law unless the law already exists. I find it impossible to imagine that any parliamentary privilege which creates an enforceable right could be brought into existence by agreement with courts or by a concession made by them.

Before I part with the present topic I will take the liberty of observing that it is not for us to start new ideas about the privileges of the House of Commons, ideas which had not ever been imagined in England. Our job is not to start an innovation as to privileges by our own researches. It would be unsafe to base these novel ideas on odd observations in the judgments in the English cases, torn out of their context and in judgments in the English cases, torn out of their context and in disregard of the purpose for which they were made. What I have quoted form these cases will at least make one pause and think that these cases can furnish no sure foundation for a novel theory as to the right of the House of Commons to commit by a general warrant. Researches into old English history are wholly out of place in the present context and what is more, are likely to lead to misconception. To base our conclusion as to lead to misconceptions. To base our conclusion as to the privileges on researches into antiquities, will furthermore be an erroneous procedure for the question is what the privileges of the House of Commons were recognised to be in 1950. Researches into the period when these privileges were taking shape can afford no answered only by ascertaining whether the right under discussion was treated as a privilege of the House of Commons by authoritative opinion in England in the years preceding 1950.

I then come to the conclusion that the right to commit for contempt by a general warrant with the consequent deprivation of jurisdiction of the courts of law to enquire into that committal is a privilege of the House of Commons. That privilege is, in my view, for the reasons earlier stated, possessed by the Uttar Pradesh Assembly by reasons of Art. 194(3) of the Constitution.

It is then said that even so that privilege of the Assembly can be exercised only subject to the fundamental right of a citizen guaranteed by the Constitution. That takes me to Sharma's case ([1959] Supp. 1 S.C.R. 806). As I read the judgment of the majority in that case, they seem to me to hold that the privileges of the House of Commons which were conferred on the House of a State Legislature by Art. 194(3), take precedence over fundamental rights. The facts were these. A House of the Bihar Legislature which also had made no law defining its privileges under Art. 194(3), had directed certain parts of its proceedings to be expunged but notwithstanding this the petitioner published a full account of the proceedings in his paper including what was expunged. A notice was thereupon issued to him by the House to show cause why steps should not be taken against him for breach of privileges of the House. The privilege claimed in that case was the right to prohibit publication of its proceedings. The petitioner, the Editor of the paper, then filed a petition under Art. 32 of the Constitution stating that the privilege did not control his fundamental right of freedom of speech under Art. 19(1)(a), and that, therefore, the House had no right to take proceedings against him. He also disputed that the House of Commons had the privilege which the Bihar Assembly claimed. The majority held that the House possessed the privilege to prohibit the publication of its proceedings and that privilege was not subject to the fundamental right of a citizen under Art. 19(1)(a). Subba Rao J., took a dissentient view and held that fundamental rights take precedence over privileges and also that the House did not possess the privilege of prohibiting the publication of its proceedings. With the latter question we are not concerned in the present case. In the result Sharma's ([1959] Supp. 1 S.C.R. 806) petition was dismissed.

On behalf of the High Court two points have been taken in regard to this case. It was first said that the majority judgment required reconsideration and then it was said that in any event, that judgment only held that the privilege there claimed took precedence over the fundamental right of the freedom of speech and not that any other privilege took precedence over fundamental rights. I am unable to accept either of these contentions.

On behalf of the Assembly it has been pointed out that in a reference under Art. 143 we have no jurisdiction to set aside an earlier decision of this Court, for we have to give our answers to the questions referred on the law as it stands and decision of this Court so long as it stands of course lays downs the law. I am unable to say that this contention is idle. It was said on behalf of the High Court that in In re. Delhi Laws Act ([1951] S.C.R. 747) a question arose whether a decision of the Federal Court which under our Constitution has the same authority as our decisions, was right. It may be argued that this case does not help, for the question posed, itself required the reconsideration of the earlier judgment. I do not propose to discuss this matter further, for I do not feel so strongly in favour of the contention of the Assembly that I should differ from the view of my learned brothers on this question.

I feel no doubt, however, that the majority judgment in Sharma's case ([1959] Supp 1 S.C.R. 806) was perfectly correct when it held that privileges were not subject to fundamental rights. I have earlier set out the first three clauses of Art. 194. The first clause was expressly made subject to the provisions of the Constitution - whatever the provisions contemplated were - while the third clause was not made so subject. Both the majority and the m minority judgments are agreed that the third clause cannot, therefore, be read as if it had been expressly made subject to the provisions of the

Constitution. For myself, I do not think that any that other reading is possible. Clause (3) of Art. 194 thus not having been expressly made subject to the other provision of the Constitution, how is a conflict between it and any other provisions of the Constitution which may be found to exist, to be resolved ? The majority held that the principle of harmonious construction has to be applied for reconciling the two and Art. 194(3) being a special provision must take precedence over the fundamental right mentioned in Art. 19(1)(a) which was a general provision : (p. 860). Though Subba Rao J. said that there was no inherent inconsistency between Art. 19(1)(a) and Art. 194(3), he nonetheless applied the rule of harmonious construction. He felt that since the legislature had a wide range of powers and privileges and those privileges can be exercised without infringing the fundamental rights, the privilege should yield to the fundamental right. This construction, he thought, gave full effect to both the articles : (pp. 880-1). With great respect to the learned Judge, I find it difficult to follow how this interpretation produced the result of both the articles having effect and thus achieving a harmonious construction.

Ex facie there is no conflict between Arts. 194(3) and 19(1)(a), for they deal with different matters. The former says that the State Legislatures shall have the powers and privileges of the English House of Commons while Art. 19(1)(a) states that every citizen shall have full freedom of speech. The conflict however comes to the surface when we consider the particular privileges claimed under Art. 194(3). When Art. 194(3) says that the State Legislatures shall have certain privileges, it really incorporates those privileges in itself. Therefore, the proper reading of Art. 194(3) is that it provides that the State Legislatures have, amongst other privileges, the privilege to prohibit publication of its proceedings. It is only then that the conflict between Arts. 194(3) and 19(1)(a) can be seen; one restricts a right to publish something while the other says all things may be published. I believe that is how the articles were read in Sharma's case ([1959] Supp. 1 S.C.R. 806) by all the Judges. If they had not done that, there would have been no question of a conflict between the two provisions or of reconciling them.

> Now if Art. 19(1)(a) is to have precedence, then a citizen has full liberty to publish whatever he likes; he can publish the proceedings in the House even though the House prohibited their publication. The result of that reading however is to wipe out that part of Art. 194(3) which said that the State Legislatures shall have power and privilege to prohibit publication of their proceedings. That can hardly be described as harmonious reading of the provisions, a reading which gives effect to both provisions. It is a reading which gives effect to one of the provisions and treats the other as if it did not exist.
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> It is true that if Art. 19(1)(a) prevailed, it would not wipe out all the other privileges of the House of Commons which had to be read in Art. 194(3). Thus the right of the House to exclude strangers remained intact even if the right to prohibit publication of proceedings was destroyed by Art. 19(1)(a). But this is to no purpose as there never was any conflict between the right to exclude strangers and the freedom of speech and no question of reconciling the two by the rule of harmonious construction arose. When one part of a provision alone is in conflict with another provision, the two are not reconciled by wiping out of the statute book the conflicting part and saying that the two provisions have thereby been harmonised because after such deletion the rest of the first and the whole of the second operate. We are concerned with harmonising two conflicting provisions by giving both the best effect possible and that is not done by cutting the gordian knot by removing the conflicting part out of the statute.

I agree that in view of the conflict between Art. 194(3) and Art. 19(1)(a), which arise in the manner earlier stated, it has to be resolved by harmonious construction. As I understand the principle, it is this. When the Legislature - here the Constitution - enacted both the provisions they intended both to have effect. If per chance it so happens that both cannot have full effect, then the intention of the legislature would be best served by giving the provisions that interpretation which would have the effect of giving both of them the most efficacy. This, I believe, is the principle behind the rule of harmonious construction. Applying that rule to Sharama's case ([1959] Supp. 1 S.C.R. 806), if the privilege claimed by the Legislature under Art. 194(3) of prohibiting publication of proceedings was given full effect, Art. 19(1)(a) would not be wiped out of the Constitution completely, the freedom of speech guaranteed by the last mentioned article would remain in force in respect of other matters. If, on the contrary Art. 19(1)(a) was to have full effect, that is to say, a citizen was to have liberty to say and publish anything he liked, then that part of Art. 194(3) which says that the House can prohibit publication of its proceedings is completely destroyed, it is as if it as if it had never been intended or be the proper reading of the Constitution. That to my mind, can hardly have been intended or be the proper reading of the Constitution. I would for these reasons say that the rule of harmonious construction supports the interpretation arrived at by the majority in Sharma's case ([1959] Supp. 1 S.C.R. 806).

SUBBA RAO J.

Gove another reason why he thought that fundamental rights should have precedence over the privileges of the Legislature and on this also learned counsel for the High Court relied in the present case. Subba Rao J. said that that part of Art. 194(3) under which the State Legislature claimed the same privilege as those of the House of Commons in English, which has been called the second part of this clause, was obviously a transitory provision because it was to have effect until the Legislature made a law defining the privileges as the Constitution-makers must have intended it to do. He added that if and when the Legislature made a law that would be subject to the fundamental rights and it would be strange if provisions which were transitory were read as being free of those rights. The majority in Sharma's case ([1959] Supp. 1 S.C.R. 806). no doubt said without any discussion that the law made under Art. 194(3) would be subject to all fundamental right. Learned advocate for the Assembly however contended before us that that view was not justified. In the present case it seems to me it makes no difference whatever view is taken. Assume that the law made by a Legislature defining its privileges has to be subject to fundamental rights. But that will be so only because Art. 13 says so. Really the law made under Art. 194(3) is not to be read as subject to fundamental rights; the position is that if that law is in conflict with any fundamental right, it is as goods as not made at all. That is the effect of Art. 13. The argument that since the laws made under Art. 194(3) are subject to fundamental rights, so must the privileges conferred by the second part of cl. (3) be, is therefore based on a misconception. Article 13 makes a law bad if it conflicts with fundamental rights. It cannot be argued that since Art. 13 might make laws made under cl. (3) of Art. 194 void, the privileges conferred by the second part of that clause must also be void. Article 13 has no application to a provision in the Constitution itself. It governs only the laws made by a State Legislature which Art. 194(3) is not. Therefore, I do not see why it must be held that because a law defining privileges if made, would be void if in conflict with fundamental rights, the privileges incorporated in Art. 194(3) - I have already said that that is how the second part of Art 194(3) has to be read - must also have been intended to be subject to the fundamental rights. If such was the intention, cl. (3) would have started with a provision that it would be subject to the

Constitution. The fact that in cl. (1) the words 'subject to the provisions of this Constitution' occur while they are omitted form cl. (3) is a strong indication that the latter clause was not intended to be so subject. Furthermore, that could not have been the intention because then the privilege with which the present case is concerned, namely, to commit for contempt by a general warrant without the committal being subjected to the review of the court, would be wiped out of the Constitution for the fundamental right required that the legality of every deprivation of liberty would be examinable in courts.

It was also that fundamental rights are transcendental. I do not know what is meant by that. If they are transcendental that must have been because the Constitution made them so. The Constitution no doubt by Art. 13 makes laws made by the Legislatures subject to fundamental rights, but I do not know, nor has it been pointed out to us, in what other way the Constitution makes the fundamental rights transcendental. We are not entitled to read into the Constitution things which are not there. We are certainly not entitled to say that a specific provision in the Constitution is to have no effect only because it is in conflict with fundamental rights, or because the latter are from their nature, though not expressly made so, transcendental.

Then as to the second part of Art. 194(3) being transitory, that depends on what the intention of the Constitution - makers was. No doubt it was provided that when the law was made by the Legislature under the first part of Art. 194(3) the privileges of the House of Commons enjoyed under the latter part of that provision would cease to be available. But I do not see that it follows from this that the second part was transitory. There is nothing to show that the Constitution - makers intended that the Legislature should make its own law defining its privileges. The Constitution - makers had before them when they made the Constitution in 1950, more or less similar provisions in the Australian Constitution Act, 1901 and they were aware that during fifty years, laws had not been made in Australia defining the privileges of the Houses of the Legislatures there but the Houses had been content to carry on with the privileges of the House of Commons conferred on them by their Constitution. With this example before them I have no reason to think that our Constitution-makers, when they made a similar provision in our Constitution, desired that our Legislatures should make laws defining their own privileges and get rid of the privileges of the Houses of Commons conferred on them by the second part of Art. 194(3). I think it right also to state that even if the rights conferred by the second part of Art. 194(3) were transitory, that would not justify a reading the result of which would be to delete a part of it from the Constitution.

It is necessary to notice at this stage that in Ganupati Keshav Ram Reddy v. Nafisul Hassan (A.I.R. 1954 S.C. 636) his Court held the arrest of a citizen under the Speaker's order for breach of privilege of the Uttar Pradesh Assembly without producing him before a magistrate as required by Ar. 22(2) of the Constitution was a violation of the fundamental right mentioned there. Reddy's case (A.I.R. 1954 S.C. 636) states no reason in support of the view taken. Subba Rao J., though he noticed this, nonetheless felt bound by it. The majority did not do so observing that the decision there proceeded on a concession by counsel. In this Court learned Advocate for the High Court said that there was no concession in the earlier case. I notice that Das C.J., who delivered the judgment of the majority in Sharma's case ([1959] Supp 1 S.C.R. 806) was a member of the Bench which decided Reddy's case (A.I.R. 1954 S.C. 636). If the decision Reddy's case (A.I.R. 1954 S.C. 636) was not by concession at least in the sense that the learned advocate was unable to advance any argument to support the contention that privilege superseded fundament to support the contention that privilege superseded fundamental right, it would be strange that the point was not discussed in the judgment. However all this may be, in view of the fact that it does not seem from the judgment to have been contended in Reddy's case (A.I.R. 1954 S.C. 636) that the second part of Art. 194(3)

created privileges which took precedence over the fundamental rights, as the judgment does not state any reason in support of the view taken, for myself I have no difficulty in not following Reddy's case (A.I.R. 1954 S.C. 636) especially as the majority in Sharma's case ([1959] Supp. 1 S.C.R. 806) did not follow it.

It was also said that the privileges were only intended to make the Legislatures function smoothly and without obstruction. The main function of the Legislatures, it was pointed out, was the making of laws and the object of the privileges was to assist in the due discharge of that function. It was contended that if the laws made by a Legislature, for the making of which it primarily exists, are subject of fundamental rights, it is curious that something which is ancillary to that primary function should be free of them. I find nothing strange in this. Laws made by a Legislature are subject to fundamental rights because the Constitution says so. The privileges are not subject because they are conferred by the Constitution itself and have neither been made so subject nor found on a proper interpretation to be such.

I believe I have now discussed all the reasons advanced in support of the view that the majority decision in Sharma's case ([1959] Supp. 1 S.C.R. 806) war erroneous. As I have said, I am not persuaded that these reason are sound.

In R. K. Karanjia v. The Hon'ble Mr. M. Anantasayanam Ayyangar, Speaker, Lok Sabha (W.P. No. 221 of 1961 unreported), which was a petition under Art. 32 of the Constitution, a Bench of seven Judges of this Court was asked to reconsider the correctness of the majority decision in Sharma's case ([1959] Supp 1 S.C.R. 806) but it considered that decision to be correct and refused to admit the petition. This is another reason for holding that Sharma's case ([1859] Supp. 1 S.C.R. 806) as correctly decided.

I now come to the other contention concerning Sharma's case ([1859] Supp. 1 S.C.R. 806). it was said that all that the majority judgment held in that case was that the privilege of prohibiting publication of its proceedings conferred on a Legislature by the second part of cl. (3) of Art. 194 was not subject to the fundamental right of freedom of speech guaranteed by Art. 19(1)(a). It was pointed out that that case did not say that all the privileges under the second part of Art, 194(3) would take precedence over all fundamental rights. it was stressed that Das C.J. dealt with the argument advanced in that case that Art. 21 as the arrest would be according to procedure established by law because the arrest and detention would be according to rules of procedure framed by the House under Art. 208. It was contended that the majority therefore held that the fundamental right guaranteed by Art. 21 would take precedence over the privilege to commit.

This contention is also not acceptable to me. No doubt Sharma's case ([1859] Supp. 1 S.C.R. 806) was concerned with the concerned with the conflict between Art. 19(1)(a) and the privilege of the House under the second part of Art. 194(3) to prohibit publication of its proceedings and, therefore, it was unnecessary to refer to the other fundamental rights. The reason, however, which led the majority to hold that the conflict between the two had to be resolved by giving precedence to the privilege would be available the case of a conflict between many other privileges and many other fundamental rights. Now that reason was that the resolve the conflict, the rule of harmonious construction had to be applied and the result of that would be that fundamental rights, which in their nature were general, had to yield to the privileges which were special. The whole decision of the majority in that case was that when there was a conflict between a privileges which were special. The whole decision of majority in that case was that when there was a conflict between a privilege created by the second part of Art. 194(3) and a fundamental right, that conflict should be resolved

by harmonising the two. The decision would apply certainly to the conflict between the privilege of committal to prison for contempt by a general warrant without the validity of that warrant being reviewed by a court of law and the fundamental rights guaranteed by Arts. 21, 22 and 32. The majority judgment would be authority for holding that the conflict should be resolved by a harmonious construction. Indeed that was the view of the minority also. The difference was as to the actual construction.

Das C.J. no doubt said that there was no violation of Art. 21 in Sharma's case ([1959] Supp. 1 S.C.R. 806) because the deprivation of liberty was according to procedure established by law. That was to my mind, only an alternative reason, for he could have dealt with that point on the same reason on which he said that the fundamental right under Art. 19(1)(a) must yield to the privilege of the House to prohibit publication of its proceedings, namely, by the application of the rule of harmonious construction. He could have said by the same logic that he sued earlier, that the fundamental right guaranteed by Art. 21 was general and the privilege to detain by a general warrant was a special provision and must, therefore, prevail. I am unable to hold that by dealing with the argument based on Art. 21 in the manner he did, Das C.J. held that the fundamental right under Art. 21 took precedence over the privilege of committal by a general warrant which the Legislature possessed under the second part of cl. (3) of Art. 194. If he did so, then there would be no reason why he should have held that fundamental right of freedom of speech should yield to the House's privilege to stop publication of its proceedings. Another reason for saying that Das C.J. did not hold that Art. 21 took precedence over the privilege to commit by a general warrant is the fact that the held that Reddy's case ([1959] Supp. 1 S.C.R. 806) was wrongly decided. That case had held that Art. 22 have precedence, as Das C.J. must have held since he did not accept the correctness of Reddy's case (A.I.R. 1954 S.C. 636), no more could he have held that Art. 21 would have precedence over the privilege to commit for contempt.

Some reference was made to cls. (1) and (2) of Art. 194 to show that Sharma's case ([1959] Supp. 1 S.C.R. 806) decided that Art. 19(1)(a) alone had to yield to the privilege conferred by the second part of cl. (3) of Art. 194, but I do not think that the majority decision in Sharma's case ([1959] Supp. 1 S.C.R. 806) was at all based on those clauses, These clauses, it will be remembered, dealt with freedom of speech in the House. Das C.J., referred to them only because some arguments, to which it is unnecessary now to refer, had been advanced on the basis of these clauses for of showing that the privileges were subject to the fundamental right of freedom of speech. Both the minority and the majority judgments were unable to accept these arguments. Indeed the question in that case concerned the power to affect a citizen's freedom of speech outside the House and cls. (1) and (2) only deal with freedom of speech of a member in the House itself and with such freedom that case had nothing to do.

In this Court some discussion took place as to the meaning of the words "subject to the provisions of the Constitution" on cl. (1) of Art. 194, These words can, in my view, only refer to the provisions of the Constitution laying down the procedure to be observed in the House for otherwise cls. (1) and (2) will conflict with each other. I will now make a digression and state that learned advocate for the Assembly pointed out that in Art. 194 the Constitution makers treated the liberty of speech of a member differently by expressly providing for it in cls. (1) and (2) and by providing for other privileges, that is, privileges other than that of the freedom of speech in the House, in cl. (3). He said that the reason was that if the freedom of speech in the House was conferred by cl. (3) it would be controlled by law made by the legislature and then the party in power might conceivably destroy that freedom. The intention was that the freedom of speech in the House should be guaranteed by the Constitution itself so as to be beyond the reach of any impairment by any law made by the

legislature. I think that is the only reason why that freedom was treated separately in the Constitution in cls. (1) and (2) of Art. 194. Therefore those clauses have nothing to do with the case in hand. Nor had they anything to do with decision in Sharma's case. The result is that in my judgment Sharma's case covers the present case and cannot be distinguished from it.

For the reasons earlier stated I come to the conclusion that when there is a conflict between a privilege conferred on a House by the second part of Art. 194(3) and a fundamental right, that conflict has to be resolved by harmonising the two provisions. It would be wrong to say that the fundamental right must have precedence over the privilege simply because it is a fundamental right or for any other reason. In the present case the conflict is between the privilege of the House to commit a person for contempt without that committal being liable to be examined by a court of law and the personal liberty of a citizen guaranteed by Art. 21 and the right to move the courts in enforcement of that right under Art. 32 or Art. 226. If the right to move the courts in enforcement of the fundamental right is given precedence, the privilege which provides that if a House commits a person by a general warrant that committal would not be reviewed by courts of law, will lose all its effect and it would be as if that privilege had not been granted to a House by the second part of Art. 194(3). This, in my view, cannot be. That being so, it would follow that when a House commits a person for contempt by a general warrant that person would have no right to approach the courts nor can the courts sit in judgment over such order of committal. It is not my intention to state that there may not be exceptions to the rule but I do not propose to enter into discussion of these exceptions, if any, in the present case. The existence of those exceptions may be supported by the observations of Lord Ellenborough C.J. in Burdett v. Abbot ((1811) 14 East I. 152 : 104 E.R. 501). May at p. 159 puts the matter thus : "Lord Ellenborough C.J., left open the possibility that cases might arise in which the courts would have to decide on me validity of a committal for contempt where the facts displayed in the return could by no reasonable interpretation be considered as a contempt."

I think I have now sufficiently discussed the law on the subject and may proceed to answer the questions stated in the order of reference.

Question No. 1. - Whether, on the facts and circumstances of the case, it was competent for the Lucknow Bench of the High Court of Uttar Pradesh, consisting of the Hon'ble Shri Justice N. U. Beg and the Hon'ble Shri Justice G. D. Sahgal, to entertain and deal with the petition of Shri Keshav Sing challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh for its contempt and for infringement of its privileges and to pass order releasing Shri Keshav Singh on bail pending the disposal of his said petition.

This question should, in my opinion, be answered in the affirmative. The Lucknow Bench was certainly competent to deal with habeas corpus petitions generally. The only point raised by the Assembly is that it has no jurisdiction to deal with such petitions when the detention complained of is under a general warrant issued by the speaker. But the Lucknow Bench had to find out whether the detention of Keshav Singh was by such a warrant before it could throw out the petition on the ground of want of jurisdiction. The petition did not show that the detention was under a general warrant. That would have appeared when the Speaker of the Assembly and the jailor who were respondents to the petition made their return. That stage had not come when the Lucknow Bench dealt with the petition and made orders on it. Till the Lucknow Bench was apprised of the fact that the detention complained of was under a general warrant, it had full competence to deal with the petition and make orders on it. It was said that the order for bail was illegal because in law release on bail is not permitted when imprisonment is for contempt. I do not think this is a fit occasion for deciding that question of law for even if the order for bail was not justifiable in law that would not

otherwise affect the competence of the Bench to make the order. I do not suppose this reference was intended to seek an answer on the question whether in a habeas corpus petition where the imprisonment is for contempt, the law permit a release on bail.

Question No. 2 - Whether, on the facts and circumstances of the case, Shri Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Shri B, Solomon, Advocate, by presenting the said petition and the said two Hon'ble Judges by entertaining and dealing with the said petition and ordering the release of Shri Keshav Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh.

The first thing I observe is that the question whether there is a contempt of the Assembly is for the Assembly to determine. If that determination does not state the facts, courts of law cannot review the legality of it. Having made that observation, I proceed to deal with the question.

The question should be answered in the negative. I suppose for an act to amount to contempt, it has not only to be illegal but also wilfully illegal. Now in the present case it does not appear that any of the person mentioned had any knowledge that the imprisonment was under a general warrant. That being so, I have no material to say that the presentation of the petition was an illegal act much less a wilfully illegal act. No contempt was, therefore, committed by the Hon'ble Judges or B. Solomon or Keshav Singh for the respective parts taken by them in connection with the petition.

Question No. 3. - Whether on the facts and circumstances of the case, it was competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon'ble Judges and Shri B. Solomon,

Advocate, before it in custody or to call for their explanation for its contempt;

It will be remembered that, according to the recitals, the resolution of March 21, 1964 which directed the production of the Hon'ble Judges in custody stated that they had committed contempt of the House by what they respectively did in connection with Keshav Singh's petition of March 19, 1964 and that the Assembly disputes that the resolution so provided. We have however to answer the question on the facts as stated in the order of reference and have no concern with what may be the correct facts. For one thing, it would not be competent for the Assembly to find the Hon'ble Judges and B. Solomon to be guilty of contempt without giving them a hearing. Secondly, in the present case I have already shown that they were not so guilty. That being so, it was not competent for the Assembly to direct their production in custody. It has to be noticed that in the present case the Assembly had directed the question of the privilege of the House to "cause persons to be brought in custody to the Bar to answer charges of contempt". See May p. 94. Furthermore, the Assembly had modified its resolution to have the Judges, Solomon and Keshav Singh brought under custody and asked only for explanation from the Hon'ble Judges and B. Solomon for their conduct. Therefore, strictly specking, the question as to bringing them in custody before the House does not arise on the facts of the case.

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

Question No. 4. - Whether, on the facts and circumstances of the case, it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two

Hon'ble Judges and Shri B. Solomon, Advocate and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other Respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly;

I would answer the question in the affirmative. The Full Bench had before it petitions by the two Judges and B. Solomon complaining of the resolution of the Assembly finding them guilty of contempt. I have earlier stated that on the facts of this case, they cannot be said to have been so guilty. It would follow that the Full Bench had the power to pass the interim orders that it did.

Question No. 5. - Whether a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt or for infringement of its privileges and immunities or who passes any order on such petition commits contempt of the said Legislature and whether the said Legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities.

This is too general a question and is not capable of a single answer; the answers would vary as the circumstances vary, and it is not possible to imagine all the sets of circumstances. Nor do I think we are called upon to do so. As learned advocates for the parties said, this question to be answered on the facts of this case. On those facts the question has to be answered in the negative.

I propose now to refer to an aspect of the case on which a great deal of arguments had been addressed at the bar. That concerns the liability of a Judge for contempt. If I am right in what I have said earlier, a Judge has no jurisdiction to interfere with a commitment by a House under a general warrant. If he makes an order which interferes with such a commitment, his action would be without jurisdiction. It would then be a nullity. Any officer executing that order would be interfering with the committal by the House and such interference would be illegal because the order is without jurisdiction and hence a nullity. If the House proceeded against him in contempt, a Court of Law could not, in any event, have given him any relief based on that order. It may be that the Judge by making such an order would be committing contempt of the House for by it he would be interfering with the order of the House illegally and wholly without jurisdiction. The question however to which I wish now to refer is whether the judge, assuming that he has committed contempt, can be made liable for it by the House. In other words, the question is, has the Judge immunity against action by the House for contempt committed by him ? If his order was legal, then, of course, he would not leave committed contempt and question of immunity for him would not arise.

It was said on behalf of the High Court that even assuming that a Judge can commit contempt of a House, he has fully immunity. This was put first on the scheme of the Constitution which, it was said, favoured complete judicial independence. It was next point out that under our Constitution Judges cannot be removed from office except by the process of impeachment under Art. 124(4), that is, by the order of the President upon an address by each House of Parliament supported by a certain majority. Reliance was then placed on Art. 211 of the Constitution which prohibits discussion in the Legislature of the conduct of a Judge in the discharge of his duties and it was said that this indicated that a Judge cannot be liable for contempt, because to make him so liable his duties and it was said that this indicated that a Judge cannot be liable for contempt, because to make him so liable his conduct was to be discussed. It was however conceded that Art. 211 did not give an enforceable right in view of Art. 194(2) but it was said to indicate the intention of the Constitution-makers that a Judge is to be immune from liability for contempt for the Assembly.

The correctness of these contentions was challenged on behalf of the Assembly. With regard to the point of judicial independence, it was said that it would hardly have been intended that a Judge should have immunity even though he deliberately committed contempt of a House. It was pointed out that the contempt would be deliberate, because the Judge would know that in the case of a general warrant he had no jurisdiction to proceed further.

As regards the argument based on the irremovability of Judges except in the manner provided, it was said that that had nothing to do with immunity for contempt. It was pointed out that the Constitution provided for State autonomy and it could not have been intended that when a Judge committed contempt of a State Legislature, the only remedy of that body would be to approach the Central Parliament with a request to take steps for the removal of the Judge. That would also seriously impair the dignity of the State Legislature. The grant of relief in such a case would be unlikely to be obtained particularly when the parties in power in the State and the Centre, were as might happen, different. The irremovability of the Judges was not, it was said, intended to protect their deliberate wrongful act but only to secure their independence against illegal interference from powerful influences. It was argued that the immunity of a Judge would also put the officers of the court who would be bound to execute all his orders, in a helpless and precarious condition, for they have to carry out even illegal orders of the Judges and thereby expose themselves to the risk of punishment legitimately imposed by an Assembly. It was lastly said that if independence of the Judges was necessary for the good of the country, so was the independence of the Legislatures.

In regard to Art. 211, it was observed that it did not at all indicate an intention that the Judges would not be liable for contempt committed by themselves. Its main object, it was contended, was to permit the freedom of speech guaranteed by Art. 194(1) to be restrained in a certain manner. Furthermore, it was pointed out that Art. 211 would not bar a discussion unless it was first decided that that discussion related to the conduct of a Judge in the discharge of his duties, a decision which would often be difficult to make and in any case the decision of the House would not be open to question in a court of law, for it is Legislature has obtained under Art. 194(3) that it has absolute control of its internal proceedings : (see Bradlaugh v. Gosset). On all these grounds it was contended that our Constitution did not confer any immunity on a Judge for an admitted contempt committed by him. It was pointed out that in England judicial officers, including Judges of superior courts, did not have that immunity and reference was made to Jay v. Topham (12 Howell's State Trials 821) and case of Brass Crossby (19 Howell's State Trials 1138).

I am not sure that I have set out all the arguments on this question but what I have said will give a fair idea of the competing contentions. For the purpose of this case, I do not think it necessary to go into the merits of those contentions. The questions that arise on the facts of the reference can, in my view, be answered without pronouncing on the question of immunity of Judges. It is often much better that theoretical disputes should be allowed to lie buried in learned tracts and not be permitted to soil our daily lives. It would not require much strain to avoid in practice circumstances which give rise to those disputes. In England they have done so and there is no reason why in our country also that would not happen. I strongly feel that it would serve the interest of our country much better not to answer this question especially as it has really not arisen. I do hope that it will never arise.

I think it right to mention that Mr. Verma appearing for the Advocate-General of Bihar raised a point that this reference was incompetent or at least should not be answered. He said that a reference can be made by the President only when he needed the advice of this Court with regard to difficulties that he might feel in the discharge of his duties. Mr. Verma's contention was that the questions in the reference related to matters which did not concern the President at all. He said that

the advice given by us on this reference will not solve any difficulty with which the President may be faced. On the other side, it was contended that the President might consider the amendment of the Constitution in the light of the answers that he might receive from this Court. Mr. Verma replied to this answer to his argument by saying that it was not for the President to consider amendments of the Constitution and that it was not the object of Art. 143 that this Court should be consulted for the purpose of initiating legislation. I am unable to say that Mr. Verma's contention is wholly unfounded but I do not propose to express an opinion on that question in the present case.

Before I conclude, I must say that I feel extremely unhappy that the circumstances should have taken the turn that they did and that the reference to this Court by the President should have been rendered necessary. With a little more tact, restraint and consideration for others, the situation that has arisen could have been avoided. I feel no doubt that Beg and Sahgal JJ. would have dismissed the petition of March 19, 1964 after they had possession of the full facts. I regret that instead of showing that restraint which the occasion called for, particularly as the order of imprisonment challenged wise expressly stated to have been passed by a body of the stature of the Assembly for contempt shown to it, a precipitate action was taken. No doubt there was not much time for waiting but Keshav Singh could not force the hands of the Court by coming at the last moment. The result of the order of the Hon'ble Judges was to interfere with a perfectly legitimate action of the Assembly in a case where interference was not justifiable and was certainly avoidable. On the other hand, the Assembly could have also avoided the crisis by practicing restraint and not starting proceedings against the Judges at once. It might have kept in mind that the Judges had difficult duties to perform, that often they had to act on imperfect materials, and errors were, therefore, possible. It could have realised that when it placed the facts before the judges, its point of view would have been appreciated and appropriate orders made to undo what had been done in the absence of full materials. Such an action of the Assembly would have enhanced it stature and prestige and helped a harmonious working of the different organs of the State.

I wish to add that I am not one of those who feel that a Legislative Assembly cannot be trusted with an absolute power of committing for contempt. The Legislatures have by the Constitution been expressly entrusted with much more important things. During the fourteen years that the Constitution has been in operation, the Legislatures have not done anything to justify the view that they do not deserve to be trusted with power. I would point out that though Art. 211 is not enforceable, the Legislatures have shown an admirable spirit of restraint and have not even once in all these years discussed the conduct of Judges. We must not lose faith in our people, we must not think that the Legislatures would misuse the powers given to them by the Constitution or that safety lay only in judicial correction. Such correction may produce friction and cause more harm than good. In a modern State it is often necessary for the good of the country that parallel powers should exist in different authorities. It is not inevitable that such powers will clash. It would be defeatism to take the view that in our country men would not be available to work these powers smoothly and in the best interests of the people and without producing friction. I sincerely hope that what has happened will never happen again and our Constitution will be worked by the different organs of the State amicably, wisely, courageously and in the spirit in which the makers of the Constitution expected them to act.

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