Raj Narain Singh vs Atmaram Govind And Anr. on 7 May, 1953

Equivalent citations: AIR1954ALL319, AIR 1954 ALLAHABAD 319

JUDGMENT

Sapru, J.

1. This is an application under Article 226 of the Constitution. The applicant, Shri Raj Narain Singh, is a member of the U.P. Legislative Assembly having been returned on the Praja Socialist Party ticket which is the main opposition party in the Legislative Assembly. He has the distinction of being the parliamentary leader of that party and, as such, is the leader of the opposition. The opposite parties to this application are the Speaker of the Assembly, Shri A. G. Kher, and the Secretary, Shri Kailash Chandra Bhatnagar. The reliefs sought by the applicant are that this Court may be pleased (a) to declare that the resolution of the U.P. Legislative Assembly dated the 30th March 1953 is void on the ground of inconsistency with the provisions of part III of the Constitution, (b) to call for the records of the U.P. Legislative Assembly proceedings dated the 30th March 1953, the proceedings of the privileges Committee dated the 7th, 17th, 25th and the 26th March 1953 and quash the resolution dated the 30th March 1953, (c) to issue a suitable order, writ or direction asking the opposite parties to expunge the above-mentioned resolution of the said Assembly dated the 30th March 1953 from the proceedings of the U.P. Legislative Assembly and (d) to order the payment of costs to the petitioner.

2. I should have been disposed to reject this application on the simple ground that it is not competent to this Court, for reasons to be indicated hereafter, to grant the reliefs asked for, had it not been for the fact that the learned Advocate-General has made it clear that the opposite-parties do not wish to take their stand on the technical ground that the reliefs are not properly framed. Repeatedly this Court has emphasised that a party seeking relief under Article 226 of the Constitution should precisely state what writ, order or direction it is that he seeks for redressing a wrong which affects him personally. That the prayer for relief in this application has not been properly framed and does not clearly indicate the exact nature of the relief sought is not, indeed, denied by learned Counsel for the applicant. It is urged, however, that the writ jurisdiction being comparatively a new one so far as this Court is concerned and its practice being largely unfamiliar to the Lucknow Bench of the Court, we should not reject the application on the ground of the unsatisfactory nature of the prayer, if we are satisfied that the case is otherwise a fit one for granting some kind of relief. It is contended that we should look to the substance rather than to the form of the relief and that if that be done it will be found that what the applicant seeks is that the wrong done by a resolution which the applicant maintains was illegal and affected his rights as a member of the legislature should be redressed.

I would however, like to point out that the reliefs as they stand do not seek to enforce a personal right of the applicant which has been infringed. The applicant has merely asked for a declaratory

relief. No relief is claimed quashing any unjust punishment supposed to have been inflicted upon the applicant in violation of any fundamental right. Further, it will be observed that there is no prayer seeking for a relief restraining any authority from carrying out that punishment which has, indeed, exhausted itself. The point that I wish to make is that the relief as claimed has no relation to the rights of the petitioner. An application for a writ in the nature of mandamus or such like order or direction is not maintainable unless it has been filed by a person whose right is said to have been directly affected (see -- 'Indian Sugar Mills Association v. Secy. to Govt., Uttar Pradesh, Labour Department, Lucknow', AIR 1951 All 1 (FB) (A)).

3. It will be seen that the writ is directed against the Speaker of the U.P. Legislative Assembly and the Secretary of the said Assembly. Why Mr. Speaker and the Secretary have been impleaded has not been explained because, as far as I can see, no relief save relief (c), is sought against both or either of them. The relief really sought is against a resolution of the U.P. Legislative Assembly. There is no doubt, therefore, that the case is unique inasmuch as it impleads the Speaker and confuses him with the legislature. It is well known that no writ, direction or order restraining the Speaker from allowing a particular question to be discussed or interfering with the legislative processes of either house of the legislature or interfering with the freedom of discussion or expression of opinion in either house can be entertained. On this part of the case, I may quote Article 285 of Mr. Perris's Extraordinary Legal Remedies. It runs as follows:

> "Under the common law mandamus Is issued in the King's name to inferior Courts, officers, corporations or persons. Being in the King's name, it did not run to himself; 'nor did it run to Parliament', nor to the judiciary, except to such inferior Courts as the higher Courts had the power to review. Under our system of Government the executive power answers to that of the King, the legislative power takes the place of parliament, and the judicial power is vested in Courts established in accordance with the provisions of the Constitution. Where the force and effect of the common-law writ of mandamus, and its objects and purposes are unchanged, it follows that the writ never issues to the legislative branch of the Government. It is scarcely necessary to say, therefore, that under our form of Government, members of the legislative departments cannot be directly controlled in the exercise of their legislative powers by mandamus, or any other judicial process. Thus the legislature cannot be compelled to pass an act, even though the Constitution expressly commands it, nor be restrained from passing an Act, even though the Constitution expressly prohibits it. If it neglects or refuses to act, the responsibility is with the legislature alone."

It may further be mentioned that the resolution complained against was passed on the 30th March 1953 and its effects lasted for three days, i.e., till the 2nd April 1953 on which date the parliamentary punishment inflicted on the applicant exhausted itself. The writ was moved on the 2nd April 1953 and it is strange that in the writ application no relief either of an interim nature or of a substantive nature against the punishment inflicted was claimed. On the face of it, the writ does not seek to claim any personal relief but asks merely for a declaration of an academic nature regarding the validity of a resolution passed by the legislature. I may point out that in a recent Full Bench case of this Court, to which I was a party, it was held that the writ jurisdiction under Article 226 should not

be utilised for the purpose of granting merely declaratory reliefs.

It is well known that Professor Dicey calls what Lord Birkenhead would have designated controlled legislatures' non-sovereign legislatures which are not constituent but within certain limits legislative assemblies, (vide Dicey's Law of the Constitution, page 101). He points out that, while the Courts have the right to pronounce, and, indeed, are bound to pronounce, on the validity of any law passed by such legislatures, no judge or Court declares invalid or makes void a law or regulation unless in a particular case the Court before which the proceedings take place is called upon to consider by the party affected by it whether the Act or regulation or bye-law which has been broken is within the powers given to the legislature by the constitution making body (see Dicey's Law of Constitution, 9th Edn., pp. 100-102). Reference may also be made to Rule 1(2) of Chapter XXII of the Rules of this Court. That rule requires an application under Article 226 not only to see out in numbered paragraphs the grounds upon which the Court is asked to issue a direction, order or writ but also to specify in the prayer clearly, so far as circumstances permit, the exact nature of the relief sought.

Undoubtedly, the prayer for relief in this case has not been framed with due regard to the considerations to which attention has been drawn above. While inviting our attention to the defects in the prayer for relief, the learned Advocate General, however, stated that he did not want a decision on technical grounds alone as not only a question of the status and the dignity of the Speaker but also that of the legislature was involved. While we would have been justified in dismissing this application on the simple ground that the reliefs asked for were neither precisely nor intelligibly stated, I think that having regard to the importance of the case and the issue that it raises and the further fact that the procedure in regard to writ applications is not very well understood, even after the framing of the new High Court Rules, it is not desirable to rest our decision on technical grounds alone. With these preliminary observations, I shall now proceed with a narration of the facts which have led to the filing of the present application.

4. The applicant Shri Raj Narain, as has been stated before, is a member of the U.P. Legislative Assembly and was returned on the Praja Socialist Party ticket. He is the leader of the Praja Socialist Party which is the chief opposition party in the House. In that capacity he has the distinction of functioning as the leader of the opposition party. On the 4th March 1953, after question hour, Shri Raj Narain requested the Chair to allow him to move a motion for adjournment of the House to discuss a matter of urgent public importance, namely the forcible removal by the police of three teachers who were on hunger-strike from the semi-circle opposite the Council House. According to the affidavit which has been filed in support of the application, the applicant had arrived in Lucknow from Banaras on the morning that very day. On his way to his residence at Darul-shafa quarters he saw the police encamped at the place previously occupied by the hunger-striking teachers. On enquiry he was reliably informed that they had been forcibly removed.

Shri Raj Narain Singh thereafter contacted the Speaker on the telephone in order to obtain his consent to move the adjournment motion referred to before that day in the U.P. Assembly. He was advised by the Speaker to contact the Treasury Benches. He was unable to contact on the telephone the Leader of the House. He, however, spoke on the telephone to the Government Chief Whip who promised to consult the Leader of the House and intimate to him his reactions. He was" not,

however, told what the Government attitude towards his adjournment motion would be prior to his actually moving for leave to move the adjournment of the House to discuss that question. It would seem that prior to the discussion relating to the adjournment motion, Shri Narain Dutt Tiwari, a member of the Praja Socialist Party, also saw the Speaker in his chambers along with the applicant. He requested him to allow him to move for the suspension under Rule 221 of Rule 71(3) of the Rules of Procedure of the Assembly requiring before an adjournment motion is allowed 1/12th of the total number of members of the house to rise in support of the adjournment motion, where objection to its discussion is raised.

5. After question hour on that day, Shri Raj Narain Singh was allowed by the Speaker to make a short statement about the matter & to ask for leave of the House to move his adjournment motion. The applicant thereafter rose in his seat and after a short statement asked for the leave of the House. Objection to leave being granted was taken by the Minister for Home Affairs, Shri Sampurnanand. On that being done, the Speaker asked the members who were prepared to support the motion to rise in their places so that he might be able to find out if the requisite number of thirty-six members was there to support the motion for leave. At that stage there was an intervention by another member, Shri Narain Dutt Tiwari. He requested the Speaker to give his consent under Rule 221 to enable him to move the suspension of Rule 71 (3). Rule 71 (3) requires that at least one-twelfth of the total number of the House, i.e., 36 members must rise in support of the motion for leave before such a motion can be considered if objection is taken by any member to its being taken up. The Speaker was not prepared to allow a consideration of the question of suspension of the rule under Rule 221 as it was a day fixed for the voting of the demands. An assurance was, however, given by the Speaker that permission to move the motion for the suspension of the rule would be given by him at 5 O'clock in the evening.

Meanwhile, he asked the members supporting the motion for leave to discuss the motion to rise in their places. The applicant thereafter requested the Speaker to take up the motion of Shri N. D. Tiwari first as his motion would become infructuous if the permission to suspend the rule was not given then and there. This the Speaker was not prepared to do. The applicant was, however, insistent that the decision on the question of the motion of Shri Narain Dutt Tiwari should be given in accordance with their desire as the party of which he was the leader had only twenty-two members and could not get thirty-six members to rise in their seats. The Speaker pointed out that it was not possible for him to comply with his request as it was a day fixed for voting demands. He further directed the applicant not to obstruct the business of the House and observed that he could not understand how he would be able to get a majority to support his motion if he could not get the support of even 36 members to rise in support of his motion for leave.

The applicant again made a request with folded hands for the immediate consideration of the motion for the suspension of the rule but it was not granted by the Speaker. On about three occasions, the applicant was asked by the Speaker to sit down; but, as he was not prepared to take notice of even the points of order raised, the Speaker asked him to withdraw from the House. The applicant did not comply with that direction. Thereafter the Speaker drew the attention of the House to the defiant attitude adopted by the applicant and ordered the police to remove him from the Assembly Hall by using the minimum amount of force necessary for that purpose. On being so

ordered, the police forcibly removed the applicant by bodily lifting him from the Assembly Hall, he having squatted on the floor of the House. Similar scenes happened in the case of two other members, namely. Shri Ram Narain Tripathi and Shri Jagannath Mal. They were both ejected forcibly from the Hall. It may be mentioned that, while Shri Jagannath Mal used language which cast reflection on the impartiality of the Chair, there was at that time no allegation that the applicant had used any language attributing any bias to the chair.

6. After Shri Raj Narain Singh and Shri Ram Narain Tripathi had been removed from the House, the Speaker drew the attention of the House to the intransigent attitude that they had adopted and observed that, in his opinion, their conduct constituted a breach of the privileges of the House. He did not think that the incident should be ignored. He referred the matter to the Committee of Privileges and suggested that the Committee should examine and Investigate and report on the conduct of the members against whom action had been taken in the interests of order. The privileges Committee met on the 7th, 17th, 24th and 26th March 1953 and submitted its report. On the 17th March the applicant was called upon by it to state whether he was guilty of a breach of privilege of the House. He denied that he had been guilty of any breach. It may be added that according to the applicant it turned down his request to be represented by Counsel. It may also be mentioned that according to the applicant no charges were supplied to him even on his asking for them. The committee was not, however, unanimous in regard to the recommendation for action to be taken against the intransigent members, there being majority and minority reports. On the recommendation of the Privileges Committee, the following resolution was, however, passed after discussion by the House:

> "That this House accepts the report of the Privileges Committee on the question of breach of Privileges, by Sarvashri Raj Narain, Ram Narain Tripathi, and Jagannath Mal & resolves that Sarvashri Raj Narain, Ram Narain Tripathi and Jagannath Mal are guilty of breach of privileges of this august House and suspends Shri Raj Narain until the adjournment of the present sitting and Shri Jagannath Mal until the prorogation of this session from the services of the House and taking into consideration the statement of Shri Ram Narain Tripathi which he had made in the House today does not deem it fit to pass any orders in his case."

7. It is contended by learned Counsel for the applicant that this resolution is void and the order passed upon it unconstitutional and should be declared to be so as the effect of it is to inflict a punishment for the second time upon his client for an offence for which he had been punished previously by the Speaker as the President of the House. It is contended that a resolution relating to privileges has the effect of or force of law and is in any case subject to the provisions of Article 20(2) of the Constitution which rules out a second punishment for an offence for which a person has been prosecuted and punished. It is further argued that the reference to the Committee of Privileges by the Speaker of a matter which could be dealt with by the standing orders or rules of the House was wrong and contrary to established Parliamentary practice. It constituted, indeed, the creation of a new privilege for the House.

8. Our attention was drawn by learned Counsel for both the parties to the proceedings of the House as recorded in the Legislative Assembly proceedings. They were placed before us for our perusal, having, been made part of the record of the case by the counter-affidavit which has been filed by the Secretary of the House, Shri Kailash Chandra Bhatnagar. Personally I strongly hold that it is not open to us to look into those proceedings. In regard to this matter, I am reminded of the famous observations of Lord Coleridge, C. J. in -- 'Bradlaugh v. Gossett', (1884) 12 QBD 271 (B) at p. 275--

> "What is said or done within the walls of Parliament cannot be inquired into a Court of law. On this point all the Judges in the two great cases which exhaust the learning on the subject -- 'Burdett, v. Abhott', (1811) 14 East 1, at p. 148 (C) and -- 'Stockdale v. Hansard', (1839) 9 Ad and E 1 (D) -- are agreed, and are emphatic. The Jurisdiction of the Houses over their own members, their right to Impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellen-borough, 'They would sink into utter contempt and inefficiency without it. (1811) 14 East 1 at p. 152' (C)."

The facts which have been narrated by me are based upon the affidavits and have not been taken from the proceedings, but I have considered it necessary to state them as fully as I could as they are essential for an understanding of the points and issues which have been raised and the arguments which have been advanced in this case. I am well aware of the observations of Sir Maurice Gwyer, C. J. in --'in the matter of the Central Provinces and Berar Sales of Motor ispirit and Lubricants Taxation Act, 1938', AIR 1939 PC 1 (E), regarding the relevance for historical purposes, in constitutional cases of parliamentary paper such as, for example, the Proposals for Indian constitutional reform commonly known as the White Paper and the Report of the Joint Select Committee thereon but it may be said that while that learned Chief Justice was prepared to refer to the item of the appearance of taxes on the sale of commodities and on turnover in those papers as constituting the source of the legislation, he was considering, he did not look into the proceedings or debates of Parliament to see why a different formula was accepted. Thus the purposes for which parliamentary papers can be referred to if at all, are of a limited character. I may say with profound respect that the view I am taking is not inconsistent with that which commended itself to Gwyer C. J. or the Supreme Court in its recent judgments.

9. Before considering the various arguments which have been advanced in this case, it would seem necessary to understand clearly the law relating to what is called 'the privileges of Parliament'. "Nothing" says Prof. Dicey in his introduction to the study of the law of Constitution at page 58 (footnote), "is harder to define than the extent of the indefinite powers or rights possessed by either house of Parliament under the head of privilege or law and custom of Parliament." Parliamentary privilege is a difficult theme for precise legal definition. As is well, known Parliamentary privilege in Britain has a long and eventful history. The position, as it has crystallised itself after a series of conflicts between the Crown and the House of Commons, the House of Lords and the House of Commons and the Courts and the House of Commons, is that the British House of Commons possessed, at the commencement of our Constitution extensive privileges which will be found stated at p. 61 by Keith in his edition of Ridge's Constitutional Law of England. They are enjoyed by most democratic legislatures which look to it for inspiration and their members individually. They are regarded as essential for the adequate performance of the high and multifarious functions assigned

to the Houses--functions which as a part of a sovereign legislature naturally exceed those possessed by other bodies or individuals. Parliamentary privilege is, indeed, to use the language of Redlich, quoted by May in his Parliamentary Practice (at p. 41):

> "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."

Though the Houses have never expressly given up the claim that they and they alone can interpret and determine the extent and limits of their privileges, the position that the Courts have taken consistently is that it is for each House, unless Parliament decrees otherwise by law to determine the limits of the privileges of each House, while allowing each of them within those limits exclusive jurisdiction. The reasons for the importance attaching to privileges of Parliament are not far to seek. In order that a free competition of ideas in regard to the various matters the legislature has to deal with, including a ventilation of grievances through examination of legislative proposals or a reasonable scrutiny of administrative acts, might be effectively possible it is vitally necessary that not only should a member of the legislature not have the fear that he can be penalised for anything that is said or done within the four walls of the legislature, but also that each House should itself have complete control over its proceedings and internal affairs. Thus it is a truism to say that the right to regulate its own procedure and, indeed, its internal affairs is indispensable for the effective functioning of a democratic legislature. Without it, democratic legislatures would not only be impotent to perform the high functions entrusted to them but also not command the respect and prestige with which they should be looked upto by the people for whom they make laws.

10. It follows from what I have said, that the distinctive mark of a privilege is, as May put it, its 'ancillary character'. They are rights which a sovereign legislature must possess for the due execution of its powers. Some of them are enjoyed by individual members for the obvious reason that the House cannot perform its functions without an unimpeded use of their services and others by each House for the protection of its members and the vindication of its own authority, prestige, power and dignity. Writers on the British Constitution point out that the distinction between privilege and functions is not always apparent, e.g., the Commons have certain exclusive financial rights. The more convenient course, therefore, is, as pointed out by May, to reserve the term 'privilege' to certain fundamental rights of each House which are generally accepted as essential for the exercise of its constitutional functions.

That being the position, a breach of privilege occurs when any of the rights and immunities either of the members individually or of the Assembly in its collective capacity which are known by the general name of privileges are disregarded or attacked by any individual or authority. An offence of the nature described above is called a breach of privilege and is punishable under the general law of Parliament. It is commonsense that a Legislative Assembly would not be able to discharge the high functions entrusted to it properly, if it had no power to punish offenders against breaches of its privileges, to impose disciplinary regulations upon its members or to enforce obedience to its commands. It took centuries for the simple principle to be firmly established in Britain. I think I would be correct in saying that by the time of Coke at the end of the 16th century the principle had

got firmly established that a matter concerning either House of Parliament must be decided by the House to which it relates and not elsewhere.

11. It must be borne in mind that each House exercises its own privileges without any reference to or dependence on the other. This enjoyment is due, as May points out, at page ..... not to any separate right peculiar to each but solely by virtue of the law and custom of Parliament. Thus both Houses possess privileges, though they are not exactly similar in nature. They are declared, explained and interpreted by each House; their violations or breaches are adjudged and censured by each; but still it is the law of Parliament that is thus administered. While, to repeat what has been said already, neither House has ever expressly renounced the claim not only to be the judge of the breach of its own privileges but of their very existence or limits, the courts have nevertheless consistently taken the view that neither House of Parliament has power by any vote, resolution or declaration to create for themselves new privileges not justified by the known laws and customs of Parliament.

Reference may be made here to Article 9 of the Bill of Rights (1688) which confirmed the long standing claim of each House of Parliament to exclude all outside interference within its four walls. That great document lays down :

> 'that freedom of speech and debate or proceedings in Parliament cannot be impeached or questioned in any Court or place outside Parliament.' I have mentioned all this to indicate clearly that each House in Britain possesses, (a) the right of being the exclusive judge of the legality of its own proceedings, (b) the right to punish its own members for their conduct in Parliament and (c) the right to settle its own proceedings. It is settled law that the House of Commons is not responsible to any external authority for following the rules it lays down for itself for the transaction of its own business. It is open to the House to depart from them at its own discretion. Even where the procedure of the House or the right of its members to take part in its proceedings is dependent on statute -- and this is important -- the House is immune from scrutiny by courts as to the manner in which it interprets them. It follows from this that for such purposes the House can practically change or 'supersede the law. For the principles enunciated above reference may be made to the following cases: 'Paty's case', (1704) 24 D Rayn 1105 (F); (1811) 14 East 1 at p. 145 (C); (1839) 9 Ad & E 1 at p. 14 (D). -- 'Sheriff of Middlex's case', (1840) 11 Ad & E 273 (G) and (1884) 12 QBD 271 (B).

I may be permitted to draw particular attention to the observations of Lord Denman that "Whatever is said or done within the walls of either Assembly must pass without question in any other place";

of Littledale J. that "It is said that the House of Commons is the sole judge of its privileges; and so I admit as far as the proceedings in the House and some other things are concerned."

of Patteson J. that "Beyond all dispute it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere."

and of Coleridge J. that "The House should have exclusive jurisdiction to regulate the course of its proceedings and animadvert upon any conduct there in violation of its rights or derogation from its dignity, stands upon the clearest grounds of necessity, (see -- '(1839) 9 Ad and E 1 (D))."

In saying all this, I do not mean to suggest that a resolution of the House of Commons relating to a new privilege cannot in some extreme cases be declared at the instance of a party affected by it to be of no effect. But the position is inescapable, to use the language or Lord Coleridge, C. J., in -- '(1884) 12 QBD 271 (B)', that:

> "if the House of Commons is,--as for certain purposes and in relation to certain persons it certainly is, and is on all hands admitted to be,--the absolute judge of its own privileges, it is obvious that it can, at least for those purposes and in relation to those persons, practically change or practically supersede the law."

12. I have considered it desirable to state the law relating to privileges before grappling with the questions which this case raises as I think that much of the argument in this case on behalf of the applicant is based upon the assumption that an erroneous decision by Mr. Speaker or the House in respect of a breach of privilege can be the subject-matter of scrutiny by a Court of law. There is nothing startling in the proposition that finality attaches where under cover of it no new privilege is created by the House to a decision of the House in respect of a matter relating to its privileges. On this part of the case, I may quote the observations of Stephen J. in -- 'Bradlaugh v. Gossett (B)', referred to above. They are to the following effect:

> "It would, as I have already said, be wrong for us to suggest or assume that the House acted otherwise then in accordance with its own view of the law; and, as we know not what that view is, nor by what arguments it is supported, we can give no opinion upon it. I do not say that the resolution of the House is the judgment of a Court not subject to our revision; but it has much in common with such a judgment. The House of Commons is not a Court of justice; but the effect of its privilege to regulate its own internal concerns practically invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. We must presume that it discharges this function properly and with due regard to the laws, in the making of which it has so great a share. If its determination is not in accordance with law, this resembles the case of an error by a judge whose decision is not subject to appeal. There is nothing startling in the recognition of the fact that such an error is possible. If, for instance, a jury in a criminal case give a perverse verdict, the law has provided no remedy. The. maxim that there is no wrong without a remedy does not mean, as it is sometimes supposed, that there is a legal remedy for every moral or political wrong. If this were its meaning, it would be manifestly untrue. There is no legal remedy for the breach of a solemn promise not under seal and made without consideration; nor for many kinds of verbal slander, though each may involve utter ruin: nor for oppressive legislation, though it may reduce men practically to slavery; nor for the worst damage to person and property inflicted by the most unjust and cruel war. The maxim means only that legal wrong and legal remedy are correlative

> terms; and it would be more intelligibly and correctly stated, if it were reserved, so as to stand, 'Where there is no legal remedy, there is no legal wrong."

I may also, before parting with this part of the case, refer to a comparatively recent judgment in -- 'Rex v. Graham-Campbell', (1935) 1 KB 594 (H). That case which related to the sale of liquor in the precincts of the house of Commons without a licence goes to the extreme length of holding that no Court of law has jurisdiction to interfere with the management in the refreshment Department of the House as mat was a matter which fell within the internal affairs of the House. 'Bradlaugh's case (B)' was, as is well-known, of a duly elected member entitled to take the oath by law prescribed to be taken by the members of the House of Commons being refused to do so by the Speaker who directed the serjeant at arms to exclude him by actual force from the House until he should engage not further to disturb its proceedings. These cases forcibly illustrate the complete degree of internal autonomy which the House of Commons enjoys in a matter relating to its internal affairs. On this part of the case, see Holdworth's History of English Law, Vol. 10, pp. 539-550; Anson's Law and Custom of the Constitution. Vol. 4 (Parliament pages 151-178 also Vol. 6, pp. 268-273 of the Constitution; Keir and Lawson's cases on constitutional law, p. 72.)

13. On the question whether it was wise and statesmanlike to pursue the matter after Shri Raj Narain Singh had been ejected from the House it would be improper for me to express any opinion. Obviously, this Court is not, in any sense whatever a Court of appeal or revision against the legislature or against the rulings of the Speaker who, as the holder of an office of the highest distinction, has the sole responsibility cast upon him of maintaining the prestige and dignity of the House. Parliamentary government requires for its successful working a spirit of reasonableness and accommodation on the part of those, whether belonging to a majority or minority party, who have been elected by the people to be their chosen representatives in our legislatures. A perusal of Article 121 would show that the founding fathers have protected Judges from criticism in Parliament by laying down that there shall, except on a motion of misbehaviour, be no discussion in Parliament on the conduct of any Judge or Court of law having jurisdiction in any part of India in the exercise of his or its judicial functions.

Rule 32 of the Rules of Procedure of the U.P. Legislative Assembly relating to the form and content of questions lays down in Clause (10) that there shall be in the House no reference to the conduct of any Judge or Court of law having jurisdiction in any part of India in the exercise of his or its Judicial functions. Rule 79 lays down, as one of the conditions of the admissibility of the resolution, that a resolution shall not relate to any matter which is under adjudication by a Court of law having jurisdiction in any part of India. It is right and proper that judicial authorities should be free from criticism so far as their judicial work is concerned in the State legislature or Parliament. Correct ettiquette therefore requires that the judiciary on its part too should refrain from comments in regard to a matter which was exclusively within the jurisdiction and authority of the Speaker and the State legislature. For this reason, I think it undesirable that I should express any opinion on the controversy which led to the unfortunate incident and the mode in which it was dealt with by the Speaker and the State Assembly.

I may say that the basis of the argument of earned Counsel for the applicant is that the speaker had no authority to refer, in view of the well established practice in British Parliament, matters which can be dealt with under the standing orders to the Committee of Privileges. (See May's Parliamentary Practice at page 437). The basis of Mr. Iqbal Ahmad's argument is that the reference to the Committee of Privileges was wrong and consequently the resolution based thereon was also void in so far as it affects the applicant.

14. I have endeavoured to state what the present position in regard to the law relating to privileges of the British House of Commons is as Article 194 declares that the Privileges of each House of the State Legislature and the members thereof shall be, save in respect of matters specified in Clauses 1 and 2 of Article 194, the same as those enjoyed by the British House of Commons and its members. The broad facts on which the learned argument advanced to this Court by Shri Iqbal Ahmad is based have been stated by me in an earlier part of this judgment. What he contends is that under the procedure as it obtains in the British House of Commons under Standing Orders 21 to 24, the Speaker has been invested, with the power to direct a member whose conduct is disorderly in the House, to withdraw from the House and such withdrawal has the effect of suspending him for the rest of the day's sitting.

Where, however, a member is guilty of a disorderly behaviour for a second time, or where the speaker thinks it desirable that a more severe notice should be taken of the member's conduct, the Speaker names the member, that is to say submits his conduct to the judgment of the House before the member actually leaves the house. The Speaker's naming of the Member is followed by a motion by the Leader of the House, or any other member acting on his behalf, suspending the member for periods the maximum of which is prescribed in the Standing Order. The motion made by the Leader is put to vote without any discussion, no amendment being allowed and when carried the member so named is forcibly made to leave the House, if he offers any opposition, with the minimum of force necessary for the purpose. Matters so dealt with are not referred to the Committee of Privileges. Shri Iqbal Ahmad has cited the high authority of May in this matter. May says at p. 364:

> "In judging whether a prima facie case of privilege is made out the Speaker excludes any matters which are otherwise properly to be dealt with under the practice or standing orders of the House." (See May's Parliamentary Practice, p. 362).

15. The Standing Orders referred to by Shri Iqbal Ahmad have not superseded the ancient practice though it has become unusual to resort to it. Mr. Iqbal Ahmad contends that even under the ancient practice as it obtained in Britain, naming of a member before he actually withdraws or is made to withdraw from the House, in order that a more adequate punishment may be awarded, is necessary. For this too support has been sought from quotations from May's Parliamentary Practice, at p. 445. I feel no difficulty in coming to the conclusion that the procedure followed in the British Parliament by the Speaker and the House in dealing with members who are guilty of disorderly behaviour is exactly the same as that contended for by Shri Iqbal Ahmad. It does not follow from the admission of this fact, that Mr. Speaker and the State Legislature were bound to follow that procedure in every detail, howsoever well established and reasonable it might seem to those who feel an instinctive respect for the conventions and traditions which that great House has built up for itself. After all

there is nothing sacrosanct about that procedure.

The Indian Legislatures have been empowered to frame rules of procedure under Article 208 of the Constitution. Our attention has been drawn to those rules. Rule 189 invests the Speaker with authority to deal with cases of disorderly behaviour. It is unnecessary to quote it but I would say that clearly the Speaker has under Clause (c) of those rules, the power to carry out his order at any stage of the proceedings. Undeniably the Speaker has been invested with the power under Rule 67 to refer any matter he chooses to the Committee of Privileges. The learned Advocate General has sought to justify the departure from British practice on the ground of its suitability to the peculiar requirements of working parliamentary institutions in a Country which is new to them.

On the question whether that reason is a good one or not, it would be improper for me to express any opinion for obviously the matter is capable of being looked at from different angles. There is the point of view that Oppositions are weak in our Legislatures, and that the tendency to associate every person in authority in any capacity with the Government of the day is still wrong. It may well be that naming a member, i.e., submitting him to the judgment of the House at the very time the incident occurs has the merit of not bringing the Speaker into the area of controversy. These are considerations, however, with which this Court has no concern and on which I do not think it proper to dogmatise. Rule 67 of the Rules of procedure of the State Assembly makes it abundantly clear that, notwithstanding anything contained in these rules, the Speaker can refer any question of privilege to the Committee of Privileges for examination, investigation or report. Whether the question was one of privilege or not was a matter solely for the Speaker to decide. Even if there had been no express rule such as is to be found in the Rules of Procedure of the U.P. Legislative Assembly, I should have felt it incumbent on me to say unhesitatingly that this Court has no jurisdiction to issue a writ, direction or order relating to a matter which affected the internal affairs of the House. To borrow the language of Lord Coleridge, C. J.:

> "The Houses of Parliament, cannot act by themselves in a body: they must act by officers."

The Speaker is the highest functionary of the House and no acts for it. The other officers who acted under his directions are recognised officers of the State Assembly and they executed his orders. The House had a right to decide on the subject-matter and the officers gave effect to its orders. Thus both the Speaker and the other officers are protected from scrutiny by a Court of law for what was done in the House. Clearly the matter in issue is a matter concerning the State legislature to borrow the language of Stephen J., "in a matter arising concerning the State legislature."

The resolution suspending the applicant from the House was a thing done 'within the walls of the House.' Of a matter concerning its proceedings, the State legislature is the sole judge. The matter in issue is a proceeding of the House of Commons in the House and, therefore, 'it is part of the course of its own proceedings' and subject therefore to its exclusive jurisdiction. Both Article 212 and the authorities are so decisive and conclusive that there is no room for argument so far as this part of the case is concerned.

16. I may also refer to the fact that under the Bill of Rights to which reference has been made by me previously, the House of Commons and, therefore, the State legislature has a complete freedom to discuss any question it chooses. Thus I can see no creation of a new privilege in the procedure adopted by the Speaker or the State legislature. The complaints which Sir Iqbal Ahmad has brought before us, whether justified or not, are of a procedural character. I am unable to agree with the view that the resolution of the House goes beyond a matter of procedure and on this point again I would invite attention to the observations of Stephen J. at p. 285:

> -- '(1884) 12 QBD 271 (B)'. While there is no doubt that the right of a member to continue to represent his constituency in Parliament gets affected by his suspension for whatever period, yet even on that assumption there is no legal remedy open to a member if his rights get affected by something done within the walls of the legislature. Apart from the cases to which reference has been made, Article 212(2) of the Constitution is decisive on this point. Article 212 is in the following terms:
>
> "212, (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. (2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers."

17. For the reasons given above, this part of the case fails. But it is so interconnected with the other part that I shall have to consider some aspects of it when dealing with some other arguments which have been advanced by Sir Iqbal Ahmad.

18. I now come to another part of the case. Sir Iabal Ahmad's contention is that, whatever may be the position regarding the law relating to privilege in Britain, the position in our country is vastly different for we have what Lord Pirkenhead would have called a 'controlled Constitution' embodied in a written instrument by the founding fathers. This Constitution has conreded certain fundamental rights. Now one of those rights is the right not to be punished a second time for the same offence. Sir Iqbal Ahmad's contention is that Article 20(2) which lays down that "no person shall be prosecuted and punished for the same offence more than once" governs all the parts of Article 194 including the one which has reference to the powers, privileges and immunities of the State legislature and its members.

It is argued that the resolution in question in so far as it punished the applicant a second time for an offence for which he had been punished previously by the Speaker is (a) if it be regarded as a law, void by virtue of Article 13(2) for its inconsistency with Article 20(3), and (b) if it be treated as the decision of the State legislature in its capacity as a Court which can punish breaches of privileges, illegal for the reason that it embodies a decision which has the effect of punishing the applicant a second time for the same offence on the same set of facts. The assumptions underlying the arguments on this part of the case are that (a) Clause (3) of Article 194 is controlled by Article 20(2)(b) that the resolution amounted to a law within the meaning of that word in Article 13(2)(c)

that alternatively in any case it was the decision of a Court which could be set aside by this Court, (d) that the applicant was in point of fact punished a second time for the offence, (e) that the word offence includes a parliamentary offence, (f) that the words "prosecute and punish for the same offence" do not limit the bar of what American Jurists would call 'double jeopardy' and purefy criminal actions only. I shall deal with each of these points seriatim.

19. I shall first proceed to consider whether Article 194(3) is subject to the provisions of the Constitution, and, if so, whether Article 20(2) governs it. To appreciate this point, it is desirable to reproduce Article 194.

> "(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
>
> (2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.
>
> "(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.
>
> (4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

20. It will be noticed that the Article is divisible into four distinct clauses and that its form is such as to lead to the irresistible inference that only the first clause has been made subject to the provisions of the Constitution. I cannot understand why if it was intended by the legislature that part (3) of Article 194 or the whole Article should be subject to Article 20(2) or to any other provision of the Constitution, the frame of the Article should not have been different. Easily the founding fathers could have made it clear that all the parts and not only Clause (1) of the Article would be subject to the provisions of the Constitution. It is not as if the founding fathers are silent as to the applicability or otherwise of the other parts of the Constitution. They have specifically mentioned in Clause (1) that freedom of speech shall be subject to the provisions of the Constitution. By necessary Implication, therefore, they must be deemed to have intended by omitting any reference to the other parts of the Constitution that the other clauses shall not be governed by the other provisions of the Constitution. It strikes me that a clear distinction has been made between the language of Article

194(1) and Article 194(3) and that the fact cannot be ignored.

21. It is contended that it is only where the founding fathers had made any specific provision, for a matter dealt with by an article of the Constitution that they used such expressions as 'subject to the provisions of the Constitution' or 'notwithstanding anything to the contrary.' It is argued that where no provision has been made by the Constitution in respect of any matter dealt with by the Constitution, every article of the Constitution must be construed with reference to the other articles so as to enable a construction, to be placed on the Constitution which produces the greatest harmony and the least inconsistency between different parts of the Constitution.

22. While it may be admitted that in the case of an ambiguity or inconsistency between different parts of the Constitution, Courts should look into all parts of the Constitution and harmonize them to the utmost extent possible, I do not think that we would be justified in going so far as to say on the basis of speculation that words like 'subject to the provisions of the Constitution' have been used. only where a matter dealt with by an article is also the subject-matter of some other article. It strikes me that whenever the founding fathers intended that a provision of the Constitution, whether it be described as Fundamental or not, should govern it they said so. Incidentally it may be pointed out that the Fundamental rights conceded by our Constitution have not been conceived, of as 'natural, sacred and inalienable' rights which may not be changed at all like the Law of the Medes and Persians, but as rights which can be changed in the exercise of the constituent powers conceded to Parliament by a procedure which is less rigid than that reserved for an amendment of certain other parts of the Constitution.

In any case, the use of the words 'subject to the provisions' 'only' in connection with the right of freedom of speech and its omission from the other parts of the article cannot be ignored. The way in. which the whole article has been framed clearly indicates, to my mind, that the fundamental rights which they were conferring on the houses of the legislature were not to be subject to or governed by any other part of the Constitution. It, must be remembered that Article 194(3) occurs in a later part of the Constitution than Article 20(2). Both are parts of the Constitution, having been enacted by the founding fathers. The fact that a, prevision is either described as fundamental or occurs in the part relating to fundamental rights does not 'ipso facto' make it govern other parts of the constitution. Both Article 20(2), and Article 194(3) find a place in the Constitution and it cannot be assumed that an Article described as fundamental was intended to govern not only laws made by the Legislature but the various other parts of the Constitution, even where the context indicates that it was not intended to apply to them.

Had the intention been to make Article 194(3) subject to the other provisions of the Constitution, the founding fathers who knew what they had said previously about Article 194(1) would have said so clearly. I am, therefore, driven to the conclusion that it will be unsafe to accept as correct the argument that Article 194(3) must be deemed by necessary implication to be subject to the other parts of the Constitution either on the basis that words such as 'subject to the provisions' have been used only where some specific provision having been made, it was intended to make it clear that that article would also operate so far as that article is concerned or on the assumption that the whole article and not only Clause (3) has, notwithstanding the frame of the article and its divisibility into

distinct parts, been made subject to the Constitution. Why the founding fathers reserved freedom of speech which is vital for unfettered parliamentary discussion for special treatment I cannot say. It would be outside the scope of the Question before us to speculate into the possible reasons for that special treatment. I am unable to hold that it was necessary for the founding fathers to use some such words as 'irrespective of the Constitution' if the article was not to be subject to the Constitution.

23. Sir Iqbal Ahmad contends that the view that Article 194(3) is not subject to the Constitution is bound to lead to the anomalous position that as long as the Houses do not define their privileges by a law enacted by themselves, their privileges, being the same as those of the British Parliament, will not be subject to the operation of either Article 20(2) or to any other provision of the Constitution, while a law passed relating to them shall be subject to the provisions of the Constitution and thus liable to be declared void, under Article 13(2), on the ground of inconsistency with it. Sir Iqbal Ahmad contends that it could hardly have been the intention of the founding fathers that during the interim period when privileges have not been denned by the statute itself, privileges should not be subject to the Constitution. Now, it strikes me that in declaring that the privileges etc. of the State legislature shall be the same as those of the British Parliament, until so otherwise determined by legislation, the founding fathers followed the precedents created for them by the framers of both the British North America Act and the Australian Act.

24. It is interesting to note that while in Canada the houses of legislature cannot enlarge their privileges by any law made by them beyond those enjoyed by the British House of Commons, there is no such limitation under Section 49 of the Commonwealth of Australia Act on the powers of its parliament, it being presumably open to it either to curtail or enlarge them. Possibly in laying down that the powers, privileges and functions assigned to each House can only be changed by law if they want them to be somewhat different from the British House of Commons, the founding fathers were enacting a safeguard which would make them subject to the provisions of the fundamental rights guaranteed by the Constitution. It is on this basis understandable that they did not think it necessary to make them until they were so changed by law, subject to the other parts of the Constitution. For the privileges of the House of Commons are well-known and can be easily ascertained from any standard work on the Constitution.

25. Another argument which was advanced was that from the nature of our Constitution itself, which is a republican one, it could not have been contemplated by the framers of the Constitution that all the powers, privileges and immunities enjoyed by the House of Commons shall be enjoyed by the State legislatures. The privileges of the House of Commons have been enumerated by Mr. Keith in his revised edition of Ridges' Constitutional Law of England at page 67. They are classifiable under two headings, (1) those which the Speaker demands from the Crown at the commencement of each Parliament and are guaranteed as a matter of course, and (2) those which are demanded by the Speaker. The first group comprises--

(a) Freedom from arrest.

(b) Freedom of speech.

(c) The right of access to the Crown.

(d) The right of having the most favourable construction placed upon its proceedings.
The second group comprises the following:

(a) The right to provide for the due composition of its own body.

(b) The right to regulate its own proceedings.

(c) The right to exclude strangers.

(d) The right to prohibit publication of its debates.

(e) The right to enforce observance of its privileges by fine, imprisonment, or expulsion.

26. Now, it is pointed out that the State legislatures have not been conceded the right to provide for the due composition of its own body as that is a right which has been specifically and separately dealt with in Part XV, Articles 324 and 329 of the Constitution, the powers of superintendence, direction and control of elections having been vested in an Election Commission. Freedom of speech is the subject-matter of a separate article viz., Article 19(a) of the Constitution. The right to prohibit publication of its proceedings is dealt with under Sub-article (2) of Article 194.

It is further contended that some of the privileges of the House of Commons can have no meaning with reference to the Indian Constitution, our being a republican one. There are others again which have either become obsolete or meaningless in Britain or which Parliament has given up itself. For example, it is pointed out that the right to provide for the due composition of its own body has been modified by Parliamentary enactments in Britain which give authority to Courts of law to adjudicate on disputed questions of law. In our own Constitution Articles 324 and 329 deal with election matters. Now, on this basis it is urged that the only rights which had not been the subject-matter of definition in previous or subsequent articles by the Constitution are the rights to regulate its own proceedings and the right to enforce observance of its privileges by fine, imprisonment or expulsion. On the basis of these facts, it is argued that it is only where specific matters have been dealt with by some other parts of the Constitution, that the founding fathers made a mention of the fact that a particular Article or clause was subject to the provisions of the Constitution, it being understood that the other Articles are to be read in a connected manner, all being subject, at all events, to the fundamental rights conceded to its citizens or persons by the founding fathers,

27. I am unable to accept the argument as representing a correct approach to the various articles of the Constitution. It must not be overlooked that Part III occurs in a later part of the Constitution than Article 20(2). The fact that a particular right has been classified as 'fundamental' cannot make it paramount over an Article in a part of the same Constitution framed by the same founding fathers and the same Constituent Assembly. Fundamental rights cannot govern, except of course where it is specifically or by implication intended that they should, various parts of the Constitution. There is a

clear distinction between the language of Article 194(1) and Article 194(3). The substantive provision in Article 194(3) is that the privileges etc. of the State legislature shall be, unless determined otherwise by the legislature, the same as those of the British Parliament. It would be contradictory to hold that Part III can be controlled by Clause (1). It would be to subject them to a limitation which it was intended should not apply to them.

The British House of Commons cannot be controlled by any Court in respect of any punishment it chooses to inflict upon its members for parliamentary offence within its walls on the ground that the punishment is of a double nature. Can we read a limitation of this nature in our Constitution when expressly the State legislature has been given all the privileges possessed by the British Parliament? I venture to think that to do so would be to impose a restriction not contemplated by the founding lathers. For the effect of doing so would be to make the specific provision declaring the privileges to be the same as those of the British Parliament subject to fundamental rights. This would nullify the fundamental rights granted to the legislature and its members specially treated qua their parliamentary capacity. The article deals with privileges of the Houses and its members; they have been put on a special footing. The entire purpose will be nullified or defeated if the privileges which have been defined to be those of the House of Commons were made subject to fundamental rights. Fundamental rights cannot govern, except of course where it is specifically or by implication intended that they should, various parts of the Constitution. The frame of Article 194, remembering the rules of grammatical construction, cannot be ignored. The omission of the words "subject to any provision of the Constitution" as governing Clauses (2), (3) and (4) of the Article has a significance which cannot be omitted from consideration.

28. As regards the argument that the law when made relating to privileges would be subject to the fundamental rights and thus subject to Article 13(2) whereas privileges as conferred by the Constitution with reference to the British House of Commons would not be so subject, the answer is that the founding fathers contemplated a clear distinction between the two periods, viz., (1) until so defined and (2) when so determined. In one case the privileges well known to be possessed by the House of Commons were being conferred by the Constitution. In the other case the privileges made were to be laid down by the authority of the State legislature. Clearly, the founding fathers did not desire a law so made not to be subject to some safeguard.

29. Support was sought to be derived for the proposition enunciated above from a decision of the Supreme Court in what has come to be known as the Blitz case: -- 'Ganapatu Keshavaram Reddy v. Nafisul Hasan and State of Uttar Pradesh', Ori. Jur. Petn. No. 75 of 1952 (SC) (I). In that case one Shri Homi Mistry was arrested in Bombay under a warrant issued by the Speaker of the Uttar Pradesh State legislature. The warrant of arrest was signed by the Speaker and he was brought and kept in detention in the Speaker's custody at Lucknow. On his applying for a writ of 'habeas corpus', Patanjali Sastri C. J. directed his release as Shri Mistry had not been produced before a Magistrate within the time allowed. It was held that the term of Article 22(2) were peremptory and admitted of no doubt.

All that I understand that case to lay down is that any person arrested, whatever be the nature of that arrest and whichever be the authority on whose behalf he has been arrested, must not be

confined in custody beyond the period indicated in Article 22(2) without the authority of a magistrate. The question of the extent of the privileges enjoyed by the State legislature or the Speaker as representing the State legislature and their subjection to fundamental rights was not specifically dealt with by his Lordship and I cannot read him to have laid down that Article 194(3) is subject to the other provisions of the Constitution.

I may say that strong reliance was placed by Sir Iqbal Ahmad on the case of -- 'U Aye v. U Chit Hlaing', AIR 1941 Rang 151 (J). This was a case of a member of the Burma legislature who, on accepting a commission in the armed forces of the Crown, was declared to have vacated his seat by the Speaker of the Assembly. The High Court intervened holding that it was beyond the powers of the Speaker to decide whether the applicant had or had not continued to be a member of the House of representatives of the Burma legislature. Clearly in that case the Speaker had no power to make that declaration for he was not in any sense a Court. In any event, this was a case of the legislature of a State which was not fully self-governing and can be no authority for a case like this where we are dealing with a 'controlled' legislature possessed of all the privileges which the British House of Commons possesses.

30. I am unable, therefore, to hold that the cases cited above govern this case. From what I have said it will be apparent that, in my opinion, Article 194(3) is not governed by Article 20(2) of the Constitution.

31. I shall now proceed to consider what the exact nature of a resolution of a house of legislature is. It was held in the famous case of --'Stockdale v. Hansard (D)', that a resolution of the House of Commons cannot alter the law of the land. For legislation both under the British Constitution and the Constitution as it obtains in the Uttar Pradesh State three parties are necessary. In our State the parties are the two Houses of the Legislature and the Governor. A resolution is an expression of the opinion of the House or at best a recommendation on any particular matter. It has not the status of a law. A declaration or resolution of either House, as Dicey points out on the basis of -- 'Stockdale v. Hansard (D)', is not in any sense a law. For no resolution of the House of Commons ordering or approving of a member's act could be pleaded by a person as a legal defence to proceedings, either civil or criminal, against him. See -- '(1839) 9 Ad and E 1 (D)'.

The difficulty as pointed out by Prof. Dicey is, however, that though the resolution of neither House is a law, each House of Parliament has complete control over its own proceedings and in so doing has also the right to protect itself by committing for contempt any person who commits any injury against or offers any affront to the House, and- no Court of law will inquire into the mode in which either House exercises the powers which it by law possesses. While Lord Coleridge C. J. would concede to it the position of at least 'for certain purposes and in relation to certain persons', the effect of practically changing or practically superseding the law. Stephen J. compares it to 'the judgment of a Court' not subject to the decision of Courts of law. It is that Lord Coleridge C. J., did not go as far as describing it as a Law. It is equally clear that Stephen J. did not go as far as describing it as a judgment of a Court, though it has much in common with a judgment, not subject to the revisional jurisdiction of the High Court.

It is important to note that Stephen J. expressly said that the House of Commons was not 'a Court of justice'; but the effect of its privilege to regulate its own internal concerns practically Invests it with a judicial character when it has to apply to particular cases the provisions of Acts of Parliament. Both Lord Coleridge C. J. and Stephen J. however, stated that whatever way it may be looked at, extraordinary circumstances might require when acts are done under cover of its authority its being declared invalid. It is important to note that while no British Court of law can declare an Act of Parliament void on any ground whatever, it can declare a resolution invalid in certain conceivable circumstances. Such an extraordinary circumstance arose in the well-known case of --'Stockdale v. Hansard (D)'. I cannot accept as correct the argument that the resolution in this case is a law subject to the provisions of Article 20(2) or a judgment of a Court of justice such as we conceive Courts of justice to be. The notion of the High Court of Parliament has no application here and it is unnecessary to discuss' the matter at any length.

32. It was contended by Sir Iqbal Ahmad that the word 'law' has been used in Article 13(3) In the widest sense possible as including any ordinance, order, bye-law, rule, regulation, custom or usage having in the territory of India the force of law. I am inclined to think that even having regard to that very wide language, the resolution cannot be accurately described as a law for it is a mere expression of opinion which can have a binding effect in cases of privileges.

33. Whatever be the position of a resolution of a House, whether it be looked upon as a law or as a judgment of a Court or the expression of an opinion which may practically have the effect of law, the question still remains whether the resolution complained against awarded a punishment for an offence within the meaning which must be attributed to those words in Article 20(2) of the Constitution. Before dealing with this part of the case, I may quite frankly state that on the facts which have been placed before us, I am unable to hold that the action of the Speaker in ordering the applicant to withdraw from the House was not in the nature of a punishment for the parliamentary offence of disorderly behaviour.

The learned Advocate General contended that that the Speaker did initially when the applicant was made forcibly to leave the House merely was in the nature of preventive action. The notion of preventive action can, in my opinion, have no application to a case where the Speaker takes disciplinary steps against a member. Preventive action in Parliamentary proceedings is unheard of. Preventive action in relation to Parliamentary proceedings is, I venture to think, against the whole spirit of the British Constitution. To uphold the view that preventive action can have a place in the regulation or conduct of the business of a legislature would be to go back upon the principles firmly established by the constitutional struggles so famous in British history. Exalted as the position of the Speaker is, important and onerous as his duties and functions are, he is, in no sense, if I may say so with the utmost respect, the head of a State authorised under the Constitution to take precautionary as distinguished from punitive action for possible disorders likely to occur in the conduct of the business of the House.

In order to make this point clear, I may point out that, according to that great authority - Sir William Anson, -- the duties of the Speaker are of a three-fold character. (See Anson's Law and Custom of the Constitution, Vol. I, pp. 149-151). He is firstly, the spokesman and representative of the House.

Secondly, the Speaker is required under the provisions of the Parliament Act to discharge duties of a judicial or interpretative character, having finality attached to them under the Parliament Acts. Thirdly, the Speaker is the Chairman of the House, and in that capacity he maintains order in its debates, decides such questions as may arise upon points of order, puts the questions, and declares the determination of the House. It will be seen that his position in no way corresponds to that of the head of the State. An enumeration of these duties will show that the action taken by the Speaker in repressing disorder is not of a preventive but of a punitive character. Preventive action is in the nature of precautionary action. It is taken in the interests of maintenance of order or the security of the State or the maintenance of essential supplies when necessity compels an authority specifically endowed with power to use it to resort to it. Punitive action, on the other hand, is action for some breach actually committed and has the character of a punishment or a disciplinary order. 'In so large and active an Assembly as the House of Commons', observes May in his Parliamentary Practice "It is absolutely necessary that the Speaker should be invested with authority to repress disorder and to give effect, promptly and decisively, to .the rules and orders of the House." "The ultimate authority", Sir J. Erskine May further observes, "upon all points is the House itself, but the Speaker is the executive officer by whom its rules are enforced."

May further observes that "the power to punish disorder is regulated partly by practice and partly by standing order." "the change introduced", he continues, "by standing orders may be described briefly as giving the Chair power to deal with minor offences, but as leaving punishment to the House, while making its infliction more certain than immediate."

May further observes that "the ancient usage has been so modified by recent standing orders, which cover the majority of cases likely to arise, as to be largely inapplicable." (May's Parliamentary Practice, pp. 445-447).

34. From these quotations it will be observed that the order of withdrawal is in the nature of a punishment for what the member has actually done and not likely to do and does not partake of the character of preventive action. I may say that the use of the word "repress" by May is very important. It is not for what a member threatens to do before the legislature starts actually functioning, but for what he does when it is in actual session that he can be dealt with by the Speaker.

35. Now, the first question which has to be considered is whether there was any punishment in this case, and the second question is whether that punishment is the bind of punishment contemplated by Article 20(2) of the Constitution. The powers of the Speaker to order withdrawal of a member or to suspend a sitting are to be found in Rule 189 of the Rules of Procedure of the Assembly. Prom the very wording of the rule it is clear that in directing a member to withdraw from the House, the Speaker has to come first to a finding that the conduct of the member is disorderly. Having come to that finding, he can direct Him to withdraw for the rest of the day and in order to be able to do so, he has been invested with full authority to carry out his order by the use of such force as may be necessary for that purpose. The Speaker when acting in this capacity is exercising a power on behalf of the House.

Withdrawal of a member from the House even for a brief period is a serious matter both for the member and his constituency. Important debates and votes may take place during his absence even if the period be brief and he may not be able to present his view-point or that of the group or that of the constituency he represents. It is, however, in the nature of a disciplinary or punitive action for a specific parliamentary offence, namely, disorderly behaviour. According to Rule 63, the punishments which the House can inflict, among others, are (1) admonition, (2) reprimand, (3) imprisonment, the time whereof is at the pleasure of the House but cannot extend beyond the prorogation, (4) suspension or expulsion of the member. The offences for which punishments can be so inflicted have nowhere been defined but broadly they are for breaches of privilege including contempt of the House or the Speaker as representing the majesty of the House. The order of withdrawal has the effect of suspension and in any case comes within the category of the punishment classifiable in the words 'among others'. Sir Iqbal Ahmad is, therefore, indisputably right when he says that Shri Raj Narain was punished by Shri Speaker when he was forcibly made to withdraw from the House and very properly he does not question the correctness or justice of that order. Indeed, it would have been grossly improper for us to sit in review in any sense over that order.

In order to appreciate, however, the point which has arisen under Article 20(2) of the Constitution, it is necessary to appreciate exactly what was done after the reference to the Committee of Privileges by the House. Sir Iqbal Ahmad's argument is that his client was, contrary to established parliamentary practice in Britain, punished a second time by the House on the same set of facts for the offence or offences for which he had been punished or could have been punished then and there by the House.

36. Now, as far as I can see, there is no doubt that further action was taken against Mr. Raj Narain for the incident for which disciplinary action had been taken against him by Mr. Speaker. On the question whether that further punishment was in the nature of a second punishment or an enhancement of the punishment inflicted previously on Shri Raj Narain it is unnecessary to enter for the purposes of deciding this case, having regard to the view that I take of the meaning to be assigned to the word punishment. For this question could, and would, have been important 'only' if I had come to the conclusion, which I may quite frankly state I have not, that punishment for a parliamentary offence is covered by Article 20(2) of the Constitution.

37. Before considering the exact scope of Article 20(2), there is yet another argument urged by Sir Iqbal Ahmad which deserves to be noticed. Sir Iqbal Ahmad contends that each of the Houses of the British Parliament is a 'court' and on that basis contends that the Houses of the State Legislatures are courts. Sir Iqbal Ahmad's contention is correct only, as Mr. Keith observes in his edition of Ridges' Constitutional Law in a sense. The late Sir William Anson quotes Lord Coke to the effect that, "the Lords in their House have power of judicature, and the Commons in their House have power of judicature, and both Houses together have power of judicature."

He goes on, however, to add that the sense in which judicial attributes are assigned to the two Houses severally and jointly must be limited. The power of the House of Commons in dealing with the Constitution of its own body and the right of persons who claim to be members of that body is

not today what it was before. The House of Commons has jurisdiction, as pointed out by Sir William Anson, over its own members and even the general public in respect of contempt against itself. In respect of the other matters referred to by him, the position has considerably changed during recent years. There is the high authority of Stepehen J. in -- 'Bradlaugh v. Gossett (B)', that the House of Commons is not 'a court of justice'; it is by virtue of the privilege that it enjoys to regulate its own internal affairs that it becomes practically vested with a judicial character when dealing with Acts of Parliament. To say this, however, is not to say that the House of Commons is a court or even a quasi-judicial tribunal in the sense in which those words are generally understood. I am not prepared, therefore, to hold that the State Legislature is a court of of law or of justice except, of course, in the most strictly limited sense that in the exercise of regulating its proceedings it can proceed against a person or even a stranger for breaches of privilege.

38. And this brings me to the question of the exact scope of Article 20(2) of the Constitution. That Article reads as follows : "No person shall be prosecuted and punished for the same offence more than once." It is clear that this Article is based upon the principle of the 'double jeopardy' clause and lays down that no person should be put in jeopardy of. his life or liberty more than once. This principle is so well established in the system of law that we administer that it is not surprising that it should have been elevated to the level of a fundamental right. In the case of -- 'Rex v. Barron (No. 2)', (1914) 2 KB 570 (K), Lord Reading C. J. quotes a statement of the law by Hawkins J. that, "It is against the very first principles of the criminal law that a man should be placed twice in jeopardy upon the same facts." Lord Reading C. J., however, made it plain that the learned Judge did not intend to lay down and did not lay down as a general principle of law that a man cannot be placed twice in jeopardy upon the same facts if the offences are different. Whether the view taken by Lord Reading C. J. be correct or not, Section 403 of the Code of Criminal Procedure would seem to be based upon a principle which found favour with Hawkins J. Section 403 of the Code of Criminal Procedure runs as follows :

> "(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence, for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.
>
> (2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235, Sub-section (1).
>
> (3) A person convicted of any offence constituted by any act causing consequences, which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

> (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
>
> (5) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897, or Section 183 of this Code."

39. Now, it is not necessary for the purposes of this case to express any opinion on the point Whether the prohibition in Article 20(2) which relates to a prosecution and punishment for the same offence would be operative also against a subsequent trial for a different offence on the same facts. The important point, however, to note is that the word 'prosecute' has been deliberately introduced in order to make it clear that the bar relates to a punishment by a court of law and not to other types of punishment. The intention of the founding fathers appears to have been not to disturb the existing law which is to be found in Section 403 of the Code of Criminal Procedure relating to the extent of protection against 'double jeopardy' in the criminal law of this country.

40. It strikes me that on a correct reading of the section, having regard to the background of Article 20(2) as discoverable by a reference to Section 403 of the Code of Criminal Procedure, the word 'and' has been used not in a disjunctive but in a conjunctive sense. To read the word 'and' as 'or' would be to read something into the article which is not there. That being so, it strikes me that Article 20(2) does nothing more than reproduce in effect the provisions of Section 403 of the Code of Criminal Procedure. It is clear that under that Code a discharged person can be put for retrial. Article 20(2) clearly uses the word 'and' in a conjunctive sense and only where the accused has been both prosecuted and punished for the same offence is a second trial barred, according to the judgment of a learned single judge of the Madras High Court in -- 'In Re C. Devanugraham', AIR 1952 Mad 725 (L).

41. In the case of 'Raman Lal v. Commr. of Police, Calcutta', AIR 1952 Cal 26 (M), the observation was made by Mukerji J. in a case under the Preventive Detention Act, 1950, that the principle of 'autre fois acquit' under Section 403 of the Code of Criminal Procedure has no application to a case under the Preventive Detention Act and that the constitutional protection of Article 20(2) of the Constitution is also inapplicable because 'satisfaction under the Preventive Detention Act is not a prosecution'. There is and can be no identity of offence or of prosecution between detention under the Preventive Detention Act and trial and conviction by a court of law. Now, with preventive detention I am not concerned The point, however, is that Mukerji J. emphasises that it is only trial and conviction by a 'court of law' for the same offence that can bring a case under Article 20(2) of the Constitution.

42. I may also refer to a case, namely, --'Suresh Chandra v. Himangshu Kumar', AIR 1953 Cal 316 (N), where a learned single Judge of the Calcutta High Court held that the word 'prosecution' in Article 20(2) means judicial proceedings before a court or legal tribunal and could not include departmental or disciplinary proceedings taken for inflicting departmental penalty or punishment

on an officer belonging to the department for any misconduct. Now it strikes me that the words 'prosecution and punishment' have reference to criminal offences and have the effect of limiting the scope of the article to criminal proceedings before a court of law or judicial tribunal competent to deal with criminal cases.

43. A further complication is the use of the word 'offence'. The word 'offence' has been defined in section 3(38) of the General Clauses Act, 1897, in the following terms :

> " 'Offence' shall mean any act or omission made punishable by any law for the time being in force."

Now, Article 367 directs that "Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of Act of the Legislature of the Dominion of India."

Article 372(1) preserves 'subject to the other provisions of the Constitution all the law in force in the territory of India immediately before the commencement of this Constitution until altered or repealed or amended by a competent Legislature or other competent authority.' The effect of this Article read with Section 403 of the Criminal Procedure Code is that Section 403 of the Criminal Procedure Code continued to be a law on the date the Constitution came into force. Having regard to these considerations, I am driven to the conclusion that Article 20(2) did nothing more than elevate the principle laid down in Section 403 of the Code of Criminal Procedure to the status of a fundamental law.

Bearing these considerations in mind, I am driven to the conclusion that taking the article as a whole, the context indicates that the word 'offence' as used to the Article contemplates a criminal offence and not all types of offences. In any case, for an 'offence' there has to be an act or omission made punishable by any law for the time being in force. Significance has, therefore, to be attached to the word 'made'. That word carries with it the implication that some authority empowered to do so has laid down the law. The law contemplated in the Article would appear to be an enacted law by a legislature or by a body of persons authorised by the legislature to make it. A difficulty that I feel is that while the punishment for offences has been prescribed by Rule 63 of the Rules of Procedure of the Assembly framed under Article 208 of the Constitution, the offences themselves have not been so defined by those rules. Can W3 go to the extent of holding that the whole law of the Parliament, i.e., the British Parliament, as developed in the course of centuries relating to breaches of privilege was also made a part of the law of this country by Article 194(3) of the Constitution. I feel that I cannot hold that the essential elements of the word 'offence' as used in Article 20(2) have been made out. For this reason I am unable to hold that the case before me, assuming it to be one of double punishment for a parliamentary offence which is nowhere defined in the Rules, is covered by Article 20(2) of the Constitution.

44. I have indicated my views on the various parts of this case. I would like to make it clear, however, that the basis of my judgment is the view that Article 194(3) which relates to fundamental

rights of each house of the State legislature, known as powers, privileges and immunities, is not governed by the fundamental rights conceded to a citizen or person under Article 20(2) of the Constitution. The important point which has to be remembered is that the privileges etc. of the State legislature have been defined for, at all events, until such period as the legislature determines otherwise by law to be the same as those of the British House of Commons. The Article itself is in the nature of a charter of fundamental rights for the State legislature. To subject this Article when it is well-known that even in defiance of a statute, the British Parliament can, by placing its own interpretation, prevent a member from taking the parliamentary oath he was entitled to would be to whittle them down. This would be, in my opinion, contrary to the intentions of the founding fathers, regard being had to the necessary implications of the scheme of Article 194(3).

45. On an analysis of all the arguments advanced in this case, the conclusion that I have arrived at is that this Court can give no relief to the applicant. With political remedies this Court is not concerned. Important as they are, they lie beyond our sphere. As I have indicated, there are good reasons why this Court should not interfere with the mode in which the legislature conducts its internal affairs. In the ultimate analysis, it is as was hinted at by Lord Coleridge C. J, in --Bradlaugh v. Gossett ', (B) (supra), in an assiduous education of the tremendous forces generated by a vast electorate that remedies against real or supposed highhandedness on the part of any particular legislature lies. With all those matters, which are of a political nature, this Court has no concern.

46. Before parting with this case, I would like to record my thanks to learned counsel for the applicant, Sir Iqbal Ahmad, and the learned Advocate General, Mr. Kanhaiya Lal Misra, for the valued assistance which they rendered in this case to us. I am deeply grateful to them for the thoroughness with which the case was placed before us.

47. For the reasons given above, I would dismiss this application.

Mukerji, J.

48. This is an application under Article 226 of the Constitution seeking certain relief by means of requisite orders or directions or writs. The effective, or the main, prayer is that a resolution which was passed by the U.P. Legislative Assembly on the 30th March, 1953, be declared void as being inconsistent with the provisions of Part III of the Constitution. It was further prayed that this Court be pleased to call for the records of the U.P. Legislative Assembly proceedings of the 30th March, 1953, as also the proceedings of the "the Privileges Committee" dated 7th, 17th, 25th and 26th March, 1953, and after examining the legality of those proceedings, to quash the resolution which was the culmination of those proceedings and which was recorded on the 30th March, 1953. There is also a prayer to expunge the aforementioned resolution of the U.P. Legislative Assembly of the 30th March, 1953, from the proceedings of the Assembly. I have deemed It necessary to enumerate the reliefs claimed by the petitioner at the outset of my judgment because a good deal of argument on both sides centred round the appropriateness of the reliefs sought by the petitioner as also the jurisdiction of this Court to grant the reliefs prayed for. This matter has been considered at length by my learned brother and I need add nothing of my own to that consideration.

49. The facts which gave rise to these constitutional proceedings before this Court lie in a narrow compass and I shall now state them very briefly.

50. The petitioner, Raj Narain Singh, is a citizen of India and. is an elected member of the Uttar Pradesh Legislative Assembly. The petitioner claims to be the leader of the U.P. Praja Socialist Legislature Party which according to the petitioner's allegations forms the opposition in this Legislature. This claim of the petitioner has not been controverted by the opposite parties to this petition.

51. On the 4th March, 1953, the petitioner was informed that the police of the State had forcibly removed certain teachers of Primary Schools who were on hunger-strike and were squatting in front of the Council House. The petitioner wished to move an adjournment motion in the Assembly, the Assembly being then in session, in order to discuss the situation which had arisen out of the strike which had been organized and indulged in by some of the primary school teachers of the State and the action taken by Government to curb that strike. The petitioner with this idea contacted opposite party No. 1 Sri Atmaram Govind Kher, who is the Speaker of the U.P. Legislative Assembly and he was advised to consult, according to the petitioner, the Treasury Benches, and according to the opposite party No. 1, the Chief Whip of the Assembly. Some parleys appear to have taken place between the petitioner on the one hand and members of Government on the other in order that the petitioner may have facility in moving his contemplated adjournment motion in the House. It also appears that there was no agreement between the majority party and the opposition in regard to this matter.

52. The petitioner, thereafter, sought the permission of the Speaker from the floor of the House to move his adjournment motion. Under the rules of procedure, framed by the U.P. Legislative Assembly, in pursuance of the previsions of Article 208(1), namely, under Rule 68, the consent of the Speaker is necessary to make such ft motion. The Speaker is under this rule, made the sole judge as to whether the proposed motion is for the purpose of discussing a definite matter and is of urgent public importance or not. In the event of the Speaker being of the view that the matter to be discussed is definite and is of urgent public importance, he is empowered to accord permission to the mover to seek the leave of the House to move the motion. Under Rule 71 of the aforesaid rules, there is a mode prescribed for asking for leave to move an adjournment motion. Under Rule 71(1), the Speaker is enjoined to take up the motion after the 'questions' and before the 'list of business' is entered upon if he holds that the matter proposed is in order and gives his consent under Rule 68. He then calls on the member concerned to ask for the leave of the House to move the adjournment motion. Rule 71(3) provides thus :

> "If objection to leave being granted is taken, the Speaker shall request those members who are in favour of leave being granted to rise to their places and if not less than one-twelfth of the total members of the House for the time being (in the present case thirty-six members) rise accordingly, the Speaker shall intimate that leave is granted. If less than the required number of members rises, the Speaker shall inform the member that he has not the leave of the House."

Under this rule the petitioner was called upon by the Speaker to seek the leave of the House. There was an objection to leave being granted --objection having been taken by the Home Minister -- and consequently the petitioner required the support of thirty-six members of the Assembly before the adjournment motion could be taken into consideration. The petitioner was conscious of the fact that he could not get the support of thirty-six members of the Assembly to his resolution, the strength of his party being very much less than thirty-six and hence a motion was made for the suspension of Rule 71(3) under the provisions of Rule 221. Rule 221 is in these words :

> "Any member may with the consent of the Speaker move that any rule may be suspended in its application to a particular motion before the House and if the motion is carried, the rule in question shall be suspended for the time being."
>
> "The Speaker shall decide the procedure to be followed in lieu of that contained in the suspended rule."

It is clear to me that if the petitioner could not get the support of thirty-six members in order to have the opportunity of placing the adjournment motion before the House, the petitioner obviously had less chance of getting the necessary support of the House to carry his motion in regard to the suspension of Rule 71(3). It appears to me that the reason for making this motion of suspension of the rule was to get an opportunity, indirectly, to discuss the same thing as v/as contemplated for discussion if and when the adjournment motion was before the House. I am fortified in this view of mine by the line of action which was taken by the petitioner and some of his supporters when both these questions were before the House. We are, however, not called upon to pronounce upon the appropriateness or otherwise of the action of the petitioner.

53. The Speaker could not allow the adjournment motion to be placed before the House because the requisite support was not forthcoming for the motion. The Speaker further did not wish to let the motion for the suspension of Rule 71(3) to be discussed because of the fact that the day on which these motions were placed before the House was a day set apart for the voting on demands. Under the rules of procedure, the days set apart for the voting on demands are to be exclusively devoted to such business and other motions, save adjournment motions, could not be permitted to take precedence over it. Nonetheless the Speaker appears to have pointed out that he could accord permission to move the motion for the suspension of Rule 71(3) later in the day, presumably after the time for the budget discussions was over. The petitioner and his supporters did not agree to accept this concession or suggestion which the Speaker made.

The result was that the petitioner persisted in his demand for having the adjournment motion as also the motion for the suspension of Rule 71 (3) placed before the House. The Speaker called the petitioner to order several times but the petitioner disregarded the orders of the Speaker. There was, therefore, without doubt disorderly behaviour on the part of the petitioner. By virtue of the authority conferred on the Speaker under Rule 189, the Speaker in order to 'preserve order' directed the petitioner to withdraw immediately from the House. The petitioner even disobeyed this order with the result that the Speaker was compelled to direct that the petitioner be removed from the House and in removing the petitioner if the employment of force was necessary to employ such force. The

result was that the petitioner was removed from the House. After the petitioner had been removed, the Speaker drew the attention of the House to the disorderly behaviour of the petitioner and stated that he was of the opinion that as a matter of principle (siddhanta), he should not leave the matter at that but should refer this incident to the Committee of Privileges for their report.

54. A reference was accordingly made to the Committee of Privileges of the Assembly which considered this question at several sittings and then made a report to the House on the 26th March, 1S53. The report of the Committee of Privileges was considered by the House and a resolution in approval of the report was adopted on the 30th March, 1953, whereby the petitioner v/as found guilty of a breach of privilege and was suspended from participating in the proceedings of the House till the end of the session. It is this resolution, as I have indicated earlier, which is the main target of attack by the petitioner.

55. It is interesting to observe here again, that the resolution was dated the 30th March, 1953, and then the fact that the session of the House ended on the 2nd April, 1953, at 5 p.m. This petition was moved on the 2nd April, 1953, at 10-15 a.m. before us. I am drawing attention to these dates because of the fact that on behalf of the opposite parties an objection was taken to the hearing of this petition on the ground that the petition had become more or less infructuous, inasmuch as the punishment, if there was any punishment, had spent itself out. It was further argued by the learned Advocate-General that any harm that may have accrued by the resolution cannot now be undone by our intervention.

56. This petition was moved before us, as I have said, on the 2nd April, 1953, and we issued notice to the opposite parties because of the importance of this case and the importance of the issues which it raised and also because we thought it proper under the circumstances to decide the questions which were raised concerning the dignity of the Speaker of the House, its privileges and the protection which the petitioner claimed, after deliberation and after having the full assistance of learned counsel on both sides.

57. On behalf of the petitioner the points that were raised were these. First, that the procedure which had been adopted by the Speaker in referring the matter of the "disorderly conduct" of the petitioner was unwarranted by the rules of procedure prescribed and as such was in effect the creation of a new privilege, or in any event was the extension of a privilege.

58. Second, that the Speaker having ordered the forcible eviction of the petitioner from the House for disorderly conduct, he could not subsequently refer that very conduct to the Committee of Privileges for report and that the House could not on the basis of the report of the Committee of Privileges punish the petitioner a second time as they had by resolving to have him suspended. On behalf of the petitioner it was contended that this second, punishment, so to speak, was a breach of Article 20(2) of the Constitution and as such an invasion on the fundamental rights of the petition.

59. The two main questions referred to earlier, which were canvassed before us were argued with considerable ability and thoroughness by counsel on either side. The entire field of parliamentary procedure and practice was covered and all conceivable authorities on the point were placed before

us by Sir Iqbal Ahmad appearing on behalf of the petitioner and the learned Advocate-General appearing on behalf of the opposite parties. My learned brother has exhaustively dealt with the authorities and I do not, therefore, wish to encumber my judgment by a repetition of the same. I, therefore, propose to refer to only those authorities which in my judgment most properly determine the questions raised, and to very briefly indicate my reasons for agreeing with my learned brother in his conclusions.

60. Sir Iqbal Ahmad contended that the Speaker could not refer the disorderly conduct of a member of the House to the Committee of Privileges and that the only power which the Speaker had of dealing with such disorderly conduct was provided for by Rule 189 of the Rules of procedure of the U.P. Legislative Assembly. The aforesaid rule is in these words: "189(1)-- The Speaker shall preserve order; and may direct any member whose conduct in his opinion is disorderly, to withdraw immediately from the House and the member so ordered to withdraw shall do so forthwith and absent himself during the remainder of the day's sitting. "(2) If any member is ordered to withdraw a second time in the same session, the Speaker may direct him to withdraw from the meetings of the House and may name him. Similarly, if a member when ordered by the Speaker to withdraw, does not obey the order, the Speaker may name him. As soon as the member is named, the leader of the House shall forthwith make a motion to the effect that the member so named be suspended for the period to be mentioned in the motion:

> Provided that this period shall in no case be longer than, the remainder of the session:
>
> Provided further that the House may at any time, on a motion being made, resolve that such suspension be terminated. "(3) The Speaker shall have full authority to carry out his order or the decisions of the House and may employ or authorise the employment of necessary force at any stage of the proceedings. "(4) The Speaker may in the case of grave disorder arising in the House suspend any sitting for a time to be determined by him".

By virtue of the provisions of Sub-rule (1) quoted above, it was contended by Sir Iqbal Ahmad that the Speaker having directed the petitioner to withdraw from the House and having used force under Sub-rule (3) for the enforcement of the order of withdrawal, the Speaker had exhausted all the power that he had in respect of that disorder. It was contended that the Speaker not having "named" the member and there not having been a motion by the leader of the House forthwith to suspend the member named, the Speaker had no jurisdiction or power to have the suspension of the member brought about through the mediation of the Committee of Privileges. It was strenuously contended by Sir Iqbal Ahmad that the procedure adopted by the Speaker was a novel procedure--a procedure unknown to Parliamentary practice.

According to Sir Iqbal Ahmad, there never had been a case in parliamentary history where a member's disorderly conduct had been referred to the Committee of Privileges by a Speaker without naming him and after he had been physically ejected from the House. In support of his contention passages from Sir T. Erskine-May's Parliamentary practice were quoted. I do not consider it

necessary to quote the passages from May's Parliamentary Practice on which reliance was placed but I do propose to consider the question raised at a later stage while determining whether or not it is open to this Court to go into these questions in view of the fact that the Constitution precludes us from going into these questions.

61. Although on behalf of the Speaker, objection was taken to our jurisdiction to investigate into the questions raised by this petition yet it was stated on his behalf by the learned Advocate General that the Speaker did not wish to claim the privilege of shutting out from our scrutiny the proceedings of the House in respect of the actual incident. As a matter of fact the learned Advocate-General made the relevant proceedings of the Assembly part of the counter-affidavit which was filed on behalf of the Speaker. This attitude made it possible for us to look into the proceedings and know exactly what happened on the 4th March, 1943, in the House. Prom the proceedings it appears that the applicant was excluded from the House by the use of force when he refused to follow the direction of the Speaker to leave the House.

It also appears from the proceedings that the Speaker of his own accord referred the matter of the petitioners unruly behaviour to the Committee of Privileges of the House for consideration and report and that Committee made a report to the House on which the House recorded the resolution of the 30th March, 1953, which is, as I have already stated, being impugned by these proceedings in this Court. The learned Advocate-General argued that the conduct of the proceedings by the Speaker was strictly in accordance with the rules of procedure prescribed. It was contended by the learned Advocate-General in reply to Sir Iqbal Ahmad's contention that it was not obligatory under Rule 189 (2) to name the offending member. It was further contended that apart from the provisions of Rule 189 (2) it was open to the Speaker, under Rule 67, to refer the conduct of the applicant to the Committee of Privileges for examination, investigation and report. I do not consider it necessary, in view of what I shall say presently, to express any opinion as to whether or not the interpretation put by the learned Advocate-General on Rule 189 as also on Rule 67 is correct.

62. The main question which to my mind calls for determination in this application is whether this Court has the power to review the action taken by the Speaker in regard to the conduct of the applicant in the House on the 4th March, 1953. Further, whether it is open to this Court to scrutinise and pronounce upon the decision taken by the Speaker in referring the question to the Committee of Privileges and further to pronounce upon the legality or otherwise of the resolution of the House adopted on the report of the Committee of Privileges.

63. It must be conceded that the House is the sole judge of its own privileges. It must also be conceded, however, that Courts elsewhere have from time to time scrutinised as to whether or not in judging their privileges and in pronouncing upon those privileges, the Houses of Parliament have not 'in fact' exceeded their well recognised privileges or have in fact attempted to create new privileges. This position in England was crystallised by a long process. During the period of the growth of these principles, historians have noticed a struggle between the Courts and the Legislature. In India we have no such history. In England, four cases to my mind consolidated the position of the Courts and Parliament vis-a-vis each other. These cases are: -- 'Ashby v. White (1703) 92 E. B. 126 (O), Paty's case (P)', -- 'Stockdale v. Hansard (D)', and the 'case of the Sheriff of

Middle-sex (G)'. ' The ratio of these cases appears to be that the Courts deny to the Houses the right to determine the limits of their privileges while allowing them within those limits exclusive jurisdiction. The Courts have always allowed the Houses complete and exclusive jurisdiction in regard to everything which takes place within the walls of Parliament and the Houses have long claimed little else in England. As a matter of fact they have consented to statutory limitations being placed on many privileges since the claims to privileges were first made by Parliament. The undoubted privileges of the House of Commons therefore, appear to be of three kinds:

> (1) Exclusive jurisdiction over all questions which arise within the walls of the House except perhaps in cases of felony and like offences.
>
> (2) Certain personal privileges which attach to members of Parliament, and (3) Power of executing decisions on matters of privileges by committing members of Parliment or any other individuals to imprisonment for contempts of the House.

63a. Another ancillary matter may here be noticed so as to make the category of privileges complete, namely, the right which newspapers claimed, to publish, fair and accurate reports of Parliamentary debates--this right appears to have been conceded once for all by the decision in --'Wason v. Walter (1868) 4 QB 73 (P)'. The privilege here is really a qualified privilege which is familiar as a defence to actions of defamation. It has, however, nothing else but its name on common with Parliamentary privilege.

64. In the case of -- '(1884) 12 Q. B. D., 271 (B)', Stephen J. quoted Lord Denman with approval thus:

> "Whatever is done within the walls of either assembly must pass without question in any other place".

Littledale J. was then quoted thus:

> "It .is said the House of Commons is the sole Judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned".

Stephen J. also quoted with approval the following passage of Patteson J.:

> "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere."

Coleridge J. is reported to have said.

> "That the House should have exclusive jurisdiction to regulate the course of ,its own proceedings and animadvert upon any conduct there in violation of its rules or derogation from its dignity stands upon the clearest grounds of necessity."

On these high authorities, which I have quoted above, it is clear to me that the security which the petitioner in this case wants us to make into the proceedings of the House cannot be made by us.

65. Apart from the persuasive authority of great value of English decisions we have definite provisions in our Constitution enjoining us to look to those authorities in order to know for certain what the powers, privileges and immunities of the Legislatures of our States are, for Article 194(3) of the Constitution provides:

> "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".

It was because of this provision in the Constitution that it became necessary for counsel on either side, and for us, to go to English precedents and to examine the question partially on the footing, as if it arose in England, and had to be decided according to English precedents.

Sir Iqbal Ahmad contended that the aforequoted provision of the Constitution in regard to the powers, privileges and immunities of the House had to be read subject to the other provisions of the Constitution, inasmuch as all the powers, privileges and immunities which the House of Commons of the Parliament of the United Kingdom enjoyed could not possibly be enjoyed by State Legislatures in India. One little illustration was taken to illustrate this point. The illustration taken was that the Houses of Parliament had the privilege of regulating its own composition and as such to decide upon elections etc. while there is no such privilege vested in the State Legislatures because the Constitution has made specific provision for the conduct of elections. A reference-was made to Part XV of the Constitution. It was further contended that Article 194 in its entirety was subject to the other provisions of the Constitution and therefore if the House had by a resolution on any question of privilege contravened any of the Constitutional privileges, then it was not only open to the Court but it was the bounden duty of the Court to declare such resolution 'ultra vires'.

66. If a resolution of the House which does not enjoy the status of law nor has the power to alter the law infringes any constitutional provision or is in the teeth of any constitutional prohibition then obviously such a resolution may not be binding and a remedy may be had against such a resolution. With the aforesaid exception the constitutional provisions, to my mind, give the proceedings in the Legislative sanctity and make them inscrutable to the same extent as the proceedings of the House of Commons. The provisions which to my mind determine this question are the provisions of Article 194(3) and Article 212 of the Constitution. Article 212 is in these words:

> "(1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity, of procedure.

> (2) No Officer or member of the Legislature of a State in whom the powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order in the legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers."

What was done by the Speaker was in the exercise of powers vested in him for regulating the conduct of business of the House and for maintaining order in the Legislature. This conduct, under Article 212(2) must, in my judgment, remain without scrutiny by the Courts. The petitioner in effect challenges the validity of the proceedings in the Legislature, inasmuch as he says that the Speaker aid not follow the well recognized parliamentary practice but invented a procedure of his own when he referred the conduct of the petitioner to the Committee of Privileges without naming him. This in my judgment must also be deemed to be outside the scope of our scrutiny, for Article 212(1) in terms prohibits the validity of proceedings being questioned on the ground of alleged irregularity of procedure. It was argued that the irregularity which the Speaker in this particular case committed was not really an irregularity in procedure but was a matter of substance and in effect it was the creation of a new privilege. I have not found it possible to agree with the contention, for in my judgment the matter under controversy was nothing but a matter of procedure.

67. The next argument which was raised on behalf of the petitioner was that he had been punished twice over for the same offence. It was submitted that the exclusion of the petitioner from the House by force for unruly conduct was a punishment and the suspension recommended by the Committee of Privileges and approved by the House was also a punishment for the same unruly conduct for which he had been ejected from the House under the orders of the Speaker. It was contended that by virtue of Article 20(2) of the Constitution there can be no double punishment like this for the same offence. Article 20(1) is in these words:

> "No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence".

This, in fact, makes punishment by means of 'post facto' laws, or awarding enhanced punishment under 'post facto' laws, illegal. It was on Clause (2) of Article 20 that reliance was placed * that clause is in these words:

> * "No person shall be prosecuted and punished for the same offence more than once."

> * In order to have the protection provided by this clause, it must be found first that the petitioner was 'prosecuted' and "punished" for the same 'offence' more than once. The word 'offence' appears in all the three clauses of Article 20 and, in my judgment the word must bear the same meaning in all the three clauses of the Article. The use of the word 'offence' in Clause (1) of Article 20 makes it perfectly clear to me that by the word 'offence' in Article 20 is meant something which is a violation of a law in force and for the violation of which the law prescribes a penalty. The use of the word

'offence' in Clause (3) also indicates, to my mind, that it has reference to an act in respect of which a person can be accused and where in respect of that accusation there is a question of taking evidence and deciding upon the culpability or otherwise of the person charged. The use of the word 'prosecuted' in Article 20 is also indicative of the fact that it has a reference to a prosecution for an offence before a Court.

Further by Article 367 the provisions of the General Clauses Act, 1897, subject to any adaptations and modifications that may have been, made therein under Article 372 are made applicable to the interpretation of the Constitution in the same manner as they are made applicable to the interpretation of an Act of the Legislature of the dominion of India. By Section 3(37) of the General Clauses Act 'offence' has been defined to mean any act or omission made punishable by any law for the time being in force. To me it appears that the ingredient of the act or the omission which is to constitute the offence must be found in a law and the same law must prescribe the punishment.

Breaches which may loosely be termed 'offences' cannot, to my mind, fall within the purview of Article 20 of the Constitution. We speak loosely of social offences and of departmental offences, but these lapses cannot obviously come within the purview of the word 'offence' within the meaning of Article 20. All lapses in the social sphere are punished in some form or other, if the word 'punishment' is to be given the same loose and wide meaning as was attempted to be given to the word 'offence'. it was argued by Sir Iqbal Ahmad that under Rule 63 of the Rules of Procedure of the U.P. Legislative Assembly certain punishments, as punishments, have been catalogued and prescribed. It was also pointed out that expulsion of a member and the suspension of a member are both classed as punishments under the rules. In my judgment, the word 'punishment' in Rule 63 has been used in. a wide and popular sense and not in the sense in which the word has been used in the Constitution in Article 20.

There is, in my judgment, another way of looking at this matter. The action of the Speaker in having the applicant removed from the House for unruly behaviour was not a punishment and was not, strictly speaking, 'expulsion' within the meaning of Rule 63 (4). The Speaker, it must be remembered, asked the applicant to withdraw from the House for disorderly conduct under the powers conferred on him by Rule 189 (1). When the applicant refused to withdraw then the Speaker had him put out of the House under the powers vested in him by Sub-rule (3) of Rule 189. This action of the Speaker was not really punitive action, but was preventive action. Under Rule 189 (1) the Speaker has been given power to preserve order and he has further been armed with the power to direct a member to withdraw if his conduct appears to be disorderly to the Speaker; the Speaker has further been given the power to enforce his decision under Sub-rule (3). He has not been empowered, as such, to punish any member for disorderly conduct.

> It appears to me, therefore, that the action which the Speaker took was for preserving future order for he could not possibly preserve that order which had already been broken and he had not been given any other power save the power to preserve order under Rule 189(1). Anything that is done in order to safeguard against a future recurrence of the same danger is not punitive action but is preventive action, but what was done by the resolution of the House was to suspend the petitioner for the disorderly conduct for which he had not really been punished earlier. In my judgment in this view of the matter also, there was no breach of Article 20(2) of the Constitution.

68. I wish, however, to make it clear that in the event of my being persuaded to hold that there was double punishment of the petitioner for the same offence--offence as contemplated by Article 20(2) of the Constitution -- then I would have felt little difficulty in holding that the petitioner would have been entitled to relief by this Court because in my judgment the privileges, immunities and powers of the House or its Speaker could not override the positive prohibitions contained in the Constitution, nor could they make the provisions of Part III -- the Fundamental Rights--nugatory, even though Article 194(3) has not been made specifically subject to the other provisions of the Constitution. To hold otherwise would be to place the Speaker or the Legislature of a State, above the Constitution -- that, in my judgment can never be held. The constitutional guarantees, subject to the limitations as are permissible under the Constitution, contained in Part III of the Constitution must reign supreme above everything created under the Constitution.

69. In the result I agree with my learned brother in the order which he has proposed, namely, that this petition has no merits and must be dismissed with costs.

BY THE COURT

70. For the reasons given in our respective judgments we dismiss this application with costs.