

(1998) 04 AHC CK 0138

In the Allahabad High Court

Case No : Criminal Contempt Petition No. 38 of 1996

Smt. Saroj Giri

APPELLANT

Vs

Vayalar Ravi and Others

RESPONDENT

Date of Decision : 28-04-1998

Acts Referred:

Constitution of India, 1950 — Article 105, 105(1), 105(2), 12, 121
Criminal Procedure Code, 1973 (CrPC) — Section 491

Citation : (1999) CriLJ 498

Hon'ble Judges : P.K. Jain, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : A.P.N. Giri, Sarvodaya Singh, Gyanendra Mrityunjaya and Rajesh Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

1. Through this petition, filed on August 26, 1996, the petitioner prays to issue show cause notices to Respondents Nos. 1 to 15 Sri Vayalar Ravi, Sri John. F. Fernandes, Smt. Jayanti Natrajan, Sri S.S. Ahluwalia, Sri S. M. Krishna, Sri Ish Dutt Yadav, Sri Gurudas Das Gupta, Sri M. A. Baby, Mrs. Najma Heptulla, Sri Priya Ranjan Das Munshi, Sri Santosh Mohan Dev, Sri Basudev Acharya, Sri Nirmal Kanti Chatterjee, Sri P. A. Sangama and Sri Surinder Kumar Singla for having criticised on the floor of the Parliament on July 24, 26 and 30, 1996 two of the Hon'ble Judges of this Court, who on 24-7-1996 had issued notices in her Civil Misc. Writ Petition No. 19386 of 1996 questioning the validity of the appointment of Respondent No. 16 Sri H. D. Deve Gowda as the Prime Minister of the country and had advised him not to appear before this Court and who did not appear before this Court and punish them for committal of contempt of this Court under Article 215 of the Constitution of India.

2. Records of her writ petition discloses that it was heard on the question of its admission by a Division Bench comprising B. M. Lal, J. (who since July 9, 1997 is the Chief Justice of Patna High Court) and J.S. Sidhu, J. on 24-7-96. Sri U. N.

Sharma, Senior Standing Counsel for the Union of India accepted notices on behalf of Respondents Nos. 2 and 3 to the writ petition (Union of India and Secretary to the Govt. of India) and undertook to file counter-affidavit within three weeks. Notices were issued to Respondents Nos. 1 and 4 to the writ petition (Respondent No. 16 herein and the Attorney General of India). The writ petition was directed to be listed on 13-8-1996. The interim prayer for restraining Respondent No. 16 from functioning as the Prime Minister was not granted.

2.1 It may be mentioned that on July 30, 1996 the Apex Court considered Civil Misc. Writ Petition filed by one S.P. Anand, similar in nature to one filed by the petitioner, and passed the following order:-

We have heard the petitioner-in-person. We find that the very same issue is being raised from Court to Court and it is, therefore, essential that this Court may examine the question to avoid multiplicity of litigation on the same point. We understand that the High Courts of Delhi and Calcutta have already examined this question but the question is still pending in the High Court of Allahabad and Madhya Pradesh. We, therefore, think that to avoid multiplicity of litigation, it is desirable that this Court examines the question so that matters pending in the High Courts may stand concluded one way or the other based on the decision of this Court.

Before we decide to issue directions in this petition we would like the Attorney General to assist us in this matter. We direct a notice to go to the Attorney General returnable within four weeks from today. In the meantime, we also direct that all proceedings pending on the question, "whether the present Prime Minister who does not happen to be a member of either House of Parliament as alleged by the petitioner can be sworn in and can function as the Prime Minister of this Country", should remain stayed wherever it is pending and any petition raising the same question filed hereafter in any Court in the Country shall not be proceeded with after lodgment till further orders of this Court. Notice to go to the Registrars of all High Courts who will ensure that pending petition, if any, shall remain stayed and fresh petitions if filed shall be dealt with as directed. List this petition after four weeks.

2.2 The writ petition filed by S.P. Anand before the Apex Court was finally dismissed after recording elaborate reasons upholding the appointment of Sri H. D. Deve Gowda as Prime Minister vide judgment and order dated November 6, 1996 which stands reported in S.P. Anand Vs. H.D. Deve Gowda and others, .

2.3 Thereafter the writ petition of the petitioner was placed before a Division Bench consisting of B. M. Lal and Bhagwan Din, JJ. on February 24, 1997 and the petitioner's husband Sri A. P. N. Giri, Advocate was heard and judgment reserved.

2.4 The petitioner on the very day (i.e. February 25, 1997) appeared in person and created a scene resulting into initiation of proceedings in contempt against

her and her husband-counsel which, however, were finally dropped by that Bench.

2.5 Her writ petition was ultimately dismissed vide Judgment and Order dated March 11, 1997 following the ratio laid down by the Apex Court in S.P. Anand supra.

3. This petition was placed before us on January 6, 1998 for our consideration.

3.1 Sri A. P. N. Giri, learned counsel appearing on behalf of the petitioner, at the very beginning came up with an oral prayer to withdraw certain statements made by the petitioner in regard to the Hon''ble Judges and Parliamentarians and undertook to file an appropriate application. We permitted him to proceed with his arguments keeping his undertaking in mind. We also heard Sri Ravindra Singh, a learned counsel for this Court.

3.2 The submissions of Mr. Giri and Mr. Singh were as follows:-(i) Article 121 of the Constitution of India prohibited discussions against the conduct of Hon''ble Mr. Justice B. M. Lal and Hon''ble Mr. Justice J.S. Sidhu, yet from the reports of the Newspapers it is clear that the members of both Houses of Parliament had criticised them. Even though the very opening words of Article 105(1) no doubt talks of freedom of speech of the Parliamentarians but it is subject to the provisions of the Constitution which apparently means subject to Article 121 of the Constitution and the Rules and Standing Orders regulating the procedure of Parliament. Even notice of privilege was served on the President of the Bar Association of the High Court erroneously relying upon the provisions of Article 205 of the Constitution of India when their act was criticised, deprecated and condemned by the Bar Association of the High Court. It is crystal clear that discussion should not have been made in the Parliament in regard to the conduct of the aforementioned Judges which was/is permissible only at the time when a motion is moved for their removal under the provisions of the Judges Enquiry Act. The interpretation of Articles 105 and 121 given by the Supreme Court in C. Ravichandran Iyer Vs. Justice A.M. Bhattacharjee and Others, and Dr. D.C. Saxena, Contemnor Vs. Hon''ble the Chief Justice of India, that Article 121 of the Constitution puts nail squarely on the projection/prosecution or attempts by an individual or associations to investigate or to interfere into or discussion in regard to the conduct of the Judges or performance of their duty or Court behaviour except as provided under Article 124 of the Constitution was binding on them. Discussion was not permissible in view of the fact that the issues were subjudice before this Court which attempted to interfere with administration of justice of this Court. Reliance was also placed on the judgments of the Apex Court in Re-Balwan Singh JT (1996) 10 (SC) 337 In Re: P.C. Sen, and E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar, . Accordingly, contempt of this Court and the Supreme Court was committed by Respondents Nos. 1 to 16 in discussing and criticising the conduct of the two Judges in particular and of the High Court in general. (ii) In view of the Constitution Bench decision of the Apex Court rendered through Seven Judges in L. Chandra Kumar Vs. Union of India and others, the Supreme Court and the High Courts possess powers of judicial

review over legislative acts which is integral and essential feature of the Constitution, constituting parts of its basic structure and accordingly the Supreme Court and this Court have powers to restrain the members of the Parliament from breaching the express mandate enshrined under Article 121 of the Constitution and in the event of their deliberate violation to take appropriate action under Articles 129 and 215 of the Constitution and/or under the codified Contempt Law. In *State Vs. Tribhuvan Nath Verma*, it was held that the statement that the particular Judge of the High Court was wrong in directing issuing notice, instead of dropping the proceeding, was held to be contempt of the Court. (iii) The former Prime Minister has committed contempt in not filing counter/show cause pursuant to the notice issued to him in view of the decision of the Supreme Court in *Dhananjay Sharma Vs. State of Haryana and Others*, . In advising him in not filing show cause and/or not appearing before this Court Respondents Nos. 1 to 15 have also committed contempt. (iv) In our country no one is above law. I. *Manilal Singh Vs. Dr. H. Borobabu Singh and another*, was held up for committal of contempt of Court. Similar is the view of the Apex Court in *Mohd. Aslam alias Bhure Vs. Union of India*, .

3.3 Awaiting filing of the proposed amendment application we reserved our judgment.

3.4 Thereafter on 9-1-1998 the petitioner filed an application for deleting certain statements in her petition. She on 9-1-1998 also filed another application seeking impleadment of two newspapers (i) *Janmorcha* through its Publisher/Editor, 22, Sarojini Naidu Marg, Allahabad and (ii) *The Pioneer*, through its Publisher/Editor, Allahabad as their reports corroborated her allegations. The petitioner or her husband counsel neither had taken our leave for filing the second application nor was any submission made in their regard during his arguments.

3.5 Mr. Singh on 9-1-1998 also filed this written submission.

4. OUR FINDINGS :

We would have dismissed this petition by merely remembering the question posed by H. M. Seervai (whose submissions as counsel were rejected by the majority judgment 6.1 of the Supreme Court while giving its opinion in *Re-Under Article 143*, In the matter of: *Under Article 143 of the Constitution of India*, better known as *U. P. Legislature Case* in his book "*Constitutional Law of India*", Fourth Edition Vol. 2 Paragraph 20.89); what is the consequence if notwithstanding the restriction imposed by Article 211 the Speaker allows and the members of the Assembly discuss the conduct of the Judge ?; and the finding of the majority opinion in the *U. P. Legislature case supra* that "the conduct of the Judge in relation to the discharge of his duties cannot legitimately be discussed inside the House, though if it is, no remedy lies in a Court of law"; but having regard to the entire facts and circumstances including the detailed arguments made we proceed to deliver a more reasoned order.

5. First we take up the Rules of Procedure and Conduct of Business of South Houses of the Parliament, though not referred to by any of the counsel during arguments.

6.1 Rule 186(viii), Chapter XIV of the "Rules of Procedure and Conduct of Business in Lok Sabha" dealing with Motions reads, thus :-

Admissibility of motions 186. In order that a motion may be admissible it shall satisfy the following conditions, namely :-

x x x x

(viii) it shall not relate to any matter which is under adjudication by a Court of law having jurisdiction in any part of India.

(Emphasis supplied)

6.2 Rule 157(V), Chapter XI of the Rules of Procedure of Council of States (Rajya Sabha) reads thus :-

Conditions of admissibility of Resolution 157. In order that a resolution may be admissible, it will satisfy the following conditions, namely :-

x x x x x

(v) It shall not relate to any matter which is under adjudication by a Court of Law having jurisdiction in any part of India.

(Emphasis supplied)

7. Under the aforesaid Rules no motion pertaining to a subjudice matter in Court could be discussed in either House of the Parliament.

7.1 The then Chairman of the Rajya Sabha Sri M. Hidayatullah had also given a ruling in this regard thus :

It shall not relate to any matter which is under adjudication by a Court of Law having jurisdiction in any part of India (See the Book "Second Chamber of Indian Parliament", by Dr. N. K. Tripathi, 1984 Edition page 125).

7.2 Thus, the discussion in regard to the pending writ petition of the petitioner was not permissible under Rules aforesaid.

8. Now we revert to the text of the Constitution of India of which the following Articles are relevant :-

105(1). Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under

the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978.

(4) The provisions of Clauses shall apply in relation to persons who by virtue of this Constitution have right to speak in. and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they supply in relation to members of Parliament.

x x x x x

121. No discussion shall take place in Parliament with respect of the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the Parliament Praying for the removal of the Judges as hereinafter pro-vided.

122(1). The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

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

211. No discussion shall take place in the Legislature of a State with respect of the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

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.

(Emphasis supplied).

9. On a bare comparison it is clear that Articles 121 and 211 of the Constitution are pari material except that under the former Article discussion in regard to the conduct of a Judge of the Supreme Court or High Court can take place only at the time of prayer for removal of such a Judge as provided under the Constitution.

9.1 There was no motion for removal of the two Hon"ble Judges of this Court,

who had passed order dated 24-7-1996, and, thus, their action or conduct could not be discussed on the days as reported to in the Media in view of the prohibition enshrined in Article 121 of the Constitution.

10. Articles 122(2) and 212(2) are pari material with no exception.

11. Let us now notice some cases, ruling of the Legislature including that of the privilege Committee of the Rajya Sabha and comments and notings etc. of some great authors made in their books.

12. In Sri Surendra Mohanty Vs. Sri Nabakrishna Choudhury and Others, a Division Bench of the Orissa High Court, when a proceeding in contempt was initiated against the Chief Minister of Orissa for having made certain remarks against the Orissa High Court in his speech at the floor of the Legislative Assembly and against the Editor, Printer and Publisher of the Newspaper Matrubhumi for having published an extract of that speech, on a petition filed by a member of Parliament, held as follows :-

(i) "The speech of the Chief Minister amounts to contempt of this Court.

(ii) The High Court has no jurisdiction to take action against a member of the Legislature for his speech in the Legislature, even if it amounts to contempt.

(iii) The appropriate procedure would be to leave the matter to the State Legislative Assembly to be referred to its Committees of Privileges for each examination, investigation and report as may be necessary in accordance with its own rules of procedure and the provisions of the Constitution.

(iv) So far the Editor, and the printer and publisher of Matrubhumi are concerned....They have committed contempt of Court by publishing the speech of the Chief Minister in their "daily"...they cannot claim immunity under Clause (2) of Article 194 because their "daily" is not an authorised publication.

12.1 We fully concur with the view taken by the Orissa High Court.

13. Now we come to the In the matter of: Under Article 143 of the Constitution of India, .

13.1 A pamphlet bearing signatures of various persons including Keshav Singh, a resident of Gorakhpur, was printed and published. On March 14, 1964 the Speaker of our Legislative Assembly administered a reprimand to Keshav Singh in regard to the contents of that pamphlet for having committed contempt of the House and also for having committed a breach of the privileges of a Member of the House. Later, on that very day, a decision was taken by the House. The Speaker directed Keshav Singh to be committed to prison for 7 days for committing another contempt, when he was summoned to receive the aforesaid reprimand and for writing earlier a disrespectful letter to the Speaker. A warrant was issued. Keshav Singh was detained in Jail in execution of that warrant.

Sri B. Solomon, an Advocate filed a petition on March 19, 1964 on behalf of

Keshav Singh aforesaid under Article 226 of the Constitution and Section 491, Cr. P. C. before the Lucknow Bench of this Court challenging his detention. The Court passed an order admitting the petition as well as releasing Keshav Singh on bail.

13.2 On March 21, 1964, the House proceeded to take action against the learned Judges, who had passed orders aforesaid, Keshav Singh and his learned Advocate Sri B. Solomon resolving that the House is of the definite view that they have committed contempt of the House.

13.3 On March 23, 1964 the learned Judges filed petition under Article 226 before this Court for setting aside the resolution dated March 21, 1964 -aforesaid on various grounds which was taken up by the Full Bench of all the 28 Judges of this Court. The petition was admitted, the Speaker was restrained from issuing any warrant and Govt. of U. P. as well as the Marshall of the House were restrained from executing the warrant, if already issued.

13.4 On March 25, 1964 Sri B. Solomon also filed a similar petition, which was also heard by the Full Bench and while admitting his petition interim order was passed prohibiting implementation of the resolution of the House.

13.5 On that very day the House passed yet another resolution, clarifying its earlier resolution, that the question of contempt may be decided after giving opportunity of explanation. Accordingly, the warrants issued were withdrawn.

13.6 On March 26, 1964 the President of India referred the following 5 questions to be answered by the Supreme Court under Article 143(1) of the Constitution :-

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

(2) Whether, on the facts and circumstances of the case, Mr. Keshav Singh by causing the petition to be presented on his behalf to the High Court of Uttar Pradesh as aforesaid, Mr. B. Solomon, Advocate, by presenting the said petition and the said two Hon"ble Judges by entertaining and dealing with the said petition and ordering the release of Shri Keshav Singh on bail pending disposal of the said petition committed contempt of the Legislative Assembly of Uttar Pradesh;

(3) Whether, on the facts and circumstances of the case, it was competent for the Legislative Assembly of Uttar Pradesh to direct the production of the said two Hon"ble Judges and Mr. B. Solomon, Advocate, before it in custody or to call for their explanation for its contempt;

(4) Whether, on the facts and circumstances of the case, it was competent for

the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two Hon''ble Judges and Mr. B. Solomon, Advocate, and to pass interim orders restraining the Speaker of the Legislative Assembly of Uttar Pradesh and other respondents to the said petitions from implementing the aforesaid direction of the said Legislative Assembly; and

(5) Whether a Judge of a High Court who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt or for infringement of its privileges and immunities or who passes any order on such petition commits contempt of the said Legislature is competent to take proceedings against such a Judge in the exercise and enforcement of its powers, privileges and immunities.

13.7 A Constitution Bench of Seven Judges of the Supreme Court was constituted, which as per majority (6:1) judgment (which is reported in In the matter of: Under Article 143 of the Constitution of India, answered as follows :-

(143) Having thus discussed all the relevant points argued before us and recorded our conclusions on them. We are now in a position to render our answers to the five questions referred to us by the president. Our answers are :-

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

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

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

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

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

13.8 Before giving the answers aforesaid following observations/findings were made (only the relevant ones are being mentioned):-

40. Our Legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within Legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule but beyond the Lists, the Legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution but the basis of the power is the Constitution itself. Therefore, it is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution.

41. In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance.

42. The Constitution has entrusted to the Judicature in this country the task of construing the provisions of the Constitution and of safeguarding the fundamental rights of the citizens. Just as the legislatures are conferred legislative authority and their functions are normally confined to legislative functions, and the functions and authority of the executive lie within the domain of executive authority, so the jurisdiction and authority of the Judicature in this country lie within the domain of adjudication.

43. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. The High Courts

also have to play an equally significant role in the development of the rule of law and there can be little doubt that the successful working of the rule of law is the basic foundation of the democratic way of life. In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the Legislatures and the Judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the Executive which is another important constituent of a democratic State, must function not in antimony nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country.

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

59. Let us first take Article 226. This Article confers very wide powers on every High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including the appropriate cases any Government within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, qua warrant, certiorari, or any of them for the enforcement of any of the rights conferred by part III and for any other purpose. It is hardly necessary to emphasise that the language used by Article 226 in conferring power of the High Courts is very wide. Article 12 defines the "State" as including the Legislature of such State, and so, prima facie, the power conferred on the High Court under Article 226(1) can, in proper case, be exercised even against the legislature.

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63. That takes us to Article 211. This article provides that no discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. This provision amounts to an absolute Constitutional prohibition against any discussion in the Legislature of a State in respect of the judicial conduct of a Judge of this Court or of the High Court. x x x x x

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

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

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

be made the subject matter of any proceedings under the latter part of Article 194(3). If this were not the true position, Article 211 would amount to a meaningless declaration and that clearly could not have been the intention of the Constitution.

68. The existence of a fearless and independent judiciary can be said to be the very basic foundation of the Constitutional structure in India, and so, it would be idle, we think, to contend that the absolute prohibition prescribed by Article 211 should be read as merely directory and should be allowed to be reduced to a meaningless declaration by permitting the House to take action against a Judge in respect of his conduct in the discharge of his duties. Therefore, we are satisfied that Mr. Setalvad is right when he contends that whatever may be the extent of the powers and privileges conferred on the House by the latter part of Article 194(3), the power to take action against a Judge for contempt alleged to have been committed by him by his act in the discharge of his duties cannot be included in them. Thus, Mr. Setalvad's case is that so far as the Judge are concerned, the position is quite clear that as a result of the impact of the provisions contained in Articles 226 and 211, judicial conduct can never become the subject matter of contempt proceedings under the latter part of Article 194(3), even if it is assumed that such conduct can become the subject matter of contempt proceedings under the powers and privileges possessed by the House of Commons in England.

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

129. If the power of the High Courts under Article 226 and the authority of this Court under Article 32 are not subject to any exceptions, then it would be futile to contend that a citizen cannot move the High Courts or this Court to invoke their jurisdiction even in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the Court in that behalf, otherwise the power conferred on the High Court and this Court would be rendered virtually meaningless. Let it not be forgotten that the judicial power

conferred on the High Courts and this Court is meant for the protection of the citizens' fundamental rights, and so, in the existence of the said judicial power itself is necessarily involved the right of the citizen to appeal to the said power in a proper case.

130. In re, parliamentary privilege Act, 1770; 1958 AC 331 the privy Council was asked to consider whether the House of Commons would be acting contrary to the parliamentary privilege Act, 1770, if it treated the issue of a writ against a Member of parliament in respect of a speech or proceeding by him in parliament as a breach of its privileges. The said question had given rise to some doubt, and so, it was referred to the Privy Council for its opinion. The opinion expressed by the Privy Council was in favour of parliament. Confining its answer to the said limited question, the Privy Council took the precaution of adding that "they express no opinion whether the proceedings referred to in the introductory paragraph were "a proceeding in Parliament", a question not discussed before them, nor on the question whether the mere issue of a writ would in any circumstances be a breach of privilege. "In taking this course", said Viscount Simonds who spoke for the Privy Council, "they have been mindful of the inalienable right of her Majesty's subjects to have recourse to her Courts of law for the remedy of their wrongs and would not prejudice the hearing of any cause in which a plaintiff sought relief. "The inalienable right to which Viscount Simonds referred is implicit in the provisions of Article 226 and Article 32 and its existence is clearly inconsistent with the right claimed by the House that a general warrant should be treated as conclusive in all courts of law; it would also be equally inconsistent with the claim made by the House that Keshav Singh has committed contempt by moving the High Court under Article 226.

132. Our conclusion is that the particular right which the House claims to be an integral part of its power or privilege is inconsistent with the material provisions of the Constitution and cannot be deemed to have been included under the latter part of Article 194(3).

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142. Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the Courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in *Andre Paul v. Attorney General of Trinidad* AIR 1936 PC 141. Said Lord Atkin, "Justice is not a cloistered virtue she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men." We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the Court, but may sometimes affect it adversely. Wise Judges never forget that the best way of sustaining the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their

approach, and by the restraint, dignity and decorum which they deserve in their judicial conduct. We venture to think that what is true of the Judicature is equally true of the Legislatures.

13.9 On 10-3-1965 Keshav Singh's Criminal Misc. Writ Petition No. 3362 of 1994 was decided by J.N. Takri & G.C. Mathur, JJ. (the Judgment stands reported in Keshav Singh Vs. Speaker, Legislative Assembly and Others, despite the fact that no one except the Jail Superintendent appeared to oppose the writ petition after overruling all the submissions made on his behalf and directed him to surrender his bail and serve out the remaining portion of the sentence of imprisonment imposed upon him by the Legislative Assembly.

13.10 Despite the opinion given by the Supreme Court, the privileges Committee of the U.P. Legislature went into the question and held that the "Committee feels that the ends of justice would be met and the dignity of the House vindicated, if the House expresses its displeasure.

13.11 On 15-9-1971, Writ Petition No. 1463 of 1964 filed by Justice Nasir Ullah Beg Writ Petition No. 1464 of 1964 filed by Justice G.D. Sehgal and Writ Petition No. 1496 of 1964 filed by B. Soloman (the counsel) against the Speaker of the Legislative Assembly U.P. (Respondent No. 1), Sri Madan Mohan Verma, Speaker of the Legislative Assembly, U.P. (Respondent No. 2). The Legislative Assembly of Uttar Pradesh (Respondent No. 3), and the Marshal of the U.P. Legislative Assembly (Respondent No. 4) were consigned to the Record Room by the then Hon"ble the Chief Justice Mr. Justice S.K. Verma by passing the following order on 15-9-1971:-

No body seems to be interested in this petition. The Speaker Mr. Madan Mohan Verma is dead. There is no point in keeping this petition pending. Consign to the Record Room.

14. Sri Jagdish Swarup, Former Solicitor General of India, in his Book "Constitution of India" 1985 Edition at page 196 writes to the effect that aforesaid judgment was applauded by the public at large but the legislatures of our country, including the Parliament did not like the view. The then Prime Minister Sri Lal Bahadur Shastri sent the opinion expressed by the Apex Court to several Senior Judges of England and United States presumably to find out their reaction. Lord Denning M.R. of England, Chief Justice, Earl Warren of the United States Supreme Court and several other of England and America complemented the CJI Mr. Justice P.B. Gajendragadkar which stands mentioned at page 161 of his Book "To the best of My Memory" in these words :-

One morning, I got a letter from Lord Denning praising the opinion in superlative terms and making the characteristic observation that he hoped that if such questions were raised before his Court, he could have the courage to take the view which we had taken and the command over the language in which our opinion was expressed. I got similar compliments from Earl Warren, Chief Justice of the Supreme Court of the United States and several other Judges in America

and England. That is how I came to know that the opinion received publicity among the Judges of the foreign Courts by reason of the fact that the Prime Minister of India had circulated it, presumably to find out their reaction.

15. Justice M. Hidayatullah, who was party to the majority opinion in In the matter of: Under Article 143 of the Constitution of India, , in his Lajpat Rai Memorial Lectures (See the book "Democracy in India and the Judicial process in India, page 79), after tracing out that even in England the House of Commons did in a way recognised the Court's jurisdiction, stated thus :-

...Our Constitution ensures to us that Government would be based on the salutary principle that all the forces possessed by the State should be 8 divided and balanced between its three branches in such a way that whenever one branch oversteps the limits, it can be checked by one or the other branch. This always tends to a proper appraisal of any action, be it executive, be it legislative, be it judicial. The highest form of democratic Government is one in which Judiciary can step in to vote a wrong action by the other two branches of Government, and the Judiciary though Independent, is subject to reasonable public criticism.

16. In Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others, a six Judges Bench of the Apex Court while upholding the view taken by the Delhi High Court that in view of Clause 2 of Article 105 of the constitution no proceeding could lie in any Court in respect of what was said by the Speaker of the Lok Sabha, the Home Minister and the three members of the parliament on the floor of the Lok Sabha during call attention motion, held as follows :-

When it was submitted in support of the appeal that the immunity under Article 212 of the Constitution was against an alleged irregularity of procedure but not against an illegality as observed by this Court in U.P. Legislature case, and contended that the same principle should be applied here to determine whether what was said was outside the discussion on a calling attention motion and that immunity granted by Article 105(2) was to what was relevant to the business of the parliament and not to something which was utterly irrelevant, it was held as follows :-

In our judgment it is not possible to read the provisions of the article in the way suggested. The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of "anything said... in parliament". The word "anything" is of the widest import and is equivalent to "everything". The only limitation arises from the words "in Parliament" which means during the sitting of parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's

representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of parliament the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none.

16.1 The aforesaid judgment is also an authority for the proposition that if a defendant despite summons does not appear the Court may take action to be undefended and proceedings ex parte may even regard the claim of the plaintiff to be admitted, and that if a summons is issued to a witness or to a person complained against under the law relating to crimes, and the witnesses or the person summoned remains absent after service, a warrant for his arrest may issue.

17. This Court had merely issued notice in the admission matter and not summons for appearance of any one as a witness. Thus the advice to the then Prime Minister by these Members of the Parliament in the Houses arrayed as respondent Nos. 1 to 15 not to appear before this Court pursuant to its notice by no stretch of imagination can be held to be committal of contempt of this Court. The argument of the counsel for the petitioner in this regard is hereby thus rejected.

18. The Karnataka Legislative Case A.K. Subbiah and Another Vs. The Chairman, Karnataka Legislative Council, Bangalore and Another, .

A prayer under Article 226 of the Constitution was made before the Karnataka High Court by two members of the Karnataka State Legislature that a member on the floor of the Council had made derogatory remarks touching the conduct of the Karnataka High Court Judges violating Article 211 of the Constitution and that the Chairman of the Council be directed to produce the records of the proceedings dated 11- 8-1976 of the Council in relation to the statements of that member.

18.1 E.S. Venkataramiah, J. (who later on became CJI), dismissed that petition following In the matter of: Under Article 143 of the Constitution of India, and Tej Kiran Jain and Others Vs. N. Sanjiva Reddy and Others, holding as follows :

(i) "The presiding Officer of a House is the supreme Authority with regard to the regularity or otherwise of the proceedings.

(ii) "The question whether a member while exercising his freedom of speech has contravened Article 211 or any other provisions of the Constitution, is a matter which falls within his exclusive jurisdiction as observed by the Supreme Court and that the Courts have no say in the matter. This Court cannot go into that question and express any opinion on it.

(iii) "Hence the question of sending for the records and quashing any such proceedings does not arise.

(iv)...(T) This Court which has a special obligation to uphold the Constitution and

the laws, upholds Article 194(2) of the Constitution and the immunity guaranteed to the members of the Legislature thereunder, leaving it to them to uphold Article 211 of the Constitution in their deliberation.

18.2 We fully concur with the aforesaid view.

19. We have had the advantage of going through a copy of the 5 Judges Constitution Bench Judgment of the Supreme Court dated April 17, 1998 in Criminal Appeals Nos. 1 207-1208 of 1997 (reported in P.V. Narsimha Rao Vs. State (CBI/SPE), (CBI/SPE) (popularly known as J.M.M. Biribery case) Bharucha & Rajendra Babu, JJ. in regard to Article 105 of the Constitution forming the majority held as follows (Paras 106, 131, 134, 143 and 144 of AIR) :-

By reason of sub-article (1) of Article 105, members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively. Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no member is answerable in a Court of law or any similar tribunal for what he has said in parliament. This again is recognition of the fact that a member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that has been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of. It is so given to secure the freedom of speech in parliament that sub-article (1) provides for. It is necessary, given the role members of parliament must perform. The protection is absolute against .,. Court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person shall be liable to any proceedings in any Court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any Court connected with such publication. The Constitution having dealt with the all important privilege of members of Parliament to speak and vote therein as they deem fit, freed of the fear of

attracting legal proceedings concerning what they say or how they vote, provides for other powers privileges and immunities in sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force, that is to say, they are such as were enjoyed by the House of Commons just before 26th January, 1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in parliament thought to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in parliament and to a vote given therein is concerned, provision is made in sub-article (2), it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-article (4) gives the protection of the sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General.

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...Article 105(2) protects a Member of Parliament against proceedings in Court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in parliament.

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It is difficult to agree with the learned Attorney General that, though the words "in respect of " must receive a broad meaning, the protection under Article 105(2) is limited to Court proceedings that impugn the speech that is given or the vote that is cast or arise there out or that the object of the protection would be fully satisfied thereby. The object of the protection is to enable members to speak their mind in parliament and vote in the same way, freed of the fear of being made answerable on that, account in a Court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action which is their speech or their vote. To enable members to participate fearlessly in parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a member is not "liable to any proceedings in any Court in respect of anything said or any vote given by him". Article 105(2) does not say, which it would have if the learned Attorney General were right, that a member is not liable for what he has said or how he has voted.

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...Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a member of parliament and has a connection with his speech or vote therein. What is provided thereby is that a member of

parliament shall not be answerable in a Court of law for something that has a nexus to his speech or vote in parliament. If a member of parliament, has, by his speech or vote in parliament, committed an offence, he enjoys, by reason of Article 105(2), immunity from prosecution therefore. Those who have conspired with the member of parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it.

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...Article 105(2) does not states that the member of parliament who is not liable to civil or criminal proceedings in a Court of law is liable to the same civil or criminal proceedings in parliament. Parliament in India is not a Court of Record. It may not exercise judicial powers or entertain judicial proceedings. The decisions of this Court so holding have already been referred to. The alleged bribe takers, except Ajit Singh, who are entitled to the immunity conferred by Article 105(2) are not liable to be tried in the Lok Sabha for the offences set out in the charges against them or any other charges, but the Lok Sabha may proceed against them for breach of privileges or contempt.

Ray, J. who agreed with Bharucha and Rajendra Babu, JJ., held as follows (Paras 97 and 98 of AIR) :-

Article 105 of the Constitution deals with powers, privileges etc. of Houses of Parliament and the members and committees thereof. Sub-Article (1) of Article 105 makes it evident that subject to the provisions of the Constitution and rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in parliament. The provisions of sub-article (1) Article 105 indicates in no uncertain term that the freedom of speech guaranteed under sub-article (1) of Article 105 is independent of the freedom of speech guaranteed under Article 19 of the Constitution and such freedom of speech under Article 105(1) is not inhibited or circumscribed by the restrictions under Article 19 of the Constitution. In order to ensure effective functioning of parliamentary democracy, there was a felt need that a Member of Parliament will have absolute freedom in expressing his views in the deliberations made on the floor of parliament. Similarly he must enjoy full freedom in casting his vote in parliament.

The protections to be enjoyed by a Member of Parliament as contained in sub-article (2) of Article 105 essentially flows from the freedom of speech guaranteed under sub-article (1) of Article 105. Both the sub-articles (1) and (2) compliment each other and indicate the true content of freedom of speech and freedom to exercise the right to vote envisaged in Article 105 of the Constitution. The expression "in respect of appearing in several articles of the Constitution and in some other legislative provisions has been noticed in a number of decisions of this Court. The correct interpretation of the expression "in respect of cannot be made under any rigid formula but must be appreciated with reference to the context in which it has been used and the purpose to be achieved under the provision in question. The context in which the expression "in respect of has

been used in sub-article (2) of Article 105 and the purpose for which the freedom of speech and freedom to vote have been guaranteed in sub-article (2) of Article 105 do not permit any restriction or curtailment of such right expressly given under sub-article (1) and sub-article (2) of Article 105 of the Constitution. It must, however, be made clear that the protection under sub-article (2) of Article 105 of the Constitution must relate to the vote actually given and speech actually made in parliament by a Member of Parliament. In my view, the protection against proceedings in Court as envisaged under sub-article (2) of Article 105 must necessarily be interpreted broadly and not in a restricted manner.

20. The following interpretation of Article 121 of the Constitution of India was given by the 5 Judges Constitution Bench of the Apex Court in Sub-Committee of Judicial Accountability Vs. Union of India and others, :-

B.C. Roy, J. (for himself, Venkatachaliah, Verma & Agrawal, JJ.)

Article 121 provides that no discussion shall take place in parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

Article 121 suggests that the bar on the discussion in parliament with respect to the conduct of any Judge is lifted upon a motion for presenting an address to the President praying for the removal of a Judge hereinafter provided. The words "motion" and "as hereinafter provided" are obvious reference to the motion for the purpose of clause (4) of the Article 124 which in turn imports the concept of "proved misbehaviour or incapacity, what lift to bar under Article 121 in the "proved" misbehaviour or incapacity.

The motion which lifts the bar contained in Article 121 is really a motion for such removal under clause (4) of Article 124 moved in the House after the alleged misbehaviour or incapacity has been proved in accordance with the law enacted by the parliament under clause (5) of Article 124.

The Judges (Inquiries) Act, 1968 enacted under Article 124(5) itself indicates that the parliament so understood the integrated scheme of Articles 121, 124 and 124(5).... In substance it only means that the specified member of MPs alone can make such a complaint; on receiving such a complaint if the Speaker/Chairman forms the opinion that there is a prima facie case for investigation, he will constitute the judicial committee as prescribed; and if the finding reached is guilty then the Speaker/Chairman commences the parliamentary process in accordance with Article 124(4) for removal of the Judge and the bar of Article 125 is lifted.

The Constitution Scheme appears to be that unless the alleged misbehaviour or incapacity proved in accordance with the provisions of law enacted under Article 124(5) and a motion for presenting an address for removal of the Judge on the ground of proved misbehaviour or incapacity is made, because of the restriction

contained in Article 121, there cannot be a discussion about the Judge's conduct even in the Parliament which has the substantive power of removal under Article 124(4).

Sharma, J. "There is complete unanimity before us, and rightly so, that the object of Article 121 to prevent a public discussion of the Judges in public interest and its importance cannot be diluted. Mr. Shanti Bhushan elaborated this aspect by saying that any such discussion in the House is bound to be reported through the media and will thus reach the general public and which by itself, irrespective of the final outcome of the discussion, will damage the reputation of the Judge concerned and thereby the image of the entire judiciary; and must, therefore, be permitted until a report against the Judge after a proper inquiry is available. Mr. Sibal also agreed on the significance of Article 121.

21. The Supreme Court recently, through its Three Judges Division Bench, Dr. D.C. Saxena, Contemnor Vs. Hon^{ble} the Chief Justice of India, , observed thus :

45. In Special Reference No. 1 of 1964, popularly known as U.P. Legislature's Warrant of Arrest of the Judges of the Allahabad High Court and Keshav Singh Reference, a Bench of Seven Judges of this Court observed that the power to punish for contempt alleged must always be exercised cautiously, wisely and with circumspection. The best way to sustain the dignity and status of their (Judges) office is to deserve respect from the public at large by the quality of their judgments, fearlessness and objectivity of their approach and by the restraint, dignity and decorum which they observe in their judicial conduct. It would equally apply to the legislature. Keeping the above perspective in view, the question emerges, whether the imputations itemised here in before constitute contempt of the Court. At the cost of repetition, we may reiterate that in a democracy though every one is entitled to express his honest opinion about the correctness or legality of a judgment or an order or sentence, Judges do require degree of detachment and objectivity in judicial dispensation, they being duty bound with the oath of office taken by them in adjudicating the disputes brought before the Court. The objectivity or detachment cannot be obtained if the Judges have constantly to look over their shoulders for fear of harassment and abuse and irresponsible demands for prosecution, resignation or to refrain from discharging their duties pending further action. Cognisant of this tendency, the founding fathers of the Constitution engrafted Articles 121 and 211 of the Constitution and prohibited the parliament and the Legislatures to discuss on the floor of the House the conduct of any Judge of the Supreme Court or the High Court in the discharge of his duties except upon a motion for resenting address to the President praying for the removal of a Judge under Article 124(4) of the Constitution in accordance with the procedure prescribed under the Judges (Inquiry) Act, 1968 and the Rules made thereunder. In A.M. Bhattacharjee's case 1995 AIR SC 3768 on which great reliance was placed by the petitioner emphasising the rectitude on the part of a Judge, this Court laid the rule for the advocates to adhere to a code of conduct in seeking redressal on the perceived

aberration of the conduct of a Judge otherwise than in accordance with the procedure prescribed in Article 124(4) of the Constitution. The respect for and the dignity of the Court thereby was protected from scurrilous attack on the Judge or the Court. If the forum of the judicial process is allowed to mount scurrilous attack on a Judge, the question arises whether the forum of the Judicial process of vilification of the Judges or imputations to the Judges in the pleadings presented to the Court would give liberty of freedom of expression to an advocate or a litigant. In the light of the above discussion, we have little doubt to conclude that when an advocate or a party appearing before the Court requires to conduct himself in a manner befitting to the dignity and decorum of the Court, he cannot have a free licence to indulge in writing in the pleadings the scurrilous accusations or scandalisation against the Judge or the Court. If the reputation and dignity of the Judge, who decides the case are allowed to be prescribed in the pleadings, the respect for the Court would quickly disappear and independence of the judiciary would be a thing of the past.

...As stated earlier, Article 124(4) of the Constitution read with the Judges (Inquiry) Act prescribes the procedure to take action against a Judge of the Supreme Court or of the High Court for proved misbehaviour or incapacity. As laid down in Bhattacharjee's case 1995 AIR SC 3768 Bar Association of the concerned Court was given liberty to piece any material of the aberration of the conduct of a Judge before the CJI for redressal as per the "in-house" procedure laid down therein. For proved misbehaviour, the address by each House of Parliament to the President for removal of Judge pursuant to a finding of proved misbehaviour or incapacity under the Judge (Inquiry) Act by a resolution of not less than two-third of the members of the House and voting by two-third of the House-present and an order of removal therein by the president of India is culmination. In Bhattacharjee's case 1995 AIR SC 3768 this Court also laid down that no other authority or person has power to conduct any enquiry against the conduct of a Judge. Article 121 and 211 prohibit discussion, in the parliament or in the Legislature of a State, of the conduct of Judge of the Supreme Court or High Court respectively. Therefore, when the Constitution prohibits the discussion of the conduct of a Judge, by implication, no one has power to accuse a Judge of his misbehaviour or incapacity except and in accordance with the procedure prescribed in the Constitution and the Judge (Inquiry) Act or as per the procedure prescribed in the Constitution and the Judges (Inquiry) Act or as per the procedure laid down in Bhattacharjee's case.

22. We take up the decision" in L. Chandra Kumar Vs. Union of India and others, . In this Constitution Bench decision it has been held that powers of judicial superintendence over Tribunals vested in the High Court under Ails. 226 arid 227 of the Constitution of India is an integral and essential feature of the Constitution, constituting part of its basic structure referred to in 13 Judges Constitution Bench decision of the Apex Court in His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, but this decision is no authority running counter to what was laid down by the Supreme. Court in In the matter

of: Under Article 143 of the Constitution of India, .

22.1 The reliance of Mr, Singh on the two Judges Division Bench judgment in Dhananjay Sharma Vs. State of Haryana and Others, is also wholly misplaced. In this case a question cropped up regarding illegal detention of a citizen in a writ of habeas corpus and the Court issued Rule nisi to the State. In that backdrop it was held that a duty is cast on the State through its functionaries, and particularly those who are arrayed as respondents, to satisfy the Court that the detention of Use citizen was legal and in conformity not only with the mandatory requirements of the law but also with the requirements implicit in Article 22(5) of the Constitution of India and it was obligatory for them to place before the Court all relevant facts through an affidavit, which is required to be filed in reply, it was emphasised that despite issuance of the Rule nisi by the Court and even after specific direction to file an affidavit, the respondent Home Secretary to the State Government did not file, and accordingly proceedings in contempt were initiated against him. Apparently there was a gross violation by the Home Secretary of the State of Haryana, who despite specific direction did not file affidavit. This Court never issued such directions to any of the respondents. Accordingly, the submissions of Mr. Singh are rejected.

22.2 C. Ravichandran Iyer 1995 AIR SC 2763 or Dr. D.C. Saxena, Contemnor Vs. Hon'ble the Chief Justice of India, are no doubt authorities for the proposition that Article 121 of the Constitution of India prohibits discussion by the Members of the Parliament of the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties, except upon a motion as provided under Articles 124(4) and (5) and in the manner laid down under the Judges Enquiry Act and the Rules of the business of Parliament consistent therewith and that by necessary implications, no other forum or place or platform is available for discussion of the conduct of a Judge in the discharge of his duties as a Judge of the Supreme Court or the High Court. But these cases are not authority for the proposition as to whether for breach of Article 121 by the Parliamentarians or State Legislators whether a proceeding in contempt will be maintainable. In paragraph 45 of the judgment there is a specific mention of the In the matter of: Under Article 143 of the Constitution of India, (Special Reference No. 1 of 1964) decided by the Apex Court supra and reiteration of the dictum of the Judges as well as Legislators that the power to punish for contempt alleged must always be exercised cautiously, wisely and with circumspection and by strained dignity and decorum which they observe in their conduct.

23. Now we come to the Manipur Legislative Assembly Speaker case I. Manilal Singh Vs. Dr. H. Borobabu Singh and another, . It was held by the Apex Court that the speaker, while deciding the question of disqualification of a Member of Legislative Assembly under the 10th Schedule of the Constitution acts as a statutory authority and in that capacity his decision is not subject to judicial review by the High Court and the Supreme Court. Certain orders were made by the Apex Court the proceedings arising out of the order of disqualification of

certain members passed by certain members passed by the speaker Despite this the Speaker continued to resist the implementation of the orders passed by the Apex court. The Secelwy Secretary of the Legislative Assembly tool steps to implement the orders of the Supreme Court which annoyed the Speaker and as an act of reprisal passed an order compulsorily retiring the Secretary. The Secretary challenged the order of his compulsory retirement, inter alia, on the ground that it was passed mala fide. The Court stayed the operation of the impugned order of his compulsory retirement as well as the order of his suspension passed by the Speaker. The Secretary complained that despite Court order the Speaker was not permuting him to function as Secretary as also not paying salary and other dues. Proceedings in contempt were initiated in that backdrop. Nowhere the Five Judges decision either took a view contrary to one taken in the 7 Judges Constitution Bench decision in In the matter of: Under Article 143 of the Constitution of India, or explained it away. The facts are entirely different. Reliance on the reported order of the Supreme Court aforementioned is wholly misplaced.

24. In Re: P.C. Sen, , relied upon by Mr. Singh, where the Chief Minister of West Bengal made a speech on All India Radio in regard to a pending case, it was held that the speech was calculated to interference with due administration of justice as it was likely to create an atmosphere of prejudice against the petitioner and also to others from making similar claim from the Court and thereby committed contempt. The utterances were not made on the floor of the Parliament. Thus this decision is also of no help.

25. E.M. Sankaran Namboodripad Vs. T. Narayanan Nambiar, the Chief Minister of Kerala made certain utterances against the Judges at a Press conference held by him at Trivandram and again not on the floor of the Parliament. Thus this case is also of no help.

26. In Re: Balwan Singh JT 1996 (10) (SC) 337) when threats were given and influence used to bro-beat the members of Muhila Dakshita Samiti to desist from prosecuting a pending case. before the Supreme Court it was held that Baiwan Singh is guilty of having committed criminal contempt as he sought to interfere in the pending proceedings before the Court. This case is also no authority for the proposition mooted in support of the prayers.

27. In Mohd. Aslam alias Bhure Vs. Union of India, , relied upon by the learned counsel appearing on behalf of the petitioner, it was held that Chief Minister/ Ministers can be liable for contempt both in their official and personal capacity as there is no immunity for any authority of the Government, if a personal element is shown in the act of disobedience of the order of the Court, from the consequence of an order of the Court. A Minister or Officer of Government is also either in his official capacity or there is a personal element contributing to contempt in this personal capacity, liable for contempt. The ratio laid down is again no authority that a contrary view was taken by the Supreme Court than one taken in U.P. Legislature case.

27.1 The Present pronouncement of the House of Lords in "In Re M. v. Home Office (1994) 1 AC 377 referred to in this decision, is also no help to the petitioner.

28. It is true that in State Vs. Tribhuvan Nath Verma, it was held that the statement that a particular Judge of the High Court was wrong in directing issuing notice, instead of dropping the proceedings, was held to be contempt of the Court but. that statement was not made on the floor of the Legislature and is thus no help to the petitioner.

29. Mr. Singh in particular with reference to the motion for breach of privilege against the President of the Allahabad High Court Bar Association contended that Allahabad High Court Bar Association had fairly criticised the action of the Parliamentarians and thus there was no breach of the privilege. That is a matter wholly beyond our domain. Besides, the President of the Bar Association of the Court has not moved before us though in this context, it is worth while to remember, when the Editor of the Blitz was reprimanded by the Lok Sabha its privilege Committee had observed thus:-

Nobody would deny the members, or, as a matter of fact any citizen the right of fair comment. But if the comments contain personal attack on individual members of Parliament on account of their conduct in Parliament or if the language of the comment is vulgar or abusive, they cannot be deemed to come within the bonds of fair comment or justifiable criticism." (See the book "Indian parliament, Edited by Dr. Phul Chand published by the Institute of Constitutional and Parliament Studies, 1984 Edition of page 94);

30. In view of the aforementioned discussion;; we arc of the view that we have no jurisdiction to initiate proceedings in contempt against the respondents,

31. From the order dated 24-7-1996 passed in the petitioner's, writ petition it is clear that no order was passed by the Court restraining respondent No. 16 from functioning as the Prime Minister of the Country rather it had merely issued notice to him and the Attorney General of India, Issuance of mere notices cannot mean that the Court intended to allow the writ petition. At best it can mean to know that stand of the other side in regard to the issues involved. Even the Supreme Court in S.P. Anand issued notice to the Attorney General of India, like this Court, and decided the very issues setting them once for all. Where was the occasion for an out burst against the two Hon''ble Judges and this Court in particular and the. entire Indian Judiciary in general,

32. This petition was filed on August 26, 1996 i.e. to say after the Supreme Court had passed its first order on July 30, 1996 in S.P. Anand case. True it is that the Media had reported the contemptuous utterances and had also exhibited them on private channels of the T.V. and even the National T.V. had also exhibited in its news which cannot be dubbed to be authorised by the Parliament and had thereby committed contempt but filing of the application dated 9-1-1998 seeking impleadment of (i) Janmorcha through its publisher/Editor, 22, Sarojini Naidu

Marg, Allahabad and (ii) The Pioneer through its publisher/Editor, Allahabad as respondent Nos. 18 and 20 respectively for bare corroboration of their published reports, in the absence of our jurisdiction, is not appreciable, and is hereby rejected. We hope and trust that the Media persons will restrain themselves hereinafter from publishing or exhibiting contemptuous statements, utterances and demeanours by not crossing the Laxman Rekha of fair criticism concerning the judgments/ orders of the Judges in their newspaper and on T.V. channels. This observation, however, does not apply to the publication of the live coverage of the parliamentary proceedings provided they are authorised by the Parliament as we lack powers to have any say in regard to the Parliamentary proceedings.

33. Before dismissing this petition we also remember, like the learned single Judge of the Karnataka High Court in A.K. Subbiah and Another Vs. The Chairman, Karnataka Legislative Council, Bangalore and Another, , what Voltaire had said "I disapprove of what you say, but I will defend to the death your right to say it. (Attrib. In S.C. Tallentyre, The Friends of Voltaire (1907) P. 199 quoted in The Oxford Dictionary of Quotations, Second Edition page 557). We merely wish that the eminent parliamentarians would have restrained themselves remembering their own rules, the ruling given by the then Chairman of the Rajya Sabha extracted in Paragraphs 5 to 7 of this judgment and the clear cut provisions as contained in Article 121 of the Constitution of India.

34. The application dated 9-1-1998 filed by the petitioner seeking deletion of certain statements is allowed. Let necessary corrections be made by the petitioner or her counsel.

35. In the result we dismiss this petition but without cost.