PETITIONER:
NARESH SHRIDHAR MIRAJKAR AND ORS.

Vs.

RESPONDENT:
STATE OF MAHARASHTRA AND ANR.

DATE OF JUDGMENT:
03/03/1966

BENCH:
GAJENDRAGADKAR, P.B. (CJ)
BENCH:
GAJENDRAGADKAR, P.B. (CJ)
SARKAR, A.K.
WANCHOO, K.N.
HIDAYATULLAH, M.
SHAH, J.C.
MUDHOLKAR, J.R.
SIKRI, S.M.
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1967 AIR 1 1966 SCR (3) 744
CITATOR INFO :

RF	1967 SC1643	(274)
RF	1973 SC 106	(105)
RF	1973 SC1461	(1717)
D	1974 SC 532	(12)
R	1978 SC 597	(41,66,67)
R	1980 SC 898	(56)
RF	1981 SC 917	(11,12)
RF	1981 SC2198	(21)
R	1985 SC 61	(7)
R	1986 SC 180	(31)
R	1988 SC1531	(184)
RF	1988 SC1883	(206)
F	1989 SC1335	(22,26)
R	1991 SC2176	(38)

ACT:
Practice and Procedur-Inherent jurisdiction of High Court-Power to stop publication of proceedings of a trial-Order if violates fundamental right under Art. 19(1)(a)-If amenable to proceedings under Art. 32 of the Constitution.

HEADNOTE:
In a suit for. defamation against the editor of a weekly newspaper, field on the original side of the High Court, one of the witnesses prayed that the Court may order that publicity should not be given to his evidence in the press as his business would be affected. After hearing arguments, the trial Judge passed an oral order prohibiting the publication of the evidence of the witness. A reporter of the weekly along with other journalists moved this Court under Art. 32 challenging the validity of the order. .
It was contended that : (i) the High Court did not have inherent power to pass the order; (ii) the impugned order violated the fundamental rights of the petitioners under Art. 19(1) (a); and (iii) the order was amenable to the writ

jurisdiction of this Court under Art. 32.
HELD:(i) (Per Gajendragadkar C. J., Wanchoo, Mudholkar, Sikri, Bachawat and kainaswami, JJ.) : As the impugned order must be held to prevent the publication of the evidence of the witness during the course of the trial and not thereafter. and the order was passed to help the administration of justice for the purpose of obtaining true evidence in the case, the order was within the inherent power of the High Court. [754 A-B; 759 C]
The High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. Section 14 of the Official Secrets Act, 1923 in terms recognises the existence of such inherent powers in its opening clause, and s. 151, Code of Civil Procedure, saves the inherent power of the High Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Such a power includes the power to hold a part of the trial in camera or to prohibit exessive publication of a part of the proceedings at such trial. (755 F; 759 C, G; 760 C]
Scott v. Scott, [1913] 1 A.C. 417 and Moosbrugger v. Moosbrugger, (1912-13) 29 T.L.R. 658, referred to.
Per Sarkar J. : The High Court has inherent power to prevent publication of the proceedings of a trial. The power to prevent publication of proceedings is a facet of the power to hold, a trial in camera and cm from it. [776 C]
Scott v. Scoot [1913] A.C. 417, explained.
Per Shah J. : The Code of Civil Procedure contains no express provision authorising the to hold its proceedings in camera, but if
745
excessive publicity itself operates as an instrument of injustice, the Court has inherent jurisdiction to pass an order excluding the public when the nature of the case necessitates such a course to be adopted An order made by a court in the course of a proceeding which it has jurisdiction to entertain-whether the order relates to the substance of the dispute between the parties or to the procedure, or to the rights of other persons, is not without jurisdiction, merely because it is erroneous. [804 B, C. F]
Per Hidayatullah J. (dissenting): A Court which was holding a public trial from which the public was not excluded, cannot suppress the publication of the deposition of a witness, heard not in camera but in open Court, on the request of the witness that his business will suffer. [783 H, 789 D]
Section 151 C.P.C. cannot be used to confer a discretion on the to turn its proceedings which should be open and public into a private affair. A trial in camera can only be used when a strong case exists for holding it in camera and inherent powers can only be reconised on wellrecognised principles. Where the legislature felt the special need it provided for it. It is not right to assume from s. 14 of the Official Secrets Act, 1923, that courts possess a general or inherent power of dispensing with open and public trials. [787 E, F, G, H; 789 C]
English cases referred to.
(ii)(Per Gajendragadkar C.J., Wanchoo, Mudholkar, Sikri and Ramaswami, JJ.) : Just as an order passed by the Court on the merits of the dispute before it cannot be said to contravene the fundamental rights of the litigants before the Court, so the impugned order, which is also a judicial order, cannot be said to affect the fundamental rights of the petitioners. It was directly connected with the

proceedings before the Court inasmuch as the Court found that justice could not be done between the parties and that the matter before it could not be satisfactorily decided unless publication of the evidence was prohibited pending the trial. if incidentally, the petitioners were not able to report what they. heard in Court, that cannot be said to make the impugned order invalid under Art. 19(1) (a). [761 D-F; 762 F-G]

A. K Gopalan v. State of Madras, [1950] S.C.R. 88, 101, Ram Singh v. State, [1951] 1 S.C.R. 451 and The Parbhani Transport Cooperative Society Ltd. v. The RTA Aurangabad, [1960] 3 S.C.R. 177, followed.

Budhan Chowdhry v. State of Bihar, [1955] 1 S.C.R. 1045, explained.

Per Sarkar J. : The impugned order does not violate the fundamental right of the petitioners to freedom of speech and expression conferred by Art. 19(1) (a-. [777 D]

If a judicial tribunal makes an order which it has jurisdiction to maim by applying a law which is valid in all respects, the order cannot offend a fundamental right. An order is within the jurisdiction of the tribunal which made it, if the tribunal had jurisdiction to decide the matters that were litigated before it and if the law which it, applied in making the order was a valid law. A tribunal having this jurisdiction does not act without jurisdiction if it makes an error in the application of the law. The impugned order is a judicial order within the jurisdiction of the Judge making it even though it restrained the petitioners who were not. parties to the proceedings. [774 F-G; 775 B, F-G; 776 B; 779 B, C]

Ujjam Bai v. State of U.P. [1963] 1 S.C.R. 778, followed.

Sup Cl/66-2

746

Further, the order is based on a good and valid law. The power to prohibit publication of proceedings is essentially the same as the power to hold a trial in camera and the law empowering a trial in camera is a valid law and does not violate the fundamental right in regard to liberty of speech because, the person restrained is legally prevented from entering the Court and hearing the proceedings, and the liberty of speech is affected only indirectly. Moreover, the law empowering :a Court to prohibit publication of its proceedings is protected by Art. 19(2), because, the law relates to contempt of Court and the restriction is reasonable as it is based on the principle that publication would interfere with the course of justice and its due administration. [777 E-G; 778 C-E, G]

The Parbhani Transport Cooperative Society Ltd. v. RTA Aurangabad, [1960] 3 S.C.R. and A. K. Gopalan v. State, [1950] 1 S.C.R. 88, followed.

Budhan Chowdhry v. The State, [1955] 1 S.C.R. 1045, explained.

Per Shah J. : Jurisdiction to exercise these powers which may affect rights of persons other than those who are parties to the litigation is either expressly granted to the Court by the statute or arises from the necessity to regulate the course of proceedings so as to make them an effective instrument- for the administration of justice. An order made against a stranger in aid of administration of justice between contending parties or for enforcement of its adjudication does not directly infringe any fundamental right under Art. 19 of the person affected thereby, for it is founded either expressly or by necessary implication upon the nonexistence of the right claimed. Such a determination of the disputed question would be as much exempt from the

jurisdiction of his Court to grant relief against infringement of a fundamental right under Art. 19, as a determination of the disputed question between the parties on merits or on procedure. [803 C-D,; F-H]
Per Bachawat J. : The law empowering the High Court to restrain the publication of the report of its proceedings does not infringe Art. 19(1) (a), because it affects the freedom of speech only incidentally and indirectly. [808 G, H]
A.K. Gopalan v. Stare of Madras, [1950] S.C.R. 88 and Ram Singh v. State, [1951] S.C.R. 451, followed.
Per Hidayatullah J.(dissenting) : The order commits a breach of the fundamental right of freedom of speech and expression. [789 E; 792 A)
The Chapter on Fundamental Rights indicates that Judges acting in their judicial capacity were not intended to be outside the reach of fundamental rights. The word "State" in Arts. 12 and 13 includes "Courts" because. otherwise courts will be enabled to make rules which take away or abridge fundamental rights. and a judicial decision based on such a rule would also offend fundamental rights. A Judge ordinarily decides controversies between the parties, in which controversies he does not figure, but occasion may arise collaterally where the matter may be between the Judge and the fundamental rights of any Person by reason of the Judge's action. [789 G-H; 790 A-B; 791 C]
Prem Chand Garg V. The Excise Commissioner, [1963] Supp. 1 S.C.R. 885, referred to.
(iii)(Per Gajendmgadkar C.T., Wanchoo, Mudholkar, Sikri and Ramaswami,JJ.) : The High Court is a superior court of Record and it is for itto consider whether any matter falls within its jurisdiction or
747
not. The order is a judicial order and if it is erroneous a person aggrieved by it, though a stranger, could move this Court under Art. 136 and the order can be corrected in appeal; but the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings under Art. 32. [770 H; 772 EJ
Ujjam Bai v. State, [1963] 1 S.C.R. 778, referred to.
Prem Chand Garg v. Excise Commissioner, U.P. [1963] Supp. I S.C.R. 885, explained.
Per Sarkar J. : This Court has no power to issue a certiorari to the High Court. [782 H]
When the High Court has the power to issue the writ of certiorari, it is not, according to the fundamental principles of certiorari an inferior court or a court of limited jurisdiction. The Constitution does not contemplate the High Courts to be inferior courts so that their decisions would be liable to be quashed by a writ of certiorari issued by the Supreme Court. [782 F-H]
Per Shah, J : In the matter of issue of a writ of certiorari against the order of any Court, in the context of the infringement of Fundament rights, even orders made by subordinate , such as the District Court or of subordinate Judge, are as much exempt from challenge in enforcement of an alleged fundamental right under Art. 19 by a petition under Art. 32 as orders of the High Court which is a superior Court of Record. It is not necessary to decide for the purpose of these petitions whether an order made by a High Court may infringe any of the rights guaranteed by Arts. 20, 21 & 22(1) and may on that account form the subject-matter of a petition under Art. 32. Art. 19, on the one hand and Arts. 20, 21 & 22(1) are differently worded.

Art. 19 protects personal freedoms of citizens against state action except where the 'action falls within the exceptions. Arts. 20, 21 & 22 impose direct restrictions upon the power of authorities. [805 E-F; 806 C; 807 A, B; 808 A-B]
Per Bachawat J. : The High Court has jurisdiction to decide if it could restrain the publication of any document or information relating to the trial of a pending suit or concerning which the suit is brought. If it erroneously assumes a jurisdiction not vested in it, its decision may be set aside in appropriate proceedings, but the decision is not open to attack under Art. 32 on the ground that it infringes the fundamental right under Art. 19(1)(a). If a stranger is prejudiced by an order forbidding the publication of the report of any proceeding, his proper course is only to apply to the Court to lift the ban. [808 F; 810 A-B]
Per Hidayatullah J. (dissenting) : Even assuming the impugned order means a temporary suppression of the evidence of the witness the trial Judge had no jurisdiction to pass the order. As he passed no recorded order the appropriate remedy (in fact the only effective remedy) is to seek to quash The order by a writ under Art. 32. [792 E-F; 801 E]
There may be action by a Judge which may offend the fundamental rights under Arts. 14, 15, 19, 20, 21 and 22 and an appeal to this Court will not only be not practicable but will also be an ineffective remedy and this Court can issue a writ to the High Court to quash its order, under Art. 32 of the Constitution. Since them is no exception in Art. 32 in of the High Courts there is a presumption that the High Court are not excluded. Even with the enactment of Art. 226 the power which is conferred on the High Courts is not in every sense a coordinate and the implication of reading Arts. 32, 136 and 226 together is
748
that there is no sharing of the powers to issue the prerogative writs processed by this Court. Under the total scheme of the Constitution the subordination of the High Courts to the Supreme Court is not only evident but is, logical. [794F; 797 G-H; 799 D-E]

JUDGMENT:
ORIGINAL JURISDICTION : W.Ps. Nos. 5 and 7 to 9 of 1965.
Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.
M. C. Setalvad, R. K. Garg, R. C. Agarwal, D. P. Singh and M. K. Ramamurthi, for petitioner (in W.P. No. 5 of 1965).
A.K. Sen, R. K. Garg, S. C. Agrawal, D. P. Singh and M. K. Ramamurthi, for the petitioner (in W.P. No. 7 of 1965).
V.K. Krishna Menon, R. K. Garg, S. C. Agrawal, D. P. Singh and M. K. Ramamurthi, for the petitioner (in W.P. No. 8 of 1965).
N. C. Chatterjee, R. K. Garg, S. C. Agrawal, D. P. Singh, and M. K. Ramamurthi, for the petitioners (in W. P. No. 9 of 1965).
C. K. Daphtary, Attorney-General, B. R. L. Iyengar and B. R. G. K. Achar, for the respondents (in all the petitions).
The Judgment of GAJFNDRAGADKAR C.J., WANCHOO, MUDHOL- KAR, SIKRI and RAMASWAMI, JJ. was delivered by GAJENDRA-GADKAR C.J. SARKAR, SHAH and BACHAWAT JJ. delivered separate Opinions. HIDAYATULLAH, J. delivered a dissenting Opinion.
Gajendragadkar, C.J. The petitioner in Writ Petition No. 5 of 1965--Naresh Shridhar Mirajkar, who is a citizen of India, serves as a Reporter on the Staff of the English

Weekly "Blitz", published in Bombay and edited by Mr. R. K. Karanjia. It appears that Mr. Krishnaraj M. D. Thackersey sued Mr. R. K. Karanjia (Suit No. 319 of 1960) on the Original Side of the Bombay High Court, and claimed Rs. 3 lakhs by way of damages for alleged malicious libel published in the Blitz on the 24th September, 1960, under the caption "Scandal Bigger Than Mundhra". This suit was tried by Mr. Justice Tarkunde.

One of the allegations which had been made in the said article was to the effect that China Cotton Exporters, of which Mr. Thackersey was a partner, had obtained licences for import of art silk yarn on condition that the same would be sold to handloom weavers only; and that in order to sell the said silk yarn in the black market with a view to realise higher profits, three bogus handloom factories were created on paper and bills and invoices were made with a view to create the impression that the condition on which the, licences had been granted to China Cotton Exporters, had been complied with. Mr. Thackersey's concern had thus sold the said yarn in the black-market and thereby concealed from taxation'

749

the large profits made in that behalf. These allegations purported to be based on the papers filed in Suits Nos. 997 and 998 of 1951 which had been instituted by China Cotton Exporters against National Handloom Weaving Works, Rayon Handloom Industries, and one Bhaichand G. Goda. The said Bhaichand G. Goda was alleged to have been the guarantor in respect of the transactions mentioned in the said suits.

The said Bhaichand Goda had, in the course of insolvency proceedings which had been taken out in execution of the decrees passed against him, made an affidavit which seemed to support the main points of the allegations made by the Blitz in its article "Scandal Bigger Than Mundhra".

During the course of the trial, the said Bhaichand Goda was called as a defence witness by Mr. Karanjia. In the witness-box, Mr. Goda feigned complete ignorance of the said transactions; and under protection given to him by the learned Judge who was trying the action, he repudiated every one of the allegations he had made against Mr. Thackersey's concern in the said affidavit. Thereupon, Mr. Karanjia applied for permission to cross-examine Mr. Goda and the said permission was granted by the learned Judge. Accordingly, Mr. Goda came to be cross-examined by Mr. Karanjia's counsel.

Later, during the course of further proceedings, it was discovered that Mr. Goda had made several statements before the Income-tax authorities in which he had reiterated some of the statements made by him in his affidavit on which he was crossexamined. From the said statements it also appeared that he had alleged that in addition to the invoice price of the transactions in question, he had paid Rs. 90,000/- as "on money" to China Cotton Exporters. As a result of the discovery of this material, an application was made by Mr. Karanjia before the learned Judge for permission to recall Mr. Goda and confront him with the statements which he had made before the Income-tax authorities. The learned Judge granted the said application.

On Friday, the 23rd October, 1964, Mr. Goda stepped. into the witness-box in pursuance of the order passed by the learned Judge that he should be recalled for further examination. On that occasion he moved the learned Judge that the latter should protect him against his evidence being reported in the press. He stated that the publication in the press of his earlier evidence had caused loss to him

in business; and so, he desired that the evidence which he had been recalled to give should not be published in the papers. When this request was made by Mr. Goda, arguments were addressed before the learned Judge and he orally directed that the evidence of Mr. Goda should not be published. It was pointed out to the learned Judge that the daily press, viz., 'The Times of India' and
750
'The Indian Express' gave only brief accounts of the proceedings before the Court in that case, whereas the 'Blitz' gave a full report of the said proceedings. The learned Judge then told Mr. Zaveri, Counsel for Mr. Karanjia that the petitioner who was one of the reporters of the 'Blitz' should be told not to publish reports of Mr. Goda's evidence in the 'Blitz'. The petitioner had all along been reporting the proceedings in the said suit in the columns of the 'Blitz'.

On Monday, the 26th October, 1964, Mr. Chari appeared for Mr. Karanjia and urged before the learned Judge that the fundamental principle in the administration of justice was that it must be open to the public and that exceptions to such public administration of justice were rare, such as that of a case where a child is a victim of a sexual offence, or of a case relating to matrimonial matters where sordid details of intimate relations between spouses are likely to come out, and proceedings in regard to official secrecy. Mr. Chari further contended that no witness could claim protection from publicity on the ground that if the evidence is published it might adversely affect his business. Mr. Chari, therefore, challenged the correctness of the said order and alternatively suggested to the learned Judge that he should pass a written order forbidding publication of Mr. Goda's evidence. The learned Judge, however, rejected Mr. Chari's contentions and stated that he had already made an oral order forbidding such publication, and that no written order was necessary. He added that he expected that his oral order would be obeyed.

The petitioner felt aggrieved by the said oral order passed by Mr. Justice Tarkunde and moved the Bombay High Court by a Writ Petition No. 1685 of 1964 under Art. 226 of the Constitution. The said petition was, however, dismissed by a Division Bench of the said High Court on the 10th November, 1964 on the ground that the impugned order was a judicial order of the High Court and was not amenable to a writ under Art. 226. That is how the petitioner has moved this Court under Art. 32 for the enforcement of his fundamental rights under Art. 19(1)(a) and (g) of the Constitution.

Along with this petition, three other petitions have been filed in this Court; they are Writ Petitions Nos. 7 , 8 and 9 of 1965. Mr. P. R. Menon, Mr. M. P. Iyer, and Mr. P. K. Atre, the three petitioners in these petitions respectively, are Journalists, and they have also challenged the validity of the impugned order and have moved this Court under Art. 32 of the Constitution for enforcement of their fundamental rights under Art. 19(1)(a) and (g). It appears. that these three petitioners were present in court at the time when the impugned order was passed and they were directed not to. publish the evidence given by Mr. Goda in their respective papers.
751
All the petitioners challenge the validity of the impugned order on several grounds. They urge that the fundamental rights of citizens guaranteed by Art. 19(1) are absolute,' except to the extent that they are restricted by reasonable

restrictions imposed by law within the limitations prescribed by clauses (2) to (6) of Art. 19. According to them, it is doubtful whether even the Indian Legislatures have the power to ban publication of faithful reports of proceedings in the Legislatures, much less can the courts have power to ban such publication. They also allege that a restriction imposed in the interests of the witness cannot be held to be justified under Art. 19(2), and that in passing the impugned order, the learned Judge had exceeded his jurisdiction. It is plain that the basic assumption on which the petitions are founded, is that the impugned order infringes their fundamental rights under Art. 19(1) and that it is not saved by any of the provisions contained in clauses (2) to (6). To these petitions, the State of Maharashtra and Bhaichand Goda have been impleaded as respondents I and 2 respectively.

Respondent No. I has disputed the correctness and the validity of the contentions raised by the petitioners in support of their petitions under Art. 32. In regard to factual matters set out in the petitions, respondent No. I has naturally no personal knowledge; but for the purpose of these petitions, it is prepared to assume that the facts alleged in the said petitions are correct. According to respondent No. 1, the impugned order was passed by the learned Judge in exercise of his general and inherent powers and he was justified in making such an order, because in his opinion, the excessive publicity attendant upon the publication of Mr. Goda's evidence would have caused annoyance to the witness or the parties, and might have led to failure of justice. It urges that it is for the Judge trying the suit to consider whether in the interests of the administration of justice, such publication should be banned or not. According to respondent No. 1, the impugned order cannot be said to affect the petitioners' fundamental rights under Art. 19(1); and that even otherwise, it is protected under Art. 19(2). Respondent No. I also contends that the High Court being a superior Court of Record, is entitled to determine questions of its own jurisdiction; and orders like the impugned order passed by the High Court in exercise of its inherent jurisdiction are not amenable to the writ jurisdiction of this Court under Art. 32(2) of the Constitution. That, broadly stated, is the nature of the allegations made by the respective parties in the present proceedings.

At the hearing of these petitions, the arguments advanced before us on both the sides have covered a very large field. It has been urged by Mr. Setalvad who argued the case of the petitioner in Writ Petition No. 5 of 1965, that Art. 32(1) is very wide in its sweep and no attempt should be made to limit or circumscribe its scope and width. The right conferred on the citizens of this country by

752

Art. 32(1) is itself a fundamental right; and so, he argues that as soon as it is shown that the impugned order has contravened his fundamental rights under Art. 19(1), the petitioner is entitled, as a matter of guaranteed constitutional right, to move this Court under Art. 32. Mr. Setalvad also urges that the extent of the jurisdiction of this Court to issue a writ of certiorari must be determined in the light of the width of the guaranteed right conferred on the citizens by Art. 32(1). The power to issue writs conferred on this Court by Art. 32(2) is a very wide power, and it includes the power to issue not only the writs therein specified, but also directions or orders in the nature of the said specified writs. The test in exercising

the power under Art. 32(2) inevitably has to be: if the fundamental right of a citizen has been breached, which is the appropriate writ, direction, or order that should issue to remedy the said breach?

According to Mr. Setalvad, the fundamental rights guaranteed to the citizens by Part III are very wide in their scope; and the right to move this Court by an aggrieved citizen is not limited to his right to move only against the Legislature or the Executive. If an individual citizen contravenes the fundamental rights of another citizen, the aggrieved citizen can, according to Mr. Setalvad, move this Court for an appropriate writ under Art. 32(1) & (2). As illustrations supporting this proposition, Mr. Setalvad referred us to the fundamental rights guaranteed by Articles 17, 23 and 24. Article 17 abolishes 'untouchability'. If in spite of the abolition of 'untouchability' by constitutional provision included in Part III, any private shop-keeper, for instance, purports to enforce un-touchability against a Harijan citizen, the said citizen would be entitled to move this Court for a proper order under Art. 32(1) & (2). Similar is the position in regard to fundamental rights guaranteed by Articles 23 and 24. Art. 23 prohibits traffic in human beings and forced labour, whereas Art. 24 prohibits employment of children to work in any factory or mine or their engagement in any other hazardous employment.

In regard to judicial orders passed by courts, Mr. Setalvad says that the said orders cannot claim immunity from being challenged under Art. 32, because some of the fundamental rights guaranteed are clearly directed against courts. In support of this contention, he relies on the fundamental rights guaranteed by Art. 20(1) & (2), Art. 21, and Art. 22(1). These Articles refer to protection in respect of conviction for offences, protection of life and personal liberty, and protection against arrest and detention in cer-tain cases, respectively. Read Art. 32(1) and (2) together in this broad perspective, says Mr. Setalvad, and it would follow that if a judicial order contravenes the fundamental rights of the citizen under Art. 19(1), he must be held entitled to move this Court under Art. 32(1) and (2).

753

On the other hand, the learned Attorney-General contends that the scope of Art. 32(1) is not as wide as Mr. Setalvad suggests. He argues that in determining the scope and width of the fundamentals rights guaranteed by Part 111, with a view to decide the extent of the fundamental right guaranteed by Art. 32(1), it is necessary to bear, in mind the definition prescribed by Art. 12. Under Art. 12, according to the learned Attorney-General, "the State" includes the: Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. He elaborated his point by suggesting that the reference to the Government and Parliament of India and the Government and the Legislature of each of the States specifically emphasises the fact that the Judicature is intended to be excluded from the said definition. He argues that the fundamental rights guaranteed by Articles 17, 23 and 24 on which Mr. Setalvad relies, are, no doubt, of paramount importance; but before a citizen can be permitted to move this Court under Art. 32(1) for infringement of the said rights, it must be shown that the said rights have been; made enforceable by appropriate legislative enactments. In regard to Articles 20, 21 and 22, his argument is that the protection guaranteed by the

said Articles is intended to be available against the-Legislature and the Executive, not against courts. That is how he seeks to take judicial orders completely out of the scope of Art. 32(1) According to him, private rights, though fundamental in character,, cannot be enforced against individual citizens under Art. 32(1).

We have referred to these respective arguments just to indicate the extent of the field which has been covered by learned counsel who assisted us in dealing with the present petitions. As this Court has frequently emphasised, in dealing with constitutional matters, it is necessary that the decision of the Court should be confined to the narrow Points which a particular proceeding raises it. Often enough, in dealing with the very narrow point raised by a writ petition, wider arguments are urged before the Court; but the Court should always be careful not to cover ground which is strictly not relevant for the purpose of deciding the petition before it. Obiter observations and discussion of problems not ,directly involved in any proceeding should be avoided by courts in dealing with all matters brought before them; but this requirement becomes almost compulsive when the Court is dealing with constitutional matters. That is Why we do not propose to deal with the larger issues raised by the learned counsel in the present proceedings, and we wish to confine our decision to the narrow points which these petitions raise.

Let us, therefore, indicate clearly the scope of the enquiry in the present proceedings. The impugned order has been passed by the learned Judge in the course of the trial of a suit before him after

754

hearing the parties; and having regard to the circumstances under which the said order was passed, and the reasons on which it is presumably based, we are inclined to hold that what the order purports to do is to prohibit the publication of Mr. Goda's evidence in the Press during the progress of the trial of the suit. We do not read this order as imposing a permanent ban on the publication of the said evidence.

On these facts, the question which arises for our decision is whether a judicial order passed by the High Court prohibiting the publication in newspapers of evidence given by a witness pending the hearing of the suit, is amenable to be corrected by a writ of certiorari issued by this Court under Art. 32(2). This question has two broad facets; does the impugned order violate the fundamental rights of the petitioners under Art. 19(1)(a), (d) and (g); and if it does, is it amenable to the writ jurisdiction of this Court under Art. 32(2)? Thus, in the present proceedings, we will limit our discussion and decision to the points which have a material bearing on the broad problem posed by the petitions before us.

Let us begin by assuming that the petitioners who are Journalists, have a fundamental right to carry on their occupation under Art. 19(1)(g); they have also a right to attend proceedings in court under Art. 19(1)(d); and that the right to freedom of speech and .expression guaranteed by Art. 19(1) (a) includes their right to publish as Journalists a faithful report of the proceedings which they have witnessed and heard in court. In Sakal Papers (P) Ltd., and Others v. The Union of India' , it has been held by this Court that the freedom of speech and expression guaranteed by Art. 19(1)(a) .includes the freedom of press. That being so, the question which we have to consider is: does the impugned order contravene the petitioners'

fundamental rights to which we have just referred?
Before dealing with this question, it is necessary to refer to one incidental aspect of the matter. It is well-settled that in general, all cases brought before the Courts, whether civil, criminal, or others, must be heard in open Court. Public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries, and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity, and impartiality of the administration of justice. Public confidence in the administration of justice is of such great significance that there can be no two opinions on the broad proposition that in discharging their functions as judicial Tribunals, courts must generally hear causes in open and must permit the public admission to the court-room. As Bentham has observed:
(1) [1962] 3 S. C. R. 842.
755
.lm15
"In the darkness of secrecy sinister interest, and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks applicable to judicial injustice operate. Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion, and surest of all guards against improbity. It keeps the Judge himself while trying under trial (in the sense that) the security of securities is publicity". (Scott v. Scot(1)
Having thus enunciated the universally accepted proposition in favour of open trials, it is necessary to consider whether this rule admits of any exceptions or not. Cases may occur where the requirement of the administration of justice itself may make it necessary for the court to hold a trial in camera. While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully ? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must be tried in open court. If the principle that all trials before courts must be held in puplic was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. Er It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself The principle underlying the insistence on hearing causes in open court is to protect and assist fair,

impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court. In this connection it is essential to remember that public trial of causes is a means, though important and valuable, to ensure fair administration of justice; it is a means, not an end. It is the fair administration of

(1) [1911] All E.R. 1, 30.

756

justice which is the end of judicial process, and so, if ever a real conflict arises between fair administration of justice itself on the one hand, and public trial on the other, inevitably, public trial may have to be regulated or controlled in the interest of administration of justice. That, in our opinion, is the rational basis on which the conflict of this kind must be harmoniously resolved. Whether or not in the present case such a conflict did in fact arise, and whether or not the impugned order is justified on the merits, are matters which are irrelevant to the present enquiry.

Whilst we are dealing with this question , it would be useful to refer to the decision of the House of Lords in Scott v. Scott.[In that case a Judge of the Divorce Court had made an order that a petition for a decree of nullity of marriage should be heard in camera, but after the conclusion of the proceedings, one of the parties published to third parties a transcript of the evidence given at the hearing of the suit; and the question which arose for decision was whether by such publication, the party concerned had commit-ted contempt. The House of Lords held that assuming that the order for hearing the case in camera was valid, it was not effective to enjoin perpetual silence on all persons with regard to what took place at the hearing of the suit, and, therefore, the party publishing the evidence was not guilty of contempt of Court.

Dealing with the question about the power of an ordinary court of justice to hear in private, Viscount Haldane, L.C., observed that whatever may have been the power of the ecclesiastical courts, the power of an ordinary court of justice to hear in private cannot rest merely on the discretion of the Judge or on his individual view that it is desirable for the sake of public decency or morality that the hearing should take place in private. If there is any except-ion to the broad principle which requires the administration of justice to take place in open court, that exception must be based on the application of some other and over-riding principle which defines the field of exception and does not leave its limits to the individual discretion of the Judge.

Looking at the problem from another point of view, Viscount Haldane, L.C. observed that while the broad principle is that the courts of this country must, as between parties, administer justice in public, this principle is subject to apparent exceptions. By way of illustration, reference was made to two cases of wards of court and of lunatics where the court is really sitting primarily to guard the interest of the ward or the lunatic. In such matters, the jurisdiction of the court was in a sense, parental and administrative. That is how the broad principle which ordinarily governs open public trial, yields to the paramount duty which is the care of the ward or the lunatic. Similarly, in regard to litigation as

(1) [1911] All E.R . 1.

757
to a secret process, where the effect of publicity would be to destroy the subject-matter, trial in camera would be justified, because in such a case, justice could not be done at all if it had to be done in public.(1) In other words, unless it be strictly necessary for the attainment of justice, there can be no power in the court to hear in camera either a matrimonial cause or any other where there is a contest between parties. He who maintains that by no other means than by such a hearing can justice be done may apply. for an unusual procedure. But he must make out his case strictly, and bring it up to the standard which the underlying principle requires. He may be able to show that the evidence can be effectively brought before the court in no other fashion. In either case, he must satisfy the court that by nothing short of the exclusion of the public can justice be done

It would thus be noticed that according to Viscount Haldane, L.C., though it is of the essence of fair and impartial administration of justice that all causes must be tried in open court, cases may arise where the court may be satisfied that evidence can be effectively brought before it only if the trial is held in camera; and in such cases, in order to discharge its paramount duty to administer justice, the court may feel compelled to order a trial in camera.

The same principle has been enunciated by the other Law Lords, though they have differed in their approach as well as in their emphasis. We do not propose to refer to the statements made in the speeches of the other Law Lords, because it is clear that on the whole, the principles laid down by Viscount Haldane, L.C., appear to have received general approval from the other Law Lords. There are, no doubt, certain observations in the speeches of some Law Lords which seem to suggest that there would be no power in the court to hear a case in camera, except in the recognised cases of exceptional character to which Viscount Haldane referred. Lord Shaw, for instance, observed that "I am of opinion that the order to hear this case in camera was beyond the power of the Judge to pronounce. I am further of opinion that, even on the assumption that such an order had been within his power, it was beyond his power to impose a suppression of all reports of what passed at the trial after the trial had come to an end".(p. 29). It must be remembered that the order with which the House of Lords was dealing, had imposed a perpetual prohibition against the publication of the proceedings in court; and naturally, there was unanimity in the view expressed by the House of Lords that such a drastic order was not justified. That is why the conclusion of the House of Lords was that by publishing the proceedings at the end of the trial, the party concerned had not committed contempt of court. It would thus be clear from the decision of the House of

(1)[1911] All E.R. pp. 8-9.

758
Lords in Scott v. Scott(1) that courts of justice have no power to hear cases in camera even by consent of the parties, except in special cases in which a hearing in open court might defeat the ends of justice. Therefore, as a bare proposition of law, it would be difficult to accede to the argument urged by the petitioners before us that the High Court had no jurisdiction to pass the impugned order.

This question has been considered by English Courts on several occasions. In Moosbrugger v. Moosbrugger and Moosbrugger v. Moosbrugger and Martin,(2) where in a divorce proceeding it, was urged before the President that if the

case was heard in public, it would become almost impossible for the lady to give her evidence and in that case justice would or might be defeated, on being satisfied that the plea thus made on behalf of the witness was well-founded, the President directed that the evidence of the witness shall be that recorded in camera. The Court was thereupon cleared and the witness gave evidence in camera. It is significant that the case had been opened in public and was being tried in public; only a part of the trial was, however, held in camera, because the President was satisfied that unless the witness was allowed to depose in camera, she would not be able to disclose the whole truth.

Similarly, in Re Green (a bankrupt), Ex Parte The Trustee,(3) Jenkins, L.J., was moved to hear a bankruptcy petition in camera. After hearing arguments, he was satisfied that the interests of justice required that the application for hearing the case in camera wag justified. Accordingly the application was heard in camera.

We have referred to these decisions by way of illustration to emphasise the point that it would be unreasonable to hold that a court must hear every case in public even though it is satisfied that the ends of justice themselves would be defeated by such public trial. The overriding consideration which must determine. the conduct of proceedings before a court is fair administration of justice. Indeed, the principle that all cases must be tried in public is really and ultimately based on the view that it is such public trial of cases that assists the fair and impartial administration of justice. The administration of justice is thus the primary object of the work done in courts; and so, if there is a conflict between the claims of administration of justice itself and those of public trial, public trial must yield to administration of justice. In none of the cases to which we have referred was it expressly held that the court does not possess inherent jurisdiction to hold a trial in camera if it is satisfied that the ends of justice required the adoption of such a course.

(1) [1911] All. E. R. pp. 8-9.
(2) (1912-13) 29 T.L.R. 658.
(3)[1958] 2 All E. R. 57
759

If the High Court thus had inherent power to hold the trial of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned AttorneyGeneral that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. In a certain case, the Court may feel that the trial may continue to be a public trial, but that the evidence of a particular witness need not receive excessive publicity, because fear of such excessive publicity may prevent the witness from speaking the truth. That being so, we are unable to hold that the High Court did not possess inherent jurisdiction to pass the impugned order. We have already indicated that the impugned order, in our opinion, prevented the publication of Mr. Goda's evidence during the course of the trial and not thereafter.

Before we part with this topic, we would like to refer to certain statutory provisions which specifically deal with the topic of holding trials in camera.

Section 53 of Act 4 of 1869 which was passed to amend the

law relating to Divorce and Matrimonial Causes in India provides that the whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Similarly, section 14 of the Indian Official Secrets Act, 1923 (No. 19 of 1923) provides that in addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public. It would be noticed that while making a specific provision authorising the court to exclude all or any portion of the public from a trial, s.14 in terms recognises the existence of such inherent powers by its opening clause.

Section 22(1) of the Hindu Marriage Act, 1955 (No. 25 of 1955) likewise lays down that a proceeding under this Act shall be /conducted in camera if either party so desires or if the court so, thinks fit to do, and it shall not be lawful for any person to print or

740

publish any matter in relation to any such proceeding except with the previous permission of the court.

The proviso to s. 352 of the Code of Criminal Procedure, 1898, prescribes that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in the room or building used by the Court.

The last provision to which we may refer in this connection is s. 151 of the Code of Civil Procedure, 1908. This section provides that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. These statutory provisions merely illustrate how the power of the Court to hold certain trials in camera, either fully or partially, is inevitably associated with the administration of justice itself.

The next question which calls for our decision is: does the impugned order contravene the fundamental rights of the petitioners under Art. 19(1) ? In dealing with this question, it is essential to bear in mind the object with which the impugned order has been passed. As we have already indicated, the impugned order has been passed, because the learned Judge was satisfied that the interests of justice required that Mr. Goda should not be exposed to the risk of excessive publicity of the evidence that he would give in court. This order was passed by the learned Judge after hearing arguments from both the parties to the suit. Thus, there is no doubt that the learned Judge was satisfied that in order to be able to do justice between the parties before him, it was ,essential to grant Mr. Goda's request for prohibiting the publication of his testimony in the newspapers from day to day. The question is: can it be said that an order which has been passed directly and solely for the purpose of assisting the discovery of truth and for doing justice between the parties, infringes the fundamental

rights of the petitioners under Art. 19(1) ?
The argument that the impugned order affects the fundamental rights of the petitioners under Art. 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions ,of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the
761
matter up before the appellate Court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Art. 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Art. 19(1).
The impugned order is, in a sense, an order of a collateral nature; it has no direct relation with the decision of the dispute which had been brought before the Court in the proceedings between the parties. The learned Judge however, thought that in order that he should be able to do full justice between the parties it was necessary to pass the impugned order. Thus, though the order in a sense is collateral to the proceedings which were pending before the Court, it was directly connected with the said proceedings inasmuch as the learned Judge found that he could not do justice between the parties and decide the matter satisfactorily unless the publication of Mr. Goda's evidence was prohibited pending the trial. The order is not collateral in the sense that the jurisdiction of the Judge to pass that order can be challenged otherwise than by a proceeding in appeal. Just as an order passed by the court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the Court, so could the impugned order be challenged in appeal under Art. 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties, or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Art. 19(1), must fail. Assuming, however, that the impugned order can be said incidentally and indirectly to affect the fundamental rights of the petitioners under Art. 19(1), can such incidental and indirect effect of the order justify the conclusion that the order itself infringes Art. 19(1) ?
It is well-settled that in examining the validity of legislation, it is legitimate to consider whether the impugned legislation is a legislation directly in respect of the subject covered by any particular article of the

Constitution, or touches the said article only incidentally
762
or indirectly. In A.K. Gopalan v. The State of Madras(1), Kania C. J., had occasion to consider the validity of the argument -that the preventive detention order results in the detention of the applicant in a cell, and so, it contravenes his fundamental rights guaranteed by Art. 19(1) (a), (b), (c), (d), (e) and (g). Rejecting this argument, the learned Chief Justice observed that the true approach in dealing with such a question is only to consider the directness of the legislation and not what will be the result of the detention otherwise valid, on the mode of the detenu's life. On that ground alone, he was inclined to reject the contention that the order of detention contravened the fundamental rights guaranteed to the petitioner under Art. 19(1). He thought that any other construction put on the article would be unreasonable.

It is true that the opinion thus expressed by Kania, C. J., in the case of A. K Gopalan(1) had not received the concurrence of the other learned Judges who heard the said case. Subsequently, however, in Ram Singh and Others v. The State of Delhi and Another(2), the said observations were cited with approval by the Full Court. The same principle has been accepted by this Court in Express Newspapers (Private) Ltd., and Anr. v. The Union of India and Others(1), and by the majority judgment in Atiabari Tea Co., Ltd. v. The State of Assam and Others(4).

If the test of direct effect and object which is sometimes described as the pith and substance test, is thus applied in considering the validity of legislation, it would not be inappropriate to apply the same test to judicial decisions like the one with which we are concerned in the present proceedings. As we have already indicated, the impugned order was directly concerned with giving such protection to the witness as was thought to be necessary in order to obtain true evidence in the case with a view to do justice between the parties. If, incidentally, as a result of this order, the petitioners were not able to report what they heard in court, that cannot be said to make the impugned order invalid under Art. 19 (1)(a). It is a judicial order passed by the Court in exercise of it-, inherent jurisdiction and its sole purpose is to help the administration of justice. Any incidental consequence which may flow from the order will not introduce any constitutional infirmity in it.

It is, however, urged by Mr. Setalvad that this Court has held in Budhan Choudhry and Others v. The State of Bihar(5) that judicial orders based on exercise of judicial discretion may contravene Art. 14 and thereby become invalid. He contends that just as a judicial order would become invalid by reason of the fact

(1) [1950] S.C.R. 88, 101.
(2) [1951] S.C.R.451, 456.
(3) [1959] S.C.R. 12,129,130.
(4) [1961] 1 S.C.R. 809,864.
(5)[1955] 1 S.(-.R. 1045.

763

that it infringes the fundamental right guaranteed by Art. 14, so would the impugned order in the present case be invalid because it contravenes Art. 19(1). It is, therefore, necessary to examine whether this contention is well-founded.

In the case of Budhan Choudhry(1), the matter had come to this Court by way of appeal under Art. 132(1) of the Constitution. The appellants had been tried by a

Magistrate, 1st Class, exercising powers under s. 30 of the Code of Criminal Procedure on charges under ss. 366 and 143 of the Indian Penal Code, and each one of them was convicted under both the sections and sentenced to rigorous imprisonment for five years under s. 366, whereas no separate sentence was imposed under s. 143. They then challenged the correctness and validity of the order of their conviction and sentence by preferring an- appeal before the Patna High Court. The appeal was first heard by a Bench consisting of S. K. Das and C. P. Sinha, JJ. There was, however, a difference of opinion between the two learned Judges as to the constitutionality of s. 30, Cr. P.C. Das, J. took the view that the impugned section did not bring about any discrimination, whereas Sinha, J. was of the opinion that the impugned section was hit by Art, 14. The appeal was then heard by Reuben, C. J., who agreed with Das, J., with the result that the order of conviction and sentence passed against the appellants was confirmed. The appellants then obtained a certificate from the said High Court under Art. 132 (1) and with that certificate they came to this Court.

Naturally, the principal contention which was urged on their behalf before this Court was that s. 30, Cr.P.C. infringed the fundamental right guaranteed by Art. 14, and was, therefore, invalid. This contention was repelled by this Court. Then, alternatively, the appellants argued that though the section itself may not be discriminatory, it may lend itself to abuse bringing about a discrimination between persons accused of offences of the same kind, for the police may send up a person accused of an offence under s. 366 to a section 30 Magistrate and the police may send another person accused of an offence under the same section to a Magistrate who can commit the accused to the Court of Session. This alternative contention was examined and it was also rejected. That incidentally raised the question as to whether the judicial decision could itself be said to offend Art. 14. S. R. Das, J., as he then was, who spoke for the Court, considered this contention, referred with approval to the observations made by Frankfurter, J., and Stone, C.J., of the Supreme Court of the United States in Snowden v. Hughes(2), and observed that the judicial decision must of necessity depend on the facts and circumstances.of each particular case and what may superficially appear to be an unequal application of the law may not

(1) [1955]1 S.C.R. 1045.

(2) (1944) 321 U.S. 1: 88 Led. 497.

764

necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. Having made this observation which at best may be said to assume that a judicial decision may conceivably contravene Art. 14, the learned Judge took the precaution of adding that the discretion of judicial officers is not arbitrary and the law provides for revision by superior Courts of orders passed by the subordinate Courts. In such circumstances, there is hardly any ground for apprehending any capricious discrimination by judicial tribunals.

It is thus clear that though the observations made by Frank- furter, J. and Stone, C. J. in Snowden v. Hughes(1) had been cited with approval, the question as to whether a judicial order can attract the jurisdiction of this Court under Art. 32(1) and (2) was not argued and did not fall to be considered at all. That question became only incidentally relevant in deciding whether the validity of the conviction

which was impugned by- the appellants in the case of Budhan Choudhry and Others(2) could be successfully assailed on the ground that the judicial decision under s. 30, Cr. P. C. was capriciously rendered against the appellants. The scope of the jurisdiction of this Court in exercising its writ jurisdiction in relation to orders passed by the High Court was not and could not have been examined, because the matter had come to this Court in appeal under Art. 132(1); and whether or not judicial decision can be said to affect any fundamental right merely because it incidentally and indirectly may encroach upon such right, did not therefore call for consideration or decision in that case. In fact, the closing observations made in the judgment themselves indicate that this Court was of the view that if any judicial order was sought to be attacked on the ground that it was inconsistent with Art. 14, the proper remedy to challenge such an order would be an appeal or revision as may be provided by law. We are, therefore, not prepared to accept Mr. Setalvad's assumption that the observations on which he bases himself support the proposition that according to this Court, judicial decisions rendered by courts of competent jurisdiction in or in relation to matters brought before them can be assailed on the ground that they violate Art. 14. It may incidentally be pointed out that the decision of the Supreme Court of the United States in Snowden v. Hughes(1) was itself not concerned with the validity of any judicial decision at all.

On the other hand, in The Parbhani Transport Co-operative Society Ltd. v. The Regional Transport Authority, Aurangabad and Others,(3), Sarkar, J. speaking for the Court, has observed that the decision of the Regional Transport Authority which was challenged before the Court may have been right or wrong, but that they

(1)321 U.S. 1.
(2) [1955] 1 S.C.R. 1045
(3) [1960]3 S.C.R. 177.

765

were unable to see how that decision could offend Art. 14 or any other fundamental right of the petitioner. The learned Judge further observed that the Regional Transport Authority was acting as a quasi judicial body and if it has made any mistake in its decision there are appropriate remedies available to the petitioner for obtaining relief. It cannot complain of a breach of Art. 14. It is true that in this case also the larger issue as to whether the orders passed by quasi judicial tribunals can be said to affect Art. 14, does not appear to have been fully argued. It is clear that the observations made by this Court in this case unambiguously indicate that it would be inappropriate to suggest that the decision rendered by a judicial tribunal can be described as offending Art. 14 at all. It may be a right or wrong decision, and if it is a wrong decision it can be corrected by appeal or revision as may be permitted by law, but it cannot be said per se to contravene Art. 14. It is significant that these observations have been made while dealing with a writ petition filed by the petitioner, the Parbhani Transport Co-operative Society Ltd. under Art. 32; and in so far as the point has been considered and decided the decision is against Mr. Setalvad's contention.

In support of his argument that a judicial decision can be corrected by this Court in exercise of its writ jurisdiction under Art. 32(2), Mr. Setalvad has relied upon another decision of this Court in Prem Chand Garg v. Excise Commissioner, U.P. Allahabad(e). In that case, the petitioner Prem Chand Garg had been required to furnish

security for the costs of the respondent under r. 12 of O-XXXV of the Supreme Court Rules. By his petition filed under Art. 32, he contended that the rule was invalid as it placed obstructions on the fundamental right guaranteed under Art. 32 to move the Supreme Court for the enforcement of fundamental rights. This plea was upheld by the majority decision with the result that the order requiring him to furnish security was vacated. In appreciating the effect of this decision, it is necessary to bear in mind the nature of the contentions raised before the Court in that case. The Rule itself, in terms, conferred discretion on the Court, while dealing with applications made under Art. 32, to impose such terms as to costs and as to the giving of security as it thinks fit. The learned Solicitor-General, who supported the validity of the Rule, urged that though the order requiring security to be deposited may be said to retard or obstruct the fundamental right of the citizen guaranteed by Art. 32(1), the Rule itself could not be effectively challenged as invalid, because it was merely discretionary; it did not impose an obligation on the Court to demand any security; and he supplemented his argument by contending that under Art. 142 of the Constitution, the powers of this Court were wide enough to impose any term or condition subject to which proceedings before

(1) [1963) Supp. 1 S.C.R. 885.

766

this Court could be permitted to be conducted. He suggested that the powers of this Court under Art. 142 were not subject to any of the provisions contained in Part III including Art. 32(1). On the other hand, Mr. Pathak who challenged the validity of the Rule, urged that though the Rule was in form and in substance discretionary, he disputed the validity of the power which the Rule conferred on this Court to demand security. According to Mr. Pathak, Art 142 had to be read subject to the fundamental right guaranteed under Art. 32; and so, when this Court made Rules by virtue of the powers conferred on it by Art. 145, it could not make any Rule on the basis that it could confer a power on this Court to demand security from a party moving this Court under Art. 32(1), because such a term would obstruct his guaranteed fundamental right. It is on these contentions that one of the points which had to be was whether Art. 142 could be said to override the fundamental rights guaranteed by Part 111. The majority view of this Court was that though the powers conferred on this Court by Art. 142 were very wide, they could not be exercised against the fundamental rights guaranteed by the Constitution, not even against definite statutory provisions. Having reached this decision, the majority decision was that though the Rule was discretionary, the power to demand security which it purported to confer on the Court in a given case, was itself inconsistent with the fundamental right guaranteed by Art. 32(1) and as such, the Rule was bad. The minority view differed in that matter and held that the Rule was not invalid.

It would thus be seen that the main controversy in the case of Prem Chand Garg(1) centered round the question as to whether Art. 145 conferred powers on this Court to make-Rules, though they may be inconsistent with the constitutional provisions prescribed by Part III . Once it was held that the powers under Art. 142 had to be read subject not only to the fundamental rights, but to other binding statutory provisions, it became clear that the Rule which authorised the making of the impugned order was invalid. It was in that context that the validity of the

order had to be incidentally ,examined. The petition was made not to challenge the order as such but to challenge the validity of the Rule under which the order was made. Once the Rule was struck down as being invalid, the order passed under the said Rule had to be vacated. It is difficult to see how this decision can be pressed into service by Mr. Setalvad in support of the argument that a judicial order passed by this Court was held to be subject to the writ jurisdiction of this Court itself. What was held by this Court was that Rule made by it under its powers conferred by Art. 145 which are legislative in ,character, was invalid; but that is quite another matter.

It is plain that if a party desires to challenge any of the Rules framed by this Court in exercise of its powers under Art. 145 on

(1) [1963] Supp. I S.C.R. 885.

767

the ground that they are invalid because they illegally contravene his fundamental rights, it would be open to the party to move this Court under Art. 32. Such a challenge is not against any decision of this Court, but against a Rule made by it in pursuance of its rule-making power. If the Rule is struck down as it was in the case of Prem Chand Garg(1), this Court can review or recall its order passed under the said Rule. Cases in which initial orders of security passed by the Court are later reviewed and the amount of security initially directed is reduced, frequently arise in this Court; but they show the exercise of this Court's powers under Art. 137 and not under Art. 32. Therefore, we are not satisfied that Mr. Setalvad is fortified by any judicial decision of this Court in raising the contention that a judicial order passed by the High Court in or in relation to proceedings brought before it for its adjudication, can become the subject-matter of writ jurisdiction of this Court under Art. 32(2). In fact, no_ precedent has been cited before us which would support Mr. Setalvad's claim that a judicial order of the kind with which we are concerned in the present proceedings has ever been attempted to be challenged or has been set aside under Art. 32 of the Constitution.

In this connection, it is necessary to refer to another aspect of the matter, and that has relation to the nature and extent of this Court's jurisdiction to issue writs of certiorari under Art. 32(2) Mr. Setalvad has conceded that if a court of competent jurisdiction makes an order in a proceeding before it, and the order is inter-partes, its validity cannot be challenged by invoking the jurisdiction of this Court under Art. 32, though the said order may affect the aggrieved party's fundamental rights. His whole argument before us has been that the impugned order affects the fundamental rights of a stranger to the proceedings before the Court; and that, he contends, justifies the petitioners in moving this Court under Art. 32. It is necessary to examine the validity of this argument.

It is well-settled that the powers of this Court to issue writs of certiorari under Art. 32(2) as well as the powers of the High Courts to issue similar writs under Art. 226 are very wide. In fact, the powers of the High Courts under Art. 226 are, in a sense, wider than those of this Court, because the exercise of the powers of this Court to issue writs of certiorari are limited to the purposes set out in Art. 32(1). The nature and the extent of the writ juris-diction conferred on the High Courts by Art. 226 was considered by this Court as early as 1955 in T.C. Basappa v. T. Aragappa and Anr.(2). It would be useful to refer to some

of the points elucidated in this judgment. The first point which was made clear by Mukherjea, J., who spoke for the Court, was that "in view of the express provisions in our Constitution, we need not now look back
(1) [1963] Supp. I S.C.R. 885.
(2) [1955] 1 S.C.R. 250, at pp. 256-8.
768
to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law." One of the essential features of the writ, according to Mukherjea, J., is "that the control which is exercised through it over judicial or quasi-judicial tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari, the superior Court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The supervision of the superior Court exercised through writs of certiorari goes to two points, one is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. Certiorari may fie and is generally granted when a Court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter of the proceeding or from the absence of some preliminary proceeding or the Court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the Court depends upon the existence of some collateral fact, it is well-settled that the Court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess." It is in the light of these principles which have been consistently followed by this Court in dealing with the problem relating to the exercise of the writ jurisdiction by the High Courts under Art. 226 or by this Court under Art. 32, that we must now proceed to deal with the point before us.
The scope of the jurisdiction of this Court in dealing with writ petitions under Art. 32 was examined by a Special Bench of this Court in Sint. Ujjam Bai v. State of Uttar Pradesh(1). This decision would show that it was common ground before the Court that in three classes of cases aquestion of the enforcement of the fundamental rights may arise; and if it does arise, an application under Art. 32 will lie. These cases are: (1) where action is taken under a statute which is ultra vires the Constitution; (2) where the statute is intra vires but the action taken is without jurisdiction; and (3) where the action taken is procedurally ultra vires as where a quasijudicial authority under an obligation to act judicially passes an order in violation of the principles of natural justice.
769
According to the majority decision in the case of Ujjam Bai,(1) it appears that where a quasi-judicial authority makes an order in the undoubted exercise of its jurisdiction in pursuance of a provision of law which is intra vires, an

error of law or fact committed by that authority cannot be impeached otherwise than on appeal, unless the erroneous determination relates to a matter on which the jurisdiction of that body depends, and the relevant law does not confer on that body jurisdiction to determine that matter.

This last category of cases often arise in relation to tribunals which have been given jurisdiction to try certain issues under certain conditions. It is only if the condition prescribed by the statute is satisfied that the tribunal derives jurisdiction to deal with the matter. Proof of such a condition is regarded as the proof of a collateral fact, and an erroneous decision of the tribunal as to the existence of this collateral fact is not regarded as binding on the parties and can be challenged by a writ proceeding under Art. 226. But in cases where the Tribunal is given jurisdiction to deal with certain matters, then its decision on those matters cannot be regarded as a decision on collateral facts. This aspect of the matter came to 'he considered by a Special Bench of this Court in Mls. Kamala Mills Ltd. v. The State of Bombay(2) and there it has been held that the appropriate authority set up under the relevant Sales-tax Act had been given jurisdiction to determine the nature of the transaction and to proceed to levy a tax in accordance with its decision on the first issue, and so, the decision of the said authority on the first issue cannot be said to be a decision on a collateral issue, and even if the said issue is erroneously determined by the said authority, the tax levied by it in accordance with its decision cannot be said to be without jurisdiction. In Aniyoth Kunhamina Umma v. Ministry of Rehabilitation and' Others(3) the petitioner had moved this Court under Art. 32 contending that her fundamental rights under Art. 19(1)(f) and Art. 31 were infringed by the order of the Assistant Custodian which had declared that the husband of the petitioner was an evacuee and his property was evacuee property. The petitioner had appealed to the Deputy Custodian against the said order, and when she failed before the Deputy Custodian, she had moved the Custodian-General by revision; but the said revision application also was dismissed. At this stage, she moved this Court under Art. 32. This Court rejected her petition on the ground that it was incompetent as no question of violation of any fundamental right arose in the case. The decision of the authority of competent jurisdiction, it was held, had negatived the existence of the legal right alleged by the petitioner, and unless the decision was held to be a nullity or could be otherwise got rid of,. the petitioner could not complain of any,

(1) [1963] 1 S.C.R. 778.
(2) [1966] 1 S.C.R. 64.
(3) [1962] 1 S.C.R. 505.

770

infringement of a fundamental right. The main questions were .Whether the petitioner's husband was an evacuee or not, and whether his property was evacuee property or not. The decision of those -questions had become final, and no lack of jurisdiction was involved.

While referring to the decision of this Court in the case of Smt. Ujjam Bai(1), We have already indicated that it was not disputed before the Court in that case that where the action taken against a -citizen is procedurally ultra vires, the aggrieved party can move this ,Court under Art. 32. As an illustration, we may refer to the decision of this Court in Sinha Govindji v. The Deputy Chief Controller -of lmports and Exports and Others(2). In that case, the Court

was .satisfied that there was a clear violation of the requirements of clause 10 of the Imports (Control) Order, 1955, which embodied the principles of natural justice, and that made the impugned orders constitutionally invalid. That is how the jurisdiction of this Court ,under Art. 32 can be invoked if the impugned order has been passed .by adopting a procedure which is ultra vires.

We have referred to these decisions to illustrate how the jurisdiction to issue writs of certiorari has been exercised either by the High Courts under Art. 226 or by this Court under Art. 32. Bearing these principles in mind, let us enquire whether the order impugned in the present proceedings can be said to be amenable to the jurisdiction of this Court under Art. 32. We have already seen that the impugned order was passed by the learned Judge after hearing the parties and it was passed presumably because he was satisfied that the ends of justice required that Mr. Goda should be given protection by prohibiting the publication of his evidence in the newspapers during the course of the trial. This matter was directly related to the trial of the suit; and in exercise of his inherent power, the learned Judge made the order in the interests of justice. The order in ,one sense is inter-partes, because it was passed after hearing arguments on both the sides. In another sense, it is not inter-partes inasmuch as it prohibits strangers like the petitioners from publishing Mr. Goda's evidence in the newspapers. In fact, an order of this kind would always be passed after hearing parties before the -,Court and would in every case affect the right of strangers like the petitioners who, as Journalists, are interested in publishing court proceedings in newspapers. Can it be said that there is such a difference between normal orders passed inter-partes in judicial proceedings, and the present order that it should be open to the strangers -are who affected by the order to move this Court under Art. 327. The order, no doubt, binds the strangers; but, nevertheless, it is a judicial order and a person aggrieved by it, though a stranger, can move this Court by appeal under Art. 136 of the Constitution. Principles -of Res judicata have been applied by this Court in dealing with

(1) [1963] 1 S.C.R. 778.

(2) [1962] 1 S.C.R. 540.

771

petitions filed before this Court under Art. 32 in Daryao and Others v. The State of U. P. and Others(1). We apprehend that somewhat similar considerations would apply to the present proceedings. If a judicial order like the one with which we are concerned in the present proceedings made by the High Court binds strangers, the strangers may challenge the order by taking appropriate proceedings in appeal under Art. 136. It would, however, not be open to them to invoke the jurisdiction of this Court under Art. 32 and contend that a writ of certiorari should be issued in respect of it. The impugned order is passed in exercise of the inherent jurisdiction of the Court and its validity is not open to be challenged by writ proceedings.

There is yet another aspect of this matter to which it is necessary to refer. The High Court is a superior Court of Record and under Art. 215, shall have all powers of such a Court of Record including the power to punish contempt of itself. One distinguishing characteristic of such superior courts is that they are entitled to consider questions of their jurisdiction raised before them. This question fell to be considered by this Court in Special Reference No. I of 1964(2). In that case, it was urged before this Court

that in granting bail to Keshav Singh, the High Court had exceeded its jurisdiction and as such, the order was a nullity. Rejecting this argument, this Court observed that in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction. That is why this Court did not accede to the proposition that in passing the order for interim bail, the High Court can be said to have exceeded its jurisdiction with the result that the order in question was null and void. In support of this view, this Court cited a passage from Halsbury's Laws of England where it is observed that "primafacie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court."(3) If the decision of a superior Court on a question of its jurisdiction is erroneous, it can, of course, be corrected by appeal or revision as may be permissible under the law; but until the adjudication by -a superior Court on such a point is set aside by adopting the appropriate course, it would not be open to be corrected by the exercise of the writ jurisdiction of this Court.

The basis of Mr. Setalvad's argument is that the impugned order is not an order inter-partes, as it affects the fundamental rights

(1) [1962] 1 S.C.R. 574.

(2) [1965] 1 S.C.R. 413 AT p. 499.

(3) Halsbury's Laws of England, Vo 1. 9, p.249.

772

of the strangers to the litigation, and that the said order is without jurisdiction. We have already held that the impugned order cannot be said to affect the fundamental rights of the petitioners and that though it is not inter-partes in the sense that it affects strangers to the proceedings, it has been passed by the High Court in relation to a matter pending before it for its adjudication and as such, like other judicial orders passed by the High Court in proceedings pending before it, the correctness of the impugned order can be challenged only by appeal and not by writ proceedings. We have also held that the High Court has inherent jurisdiction to pass such an order.

But apart from this aspect of the matter, we think it would be inappropriate to allow the petitioners to raise the question about the jurisdiction of the High Court to pass the impugned order in proceedings under Art. 32 which seek for the issue of a writ of certiorari to correct the said order. If questions about the jurisdiction of superior courts of plenary jurisdiction to pass orders like the impugned order are allowed to be canvassed in writ proceedings under Art. 32, logically, it would be difficult to make a valid distinction between the orders passed by the High Courts inter-partes, and those which are not inter-partes in the sense that they bind strangers to the proceedings. Therefore, in our opinion, having regard to the fact that the impugned order has been passed by a superior Court of Record in the exercise of its inherent powers, the question about the existence of the said jurisdiction as well as the validity or propriety of the order cannot be raised in writ proceedings taken out by the petitioners for the issue of a writ of certiorari under Art. 32.

Whilst we are dealing with this aspect of the matter, we may incidentally refer to the relevant observations made by Halsbury on this point. "In the case of judgments of inferior courts of civil jurisdiction," says Halsbury in the footnote, "it has been suggested that certiorari might be granted to quash them for want of jurisdiction [Kemp v. Balne (1844), 1 Dow. & L. 885, at p. 887], inasmuch as an error did not lie upon that ground. But there appears to be no reported case in which the judgment of an inferior court of civil jurisdiction has been quashed on certiorari, either for want of jurisdiction or on any other ground."(1) The ultimate proposition is set out in the terms: "Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction." These observations would indicate that in England the judicial orders passed by civil courts of plenary jurisdiction in or in relation to matters brought before them are not held to be amenable to the jurisdiction to issue writs of certiorari.

In -Rex. v. Chancellor of St. Edmundsburry and Ipswich Diocese Exparte White(2) the question which arose was whether certio-

(1) Halsbury Laws of England Vol. I 1, pp. 129, 130.

(2) [1945] 1 K.B.D. 195 at pp. 205-206.

773

rari would lie from the Court of King's Bench to an ecclesiastical Court; and the answer rendered by the Court was that certiorari would not lie against the decision of an ecclesiastical court. In dealing with this question, Wrottesley, L. J. has elaborately considered the history of the writ jurisdiction and has dealt with the question about the meaning of the word "inferior" as applied to courts of law in England in discussing the problem as to the issue of the writ in regard to decisions of certain courts. "The more this matter was investigated," says Wrottesley, L. J., "the clearer it became that the word "inferior" as applied to courts of law in England had been used with at least two very different meanings. If, as some assert, the question of inferiority is determined by ascertaining whether the court in question can be stopped from exceeding its jurisdiction by a writ of prohibition issuing from the King's Bench, then not only the ecclesiastical Courts, but also Palatine courts and Admiralty courts are inferior courts. But there is another test, well recognised by lawyers, by which to distinguish a superior from an inferior court, namely, whether in its proceedings, and in particular in its judgments, it must appear that the court was acting within its jurisdiction. This is the characteristic of an inferior court, whereas in the proceedings of a superior court it will be presumed that it acted within its jurisdiction unless the contrary should appear either on the face of the proceedings or aliunde." Mr. Sen relied upon this decision to show that even the High Court of Bombay can be said to be an inferior court for the purpose of exercising jurisdiction by this Court under Art. 32(2) to issue a writ of certiorari in respect of the impugned order passed by it. We are. unable to see how this decision can support Mr. Sen's contentions.

We are, therefore, satisfied that so far as the jurisdiction of this Court to issue writs of certiorari is concerned, it is impossible to accept the argument of the petitioners that judicial orders passed by High Courts in or in relation to proceedings pending before them, are amenable to be corrected by exercise of the said jurisdiction. We have no doubt that it would be unreasonable to attempt to rationalise the assumption of jurisdiction by this Court

under Art. 32 to correct such judicial orders on the fanciful hypothesis that High Courts may pass extravagant orders in or in relation to matters pending before them and that a remedy by way of a writ of certiorari should, therefore, be sought for and be deemed to be included within the scope of Art. 32. The words used in Art. 32 are no doubt wide; but having regard to the considerations which we have set out in the course of this judgment, we are satisfied that the impugned order cannot be brought within the scope of this Court's jurisdiction to issue a writ of certiorari under Art. 32; to hold otherwise would be repugnant to the well-recognised limitations
774
within which the jurisdiction to issue writs of certiorari can be exercised and inconsistent with the uniform trend of this Court's decisions in relation to the said point.
The result is, the petitions fail and are dismissed. There would be no order as to costs.
Sarkar, J. Tarkunde J. of the High Court at Bombay, while hearing a suit in the exercise of the ordinary original civil jurisdiction of that Court, passed an order prohibiting publication of a part of the proceedings. The four petitioners, who are reporters and otherwise connected with newspapers, have moved this Court under Art. 32 of the Constitution, each by a separate petition, for a writ of certiorari to bring up the records of the order and to quash them. They allege that the order violates their fundamental right to freedom of speech and expression conferred by sub-cl. (a) of cl. (1) of Art. 19 of the Constitution, I think these petitions should fail.
First, it seems to me that this case is covered by the judgment of this Court in Ujjam Bai v. State of Uttar Pradesh(1). That was a case in which a petition had been moved under Art. 32 for quashing an order passed by an assessing officer acting judicially under a taxing statute, valid in all respects, assessing the petitioner to tax on a construction of the statute alleged to be erroneous and that petition was dismissed. It was held that the validity of an order made by a judicial tribunal, acting within its jurisdiction, under an Act which was intra vires and good law in all respects was not liable to be questioned by a petition under Art. 32 even though the provisions of the Act had been misconstrued and that such an order could not violate any fundamental right and no question of this Court enforcing any violation of fundamental right thereby could arise The principle accepted appears to be that a legally valid act cannot offend a fundamental right. I think the same principle applies to this case. The conditions of the applicability of the principle laid down in that case are that a judicial tribunal should have made an order which it had the jurisdiction to make by applying a law which is valid in all respects. I think both these conditions are fulfilled in this case and it is irrelevant to enquire whether Tarkunde J. had made the order on an erroneous view of the law he was applying. I proceed now to examine the case from this point of view.
First, had Tarkunde J. exceeded his jurisdiction in making the order ? It was said that he had, because the inherent power of the Court did not authorise the prevention of the publication of the proceedings in the circumstances of the case. As I understood
(1) [1963]1 S. C. R. 778.
775
learned counsel, they did not contend that Tarkunde J. had no power to prevent publication at all but only said that he

had misused that power, and misapplied the law which gave the power to the facts of the case before him and thereby exceeded his jurisdiction. I think, for reasons to be later stated, he had such a power and that power was based on a valid law. I will assume for the present purpose that the learned Judge had committed the error imputed to him. But I am unable to agree that he had thereby exceeded his jurisdiction in the sense in which that word was used by this Court in Ujjam Bai's(1) case. Our attention was drawn to certain observations in some of the speeches in the House of Lords, in Scott v. Scott.(2) That was a case in which the trial of matrimonial case was ordered by a learned Judge of the High Court of England, trying the case as a court of first instance, to be held in camera. The House of Lords on appeal held that the order was completely invalid and might be disobeyed with impunity. Some of' the learned Lords observed that the order was without jurisdiction and it was on this that the petitioners founded themselves.

It seems to me that this argument is based on a misconception of what was said by these learned Lords. All that they meant to say was that the law as to camera trial did not justify the order that bad been made. It was not said that it was beyond the jurisdiction of the learned Judge, who made the order, to consider what that law was and whether it justified the order that he made. The House of Lords was only concerned with the legality of the order, Indeed, in England the High Court is a court of universal jurisdiction and except where provided by statute, its jurisdiction is, I believe,, unlimited. The House of Lords was not concerned with any statutory limit of the jurisdiction of the High Court.

When this Court observed in Ujjam Bai's(1) case that the order had to be within the jurisdiction of the tribunal which made it, it really meant that the tribunal had to have jurisdiction to decide matters that were litigated before it and to apply the law which it, in fact, applied in making the order. It was not saying that the tribunal having this jurisdiction acts without jurisdiction if it makes an error in the application of the law. In coming to its conclusion in Ujjam Bai's(1) case, this Court assumed that the assessing authority misinterpreted the law which it had jurisdiction to apply, but held that nonetheless he had acted within his jurisdiction and was not acting without jurisdiction. This view is based on a well recognised principle. An order passed by a court without jurisdiction in the sense that I have mentioned, is a nullity. It cannot be said of such an order that it is a legal act which cannot result in a wrong. On the other hand, an order passed with jurisdiction but wrongly, is a legal act for it is well known that a court has jurisdic-

(1) [1963] 1 S.C.R. 778.

(2) [1913] A.C. 417.

776

tion to decide rightly as well as wrongly. This, I believe, is the principle on which the condition as to jurisdiction was formulated in Ujjam Bai's.(1) I find no difficulty, therefore, in holding that Tarkunde J. was acting within jurisdiction in making the order which he did, even if he had committed an error in applying the law under which he made it.

I turn now to the question whether the law which Tarkunde J. had applied was a valid law. It is said that it is not a valid law .as it offends the fundamental right to freedom of speech conferred by Art. 19(1)(a). Now that law is the inherent power of a High Court to prevent publication of the

proceedings of a trial. The question is: Does this power offend the liberty of speech ? it seems to me beyond dispute that the power to prevent publication of proceedings is a facet of the power to hold a trial in camera and stems from it. Both are intended to keep the proceedings secret. Suppose a court orders a trial in camera and assume it had a valid power to do so. In such a case the proceedings are not available to persons not present at the trial and cannot, for that reason at least, be published by them. Can any such person complain that his liberty of speech has been infringed ? I do not think so. He has no right to hear the proceedings. Indeed, there is no fundamental right to hear. If he has not, then it should follow that his liberty of speech has not been affected by the order directing a trial in camera.

Though it was not disputed, I will consider for myself whether a law empowering a trial in camera is a valid law. An order directing a trial to be held in camera prohibits entry into the court but I do not think that it can be said that it thereby offends the right to move freely throughout India which is given by sub-cl. (d) of cl. ,(I) of Art. 19. 1 would put this view on two grounds. I would first say that the law providing for trials being held in camera, even if it trespasses on the liberty of movement, would be protected under cl. (5) of Art. 19 which permits laws to be made imposing reasonable restrictions on that right in the interests of the general public. Now it is well recognised that the power to hold trials in camera is given in the interests of administration of justice. I suppose there can be no doubt that administration of justice is a matter of public interest. Then it seems to me indisputable that the restrictions that the exercise of the power to hold trials in camera imposes on the liberty of movement are reasonable. It is circumscribed by strict limits; see Scott. V. Scott.(2) It is unnecessary to discuss these limits for it has not been contended that the restrictions are not reasonable.

Secondly, I would say that that law does not violate any fundamental right to free movement. A court house is not such a place

(1) [1963] 1 S.C.R 778.

(2) [19131 A.C. 417.

777

into which the public have an unrestricted right of entry. The public no doubt have a right to be present in court and to watch the proceedings conducted ’there. But this is not a fundamental right. It is indeed not a personal right of a citizen which, I conceive, a fundamental right must be. It is a right given to the public at large in the interests of the administration of justice. It cannot exist when the administration of justice requires a trial to be held in camera for in such a case it is not in the interest of justice that the public should be present. That right to be present in a court must be subject to the control of the Judge administering the business of the court. If it were not so, it would be impossible to carry on work in acourt.

I should suppose that one cannot complain of the breachof the liberty of movement if he is prevented by law from entering a private property. For analoguous reasons, I think a person cannot complain of a breach of that liberty when his entry to a court room is prohibited. In neither case he is entitled to a free right of entry to the place concerned.

Now the exercise of the power to hold trial in camera no doubt has the effect incidentally of preventing a citizen

from publishing proceedings of the trial, for he is by, it prevented from hearing them; what he cannot hear, he cannot, of course, publish. I do not think this restriction on the liberty of speech is a violation of the fundamental right in regard to it. First, the liberty of speech is affected only indirectly and it has been held by this Court in many cases beginning with A. K. Gopalan v. The State(1) that when a law which, though it violates a fundamental right is nonetheless good under any of the cls. (2) to (5) of Art. 19, indirectly affects another fundamental right for which no protection can be claimed under these clauses, no grievance can be founded on the indirect infringement. Secondly, all that the law does is to legally prevent a person from entering the court and hearing the proceedings. Really, there is no such thing as an absolute right to hear. A person cannot complain of an infringement of the liberty of speech when all that is done is to prevent access to something which he intends to publish. As I have earlier said the power to prohibit publication of proceedings is essentially the same as the power to hold trial in camera. If the power to prevent publication of proceedings does not exist, it would be futile to give a power to hold a trial in camera. I should suppose that if the law giving the latter power is a good law, as I think it is, everything involved in that law and stemming from it must equally be good. It would follow that the power to prohibit publication of proceedings cannot also amount to any infringement of the liberty of speech. When it is said that a proceeding shall not be published, what is in fact said is that persons will be permitted to hear what they have no right to hear, on the condition that they do not publish what they hear. The order preventing publication is really a form

(1) [1950] S.C.R. 88.

M12Sup.Cl/66-4

778

of holding trial in camera. If a person taking advantage of such an order publishes it, he is certainly committing a wrong. I cannot imagine the Constitution contemplating a fundamental right based on a wrong.

I conceive the position would be the same if a person stealthily and wrongfully gets possession of a copy of the proceedings of a trial held in camera and publishes them. He has no fundamental right to liberty of speech in respect of such publication because that putably good law. Suppose A has a copyright in a poem and B steals it and makes it over to C. It Would be absurd if C can take shelter under the liberty of speech when he is restrained by an injunction against a threatened publication of the poem by him. I should suppose that liberty of speech is not available to do harm to others. Clearly a right cannot be based on a wrong. Therefore, I think that a law empowering a court to prohibit publication of its proceedings does not affect the fundamental right of speech. It cannot be said to be bad on the ground that it infringes any such right.

It also seems to me that the law empowering a court to prohibit publication of its proceedings is protected by cl. (2) of Art. 19. That clause says that a law may validly impose reasonable restrictions on the liberty of speech, if it is in relation to contempt of court. Now a law in relation to contempt of court in the present context is a law which says that. certain statements uttered or published will be a contempt of court. Their utterance or publication is prohibited. The principle on which the law is based is that the utterance or publication would interfere with the course of justice and its due administration. As I have

already said, the law preventing publication of the court's proceedings is based on the same principle. The publication is prohibited only because it interferes with the course of justice. An obstruction to the course of justice will of course be a contempt of court. That obstruction may take various forms. There is obstruction when comments on the merits of a case pending in a court are made. Such comments are prohibited by law and that law relates to contempt of court. Likewise an obstruction to the course of justice occurs when a court in the interests of justice prohibits publication of the proceedings and that prohibition is disobeyed. Such publication is prohibited by law and the law empowering the prohibition equally relates to contempt of court. That law is concerned with the powers of the court alone and does not purport to confer rights on persons. Such a law would be a good law under cl. (2) of Art. 19 if the restrictions which it imposes are reasonable. What I have earlier said in connection with the reasonableness of the restrictions imposed by the law providing for a trial to be held in camera will apply to this case also. The restrictions which this law empowers to be imposed

779

have to be confined within the strict limits and are plainly reasonable.

I will refer now to another aspect of the matter. As I understood learned counsel for the petitioners, they conceded that the order was a good order in so far as it concerned the parties to the case heard by Tarkunde J. who could not, therefore, complain of any violation of their liberty of speech by it. But it was contended that the order was not a valid order in so far as it restrained persons like the petitioners who were not parties to the proceedings. It is true that the petitioners were not parties, but I am unable to see that that makes any difference. The case will still be covered by the principle laid down in Ujjam Bai's(1) case It would still be a judicial order made within the jurisdiction of the Judge making it and based on a good law. It would still be a legal act. It cannot, therefore, violate anyone's fundamental right whether he is a party to the proceedings or not. The person affected can always approach the court for relief even if he was not a party to, the proceedings. The jurisdiction of the Court does not depend on who the personaffected by its order, is. Courts often have to pass orders whichaffect strangers to the proceedings before them. To take a common case, suppose a court appoints a receiver of a property about which certain persons are litigating but which in fact belongs to another. That person is as much bound by the order appointing the receiver as the parties to it are. His remedy is to move the court by an application pro interesse suo. He cannot by force prevent the receiver from taking possession and justify his action on the ground that the order was without jurisdiction and,. therefore violated his fundamental right to hold property. It would be an intolerable calamity if the law were otherwise.

Therefore, it seems to me that on the authority and the principle of Ujjam Bai's (1) case it must be held that the order of Tarkunde J. did not violate any fundamental right of the petitioners and the petitions must fail.

I would now refer to two judgments of this Court to which our attention was drawn. I find nothing in them which conflicts with the principle enunciated in Ujjam Bai's(1) case. The first is Budhan Chowdury v. The State of

Bihar(2). In that case there is an observation indicating that a judicial decision will not amount to denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. An argument was based on this observation that this Court contemplated that a judical order might in certain circumstances violate a fundamental right. But that observation must be related to the facts of the case. The case dealt with the power of a magistrate to

(1) [1953] 1 S.C.R. 778.
(2) [1955]1 S.C.R. 1045.

780

decide whether a matter was to be heard by him or by a Court of Sessions. Such an order is hardly a judicial order of the kind that was dealt with in Ujjam Bai's case(1). All that was said in Budhan Chowdury's(2) case was that the power given to the magistrate to decide-by whom the case would be heard, did not offend Art. 14 and one of the reasons given to support that view was that the magistrate had to act judicially. There was no question there of a magistrate acting as a tribunal. Besides this, in Ujjam Bai's(1) case it was held that where a judicial officer acts against the principles of natural justice, he acts without jurisdiction. This is the kind of thing that was perhaps in the mind ,of the learned Judges who decided Budhan Chowdhury's(1) case. Indeed in Parbhani Transport Cooperative Society Ltd. v. The Regional Transport Authority, Aurangabad(3). this Court observed that ,decisions of quasi judicial tribunals, however wrong, could not ,offend Art. 14.

The other case is that of Prem Chand Garg v. Excise Commissioner Uttar Pradesh(4). My lord the Chief Justice has dealt ,with this case very fully and I have nothing to add to what he has -said. For the reasons stated by him, it must be held that there is, nothing in that case which is in conflict with Ujjam Bai's case(1).

There is one other reason why, in my view, the petitions should fail. The petitions ask for a writ of certiorari. We are, therefore, concerned only with that writ. The difficulty that at once arises is. Does a certiorari lie to remove, for the purpose of quashing, the order of a High Court, which the order of Tarkunde J. undoubtedly was? I am confining myself only to a writ of certiorari for quashing a judicial order made by a High Court. The Constitution does not say what a writ of certiorari is. As certiorari is a technical word of English law and had its origin in that law, for determining its scope and contents we have necessarily to resort to English law. I am not unmindful that we are not to look back to the procedural technicalities of the writ as obtaining in English law. Nonetheless however we have to keep to the broad and fundamental principles that 'regulate the exercise of the jurisdiction to issue the writ in that law:

Now one of the fundamental principles concerning the issue of the writ is that it issues to an inferior court. The inferior court conceived in English law in this context is a court of limited jurisdiction: Rex v. Chancellor of St. Edmundabury(6). The origin of this test of an inferior court appears to have been this. In English theory, all judicial power is vested in the King. It was earlier ,exercised by the Court of King's Bench because the King, initially in

(1)[1963] 1 S.C.R. 778.
(2) [1955] 1 S.C.R. 1045.
(3)11969] 3 S.C.R. 177.

(4) [1963] Supp. 1 S.C.R. 885.
(5)[1955] 1 S.C.R. 250.
(6) [1948] 1 K.B. 195.

781

person and later in theory, sat there. In course of time as the 'Court in which the King sat, actually or in theory, was not enough to meet the needs of the people, a number of other courts had to be set up. The instruments creating such other courts always defined their jurisdiction. The King, however, retained his right to see that these courts did not encroach upon the royal prerogative of dispensing justice, that is, entertained cases which were beyond their jurisdiction as limited by the instruments creating them and thereby decided cases which the King had the right to decide. In England the King was the court of universal jurisdiction and he, therefore, issued the writ to the courts of limited jurisdiction to keep them within the limits prescribed for them. The King's prerogative to issue the writ is now vested in the High Court of England by statute. I am referring to this aspect of the matter only for the principle and origin of the rule that a certiorari could be issued only to inferior courts.

In our country there is no court of universal jurisdiction in the sense in which the High Court of England is. The jurisdiction of our Supreme Court is prescribed by the Constitution. The Constitution also provides how the jurisdiction of High Courts is to be prescribed. Jurisdiction of other courts is to be found in the statutes setting them up. Thus, in our country all courts are in the sense, courts of limited jurisdiction. Nonetheless, however, I find great difficulty in thinking of the High Courts as courts of inferior jurisdiction. Certain other tests for deciding what a court of inferior jurisdiction is, have been suggested but none of them, in my view, can support the conclusion that a High Court is an inferior court. I proceed to discuss these tests first.

It was said that the High Courts were inferior courts as appeals lie from them to the Supreme Court. This argument is really based on the theory that an inferior court is one from which an appeal lies to another court. Now, there are many tribunals from which no appeal lies to a High Court upon which the Constitution has conferred the power to issue a writ of certiorari. If appealability was the test, then the High Courts would not be able to issue writs of certiorari to such tribunals as they would not then be inferior courts. In. that case, a High Court's power to issue the writ would only be confined to courts from which appeals lie to it. It would be strange if this was what the Constitution contemplated when it provided that the High Courts would have the power to issue writs of certiorari. I am not prepared to adopt a test which produces such a result. Nor do I think that the Constitution intended it. With the growing number of these tribunals and the increasing scope of their activity covering a large part of an average citizen's life, property and work, it is of the utmost importance that the citizens should have the quick and effective remedy of a writ of certiorari by approaching the High Courts for such writs. I am

782

hot prepared to accept a test which would affect that right in any way. Besides this aspect of the matter, the power to issue a writ of certiorari is most valuable and most needed where an appeal does not lie from a decision of a tribunal and that decision is sought to be called in question. A test which would prevent the writ from lying in a case where

it is most needed is not acceptable to me. I may add that in England where a writ of error a form of appeal lay, the certiorari does not appear to have issued.

Another test suggested was that the inferior court was one over which the superior court issuing the writ had a supervisory jurisdiction. This test would fail for the same reason as the test of appealability. The Supreme Court has no supervisory jurisdiction over any court though it has power to issue the writ, nor have the High Courts over many to which it is necessary that they should issue the writ and have in fact been doing so all along with great beneficial results. This test will not, therefore, work in our country. That is not a test in England either. No doubt, in England it is said that the High Court exercises supervision over the inferior courts by the issue of the writ but that is so because the power to issue the writ carried with it the power to supervise and not because the writ is issued as there is a power to supervise. The power to issue the writ arises from what was once the royal prerogative and not from what is only a power to supervise.

I confess the question is of some haziness. That haziness arises because the courts in our country which have been given the power to issue the writ are not fully analogous to the English courts having that power. We have to seek a way out for ourselves. Having given the matter my best consideration, I venture to think that it was not contemplated that a High Court is an inferior court ,,even though it is a court of limited jurisdiction. The Constitution ,gave power to the High Courts to issue the writ. In England an inferior court could never issue the writ. I think it would be abhorrent to the principle of certiorari if a court which can itself issue the writ is to be made subject to be corrected by a writ issued by another court. When a court has the power to issue the writ, it is not, according to the fundamental principles of certiorari, an inferior court or a court of limited jurisdiction. It does not cease to be so because another court to which appeals from it lie, has also the power to issue the writ. That should furnish strong justification for saying that the Constitution did not contemplate the High ,Courts to be inferior courts so that their decisions would be liable to be quashed by writs issued by the Supreme Court which also had been given the power to issue the writs. Nor do I think that the cause of justice will in any manner be affected if a High Court is not made amenable to correction by this Court by the issue of the writ. In my opinion, therefore, this Court has no power to issue a certiorari to a High Court.

783

I would, for these reasons, dismiss the petitions.

Hidayatullah, J. Questions of far-reaching importance to our system of administration of justice are involved in these petitions arid as I have reached the conclusion that these petitions should be allowed, I consider it necessary to state my reasons fully. The facts are these:

In a sensational libel suit, on the original side of the High Court of Bombay, between one Mr. Krishnaraja M.D. Thakersey and Mr. R.K. Karanjia, Editor of the "Blitz" (an English weekly newspaper of Bombay), one Bhaichand Goda was cited as a witness for the defence. In a different proceeding Goda had earlier made an affidavit of facts which were considered relevant to the libel suit, but as witness he did not adhere to them. Mr. Karanjia was, therefore, permitted to cross-examine him with reference to his earlier statement. When the trial of the suit proceeded some other

material came on record which indicated that Goda had, in some other proceedings, repeated what he had stated in his affidavit. At the request of Mr. Karanjia, Goda was recalled for further cross-examination in relation to the new matter. On his second appearance Goda made a request to the presiding Judge (Mr. Justice Tarkunde) to withhold his evidence from newspaper reporters on the ground that publication of reports of his earlier deposition had caused loss to him in his business. After hearing arguments Mr. Justice Tarkunde orally ordered that Goda's deposition should not be reported in newspapers. The Blitz was giving verbatim reports of the trial and the other newspapers were also publishing brief accounts. The oral order of the learned Judge was not recorded. The minutes of the Court also do not mention it. In fact we have not seen that order. No one can say what the nature of the prohibition was, namely, whether it was a temporary or a perpetual suppression of publication. As the intention was to save Goda's business from harm, it is reasonable to think that the prohibition was perpetual and that is how the matter appears to have been understood by all concerned because no report of his deposition has since appeared in any newspaper.

These four petitions under Art. 32 of the Constitution were filed to question the order (such as it was) on the ground that the fundamental rights under Art. 19(1)(a) of the Constitution of the four petitioners (who are all journalists) have been violated by the said order. They raise important questions and I shall mention them at once. They are: (i) can a court, which is holding a public trial from which the public is not excluded suppress the publication of the deposition of a witness heard not in camera but in open court on the request of the witness that his business will suffer; (ii) does such an order breach fundamental right of freedom of speech and expression entitling persons affected to invoke Art. 32;

784

and (iii) if so, can this Court issue a writ to a High Court? answer these questions in the affirmative and in favour of the petitioners.

Before I discuss the order in this case I shall state the nature of hearings in the trial of cases in our courts. As we have fortunately inherited the English tradition of holding trials (with a few exceptions to which I shall refer later) in public, I shall begin with the English practice. It has always been the glory of the English system as opposed to the Continental, that all trials are held ostiis apertis, that is, with open doors. This principle is old and according to Hallam it is a direct guarantee of civil liberty and it moved Bentham to say that it was the soul of Justice and that in proportion as publicity had place, the checks on judicial injustice could be found. Except for trials before the Council all trials in England, including those before the notorious Star Chamber, were public and with observance of the law terms. It is because English trial has not known the Letters de cachet of Louis XIV and all its state trials were public, that the Selden Society has been able to collect the cases of the Star Chamber and we have the verbatim reports of almost all state trials. As Emlyn in his preface to the State Trials says proudly :

> "In other countries the courts of Justice are held in secret; with us publicly and in open view; there the witnesses are examined in private, and in the prisoner's absence; with us face to face, and in the prisoner's

presence."

He was no doubt speaking of criminal trials but the principle (with a few exceptions) is applicable to civil cases also.

This attachment to an open trial is not a rule of practice with the English, but is an article of their Great Charter and Judges view with great concern any departure from it. Whenever, a Judge departed from it he defined the 'field of exception' and stated ' the overriding principle' on which his decision was based. No Judge passes an order which is not recorded in the minutes and a question of this kind is not dealt with by the Judge as within his mere discretion as to what he considers expedient or convenient. As illustration of the seriousness of the question I shall permit myself an instance which concerns one of the greatest legal luminaries of English law. In Malan v. Young(1) (in the Sherborne School libel case) Lord Denman (then Denman J.) with the consent of the parties made an order for hearing in camera and a part of the case was so heard. Then a lawyer protested and Mr. Justice Denman, on a reconsideration of the matter, invited the parties the decide whether they would take the risk of a case in camera or would begin de novo in open court. The parties agreed to have the case

(1) (1889) 6 T.L.R. 38.

785

heard before him as an arbitrator. A decision of a case in camera, even if parties agree, is voidable (as was decided by the Judicial Committee in Mc. Pherson v. Mc Pherson(1)) and Lord Denman was apprehensive of such a result. This attitude to the trial in open was summed up by Viscount Haldane L.C. in Scott v. SCott(2) by saying that a Judge could only depart from the principle that the trial must be in public (except for some narrow exceptions) by demitting his capacity as a Judge and sitting as an arbitrator. The exceptions to the general rule which Viscount Haldane mentioned are cases of lunatics and wards of courts, of trade secrets, and nullity cases in which the Ecclesiastical Courts granted trials in camera. But even these are viewed very narrowly and the principle on which each exception is made to rest, differs. The cases of lunatics and wards are so viewed because- the court exercises over them a quasi-paternal Jurisdiction on behalf of the Queen as the parent patriae. These cases are considered private or domestic with which the public have no concern. The cases of trade secret are so viewed because secret processes (which are property) must be protected and unless secrecy from public view is maintained justice itself must fail in its purpose. The last are kept away from publicity because they involve sordid details of domestic life and therefore embarrass deponents. Even the last rule does not apply to all matrimonial cases as is evident from Scott. v. Scott referred, to earlier.

In Scott v. Scott (2) there are certain observations which proceed upon a dictum of Sir Francis Jenne in D. v D. (3) that the court possesses an inherent jurisdiction to hear any case in private when the administration of justice requires or with the consent of parties. This is the principle which has been stressed in the judgment of my lord the Chief Justice and I shall say a few words about it. Viscount Haldane did not dissent from that dictum, "provided that the principle is applied with great care and is not stretched to cases where there is not a strict necessity for invoking it." These observations were really made in relation to the three exceptions he was considering and he

did not intend by them to give a wide. discretion to the judge. He himself stated:

> "But unless it be strictly necessary for the attainment of justice, there can be no power in court to hear in camera either a matrimonial cause or any other where there is contest between parties. He who maintains that by no other means than by such a hearing can justice be done may apply for an unusual procedure. But he must make out his case strictly, and bring it up to the standard which the underlying
> (1) L. R. [1936] A.C. 177.
> (2) L. R. [1913] A.C. 417 at 436.
> (3) [1903] P. 144.
> 786
> principle requires. He may be able to show that the evidence can be effectively brought before the court in no other
> fashion."
> (emphasis added)

With profound respect for the eminent Judge I think the principle, so stated, is too wide and Rex. v Clement(1) which he uses to illustrate his point has no relevance. I respectfully agree with the Earl of Halsbury, who in the same case, commented upon the width of the Lord Chancellor's language and with Lord Atkinson who pointed out that in Clement's case there were many persons being tried for high treason and as the challenges to the jury were different, a large number of trials with common witnesses had to be held and publication was withheld so that others might not be prejudiced. The Earl of Halsbury observed as follows:

> "..... I wish to guard myself against the proposition that a judge may bring a case within the category of enforced secrecy because he thinks that justice cannot be done unless it is heard in secret.....
> I am not venturing to criticise your Lordship's language, which, as your Lordship understands it, and as I venture to :say I myself understand it, is probably enough to secure the observance of the rule of public hearing, but what I venture to point out is that it is not so definite in its application but that an individual judge might think that, in his view, the paramount object could not be attained without a secret hearing. Although I am very far from saying that such a case may not arise, I hesitate to accede to the width of the language, which, as I say, might be applied to what, in my view, would be an unlawful extension."
> "(pp. 442/443)." (emphasis added)

The Earl of Halsbury also expressed amazement that a single Judge (Sir Francis Jeune) should overrule "three such learned Judges as Sir Cresswell, Williams J. and Bramwell B." who in H (falsely called C) v C.(2) had expressed different opinion in relation to hearing in camera on there quest of parties Lord Shaw of Dunfermline also called the dictum of Sir Francis Jeune in D. v. D. "to be historically and legally indefensible' Earl Loreburn, however, agreed with the principle as enunciated and was in favour of its being exercised liberally. The head-note in the law report sets out the views of Viscount Haldane and Earl Loreburn separately from the main decision.

(1) 4B & Ald. 218. (2) 1 SW & Tr. 605.
787
In Scott v. Scott(1) the question had arisen in connection with a nullity suit and the main decision was that the Probate, Divorce and Admiralty Division had no power, either with or without the consent of the parties, to hear a nullity suit or other matrimonial suit in camera in the interest of public decency. The order of hearing in camera which led to a suppression of publication of the proceedings in perpetuity was held to be bad. So strong is this principle of open trial that even where this rule is departed from on the ground that interest of justice would suffer the Judges always remember to remind themselves that the order cannot be made as a matter of course. Thus it was that in Moosbrugger v. Moosbrugger and Moosbrugger v. Moosbrugger and Martin(2) (which were two cross suits between spouses for divorce), Evans P., while ,acceding to the request of the wife for privacy because of the horrible details of her case, repeated again and again that the trial was public and should not be thought not to be so. He was apprehensive that the lady's case would suffer if the sordid details were asked to be divulged in public and, therefore, heard only that part in private to give her confidence.
In India the position is not different. Public hearing of cases before courts is as fundamental to our democracy and system of justice as to any other country. That our legal system so understands it is quite easily demonstrable. We have several statutes in which there are express provisions for trials in camera. Section 53 of Act 4 of 1869 dealing with matrimonial causes, s. 22 of the Hindu Marriage Act, 1955, s.352 to the Code of Criminal Procedure, 1898 and s. 14 of the Indian Official Secrets Act, 1923, allow the court a power to exclude the public. Where the Legislature felt the special need it provided for it. Section 14 of the Official Secrets Act, however, needs some comment because an argument is knit from it. That section recites "without prejudice to any powers which a court may possess to order the exclusion of the public" and it is suggested that this recognizes the existence of inherent powers spoken of by Sir Francis Jeune. From this recital alone it is not right to assume that courts possess a general or inherent power of dispensing with open and public trials. This recital is necessary to be stated lest it may be thought that unless the prosecution applies to have the public excluded for reasons arising under the Official Secrets Act, other power derivable from any other source such as s. 352 of the Code of Criminal Procedure cannot be exercised. For this reason the other powers are expressly mentioned and preserved. The above statutes do not only confer power to hold trials in camera, but in a way they show that trials under laws which do not contain such enabling provisions must be open and public unless a strong case exists for holding them in camera. Inherent powers can only be exercised on well-
(1) [1913] A.C. 417. (2) (1913) 29 T.L.R. 658.
788
recognized principles and they cannot be assumed to exist where they do not and I see none on the facts of this case. The libel suit against the Editor of Blitz opened in public and proceeded in public. Goda's deposition on the first occasion was taken in open court and it was reported in newspapers. On his second appearance the trial as well as his examination was in open court but the reporting of his evidence was banned. Now the rule about reporting of cases in court is this: what takes place in court is public and the publication of the proceedings merely enlarges the area

of the court and gives to the trial that added publicity which is favoured by the rule that the trial should be open and public. It is only when the public is excluded from audience that the privilege of publication also goes because the public outside then have no right to obtain at second-hand what they cannot obtain in the court itself. If the matter is already published in open court, it cannot be prevented from being published outside the court room provided the report is a verbatim or a fair account. Accurate publication of reports is insisted upon so that the proceedings are not misrepresented. The above rules were stated by Lord Halsbury L.C. in Macdougall v. Knight(1) thus:

> "My Lords, the ground on which the privilege of accurately reporting what takes place in a court of justice is based is that judicial proceedings are in this country public, and that the publication of what takes place there, even though matters defamatory to an individual may thus obtain wider circulation than they otherwise would, is allowed because such publication is merely enlarging the area of the court, and communicating to all that which all had the right to know." I (emphasis added).

In our case the learned Judge by an order (which we have not seen and which parties could not produce because it was nowhere recorded) ordered that the deposition of Goda should not be published. Whether this order is to apply in perpetuity or for the duration of the trial, only the learned Judge can say. If it is to apply in perpetuity then it is bad because if there was unanimity on any one point in Scott v. Scott it was on this point. Even otherwise the order is indefensible. Having held the trial in open court, the learned Judge could not curtail the publication of the report of the trial and the reason which he accepted as sufficient, is one which the courts have not recognised and should not recognise. I know of no case to support the astounding proposi-

(1) [1889]14 A.C. 194.

789

tion that a witness can seek protection because his truthful statement would harm his own business; nor has the industry of counsel discovered any such case. I do not think such a principle exists at all. If it did a witness might with as good or as bad reason claim that he would depose only under a veil of secrecy because his domestic relations or his friendships or the relations with his employer would otherwise suffer. I imagine that a cunning rogue might ask for such secrecy to harm and wound another with impunity or to save his face when contradicted by his many prevarications. It is not sufficient to say that the witness is bound to speak the truth if so protected for he might well use the occasion to tell lies. It is clear to me from this case that the warning given by the Earl of Halsbury against the width of the language of Viscount Haldane was necessary. Section 151 of the Code of Civil Procedure, on which great reliance is placed, in spite of its very generous and wide language, cannot be used to confer a discretion on the court to turn its proceedings which should be open and public into a private affair. I am of opinion that the order of Mr. Justice Tarkunde imposing suppression of the reporting of the deposition of Goda was illegal and without jurisdiction. It was not in his power to make such an order on the ground he was moved and further because the

order either purports to impose a perpetual ban or leaves the matter in doubt, thus placing those concerned with the publication of the report under a virtual sword of Damocles, the order cannot be sustained.

The next question which arises is whether such an order breaches the fundamental right to freedom of speech and expression. This question is tied to another and it is whether a petition under Art. 32 can at all lie against a Judge in respect of any action performed by him while in the seat of justice. To determine these questions it is necessary to start with the second limb because unless it is answered in the affirmative the first limb may not fall for consideration. In making the enquiry on the second limb, I do not confine my attention to the consideration of Art. 19(1)(a) alone, for that does not enable me to see the fundamental rights in their true perspective vis-a-vis the action of Judges. While I do not detract from the proposition that judicial effort should be restrained and should never attempt an exposition of the law at large and outside the range of the facts on which a case in hand is founded, I venture to think that (remedy apart) the chapter on fundamental rights, when examined carefully in its several parts, gives many indications that Judges were not intended to be outside its purview, Certain articles address themselves to courts in common with other authority and some more to courts than to other authorities. Unless we read these other articles with Art. 19(1)(a) and consider them together, we are likely to have but a partial view of the problem.

7 90

To begin with we have the definition of 'State' in Art. 12.* That definition does not say fully what may be included in the word 'State' but, although it says that the word includes certain authorities, it does not consider it necessary to say that courts and Judges are excluded. The reason is made obvious at once. if we consider Art. 13(2).** There the word 'State must obviously include 'courts' because otherwise 'courts' will be enabled to make rules which take away or abridge fundamental rights. Such a case in fact arose in this Court when Rule 12 of Order XXXV of the Supreme Court Rules was struck down. [See Premchand Garg v. Excise Commissioner, U.P., Allahabad](1). That rule required the furnishing of security in petition under Art. 32 and it was held to abridge the fundamental rights. But it is said that the rule was struck down and not the judicial decision which was only revised. That may be so. But a judicial decision based on such a rule is not any better and offends the fundamental rights just the same and not less so because it happens to be a judicial order. If here be no appropriate remedy to get such an order removed because this Court has no superior, it does not mean that the order is made good. When judged of under the Constitution it is still a void order although it may bind parties unless set aside. Procedural safeguards are as important as other safeguards.

Again Art. 20, which speaks of convictions for offences, punishments and testimonial compulsion is addressed as much to courts as to executive and other authorities, and I venture to think that the worst offenders would be the courts if they went against this prescription. Article 22(1) is addressed to courts where it says that no person, who is arrested, shall be denied the right to be

*"12. In this Part,unless the context otherwise requires,"the state"includes the Government and Parliament of India and the

Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."

**"13 (2) The State shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

(1) [1963] Supp. 1 S.C.R. 885.

"20 (1) 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.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself"

22(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.

791

defended by a legal practitioner of his choice. If the High Court had, for example, insisted on the defendant in a criminal case to take a counsel of its choice, the trial would have been vitiated. Why? Because of the breach of the fundamental right in Art. 22(1). The remedy would not have been to wait till the end of the trial and then to bring the matter up by appeal on a certificate or to ask for special leave against the order but to ask for a writ compelling the observance of the Constitution.

These provisions show that it cannot be claimed as a general proposition that no action of a Judge can ever be questioned on the ground of breach of fundamental rights. The Judge no doubt functions, most of the time, to decide controversies between the parties in which controversies the Judge does not figure but occasion may arise collaterally where the matter may be between the Judge and the fundamental rights of any person by reason of the Judge's action. It is true that Judges, as the upholders of the Constitution and the laws, are least likely to err but the possibility of their acting contrary to the Constitution cannot be completely excluded. In the context of Arts. 14, 15(1)(b) and (19) (a) and (d) it is easy to visualize breaches by almost any one including a Judge. A court room is a place dedicated to the use of the general public. This means that a person who goes there has not to seek anybody's permission to enter it provided he either has business there or as a spectator behaves himself. The work of the court is done in public and no one is excluded who wishes to enter the court room to watch it. In a suitable case the public may, of course, be excluded by the Judge. But he cannot exclude a section of the public on the ground of race, religion or community without offending fundamental rights. The right to carry on the profession of law may be enforced against a Judge within the precincts of his court as much as the carrying on of other professions may be enforced outside. It is, however, said that a Judge possesses a dual character, that in his administrative capacity he may be within the reach of the

chapter on fundamental rights but not in his judicial capacity. I venture to think that sitting in the seat of justice hardly makes a difference. It may be that his judicial orders normally are subject to appeals, revisions and reviews but where none of these can be invoked and fundamental rights are involved recourse to the guaranteed remedy may become necessary. Because Judges decide matters objectively and because almost all their orders are capable of correction by way of appeals, revisions or reviews, does not lead to the conclusion that every order made by a Judge may only be treated as a wrong order and not as one guilty of breach of fundamental rights. If a Judge, without any reason, orders the members of, say, one political party out of his court, those so ordered may seek to enforce their fundamental rights against him and it should make no difference that the order is made while he sits as a Judge. Even if appeal lies against

79 2

Such an order, the defect on which relief can be claimed, is the breach of fundamental rights. I am, therefore, of opinion that Judges cannot be said to be entirely out of the reach of fundamental rights.

The fundamental right here claimed is the freedom of speech and expression. In Sakal Papers (P) Ltd. v. The Union of India(1) this Court holds that the freedom of speech and expression guaranteed by Art. 19(1) (a) includes freedom of press. A suppression of the publication of the report of a case conducted in open court, for a reason which has no merit, ex facie offends that freedom. Just as the denial without any reason to a person of the right to enter ,a court is to deprive him of several fundamental freedoms, denial of the right to publish reports of a public trial is also to deny the freedom of the press which is included in the freedom of speech and expression. Suppose for a moment that a Judge singles out some newspapers for discriminatory treatment. The order would indubitably offend the- equality clause. Assuming that no remedy exists against such an order, the person affected, if he disobeys it, can at least claim immunity in a proceeding for contempt by pleading breach of his fundamental rights by the Judge. In my judgment Mr. Justice Tarkunde, having held a public trial, could not curtail the liberty of the press by suppressing the publication of the reports. This was not a matter of deciding anything in a lis but of regulating his court and procedure. As the Judge passed no recorded order, the appropriate remedy (in fact the only effective remedy) is to seek to quash the order by a writ under Art. 32 of the Constitution;

I have disposed of the second question but some of the reasons which strengthen that view were not mentioned because they can be more appropriately mentioned in connection with the third question which is: Can this Court issue a writ under Art. 32 of the Constitution to a High Court? This is a difficult and an important question which I would have gladly reserved for a more suitable case. Had I been of the view that the order of Mr. Justice Tarkunde was proper, I would not have attempted it because it would have been a futile exercise but I am compelled to answer this question firstly because the matter is considered in the judgments of ,my lord the Chief Justice and of my other brethren and, secondly, because on my answers to the first two questions it perhaps arises ,more in my judgment than in others.

The submission of the Attorney-General is that in no case can writs of mandmus, certiorari or prohibition go to a

Division Court ,or to a single Judge of the High Court whether sitting in banc or in chambers. He is not so sure about the writ of quo warranto ,and wishes it to be considered as a separate question. It is, how-ever, clear that the last writ must either issue here or in the High
(1) [1962] 3 S.C.R. 842.
793
Court if a Judge becomes incompetent, say, by reason of superannuation and does not demit his office and, I think ,the Attorney-General is right in not mixing up this writ with a consideration of the others. In respect of the other writs, the argument of the Attorney-General is that the High Court in England issues these writs to inferior courts but not to courts of coordinate jurisdiction or superior courts and the High Court as a Court of Record and a superior court, itself being able to issue these writs in our country, must be treated as a court of coordinate jurisdiction in this matter and not regarded as an inferior court. He also contends that the decisions of the High Courts are capable of being corrected by appeals only and writs cannot lie. I do not accept these arguments.
Nothing turns on the fact that the High Court is a court of record because the writ of certiorari issues to several courts of record-(see Halsbury's Laws of England (3rd Edn.) Vol. II, page 124. Para 230). Similarly "Ecclesiastical courts are superior courts in the sense that it need not appear in any proceeding or judgments of these courts that the court was acting within its jurisdiction but they are regarded as inferior courts in the sense that they can be stopped from exceeding their jurisdiction by an order of prohibition" (see Halsbury ibid., Vol. 9, P. 348 Para 817). Nothing much can turn upon phrases such as 'court of record', 'superior and inferior courts' borrowed from English law.

> We have to guide ourselves by our Constitution which lays down the powers of this Court in Art. 32 thus:
> "32. Remedies for enforcement of rights.
> (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
> (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
> (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
> (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."
> M12 Sup. C. 1./66-5

794
The powers of the High Court are stated in Art. 226 which may also be get out here for comparison:

> "226. Power of High Courts to issue certain writs.

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government within those territories directions, orders, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(1A) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(2) The power conferred on a High Court by clause (1) or clause (IA) shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32."

Article 32 makes no exception in favour of the High Court. It refers to the writs of certiorari and prohibition which lie only in respect of judicial acts and although they lie also to bodies and persons who are not courts stricto sensu, they always lie to courts. As these writs are mentioned in Art. 32 and there is no exception in respect of the High Courts we start with a presumption that the High Court may not be excluded. The writ of mandamus may also be issued to courts and that does not detract from the presumption. The writ of quo warranto, as stated earlier, may concededly be held to apply to a High Court Judge.

It will be noticed that both the articles in speaking of the power say that it is to issue writs "in the nature of" the writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto. The phrase "in the nature of" is not the same as the other phrase "of the nature of". The former emphasises the essential nature and the latter is content with mere similarity. As a result we have to consider this controversy from two angles: (i) how far does the essential nature of the writs taken with the special history of courts in England throw any light upon the subject and (ii) what assistance do we derive from the language and scheme of Arts. 32 and 226? 1 shall deal with these matters in the same order.

795

We are concerned with high prerogative writs. They do not issue like the ordinary writs which are of strict right, but only at the discretion of a court entitled to issue them. The writ of prohibition issues from the Queen’s Bench properly but it was also issued from the Chancery, Common Pleas and Exchequer Courts returnable to the Queen’s Bench or Common Pleas (now merged in the Queen’s Bench Division). It is, however, not granted to a court which exercises the powers of the High Court. The writ is issued to Judges and parties in an inferior court to cease from prosecuting a case in which their jurisdiction, either originally or collaterally, is wanting. Prohibition lies to a Judge as of right when the want of jurisdiction is patent. Since the Judicature Acts an appeal now lies against the writ, to the

Court of Appeal and thence to the House of Lords, but before that the writ could only be questioned under a Writ of Consultation. The Judge to whom the writ went consulted with the Queen's Justices and if the writ of prohibition was not proper, a consultation was granted.

Certiorari issues to Judges and officers of inferrior courts and' jurisdictions, from the Queen's Bench (now the Queen's Bench Division) to certify or send proceedings so that the legality of the, proceedings may be examined. But if the other court exercises the powers of the High Court the writ is refused (see Skinner v. Northallerton County Court Judge- [1889] A.C. 439). Certiorari also lies to remove a cause or matter into the High Court if fair and impartial trial in the inferior court is not possible or questions of law of unusual difficulty are likely to arise. The writ also issues from the House of Lords to remove an indictment for felony found by a grand jury against a Peer. The Earl of Russell was tried for bigamy by the King in Parliament before 160 peers and all the Judges of the High Court after removal thereof the case by certiorari (see The Trial of Earl Russell(1). The Crown gets the writ of certiorari as of absolute right but the subject at the discretion of the court. No certiorari goes from one branch of the High Court to another nor to another superior court. This writ cannot be avoided by the Judge by not writing an order in the case before him. Even if the Judge has not recorded the order the High Court will order the inferior court to record its decision and then to transmit the record to it. (Halsbury, 3rd Edn, Vol XI, page 135, para 251). Certiorari lies only in respect of judicial, as distinguished from administrative, acts.

Mandamus lies for the enforcement of legal rights when there is no other specific remedy or the other available remedy is not so effective. It often issues to a court to hear and determine a matter pending before it. Such a writ issued also from the Chancery when judgments were delayed, but returnable to the Queen's Bench.

(1) [1901] A.C.446.

796

As Halsbury tersely puts it (3rd ed. Vol. XI, p. 53, para 109) the three writs of mandamus, prohibition and certiorari are used as a means of controlling inferior courts and those who have legal authority to determine questions affecting the rights of subjects and having to act judicially. By these three writs inferior courts were compelled to do ample and speedy justice and were kept within their jurisdiction.

The root principle, says Halsbury (ibid., Vol. IX, p. 351, para 823) is that the Judges stand in the place of the Queen and the Queen is supposed to be present in her royal courts. Of the Courts of Common Law at Westminster which have dispensed justice for upward of seven centuries in the Queen's name, only one exercised general jurisdiction in civil causes. This court was established by Henry 11 in 1178 A.D. and was known as the Common Bench. Cases of special difficulty were heard by the Sovereign with the advice of her wise men. This court was spoken of by the Sovereign as our Justices at Westminster". In accordance with Article XVII of the Great Charter, Westminster was chosen as a "certain place" and till the idea of taking justice to the people arose and assizes came into existence, the court never stirred from that place 'The court was known as the Upper Bench or the Queen's Bench where the Sovereign was present (curia ad placita corem Rege tenenda). The Upper Bench or the Banc Royal dealt with matters of special interest to the sovereign, viz. the 'prerogative' writs of

certiorari, prohibition etc. The Court of Exchequer (which was the third court) dealt with cases in the course of collection of revenue.

Some writs which issued from these courts were original or judicial. They were regarded as mere machinery writs and were writs of right and issued on payment of the necessary fee to commence litigation or something incidental to it. Prerogative 'writs were different and they issued with the special leave of the Court. By these prerogative writs the Queen's Bench superintended the other courts and tribunals. The distinction between superior and inferrior courts is this. No matter is deemed to be beyond the jurisdiction of a superior court unless expressly shown on the face of the proceedings to be beyond it, or established aliunde. In the case of an inferior court it has to appear in the proceedings or in its judgment that the matter is within its jurisdiction. Another test is whether proceedings in the court can be stopped by a writ of prohibition issuing from the Queen's Bench and in this sense the Ecclesiastical Courts and even the Judicial Committee hearing appeals in ecclesiastical matters and the Admiralty Courts are inferior (see Rex. v. Chancellor of St. Edmunsbury and Ipswich Diocese) (1).

(1) [1948] 1 K.B. 195 at 205.

797

I make no excuse for this excursion into the history of English, law and institutions because we have chosen to put down in Arts. 32 and 226 of the Constitution that the Supreme Court and the High Courts will exercise the power to issue writs 'in the nature of' mandamus, certiorari, prohibition and quo warranto the Supreme Court for the enforcement of fundamental rights only and the High Courts for that purpose and for other purposes. The question is who takes the place of the Queen's Bench Division in England and whether the Supreme Court in India has no power to issue a writ to enforce fundamental rights when breached by the High Courts? There is no real resemblance between the scheme of courts under our Constitution and the courts in England. Obviously, no prerogative writ of the Queen can go to a court in which the Queen herself is supposed to be present. This limitation has no significance with us. The analogy of superior and inferior courts breaks down in England itself when we consider the Ecclesiastical Courts and the Privy Council hearing appeals in ecclesiastical matters. They are superior courts but prohibition. issues to them. That our High Courts are courts of record is not, a fact of much significance either because prerogative writs do issue to several courts of record in England. As there is no real correspondence between the courts in the two countries we can only decide the question by considering if there is any good reason for excluding the High Court Judges from the area of the powers of this Court or conversely for holding that they are so included.

In the draft Constitution the jurisdiction and power to issue prerogative writs to governments etc. was entrusted to this Court only by implication. The inclusion of this power in Art. 226 came by way of amendment. It was perhaps considered that enabling the making of a law under Art. 32(3) might not be an adequate provision to provide for investing the High Courts with similar powers because such a law might never be passed. It was considered difficult for this Court single-handed to enforce the fundamental rights throughout the territories of India and accordingly Art. 226 was amended to confer jurisdiction on the High Courts within the territories in relation to which they exercise

jurisdiction to issue such writs. The fundamental rights are, however, more strongly entrenched in the Constitution through Art. 32 than through Art. 226. Even with the amendment of Art. 226 the power which is conferred on the High Courts is not in every sense a coordinate power and the Constitution furnishes several reasons in support of this statement. The first indication is that the right to move the Supreme Court for the enforcement of these rights is guaranteed but there is no such guarantee in Art. 226. Again cl. (3) of Art. 32 enables Parliament to empower by law any other court to exercise within local limits of its jurisdiction all or any of the powers exercisable by this Court under Art. 32 but without
798
prejudice to the powers of the Supreme Court under Cls. (1) and (2) of Art. 32. There is no such saving in favour of the powers of the High Courts. The mention of the first two clauses of Art. 32, particularly cl. (1), indicates the importance of the guarantee.

Although the amendment of Art. 32 has been held to be a less difficult process than the amendment of Art. 226, the guarantee in Art. 32(1) seems to be real till it is repealed or annulled. The provisions of Art. 226 themselves indicate this. Art. 226 begins by saying "Notwithstanding anything in article 32" which shows that the whole of the power must otherwise be with this Court. It indicates an intention to carve out an area for local action by the High Court. This might have made the exercise of the power by the High Court equal to its exercise by this Court but for the existence of cl. (2) which says that the power conferred on the High Court is not in derogation of the powers conferred on the Supreme Court. The word derogation must receive its full meaning. It shows that the entirety of the powers possessed by this Court is still intact in spite of the High Court's ability to ,exercise similar powers in local areas within their jurisdiction. If the powers were coordinate why include cf. (2) in Art. 226 ?

In these circumstances can we say that the High Court possesses coordinate powers ? I say no. A person need not go to the' High Court at all before moving this Court. There is really no provision that when a person has moved the High Court and failed he cannot again move this Court although on the ground of comity this Court expects in such circumstances an appeal against the decision of the High Court and not a direct approach. This Court is not only a court of appeal in civil, revenue and criminal proceedings from judgments of the High Court but by Art. 136 it is empowered to bring before it any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The implication of this is quite clear to me when I read Art. 136 in Conjunction with Arts. 32 and 226. That implication is that there is no sharing of the powers to issue the prerogative writs possessed by this Court. The whole of the power is still with this Court under a guarantee and only analogous powers for local enforcement are given to the High Courts. Under the total scheme of the Constitution the subordination of High Courts to the Supreme Court is not only evident but is logical.

Art. 32 is concerned with fundamental rights and fundamental rights only. It is not concerned with breaches of law which do not involve fundamental rights directly. The ordinary writs of ceriortari, mandamus and prohibition can only issue for enforcement of fundamental rights. A clear-cut case of breach of fundamental rights alone can be the basis for the

exercise of the power. I have
799
already given examples of actions of courts and Judges which are not instances of wrong judicial orders capable of being brought before this Court only by appeal but of breaches of fundamental rights pure and simple. Denial of equality, as for example, by excluding members of a particular party or of a particular community from the public courtroom in a public hearing without any fault when others are allowed to stay on, would be a case of breach of fundamental rights of equal protection given by the Constitution. Must an affected person in such case, ask the Judge to write down his order so that he may appeal against it? Or is he expected to ask for special leave from this Court? If a High Court Judge in England acted improperly there may be no remedy because of the limitation on the rights of the subject against the Crown. But in such circumstances in England the hearing is considered vitiated and the decision voidable. This need not arise here. The High Court in our country in similar circumstances is not immune because there is a remedy to move this Court for a writ against discriminatory treatment and this Court should not in a suitable case shirk to issue a writ to a High Court Judge who ignores the fundamental rights and his obligations under the Constitution. Other cases can easily be imagined under Arts. 14, 15, 19, 20, 21 and 22 of the Constitution in which there may be action by a Judge which may offend the fundamental rights and in which an appeal to this Court will not only be not practicable but also quite an ineffective remedy.

We need not be dismayed that the view I take means a slur on the High Courts or that this Court will be flooded with petitions under Art. 32 of the Constitution. Although the High Courts possess a power to interfere by way of high prerogative writs of certiorari, mandamus and prohibition, such powers have not been invoked against the normal and routine work of subordinate courts and tribunals. The reason is that people understand the difference between an approach to the High Court by way of appeals etc. and an approach for the purpose of asking for writs under Art. 226. Nor have the High Court spread a Procrustean bed of high prerogative writs for all actions to lie. Decisions of the courts have been subjected to statutory appeals and revisions but the losing side has not charged the Judge with a breach of fundamental rights because he ordered attachment of property belonging to a stranger to the litigation or by his order affected rights of the parties or even strangers. This is because the people understand the difference between normal proceedings of a civil nature and proceedings in which there is a breach of fundamental rights. The courts' acts, between parties and even between parties and strangers, done impersonally and objectively are challengeable under the ordinary law only. But acts which involve the court with a fundamental right are quite different.
800
The power and jurisdiction of this Court is so narrow that nothing on the merits of a controversy of a civil case can ever come up before it under Art. 32. It is unlikely that this Court will torture cases to fit them into Art. 32. A person may try but he will find this a Sisyphean task. It cannot be brought here by pleading breach of fundamental rights. It is only when a Judge directly acts in some collateral matter so as to cause a breach of a fundamental right that the ordinary process of appeals being unavailable

or insufficient a case under Art. 32 can be made out. If there is a decision in a civil proceeding, an appeal is the only appropriate remedy. When the, High Court Judge acts collaterally to cause a breach of fundamental right I am clear that an approach to this Court is open under Art. 32. The Supreme Court of America has not hesitated to interfere with breaches of Civil Rights Acts on the part of the courts in the States by treating the action of State courts and of judicial officers in their official capacities as State action. (see Shelly v. Kraemer, (1) Virginia v. Rives(2) and Hurd v. Hodge)(3). I think we should not hesitate to extend our protection to the fundamental rights in our country even if they be breached by the High Courts.

I may dispose of a few results which it was suggested, might flow from my view that this Court can issue a high prerogative writ to the High Court for enforcement of fundamental rights. It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High Court and the Supreme Court might issue a writ to another Judge or Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction. Where the county court exercised the powers of the High Court, the writ was held to be wrongly issued to it (see In re The New Par Consols, Limited.)(4) The following observations of the Earl of Halsbury L.C. in Skinner v. the Northallerton County Court Judge (5) represent my view:

> "The absurdity of that is that the statute itself has made the county court the High Court for this purpose. You might just as well argue that a warrant defective in form, issued by the Court of Queen's Bench could be set right by certiorari. Of course this is absurd. This is the High Court for this purpose..... If there was any irregularity or inaccuracy in point of form in the warrant that did issue, that could be put right by
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> (1) 92 L. ed. 1161:334 U. S. 1.
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> (2) 25 L. ed. 667 at 669.
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> (3) 92 L. ed. 1187. (4) [1898] I.Q.B. 669.
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> (5) [1899] A.C. 439.
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> 801
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> proper proceedings, but the proper proceedings would be in that court itself, and not proceedings by certiorari' in the Court of Queen's Bench."

I must hold that this English practice of not issuing writs in the same court is in the very nature of things. One High Court will thus not be able to issue a writ to another High Court nor even to a court exercising the powers of the High Court. In so far as this Court is concerned, the argument that one Bench or one Judge might issue a writ to another Bench or Judge, need hardly be considered. My opinion gives no support to such a view and I hope I have said nothing to give countenance to it. These are imaginary fears which have no reality either in law or in fact.

I am of opinion that if this Court is satisfied that a fundamental right has been trampled upon it is not only its duty to act to correct it but also its obligation to do so. In the present case, I am satisfied that the order passed by

Mr. Justice Tarkunde was an erroneous and illegal order. I cannot assume that it suppresses publication temporarily because Goda's business was sought to be protected and Goda's business, it is to be presumed, was expected to outlast the trial. A permanent suppression on publication would certainly be without jurisdiction. Even assuming the order meant a temporary suppression of the publication of Goda's testimony I am quite clear that the learned Judge had no jurisdiction to pass such an order when the trial he was holding was a public trial for the reason accepted by him. That being so his order involved a breach of the freedom of speech and expression guaranteed as a fundamental right and took away from the press its liberty to report a case conducted in open court. I would, accordingly, quash the order of Mr. Justice Tarkunde and declare that Goda's testimony is capable of being reported in extenso in any newspaper in India.

Shah, J. Article 19(1) of the Constitution declares certain personal freedoms in cls. (a) to (g) as guaranteed rights of citizens, and cls. (2) to (6) define restrictions which may be lawfully imposed by any existing or future law on those rights. Guarantee of personal freedoms subject to restrictions which are or may be imposed is in terms absolute, but since the rights are enforceable only against State action and not against private action, infringement of the personal freedoms by non-State agencies cannot be made a ground for relief under Art. 32. It is said however that the Courts are State agencies and infringement of fundamental rights guaranteed by Art. 19 by an order of a Court may found a petition under Art. 32 of the Constitution. It is necessary therefore to appreciate the manner in which a judicial determination which is alleged to infringe a fundamental right of a citizen operates. In dealing with this question, I propose to restrict the discussion only to.

802

determinations by Courts strictly so-called-Courts which are invested with plenary power to determine civil disputes, or to try offences. Quasi-judicial, or administrative tribunals, or tribunal$ with limited authority are not within the scope of the discussion.

By Art. 32(2) this Court is invested with jurisdiction to issue writs, directions or orders for the enforcement of fundamental rights. Implicit in the claim for invoking this jurisdiction are two components: that the claimant has the fundamental freedom which is guaranteed by Part III of the Constitution, and that the freedom is directly infringed by the agency against whose action the protection is given. When it is claimed that an order made pursuant to a judicial determination of a disputed question of law or fact infringes a fundamental right under Art. 19, the claimant has to establish that he has the right claimed, and that by the order made the Court has directly infringed that right. But the function of the Court is to determine facts on which claim to relief is founded, to apply the law to the facts so found, and to make an appropriate order concerning the rights, liabilities and obligations of the parties in the light of the appropriate law. In granting relief to a party claiming to be aggrieved or in punishing an offender, the Court in substance declares that the party who claims that he is aggrieved has or has not a certain right and that the right was or was not infringed by the action of the other party, or that the offender by his action did or did not violate a law which prohibited the action charged against him. Such a determination by a Court therefore will not

operate to infringe a fundamental right under Art. 19. The Court may in the ascertainment of facts or application of the law err: in the very mechanism of judicial determination that possibility cannot be ruled out, but until the determination is set aside by resort to the appropriate machinery set up in that behalf for rectification, a party to a proceeding cannot ignore that determination and seek relief on the footing that he has the right which has been negatived by the Court. Since the first postulate, of a plea of infringement of a fundamental right under, Art. 19 is the existence of the right claimed and breach thereof by a State agency, a plea cannot be set up in a petition under Art. 32 contrary to an adjudication by a Court competent in that behalf.

Counsel for the petitioners conceded that against a judicial determination of the rights, liabilities or obligations in a proceeding and enforcement thereof according to law, a party thereto may not maintain a petition under Art. 32 on the plea that by an erroneous judicial determination a fundamental right of the petitioner under Art. 19 is infringed, but they submitted that where the ,order of a Court dealing with a dispute inter partes infringes the fundamental right under Art. 19 of a stranger to the proceeding, the order may in appropriate cases be challenged in a petition under Art. 32. In my view there is no warrant for the reservation stated

803

in that form. A Court in adjudicating upon a dispute has power for arriving at an effective and just decision to take all incidental steps for ensuring regularity and decorum in the conduct of its proceedings, and such steps may incidentally affect persons who are strangers to the litigation. The Court may issue a warrant to compel attendance of witnesses, attach property in the hands of strangers to the proceeding, correct mistakes in its proceedings even after rights of third parties have come into existence, set aside Court proceedings in contravention of its directions or procured by fraud, recall invalid orders which cause injustice, take contempt proceedings against witnesses and others who act in violation of the orders of the Court or otherwise obstruct proceedings of the Court directly. or indirectly, and generally pass orders which may be necessary in the ends of justice to prevent abuse of the process of law. Jurisdiction to exercise those powers which may affect rights of persons other than those who are parties to the litigation is either expressly granted by statute or arises from the necessity to regulate the course of its proceeding so as to make them an effective instrument for the administration of justice. If, as is accepted, and rightly, a judicial determination of the rights, privileges, duties and obligations of the parties before the Court does not attract the jurisdiction of this Court under Art. 32 of the Constitution for enforcement of the fundamental rights under Art. 19, it is difficult to appreciate on what grounds that jurisdiction may be attracted where a person other than the party to the proceeding is aggrieved by an order of the Court made for ensuring an effective adjudication of the dispute,.

Even when the rights under Art. 19 of a third party are affected by an order made by a Court in a judicial proceeding, there is in a sense a disputed question which is raised before it about the right of that third person not to be dealt with in the manner in which the Court has acted or proposes to act, and the Court proceeds upon determination of that disputed question. Such a determination of the

disputed question would be as much exempt from the jurisdiction of this Court to grant relief against infringement of a fundamental right under Art. 19, as a determination of the disputed question between the parties on merits or on procedure. An order made against a stranger in aid of administration of justice between contending parties or for enforcement of its adjudication does not directly infringe any fundamental right under Art. 19 of the person affected thereby, for it is founded either expressly or by necessary implication upon the non-existence of the right claimed and so long as the order stands, it cannot be made the subject-matter of a petition under Art. 32 of the Constitution.

It was then urged by counsel for the petitioners that Tarkunde, J., had no jurisdiction to make the order prohibiting publication of the evidence of the witness Bhaichand Goda, and on that account

804

the order was liable to be challenged in a petition under Art. 32 of the Constitution. Indisputably when a Judge makes an order, not as a Judge but in some other capacity-but as an authority of the State-it may be open to challenge by a petition under Art. 32. But an order made by a Court in the course of a proceeding which it has jurisdiction to entertain-whether the order relates to the substance of the dispute between the parties or to the procedure or to the rights of other person, it is not without jurisdiction, merely because it is erroneous.

The Code of Civil Procedure contains no express provisions authorising a Court to hold its proceedings in camera : but the Court has inherent jurisdiction to pass an order excluding the public when the nature of the case necessitates such a course to be adopted. Hearing of proceedings in open Court undoubtedly tends to ensure untainted. administration of justice and departure from that course may be permitted in exceptional circumstances, when the Court is either by statutory injunction compelled, or is in the exercise of its discretion satisfied, that unless the public are excluded from the courtroom, interests of justice may suffer irreparably. An order, for hearing of a trial ’in camera is only intended to prevent excessive publication of the proceedings of the Court, if such excessive publication may, it is apprehended, cause grave harm either to the public interest or to the interests of the parties or witnesses, which cannot be offset by the interest which it is the object of a trial in open Court to serve. Hearing in open Court of causes is of the utmost importance for maintaining confidence of the public in the impartial administration of justice : it operates as a wholesome check upon judicial behaviour as well as upon the conduct of the. contending parties and their witnesses. But hearing of a cause in public which is only to secure administration of justice untainted must yield to the paramount object of administration of justice. If excessive publicity itself operates as an. instrument of injustice, the Court may not be slow, if it is satisfied that it is necessary so to do to put such restraint upon publicity as is necessary to secure the Court’s primary object. Trial in closed session is generally ,ordered to prevent publicity which is likely to deter parties or their witnesses from giving evidence, on account of the nature of the evidence such as intimate details of sexual behaviour, matters relating to minors and lunatics, matters publication of which may harm the interests of the State or the public at large, for instance, disclosure of official secrets, or matters which lead to publication of secret processes, publication of which would

destroy the very basis of the claim for relief etc. In these cases the Court may hold a trial in closed session and wholly exclude the public throughout the trial or a part thereof. Circumstances may also justify imposition of a partial ban on publicity in the interests of justice and the Court may instead of holding a trial in camera

805

and thereby excluding all members of the public who are not directly concerned with the trial, restrain publication of the evidence'. Such an order may, having regard to the nature of the dispute and evidence given, be within the jurisdiction of the Court. Whether in a particular case, an order holding a trial after excluding the public or preventing publication of evidence should be made will depend upon the discretion of the Court, which must of necessity be exercised sparingly and with great circumspection,and only in cases where the Court is satisfied that prevention of excessive publication is the only course by resort to which justice may effectively be administered in the case. Exercise of that discretion is always subject to rectification by a superior Court. I may 'hasten to add that I express no opinion on the question whether Tarkunde J., was right in making the order that he did. I am only endeavouring to emphasize that he had, in appropriate cases where he was satisfied that justice of the case demanded such a course, jurisdiction to make an order preventing publication in newspapers of the evidence. Whether Tarkunde, J., erred in making the impugned order is a question apart, and does not fall to be determined in these writ petitions.

I am unable however to agree that in the matter of exercise of powers of this Court to issue writs against orders of Courts which are alleged to infringe a fundamental right under Art. 19, any distinction between the High Court and subordinate Courts may be made. In my view orders made by subordinate courts, such as the District Court or Courts of Subordinate Judges which are Courts of trial and Courts of plenary jurisdiction are as much exempt from challenge in enforcement of an alleged fundamental right under Art. 19 by a petition under Art. 32 of the Constitution as the orders of the High Courts are. The argument that a writ of certiorari is an appropriate writ for correcting errors committed by an "inferior" authority or tribunal exercising judicial power, and that the High Court is not an "inferior Court" cannot in my judgment prevail. No adequate test of inferior status which would support a valid distinction between the High Court and other Courts or Tribunals would stand scrutiny. If the investment of appellate power in this Court is a valid test, all Courts and Tribunals (except the Courts and Tribunals constituted by and under the law relating to the Armed Forces or the Forces charged with the maintenance of public order within the territory of India) are inferior to this Court, and if the grounds which I have set out in some detail earlier for holding that a petition does not lie to this Court under Art. 32 against an alleged infringement of rights by an adjudication of a Court or by an order of a Court against a stranger to the proceeding, such order being made in aid of determination of the dispute between the parties before the Court, be not true, the order of the High Court would be as much subject to jurisdiction

806

of this Court under Art, 32 as an adjudication of any other subordinate Court such as the District Court or the Subordinate Judge Courts. If the test of inferiority is to be found in the investment of supervisory jurisdiction, this

Court is not invested with that jurisdiction over any Court, be it the High Court, or the District Court or the Subordinate Judge's Court. It is unnecessary to enter upon a discussion about the procedural law in the United Kingdom relating to the issue of writs of certiorari in considering whether jurisdiction under Art. 32 of the Constitution may be exercised. This Court is competent to issue an appropriate writ including a writ in the nature of a writ of certiorari. If it be granted that the fundamental right under Art. 19 may be infringed by an adjudication of a Court-civil or criminal-because the Court had come to an erroneous conclusion, I see no ground for making a distinction between adjudications of the High Court which is a superior Court of Record and of Courts which are subject to the appellate jurisdiction of the High Court. It is true that the High Courts are invested with the power under Art. 226 of the Constitution to issue writs in enforcement of fundamental rights. The power to issue a writ in respect of the territory over which the High Court has jurisdiction in enforcement of fundamental rights is co-extensive with the power which this Court possesses. But if this Court possesses authority to issue a writ in respect of an ad-judication by a Court, the circumstance, that the High Court has also power to issue a writ of certiorari which may be issued by this Court in enforcement of a fundamental right whereas the subordinate Courts have not, will not warrant the distinction sought to be made on behalf of the respondents. I am therefore unable to agree that in the matter of issue of a writ of certiorari against the order of any Court, a distinction may be made between the order of the District Court or the Subordinate Court and an order of the High Court.

The argument that the inherent power of this Court which may have existed prior to the Constitution must still be tested in the light of Art. 19(2) of the Constitution does not require any serious consideration. If a plea of infringement of a fundamental right under Art. 19 against infringement by a judicial determination may not be set up, in petition under Art. 32, it would not be necessary to consider whether on the footing that such a right is infringed by a judicial determination of the rights of the parties or an order made in aid of determination that the law which confers such inherent power of the Courts is within Art. 19(2). The function of Art. 19(2) is to save laws-existing laws or laws to be made by the State in future-which otherwise infringe the rights under Art. 19. Where the action is such that by its very nature it cannot infringe the rights in Art. 19(1) of the Constitution, an investiga-

807

tion whether the law which authorises the action falls within cl.(2) of Art. 19 may not be called for.

It was urged that the-view which I have expressed may involve serious repercussions on the enforcement of fundamental rights guaranteed by Arts. 20, 21 and 22 (1) of the Constitution. Whether orders made by the Courts may violate the guarantees under Arts.. 20, 21 & 22(1) and on that account be subject to the jurisdiction under Art. 32 does not fall to be determined in this case. The Attorney-General appearing on behalf of the State of Maharashtra contended that the freedoms guaranteed by Arts. 20, 21 & 22 are only in respect of laws made which seek prejudicially to affect persons in the manner indicated in those Articles. It was urged by counsel on behalf of the petitioner that these Articles grant protection not only against legislative

and executive action but also against orders made by Courts. I refrain from expressing any opinion on this question. The area of fundamental freedoms guaranteed or declared by the various Articles of the Constitution must be determined in the light of the nature of the right conferred thereby, and the extent of protection granted, the agency against the action of which they are protected and the relief which may be claimed against infringement of those rights. Considerations which may be material or relevant in considering the nature of the right conferred or guaranteed by one Article cannot be projected into considerations which may be material or relevant in dealing with the infringement of a fundamental right guaranteed by another Article. Article 19 and Arts. 20, 21 & 22 are differently worded. Article 19 in terms protects certain personal freedoms of citizens only against invasion by the State otherwise than by law existing 'or to be made in future and falling strictly within the limits prescribed by cls. (2) to (6): Arts. 20, 21 & 22(1) impose directly restrictions upon the power of authorities. Declaration of rights in favour of citizens as well as non-citizens under Arts. 20, 21 & 22(1) arises by implication of the prohibition against action of the authorities concerned to deal with them, and it would not be permissible to equate the guaranteed rights declared by implication in all respects with the specific personal freedoms enumerated in Art. 19. It is somewhat striking that the Personal freedoms in Art. 19 are subject to reasonable restrictions which may be imposed by law, but the prohibitions in Arts. 20, 21 & 22 are absolute in terms. By enunciating the personal freedoms, under Art. 19(1) and setting up machinery for imposition of reasonable restrictions thereon, balance is sought to be maintained between the enforcement of specific rights of the citizens and the larger interest of the public. The freedoms declared by the implication of Arts. 20, 21 & 22 are on the other hand not liable to be tested on the touchstone of reasonableness. Our Constitution-makers thought that certain minimum safeguards in proceedings-criminal

808

and quasi-criminal-Cannot in the larger interests of the public be permitted to be whittled down under any circumstances and on that account made the protection of Arts. 20, 21 & 22(1) absolute. The form in which the rights under Arts. 20, 21 & 22(1) are guaranteed and the absolute character of the injunctions against the authorities clearly emphasize the distinct and special character of those rights. I do not find it necessary in this case to record my opinion on the question whether action taken by a Court which is prohibited under Arts. 20, 21 & 22 may form the subject-matter of a petition under Art. 32 of the Constitution.

The petitions therefore fail and are dismissed.

Bachawat, J. Counsel for the petitioners submitted that the High Court had no power to affect the right of the petitioners to publish reports of the deposition of Bhaichand Goda by an order passed in a proceeding to which they were not parties, and if there is a law which confers this power, such a law is repugnant to Art. 19 (1)(a) of the Constitution. I do not accept either of these contentions. In agreement with the learned Chief Justice, I hold that the High Court in the exercise of its inherent powers can, in exceptional cases, pass an order restraining the publication of any matter in relation to any proceeding pending before it. The inherent powers of the Court are preserved by s. 151 of the Code of Civil. Procedure.

If a stranger to the proceeding feels aggrieved by the order, he may take appropriate steps for setting it aside, but while it lasts, it must be obeyed. Take a case where a Court appoints a receiver over a property in a suit concerning it. If a stranger interested in the property is prejudiced by the order, his proper course is to apply to the Court to enforce his right, and the Court will then examine his claim and give him the relief to which he may be entitled. Similarly, if a stranger is prejudiced by an order forbidding the publication of the report of any proceeding, his proper course is to apply to the Court to lift the ban. But while the order remains in force, he must obey it. Wilful disobedience of the order is punishable as a contempt of Court, and it is not a defence that he was not a party to the proceeding in which the order was passed.

The law empowering the high court to restrain the publication The law empowering the High Court to restrain the public of the report of its proceedings does not infringe Art. 19 (1) (a). If a law is attacked on the ground that it is repugnant to Art. 19 (1) (a), its true nature, object and effect should be closely examined. If the law directly abridges the freedom of speech, it is repugnant to Art. 19 (1) (a) and must be struck down. On the other band, if it affects the freedom of speech only incidentally and indirectly, it does not infringe Art. 19 (1) (a). This test was

809

first laid down by Kania, C. J. in A. K. Gopalan v. State of Madras(1) and has been subsequently adopted in numerous decisions of this Court. See Ram Singh v. State of Delhi(2) Express Newspapers (Private) Ltd. v. The Union of India(3), Hamdard Dawakhana Wakf v. Union of India(4). Many laws incidentally encroach on the freedom of speech, but, judged by the test of the directness of the legislation, they do not infringe Art. 19 (1) (a). Section 54 of the Indian Specific Relief Act, 1877, empowers the Court to grant a perpetual injunction to prevent the breach of an obligation, and illustrations (h), (i), (v), (y) and (z) to the section show that the Court may restrain the publication of documents and information in breach of the fiduciary obligations of a legal or medical adviser, or an employee, the piracy of a copyright and other publications infringing the proprietary rights of the owner. Order 39, r. 1 of the Code of Civil Procedure, 1908, empowers the Court to grant a temporary injunction restraining the defendant from publishing documents in breach of his obligation under a contract or otherwise during the pendency of a suit for restraining the breach. Section 22 of the Hindu Marriage Act, 1955, makes it unlawful for any person to print or publish any matter in relation to any proceeding, under the Act conducted in camera without the previous permission of the Court. Under the rule of practice prevailing in the Bombay High Court, it is not permissible to print or publish in the press a report of any proceeding heard in chambers without the leave of the Judge, see Purushottam Hur wan v. Navnitlal Hurgovandas.(5) so also, the law relating to the inherent powers of the Court preserved by s. 151 of the Code of Civil Procedure enables the Court in the ends of justice to pass orders restraining the publication of the report of its proceeding during the pendency of the litigation. fudged by the test of the directness of the legislation, none of these laws infringes Art. 19 (1) (a). Instances may be multiplied. The law relating to discovery and interrogatories, the law which punishes a witness for giving false evidence, the law which compels the assessee to

furnish a true return of his income and forbids the disclosure of the statements in the return are all outside the purview of Art. 19 (1) (a).

It follows that the impugned order was passed by a Court of competent jurisdiction under a valid law. Whether the High Court should have passed the order is another question. The propriety of the order cannot be challenged in a writ application under Art. 32. Until the order is set aside in appropriate proceedings, it conclusively negatives the right of the petitioners to publish reports of the deposition of Bhaichand Goda. The petitioners cannot, therefore, complain that their fundamental right under Art. 19 (1) (a) has been infringed.

(1) [1950] S.C.R. 88, 101. (2) [1951] S.C.R. 451.
(3) [1959] S.C.R. 12,129-133.(4) [1960] 2 S.C.R. 671, 690-691,
(5) [1925] I.L.R. 50 Bom. 275.

C.1./66-6
810

The High Court was competent to pass the impugned orders, but assuming that it exceeded its jurisdiction, the order does not infringe Art. 19 (1) (a). The High Court has jurisdiction to decide if it has jurisdiction to restrain the publication of any document or information relating to the trial of a pending suit or concerning which the suit is brought. If it erroneously assumes on this matter, a jurisdiction not vested in it by law, its decision may be set aside in appropriate proceedings, but the decision is not open to attack on the ground that it infringes the fundamental right under Art. 19 (1) (a).

I must not be taken to say that I approve of the impugned order. A Court of justice is a public forum. It is through publicity that the citizens are convinced that the Court renders evenhanded justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the Court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the Court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation.

Long ago, Plato observed in his Laws that the citizen should attend and listen attentively to the trials. Hegel in his Philosophy of Right maintained that judicial proceedings must be public, since the aim of the Court is justice, which is a universal belonging to all. The ancient idea found its echo in the celebrated case of Scott v. Scott(1). Save in exceptional cases, the proceedings of a Court of justice should be open to the public.

The petitions are not maintainable, and are dismissed.

ORDER

In accordance with the opinion of the majority these Writ Petitions are dismissed. No order as to costs.

(1) [1913] A.C. 417,
811