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THE SUPREME COURT CASES

(2018) 7 SCC

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(2018) 7 Supreme Court Cases 1

(BEFORE DIPAK MISRA, C.J. AND DR A.K. SIKRI, A.M. KHANWILKAR, DR D.Y. CHANDRACHUD, ASHOK BHUSHAN, JJ.)

KALPANA MEHTA AND OTHERS .. Petitioners;

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Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petitions (C) No. 558 of 2012† with No. 921 of 2013, decided on May 9, 2018

A. **Parliament and State Legislatures — Parliamentary privilege — Facts and Observations contained in Parliamentary Committee Reports — Extent to which may be relied on in court, and probative value — Adjudication of factual and legal issues — Appropriate authority for, is court of law — Approach to be followed in respect of contentious facts in said reports as distinguished from report itself — Government sponsored immunisation programme — Death of young girls — Adverse observations and comments against said programme in two reports of Parliamentary Committee — Reliance upon by petitioners in present PIL — Extent to which permissible and actionable**

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— Said reports, held, *per curiam*, admissible in evidence under S. 74, Evidence Act of which judicial notice shall be taken under S. 57(4), Evidence Act — Moreover, for their production in court, permission of Speaker not necessary as they are already in public domain — It is court and not Parliament which has to adjudicate all factual and legal issues — People also have a right to know — No exception can be taken to the petitioners obtaining 72nd and 81st Reports of Parliamentary Standing Committee, for using them as evidence in court — But Parliamentary Committee Report not substantive evidence in case of findings of misdemeanour or breach of duty by public

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† Under Article 32 of the Constitution of India.

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officials or private individuals or an evasion of law or any other lis or dispute — Court has to consider other evidence and adudicate independently upon any lis/dispute(s) arising, in accordance with law — Court proceedings are independent of Parliament and based on multiple inputs and evidence — It is certainly possible for court to determine facts and form an opinion in law at variance with Parliamentary Committee report

— Disputable facts stated in Parliamentary Committee Reports are not conclusive evidence for deciding rights of parties and thus not binding — There is no presumption that contents of Parliamentary Committee Reports are true and correct — To be binding they have to be adjudicated upon by court, and adjudicating body is not Parliament but court — Right to adduce independent evidence by all parties is covered by procedural safeguard of right to be heard — Court has a duty to independently adjudicate same as per law — Such adjudication and said rights of parties and duty of court is as per constitutional scheme of judicial review, separation of powers and rule of law

— There is functional complementarity between purpose of investigation by Parliamentary Committee and adjudication by court — Said purpose being to secure accountability, transparency and responsiveness — To deprive court of valuable insight of a Parliamentary Committee would amount to excluding an important source of information from purview of court — PIL is a flexible tool to provide innovative remedies to marginalised sections who have suffered discrimination and prejudice — Court has intervened to ensure structural probity of system of good governance

— However, in view of Parliamentary privilege and immunity, neither any party nor court can question or impeach validity of Parliamentary Committee Reports, only Parliament itself can approve or disapprove reports of its Committees for publication — Further, no Member of Parliament can be held liable for anything said in Parliament nor in any Committee [Art. 105(2)] — Committees of House of Parliament are established by/under authority of Parliament and they represent and are comprised within Parliament and are as much a part of Parliament — Hence reports of Parliamentary Committees also covered by said protection of Art. 105(2) — Reference to present Constitution Bench, answered accordingly — Constitution of India — Arts. 105, 194, 118, 121, 122, 19(1)(a), 32, 136 and 226 — Evidence Act, 1872 — Ss. 74 and 57(4) — Constitutional Law — Silences of the Constitution/Implied Limitation — Parliamentary Proceedings (Protection of Publication) Act, 1977, S. 3 (Paras 111 to 166, 233 to 241, 257 to 278 and 334 to 403 and 428 to 450)

B. **Parliament and State Legislatures — Parliamentary privilege — Breach of parliamentary privilege and contempt of Parliament — Actions not amounting to said breach and contempt, discussed (non-exhaustively),** ***per curiam***

— (a) Judicial notice (including, as aids to construction of statutes) of course of proceedings of Parliament/Parliamentary Committee reports/Other publications by or under authority of Parliament and/or their admissibility and

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(non-conclusive) reliance in evidence in courts of law, (b) Judicial review of legislation/legislative action within the well-established parameters of judicial review, (c) Judicial review of proceedings in Parliament which may be tainted on account of substantive or gross illegality or unconstitutionality, (d) Usability of published Parliamentary reports by general public who have a right to know about said reports as step towards governance of country, and (e) Fair criticism of Parliamentary Committee Reports by general public showing pubic concern, without any personal attack on MPs or without tarnishing image of MPs or House by vulgar and abusive language, held (*per curiam*), permissible and not a breach of parliamentary privilege nor contempt of Parliament

— However, neither any party nor court can question or impeach validity of Parliamentary Committee Reports, only Parliament itself can approve or disapprove reports of its Committees for publication — Further no Member of Parliament can be held liable for anything said in Parliament or in any Committee [Art. 105(2)] — Reports of Parliament also covered by said protection of Art. 105(2) — Constitution of India — Arts. 105, 194, 118, 121, 122, 19(1)(a), 32, 136 and 226 — Evidence Act, 1872 — Ss. 74 and 57(4) — Constitutional Interpretation — Aids to construction — External aids — Parliamentary Committee Reports (Paras 111 to 166, 257 to 278, 334 to 403 and 428 to 450)

C. **Constitutional Law — Grant and Separation of powers — Primacy of Constitution — Constitutional supremacy in India — Nature of, explained (*per curiam*) — Constitution is supreme — Three organs of Government, that is, executive, legislature and judiciary are created, empowered and their powers limited by Constitution — If a law transgresses constitutional limitation, it can be declared ultra vires by constitutional courts — Rule of law, separation of powers and judicial review are the basic features of the Constitution — As per Constitution, Supreme Court is its final interpreter and protector of rights — Functional complementarity of legislature, executive and judiciary, explained, *per Chandrachud, J., concurring***

— Indian Constitution does not adopt a rigid separation of powers — Constitution does not strictly prohibit overlapping of functions of the three organs, nor desirable also — Delicate balance must be maintained — Constitutional limitation, a facet of separation of powers — Each organ have their own broad spheres and essential functions, should not encroach into others' domain and their essential functions resulting in wresting away of regime of constitutional accountability — Judicial review being a basic feature of Constitution, there is no breach of Constitution, when court declares a law as invalid — Power over sword and purse given to executive and legislature, but their functioning within constitutional limits is ensured by power of judicial review entrusted to courts — Horizons of judicial review expanding into spheres of social and economic justice — Court has to perform oversight function with more urgency to enforce positive socio-economic rights in case of governmental inaction — Separation of power doctrine cannot be reduced

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to its descriptive content, bereft of its normative features — In Indian context, no institution of governance lies above the Constitution and no entrustment of power is absolute

— Mutual supervision, interdependence and coordination between legislature and judiciary are required to protect rights of citizens, ensure good governance and serve public interest — When courts enter upon issues of public interest they do not discharge function which is adversarial — Constitution of India — Arts. 32, 136, 226, 105, 118(1), 121, 122 and 19(1)(a) — Bill of Rights, 1688, Art. IX (Paras 20 to 38, 233 to 256, 266 to 269, 312 to 330, 413 to 422 and 449.8)

D. **Constitutional Law — Judicial power — Power of judicial review in India — Scope of, explained**

— Power of judicial review not unfettered — Judges expected to exercise judicial restraint, while interpreting Constitution and other laws — But judicial abdication and judicial passivism, not warranted when fundamental rights of individuals are in jeopardy — For interpreting inalienable fundamental rights of individuals, liberal and progressive attitude required — Words and Phrases — "Judicial review", "judicial abdication", "judicial passivism" (Paras 40 to 47)

E. **Constitutional Interpretation — Constitution an organic (living) document — Approach and duty of courts while interpreting same, explained, *per curiam* — Constitutional interpretation not frozen by its original understanding — Constitution, an organic document, must continuously evolve to meet aspirations and challenges of present and future — Courts must interpret it accordingly**

— Provisions of Constitution of free India distinguished from colonial provisions — Democratic transformation places individual at core of concern of Government — Thus precepts drawn from colonial past including Parliamentary privilege must be interpreted having regard to, empowerment, rights of individuals and access to justice — Fundamental rights must be interpreted collectively and not as isolated protections — Courts must adopt comprehensive test of arbitrariness for such interpretation so that said rights are available to the fullest extent — Rational inference and deduction, is permissible within constitutional limits — Present case not about protection of parliamentary privilege, but about duty and limits of court when a case requires reliance on reports of Parliamentary Standing Committees in context of Arts. 105 and 122

— Constitutional Law — Silences of the Constitution/Implied Limitation — Rational inference and deduction — Constitution of India, Arts. 32, 136, 226, 105, 118(1), 121, 122 and 19(1)(c) (Paras 48 to 63 and 271 to 274)

F. **Parliament and State Legislatures — Parliamentary Committees — Role, functions and importance, stated — Parliamentary Committees are focal point for legislation and oversight — They are usually small groups of MPs**

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who critically review assigned topics in-depth — They identify politically and technically feasible alternatives — They consider a wide range of topics — They are vital institutions in eminent democracies such as USA, UK, Canada and Australia, etc. — They occupy importance in field of governance — Constitution of India, Arts. 105 and 194 (Paras 72 to 82)

G. **Parliament and State Legislatures — Parliamentary Committees — Different types, role, function and importance, discussed,** ***per curiam***

— Some types of Committees scrutinise functioning of Government — While some other types deal with matters relating to Houses and Members — Some may be permanent and others ad hoc — Said Committees share burden of complex and diverse legislative functions of Parliament — Parliamentary Committees are appointed or elected by House or nominated by Speaker — They works under direction of and present their reports to Speaker — Committee system in India is designed to enlighten MPs on whole range of governmental actions, dynamics of democracy and India's strengths and weaknesses through detailed studies — It is designed to enhance capabilities of MPs to shoulder greater responsibilities and broaden their horizons — Lok Sabha Rules of Procedure and Conduct of Business — Ch. 26 and Rr. 2, 77, 78, 270, 271, 274(3) and 277 — Constitution of India, Arts. 105 and 194 (Paras 83 and 90, 190 to 198 and 334 to 367)

H. **Parliament and State Legislatures — Parliamentary privilege — Rationale behind, explained,** ***per curiam***

— Parliamentary privilege protects MPs from undue interference and unreasonable impediment — It enables Parliament and its Members to function effectively and efficiently — It is important for any parliamentary democracy — MPs have full freedom for what they speak in House — Freedom of speech under Art. 105(2) is quite distinct from that under Art. 19(1)(a) — Parliament regulates its own procedure by framing rules under Art. 118 — Bill of Rights, 1688 — Art. IX — Parliamentary privilege in UK, whether absolute, development of law and current position — Constitution of India, Arts. 105, 118, 121, 122 and 194 and Art. 19(1)(a) (Paras 99 to 110 and 180 to 189)

I. **Parliament and State Legislatures — Parliamentary privilege — Parliamentary privilege in India distinguished from that in UK**

— *Per curiam*, law in India qualitatively different from UK — Fundamental difference arises from supremacy of Constitution in India — Judicial review is basic feature of Indian Constitution — Judicial scrutiny of parliamentary privileges is not excluded where a fundamental right is violated or a gross illegality occurs or there is a violation of constitutional provision as distinguished from mere irregularity of procedure, in view of Art. 122(1) — Constitution of India, Arts. 105, 118, 121, 122, 194, 32, 136 and 226 (Paras 198 to 232, 365 to 375 and 403)

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Facts

The writ petition as a public interest litigation has been filed by three petitioners, Petitioners 1 and 2 claim to be working for women health whereas Petitioner 3 is a registered Society working with women organisations to help them to improve their lives and livelihood and to seek justice for marginalised communities. In July 2009, the petitioners became aware of a so-called demonstration project work being carried out in the States of Andhra Pradesh and Gujarat by PATH (Respondent 6), a US based NGO along with the Indian Council of Medical Research (ICMR) and the Governments of Andhra Pradesh and Gujarat. In the above project about 32,000 young adolescent girls in the age group of 10-14 years were to be administered HPV (human papilloma virus) vaccines purported to be effective in preventing cervical cancer. HPV vaccine, namely, "Gardasil" is manufactured by Respondent 7-Glaxosmithkline Asia Pvt. Ltd. and "Cervarix" by Respondent 8-MSD Pharmaceuticals (P) Ltd., licensed in India only in July 2008 and September 2008 respectively by the Drug Controller General of India. In July 2009 vaccine Gardasil in Khammam District in Andhra Pradesh was administered. Few girl children died. On 15-4-2010, the Government of India appointed a committee to enquire into "alleged irregularities in the conduct of studies using human papilloma virus (HPV) vaccine" by PATH in India. The final report of the Committee was submitted on 15-2-2011. The Enquiry Committee noted several discrepancies.

The Parliamentary Standing Committee of the Department of Health Research, Ministry of Health and Family Welfare while examining the demand for grants (2010-11) of Department of Health Research took up the issue of trial of HPV vaccine on children in the districts of Khammam, Andhra Pradesh and Vadodara, Gujarat. The Parliamentary Standing Committee (PSC) deliberated on the subject and held various meetings. The Committee heard the UoI, ICMR, Department of Drugs Controller General of India and also took oral evidence. The Departmental Standing Committee submitted its report (72nd Report) to the Rajya Sabha on 30-8-2013 which was also laid on the table of the Lok Sabha on 30-8-2013. The PSC found various shortcomings and lapses of the Government Departments, ICMR as well as on part of Respondents 6 to 8. Various directions and recommendations were issued by the Committee.

Again a detailed report, namely, 81st Report on "action taken by the Government on the recommendations/observations contained in the 72nd Report on the alleged irregularities in the conduct of studies using human papilloma virus (HPV) vaccine by PATH" in India was submitted to the Rajya Sabha on 23-12-2014 and also laid on the table of the Lok Sabha on 23-12-2014. Both the reports have been brought on record.

At the hearing, the petitioners relied upon the 81st Report of the Parliamentary Standing Committee dated 22-12-2014. The petitioners sought to place reliance on the Report so as to enable the Court to be apprised of the facts and to facilitate its conclusions and directions. This was objected to. The issue which arose before the Court was whether a report of a Parliamentary Standing Committee can be relied upon in a public interest litigation under Article 32 or Article 226 of the Constitution. If it could be adverted to, then an allied issue was the extent to which reliance could be placed upon it and its probative value.

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Answering the reference in the terms below, the Supreme Court

Held :

a ***Per Dipak Misra, C.J. (for himself and Khanwilkar, J.; Sikri and Chandrachud, JJ. and Bhushan, J., concurring)***

Constitution, an organic document, must continuously evolve to meet aspirations and challenges of present and future

b For maintaining democratic process and to avoid political friction, it is necessary to direct the political parties within the purview of the constitutional umbrella to strongly adhere to constitutional values. There is no denial of the fact that the judiciary takes note of the obtaining empirical facts and the aspirations of the generation that are telescoped into the future. If constitutional provisions have to be perceived from the prism of growth and development in the context of time so as to actualise the social and political will of the people that was put to in words, c they have to be understood in their life and spirit with the further potentiality to change. While interpreting serious issues, it would always be prudent, as a matter of constitutional necessity, to widen the search for the true meaning, purport and ambit of the provision under consideration. No provision, and indeed no word or expression, of the Constitution exists in isolation—they are necessarily related to, transforming and, in turn, being transformed by other provisions, words and d phrases in the Constitution. While interpreting a constitutional provision, one has to be guided by the letter, spirit and purpose of the language employed therein and also the constitutional silences or abeyances that are discoverable. The scope and discovery has a connection with the theory of constitutional implication. Additionally, the interpretative process of a provision of a Constitution is also required to accentuate the purpose and convey the message of the Constitution which is intrinsic to the Constitution. (Paras 48 to 50 and 54)

e *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1; *GVK Industries Ltd.* v. *CIT*, (2011) 4 SCC 36; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (1993) 4 SCC 441, *relied on*

Reflections on Free-Form Method in Constitutional Interpretation, (1995) 108 Harv L Rev 1221, *cited*

The Constitution being an organic document, its ongoing interpretation is permissible. While interpreting the Constitution, the courts are not only required to f take into consideration their own experience over time, the international treaties and covenants but also keep the doctrine of flexibility in mind. With the passage of time, the interpretative process has become expansive. It has been built brick by brick to broaden the sphere of rights and to assert the constitutional supremacy to meet the legitimate expectations of the citizens. The words of the Constitution have been injected life to express connotative meaning. The interpretation of the Constitution cannot be frozen by its original understanding, for the Constitution has evolved and g must continuously evolve to meet the aspirations and challenges of the present and the future. The duty of the constitutional courts to interpret the Constitution opened the path for succeeding generations to meet the challenges. (Paras 51 to 53)

Union of India v. *Naveen Jindal*, (2004) 2 SCC 510; *K.S. Puttaswamy* v. *Union of India*, (2017) 10 SCC 1; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225; *State of Rajasthan* v. *Union of India*, (1977) 3 SCC 592; *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1; *State of W.B.* v. *Anwar Ali Sarkar*, 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510; *K.C. Gajapati Narayan Deo* v. *State of Orissa*, 1954 SCR 1 : AIR 1953 SC 375; *Deep Chand* v. *State of U.P.*, 1959 Supp (2) SCR 8 : AIR 1959 SC 648; *Attorney General for Ontario*

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v. *Attorney General for Canada*, 1912 AC 571 (PC); *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1; *State of T.N.* v. *State of Kerala*, (2014) 12 SCC 696; *Bhim Singh* v. *Union of India*, (2010) 5 SCC 538; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225; *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1; *Ram Jawaya Kapur* v. *State of Punjab*, (1955) 2 SCR 225 : AIR 1955 SC 549; *Union of India* v. *Raghubir Singh*, (1989) 2 SCC 754; *Virendra Singh* v. *State of U.P.*, AIR 1954 SC 447; *K.S. Srinivasan* v. *Union of India*, AIR 1958 SC 419, *relied on*

Binoy Viswam v. *Union of India*, (2017) 7 SCC 59; *State of H.P.* v. *Parent of a Student of Medical College*, (1985) 3 SCC 169; *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784; *Federation of Railway Officers Assn.* v. *Union of India*, (2003) 4 SCC 289; *State of Maharashtra* v. *Raghunath Gajanan Waingankar*, (2004) 6 SCC 584; *Aravali Golf Club* v. *Chander Hass*, (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289; *Asif Hameed* v. *State of J&K*, 1989 Supp (2) SCC 364; *S.C. Chandra* v. *State of Jharkhand*, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897; *Suresh Seth* v. *Indore Municipal Corpn.*, (2005) 13 SCC 287; *Supreme Court Employees' Welfare Assn.* v. *Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569; *Census Commr.* v. *R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589; *Premium Granites* v. *State of T.N.*, (1994) 2 SCC 691; *M.P. Oil Extraction* v. *State of M.P.*, (1997) 7 SCC 592; *State of M.P.* v. *Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875; *State of Punjab* v. *Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021, *affirmed*

Cooley, *Constitutional Limitation* (8th Edn., Vol. I), *referred to*

R. v. *Burah*, 1878 SCC OnLine PC 17 : (1877-78) 5 IA 178; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413, *cited*

Parliamentary privilege — Rationale behind

Parliamentary privilege was introduced to prevent any undue interference in the working of Parliament and thereby enable the Members of Parliament to function effectively and efficiently without unreasonable impediment. Till date, parliamentary privilege remains an important feature in any parliamentary democracy. Conceptually parliamentary privilege protects the MPs and sustains legislative functionalism. And said protection is absolute. (Paras 99 and 110)

Raja Ram Pal v. *Lok Sabha*, (2007) 3 SCC 184; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413, *relied on*

Black's Law Dictionary, 6th Edn., 1990, p. 1197, *referred to*

Article 105(2) of the Constitution of India clearly lays the postulate that no Member of Parliament shall be made liable to any proceedings in any court in respect of anything he has said in the committee. Freedom of speech that is available to the Members on the floor of the legislature is quite distinct from the freedom which is available to the citizens under Article 19(1)(*a*) of the Constitution. Members of Parliament enjoy full freedom in respect of what they speak inside the House. There is complete constitutional protection under Article 105(4). Article 118 enables the Parliament to regulate its procedure apart from what has been stated directly in the Constitution. The rules and standing orders may regulate the procedure of the legislature apart from the limits prescribed by the Constitution. (Paras 101 to 108)

Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964, AIR 1965 SC 745 : (1965) 1 SCR 413, *referred to*

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There are limitations for both court and legislature

The normal impact of parliamentary privilege is to prevent the Court from entertaining any evidence, cross-examination or submissions which challenge the veracity or propriety of anything done in the course of parliamentary proceedings. (Para 111)

Hamilton v. *Al Fayed*, (2001) 1 AC 395 : (2000) 2 WLR 609 (HL), *relied on*

Wellesley v. *Duke of Beaufort*, (1831) 2 Russ & M 639 : 39 ER 538 : 1831 Eng R 809, *approved*

UK Joint Committee Report, 1999, *referred to*

Nowadays, people, in their efforts to obtain redress, press expansively in areas where the limits of the courts' jurisdiction are not clear. If Parliament does not act, the courts may find themselves compelled to do so. In order to prevent abuses in the guise of privilege the courts must inquire into the legitimacy of a claim of parliamentary privilege. (Paras 113 to 115)

New Brunswick Broadcasting Co. v. *Nova Scotia (Speaker of the House of Assembly)*, 1993 SCC OnLine Can SC 8 : (1993) 1 SCR 319; *Harvey* v. *Attorney General for New Brunswick*, 1996 SCC OnLine Can SC 80 : (1996) 2 SCR 876; *Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC), *referred to*

Ashby v. *White*, (1703) 2 Ld Raym 938 : 92 ER 126; *Stockdale* v. *Hansard*, (1839) 9 Ad & E 1 : 112 ER 1112 (QB); *Sheriff of Middlesex*, (1840) 11 Ad & E 273 : (1840) 113 ER 419, *cited*

Sir William Holdsworth, *A History of English Law*, *referred to*

Articles 121 and 122 are extremely significant as they are really meant to state the restrictions imposed by the Constitution on both the institutions. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. *What is true of the judicature is equally true of the legislatures.* (Paras 117 to 120)

Raja Ram Pal v. *Lok Sabha*, (2007) 3 SCC 184; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413, *relied on*

The constitutional courts are not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens. There is no absolute immunity to the parliamentary proceeding under Article 105(3) of the Constitution; that the enforcement of privilege by the legislature can result in judicial scrutiny though subject to the restrictions contained in other constitutional provisions such as Articles 122 and 212. Article 122(1) and Article 212(1) prohibit the validity of any proceedings in the legislature from being called in question in a court merely on the ground of irregularity of procedure, and the proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny. (Paras 121 and 122)

Reliance on parliamentary proceedings as external aids for construction of a statute, permissible

The basic purpose of all canons of the Constitution is to ascertain with reasonable certainty the intention of Parliament and for the said purpose, external aids such as reports of Special Committee preceding the enactment, the existing state of law, the environment necessitating enactment of a legislation and the object sought to be achieved, etc. which Parliament held the luxury of availing should not

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be denied to the court whose primary function is to give effect to the real intention of the legislature in enacting a statute. Such a denial would deprive the Court of a substantial and illuminating aid to construction and, therefore, the reports of Committees which preceded the enactment of a law, reports of Joint Parliamentary Committees and a report of a commission set up for collecting information can be referred to as external aids of construction. (Para 123)

R.S. Nayak v. *A.R. Antulay*, (1984) 2 SCC 183 : 1984 SCC (Cri) 172, *relied on*

A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute. The speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. Where the meaning of the words in a statute is plain, then the language prevails, but in case of obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance to determine the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters. The Court can take aid of the report of the Parliamentary Committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment. (Paras 124 to 134)

K.P. Varghese v. *CIT*, (1981) 4 SCC 173 : 1981 SCC (Tax) 293; *Ramesh Yeshwant Prabhoo* v. *Prabhakar Kashinath Kunte*, (1996) 1 SCC 130; *Novartis AG* v. *Union of India*, (2013) 6 SCC 1 : (2013) 3 SCC (Civ) 227; *State of M.P.* v. *Dadabhoy's New Chirimiri Ponri Hill Colliery Co. (P) Ltd.*, (1972) 1 SCC 298; *Union of India* v. *Steel Stock Holders' Syndicate*, (1976) 3 SCC 108; *Surana Steels (P) Ltd.* v. *CIT*, (1999) 4 SCC 306; ; *Dharam Dutt* v. *Union of India*, (2004) 1 SCC 712; *Khudiram Das* v. *State of W.B.*, (1975) 2 SCC 81 : 1975 SCC (Cri) 435, *affirmed*

State of W.B. v. *Union of India*, AIR 1963 SC 1241; *Ashoka Kumar Thakur* v. *Union of India*, (2008) 6 SCC 1 : 3 SCEC 35; *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.*, (1980) 2 SCC 31 : 1980 SCC (Tax) 170; *Pepper (Inspector of Taxes)* v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3; *R.* v. *Vasil*, 1981 SCC OnLine Can SC 19 : (1981) 1 SCR 469 : (1981) 121 DLR (3d) 41; *Anti-Inflation Act, In re*, 1976 SCC OnLine Can SC 69 : (1976) 2 SCR 373 : (1976) 68 DLR (3d) 452; *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1; *Rustom Cavasjee Cooper* v. *Union of India*, (1970) 1 SCC 248; *Sakal Papers (P) Ltd.* v. *Union of India*, (1962) 3 SCR 842 : AIR 1962 SC 305; *Sambhu Nath Sarkar* v. *State of W.B.*, (1973) 1 SCC 856 : 1973 SCC (Cri) 618; *Haradhan Saha* v. *State of W.B.*, (1975) 3 SCC 198 : 1974 SCC (Cri) 816; *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248; *M. Nagaraj* v. *Union of India*, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013; *B.R. Kapur* v. *State of T.N.*, (2001) 7 SCC 231; *Minerva Mills Ltd.* v. *Union of India*, (1980) 3 SCC 625; *Manoj Narula* v. *Union of India*, (2014) 9 SCC 1; *Melbourne Corpn.* v. *Commonwealth*, (1947) 74 CLR 31 (Aust); *Australian Capital Television Pty. Ltd.* v. *Commonwealth*, (1992) 177 CLR 106 (Aust); *Kuldip Nayar* v. *Union of India*, (2006) 7 SCC 1; *G. Narayanaswami* v. *G. Pannerselvam*, (1972) 3 SCC 717; *Union of India* v. *Sankalchand Himatlal Sheth*, (1977) 4 SCC 193 : 1977 SCC (L&S) 435; *Massachusetts Bonding & Insurance Co* v. *United States*, 1956 SCC OnLine US SC 102 : 1 L Ed 2d 189 : 352 US 128 (1956), *relied on*

A.K. Gopalan v. *State of Madras*, AIR 1950 SC 27 : (1950) 51 Cri LJ 1383 : 1950 SCR 88, *held, overruled*

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The petitioners do not intend to seek liberty from Parliament or the Parliamentary Committee to be questioned or cross-examined. In fact, reliance of the report has nothing to do with what is protected by the Constitution under Article 105. The court proceedings are independent of Parliament and based on multiple inputs, materials and evidence and in such a situation, the parties are at liberty to persuade the court to come to a determination of facts and form an opinion in law at variance with the Parliamentary Committee report. The further submissions of the petitioners relying on the report would not come within the scope of parliamentary privilege. (Para 137)

Parliamentary Committee Reports are public documents and admissible under S. 74, Evidence Act — Judicial notice can be taken of said reports under S. 57(4) of the Evidence Act — Fair comments by citizens showing public concern is permissible — In all such circumstances, question of parliamentary privilege would not arise

Section 57(4) of the Evidence Act casts an obligation on the courts to take judicial notice of the course of proceedings of Parliament. (Para 140)

Lok Shikshana Trust v. *CIT*, (1976) 1 SCC 254 : 1976 SCC (Tax) 14, *affirmed*

There can be no dispute that Parliamentary Standing Committee report being in the public domain is a public document. Therefore, it is admissible under Section 74 of the Evidence Act and judicial notice can be taken of such a document as envisaged under Section 57(4) of the Evidence Act. There can be no scintilla of doubt that the said document can be taken on record. It can be taken aid of to understand and appreciate a statutory provision if it is unclear, ambiguous or incongruous. It can also be taken aid of to appreciate what mischief the legislative enactment intended to avoid. (Para 142)

Additionally, it can be stated with certitude that there can be a fair comment on the report and a citizen in his own manner can advance a criticism in respect of what the report has stated. Needless to emphasise that the right to fair comment is guaranteed to the citizens. It is because freedom of speech, as permissible within constitutional parameters, is essential for all democratic institutions. Fair comments show public concern and, therefore, such comments cannot be taken exception to. That is left to public opinion and perception on which the grand pillar of democracy is further strengthened. And, in all such circumstances, the question of parliamentary privilege would not arise. (Para 142)

Entering the Committee System: State Committee Assignments, Ronald D. Hedlund, Political; Research Quarterly, Vol. 42, Issue 4, pp. 597-625, *relied on*

Woodrow Wilson, "Congressional Government", 1885, quoted in the JCOC Final Report, (Baltimore, the Johns Hopkins University Press, 1981) p. 69; National Democratic Institute for International Affairs, Parliament's Organization: The Role of Committees and Party Whips — NDI Workshop in Mangochi, Malawi, June 1995 (Washington: National Democratic Institute for International Affairs, 1995); *An Introduction to the Procedure of House of Commons*; Lord Beaconsfield in Hansard, 3rd Series, Vol. 235 (1877) p. 1478; "Growth of Committee System in the Central Legislature of India 1920-1947"; "The Committee System in India: Effectiveness in Enforcing Executive Accountability", Hanoi Session, March 2015, India, *referred to*

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Parliamentary Committee and reports distinguished from contestable matter contained in them

In the case at hand, the controversy does not end there inasmuch as the petitioners have placed reliance upon the contents of the Parliamentary Standing Committee report and the respondents submit that they are forced to controvert the same. In such a situation, the Court would be duty-bound to afford the respondents an opportunity of being heard in consonance with the principles of natural justice. This, in turn, would give rise to a very peculiar situation as the respondents would invariably be left with the option either to: (*i*) accept, without contest, the opinion expressed in the Parliamentary Standing Committee report and the facts stated therein; or (*ii*) contest the correctness of the opinion of the Parliamentary Standing Committee report and the facts stated therein. In the former scenario, the respondents at the very least would be put in an inequitable and disadvantageous position. It is in the latter scenario that the Court would be called upon to adjudicate the contentious facts stated in the report. Ergo, whenever a contest to a factual finding in a PSC report is likely and probable, the Court should refrain from doing so. It is one thing to say that the report being a public document is admissible in evidence, but it is quite different to allow a challenge. (Para 143)

It is worthy to note here that there is an intrinsic difference between parliamentary proceedings which are in the nature of statement of a Minister or of a Mover of a Bill made in Parliament for highlighting the purpose of an enactment or, for that matter, a Parliamentary Committee report that had come into existence prior to the enactment of a law and a contestable/conflicting matter of "fact" stated in the Parliamentary Committee report. It is the parliamentary proceedings falling within the former category of which courts are enjoined under Section 57(4) to take judicial notice of, whereas, for the latter category of parliamentary proceedings, the truthfulness of the contestable matter of fact stated during such proceedings has to be proved in the manner known to law. (Para 144)

This again is to the hazardous zone wherein taking judicial notice of Parliamentary Standing Committee reports for a factual finding will obviously be required to be proved for ascertaining the truth of a contestable matter of fact stated in the said report. (Para 145)

Taking judicial notice of the Parliamentary Standing Committee report can only be to the extent that such a report exists. The said report can be taken aid of for understanding the statutory provision wherever it is felt so necessary or to take cognizance of a historical fact that is different from a contest. The word "contest", according to *Black's Law Dictionary*, means to make defence to an adverse claim in a court of law; to oppose, resist or dispute; to strive to win or hold; to controvert, litigate, call in question, challenge to defend. This being the meaning of the word "contest", the submission to adjudge the lis on the factual score of the report is to be negatived. (Para 146)

In many cases, the Supreme Court has referred to and taken note of various Parliamentary Committee reports. But in said cases, the question of contest/challenge never emerged. That being the position, the said judgments do not render any assistance to the controversy in question. (Paras 147 to 153)

Catering Cleaners of Southern Railway v. *Union of India*, (1987) 1 SCC 700 : 1987 SCC (L&S) 77; *State of Maharashtra* v. *Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117; *Aruna Roy* v. *Union of India*, (2002) 7 SCC 368 : 5 SCEC 310; *M.C. Mehta* v. *Union of India*,

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(2017) 7 SCC 243; *Lal Babu Priyadarshi* v. *Amritpal Singh*, (2015) 16 SCC 795 : (2016) 3 SCC (Civ) 649; *Gujarat Electricity Board* v. *Hind Mazdoor Sabha*, (1995) 5 SCC 27 : 1995 SCC (L&S) 1166; *Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353 : 7 SCEC 1; *Krishan Lal Gera* v. *State of Haryana*, (2011) 10 SCC 529, *distinguished*

Adjudication, duty of court — Court also has duty to strike balance between judiciary and legislature — Admissibility of Parliamentary Committee Reports and judicial notice of same — Fair comments on same by public showing public concern is permissible

A party can always establish its case on the materials on record and the court can independently adjudicate the controversy without allowing a challenge to Parliamentary Standing Committee report. The court has a constitutional duty to strike a delicate balance between the legislature and the judiciary. It is more so when the issue does not involve a fundamental right that is affected by parliamentary action. A constitutional court cannot abdicate its duty to allow injustice to get any space or not allow real space to a principle that has certain range of acceptability. The court ought not to shy away from its primary responsibility of interpreting the Constitution and other statutes in a manner that is not only legally tenable but also facilitates the progress and development of the avowed purpose of the rights-oriented Constitution. Therefore, the constitutional courts should always adopt a progressive approach and display a dynamic and spirited discharge of duties regard being had to the concepts of judicial statesmanship and judicial engagement, for they subserve the larger public interest. (Paras 154 to 157)

Lakshmi Kant Pandey v. *Union of India*, (1984) 2 SCC 244; *Vishaka* v. *State of Rajasthan*, (1997) 6 SCC 241 : 1997 SCC (Cri) 932; *Prakash Singh* v. *Union of India*, (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417; *Shakti Vahini* v. *Union of India*, (2018) 7 SCC 192, *affirmed*

Common Cause v. *Union of India*, (2018) 5 SCC 1, *relied on*

Jajbhay v. *Cassim*, 1939 AD 537; *Miranda* v. *Arizona*, 1966 SCC OnLine US SC 112 : 16 L Ed 2d 694 : 384 US 436 (1966), *referred to*

In the case at hand, having regard to the constitutional obligation the Parliamentary Standing Committee report or any Parliamentary Committee report can be taken judicial notice of and regarded as admissible in evidence, but it can neither be impinged nor challenged nor its validity can be called in question. (Para 158)

Conclusions

In view of the aforesaid analysis, the referred questions are answered in the following manner: (Para 159)

(*i*) Parliamentary Standing Committee report can be taken aid of for the purpose of interpretation of a statutory provision wherever it is so necessary and also it can be taken note of as existence of a historical fact. (Para 159.1)

(*ii*) Judicial notice can be taken of the Parliamentary Standing Committee report under Section 57(4) of the Evidence Act and it is admissible under Section 74 of the said Act. (Para 159.2)

(*iii*) In a litigation filed either under Article 32 or Article 136 of the Constitution of India, the Supreme Court can take on record the report of the Parliamentary Standing Committee. However, the report cannot be impinged or challenged in a court of law. (Para 159.3)

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(*iv*) Where the fact is contentious, the petitioner can always collect the facts from many a source and produce such facts by way of affidavits, and the court can render its verdict by way of independent adjudication. (Para 159.4)

(*v*) The Parliamentary Standing Committee report being in the public domain can invite fair comments and criticism from the citizens as in such a situation, the citizens do not really comment upon any Member of Parliament to invite the hazard of violation of parliamentary privilege. (Para 159.5)

The reference is answered accordingly. (Para 160)

Let the writ petitions be listed before the appropriate Bench for hearing. (Para 161)

Kalpana Mehta v. *Union of India*, (2017) 7 SCC 295; *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307; *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 302; *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 305; *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 306, *referred to*

Per Sikri and Chandrachud, JJ. (concurring)

The Constitution

Articles 105, 118, 119 and 121 are comprised in Part V of the Constitution which deals with the Union and form a part of Chapter II, which deals with Parliament. (Para 180)

Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents. (Para 181)

The Constitution recognises free speech as a fundamental right in Article 19(1)(*a*). A separate articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. Article 105(4) widens the scope of the protection. Committees of the Houses of Parliament are established by and under the authority of Parliament. They represent Parliament. They are comprised within Parliament and are as much, Parliament. The provisions contained in Chapter II of Part V are mirrored, in the case of the State Legislatures, in Chapter III of Part VI. The corresponding provisions in regard to State Legislatures are contained in Articles 194, 208, 209 and 212. The same protection which extends to parliamentary proceedings is extended to proceedings in or before the Committees constituted by each House. Parliament has been vested with a complete and exclusive authority to regulate its own procedure and the conduct of its business. (Paras 182 to 188)

The Constitution has carefully engrafted provisions to ensure institutional comity between Parliament and the judiciary. Under Article 121, the conduct of a Judge of the Supreme Court or of a High Court in the discharge of duties cannot be discussed in Parliament (except upon a motion for removal). Article 211 makes a similar provision in regard to the State Legislatures. (Para 189)

Parliamentary privilege in India

The law in India has witnessed a marked degree of evolution. Indian jurisprudence on the subject has recognised the importance of the freedom of speech in Parliament, the principle of separation of powers and the concomitant

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protection afforded to Members from being held liable for what is spoken in Parliament. Principles grounded in the common law in UK have not remained just in the realm of common law. Our precedent on the subject notices the qualitative difference between parliamentary democracy in UK and in India. The fundamental difference arises from the supremacy of the Indian Constitution which subjects all constitutional authorities to the mandate of a written Constitution. (Para 218)

Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964, AIR 1965 SC 745 : (1965) 1 SCR 413; *P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108; *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC); *R.* v. *Currie*, 1992 (unreported); *Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184, *relied on*

Bradlaugh v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC), *approved*

Constitutional supremacy mandates that every institution of governance is subject to the norms embodied in the constitutional text. The Constitution does not allow for the existence of absolute power in the institutions which it creates. Judicial review as a part of the basic features of the Constitution is intended to ensure that every institution acts within its bounds and limits. The fundamental rights guaranteed to citizens are an assurance of liberty and a recognition of the autonomy which inheres in every person. Hence, judicial scrutiny of the exercise of parliamentary privileges is not excluded where a fundamental right is violated or a gross illegality occurs or where there is a violation of the constitutional provision as distinguished from mere irregularity of procedure, in view of Article 122(1). (Paras 222 to 227)

Raja Ram Pal v. *Lok Sabha*, (2007) 3 SCC 184; *Amarinder Singh* v. *Punjab Vidhan Sabha*, (2010) 6 SCC 113 : (2010) 2 SCC (Cri) 1343, *relied on*

Separation of powers: A nuanced modern doctrine

Many contemporary scholars have differed on the normative importance of the doctrine of separation. Yet, even scholars who emphasise the importance of the separation of powers in the UK acknowledge that the Constitution does not strictly observe such a separation. Courts in the UK do not possess a direct power of judicial review to invalidate legislation though, with the enactment of the Human Rights Act, the doctrine of incompatibility has become an entrenched feature of the law. (Para 230)

Peter A. Gerangelos, *The Separation of Powers and Legislative Interference in Judicial Process, Constitutional Principles and Limitations* (Hart Publishing, 2009); See A. Tomkins, *Public Law* (Oxford University Press, 2003) 37 (as cited by Gerangelos at p. 274); E. Barendt, "Separating of Powers and Constitutional Government" [1995] Public Law 599 at 599-60, C. Munro, *Studies in Constitutional Law*, 2nd Edn. (London, Butterworths, 1999) at 304, T.R.S. Allan, *Law Liberty and Justice, The Legal Foundations of British Constitutionalism* (Oxford, Clarendon Press, 1993) Chs. 3 and 8, and T.R.S. Allan, *Constitutional Justice, A Liberal Theory of the Rule of Law* (Oxford, Oxford University Press, 2001); R. Stevens, "A Loss of Innocence?: Judicial Independence and the Separation of Powers" (1999) 19 Oxford Journal of Legal Studies 365, *referred to*

The importance of the principle of separation essentially lies in the independence of the judiciary. Though the supremacy of Parliament is one of the fundamental features in UK and the unwritten Constitution does not mandate a strict separation of powers, it would be difficult to regard a State which has no control on legislative supremacy as a constitutional State founded on the rule of law. Consequently, where the rule of law and constitutionalism govern society there

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may yet be fundamental principles inhering in the nature of the polity, which can be enforced by the judiciary even against Parliament, in the absence of a written Constitution. In other words, even in the context of an unwritten Constitution, the law has a certain internal morality as a part of which it embodies fundamental notions of justice and fairness. (Para 232)

Allan, *Law, Liberty and Justice*; *Gerangelos*, at p. 277, *referred to*

Current view of doctrine of separation of powers

The interpretation of the doctrine of separation of powers has evolved from being a "one branch - one function approach" with limited exceptions, to a concept which involves an integration of the "division of work" and "checks and balances". The doctrine of separation of power has developed to fulfil the changing needs of society and its growing necessities. The current view on the doctrine of separation of powers also seeks to incorporate mutual supervision, interdependence and coordination because the ultimate aim of the different branches of the Government, through their distinct functions is to ensure good governance and to serve public interest, which is essential in the background of growing social and economic interests in a welfare State. This stands in contrast with the former and original interpretation of the doctrine, which sought to compartmentalise and isolate the different branches of the Government from one another, with limited permissible exceptions. (Paras 233 to 238)

Aileen Kavanagh, The Constitutional Separation of Powers, Chapter 11 in David Dyzenhaus and Malcolm Thorburn (eds.) *Philosophical Foundations of Constitutional Law*, (Oxford University Press, 2016) 221; M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Oxford University Press, 1967); D. Kyritsis, "What is Good about Legal Conventionalism?" (2008) 14 Legal Theory 135, 154 (as cited in *Philosophical Foundations of Constitutional Law*, at p. 235); *Philosophical Foundations of Constitutional Law*, at p. 236; K. Malleson, 'The Rehabilitation of Separation of Powers in UK' in L. de Groot-van Leeuwen and W. Rombouts, *Separation of Powers in Theory and Practice: An International Perspective* (Nijmegen: Wolf Publishing, 2010) 99-122, 115 (as cited in *Philosophical Foundations of Constitutional Law*, at p. 237); J. Waldron, "Authority for Officials" in L. Meyer, S. Paulson and T. Pogge (eds.), *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* (Oxford University Press, 2003) 45-70; J. King, "Institutional Approaches to Judicial Restraint" (2008) 28 Oxford Journal of Legal Studies 409, 428; *Buckley* v. *Attorney General*, 1950 Irish Reports 67, 80 (per O'Bryne, J.) (as cited in *Philosophical Foundations of Constitutional Law*, at p. 235), *referred to*

The traditional doctrine of separation should be reshaped to make it relevant to the practical realities of modern Government. The shared growth of administrative powers of the bureaucracy in the modern State defies the tripartite division. Therefore, a realistic modern application of the theory is necessary. The modern system of Government has grown in ways previously thought unfathomable, and now encompasses a breadth and diversity previously unseen. The Government today is characterised by the increase in powers of its agencies and the rapid growth of organisations which can neither be classified as exclusively public or private bodies. These modern systems of Government and the existence and rapid rise of supranational organisations defy the traditional three way division of powers. Administrative bodies are not defined by a uniform design, and exercise institutional fluidity in a manner which has come to characterise the administrative State's organisational complexity: in a single instance, they exercise powers and perform functions that might have been formerly classified as executive, judicial

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or legislative in nature. In this view, the modern State is distinctly different from *Locke's* seventeenth century Model and *Montesquieu's* eighteenth century ideas. (Paras 239 and 240)

Eoin Carolan, *The New Separation of Powers— A Theory for the Modern State* (Oxford University Press, 2009) 253; Eoin Carolan, "The Problems with the Theory of Separation of Powers", SSRN, (2011) 26; Op cit fn 162 at p. 256, *referred to*

Indian Constitution does not adopt a rigid separation

While the Indian Constitution has been held to have recognised the doctrine of separation of powers, it does not adopt a rigid separation. Whether legislative authority has extended beyond its constitutional boundaries or the fundamental rights have been contravened cannot be decided by the legislature, but is a matter entrusted exclusively to judicial decision. (Paras 242 and 243)

Indira Nehru Gandhi v. *Raj Narain*, 1975 Supp SCC 1; *Ram Jawaya Kapur* v. *State of Punjab*, (1955) 2 SCR 225 : AIR 1955 SC 549; *State of T.N.* v. *State of Kerala*, (2014) 12 SCC 696; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225, *referred to*

The doctrine of separation restrains the legislature from declaring a judgment of a court to be void and of no effect. However, in the exercise of its law-making authority, a legislature possessed of legislative competence can enact validating law which remedies a defect pointed out in a judgment of a court. While the legislature cannot ordain that a decision rendered by the court is invalid, it may by enacting a law, take away the basis of the judgment such that the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. (Para 248)

I.N. Saksena v. *State of M.P.*, (1976) 4 SCC 750 : 1977 SCC (L&S) 36; *Indian Aluminium Co.* v. *State of Kerala*, (1996) 7 SCC 637; *S.S. Bola* v. *B.D. Sardana*, (1997) 8 SCC 522; *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*, (1969) 2 SCC 283; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1, *referred to*

In the evolution of separation of powers doctrine, traditionally the *checks and balances* dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable *social and economic* entitlements, hybrid administrative bodies, private functionaries discharging public functions, the court has to perform the oversight function with more urgency and enlarge the field of *checks and balances* to include governmental inaction. Otherwise the country would be transformed into a *state of repose*. Social engineering as well as institutional engineering therefore forms part of this obligation. (Para 249)

State of U.P. v. *Jeet S. Bisht*, (2007) 6 SCC 586, *affirmed*

There is a link between separation and the need to ensure accountability of each branch of Government. While the Constitution does not prohibit overlapping functions, what it prohibits is the exercise of functions by a branch in a way which "results in wresting away of the regime of constitutional accountability". While the essential functions of one organ of the State cannot be taken over by the other and that a sense of institutional comity must guide the work of the legislature, executive and judiciary, the practical problems which arise in the unfolding of democracy can be resolved through robust constitutional cultures and mechanisms. The separation doctrine cannot be reduced to its descriptive content, bereft of its

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normative features. Evidently, it has both normative and descriptive features. In applying it to the Indian Constitution, the significant precept to be borne in mind is that no institution of governance lies above the Constitution. No entrustment of power is absolute. (Paras 250 to 256)

Bhim Singh v. *Union of India*, (2010) 5 SCC 538, *relied on*

Supreme Court Advocates-on-Record Assn. v. *Union of India*, (2016) 5 SCC 1; *State of W.B.* v. *Committee for Protection of Democratic Rights*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401; *Common Cause* v. *Union of India*, (2017) 7 SCC 158, *referred to*

Kesavananda Bharati v. *State of Kerala*, (1973) 4 SCC 225; *Tata Power Co. Ltd.* v. *Reliance Energy Ltd.*, (2009) 16 SCC 659; *Namit Sharma* v. *Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (Civ) 786 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (L&S) 244, *cited*

Parliamentary Committee does not decide lis between contesting disputants nor does it perform any adjudicating function

The Parliamentary Committees owe their existence to Parliament. They report to Parliament. They comprise of the Members of Parliament. Their work consists of tendering advice to the legislature. A Parliamentary Committee does not decide a lis between contesting disputants nor does it perform an adjudicatory function. A committee appointed by the House can undoubtedly receive evidence, including expert evidence, both oral and documentary. A Select Committee may be appointed by the House to scrutinise a Bill. When the committee performs its task, its report is subject to further discussion and debate in the House in the course of which the legislative body would decide as to whether the Bill should be enacted into law. The validity of the advice which is tendered by a Parliamentary Committee in framing its recommendations for legislation cannot be subject to a challenge before a court of law. The advice tendered is, after all, what it purports to be: it is advice to the legislating body. The correctness of or the expediency or justification for the advice is a matter to be considered by the legislature and by it alone. (Para 257)

The contents of the report of a Parliamentary Committee may have a bearing on diverse perspectives like matters of policy and purpose of law, statements made by persons who have deposed before the Committee, findings of misdemeanour implicating a breach of duty by public officials or private individuals or an evasion of law. (Paras 258 and 259)

Justice G.P. Singh, *Principles of Statutory Interpretation* (14th Edn.) 253, *referred to*

Functional complementarity

In matters involving public interest which come up before the court, a grievance is often made of the violation of the fundamental rights of persons who by reason of poverty, ignorance or marginalised status are unable to seek access to justice. Public interest litigation has been perceived as social action litigation because a relaxation of the rules of standing has enabled constitutional courts to reach out to those who have suffered discrimination and prejudice. Whatever be the source of such discrimination — the feudal and patriarchal structures of Indian society being among them — public interest litigation has enabled courts to develop flexible tools of decision-making and pursue innovative remedies. The writ of continuing mandamus is one of them. In the process, the violation of the fundamental rights of those groups of citizens who may not be able to seek access to justice is sought to be remedied. Public interest litigation has emerged as a powerful tool to provide justice to the marginalised. In matters involving issues of public

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interest, courts have been called upon to scrutinise the failure of the State or its agencies to implement law and to provide social welfare benefits to those for whom they are envisaged under legislation. Courts have intervened to ensure the structural probity of the system of democratic governance. Executive power has been made accountable to the guarantee against arbitrariness (Article 14) and to fundamental liberties (principally Articles 19 and 21). (Para 263)

Committees of Parliament attached to ministries/departments of the Government perform the function of holding the Government accountable to implement its policies and its duties under legislation. The performance of governmental agencies may form the subject-matter of such a report. In other cases, the deficiencies of the legislative framework in remedying social wrongs may be the subject of an evaluation by a Parliamentary Committee. The work of a Parliamentary Committee may traverse the area of social welfare either in terms of the extent to which existing legislation is being effectively implemented or in highlighting the lacunae in its framework. There is no reason in principle why the wide jurisdiction of the High Courts under Article 226 or of the Supreme Court under Article 32 should be exercised in a manner oblivious to the enormous work which is carried out by Parliamentary Committees in the field. The work of the committee is to secure alacrity on the part of the Government in alleviating deprivations of social justice and in securing efficient and accountable governance. When courts enter upon issues of public interest and adjudicate upon them, they do not discharge a function which is adversarial. The constitutional function of adjudication in matters of public interest is in step with the role of Parliamentary Committees which is to secure accountability, transparency and responsiveness in the Government. In such areas, the doctrine of separation does not militate against the court relying upon the report of a Parliamentary Committee. The court does not adjudge the validity of the report nor for that matter does it embark upon a scrutiny into its correctness. There is a functional complementarity between the purpose of the investigation by the Parliamentary Committee and the adjudication by the court. To deprive the court of the valuable insight of a Parliamentary Committee would amount to excluding an important source of information from the purview of the court. To do so on the supposed hypothesis that it would amount to a breach of parliamentary privilege would be to miss the wood for the trees. Once the report of the Parliamentary Committee has been published it lies in the public domain. There is no reason or justification to exclude it from the purview of the material to which the court seeks recourse to understand the problem with which it is required to deal. The court must look at the report with a robust commonsense, conscious of the fact that it is not called upon to determine the validity of the report which constitutes advice tendered to Parliament. The extent to which the court would rely upon a report must necessarily vary from case to case and no absolute rule can be laid down in that regard. (Para 264)

Findings of misdemeanour or breach of duty by public officials or private individuals or an evasion of law — Parliamentary Committee Report not substantive evidence — Court has to consider other evidence and deal with it independently

There may, however, be contentious matters in the report of a Parliamentary Committee in regard to which the court will tread with circumspection. For

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instance, the report of the committee may contain a finding of misdemeanour involving either officials of the Government or private individuals bearing on a violation of law. If the issue before the court for adjudication is whether there has in fact been a breach of duty or a violation of law by a public official or a private interest, the court would have to deal with it independently and arrive at its own conclusions based on the material before it. Obviously in such a case the finding by a Parliamentary Committee cannot constitute substantive evidence before the court. The Parliamentary Committee is not called upon to decide a lis or dispute involving contesting parties and when an occasion to do so arises before the court, it has to make its determination based on the material which is admissible before it. An individual whose conduct has been commented upon in the report of a Parliamentary Committee cannot be held guilty of a violation on the basis of that finding. (Para 265)

Jyoti Harshad Mehta v. *Custodian*, (2009) 10 SCC 564 : (2010) 2 SCC (Cri) 1494, *referred to*

Judicial notice

Section 57 of the Evidence Act, 1872 speaks of facts of which the court must take judicial notice. However, the truth of a disputable question of fact would have to be independently proved before the court. In view of Section 57(4) of the Evidence Act, the court has to take judicial notice of the proceedings of both the Houses of Parliament and is expected to treat the proceedings of the two Houses of Parliament as proved on the production of the copies of the journals or the reports containing proceedings of the two Houses of Parliament which are published by them. (Paras 266 and 269)

Lok Shikshana Trust v. *CIT*, (1976) 1 SCC 254 : 1976 SCC (Tax) 14; *"The Englishman" Ltd.* v. *Lajpat Rai*, 1910 SCC OnLine Cal 224 : ILR (1910) 37 Cal 760 : 14 CWN 945 : 6 IC 81; *Onkar Nath* v. *State (UT of Delhi)*, (1977) 2 SCC 611 : 1977 SCC (Cri) 388; *Baburao* v. *Union of India*, 1988 Supp SCC 401, *affirmed*

Gerald Lord Strickland v. *Carmelo Mifsud Bonnici*, 1934 SCC OnLine PC 51 : AIR 1935 PC 34 : 153 IC 1, *relied on*

Conclusion

The Constitution is about empowerment. The democratic transformation to which it aspires places the individual at the core of the concerns of governance. For a colonial regime, individuals were subordinate to the law. Since the Constitution is about transformation and its vision is about empowerment, our reading of precepts drawn from a colonial past, including parliamentary privilege, must be subjected to a nuance that facilitates the assertion of rights and access to justice. The Indian society must move from the culture of authority and submission to the law, to one of justification and rights under the law. (Paras 271 to 273)

Justice Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford University Press 2009) pp. 32-33, *referred to*

Once the fulfilment of individual rights and human freedoms is placed at the forefront of constitutional discourse, the resolution of the present case presents no difficulty. History and contemporary events across the world are a reminder that blackouts of information are used as a willing ally to totalitarian excesses of power. They have no place in a democracy. Placing reliance on the report of a Parliamentary Committee does not infringe parliamentary privilege. No Member of Parliament is sought to be made liable for what has been said or for a vote

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tendered in the course of a debate. The correctness or validity of the report of a Parliamentary Committee is not a matter which can be agitated before the Court nor does the Court exercise such a function. Where an issue of fact referred to in the report of the Parliamentary Committee becomes contentious, it undoubtedly has to be proved before a court independently on the basis of the material on the record. (Para 274)

Parliamentary Committees are an intrinsic part of the process by which the elected legislature in a democracy exacts accountability on the part of the Government. Department related Parliamentary Standing Committees undertake the meticulous exercise of scrutinising the implementation of law, including welfare legislation and the performance of the departments of the State. The purpose of law is to promote order for the benefit of the citizen and to protect rights and entitlements guaranteed by the Constitution and by statute. Access to justice as a means of securing fundamental freedoms and realising socio-economic entitlements is complementary to the work of other organs of the State. The modern doctrine of separation of powers has moved away from a "one organ - one function" approach, to a more realistic perspective which recognises the complementarity in the work which is performed by institutions of governance. Judicial review is founded on the need to ensure accountable governance in the administration of law as an instrument of realising the rights guaranteed by the Constitution. If the function of judicial review in facilitating the realisation of socio-economic rights is construed in the context of the modern notion of separation of powers, there is no real conflict between the independence of the judicial process and its reliance on published reports of Parliamentary Committees. Ultimately it is for the court in each case to determine the relevance of a report to the case at hand and the extent to which reliance can be placed upon it to facilitate access to justice. Reports of Parliamentary Committees become part of the published record of the State. As a matter of principle, there is no reason or justification to exclude them from the purview of the judicial process, for purposes such as understanding the historical background of a law, the nature of the problem, the causes of a social evil and the remedies which may provide answers to intractable problems of governance. The court will in the facts of a case determine when a matter which is contentious between the parties would have to be adjudicated upon independently on the basis of the evidence adduced in accordance with law. (Para 275)

Dingle v. *Associated Newspapers Ltd.*, (1960) 2 QB 405 : (1960) 2 WLR 430; *Church of Scientology of California* v. *Johnson Smith*, (1972) 1 QB 522 : (1971) 3 WLR 434; *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC); *Burdett* v. *Abbot*, (1811) 14 East 1 : 104 ER 501; *British Railways Board* v. *Pickin*, 1974 AC 765 : (1974) 2 WLR 208 (HL); *R.* v. *Murphy*, (1986) 64 ALR 498 : (1986) 5 NSWLR 18; *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*, (2007) 1 WLR 2825 : 2007 UKPC 48 (PC); *R. (Bradley)* v. *Secy. of State for Work and Pensions*, 2009 QB 114 : (2008) 3 WLR 1059 : 2007 EWHC 242 (Admin); *Office of Govt. Commerce* v. *Information Commr.*, 2010 QB 98 : (2009) 3 WLR 627; *R. (Wheeler)* v. *Office of the Prime Minister*, 2014 EWHC 3815 (Admin); *Buchanan* v. *Jennings*, (2005) 1 AC 115 : (2004) 3 WLR 1163 : 2004 UKPC 36; *Buchanan* v. *Jennings*, (2002) 3 NZLR 145 (CA); *Hamilton* v. *Al Fayed*, (2001) 1 AC 395 : (2000) 2 WLR 609 (HL); *Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC); *Stockdale* v. *Hansard*, (1839) 9 Ad & E 1 : 112 ER 1112 (QB); *Pepper (Inspector of Taxes)* v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3, *referred to*

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State of M.P. v. *Dadabhoy's New Chirimiri Ponri Hill Colliery Co. (P) Ltd.*, (1972) 1 SCC 298; *R.* v. *Secy. of State for the Home Department, ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL); *Wilson* v. *First County Trust Ltd. (No. 2)*, (2004) 1 AC 816 : (2003) 3 WLR 568 : 2003 UKHL 40 (HL); *R.* v. *F.*, 2007 QB 960 : (2007) 3 WLR 164 (CA), *cited* a

In the circumstances, the reference is answered by holding that:

(*i*) As a matter of principle, there is no reason why reliance upon the report of a Parliamentary Standing Committee cannot be placed in proceedings under Article 32 or Article 136 of the Constitution; (Para 276.1)

b

(*ii*) Once the report of a Parliamentary Committee has been published, reference to it in the course of judicial proceedings will not constitute a breach of parliamentary privilege; (Para 276.2)

(*iii*) The validity of the report of a Parliamentary Committee cannot be called into question in the court. No Member of Parliament or person can be made liable for what is stated in the course of the proceedings before a Parliamentary Committee or for a vote tendered or given; and (Para 276.3) c

(*iv*) When a matter before the court assumes a contentious character, a finding of fact by the court must be premised on the evidence adduced in the judicial proceeding as explained in paras 265 and 274. (Para 276.4)

d

Per Bhushan, J. (concurring)

Parliamentary privileges — Origin and meaning

The origin and evolution of parliamentary privilege is traceable from the High Court of British Parliament. The term "parliamentary privilege" refers to the immunity and powers possessed by each of the Houses of Parliament and by the Members of Parliament, which allow them to carry out their parliamentary functions effectively. (Paras 312 to 314) e

Erskine May, *Parliamentary Practice*, 24th Edn. Chapter XII, *referred to*

The privileges of the Indian Legislatures have also gradually developed along with the progress in the constitutional development of the country. There is absolute protection to a Member of Parliament against any proceeding in any court, in respect of anything said or vote given by him in Parliament or any committee thereof. The words "in other respects" in Article 105(3) clearly refer to powers, privileges and immunities which are not mentioned and referred to in Articles 105(1) and (2). Article 105(3) makes applicable the same powers, privileges and immunities which are not mentioned and referred to in Articles 105(1) and (2). Article 105(3) makes applicable the same powers, privileges and immunities for Indian Parliament which were enjoyed by the House of Commons at the time of enforcement of the Constitution of India. (Paras 315 to 323) f g

P.V. Narasimha Rao v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108, *relied on*

Halsbury's Laws of England, 5th Edn. Vol. 78, *referred to*

Privileges of the House of Commons

The privileges of Indian Parliament are the privileges which were enjoyed by the British House of Commons. There is a complete immunity to the Members of h

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Parliament from any proceeding for anything said in any committee of Parliament. However, the issue in present case is whether, there is any breach of privileges of Parliament in accepting, referring and relying on a Parliamentary Committee report by the Supreme Court. (Paras 324 to 330)

Homi D. Mistry v. *Nafisul Hussan*, 1956 SCC OnLine Bom 175 : ILR 1957 Bom 218; *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395; *C. Subramaniam* v. *Speaker of the Madras Legislative Assembly*, 1968 SCC OnLine Mad 64 : AIR 1969 Mad 10; *Harendra Nath Barua* v. *Dev Kanta Barua*, 1958 SCC OnLine Gau 16 : AIR 1958 Assam 160, *cited*

Halsbury's Laws of England, 5th Edn., Vol. 78; Erskine May: *Parliamentary Practice*; M.N. Kaul and S.L. Shakdher: *Practice & Procedure of Parliament, 7th Edn.,* published by Lok Sabha Secretariat, *referred to*

The Role of Parliamentary Committees — Enormous duties and responsibilities not limited to legislation alone — Their functions relate to welfare of people

The business of Parliament is transacted in accordance with the rules of procedure as framed under Article 118 of the Constitution of India. Over the years, the functions of Parliament have no longer remained restricted merely to legislating. Various Committees of both Rajya Sabha and Lok Sabha are entrusted with enormous duties and responsibilities in reference to the functions of Parliament. (Para 334)

F.W. Maitland: *Constitutional History of England*; Dr Subhash C. Kashyap: *Parliamentary Procedure*, 2nd Edn., *referred to*

Apart from the supervision, the Committees also make recommendations and issue directions. They play an important role in functioning of the entire Government which is directly related to the welfare of the people of the country. (Para 340)

Publication of parliamentary reports — People have a right to know — No exception can be taken in the petitioners obtaining 72nd and 81st Reports of Parliamentary Standing Committee

Publication of proceedings of Parliament serves public purpose. By Constitution (Forty-fourth Amendment) Act, 1978, Article 361-A was inserted in the Constitution providing for "protection of publication of proceedings by Parliament and State Legislatures". Apart from publication of the proceedings of Parliament, including the reports of the Committees, now, they are also permitted to be broadcast on electronic media. Such publication is encouraged by Parliament. The general public is keenly interested in knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country. (Paras 341 to 346)

Wason v. *Walter*, (1868) LR 4 QB 73, *referred to*

The right to know about the reports only arises when they have been published for use of the public in general and not when they are being prepared and not yet submitted to the Speaker. Thus, no exception can be taken in the petitioners obtaining 72nd and 81st Reports of Parliamentary Standing Committee. (Para 347)

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Rules and Procedures of Parliament are permitted to be given in evidence in court — These are public documents and judicial notice can be taken of them

From time to time, the papers and proceedings of Parliament have been permitted to be given in evidence in courts of law by Parliament. Though after the enforcement of the Right to Information Act, 2005, on the basis of a report submitted by the Committee of Privileges, the procedure for making available documents relating to the proceedings of the House has been modified. Documents relating to the proceedings of the House or any Committee of the House which are public documents should be taken judicial notice of and requests for certified copies thereof may not be ordinarily made unless there are sufficient reasons for making such requests. (Paras 348 to 351)

M.N. Kaul and S.L. Shakdher: *Practice & Procedure of Parliament*, 7th Edn., published by Lok Sabha Secretariat, *referred to*

Section 57(4) of the Evidence Act makes it clear that the course of proceeding of Parliament and the Legislature, established under any law are facts of which judicial notice shall be taken by the Court. The expression "course of proceeding of Parliament" is an expression of wide import. Article 118(1) of the Constitution makes it clear that the proceedings of Parliamentary Standing Committee including its report are proceedings which are covered by the expression "course of proceeding of Parliament". The effect of Section 57(4) is not diminished by the amendments made in Section 57(4) by the Presidential Adaptation Order in exercise of power under Article 372(2). (Paras 353 to 358)

According to Section 74 of the Evidence Act documents forming the acts, or records of the acts of legislature of any part of India is a public document. Parliament has already adopted the report of the privilege committee that for those documents which are public documents within the meaning of the Evidence Act, there is no requirement of any permission of Speaker of Lok Sabha for producing such documents as evidence in court. However, mere fact that a document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents also are true and correct and constitute evidence as defined under Section 3 of the Evidence Act. The question as to what weight the Court should give to the findings of a Parliamentary Committee Report will ultimately depend on the totality of circumstances brought before the Court. (Paras 360 to 364)

Standard Chartered Bank v. *A.B.F.S.L.*, 2001 SCC OnLine Bom 588, *approved*

Gerald Lord Strickland v. *Carmelo Mifsud Bonnici*, 1934 SCC OnLine PC 51 : AIR 1935 PC 34 : 153 IC 1, *referred to*

Nature and extent of parliamentary privileges regarding reports of Committees of British Parliament

In the Constituent Assembly Debates on draft Article 85 (now Article 105 of the Constitution of India) and draft Article 169 (now Article 194 of the Constitution of India), various amendments suggested were not adopted. Thus, the privileges which our Parliament and State Legislatures enjoy are privileges enjoyed by the House of Commons of the United Kingdom at the time of commencement of the Constitution. (Paras 365 and 366)

Constituent Assembly Debates on 3-6-1949, (CAD Vol. 8, p. 583); Erskine May: *Parliamentary Practice*, 24th Edn., *referred to*

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Participation of Members of Parliament is also by various other recognised forms such as voting, giving notice of a motion, presenting a petition or submitting a report of a committee, the modern forms of expression by which the wish and will of Parliamentarians is expressed. (Paras 369 to 375)

Bradlaugh v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC); *Stockdale* v. *Hansard*, (1839) 9 Ad & E 1 : 112 ER 1112 (QB); *Dingle* v. *Associated Newspapers Ltd.*, (1960) 2 QB 405 : (1960) 2 WLR 430; *Church of Scientology of California* v. *Johnson Smith*, (1972) 1 QB 522 : (1971) 3 WLR 434; *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC); *Burdett* v. *Abbot*, (1811) 14 East 1 : 104 ER 501, *referred to*

Court can independently decide lis on basis of evidence — Observation in Parliamentary Committee Report can be relied on but cannot be held to binding between parties

Use of parliamentary materials including Standing Committee report in courts, does not violate the parliamentary privilege as enshrined in Article 9 of the (English) Bill of Rights (1688). All references to parliamentary proceedings and materials do not amount to breach of privilege to invite contempt of Parliament. However, no party can be allowed to "question" or "impeach" report of Parliamentary Committee. The court has the right to decide the "lis" on the basis of the material and evidence brought by the parties. Any observation in the report or inference of the Committee cannot be held to be binding between the parties or prohibit either of the parties to lead evidence to prove their stand in court of law. Unfair disadvantage stands removed in the above manner. The rules of Parliament, procedure permit the production of parliamentary materials in a court of law as evidence. The parliamentary materials which are public documents can be submitted before the Court without taking any permission from Parliament. Thus, no exception can be taken in producing reports of Parliament Committee before a court of law. The Evidence Act, 1872, which regulates the admission of evidence in court of law, also refers to proceedings in Parliament as a public document of which the Court shall take judicial notice. Therefore, there is no violation of any parliamentary privilege in accepting reports of Parliamentary Committee in court. (Paras 376 to 397)

Pepper (Inspector of Taxes) v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3; *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC); *R.* v. *Murphy*, (1986) 64 ALR 498 : (1986) 5 NSWLR 18; *R.* v. *Secy. of State for the Home Department, ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL); *Wilson* v. *First County Trust Ltd. (No. 2)*, (2004) 1 AC 816 : (2003) 3 WLR 568 : 2003 UKHL 40 (HL); *R.* v. *F.*, 2007 QB 960 : (2007) 3 WLR 164 (CA); *Office of Govt. Commerce* v. *Information Commr.*, 2010 QB 98 : (2009) 3 WLR 627; *Catering Cleaners of Southern Railway* v. *Union of India*, (1987) 1 SCC 700 : 1987 SCC (L&S) 77; *State of Maharashtra* v. *Milind*, (2001) 1 SCC 4 : 2001 SCC (L&S) 117; *Aruna Roy* v. *Union of India*, (2002) 7 SCC 368 : 5 SCEC 310; *M.C. Mehta* v. *Union of India*, (2017) 7 SCC 243; *Lal Babu Priyadarshi* v. *Amritpal Singh*, (2015) 16 SCC 795 : (2016) 3 SCC (Civ) 649; *Gujarat Electricity Board* v. *Hind Mazdoor Sabha*, (1995) 5 SCC 27 : 1995 SCC (L&S) 1166; *Modern Dental College & Research Centre* v. *State of M.P.*, (2016) 7 SCC 353 : 7 SCEC 1; *Krishan Lal Gera* v. *State of Haryana*, (2011) 10 SCC 529; *Federation of Tour Operators* v. *HM Treasury*, 2007 EWHC 2062 (Admin) : 2008 STC 547; *R.* v. *Secy. of State for Trade, ex p Anderson Strathclyde Plc.*, (1983) 2 All ER 233 (DC), *referred to*

R. v. *Secy. of State for Home Department*, 2002 QB 129 : (2001) 3 WLR 323 : 2001 EWCA Civ 789, *cited*

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Exclusionary rules how far applicable in the Indian context

It is not disputed that parliamentary reports and materials can be used for the purposes of taking into consideration legislative history for interpretation of statute as well as for considering the statement made by a Minister. When there is no breach of privilege in considering the parliamentary materials and reports of the Committee by the Court for the above two purposes, there is no reason why courts should be debarred from accepting the parliamentary materials and reports as evidence before it, provided the parties are not permitted to question or impeach the reports. (Paras 399 to 412)

Standard Chartered Bank v. *A.B.F.S.L.*, 2001 SCC OnLine Bom 588; *SBI* v. *National Housing Bank*, (2013) 16 SCC 538 : (2014) 5 SCC (Civ) 523; *Common Cause* v. *Union of India*, (2017) 7 SCC 158, *distinguished*

Jyoti Harshad Mehta v. *Custodian*, (2009) 10 SCC 564 : (2010) 2 SCC (Cri) 1494; *State of Mysore* v. *R.V. Bidap*, (1974) 3 SCC 337 : 1973 SCC (L&S) 538, *referred to*

Black-Clawson International Ltd. v. *Papierwerke Waldhof-Aschaffenburg A.G.*, 1975 AC 591 : (1975) 2 WLR 513 (HL); *R.* v. *Olugboja*, 1982 QB 320 : (1981) 3 WLR 585 (CA); *R.* v. *Bloxham*, (1983) 1 AC 109 : (1982) 2 WLR 392 (HL); *Ram Krishna Dalmia* v. *S.R. Tendolkar*, AIR 1958 SC 538; *Madhava Singh* v. *Secy. of State for India in Council*, 1904 SCC OnLine PC 18 : (1903-04) 31 IA 239; *M.V. Rajwade* v. *S.M. Hassan*, 1953 SCC OnLine MP 90 : AIR 1954 Nag 71 : 1954 Cri LJ 366; *State of Karnataka* v. *Union of India*, (1977) 4 SCC 608; *Sham Kant* v. *State of Maharashtra*, 1992 Supp (2) SCC 521 : 1992 SCC (Cri) 765; *T.T. Antony* v. *State of Kerala*, (2001) 6 SCC 181 : 2001 SCC (Cri) 1048, *cited*

Separation of powers and maintaining a delicate balance between the Legislature, Executive and Judiciary

The essential characteristic of a Federation is distribution of limited Executive, Legislative and Judicial authority and the supremacy of the Constitution. (Para 413)

Ram Jawaya Kapur v. *State of Punjab*, (1955) 2 SCR 225 : AIR 1955 SC 549, *relied on*

The Constitution does not envisage supremacy of any of the three organs of the State. But, functioning of all the three organs is controlled by the Constitution. Wherever, interaction and deliberations among the three organs have been envisaged, a delicate balance and mutual respect are contemplated. All the three organs have to strive to achieve the constitutional goal set out for "We the People". Mutual harmony and respect have to be maintained by all the three organs to serve the Constitution under which we all live. (Para 414)

Kesavananda Bharati v. *State of Kerala*, (1973) 4 SCC 225; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413, *relied on*

There is no parliamentary privilege that Parliamentary Committee reports or other parliamentary materials cannot be given in evidence in any court of law. By accepting Parliamentary Report as an evidence, there is no breach of any parliamentary privilege. There is a vital difference between parliamentary sovereignty in England and constitutional supremacy in this country. Any law made by Parliament, which violates the fundamental rights guaranteed under Part III of the Constitution, can be set aside by the Supreme Court in exercise of jurisdiction of judicial review which has been granted by the Constitution to the Supreme Court. Parliamentary sovereignty, as enjoyed by the United Kingdom is not a parallel example in reference to functioning of different organs in this country, as controlled

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by the Constitution of India. The parliamentary privilege, as guaranteed under Article 9 of the Bill of Rights, 1688 that no proceeding of Parliament can be questioned and impeached thus has to be applied, subject to express constitutional provisions as contained in the Constitution of India. (Para 415)

Although, there is no rigid separation of powers under the Constitution of India, but functions of all the three wings have been sufficiently differentiated and each has freedom to carry out its functions unhindered by any other wing of the State. However, in functioning of all the three organs, a delicate balance, mutual harmony and respect have to be maintained for true working of the Constitution. (Para 416)

Article 121 and Article 122 of the Constitution of India

Although, heading of Article 122 reads "Courts not to enquire into proceedings of Parliament" but substantive provision of the Constitution, as contained in Article 122(1) debars the court from questioning the validity of any parliamentary proceeding *on the ground of any alleged irregularity or procedure*. The embargo on the court to question the proceeding is thus limited on the aforesaid ground alone. There is no total prohibition from examining the validity of the proceeding if the proceedings are clearly in breach of fundamental rights or other constitutional provisions. (Para 418)

Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964, AIR 1965 SC 745 : (1965) 1 SCR 413, *relied on*

The power of judicial review enjoyed by the Supreme Court in reference to legislation and some parliamentary proceedings are recognised exceptions, when the Supreme Court can enter into parliamentary domain. In all other respects, parliamentary supremacy with regard to its proceedings, the procedure followed has to be accepted. (Para 421)

On the strength of Article 122, it cannot be contended that Parliamentary Standing Committee reports can neither be admitted in evidence in court nor the said reports can be utilised for any purpose. (Para 422)

Fair comments on reports of Parliamentary Committee, permissible and not breach of privilege

Deeper public interest is served in making public, the conduct of a public servant or any inquiry public. Fair comments on report of the Parliamentary Committee are fully protected under the rights guaranteed under Article 19(1)(*a*). However, the comments when turn into personal attack on the individual Member of Parliament or the House or made in vulgar or abusive language tarnishing the image of Member or the House, the said comments amount to contempt of the House and breach of privilege. No party is precluded in making fair comments on the Parliamentary Committee report which comments remain within the bounds of a fair comments and does not transgress the limits prescribed for fair comments without breach of privilege. The Parliamentary Committee reports when published, the Press is entitled to make fair comments. (Paras 423 to 438)

Pepper (Inspector of Taxes) v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL); *Adam* v. *Ward*, 1917 AC 309 (HL); *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413; *R.* v. *Murphy*, (1986) 64 ALR 498 : (1986) 5 NSWLR 18, *relied on*

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Wason v. *Walter*, (1868) LR 4 QB 73; *Burdett* v. *Abbot*, (1811) 14 East 1 : 104 ER 501, *approved*

Romesh Thappar v. *State of Madras*, 1950 SCR 594 : AIR 1950 SC 124 : (1950) 51 Cri LJ 1514; *Bennett Coleman & Co.* v. *Union of India*, (1972) 2 SCC 788, *referred to*

Andre Paul Terence Ambard v. *Attorney General of Trinidad and Tobago*, 1936 SCC OnLine PC 15 : AIR 1936 PC 141, *cited*

Justice Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford University Press 2009) pp. 32-33, *relied on*

Erskine May: *Parliamentary Practice* (24h Edn.), *referred to*

Issues have to be adjudicated by court independently — Facts stated in Parliamentary Committee report cannot be treated as binding and conclusive

"Adjudication" is the power of Court to decide and pronounce a judgment and carry it into effect between the persons and parties who bring a cause before it for a decision. Both for civil and criminal cases people look forward to courts for justice. To decide the controversy between its subject had always been treated as a part of sovereign functions. Constitutional law developments emphasised separation of powers of governmental functions for protecting rights and liberties of people. The apprehension of the respondents that their case shall be prejudiced if the Court accepts the Parliamentary Committee report in evidence, is misplaced. By acceptance of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues, facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it and in which adjudication Parliamentary Committee report may only be one of the materials, what weight has to be given to one or other evidence is the adjudicatory function of the court which may differ from case to case. The Parliamentary Committee reports cannot be treated as conclusive or binding of what has been concluded in the Report. When adjudication of any claim fastening any civil or criminal liability on an individual is up in a court of law, it is open for a party to rely on all evidence and materials which is in its power and court has to decide the issues on consideration of the entire material brought before it. When the Parliamentary Committee report is not adjudication of any civil or criminal liability of the private respondents, their fear that acceptance of report shall prejudice their case is unfounded. By accepting Parliamentary Committee report on the record in this case and considering the Report by the Supreme Court, the respondents' right to dispel conclusions and findings in the Report is not taken away and they are free to prove their case in accordance with law. (Paras 440 to 448)

State of Karnataka v. *Union of India*, (1977) 4 SCC 608, *relied on*

I.R. Coelho v. *State of T.N.*, (2007) 2 SCC 1; *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413; *Dingle* v. *Associated Newspapers Ltd.*, (1960) 2 QB 405 : (1960) 2 WLR 430, *referred to*

Montesquieu, *L'Esprit des Lois*, 1748; James Madison *The Federalist* 47, 48 and 51, *referred to*

Conclusions

(*i*) According to Article 105(2) of the Constitution no Member of Parliament can be held liable for anything said by him in Parliament or in any committee. The reports submitted by Members of Parliament are also fully covered by protection extended under Article 105(2) of the Constitution. (Para 449.1)

(*ii*) The publication of the reports not being only permitted, but also are being encouraged by Parliament. The general public is keenly interested in

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knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country. The right to know about the reports only arises when they have been published for use of the public in general. (Para 449.2)

(*iii*) Section 57(4) of the Evidence Act, 1872 makes it clear that the course of proceedings of Parliament and the Legislature, established under any law are facts of which judicial notice shall be taken by the Court. (Para 449.3)

(*iv*) Parliament has already adopted a report of "privilege committee", that for those documents which are public documents within the meaning of the Evidence Act, there is no requirement of any permission of the Speaker of Lok Sabha for producing such documents as evidence in court. (Para 449.4)

(*v*) That mere fact that document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents are also true and correct. (Para 449.5)

(*vi*) When a party relies on any fact stated in the Parliamentary Committee report as the matter of noticing an event or history no exception can be taken on such reliance of the report. However, no party can be allowed to "question" or "impeach" report of Parliamentary Committee. The parliamentary privilege, that it shall not be impeached or questioned outside Parliament shall equally apply both to a party who files claim in the court and other who objects to it. Any observation in the report or inference of the Committee cannot be held to be binding between the parties. The parties are at liberty to lead evidence independently to prove their stand in a court of law. (Para 449.6)

(*vii*) Both the parties have not disputed that parliamentary reports can be used for the purposes of legislative history of a statute as well as for considering the statement made by a minister. When there is no breach of privilege in considering the parliamentary materials and reports of the Committee by the Court for the above two purposes, there is no valid reason for not accepting the submission of the petitioner that courts are not debarred from accepting the parliamentary materials and reports, on record, before it, provided the court does not proceed to permit the parties to question and impeach the reports. (Para 449.7)

(*viii*) The Constitution does not envisage supremacy of any of the three organs of the State. But, functioning of all the three organs is controlled by the Constitution. Wherever, interaction and deliberations among the three organs have been envisaged, a delicate balance and mutual respect are contemplated. All the three organs have to strive to achieve the constitutional goal set out for "We the People". Mutual harmony and respect have to be maintained by all the three organs to serve the Constitution under which we all live. (Para 449.8)

(*ix*) Fair comments on report of the Parliamentary Committee are fully protected under the rights guaranteed under Article 19(1)(*a*). However, the comments when turn into personal attack on the individual Member of Parliament or the House or made in vulgar or abusive language tarnishing the image of the Member or the House, the said comments amount to contempt of the House and breach of privilege. (Para 449.9)

(*x*) The function of adjudicating rights of the parties has been entrusted to the constituted courts as per constitutional scheme, which adjudication has to be made after observing the procedural safeguards which include the right to be

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heard and the right to produce evidence. Parliament, however, is not vested with any adjudicatory jurisdiction which belongs to judicature under the constitutional scheme. (Para 449.10)

(*xi*) Admissibility of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues of facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it. (Para 449.11)

The questions having been answered as above, the writ petitions to be listed before the appropriate Bench for hearing. (Para 450)

SS-D/60470/C

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136. 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510, *State of W.B.* v. *Anwar Ali Sarkar* 41*g*
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138. AIR 1950 SC 27 : (1950) 51 Cri LJ 1383 : 1950 SCR 88, *A.K. Gopalan* v. *State of Madras* **(held, overruled)** 51*f-g*, 52*a*
139. (1947) 74 CLR 31 (Aust), *Melbourne Corpn.* v. *Commonwealth* 53*e*
140. 1939 AD 537, *Jajbhay* v. *Cassim* 85*a*
141. 1936 SCC OnLine PC 15 : AIR 1936 PC 141, *Andre Paul Terence Ambard* v. *Attorney General of Trinidad and Tobago* 186*c*
142. 1934 SCC OnLine PC 51 : AIR 1935 PC 34 : 153 IC 1, *Gerald Lord Strickland* v. *Carmelo Mifsud Bonnici* 131*c*, 158*d-e*
143. 1917 AC 309 (HL), *Adam* v. *Ward* 184*e*
144. 1912 AC 571 (PC), *Attorney General for Ontario* v. *Attorney General for Canada* 42*f*
145. 1910 SCC OnLine Cal 224 : ILR (1910) 37 Cal 760 : 14 CWN 945 : 6 IC 81, *"The Englishman" Ltd.* v. *Lajpat Rai* 131*c*
146. 1904 SCC OnLine PC 18 : (1903-04) 31 IA 239, *Madhava Singh* v. *Secy. of State for India in Council* 177*g-h*
147. (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC), *Bradlaugh* v. *Gossett* 72*b*, 72*f-g*, 98*f-g*, 99*d*, 100*e*, 111*b-c*, 113*b-c*, 162*a*, 162*e*, 162*f-g*
148. 1878 SCC OnLine PC 17 : (1877-78) 5 IA 178, *R.* v. *Burah* 42*e*
149. (1868) LR 4 QB 73, *Wason* v. *Walter* 151*f-g*, 151*g*, 152*d*, 182*e-f*, 182*e-f*
150. (1840) 11 Ad & E 273 : (1840) 113 ER 419, *Sheriff of Middlesex* 72*f-g*
151. (1839) 9 Ad & E 1 : 112 ER 1112 (QB), *Stockdale* v. *Hansard* 72*f*, 100*e*, 161*f*, 162*b-c*
152. (1831) 2 Russ & M 639 : 39 ER 538 : 1831 Eng R 809, *Wellesley* v. *Duke of Beaufort* 71*c*
153. (1811) 14 East 1 : 104 ER 501, *Burdett* v. *Abbot* 100*e*, 162*b*, 185*f-g*
154. (1703) 2 Ld Raym 938 : 92 ER 126, *Ashby* v. *White* 72*f*

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The Judgments* of the Court were delivered by

DIPAK MISRA, C.J. (*for himself and Khanwilkar, J.; Sikri and Chandrachud, JJ. and Bhushan, J., concurring*)—

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A. *Introduction*

1. In a parliamentary democracy where human rights are placed on a high pedestal and a rights-oriented Constitution is sought to be interpreted, it becomes the obligation on the part of the constitutional courts to strike a balance between emphatic hermeneutics on progressive perception of the provisions

* **Ed.**: Dipak Misra, C.J. delivered the leading opinion of the Court for himself and Khanwilkar, J. Sikri & Chandrachud, JJ. and Bhushan, J. delivered concurring opinions.

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of the Constitution on the one hand and the self-imposed judicial restraint founded on self-discipline on the other hand, regard being had to the nature and character of the article that falls for interpretation and its constitutional vision and purpose.

2. The courts never allow a constitutional provision to be narrowly construed keeping in view the principle that the Constitution is a living document and organic which has the innate potentiality to take many a concept within its fold. The courts, being alive to their constitutional sensibility, do possess a progressive outlook having a telescopic view of the growing jurisprudence. Nonetheless, occasions do arise where the constitutional consciousness is invoked to remind the Court that it should not be totally oblivious of the idea, being the final arbiter of the Constitution, to strike the requisite balance whenever there is a necessity, for the Founding Fathers had wisely conceived the same in various articles of the grand fundamental document.

3. In the present case, this delicate balance is the cardinal issue, as it seems to us, and it needs to be resolved in the backdrop of both the principles. The factual score that has given rise to the present reference to be dealt with by us is centred on the issue as to whether a Parliamentary Standing Committee (PSC) report can be placed reliance upon for adjudication of a fact in issue and also for what other purposes it can be taken aid of. That apart, to arrive at the ultimate conclusion, we will be required to navigate and steer through certain foundational fundamentals which take within its ambit the supremacy of the Constitution, constitutional limitations, separation of powers, power of judicial review and self-imposed restraint, interpretation of constitutional provisions in many a sphere, the duty of Parliamentary Committee in various democracies and also certain statutory provisions of the Evidence Act, 1872 (for brevity "the Evidence Act").

B. ***The factual background***

4. The initial debate and deliberation before the two-Judge Bench that was hearing the instant writ petitions had focussed around the justifiability of the action taken by the Drugs Controller General of India and the Indian Council of Medical Research (ICMR) pertaining to the approval of a vaccine, namely, Human Papilloma Virus (HPV) manufactured by Respondent 7, M/s GlaxoSmithKline Asia Pvt. Ltd., and Respondent 8, MSD Pharmaceuticals (P) Ltd., for preventing cervical cancer in women and the experimentation of the vaccine was done as an immunisation by the Governments of Gujarat and Andhra Pradesh (before bifurcation, the State of Andhra Pradesh, eventually the State of Andhra Pradesh and the State of Telangana) with the charity provided by Respondent 6, namely, PATH International.

5. Apart from the aforesaid issue, the grievance with regard to the untimely death of certain persons and the grant of compensation on the foundation that there had been experiment of the drugs on young girls who had not reached the age of majority without the consent of their parents/guardians was also highlighted. Be it stated, it was also projected that women, though being fully informed, had become victims of the said vaccination. In essence, the submissions were advanced pertaining to the hazards of the vaccination

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and obtaining of consent without making the persons aware of the possible after-effects and the consequences of the administration of such vaccine. The two-Judge Bench had passed certain orders[1] from time to time with which we are not presently concerned.

6. In the course of hearing before the two-Judge Bench, the learned counsel for the writ petitioners had invited the attention of the Bench to a report of the Parliamentary Standing Committee (PSC) and the Court had directed the Governments to file affidavits regarding the steps taken keeping in view the various instructions given from time to time including what has been stated in the report of the PSC. Certain affidavits were filed by the respondents stating about the safety of the vaccination and the steps taken to avoid any kind of hazard or jeopardy. That apart, the allegations made in the writ petitions were also controverted.

B.1 ***The Reference***

7. When the matter stood thus, the learned Senior Counsel for Respondent 8, MSD Pharmaceuticals (P) Ltd., and the learned Additional Solicitor General appearing for the Union of India submitted that this Court, while exercising the power of judicial review or its expansive jurisdiction under Article 32 of the Constitution of India dealing with public interest litigation, cannot advert to the report of the PSC and on that basis, exercise the power of issue of a writ in the nature of mandamus and issue directions. The assistance of the learned Attorney General was also sought keeping in view the gravity of the issue involved.

8. After hearing the matter, the two-Judge Bench in *Kalpana Mehta* v. *Union of India*[2] thought it appropriate to refer it to a Constitution Bench under Article 145(3) of the Constitution and in that regard, the Division Bench expressed thus: (SCC pp. 321-22, paras 72 & 73)

> "72. The controversy has to be seen from the perspective of judicial review. The basic principle of judicial review is to ascertain the propriety of the decision-making process on the parameters of reasonableness and propriety of the executive decisions. We are not discussing about the parameters pertaining to the challenge of amendments to the Constitution or the constitutionality of a statute. When a writ of mandamus is sought on the foundation of a factual score, the Court is required to address the facts asserted and the averments made and what has been stated in oppugnation. Once the Court is asked to look at the report, the same can be challenged by the other side, for it cannot be accepted without affording an opportunity of being heard to the respondents. The invitation to contest a Parliamentary Standing Committee report is likely to disturb the delicate balance that the Constitution provides between the constitutional institutions. If the Court allows contest and adjudicates on the report, it may run counter to the spirit of privilege of Parliament which the Constitution protects.

1 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295
2 (2017) 7 SCC 295 : (2017) 7 SCC 307

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73. As advised at present, we are prima facie of the view that the Parliamentary Standing Committee report may not be tendered as a document to augment the stance on the factual score that a particular activity is unacceptable or erroneous. However, regard being had to the substantial question of law relating to interpretation of the Constitution involved, we think it appropriate that the issue be referred to the Constitution Bench under Article 145(3) of the Constitution."

9. Thereafter, the two-Judge Bench framed the following questions for the purpose of reference to the Constitution Bench: (*Kalpana Mehta case*[2], SCC p. 322, para 73)

"*73.1*. (*i*) Whether in a litigation filed before this Court either under Article 32 or Article 136 of the Constitution of India, the Court can refer to and place reliance upon the report of the Parliamentary Standing Committee?

73.2. (*ii*) Whether such a report can be looked at for the purpose of reference and, if so, can there be restrictions for the purpose of reference regard being had to the concept of parliamentary privilege and the delicate balance between the constitutional institutions that Articles 105, 121 and 122 of the Constitution conceive?"

Because of the aforesaid reference, the matter has been placed before us.

C. ***Contentions of the petitioners***

10. At the very outset, it is essential to state that the argument has been advanced by the learned counsel appearing for the petitioners that the lis raised neither relates to parliamentary privileges as set out in Article 105 of the Constitution nor does it pertain to the concept of separation of powers nor does it require any adjudication relating to the issue of mandamus for the enforcement of the recommendations of the PSC report. What is suggested is that the Court should not decide the controversy as per the facts stated in the report of the PSC treating it to be conclusive; rather the Court should take judicial notice of the same as provided under Section 57(4) of the Evidence Act. It is also urged that the Court has the jurisdiction under Article 32 of the Constitution to conduct an independent inquiry being assisted by the Court Commissioners and also give direction for production of the documents from the executive.

11. It is put forth in simplest terms that the petitioners are entitled to bring the facts stated in the report to the notice of the Court and persuade the Court to analyse the said facts and express an opinion at variance with the report, for the proceedings in the Court are independent of the PSC report which only has persuasive value. Emphasising the concept of "judicial notice", it is propounded that the scope of judicial review does not rest on a narrow spectrum and the Court under the Constitution is within its rights to draw factual and legal

2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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conclusions on the basis of wide spectrum of inputs and materials including what has been stated in the PSC report.

a **12.** The aforesaid submission, as is noticeable, intends to convey that no constitutional debate should be raised with regard to reliance on the report of PSC and the Court should decide without reference to the concepts of parliamentary privilege, separation of powers and comity of institutions. The argument, in entirety, put forth by the petitioners is not founded on the said bedrock inasmuch as Mr Colin Gonsalves and Mr Anand Grover, learned b Senior Counsel appearing for the petitioners, have argued that the constitutional court in exercise of the power of judicial review can take note of the report of the PSC and also rely upon the said report within the constitutional parameters and the proposition does not invite any constitutional discordance.

13. It is further contended by the counsel for the petitioners that the concept of parliamentary privilege is enshrined under Article 105 of the Constitution c which guarantees freedom of speech within the House during the course of the proceedings of the House and the said freedom has been conferred to ensure that the Members of Parliament express themselves freely in Parliament without fear of any impediment of inviting any civil or criminal proceedings. The initial part of clause (2) of Article 105 confers, inter alia, immunity to the Members of Parliament from civil and criminal proceedings before any court in respect of d "anything said" or "any vote given" by Members of Parliament in Parliament or any committee thereof.

14. It is argued that this being the position, the factual score of the instant case does not invite the wrath of violation of parliamentary privilege which Article 105 seeks to protect. It is because the limited issue that emerges in the present case is to see the Parliamentary Standing Committee reports. Thus, e looking at the report for arriving at the truth by the Court in its expansive jurisdiction under Article 32 of the Constitution remotely touches the concept of privilege under Article 105 of the Constitution.

15. It is further canvassed that the facts that have been arrived at by the Parliamentary Committee are of immense assistance for the adjudication of the controversy in question and in such a situation, it is crystal clear that the purpose f of the petitioners is not to file a civil or criminal case against any Member of Parliament or any member of the Standing Committee. Therefore, the violation of parliamentary privilege does not arise.

16. The learned counsel for the petitioners would contend that this Court is neither called upon to comment expressly or otherwise on the report nor a g writ of mandamus has been sought for enforcement of the recommendations in the report. It is brought on record so that the Court can look at the facts stated therein and arrive at a just conclusion in support of other facts.

D. ***Contentions of the respondents***

17. Both the facets of the arguments advanced by the learned counsel appearing for the petitioners have been seriously opposed by Mr K.K. h Venugopal, learned Attorney General for India, Mr Harish N. Salve, Mr Gourab

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Banerji and Mr Shyam Divan, learned Senior Counsel appearing for the contesting respondents. Their basic propositions are grounded, first on constitutional provisions which prescribe the privilege of Parliament and how the report of a PSC is not amenable to contest and the limited reliance that has been placed by this Court on the report of PSC or the speech of a Minister on the floor of the legislature only to understand the provisions of a statute in certain context and second, the limited interpretation that is required to be placed on the words "judicial notice" as used in Section 57(4) of the Evidence Act regard being had to the context. It is urged by them that allowing contest and criticism of the report would definitely create a stir in the constitutional balance.

18. It is also highlighted that in a public interest litigation, the Court has relaxed the principle of locus standi, encouraged epistolary jurisdiction, treated the petitioner as a relator, required the parties on certain occasions not to take an adversarial position and also not allowed technicalities to create any kind of impediment in the dispensation of justice but the said category of cases cannot be put on a high pedestal to create a concavity in the federal structure of the Constitution or allow to place a different kind of interpretation on a constitutional provision which will usher in a crack in the healthy spirit of the Constitution.

19. We shall refer to the arguments and the authorities cited by both sides in the course of our deliberation. Suffice it to mention, the fundamental analysis has to be done on the base of the constitutional provisions, the constitutional values and the precedents. To address the issue singularly from the prism of Section 57(4) of the Evidence Act, we are afraid, will tantamount to oversimplification of the issue. Therefore, the said aspect shall be addressed to at the appropriate stage.

E. ***Supremacy of the Constitution***

20. The Constitution of India is the supreme fundamental law and all laws have to be in consonance or in accord with the Constitution. The constitutional provisions postulate the conditions for the functioning of the legislature and the executive and prescribe that the Supreme Court is the final interpreter of the Constitution. All statutory laws are required to conform to the fundamental law, that is, the Constitution. The functionaries of the three wings, namely, the legislature, the executive and the judiciary, as has been stated in *Kesavananda Bharati* v. *State of Kerala*[3], derive their authority and jurisdiction from the Constitution. Parliament has the exclusive authority to make laws and that is how the supremacy of Parliament in the field of legislation is understood. There is a distinction between parliamentary supremacy in the field of legislation and constitutional supremacy. The Constitution is the fundamental document that provides for constitutionalism, constitutional governance and also sets out morality, norms and values which are inhered in various articles and sometimes are decipherable from the constitutional silence. Its inherent dynamism makes it organic and, therefore, the concept of "constitutional sovereignty" is sacrosanct. It is extremely sacred and, as stated

3 (1973) 4 SCC 225 : AIR 1973 SC 1461

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earlier, the authorities get their powers from the Constitution. It is "the source". Sometimes, the constitutional sovereignty is described as the supremacy of the Constitution.

21. In *State of Rajasthan* v. *Union of India*[4], Bhagwati, J. (as his Lordship then was), in his concurring opinion, stated that the Constitution is *suprema lex*, the paramount law of the land and there is no department or branch of Government above or beyond it. The learned Judge, proceeding further, observed that every organ of the Government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. Observing about the power of this Court, he ruled that this Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of the Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits. He further observed that it is for this Court to uphold the constitutional values and to enforce the constitutional limitations, for it is the essence of the rule of law. Elaborating the said concept, Sabharwal, C.J. in *I.R. Coelho* v. *State of T.N.*[5], speaking for the nine-Judge Bench, held that the supremacy of the Constitution embodies that constitutional bodies are required to comply with the provisions of the Constitution. It also mandates a mechanism for testing the validity of legislative acts through an independent organ viz. the judiciary.

22. Be it noted, in the *I.R. Coelho case*[5], a distinction was drawn between parliamentary and constitutional sovereignty. Speaking on the same, the Bench opined that our Constitution was framed by a Constituent Assembly which was not Parliament. It is in the exercise of law-making power by the Constituent Assembly that we have a controlled Constitution. Articles 14, 19 and 21 represent the foundational values which form the bedrock of the rule of law. These are the principles of constitutionality which form the basis of judicial review apart from the rule of law and separation of powers.

23. Thus, the three wings of the State are bound by the doctrine of constitutional sovereignty and all are governed by the framework of the Constitution. The Constitution does not accept transgression of constitutional supremacy and that is how the boundary is set.

F. *Constitutional limitations upon the legislature*

24. The law-making power of Parliament or the State Legislature is bound by the concept of constitutional limitation. It is necessary to appreciate what precisely is meant by constitutional limitation.

25. In *State of W.B.* v. *Anwar Ali Sarkar*[6], this Court, in the context of freedom of speech and expression conferred by Article 19(1)(*a*) of the Constitution, applied the principle of constitutional limitation and opined that where a law purports to authorise the imposition of restrictions on

4 (1977) 3 SCC 592
5 (2007) 2 SCC 1
6 1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510

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a fundamental right in a language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. The emphasis was laid on constitutional limitation.

26. In *K.C. Gajapati Narayan Deo* v. *State of Orissa*[7], the Court adverted to the real purpose of legislation and colourable legislation and, in that context, expressed that when a scrutiny is made, it may appear that the real purpose of a legislation is different from what appears on the face of it. It would be a colourable legislation only if it is shown that the real object is different as a consequence of which it lies within the exclusive field of another legislature.

27. Dwelling upon the legal effect of a constitutional limitation of legislative power with respect to a law made in derogation of that limitation, the Court in *Deep Chand* v. *State of U.P.*[8] reproduced a passage from Cooley's book on *Constitutional Limitation* (8th Edn., Vol. I) which is to the following effect: (AIR p. 656, para 14)

> "*14.* … 'From what examination has been given to this subject, it appears that whether a statute is constitutional or not is always a question of power; that is, a question whether the legislature in the particular case, in respect to the subject-matter of the Act, the manner in which its object is to be accomplished, and the mode of enacting it, has kept within the constitutional limits and observed the constitutional conditions.' "

Thereafter, the Constitution Bench referred to the observations of the Judicial Committee in *R.* v. *Burah*[9] wherein it was observed that whenever a question as to whether the legislature has exceeded its prescribed limits arises, the courts of justice determine the said question by looking into the terms of the instrument which created the legislative powers affirmatively and which restricted the said powers negatively.

28. The Constitution Bench in *Deep Chand case*[8] also referred to the observations of the Judicial Committee in *Attorney General for Ontario* v. *Attorney General for Canada*[10] which were later on lucidly explained by Mukherjea, J., (as he then was) in *K.C. Gajapati Narayan Deo*[7] to the effect that if the Constitution distributes the legislative powers amongst different bodies which have to act within their respective spheres marked out by specific legislative entries or if there are limitations on the legislature in the form of fundamental rights, the question will arise as to whether, in a particular case, the legislature has transgressed the limits of its constitutional power in respect of the subject-matter of the statute or in the method of making it.

7 1954 SCR 1 : AIR 1953 SC 375
8 1959 Supp (2) SCR 8 : AIR 1959 SC 648
9 1878 SCC OnLine PC 17 : (1877-78) 5 IA 178
10 1912 AC 571 (PC)

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29. Recently, in *Binoy Viswam* v. *Union of India*[11] this Court, while dealing with the exercise of sovereign power of the Centre and the States in the context of levy of taxes, duties and fees, observed that the said exercise of power is subject to constitutional limitation. It is imperative to remember that our Constitution has, with the avowed purpose, laid down the powers exercised by the three wings of the State and in exercise of the said power, the authorities are constitutionally required to act within their spheres having mutual institutional respect to realise the constitutional goal and to see that there is no constitutional transgression. The grammar of constitutional limitation has to be perceived as the constitutional fulcrum where control operates among the several power holders, that is, legislature, executive and judiciary. It is because the Constitution has created the three organs of the State.

30. Under the Constitution, Parliament and the State Legislatures have been entrusted with the power of law-making. Needless to say, if there is a transgression of the constitutional limitation, the law made by the legislature has to be declared ultra vires by the constitutional courts. That power has been conferred on the courts under the Constitution and that is why, we have used the terminology "constitutional sovereignty". It is an accepted principle that the rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State, whether it be the legislature or the executive or any other authority, should be within the constitutional limitations.

G. ***Doctrine of separation of powers***

31. Having stated about constitutional sovereignty and constitutional limitation, we may presently address the issue as to how the Constitution of India has been understood in the context of division of functions of the State.

32. In *Indira Nehru Gandhi* v. *Raj Narain*[12], Beg, J., in his concurring opinion, quoted what M.C. Setalvad, a distinguished jurist of India, had said in "The Common Law in India" (*The Hamlyn Lectures*), 12th Series, 1960. We think it appropriate to reproduce the paragraph in entirety: (SCC p. 217, para 572)

> "*572. … 'The Constitution divides the functions of the Union into the three categories of executive, legislative and judicial functions following* the pattern of the British North America Act and the Commonwealth of Australia Act. Though this division of functions is not based on the doctrine of separation of powers as in the United States yet there is a broad division of functions between the appropriate authorities so that, for example, the legislature will not be entitled to arrogate to itself the judicial function of adjudication.
>
> > '*12. … The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have*

11 (2017) 7 SCC 59
12 1975 Supp SCC 1

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> *been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another*.' [See *Ram Jawaya Kapur* v. *State of Punjab*[13] (AIR p. 556, para 12)].

This will no doubt strike one accustomed to the established supremacy of Parliament in England as unusual. In the course of its historical development Parliament has performed and in a way still performs judicial functions. Indeed the expression "Court of Parliament" is not unfamiliar to English lawyers. However, a differentiation of the functions of different departments is an invariable feature of all written Constitutions. The very purpose of a written Constitution is the demarcation of the powers of different departments of Government so that the exercise of their powers may be limited to their particular fields. *In countries governed by a written Constitution, as India is, the supreme authority is not Parliament but the Constitution. Contrasting it with the supremacy of Parliament, Dicey has characterised it as the supremacy of the Constitution*.' " (emphasis supplied)

33. The doctrine of separation of powers has become concrete in the Indian context when the Court in *Kesavananda Bharati case*[3] treated the same as a basic feature of the Constitution of India. In *State of H.P.* v. *Parent of a Student of Medical College*[14], this Court ruled that it is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. The Court further observed that it cannot usurp the functions assigned to the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.

34. In *State of T.N.* v. *State of Kerala*[15], this Court, laying down the principle of separation of powers, stated that even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of the rule of law.

13 (1955) 2 SCR 225 : AIR 1955 SC 549
3 *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461
14 (1985) 3 SCC 169
15 (2014) 12 SCC 696

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35. In *Bhim Singh* v. *Union of India*[16], the Court, for understanding the concept of separation of powers, observed that two aspects must be borne in mind. One, that separation of powers is an essential feature of the Constitution and secondly, that in modern governance, a strict separation is neither possible nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers and the same is founded on keen scrutiny of the constitutional text. The Constitution does not strictly prohibit overlap of functions and, in fact, provides for some overlap in a parliamentary democracy. What it prohibits is such exercise of function of the other branch which results in wresting away of the regime of constitutional accountability.

36. In *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*[17], *Federation of Railway Officers Assn.* v. *Union of India*[18] and *State of Maharashtra* v. *Raghunath Gajanan Waingankar*[19], the Court applied the principle of restraint, acknowledging and respecting the constitutional limitation upon the judiciary to recognise the doctrine of separation of powers and restrain itself from entering into the domain of the legislature. Elaborating further, this Court in *Aravali Golf Club* v. *Chander Hass*[20] observed that under our constitutional scheme, the Legislature, the Executive and the Judiciary have their own broad spheres of operation and each organ must have respect for the others and must not encroach into each other's domain, otherwise the delicate balance in the Constitution will be upset, and there will be a reaction.

37. In *Asif Hameed* v. *State of J&K*[21], the Court observed that the Constitution-makers have meticulously defined the functions of various organs of the State. The Legislature, the Executive and the Judiciary have to function within their own spheres demarcated under the Constitution. It further ruled that the Constitution trusts the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. The Legislature and the Executive, the two facets of people's will, have all the powers including that of finance. The judiciary has no power over the sword or the purse. Nonetheless, it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and the executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. The exercise of powers by the legislature and executive is subject to judicial restraint and the only check on the exercise of power by the judiciary is the self-imposed discipline of judicial restraint.

16 (2010) 5 SCC 538
17 (1997) 7 SCC 622 : 1997 SCC (Cri) 1120 : 1997 SCC (L&S) 1784 : AIR 1997 SC 3400
18 (2003) 4 SCC 289 : AIR 2003 SC 1344
19 (2004) 6 SCC 584 : AIR 2004 SC 4264
20 (2008) 1 SCC 683 : (2008) 1 SCC (L&S) 289
21 1989 Supp (2) SCC 364 : AIR 1989 SC 1899

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38. In *I.R. Coelho*[5], adverting to the issue of separation of powers, the nine-Judge Bench referred to the basic structure doctrine laid down in *Kesavananda Bharati*[3] by the majority and the reiteration thereof in *Indira Nehru Gandhi*[12] and reproduced a passage from Alexander Hamilton's book *The Federalist* and eventually held: (*I.R. Coelho case*[5], SCC p. 87, para 67)

> "*67*. The Supreme Court has long held that the separation of powers is part of the basic structure of the Constitution. Even before the basic structure doctrine became part of constitutional law, the importance of the separation of powers on our system of governance was recognised by this Court in *Special Reference No. 1 of 1964*[22]."

39. From the above authorities, it is quite vivid that the concept of constitutional limitation is a facet of the doctrine of separation of powers. At this stage, we may clearly state that there can really be no straitjacket approach in the sphere of separation of powers when issues involve democracy, the essential morality that flows from the Constitution, interest of the citizens in certain spheres like environment, sustenance of social interest, etc. and empowering the populace with the right to information or right to know in matters relating to candidates contesting election. There can be many an example where this Court has issued directions to the executive and also formulated guidelines for facilitation and in furtherance of fundamental rights and sometimes for the actualisation and fructification of statutory rights.

H. ***Power of judicial review***

40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in *Union of India* v. *Raghubir Singh*[23] by R.S. Pathak, C.J. thus: (SCC p. 766, para 7)

> "*7*. … The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. … With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India."

5 *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1
3 *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461
12 *Indira Nehru Gandhi* v. *Raj Narain*, 1975 Supp SCC 1
22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413
23 (1989) 2 SCC 754

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And again: (SCC p. 767, para 11)

> "*11.* Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41. This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43. In *S.C. Chandra* v. *State of Jharkhand*[24], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in *Suresh Seth* v. *Indore Municipal Corpn.*[25] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme,

24 (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897
25 (2005) 13 SCC 287

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Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn.* v. *Union of India*[26] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44. Recently, in *Census Commr.* v. *R. Krishnamurthy*[27], the Court, after referring to *Premium Granites* v. *State of T.N.*[28], *M.P. Oil Extraction* v. *State of M.P.*[29], *State of M.P.* v. *Narmada Bachao Andolan*[30] and *State of Punjab* v. *Ram Lubhaya Bagga*[31], held: (*R. Krishnamurthy case*[27], SCC p. 809, para 33)

> "*33*. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in *Virendra Singh* v. *State of U.P.*[32] has observed: (AIR p. 454, para 34)

> "*34*. … We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration."

26 (1989) 4 SCC 187 : 1989 SCC (L&S) 569
27 (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589
28 (1994) 2 SCC 691
29 (1997) 7 SCC 592
30 (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875
31 (1998) 4 SCC 117 : 1998 SCC (L&S) 1021
32 AIR 1954 SC 447

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46. While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as *sentinel on the qui vive* to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this context, has been aptly described in *K.S. Srinivasan* v. *Union of India*[33] wherein it was stated: (AIR p. 433, para 50)

> "*50.* … All I can see is a man who has been wronged and I can see a plain way out. I would take it."

47. Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr B.R. Ambedkar as "the very soul of the Constitution — the very heart of it — the most important Article". Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals.

I. *Interpretation of the Constitution — The nature of duty cast upon this Court*

48. Having stated about the supremacy of the Constitution and the principles of constitutional limitation, separation of powers and the spheres of judicial review, it is necessary to dwell upon the concept of constitutional interpretation. In *S.R. Bommai* v. *Union of India*[34], it has been said that for maintaining democratic process and to avoid political friction, it is necessary to direct the political parties within the purview of the constitutional umbrella to strongly adhere to constitutional values. There is no denial of the fact that the judiciary takes note of the obtaining empirical facts and the aspirations of the generation that are telescoped into the future. If constitutional provisions have to be perceived from the prism of growth and development in the context of time so as to actualise the social and political will of the people that was put to in words, they have to be understood in their life and spirit with the further potentiality to change.

49. A five-Judge Bench in *GVK Industries Ltd.* v. *CIT*[35] has lucidly expressed that our Constitution charges the various organs of the State with affirmative responsibilities of protecting the welfare and the security of the nation. Legislative powers are granted to enable the accomplishment of the goals of the nation. The powers of judicial review are granted in order to ensure that the legislative and executive powers are used within the bounds specified by the Constitution. The powers referred by the Constitution and implied and borne by the constitutional text have to be perforce admitted. Nevertheless, the very essence of constitutionalism is also that no organ of the State may arrogate

33 AIR 1958 SC 419
34 (1994) 3 SCC 1
35 (2011) 4 SCC 36

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to itself powers beyond what is specified by the Constitution. Speaking on the duty of the judiciary, the Court has opined that judicial restraint is necessary in dealing with the powers of another coordinate branch of the Government; but restraint cannot imply abdication of the responsibility of walking on that edge.

50. Stressing on the facet of interpreting any law, including the Constitution, the Court observed that the text of the provision under consideration would be the primary source for discerning the meanings that inhere in the enactment. It has also been laid down that in the light of the serious issues, it would always be prudent, as a matter of constitutional necessity, to widen the search for the true meaning, purport and ambit of the provision under consideration. No provision, and indeed no word or expression, of the Constitution exists in isolation—they are necessarily related to, transforming and, in turn, being transformed by other provisions, words and phrases in the Constitution. Therefore, the Court went on to say: (*GVK Industries case*[35], SCC p. 59, para 38)

> "*38.* Our Constitution is both long and also an intricate matrix of meanings, purposes and structures. It is only by locating a particular constitutional provision under consideration within that constitutional matrix could one hope to be able to discern its true meaning, purport and ambit. As Prof. Laurence Tribe points out:
>
> > '[T]o understand the Constitution as a legal text, it is essential to recognize the … sort of text it is: a *constitutive* text that purports, in the name of the people … to bring into being a number of distinct but inter-related institutions and practices, at once legal and political, and to define the rules governing those institutions and practices.' (See *"Reflections on Free-Form Method in Constitutional Interpretation"*[36], Harv L Rev p. 1235.)" (emphasis in original)

51. The Constitution being an organic document, its ongoing interpretation is permissible. The supremacy of the Constitution is essential to bring social changes in the national polity evolved with the passage of time. The interpretation of the Constitution is a difficult task. While doing so, the constitutional courts are not only required to take into consideration their own experience over time, the international treaties and covenants but also keep the doctrine of flexibility in mind. It has been so stated in *Union of India* v. *Naveen Jindal*[37].

52. In *S.R. Bommai*[34] the Court ruled that correct interpretation in proper perspective would be in the defence of democracy and in order to maintain the democratic process on an even keel even in the face of possible friction, it is but the duty of the Court to interpret the Constitution to bring the political parties within the purview of the constitutional parameters for accountability and to abide by the Constitution and the laws for their strict adherence. With the passage of time, the interpretative process has become expansive. It has

35 *GVK Industries Ltd.* v. *CIT*, (2011) 4 SCC 36
36 *Reflections on Free-Form Method in Constitutional Interpretation*, (1995) 108 Harv L Rev 1221
37 (2004) 2 SCC 510
34 *S.R. Bommai* v. *Union of India*, (1994) 3 SCC 1

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been built brick by brick to broaden the sphere of rights and to assert the constitutional supremacy to meet the legitimate expectations of the citizens. The words of the Constitution have been injected life to express connotative meaning.

53. Recently, in *K.S. Puttaswamy* v. *Union of India*[38], one of us (Dr D.Y. Chandrachud, J.) has opined that constitutional developments have taken place as the words of the Constitution have been interpreted to deal with new exigencies requiring an expansive reading of liberties and freedoms to preserve human rights under the Rule of Law. It has been further observed that the interpretation of the Constitution cannot be frozen by its original understanding, for the Constitution has evolved and must continuously evolve to meet the aspirations and challenges of the present and the future. The duty of the constitutional courts to interpret the Constitution opened the path for succeeding generations to meet the challenges. Be it stated, the Court was dealing with privacy as a matter of fundamental right.

54. In *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[39], the Court exposited that the Constitution has not only to be read in the light of contemporary circumstances and values but also in such a way that the circumstances and values of the present generation are given expression in its provisions. The Court has observed that constitutional interpretation is as much a process of creation as one of discovery. Thus viewed, the process of interpretation ought to meet the values and aspirations of the present generation and it has two facets, namely, process of creation and discovery. It has to be remembered that while interpreting a constitutional provision, one has to be guided by the letter, spirit and purpose of the language employed therein and also the constitutional silences or abeyances that are discoverable. The scope and discovery has a connection with the theory of constitutional implication. Additionally, the interpretative process of a provision of a Constitution is also required to accentuate the purpose and convey the message of the Constitution which is intrinsic to the Constitution.

I.1 *Interpretation of fundamental rights*

55. While adverting to the concept of the duty of the Court, we shall focus on the interpretative process adopted by this Court in respect of fundamental rights. In the initial years, after the Constitution came into force, the Court viewed each fundamental right as separate and distinct. That apart, the rule of restrictive interpretation was applied. The contours were narrow and limited. It is noticeable from the decision in *A.K. Gopalan* v. *State of Madras*[40]. The perception changed when the Court focussed on the actual impairment caused by the law rather than the literal validity of the law as has been observed in *I.R. Coelho*[5]. *I.R. Coelho*[5] referred to *Rustom Cavasjee Cooper* v. *Union of India*[41] and understood that the view rendered therein disapproved the viewpoint in

38 (2017) 10 SCC 1
39 (1993) 4 SCC 441
40 AIR 1950 SC 27 : (1950) 51 Cri LJ 1383 : 1950 SCR 88
5 *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1
41 (1970) 1 SCC 248

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A.K. Gopalan[40] and reflected upon the concept of impact doctrine in *Sakal Papers (P) Ltd.* v. *Union of India*[42]. The Court, after referring to *Sambhu Nath Sarkar* v. *State of W.B.*[43], *Haradhan Saha* v. *State of W.B.*[44] and *Khudiram Das* v. *State of W.B.*[45], reproduced a passage from *Maneka Gandhi* v. *Union of India*[46] which reads thus: (*I.R. Coelho case*[5], SCC p. 83, para 57)

> "*57. … '6. … The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article.*' (*Maneka Gandhi case*[46], SCC p. 282, para 6)" (emphasis in original)

56. The Court reproduced a passage from the opinion expressed by Krishna Iyer, J. which stated that the proposition is indubitable that Article 21 does not, in a given situation, exclude Article 19 if both the rights are breached.

57. In *I.R. Coelho*[5], the Court clearly spelt out that post *Maneka Gandhi*[46], it is clear that the development of fundamental rights had been such that it no longer involves the interpretation of rights as isolated protections which directly arise but they collectively form a comprehensive test against the arbitrary exercise of powers in any area that occurs as an inevitable consequence. The Court observed that the protection of fundamental rights has been considerably widened. In that context, reference had been made to *M. Nagaraj* v. *Union of India*[47] wherein it has been held that a fundamental right becomes fundamental because it has foundational value. That apart, one has also to see the structure of the article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution and, in particular, that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

I.2 *Interpretation of other constitutional provisions*

58. In this regard, we may note how the Constitution Benches have applied the principles of interpretation in relation to other constitutional provisions which are fundamental to constitutional governance and democracy. In *B.R. Kapur* v. *State of T.N.*[48], while deciding a writ of quo warranto, the majority

40 *A.K. Gopalan* v. *State of Madras*, AIR 1950 SC 27 : (1950) 51 Cri LJ 1383 : 1950 SCR 88
42 (1962) 3 SCR 842 : AIR 1962 SC 305
43 (1973) 1 SCC 856 : 1973 SCC (Cri) 618 : (1974) 1 SCR 1
44 (1975) 3 SCC 198 : 1974 SCC (Cri) 816 : (1975) 1 SCR 778
45 (1975) 2 SCC 81 : 1975 SCC (Cri) 435 : (1975) 2 SCR 832
46 (1978) 1 SCC 248
5 *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1
47 (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013
48 (2001) 7 SCC 231

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ruled that if a non-legislator could be sworn in as the Chief Minister under Article 164 of the Constitution, then he must satisfy the qualification of membership of a legislator as postulated under Article 173. *I.R. Coelho*[5], while deciding the doctrine of implied limitation and referring to various opinions stated in *Kesavananda Bharati*[3] and *Minerva Mills Ltd.* v. *Union of India*[49], ruled that the principle of implied limitation is attracted to the sphere of constitutional interpretation.

59. In *Manoj Narula* v. *Union of India*[50], the Court, while interpreting Article 75(1) of the Constitution, opined that reading of implied limitation to the said provision would tantamount to prohibition or adding a disqualification which is neither expressly stated nor impliedly discernible from the provision. Eventually, the majority expressed that when there is no disqualification for a person against whom charges have been framed in respect of heinous or serious offences or offences relating to corruption to contest the election, it is difficult to read the prohibition into Article 75(1) by interpretative process or, for that matter, into Article 164(1) to the powers of the Prime Minister or the Chief Minister in such a manner. That would come within the criterion of eligibility and would amount to prescribing an eligibility qualification and adding a disqualification which has not been stipulated in the Constitution. In the absence of any constitutional prohibition or statutory embargo, such disqualification cannot be read into Article 75(1) or Article 164(1) of the Constitution.

60. Another aspect that was highlighted in *Manoj Narula*[50] pertained to constitutional implication and it was observed that the said principle of implication is fundamentally founded on rational inference of an idea from the words used in the text. The concept of legitimate deduction is always recognised. In *Melbourne Corpn.* v. *Commonwealth*[51], Dixon, J. opined that constitutional implication should be based on considerations which are compelling. Mason, C.J., in *Australian Capital Television Pty. Ltd.* v. *Commonwealth*[52] (*Political Advertising case*), has ruled that there can be structural implications which are "logically or practically necessary for the preservation of the integrity of that structure". Any proposition that is arrived at taking this route of interpretation must find some resting pillar or strength on the basis of certain words in the text or the scheme of the text. In the absence of the same, it may not be permissible for a court to deduce any proposition as that would defeat the legitimacy of reasoning. A proposition can be established by reading a number of articles cohesively, for that will be in the domain of substantive legitimacy. Elaborating further, the Court proceeded to state that the said process has its own limitation for the Court cannot rewrite a constitutional provision. To justify the adoption of the said method of interpretation, there has to be a constitutional foundation.

5 *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1
3 *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225 : AIR 1973 SC 1461
49 (1980) 3 SCC 625
50 (2014) 9 SCC 1
51 (1947) 74 CLR 31 (Aust)
52 (1992) 177 CLR 106 (Aust)

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61. In *Kuldip Nayar* v. *Union of India*[53], a Constitution Bench, while interpreting Article 80 of the Constitution of India, relied upon a passage from *G. Narayanaswami* v. *G. Pannerselvam*[54]. The said authority clearly lays down that courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land. The Court observed that it may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so, the rule of "plain meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In the context of Article 80(4) of the Constitution in the context of "the representatives of each State", the Court repelled the argument that it is inherent in the expression "representative" that he/she must first necessarily be an elector in the State. It ruled that the "representative" of the State is the person chosen by the electors who can be any person who, in the opinion of the electors, is fit to represent them.

62. The Court, in *Union of India* v. *Sankalchand Himatlal Sheth*[55], ruled that it is to be remembered that when the Court interprets a constitutional provision, it breathes life into the inert words used in the founding document. The problem before the constitutional court is not a mere verbal problem. "Literalness", observed Frankfurter, J., "may strangle meaning" and he went on to add in *Massachusetts Bonding & Insurance Co* v. *United States*[56] that "there is no surer way to misread a document than to read it literally". The Court cannot interpret a provision of the Constitution by making "a fortress out of the dictionary". The significance of a constitutional problem is vital, not formal: it has to be gathered not simply by taking the words and a dictionary, but by considering the purpose and intendment of the Framers as gathered from the context and the setting in which the words occur. The difficulty of gathering the true intent of the law-giver from the words used in the statute was expressed by Holmes, J. in a striking and epigrammatic fashion when he said: "Ideas are not often hard but the words are the devil[57]" and this difficulty is all the greater when the words to be construed occur in a constitutional provision, for, as pointed out by Cardozo, J., "the process of constitutional interpretation is in the ultimate analysis one of reading values into its clauses".

63. In this backdrop, it is necessary to state that the Court has an enormous responsibility when it functions as the final arbiter of the interpretation of the constitutional provision.

64. We have discussed the concepts of supremacy of the Constitution and constitutional limitation, separation of powers, the ambit and scope of judicial review, judicial restraint, the progressive method adopted by the Court while interpreting fundamental rights and the expansive conception of such inherent rights. We have also deliberated upon the interpretation of other constitutional provisions that really do not touch the area of fundamental rights

53 (2006) 7 SCC 1
54 (1972) 3 SCC 717
55 (1977) 4 SCC 193 : 1977 SCC (L&S) 435
56 1956 SCC OnLine US SC 102 : 1 L Ed 2d 189 : 352 US 128 (1956)
57 R.E. Megarry, "A Second Miscellany-at-Law" (Stevens, London 1973) p. 152.

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but are fundamental for constitutional governance and the duty of the Court is not to transgress the constitutional boundaries. We may immediately add that in the case at hand, we are not concerned with the interpretation of such constitutional provisions which have impact on the fundamental rights of the citizens. We are concerned with the interpretation of certain provisions that relate to parliamentary privilege and what is protected by the Constitution in certain articles. This situation has emerged in the context of the Court's role to rely upon the reports of Parliamentary Standing Committees in the context of the constitutional provisions contained in Articles 105 and 122.

J. ***A perspective on the role of Parliamentary Committees***

65. It is necessary to understand the role of the Parliamentary Standing Committees or Ad hoc Committees. They are constituted with certain purposes. The formation of committee has history. "Committees have been described as a primary organisational device whereby legislatures can accommodate an increase in the number of Bills being introduced, while continuing to scrutinise legislation; handle the greater complexity and technical nature of Bills under review without an exponential growth in size; develop "division of labours" among members for considering legislation...."[58].

66. Woodrow Wilson, the 28th President of the United States, was quoted as saying in 1885 that "it is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its Committee rooms is Congress at work"[59]. This is because most of the work of Congress was referred to committees for detailed review to inform debate on the floor of the House.

67. Former US Representative James Shannon commented during a 1995 conference on the role of committees in Malawi's Legislature:

> "Around the world there is a trend to move toward more reliance on committees to conduct the work of Parliament, and the greatest reason for this trend is a concern for efficiency. The demands on a modern Parliament are numerous and it is not possible for the whole House to consider all the details necessary for performing the proper function of a legislature."[60]

68. Lord Campion in his book[61] has explained the dual sense in which the word "committee" was used in old parliamentary language:

> "In early days it is not the body as a whole but each single member that is meant by the term, 'the body is described as the committee' to whom

58 Source — Entering the Committee System: State Committee Assignments, Ronald D. Hedlund, Political; Research Quarterly, Vol. 42, Issue 4, pp. 597-625.

59 Woodrow Wilson, "Congressional Government", 1885, quoted in the JCOC Final Report, (Baltimore, the Johns Hopkins University Press, 1981) p. 69.

60 National Democratic Institute for International Affairs, Parliament's Organization: The Role of Committees and Party Whips — NDI Workshop in Mangochi, Malawi, June 1995 (Washington: National Democratic Institute for International Affairs, 1995).

61 *An Introduction to the Procedure of House of Commons.*

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the bill is committed. The formation of the terms is the same as that of any other English word which denotes the recipient in a bilateral relation of obligation, such as trustee, lessee, nominee, appointee. The body is usually referred to in the old authorities as 'committee'. But it was not long before it became usual to describe the totality of those to whom a bill was referred as a 'committee' in an abstract sense. In both the English word emphasis the idea of delegation and not that of representation in which the German word aussehuss expresses."

69. The utility of a committee has been succinctly expressed by Lord Beaconsfield[62]:

"I do not think there is anyone who more values the labour of Parliamentary Committees than myself. They obtain for the country an extraordinary mass of valuable information, which probably would not otherwise be had or available, and formed, as they necessarily are, of chosen men their reports are pregnant with prudent and sagacious suggestion for the improvements of the administration of affairs."

70. The importance of committees in today's democracy has further been detailed thus[63]:

"Committees may not be of much service in the more spectacular aspect of these democratic institutions, and they might not be of much use in shaping fundamental policy, or laying down basic principles of government. But they are absolutely indispensable for the detailed work of supervision and control of the administration. Not infrequently, do they carry out great pieces of constructive legislation of public economy. Investigation of a complicated social problem, prior to legislation, maybe and is frequently carried out by such legislative committees, the value of whose service cannot be exaggerated. They are useful for obtaining expert advice when the problem is a technical one involving several branches within an organisation, or when experts are required to advise upon a highly technical problem definable within narrow limits. The provision of advice based on an inquiry involving the examination of witnesses is also a task suitable for a committee. The employment of small committees, chosen from the Members of the House, for dealing with some of the items of the business of the House is not only convenient but is also in accordance with the established convention of Parliament. This procedure is particularly helpful in dealing with matters which, because of their special or technical nature, are better considered in detail by a committee of the House. Besides expediting legislative business, committees serve other useful services. Service on these committees keeps the Members adequately supplied with information, deepens their insight into affairs and steady their judgment, providing invaluable training to aspirants to office, and the general level of knowledge and ability in the legislature rises. Committees properly attuned

62 Lord Beaconsfield in Hansard, 3rd Series, Vol. 235 (1877) p. 1478.
63 "Growth of Committee System in the Central Legislature of India 1920-1947".

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to the spirit and forms parliamentary government can serve the country well as the eyes and ears and to some extent the brain of the legislature, the more so since the functions and fields of interest of the Government increase day by day."

71. Also, in the said book, the following observations have been made with respect to the functions of committees:

"As the committee system developed in the course of time the various functions of these bodies were differentiated into a few fixed types and a standard of size appropriate to each of these functions was also arrived at. These committees are appointed for a variety of purposes. One of the major purposes for which committees are appointed is the public investigation of problems out of the report upon which legislation can be built up. Secondly, committees are appointed to legislate. Bills referred to such committees are thoroughly discussed and drafted before they become laws. Example of such committees are the Select Committees in the Indian Legislature. Thirdly, committees are appointed to scrutinise and control. These committees are entrusted with the task of seeing whether or how a process is being performed, and by their conduct of this task they serve to provide the means of some sort of control over the carrying out of the process."

72. Today Parliamentary Committee systems have emerged as a creative way of parliaments to perform their basic functions. They serve as the focal point for legislation and oversight. In a number of parliaments, bills, resolutions and matters on specific issues are referred to specific committees for debate and recommendations are made to the House for further debate. Parliamentary Committees have emerged as vibrant and central institutions of democratic parliaments of today's world. Parliaments across the globe set up their own rules on how committees are established, the composition, the mandate and how chairpersons are to be selected but they do have certain characteristics in common. They are usually a small group of MPs brought together to critically review issues related to a particular subject-matter or to review a specific bill. They are often expected to present their observations and recommendations to the Chamber for final debate.

73. Often committees have a multi-party composition. They examine specific matters of policy or government administration or performance. Effective committees have developed a degree of expertise in a given policy area, often through continuing involvement and stable memberships. This expertise is both recognised and valued by their colleagues. They are able to represent diversity as also reconcile enough differences to sustain recommendations for action. Also, they are important enough so that people inside and outside the legislature seek to influence outcomes by providing information about what they want and what they will accept. Furthermore, they provide a means for a legislative body to consider a wide range of topics in-depth and to identify politically and technically feasible alternatives.

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K. ***International position of Parliamentary Committees***

74. Before we proceed to dwell upon the said aspect in the Indian context, we think it apt to have a holistic view of the role of Parliamentary Standing Committees in a parliamentary democracy.

75. History divulges that Parliamentary Standing Committees have been very vital institutions in most of the eminent democracies such as USA, United Kingdom, Canada, Australia, etc. Over the years, the committee system has come to occupy importance in the field of governance.

K.1 ***Parliamentary Committees in England***

76. British parliamentary history validates that Parliamentary Committees have existed in some form or the other since the 14th century. Perhaps the committee system originated with the "triers and examiners of petitions" — they were individual members selected for drawing up legislations to carry into effect citizens' prayers that were expressed through petitions. By the middle of the 16th century, a stable committee system came into existence. These Parliamentary Committees are sub-legislative organisations each consisting of a small number of Members of Parliament from the House of Commons, or peers from the House of Lords, or a mix of both appointed to deal with particular areas or issues; most are made up of Members of the Commons.[64] The majority of Parliamentary Committees are Select Committees which are designed to:

1. Superintend the work of departments and agencies;

2. Examine topical issues affecting the country or individual regions; and

3. Review and advise on the procedures, workings and rules of the House.

77. The other committees such as "Departmental Select Committees" are designed to oversee and examine the work of individual government departments, "Topical Select Committee" examines contemporary issues of significance and "Internal Select Committees" have responsibility with respect to the day-to-day running of Parliament.[65] It helps Parliament to have a very powerful network of committees to ensure executive accountability.

K.2 ***Parliamentary Committees in the United States of America***

78. Parliamentary Committees are essential to the effective operation of Parliament in the United States. Due to the high volume and complexity of its work, the Senate divides its tasks among 20 permanent committees, 4 joint committees and occasionally temporary committees. Although the Senate committee system is similar to that of the House of Representatives, it has its own guidelines within which each committee adopts its own rules. This creates considerable variation among the panels. The chair of each committee and a majority of its members represent the majority party. The

64 <http://www.parliament.uk/business/committees/>.
65 *Ibid.*

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chair primarily controls a committee's business. Each party assigns its own members to committees, and each committee distributes its members among its sub-committees.[66] The Senate places limits on the number and types of panels any one senator may serve on and chair. Committees receive varying levels of operating funds and employ varying numbers of aides. Each hires its own staff. The majority party controls most committee staff and resources, but a portion is shared with the minority.

79. The role and responsibilities of Parliamentary Committees in the United States of America are as follows:

79.1. As "*little legislatures*", committees monitor ongoing governmental operations, identify issues suitable for legislative review, gather and evaluate information and recommend courses of action to their parent body.

79.2. The committee membership enables members to develop specialised knowledge of the matters under their jurisdiction.

79.3. Standing Committees generally have legislative jurisdiction. Sub-committees handle specific areas of the committee's work. Select and joint committees generally handle oversight or housekeeping responsibilities.[67]

79.4. Several thousand bills and resolutions are referred to committees during each 2-year Congress. Committees select a small percentage for consideration, and those not addressed often receive no further action. The bills that committees report help to set the Senate's agenda.

80. When a committee or sub-committee favours a measure, it usually takes four actions: first it asks relevant executive agencies for written comments on the measure; second, it holds hearings to gather information and views from non-committee experts and at committee hearings, these witnesses summarise submitted statements and then respond to questions from the senators; third, a committee meets to perfect the measure through amendments, and non-committee members sometimes attempt to influence the language; and fourth, when the language is agreed upon, the committee sends the measure back to the full Senate, usually along with a written report describing its purposes and provisions. A committee's influence extends to its enactment of bills into law. A committee that considers a measure will manage the full Senate's deliberation on it. Also, its members will be appointed to any conference committee created to reconcile its version of a bill with the version passed by the House of Representatives.

K.3 *Parliamentary Committees in Canada*

81. Parliament in Canada also functions through various Standing Committees established by Standing Orders of the House of Commons or the Senate. It studies matters referred to it by special order or, within its

66 See <https://www.britannica.com/topic/Congress-of-the-United-States> for details.

67 Other types of committees deal with the confirmation or rejection of presidential nominees. Committee hearings that focus on the implementation and investigation of programmes are known as oversight hearings, whereas committee investigations examine allegations of wrongdoing.

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area of responsibility in the Standing Orders, may undertake studies on its own initiative. There are presently 23 Standing Committees (including two standing joint committees) in the House and 20 in the Canadian Senate.[68] They, in general, examine the administration, policy developments and budgetary estimates of government departments and agencies. Certain Standing Committees are also given mandates to examine matters that have implications such as official languages policy and multiculturalism policy.

K.4 ***Parliamentary Committees in Australia***

82. The primary object of Parliamentary Committees in Australia is to perform functions which the Houses themselves are not well fitted to perform i.e. finding out the facts of a case, examining witnesses, sifting evidence, and drawing up reasoned conclusions. Because of their composition and method of procedure, which is structured but generally informal compared with the Houses, committees are well suited to the gathering of evidence from expert groups or individuals.[69] In a sense, they "take Parliament to the people" and allow organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process. Not only do committee inquiries enable Members to be better informed about community views but in simply undertaking an inquiry, the committee may promote public debate on the subject at issue. The all-party composition of most committees and their propensity to operate across party lines are important features.[70] This bipartisan approach generally manifests itself throughout the conduct of inquiries and the drawing up of conclusions. Committees oversee and scrutinise the Executive and contribute towards a better-informed administration and government policy-making process.[71] In respect of their formal proceedings, committees are microcosms and extensions of the Houses themselves, limited in their power of inquiry by the extent of the authority delegated to them and governed for the most part in their proceedings by procedures and practices which reflect those which prevail in the House by which they were appointed.

L. ***Parliamentary Committees in India***

83. Having reflected upon the Parliamentary Committees and their role in other democracies, we may now proceed to deal with the Parliamentary Committees in India. The long freedom struggle in India was not just a movement to achieve freedom from British Rule. It was as much a movement

68 Special Committees (sometimes called Select Committees) e.g. the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, are sometimes established by the House to study specific issues or to investigate public opinion on policy decisions. They are sometimes called task forces but should not be confused with government taskforces. See <http://www.thecanadianencyclopedia.ca/en/article/committees/>.

69 See <https://www.aph.gov.au/Parliamentary_Business/Committees>.

70 *Ibid.*

71 *Ibid.*

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to free ourselves from the various social evils and socio-economic inequities and discriminations, to lift the deprived and the downtrodden from the sludge of poverty and to give them a stake in the overall transformation of the country. It was with this larger national objective that a democratic polity based on parliamentary system was conceived and formally declared in 1936 as "the establishment of a democratic State", a sovereign State which would promote and foster "full democracy" and usher in a new social and economic order.

84. The Founding Fathers of the Constitution perceived that such a system would respond effectively to the problems arising from our diversity as also to the myriad socio-economic factors that the nation was faced with. With that objective, in the political system that we established, prominence was given to Parliament, the organ that directly represents the people and as such accountable to them.

85. At this juncture, we may look at the origin and working of the Parliamentary Committee. The committee system in India, as has been stated in "The Committee System in India: Effectiveness in Enforcing Executive Accountability", Hanoi Session, March 2015, is as follows:

> "The origin of the committee system in India can be traced back to the Constitutional Reforms of 1919. The Standing Orders of the Central Legislative Assembly provided for a Committee on Petitions relating to Bills, Select Committee on Amendments of Standing Orders, and Select Committee on Bills. There was also a provision for a Public Accounts Committee and a Joint Committee on a Bill. Apart from Committees of the Legislative Assembly, Members of both Houses of the Central Legislature also served on the Standing Advisory Committees attached to various departments of the Government of India. All these committees were purely advisory in character and functioned under the control of the Government with the Minister in charge of the Department acting as the Chairman of the Committee.
>
> After the Constitution came into force, the position of the Central Legislative Assembly changed altogether and the committee system underwent transformation. Not only did the number of committees increase, but their functions and powers were also enlarged.
>
> By their nature, Parliamentary Committees are of two kinds: Standing Committees and Ad hoc Committees. Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha. The work of these Committees is of continuous nature. The Financial Committees, Departmentally Related Standing Committees (DRSCs) and some other committees come under the category of Standing Committees. Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad hoc Committees are the Select and Joint Committees on Bills. Railway Convention Committee,

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Joint Committee on Food Management in Parliament House Complex, etc. also come under the category of Ad hoc Committees."

86. In the said document, it has been observed thus in respect of the Standing Committees of Parliament:

> "Standing Committees are those which are periodically elected by the House or nominated by the Speaker, Lok Sabha, or the Chairman, Rajya Sabha, singly or jointly and are permanent in nature. In terms of their functions, Standing Committees may be classified into two categories. One category of Committees like the Departmentally Related Standing Committees (DRSCs), Financial Committees, etc., scrutinise the functioning of the Government as per their respective mandate. The other category of Committees like the Rules Committee, House Committee, Joint Committee on Salaries and Allowances, etc. deal with matters relating to the Houses and Members."

87. The functions of Parliament in modern times are not only diverse and complex in nature but also considerable in volume and the time at its disposal is limited. It cannot, therefore, give close consideration to all the legislative and other matters that come up before it. A good deal of its business is, therefore, transacted in the Committees of the House known as Parliamentary Committees. Parliamentary Committee means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker.

88. Founded on English traditions, the Indian Parliament's committee system has a vital role in the parliamentary democracy. Generally speaking, the Parliamentary Committees are of two kinds: Standing Committees and Ad hoc Committees. Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in the Lok Sabha. The work of these committees is of continuous nature. The Financial Committees, Department Related Standing Committees (DRSCs) and some other committees too come under the category of Standing Committees. The Ad hoc Committees are appointed for specific purposes as and when the need arises and they cease to exist as soon as they complete the work assigned to them.[72] The Parliamentary Committees are invariably larger in size and are recommendatory in nature. Be it stated, there are 24 Department Related Standing Committees covering under their jurisdiction all the Ministries/Departments of the Government of India. Each of these Committees consists of 31 Members — 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker, Lok Sabha and the Chairman, Rajya Sabha, respectively. The term of office of these committees does not exceed one year.

72 The principal Ad hoc Committees are the Select and Joint Committees on Bills. Railway Convention Committee, Joint Committee on Food Management in Parliament House Complex, etc. also come under the category of Ad hoc Committees.

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L.1 ***Rules of Procedure and Conduct of Business in the Lok Sabha***

89. A close look at the functioning of these committees discloses the fact that the committee system is designed to enlighten Members of Parliament (MPs) on the whole range of governmental action including defence, external affairs, industry and commerce, agriculture, health and finance. They offer opportunities to the Members of Parliament to realise and comprehend the dynamics of democracy. The Members of Parliament receive information about parliamentary workings as well as perspective on India's strengths and weaknesses through the detailed studies undertaken by Standing Committees. Indian Parliamentary Committees are a huge basin of information which are made available to the Members of Parliament in order to educate themselves and contribute ideas to strengthen the parliamentary system and improve governance. The committee system is designed to enhance the capabilities of Members of Parliament to shoulder greater responsibilities and broaden their horizons.

90. As has been stated in the referral judgment[2] with regard to the Parliamentary Committee, we may usefully refer to the Rules of Procedure and Conduct of Business in Lok Sabha (for short "the Rules"). Rule 2 of the Rules defines "Parliamentary Committee". It reads as follows: (*Kalpana Mehta case*[2], SCC p. 310, para 32)

> "**2. (1)** … "**Parliamentary Committee**" means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat;"

91. From the referral judgment[2], we may reproduce the following paragraphs dealing with the relevant Rules: *Kalpana Mehta case*[2], SCC p. 310, paras 33 & 34)

> "*33.* Chapter 26 of the Rules deals with Parliamentary Committees and the matters regarding appointment, quorum, decisions of the committee, etc. There are two kinds of Parliamentary Committees: (*i*) Standing Committees, and (*ii*) Ad hoc Committees. The Standing Committees are categorised by their nature of functions. The Standing Committees of the Lok Sabha are as follows:
>
> (*a*) Financial Committees;
>
> (*b*) Subject Committees or Departmentally Related Standing Committees of the two Houses;
>
> (*c*) Houses Committee i.e. the committees relating to the day-to-day business of the House;
>
> (*d*) Enquiry Committee;
>
> (*e*) Scrutiny Committees;
>
> (*f*) Service Committees;

2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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34. A list of Standing Committees of Lok Sabha along with its membership is reproduced as under:

Name of Committee	*Number of Members*
Business Advisory Committee	15
Committee of Privileges	15
Committee on Absence of Members from the Sittings of the House of Committee on Empowerment of Women	15
Committee on Estimates	30
Committee on Government Assurances	15
Committee on Papers Laid on the Table	15
Committee on Petitions	15
Committee on Private Members Bills and Resolutions	15
Committee on Public Accounts	22
Committee on Public Undertakings	22
Committee on Subordinate Legislation	15
Committee on the Welfare of Scheduled Castes and Scheduled Tribes	30
House Committee	12
Joint Committee on Offices of Profit	15
Joint Committee on Salaries and Allowances of Members of Parliament	15
Library Committee	9
Rules Committee	15

Apart from the above, there are various Departmentally Related Standing Committees under various Ministries."

92. Rules 77 and 78 of the Rules read as under:

"**77.** ***Motions after presentation of Select/Joint Committee reports***.—(1) After the presentation of the final report of a Select Committee of the House or a Joint Committee of the Houses, as the case may be, on a Bill, the Member in charge may move—

(*a*) that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration; or

(*b*) that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be re-committed to the same Select Committee or to a new Select Committee, or to the same Joint Committee or to a new Joint Committee with the concurrence of the Council, either—

(*i*) without limitation, or

(*ii*) with respect to particular clauses or amendments only, or

(*iii*) with instructions to the Committee to make some particular or additional provision in the Bill, or

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(*c*) that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, be circulated or recirculated, as the case may be, for the purpose of eliciting opinion or further opinion thereon:

Provided that any Member may object to any such motion being made if a copy of the report has not been made available for the use of Members for two days before the day on which the motion is made and such objection shall prevail, unless the Speaker allows the motion to be made.

(2) If the Member in charge moves that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration, any Member may move as an amendment that the Bill be re-committed or be circulated or recirculated for the purpose of eliciting opinion or further opinion thereon.

78. ***Scope of debate on Select/Joint Committee reports***.—The debate on a motion that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration shall be confined to consideration of the report of the Committee and the matters referred to in that report or any alternative suggestions consistent with the principle of the Bill."

93. Rule 270 of the Rules, which deals with the functions of the Parliamentary Committee meant for Committees of the Rajya Sabha, is relevant. It reads as follows:

"**270.** ***Functions***.—Each of the Standing Committees shall have the following functions, namely—

(*a*) to consider the Demands for Grants of the related Ministries/Departments and report thereon. The report shall not suggest anything of the nature of cut motions;

(*b*) to examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;

(*c*) to consider the annual reports of the Ministries/Departments and report thereon; and

(*d*) to consider national basic long-term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon:

Provided that the Standing Committees shall not consider matters of day-to-day administration of the related Ministries/Departments."

94. Rule 271 provides for the applicability of provisions relating to functions. Rule 274 deals with the report of the Committee. The said Rule reads as follows:

"**274.** ***Report of the Committee***.—(1) The report of the Standing Committee shall be based on broad consensus.

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(2) Any member of the Committee may record a minute of dissent on the report of the Committee.

(3) The report of the Committee, together with the minutes of dissent, if any, shall be presented to the Houses."

95. Rule 274(3) is extremely significant, for it provides that the report of the Committee together with the minutes of the dissent, if any, is to be presented to the House. Rule 277 stipulates that the report is to have persuasive value. In this context, Rule 277 is worth quoting:

"**277.** ***Reports to have persuasive value***.—The report of a Standing Committee shall have persuasive value and shall be treated as considered advice given by the Committee."

The aforesaid rule makes it quite vivid that the report of the Committee is treated as an advice given by the Committee and it is meant for Parliament.

M. ***Parliamentary privilege***

96. *Black's Law Dictionary*, 6th Edn., 1990, p. 1197, defines "privilege" as

"a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others".

97. "Parliamentary privilege" is defined by author Erskine May in *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*:

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively … and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law."[73]

98. The concept of parliamentary privilege has its origin in Westminster, Britain in the 17th century with the passage of the Bill of Rights 1688. Article IX of the Bill of Rights, which laid down the concept of parliamentary privilege, reads as under:

"That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament."

99. Parliamentary privilege was introduced to prevent any undue interference in the working of Parliament and thereby enable the Members of Parliament to function effectively and efficiently without unreasonable impediment. Till date, parliamentary privilege remains an important feature in

73 *May*, 22nd Edn., p. 65. For other definitions of "privilege", see *Maingot*, 2nd Edn., pp. 12-3.

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any parliamentary democracy. The concept of parliamentary privilege requires a balancing act of two opposite arguments as noted by Thomas Erskine May:

a "On the one hand, the privileges of Parliament are rights 'absolutely necessary for the due execution of its powers'; and on the other, the privilege of Parliament granted in regard of public service 'must not be used for the danger of the commonwealth'."[74]

M.1 ***Parliamentary privilege under the Indian Constitution***

b **100.** Having dealt with the role of the Parliamentary Standing Committee or Parliamentary Committees, it is necessary to understand the status of Parliamentary Committee and the privileges it enjoys in the Indian context. Article 105 of the Constitution of India, being relevant in this context, is reproduced below:

"**105.** ***Powers, privileges, etc. of the Houses of Parliament and of the Members and committees thereof.***—(1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

c

(2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

d

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

e

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to Members of Parliament."

f **101.** Clause (2) of the aforesaid Article clearly lays the postulate that no Member of Parliament shall be made liable to any proceedings in any court in respect of anything he has said in the committee. Freedom of speech that is available to the Members on the floor of the legislature is quite distinct from the freedom which is available to the citizens under Article 19(1)(*a*) of the Constitution. Members of Parliament enjoy full freedom in respect of what they speak inside the House. Article 105(4) categorically stipulates that the provisions of clauses (1), (2) and (3) shall apply in relation to persons, who by virtue of this Constitution, have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to the Members of Parliament. Thus, there is complete constitutional protection. It is worthy to note that Article 118 provides that each House of Parliament may make rules for regulating, subject to the provisions

g

h

74 *Erskine May*, 24th Edn., p. 209.

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of this Constitution, its procedure and the conduct of its business. Condignly analysed, Parliament has been enabled by the Constitution to regulate its procedure apart from what has been stated directly in the Constitution.

102. Article 105 of the Constitution is read mutatis mutandis with Article 194 of the Constitution as the language in both the articles is identical, except that Article 105 employs the word "Parliament" whereas Article 194 uses the words "Legislature of a State". Therefore, the interpretation of one of these articles would invariably apply to the other and *vice versa*.

103. In *U.P. Assembly case (Special Reference No. 1 of 1964)*[22], the controversy pertained to the privileges of the House in relation to the fundamental rights of the citizens. The decision expressly stated that the Court was not dealing with the internal proceedings of the House. We may profitably reproduce two passages from the said judgment: (AIR pp. 781 & 790, paras 108 & 141)

> "*108.* The obvious answer to this contention is that we are not dealing with any matter relating to the internal management of the House in the present proceedings. We are dealing with the power of the House to punish citizens for contempt alleged to have been committed by them outside, the four walls of the House, and that essentially raises different considerations.
>
> * * *
>
> *141.* In conclusion, we ought to add that throughout our discussion we have consistently attempted to make it clear that the main point which we are discussing is the right of the House to claim that a general warrant issued by it in respect of its contempt alleged to have been committed by a citizen who is not a Member of the House outside the four walls of the House, is conclusive, for it is on that claim that the House has chosen to take the view that the Judges, the Advocate, and the party have committed contempt by reference to their conduct in the habeas corpus petition pending before the Lucknow Bench of the Allahabad High Court. …"

104. The Court further observed: (*U.P. Assembly case*[22], AIR p. 763, para 43)

> "*43.* In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the legislatures and the judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the executive which is another important constituent of a democratic State, must function not in antinovel nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country."

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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105. In the said case, the Court was interpreting Article 194 of the Constitution and, in that context, it held: (*U.P. Assembly case*[22], AIR p. 760, para 31)

> "*31.* … While interpreting this clause, it is necessary to emphasise that the provisions of the Constitution subject to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the legislature. The rules and standing orders may regulate the procedure of the legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. The adjectival clause "regulating the procedure of the legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing orders". Therefore, clause (1) confers on the legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. It would thus appear that by making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Article 19(1)(*a*). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Article 19(1)(*a*), it would have been unnecessary to confer the same right specifically in the manner adopted by Article 194(1); and so, it would be legitimate to conclude that Article 19(1)(*a*) is not one of the provisions of the Constitution which controls the first part of clause (1) of Article 194."

106. Proceeding further, the Court in *U.P. Assembly case*[22] went on to say that clause (2) emphasises the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the legislature or any committee thereof. Interpreting clause (3), the Court ruled that the first part of this clause empowers the Legislatures of the States to make laws prescribing their powers, privileges and immunities; the latter part provides that until such laws are made, the legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers, the Court observed, must have thought that the legislatures would take some time to make laws in respect of their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by clause (3) are incidental powers, privileges and immunities which every legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3).

107. The Court stated that all the four clauses of Article 194 are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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couched in such wide terms that in exercising the rights conferred on them by clause (1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by Part III, they would not be liable for any action in any court. It further said: (*U.P. Assembly case*[22], AIR p. 761, para 36)

> "*36.* … In dealing with the effect of the provisions contained in clause (3) of Article 194, wherever it appears that there is a conflict between the said provisions and the provisions pertaining to fundamental rights, an attempt will have to be made to resolve the said conflict by the adoption of the rule of harmonious construction. …"

108. Dealing with the plenary powers of the legislature, the Court ruled in *U.P. Assembly case*[22] that these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our legislatures including Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or while acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by the courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, yet they function within the limits prescribed by the material and relevant provisions of the Constitution.

109. Adverting to Article 212(1) of the Constitution, the Court in *U.P. Assembly case*[22] held that the said Article seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Article 194(3).

110. In *Raja Ram Pal* v. *Lok Sabha*[75], the Court, after referring to *U.P. Assembly case (Special Reference No. 1 of 1964)*[22], observed that the privileges of Parliament are rights which are "absolutely necessary for the due execution of its powers" which are enjoyed by individual Members as the House would not be able to perform its functions without unimpeded use of the services of

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

75 (2007) 3 SCC 184

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its Members and also for the protection of its Members and the vindication of its own authority and dignity. The Court, for the said purpose, referred to *May's Parliamentary Practice*. Parliamentary privilege conceptually protects the Members of Parliament from undue pressure and allows them freedom to function within their domain regard being had to the idea of sustenance of legislative functionalism. The aforesaid protection is absolute.

M.2 ***Judicial review of parliamentary proceedings and its privilege***

111. Commenting upon the effect of parliamentary privilege, the House of Lords in *Hamilton* v. *Al Fayed*[76] (*Hamilton*), AC p. 407 pointed out that the normal impact of parliamentary privilege is to prevent the Court from entertaining any evidence, cross-examination or submissions which challenge the veracity or propriety of anything done in the course of parliamentary proceedings.

112. With regard to the role of the Court in the context of parliamentary privileges, Lord Brougham, in *Wellesley* v. *Duke of Beaufort*[77], has opined that it is incumbent upon the courts of law to defend their high and sacred duty of guarding themselves, the liberties and the properties of the subject, and protecting the respectability and the very existence of the Houses of Parliament themselves, against wild and extravagant and groundless and inconsistent notions of privilege.

113. The 1999 UK Joint Committee Report offers a useful analysis of the respective roles to be played by Parliament and the courts in advancing the law of parliamentary privilege:

> "There may be good sense sometimes in leaving well alone when problems have not arisen in practice. Seeking to clarify and define boundaries may stir up disputes where currently none exists. But Parliament is not always well advised to adopt a passive stance. There is merit, in the particularly important areas of parliamentary privilege, in making the boundaries reasonably clear before difficulties arise. Nowadays people are increasingly vigorous in their efforts to obtain redress for perceived wrongs. In their court cases they press expansively in areas where the limits of the courts' jurisdiction are not clear. Faced with demarcation problems in this jurisdictional no-man's land, the Judges perforce must determine the position of the boundary. If Parliament does not act, the courts may find themselves compelled to do so."

114. With respect to the position of parliamentary privileges and the role of the courts in Canada, the Supreme Court of Canada in *New Brunswick Broadcasting Co.* v. *Nova Scotia (Speaker of the House of Assembly)*[78] opined that the Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning and that the said privileges are part of the fundamental law of the land and are, hence, constitutional. Further, the

76 (2001) 1 AC 395 : (2000) 2 WLR 609 (HL)
77 (1831) 2 Russ & M 639 : 39 ER 538 : 1831 Eng R 809
78 1993 SCC OnLine Can SC 8 : (1993) 1 SCR 319

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Court observed that the courts have the power to determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the correctness of a particular decision made pursuant to the privilege. In *Harvey* v. *Attorney General for New Brunswick*[79], the Court has held that in order to prevent abuses in the guise of privilege from trumping legitimate Charter interests, the courts must inquire into the legitimacy of a claim of parliamentary privilege.

115. With respect to the review of parliamentary privilege, Lord Coleridge, C.J., in *Bradlaugh* v. *Gossett*[80], observed that the question as to whether in all cases and under all circumstances the Houses are the sole judges of their own privileges is not necessary to be determined in this case and that to allow any review of parliamentary privilege by a court of law may lead and has led to very grave complications. However, the Law Lord remarked that to hold the resolutions of either House absolutely beyond any inquiry in any court of law may land in conclusion not free from grave complications and it is enough to say that in theory the question is extremely hard to solve.

116. Sir William Holdsworth in his book[81] has also made the following observations with regard to review of parliamentary privileges:

> "There are two maxims or principles which govern this subject. The first tells us that 'Privilege of Parliament is part of the law of the land'; the second that 'Each House is the judge of its own privileges'. Now at first sight it may seem that these maxims are contradictory. If privilege of Parliament is part of the law of the land its meaning and extent must be interpreted by the courts, just like any other part of the law; and therefore, neither House can add to its privileges by its own resolution, any more than it can add to any other part of the law by such a resolution.
>
> On the other hand if it is true that each House is the sole judge of its own privileges, it might seem that each House was the sole judge as to whether or not it had got a privilege, and so could add to its privileges by its own resolution. This apparent contradiction is solved if the proper application of these two maxims is attended to. The first maxim applies to cases like *Ashby* v. *White*[82] and *Stockdale* v. *Hansard*[83], in which the question at issue was the existence of a privilege claimed by the House.
>
> This is a matter of law which the courts must decide, without paying any attention to a resolution of the House on the subject. The second maxim applies to cases like that of the *Sheriff of Middlesex*[84] and *Bradlaugh* v. *Gossett*[80], in which an attempt was made to question, not the existence but the mode of user of an undoubted privilege. On this matter the courts will not interfere because each House is the sole judge of the question whether, when or how it will use one of its undoubted privileges."

79 1996 SCC OnLine Can SC 80 : (1996) 2 SCR 876
80 (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)
81 *A History of English Law.*
82 (1703) 2 Ld Raym 938 : 92 ER 126
83 (1839) 9 Ad & E 1 : 112 ER 1112 (QB)
84 (1840) 11 Ad & E 273 : (1840) 113 ER 419

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117. At this juncture, it is fruitful to refer to Articles 121 and 122 of the Constitution. They read as follows:

a "**121.** ***Restriction on discussion in Parliament.***—No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.

122. ***Courts not to inquire into proceedings of Parliament.***—(1) The b validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

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

c **118.** As we perceive, the aforesaid Articles are extremely significant as they are really meant to state the restrictions imposed by the Constitution on both the institutions.

119. In *Raja Ram Pal*[75], a Constitution Bench, after referring to *U.P. Assembly case (Special Reference No. 1 of 1964)*[22], opined: (*Raja Ram Pal* d *case*[75], SCC p. 315, paras 267 & 268)

"*267.* Indeed, the thrust of the decision was on the examination of the power to issue unspeaking warrants immune from the review of the courts, and not on the power to deal with contempt itself. A close reading of the case demonstrates that the Court treated the power to punish for contempt as a privilege of the House. Speaking of the legislatures in India, it was e stated: (*U.P. Assembly case*[22], AIR p. 786, para 125)

'*125.* There is no doubt that the House has the power to punish for contempt committed outside its chamber, *and from that point of view it may claim one of the rights possessed by a court of record.*'

268. Speaking of the Judges' power to punish for contempt, the Court f observed: (*U.P. Assembly case*[22], AIR p. 791, para 142)

'*42.* … We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of g the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their

h 75 *Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184
22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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judicial conduct. *We venture to think that what is true of the judicature is equally true of the legislatures*.' " (emphasis in original)

And again: (SCC pp. 315-16, para 269)

"*269*. It is evident, therefore, that in the opinion of the Court in *U.P. Assembly case (Special Reference No. 1 of 1964)*[22], legislatures in India do enjoy the power to punish for contempt. It is equally clear that while the fact that the House of Commons enjoyed the power to issue unspeaking warrants in its capacity of a court of record was one concern, what actually worried the Court was not the source of the power per se, but the "judicial" nature of power to issue unspeaking warrant insofar as it was directly in conflict with the scheme of the Constitution whereby citizens were guaranteed fundamental rights and the power to enforce the fundamental rights is vested in the courts. It was not the power to punish for contempt about which the Court had reservations. Rather, the abovequoted passage shows that such power had been accepted by the Court. The issue decided concerned the non-reviewability of the warrant issued by the legislature, in the light of various constitutional provisions."

120. After referring to various other decisions, the Court summarised the principles relating to the parameters of judicial review in relation to exercise of parliamentary provisions. Some of the conclusions being relevant for the present purpose are reproduced below: (*Raja Ram Pal case*[75], SCC pp. 371-73, para 431)

"(*a*) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;

(*b*) The constitutional system of Government abhors absolutism and *it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision*;

(*c*) The expediency and necessity of exercise of power or privilege by the legislature are for the determination of the legislative authority and not for determination by the courts;

(*d*) The judicial review of the manner of exercise of power of contempt or privilege does not mean the said jurisdiction is being usurped by the judicature;

* * *

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

75 *Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184

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(*f*) The fact that Parliament is an august body of coordinate constitutional position does not mean that there can be no judicially manageable standards to review exercise of its power;

(*g*) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;

(*h*) *The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens*;

(*i*) *The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct*;

(*j*) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;

(*k*) *There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution*;

(*l*) *The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212*;

(*m*) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;

(*n*) *Article 122(1) and Article 212(1) prohibit the validity of any proceedings in legislature from being called in question in a court merely on the ground of irregularity of procedure*;

* * *

(*r*) Mere availability of the Rules of Procedure and Conduct of Business, as made by the legislature in exercise of enabling powers under the Constitution, is never a guarantee that they have been duly followed;

(*s*) The proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny;

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(*t*) Even if some of the material on which the action is taken is found to be irrelevant, the court would still not interfere so long as there is some relevant material sustaining the action;

(*u*) An ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity." (emphasis supplied)

121. The aforesaid summarisation succinctly deals with the judicial review in the sense that the constitutional courts are not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens; that there is no absolute immunity to the parliamentary proceeding under Article 105(3) of the Constitution; that the enforcement of privilege by the legislature can result in judicial scrutiny though subject to the restrictions contained in other constitutional provisions such as Articles 122 and 212; that Article 122(1) and Article 212(1) prohibit the validity of any proceedings in the legislature from being called in question in a court merely on the ground of irregularity of procedure, and the proceedings which may be tainted on account of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny.

122. We are presently concerned with the interpretation of two constitutional provisions, namely, Articles 122 and 105. It has been submitted by the learned counsel on behalf of the petitioners that the reports of Parliamentary Committees have various facets, namely, statement of fact made to the committee, statement of policy made to the committee, statements of fact made by Members of Parliament in Parliament and inference drawn from facts and findings of fact and law and, therefore, the Court is required to pose the question as to which of the above aspects of the Parliamentary Committee reports can be placed reliance upon. The contention is structured on the foundation that committee reports are admissible in evidence and in public interest litigation in exercise of power under Article 32 for interpreting the legislation and directing the implementation of constitutional or statutory obligation by the executive.

N. ***Reliance on parliamentary proceedings as external aids***

123. A Constitution Bench in *R.S. Nayak* v. *A.R. Antulay*[85], after referring to various decisions of this Court and development in the law, opined that the exclusionary rule is flickering in its dying embers in its native land of birth and has been given a decent burial by this Court. The Constitution Bench further observed that the basic purpose of all canons of the Constitution is to ascertain with reasonable certainty the intention of Parliament and for the said purpose, external aids such as reports of Special Committee preceding the enactment, the existing state of law, the environment necessitating enactment of a legislation

85 (1984) 2 SCC 183 : 1984 SCC (Cri) 172

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and the object sought to be achieved, etc. which Parliament held the luxury of availing should not be denied to the court whose primary function is to give effect to the real intention of the legislature in enacting a statute. The Court was of the view that such a denial would deprive the Court of a substantial and illuminating aid to construction and, therefore, the Court decided to depart from the earlier decisions and held that reports of committees which preceded the enactment of a law, reports of Joint Parliamentary Committees and a report of a commission set up for collecting information can be referred to as external aids of construction.

124. In this regard, we may also usefully state that the speeches of Ministers in Parliament are referred to on certain occasions for limited purposes. A Constitution Bench in *State of W.B.* v. *Union of India*[86] has opined that it is, however, well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. The same cannot be used as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or, in any way, to affect the State Governments' rights as owners of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.

125. In *K.P. Varghese* v. *CIT*[87], the Court, while referring to the Budget Speech of the Minister, ruled that speeches made by Members of legislatures on the floor of the House where a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision. But the Court made it clear that the speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. Such a view, as per the Court, was in consonance with the juristic thought not only in the western countries but also in India as in the exercise of interpretation of a statute, everything which is logically relevant should be admitted. Thereafter, the Court acknowledged a few decisions of this Court where speeches made by the Finance Minister were relied upon by the Court for the purpose of ascertaining the reason for introducing a particular clause.

126. Similar references have also been made in *Ramesh Yeshwant Prabhoo* v. *Prabhakar Kashinath Kunte*[88]. That apart, parliamentary debates have also been referred to appreciate the context relating to the construction of a statute

86 AIR 1963 SC 1241
87 (1981) 4 SCC 173 : 1981 SCC (Tax) 293
88 (1996) 1 SCC 130

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in *Novartis AG* v. *Union of India*[89], *State of M.P.* v. *Dadabhoy's New Chirimiri Ponri Hill Colliery Co. (P) Ltd.*[90], *Union of India* v. *Steel Stock Holders' Syndicate*[91], *K.P. Varghese*[87] and *Surana Steels (P) Ltd.* v. *CIT*[92]. a

127. In *Ashoka Kumar Thakur* v. *Union of India*[93], this Court, after referring to *Crawford on Statutory Construction*, observed that the rule of exclusion followed in the British courts has been criticised by jurists as artificial and there is a strong case for whittling down the said rule. The Court was of the view that the trend of academic opinion and practice in the European system suggests that the interpretation of a statute being an exercise in the ascertainment of meaning, b everything which is logically relevant should be admissible which implies that although such extrinsic materials shall not be decisive, yet they should at least be admissible. Further, the Court took note of the fact that there is authority to suggest that resort should be had to these extrinsic materials only in case of incongruities and ambiguities. Where the meaning of the words in a statute is plain, then the language prevails, but in case of obscurity or lack of harmony c with other provisions and in other special circumstances, it may be legitimate to take external assistance to determine the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters.

128. In *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.*[94], this Court held: (SCC p. 75, para 76) d

> "*76.* It is legitimate to look at the state of law prevailing leading to the legislation so as to see what was the mischief at which the Act was directed. This Court has on many occasions taken judicial notice of such matters as the reports of Parliamentary Committees, and of such other facts as must be assumed to have been within the contemplation of the legislature when the Acts in question were passed." e

129. We have referred to these authorities to highlight that the reports or speeches have been referred to or not referred to for the purposes indicated therein and when the meaning of a statute is not clear or ambiguous, the circumstances that led to the passing of the legislation can be looked into in order to ascertain the intention of the legislature. It is because the reports assume significance and become relevant because they precede the formative f process of a legislation.

130. In *Pepper (Inspector of Taxes)* v. *Hart*[95], Lord Browne-Wilkinson, delivering the main speech, set out the test as follows: (AC p. 640)

> "I therefore reach the conclusion, subject to any question of Parliamentary privilege, that the exclusionary rule should be relaxed so g

89 (2013) 6 SCC 1 : (2013) 3 SCC (Civ) 227
90 (1972) 1 SCC 298
91 (1976) 3 SCC 108
87 *K.P. Varghese* v. *CIT*, (1981) 4 SCC 173 : 1981 SCC (Tax) 293
92 (1999) 4 SCC 306
93 (2008) 6 SCC 1 : 3 SCEC 35 h
94 (1980) 2 SCC 31 : 1980 SCC (Tax) 170
95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)

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as to permit reference to Parliamentary materials where (*a*) legislation is ambiguous or obscure, or leads to an absurdity; (*b*) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (*c*) the statements relied upon are clear."

131. The Supreme Court of Canada in *R.* v. *Vasil*[96] relied on parliamentary materials to interpret the phrase "unlawful object" in Section 212(*c*) of the Canadian Criminal Code. Speaking for the majority, Lamer, J. (as he then was) said: (SCC OnLine Can SC)

"Reference to Hansard is not usually advisable. However, as Canada has, at the time of codification, subject to few changes, adopted the English Draft Code of 1878, it is relevant to know whether Canada did so in relation to the various sections for the reasons advanced by the English Commissioners or for reasons of its own.

Indeed, a reading of Sir John Thompson's comments in Hansard of 12-4-1892, (House of Commons Debates, Dominion of Canada, Session 1892, Vol. I at pp. 1378-85) very clearly confirms that all that relates to murder was taken directly from the English Draft Code of 1878. Sir John Thompson explained the proposed murder sections by frequently quoting verbatim the reasons given by the Royal Commissioners in Great Britain, and it is evident that Canada adopted not only the British Commissioners' proposed sections but also their reasons."

The Canadian authorities, as is noticeable from *Anti-Inflation Act, In re*[97], have relaxed the exclusionary rule.

132. In *Dharam Dutt* v. *Union of India*[98], the Court took note of the three Parliamentary Standing Committees appointed at different points of time which had recommended the taking over of Sapru House on the ground of declining standard of the Institution. Further, this Court took note that it had already pointed out in an earlier part of this judgment that in the present case, successive Parliamentary Committees had found substance in the complaints received that an institution of national importance was suffering from mismanagement and maladministration and in pursuance of such PSC report, the Central Government acted on such findings.

133. In *Kuldip Nayar*[53], certain amendments in the Representation of the People Act, 1951 were challenged which had the effect of adopting an open ballot system instead of a secret ballot system for elections to the Rajya Sabha. Defending the amendment, the Union of India submitted a copy of a Report of the Ethics Committee of Parliament which recommended the open ballot system for the aforesaid purpose. The Committee had noted the emerging

96 1981 SCC OnLine Can SC 19 : (1981) 1 SCR 469 : (1981) 121 DLR (3d) 41
97 1976 SCC OnLine Can SC 69 : (1976) 2 SCR 373 : (1976) 68 DLR (3d) 452
98 (2004) 1 SCC 712
53 *Kuldip Nayar* v. *Union of India*, (2006) 7 SCC 1

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trends of cross voting in elections for Rajya Sabha and Legislative Councils in the State. It also made a reference to rampant allegations that large sums of money and other considerations encourage the electorate to vote in a particular manner sometimes leading to defeat of official candidates belonging to their own political party. In this context, the Court took note of the recommendations of the Committee report while testing the vires of the impugned amendment.

134. From the aforesaid, it clear as day that the Court can take aid of the report of the Parliamentary Committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment.

135. Further, it is quite vivid on what occasions and situations the Parliamentary Standing Committee reports or the reports of other Parliamentary Committees can be taken note of by the court and for what purpose. Relying on the same for the purpose of interpreting the meaning of the statutory provision where it is ambiguous and unclear or, for that matter, to appreciate the background of the enacted law is quite different from referring to it for the purpose of arriving at a factual finding. That may invite a contest, a challenge, a dispute and, if a contest arises, the Court, in such circumstances, will be called upon to rule on the same.

136. In the case at hand, what is urged by the learned counsel for the petitioners is that though no interpretation is involved, yet they can refer to the report of the Parliamentary Standing Committee to establish a fact which they have pleaded and asserted in the writ petition. According to them, the committees are constituted to make the executive accountable and when the public interest litigation is preferred to safeguard the public interest, the report assumes great significance and it is extremely necessary to refer to the same to arrive at the truth of the controversy. In such a situation, they would contend that the question of aid does not relate to any kind of parliamentary privilege.

137. It is the stand of the petitioners that they do not intend to seek liberty from Parliament or the Parliamentary Committee to be questioned or cross-examined. In fact, reliance of the report has nothing to do with what is protected by the Constitution under Article 105. The court proceedings are independent of Parliament and based on multiple inputs, materials and evidence and in such a situation, the parties are at liberty to persuade the court to come to a determination of facts and form an opinion in law at variance with the Parliamentary Committee report. The learned counsel for the petitioners would further submit that advancing submissions relying on the report would not come within the scope of parliamentary privilege.

O. *Section 57(4) of the Evidence Act*

138. The learned counsel for the petitioners propound that under Section 57(4) of the Evidence Act, the Parliamentary Standing Committee report can be judicially taken note of as such report comes within the ambit of the said provision.

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139. To appreciate the stand, it is necessary to scan the relevant clause (4) of Section 57 of the Evidence Act. It reads as follows:

a "**57.** ***Facts of which Court must take judicial notice.***—The Court shall take judicial notice of the following facts—

* * *

(4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the States;"

b

140. Section 57 is a part of Chapter III of the Evidence Act which deals with "Facts which need not be proved". Section 57 rests on the assumption that the facts scripted in the thirteen sub-sections are relevant under any one or more sections of Chapter II which deals with "relevancy of facts". Thus, Section 57, by employing the word "shall", casts an obligation upon the courts to take judicial notice of the said facts. Section 57, clause (4) of the Evidence Act casts an obligation on the courts to take judicial notice of the course of proceedings of Parliament.

c

141. This Court, in *Lok Shikshana Trust* v. *CIT*[99], has observed that Section 57, clause (4) enjoins upon the courts to take judicial notice of the course of proceedings of Parliament on the assumption that it is relevant.

d

142. There can be no dispute that Parliamentary Standing Committee report being in the public domain is a public document. Therefore, it is admissible under Section 74 of the Evidence Act and judicial notice can be taken of such a document as envisaged under Section 57(4) of the Evidence Act. There can be no scintilla of doubt that the said document can be taken on record. As stated earlier, it can be taken aid of to understand and appreciate a statutory provision if it is unclear, ambiguous or incongruous. It can also be taken aid of to appreciate what mischief the legislative enactment intended to avoid. Additionally, it can be stated with certitude that there can be a fair comment on the report and a citizen in his own manner can advance a criticism in respect of what the report has stated. Needless to emphasise that the right to fair comment is guaranteed to the citizens. It is because freedom of speech, as permissible within constitutional parameters, is essential for all democratic institutions. Fair comments show public concern and, therefore, such comments cannot be taken exception to. That is left to public opinion and perception on which the grand pillar of democracy is further strengthened. And, in all such circumstances, the question of parliamentary privilege would not arise.

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143. In the case at hand, the controversy does not end there inasmuch as the petitioners have placed reliance upon the contents of the Parliamentary Standing Committee report and the respondents submit that they are forced to controvert the same. Be it clearly stated, the petitioners intend to rely on the contents of the report and invite a contest. In such a situation, the Court would be duty-bound to afford the respondents an opportunity of being heard

h

99 (1976) 1 SCC 254 : 1976 SCC (Tax) 14

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in consonance with the principles of natural justice. This, in turn, would give rise to a very peculiar situation as the respondents would invariably be left with the option either to: (*i*) accept, without contest, the opinion expressed in the Parliamentary Standing Committee report and the facts stated therein; or (*ii*) contest the correctness of the opinion of the Parliamentary Standing Committee report and the facts stated therein. In the former scenario, the respondents at the very least would be put in an inequitable and disadvantageous position. It is in the latter scenario that the Court would be called upon to adjudicate the contentious facts stated in the report. Ergo, whenever a contest to a factual finding in a PSC report is likely and probable, the Court should refrain from doing so. It is one thing to say that the report being a public document is admissible in evidence, but it is quite different to allow a challenge.

144. It is worthy to note here that there is an intrinsic difference between parliamentary proceedings which are in the nature of statement of a Minister or of a Mover of a Bill made in Parliament for highlighting the purpose of an enactment or, for that matter, a Parliamentary Committee report that had come into existence prior to the enactment of a law and a contestable/conflicting matter of "fact" stated in the Parliamentary Committee report. It is the parliamentary proceedings falling within the former category of which courts are enjoined under Section 57, clause (4) to take judicial notice of, whereas, for the latter category of parliamentary proceedings, the truthfulness of the contestable matter of fact stated during such proceedings has to be proved in the manner known to law.

145. This again brings us to the hazardous zone wherein taking judicial notice of Parliamentary Standing Committee reports for a factual finding will obviously be required to be proved for ascertaining the truth of a contestable matter of fact stated in the said report.

146. Taking judicial notice of the Parliamentary Standing Committee report can only be to the extent that such a report exists. As already stated, the said report can be taken aid of for understanding the statutory provision wherever it is felt so necessary or to take cognizance of a historical fact that is different from a contest. The word "contest", according to *Black's Law Dictionary*, means to make defence to an adverse claim in a court of law; to oppose, resist or dispute; to strive to win or hold; to controvert, litigate, call in question, challenge to defend. This being the meaning of the word "contest", the submission to adjudge the lis on the factual score of the report is to be negatived.

P. *The decisions in which Parliamentary Standing Committee report(s) have been referred to*

147. Before we proceed to record our conclusions, it is necessary to allude to various authorities cited by the petitioners herein highlighting the occasions where this Court has referred to and taken note of various Parliamentary Committee reports. In *Catering Cleaners of Southern Railway* v. *Union of India*[100], the catering cleaners of the Southern Railway filed a writ petition

100 (1987) 1 SCC 700 : 1987 SCC (L&S) 77

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praying for abolition of the contract labour system and their absorption as direct employees of the principal employer viz. the Southern Railway. This Court referred to the Parliamentary Committee report under the Chairmanship of K.P. Tewari which had dealt with the question of abolishing the contract labour system and regularising the services of the catering cleaners. The Committee had, inter alia, recommended that the Government should consider direct employment of catering cleaners by the Railway Administration to avoid their exploitation.

148. In *State of Maharashtra* v. *Milind*[101], the issue was whether the tribe of "Halba-Koshtis" were treated as "Halbas" in the specified areas of Vidarbha. This Court, in the said case, referred to the report of Joint Parliamentary Committee which did not make any recommendation to include "Halba-Koshti" in the Scheduled Tribes Order. Again, in *Federation of Railway Officers Assn.*[18], this Court alluded to the reports and recommendations of several committees such as the Railways Reforms Committee in 1984 which recommended the formation of new four zones; the Standing Committee report of Parliament on Railway which recommended for creation of new zones on the basis of work load, efficiency and effective management and the Rakesh Mohan Committee Report which had suggested that the formation of additional zones would be of dubious merit and would add substantial cost and be of little value to the system.

149. In *Aruna Roy* v. *Union of India*[102], the education policy framed by NCERT was challenged by the petitioners. This Court while dealing with the said issue, referred, in extenso, to the Parliamentary Committee report which had made several recommendations in this regard. After so referring to the report, the Court was of the view that if the recommendations made by the Parliamentary Committee are accepted by the NCERT and are sought to be implemented, it cannot be stated that its action is arbitrary or unjustified.

150. In *M.C. Mehta* v. *Union of India*[103], this Court referred to the report of the Standing Committee of Parliament on Petroleum & Natural Gas which expressed concern over the phenomenal rise of air pollution and made some recommendations. The Court, in this case, made it clear that it had mentioned the report only for indicating that the Government was and is proactively supporting the reduction of vehicular pollution by controlling the emission norms and complying with the Bharat Stage standards.

151. In *Lal Babu Priyadarshi* v. *Amritpal Singh*[104], while dealing with a trade mark case under various sections of the Trade and Merchandise Marks Act, 1958 [repealed by the Trade Marks Act, 1999 (47 of 1999)], this Court referred to the Eighth Report on the Trade Marks Bill, 1993 submitted by the Parliamentary Standing Committee which was of the opinion that any

101 (2001) 1 SCC 4 : 2001 SCC (L&S) 117
18 *Federation of Railway Officers Assn.* v. *Union of India*, (2003) 4 SCC 289 : AIR 2003 SC 1344
102 (2002) 7 SCC 368 : 5 SCEC 310
103 (2017) 7 SCC 243
104 (2015) 16 SCC 795 : (2016) 3 SCC (Civ) 649

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symbol relating to gods, goddesses or places of worship should not ordinarily be registered as a trade mark.

152. The petitioners have also referred to other cases such as *Gujarat Electricity Board* v. *Hind Mazdoor Sabha*[105], *Modern Dental College & Research Centre* v. *State of M.P.*[106] and *Krishan Lal Gera* v. *State of Haryana*[107] wherein also this Court has made a passing reference to reports of the Parliament Standing Committees.

153. We have, for the sake of completeness, noted the decisions relied upon by the petitioners to advance their stand. But it is condign to mention here that in the abovereferred cases, the question of contest/challenge never emerged. In all the cases, the situation never arose that warranted any contest amongst the competing parties for arriving at a particular factual finding. That being the position, the said judgments, in our considered opinion, do not render any assistance to the controversy in question.

154. We have distinguished the said decisions, as we are disposed to think that a party can always establish his case on the materials on record and the Court can independently adjudicate the controversy without allowing a challenge to Parliamentary Standing Committee report. We think so as the Court has a constitutional duty to strike a delicate balance between the legislature and the judiciary. It is more so when the issue does not involve a fundamental right that is affected by parliamentary action. In such a situation, we may deal with the concept of jurisprudential foundational principle having due regard to constitutional conscience. The perception of self-evolved judicial restraint and the idea of jurisprudential progression has to be juxtaposed for a seemly balance. There is no straitjacket formula for determining what constitutes judicial restraint and judicial progressionism. Sometimes, there is necessity for the courts to conceptualise a path that can be a wise middle path. The middle course between these two views is the concept of judicial engagement so that the concept of judicial restraint does not take the colour of judicial abdication or judicial passivism. Judicial engagement requires that the courts maintain their constitutional obligation to remain the sentinel on qui vive. It requires a vigilant progressive judiciary for the rights and liberties of the citizens to be sustained. Thus, as long as a decision of a court is progressive being in accord with the theory of judicial engagement, the approach would be to ensure the proper discharge of duty by the constitutional courts so as to secure the inalienable rights of the citizens recognised by the Constitution. A constitutional court cannot abdicate its duty to allow injustice to get any space or not allow real space to a principle that has certain range of acceptability.

105 (1995) 5 SCC 27 : 1995 SCC (L&S) 1166
106 (2016) 7 SCC 353 : 7 SCEC 1
107 (2011) 10 SCC 529

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155. Stradford, C.J., speaking the tone and tenor in *Jajbhay* v. *Cassim*[108], AD p. 542 has observed:

a "Now the Roman-Dutch law, which we must apply, is a living system capable of growth and development to allow adaptation to the increasing complexities and activities of modern civilised life. The instruments of that development are our own courts of law. In saying that, of course, I do not mean that it is permissible for a court of law to alter the law; its function is to elucidate, expound and apply the law. But it would be idle to deny that b in the process of the exercise of those functions rules of law are slowly and beneficially evolved."

156. In *Miranda* v. *Arizona*[109], the Supreme Court of the United States observed: (SCC OnLine US SC para 169)

"*169*. That the Court's holding today is neither compelled nor even c strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent does not prove either that the Court has exceeded its powers or that the Court is wrong or unwise in its present reinterpretation of the Fifth Amendment. It does, however, underscore the obvious—that the Court has not discovered or found the law in making today's decision, nor has it derived it from some irrefutable sources; what it has done is to d make new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution. This is what the Court historically has done. Indeed, it is what it must do and will continue to do until and unless there is some fundamental change in the constitutional distribution of governmental powers."

e **157.** In the Indian context, this Court has recognised the comprehensive, progressive and engaging role of constitutional courts in a catena of judgments starting from *Lakshmi Kant Pandey* v. *Union of India*[110], *Vishaka* v. *State of Rajasthan*[111], *Prakash Singh* v. *Union of India*[112], *Common Cause* v. *Union of India*[113] and *Shakti Vahini* v. *Union of India*[114]. In all these judgments, the dynamic and spirited duty of the Supreme Court has been recognised and it f has been highlighted that this Court ought not to shy away from its primary responsibility of interpreting the Constitution and other statutes in a manner that is not only legally tenable but also facilitates the progress and development of the avowed purpose of the rights-oriented Constitution. The Constitution itself being a dynamic, lively and ever changing document adapts to the paradigm of epochs. That being the situation, it is also for this Court to take a fresh look and mould the existing precepts to suit the new emerging situations. Therefore, the g constitutional courts should always adopt a progressive approach and display

108 1939 AD 537
109 1966 SCC OnLine US SC 112 : 16 L Ed 2d 694 : 384 US 436 (1966)
110 (1984) 2 SCC 244
111 (1997) 6 SCC 241 : 1997 SCC (Cri) 932
h 112 (2006) 8 SCC 1 : (2006) 3 SCC (Cri) 417
113 (2018) 5 SCC 1
114 (2018) 7 SCC 192

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a dynamic and spirited discharge of duties regard being had to the concepts of judicial statesmanship and judicial engagement, for they subserve the larger public interest.

158. In the case at hand, the constitutional obligation persuades us to take the view that the Parliamentary Standing Committee report or any Parliamentary Committee report can be taken judicial notice of and regarded as admissible in evidence, but it can neither be impinged nor challenged nor its validity can be called in question.

Q. ***Conclusions***

159. In view of the aforesaid analysis, we answer the referred questions in the following manner:

159.1. Parliamentary Standing Committee report can be taken aid of for the purpose of interpretation of a statutory provision wherever it is so necessary and also it can be taken note of as existence of a historical fact.

159.2. Judicial notice can be taken of the Parliamentary Standing Committee report under Section 57(4) of the Evidence Act and it is admissible under Section 74 of the said Act.

159.3. In a litigation filed either under Article 32 or Article 136 of the Constitution of India, this Court can take on record the report of the Parliamentary Standing Committee. However, the report cannot be impinged or challenged in a court of law.

159.4. Where the fact is contentious, the petitioner can always collect the facts from many a source and produce such facts by way of affidavits, and the court can render its verdict by way of independent adjudication.

159.5. The Parliamentary Standing Committee report being in the public domain can invite fair comments and criticism from the citizens as in such a situation, the citizens do not really comment upon any Member of Parliament to invite the hazard of violation of parliamentary privilege.

160. The reference is answered accordingly.

161. Let the writ petitions be listed before the appropriate Bench for hearing.

DR D.Y. CHANDRACHUD, J. (*for Sikri, J. and himself, concurring*)— This judgment has been divided into sections to facilitate analysis. They are:

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A. *Reference to the Constitution Bench*

163. Two public interest petitions instituted before this Court under Article 32 of the Constitution in 2012 and 2013 have placed into focus the process adopted for licensing vaccines[115] to prevent cervical cancer. The petitioners allege that the process of licensing was not preceded by adequate clinical trials to ensure the safety and efficacy of the vaccines. Nearly twenty-four thousand adolescent girls are alleged to have been vaccinated in Gujarat and before its bifurcation, in Andhra Pradesh without following safeguards. The trials are alleged to have been conducted under the auspices of a project initiated by the sixth respondent. The drugs are manufactured and marketed by the seventh and eighth respondents. Each of them produces pharmaceuticals. The petition calls into question the role of the Drugs Controller General of India and the Indian Council of Medical Research. The administration of the vaccine is alleged to have resulted in serious health disorders. Deaths were reported.

164. On 12-8-2014[116], a Bench of two Judges formulated the questions which would have to be addressed in the course of the proceedings.[117] They are: (*Kalpana Mehta case*[116], SCC p. 302, para 1)

> "*1.1.* (*i*) 'Whether before the drug was accepted to be used as a vaccine in India, the Drugs Controller General of India and ICMR had followed the procedure for said introduction?
>
> *1.2.* (*ii*) What is the action taken after the Parliamentary Committee had submitted the 72nd Report on 30-8-2013?
>
> *1.3.* (*iii*) What are the reasons for choosing certain places in Gujarat and Andhra Pradesh?
>
> *1.4.* (*iv*) What has actually caused the deaths and other ailments who had been administered the said vaccine?
>
> *1.5.* (*v*) Assuming this vaccine has been administered, regard being had to the nature of the vaccine, being not an ordinary one, what steps have been taken for monitoring the same by the competent authorities of the Union of India, who are concerned with health of the nation as well as the State Governments who have an equal role in this regard?
>
> *1.6.* (*vi*) The girls who were administered the vaccine, whether proper consent has been taken from their parents/guardians, as we have been apprised at the Bar that the young girls had not reached the age of majority?
>
> *1.7.* (*vii*) What protocol is required to be observed/followed, assuming this kind of vaccination is required to be carried out?' "

165. At the hearing, the petitioners relied upon the 81st Report of the Parliamentary Standing Committee dated 22-12-2014. The petitioners sought to place reliance on the Report so as to enable the Court to be apprised of the facts and to facilitate its conclusions and directions. This was objected to.

115 Human Papilloma Virus (HPV).
116 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295, paras 1 and 2.
117 WP (C) No. 558 of 2012.

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166. The issue which arose before the Court was whether a report of a Parliamentary Standing Committee can be relied upon in a public interest litigation under Article 32 or Article 226. If it could be adverted to, then an allied issue was the extent to which reliance could be placed upon it and its probative value. The then Attorney General for India, in response to a request for assistance, submitted that reports of Parliamentary Standing Committees are at best an external aid to construction, to determine the surrounding circumstances or historical facts for understanding the mischief sought to be remedied by legislation. The Union Government urged that reports of Parliamentary Standing Committees are meant to guide the functioning of its departments and are a precursor to debates in Parliament. However, those reports (it was urged) cannot be utilised in court nor can they be subject to a contest between litigating parties.

167. In an order dated 5-4-2017[2], a two-Judge Bench of this Court adverted to Articles 105 and 122 of the Constitution and observed thus: (*Kalpana Mehta case*[2], SCC pp. 320-21, para 69)

> "*69*. The purpose of referring to the aforesaid Articles is that while exercising the power of judicial review or to place reliance on the report of the Parliamentary Standing Committee, the doctrine of restraint has to be applied by this Court as required under the Constitution. What is argued by the learned counsel for the petitioners is that there is no question of any kind of judicial review from this Court or attributing anything on the conduct of any of the members of the Committee, but to look at the report for understanding the controversy before us. The submission "looking at the report", as we perceive, is nothing but placing reliance thereupon. The view of a Member of Parliament or a Member of the Parliamentary Standing Committee who enjoys freedom of speech and expression within the constitutional parameters and the rules or regulations framed by Parliament inside Parliament or the Committee is not to be adverted to by the court in a lis."

168. The referring order[2] notes that when a mandamus is sought, the Court has to address the facts which are the foundation of the case and the opposition, in response. If a court were to be called upon to peruse the report of a Parliamentary Standing Committee, a contestant to the litigation may well seek to challenge it. Such a challenge, according to the Court, in the form of "an invitation to contest" the report of a Parliamentary Committee "is likely to disturb the delicate balance that the Constitution provides between the constitutional institutions". Such a contest and adjudication would (in that view) be contrary to the privileges of Parliament which the Constitution protects. Hence according to the Court: (*Kalpana Mehta case*[2], SCC p. 322, para 73)

> "*73*. … we are prima facie of the view that the Parliamentary Standing Committee report may not be tendered as a document to augment the stance on the factual score that a particular activity is unacceptable or erroneous."

2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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169. A substantial question involving the interpretation of the Constitution having arisen, two questions have been referred to the Constitution Bench under Article 145(3): (*Kalpana Mehta case*[2], SCC p. 322, para 73)

> "*73.1.* (*i*) Whether in a litigation filed before this Court either under Article 32 or Article 136 of the Constitution of India, the Court can refer to and place reliance upon the report of the Parliamentary Standing Committee?
>
> *73.2.* (*ii*) Whether such a report can be looked at for the purpose of reference and, if so, can there be restrictions for the purpose of reference regard being had to the concept of parliamentary privilege and the delicate balance between the constitutional institutions that Articles 105, 121 and 122 of the Constitution conceive?"

B. ***Submissions***

170. Leading the submissions on behalf of the petitioners, Mr Harish Salve, learned Senior Counsel underscored the importance of three constitutional principles:

(*i*) Privileges of Parliament;

(*ii*) Comity of institutions; and

(*iii*) Separation of powers.

Based on them, the submission is that reference to what transpires in a co-equal constitutional institution must be circumspect and consistent with due deference to and comity between institutions. Freedom of speech and expression is implicit in the working of every institution and it is that institution alone which can regulate its own processes. In Parliament, what speakers state is controlled by the House or, as the case may be, by its Committee and a falsehood in Parliament is punishable by that institution alone.

171. It has been urged that if what is stated in a report of a Parliamentary Standing Committee were to be impeached in a court of law, that would affect the control of the Committee and of Parliament itself. The functions performed by Parliament and by the judiciary as two co-equal branches are, it is urged, completely different. Parliamentary business is either for the purpose of enforcing accountability of the Government or to enact legislation. The function of judicial institutions is adjudicatory. The courts resolve a lis on objective satisfaction and have a duty to act judicially. The courts would not, it has been urged, receive as evidence of facts any material whose truth or integrity cannot be assailed in court.

172. On the above conceptual foundation, Mr Salve urged that the report of a Parliamentary Standing Committee can be relied upon in a judicial proceeding in two exceptional situations:

(*i*) Where it becomes necessary for the court to examine the legislative history of a statutory provision;

2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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(*ii*) As a source from which the policy of the Government, as reflected in the statements made by a Minister before the House can be discerned; and

(*iii*) Reports of Parliamentary Standing Committees are meant for consideration before Parliament and can only be regarded as "considered advice" to the House.

Except in the two situations enumerated above, no petition seeking a mandamus can be brought before the court on the basis of such a report for the reason that (*i*) No right can be founded on the recommendation of a House Committee; and (*ii*) Relying on such a report may result in a challenge before the court, impinging upon parliamentary privileges.

173. Mr K.K. Venugopal, the learned Attorney General for India has supported the adoption of a rule of exclusion, based on the privileges of the legislature, separation of powers and as a matter of textual interpretation of the Constitution. In his submission:

173.1. Committees of Parliament being an essential adjunct to Parliament, and their reports being for the purpose of advising and guiding Parliament in framing laws and the executive for framing policies, it would be a breach of privilege of Parliament to judicially scrutinise and/or review these reports for any purpose whatsoever;

173.2. The broad separation of powers, which is a part of the basic structure of the Constitution of India, would prevent courts from subjecting the reports of Parliamentary Standing Committees to scrutiny or judicial review; and

173.3. A conjoint reading of Articles 105 and 122 of the Constitution would establish that, expressly or by necessary implication, there is a bar on the courts from scrutinising or judicially reviewing the functioning or reports of the committees of Parliament.

174. Refuting the submissions which have been urged by the Attorney General and on behalf of the pharmaceutical companies, Mr Colin Gonsalves, learned Senior Counsel urges that there can be no objection to reliance being placed on the report of a Parliamentary Standing Committee where (as in the present case) there is *no attempt*:

(*i*) to criticise Parliament;

(*ii*) to summon a witness; or

(*iii*) to breach a privilege of the legislating body.

The report of a Parliamentary Standing Committee is (it is urged) relied upon only for the court to seek guidance from it. The court may derive such support in whichever manner it may best regard in the interest of justice, to advance a cause which has been brought in a social action litigation.

175. According to Mr Gonsalves, the core of the submission (urged by Mr Salve) is that because his clients object to the findings in the Report, it becomes a contentious issue. Mr Gonsalves submits that this Court should not allow what in substance is an argument for a blackout against the highest

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court taking notice of the report in its PIL jurisdiction. The submission is that the Court need not treat any of the facts contained in the report as conclusive except those that are permitted by Section 57 of the Evidence Act, 1872. No mandamus is sought that the recommendations of the Parliamentary Committee be enforced. The Court, it has been urged, will not be invited to comment upon the report even if it were not to agree with the contents of the report. The learned counsel urged that the legislative function of Parliament is distinct from the oversight which it exercises over government departments. An issue of parliamentary privileges arises when the court makes a Member of Parliament or of a Parliamentary Committee liable in a civil or criminal action for what is stated in Parliament. Such is not the position here.

176. Mr Gonsalves submitted that in significant respects, our Constitution marks a historical break from the English Parliamentary tradition. India has adopted the doctrine of constitutional supremacy and not Parliamentary sovereignty, as in the UK. Hence, cases decided under the English Common Law cannot be transplanted, without regard to context, in Indian jurisprudence on the subject. The unrestrained use of parliamentary privileges, it has been urged, stands modified in the Indian context, which is governed by constitutional supremacy. In matters involving public interest or issues of a national character, both the institutions — Parliament and the courts — must act together. As a matter of fact, Parliament has placed the report of its Standing Committee in the public domain. It is ironical, Mr Gonsalves urges, that in the present case, it is the executive which seeks to protect itself from disclosure in the guise of parliamentary privileges.

177. Finally, it has been urged that the public interest jurisdiction is not adversarial and constitutes a distinctly Indian phenomenon. Where the fulfilment and pursuit of a constitutional goal, national purpose or public interest is in issue, both Parliament and the judiciary will act in comity. No issue arises here in relation to the separation of powers or breach of parliamentary privilege. On the contrary, it has been submitted that the approach of the respondents is not in accordance with the march of transparency in our law.

178. Mr Anand Grover, learned Senior Counsel submitted that if there is no dispute that a certain statement was made before Parliament or, as the case may be, a Parliamentary Standing Committee, such a statement can be relied upon as a fact of it being stated in Parliament. The truth of the statement is, in the submission of the learned Senior Counsel, another and distinct issue. The report is uncontentious not as regards the truth of its contents but of it having been made. The Court in the exercise of its power of judicial review will not hold that an inference drawn by a Parliamentary Committee is wrong. But the Court can certainly look at a statement where there is no dispute of it having been made.

179. Mr Shyam Divan and Mr Gourab Banerji, learned Senior Counsel have broadly pursued the same line of argument as the learned Attorney General for India and Mr Harish Salve.

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C. ***The Constitution***

180. Articles 105, 118, 119 and 121 are comprised in Part V of the Constitution which deals with the Union and form a part of Chapter II, which deals with Parliament. Article 105 is extracted below:

> "**105.** ***Powers, privileges, etc., of the Houses of Parliament and of the Members and committees thereof.***—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
>
> (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the Members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its Members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
>
> (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to Members of Parliament."

181. The first major principle which emerges from Article 105 is that it expects, recognises and protects the freedom of speech in Parliament. Stated in a sentence, the principle enunciates a vital norm for the existence of democracy. Parliament represents collectively, through the representative character of its Members, the voice and aspirations of the people. Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents.

182. The Constitution recognises free speech as a fundamental right in Article 19(1)(*a*). A separate articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. It embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy. Elected Members of Parliament represent the voices of the citizens. In giving expression to the concerns of citizens, Parliamentary speech enhances democracy. Article 105(1) emphasises free speech as an institutional value, apart from it being a part of individual rights. Elected Members of the legislature continue to wield that fundamental right in their individual capacity.

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Collectively, their expression of opinion has an institutional protection since the words which they speak are spoken within the portals of Parliament. This articulated major premise is however subject to the provisions of the Constitution and is conditioned by the procedure of Parliament embodied in its rules and standing orders. The recognition in clause (1) that there shall be freedom of speech in Parliament is effectuated by the immunity conferred on Members of Parliament against being liable in a court of law for anything said or for any vote given in Parliament or a committee. Similarly, a person who publishes a report, paper, votes or proceedings under the authority of Parliament is protected against liability in any court. In other respects — that is to say, on matters other than those falling under clauses (1) and (2), Parliament has been empowered to define the powers, privileges and immunities of each of its Houses and of its Members and committees. Until Parliament does so, those powers, privileges and immunities are such as existed immediately before the enforcement of the 44th amendment to the Constitution[118]. Clause (4) of Article 105 widens the scope of the protection by making it applicable "in relation to persons" who have a right to speak in or to take part in the proceedings before the House or its committees. The protection afforded to Members of Parliament is extended to all such persons as well. Committees of the Houses of Parliament are established by and under the authority of Parliament. They represent Parliament. They are comprised within Parliament and are as much, Parliament.

183. Article 118 deals with the Rules of Procedure of Parliament:

> "**118.** ***Rules of procedure.***—(1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.
>
> (2) Until rules are made under clause (1), the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.
>
> (3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.
>
> (4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3), shall preside."

184. The procedure and conduct of business of Parliament are governed by the rules made by each House. The rule-making authority is subject only to the provisions of the Constitution. Until rules are framed, the procedure of Parliament was to be governed by the rules of procedure and Standing Orders which applied to the legislature of the Dominion of India immediately

118 The Constitution (44th Amendment) Act, 1978 came into force from 20-6-1979.

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before the commencement of the Constitution (subject to adaptations and modifications). Rules of procedure for joint sittings of the two Houses of Parliament and in regard to communications between them are to be framed by the President in consultation with the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha.

185. Article 119 provides for regulation by law of the procedure in Parliament in relation to financial business. Article 119 provides thus:

> "**119.** ***Regulation by law of procedure in Parliament in relation to financial business***.—Parliament may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in, each House of Parliament in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of India, and, if and so far as any provision of any law so made is inconsistent with any rule made by a House of Parliament under clause (1) of Article 118 or with any rule or standing order having effect in relation to Parliament under clause (2) of that article, such provision shall prevail."

Article 119 thus embodies a special provision which enables Parliament to regulate the procedure for and conduct of business in each House in relation to financial matters or for appropriation of monies from the Consolidated Fund.

186. Article 122 contains a bar on courts inquiring into the validity of any proceedings of Parliament on the ground of an irregularity of procedure:

> "**122.** ***Courts not to inquire into proceedings of Parliament***.—(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
>
> (2) No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

Article 122 protects the proceedings in Parliament being questioned on the ground of an irregularity or procedure. In a similar vein, a Member of Parliament or an officer vested with authority under the Constitution to regulate the procedure or the conduct of business (or to maintain order) in Parliament is immune from being subject to the jurisdiction of any court for the exercise of those powers. Those who perform the task — sometimes unenviable — of maintaining order in Parliament are also protected, to enable them to discharge their functions dispassionately.

187. The provisions contained in Chapter II of Part V are mirrored, in the case of the State Legislatures, in Chapter III of Part VI. The corresponding provisions in regard to State Legislatures are contained in Articles 194, 208, 209 and 212.

188. The fundamental principle which the Constitution embodies is in terms of its recognition of and protection to the freedom of speech in Parliament. Freedom of speech has been entrenched by conferring an immunity against holding a Member of Parliament liable for what has been spoken

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in Parliament or for a vote which has been tendered. The freedom to speak is extended to other persons who have a right to speak in or take part in the proceedings of Parliament. Parliament is vested with the authority to regulate its procedures and to define its powers, privileges and immunities. The same protection which extends to parliamentary proceedings is extended to proceedings in or before the Committees constituted by each House. Parliament has been vested with a complete and exclusive authority to regulate its own procedure and the conduct of its business.

189. While making the above provisions, the Constitution has carefully engrafted provisions to ensure institutional comity between Parliament and the judiciary. Under Article 121, the conduct of a Judge of the Supreme Court or of a High Court in the discharge of duties cannot be discussed in Parliament (except upon a motion for removal). Article 211 makes a similar provision in regard to the State Legislatures.

D. *Parliamentary Standing Committees*

190. Parliamentary Committees exist both in the Westminster form of Government in the United Kingdom as well as in the Houses of Parliament in India. In the UK, Select Committees have emerged as instruments through which Parliament scrutinises the policies and actions of Government and enforces accountability of Government and its officers. Select Committees are composed of specifically nominated Members of Parliament and exercise the authority which the House delegates to them. The role of Select Committees has been set forth in *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*[119]:

> "Select Committees are appointed by the House to perform a wide range of functions on the House's behalf. Most notably they have become over recent years the principal mechanism by which the House discharges its responsibilities for the scrutiny of government policy and actions. Increasingly this scrutiny work has become the most widely recognised and public means by which Parliament holds Government Ministers and their departments to account."

191. The scope of deliberations or inquiries before a Select Committee is defined in the order by which the committee is appointed. When a Bill is referred to a Select Committee, the Bill constitutes the order of reference[120]. Select Committees are a microcosm of the House. During the course of their work, Select Committees rely upon documentary and oral evidence[121]:

> "Once received by the committee as evidence, papers prepared for a committee become its property and may not be published without the express authority of the committee. Some committees have agreed to a

119 *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (Lexis Nexis, 24th Edn. 2011), 37.
120 *Id*, at pp. 805-806.
121 *Id*, at p. 818.

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resolution at the beginning of an inquiry authorising witnesses to publish their own evidence."

192. Evidence which has been collected during the course of an inquiry is published with the report of the committee[122]:

> "It is usual practice of committees to publish the evidence which they have taken during the course of an inquiry with the report to which the evidence is relevant. In the case of longer inquiries, the evidence may be separately published during the course of the inquiry. In such cases, however, that evidence may be published again with the report. Additionally, committees may take evidence with no intention of producing a subsequent report and publish it without comment."

A Select Committee decides when to publish any report which it has agreed[123].

193. Article 105 of the Indian Constitution recognises committees of the Houses of Parliament. Rules of Procedure of the Lok Sabha and the Rajya Sabha framed under Article 118(1) of the Constitution inter alia provide for the organisation and working of these committees[124].

194. The rules governing procedure and the conduct of business in the Rajya Sabha provide for the constitution of the committees of the House. Chapter IX of the Rules contains provisions relating to legislation. Provisions have been made for Bills which originate in the Rajya Sabha and for those which originate in the Lok Sabha and are transmitted to the Rajya Sabha. Under Rule 72, members of a Select Committee for a Bill are appointed by the Rajya Sabha when a motion that the Bill be referred to a Select Committee is made. Rule 84 empowers the Select Committee to require the attendance of witnesses or the production of papers or records. The Select Committee can hear expert evidence and representatives of special interests affected by the measure. Documents submitted to the Committee cannot be withdrawn or altered without its knowledge and approval. The Select Committee, under Rule 85, is empowered to decide upon its procedure and the nature of questions which it may address to a witness called before it. Rule 86 provides for the printing and publication of evidence and empowers the Committee to direct that the evidence or a summary be laid on the table. Evidence tendered before the Select Committee can only be published after it has been laid on the table. The Select Committee prepares its report on the Bill referred to it, under Rule 90. Under Rule 91, the report of the Select Committee on a Bill, together with minutes of dissent, is presented to the Rajya Sabha by the Chairperson of the Committee. Under Rule 92, the Secretary General must print every report of a Select Committee. The report together with the Bill proposed by the Select Committee has to be published in the Gazette. The rules contemplate

122 *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (Lexis Nexis, 24th Edn. 2011), 825.

123 *Id*, at p. 838.

124 Rules of Procedure and Conduct of Business in Lok Sabha, (Lok Sabha Secretariat, 15th Edn., April 2014). Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), (published by the Secretary General, 9th Edn., August 2016).

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the procedure to be followed in the Rajya Sabha for debating and discussing the report and for considering amendments, leading up to the eventual passage of the Bill. In a manner similar to reference of Bills originating in the Rajya Sabha to Select Committees, Bills which are transmitted from the Lok Sabha to the Rajya Sabha may be referred to a Select Committee under Rule 125, if a motion for that purpose is carried.

195. Chapter XXII of the Rules contains provisions in regard to Department related Parliamentary Standing Committees. Rule 268 stipulates that there shall be Parliamentary Standing Committees related to Ministries/Departments. The Third Schedule elucidates the name of each committee and the Ministries/ Departments which fall within its purview. Under Rule 269, each such committee is to consist of not more than 31 members: 10 to be nominated by the Chairperson from the Members of the Rajya Sabha and 21 to be nominated by the Speaker from the Members of the Lok Sabha. Rule 270 specifies the functions of the Standing Committees:

> "**270.** ***Functions***.—Each of the Standing Committees shall have the following functions, namely—
>
> (*a*) to consider the demands for grants of the related Ministries/ Departments and report thereon. The report shall not suggest anything of the nature of cut motions;
>
> (*b*) to examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
>
> (*c*) to consider the annual reports of the Ministries/Departments and report thereon; and
>
> (*d*) to consider national basic long-term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon:
>
> Provided that the Standing Committees shall not consider matters of day-to-day administration of the related Ministries/Departments."

196. Rule 274 envisages that the report of the Standing Committee "shall be based on broad consensus" though a member may record a dissent. The report of the Committee is presented to the Houses of Parliament. Under Rule 275, provisions applicable to Select Committees on Bills apply mutatis mutandis to the Standing Committees. Rule 277 indicates that the report of a Standing Committee is to have persuasive value and is treated as advice to the House:

> "**277.** ***Reports to have persuasive value***.—The report of a Standing Committee shall have persuasive value and shall be treated as considered advice given by the Committee."

197. Department related Parliamentary Standing Committees are Committees of the Houses of Parliament. The Committees can regulate their procedure for requiring the attendance of persons and for the production of documents. The Committees can hear experts or special interests. These Committees ensure parliamentary oversight of the work of the ministries/

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departments of Government. As a part of that function, each Committee considers demands for grants, examines Bills which are referred to it, considers the annual reports of the ministry/department and submits reports on national long-term policy documents, when they have been referred for consideration. The reports of these Committees are published and presented to the Houses of Parliament. They have a persuasive value and are advice given by the Committee to Parliament.

198. Besides the Department related Standing Committees, there is a General Purposes Committee (Chapter XXIII) whose function is to consider and advise on matters governing the affairs of the House, referred by the Chairperson. Chapter XXIV provides for the constitution of a Committee on Ethics to oversee "the moral and ethical conduct" of members, prepare a code of conduct, examine cases of alleged breach and to tender advise to members on questions involving ethical standards.

E. ***Parliamentary privilege***

E.1. ***UK decisions***

199. In UK, a body of law has evolved around the immunity which is afforded to conduct within or in relation to statements made to Parliament against civil or criminal liability in a court of law. The common law also affords protection against the validity of a report of a Select Committee being challenged in a court.

200. Article 9 of the Bill of Rights, 1688 declares that:

> "… That the freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament. …"

Construed strictly, the expression "out of Parliament" will effectively squelch any discussion of the proceedings of Parliament, outside it. This would compromise to the need for debate and discussion on matters of governance in a democracy. Hence, there has been an effort to bring a sense of balance: a balance which will ensure free speech within Parliament but will allow a free expression of views among citizens. Both are essential to the health of democracy.

201. Article 9 has provided the foundation for a line of judicial precedent in the English Courts. In 1884, the principle was formulated in *Bradlaugh* v. *Gossett*[80]: (QBD p. 271)

> "The House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into in a court of law.
>
> A resolution of the House of Commons cannot change the law of the land. But a court of law has no right to inquire into the propriety of a

80 (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)

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resolution of the House restraining a member from doing within the walls of the House itself something which by the general law of the land he had a right to do.…"

In *Dingle* v. *Associated Newspapers Ltd.*[125], the above formulation was held to constitute "a clear affirmation of the exclusive right of Parliament to regulate its own internal proceedings". Applying that principle, the Queen's Bench Division ruled that the report of a Select Committee of the House of Commons could not be impugned outside Parliament. This principle was applied in *Church of Scientology of California* v. *Johnson Smith*[126], when an action for libel was brought against a Member of Parliament for a statement made during the course of a television interview. In order to refute the defendants' plea of fair comment, the plaintiff sought to prove malice by leading evidence of what had taken place in Parliament. Rejecting such an attempt, the Court adverted to the following statement of principle in *Blackstone*: (*Johnson Smith case*[126], QB p. 528)

> " '… "The whole of the law and custom of Parliament has its origin from this one maxim, "that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere".'" (*Gossett case*[80], QBD p. 278)

Reiterating that principle, the Court held: (*Johnson Smith case*[126], QB p. 529)

> "… what is said or done in the House in the course of any proceedings there cannot be examined outside Parliament for the purpose of supporting a cause of action even though the cause of action itself arises out of something done outside the House."

The decision involved a libel action brought against a Member of Parliament for a statement made outside. The Court rejected an attempt to rely upon what was stated in Parliament to establish a case of malice against the defendant.

202. In *Pepper (Inspector of Taxes)* v. *Hart*[95], Lord Browne-Wilkinson held for the House of Lords that there was a valid reason to relax the conventional rule of exclusion under which reference to Parliamentary material, as an aid to statutory construction, was not permissible. The learned Law Lord held: (AC p. 634)

> "… In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words."

125 (1960) 2 QB 405 : (1960) 2 WLR 430
126 (1972) 1 QB 522 : (1971) 3 WLR 434
80 *Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)
95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)

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Holding that such a relaxation would not involve the Court criticising what has been said in Parliament since the Court was only giving effect to the words used by the Minister, the Court held that the exclusionary rule should be relaxed to permit reference to parliamentary materials where: (*Hart case*[95], AC p. 640)

> "(*a*) legislation is ambiguous or obscure, or leads to an absurdity; (*b*) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (*c*) the statements relied upon are clear."

203. The decision of the Privy Council in *Richard William Prebble* v. *Television New Zealand Ltd.*[127] (*Prebble*) arose from a case where, in a television programme transmitted by the defendant, allegations were levelled against the Government of New Zealand, involving the sale of State-owned assets to the private sector while the plaintiff was the Minister of the department. In his justification, the defendant alleged that the plaintiff had made statements in the House calculated to mislead. Lord Browne-Wilkinson held that the defendant was precluded from questioning a statement made by the plaintiff before the House of Parliament. The principle was formulated thus: (AC p. 332)

> "In addition to Article 9 itself, there is a long line of authority which supports a wider principle, of which Article 9 is merely one manifestation viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges: *Burdett* v. *Abbot*[128]; *Stockdale* v. *Hansard*[83]; *Bradlaugh* v. *Gossett*[80]; *British Railways Board* v. *Pickin*[129] and *Pepper (Inspector of Taxes)* v. *Hart*[95]. As Blackstone said in his *Commentaries on the Laws of England*, 17th Edn. (1830), Vol. 1, p. 163:
>
> > 'the whole of the law and custom of Parliament has its origin from this one maxim, "that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere".' "

The Privy Council held that cross-examination based on the Hansard was impermissible.

95 *Pepper (Inspector of Taxes)* v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
127 (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)
128 (1811) 14 East 1 : 104 ER 501
83 (1839) 9 Ad & E 1 : 112 ER 1112 (QB)
80 (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)
129 1974 AC 765 : (1974) 2 WLR 208 (HL)

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204. In the course of its decision in *Prebble*[127], the Privy Council adverted to an Australian judgment of New South Wales Supreme Court in *R.* v. *Murphy*[130] (*Murphy*) which had allowed a witness to be cross-examined on the basis of evidence given to a Select Committee on the ground that Article 9 did not prohibit cross-examination to show that the statement of the witness before the committee was false. In order to overcome the situation created by the decision, the Australian Legislature enacted the Parliamentary Privileges, Act, 1987. Section 16(3) introduced the following provisions: (*Prebble*[127], AC p. 333)

> "**16. (3)** In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:
>
> (*a*) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
>
> (*b*) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
>
> (*c*) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament."

205. In *Prebble*[127], the Privy Council held that Section 16(3) contains "what, in the opinion of their Lordships, is the true principle to be applied". The Privy Council held that the Australian view in *Murphy*[130] was not correct, so far as the rest of the Commonwealth is concerned, because it was in conflict with a long line of authority that courts will not allow any challenge to what is said or done in Parliament.

206. The Defamation Act, 1996 (UK) contained a provision in Section 13 under which an individual litigant in a defamation case could waive parliamentary privilege. The report of the Joint Committee observed that the provision "undermined the basis of privilege: freedom of speech was the privilege of the House as a whole and not of the individual member in his or her own right, although an individual member could assert and rely on it". The waiver provision was deleted on the ground that the privilege belongs to the House and not to an individual member. The impact of the provisions of Section 13 of the Defamation Act, 1996 was dealt with in a 2011 decision of the House of Lords in *Hamilton* v. *Al Fayed*[76] (*Hamilton*). The defendant had alleged that as a Member of Parliament, the plaintiff had accepted cash from him for asking questions on his behalf in the House of Commons. The plaintiff commenced an action for defamation against the defendant, waiving his parliamentary privileges pursuant to Section 13 of the Defamation

127 *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)
130 (1986) 64 ALR 498 : (1986) 5 NSWLR 18
76 (2001) 1 AC 395 : (2000) 2 WLR 609 (HL)

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Act, 1996. Lord Browne-Wilkinson dwelt on parliamentary privileges, which prohibit the court from questioning whether a witness before Parliament had misled it. The House of Lords held that any attempt to cross-examine the defendant to the effect that he had lied to a Parliamentary Committee when he had stated that he had paid money for questions would have infringed parliamentary privileges. However, under Section 13, the plaintiff could waive his own protection from parliamentary privilege. The consequence was thus: (AC pp. 408-09)

> "… The privileges of the House are just that. They all belong to the House and not to the individual. They exist to enable the House to perform its functions. Thus Section 13(1) accurately refers, not to the privileges of the individual MP, but to "the protection of any enactment or rule of law" which prevents the questioning of procedures in Parliament. The individual MP enjoys the protection of parliamentary privilege. If he waives such protection, then under Section 13(2) any questioning of parliamentary proceedings (even by challenging "findings … made about his conduct") is not to be treated as a breach of the privileges of Parliament."

The effect of Section 13 was that if a Member of Parliament waived the protection, an assail of proceedings before Parliament would not be regarded as a breach of privilege.

207. The decision in *Hamilton*[76] is significant for explaining precisely the relationship between parliamentary privilege and proceedings in a court which seek to challenge the truth or propriety of anything done in parliamentary proceedings. As the Court holds: (AC p. 407)

> "… The normal impact of parliamentary privilege is to prevent the court from entertaining any evidence, cross-examination or submissions which challenge the veracity or propriety of anything done in the course of parliamentary proceedings. Thus, it is not permissible to challenge by cross-examination in a later action the veracity of evidence given to a Parliamentary Committee."

But for the provisions of Section 13, evidence by *Hamilton*[76] that he had not received money for questions would come into conflict with the evidence tendered by Al Fayed which was accepted by the Parliamentary Committees. Hence it would have been impermissible to cross-examine Al Fayed to the effect that he had falsely stated before the Parliamentary Committees that he had paid money for questions. Such a consequence was obviated by the waiver provisions of Section 13.

208. In *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*[131] (*Toussaint*), the Privy Council dealt with a case where a claim was brought against the Government by an individual claiming that the acquisition of his land was unlawful. In support, he referred to a speech of the Prime Minister in Parliament and a transcript taken from the video-

76 *Hamilton* v. *Al Fayed*, (2001) 1 AC 395 : (2000) 2 WLR 609 (HL)
131 (2007) 1 WLR 2825 : 2007 UKPC 48 (PC)

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tape of a televised debate. The submission was that the true reason for the acquisition of the land, as evident from the speech of the Prime Minister, was political. Adverting to *Prebble*[127], Lord Mance, speaking for the Privy Council, noted that there were three principles involved: the need to ensure the free exercise of powers by the legislature on behalf of the electors; the need to protect the interest of justice; and the interest of justice in ensuring that all relevant evidence is available to the courts. The Privy Council held that it was permissible to rely upon the speech of the Prime Minister though the attempt was to demonstrate an improper exercise of power for extraneous purposes. As Lord Mance observed: (*Toussaint case*[131], WLR pp. 2832-33, para 17)

> "*17*. In such cases, the minister's statement is relied upon to explain the conduct occurring outside Parliament, and the policy and motivation leading to it. This is unobjectionable although the aim and effect is to show that such conduct involved the improper exercise of a power "for an alien purpose or in a wholly unreasonable manner": *Pepper (Inspector of Taxes)* v. *Hart*[95], per Lord Browne-Wilkinson at p. 639-A. The Joint Committee expressed the view that Parliament should welcome this development, on the basis that "Both parliamentary scrutiny and judicial review have important roles, separate and distinct, in a modern democratic society" (para 50) and on the basis that "The contrary view would have bizarre consequences", hampering challenges to the "legality of executive decisions … by ring-fencing what ministers said in Parliament", and making "ministerial decisions announced in Parliament … less readily open to examination than other ministerial decisions": para 51. The Joint Committee observed, pertinently, that:
>
> > " 'That would be an ironic consequence of Article 9. Intended to protect the integrity of the legislature from the executive and the courts, Article 9 would become a source of protection of the executive from the courts.' "

The Prime Minister's statement in the House was "relied on for what it says, rather than questioned or challenged". This was permissible.

209. *Toussaint*[131] is an important stage in the development of the law. A statement made in Parliament by a Minister could be relied upon, not just to explain the history of a law. Where there is a challenge to the exercise of governmental authority on the ground that it is actuated by extraneous reasons, a statement by a Minister in Parliament could be used in court in regard to conduct outside Parliament. The challenge is not to a statement made in Parliament but to governmental action outside. The statement would be relevant to question an abuse of power by Government.

127 *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)

131 *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*, (2007) 1 WLR 2825 : 2007 UKPC 48 (PC)

95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)

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210. In *R. (Bradley)* v. *Secy. of State for Work and Pensions*[132] (Attorney General intervening), the Court of Appeal visited the statement in *Prebble*[127] that Section 16(3) of the Parliamentary Privileges Act, 1987 in Australia declared the true effect of Article 9 of the Bill of Rights and that Section 16(3) contained "the true principle to be applied" in the case. Holding that the dictum in *Prebble*[127] appears to be too wide, it was held: [*R. (Bradley) case*[132], QB p. 160, para 32]

> "*32.* … But paragraph (*c*), if read literally, is extremely wide. It would seem to rule out reliance on or a challenge to a ministerial statement itself on judicial review of the decision embodied in that statement (which was permitted in *R.* v. *Secy. of State for the Home Department, ex p Brind*[133], and to which no objection has been raised in the present case), or to resolve an ambiguity in legislation [*Pepper (Inspector of Taxes)* v. *Hart*[95]], or to assist in establishing the policy objectives of an enactment [*Wilson* v. *First County Trust Ltd. (No. 2)*[134]]. It would also prohibit reliance on report of the Joint Committee on Human Rights, which, as Mr Lewis's submissions rightly state, have been cited in a number of appellate cases in this jurisdiction: a very recent example is *R.* v. *F.*[135], QB para 11. As Lord Nicholls of Birkenhead observed in *Wilson case*[134], AC para 60: (*Wilson case*[134], AC p. 841)
>
> > '*60.* … there are occasions when courts may properly have regard to ministerial and other statements made in Parliament without in any way "questioning" what has been said in Parliament, without giving rise to difficulties inherent in treating such statements as indicative of the will of Parliament, and without in any other way encroaching upon parliamentary privilege by interfering in matters properly for consideration and regulation by Parliament alone.'
>
> I therefore do not treat the text of paragraph (*c*) of the Australian statute as being a rule of English law."

The report of a Select Committee, it was observed, is a written document published after a draft report has been placed before and approved by the Committee. Hence, it was unlikely that the use of such a report in the submissions of a party in civil litigation would have inhibited the Committee from expressing its view. The freedom of speech in Parliament principle would not be affected, since there would be no inhibition of that freedom.

132 2009 QB 114 : (2008) 3 WLR 1059 : 2007 EWHC 242 (Admin)
127 *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)
133 (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)
95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
134 (2004) 1 AC 816 : (2003) 3 WLR 568 : 2003 UKHL 40 (HL)
135 2007 QB 960 : (2007) 3 WLR 164 (CA)

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211. The decision of the Administrative Court in the UK in *Office of Govt. Commerce* v. *Information Commr.*[136] involved a case where a department of Government had carried out reviews into an identity card programme. The case involved a claim for the disclosure of information. The Court observed that the law of parliamentary privilege is based on two principles: the need for free speech in Parliament and separation of powers between the legislature and the judiciary: (QB p. 115, paras 46 & 47)

> "*46*. … the law of parliamentary privilege is essentially based on two principles. The first is the need to avoid any risk of interference with free speech in Parliament. The second is the principle of the separation of powers, which in our Constitution is restricted to the judicial function of Government and requires the executive and the legislature to abstain from interference with the judicial function, and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature. These basic principles lead to the requirement of mutual respect by the courts for the proceedings and decisions of the legislature and by the legislature (and the executive) for the proceedings and decisions of the courts.
>
> *47*. Conflicts between Parliament and the courts are to be avoided. The above principles lead to the conclusion that the courts cannot consider allegations of impropriety or inadequacy or lack of accuracy in the proceedings of Parliament. Such allegations are for Parliament to address, if it thinks fit, and if an allegation is well founded any sanction is for Parliament to determine. The proceedings of Parliament include parliamentary questions and answers. These are not matters for the courts to consider."

Yet, the Court also noticed the limitation of the above principles, when proceedings in Parliament are relied upon simply as relevant historical facts or to determine whether the legislation is incompatible with the European Convention for the Protection of Human Rights which was embodied in the Human Rights Act, 1998 ("HRA") in the UK. In that context the Court observed: (QB p. 116, para 49)

> "*49*. However, it is also important to recognise the limitations of these principles. There is no reason why the courts should not receive evidence of the proceedings of Parliament when they are simply relevant historical facts or events: no "questioning" arises in such a case.… Similarly, it is of the essence of the judicial function that the courts should determine issues of law arising from legislation and delegated legislation. Thus, there can be no suggestion of a breach of parliamentary privilege if the courts decide that legislation is incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms: by enacting the Human Rights Act, 1998.…"

136 2010 QB 98 : (2009) 3 WLR 627

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The Court held that the conclusions of the report of a committee that had led to legislation could well be relied upon since the purpose of the reference is either historical or made with a view to ascertaining the mischief at which the legislation was aimed. If the evidence given to a committee is uncontentious — the parties being in agreement that it is true and accurate — there could be no objection to it being taken into account. What the Tribunal could not do was to refer to contentious evidence given to a Parliamentary Committee or the finding of the Committee on an issue which the Tribunal had to determine.

212. The decision indicates a calibrated approach to parliamentary privilege consistent with the enactment of the HRA. The doctrine of incompatibility envisages a role for courts in the UK to assess the consistency of the provisions of law with reference to the standards of the European Convention. Parliamentary supremacy does not allow the court to strike down legislation. Yet the emergence of standards under the HRA has allowed for a distinct adjudicatory role: to determine the compatibility of domestic law with reference to European Convention standards, adopted by the HRA. To hold that this has not altered the role of courts vis-à-vis parliamentary legislation would be to miss a significant constitutional development.

213. *R. (Wheeler)* v. *Office of the Prime Minister*[137] was a case where there was a challenge to a decision brought by the Government to give notice of the intention of UK to participate in the Council Framework Decision on the European arrest warrants. It was claimed that the Government was precluded from issuing a notification of its intention without holding a referendum. Holding that the plea would breach parliamentary privilege the Court held:

> "… In substance, however, the claim is that, unless the House of Commons organises its business in a particular way, and arranges for a vote in a particular form, the courts must intervene and either grant a declaration or issue an order prohibiting the government from taking certain steps unless and until there is such a vote. In my judgment, that would involve the courts impermissibly straying from the legal into the political realm."

The plea, the Court ruled, would amount to the Court questioning things done in Parliament and instead of facilitating the role of Parliament, the Court would be usurping it.

214. In *Wilson* v. *First County Trust Ltd. (No. 2)*[134] the House of Lords observed that the Human Rights Act, 1998 had obligated the Court to exercise a new role in respect of primary legislation. The courts were required to evaluate the effect of domestic legislation upon rights conferred by the European Convention and where necessary; to make a declaration of incompatibility. While doing so, the Court would primarily construe the legislation in question. Yet, the practical effect of a statutory provision may require the Court to look outside the statute. The Court would be justified in looking at additional background information to understand the practical impact of a statutory

137 2014 EWHC 3815 (Admin)
134 (2004) 1 AC 816 : (2003) 3 WLR 568 : 2003 UKHL 40 (HL)

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measure on a Convention right and decide upon the proportionality of a statutory provision. In that context, the Court held: (AC pp. 842-43, paras 64 & 65)

> "*64*. This additional background material may be found in published documents, such as a government white paper. If relevant information is provided by a minister or, indeed, any other member of either House in the course of a debate on a Bill, the courts must also be able to take this into account. The courts, similarly, must be able to have regard to information contained in explanatory notes prepared by the relevant government department and published with a Bill. The courts would be failing in the due discharge of the new role assigned to them by Parliament if they were to exclude from consideration relevant background information whose only source was a ministerial statement in Parliament or an explanatory note prepared by his department while the Bill was proceeding through Parliament. By having regard to such material, the court would not be "questioning" proceedings in Parliament or intruding improperly into the legislative process or ascribing to Parliament the views expressed by a minister. The court would merely be placing itself in a better position to understand the legislation.
>
> *65*. To that limited extent there may be occasion for the courts, when conducting the statutory "compatibility" exercise, to have regard to matters stated in Parliament. It is a consequence flowing from the Human Rights Act. The constitutionally unexceptionable nature of this consequence receives some confirmation from the view expressed in the unanimous report of the parliamentary Joint Committee on Parliamentary Privilege (1999) (HL Paper 43-I, HC 214-I), p. 28, para 86, that it is difficult to see how there could be any objection to the court taking account of something said in Parliament when there is no suggestion the statement was inspired by improper motives or was untrue or misleading and there is no question of legal liability."

Recourse to such background information would enable the court to better understand the law and would not amount to a breach of parliamentary privilege.

215. The decision of the Privy Council in *Buchanan* v. *Jennings*[138] arose from the Court of Appeal[139] in New Zealand. The judgment recognises that while the protection conferred by Article 9 of the Bill of Rights should not be whittled away, yet as the Joint Committee on parliamentary privileges (Chaired by Lord Nicholls of Birkenhead) observed, freedom to discuss parliamentary proceedings is necessary in a democracy: (AC p. 123, para 9)

> "*9*. … ' Freedom for the public and the media to discuss parliamentary proceedings outside Parliament is as essential to a healthy democracy as the freedom of members to discuss what they choose within Parliament.' "

138 (2005) 1 AC 115 : (2004) 3 WLR 1163 : 2004 UKPC 36
139 *Buchanan* v. *Jennings*, (2002) 3 NZLR 145 (CA)

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Media reporting of parliamentary proceedings, the Court held, has been an important instrument of public debate. Hence the freedom of the Members of Parliament to discuss freely within its portals must be weighed with the freedom of the public to discuss and debate matters of concern to them: (AC p. 123, para 9)

> "*9.* … As it is, parliamentary proceedings are televised and recorded. They are transcribed in Hansard. They are reported in the press, sometimes less fully than parliamentarians would wish. They form a staple of current affairs and news programmes on the radio and television. They inform and stimulate public debate. All this is highly desirable, since the legislature is representative of the whole nation. Thus, as the Joint Committee observed in its executive summary (p. 1):
>
> > 'This legal immunity is comprehensive and absolute. Article 9 should therefore be confined to activities justifying such a high degree of protection, and its boundaries should be clear.' "

These observations reflect a concern to define the boundaries of the immunities under Article 9 in clear terms. While recognising the absolute nature of the immunity, its boundaries must "be confined to activities justifying such a high degree of protection". The right of Members of Parliament to speak their minds in Parliament without incurring a liability is absolute. However, that right is not infringed if a member, having spoken and in so doing defamed another person, thereafter chooses to repeat his statement outside Parliament. In such circumstances, the privilege may be qualified. While it is necessary that the legislature and the courts do not intrude into the spheres reserved to the other, a reference to parliamentary records to prove that certain words were in fact uttered is not prohibited. (*Jennings case*[138], AC p. 132, para 18)

> "*18.* … In a case such as the present, however, reference is made to the parliamentary record only to prove the historical fact that certain words were uttered. The claim is founded on the later extra-parliamentary statement. The propriety of the member's behaviour as a parliamentarian will not be in issue. Nor will his state of mind, motive or intention when saying what he did in Parliament."

216. The evolution of the law in UK indicates the manner in which the protection under Article 9 of the Bill of Rights has been transformed. There are essentially three principles which underlie the debate. The first is the importance of the freedom of speech in Parliament. The absolute protection which is afforded to what is done or spoken by a Member of Parliament in Parliament is an emanation of the need to protect freedom of speech in Parliament. The second principle which is at work is the separation of powers between Parliament and the courts. This principle recognises that liability for a falsehood spoken in Parliament lies within the exclusive control of Parliament.

138 *Buchanan* v. *Jennings*, (2005) 1 AC 115 : (2004) 3 WLR 1163 : 2004 UKPC 36

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A Member of Parliament cannot be held to account in a court of law for anything which is said or spoken in Parliament. A speech in Parliament would not attract either a civil or criminal liability enforceable in a court of law. The third principle emphasises that debates in Parliament have a public element. Public debate is the essence of and a barometer to the health of democracy. Though the privilege which attaches to a speech in Parliament is absolute, the immunity extends to those activities within Parliament, which justify a high degree of protection. As parliamentary proceedings have come to be widely reported, published and televised, the common law has come to recognise that a mere reference to or production of a record of what has been stated in Parliament does not infringe Article 9 of the Bill of Rights.

217. In other words, a reference to parliamentary record to prove a historical fact that certain words were spoken is not prohibited. What is impermissible is to question the truthfulness or veracity of what was stated before Parliament in any forum including a court, outside Parliament. Nor can a Member of Parliament be cross-examined in a proceeding before the court with reference to what was stated in Parliament. The validity of an Act of Parliament or of the proceedings of a Parliamentary Committee cannot be questioned in a court in UK. The enactment of the Human Rights Act has led to a recognition that in testing whether a statutory provision is incompatible with a Convention right, it may become necessary for the court to adjudge the practical effects of a law. To do so, the court may legitimately have reference to background material which elucidates the rationale for the law, the social purpose which it has sought to achieve and the proportionality of its imposition. In order to understand the facets of the law which bear upon rights protected under the European Convention, the court may justifiably seek recourse to statements of ministers, policy documents and white papers to find meaning in the words of the statute. The law in UK has hence developed to recognise that free speech in Parliament and separation of powers must be placed in a scale of interpretation that is cognizant of the need to protect the democratic rights of citizens.

E.2. *India*

218. The law in India has witnessed a marked degree of evolution. Indian jurisprudence on the subject has recognised the importance of the freedom of speech in Parliament, the principle of separation of powers and the concomitant protection afforded to Members from being held liable for what is spoken in Parliament. Principles grounded in the common law in UK have not remained just in the realm of common law. The Constitution, in recognising many of those principles imparts sanctity to them in a manner which only the text of a fundamental written charter for governance can provide. Separation of powers is part of the basic structure. Our precedent on the subject notices the qualitative difference between parliamentary democracy in UK and in India. The fundamental difference arises from the supremacy of the Indian

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Constitution which subjects all constitutional authorities to the mandate of a written Constitution.

219. The locus classicus on the subject of parliamentary privileges is the seven-Judge Bench decision in *Powers, Privileges and Immunities of State Legislatures, In re*[22]. It was argued before this Court that the privilege of the House to construe Article 194(3) and to determine the width of the privileges, powers and immunities enables the House to determine questions relating to the existence and extent of its powers and privileges, unfettered by the views of the Supreme Court. Gajendragadkar, C.J. held that it was necessary to determine whether even in the matter of privileges, the Constitution confers on the House a sole and exclusive jurisdiction. The decision recognises that while in UK, Parliament is sovereign, the Indian Constitution creates a federal structure and the supremacy of the Constitution is fundamental to preserving the delicate balance of power between constituent units: (AIR p. 762, para 39)

> "*39.* … it is necessary to bear in mind one fundamental feature of a Federal Constitution. In England, Parliament is sovereign; and in the words of Dicey, the three distinguishing features of the principle of Parliamentary Sovereignty are that Parliament has the right to make or unmake any law whatever; that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament, and that the right or power of Parliament extends to every part of the Queen's dominions*. On the other hand, the essential characteristic of federalism is "the distribution of limited executive, legislative and judicial authority among bodies which are coordinate with and independent of each other". The supremacy of the Constitution is fundamental to the existence of a federal State in order to prevent either the legislature of the federal unit or those of the member States from destroying or impairing that delicate balance of power which satisfies the particular requirements of States which are desirous of union, but not prepared to merge their individuality in a unity. This supremacy of the Constitution is protected by the authority of an independent judicial body to act as the interpreter of a scheme of distribution of powers. Nor is any change possible in the Constitution by the ordinary process of federal or State legislation**. Thus the dominant characteristic of the British Constitution cannot be claimed by a Federal Constitution like ours."

While the legislatures in our country have plenary powers, they function within the limits of a written Constitution. As a result, the sovereignty which Parliament can claim in UK cannot be claimed by any legislature in India "in the literal absolute sense".

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

* *The Law of the Constitution* by A.V. Dicey, p. 34.

** *The Law of the Constitution* by A.V. Dicey, p. 77.

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220. The immunity conferred on Members of Parliament from liability to "any proceedings in any court in respect of anything said or any vote given by him in Parliament" [Article 105(2)] was deliberated upon in a judgment of the Constitution Bench in *P.V. Narasimha Rao* v. *State*[140]. G.N. Ray, J. agreed with the view of S.P. Bharucha, J. on the scope of the immunity under clauses (2) and (3) of Article 105. The judgment of Bharucha, J. (for himself and S. Rajendra Babu, J.) thus represents the view of the majority. The minority view was of S.C. Agrawal and Dr A.S. Anand, JJ. In construing the scope of the immunity conferred by Article 105(2), Bharucha, J. adverted to the judgments delivered by courts in the United Kingdom (including those of the Privy Council noted earlier[141]). Interpreting Article 105(2), Bharucha, J. observed thus: (SCC p. 729, para 133)

> "*133*. Broadly interpreted, as we think it should be, Article 105(2) protects a Member of Parliament against proceedings in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament."

In that case, the charge in a criminal prosecution for the offences under Section 120-B of the Penal Code and the Prevention of Corruption Act, 1988 was that there was a criminal conspiracy between alleged bribe-givers and bribe-takers (who were Members of the legislature) to defeat a motion of no confidence by obtaining illegal gratification in pursuance of which bribes were given and accepted. The charge did not refer to the votes that the alleged bribe-takers had actually cast upon the no-confidence motion. Nevertheless, the majority held that the expression "in respect of" in Article 105(2) must perceive a "broad meaning". The alleged conspiracy and agreement had nexus in respect of those votes, and the proposed inquiry in the criminal proceedings was in regard to its motivation.

221. The submission of the Attorney General for India that the protection under Article 105(2) is limited to court proceedings and to a speech that is given or a vote that is cast was not accepted by the Constitution Bench for the following reasons: (*P.V. Narasimha case*[140], SCC pp. 729-30, para 136)

> "*136*. It is difficult to agree with the learned Attorney General that though the words "in respect of" must receive a broad meaning, the protection under Article 105(2) is limited to court proceedings that impugn the speech that is given or the vote that is cast or arises thereout or that the object of the protection would be fully satisfied thereby. The object of the protection is to enable Members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. It is not enough that Members should be protected against civil action and criminal proceedings, the cause of action of which

140 (1998) 4 SCC 626 : 1998 SCC (Cri) 1108

141 *Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC); *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC); *R.* v. *Currie*, 1992 (unreported).

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is their speech or their vote. To enable Members to participate fearlessly in parliamentary debates, Members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a Member is not "liable to any proceedings in any court in respect of anything said or any vote given by him". Article 105(2) does not say, which it would have if the learned Attorney General were right, that a Member is not liable for what he has said or how he has voted. While imputing no such motive to the present prosecution, it is not difficult to envisage a Member who has made a speech or cast a vote that is not to the liking of the powers that be being troubled by a prosecution alleging that he had been party to an agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe."

The view of the minority was that the offence of bribery is made out against a bribe-taker either upon taking or agreeing to take money for a promise to act in a certain manner. Following this logic, S.C. Agrawal, J. held that the criminal liability of a Member of Parliament who accepts a bribe for speaking or giving a vote in Parliament arises independent of the making of the speech or the giving of the vote and hence is not a liability "in respect of anything said or any vote given" in Parliament. The correctness of the view in the judgment of the majority does not fall for consideration in the present case. Should it become necessary in an appropriate case in future, a larger Bench may have to consider the issue.

222. The judgment of the Constitution Bench in *Raja Ram Pal* v. *Lok Sabha*[142], has a significant bearing on the issues which arise in the present reference. Y.K. Sabharwal, C.J. delivering the leading opinion on behalf of three Judges dealt with the ambit of Article 105 in relation to the expulsion of a Member and the extent to which such a decision of the Houses of Parliament is amenable to judicial review. The judgment notices that "parliamentary democracy in India is qualitatively distinct" from UK. In defining the nature and extent of judicial review in such cases, Sabharwal, C.J. observed that it is the jurisdiction of the court to examine whether a particular privilege claimed by the legislature is actually available to it: (SCC p. 259, para 62)

"*62*. In view of the above clear enunciation of law by Constitution Benches of this Court in case after case, there ought not be any doubt left that whenever Parliament, or for that matter any State Legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or Article 194(3), as the case may be, it is the Court which has the authority and the jurisdiction to examine, on grievance being brought before it, to find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of the Parliament of the United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian Legislatures."

142 (2007) 3 SCC 184

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While Parliament has the power to expel a member for a contempt committed, the doctrine of "exclusive cognizance" adopted in UK has no application in India which is governed by a written Constitution. Though Parliament is possessed of a plenitude of powers, it is subject to terms of legislative competence and to the restrictions imposed by fundamental rights. Article 21 is attracted when the liberty of a Member of Parliament is threatened by imprisonment in execution of a parliamentary privilege. Fundamental rights can be invoked both by a Member and by a non-Member when faced by the exercise of parliamentary privilege.

223. Drawing the distinction between UK and India, Sabharwal, C.J. observed: (*Raja Ram Pal case*[142], SCC p. 348, para 363)

> "*363*. That the English cases laying down the principle of exclusive cognizance of Parliament, including *Bradlaugh*[80], arise out of a jurisdiction controlled by the constitutional principle of sovereignty of Parliament cannot be lost sight of. In contrast, the system of governance in India is founded on the norm of supremacy of the Constitution which is fundamental to the existence of the Federal State."

Consequently, proceedings which are tainted as a result of a substantive illegality or unconstitutionality (as opposed to a mere irregularity) would not be protected from judicial review. The doctrine of exclusive cognizance was evolved in England as incidental to a system of governance based on parliamentary sovereignty. This has no application to India, where none of the organs created by the Constitution is sovereign, and each is subject to the checks and controls provided by the Constitution.

224. The decision in *Raja Ram Pal*[142] holds that Article 122(1) embodies the twin test of legality and constitutionality. This Court has categorically rejected the position that the exercise of powers by the legislature is not amenable to judicial review: (SCC p. 360, para 389)

> "*389*. … there is no scope for a general rule that the exercise of powers by the legislature is not amenable to judicial review. This is neither the letter nor the spirit of our Constitution. We find no reason not to accept that the scope for judicial review in matters concerning parliamentary proceedings is limited and restricted. In fact, this has been done by express prescription in the constitutional provisions, including the one contained in Article 122(1). But our scrutiny cannot stop, as earlier held, merely on the privilege being found, especially when breach of other constitutional provisions has been alleged."

The Court will not exercise its power of judicial review where there is merely an irregularity of procedure, in view of the provisions of Article 122(1). But judicial review is not "inhibited in any manner" where there is a gross illegality or a violation of constitutional provisions. While summarising the conclusions of the judgment, Sabharwal, C.J. emphasised the need for constitutional comity,

142 *Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184
80 *Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)

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since Parliament being a coordinate constitutional institution. The expediency and necessity for the exercise of the power of privilege are for the legislature to determine. Yet, judicial review is not excluded for the purpose of determining whether the legislature has trespassed on the fundamental rights of its citizens.

225. Among the conclusions in the judgment, of relevance to the present case, are the following: (*Raja Ram Pal case*[142], SCC p. 372, para 431)

> "*431.* ... (*k*) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;
>
> (*l*) The manner of enforcement of privilege by the legislature can result in judicial scrutiny, though subject to the restrictions contained in the other constitutional provisions, for example Article 122 or 212; and
>
> (*m*) Article 122(1) and Article 212(1) displace the broad doctrine of exclusive cognizance of the legislature in England of exclusive cognizance of internal proceedings of the House rendering irrelevant the case law that emanated from courts in that jurisdiction; inasmuch as the same has no application to the system of governance provided by the Constitution of India;"

226. The decision in *Raja Ram Pal*[142] has been adverted to in the subsequent judgment of the Constitution Bench in *Amarinder Singh* v. *Punjab Vidhan Sabha*[143]. Balakrishnan, C.J. speaking for the Constitution Bench, held that all the privileges which have been claimed by the House of Commons cannot be claimed automatically by legislative bodies in India. Legislatures in India do not have the power of self-composition which is available to the House of Commons. Indian legislatures are governed by a written Constitution.

227. The limits of comparative law must weigh in the analysis in this area of constitutional law, when the Court is confronted by a copious attempt, during the course of submissions, to find meaning in the nature and extent of parliamentary privilege in India from decided cases in UK. The fundamental difference between the two systems lies in the fact that parliamentary sovereignty in the Westminster form of Government in UK has given way, in the Indian Constitution, to constitutional supremacy. Constitutional supremacy mandates that every institution of governance is subject to the norms embodied in the constitutional text. The Constitution does not allow for the existence of absolute power in the institutions which it creates. Judicial review as a part of the basic features of the Constitution is intended to ensure that every institution acts within its bounds and limits. The fundamental rights guaranteed to citizens are an assurance of liberty and a recognition of the autonomy which inheres in every person. Hence, judicial scrutiny of the exercise of parliamentary privileges is not excluded where a fundamental right is violated or a gross illegality occurs. In recognising the position of Parliament as a coordinate institution created by the Constitution, judicial review acknowledges that

142 *Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184
143 (2010) 6 SCC 113 : (2010) 2 SCC (Cri) 1343

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Parliament can decide the expediency of asserting its privileges in a given case. The Court will not supplant such an assertion or intercede merely on the basis of an irregularity of procedure. But where a violation of a constitutional prescription is shown, judicial review cannot be ousted.

F. ***Separation of powers: A nuanced modern doctrine***

228. The submission of the Attorney General is that the carefully structured dividing lines between the judicial, executive and legislative wings of the State would be obliterated if the court were to scrutinise or judicially review reports of Parliamentary Committees. The principle of separation, it has been submitted, interdicts the courts from scrutinising or reviewing reports of Parliamentary Committees. Judicial review may well result in a conflict between the two institutions of the State and is hence — according to the submission — best eschewed.

229. Separation of powers between the legislature, the executive and the judiciary covers a large swathe of constitutional history spanning the writings of *Montesquieu* and *Blackstone*, to the work of *Dicey* and *Jennings*. *Gerangelos (2009)* laments that in UK, parliamentary sovereignty has prevented the principle of separation from emerging as a judicially enforceable standard[144]:

> "Britain's unwritten constitution and the influence of Diceyian orthodoxy, emphasising parliamentary sovereignty and a fusion of powers which did not countenance judicial invalidation of legislative action, has meant that the separation of powers has not become a source of judicially-enforceable constitutional limitations. The precise status of the doctrine has varied from time to time and the extent to which the doctrine nevertheless provides some restraint on legislative interference with judicial process cannot be determined with precision. It can be said, however, that constitutional entrenchment of the separation doctrine has not been part of the Westminster constitutional tradition; a tradition which has not, in any event, placed much store by written constitutions with their accompanying legalism and rigidities. The prevailing influence from that quarter has been the maintenance of judicial independence in terms of *institutional* independence through the protection of tenure and remuneration, and afforded statutory protection in the Act of Settlement in 1701, as opposed to the protection of judicial power in a functional sense." (emphasis in original)

The impact of the doctrine is seen best in terms of the institutional independence of the judiciary from other organs of the State. The doctrine is stated to have been overshadowed in UK "by the more dominant constitutional principles of parliamentary sovereignty and the rule of law". For instance, in UK, Ministers of Crown are both part of the executive and members of Parliament. Until the Constitutional Reform Act, 2005 the Lord Chancellor was a member of the Cabinet and was eligible to sit as a Judge in the Appellate Committee of the

144 Peter A. Gerangelos, *The Separation of Powers and Legislative Interference in Judicial Process, Constitutional Principles and Limitations* (Hart Publishing, 2009).

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House of Lords. The Judicial Committee of the House of Lords was the highest court, even though the House constituted the Upper House of the legislature. In the enforcement of parliamentary privileges, the House exercises judicial functions. Delegated legislation enables the executive to exercise legislative functions.

230. Many contemporary scholars have differed on the normative importance of the doctrine of separation. One view is that while a distinct legislature, executive and judiciary can be identified as a matter of practice, this is not a mandate of the unwritten Constitution. The statement that there is a separation is construed to be descriptive and not normative[145]. On the other hand, other scholars regard the doctrine as "a fundamental underlying constitutional principle which informs the whole British constitutional structure"[146]. Yet, even scholars who emphasise the importance of the separation of powers in UK acknowledge that the Constitution does not strictly observe such a separation. Courts in UK do not possess a direct power of judicial review to invalidate legislation though, with the enactment of the Human Rights Act, the doctrine of incompatibility has become an entrenched feature of the law.

231. Gerangelos (supra) states that "the most that can be said is that the separation of powers does play an influential role as a constitutional principle, but as a non-binding one".[147] He cites Professor Robert Stevens[148]:

> "In modern Britain the concept of the separation of powers is cloudy and the notion of the independence of the judiciary remains primarily a term of constitutional rhetoric. Certainly its penumbra, and perhaps even its core, are vague. No general theory exists, although practically the English have developed surprisingly effective informal systems for the separation of powers; although it should never be forgotten that the system of responsible Government is based on a co-mingling of the executive with the legislature. The political culture of the United Kingdom, however, provides protections for the independence of the judiciary, which are missing in law."

232. The importance of the principle of separation essentially lies in the independence of the judiciary. The protections in the Act of Settlement, 1701 have now been reinforced in the Constitutional Reform Act, 2005. Though the supremacy of Parliament is one of the fundamental features in UK and the

145 *See* A. Tomkins, *Public Law* (Oxford University Press, 2003) 37 (as cited by Gerangelos at p. 274).

146 E. Barendt, "Separating of Powers and Constitutional Government" [1995] Public Law 599 at 599-60, C. Munro, *Studies in Constitutional Law*, 2nd Edn. (London, Butterworths, 1999) at 304, T.R.S. Allan, *Law Liberty and Justice, The Legal Foundations of British Constitutionalism* (Oxford, Clarendon Press, 1993) Chs. 3 and 8, and T.R.S. Allan, *Constitutional Justice, A Liberal Theory of the Rule of Law* (Oxford, Oxford University Press, 2001).

147 Peter A. Gerangelos, *The Separation of Powers and Legislative Interference in Judicial Process, Constitutional Principles and Limitations* (Hart Publishing, 2009).

148 R. Stevens, "A Loss of Innocence?: Judicial Independence and the Separation of Powers" (1999) 19 Oxford Journal of Legal Studies 365.

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unwritten Constitution does not mandate a strict separation of powers, it would be difficult to regard a State which has no control on legislative supremacy as a constitutional State founded on the rule of law[149]. Consequently, where the rule of law and constitutionalism govern society there may yet be fundamental principles inhering in the nature of the polity, which can be enforced by the judiciary even against Parliament, in the absence of a written Constitution[150]. In other words, even in the context of an unwritten Constitution, the law has a certain internal morality as a part of which it embodies fundamental notions of justice and fairness.

233. The interpretation of the doctrine of separation of powers has evolved from being a "one branch - one function approach"[151] with limited exceptions, to a concept which involves an integration of the "division of work" and "checks and balances"[152]. The primary aim of the doctrine today is to ensure the accountability of each wing of the State, while ensuring concerted action in respect of the functions of each organ for good governance in a democracy. The doctrine of separation of power has developed to fulfil the changing needs of society and its growing necessities. Many of these considerations are significantly different from those which were prevalent when Montesquieu originally formulated the doctrine.

234. In 1967, M.J.C. Vile in his book titled *Constitutionalism and the Separation of Powers*[153] defined the "pure doctrine" of separation of powers thus:

> "[a] "pure doctrine" of the separation of powers might be formulated in the following way: It is essential for the establishment and maintenance of political liberty that the Government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches, there is a corresponding identifiable function of Government, legislative, executive, or judicial. Each branch of the Government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of Government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch. In this way, each of the branches will be a check to the others and no single group of people will be able to control the machinery of the State."[154]

149 T.R.S. Allan, *Law Liberty and Justice, The Legal Foundations of British Constitutionalism* (Oxford, Clarendon Press, 1993).
150 Gerangelos, at p. 277.
151 Aileen Kavanagh, The Constitutional Separation of Powers, Chapter 11 in David Dyzenhaus and Malcolm Thorburn (eds.) *Philosophical Foundations of Constitutional Law*, (Oxford University Press, 2016) 221 (hereinafter, "*Philosophical Foundations of Constitutional Law*").
152 *See* M.J.C. Vile, *Constitutionalism and the Separation of Powers* (Oxford University Press, 1967).
153 *Ibid.*
154 *Id*, at p. 13.

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This definition becomes important to facilitate an understanding of the reconstructed and modern view on separation of powers vis-à-vis its traditional understanding. Vile essentially proposes that "division of labour" and "checks and balances" are intrinsic to the theory of separation of powers. In his view, a scheme of checks and balances would involve a degree of mutual supervision among the branches of Government, and may therefore result in a certain amount of interference by one branch into the functions and tasks of the other.[155]

235. Aileen Kavanagh, has presented a scholarly analysis of separation of powers in a chapter titled "The Constitutional Separation of Powers".[156] She concurs with the view expressed by M.J.C. Vile that separation of powers includes two components, that of "division of labour" and "checks and balances". These two components are strengthened by the deep-rooted ethos of coordinated institutional effort and joint activity between branches of the Government in the interest of good governance.[157] Instead of an isolated compartmentalisation of branches of Government, she highlights the necessary independence, interdependence, interaction and interconnection between these branches in a complex interactive setting.[158]

236. Kavanagh acknowledges that in view of the stronghold of the pure doctrine over our understanding of separation of powers, the idea of a collective enterprise between the branches of the Government for the purpose of governing may seem jarring. However, she argues that this idea of "branches being both independent and interdependent—distinct but interconnected—also has some pedigree in canonical literature."[159] Kavanagh thus opines that the tasks of law-making, law-applying and law-executing are collaborative in nature, necessitating cooperation between the branches of the Government in furtherance of the common objective of good governance. Kavanagh explains this as follows:

> "In some contexts, the interaction between the branches will be supervisory, where the goal is to check, review and hold the other to account. At other times, the interaction will be a form of cooperative engagement where the branches have to support each other's role in the joint endeavor."[160]

155 See, M.J.C. Vile, *Constitutionalism and The Separation of Powers* (Oxford University Press, 1967).

156 Aileen Kavanagh, The Constitutional Separation of Powers, Chapter 11 in David Dyzenhaus and Malcolm Thorburn (eds.) *Philosophical Foundations of Constitutional Law*, (Oxford University Press, 2016) 221.

157 See, D. Kyritsis, "What is Good about Legal Conventionalism?" (2008) 14 Legal Theory 135, 154 (as cited in *Philosophical Foundations of Constitutional Law*, at p. 235).

158 *Ibid.*

159 *Philosophical Foundations of Constitutional Law*, at p. 236.

160 K. Malleson, 'The Rehabilitation of Separation of Powers in UK' in L. de Groot-van Leeuwen and W. Rombouts, *Separation of Powers in Theory and Practice: An International Perspective* (Nijmegen: Wolf Publishing, 2010) 99-122, 115 (as cited in *Philosophical Foundations of Constitutional Law*, at p. 237).

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237. Jeremy Waldron has dealt with the relationships among officials or institutions in a State. He proposes that separation of powers is not just a principle involving the division of labour and the distribution of power but also includes inter-institutional relationships between the three branches when carrying out their distinct roles as part of a joint enterprise. This is in order to facilitate, what Waldron called the "Principle of Institutional Settlement".[161] Further, inter-institutional comity, which is the respect that one branch of the State owes to another, is also a significant factor, which calls for collaboration among branches of the Government to ensure that general public values such as welfare, autonomy, transparency, efficiency and fairness are protected and secured for the benefit of citizens.[162]

238. Thus, in a comparative international context, authors have accepted separation of powers to widely include two elements: "division of labour" and "checks and balances". The recent literature on the subject-matter encourages inter-institutional assistance and aid towards the joint enterprise of good governance. The current view on the doctrine of separation of powers also seeks to incorporate mutual supervision, interdependence and coordination because the ultimate aim of the different branches of the Government, through their distinct functions is to ensure good governance and to serve public interest, which is essential in the background of growing social and economic interests in a welfare State. This stands in contrast with the former and original interpretation of the doctrine, which sought to compartmentalise and isolate the different branches of the Government from one another, with limited permissible exceptions.

239. *Eoin Carolan's* book titled *The New Separation of Powers* (2009) reflects an attempt to reshape the traditional doctrine of separation, to make it relevant to the practical realities of modern Government. He notes that while the tripartite separation of powers between the legislature, executive and judiciary had "conceptual simplicity with an impeccable academic pedigree"[163], the doctrine has obvious limitations in the sense that it does not satisfactorily explain the emergence and growth of the modern administrative State we see today. The author contends that an institutional theory like the separation of powers can no longer be accepted in its original form if it cannot account for this "significant tranche of government activity". Among the characteristics of the modern administrative State is that public power is exercised in a decentralised manner and on an ever-growing discretionary basis.[164]

161 J. Waldron, "Authority for Officials" in L. Meyer, S. Paulson and T. Pogge (eds.), *Rights, Culture, and the Law: Themes from the Legal and Political Philosophy of Joseph Raz* (Oxford University Press, 2003) 45-70.

162 See, J. King, "Institutional Approaches to Judicial Restraint" (2008) 28 Oxford Journal of Legal Studies 409, 428; See also, *Buckley* v. *Attorney General*, 1950 Irish Reports 67, 80 (per O'Bryne, J.) (as cited in *Philosophical Foundations of Constitutional Law*, at p. 235).

163 Eoin Carolan, *The New Separation of Powers—A Theory for the Modern State* (Oxford University Press, 2009) 253.

164 *Ibid.*

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240. The shared growth of administrative powers of the bureaucracy in the modern State defies the tripartite division. Therefore, a realistic modern application of the theory is necessary. The modern system of Government has grown in ways previously thought unfathomable, and now encompasses a breadth and diversity previously unseen. The Government today is characterised by the increase in powers of its agencies and the rapid growth of organisations which can neither be classified as exclusively public or private bodies. These modern systems of Government and the existence and rapid rise of supranational organisations defy the traditional three-way division of powers. Administrative bodies are not defined by a uniform design, and exercise institutional fluidity in a manner which has come to characterise the administrative State's organisational complexity: in a single instance, they exercise powers and perform functions that might have been formerly classified as executive, judicial or legislative in nature.[165] In this view, the modern State is distinctly different from *Locke's* seventeenth century Model and *Montesquieu's* eighteenth century ideas:

> "The State is now dirigiste, discretionary, and broadly dispersed."[166]

241. Carolan thus proposes that to be suitable, a theory of institutional justice must be rooted in the principle of non-arbitrariness. He believes that a more suitable approach of classification of institutions would be not by functions, but by constituencies, and the sole constituency in this legal framework is the individual citizen. Carolan's proposed model places emphasis on the exercise of power on the basis of inter-institutional dialogue which ensures that a communicative process has taken place[167]. Carolan describes his model thus:

> "The prescribed institutional structure operates by inter-organ mingling instead of separation. Individual decisions are delivered at the end of a multi-institutional process, the central concern of which is to organise, structure, manage, and—crucially—ensure the input of all relevant institutional interests. On this model, the government and the courts are presented as providing an orienting framework within which administrative decision-making will occur. These first-order organs function at the level of macro-social organisation, adopting general measures which are expected to advance their constituent social interest. The government specifies the actions it feels are required (or requested) to enhance the position of the collective. The courts, for their part, insist on the process precautions necessary to secure individual protection. Issues of informational efficacy and non-arbitrariness combine to ensure, however, that these provisions are not particularized."

While the autonomy of the administration is respected as a vital institutional process, corrective measures are required where an institution has strayed

165 Eoin Carolan, "The Problems with the Theory of Separation of Powers", SSRN, (2011) 26.
166 *Op cit* fn 162 at p. 256.
167 *Id*, at p. 132.

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outside the range of permissible outcomes. He speaks of a collaborative process of exercising power, with the judiciary acting as a restraining influence on the arbitrary exercise of authority.

242. While the Indian Constitution has been held to have recognised the doctrine of separation of powers, it does not adopt a rigid separation. In *Ram Jawaya Kapur* v. *State of Punjab*[13], this Court held: (AIR p. 556, para 12)

> "*12.* … The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another."

Reduced to its core, separation entails that one organ or institution of the State cannot usurp the powers of another.

243. In *Powers, Privileges and Immunities of State Legislatures, In re*[22], this Court held that whether or not the Constitution brings about a "distinct and rigid separation of powers", judicial review is an inseparable part of the judicial function. Whether legislative authority has extended beyond its constitutional boundaries or the fundamental rights have been contravened cannot be decided by the legislature, but is a matter entrusted exclusively to judicial decision.

244. In *Kesavananda Bharati* v. *State of Kerala*[3], separation of powers was regarded as a feature of the basic structure of the Indian Constitution. Sikri, C.J. held: (SCC p. 366, para 292)

> "*292.* The learned Attorney General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:
>
> (*1*) Supremacy of the Constitution;
>
> (*2*) Republican and Democratic form of Government;
>
> (*3*) Secular character of the Constitution;
>
> (*4*) *Separation of powers between the legislature, the executive and the judiciary;*
>
> (*5*) Federal character of the Constitution." (emphasis supplied)

Shelat and Grover, JJ. emphasised the doctrine of separation as a part of the checks and balances envisaged by the Constitution: (SCC p. 452, para 577)

13 (1955) 2 SCR 225 : AIR 1955 SC 549

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

3 (1973) 4 SCC 225 : AIR 1973 SC 1461

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"*577.* … There is ample evidence in the Constitution itself to indicate that it creates a system of checks and balances by reason of which powers are so distributed that none of the three organs it sets up can become so predominant as to disable the others from exercising and discharging powers and functions entrusted to them. Though the Constitution does not lay down the principle of separation of powers in all its rigidity as is the case in the United States Constitution yet it envisages such a separation to a degree…."

245. In *Indira Nehru Gandhi* v. *Raj Narain*[12], Y.V. Chandrachud held that while the Constitution does not embody a rigid separation of governmental powers, a judicial function cannot be usurped by the legislature: (SCC p. 261, para 689)

"*689.* … the exercise by the legislature of what is purely and indubitably a judicial function is impossible to sustain in the context even of our cooperative federalism which contains no rigid distribution of powers but which provides a system of salutary checks and balances."

The 39th Amendment of the Constitution did precisely that and was held to violate the basic structure.

246. In *I.R. Coelho* v. *State of T.N.*[5], the Court underlined the functional complementarity between equality, the rule of law, judicial review and separation of powers: (SCC p. 105, para 129)

"*129.* Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review. All these would be redundant if the legislative, executive and judicial powers are vested in one organ. Therefore, the duty to decide whether the limits have been transgressed has been placed on the judiciary."

247. A Constitution Bench of this Court in *State of T.N.* v. *State of Kerala*[15] ruled on the importance of separation as an entrenched constitutional principle. The Court held: (SCC p. 771, para 126.1)

"*126.1.* Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law. In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs —legislature, executive and judiciary. In that sense, even in the absence

12 1975 Supp SCC 1
5 (2007) 2 SCC 1
15 (2014) 12 SCC 696

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of express provision for separation of powers, the separation of powers between the legislature, executive and judiciary is not different from the Constitutions of the countries which contain express provision for separation of powers."

248. The doctrine of separation restrains the legislature from declaring a judgment of a court to be void and of no effect. However, in the exercise of its law-making authority, a legislature possessed of legislative competence can enact validating law which remedies a defect pointed out in a judgment of a court. While the legislature cannot ordain that a decision rendered by the court is invalid, it may by enacting a law, take away the basis of the judgment such that the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.[168]

249. In *State of U.P.* v. *Jeet S. Bisht*[169], the Court held that the doctrine of separation of powers limits the "active jurisdiction" of each branch of Government. However, even when the active jurisdiction of an organ of the State is not challenged, the doctrine allows for methods to be used to prod and communicate to an institution either its shortfalls or excesses in discharging its duty. The Court recognised that fundamentally, the purpose of the doctrine is to act as a scheme of checks and balances over the activities of other organs. The Court noted that the modern concept of separation of powers subscribes to the understanding that it should not only demarcate the area of functioning of various organs of the State, but should also, to some extent, define the minimum content in that delineated area of functioning. S.B. Sinha, J. addressed the need for the doctrine to evolve, as administrative bodies are involved in the dispensation of socio-economic entitlements: (SCC p. 619, para 83)

> "*83*. If we notice the evolution of separation of powers doctrine, traditionally the *checks and balances* dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable *social and economic* entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of *checks and balances* to include governmental inaction. Otherwise we envisage the country getting transformed into a *state of repose*. Social engineering as well as institutional engineering therefore forms part of this obligation." (emphasis in original)

250. The constitutional validity of the Members of Parliament Local Area Development ("MPLAD") Scheme, which allocates funds to MPs for development work in their constituencies was considered by a Constitution Bench of this Court in *Bhim Singh* v. *Union of India*[16]. The challenge was

168 *I.N. Saksena* v. *State of M.P.*, (1976) 4 SCC 750 : 1977 SCC (L&S) 36; *Indian Aluminium Co.* v. *State of Kerala*, (1996) 7 SCC 637; *S.S. Bola* v. *B.D. Sardana*, (1997) 8 SCC 522; *Shri Prithvi Cotton Mills Ltd.* v. *Broach Borough Municipality*, (1969) 2 SCC 283; *Supreme Court Advocates-on-Record Assn.* v. *Union of India*, (2016) 5 SCC 1

169 (2007) 6 SCC 586

16 (2010) 5 SCC 538

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that by entrusting funds to MPs, the Scheme vests governmental functions in legislators and violates the separation of powers. The Court held that while the concept of separation of powers is not found explicitly in a particular constitutional provision, it "is inherent in the polity the Constitution has adopted". The Constitution Bench perceived that there is a link between separation and the need to ensure accountability of each branch of Government. While the Constitution does not prohibit overlapping functions, what it prohibits is the exercise of functions by a branch in a way which "results in wresting away of the regime of constitutional accountability". The Court held that by allowing funds to be allocated to Members of Parliament for addressing the development needs of their constituencies, the MPLAD Scheme does not breach the doctrine of separation of powers. The administration of the scheme was adequately supervised by district authorities.

251. In *Supreme Court Advocates-on-Record Assn.* v. *Union of India*[170], Madan B. Lokur, J. observed that separation of powers does not envisage that each of the three organs of the State — the legislature, executive and judiciary — work in a silo. The learned Judge held: (SCC p. 583, para 678)

> "*678*. There is quite clearly an entire host of parliamentary and legislative checks placed on the judiciary whereby its administrative functioning can be and is controlled, but these do not necessarily violate the theory of separation of powers or infringe the independence of the judiciary as far as decision-making is concerned. As has been repeatedly held, the theory of separation of powers is not rigidly implemented in our Constitution, but if there is an overlap in the form of a check with reference to an essential or a basic function or element of one organ of State as against another, a constitutional issue does arise. It is in this context that the 99th Constitution Amendment Act has to be viewed—whether it impacts on a basic or an essential element of the independence of the judiciary, namely, its decisional independence."

252. In *State of W.B.* v. *Committee for Protection of Democratic Rights*[171], this Court held that the doctrine of separation of powers could not be invoked to limit the Court's power to exercise judicial review, in a case where fundamental rights are sought to be breached or abrogated on the ground that exercise of the power would impinge upon the doctrine.

253. In a more recent decision of a Bench of two learned Judges of this Court in *Common Cause* v. *Union of India*[172], the Court construed the provisions of the Lokpal and Lokayuktas Act, 2013 under which a multi-member selection committee for the appointment of the Lokpal is to consist, among others, of the Leader of the Opposition. A Bill for amending the provisions of the Act was referred to a Parliamentary Committee which proposed the inclusion of the leader of the largest opposition party in the Lok Sabha as a member, in lieu of the Leader of the Opposition in the selection

170 (2016) 5 SCC 1
171 (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401
172 (2017) 7 SCC 158

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committee. The grievance of the petitioners was that despite the enactment of the law, its provisions had not been implemented. It was urged that even if there is no recognised Leader of the Opposition in the Lok Sabha, the leader of the single largest opposition party should be inducted as a part of the Selection Committee. Ranjan Gogoi, J. speaking for this Court held thus: (SCC p. 173, para 18)

> "*18*. There can be no manner of doubt that the parliamentary wisdom of seeking changes in an existing law by means of an amendment lies within the exclusive domain of the legislature and it is not the province of the Court to express any opinion on the exercise of the legislative prerogative in this regard. The framing of the Amendment Bill; reference of the same to the Parliamentary Standing Committee; the consideration thereof by the said Committee; the report prepared along with further steps that are required to be taken and the time-frame thereof are essential legislative functions which should not be ordinarily subjected to interference or intervention of the Court. The constitutional doctrine of separation of powers and the demarcation of the respective jurisdiction of the executive, the legislature and the judiciary under the constitutional framework would lead the Court to the conclusion that the exercise of the amendment of the Act, which is presently underway, must be allowed to be completed without any intervention of the Court. Any other view and any interference, at this juncture, would negate the basic constitutional principle that the legislature is supreme in the sphere of law-making. Reading down a statute to make it workable in a situation where an exercise of amendment of the law is pending, will not be justified either. A perception, however strong, of the imminent need of the law engrafted in the Act and its beneficial effects on the citizenry of a democratic country, by itself, will not permit the Court to overstep its jurisdiction. Judicial discipline must caution the Court against such an approach."

254. While assessing the impact of the separation of powers upon the present controversy, certain precepts must be formulated. Separation of powers between the legislature, the executive and the judiciary is a basic feature of the Constitution. As a foundational principle which is comprised within the basic structure, it lies beyond the reach of the constituent power to amend. It cannot be substituted or abrogated. While recognising this position, decided cases indicate that the Indian Constitution does not adopt a separation of powers in the strict sense. Textbook examples of exceptions to the doctrine include the power of the executive to frame subordinate legislation, the power of the legislature to punish for contempt of its privileges and the authority entrusted to the Supreme Court and the High Courts to regulate their own procedures by framing rules. In making subordinate legislation, the executive is entrusted by the legislature to make delegated legislation, subject to its control. The rule-making power of the higher judiciary has trappings of a legislative character. The power of the legislature to punish for contempt of its privileges has a judicial character. These exceptions indicate that the separation doctrine has not been adopted in

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the strict form in our Constitution. But the importance of the doctrine lies in its postulate that the essential functions entrusted to one organ of the State cannot be exercised by the other. By standing against the usurpation of constitutional powers entrusted to other organs, separation of powers supports the rule of law and guards against authoritarian excesses.

255. Parliament and the State Legislatures legislate. The executive frames policies and administers the law. The judiciary decides and adjudicates upon disputes in the course of which facts are proved and the law is applied. The distinction between the legislative function and judicial functions is enhanced by the basic structure doctrine. The legislature is constitutionally entrusted with the power to legislate. Courts are not entrusted with the power to enact law. Yet, in a constitutional democracy which is founded on the supremacy of the Constitution, it is an accepted principle of jurisprudence that the judiciary has the authority to test the validity of legislation. Legislation can be invalidated where the enacting legislature lacks legislative competence or where there is a violation of fundamental rights. A law which is constitutionally ultra vires can be declared to be so in the exercise of the power of judicial review. Judicial review is indeed also a part of the basic features of the Constitution. Entrustment to the judiciary of the power to test the validity of law is an established constitutional principle which co-exists with the separation of powers. Where a law is held to be ultra vires there is no breach of parliamentary privileges for the simple reason that all institutions created by the Constitution are subject to constitutional limitations. The legislature, it is well settled, cannot simply declare that the judgment of a court is invalid or that it stands nullified. If the legislature were permitted to do so, it would travel beyond the boundaries of constitutional entrustment. While the separation of powers prevents the legislature from issuing a mere declaration that a judgment is erroneous or invalid, the law-making body is entitled to enact a law which remedies the defects which have been pointed out by the court. Enactment of a law which takes away the basis of the judgment (as opposed to merely invalidating it) is permissible and does not constitute a violation of the separation doctrine. That indeed is the basis on which validating legislation is permitted.

256. This discussion leads to the conclusion that while the separation of powers, as a principle, constitutes the cornerstone of our democratic Constitution, its application in the actual governance of the polity is nuanced. The nuances of the doctrine recognise that while the essential functions of one organ of the State cannot be taken over by the other and that a sense of institutional comity must guide the work of the legislature, executive and judiciary, the practical problems which arise in the unfolding of democracy can be resolved through robust constitutional cultures and mechanisms. The separation doctrine cannot be reduced to its descriptive content, bereft of its normative features. Evidently, it has both normative and descriptive features. In applying it to the Indian Constitution, the significant precept to be borne in mind is that no institution of governance lies above the Constitution. No entrustment of power is absolute.

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G. ***A functional relationship***

257. What then does the above analysis tell us about the functional relationship of the work which is done by Parliamentary Committees and the role of the court as an adjudicator of disputes? In assessing the issue, it must be remembered, that Parliamentary Committees owe their existence to Parliament. They report to Parliament. They comprise of the Members of Parliament. Their work consists of tendering advice to the legislature. A Parliamentary Committee does not decide a lis between contesting disputants nor does it perform an adjudicatory function. A committee appointed by the House can undoubtedly receive evidence, including expert evidence, both oral and documentary. A Select Committee may be appointed by the House to scrutinise a Bill. When the committee performs its task, its report is subject to further discussion and debate in the House in the course of which the legislative body would decide as to whether the Bill should be enacted into law. The validity of the advice which is tendered by a Parliamentary Committee in framing its recommendations for legislation cannot be subject to a challenge before a court of law. The advice tendered is, after all, what it purports to be: it is advice to the legislating body. The correctness of or the expediency or justification for the advice is a matter to be considered by the legislature and by it alone.

258. Department related Standing Committees are constituted by Parliament to oversee the functioning of ministries/departments of Government. It is through the work of these committees that Parliament exacts the accountability of the executive. It is through the work of these committees that Parliament is able to assess as to whether the laws which it has framed are being implemented in letter and spirit and to determine the efficacy of government policies in meeting the problems of the day.

259. The contents of the report of a Parliamentary Committee may have a bearing on diverse perspectives. It is necessary to elucidate them in order to determine whether, and if so to what extent, they can form the subject-matter of consideration in the course of adjudication in a court. Some of these perspectives are enumerated below:

259.1. The report of a Parliamentary Committee may contain a statement of position by Government on matters of policy;

259.2. The report may allude to statements made by persons who have deposed before the Committee;

259.3. The report may contain inferences of fact including on the performance of Government in implementing policies and legislation;

259.4. The report may contain findings of misdemeanour implicating a breach of duty by public officials or private individuals or an evasion of law; or

259.5. The report may shed light on the purpose of a law, the social problem which the legislature had in view and the manner in which it was sought to be remedied.

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260. The use of parliamentary history as an aid to statutory construction is an area which poses the fewest problems. In understanding the true meaning of the words used by the legislature, the court may have regard to the reasons which have led to the enactment of the law, the problems which were sought to be remedied and the object and purpose of the law. For understanding this, the court may seek recourse to background parliamentary material associated with the framing of the law.

261. In his seminal work on the *Interpretation of Statutes*, Justice G.P. Singh notes that the traditional rule of exclusion in English courts has over a period of time been departed from in India as well to permit the court to have access to the historical background in which the law was enacted. Justice G.P. Singh[173] notes:

> "The Supreme Court, speaking generally, to begin with, enunciated the rule of exclusion of Parliamentary history in the way it was traditionally enunciated by the English Courts, but on many an occasion, the court used this aid in resolving questions of construction. The court has now veered to the view[174] that legislative history within circumspect limits may be consulted by courts in resolving ambiguities. But the courts still sometimes, like the English courts, make a distinction between use of a material for finding the mischief dealt with by the Act and its use for finding the meaning of the Act. As submitted earlier this distinction is unrealistic and has now been abandoned by the House of Lords."

262. Reports of Parliamentary Committees may contain a statement of position by the Government on matters of policy. There is no reason in principle to exclude recourse by a court to the report of the committee at least as a reflection of the fact that such a statement was made before the committee. Similarly, that a statement was made before the committee — as a historical fact — may be taken note of by the court in a situation where the making of the statement itself is not a contentious issue.

263. In matters involving public interest which come up before the court, a grievance is often made of the violation of the fundamental rights of persons who by reason of poverty, ignorance or marginalised status are unable to seek access to justice. Public interest litigation has been perceived as social action litigation because a relaxation of the rules of standing has enabled constitutional courts to reach out to those who have suffered discrimination and prejudice. Whatever be the source of such discrimination — the feudal and patriarchal structures of Indian society being among them — public interest litigation has enabled courts to develop flexible tools of decision-making and pursue innovative remedies. The writ of continuing mandamus is one of them. In the process, the violation of the fundamental rights of those groups of citizens

173 Justice G.P. Singh, *Principles of Statutory Interpretation* (14th Edn.) 253.

174 *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225; *Tata Power Co. Ltd.* v. *Reliance Energy Ltd.*, (2009) 16 SCC 659; *Namit Sharma* v. *Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (Civ) 786 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (L&S) 244

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who may not be able to seek access to justice is sought to be remedied. Public interest litigation has emerged as a powerful tool to provide justice to the marginalised. In matters involving issues of public interest, courts have been called upon to scrutinise the failure of the State or its agencies to implement law and to provide social welfare benefits to those for whom they are envisaged under legislation. Courts have intervened to ensure the structural probity of the system of democratic governance. Executive power has been made accountable to the guarantee against arbitrariness (Article 14) and to fundamental liberties (principally Articles 19 and 21).

264. Committees of Parliament attached to ministries/departments of the Government perform the function of holding the Government accountable to implement its policies and its duties under legislation. The performance of governmental agencies may form the subject-matter of such a report. In other cases, the deficiencies of the legislative framework in remedying social wrongs may be the subject of an evaluation by a Parliamentary Committee. The work of a Parliamentary Committee may traverse the area of social welfare either in terms of the extent to which existing legislation is being effectively implemented or in highlighting the lacunae in its framework. There is no reason in principle why the wide jurisdiction of the High Courts under Article 226 or of this Court under Article 32 should be exercised in a manner oblivious to the enormous work which is carried out by Parliamentary Committees in the field. The work of the committee is to secure alacrity on the part of the Government in alleviating deprivations of social justice and in securing efficient and accountable governance. When courts enter upon issues of public interest and adjudicate upon them, they do not discharge a function which is adversarial. The constitutional function of adjudication in matters of public interest is in step with the role of Parliamentary Committees which is to secure accountability, transparency and responsiveness in the Government. In such areas, the doctrine of separation does not militate against the court relying upon the report of a Parliamentary Committee. The court does not adjudge the validity of the report nor for that matter does it embark upon a scrutiny into its correctness. There is a functional complementarity between the purpose of the investigation by the Parliamentary Committee and the adjudication by the court. To deprive the court of the valuable insight of a Parliamentary Committee would amount to excluding an important source of information from the purview of the court. To do so on the supposed hypothesis that it would amount to a breach of parliamentary privilege would be to miss the wood for the trees. Once the report of the Parliamentary Committee has been published it lies in the public domain. Once Parliament has placed it in the public domain, there is an irony about the executive relying on parliamentary privilege. There is no reason or justification to exclude it from the purview of the material to which the court seeks recourse to understand the problem with which it is required to deal. The court must look at the report with a robust commonsense, conscious of the fact that it is not called upon to determine the validity of the report which constitutes advice tendered to Parliament. The extent to which the court would rely upon a report

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must necessarily vary from case to case and no absolute rule can be laid down in that regard.

265. There may, however, be contentious matters in the report of a Parliamentary Committee in regard to which the court will tread with circumspection. For instance, the report of the committee may contain a finding of misdemeanour involving either officials of the Government or private individuals bearing on a violation of law. If the issue before the court for adjudication is whether there has in fact been a breach of duty or a violation of law by a public official or a private interest, the court would have to deal with it independently and arrive at its own conclusions based on the material before it. Obviously in such a case the finding by a Parliamentary Committee cannot constitute substantive evidence before the court. The Parliamentary Committee is not called upon to decide a lis or dispute involving contesting parties and when an occasion to do so arises before the court, it has to make its determination based on the material which is admissible before it. An individual whose conduct has been commented upon in the report of a Parliamentary Committee cannot be held guilty of a violation on the basis of that finding. In *Jyoti Harshad Mehta* v. *Custodian*[175], this Court held that a report of the Janakiraman Committee could not have been used as evidence by the Special Court. The Court held: (SCC pp. 582-83, para 57)

> "*57.* It is an accepted fact that the reports of the Janakiraman Committee, the Joint Parliamentary Committee and the Inter-Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history of the Act alone. The contents of the report should not have been used by the learned Judge of the Special Court as evidence."

266. Section 57 of the Evidence Act, 1872 speaks of facts of which the court must take judicial notice. Section 57 is comprised in Part II (titled "On proof"). Chapter III deals with facts which need not be proved. Section 57(4) provides as follows:

> "**57.** ***Facts of which Court must take judicial notice***.—The Court shall take judicial notice of the following facts—
>
> * * *
>
> (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the States."

267. In *Lok Shikshana Trust* v. *CIT*[99], a three-Judge Bench of this Court, while construing Section 57(4) made a distinction between the fact that a particular statement is made in Parliament and the correctness of what is stated on a question of fact. The former could be relied upon. However, the truth of a

175 (2009) 10 SCC 564 : (2010) 2 SCC (Cri) 1494
99 (1976) 1 SCC 254 : 1976 SCC (Tax) 14

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disputable question of fact would have to be independently proved before the court. H.R. Khanna, J. observed thus: (SCC p. 272, para 33)

a "*33*. We find that Section 57 clause (4) of the Evidence Act not only enables but enjoins courts to take judicial notice of the course of proceedings in Parliament assuming, of course, that it is relevant. It is true that the correctness of what is stated, on a question of fact, in the course of parliamentary proceedings, can only be proved by somebody who had direct knowledge of the fact stated. There is, however, a distinction between b the fact that a particular statement giving the purpose of an enactment was made in Parliament, of which judicial notice can be taken as part of the proceedings, and the truth of a disputable matter of fact stated in the course of proceedings, which has to be proved aliunde, that is to say, apart from the fact that a statement about it was made in the course of proceedings in Parliament (see Rt. Hon'ble *Gerald Lord Strickland* v. *Carmelo Mifsud Bonnici*[176]; and *"The Englishman" Ltd.* v. *Lajpat Rai*[177]." c

A statement made by the Finance Minister while proposing amendment could, it was held, be taken judicial notice of. Judicial notice would be taken of the fact that "such a statement of the reason was given in the course of such a speech".

268. In *Onkar Nath* v. *State (UT of Delhi)*[178], another Bench of three Judges elaborated upon Section 57(4). Y.V. Chandrachud, J. speaking for the Court, d held thus: (SCC p. 614, para 6)

"*6*. One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on 8-5-1974. Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be e proved. Section 57 enumerates facts of which the Court "shall" take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court *shall* take judicial notice of certain facts rather than f exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of matters which are unquestionably within public knowledge. (See *Taylor*, 11th Edn., pp. 3-12; Wigmore, Section 2571, footnote; *Stephen's Digest*, notes to Article 58; *Whitley Stokes' Anglo-Indian Codes*, Vol. II, p. 887.) Shutting the judicial eye to the existence of g such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of

h 176 1934 SCC OnLine PC 51 : AIR 1935 PC 34 : 153 IC 1
177 1910 SCC OnLine Cal 224 : ILR (1910) 37 Cal 760 : 14 CWN 945 : 6 IC 81
178 (1977) 2 SCC 611 : 1977 SCC (Cri) 388

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eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force." (emphasis in original)

269. In *Baburao* v. *Union of India*[179], the Court observed thus: (SCC p. 414, para 31)

> "*31.* The Lok Sabha Debates and the Rajya Sabha Debates are the journals or the reports of the two Houses of Parliament which are printed and published by them. The court has to take judicial notice of the proceedings of both the Houses of Parliament and is expected to treat the proceedings of the two Houses of Parliament as proved on the production of the copies of the journals or the reports containing proceedings of the two Houses of Parliament which are published by them."

These observations were in the context, specifically, of the provisions of the Evidence Act, including Section 57(4). The Court held that the production of debates of the Lok Sabha and Rajya Sabha containing the proceedings of the two Houses of Parliament, relating to the period between the time when the resolutions were moved in each of the two Houses and the time when the resolutions were duly adopted amounted to proof of the resolutions. The Court was required to take judicial notice under Section 57.

H. ***Conclusion***

270. The issue which has been referred to the Constitution Bench is whether the report of a Parliamentary Standing Committee can be relied upon in a proceeding under Article 32 or Article 136 of the Constitution. Allied to this is whether parliamentary privileges and the doctrine of separation of powers (shades of which find expression in the often-used phrase "the delicate balance") impose restraints on the ability of the court to seek recourse to parliamentary reports.

271. In finding an answer to the questions in reference, this Court must of necessity travel from a literal and perhaps superficial approach, to an understanding of the essence of what the Constitution seeks to achieve. At one level, our Constitution has overseen the transfer of political power from a colonial regime to a regime under law of a democratic republic. Legitimising the transfer of political power is one, but only one facet of the Constitution. To focus upon it alone is to miss a significant element of the constitutional vision. That vision is of about achieving a social transformation. This transformation which the Constitution seeks to achieve is by placing the individual at the forefront of its endeavours. Crucial to that transformation is the need to reverse the philosophy of the colonial regime, which was founded on the subordination of the individual to the State. Liberty, freedom, dignity and autonomy have meaning because it is to the individual to whom the Constitution holds out an assurance of protecting fundamental human rights. The Constitution is about empowerment. The democratic transformation to which it aspires places the individual at the core of the concerns of governance. For a colonial regime, individuals were subordinate to the law. Individuals were

179 1988 Supp SCC 401

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subject to the authority of the State and their well-being was governed by the acceptance of a destiny wedded to its power. Those assumptions which lay at the foundation of colonial rule have undergone a fundamental transformation for a nation of individuals governed by the Constitution. The Constitution recognises their rights and entitlements. Empowerment of individuals through the enforcement of their rights is the essence of the constitutional purpose. Hence, in understanding the issues which have arisen before the Court in the present reference, it is well to remind ourselves that since the Constitution is about transformation and its vision is about empowerment, our reading of precepts drawn from a colonial past, including parliamentary privilege, must be subjected to a nuance that facilitates the assertion of rights and access to justice. We no longer live in a political culture based on the subordination of individuals to the authority of the State. Our interpretation of the Constitution must reflect a keen sense of awareness of the basic change which the Constitution has made to the polity and to its governance.

272. A distinguished South African Judge, Albie Sachs has spoken of the importance of understanding the value of constitutional transformation. In his book titled *The Strange Alchemy of Life and Law*[180], explaining the role of the constitutional court, Sachs has this to say:

> "It is difficult to analyse the impact that court decisions have on actual historical events. It may well be that the publicity given to the case, and the evidence and arguments presented had more impact on public life than did the actual decision. Yet any amount of forensic combat, however bitter and prolonged, is better than a single bullet. Submitting the harsh conflicts of our times to legal scrutiny—conducted transparently and in the light of internationally accepted values of fairness and justice—was a telling rebuttal of mercenarism and violence, whether from or against the State. It responded in a practical way to the immediate issues, and at the same time induced Governments, judiciaries, and law-enforcement agencies in three countries to engage with each other and carefully consider their powers and responsibilities under the international law. It reaffirmed to the South African public that *we were living in a constitutional democracy in which all exercises of power were subject to constitutional control*. It said something important about the kind of country in which we lived and about the importance of principled and reasoned debate. It underlined that *we had moved from a culture of authority and submission to the law, to one of justification and rights under the law*." (emphasis supplied)

273. In India, no less than in South Africa it is important to realise that citizens live in a constitutional democracy in which every exercise of power is subject to constitutional control. Every institution of the State is subject to the Constitution. None lies above it. The most important feature of Sachs' vision relevant to our Constitution is that Indian society must move "from the culture

180 Justice Albie Sachs, *The Strange Alchemy of Life and Law* (Oxford University Press 2009) pp. 32-33.

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of authority and submission to the law, to one of justification and rights under the law".

274. Once we place the fulfilment of individual rights and human freedoms at the forefront of constitutional discourse, the resolution of the present case presents no difficulty. Individuals access courts to remedy injustice. As institutions which are committed to the performance of a duty to facilitate the realisation of human freedom, the High Courts as well as this Court are under a bounden obligation to seek and pursue all information on the causes of injustice. Where the work which has been performed by a coordinate constitutional institution — in this case a Parliamentary Committee, throws light on the nature of the injustice or its causes and effects, constitutional theory which has to aid justice cannot lead us to hold that the court must act oblivious to the content of the report. History and contemporary events across the world are a reminder that blackouts of information are used as a willing ally to totalitarian excesses of power. They have no place in a democracy. Placing reliance on the report of a Parliamentary Committee does not infringe parliamentary privilege. No Member of Parliament is sought to be made liable for what has been said or for a vote tendered in the course of a debate. The correctness or validity of the report of a Parliamentary Committee is not a matter which can be agitated before the Court nor does the Court exercise such a function. Where an issue of fact becomes contentious, it undoubtedly has to be proved before a court independently on the basis of the material on the record. In other words, where a fact referred to in the report of the Parliamentary Committee is contentious, the court has to arrive at its *own* finding on the basis of the material adduced before it.

275. Parliamentary Committees are an intrinsic part of the process by which the elected legislature in a democracy exacts accountability on the part of the Government. Department related Parliamentary Standing Committees undertake the meticulous exercise of scrutinising the implementation of law, including welfare legislation and the performance of the departments of the State. The purpose of law is to promote order for the benefit of the citizen and to protect rights and entitlements guaranteed by the Constitution and by statute. Access to justice as a means of securing fundamental freedoms and realising socio-economic entitlements is complementary to the work of other organs of the State. The modern doctrine of separation of powers has moved away from a "one organ - one function" approach, to a more realistic perspective which recognises the complementarity in the work which is performed by institutions of governance. Judicial review is founded on the need to ensure accountable governance in the administration of law as an instrument of realising the rights guaranteed by the Constitution. If the function of judicial review in facilitating the realisation of socio-economic rights is construed in the context of the modern notion of separation of powers, there is no real conflict between the independence of the judicial process and its reliance on published reports of Parliamentary Committees. Ultimately it is for the court in each case to determine the relevance of a report to the case at hand and the extent to which reliance can be placed upon it to facilitate access to justice. Reports of

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Parliamentary Committees become part of the published record of the State. As a matter of principle, there is no reason or justification to exclude them from the purview of the judicial process, for purposes such as understanding the historical background of a law, the nature of the problem, the causes of a social evil and the remedies which may provide answers to intractable problems of governance. The court will in the facts of a case determine when a matter which is contentious between the parties would have to be adjudicated upon independently on the basis of the evidence adduced in accordance with law.

276. In the circumstances, the reference is answered by holding that:

276.1. As a matter of principle, there is no reason why reliance upon the report of a Parliamentary Standing Committee cannot be placed in proceedings under Article 32 or Article 136 of the Constitution;

276.2. Once the report of a Parliamentary Committee has been published, reference to it in the course of judicial proceedings will not constitute a breach of parliamentary privilege;

276.3. The validity of the report of a Parliamentary Committee cannot be called into question in the court. No Member of Parliament or person can be made liable for what is stated in the course of the proceedings before a Parliamentary Committee or for a vote tendered or given; and

276.4. When a matter before the court assumes a contentious character, a finding of fact by the court must be premised on the evidence adduced in the judicial proceeding as explained in paras 265 and 274.

277. The issues framed for reference are accordingly answered.

278. The proceedings may now be placed before the Hon'ble Chief Justice for assignment of the case for disposal.

ASHOK BHUSHAN, J. (*concurring*)— This Constitution Bench is required to answer some important constitutional issues which also involve issues relating to delicate balance between Parliament and the Judiciary. The Hon'ble Chief Justice has circulated his Lordships' judgment which has been carefully read by me. Although I am in substantial agreement with the conclusions arrived by my Lord the Chief Justice, but looking to the importance of the issues involved I have penned my own views and conclusions.

280. Whether acceptance and reliance on a Parliamentary Standing Committee report by this Court while hearing a public interest writ petition amount to breach of any privilege of Parliament, is the sum and substance of the questions referred to this Constitution Bench. During the course of hearing of these writ petitions, the learned Senior Counsel of Respondent 8 [MSD Pharmaceuticals (P) Ltd.] raised objection regarding admissibility and consideration of the Parliamentary Committee report, considering which objections following two questions have been referred to be answered: (*Kalpana Mehta case*[2], SCC p. 322, para 73)

> "*73.1.* (*i*) Whether in a litigation filed before this Court either under Article 32 or Article 136 of the Constitution of India, the Court can

2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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refer to and place reliance upon the report of the Parliamentary Standing Committee?

73.2. (*ii*) Whether such a report can be looked at for the purpose of reference and, if so, can there be restrictions for the purpose of reference regard being had to the concept of parliamentary privilege and the delicate balance between the constitutional institutions that Articles 105, 121 and 122 of the Constitution conceive?"

281. The background facts as disclosed by the two writ petitions giving rise to the above two questions need to be noted now.

Writ Petition (C) No. 558 of 2012

282. The writ petition as a public interest litigation has been filed by three petitioners, Petitioners 1 and 2 claim to be working for women health whereas Petitioner 3 is a registered Society working with women organisations to help them to improve their lives and livelihood and to seek justice for marginalised communities.

283. In July 2009, the petitioners became aware of a so-called demonstration project work being carried out in the States of Andhra Pradesh and Gujarat by PATH (Respondent 6), a US based NGO along with the Indian Council of Medical Research (ICMR) and the Governments of Andhra Pradesh and Gujarat. In the above project about 32,000 young adolescent girls in the age group of 10-14 years were to be administered HPV (human papilloma virus) vaccines purported to be effective in preventing cervical cancer. HPV vaccine, namely, "Gardasil" is manufactured by Respondent 7 Glaxosmithkline Asia Pvt. Ltd. and "Cervarix" by Respondent 8 MSD Pharmaceuticals (P) Ltd., licensed in India only in July 2008 and September 2008 respectively by the Drug Controller General of India.

284. In July 2009 vaccine Gardasil in Khammam District in Andhra Pradesh was administered. Few girl children died. Health activists wrote to the Ministry of Health pointing out concern about irregularities and health risk of the HPV vaccine. Women organisation sent representations and also conducted a fact-finding enquiry. On 15-4-2010, the Government of India appointed a committee to enquire into "alleged irregularities in the conduct of studies using human papilloma virus (HPV) vaccine" by PATH in India. The final report of the Committee was submitted on 15-2-2011. The Enquiry Committee noted several discrepancies.

285. The Parliamentary Standing Committee of the Department of Health Research, Ministry of Health and Family Welfare while examining the demand for grants (2010-11) of Department of Health Research took up the issue of trial of HPV vaccine on children in the districts of Khammam, Andhra Pradesh and Vadodara, Gujarat. The Parliamentary Standing Committee (hereinafter referred to as "PSC") deliberated on the subject and held various meetings. The Committee heard the UOI, ICMR, Department of Drugs Controller General of India and also took oral evidence. The Departmental Standing Committee submitted its report (72nd Report) to the Rajya Sabha on 30-8-2013 which

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was also laid on the table of the Lok Sabha on 30-8-2013. The PSC found various shortcomings and lapses of the government departments, ICMR as well as on part of Respondents 6 to 8. Various directions and recommendations were issued by the Committee.

286. Again a detailed report, namely, 81st Report on "action taken by the Government on the recommendations/observations contained in the 72nd Report on the alleged irregularities in the conduct of studies using human papilloma virus (HPV) vaccine by PATH" in India was submitted to the Rajya Sabha on 23-12-2014 and also laid on the table of the Lok Sabha on 23-12-2014. Both the reports have been brought on record.

Writ Petition (C) No. 921 of 2013

287. The writ petition as a public interest litigation has been filed by the petitioners of which Petitioners 1 and 2 are public trusts and Petitioners 3 and 4 are registered societies. The petitioners have questioned the methods in which clinical trials for medicines including vaccines are taking place in this country to the disadvantage of vulnerable groups in the society including the poor, tribal, women and children. The facts and pleadings in the writ petition are on the line of facts and pleadings as contained in Writ Petition (C) No. 558 of 2012, hence are not repeated for brevity.

288. The petitioners have prayed for various reliefs including declaration that HPV Vaccine Observational Study Demonstration Project was a Phase IV clinical trial within the meaning of various rules in the Drugs and Cosmetics Rules, 1945. The petitioners have made several prayers including the prayers for grant of compensation and direction for investigation by special investigation team of various offences committed by Respondents 2 to 8.

289. In both the writ petitions, most of the materials including fact-finding enquiry conducted by Petitioner 1 in Writ Petition (C) No. 921 of 2013 (PIL-W), newspapers reports, articles, representations, correspondence have been referred to and relied on. Apart from other materials, reference and reliance on 72nd Report presented on 30-8-2013 and 81st Report presented on 23-12-2014 to the Rajya Sabha have also been placed.

290. A two-Judge Bench of this Court while hearing the writ petitions has posed several questions and issued various directions. In this context the Court passed various directions on 12-8-2014[116], 13-1-2015[181] and 17-11-2015[182].

291. When the matter was heard on 18-11-2015[183] the two-Judge Bench of this Court stated: (*Kalpana Mehta case*[183], SCC p. 306, para 19)

> "*19.* Be it noted, a substantial issue in law has arisen in course of hearing of this case which pertains to exercise of power of judicial review when a report of the Parliamentary Standing Committee is filed before the Court."

116 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295, paras 1 and 2.
181 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 302
182 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 305
183 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 306

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After hearing the parties on 18-11-2015[183] the two-Judge Bench of this Court by a detailed order dated 5-4-2017[2] has referred two questions as noted above to be answered by a Constitution Bench.

Submissions

292. We have heard Shri Colin Gonsalves, learned Senior Advocate for the petitioner in Writ Petition (C) No. 558 of 2012 and Shri Anand Grover, learned Senior Advocate for the petitioner in Writ Petition (C) No. 921 of 2013. Shri Harish Salve and Shri Gourab Banerji, learned Senior Advocates have appeared for Respondent 8 MSD Pharmaceuticals (P) Ltd. Shri Shyam Divan, learned Senior Advocate has appeared for PATH International. We have also heard Shri K.K. Venugopal, learned Attorney General for India.

293. Shri Salve submits that Parliamentary Committee report can neither be looked into nor relied on by this Court. Shri Salve, however, submits that there are two areas where Parliamentary Committee report can be relied i.e. (*a*) legislative history of a statute and (*b*) Minister's statement in the House. The Members of Parliament as well as those who appear before the Parliamentary Committee are fully protected by the legislative privileges of the Members as well as of the Houses. Article 105 clause (2) of the Constitution of India provides that no Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.

294. Shri Salve further submits that as per Article 105 clause (3) the powers, privileges and immunities of each House of Parliament, and of the Members and the committees of each House, is same as of those of the House of Commons as it exists on 26-11-1950. Article 105 clause (4) extends the privileges as referred to in clauses (1), (2) and (3) to all persons who have the right to speak in, and otherwise to take part in the proceedings of any House of Parliament or any committee thereof. Evidence led in a court cannot be criticised. Same principles can apply with regard to evidence taken by a Parliamentary Committee. A committee of Parliament is part of Parliament.

295. The principal submission which has been canvassed by Shri Salve is that there being legislative privilege of all acts done in Parliament including report of Parliamentary Committee, the report cannot be challenged in a court of law. He submits that reliance on a Parliamentary Committee report also involves a challenge to the report by other parties. No adjudication can be entertained by this Court with regard to a Parliamentary Committee report, hence reliance placed by the petitioner on the Parliamentary Committee report is misplaced.

296. Relying on Article IX of the Bill of Rights, 1688, Shri Salve submits that it confers on "proceedings in Parliament" protection from being "impeached or questioned" in any "court or place out of Parliament". He submits that Indian Parliament is conferred the same privileges which are

183 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 306
2 *Kalpana Mehta* v. *Union of India*, (2017) 7 SCC 295 : (2017) 7 SCC 307

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enjoyed by the House of Commons, hence Parliamentary Committee report can neither be relied nor questioned in any court of law. Shri Salve referred to various English cases and several judgments of this Court which shall be referred to while considering the submissions in detail.

297. Shri K.K. Venugopal, learned Attorney General also contends that parliamentary reports cannot be relied on in Court. He submits that although there is no rigid separation of powers in the three wings of States but each wing of the States works in its own sphere. Parliament is supreme in its proceedings which proceedings cannot be questioned in any court of law. The parliamentary reports cannot be made subject-matter of an issue in any proceeding of court of law or even in a public interest litigation. He submits that all wings of the States have to work in their own spheres so as not to entrench upon the sphere allotted to other wing of the State. He submitted that referring to a report of Parliamentary Committee is a sensitive issue of jurisdiction between the courts and Parliament which should be avoided by this Court. When the courts cannot adjudicate on Parliamentary Committee report, what is the use of looking into it.

298. Referring to Section 57(4) of the Evidence Act, 1872 which provides that the Court shall take judicial notice of the proceedings of Parliament and the legislature established under any law for the time being in force, the learned Attorney General submits that the substitutions were made in clause (4) of Section 57 by the Adaptation Order of 1950 which were orders issued by the President and were not amendments made by Parliament in Section 57. He submits that by the Adaptation Order various words which were earlier used in the Evidence Act, 1872 were changed after adoption of the Constitution which cannot be treated to be an act done by conscious deliberation of the legislature.

299. Shri Venugopal submits that historical facts as well as the statement of the Minister in Parliament can be used with which there cannot be any quarrel. He, however, submits that inferences in Parliamentary Committee report are not acceptable. He submits that when any litigant wants to prove a fact, he has to search material and produce evidence and he cannot be allowed to take a shortcut by placing reliance on the Parliamentary Committee report. Parliamentary Committee report, is, in a manner, a speech. Article 105 of the Constitution does not make any distinction with reports which can be termed to as Social Welfare Reports or other kinds of reports.

300. Shri Venugopal, learned Attorney General submits that there is total bar in looking into the Reports of Parliament based on separation of power and express provisions of Articles 105(2) and 105(4) of the Constitution of India. The very fact that the Speaker can say "no" with regard to any parliamentary material, it has to be assumed that they operate as total bar on use of parliamentary material as evidence. The protection which is extended to a Member of Parliament is also extended to the parliamentary proceedings and parliamentary reports.

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301. Shri Colin Gonsalves, learned Senior Counsel appearing for the petitioner submits that the petitioner does not intend to challenge any part of the Parliamentary Committee report. The writ petitioner seeks nothing which may give rise to any question of breach of parliamentary privileges. The writ petitioner is not asking this Court to take any facts stated in Parliamentary report to be conclusive except which is permissible under Section 57 of the Evidence Act, 1872. As per the Evidence Act, 1872, the parliamentary proceedings are public documents which are admissible in evidence. The petitioner does not ask for issuing any mandamus to enforce the Parliamentary Committee report. The cases cited by Shri Harish Salve in support of his submissions relate to breach of privileges of Members of Parliament whereas present is not a case involving any breach of any privileges of a Member of Parliament. Neither any question is being raised in the writ petition questioning any action or conduct of any Member of Parliament nor the petitioner is asking to initiate any proceeding against any Member of Parliament.

302. Shri Gonsalves submits that facts noticed and stated in parliamentary report can very well be relied. Parliament by its procedure permits the committee report to be filed in the Court, hence there is no prohibition in the Court in looking into the parliamentary report.

303. It is further submitted by Shri Gonsalves that in the present case, it is the Executive, which is trying to protect itself taking shield of parliamentary privileges whereas Parliament does not take objection or offence of its reports being relied and used. When the reports are published by Parliament the process is over and thereafter there is no prohibition on reports being filed as evidence and used by all concerned. This Court should follow the principles of the comity of the institution instead of relying on principles of separation of power and conflict of the institution. Under the Right to Information Act, the parliamentary reports can be sought for and used by all concerned. The present is an age of transparency, in which period the respondent cannot be heard in saying that benefits of report should be blacked out from the courts.

304. The 72nd and 81st Parliamentary Committee reports play a very important role since they unearth the events of the illegal vaccination done on poor and malnourished young tribal girls and further it has commented adversely on the role of government agencies such as ICMR and DGCI and the State of Andhra Pradesh and Gujarat. The government officials had appeared before the Parliamentary Committee and admitted several wrongdoings.

305. Shri Anand Grover, learned Senior Advocate appearing for the petitioners in Writ Petition (C) No. 921 of 2013 has adopted most of the submissions of Shri Colin Gonsalves but has raised certain additional submissions. Shri Grover submits that the truth and contents of documents are two entirely different things. When document is admitted what is proved is document and contents and not the truth. He submits that there is no question of challenging the findings of the Parliamentary Committee's report nor the reports are being questioned in this Court.

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306. Shri Grover has also referred to several English cases as well as judgments of the Australian High Court, the US Supreme Court and of this Court. Referring to Section 16(3) of the Australian Parliamentary Privileges Act, 1987, Shri Grover submits that law as applicable in Australia by virtue of Section 16(3) is not applicable in India nor has been accepted as law applicable in the United Kingdom. He submits that Parliamentary Committee report which is a measure of social protection should be looked into by the Court while rendering justice to the common man especially in public interest litigation.

307. Shri Grover further submits that Parliamentary Committee reports can be relied only when they are published and become a public document. He submits that statements can be looked into from the Parliamentary Committee report but not the inferences and findings. The Parliamentary Committee reports have been obtained from the House and no kind of privilege is involved.

308. Shri Shyam Divan, learned Senior Advocate appearing for PATH submits that PATH is a non-profit body operating in the area of health. Referring to Section 57 of the Evidence Act, Shri Divan submits that clause (4) of Section 57 uses the phrase "course of proceeding". He submits that the expression "course of proceeding" does not comprehend the parliamentary reports. He submits that when in this Court anyone traverses or controverts a Parliamentary Committee report, it is not in the interest of the comity of the institutions.

309. Shri Divan submits that references to parliamentary proceedings are possible only in two areas i.e. in interpreting a legislation and statement of a Minister. He submits that the entire report is to be examined as a whole. The answering respondent in Writ Petition (C) No. 921 of 2013 in its counter-affidavit has challenged the veracity of the findings of the Parliamentary Standing Committee report. The Parliamentary Committee is the functional organ of Parliament which also enjoys the privileges and immunity provided under Article 105(2) of the Constitution of India. The reports of the Parliamentary Committee are not amenable to judicial review. Parliamentary Standing Committee reports are not to be relied in court proceedings inasmuch as traversing or contesting the content of report, it may cause breach of parliamentary privileges under Article 105 and Article 122 of the Constitution of India. Challenge to such reports may invite contempt proceedings by Parliament for breach of privileges. The parliamentary reports cannot be basis for any action in law both criminal and civil in any court including writ petition or public interest litigation.

310. Shri Gourab Banerji, learned Senior Advocate, replying to the submissions of Shri Colin Gonsalves and Shri Anand Grover, submits that recommendations and conclusions of Parliamentary Committee reports cannot be relied. A moment there is a fact finding in report, it cannot be looked into.

311. We have considered the above submissions and perused the record. For answering the two questions referred to this Constitution Bench, as noted above, we need to consider the following issues:

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311.1. Whether by accepting on record a Parliamentary Standing Committee's report by this Court in a case under Article 32 or 136, any privilege of Parliament is breached.

311.2. In the event, a Parliamentary Standing Committee's report can be accepted as an evidence, what are the restrictions in its reference and use as per the parliamentary privileges enjoyed by the legislature of this country.

311.3. Whether in traversing and questioning the reports, the private respondents may invite a contempt of House.

311.4. The above issues being interconnected, we proceed to examine all the issues together. While considering the above issues, we have divided our discussion in different sub-heads/topics for overall understanding of parliamentary privileges enjoyed by the Indian Legislature.

A. ***Parliamentary privileges***

312. The origin and evolution of parliamentary privilege is traceable from the High Court of British Parliament. In the early period of British History, the High Court of Parliament assisted the Crown in his judicial functions. The High Court of Parliament started sitting in two parts i.e. House of Lords and House of Commons. Gradually, both the Houses claimed various privileges which were recognised. Some of the privileges were claimed by both the Houses as rights from ancient times and some of the privileges were statutorily recognised. A significant parliamentary privilege is recognised and declared by Article IX. The Bill of Rights, 1688 which conferred on "proceedings in Parliament protection from being "impeached" or "questioned" in any court or place out of Parliament". By the end of 19th century most of the parliamentary privileges of House of Commons were firmly established and recognised by the courts also.

313. Erskine May in his treatise *Parliamentary Practice*, 24th Edn. has elaborately dealt with the privileges of Parliament and all other related aspects. In Chapter XII of the book, Erskine May states about what constitutes the privilege:

> "Parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the High Court of Parliament; and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute."

314. The term "parliamentary privilege" refers to the immunity and powers possessed by each of the Houses of Parliament and by the Members of Parliament, which allow them to carry out their parliamentary functions effectively. Enumerating few rights and immunities Erskine May states:

> "Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual Members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its Members. Other rights and immunities, such as the power

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to punish for contempt and the power to regulate its own constitution, belong primarily to each House as a collective body, for the protection of its Members and the vindication of its own authority and dignity. Fundamentally, however, it is only as a means to the effective discharge of the collective functions of the House that the individual privileges are enjoyed by Members. The Speaker has ruled that parliamentary privilege is absolute.

When any of these rights and immunities is disregarded or attacked, the offence is called a breach of privilege, and is punishable under the law of Parliament. Each House also claims the right to punish contempts, that is, actions which, while not breaches of any specific privilege, obstruct or impede it in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its Members or its officers. The power to punish for contempt has been judicially considered to be inherent in each House of Parliament not as a necessary incident of the authority and functions of a legislature (as might be argued in respect of certain privileges) but by virtue of their descent from the undivided High Court of Parliament and in right of the *lex et consuetudo parliamenti*."

315. The *Halsbury's Laws of England*, 5th Edn. Vol. 78, while tracing the "origin and scope of privileges", states the following:

"1076. *Claim to rights and privileges*.—The House of Lords and the House of Commons claim for their members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions, and which exceed those possessed by other bodies and individuals. In 1705 the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed. Each House is the guardian of its own privileges and claims to be the sole judge of any matter that may arise which in any way impinges upon them, and, if it deems it advisable, to punish any person whom it considers to be guilty of a breach of privilege or a contempt of the House."

316. The privileges of the Indian Legislatures have also gradually developed along with the progress in the constitutional development of the country. The Government of India Acts, 1919 and 1935 constitute successive milestone in the development of the legislative bodies in India. The Government of India Act, 1935 has been referred to as the Constitution Act by the Privy Council.

317. Dr B.R. Ambedkar, the Chairman of the Drafting Committee while debating on draft Article 85 (Article 105 of the Constitution of India) and draft Article 169 (Article 194 of the Constitution of India) has referred to Erskine May's *Parliamentary Practice* as a source book of knowledge with regard to immunities, privileges of Parliament. The Constitution of India by Article 105 and Article 194 gives constitutional recognition of parliamentary

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privileges. We now proceed to examine the constitutional provisions pertaining to parliamentary privileges.

318. Article 105 of the Constitution of India deals with "powers, privileges and immunities" of Parliament and its Members whereas Article 194 deals with the powers, privileges and immunities of State Legislatures and their Members. Both the provisions are identical. To understand the constitutional scheme, it is sufficient to refer to Article 105 of the Constitution of India.

319. Article 105 of the Constitution of India as it exists, provides as follows:

> "**105.** ***Powers, privileges, etc., of the Houses of Parliament and of the Members and committees thereof.***—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
>
> (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the Members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of that House and of its Members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.
>
> (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to Members of Parliament."

320. Two amendments were made in Article 105 clause (3) i.e. by the Constitution (Forty-second and Forty-fourth Amendments). Article 105 clause (3) in its original form was as follows:

> "**105. (3)** In other respects, the powers, privileges and immunities of each House of Parliament, and of the Members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and committees, at the commencement of this Constitution."

321. Clause (1) of Article 105 of the Constitution of India gives constitutional recognition to "freedom of speech" in Parliament. Clause (2) of Article 105 enumerates the privileges and immunities of Members of Parliament. There is absolute protection to a Member of Parliament against any proceeding in any court, in respect of anything said or vote given by him in Parliament or any committee thereof. In the present case, we are called upon to examine the parliamentary privileges with regard to Parliamentary Standing Committee's report. According to clause (2) of Article 105 of the Constitution of India no Member of Parliament can be held liable for anything said by

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him in Parliament or in any committee. The reports submitted by Members of Parliament is also fully covered by protection extended under clause (2) of Article 105 of the Constitution of India. Present is not a case of any proceeding against any Member of Parliament for anything which has been said in the Parliament Committee's report.

322. We now proceed to clause (3) of Article 105 of the Constitution of India. Clause (3) of Article 105 of the Constitution of India begins with the words "in other respects". The words "in other respects" clearly refer to powers, privileges and immunities which are not mentioned and referred to in clauses (1) and (2) of Article 105. Clause (3) of Article 105 makes applicable the same powers, privileges and immunities which are not mentioned and referred to in clauses (1) and (2) of Article 105. Clause (3) of Article 105 makes applicable the same powers, privileges and immunities for Indian Parliament which were enjoyed by the House of Commons at the time of enforcement of the Constitution of India.

323. The Constitution Bench in *P.V. Narasimha Rao* v. *State*[140] had elaborately considered Article 105 of the Constitution of India. In para 28 and para 29 of the judgment the following has been stated: (SCC pp. 662-63)

> " *28*. Clause (2) confers immunity in relation to proceedings in courts. It can be divided into two parts. In the first part immunity from liability under any proceedings in any court is conferred on a Member of Parliament in respect of anything said or any vote given by him in Parliament or any committee thereof. In the second part such immunity is conferred on a person in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings. This immunity that has been conferred under clause (2) in respect of anything said or any vote given by a Member in Parliament or any committee thereof and in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, ensures that the freedom of speech that is granted under clause (1) of Article 105 is totally absolute and unfettered. (See *Legislative Privileges case*[22], SCR pp. 441, 442.)
>
> *29*. Having secured the freedom of speech in Parliament to the Members under clauses (1) and (2), the Constitution, in clause (3) of Article 105, deals with powers, privileges and immunities of the House of Parliament and of the Members and the committees thereof in other respects. The said clause is in two parts. The first part empowers Parliament to define, by law, the powers, privileges and immunities of each House of Parliament and of the Members and the committees of each House. In the second part, which was intended to be transitional in nature, it was provided that until they are so defined by law the said powers, privileges and immunities shall be those of the House of Commons in the United Kingdom and of its Members and committees at the commencement of

140 (1998) 4 SCC 626 : 1998 SCC (Cri) 1108

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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the Constitution. This part of the provision was on the same lines as the provisions contained in Section 49 of the Australian Constitution and Section 18 of the Canadian Constitution. Clause (3), as substituted by the Forty-fourth Amendment of the Constitution, does not make any change in the content and it only seeks to omit future reference to the House of Commons of Parliament in the United Kingdom while preserving the position as it stood on the date of the coming into force of the said amendment."

B. ***Privileges of the House of Commons***

324. What are the privileges of the House of Commons which are also enjoyed by the Indian Parliament by virtue of clause (3) of Article 105 of the Constitution of India need to be examined for answering the issues which have arisen in the present case.

325. While dealing with the privileges of Parliament Erskine May in his treatise *Parliamentary Practice* enumerates the following privileges:

1. Freedom of speech.
2. Freedom from arrest.
3. Freedom of access.
4. Favourable construction.
5. Privileges with respect to membership of the House.
6. Power of commitment for breach of privilege or contempt.

326. *Halsbury's Laws of England* in 5th Edn. Vol. 78, while dealing with the privileges, etc. claimed by both the Houses "enumerates privileges":

1. Exclusive cognizance of proceedings.
2. Freedom of Speech and proceedings in Parliament.
3. Contempts.
4. Freedom from Arrest.
5. Protection of witnesses and others before Parliament.
6. Power to exclude the public.

327. The main privileges which are claimed by the House of Commons were noticed by the Constitution Bench of this Court in *Powers, Privileges and Immunities of State Legislatures, In re*[22] in paras 74 and 75 which are quoted as below: (AIR p. 771)

"*74.* Amongst the other privileges are: the right to exclude strangers, the right to control publication of debates and proceedings, the right to exclusive cognizance of proceedings in Parliament, the right of each House to be the sole judge of the lawfulness of its own proceedings, and the right implied to punish its own members for their conduct in Parliament [*May's Parliamentary Practice*, pp. 52-53].

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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75. Besides these privileges, both Houses of Parliament were possessed of the privilege of freedom from arrest or molestation, and from being impleaded, which was claimed by the Commons on ground of prescription. …"

328. M.N. Kaul and S.L. Shakdher in *Practice & Procedure of Parliament*, 7th Edn. published by Lok Sabha Secretariat have enumerated "Main privileges of Parliament" to the following effect:

"*Main Privileges of Parliament*

Some of the privileges of Parliament and of its Members and committees are specified in the Constitution, certain statutes and the Rules of Procedure of the House, while others continue to be based on precedents of the British House of Commons and on conventions which have grown in this country.

Some of the more important of these privileges are:

(*i*) Privileges specified in the Constitution:

Freedom of speech in Parliament [Article 105(1)].

Immunity to a Member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof [Article 105(2)].

Immunity to a person from proceedings in any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings (Ibid).

Prohibition on the courts to inquire into proceedings of Parliament (Article 122).

Immunity to a person from any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice. This immunity is also available in relation to reports or matters broadcast by means of wireless telegraphy (Article 361-A).

(*ii*) Privileges specified in Statutes:

Freedom from arrest of Members in civil cases during the continuance of the session of the House and forty days before its commencement and forty days after its conclusion. CPS Section 135 A—For further details, see sub-head 'Freedom from Arrest in Civil Cases' (infra).

(*iii*) Privileges specified in the Rules of Procedure and Conduct of Business of the House:

Right of the House to receive immediate information of the arrest, detention, conviction, imprisonment and release of a Member (Rules 229 and 230).

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Exemption of a Member from service of legal process and arrest within the precincts of the House (Rules 232 and 233).

Prohibition of disclosure of the proceedings or decisions of a secret sitting of the House (Rule 252).

(*iv*) Privileges based upon precedents:

Members or officers of the House cannot be compelled to give evidence or to produce documents in courts of law, relating to the proceedings of the House without the permission of the House 1-R (CPR — 1LS).

Members or officers of the House cannot be compelled to attend as witness before the other House or a committee thereof or before a House of State Legislature or a committee thereof without the permission of the House and without the consent of the Member whose attendance is required 6-R (CPR — 2LS).

In addition to the abovementioned privileges and immunities, each House also enjoys certain consequential powers necessary for the protection of its privileges and immunities. These powers are:

to commit persons, whether they are members or not, for breach of privilege or contempt of the House P.D., 1961, Vol. V-2, Pt. III, pp. 51-52 (Rajasthan Vidhan Sabha case, 10-4-1954) 1974, Vol. XIX-2, pp. 42-43 and 1975, Vol. XX-1, p. 78 (shouting of slogans and carrying of arms by visitors to Lok Sabha); *Homi D. Mistry* v. *Nafisul Hussan*[184] — the *Blitz case*; *Searchlight case*[185]; *C. Subramaniam case*[186].

to compel the attendance of witnesses and to send for persons, papers and records Rules 269 and 270, *Harendra Nath Barua* v. *Dev Kanta Barua*[187].

to regulate its procedure and the conduct of its business [Article 118(1)]

to prohibit the publication of its debates and proceedings, the *Searchlight case*[185] and to exclude strangers (Rule 387)."

329. The privileges of Indian Parliament, which have been enumerated above, are the privileges which were enjoyed by the British House of Commons. From the parliamentary privileges as enumerated above, it is clear that there is a complete immunity to the Members of Parliament from any proceeding for anything said in any committee of Parliament. Present is not a case where any proceedings are contemplated against any Member of Parliament for anything which has been said in a report of a committee,

184 1956 SCC OnLine Bom 175 : ILR 1957 Bom 218
185 *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395
186 *C. Subramaniam* v. *Speaker of the Madras Legislative Assembly*, 1968 SCC OnLine Mad 64 : AIR 1969 Mad 10
187 1958 SCC OnLine Gau 16 : AIR 1958 Assam 160

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involving a breach of any privilege under clause (2) of Article 105 of the Constitution of India.

a **330.** The question to be considered, is as to whether, there is any breach of privileges of Parliament in accepting, referring and relying on a Parliamentary Committee report by this Court.

C. ***The Role of Parliamentary Committees***

331. Parliament is legislative wing of the Union. The Council of Ministers b headed by the Prime Minister is collectively responsible to the House of the People. The role of Parliament is thus not confined to mere transacting legislative business. In the representative parliamentary democracy, the role of Parliament has immensely increased and is pivotal for the governance of the country.

332. F.W. Maitland in the *Constitutional History of England* while writing c on "The Work of Parliament" stated the following:

> "… But we ought to notice that the Houses of Parliament do a great deal of important work without passing statutes or hearing causes. In the first place they exercise a constant supervision of all governmental affairs. The ministers of the king are expected to be in Parliament and to answer questions, and the House may be asked to condemn their conduct. …"

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333. Dr Subhash C. Kashyap in *Parliamentary Procedure*, 2nd Edn. while discussing the functions of Parliament stated:

> "Over the years, the functions of Parliament have no longer remained restricted merely to legislating. Parliament has, in fact emerged as a multi-functional institution encompassing in its ambit various roles e viz. developmental, financial and administrative surveillance, grievance ventilation and redressal, national integrational, conflict resolution, leadership recruitment and training, educational and so on. The multifarious functions of Parliament make it the cornerstone on which the edifice of Indian polity stands and evokes admiration from many a quarter."

f **334.** The business of Parliament is transacted in accordance with the rules of procedure as framed under Article 118 of the Constitution of India. Both the Houses of Parliament have made rules for regulating its procedure and conduct of its business. The Rajya Sabha has framed rules, namely, "The Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)", which were brought into force w.e.f. 1-7-1964. The Rules of Procedure and Conduct of Business in Lok Sabha were framed and published in the Gazette g of India Extraordinary on 17-5-1952.

335. Various committees of both Rajya Sabha and Lok Sabha are entrusted with enormous duties and responsibilities in reference to the functions of Parliament. Maitland in *Constitutional History of England* while referring to the committees of the Houses of British Parliament noticed the functions of the h committees in the following words:

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"… Then again by means of committees the Houses now exercise what we may call an inquisitorial power. If anything is going wrong in public affairs a committee may be appointed to investigate the matter; witnesses can be summoned to give evidence on oath, and if they will not testify they can be committed for contempt. All manner of subjects concerning the public have of late been investigated by parliamentary commissions; thus information is obtained which may be used as a basis for legislation or for the recommendation of administrative reforms."

336. Chapter IX of the Rajya Sabha Rules dealing with the legislation provides for Select Committees on Bills, procedure of the presentation after report of the Select/Joint Committee. The Rules provide for various committees including Committee on Subordinate Legislation, Committee on Government Assurances and other committees. Chapter XXII deals with "Department Related Parliamentary Standing Committees". Rule 268 which provides for "Departmental Select Committees" is as follows:

"**268.** ***Department related Standing Committees***.—(1) There shall be Parliamentary Standing Committees of the Houses (to be called the Standing Committees) related to Ministries/Departments.

(2) Each of the Standing Committees shall be related to the Ministries/Departments as specified in the Third Schedule:

Provided that the Chairman and the Speaker, Lok Sabha (hereinafter referred to as the Speaker), may alter the said Schedule from time to time in consultation with each other."

337. Rule 270 deals with functions of the Standing Committees which are to the following effect:

"**270.** ***Functions***.—Each of the Standing Committees shall have the following functions, namely—

(*a*) to consider the demands for grants of the related Ministries/Department and report thereon. The report shall not suggest anything of the nature of cut motions;

(*b*) to examine Bills, pertaining to the related Ministries/Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;

(*c*) to consider the annual reports of the Ministries/Departments and report thereon; and

(*d*) to consider national basic long-term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon:

Provided that the Standing Committees shall not consider matters of day-to-day administration of the related Ministries/Departments."

338. Rule 277 provides that the Report of the Standing Committee shall have persuasive value. Schedule III to the Rules deals with the "Allocation of various Ministries/Departments related to Parliamentary Standing Committee".

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At Item 7 is "Committee on Health and Family Welfare" which relates to Department of Health and Family Welfare.

a **339.** Present is a case where Parliamentary Standing Committee which has submitted the report is the Parliamentary Standing Committee on Health and Family Welfare. *M.N. Kaul and S.L. Shakdher* in their treatise on *Practice and Procedure of Parliament* published by Lok Sabha Secretariat, dealing with the business of committees stated the following:

> b "Parliament transacts a great deal of its business through committees. These committees are appointed to deal with specific items of business requiring expert or detailed consideration. The system of Parliamentary Committees is particularly useful in dealing with matters which, on account of their special or technical nature, are better considered in detail by a small number of Members rather than by the House itself. Moreover, the system saves the time of the House for the discussion of important matters and c prevents Parliament from getting lost in details and thereby losing hold on matters of policy and broad principles."

340. The reports which are submitted by the Departmental Parliamentary Standing Committees are reports of matters entrusted to it by Parliament, by the Speaker. Parliament to which Council of Ministers are responsible, d supervises the various works done by different Departments of the Government. Apart from the supervision, the committees also make recommendations and issue directions. Directions and recommendations are to be implemented by different government departments and action taken reports are submitted before Parliament to be considered by Departmental Standing Committees. The functions of the committees thus, play an important role in functioning of the e entire Government which is directly related to the welfare of the people of the country.

D. ***Publication of Parliamentary Reports***

341. The reports of the Parliamentary Standing Committees and other decisions and resolutions of Parliament are published under the authority of the House. Publication of proceedings of Parliament serves public purpose. f Members of British Parliament in earlier years had treated publication of its proceedings as breach of privilege. However, subsequently, the Members of British Parliament have permitted the publication of its proceedings in Hansard. As early as, in the year 1868 Cockburn, C.J. in *Wason* v. *Walter*[188] held that it is of paramount public and national importance that the proceedings of the House of Parliament shall be communicated to the people.

g **342.** Cockburn, C.J., at QB p. 89 held the following: (*Walter case*[188])

> "… It seems to us impossible to doubt that it is of paramount public and national importance that the proceedings of the Houses of Parliament shall be communicated to the public, who have the deepest interest in knowing what passes within their walls, seeing that on what is there

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188 (1868) LR 4 QB 73

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said and done, the welfare of the community depends. Where would be our confidence in the Government of the country or in the legislature by which our laws are framed, and to whose charge the great interests of the country are committed—where would be our attachment to the constitution under which we live—if the proceedings of the great council of the realm were shrouded in secrecy and concealed from the knowledge of the nation? How could the communications between the representatives of the people and their constituents, which are so essential to the working of the representative system, be usefully carried on, if the constituencies were kept in ignorance of what their representatives are doing? What would become of the right of petitioning on all measures pending in parliament, the undoubted right of the subject, if the people are to be kept in ignorance of what is passing in either house? Can any man bring himself to doubt that the publicity given in modern times to what passes in Parliament is essential to the maintenance of the relations subsisting between the Government, the legislature, and the country at large? …"

343. Further, it was held "no" subject of parliamentary discussion which more requires to be made known than an inquiry relating to it. Cockburn, C.J. further held that although each House by Standing Orders prohibits the publication of its debate but each House not only permits, but also sanctions and encourages the publication: (*Walter case*[188], QB p. 95)

"… The fact, no doubt, is, that each House of Parliament does, by its standing orders, prohibit the publication of its debates. But, practically, each House not only permits, but also sanctions and encourages, the publication of its proceedings, and actually gives every facility to those who report them. Individual members correct their speeches for publication in Hansard or the public journals, and in every debate reports of former speeches contained therein are constantly referred to. Collectively, as well as individually, the members of both Houses would deplore as a national misfortune the withholding their debates from the country at large. Practically speaking, therefore, it is idle to say that the publication of parliamentary proceedings is prohibited by parliament. …"

344. Under Rule 379 of the Lok Sabha, the Secretary General is authorised to prepare and publish the full report of the proceedings of the House under the direction of the Speaker. Parliament has also passed a legislation, namely, the "Parliamentary Proceedings (Protection of Publication) Act, 1977" which provides that publication of reports of parliamentary proceedings is privileged. Section 3 of the Act is as follows:

"**3.** ***Publication of reports of parliamentary proceedings privileged.***—(1) Save as otherwise provided in sub-section (2), no person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice.

188 *Wason* v. *Walter*, (1868) LR 4 QB 73

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(2) Nothing in sub-section (1) shall be construed as protecting the publication of any matter, the publication of which is not for the public good."

a **345.** By the Constitution (Forty-fourth Amendment) Act, 1978, Article 361-A was inserted in the Constitution providing for "protection of publication of proceedings by Parliament and State Legislatures". Article 361-A is as follows:

"**361-A.** ***Protection of publication of proceedings of Parliament and State Legislatures***.—(1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State, unless the publication is proved to have been made with malice:

b

c Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast, by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

d

Explanation.—In this article, "newspaper" includes a news agency report containing material for publication in a newspaper."

346. The Rules framed under Article 118 of the Constitution of India thus clearly permit the publication of parliamentary proceedings. Apart from publication of the proceedings of Parliament, including the reports of the committees, now, they are also permitted to be broadcast on electronic media. The publication of the reports not being only permitted, but also are being encouraged by Parliament. The general public is keenly interested in knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country.

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347. At this juncture, it is relevant to note that as per the Rules framed under Article 118 of the Constitution of India, both for Lok Sabha and Rajya Sabha, the Parliamentary Standing Committees are to follow the procedure after constitution of the committee and till the reports are submitted to the Speaker. During the intervening period, when the preparation of reports is in process and it is not yet submitted to the Speaker and published, there is no right to know the outcome of the reports. The learned counsel for both the petitioners have submitted that the right to know about the reports only arises when they have been published for use of the public in general. Thus, no exception can be taken in the petitioners obtaining 72nd and 81st Reports of Parliamentary Standing Committee.

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E. ***Rules and Procedures regarding permission for giving evidence in courts regarding proceedings in Parliament***

348. The papers and proceedings of Parliament have been permitted to be given in evidence in courts of law by Parliament. In this context, reference is made to *Practice and Procedure of Parliament* by *M.N. Kaul and S.L. Shakdher*, 7th Edn., published by Lok Sabha Secretariat, where on this subject the following has been stated:

> "*Evidence in Courts Regarding Proceedings in Parliament*
>
> Leave of the House is necessary for giving evidence in a court of law in respect of the proceedings in that House or committees thereof or for production of any document connected with the proceedings of that House or Committees thereof, or in the custody of the officers of that House. According to the First Report of the Committee of Privileges of the Second Lok Sabha, "no Member or officer of the House should give evidence in a court of law in respect of any proceedings of the House or any Committees of the House or any other document connected with the proceedings of the House or in the custody of the Secretary-General without the leave of the House being first obtained".
>
> When the House is not in session, the Speaker may, in emergent cases, allow the production of relevant documents in courts of law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it reassembles or through the Bulletin. However, in case the matter involves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, the Speaker may decline to grant the required permission without leave of the House.
>
> Whenever any document relating to the proceedings of the House or any committee thereof is required to be produced in a court of law, the Court or the parties to the legal proceedings have to request the House stating precisely the documents required, the purpose for which they are required and the date by which they are required. It has also to be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before the court."

349. After the enforcement of the Right to Information Act, 2005, on the basis of a report submitted by the Committee of Privileges, the procedure for making available documents relating to the proceedings of the House has been modified. *Kaul and Shakdher* had noticed the detail in the above regard in Chapter XI dealing with powers, privileges and immunities of Houses, their Committees and Members to the following effect:

> "The Committee of Privileges, Fourteenth Lok Sabha, felt that it was about time that the procedure for dealing with the requests for documents relating to proceedings of the House, its Committees, etc.,

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received from courts of law and investigating agencies were given a fresh look, particularly in the light of the provisions of the Right to Information Act, 2005. The Committee, with the permission of the Speaker, took up the examination of the matter. The Twelfth Report in the matter was presented to the Speaker Lok Sabha on 28-4-2008 and laid on the Table of the House on 30-4-2008. The Report was adopted by the House on 23-10-2008.

The Committee in their Report recommended the following procedure:

(I) Procedure for making requests for documents relating to the proceedings of the House or of any Committee of the House:

A. If request for documents relating to proceedings of the House or of any Committee of the House is made by a Court or by the parties to a legal proceedings before a court, the court or the parties to the proceedings as the case may be, shall specify the documents required, the purpose for which they are required and the date by which they are required. It should also be specifically stated in each case whether only certified copies or photocopies of the documents should be sent or an officer of the House should produce it before the court.

* * *

(II) Procedure for dealing with requests for documents relating to proceedings of the House or any Committee of the House.

* * *

III. Procedure for dealing with requests from courts or investigating agencies for documents other than those relating to the proceedings of the House or any Committee of the House, which are in the custody of the Secretary-General.

* * *

IV. The question whether a document relates to the proceedings of the House or any Committee of the House shall be decided by the Speaker and his decision shall be final.

V. *Documents relating to the proceedings of the House or any Committee of the House which are public documents should be taken judicial notice of and requests for certified copies thereof may not be ordinarily made unless there are sufficient reasons for making such requests.*

VI. Procedure after the Report of the Committee of Privileges has been presented or laid on the Table of the House." (emphasis supplied)

350. The learned counsel for the respondents in his compilation has given 3rd Edn. (2017) of *Rajya Sabha at Work*, wherein at p. 257 the subject "Production of documents before a Court" is mentioned. From p. 257 to p. 259 various instances have also been mentioned whereas on a request received from

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court for production of documents, due permission was granted and documents were made available to the courts. At p. 259 reference of the request received from the Sessions Judge, Cuddalore, for certified copy of Attendance Register of Rajya Sabha was made. The extract from the relevant file has been quoted which is to the following effect:

> "A request was received from the Sessions Judge, Cuddalore, for certified extracts from the Attendance Register from 1-3-1963 to 15-3-1963, in the Rajya Sabha, showing the presence and attendance of Shri R. Gopalakrishnan, Member of the Rajya Sabha. As the House was not in session when the said request was received, the Chairman granted permission to send the relevant extracts from the Attendance Register duly certified to the Sessions Judge. The extracts were sent on 30-1-1964, and the Deputy Chairman informed the House accordingly.
>
> As regards the production of printed/published debates of the House or reference to them in a court, a view was held that no leave of the House was required for the purpose. Under Section 78 of the Evidence Act, 1872, the proceedings of Legislatures could be proved by copies thereof, printed by order of the Government. The question of obtaining the leave of the House would arise only if a court required the assistance of any of the Members or officers in connection with the proceedings of the House or production of documents in the custody of the Secretary-General of the House."

351. From the above discussion it is clear that as a matter of fact the parliamentary materials including reports and other documents have been sent from time to time by the permission of Parliament itself to be given as evidence in courts of law.

F. ***The applicability of the Evidence Act, 1872, in the context of parliamentary proceedings***

352. The learned counsel for the petitioner has placed reliance on Section 57 of the Evidence Act. Section 57 provides for "Facts of which Court must take judicial notice". Section 57 clause (4) is relevant which is quoted as below:

> "**57.** ***Facts of which Court must take judicial notice***.—The Court shall take judicial notice of the following facts—
>
> (1) All laws in force in the territory of India;
>
> * * *
>
> (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any laws for the time being in force in a Province or in the States;
>
> * * *
>
> (13) * * *

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In all these cases, and also on all matters of public history, literature, science or art, the Court may resort for its aid to appropriate books or documents of reference.

If the Court is called upon by any person to take judicial notice of any fact, it may refuse to do so unless and until such person produces any such book or document as it may consider necessary to enable it to do so."

353. A plain reading of Section 57 clause (4) makes it clear that the course of proceeding of Parliament and the Legislature, established under any law are facts of which judicial notice shall be taken by the Court.

354. Shri Shyam Divan in reference to Section 57 submits that Parliamentary Standing Committee reports are not covered by the expression "course of proceeding of Parliament", hence no benefit can be taken by the petitioner of this provision. The expression "course of proceeding of Parliament" is an expression of wide import. The "Parliamentary Committee" is defined in Rule 2 of the Rules of Lok Sabha in the following manner:

"*2. (1)* … "**Parliamentary Committee**" means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat;"

355. Article 118 clause (1) read with the Rules framed for conduct of business in Lok Sabha and Rajya Sabha makes it clear that the proceedings of Parliamentary Standing Committee including its Report are proceedings which are covered by the expression "course of proceeding of Parliament". Thus, we do not find any substance in the above submission of Shri Shyam Divan.

356. Now the submission of the learned Attorney General in reference to Section 57(4) needs to be considered.

357. The President exercises power under Article 372 clause (2) by way of repeal or amendment of any law in force in the territory of India. The Adaptation Order issued by the President thus constitutionally has same effect as the repeal or amendment of any law in force in the territory of India. Under clause (3)(*b*) of Article 372 the competent legislature has also power of repealing or amending any law adapted or modified by the President under clause (2) of Article 372.

358. The Adaptation Order issued by the President under clause (2) of Article 372 thus has force of law and the competent legislature having not made any amendment in the Adaptation Order of 1950, even after 77 years of the enforcement of the Constitution indicates that law as adapted by the Presidential Order, 1950 is continued in full force. The effect of Section 57(4) in no manner is diminished by the fact that amendments were made in Section 57(4) by the Presidential Adaptation Order.

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359. One more provision of the Evidence Act which needs to be noted is Section 74 which deals with the public documents. Section 74 of the Evidence Act is as follows:

> "**74.** ***Public documents***.—The following documents are public documents —
>
> (1) Documents forming the acts or records of the acts—
>
> (*i*) of the sovereign authority,
>
> (*ii*) of official bodies and tribunals, and
>
> (*iii*) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;
>
> (2) Public records kept in any State of private documents."

360. According to Section 74 documents forming the acts, or records of the acts of legislature of any part of India is a public document. We have noticed above that Parliament has already adopted the report of the privilege committee that *for those documents which are public documents within the meaning of the Evidence Act, there is no requirement of any permission of Speaker of Lok Sabha for producing such documents as evidence in court*. We may, however, hasten to add that mere fact that a document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents also are true and correct.

361. In this context, reference is made to a judgment of the Privy Council in *Gerald Lord Strickland* v. *Carmelo Mifsud Bonnici*[176]. In the above case reports of the debates in the Legislative Assembly containing speeches of the appellant and the publication were produced. The Privy Council in the above reference has expressed opinion that debates can only be evidence of what was stated by the Speakers in the Legislative Assembly, and are not evidence of "any facts contained in the speeches".

362. A judgment of the Bombay High Court dealing with Section 74 of the Evidence Act in reference to Article 105 of the Constitution of India and the Rules of Procedure and Conduct of Business in Lok Sabha has been cited, namely, *Standard Chartered Bank* v. *A.B.F.S.L.*[189] In the above case, a report of the Joint Parliamentary Committee was objected to by the learned counsel for Standard Chartered Bank. In para 3 of the judgment, issue which has arisen in the case was noticed to the following effect: (SCC OnLine Bom)

> "*3*. … Two points arise for determination. Firstly, whether the Report of Joint Parliamentary Committee is a public document as defined under Section 74 of the Indian Evidence Act, 1872. Secondly, even if it is a public document, whether the findings of the Joint Parliamentary Committee constitute evidence as defined under Section 3 of the Indian Evidence Act."

176 1934 SCC OnLine PC 51 : AIR 1935 PC 34 : 153 IC 1
189 2001 SCC OnLine Bom 588 : (2001) 4 Bom LR 520

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363. It was contended before the Bombay High Court that Joint Parliamentary Committee report is a public document as defined in Section 74(1) of the Evidence Act. In paras 4 to 6 of the judgment arguments have been noticed. The argument was opposed by the other side. The Bombay High Court came to the conclusion that report of JPC is a public document under Section 74 of the Evidence Act and the report was admissible as evidence. *S.H. Kapadia, J. (as he then was)* held that the correctness of the findings in the JPC will ultimately depend on the entire view of the matter. The following was observed in para 8 of the judgment: (*Standard Chartered Bank case*[189], SCC OnLine Bom)

> "*8.* … The Report of JPC has recorded that there was an arrangement between the brokers and the Banks, including Standard Chartered Bank, under which the Banks were assured of a return of 15%. It was something like a minimum guaranteed return offered by the brokers to the Banks. As stated above, the Report has given findings on certain banking and market practices which led to the financial irregularities in security transactions. In that context, the JPC examined various officers of the Banks and the brokers. After recording their evidence, as stated above, JPC came to the conclusion that there were certain practices followed by the Banks and the brokers like routing facilities, margin trading and 15% arrangement. To this extent, the findings of JPC can be read as evidence in the present matter. However, the question as to whether the suit transaction was a part of 15% arrangement, has not been found by JPC. There is no finding to the effect that the suit transaction was a part of such an arrangement. Therefore, I am of the view that Canbank Mutual Fund is entitled to tender the Report of JPC as evidence only to establish that there was a 15% arrangement between Standard Chartered Bank and HPD. The issue as to whether the suit transaction was a part of such a practice/arrangement will have to be established independently by Canbank Mutual Fund. However, in order to prove that issue, the Report will be one of the important pieces of evidence. At this stage, I am concerned with admissibility. The correctness of the findings will ultimately depend on the entire view of the matter. The question as to what weight the Court should give to the findings of JPC will ultimately depend on the totality of circumstances brought before the Court."

364. In para 9 ultimately the Court held: (*Standard Chartered Bank case*[189], SCC OnLine Bom)

> "*9.* Accordingly, I hold that the Report of JPC is a public document under Section 74(1)(*iii*) of the Evidence Act. Secondly, that the said Report is admissible as evidence of the existence of 15% arrangement between Standard Chartered Bank and HPD. That subject to above, Canbank Mutual Fund will have to prove whether the suit transaction took place under

189 *Standard Chartered Bank* v. *A.B.F.S.L.*, 2001 SCC OnLine Bom 588 : (2001) 4 Bom LR 520

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such an arrangement as any other fact. At the request of Mr Cooper, it is clarified that this ruling is subject to my earlier ruling dated 27-6-2001 on the argument of Standard Chartered Bank on inadmissibility of documents under Sections 91 and 92 of the Evidence Act and also in view of the provisions of the Benami Transactions Abolition Act."

G. ***Nature and extent of parliamentary privileges regarding reports of committees of British Parliament***

365. In the Constituent Assembly Debates on draft Article 85 (now Article 105 of the Constitution of India) and draft Article 169 (now Article 194 of the Constitution of India), various members have brought amendments and prayed that privileges of the House of Parliament be enumerated and the Constitution should not refer to House of Commons of the United Kingdom for referring to its privileges. Dr B.R. Ambedkar in his reply in the Constituent Assembly Debates on 3-6-1949 stated as follows: (CAD Vol. 8, p. 583)

"It seems to me, if the proposition was accepted that the Act itself should enumerate the privileges of Parliament, we would have to follow three courses. One is to adopt them in the Constitution, namely, to set out in detail the privileges and immunities of Parliament and its Members. I have very carefully gone over *May's Parliamentary Practice* which is the source book of knowledge with regard to the immunities and privileges of Parliament. I have gone over the index to *May's Parliamentary Practice* and I have noticed that practically 8 or 9 columns of the index are devoted to the privileges and immunities of Parliament. So that if you were to enact a complete code of the privileges and immunities of Parliament based upon what May has to say on this subject, I have not the least doubt in my mind that we will have to add not less than twenty or twenty-five pages relating to immunities and privileges of Parliament. I do not know whether the Members of this House would like to have such a large categorical statement of privileges and immunities of Parliament extending over twenty or twenty-five pages. That I think is one reason why we did not adopt that course."

366. The draft Article was finally approved maintaining the reference to the House of Commons in regard to other privileges. Thus, the privileges which our Parliament and State Legislatures enjoy are privileges enjoyed by the House of Commons of the United Kingdom at the time of commencement of the Constitution.

367. In early period of history of British Parliament, at the commencement of every Parliament, it has been the custom, the Speaker sought by humble petition the rights and privileges. The petitions were granted by Her Majesty's by conferring upon the power, the privileges asked for. In subsequent period, the Commons started insisting that the privileges are inherent in the House. The first major recognition and acceptance of parliamentary privileges found reflected in the Bill of Rights, 1688. The Bill of Rights, 1688 was an Act

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declaring the rights and liberties of the subject and settling the succession of the Crown. Article IX of the Bill of Rights provides as follows:

a "***Freedom of speech***.—That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament:"

368. The above declaration made in the Bill of Rights thereafter has been firmly established and till date enjoyed by the House of Commons of the United Kingdom. Erskine May in *Parliamentary Practice*, 24th Edn. while dealing b with privileges of freedom of speech says the following with regard to the Bill of Rights:

"Article IX of the Bill of Rights, 1688 confers on 'proceedings in Parliament' protection from being 'impeached or questioned' in any 'court or place out of Parliament'. Except in the limited circumstances mentioned below, none of these critical terms is defined, so that it has often fallen to the c courts to arrive at judgments about their meaning, against the background of parliamentary insistence on the privilege of exclusive cognizance of proceedings (see above) and concern that judicial interpretation should not narrow the protection of freedom of speech which Article IX affords."

369. There is no doubt that reports of the Standing Committee of Parliament d are also parliamentary proceedings. Participation of Members of Parliament in normal course is usually by a speech but their participation in parliamentary proceedings is not limited to speaking only. Participation of Members of Parliament is also by various other recognised forms such as voting, giving notice of a motion, presenting a petition or submitting a report of a committee, the modern forms of expression by which the wish and will of Parliamentarians e is expressed. The report submitted by Standing Committee of Parliament is also another form of expression. Thus, the parliamentary privileges which are contained in clause (2) of Article 105 to individual parliamentary Member are also extended by virtue of clause (3) of Article 105 to the Parliamentary Committee reports. The parliamentary privileges contained in Article IX of the Bill of Rights thus also protect the Parliamentary Standing Committee reports. In this context, references to few English cases is relevant.

f **370.** The case of *Stockdale* v. *Hansard*[83] is referred. The case was an action for a publication defaming the plaintiff's character by imputing that he had published an obscene libel. The following was stated by Lord Denmen, C.J.: (ER p. 1156)

"Thus the privilege of having their debates unquestioned, though g denied when the members began to speak their minds freely in the time of Queen Elizabeth, and punished in its exercise both by that princess and her two successors, was soon clearly perceived to be indispensable and universally acknowledged. By consequence, whatever is done within the walls of either assembly must pass without question in any other place. For speeches made in Parliament by a member to the prejudice of any other

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83 (1839) 9 Ad & E 1 : 112 ER 1112 (QB)

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person, or hazardous to the public peace, that member enjoys complete impunity. …"

371. Another judgment which needs to be noted is *Bradlaugh* v. *Gossett*[80]. The plaintiff Bradlaugh was a duly elected burgess to serve in the House of Commons. The House resolved that the Serjeant-at-arms shall exclude Mr Bradlaugh from the House until he shall engage not further to disturb the proceedings of the House. Lord Coleridge, C.J. stated as follows: (QBD p. 275)

> "… What is said or done within the walls of Parliament cannot be inquired into in a court of law. On this point all the judges in the two great cases which exhaust the learning on the subject—*Burdett* v. *Abbot*[128] and *Stockdale* v. *Hansard*[83]—are agreed, and are emphatic. The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and inefficiency without it"."

372. Another case in which question of parliamentary privilege with respect to parliamentary report of a Select Committee of House of Commons was involved was *Dingle* v. *Associated Newspapers Ltd.*[125] The plaintiff sued for damages for libels appearing in the issues of the *Daily Mail* newspaper. The plaintiff alleged that the defendants falsely and maliciously printed and published an article concerning the circumstances in which the shares in Ardwick Cemetery Ltd. were acquired by Manchester Corporation. A committee of the House of Commons has also submitted a report that the Corporation obtained the shares by presenting a one-sided view, which failed to disclose the true position of the company on a break-up.

373. Pearson, J. referring to the Bill of Rights, 1688 and *Bradlaugh* v. *Gossett*[80] said the following: (*Dingle case*[125], QB pp. 409-10)

> "Reference was made to the Bill of Rights, 1688, Section 1, Article 9, on freedom of speech, which provides:
>
> > 'That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.'
>
> Reference was also made to *Bradlaugh* v. *Gossett*[80], and it is sufficient to read a short portion of the headnote: (QBD p. 271)
>
> > 'The House of Commons is not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into in a court of law.

80 (1884) LR 12 QBD 271 : 53 LJQB 290 : 50 LT 620 (DC)
128 (1811) 14 East 1 : 104 ER 501
83 (1839) 9 Ad & E 1 : 112 ER 1112 (QB)
125 (1960) 2 QB 405 : (1960) 2 WLR 430

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> A resolution of the House of Commons cannot change the law of the land. But a court of law has no right to inquire into the propriety of a resolution of the House restraining a member from doing within the walls of the House itself something which by the general law of the land he had a right to do….'

There is a clear affirmation of the exclusive right of Parliament to regulate its own internal proceedings.

That was one of the points put forward and, in my view, it is quite clear that to impugn the validity of the report of a Select Committee of the House of Commons, especially one which has been accepted as such by the House of Commons by being printed in the House of Commons Journal, would be contrary to Section 1 of the Bill of Rights. No such attempts can properly be made outside Parliament."

374. Another judgment which also related to proceeding in Parliament is *Church of Scientology of California* v. *Johnson Smith*[126]. Referring to earlier judgment in *Dingle* v. *Associated Newspapers Ltd.*[125], Browne, J. said the following: (*Johnson Smith case*[126], QB pp. 530-31)

> "The most recent case to which I was referred was *Dingle* v. *Associated Newspapers Ltd.*[125] The plaintiff's claim in that case was in respect of an article which had appeared in a newspaper which he said was defamatory of him. It was held in that case that the court could not inquire into the validity of a Select Committee of the House of Commons on which the article complained of had apparently been partly based. The invalidity suggested in that case seems to have been a suggestion that there was some sort of procedural defect in the proceedings of the committee, which of course is quite a different set of facts from the present case. But it seems to me that it really involved the same principle as is involved in this case. As I understand it the plaintiff there was trying to question proceedings in Parliament in order to support in certain respects his case based on a libel published outside Parliament and was held not entitled to do that. By analogy with this case it seems to me that the plaintiffs here are trying to use what happened in Parliament in order to support a part of their case in respect of this libel published outside Parliament in the television broadcast.
>
> I am quite satisfied that in these proceedings it is not open to either party to go directly, or indirectly, into any question of the motives or intentions of the defendant or Mr Hordern or the then Minister of Health or any other Member of Parliament in anything they said or did in the House. …"

375. What was held in the above cases clearly establish that it is now well settled that proceedings undertaken in Parliament including a report of

126 (1972) 1 QB 522 : (1971) 3 WLR 434
125 (1960) 2 QB 405 : (1960) 2 WLR 430

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the Standing Committee cannot be challenged before any court. The word "challenge" includes both "impeaching" and "questioning" the Parliamentary Committee reports.

376. After having noticed the nature and extent of Article 9 of the Bill of Rights (1688), we now proceed to consider the question, as to whether, use of parliamentary materials including Standing Committee report in courts, violates the parliamentary privilege as enshrined in Article 9 of the Bill of Rights (1688).

377. The most important judgment to be noticed in the above regard is the judgment of the House of Lords in *Pepper (Inspector of Taxes)* v. *Hart*[95]. A seven-Member Committee of the House of Lords heard the case looking to the importance of the issue raised. The opinion expressed by Lord Browne-Wilkinson was concurred by all except one. The two questions which arose in the case, were noticed in the following words by Lord Browne-Wilkinson: (AC p. 621)

> "… However, in the circumstances which I will relate, the appeals have also raised two questions of much wider importance. The first is whether in construing ambiguous or obscure statutory provisions your Lordships should relax the historic rule that the courts must not look at the parliamentary history of legislation or Hansard for the purpose of construing such legislation. The second is whether, if reference to such materials would otherwise be appropriate, it would contravene Article 9 of the Bill of Rights (1688) or parliamentary privilege so to do."

378. Lord Wilkinson also considered Article 9 of the Bill of Rights (1688), in the context that whether such use of parliamentary materials will contravene the parliamentary privilege. The argument of the learned Attorney General that the use of parliamentary material by the courts shall amount to questioning of the freedom of speech or debate, was repelled holding that the court would be giving effect to what was said and done there. Considering the aforesaid the following was stated by the House of Lords: (*Hart case*[95], AC p. 638)

> "Article 9 is a provision of the highest constitutional importance and should not be narrowly construed. It ensures the ability of democratically elected members of Parliament to discuss what they will (freedom of debate) and to say what they will (freedom of speech). But, even given a generous approach to this construction, I find it impossible to attach the breadth of meaning to the word "question"; which the Attorney General urges. It must be remembered that Article 9 prohibits questioning not only "in any court" but also in any "place out of Parliament". If the Attorney General's submission is correct, any comment in the media or elsewhere on what is said in Parliament would constitute "questioning" since all Members of Parliament must speak and act taking into account what political commentators and others will say. Plainly Article 9 cannot have effect so as to stifle the freedom of all to comment on what is said

95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)

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in Parliament, even though such comment may influence members in what they say.

a In my judgment, the plain meaning of Article 9, viewed against the historical background in which it was enacted, was to ensure that Members of Parliament were not subjected to any penalty, civil or criminal, for what they said and were able, contrary to the previous assertions of the Stuart monarchy, to discuss what they, as opposed to the monarch, chose to have discussed. Relaxation of the rule will not involve the courts in criticising b what is said in Parliament. The purpose of looking at Hansard will not be to construe the words used by the minister but to give effect to the words used so long as they are clear. Far from questioning the independence of Parliament and its debates, the courts would be giving effect to what is said and done there."

c **379.** The House of Lords also observed that Hansard has frequently been used in cases of judicial review and the following was stated in this context: (*Hart case*[95], AC pp. 638-39)

"Moreover, the Attorney General's contentions are inconsistent with the practice which has now continued over a number of years in cases of judicial review. In such cases, Hansard has frequently been referred to d with a view to ascertaining whether a statutory power has been improperly exercised for an alien purpose or in a wholly unreasonable manner. In *R.* v. *Secy. of State for the Home Department, ex p Brind*[133] it was the Crown which invited the court to look at Hansard to show that the minister in that case had acted correctly (see *R.* v. *Secy. of State for the Home Department, ex p Brind*[133], AC at p. 741). This House attached importance to what the e minister had said (see *R.* v. *Secy. of State for the Home Department, ex p Brind*[133], AC at pp. 749, 755-56 : All ER at pp. 724, 729-30). The Attorney General accepted that references to Hansard for the purposes of judicial review litigation did not infringe Article 9. Yet reference for the purposes of judicial review and for the purposes of construction are indistinguishable. In both type of cases, the minister's words are considered and taken into f account by the court: in both, the use of such words by the courts might affect what is said in Parliament."

380. In the end Lord Wilkinson held that reference to parliamentary materials for the purpose of construing legislation does not breach Article 9 of the Bill of Rights (1688). The following was held: (*Hart case*[95], AC p. 644)

g "… For the reasons I have given, as a matter of pure law this House should look at Hansard and give effect to the parliamentary intention it discloses in deciding the appeal. The problem is the indication given by the Attorney General that, if this House does so, your Lordships may be infringing the privileges of the House of Commons.

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95 *Pepper (Inspector of Taxes)* v. *Hart*, 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
133 (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)

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For the reasons I have given, in my judgment reference to parliamentary materials for the purpose of construing legislation does not breach Article 9 of the Bill of Rights. …" a

381. Again the House of Lords in *Richard William Prebble* v. *Television New Zealand Ltd.*[127] observed that there can no longer be any objection to the production of Hansard. The following was held by Lord Wilkinson: (AC p. 337)

"Since there can no longer be any objection to the production of Hansard, the Attorney General accepted (in their Lordships' view rightly) b that there could be no objection to the use of Hansard to prove what was done and said in Parliament as a matter of history. Similarly, he accepted that the fact that a statute had been passed is admissible in court proceedings. Thus, in the present action, there cannot be any objection to it being proved what the plaintiff or the Prime Minister said in the House (particulars 8-2-2010 and 8-2-2014) or that the State-owned Enterprises c Act, 1986 was passed (particulars 8-4-2001). It will be for the trial Judge to ensure that the proof of these historical facts is not used to suggest that the words were improperly spoken or the statute passed to achieve an improper purpose.

It is clear that, on the pleadings as they presently stand, the defendant intends to rely on these matters not purely as a matter of history but d as part of the alleged conspiracy or its implementation. Therefore, in their Lordships' view, Smellie, J. was right to strike them out. But their Lordships wish to make it clear that if the defendants wish at the trial to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning there is no objection to that course." e

382. *R.* v. *Murphy*[130] is another judgment where Article 9 of the Bill of Rights was considered in the context of parliamentary proceedings. The tender of Hansard in curial proceedings is not a breach of parliamentary privilege. Hunt, J., stated the following:

"None of the cases to which reference has been made has caused me f to alter the interpretation of the Bill of Rights, Article 9, which I have proposed. I remain of the view that what is meant by the declaration that "freedom of speech … in Parliament ought not to be impeached or questioned in any court or place out of Parliament" is that no court proceedings (or proceedings of a similar nature) having legal consequences against a Member of Parliament (or a witness before a Parliamentary g Committee) are permitted which by those legal consequences have the effect of preventing that member (or committee witness) exercising his freedom of speech in Parliament (or before a committee) or of punishing him for having done so."

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127 (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)
130 (1986) 64 ALR 498 : (1986) 5 NSWLR 18

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383. The next judgment which needs to be noted is the judgment of the House of Lords in *Wilson* v. *First County Trust Ltd. (No. 2)*[134]. The House of Lords in the above case has held that the decision in *Pepper (Inspector of Taxes)* v. *Hart*[95] removed from the law an irrational exception. Before the decision in *Pepper (Inspector of Taxes)* v. *Hart*[95] a self-imposed judicial rule excluded use of parliamentary materials as an external aid. It was held that the Court may properly use the ministerial and other statements made in Parliament without in any way questioning what has been said in Parliament. The following was laid down in para 60: (*Wilson case*[134], AC pp. 841-42)

> "*60.* … What is important is to recognise there are occasions when courts may properly have regard to ministerial and other statements made in Parliament without in any way "questioning" what has been said in Parliament, without giving rise to difficulties inherent in treating such statements as indicative of the will of Parliament, and without in any other way encroaching upon parliamentary privilege by interfering in matters properly for consideration and regulation by Parliament alone. The use by courts of ministerial and other promoters' statements as part of the background of legislation, pursuant to *Pepper (Inspector of Taxes)* v. *Hart*[95], is one instance. Another instance is the established practice by which courts, when adjudicating upon an application for judicial review of a ministerial decision, may have regard to a ministerial statement made in Parliament. The decision of your Lordships' House in *R.* v. *Secy. of State for the Home Department, ex p Brind*[133] is an example of this. …"

384. *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*[131] is another judgment of the House of Lords where Article IX of the Bill of Rights and parliamentary privileges in the context of use in court of statement made by the Prime Minister during parliamentary debate came for consideration. It was held that Article IX of the Bill of Rights precludes the impeaching or questioning in court or out of Parliament of the freedom of speech and debates or proceedings in Parliament. It was held that giving a literal meaning will lead to absurd consequences. In para 10, the following was stated by the House of Lords: (WLR pp. 2830-31)

> "*10.* Against this background, the Board turns to Article 9 of the Bill of Rights and the wider common law principle identified in *Prebble case*[127]. Article 9 precludes the impeaching or questioning in court or out of Parliament of the freedom of speech and debates or proceedings in Parliament. The Board is concerned with the proposed use in court of a statement made during a parliamentary debate. But it notes in passing

134 (2004) 1 AC 816 : (2003) 3 WLR 568 : 2003 UKHL 40 (HL)
95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
133 (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)
131 (2007) 1 WLR 2825 : 2007 UKPC 48 (PC)
127 *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)

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that the general and somewhat obscure wording of Article 9 cannot on any view be read absolutely literally. The prohibition on questioning "out of Parliament" would otherwise have "absurd consequences" e.g. in preventing the public and media from discussing and criticising proceedings in parliament, as pointed out by the Joint Committee on Parliamentary Privilege, para 91 (United Kingdom, Session 1998-1999, HL Paper 43-I, HC 214-I). On the other hand, Article 9 does not necessarily represent the full extent of the parliamentary privilege recognised at common law. As Lord Browne-Wilkinson said in *Prebble case*[127] at AC p. 332, there is in addition:

> '… a long line of authority which supports a wider principle, of which Article 9 is merely one manifestation viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges….' "

385. The House of Lords also referred to report of the Joint Committee, which welcome the use of the ministerial statement in Court. Para 17 of the judgment is to the following effect: (*Toussaint case*[131], WLR pp. 2832-33)

> "*17.* In such cases, the minister's statement is relied upon to explain the conduct occurring outside Parliament, and the policy and motivation leading to it. This is unobjectionable although the aim and effect is to show that such conduct involved the improper exercise of a power "for an alien purpose or in a wholly unreasonable manner": *Pepper (Inspector of Taxes)* v. *Hart*[95], per Lord Browne-Wilkinson at p. 639-A. The Joint Committee expressed the view that Parliament should welcome this development, on the basis that "both parliamentary scrutiny and judicial review have important roles, separate and distinct, in a modern democratic society" (para 50) and on the basis that "The contrary view would have bizarre consequences", hampering challenges to the "legality of executive decisions … by ring-fencing what ministers said in Parliament", and "making ministerial decisions announced in Parliament less readily open to examination than other ministerial decisions" (para 51). The Joint Committee observed, pertinently, that:
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> > 'That would be an ironic consequence of Article 9. Intended to protect the integrity of the legislature from the executive and the courts, Article 9 would become a source of protection of the executive from the courts.' "

127 *Richard William Prebble* v. *Television New Zealand Ltd.*, (1995) 1 AC 321 : (1994) 3 WLR 970 : (1994) 3 All ER 407 (PC)

131 *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*, (2007) 1 WLR 2825 : 2007 UKPC 48 (PC)

95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)

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386. *Office of Govt. Commerce* v. *Information Commr.*[136], was a case where Stanley Burnton, J. held that receiving evidence of the proceedings of Parliament are relevant for historical facts or events and does not amount to "questioning". In para 49, the following was stated: (QB p. 116)

> "*49*. However, it is also important to recognise the limitations of these principles. There is no reason why the courts should not receive evidence of the proceedings of Parliament when they are simply relevant historical facts or events: no "questioning" arises in such a case: see para 35 above. Similarly, it is of the essence of the judicial function that the courts should determine issues of law arising from legislation and delegated legislation. Thus, there can be no suggestion of a breach of parliamentary privilege if the courts decide that legislation is incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms: by enacting the Human Rights Act, 1998, Parliament has expressly authorised the court to determine questions of compatibility, even though a minister may have made a declaration under Section 19 of his view that the measure in question is compatible. The courts may consider whether delegated legislation is in accordance with statutory authority, or whether it is otherwise unlawful, irrespective of the views to that effect expressed by ministers or others in Parliament: *R.* v. *Secy. of State for Home Department*[190]: (QB p. 146, para 33)
>
> > '*33*. … Legislation is the function of Parliament, and an Act of Parliament is immune from scrutiny by the courts, unless challenged on the ground of conflict with European law. Subordinate legislation derives its legality from the primary legislation under which it is made. Primary legislation that requires subordinate legislation to be approved by each House of Parliament does not thereby transfer from the courts to the two Houses of Parliament, the role of determining the legality of the subordinate legislation.' "

387. Another judgment delivered by Stanley Burnton, J. in *Federation of Tour Operators* v. *HM Treasury*[191] was a case where objection to receiving evidence report of Treasury Select Committee was raised. In para 5 of the judgment, objection raised on behalf of the Speaker of the House was noticed. Para 5 is to the following effect:

> "The Speaker of the House of Commons intervened because of the Claimants' reliance in these proceedings on evidence given to Committees of the House and on a report of the Treasury Select Committee. It was submitted on his behalf that their reliance on these matters in these proceedings involved a breach of Article 9 of the Bill of Rights and the wider principle of Parliamentary privilege."

136 2010 QB 98 : (2009) 3 WLR 627
190 2002 QB 129 : (2001) 3 WLR 323 : 2001 EWCA Civ 789
191 2007 EWHC 2062 (Admin) : 2008 STC 547

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388. The issue as to the admissibility of the parliamentary material was considered in detail while referring to the judgment of the House of Lords in *Toussaint*[131]. It was held that there is no basis for distinguishing between statement of minister in the House and statement made to a Select Committee. The following was held in paras 117, 124 and 125 of the judgment:

> "*117*. In my judgment, the first two of these propositions are too widely stated. I see no basis for distinguishing between what a Minister says in the House of Commons (or the House of Lords), which may be considered by the Court in a case such as *Toussaint*[131], and what he or she says to a Select Committee. Whether what is said by an official should be received in evidence must depend on the circumstances: what he says, his authority, and the reason for which it is sought to rely on it. In general, the opinion of a Parliamentary Committee will be irrelevant to the issues before the Court [as in *R. (Bradley)* v. *Secy. of State for Work and Pensions*[132] and, as will be seen, the present case], and accordingly I do not think it sensible to seek to consider the admissibility of such a report in a case in which its contents are relevant.
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> * * *
>
> *124*. The efficacy or otherwise of APD as an environmental measure is also, in my judgment, a question which, if relevant, is to be determined on the basis of evidence and argument before the Court, and not on the basis of the opinion of anyone whose evidence is not before the Court. There is, however, no reason why the Claimants cannot take from what has been said to or by a Select Committee points that can be put before the Court. For example, what was said by the Financial Secretary to the Treasury to the Select Committee on the Environment is not rocket science, but something that would be obvious to anyone who gave the matter some thought. The points he made can be made independently, without reference to his statement.
>
> *125*. Thus, in the end, I do not think that the parliamentary material referred to by the claimants, which I have looked at de bene esse, as such advances their case."

389. The learned counsel for the respondents has pleaded reliance on a judgment of *R.* v. *Secy. of State for Trade, ex p Anderson Strathclyde Plc.*[192], Dunn, L.J. while delivering his opinion has observed that while using a report in Hansard the Court would have to do more than take note of the fact that a certain statement was made in the House on a certain date. The Court had to consider the statement or statements with a view to determining what was the true meaning of them, and what were the proper inferences to be drawn from

131 *Toussaint* v. *Attorney General of Saint Vincent and the Grenadines*, (2007) 1 WLR 2825 : 2007 UKPC 48 (PC)
132 2009 QB 114 : (2008) 3 WLR 1059 : 2007 EWHC 242 (Admin)
192 (1983) 2 All ER 233 (DC)

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them. This, according to Dunn, L.J., would be contrary to Article 9 of the Bill of Rights. The following was stated by the Court: (All ER p. 239*b-d*)

a "In my judgment there is no distinction between using a report in Hansard for the purpose of supporting a cause of action arising out of something which occurred outside the House, and using a report for the purpose of supporting a ground for relief in proceedings for judicial review in respect of something which occurred outside the House. In both cases the court would have to do more than take note of the fact that a certain b statement was made in the House on a certain date. It would have to consider the statement or statements with a view to determining what was the true meaning of them, and what were the proper inferences to be drawn from them. This, in my judgment, would be contrary to Article 9 of the Bill of Rights. It would be doing what Blackstone said was not to be done, namely, to examine, discuss and adjudge on a matter which was being c considered in Parliament. Moreover, it would be an invasion by the court of the right of every Member of Parliament to free speech in the House with the possible adverse effects referred to by Browne, J."

390. It is relevant to note that the above opinion of Dunn, L.J. was specifically disapproved by the House of Lords in *Pepper (Inspector of Taxes)* v. *Hart*[95]. The House of Lords by referring to the above opinion of Dunn, L.J. had d held that the said case was wrongly decided. It is useful to extract the following observation of the House of Lords: (AC p. 639)

"In *R.* v. *Secy. of State for Trade, ex p Anderson Strathclyde Plc.*[192] an applicant for judicial review sought to adduce parliamentary materials to prove a fact. The Crown did not object to the Divisional Court (see All ER p. 237*g-h*) looking at the materials but the court itself refused to do so on e the grounds that it would constitute a breach of Article 9 (at All ER pp. 237, 239 per Dunn, L.J.). In view of the Attorney General's concession and the decision of this House in *Brind case*[133], in my judgment *Ex p Anderson Strathclyde Plc.*[192] was wrongly decided on this point."

391. Another case the learned counsel for the respondents relied on is *Office* f *of Govt. Commerce* v. *Information Commr.*[136] Although, it was held by Stanley Burnton, J. that there is no reason why the courts should not receive evidence of the proceedings of Parliament when they are simply relevant historical facts or events; no "questioning" arises in such a case. However, in para 58 of the judgment the following was stated: (QB p. 118)

"*58.* In addition, in my judgment, there is substance in g Mr Chamberlain's further submission, summarised at para 23(*b*)(*i*) above. If a party to proceedings before a court (or the Information Tribunal) seeks to rely on an opinion expressed by a Select Committee, the other party,

95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
192 (1983) 2 All ER 233 (DC)
h 133 *R.* v. *Secy. of State for the Home Department, ex p Brind*, (1991) 1 AC 696 : (1991) 2 WLR 588 : (1991) 1 All ER 720 (HL)
136 2010 QB 98 : (2009) 3 WLR 627

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if it wishes to contend for a different result, must either contend that the opinion of the Committee was wrong (and give reasons why), thereby at the very least risking a breach of parliamentary privilege, if not committing an actual breach, or, because of the risk of that breach, accept that opinion notwithstanding that it would not otherwise wish to do so. This would be unfair to that party. It indicates that a party to litigation should not seek to rely on the opinion of a Parliamentary Committee, since it puts the other party at an unfair disadvantage and, if the other party does dispute the correctness of the opinion of the Committee, would put the tribunal in the position of committing a breach of parliamentary privilege if it were to accept that the Parliamentary Committee's opinion was wrong. As Lord Woolf, M.R. said in *Hamilton* v. *Al Fayed*[76], WLR p. 1586 G, the courts cannot and must not pass judgment on any parliamentary proceedings."

392. In the same judgment subsequently, it was held that whether there is any breach of parliamentary privilege in such a reference will depend on the purpose for which the reference is made. In para 62 of the judgment the following has been held: (*Information Commr. case*[136], QB p. 119)

"*62*. Generally, however, I do not think that inferences can be drawn from references made by the court to the reports of parliamentary Select Committees in cases where no objection was taken to its doing so. In addition, as I said in *Federation of Tour Operators* v. *HM Treasury*[191], whether there is any breach of parliamentary privilege in such a reference will depend on the purpose for which the reference is made. For example, it seems to me that there can be no objection to a reference to the conclusions of a report that leads to legislation, since in such a case the purpose of the reference is either historical or made with a view to ascertaining the mischief at which the legislation was aimed; the reference is not made with a view to questioning the views expressed as to the law as at the date of the report."

393. We are of the view that the law as broadly expressed in para 58 of the above case cannot be accepted. All references to parliamentary proceedings and materials do not amount to breach of privilege to invite contempt of Parliament. When a party relies on any fact stated in the report as the matter of noticing an event or history, no exception can be taken on reliance on such report. However, no party can be allowed to "question" or "impeach" report of Parliamentary Committee. The parliamentary privilege that it shall not be impeached or questioned outside Parliament shall equally apply both to a party who files claim in the court and other who objects to it. Both parties cannot impeach or question the report. Insofar as the question of unfair disadvantage is concerned, both the parties are free to establish their claim or objection by leading evidence in the court and by bringing materials to prove their point. The court has the right to decide the "lis" on the basis of the material and evidence brought by the parties. Any observation in the report or inference of

76 (2001) 1 AC 395 : (2000) 2 WLR 609 (HL)
136 *Office of Govt. Commerce* v. *Information Commr.*, 2010 QB 98 : (2009) 3 WLR 627
191 2007 EWHC 2062 (Admin) : 2008 STC 547

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the Committee cannot be held to be binding between the parties or prohibit either of the parties to lead evidence to prove their stand in court of law. Unfair disadvantage stands removed in the above manner.

394. The above decisions categorically hold that parliamentary materials including report of a Standing Committee of a Parliament can very well be accepted in evidence by a court. However, in view of parliamentary privileges as enshrined in Article IX of the Bill of Rights, the proceedings of Parliament can neither be questioned nor impeached in court of law. The cases of judicial review have been recognised as another category where the courts examine parliamentary proceedings to a limited extent.

395. This Court in a number of cases has also referred to and relied on parliamentary proceedings including reports of the Standing Committee of Parliament. The learned counsel for the petitioners have given reference to several cases in this regard, namely, *Catering Cleaners of Southern Railway* v. *Union of India*[100] where the Court has taken into consideration report of a Standing Committee of petitions. Another case relied on is *Gujarat Electricity Board* v. *Hind Mazdoor Sabha*[105]. In *State of Maharashtra* v. *Milind*[101], the Court has referred to and relied on a Joint Parliamentary Committee report. In *Federation of Railway Officers Assn.* v. *Union of India*[18], the Court has referred to a report of the Standing Committee of Parliament on Railways. In *Aruna Roy* v. *Union of India*[102], report of a Committee, namely, S.B. Chavan Committee, which was appointed by Parliament was relied and referred. *M.C. Mehta* v. *Union of India*[103] was again a case where report of a Standing Committee of Parliament on Petroleum and Natural Gas has been referred to and relied. Other judgments where Parliamentary Committee reports have been relied are *Kishan Lal Gera* v. *State of Haryana*[107], *Modern Dental College and Research Centre* v. *State of M.P.*[106] and *Lal Babu Priyadarshi* v. *Amritpal Singh*[104].

396. The learned counsel appearing for the respondents as well as the learned Attorney General has submitted that it is true that in the above cases this Court has referred to and relied on Parliamentary Committee reports but the issue of privilege was neither raised nor considered.

397. We have already noticed that rules of Parliament, procedure permit the production of parliamentary materials in a court of law as evidence. The parliamentary materials which are public documents can be submitted before the Court without taking any permission from Parliament. Thus, no exception can be taken in producing reports of Parliament Committee before a court of law. The Evidence Act, 1872, which regulates the admission of evidence in

100 (1987) 1 SCC 700 : 1987 SCC (L&S) 77
105 (1995) 5 SCC 27 : 1995 SCC (L&S) 1166
101 (2001) 1 SCC 4 : 2001 SCC (L&S) 117
18 (2003) 4 SCC 289 : AIR 2003 SC 1344
102 (2002) 7 SCC 368 : 5 SCEC 310
103 (2017) 7 SCC 243
107 (2011) 10 SCC 529
106 (2016) 7 SCC 353 : 7 SCEC 1
104 (2015) 16 SCC 795 : (2016) 3 SCC (Civ) 649

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court of law, also refers to proceedings in Parliament as a public document of which the Court shall take judicial notice. All these factors lead us to conclude that there is no violation of any parliamentary privilege in accepting reports of Parliamentary Committee in court.

398. Now we come to the question that when parliamentary reports cannot be questioned or impeached in court of law for what use they may be looked into by court of law. We have already noticed above ample authorities which lay down that for events which take place in Parliament, the facts which were stated before Parliament or a committee, are facts which can be looked into. Further when parliamentary reports can be looked into for few purposes as has been conceded by the learned Attorney General as well as the respondents themselves, we do not find any justification in reading any prohibition for use of reports for other purposes which are legal and lawful, without breach of any privilege.

H. ***Exclusionary rules how far applicable in the Indian context***

399. We have already noticed English cases dealing with exclusionary rules and subsequent cases whittling down the exclusionary rules. We have noticed above that in a large number of cases this Court has referred to and relied on Parliamentary Standing Committee reports. In most of the said cases, the objection relating to parliamentary privilege was neither raised nor gone into, but there are few cases of this Court where the principles and cases pertaining to exclusionary rules were gone into and the Court considered the parliamentary materials thereafter.

400. In *State of Mysore* v. *R.V. Bidap*[193], the Constitution Bench of this Court speaking through Krishna Iyer, J. stated that:

> "Anglo-American jurisprudence, unlike other systems, has generally frowned upon the use of parliamentary debates and press discussions as throwing light upon the meaning of statutory provisions." (SCC p. 339, para 5)

Krishna Iyer, J. opined that there is a strong case of whittling down the rule of exclusion followed in the British courts. In para 5 of the judgment the following was held: (SCC p. 341)

> "5. … The rule of exclusion has been criticised by jurists as artificial. The trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. Recently, an eminent Indian jurist has reviewed the legal position and expressed his agreement with Julius Stone and Justice Frankfurter. Of course, nobody suggests that such extrinsic materials should be decisive but they must be admissible. Authorship and interpretation must mutually illumine and interact. There is authority for the proposition that resort may be had to these sources with great caution and only when incongruities and ambiguities are to be resolved. There is a strong case for whittling down the rule of exclusion followed in the British

193 (1974) 3 SCC 337 : 1973 SCC (L&S) 538

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courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute."

a **401.** Another Constitution Bench in *R.S. Nayak* v. *A.R. Antulay*[85], considered the objection that debates in Parliament or the reports of the Committee cannot be relied on as per the "exclusionary rules". In para 32 of the judgment, Desai, J. speaking for the Constitution Bench noticed the detailed objections. In para 33 this Court observed that the trend certainly seems to be in the reverse gear, that is, use of report of Committee as external aids to b construction. In para 33 the following was stated: (SCC p. 212)

> "*33*. The trend certainly seems to be in the reverse gear in that in order to ascertain the true meaning of ambiguous words in a statute, reference to the reports and recommendations of the commission or committee which preceded the enactment of the statute are held legitimate external aids to c construction. The modern approach has to a considerable extent eroded the exclusionary rule even in England."

402. After considering certain other cases and *Bidap case*[193] this Court held that those exclusionary rules have been given a decent burial by this Court. It is useful to extract the following from para 34 of the judgment: (*A.R. Antulay case*[85], SCC pp. 213-15)

d

> "*34*. … Further even in the land of its birth, the exclusionary rule has received a serious jolt in *Black-Clawson International Ltd.* v. *Papierwerke Waldhof-Aschaffenburg A.G.*[194] Lord Simon of Glaisdale in his speech while examining the question of admissibility of Greer Report observed as under: (AC p. 647)
>
> e '… At the very least, ascertainment of the statutory objective can immediately eliminate many of the possible meanings that the language of the Act might bear and if an ambiguity still remains, consideration of the statutory objective is one of the means of resolving it.
>
> The statutory objective is primarily to be collected from the f provisions of the statute itself. In these days, when the long title can be amended in both Houses, I can see no reason for having recourse to it only in case of an ambiguity—it is the plainest of all the guides to the general objectives of a statute. But it will not always help as to particular provisions. As to the statutory objective of these, a report leading to the Act is likely to be the most potent aid; and, in my g judgment, it would be more obscurantism not to avail oneself of it. There is, indeed clear and high authority that it is available for this purpose.'

h 85 (1984) 2 SCC 183 : 1984 SCC (Cri) 172
193 *State of Mysore* v. *R.V. Bidap*, (1974) 3 SCC 337 : 1973 SCC (L&S) 538
194 1975 AC 591 : (1975) 2 WLR 513 (HL)

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… A reference to *Halsbury's Laws of England*, 4th Edn., Vol. 44 Para 901, would leave no one in doubt that 'reports of commissions or committees preceding the enactment of a statute may be considered as showing the mischief aimed at and the state of the law as it was understood to be by the legislature when the statute was passed'. In the footnote under the statement of law cases quoted amongst others are *R.* v. *Olugboja*[195], *R.* v. *Bloxham*[196], in which Eighth Report of Criminal Law Revision Committee was admitted as an extrinsic aid to construction. Therefore, it can be confidently said that the exclusionary rule is flickering in its dying embers in its native land of birth and has been given a decent burial by this Court. … Therefore, departing from the earlier English decisions we are of the opinion that reports of the committee which preceded the enactment of a legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. … The objection therefore of Mr Singhvi to our looking into the history of the evolution of the section with all its clauses, the Reports of Mudiman Committee and K. Santhanam Committee and such other external aids to construction must be overruled."

403. Thus, in the above two cases, this Court has accepted that parliamentary materials can be looked into, that too after considering the exclusionary rules which prohibited use of parliamentary materials in courts. As observed above, the learned Senior Counsel, Shri Harish Salve and Shri K.K. Venugopal, learned Attorney General have not disputed that parliamentary reports and materials can be used for the purposes of taking into consideration legislative history for interpretation of statute as well as for considering the statement made by a Minister. When there is no breach of privilege in considering the parliamentary materials and reports of the Committee by the Court for the above two purposes, we fail to see any valid reason for not accepting the submission of the petitioner that courts are not debarred from accepting the parliamentary materials and reports as evidence before it, provided the court does not proceed to permit the parties to question or impeach the reports.

404. The learned counsel for the respondents have also referred to the judgment of this Court in *Jyoti Harshad Mehta* v. *Custodian*[175].

405. In the above case, the Court was considering an Enquiry Committee Report, namely, Janakiraman Committee Report. In the above context the following observations were made in para 57 of the judgment: (*Jyoti Harshad Mehta case*[175])

"*57.* It is an accepted fact that the reports of the Janakiraman Committee, the Joint Parliamentary Committee and the Inter-Disciplinary Group (IDG) are admissible only for the purpose of tracing the legal history

195 1982 QB 320 : (1981) 3 WLR 585 (CA)
196 (1983) 1 AC 109 : (1982) 2 WLR 392 (HL)
175 (2009) 10 SCC 564 : (2010) 2 SCC (Cri) 1494

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of the Act alone. The contents of the report should not have been used by the learned Judge of the Special Court as evidence."

a **406.** In para 28(*viii*) of *Jyoti Harshad Mehta case*[175], the arguments of the appellants were noticed to the effect that the Judge, Special Court, committed a serious illegality insofar as he relied upon the Janakiraman Committee Report, which was wholly inadmissible in evidence. The learned Judge, Special Court, had passed order on an application of the Custodian which was set aside by this Court by remitting back the matter to the Special Court with some directions. b The Special Court thereafter relying on the said Report passed order. In this context, observations were made in para 57 that the report can be admissible only for the purpose of tracing the legal history of the Act alone and the contents of the report should not have been used by the learned Judge as evidence. This Court also took view that various audit reports were relied which were not considered. In para 58 the following was stated: (*Jyoti Harshad Mehta case*[175], c SCC p. 583)

"*58.* It does not appear that the Special Judge had considered this aspect of the matter in great detail. The learned Judge, Special Court, should consider the aforementioned two audit reports so as to arrive at a positive finding with regard to the liabilities and assets possessed by them so as to d enable to pass appropriate orders."

407. The Special Court in *Jyoti Harshad Mehta case*[175] was deciding the lis in which the party had filed the evidence. Ignoring the same reliance was placed on the report with regard to which observation was made in para 57. The Special Judge ought to have considered the evidence which were produced by the appellants and only reliance placed on the evidence of Janakiraman e Committee Report was rightly disapproved by this Court. The above was a case where sole reliance was placed on the Report which was disapproved. The observation made by the Court that the Report should not have been used by the learned Judge as evidence was made in the above context which cannot be treated to mean that the Report cannot be accepted by a court as evidence.

f **408.** Another judgment which has been relied on by the respondents is *SBI* v. *National Housing Bank*[197]. In the above case, this Court made the following observation in para 50 of the judgment which has been relied: (SCC p. 558)

"*50.* It is well settled by a long line of judicial authority that the findings of even a statutory commission appointed under the Commissions of Inquiry Act, 1952 are not enforceable proprio vigore as held in *Ram* g *Krishna Dalmia* v. *S.R. Tendolkar*[198] and the statements made before such Commission are expressly made inadmissible in any subsequent proceedings civil or criminal. The leading judicial pronouncements [*Madhava Singh* v. *Secy. of State for India in Council*[199], *M.V. Rajwade*

175 *Jyoti Harshad Mehta* v. *Custodian*, (2009) 10 SCC 564 : (2010) 2 SCC (Cri) 1494
h 197 (2013) 16 SCC 538 : (2014) 5 SCC (Civ) 523
198 AIR 1958 SC 538
199 1904 SCC OnLine PC 18 : (1903-04) 31 IA 239

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v. *S.M. Hassan*[200], *Ram Krishna Dalmia* v. *S.R. Tendolkar*[198], *State of Karnataka* v. *Union of India*[201], *Sham Kant* v. *State of Maharashtra*[202]] on that question were succinctly analysed by this Court in *T.T. Antony* v. *State of Kerala*[203], paras 29-34. Para 34 of the judgment inter alia reads: (SCC p. 204)

> '*34*. … In our view, the courts, civil or criminal, are not bound by the report or findings of the Commission of Inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law.' "

409. In the above case, the Court has relied on Janakiraman Committee which was not a statutory body, authorised to collect evidence and was a body set up by the Governor of Reserve Bank of India in exercise of its administrative functions which has been noted by this Court in para 51. The observation made by this Court in para 50 has to be read in the context of observations made by this Court in para 51 which is to the following effect: (*National Housing Bank case*[197], SCC p. 558)

> "*51*. Therefore, courts are not bound by the conclusions and findings rendered by such commissions. The statements made before such commission cannot be used as evidence before any civil or criminal court. It should logically follow that even the conclusions based on such statements can also not be used as evidence in any court. Janakiraman Committee is not even a statutory body authorised to collect evidence in the legal sense. It is a body set up by the Governor of Reserve Bank of India obviously in exercise of its administrative functions,
>
> '… the Governor, RBI set up a Committee on 30-4-1992 to investigate into the possible irregularities in funds management by commercial banks and financial institutions, and in particular, in relation to their dealings in government securities, public sector bonds and similar instruments. The Committee was required to investigate various aspects of the transactions of SBI and other commercial banks as well as financial institutions in this regard.' "

The above judgment cannot be read to mean that Parliamentary Committee reports cannot be adverted to. This Court has referred to the Commissions of Inquiry Act, 1952. The observations were made in the light of law as contained in Section 6 of the Commissions of Inquiry Act, 1952.

410. The next case relied on by the respondents is judgment of this Court in *Common Cause* v. *Union of India*[172].

200 1953 SCC OnLine MP 90 : AIR 1954 Nag 71 : 1954 Cri LJ 366
198 AIR 1958 SC 538
201 (1977) 4 SCC 608
202 1992 Supp (2) SCC 521 : 1992 SCC (Cri) 765
203 (2001) 6 SCC 181 : 2001 SCC (Cri) 1048
197 *SBI* v. *National Housing Bank*, (2013) 16 SCC 538 : (2014) 5 SCC (Civ) 523
172 (2017) 7 SCC 158

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411. In the above judgment, this Court has referred to Parliamentary Standing Committee report in paras 14 and 16. In para 21 it was held that the opinion of the Parliamentary Standing Committee would not be sacrosanct. In para 21 the following observation was made: (*Common Cause case*[172], SCC pp. 174-75)

> "*21.* … The view of the Parliamentary Standing Committee with regard to the expediency of the Search/Selection Committee taking decisions when vacancy/vacancies exists/exist is merely an opinion which the executive, in the first instance, has to consider and, thereafter, the legislature has to approve. The said opinion of the Parliamentary Standing Committee would therefore not be sacrosanct. The same, in any case, does not have any material bearing on the validity of the existing provisions of the Act."

412. The above judgments do not lend support to the submission of the respondents that Parliamentary Standing Committee report cannot be taken as evidence in the Court or it cannot be looked into by the Court for any purpose.

I. *Separation of powers and maintaining a delicate balance between the Legislature, Executive and Judiciary*

413. The essential characteristic of a Federation is a distribution of limited Executive, Legislative and Judicial authority and the supremacy of the Constitution. B.K. Mukherjea, C.J., in *Ram Jawaya Kapur* v. *State of Punjab*[13] referred to the essential characteristics of separation of powers in the Indian Constitution. In para 12, the following has been held: (AIR p. 556)

> "*12.* … The Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. …"

414. Separation of powers between the Legislative, Executive and Judiciary has been regarded as basic feature of our Constitution in *Kesavananda Bharati* v. *State of Kerala*[3]. The Constitution does not envisage supremacy of any of the three organs of the State. But, functioning of all the three organs is controlled by the Constitution. Wherever, interaction and deliberations among the three organs have been envisaged, a delicate balance and mutual respect are contemplated. All the three organs have to strive to achieve the constitutional goal set out for "We the People". Mutual harmony and respect have to be maintained by all the three organs to serve the Constitution under which we all live. These thoughts were expressed by this Court time and again. Suffice it to

172 *Common Cause* v. *Union of India*, (2017) 7 SCC 158
13 (1955) 2 SCR 225 : AIR 1955 SC 549
3 (1973) 4 SCC 225 : AIR 1973 SC 1461

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refer, the Constitution Bench of this Court in *Special Reference No. 1 of 1964*[22] where Gajendragadkar, C.J., laid down the following: (AIR p. 763, para 43)

> "*43*. … In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the legislatures and the judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the Constitution. These two august bodies as well as the executive which is another important constituent of a democratic State, must function not in antimony nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country."

415. The learned Attorney General has submitted that relying on the doctrine of "Separation of Powers", this Court may desist from taking into consideration the Parliamentary Committee's report. As observed above, there is no parliamentary privilege that Parliamentary Committee reports or other parliamentary materials cannot be given in evidence in any court of law. By accepting Parliamentary Report as an evidence, there is no breach of any parliamentary privilege. It is also not out of place to mention that there is a vital difference between parliamentary sovereignty in England and constitutional supremacy in this country. It is well settled that any law made by Parliament, which violates the fundamental rights guaranteed under Part III of the Constitution, can be set aside by this Court in exercise of jurisdiction of judicial review which has been granted by the Constitution to this Court. Parliamentary sovereignty, as enjoyed by the United Kingdom is not a parallel example in reference to functioning of different organs in this country, as controlled by the Constitution of India. The parliamentary privilege, as guaranteed under Article 9 of the Bill of Rights, 1688 that no proceeding of Parliament can be questioned and impeached thus has to be applied, subject to express constitutional provisions as contained in the Constitution of India.

416. We thus conclude that although, there is no rigid separation of powers under the Constitution of India, but functions of all the three wings have been sufficiently differentiated and each has freedom to carry out its functions unhindered by any other wing of the State. However, in functioning of all the three organs, a delicate balance, mutual harmony and respect have to be maintained for true working of the Constitution.

J. *Article 121 & Article 122 of the Constitution of India*

417. Relying on Article 121 and Article 122 of the Constitution of India, it has been contended by the learned Attorney General as well as other learned counsel appearing for the respondents that the principle enshrined in the abovementioned articles does suggest that the Court has to keep away

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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from entertaining any challenge to any parliamentary proceeding, including a Parliamentary Committee report.

a **418.** Although, heading of Article 122 reads "Courts not to enquire into proceedings of Parliament" but substantive provision of the Constitution, as contained in clause (1) of Article 122 debars the court from questioning the validity of any parliamentary proceeding *on the ground of any alleged irregularity or procedure*. The embargo on the court to question the proceeding is thus limited on the aforesaid ground alone. There is no total prohibition from b examining the validity of the proceeding if the proceedings are clearly in breach of fundamental rights or other constitutional provisions.

419. The Constitution Bench in *Special Reference No. 1 of 1964*[22], while considering the scope of Article 194 of the Constitution laid down the following: (AIR p. 762, para 40)

c "*40*. Our legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by d virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our legislatures including Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the e fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by courts in India. Therefore, it is necessary to remember that though our legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution."

f **420.** As observed above, the Constitution of India empowers this Court in exercise of judicial review to annul the legislation of a Parliament if it breaches the fundamental rights, guaranteed under Part III of the Constitution. Thus, the privileges which are enjoyed by the Indian Legislature have to be considered in light of the provisions of the Indian Constitution. These are the clear exceptions to the parliamentary privileges, as applicable in the House g of Commons on the strength of Article IX of the Bill of Rights, 1688. This Court in *Special Reference No. 1 of 1964*[22] noticing the different constitutional provisions referred to various privileges which although were enjoyed by the House of Commons, but are no longer available to the Indian Legislature.

h

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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421. The power of judicial review enjoyed by this Court in reference to legislation and some parliamentary proceedings are recognised exceptions, when this Court can enter into parliamentary domain. In all other respects, parliamentary supremacy with regard to its proceedings, the procedure followed has to be accepted.

422. In view of the above foregoing discussion, we are of the view that on the strength of Article 122, it cannot be contended that Parliamentary Standing Committee reports can neither be admitted in evidence in court nor the said reports can be utilised for any purpose.

K. ***Comments on reports of Parliamentary Committee whether breach of privilege***

423. The freedom of speech and expression is one of the most cherished fundamental rights guaranteed and secured by the Constitution of India. As early as in 1950 Patanjali Sastri, J., in *Romesh Thappar* v. *State of Madras*[204], stated: (AIR pp. 128-29, para 11)

> "*11.* … freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular Government, is possible."

424. Again this Court in *Bennett Coleman & Co.* v. *Union of India*[205], held: (SCC p. 828, para 98)

> "*98.* … 'Freedom of the Press is the Ark of the Covenant of Democracy because public criticism is essential to the working of its institutions.' "

No organ of the State, be it Judicature, Executive or Legislature is immune from public criticism; public criticism is an instrument to keep surveillance and check on all institutions in a democracy.

425. In *Wason* v. *Walter*[188] Cockburn, C.J., stated: (QB p. 90)

> "*… it may be further answered that there is perhaps no subject in which the public have a deeper interest than in all that relates to the conduct of public servants of the State—no subject of parliamentary discussion which more requires to be made known than an inquiry relating to it.* …" (emphasis supplied)

426. It was further emphasised that deeper public interest is served in making public, the conduct of a public servant or any inquiry public, Cockburn, C.J., further held that there is a full liberty of public writers to comment on the conduct and motives of public men. The recognition of making comment on the conduct was noticed as of recent origin. It was further clearly laid down that comments on Members of both the Houses of Parliament can also be made

204 1950 SCR 594 : AIR 1950 SC 124 : (1950) 51 Cri LJ 1514
205 (1972) 2 SCC 788 : AIR 1973 SC 106 at p. 150
188 (1868) LR 4 QB 73

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by which comments, it is the public which is the gainer. The following weighty observations were made by Cockburn, C.J.: (*Walter case*[188], QB pp. 93-94)

a

> "… *The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognised. Comments on Government, on ministers and officers of State, on Members of both Houses of Parliament, on Judges and other public functionaries, are now made every day, which half a century ago would have been the subject of actions or ex officio information, and would have brought down fine and imprisonment on publishers and authors. Yet who can doubt that the public are gainers by the change, and that, though injustice may often be done, and though public men may often have to smart under the keen sense of wrong inflicted by hostile criticism, the nation profits by public opinion being thus freely brought to bear on the discharge of public duties*? …" (emphasis supplied)

b

c

427. In reference to "parliamentary privilege", the House of Lords after due consideration of Article 9 of the Bills of Rights, 1688 in *Pepper (Inspector of Taxes)* v. *Hart*[95], laid down: (AC p. 638)

> "… Article 9 cannot have effect, so as to stifle the freedom of all to comment on what is said in Parliament, even though such comment may influence members in what they say."

d

What is said in Parliament is thus clearly subject to fair comments by all including the Press.

428. A Constitution Bench of this Court in *M.S.M. Sharma* v. *Sri Krishna Sinha*[185], had occasion to consider parliamentary privileges in reference to publication of a speech delivered by a Member of Bihar Legislative Assembly, commonly known as *Search Light case*[185]. In his speech, Member of Bihar Legislative Assembly made critical reference to an ex-Minister of Bihar. The Speaker, on a point of order raised by another Member directed expunging of certain words stated with regard to ex-Minister. However, notwithstanding the Speaker's direction of expunging the portion of the speech, the *Search Light*, in its issue dated 31-5-1957, published a complete report of the speech of the Member including the portion which was directed to be expunged, a notice was given to the Editor of the *Search Light*, Shri Sharma, to show cause as to why appropriate action be not recommended for breach of privilege of the Speaker and the Assembly in respect of the offending publication. Shri Sharma, Editor filed writ petition under Article 32 contending that the said notice and the proposed action is in violation of his fundamental right to freedom of speech and expression under Article 19(1)(*a*). This Court held that the principle of *harmonious construction* must be adopted in considering Article 19(1)(*a*) and Article 194(1) and the latter part of clause (3) of Article 194.

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188 *Wason* v. *Walter*, (1868) LR 4 QB 73
95 1993 AC 593 : (1992) 3 WLR 1032 : 1992 UKHL 3 (HL)
185 AIR 1959 SC 395

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429. The Court further held that the publication of the speech by *Search Light* in law has to be regarded as unfaithful report, prima facie, constituting a breach of privilege, the following observations were made in para 32: (*Search Light case*[185], AIR p. 412)

> "*32.* … The effect in law of the order of the Speaker to expunge a portion of the speech of a Member may be as if that portion had not been spoken. A report of the whole speech in such circumstances, though factually correct, may, in law, be regarded as perverted and unfaithful report and the publication of such a perverted and unfaithful report of a speech i.e. including the expunged portion in derogation to the orders of the Speaker passed in the House may, prima facie, be regarded as constituting a breach of the privilege of the House arising out of the publication of the offending news item and that is precisely the charge that is contemplated by the Committee's resolution and which the petitioner is by the notice called upon to answer. We prefer to express no opinion as to whether there has, in fact, been any breach of the privilege of the House, for of that the House alone is the judge."

430. The freedom of speech and expression as guaranteed under Article 19(1)(*a*) is available to a citizen to express his opinion and comment which is also available with regard to court proceedings as well. In respect of parliamentary proceedings, the said right is not stifled unless the comment amounts to reflection or personal attack on individual Member of Parliament or to the House in general.

431. In this context reference is also made to a judgment of the House of Lords in *Adam* v. *Ward*[206], where proceedings of Parliament were published containing a slander remark on a servant of the Crown. An enquiry was conducted with regard to imputation and report was published for vindication of the honour of the servant. The following was laid down by Lord Atkinson of the House of Lords: (AC p. 343)

> "… I think it may be laid down as a general proposition that where a man, through the medium of Hansard's reports of the proceedings in Parliament, publishes to the world vile slanders of a civil, naval, or military servant of the Crown in relation to the discharge by that servant of the duties of his office he selects the world as his audience, and that it is the duty of the heads of the service to which the servant belongs, if on investigation they find the imputation against him groundless, to publish his vindication to the same audience to which his traducer has addressed himself. In my view the Army Council would have failed in their duty to General Scobell personally, and to the great service which they in a certain sense govern and control, if they had not given the widest circulation to the announcement of the General's vindication."

185 *M.S.M. Sharma* v. *Sri Krishna Sinha*, AIR 1959 SC 395
206 1917 AC 309 (HL)

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432. In *R.* v. *Murphy*[130], Hunt, J. held that what is said and done in Parliament can without any breach of parliamentary privilege be impeached and questioned by the exercise by ordinary citizens of their freedom of speech. The following was held:

> "I have already pointed out that what is said and done in Parliament can without any breach of parliamentary privilege be impeached and questioned by the exercise by ordinary citizens of their freedom of speech (whether or not in the media), notwithstanding the fear which such conduct may engender in members of Parliament (and committee witnesses) as to the consequences of what they say or do. In those circumstances, it can be neither necessary nor desirable in principle that what is said or done in Parliament should not be questioned (in the wider sense) in courts or similar tribunals where no legal consequences are to be visited upon such members (or witnesses) by the proceedings in question."

433. The Privilege Committee of the Lok Sabha has also recognised the right of fair comment in the following words:

> "Nobody would deny the Members or as a matter of fact, any citizen, the right of fair comment. But if the comments contain personal attack on individual Members of Parliament on account of their conduct in Parliament, or if the language of the comment is vulgar or abusive, they cannot be deemed to come within the bounds of fair comment or justifiable criticism."

(As quoted in "Press and Parliament" by A.N. Grover in J.C.P.S. VXIII 1984 at p. 141.)

434. *Erskine May* in *Parliamentary Practice (24th Edn.)* defines "contempt" in the following words:

> "Generally speaking, any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his duty, or which has a tendency, directly or indirectly, to produce such results, may be treated as a contempt even though there is no precedent of the offence."

435. Referring to a case, *Burdett* v. *Abbot*[128], ER at p. 561, this Court in *Special Reference No. 1 of 1964*[22], stated as follows: (*Special Reference No. 1 of 1964*[22], AIR p. 763, para 43)

> "*43.* … In this connection it is necessary to remember that the status, dignity and importance of these two respective institutions, the legislatures and the judicature, are derived primarily from the status, dignity and importance of the respective causes that are assigned to their charge by the

130 (1986) 64 ALR 498 : (1986) 5 NSWLR 18
128 (1811) 14 East 1 : 104 ER 501
22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

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Constitution. These two august bodies as well as the executive which is another important constituent of a democratic State, must function not in antinomy nor in a spirit of hostility, but rationally, harmoniously and in a spirit of understanding within their respective spheres, for such harmonious working of the three constituents of the democratic State alone will help the peaceful development, growth and stabilisation of the democratic way of life in this country."

436. This Court in the *Special Reference No. 1 of 1964*[22] also had observed that the caution and principle which are kept in mind by the courts while punishing for contempt are equally true to the Legislatures also. The following observations were made by this Court: (AIR p. 791, para 142)

"*142*. Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in *Andre Paul Terence Ambard* v. *Attorney General of Trinidad and Tobago*[207]. Said Lord Atkin, "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men". We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger or irritation would not help to sustain the dignity or status of the court, but may sometimes affect it adversely. Wise Judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgments, the fearlessness, fairness and objectivity of their approach, and by the restraint, dignity and decorum which they observe in their judicial conduct. We venture to think that what is true of the judicature is equally true of the legislatures."

437. The power to punish for contempt is a privilege available to Parliament which is defined as "keynote of parliamentary privileges".

438. From what has been stated above, we are of the view that fair comments on report of the Parliamentary Committee are fully protected under the rights guaranteed under Article 19(1)(*a*). However, the comments when turn into personal attack on the individual Member of Parliament or the House or made in vulgar or abusive language tarnishing the image of Member or the House, the said comments amount to contempt of the House and breach of privilege.

439. In the present case, the learned counsel for the respondents have contended that in the event, they raise objections regarding Parliamentary Committee report which has adversely commented on their role they shall

22 *Powers, Privileges and Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, AIR 1965 SC 745 : (1965) 1 SCR 413

207 1936 SCC OnLine PC 15 : AIR 1936 PC 141

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be liable to be proceeded against for committing contempt of the House, hence, this Court may neither permit the Parliamentary Committee report to be taken in evidence nor allow the petitioners to rely on the report. No party is precluded in making fair comments on the Parliamentary Committee report which comments remain within the bounds of fair comments and does not transgress the limits prescribed for fair comments. The Parliamentary Committee reports when published, the Press is entitled to make fair comments. We fail to see any reason prohibiting the parties who were referred to in the Parliamentary Committee report to make such fair comments or criticism of the Report as permissible under law without breach of privilege.

L. ***Adjudication in courts and Parliamentary Committee Report***

440. "Adjudication" is the power of Court to decide and pronounce a judgment and carry it into effect between the persons and parties who bring a cause before it for a decision. Both for civil and criminal cases people look forward to courts for justice. To decide the controversy between its subject had always been treated as a part of sovereign functions. Constitutional law developments emphasised separation of powers of governmental functions for protecting rights and liberties of people.

441. *Montesquieu in L'Esprit des Lois, 1748*, the modern exponent of the doctrine of separation of powers states:

> "When the legislative and executive powers are united in the same person, or on the same body or Magistrates, there can be no liberty. Again, there is no liberty if the judicial power is not separated from the legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control; for the Judge would then be the legislator. Were it joined with the executive power, the Judge might behave with violence and oppression. There would be an end of everything were the same man or the same body to exercise these three powers…".

442. In our Constitution although there is no strict separation of powers of the three branches, that is, Legislature, Judicature and Executive but constitutional provisions entrust separate functions of each organ with clarity which makes it clear that our Constitution does not contemplate assumption by one organ function which belongs to another organ of the State.

443. A nine-Judge Constitution Bench in *I.R. Coelho* v. *State of T.N.*[5], while dealing with the separation of powers stated the following in paras 64, 65 and 67: (SCC pp. 86-87)

> "*64*. In fact, it was settled centuries ago that for preservation of liberty and prevention of tyranny it is absolutely essential to vest separate powers in three different organs. In *The Federalist* 47, 48 and 51, James

5 (2007) 2 SCC 1

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Madison details how a separation of powers preserves liberty and prevents tyranny. In *The Federalist* 47, Madison discusses Montesquieu's treatment of the separation of powers in *Spirit of Laws* (Book XI, Chapter 6). There Montesquieu writes,

> 'When the legislative and executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty.... Again, there is no liberty, if the judicial power be not separated from the legislative and executive.'

Madison points out that Montesquieu did not feel that different branches could not have overlapping functions, but rather that the power of one department of Government should not be entirely in the hands of another department of Government.

65. Alexander Hamilton in *The Federalist* 78, remarks on the importance of the independence of the judiciary to preserve the separation of powers and the rights of the people:

> 'The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice in no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.' (434)

* * *

> *67*. The Supreme Court has long held that the separation of powers is part of the basic structure of the Constitution. Even before the basic structure doctrine became part of constitutional law, the importance of the separation of powers on our system of governance was recognised by this Court in *Special Reference No. 1 of 1964*[22]."

444. Adjudication of rights of the people is a function not entrusted to the Legislature of the country. Apart from legislation our Parliament has become multi-functional institution performing various roles, namely, inquisitorial, financial and administrative surveillance, grievance redressal and developmental. Parliament, however, is not vested with any adjudicatory jurisdiction which belongs to judicature under the constitutional scheme.

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445. This Court in *State of Karnataka* v. *Union of India*[201], while considering Articles 105 and 194 of the Constitution of India laid down the following: (SCC p. 656, para 63)

> "*63.* … Our Constitution vests only legislative power in Parliament as well as in the State Legislatures. A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempt of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature."

446. The function of adjudicating rights of the parties has been entrusted to the constituted courts as per constitutional scheme, which adjudication has to be made after observing the procedural safeguards which include the right to be heard and the right to produce evidence.

447. In *Dingle* v. *Associated Newspapers Ltd.*[125] in a case of damages for libel where the defendants relied on Parliamentary Committee report published, Pearson, J., laid down as follows: (QB pp. 410-11)

> "… in my view, this Court should make its own findings based on the evidence adduced and on the arguments presented in this Court, and that should be done without regard to any decisions reached or opinions expressed or findings made by a different tribunal having a different function, and, probably, different issues before it, and having received different evidence and a different presentation of the case."

448. The apprehension of the respondents that their case shall be prejudiced if this Court accepts the Parliamentary Committee report in evidence, in our opinion is misplaced. By acceptance of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues, facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it and in which adjudication Parliamentary Committee report may only be one of the materials, what weight has to be given to one or other evidence is the adjudicatory function of the court which may differ from case to case. The Parliamentary Committee reports cannot be treated as conclusive or binding of what has been concluded in the Report. When adjudication of any claim fastening any civil or criminal liability on an individual is up in a court of law, it is open for a party to rely on all evidence and materials which is in its power and court has to decide

201 (1977) 4 SCC 608
125 (1960) 2 QB 405 : (1960) 2 WLR 430

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the issues on consideration of the entire material brought before it. When the Parliamentary Committee report is not adjudication of any civil or criminal liability of the private respondents, their fear that acceptance of report shall prejudice their case is unfounded. We are, thus, of the opinion that by accepting Parliamentary Committee report on the record in this case and considering the Report by this Court, the respondents' right to dispel conclusions and findings in the Report is not taken away and they are free to prove their case in accordance with law.

449. ***Our Conclusions***

449.1. According to clause (2) of Article 105 of Constitution of India no Member of Parliament can be held liable for anything said by him in Parliament or in any committee. The reports submitted by Members of Parliament are also fully covered by protection extended under clause (2) of Article 105 of the Constitution of India.

449.2. The publication of the reports not being only permitted, but also are being encouraged by Parliament. The general public is keenly interested in knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country. The right to know about the reports only arises when they have been published for use of the public in general.

449.3. Section 57(4) of the Evidence Act, 1872 makes it clear that the course of proceedings of Parliament and the Legislature, established under any law are facts of which judicial notice shall be taken by the Court.

449.4. Parliament has already adopted a report of "privilege committee", that for those documents which are public documents within the meaning of the Evidence Act, there is no requirement of any permission of the Speaker of Lok Sabha for producing such documents as evidence in court.

449.5. That mere fact that document is admissible in evidence whether a public or private document does not lead to draw any presumption that the contents of the documents are also true and correct.

449.6. When a party relies on any fact stated in the Parliamentary Committee report as the matter of noticing an event or history no exception can be taken on such reliance of the report. However, no party can be allowed to "question" or "impeach" report of Parliamentary Committee. The parliamentary privilege, that it shall not be impeached or questioned outside Parliament shall equally apply both to a party who files claim in the court and other who objects to it. Any observation in the report or inference of the Committee cannot be held to be binding between the parties. The parties are at liberty to lead evidence independently to prove their stand in a court of law.

449.7. Both the parties have not disputed that parliamentary reports can be used for the purposes of legislative history of a statute as well as for considering the statement made by a minister. When there is no breach of privilege in

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considering the parliamentary materials and reports of the Committee by the Court for the above two purposes, we fail to see any valid reason for not accepting the submission of the petitioner that courts are not debarred from accepting the parliamentary materials and reports, on record, before it, provided the court does not proceed to permit the parties to question and impeach the reports.

449.8. The Constitution does not envisage supremacy of any of the three organs of the State. But, functioning of all the three organs is controlled by the Constitution. Wherever, interaction and deliberations among the three organs have been envisaged, a delicate balance and mutual respect are contemplated. All the three organs have to strive to achieve the constitutional goal set out for "We the People". Mutual harmony and respect have to be maintained by all the three organs to serve the Constitution under which we all live.

449.9. We are of the view that fair comments on report of the Parliamentary Committee are fully protected under the rights guaranteed under Article 19(1) (*a*). However, the comments when turn into personal attack on the individual Member of Parliament or the House or made in vulgar or abusive language tarnishing the image of the Member or the House, the said comments amount to contempt of the House and breach of privilege.

449.10. The function of adjudicating rights of the parties has been entrusted to the constituted courts as per constitutional scheme, which adjudication has to be made after observing the procedural safeguards which include the right to be heard and the right to produce evidence. Parliament, however, is not vested with any adjudicatory jurisdiction which belongs to judicature under the constitutional scheme.

449.11. Admissibility of a Parliamentary Committee report in evidence does not mean that facts stated in the Report stand proved. When issues of facts come before a court of law for adjudication, the court is to decide the issues on the basis of evidence and materials brought before it.

450. The questions having been answered as above, let these writ petitions be listed before the appropriate Bench for hearing.