



views & conclusions.

2. 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 the Parliament, is the sum & substance of the questions referred to this Constitution Bench. During course of hearing of these Writ Petitions, learned senior counsel of respondent No. 8 (M.S.D. Pharmaceuticals Private Limited) raised objection regarding admissibility & consideration of the Parliamentary Committee Report, considering which objections following two questions have been referred to be answered:

*“(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?”*

*“(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?”*

3. 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**

The Writ Petition as a Public Interest Litigation has been filed by three petitioners, petitioner Nos.1 and 2 claim to be working for women health whereas the Petitioner No.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 States of Andhra Pradesh and Gujarat by PATH (respondent No.6), a US based NGO along with the Indian Council of Medical Research(ICMR) and 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 No.7- Glaxosmithkline Asia Pvt. Ltd. and "Cervarix" by respondent No.8- M.S.D. Pharmaceuticals Private Limited, licenced in India only in July, 2008 and September, 2008 respectively by Drug Controller General of India.

4. In July, 2009 vaccine Gardasil in Khammam District in Andhra Pradesh was administered. Few girl childs 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<sup>th</sup> April, 2010, 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 Committee was submitted on 15.02.2011. Enquiry committee noted several discrepancies. The Parliamentary Standing Committee of 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 Districts of Khammam, Andhra Pradesh and Vadodara, Gujarat. Parliamentary Standing Committee (hereinafter referred to as "P.S.C.") 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 (72<sup>nd</sup> Report) to Rajya Sabha on 30<sup>th</sup> August, 2013 which was also laid on the table of Lok Sabha on 30<sup>th</sup> August, 2013. The P.S.C. found various shortcomings and lapses of the Government Departments, ICMR as well as on part of the respondent Nos.6 to 8. Various directions and recommendations were issued by the Committee. Again a detailed report, namely, 81<sup>st</sup> Report on "action taken by the Government on the recommendations/ observations contained in the 72<sup>nd</sup> Report on the alleged irregularities in the conduct of studies using Human Papilloma Virus(HPV) vaccine by PATH" in India was

submitted to Rajya Sabha on 23<sup>rd</sup> December, 2014 and also laid on the table of Lok Sabha on 23<sup>rd</sup> December, 2014. Both the reports have been brought on record.

**Writ Petition (C) No. 921 of 2013**

5. The Writ Petition as a Public Interest Litigation has been filed by petitioners of which petitioner Nos. 1 and 2 are public trusts and petitioner Nos. 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. 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 Drugs and Cosmetics Rules, 1945.

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 respondent Nos. 2 to 8.

6. In both the writ petitions, most of materials including fact finding enquiry conducted by the petitioner No.1 in Writ Petition (C) No. 921 of 2013(PIL-W), newspapers reports, articles, representations, correspondence have been referred to and relied. Apart from other materials, reference and reliance on 72<sup>nd</sup> Report presented on 30<sup>th</sup> August, 2013 and 81<sup>st</sup> Report presented on 23<sup>rd</sup> December, 2014 to Rajya Sabha have also been placed.

7. 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 12.08.2014, 13.01.2015 and 17.11.2015.

8. When the matter was heard on 18.11.2015 by two Judge Bench this Court Stated : "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." After hearing the parties on 18.11.2015 the two Judge Bench of this Court by a detailed order dated 05.04.2017 has referred two questions as noted above to be answered by a Constitution Bench.

#### **SUBMISSIONS**

9. We have heard Shri Colin Gonsalves, learned senior advocate for petitioner in Writ Petition (C) No.558/2012 and Shri Anand Grover, learned senior advocate for petitioner in Writ Petition (C) No.921 of 2013. Shri Harish Salve and Shri Gourab Banerji, learned senior advocates have appeared for respondent No.8-MSD Pharmaceuticals Private Limited. Shri Shyam Divan, learned senior advocate has appeared for PATH International. We have also heard Shri K.K.Venugopal, learned Attorney General of India.



10. Shri Salve submits that Parliamentary Committee Report can neither be looked into nor relied 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 sub-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. He further submits that as per Article 105 sub-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<sup>th</sup> November, 1950. Article 105 sub-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.

11. The principal submission which has been canvassed by Shri Salve is that there being legislative privilege of all acts done in the Parliament including report of Parliamentary Committee, the report cannot be challenged in a Court of Law. He submits that reliance of 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.

12. Relying on Article IX of 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 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.

13. Shri K.K. Venugopal, learned Attorney General also contends that Parliamentary Reports cannot be relied 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 State. He submitted that referring to a report of Parliamentary Committee is a sensitive issue of jurisdiction between 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. Referring to Section 57(4) of the Evidence Act, 1872 which provides that the Court shall take judicial notice of the proceedings of the Parliament and the Legislature established under any law for the time being in force, he submits that the substitutions were made in sub-clause (4) of Section 57 by 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 Adaptation Order various words which were earlier used in Evidence Act, 1872 were changed after adoption of Constitution which cannot be treated to be an act done by conscious deliberation of Legislature. He submits that historical facts as well

as statement of 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. He submits that there is total bar in looking into the Reports of Parliament based on separation of power and express provisions of Article 105(2) and 105(4) of the Constitution of India. The very fact that 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.

14. 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 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 petitioner is asking to initiate any proceeding against any member of Parliament. He submits that facts noticed and stated in Parliamentary report can very well be relied. The 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.

15. It is further submitted 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 concern. 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 concern. 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.

16. The 72<sup>nd</sup> and 81<sup>st</sup> 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 wrong doings.

17. Shri Anand Grover, learned senior advocate appearing for 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 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. Shri Grover has also referred to several English cases as well as judgments of Australian High Court, U.S. 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 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.

18. Shri Grover further submits that Parliamentary Committee Reports can be relied only when they are published and becomes 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.

19. Shri Shyam Divan, learned senior advocate appearing for PATH submits that PATH is a non-profit body operating in area of health. Referring to Section 57 of the Evidence Act, Shri Divan Submits that subsection (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. He 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 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 the Parliament which also enjoys the privileges and immunity provided under Article 105(2) of the Constitution of India. The reports of Parliamentary Committee are not amenable to judicial review. Parliamentary Standing Committee Reports are not to be relied in court proceedings in as much 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.

20. Shri Gourab Banerji, learned senior advocate, replying 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.

21. We have considered 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:

*a. 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.*

*b. 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.*

*c. Whether in traversing and questioning the reports, the private respondents may invite a contempt of House.*

22. The above issues being inter-connected, 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**

23. The origin and evolution of parliamentary privilege is traceable from 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. 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 19<sup>th</sup> Century most of the parliamentary privileges of House of Commons were firmly established and recognised by the Courts also.

24. **Erskine May** in his treatise '**Parliamentary Practice**', Twenty-fourth Edition' 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."*

25. The term 'parliamentary privilege' refers to the immunity and powers possessed by each of the Houses of the Parliament and by the Members of the 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 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."*

26. The Halsbury's Laws of England, Fifth Edition Vol. 78, while tracing the 'origin and scope of privileges', states 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."*

27. The privileges of the Indian Legislatures have also gradually developed alongwith the progress in the constitutional development of the country. The Government of India Act, 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 Constitution Act by Privy Council.

28. 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 privileges. We now proceed to examine the constitutional provisions pertaining to parliamentary privileges.

29. 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. Article 105 of 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 any thing 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."*

30. Two amendments were made in Article 105 sub-clause (3) i.e. by Constitution (Forty Second and Forty Fourth Amendment). Article 105 sub-clause (3) in its original form was as follows:

*"Article 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."*

31. Sub-clause (1) of Article 105 of the Constitution of India gives constitutional recognition to 'freedom of speech' in Parliament. Sub-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 sub-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 is also fully covered by protection extended under sub-clause (2) of Article 105 of the Constitution of India. Present is not a case of any proceeding against any Member of the Parliament for anything which has been said in the Parliament Committee's Report.

32. We now proceed to sub-clause (3) of Article 105 of the Constitution of India. Sub-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 sub-clauses (1) and (2) of Article 105. Sub-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.

33. The Constitution Bench in ***P. V. Narsimha Rao vs. State (CBI/SPE), (1998) 4 SCC 626*** had elaborately considered Article 105 of the Constitution of India. In paragraph 28 and paragraph 29 of the judgment following has been stated:

*"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 (1997) 66 DLT 618 (Del) 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 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 HOUSE OF COMMONS**

34. What are the privileges of the House of Commons which are also enjoyed by the Indian Parliament by virtue of sub-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.

35. 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.

36. Halsbury's Laws of England in Fifth Edition Vol. 78, while dealing with the privileges etc. claimed by both the Houses 'enumerates privileges':

1. Exclusive cognisance 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.

37. The main privileges which are claimed by the House of Commons were noticed by the Constitution Bench of this Court in Special Reference No. 1 of 1964 (UP Assembly Case) **AIR 1965 SC 745** in para 73 and 74 which are quoted as below:

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

*74. 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...."*

38. **M. N. Kaul and S. L. Shakhder** in '**Practice & Procedure of Parliament**', Seventh Edition 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 Art. 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 Art. 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 Art. 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 Art. 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 s. 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.

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 1R (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 6R (CPR-2LS).*

*In addition to the above-mentioned 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 April 1954) 1974, Vol. XIX-2, pp. 42-43 and 1975, Vol. XX-1, pp. 78 (shouting of slogans and carrying of arms by 'visitors to Lok Sabha); Homi D. Mistry v. Nafisul Hassan – the Blitz Case, I.L.R. 1957, Bombay 218; the Searchlight Case, A.I.R. 1959 S.C. 395; C. Subramaniam's Case, A.I.R. 1968, Madras 10.*

*to compel the attendance of witnesses and to send for persons, papers and records Rules 269 and 270, Harendra Nath Barua v. Dev Kant Barua, A.I.R. 1958, Assam 160.*

*to regulate its procedure and the conduct of its business Art. 118(1)*

*to prohibit the publication of its debates and proceedings, The Searchlight*

*Case and to exclude strangers Rule 387."*

39. 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 the 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, involving a breach of any privilege under sub-clause (2) of Article 105 of the Constitution of India.

40. 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**

41. The Parliament is legislative wing of the Union.

The Council of Ministers 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.

42. **F. W. Maitland** in the '**Constitutional History of England**' while writing 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..... "*

43. **Dr. Subhash C. Kashyap** in '**Parliamentary Procedure**,' Second Edition while discussing the functions of the 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 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. "*

44. 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 the 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. 01.07.1964. The Rules of Procedure and Conduct of Business in Lok Sabha were framed and published in the Gazette of India Extra-ordinary on 17.05.1952.

45. Various committees of both Rajya Sabha and Lok Sabha are entrusted with enormous duties and responsibilities in reference to the functions of the

Parliament. **Maitland** in 'Constitutional History of England' while referring to the committees of the Houses of British Parliament noticed the functions of the committees in the following words:

*".....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."*

46. 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 'Departmental 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."

47. 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."

48. Rule 277 provides that the Report of the Standing Committee shall have persuasive value. Schedule III of the Rules deals with the 'Allocation of various Ministries/Departments related to Parliamentary Standing Committee'. At Item No. 7 is 'Committee on Health and Family Welfare' which relates to Department of Health and Family Welfare.

49. 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:

*"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 prevents Parliament from getting lost in details and thereby losing hold on matters of policy and broad principles."*

50. 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, 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 the Parliament to be considered by Departmental Standing Committees. The functions of the committees thus, play an important role in functioning of the entire Government which is directly related to the welfare of the people of the country.

**D. PUBLICATION OF PARLIAMENTARY REPORTS**

51. The Reports of the Parliamentary Standing Committees and other decisions and resolutions of the Parliament are published under the authority of House. Publication of proceedings of Parliament serves public purpose. 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 *Cock Burn, CJ. in Wason v. Walter, 1869 QB Vol. 4 at p. 73* held that it is of paramount public and national importance that the proceedings of the House of Parliament shall be communicated to the people. *Cock Burn, CJ, at page 89*

held the following:

*'...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 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?...."*

52. Further, it was held 'no' subject of parliamentary discussion which more requires to be made known than

an inquiry relating to it. **Cock Burn CJ.** 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:

*"....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...."*

53. Under the Rule 379 of Lok Sabha, 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: -

"Section 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.*

*(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. "*

54. By Constitution (Forty Fourth Amendment) Act, 1978, Article 361A was inserted in the Constitution providing for 'protection of publication of proceedings by Parliament and State Legislatures'.

Article 361A is as follows:

**"Art. 361A . 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:*

*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.*

*Explanation.--In this article, "newspaper" includes a news agency report containing material for publication in a newspaper."*

55. 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 the 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 the Parliament. The general public are keenly interested in knowing about the parliamentary proceedings including parliamentary reports which are steps towards the governance of the country.

56. At this juncture, it is relevant to note that as per 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. 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 72<sup>nd</sup> and 81<sup>st</sup>



Reports of Parliamentary Standing Committee.

**E. RULES AND PROCEDURES REGARDING PERMISSION FOR GIVING EVIDENCE IN COURTS REGARDING PROCEEDINGS IN PARLIAMENT**

57. The papers and proceedings of Parliament have been permitted to be given in evidence in Courts of law by the Parliament. In this context, reference is made to Practice and Procedure of Parliament by **M.N. Kaul and S.L. Shakdhar**, Seventh Edition, published by Lok Sabha Secretariat, where on this subject 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 of 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."*

58. After the enforcement of Right of 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 Shakhder** 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., 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 April 2008 and laid on the Table of the House on 30 April 2008. The Report was adopted by the House on 23 October 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."*

59. Learned counsel for the respondents in his compilation has given Third Edition (2017) of Raj

Sabha at Work, wherein at page 257 the subject "Production of documents before a Court" is mentioned. From page 257 to page 259 various instances have also been mentioned whereas on a request received from Court for production of documents, due permission was granted and documents were made available to the Courts. At page 259 reference of the request received from Sessions Judge, Cuddalore, for certified copy of Attendance Register of Rajya Sabha was made. The extracts from 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 March 1963 to 15 March 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 January 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."*

60. 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 the Parliament itself to be given as evidence in Courts of law.

**F. THE APPLICABILITY OF THE INDIAN EVIDENCE ACT, 1872, IN THE CONTEXT OF PARLIAMENTARY PROCEEDINGS.**

61. 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 sub-section (4) is relevant which is quoted as below:

***"Section 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;

xxx            xxx            xxx            xxx

(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;

xxx            xxx            xxx            xxx

(13)            xxx            xxx            xxx            xxx

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."

62. A plain reading of Section 57 sub-section (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.

63. Shri Shyam Divan in reference to Section 57 submits that Parliamentary Standing Committee Reports are not covered by 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 *vide* import. The Parliamentary Committee is defined in Rule 2 of Rules of Lok Sabha in following manner:

*"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."*

64. Article 118 sub-clause (1) read with 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.



65. Now submission of learned Attorney General in reference to Section 57(4) needs to be considered.

66. The President exercises power under Article 372 sub-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 sub-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 sub-clause (2) of Article 372.

67. The Adaptation Order issued by the President under sub-clause (2) of Article 372 thus has force of law and 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 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.

68. One more provision of 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; of any part of India or of the Commonwealth, or of a foreign country;*

*(2) Public records kept in any State of private documents.”*

69. 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 report of

privilege committee that **for those documents which are public documents within the meaning of Indian 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.

70. In this context, reference is made to a judgment of the Privy Council reported in ***Right Honourable Gerald Lord Strickland vs. Carmelo Mifsud Bonnici*, AIR 1935 PC 34.** 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".

71. A judgment of 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 vs. A.B.F.S.L & ORS., 2001 (4) BOM.LR 520.** In the above case, a report of Joint Parliamentary Committee was objected by the learned counsel for the Standard Chartered Bank. In paragraph 1 of the judgment, issue which has arisen in the case was noticed to the following effect:

*"1. 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."*

72. 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 paragraph 2 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. **Justice S. H. Kapadia (as he then was)** held that the correctness of the findings in the JPC will ultimately depend on the entire view of the matter. Following was observed in paragraph 5 of the judgment:

*"5....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 part of such an arrangement. Therefore, I am of the view that Can Bank 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 Can Bank 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."

73. In paragraph 6 ultimately the Court held :

"6. 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, Can Bank Mutual Fund will have to prove whether the suit transaction took place under 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 27th June, 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**

74. 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 the 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 03.06.1949 stated as follows:-

"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."

75. The draft article was finally approved maintaining the reference to House of Commons in regard to other privileges. Thus, the privileges which our Parliament and State Legislatures enjoy are privileges enjoyed by House of Commons of the United Kingdom at the time of commencement of the Constitution.

76. 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 Common 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 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:-

“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:”

77. The above declaration made in 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, 24<sup>th</sup> Edition' while dealing with privileges of freedom of speech says following with regard to the Bill of Rights:-

“Article IX of the Bill of Rights 1689 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 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."

78. There is no doubt that reports of the Standing Committee of the Parliament 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 the 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. The report submitted by Standing Committee of Parliament is also another form of expression. Thus, the Parliamentary privileges which are contained in Sub-clause (2) of Article 105 to individual Parliamentary member are also extended by virtue of Sub-clause (3) of

Article 105 to the Parliamentary Committee Reports. The Parliamentary privileges contained in Article IX of Bill of Rights thus also protect the Parliamentary Standing Committee Reports. In this Context, references to few English cases are relevant. The case of **Stockdale Vs. Hansard, 9 A.D. & E.2 Page 1112** is referred. The case was an action for a publication defaming the plaintiff's character by imputing that he had published an obscene libel. Following was stated by Lord Denmen, C.J.

"Thus the privilege of having their debates unquestioned, though 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 person, or hazardous to the public peace, that member enjoys complete impunity....."

79. Another judgment which needs to be noted is **Bradlaugh V. Gossett (1884) 12 Q.B.D. 271**. 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:-

".....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. Abbott* 14 East , 1, 148 and *Stockdale v. Hansard* 9 Ad & E 1 ; - 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."

80. Another case in which question of Parliamentary privilege with respect to Parliamentary report of a select committee of House of Commons was involved was the case of ***Dingle Vs Associated Newspapers Ltd. & Ors.*** (1960) 2 Q.B. 405. 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 the 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.

81. **Pearson, J.** Referring to Bill of Rights, 1688 and the case of *Bradlaugh V. Gossett* said following:-

"....Reference was made to the Bill of Rights, 1688, s. 1, art.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 *Bardlaugh v. Gossett*, and it is sufficient to read a short portion of the headnote: "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 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....."

82. Another judgment which also related to proceeding in Parliament is ***Church of Scientology of California Vs. Johnson-Smith (1972) 1 Q.B. 522***. Referring earlier judgment in ***Dingle Vs. Associated Newspapers***, Browne, J. said following:-

"The most recent case to which I was referred was *Dingle Vs. Associated Newspapers Ltd. (1960) 2 Q.B. 405*. 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 plaintiff's 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. Horder or the then Minister of Health or any other Member of Parliament in anything they said or did in the House....."

83. What was held in the above cases clearly establish that it is now well settled that proceedings undertaken in the Parliament including a report of the Standing Committee cannot be challenged before any Court. The word 'challenge' includes both 'impeaching' and 'questioning' the Parliamentary Committee Reports.

84. 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 the Article 9 of Bill of Rights (1688). The most important judgment to be noticed in the above regard is the judgment of House of Lords in **Pepper (Inspector of Taxes) v. Hart and related appeals, 1993(1) All ER 42**. A Seven Member Committee of House of Lords heard the case looking to the importance of the issue raised. The opinion expressed by the **Lord Browne-Wilkinson** was concurred by all except one. The two questions which arose in the case, were noticed in following words by Lord Browne Wilkinson:

*"....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 SI, art 9 of the Bill of Rights (1688) or parliamentary privilege 795."*

85. Lord Wilkinson also considered Article 9 of Bill of Rights (1688), in the context that whether such use of parliamentary materials will contravene the parliamentary privilege. The argument of 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 following was stated by the House of Lords:

*"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 art 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 art 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.

In my judgment, the plain meaning of art 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 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."

86. The House of Lords also observed that Hansard has frequently been used in cases of judicial review and following was stated in this context:

*"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 with a view to ascertaining whether a statutory power has been improperly exercised for an alien purpose or in a wholly unreasonable manner. In Brind v Secretary of State for the Home Dept [1991] 1 All ER 720, [1991] 1 AC 696 it was the Crown which invited the court to look at Hansard to show that the minister in that case had acted correctly (see [1991] 1 AC 696 at 741). This House attached importance to what the minister had said (see [1991] 1 All ER 720 at 724, 729-730, [1991] 1 AC 696 at 749, 755-756). The Attorney General accepted that references to Hansard for the purposes of judicial review litigation did not infringe art 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 account by the court; in both, the use of such words by the courts might affect what is said in Parliament."*

87. In the end **Lord Wilkinson** held that reference to parliamentary materials for purpose of construing legislation does not breach Article 9 of the Bill of Rights (1688). Following was held:

*"....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.*

*For the reasons I have given, in my judgment reference to parliamentary materials for the purpose of construing legislation does not breach S 1, art 9 of the Bill of Rights...."*

88. Again the House of Lords in **Prebble v. Television New Zealand Ltd Privy Council, (1994) 3 All ER 407** observed that there can no longer be any objection to the production of Hansard. Following was held by the Lord Wilkinson:

*"Since there can no longer be any objection to the production of*

Hansard, the Attorney General accepted (in their Lordships' view rightly) 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 8.2.10 and 8.2.14) or that the State-owned Enterprises Act 1986 was passed (particulars 8.4.1). 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 defendants intent to rely on these matters not purely as a matter of history but 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."

89. **R. v. Murphy, (1986) 5 NSWLR 18** is another judgment where Article 9 of 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 to alter the interpretation of the Bill of Rights, art 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 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."*

90. The next judgment which needs to be noted is judgment of the House of Lords in **Wilson Vs. First**

**Country Trust Ltd. (2003) UKHL 40.** The House of Lords in the above case has held that decision in **Pepper Vs. Hart (supra)** removed from the law an irrational exception. Before the decision in **Pepper Vs. Hart (supra)** 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. Following was laid down in Para 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 v Hart* case, 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 *Brind v*

Secretary of State for the Home Dept [1991] 1 All ER 720, [1991] 1 AC 696 is an example of this....."

91. The case of ***Touissant Vs. Attorney General of St. Vincent, (2007) UKPC 48*** is another judgment of the House of Lords where Article IX of Bill of Rights and Parliamentary privileges in context of use in Court of statement made by Prime Minister during Parliamentary debate came for consideration. It was held that Article IX of 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, following was stated by House of Lords:-

"Against this background, the Board turns to article 9 of the Bill of Rights and the wider common law principle identified in Prebble case. 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 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, paragraph 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 at 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."

92. 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:-

"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 v. Hart*, per Lord Browne-Wilkinson at p. 639A. 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."

93. *Office of Government of Commerce Vs. Information Commissioner, (2010) QB 98*, 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, following was stated:-

"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 [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 on Human Rights: 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 (Javed) v Secretary of State for the Home Department [2001] EWCA Civ 789, [2002] QB 129 at [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.

94. Another judgment delivered by Stanley Burnton, J. in ***Federation of Tour Operators Vs. HM Treasury, (2007) EWHC 2062 (Admin)*** 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 Art.9 of the Bill of Rights and the wider principle of Parliamentary privilege."

95. The issue as to the admissibility of the

Parliamentary material was considered in detail while referring to judgment of House of Lords in **Touissant's** (*supra*). It was held that there is no basis for distinguishing between statement of minister in the House and statement made to a Select Committee. Following was held in Para 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, 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 Secretary of State for Work and Pensions* [2007] EWHC 242 (Admin) 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.

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."

96. Learned counsel for the respondents has pleaded reliance on a judgment of *R v. Secretary of State for Trade and others, ex parte Anderson Strathclyde plc, 1983(2) All ER 233*, Dunn LJ 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 them. This, according to Dunn LJ, would be contrary to Article 9 of the Bill of Rights. Following was stated by the Court:

*"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 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 art 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 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."*

97. It is relevant to note that the above opinion of Dunn LJ was specifically disapproved by House of Lords

in **Pepper (Inspector of Taxes) V Hart (supra)**. House of Lords by referring to above opinion of Dunn LJ had held that the said case was wrongly decided. It is useful to extract following observation of House of Lords:

"In *R v Secretary of State for Trade, ex p Anderson Strathclyde plc* [1982] 2 All ER 233 an applicant for judicial review sought to adduce parliamentary materials to prove a fact. The Crown did not object to the Divisional Court looking at the materials but the court itself refused to do so on the grounds that it would constitute a breach of art 9 (at 237, 239 per Dunn LJ). In view of the Attorney General's concession and the decision of this House in *Brind's case*, in my judgment *Ex p Anderson Strathclyde plc* was wrongly decided on this point."

98. Another case learned counsel for the respondents relied on is **Office of Government Commerce v. Information Commissioner (supra)**. 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 paragraph 58 of the



judgment following was stated:

*"58. In addition, in my judgment, there is substance in 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, 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 MR said in *Hamilton v Al Fayed* [1999] 1 WLR 1569, 1586G, the courts cannot and must not pass judgment on any parliamentary proceedings."*

99. 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 paragraph 62 of the judgment following has been held:

*"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 R(Federation of Tour Operators)v HM Treasury [2008] STC 547, 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."*

100. We are of the view that the law as broadly expressed in paragraph 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 the 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. In so far 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 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.

101. 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 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.

102. This Court in number of cases has also referred to and relied Parliamentary proceedings including reports of the Standing Committee of the Parliament. Learned counsel for the petitioners have given reference to several cases in this regard namely, **Catering Cleaners of Southern Railway Vs. Union of India & Anr., (1987) 1 SCC 700** where the Court has taken into consideration report of a Standing Committee of Petitions. Another case relied on is **Gujarat Electricity Board Vs. Hind Mazdoor Sabha & Ors., (1995) 5 SCC 27**. In the case of **State of Maharashtra Vs. Milind & Ors., (2001) 1 SCC 4**, the Court has referred and relied to a Joint Parliamentary Committee Report. In the case of

***Federation of Railway Officers Association Vs. Union of India, (2003) 4 SCC 289***, the Court has referred to a report of the Standing Committee of parliament on Railways. In the case of ***Ms. Aruna Roy & Ors. Vs. Union of India & Ors., (2002) 7 SCC 368***, report of a Committee namely S.B. Chavan Committee, which was appointed by the Parliament was relied and referred. ***M.C. Mehta Vs. Union of India, 2017 SCC Online 394*** 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 Vs. State of Haryana & Ors., (2011) 10 SCC 529***; ***Modern Dental College and Research Centre Vs. State of Madhya Pradesh & Ors., (2016) 7 SCC 353***; and ***Lal Babu Priyadashi Vs. Amritpal Singh, (2015) 16 SCC 795***.

103. Learned counsel appearing for the respondents as well as 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.

104. 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 Indian Evidence Act, 1874, which regulates the admission of evidence in Court of Law, also refers to proceedings in Parliament as a public document of which 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.

105. Now we come to 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 lays down that for events which take place in Parliament, the facts which was stated before the 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 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**

106. We have already noticed English cases dealing with exclusionary rules and subsequent cases whittling down the exclusionary rules. We have noticed above that in 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.

107. In ***State of Mysore vs. R.V. Bidap, 1974 (3) SCC 337***, 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'. **Justice Krishna Iyer** opined that there is a strong case of whittling down the Rule of Exclusion followed in the British courts.

In paragraph 5 of the judgment following was held:

*"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 following in the British courts and for less apologetic reference to legislative proceedings and like materials to read the meaning of the words of a statute."

108. Another Constitution Bench in **R.S. Nayak vs. A.R. Antulay, 1984 (2) SCC 183**, considered the objection that debates in Parliament or the reports of Committee cannot be relied as per the '**exclusionary rules**'. In paragraph 32 of the judgment, Desai, J. speaking for the Constitution Bench noticed the detailed objections. In paragraph 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 construction. In paragraph 33 following was stated:

"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 construction. The modern approach has to a considerable extent eroded the exclusionary rule even in England."*

109. After considering the certain other cases and the **Bidap case (supra)** this Court held that those exclusionary rules have been given a descent burial by this Court. It is useful to extract the following from paragraph 34 of the judgment:

*"34..Further even in the land of its birth, the exclusionary rule has received a serious jolt in Black-Clawson International Ltd. v. Paperwork Waldhef Ascheffenburg AC(2) Lord Simon of Claisdale in his speech while examining the question of admissibility of Greer Report observed as under:*

*"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 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 judgment, it would be more obscurantism not to avail oneself of it. here is, indeed clear and high authority that it is available for this purpose".

....A reference to Halsbury's Laws of England, Fourth Edition, Vol. 44 paragraph 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, R. v. Bloxham, 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."*

110. 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, 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.

111. Learned counsel for the respondents have also referred to judgment of this Court in ***Jyoti Harshad Mehta (Mrs) and others vs. Custodian and others, 2009 (10) SCC 564.***

112. In the above case, the court was considering an Enquiry Committee Report, namely, Janakiraman Committee Report. In the above context following observations were made in paragraph 57 of the judgment:

"57. It is 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,"*

113. In paragraph 28(viii)), the arguments of appellants were noticed to the effect that 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 custodian which was set aside by this Court by remitting back the matter to Special Court with some directions. The Special Court thereafter relying on the said Report passed order. In this context, observations were made in paragraph 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 paragraph 58 following was stated:

*"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 enable to pass appropriate orders."*

114. The Special Court was deciding the *lis* in which party had filed the evidence. Ignoring the same reliance was placed on the report with regard to which observation was made in paragraph 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 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 above context which cannot be treated to mean that the report cannot be accepted by a court as evidence.

115. Another judgment which has been relied by the

respondents is **State Bank of India vs. National Housing Bank and others, 2013 (16) SCC 538**. In the above case, this Court made following observation in paragraph 50 of the judgment which has been relied:

*"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 Krishna Dalmia v. Justice S.R. Tendolkar and Ors. : AIR 1958 SC 538 and the statements made before such Commission are expressly made inadmissible in any subsequent proceedings civil or criminal. The leading judicial pronouncements Maharaja Madhava Singh v. Secretary of State for India in Council (1903-04) 31 IA 239 (PC), M.V. Rajwade v. Dr. S.M. Hassan MANU/NA/0131/1953 : AIR 1954 Nag 71: 55 Cri LJ 366, Ram Krishna Dalmia v. Justice S.R., AIR 1958 SC 538, State of Karnataka v. Union of India, (1977) 4 SCC 608, Sham Kant v. State of Maharashtra : (1992) Supp (2) SCC 521 on that question were succinctly analysed by this Court in : (2001) 6 SCC 181, Paras 29-34. Para 34 of the judgment inter alia reads:*

*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."*



116. 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 paragraph 51. The observation made by this Court in paragraph 50 has to be read in the context of observations made by this Court in paragraph 51 which is to the following effect:

*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 April, 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."*

117. The above judgment cannot be read to mean that Parliamentary Committee reports cannot be adverted to. This Court has referred to 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. The next case relied on by the respondents is judgment of this Court in ***Common Cause : A Registered Society vs. Union of India, 2017 (7) SCC 158.***

118. In the above judgment, this Court has referred to Parliamentary Standing Committee Report in paragraphs 14 and 16. In paragraph 21 it was held that opinion of the Parliamentary Standing Committee would not be sacrosanct. In paragraph 21 following observation was made:

*"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."*

119. 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**

120. The essential characteristic of a Federation is a distribution of limited Executive, Legislative and Judicial authority and the supremacy of Constitution. Justice B. K. Mukherjea, Chief Justice, in **Ram Jawaya**

**Kapur Vs. State of Punjab, AIR 1955 SC 549** referred to essential characteristics of Separation of Powers in the Indian Constitution. In Para 12, following has been held:-

“....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.....”

121. Separation of powers between Legislative, Executive and Judiciary has been regarded as basic feature of our Constitution in **Kesavananda Bharti Vs. State of Kerala, AIR 1973 SC 1461**. 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 refer, Constitution Bench of this Court in Special Reference No. 1 of 1964 where **Gajendragadkar, C.J.**, laid down the following:

*"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 stabilization of the democratic way of life in this country."*

122. 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 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 Constitution of India.

123. 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**

124. 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 principle enshrined in the above-mentioned articles do suggests that Court has to keep away from entertaining any

challenge to any parliamentary proceeding, including a Parliamentary Committee Report.

125. Although, heading of Article 122 reads 'Courts not to enquire into proceedings of the Parliament' but substantive provision of Constitution, as contained in sub-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 examining the validity of the proceeding if the proceedings are clearly in breach of fundamental rights or other constitutional provisions. Constitution Bench in Special Reference No. 1 of 1964 (supra), while considering the scope of Article 194 of the Constitution laid down the following:

*"Our Legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the*



*three Lists under the Seventh Schedule; but beyond the Lists, the Legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the 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 the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the Legislatures step beyond the legislative fields assigned to them, or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant 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."*

126. 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 House of Commons on the strength of Article IX of Bill of Rights, 1688. This Court in ***Special Reference No. 1 of 1964 (Supra)*** 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.

127. 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.

128. 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**

129. 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 vs. The State of Madras, 1950 SCR 594**, stated :

*"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."*

130. Again this Court in **Bennett Coleman & Co. and Ors. Vs. Union of India (UOI) and Ors. , AIR 1973 SC 106 (150)**, held: *"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.

131. In *Wason v. Walter* (supra) Cockburn CJ., stated:

"....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...."

132. It was further emphasised that deeper public interest is served in making public, the conduct of a public servant or any inquiry public, **Cockburn CJ.**, 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 the Parliament can also be made by which comments, it is the public which is the gainer.

Following weighty observations were made by **Cockburn**

**CJ.:**

"....The full liberty of public writers to comment on the conduct and motives of public men has only in very recent times been recognized. 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 informations, 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?...."

133. In reference to 'parliamentary privilege', House of Lords after due consideration of Article 9 of Bills of Right 1888 in **Pepper v. Hart (House of Lords) 1993 AC 593**, laid down : '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.' What is said in

Parliament is thus clearly subject to fair comments by all including Press.

134. A Constitution Bench of this Court in ***M.S.M. Sharma vs. Sri Krishna Sinha and others, AIR 1959 SC 395***, 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***. 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<sup>st</sup> May, 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 principle of **harmonious construction** must be adopted in considering Article 19(1)(a) and Article 194(1) and latter part of sub-clause (3) of Article 194. 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 of privilege, following observations were made in paragraph 32:

*"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."*

135. 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. In this context reference is also made to a judgment of House of Lords in ***Adam v. Ward, 1917 AC 309***, 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. Following was laid down by Lord Atkinson of House of Lords:



"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."

136. In *R v. Murphy*, 1986 (5) NSWLR 18, 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. 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."*

137. The Privilege Committee of the Lok Sabha has also recognised the right of fair comment in 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.)*

138. **Erskine May** in '**Parliamentary Practice**' (**Twenty Fourth Edition**) 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."

139. Referring to a case, **Burdett v. Abbot, (1811) 104 ER 559, 561**, this Court in **Special Reference No.1 of 1964, (1965) 1 SCR 413**, stated as follows:

"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 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 held the peaceful development, growth and stablisation of the democratic way of life in this country."

140. This Court in the **Special Reference case** 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. Following observations were made by this Court:

*"Before we part with this topic, we would like to refer to one aspect of the question relating to the exercise of power to punish for contempt. So far as the courts are concerned, Judges always keep in mind the warning addressed to them by Lord Atkin in Andre Paul v. Attorney-General of Trinidad, AIR 1936 PC 141. Said Lord Atkin, "Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful even though out-spoken comments of ordinary men." We ought never to forget that the power to punish for contempt large as it is, must always be exercised cautiously, wisely and with circumspection. Frequent or indiscriminate use of this power in anger 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."*

141. The power to punish for contempt is a privilege available to Parliament which is defined as 'keynote of Parliamentary Privileges'.

142. 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 turns into personal attack on the individual member of Parliament or House or made in vulgar or abusive language tarnishing the image of member or House, the said comments amount to contempt of the House and breach of privilege.

143. In the present case, 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 be liable to be proceeded 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 a fair comments and does not transgress the limits prescribed for fair comments. The Parliamentary Committee Reports when published, the press are 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**

144. '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 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.

145. **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..."*

146. 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. A nine-Judge Constitution Bench in ***I.R. Coelho (Dead) by LRs. v. State of Tamil Nadu, 2007 (2) SCC 1***, while dealing with the separation of powers stated following in paragraphs 64, 65 and 67:

*"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 Federalist 47, 48, and 51, James 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 the 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 recognized by this Court in *Special Reference No.1 of 1964*, (1965) 1 SCR 413.”

147. 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 judiciary under the Constitutional Scheme. This Court in ***State of Karnataka v. Union of India, 1977 (4) SCC 608***, while considering Articles 105 and 194 of the Constitution of India laid down following:

*"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."*

148. 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 right to be heard and right to produce evidence.

149. In ***Dingle v. Associated Newspapers Ltd. and Others (supra)*** in a case of damages for libel where defendants relied on Parliamentary Committee Report published, Pearson, J., laid down as follows:

*"...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."*

150. 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 doest 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 evidences and materials which is in its power and Court has to decide the issues on consideration of 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 are not taken away and they are free to prove their case in accordance with law.

151. **OUR CONCLUSIONS**

- (i) According to sub-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 is also fully covered by protection extended under sub-clause (2) of Article 105 of the Constitution of India.
- (ii) The publication of the reports not being only permitted, but also are being encouraged by the Parliament. The general public are 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.

- (iii) Section 57(4) of the Indian 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.
- (iv) Parliament has already adopted a report of "privilege committee", that for those documents which are public documents within the meaning of Indian Evidence Act, there is no requirement of any permission of Speaker of Lok Sabha for producing such documents as evidence in Court.
- (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.
- (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 the 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.

- (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, 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.

(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.

(ix) 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 turns into personal attack on the individual member of Parliament or House or made in vulgar or abusive language tarnishing the image of member or House, the said comments amount to contempt of the House and breach of privilege.

- (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 right to be heard and right to produce evidence. Parliament, however, is not vested with any adjudicatory jurisdiction which belong to judicature under the Constitutional scheme.
- (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.

152. The questions having been answered as above, let these writ petitions be listed before the appropriate Bench for hearing.

.....J.  
( ASHOK BHUSHAN )

NEW DELHI,  
MAY 09, 2018.