REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 558 OF 2012

Kalpana Mehta and others …Petitioner(s)

Versus

Union of India and others …Respondent(s)

WITH

WRIT PETITION (CIVIL) NO. 921 OF 2013

J U D G M E N T

Dipak Misra, CJI. [For himself and A.M. Khanwilkar, J.]

I N D E X

A. Introduction

In a parliamentary democracy where human rights are placed on a high pedestal and a rights-oriented Constitution is sought to be interpreted, it becomes the obligation on the part of the Constitutional Courts to strike a balance between emphatic hermeneutics on progressive perception of the provisions of the Constitution on the one hand and the self-imposed judicial restraint founded on self-discipline on the other hand, regard being had to the nature and character of the article that falls for interpretation and its constitutional vision and purpose. The Courts never allow a constitutional provision to be narrowly construed keeping in view the principle that the Constitution is a living document and organic which has the innate potentiality to take many a concept within its fold. The Courts, being alive to their constitutional sensibility, do possess a progressive outlook having a telescopic view of the growing jurisprudence. Nonetheless, occasions do arise where the constitutional consciousness is invoked to remind the Court that it should not be totally oblivious of the idea, being the final arbiter of the Constitution, to strike the requisite balance whenever there is a necessity, for the founding fathers had wisely conceived the same

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

B. <u>The factual background</u>

2. The initial debate and deliberation before the two-Judge Bench that was hearing the instant Writ Petitions had focussed around the justifiability of the action taken by the Drugs Controller General of India and the Indian Council of Medical

Research (ICMR) pertaining to the approval of a vaccine, namely, Human Papilloma Virus (HPV) manufactured by the Respondent No. 7, M/s. GlaxoSmithKline Asia Pvt. Ltd., and the Respondent No. 8, MSD Pharmaceuticals Private Limited, for preventing cervical cancer in women and the experimentation of the vaccine was done as an immunisation by the Governments of Gujarat and Andhra Pradesh (before bifurcation, the State of Andhra Pradesh, eventually the State of Andhra Pradesh and the State of Telangana) with the charity provided by the Respondent No. 6, namely, PATH International. Apart from the aforesaid issue, the grievance with regard to the untimely death of certain persons and the grant of compensation on the foundation that there had been experiment of the drugs on young girls who had not reached the age of majority without the consent of their parents/guardians was also highlighted. Be it stated, it was also projected that women, though being fully informed, had become victims of the said vaccination. In essence, the submissions were advanced pertaining to the hazards of the vaccination and obtaining of consent without making the persons aware of the possible after effects and the consequences of the administration

of such vaccine. The two-Judge Bench had passed certain orders from time to time with which we are not presently concerned.

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

B.1 <u>The Reference</u>

4. When the matter stood thus, learned senior counsel for the respondent No. 8, MSD Pharmaceuticals Pvt. Ltd., and learned Additional Solicitor General appearing for the Union of India submitted that this Court, while exercising the power of judicial review or its expansive jurisdiction under Article 32 of the Constitution of India dealing with public interest litigation, cannot advert to the report of the PSC and on that basis, exercise the power of issue of a writ in the nature of mandamus and issue

directions. The assistance of learned Attorney General was also sought keeping in view the gravity of the issue involved. After hearing the matter, the two-Judge Bench in ***Kalpana Mehta and others v. Union of India and others*** [1] thought it appropriate to refer it to a Constitution Bench under Article 145(3) of the Constitution and in that regard, the Division Bench expressed thus:-

> "72. The controversy has to be seen from the perspective of judicial review. The basic principle of judicial review is to ascertain the propriety of the decision making process on the parameters of reasonableness and propriety of the executive decisions. We are not discussing about the parameters pertaining to the challenge of amendments to the Constitution or the constitutionality of a statute. When a writ of mandamus is sought on the foundation of a factual score, the Court is required to address the facts asserted and the averments made and what has been stated in oppugnation. Once the Court is asked to look at the report, the same can be challenged by the other side, for it cannot be accepted without affording an opportunity of being heard to the Respondents. The invitation to contest a Parliamentary Standing Committee report is likely to disturb the delicate balance that the Constitution provides between the constitutional institutions. If the Court allows contest and adjudicates on the report, it may run counter to the spirit of privilege of Parliament which the Constitution protects.
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> 73. As advised at present, we are prima facie of the view that the Parliamentary Standing Committee

[1] (2017) 7 SCC 307

> report may not be tendered as a document to augment the stance on the factual score that a particular activity is unacceptable or erroneous. However, regard being had to the substantial question of law relating to interpretation of the Constitution involved, we think it appropriate that the issue be referred to the Constitution Bench under Article 145(3) of the Constitution."

5. Thereafter, the two-Judge Bench framed the following questions for the purpose of reference to the Constitution Bench:-

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

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

C. Contentions of the petitioners

6. At the very outset, it is essential to state that the argument has been advanced by the learned counsel appearing for the petitioners that the *lis* raised neither relates to parliamentary privileges as set out in Article 105 of the Constitution nor does it pertain to the concept of separation of powers nor does it require

any adjudication relating to the issue of mandamus for the enforcement of the recommendations of the PSC report. What is suggested is that the Court should not decide the controversy as per the facts stated in the report of the PSC treating it to be conclusive; rather the Court should take judicial notice of the same as provided under Section 57(4) of the Evidence Act. It is also urged that the Court has the jurisdiction under Article 32 of the Constitution to conduct an independent inquiry being assisted by the Court Commissioners and also give direction for production of the documents from the executive. It is put forth in simplest terms that the petitioners are entitled to bring the facts stated in the report to the notice of the Court and persuade the Court to analyse the said facts and express an opinion at variance with the report, for the proceedings in the Court are independent of the PSC report which only has persuasive value. Emphasising the concept of "judicial notice", it is propounded that the scope of judicial review does not rest on a narrow spectrum and the Court under the Constitution is within its rights to draw factual and legal conclusions on the basis of wide spectrum of inputs and materials including what has been stated in the PSC report.

7. The aforesaid submission, as is noticeable, intends to convey that no constitutional debate should be raised with regard to reliance on the report of PSC and the Court should decide without reference to the concepts of parliamentary privilege, separation of powers and comity of institutions. The argument, in entirety, put forth by the petitioners is not founded on the said bedrock inasmuch as Mr. Colin Gonsalves and Mr. Anand Grover, learned senior counsel appearing for the petitioners, have argued that the Constitutional Court in exercise of the power of judicial review can take note of at the report of the PSC and also rely upon the said report within the constitutional parameters and the proposition does not invite any constitutional discordance. It is further contended that the concept of parliamentary privilege is enshrined under Article 105 of the Constitution which guarantees freedom of speech within the House during the course of the proceedings of the House and the said freedom has been conferred to ensure that the members of Parliament express themselves freely in Parliament without fear of any impediment of inviting any civil or criminal proceedings. The initial part of clause (2) of Article 105 confers, *inter alia*, immunity to the members of Parliament from civil and criminal

proceedings before any court in respect of 'anything said' or 'any vote given' by members of Parliament in the Parliament or any Committee thereof.

8. It is argued that this being the position, the factual score of the instant case does not invite the wrath of violation of parliamentary privilege which Article 105 seeks to protect. It is because the limited issue that emerges in the present case is to see the Parliamentary Standing Committee reports. Thus, looking at the report for arriving at the truth by the Court in its expansive jurisdiction under Article 32 of the Constitution remotely touches the concept of privilege under Article 105 of the Constitution. It is further canvassed that the facts that have been arrived at by the Parliamentary Committee are of immense assistance for the adjudication of the controversy in question and in such a situation, it is crystal clear that the purpose of the petitioners is not to file a civil or criminal case against any member of the Parliament or any member of the Standing Committee. Therefore, the violation of parliamentary privilege does not arise.

9. Learned counsel for the petitioners would contend that this Court is neither called upon to comment expressly or otherwise

on the report nor a writ of mandamus has been sought for enforcement of the recommendations in the report. It is brought on record so that the Court can look at the facts stated therein and arrive at a just conclusion in support of other facts.

D. <u>Contentions of the respondents</u>

10. Both the facets of the arguments advanced by the learned counsel appearing for the petitioners have been seriously opposed by Mr. K.K. Venugopal, learned Attorney General for India, Mr. Harish N. Salve, Mr. Gourab Banerji and Mr. Shyam Divan, learned senior counsel appearing for the contesting respondents. Their basic propositions are grounded, first on constitutional provisions which prescribe the privilege of the Parliament and how the report of a PSC is not amenable to contest and the limited reliance that has been placed by this Court on the report of PSC or the speech of a Minister on the floor of the legislature only to understand the provisions of a statute in certain context and second, the limited interpretation that is required to be placed on the words "judicial notice" as used in Section 57(4) of the Evidence Act regard being had to the context. It is urged by them that allowing contest and criticism of

the report would definitely create a stir in the constitutional balance.

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

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

E. Supremacy of the Constitution

13. The Constitution of India is the supreme fundamental law and all laws have to be in consonance or in accord with the Constitution. The constitutional provisions postulate the conditions for the functioning of the legislature and the executive and prescribe that the Supreme Court is the final interpreter of the Constitution. All statutory laws are required to conform to the fundamental law, that is, the Constitution. The functionaries of the three wings, namely, the legislature, the executive and the judiciary, as has been stated in ***His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and another***[2], derive their authority and jurisdiction from the Constitution. The Parliament has the exclusive authority to make laws and that is how the supremacy of the Parliament in the field of legislation is understood. There is a distinction between parliamentary supremacy in the field of legislation and constitutional supremacy. The Constitution is the fundamental document that provides for constitutionalism, constitutional governance and also sets out morality, norms and values which are inhered in various articles and sometimes are decipherable from the

[2] AIR 1973 SC 1461 : (1973) 4 SCC 225

constitutional silence. Its inherent dynamism makes it organic and, therefore, the concept of "constitutional sovereignty" is sacrosanct. It is extremely sacred and, as stated earlier, the authorities get their powers from the Constitution. It is "the source". Sometimes, the constitutional sovereignty is described as the supremacy of the Constitution.

14. In ***State of Rajasthan and others v. Union of India and others*** [3] , Bhagwati, J. (as his Lordship then was), in his concurring opinion, stated that the Constitution is *suprema lex*, the paramount law of the land and there is no department or branch of government above or beyond it. The learned Judge, proceeding further, observed that every organ of the government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. Observing about the power of this Court, he ruled that this Court is the ultimate interpreter of the Constitution and to this Court is assigned the delicate task of determining what is the power conferred on each branch of the Government, whether it is limited, and if so, what are the limits and whether any action of that branch transgresses such limits.

[3] (1977) 3 SCC 592

He further observed that it is for this Court to uphold the constitutional values and to enforce the constitutional limitations, for it is the essence of the rule of law. Elaborating the said concept, Sabharwal, C.J. in ***I.R. Coelho (Dead) by LRs. v. State of T.N.***[4], speaking for the nine-Judge Bench, held that the supremacy of the Constitution embodies that constitutional bodies are required to comply with the provisions of the Constitution. It also mandates a mechanism for testing the validity of legislative acts through an independent organ, viz., the judiciary.

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

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[4] (2007) 2 SCC 1

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

F. <u>Constitutional limitations upon the legislature</u>

17. The law making power of the Parliament or State legislature is bound by the concept of constitutional limitation. It is necessary to appreciate what precisely is meant by constitutional limitation. In ***State of West Bengal v. Anwar Ali Sarkar***[5], this Court, in the context of freedom of speech and expression conferred by Article 19(1)(a) of the Constitution, applied the principle of constitutional limitation and opined that where a law purports to authorise the imposition of restrictions on a fundamental right in a language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the

[5] 1952 SCR 284 : AIR 1952 SC 75

Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. The emphasis was laid on constitutional limitation. In ***K.C. Gajapati Narayan Deo v. State of Orissa***[6], the Court adverted to the real purpose of legislation and colourable legislation and, in that context, expressed that when a scrutiny is made, it may appear that the real purpose of a legislation is different from what appears on the face of it. It would be a colourable legislation only if it is shown that the real object is different as a consequence of which it lies within the exclusive field of another legislature.

18. Dwelling upon the legal effect of a constitutional limitation of legislative power with respect to a law made in derogation of that limitation, the Court in ***Deep Chand v. State of Uttar Pradesh and others***[7] reproduced a passage from Cooley's book on "Constitutional Limitation" (Eighth Edition, Volume I) which is to the following effect:-

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

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[6] 1954 SCR 1 : AIR 1953 SC 375
[7] 1959 Supp. (2) SCR 8 : AIR 1959 SC 648

> within the constitutional limits and observed the constitutional conditions."

Thereafter, the Constitution Bench referred to the observations of the Judicial Committee in ***Queen v. Burah***[8] wherein it was observed that whenever a question as to whether the legislature has exceeded its prescribed limits arises, the courts of justice determine the said question by looking into the terms of the instrument which created the legislative powers affirmatively and which restricted the said powers negatively. The Constitution Bench also referred to the observations of the Judicial Committee in ***Attorney-General for Ontario* v. *Attorney-General for Canada***[9] which were later on lucidly explained by Mukherjea, J., (as he then was) in ***K.C. Gajapati Narayan Deo*** (supra) to the effect that if the Constitution distributes the legislative powers amongst different bodies which have to act within their respective spheres marked out by specific legislative entries or if there are limitations on the legislature in the form of fundamental rights, the question will arise as to whether, in a particular case, the legislature has transgressed the

[8] (1878) LR 5 I.A. 178
[9] (1912) AC 571

limits of its constitutional power in respect of the subject matter of the statute or in the method of making it.

19. Recently, in ***Binoy Viswam v. Union of India and others***[10] this Court, while dealing with the exercise of sovereign power of the Centre and the States in the context of levy of taxes, duties and fees, observed that the said exercise of power is subject to constitutional limitation. It is imperative to remember that our Constitution has, with the avowed purpose, laid down the powers exercised by the three wings of the State and in exercise of the said power, the authorities are constitutionally required to act within their spheres having mutual institutional respect to realize the constitutional goal and to see that there is no constitutional transgression. The grammar of constitutional limitation has to be perceived as the constitutional fulcrum where control operates among the several power holders, that is, legislature, executive and judiciary. It is because the Constitution has created the three organs of the State.

20. Under the Constitution, the Parliament and the State legislatures have been entrusted with the power of law making. Needless to say, if there is a transgression of the constitutional

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[10] (2017) 7 SCC 59

limitation, the law made by the legislature has to be declared *ultra vires* by the Constitutional Courts. That power has been conferred on the Courts under the Constitution and that is why, we have used the terminology "constitutional sovereignty". It is an accepted principle that the rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State, whether it be the legislature or the executive or any other authority, should be within the constitutional limitations.

G. Doctrine of separation of powers

21. Having stated about constitutional sovereignty and constitutional limitation, we may presently address the issue as to how the Constitution of India has been understood in the context of division of functions of the State. In ***Smt. Indira Nehru Gandhi v. Shri Raj Narain and another***[11], Beg, J., in his concurring opinion, quoted what M.C. Setalvad, a distinguished jurist of India, had said in "The Common Law in India" (The Hamlyn Lectures), 12th Series, 1960. We think it appropriate to reproduce the paragraph in entirety:-

> "The Constitution divides the functions of the Union into the three categories of executive, legislative and

[11] 1975 Supp. SCC 1

judicial functions following the pattern of the British North America Act and the Commonwealth of Australia Act. Though this division of functions is not based on the doctrine of separation of powers as in the United States yet there is a broad division of functions between the appropriate authorities so that, for example, the legislature will not be entitled to arrogate to itself the judicial function of adjudication. '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.' (See: *Rai Saheb Ram Jawaya Kapur* v. *State of Punjab*[12]*)*. This will no doubt strike one accustomed to the established supremacy of Parliament in England as unusual. In the course of its historical development Parliament has performed and in a way still performs judicial functions. Indeed the expression 'Court of Parliament' is not unfamiliar to English lawyers. However, a differentiation of the functions of different departments is an invariable feature of all written Constitutions. The very purpose of a written Constitution is the demarcation of the powers of different departments of Government so that the exercise of their powers may be limited to their particular fields. In countries governed by a written Constitution, as India is, the supreme authority is not Parliament but the Constitution. Contrasting it with the supremacy of Parliament, Dicey has characterised it as the supremacy of the Constitution."

[Emphasis added]

[12] AIR 1955 SC 549 : (1955) 2 SCR 225

22. The doctrine of separation of powers has become concrete in the Indian context when the Court in ***Kesavananda Bharati's*** case treated the same as a basic feature of the Constitution of India. In ***State of Himachal Pradesh v. A Parent of a Student of Medical College, Simla and others***[13], this Court ruled that it is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the Court certainly cannot mandate the executive or any member of the legislature to initiate legislation, howsoever necessary or desirable the Court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution. The Court further observed that it cannot usurp the functions assigned to the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature. In ***State of Tamil Nadu v. State of Kerala and another*** [14] , this Court, laying down the principle of

[13] (1985) 3 SCC 169
[14] (2014) 12 SCC 696

separation of powers, stated that even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India. The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of the rule of law.

23. In ***Bhim Singh v. Union of India and others***[15], the Court, for understanding the concept of separation of powers, observed that two aspects must be borne in mind. One, that separation of powers is an essential feature of the Constitution and secondly, that in modern governance, a strict separation is neither possible nor desirable. Nevertheless, till this principle of accountability is preserved, there is no violation of separation of powers and the same is founded on keen scrutiny of the constitutional text. The Constitution does not strictly prohibit overlap of functions and, in fact, provides for some overlap in a parliamentary democracy. What it prohibits is such exercise of function of the other branch which results in wresting away of the regime of constitutional accountability.

24. In ***Mansukhlal Vithaldas Chauhan v. State of Gujarat***[16], ***Federation of Railway Officers Association and others v.***

[15] (2010) 5 SCC 538
[16] AIR 1997 SC 3400 : (1997) 7 SCC 622

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

25. In ***Asif Hameed and others v. State of Jammu and Kashmir and others***[20], the Court observed that the Constitution makers have meticulously defined the functions of various organs of the State. The Legislature, Executive and Judiciary have to function within their own spheres demarcated under the Constitution. It further ruled that the Constitution trusts the

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[17] (2003) 4 SCC 289 : AIR 2003 SC 1344
[18] AIR 2004 SC 4264
[19] (2008) 1 SCC 683
[20] AIR 1989 SC 1899

judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. The Legislature and the Executive, the two facets of people's will, have all the powers including that of finance. The judiciary has no power over the sword or the purse. Nonetheless, it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and the executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. The exercise of powers by the legislature and executive is subject to judicial restraint and the only check on the exercise of power by the judiciary is the self imposed discipline of judicial restraint.

26. In ***I.R. Coelho*** (supra), adverting to the issue of separation of powers, the nine-Judge Bench referred to the basic structure doctrine laid down in ***Kesavananda Bharati*** (supra) by the majority and the reiteration thereof in ***Indira Nehru Gandhi***

(supra) and reproduced a passage from Alexander Hamilton's book "The Federalist" and eventually held:-

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

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

H. Power of judicial review

28. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinize the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in ***Union of India and another v. Raghubir Singh (Dead) by LRs. etc.***[21] by R.S. Pathak, C.J. thus:-

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

And again:-

> "Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as 'fairness' or

[21] (1989) 2 SCC 754

> 'reasonableness', but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

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

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

30. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial

review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

31. In ***S.C. Chandra and others v. State of Jharkhand and others***[22], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in ***Suresh Seth v. Commr., Indore Municipal Corpn. and others***[23] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of

[22] (2007) 8 SCC 279
[23] (2005) 13 SCC 287

enactment. In this context, the Court held that under our constitutional scheme, the Parliament and legislative assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in ***Supreme Court Employees' Welfare Association v. Union of India and another***[24] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

32. Recently, in ***Census Commissioner and others v. R. Krishnamurthy*** [25] , the Court, after referring to ***Premium Granites and another v. State of T.N. and others***[26], ***M.P. Oil Extraction and another v. State of M.P. and others***[27], ***State of Madhya Pradesh v. Narmada Bachao Andolan and***

[24] (1989) 4 SCC 187
[25] (2015) 2 SCC 796
[26] (1994) 2 SCC 691
[27] (1997) 7 SCC 592

another[28] and ***State of Punjab and others v. Ram Lubhaya Bagga and others***[29], held:-

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

33. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders, i.e., to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The Constitutional Courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the Constitutional Courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the Constitutional

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[28] (2011) 7 SCC 639
[29] (1998) 4 SCC 117

Courts with wide powers which the Courts should exercise, without an *iota* of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in ***Virendra Singh and others v. The State of Uttar Pradesh***[30] has observed:-

> "32. We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration."

34. While interpreting fundamental rights, the Constitutional Courts should remember that whenever an occasion arises, the Courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting fundamental rights, the Constitutional Courts should altogether depart from the doctrine of precedents but it is the obligation of the Constitutional Courts to act as *sentinel on the qui vive* to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this

[30] AIR 1954 SC 447

Court, in this context, has been aptly described in the case of ***K.S. Srinivasan v. Union of India***[31] wherein it was stated:-

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

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

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

36. Having stated about the supremacy of the Constitution and the principles of constitutional limitation, separation of powers and the spheres of judicial review, it is necessary to dwell upon the concept of constitutional interpretation. In ***S.R. Bommai and others v. Union of India and others***[32], it has been said that for maintaining democratic process and to avoid political friction, it

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[31] AIR 1958 SC 419
[32] (1994) 3 SCC 1

is necessary to direct the political parties within the purview of the constitutional umbrella to strongly adhere to constitutional values. There is no denial of the fact that the judiciary takes note of the obtaining empirical facts and the aspirations of the generation that are telescoped into the future. If constitutional provisions have to be perceived from the prism of growth and development in the context of time so as to actualize the social and political will of the people that was put to in words, they have to be understood in their life and spirit with the further potentiality to change.

37. A five-Judge Bench in ***GVK Industries Limited and another v. Income Tax Officer and another***[33] has lucidly expressed that our Constitution charges the various organs of the State with affirmative responsibilities of protecting the welfare and the security of the nation. Legislative powers are granted to enable the accomplishment of the goals of the nation. The powers of judicial review are granted in order to ensure that legislative and executive powers are used within the bounds specified by the Constitution. The powers referred by the Constitution and implied and borne by the constitutional text have to be perforce

[33] (2011) 4 SCC 36

admitted. Nevertheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified by the Constitution. Speaking on the duty of the judiciary, the Court has opined that judicial restraint is necessary in dealing with the powers of another coordinate branch of the Government; but restraint cannot imply abdication of the responsibility of walking on that edge. Stressing on the facet of interpreting any law, including the Constitution, the Court observed that the text of the provision under consideration would be the primary source for discerning the meanings that inhere in the enactment. It has also been laid down that in the light of the serious issues, it would always be prudent, as a matter of constitutional necessity, to widen the search for the true meaning, purport and ambit of the provision under consideration. No provision, and indeed no word or expression, of the Constitution exists in isolation—they are necessarily related to, transforming and, in turn, being transformed by other provisions, words and phrases in the Constitution. Therefore, the Court went on to say:-

> "38. Our Constitution is both long and also an intricate matrix of meanings, purposes and structures. It is only by locating a particular constitutional provision under consideration within

that constitutional matrix could one hope to be able to discern its true meaning, purport and ambit. As Prof. Laurence Tribe points out:

> "[T]o understand the Constitution as a legal text, it is essential to recognize the … sort of text it is: a *constitutive* text that purports, in the name of the people…, to bring into being a number of distinct but inter-related institutions and practices, at once legal and political, and to define the rules governing those institutions and practices." (See *Reflections on Free-Form Method in Constitutional Interpretation*.[34])"

38. The Constitution being an organic document, its ongoing interpretation is permissible. The supremacy of the Constitution is essential to bring social changes in the national polity evolved with the passage of time. The interpretation of the Constitution is a difficult task. While doing so, the Constitutional Courts are not only required to take into consideration their own experience over time, the international treaties and covenants but also keep the doctrine of flexibility in mind. It has been so stated in ***Union of India v. Naveen Jindal and another***[35]. In ***S.R. Bommai*** (supra) the Court ruled that correct interpretation in proper perspective would be in the defence of democracy and in order to maintain the democratic process on an even keel even in the face of possible friction, it is but the duty of the Court to interpret the

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[34] 108 Harv L Rev 1221, 1235 (1995)
[35] (2004) 2 SCC 510

Constitution to bring the political parties within the purview of the constitutional parameters for accountability and to abide by the Constitution and the laws for their strict adherence. With the passage of time, the interpretative process has become expansive. It has been built brick by brick to broaden the sphere of rights and to assert the constitutional supremacy to meet the legitimate expectations of the citizens. The words of the Constitution have been injected life to express connotative meaning.

39. Recently, in ***K.S. Puttaswamy and another v. Union of India and others***[36], one of us (Dr. D.Y. Chandrachud, J.) has opined that constitutional developments have taken place as the words of the Constitution have been interpreted to deal with new exigencies requiring an expansive reading of liberties and freedoms to preserve human rights under the Rule of Law. It has been further observed that the interpretation of the Constitution cannot be frozen by its original understanding, for the Constitution has evolved and must continuously evolve to meet the aspirations and challenges of the present and the future. The duty of the Constitutional Courts to interpret the Constitution opened the path for succeeding generations to meet the

[36] (2017) 10 SCC 1

challenges. Be it stated, the Court was dealing with privacy as a matter of fundamental right.

40. In ***Supreme Court Advocates-on-Record Association and others v. Union of India***[37], the Court exposited that the Constitution has not only to be read in the light of contemporary circumstances and values but also in such a way that the circumstances and values of the present generation are given expression in its provisions. The Court has observed that constitutional interpretation is as much a process of creation as one of discovery. Thus viewed, the process of interpretation ought to meet the values and aspirations of the present generation and it has two facets, namely, process of creation and discovery. It has to be remembered that while interpreting a constitutional provision, one has to be guided by the letter, spirit and purpose of the language employed therein and also the constitutional silences or abeyances that are discoverable. The scope and discovery has a connection with the theory of constitutional implication. Additionally, the interpretative process of a provision of a Constitution is also required to accentuate the purpose and

[37] (1993) 4 SCC 441

convey the message of the Constitution which is intrinsic to the Constitution.

I.1 Interpretation of fundamental rights

41. While adverting to the concept of the duty of the Court, we shall focus on the interpretative process adopted by this Court in respect of fundamental rights. In the initial years, after the Constitution came into force, the Court viewed each fundamental right as separate and distinct. That apart, the rule of restrictive interpretation was applied. The contours were narrow and limited. It is noticeable from the decision in ***A.K. Gopalan v. State of Madras***[38]. The perception changed when the Court focussed on the actual impairment caused by the law rather than the literal validity of the law as has been observed in ***I.R. Coelho*** (supra). ***I.R. Coelho*** referred to ***Rustom Cavasjee Cooper v. Union of India***[39] and understood that the view rendered therein disapproved the view point in ***A.K. Gopalan*** and reflected upon the concept of impact doctrine in ***Sakal Papers (P) Ltd. v. Union of India***[40]. The Court, after referring to ***Sambhu Nath Sarkar v. State of West Bengal and others***[41], ***Haradhan Saha v. The***

[38] AIR 1950 SC 27 : 1950 SCR 88
[39] (1970) 1 SCC 248
[40] (1962) 3 SCR 842 : AIR 1962 SC 305
[41] (1974) 1 SCR 1 : (1973) 1 SCC 856

State of West Bengal and others[42] and ***Khudiram Das v. State of West Bengal and others***[43], reproduced a passage from ***Maneka Gandhi v. Union of India and another***[44] which reads thus:-

> "The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article."

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

43. In ***I.R. Coelho*** (supra), the Court clearly spelt out that post-***Maneka Gandhi***, it is clear that the development of fundamental rights had been such that it no longer involves the interpretation of rights as isolated protections which directly arise but they collectively form a comprehensive test against the arbitrary exercise of powers in any area that occurs as an inevitable consequence. The Court observed that the protection of

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[42] (1975) 3 SCC 198 : (1975) 1 SCR 778
[43] (1975) 2 SCR 832 : (1975) 2 SCC 81
[44] (1978) 1 SCC 248

fundamental rights has been considerably widened. In that context, reference had been made to ***M. Nagaraj and others v. Union of India and others***[45] wherein it has been held that a fundamental right becomes fundamental because it has foundational value. That apart, one has also to see the structure of the article in which the fundamental value is incorporated. Fundamental right is a limitation on the power of the State. A Constitution and, in particular, that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. The Court must interpret the Constitution in a manner which would enable the citizens to enjoy the rights guaranteed by it in the fullest measure.

I.2 <u>Interpretation of other constitutional provisions</u>

44. In this regard, we may note how the Constitution Benches have applied the principles of interpretation in relation to other constitutional provisions which are fundamental to constitutional governance and democracy. In ***B.R. Kapur v. State of T.N. and another***[46], while deciding a writ of quo warranto, the majority ruled that if a non-legislator could be sworn in as the Chief

[45] (2006) 8 SCC 212
[46] (2001) 7 SCC 231

Minister under Article 164 of the Constitution, then he must satisfy the qualification of membership of a legislator as postulated under Article 173. ***I.R. Coelho*** (supra), while deciding the doctrine of implied limitation and referring to various opinions stated in ***Kesavananda Bharati*** (supra) and ***Minerva Mills Ltd. and others v. Union of India and others***[47], ruled that the principle of implied limitation is attracted to the sphere of constitutional interpretation.

45. In ***Manoj Narula v. Union of India***[48], the Court, while interpreting Article 75(1) of the Constitution, opined that reading of implied limitation to the said provision would tantamount to prohibition or adding a disqualification which is neither expressly stated nor impliedly discernible from the provision. Eventually, the majority expressed that when there is no disqualification for a person against whom charges have been framed in respect of heinous or serious offences or offences relating to corruption to contest the election, it is difficult to read the prohibition into Article 75(1) by interpretative process or, for that matter, into Article 164(1) to the powers of the Prime Minister or the Chief Minister in such a manner. That would come within the criterion

[47] (1980) 3 SCC 625
[48] (2014) 9 SCC 1

of eligibility and would amount to prescribing an eligibility qualification and adding a disqualification which has not been stipulated in the Constitution. In the absence of any constitutional prohibition or statutory embargo, such disqualification cannot be read into Article 75(1) or Article 164(1) of the Constitution.

46. Another aspect that was highlighted in ***Manoj Narula*** (supra) pertained to constitutional implication and it was observed that the said principle of implication is fundamentally founded on rational inference of an idea from the words used in the text. The concept of legitimate deduction is always recognised. In ***Melbourne Corporation v. Commonwealth***[49] , Dixon, J. opined that constitutional implication should be based on considerations which are compelling. Mason, C.J., in ***Australian Capital Television Pty. Limited and others and the State of New South Wales v. The Commonwealth of Australia and another***[50] ***[Political Advertising case]***, has ruled that there can be structural implications which are "logically or practically necessary for the preservation of the integrity of that structure". Any proposition that is arrived at

[49] [1947] 74 CLR 31 (Aust)
[50] [1992] 177 CLR 106 (Aust)

taking this route of interpretation must find some resting pillar or strength on the basis of certain words in the text or the scheme of the text. In the absence of the same, it may not be permissible for a Court to deduce any proposition as that would defeat the legitimacy of reasoning. A proposition can be established by reading a number of articles cohesively, for that will be in the domain of substantive legitimacy. Elaborating further, the Court proceeded to state that the said process has its own limitation for the Court cannot rewrite a constitutional provision. To justify the adoption of the said method of interpretation, there has to be a constitutional foundation.

47. In ***Kuldip Nayar and others v. Union of India and others***[51], a Constitution Bench, while interpreting Article 80 of the Constitution of India, relied upon a passage from ***G. Narayanaswami v. G. Pannerselvam and others***[52]. The said authority clearly lays down that Courts should interpret in a broad and generous spirit the document which contains the fundamental law of the land. The Court observed that it may be desirable to give a broad and generous construction to the constitutional provisions, but while doing so, the rule of "plain

[51] (2006) 7 SCC 1
[52] (1972) 3 SCC 717

meaning" or "literal" interpretation, which remains "the primary rule", has also to be kept in mind. In the context of Article 80(4) of the Constitution in the context of "the representatives of each State", the Court repelled the argument that it is inherent in the expression "representative" that he/she must first necessarily be an elector in the State. It ruled that the "representative" of the State is the person chosen by the electors who can be any person who, in the opinion of the electors, is fit to represent them.

48. The Court, in ***Union of India v. Sankalchand Himatlal Sheth and another***[53], ruled that it is to be remembered that when the Court interprets a constitutional provision, it breathes life into the inert words used in the founding document. The problem before the Constitutional Court is not a mere verbal problem. "Literalness", observed Frankfurter, J., "may strangle meaning" and he went on to add in ***Massachusetts Bonding & Insurance Co. v. United States***[54] that "there is no surer way to misread a document than to read it literally." The Court cannot interpret a provision of the Constitution by making "a fortress out of the dictionary". The significance of a constitutional problem is vital, not formal: it has to be gathered not simply by taking the

[53] (1977) 4 SCC 193
[54] 352 U.S. 128 (1956)

words and a dictionary, but by considering the purpose and intendment of the framers as gathered from the context and the setting in which the words occur. The difficulty of gathering the true intent of the law giver from the words used in the statute was expressed by Holmes, J. in a striking and epigrammatic fashion when he said: "Ideas are not often hard but the words are the devil[55]" and this difficulty is all the greater when the words to be construed occur in a constitutional provision, for, as pointed out by Cardozo, J., "the process of constitutional interpretation is in the ultimate analysis one of reading values into its clauses."

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

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

[55] R.E. Megarry, 'A Second Miscellany-at-Law' (Stevens, London, 1973), p.152

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

J. <u>A perspective on the role of Parliamentary Committees</u>

51. It is necessary to understand the role of the parliamentary standing Committees or *ad hoc* committees. They are constituted with certain purposes. The formation of committee has history. "Committees have been described as a primary organizational device whereby legislatures can accommodate an increase in the number of bills being introduced, while continuing to scrutinize legislation; handle the greater complexity and technical nature of bills under review without an exponential growth in size; develop

"division of labours" among members for considering legislation...."[56].

52. Woodrow Wilson, the 28th President of the United States, was quoted as saying in 1885 that "it is not far from the truth to say that Congress in session is Congress on public exhibition, whilst Congress in its Committee rooms is Congress at work[57]". This is because most of the work of Congress was referred to committees for detailed review to inform debate on the floor of the House.

53. Former U.S. Representative James Shannon commented during a 1995 conference on the role of committees in Malawi's legislature:-

> "Around the world there is a trend to move toward more reliance on committees to conduct the work of parliament, and the greatest reason for this trend is a concern for efficiency. The demands on a modern parliament are numerous and it is not possible for the whole house to consider all the details necessary for performing the proper function of a legislature.[58]"

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

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

[58] National Democratic Institute for International Affairs, Parliament's Orgainzation: The Role of Committees and Party Whips – NDI Workshop in Mangochi, Malawi, June 1995 (Washington : National Democratic Institute for International Affairs, 1995)

54. Lord Campion in his book[59] has explained the dual sense in which the word "Committee" was used in old parliamentary language:-

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

55. The utility of a Committee has been succinctly expressed by Lord Beaconsfield[60]:-

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

56. The importance of Committees in today's democracy has further been detailed thus[61]:-

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[59] "An Introduction to the Procedure of House of Commons"
[60] Lord Beaconsfield in Hansard, 3rd Series, Vol.235 (1877) p. 1478

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

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[61] "Growth of Committee System in the Central Legislature of India 1920-1947"

> fields of interest of the government increase day by day."

57. Also, in the said book, the following observations have been made with respect to the functions of Committees:-

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

58. Today parliamentary committee systems have emerged as a creative way of parliaments to perform their basic functions. They serve as the focal point for legislation and oversight. In a number of parliaments, bills, resolutions and matters on specific issues are referred to specific committees for debate and recommendations are made to the House for further debate. Parliamentary committees have emerged as vibrant and central

institutions of democratic parliaments of today's world. Parliaments across the globe set up their own rules on how committees are established, the composition, the mandate and how chairpersons are to be selected but they do have certain characteristics in common. They are usually a small group of MPs brought together to critically review issues related to a particular subject matter or to review a specific bill. They are often expected to present their observations and recommendations to the Chamber for final debate.

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

legislative body to consider a wide range of topics in-depth and to identify politically and technically feasible alternatives.

K. International position of Parliamentary Committees

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

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

K.1 Parliamentary Committees in England

62. British parliamentary history validates that parliamentary committees have existed in some form or the other since the 14th century. Perhaps the committee system originated with the 'triers and examiners of petitions' – they were individual members selected for drawing up legislations to carry into effect citizens' prayers that were expressed through petitions. By the middle of the 16th century, a stable committee system came into existence. These Parliamentary committees are sub-

legislative organizations each consisting of small number of Members of Parliament from the House of Commons, or peers from the House of Lords, or a mix of both appointed to deal with particular areas or issues; most are made up of members of the Commons. [62] The majority of parliamentary committees are Select Committees which are designed to:-

1. Superintend the work of departments and agencies;
2. Examine topical issues affecting the country or individual regions; and
3. Review and advise on the procedures, workings and rules of the House.

63. The other committees such as "Departmental Select Committees" are designed to oversee and examine the work of individual government departments, "Topical Select Committee" examines contemporary issues of significance and "Internal Select Committees" have responsibility with respect to the day-to-day running of Parliament.[63] It helps the Parliament to have a very powerful network of committees to ensure executive accountability.

K.2 <u>Parliamentary Committees in United States of America</u>

64. Parliamentary Committees are essential to the effective operation of the Parliament in United States. Due to the high

[62] See http://www.parliament.uk/business/committees/
[63] *Id.*

volume and complexity of its work, the Senate divides its tasks among 20 permanent committees, 4 joint committees and occasionally temporary committees. Although the Senate committee system is similar to that of the House of Representatives, it has its own guidelines within which each committee adopts its own rules. This creates considerable variation among the panels. The chair of each committee and a majority of its members represent the majority party. The chair primarily controls a committee's business. Each party assigns its own members to committees, and each committee distributes its members among its sub-committees.[64] The Senate places limits on the number and types of panels any one senator may serve on and chair. Committees receive varying levels of operating funds and employ varying numbers of aides. Each hires its own staff. The majority party controls most committee staff and resources, but a portion is shared with the minority.

65. The role and responsibilities of Parliamentary committees in the United States of America are as follows:-

(i) As *"little legislatures,"* committees monitor on-going governmental operations, identify issues suitable for legislative

[64] See https://www.britannica.com/topic/Congress-of-the-United-States for details.

review, gather and evaluate information and recommend courses of action to their parent body.

(ii) The Committee membership enables members to develop specialized knowledge of the matters under their jurisdiction.

(iii) Standing committees generally have legislative jurisdiction. Sub-committees handle specific areas of the committee's work. Select and joint committees generally handle oversight or housekeeping responsibilities.[65]

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

66. When a committee or sub-committee favours a measure, it usually takes four actions: first it asks relevant executive agencies for written comments on the measure; second, it holds hearings to gather information and views from non-committee experts and at committee hearings, these witnesses summarize submitted statements and then respond to questions from the

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

senators; third, a committee meets to perfect the measure through amendments, and non-committee members sometimes attempt to influence the language; and fourth, when the language is agreed upon, the committee sends the measure back to the full Senate, usually along with a written report describing its purposes and provisions. A committee's influence extends to its enactment of bills into law. A committee that considers a measure will manage the full Senate's deliberation on it. Also, its members will be appointed to any conference committee created to reconcile its version of a bill with the version passed by the House of Representatives.

K.3 Parliamentary Committees in Canada

67. The Parliament in Canada also functions through various standing committees established by Standing Orders of the House of Commons or the Senate. It studies matters referred to it by special order or, within its area of responsibility in the Standing Orders, may undertake studies on its own initiative. There are presently 23 standing committees (including two standing joint committees) in the House and 20 in the Canadian

Senate.[66] They, in general, examine the administration, policy developments and budgetary estimates of government departments and agencies. Certain standing committees are also given mandates to examine matters that have implications such as official languages policy and multiculturalism policy.

K.4 Parliamentary Committees in Australia

68. The primary object of parliamentary committees in Australia is to perform functions which the Houses themselves are not well fitted to perform, i.e., finding out the facts of a case, examining witnesses, sifting evidence, and drawing up reasoned conclusions. Because of their composition and method of procedure, which is structured but generally informal compared with the Houses, committees are well suited to the gathering of evidence from expert groups or individuals.[67] In a sense, they 'take Parliament to the people' and allow organisations and individuals to participate in policy making and to have their views placed on the public record and considered as part of the decision-making process. Not only do committee inquiries enable

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

[67] See https://www.aph.gov.au/Parliamentary_Business/Committees

Members to be better informed about community views but in simply undertaking an inquiry, the committee may promote public debate on the subject at issue. The all-party composition of most committees and their propensity to operate across party lines are important features.[68] This bipartisan approach generally manifests itself throughout the conduct of inquiries and the drawing up of conclusions. Committees oversee and scrutinise the Executive and contribute towards a better-informed administration and government policy-making process. [69] In respect of their formal proceedings, committees are microcosms and extensions of the Houses themselves, limited in their power of inquiry by the extent of the authority delegated to them and governed for the most part in their proceedings by procedures and practices which reflect those which prevail in the House by which they were appointed.

L. Parliamentary Committees in India

69. Having reflected upon the parliamentary committees and their role in other democracies, we may now proceed to deal with the parliamentary committees in India. The long freedom struggle in India was not just a movement to achieve freedom

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[68] *Id.*
[69] *Id.*

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

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

71. At this juncture, we may look at the origin and working of the Parliamentary Committee. The committee system in India, as has been stated in "The Committee System in India :

Effectiveness in Enforcing Executive Accountability", Hanoi Session, March 2015, is as follows:-

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

> specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad hoc Committees are the Select and Joint Committees on Bills. Railway Convention Committee, Joint Committee on Food Management in Parliament House Complex, etc. also come under the category of Ad hoc Committees."

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

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

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

Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker.

74. Founded on English traditions, the Indian Parliament's committee system has a vital role in the parliamentary democracy. Generally speaking, the Parliamentary committees are of two kinds; standing committees and *ad hoc* committees. Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha. The work of these Committees is of continuous nature. The Financial Committees, Department Related Standing Committees (DRSCs) and some other Committees too come under the category of Standing Committees. The ad hoc Committees are appointed for specific purposes as and when the need arises and they cease to exist as soon as they complete the work assigned to them. [70] The parliamentary committees are invariably larger in size and are recommendatory in nature. Be it stated, there are 24 Department

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

Related Standing Committees covering under their jurisdiction all the Ministries/Departments of the Government of India. Each of these Committees consists of 31 Members - 21 from Lok Sabha and 10 from Rajya Sabha to be nominated by the Speaker, Lok Sabha and the Chairman, Rajya Sabha, respectively. The term of office of these Committees does not exceed one year.

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

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

governance. The committee system is designed to enhance the capabilities of Members of Parliament to shoulder greater responsibilities and broaden their horizons.

76. As has been stated in the referral judgment with regard to the Parliamentary Committee, we may usefully refer to the Rules of Procedure and Conduct of Business in Lok Sabha (for short 'the Rules'). Rule 2 of the Rules defines "Parliamentary Committee". It reads as follows:-

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

77. From the referral judgment, we may reproduce the following paragraphs dealing with the relevant Rules:-

> "33. Chapter 26 of the Rules deals with Parliamentary Committees and the matters regarding appointment, quorum, decisions of the committee, etc. There are two kinds of Parliamentary Committees: (*i*) Standing Committees, and (*ii*) Ad hoc Committees. The Standing Committees are categorised by their nature of functions. The Standing Committees of the Lok Sabha are as follows:
>
> (*a*) Financial Committees;
> (*b*) Subject Committees or departmentally related Standing Committees of the two houses;

(*c*) Houses Committee i.e. the committees relating to the day to day business of the House;

(*d*) Enquiry Committee;

(*e*) Scrutiny Committees;

(*f*) Service Committees;

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

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

Apart from the above, there are various departmentally related Standing Committees under various Ministries."

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

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

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

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

(i) without limitation, or

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

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

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

Provided that any member may object to any such motion being made if a copy of the report has not been made available for the use of members for two days before the day on which the motion is made and such objection shall

prevail, unless the Speaker allows the motion to be made.

(2) If the member in charge moves that the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration, any member may move Motions after presentation of Select/ Joint Committee reports. 39 as an amendment that the Bill be re-committed or be circulated or recirculated for the purpose of eliciting opinion or further opinion thereon.

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

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

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

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

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

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

> (*d*) to consider national basic long-term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon:
> Provided that the Standing Committees shall not consider matters of day-to-day administration of the related Ministries/Departments."

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

> "**274. *Report of the Committee***.— (1) The report of the Standing Committee shall be based on broad consensus.
> (2) Any member of the Committee may record a minute of dissent on the report of the Committee.
> (3) The report of the Committee, together with the minutes of dissent, if any, shall be presented to the Houses."

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

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

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

M. <u>Parliamentary privilege</u>

82. Black's Law Dictionary, 6th Ed., 1990, p. 1197, defines "privilege" as "a particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A peculiar right, advantage, exemption, power, franchise, or immunity held by a person or class, not generally possessed by others."

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

> "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively... and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law."[71]

84. The concept of Parliamentary Privilege has its origin in Westminster, Britain in the 17th century with the passage of the

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[71] May, 22nd ed., p. 65. For other definitions of privilege, see *Maingot,* 2nd ed., pp. 12-3.

Bill of Rights in 1689. Article IX of the Bill of Rights, which laid down the concept of Parliamentary Privilege, reads as under:-

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

85. Parliamentary Privilege was introduced to prevent any undue interference in the working of the Parliament and thereby enable the members of the Parliament to function effectively and efficiently without unreasonable impediment. Till date, Parliamentary Privilege remains an important feature in any parliamentary democracy. The concept of Parliamentary Privilege requires a balancing act of two opposite arguments as noted by Thomas Erskine May:-

> "On the one hand, the privileges of Parliament are rights 'absolutely necessary for the due execution of its powers'; and on the other, the privilege of Parliament granted in regard of public service 'must not be used for the danger of the commonwealth."[72]

M.1 Parliamentary privilege under the Indian Constitution

86. Having dealt with the role of the Parliamentary Standing Committee or Parliamentary Committees, it is necessary to understand the status of Parliamentary Committee and the privileges it enjoys in the Indian context. Article 105 of the

[72] Erskine May 24th Edition Pg. 209

Constitution of India, being relevant in this context, is reproduced below:-

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

87. Sub-article (2) of the aforesaid Article clearly lays the postulate that no member of Parliament shall be made liable to any proceedings in any court in respect of anything he has said

in the committee. Freedom of speech that is available to the members on the floor of the legislature is quite distinct from the freedom which is available to the citizens under Article 19(1)(a) of the Constitution. Members of the Parliament enjoy full freedom in respect of what they speak inside the House. Article 105(4) categorically stipulates that the provisions of clauses (1), (2) and (3) shall apply in relation to persons, who by virtue of this Constitution, have the right to speak in, and otherwise to take part in the proceedings of, a House of the Parliament or any committee thereof as they apply in relation to the members of the Parliament. Thus, there is complete constitutional protection. It is worthy to note that Article 118 provides that each House of the Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business. Condignly analysed, the Parliament has been enabled by the Constitution to regulate its procedure apart from what has been stated directly in the Constitution.

88. Article 105 of the Constitution is read *mutatis mutandis* with Article 194 of the Constitution as the language in both the articles is identical, except that Article 105 employs the word "Parliament" whereas Article 194 uses the words "Legislature of a

State". Therefore, the interpretation of one of these articles would invariably apply to the other and *vice versa*.

89. In ***U.P. Assembly case [Special Reference No. 1 of 1964]***[73], the controversy pertained to the privileges of the House in relation to the fundamental rights of the citizens. The decision expressly started that the Court was not dealing with the internal proceedings of the House. We may profitably reproduce two passages from the said judgment:-

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

[73] AIR 1965 SC 745

before the Lucknow Bench of the Allahabad High Court. ..."

90. The Court further observed:-

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

91. In the said case, the Court was interpreting Article 194 of the Constitution and, in that context, it held:-

"31. ... While interpreting this clause, it is necessary to emphasis that the provisions of the Constitution subject to which freedom of speech has been conferred on the legislators, are not the general provisions of the Constitution but only such of them as relate to the regulation of the procedure of the Legislature. The rules and standing orders may regulate the procedure of the Legislature and some of the provisions of the Constitution may also purport to regulate it; these are, for instance, Articles 208 and 211. The adjectival clause "regulating the procedure of the Legislature" governs both the preceding clauses relating to "the provisions of the Constitution" and "the rules and standing orders." Therefore, clause (1) confers on the legislators specifically the right of freedom of

> speech subject to the limitation prescribed by its first part. It would thus appear that by making this clause subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Art. 19(1)(a). If all that the legislators were entitled to claim was the freedom of speech and expression enshrined in Art. 19(1)(a), it would have been unnecessary to confer the same right specifically in the manner adopted by Art. 194(1); and so, it would be legitimate to conclude that Art. 19(1)(a) is not one of the provisions of the Constitution which controls the first part of clause (1) of Art. 194."

Proceeding further, the Court went on to say that clause (2) emphasises the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the Legislature or any committee thereof. Interpreting clause (3), the Court ruled that the first part of this clause empowers the Legislatures of the States to make laws prescribing their powers, privileges and immunities; the latter part provides that until such laws are made, the Legislatures in question shall enjoy the same powers, privileges and immunities which the House of Commons enjoyed at the commencement of the Constitution. The Constitution-makers, the Court observed, must have thought that the Legislatures would take some time to make laws in respect of

their powers, privileges and immunities. During the interval, it was clearly necessary to confer on them the necessary powers, privileges and immunities. There can be little doubt that the powers, privileges and immunities which are contemplated by clause (3) are incidental powers, privileges and immunities which every Legislature must possess in order that it may be able to function effectively, and that explains the purpose of the latter part of clause (3). The Court stated that all the four clauses of Article 194 are not in terms made subject to the provisions contained in Part III. In fact, clause (2) is couched in such wide terms that in exercising the rights conferred on them by clause (1), if the legislators by their speeches contravene any of the fundamental rights guaranteed by Part III, they would not be liable for any action in any court. It further said:-

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

92. Dealing with the plenary powers of the legislature, the Court ruled that these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the

legislative fields allotted to their jurisdiction by the three Lists under the Seventh Schedule; but beyond the Lists, the Legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our Legislatures including 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 while acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articles dealing with the said fundamental rights, their legislative actions are liable to be struck down by the Courts in India. Therefore, it is necessary to remember that though our Legislatures have plenary powers, yet they function within the limits prescribed by the material and relevant provisions of the Constitution.

93. Adverting to Article 212(1) of the Constitution, the Court held that the said Article seems to make it possible for a citizen to call in question in the appropriate court of law the validity of any

proceedings inside the legislative chamber if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is no more than this that the procedure was irregular. That again is another indication which may afford some assistance in construing the scope and extent of the powers conferred on the House by Article 194(3).

94. In ***Raja Ram Pal v. Hon'ble Speaker, Lok Sabha and others***[74], the Court, after referring to ***U.P. Assembly case (Special Reference No. 1 of 1964)***, observed that the privileges of the Parliament are rights which are "absolutely necessary for the due execution of its powers" which are enjoyed by individual members as the House would not be able to perform its functions without unimpeded use of the services of its members and also for the protection of its members and the vindication of its own authority and dignity. The Court, for the said purpose, referred to May's Parliamentary Practice. Parliamentary privilege conceptually protects the members of Parliament from undue

[74] (2007) 3 SCC 184

pressure and allows them freedom to function within their domain regard being had to the idea of sustenance of legislative functionalism. The aforesaid protection is absolute.

M.2 <u>Judicial review of parliamentary proceedings and its privilege</u>

95. Commenting upon the effect of parliamentary privilege, the House of Lords in the case of ***Hamilton v. Al Fayed***[75] pointed out that the normal impact of parliamentary privilege is to prevent the Court from entertaining any evidence, cross-examination or submissions which challenge the veracity or propriety of anything done in the course of parliamentary proceedings.

96. With regard to the role of the Court in the context of parliamentary privileges, Lord Brougham, in the case of ***Wellesley v. Duke of Beaufort***[76], has opined that it is incumbent upon the Courts of law to defend their high and sacred duty of guarding themselves, the liberties and the properties of the subject, and protecting the respectability and the very existence of the Houses of Parliament themselves, against wild and extravagant and groundless and inconsistent notions of privilege.

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[75] [2001] 1 AC 395 at 407
[76] [1831] Eng R 809 : (1831) 2 Russ & My 639: (1831) 39 ER 538

97. The 1999 UK Joint Committee report offers a useful analysis of the respective roles to be played by the Parliament and the Courts in advancing the law of parliamentary privilege:-

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

98. With respect to the position of parliamentary privileges and the role of the Courts in Canada, the Supreme Court of Canada in the case of ***New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)***[77] opined that the Canadian legislative bodies possess such inherent privileges as may be necessary to their proper functioning and that the said privileges are part of the fundamental law of the land and are, hence, constitutional. Further, the Court observed that the Courts have

[77] [1993] 1 SCR 319

the power to determine if the privilege claimed is necessary to the capacity of the legislature to function, but have no power to review the correctness of a particular decision made pursuant to the privilege. In the case of ***Harvey v. New Brunswick (Attorney General)***[78], the Court has held that in order to prevent abuses in the guise of privilege from trumping legitimate Charter interests, the Courts must inquire into the legitimacy of a claim of parliamentary privilege.

99. With respect to the review of parliamentary privilege, Lord Coleridge, C.J., in the case of ***Bradlaugh v. Gossett***[79], observed that the question as to whether in all cases and under all circumstances the Houses are the sole judges of their own privileges is not necessary to be determined in this case and that to allow any review of parliamentary privilege by a court of law may lead and has led to very grave complications. However, the Law Lord remarked that to hold the resolutions of either House absolutely beyond any inquiry in any court of law may land in conclusion not free from grave complications and it is enough to say that in theory the question is extremely hard to solve.

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[78] [1996] 2 SCR 876
[79] (1884) 12 QBD 271 (D)

100. Sir William Holdsworth in his book[80] has also made the following observations with regard to review of Parliamentary privileges:-

> 'There are two maxims or principles which govern this subject. The first tells us that 'Privilege of Parliament is part of the law of the land;' the second that 'Each House is the judge of its own privileges'. Now at first sight it may seem that these maxims are contradictory. If privilege of Parliament is part of the law of the land its meaning and extent must be interpreted by the courts, just like any other part of the law; and therefore, neither House can add to its privileges by its own resolution, any more than it can add to any other part of the law by such a resolution.
>
> On the other hand if it is true that each House is the sole judge of its own privileges, it might seem that each House was the sole judge as to whether or no it had got a privilege, and so could add to its privileges by its own resolution. This apparent contradiction is solved if the proper application of these two maxims is attended to. The first maxim applies to cases like Ashby v. White and Stockdale v. Hansard (A), in which the question al issue was the existence of a privilege claimed by the House.
>
> This is a matter of law which the courts must decide, without paying any attention to a resolution of the House on the subject. The second maxim applies to cases like that of the Sheriff of Middlesex (B), and Bradlaugh v. Gosset (D), in which an attempt was made to question, not the existence but the mode of user of an undoubted privilege. On this matter the courts will not interfere because each House is the sole judge of the question whether,

[80] "A History of English Law"

> when or how it will use one of its undoubted privileges."

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

> **"121. Restriction on discussion in Parliament**: No discussions shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties expect upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.
>
> **122. Courts not to inquire into proceedings of Parliament:-**
> (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.
> (2) No officer or member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers."

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

103. In ***Raja Ram Pal*** (supra), a Constitution Bench, after referring to ***U.P. Assembly case [Special Reference No. 1 of 1964]*** (supra), opined:-

> "267. Indeed, the thrust of the decision was on the examination of the power to issue unspeaking warrants immune from the review of the courts, and

not on the power to deal with contempt itself. A close reading of the case demonstrates that the Court treated the power to punish for contempt as a privilege of the House. Speaking of the legislatures in India, it was stated: [*U.P. Assembly case (Special Reference No. 1 of 1964)*,

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

268. Speaking of the Judges' power to punish for contempt, the Court observed: [*U.P. Assembly case (Special Reference No. 1 of 1964)*,]

> "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*."

And again:-

> "269. It is evident, therefore, that in the opinion of the Court in *U.P. Assembly case (Special Reference No. 1 of 1964)*, legislatures in India do enjoy the power to punish for contempt. It is equally clear that while the fact that the House of Commons

> enjoyed the power to issue unspeaking warrants in its capacity of a court of record was one concern, what actually worried the Court was not the source of the power *per se*, but the "judicial" nature of power to issue unspeaking warrant insofar as it was directly in conflict with the scheme of the Constitution whereby citizens were guaranteed fundamental rights and the power to enforce the fundamental rights is vested in the courts. It was not the power to punish for contempt about which the Court had reservations. Rather, the abovequoted passage shows that such power had been accepted by the Court. The issue decided concerned the non-reviewability of the warrant issued by the legislature, in the light of various constitutional provisions."

104. After referring to various other decisions, the Court summarized the principles relating to the parameters of judicial review in relation to exercise of parliamentary provisions. Some of the conclusions being relevant for the present purpose are reproduced below:-

> "(*a*) Parliament is a coordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;
> (*b*) The constitutional system of government abhors absolutism and it being the cardinal principle of our Constitution that no one, howsoever lofty, can claim to be the sole judge of the power given under the Constitution, mere coordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of actions which partake the character of judicial or quasi-judicial decision;
> (*c*) The expediency and necessity of exercise of power or privilege by the legislature are for the

determination of the legislative authority and not for determination by the courts;

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

x x x x

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

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

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

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

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

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

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

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

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

x x x x

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

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

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

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

[Emphasis supplied]

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

106. We are presently concerned with the interpretation of two constitutional provisions, namely, Articles 122 and 105. It has been submitted by the learned counsel on behalf of the petitioners that the reports of parliamentary committees have various facets, namely, statement of fact made to the committee, statement of policy made to the committee, statements of fact

made by Members of Parliament in Parliament and inference drawn from facts and findings of fact and law and, therefore, the Court is required to pose the question as to which of the above aspects of the Parliamentary Committee Reports can be placed reliance upon. The contention is structured on the foundation that committee reports are admissible in evidence and in public interest litigation in exercise of power under Article 32 for interpreting the legislation and directing the implementation of constitutional or statutory obligation by the executive.

N. <u>Reliance on parliamentary proceedings as external aids</u>

107. A Constitution Bench in ***R.S. Nayak v. A.R. Antulay***[81], after referring to various decisions of this Court and development in the law, opined that the exclusionary rule is flickering in its dying embers in its native land of birth and has been given a decent burial by this Court. The Constitution Bench further observed that the basic purpose of all canons of the Constitution is to ascertain with reasonable certainty the intention of the Parliament and for the said purpose, external aids such as reports of special committee preceding the enactment, the existing state of law, the environment necessitating enactment of

[81] (1984) 2 SCC 183

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

108. In this regard, we may also usefully state that the speeches of Ministers in Parliament are referred to on certain occasions for limited purposes. A Constitution Bench in ***State of West Bengal v. Union of India***[82] has opined that it is, however, well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of

[82] AIR 1963 SC 1241

affairs leading up to the legislation. The same cannot be used as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or, in any way, to affect the State Governments' rights as owners of minerals. A statute, as passed by the Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute.

109. In ***K.P. Varghese v. Income Tax Officer, Ernakulam and another***[83], the Court, while referring to the budget speech of the Minister, ruled that speeches made by members of legislatures on the floor of the House where a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision. But the Court made it clear that the speech made by the mover of the Bill explaining the reasons for introducing the Bill can certainly be referred to for ascertaining the mischief sought to be remedied and the object and the purpose of the legislation in question. Such a view, as per the Court, was in consonance with the juristic thought not

[83] (1981) 4 SCC 173

only in the western countries but also in India as in the exercise of interpretation of a statute, everything which is logically relevant should be admitted. Thereafter, the Court acknowledged a few decisions of this Court where speeches made by the Finance Minister were relied upon by the Court for the purpose of ascertaining the reason for introducing a particular clause. Similar references have also been made in ***Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte and others***[84]. That apart, parliamentary debates have also been referred to appreciate the context relating to the construction of a statute in ***Novartis AG v. Union of India and others***[85], ***State of Madhya Pradesh and another v. Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd.***[86], ***Union of India v. Steel Stock Holders Syndicate, Poona***[87], ***K.P. Varghese*** (supra), and ***Surana Steels Pvt. Ltd. v. Dy. Commissioner of Income Tax and others***[88].

110. In ***Ashoka Kumar Thakur v. Union of India and others***[89], this Court, after referring to Crawford on Statutory Construction, observed that the Rule of Exclusion followed in the

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[84] (1996) 1 SCC 130
[85] (2013) 6 SCC 1
[86] (1972) 1 SCC 298
[87] (1976) 3 SCC 108
[88] (1999) 4 SCC 306
[89] (2008) 6 SCC 1

British Courts has been criticized by jurists as artificial and there is a strong case for whittling down the said rule. The Court was of the view that the trend of academic opinion and practice in the European system suggests that the interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible which implies that although such extrinsic materials shall not be decisive, yet they should at least be admissible. Further, the Court took note of the fact that there is authority to suggest that resort should be had to these extrinsic materials only in case of incongruities and ambiguities. Where the meaning of the words in a statute is plain, then the language prevails, but in case of obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance to determine the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters.

111. In ***Additional Commissioner of Income Tax, Gujarat v. Surat Art Silk Cloth Manufacturers' Association, Surat***[90], this Court held:-

[90] (1980) 2 SCC 31

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

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

113. In ***Pepper v. Hart***[91], Lord Browne-Wilkinson, delivering the main speech, set out the test as follows:-

> "I therefore reach the conclusion, subject to any question of Parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear."

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[91] [1992] UKHL 3 : [1993] AC 593 : [1992] 3 WLR 1032

114. The Supreme Court of Canada in ***R. v. Vasil***[92] relied on parliamentary materials to interpret the phrase "unlawful object" in Section 212(c) of the Canadian Criminal Code. Speaking for the majority, Justice Lamer (as he then was) said:-

> "Reference to Hansard is not usually advisable. However, as Canada has, at the time of codification, subject to few changes, adopted the English Draft Code of 1878, it is relevant to know whether Canada did so in relation to the various sections for the reasons advanced by the English Commissioners or for reasons of its own.
>
> Indeed, a reading of Sir John Thompson's comments in Hansard of April 12, 1892, (House of Commons Debates, Dominion of Canada, Session 1892, vol. I, at pp. 1378-85) very clearly confirms that all that relates to murder was taken directly from the English Draft Code of 1878. Sir John Thompson explained the proposed murder sections by frequently quoting verbatim the reasons given by the Royal Commissioners in Great Britain, and it is evident that Canada adopted not only the British Commissioners' proposed sections but also their reasons."

The Canadian authorities, as is noticeable from ***Re Anti-Inflation Act (Canada)***[93], have relaxed the exclusionary rule.

115. In ***Dharam Dutt and others v. Union of India and others***[94], the Court took note of the three Parliamentary Standing Committees appointed at different points of time which had

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[92] [1981] 1 SCR 469, 121 D.L.R. (3d) 41
[93] [1976] 2 SCR 373, 68 D.L.R. (3d) 452
[94] (2004) 1 SCC 712

recommended the taking over of Sapru House on the ground of declining standard of the Institution. Further, this Court took note that it had already pointed out in an earlier part of this judgment that in the present case, successive parliamentary committees had found substance in the complaints received that an institution of national importance was suffering from mismanagement and maladministration and in pursuance of such PSC report, the Central Government acted on such findings.

116. In ***Kuldip Nayar*** (supra), certain amendments in the Representation of the People Act, 1951 were challenged which had the effect of adopting an open ballot system instead of a secret ballot system for elections to the Rajya Sabha. Defending the amendment, the Union of India submitted a copy of a Report of the Ethics Committee of the Parliament which recommended the open ballot system for the aforesaid purpose. The Committee had noted the emerging trends of cross voting in elections for Rajya Sabha and Legislative Councils in the State. It also made a reference to rampant allegations that large sums of money and other considerations encourage the electorate to vote in a particular manner sometimes leading to defeat of official candidates belonging to their own political party. In this context,

the Court took note of the recommendations of the Committee Report while testing the *vires* of the impugned amendment.

117. From the aforesaid, it clear as day that the Court can take aid of the report of the parliamentary committee for the purpose of appreciating the historical background of the statutory provisions and it can also refer to committee report or the speech of the Minister on the floor of the House of the Parliament if there is any kind of ambiguity or incongruity in a provision of an enactment. Further, it is quite vivid on what occasions and situations the Parliamentary Standing Committee Reports or the reports of other Parliamentary Committees can be taken note of by the Court and for what purpose. Relying on the same for the purpose of interpreting the meaning of the statutory provision where it is ambiguous and unclear or, for that matter, to appreciate the background of the enacted law is quite different from referring to it for the purpose of arriving at a factual finding. That may invite a contest, a challenge, a dispute and, if a contest arises, the Court, in such circumstances, will be called upon to rule on the same.

118. In the case at hand, what is urged by the learned counsel for the petitioners is that though no interpretation is involved, yet

they can refer to the report of the Parliamentary Standing Committee to establish a fact which they have pleaded and asserted in the writ petition. According to them, the committees are constituted to make the executive accountable and when the public interest litigation is preferred to safeguard the public interest, the report assumes great significance and it is extremely necessary to refer to the same to arrive at the truth of the controversy. In such a situation, they would contend that the question of aid does not relate to any kind of parliamentary privilege. It is the stand of the petitioners that they do not intend to seek liberty from the Parliament or the Parliamentary Committee to be questioned or cross examined. In fact, reliance of the report has nothing to do with what is protected by the Constitution under Article 105. The court proceedings are independent of the Parliament and based on multiple inputs, materials and evidence and in such a situation, the parties are at liberty to persuade the Court to come to a determination of facts and form an opinion in law at variance with the parliamentary committee report. The learned counsel for the petitioners would further submit that advancing submissions relying on the report would not come within the scope of parliamentary privilege.

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

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

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

> **"57. Facts of which Court must take judicial notice:-** The Court shall take judicial notice of the following facts:
>
> x x x x x x x x
> x x x x x x x x
> x x x x x x x x
>
> (4) The course of proceeding of Parliament of the United Kingdom, of the Constituent Assembly of India, of Parliament and of the legislatures established under any law for the time being in force in a Province or in the State;"

121. Section 57 is a part of Chapter III of the Evidence Act which deals with "Facts which need not be proved". Section 57 rests on the assumption that the facts scripted in the thirteen sub-sections are relevant under any one or more Sections of Chapter II which deals with "relevancy of facts". Thus, Section 57, by employing the words "shall", casts an obligation upon the

Courts to take judicial notice of the said facts. Section 57, sub-section (4) of the Evidence Act casts an obligation on the Courts to take judicial notice of the course of proceedings of Parliament.

122. This Court, in ***Sole Trustee Lok Shikshana Trust v. Commissioner of Income Tax, Mysore***[95], has observed that Section 57, sub-section (4) enjoins upon the Courts to take judicial notice of the course of proceedings of Parliament on the assumption that it is relevant.

123. There can be no dispute that parliamentary standing committee report being in the public domain is a public document. Therefore, it is admissible under Section 74 of the Evidence Act and judicial notice can be taken of such a document as envisaged under Section 57(4) of the Evidence Act. There can be no scintilla of doubt that the said document can be taken on record. As stated earlier, it can be taken aid of to understand and appreciate a statutory provision if it is unclear, ambiguous or incongruous. It can also be taken aid of to appreciate what mischief the legislative enactment intended to avoid. Additionally, it can be stated with certitude that there can be a fair comment on the report and a citizen in his own manner

[95] (1976) 1 SCC 254

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

124. In the case at hand, the controversy does not end there inasmuch as the petitioners have placed reliance upon the contents of the parliamentary standing committee report and the respondents submit that they are forced to controvert the same. Be it clearly stated, the petitioners intend to rely on the contents of the report and invite a contest. In such a situation, the Court would be duty bound to afford the respondents an opportunity of being heard in consonance with the principles of natural justice. This, in turn, would give rise to a very peculiar situation as the respondents would invariably be left with the option either to: (i) accept, without contest, the opinion expressed in the

parliamentary standing committee report and the facts stated therein; or (ii) contest the correctness of the opinion of the parliamentary standing committee report and the facts stated therein. In the former scenario, the respondents at the very least would be put in an inequitable and disadvantageous position. It is in the latter scenario that the Court would be called upon to adjudicate the contentious facts stated in the report. Ergo, whenever a contest to a factual finding in a PSC Report is likely and probable, the Court should refrain from doing so. It is one thing to say that the report being a public document is admissible in evidence, but it is quite different to allow a challenge.

125. It is worthy to note here that there is an intrinsic difference between parliamentary proceedings which are in the nature of statement of a Minister or of a Mover of a bill made in the Parliament for highlighting the purpose of an enactment or, for that matter, a parliamentary committee report that had come into existence prior to the enactment of a law and a contestable/conflicting matter of “fact” stated in the parliamentary committee report. It is the parliamentary proceedings falling within the former category of which Courts

are enjoined under Section 57, sub-section (4) to take judicial notice of, whereas, for the latter category of parliamentary proceedings, the truthfulness of the contestable matter of fact stated during such proceedings has to be proved in the manner known to law.

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

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

adjudge the *lis* on the factual score of the report is to be negatived.

P. <u>The decisions in which parliamentary standing committee report/s have been referred to</u>

128. Before we proceed to record our conclusions, it is necessary to allude to various authorities cited by the petitioners herein highlighting the occasions where this Court has referred to and taken note of various Parliamentary Committee reports. In ***Catering Cleaners of Southern Railway v. Union of India and another***[96], the catering cleaners of the Southern Railway filed a writ petition praying for abolition of the contract labour system and their absorption as direct employees of the principal employer, viz., the Southern Railway. This Court referred to the Parliamentary Committee Report under the Chairmanship of K.P. Tewari which had dealt with the question of abolishing the contract labour system and regularizing the services of the catering cleaners. The Committee had, *inter alia,* recommended that the government should consider direct employment of catering cleaners by the Railway Administration to avoid their exploitation.

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[96] (1987) 1 SCC 700

129. In ***State of Maharashtra v. Milind and others***[97], the issue was whether the tribe of 'Halba-Koshtis' were treated as 'Halbas' in the specified areas of Vidarbha. This Court, in the said case, referred to the report of Joint Parliamentary Committee which did not make any recommendation to include 'Halba-Koshti' in the Scheduled Tribes Order. Again, in ***Federation of Railway Officers Association*** (supra), this Court alluded to the reports and recommendations of several committees such as the Railways Reforms Committee in 1984 which recommended the formation of new four Zones; the Standing Committee Report of Parliament on Railway which recommended for creation of new zones on the basis of work load, efficiency and effective management and the Rakesh Mohan Committee Report which had suggested that the formation of additional zones would be of dubious merit and would add substantial cost and be of little value to the system.

130. In ***Ms. Aruna Roy and Others v. Union of India and others***[98], the education policy framed by NCERT was challenged by the petitioners. This Court while dealing with the said issue, referred, in *extensio,* to the Parliamentary committee report which

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[97] (2001) 1 SCC 4
[98] (2002) 7 SCC 368

had made several recommendations in this regard. After so referring to the report, the Court was of the view that if the recommendations made by the Parliamentary Committee are accepted by the NCERT and are sought to be implemented, it cannot be stated that its action is arbitrary or unjustified.

131. In ***M.C. Mehta v. Union of India and others***[99], this Court referred to the report of the Standing Committee of Parliament on Petroleum & Natural Gas which expressed concern over the phenomenal rise of air pollution and made some recommendations. The Court, in this case, made it clear that it had mentioned the report only for indicating that the Government was and is proactively supporting the reduction of vehicular pollution by controlling the emission norms and complying with the Bharat Stage standards.

132. In ***Lal Babu Priyadarshi v. Amritpal Singh***[100], while dealing with a Trade Mark case under various sections of the Trade and Merchandise Marks Act, 1958 [repealed by the Trade Marks Act, 1999 (47 of 1999), this Court referred to the Eighth Report on the Trade Marks Bill, 1993 submitted by the Parliamentary Standing Committee which was of the opinion that

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[99] (2017) 7 SCC 243
[100] (2015) 16 SCC 795

any symbol relating to Gods, Goddesses or places of worship should not ordinarily be registered as a trade mark.

133. The petitioners have also referred to other cases such as ***Gujarat Electricity Board v. Hind Mazdoor Sabha and others***[101], ***Modern Dental College and Research Centre and others v. State of Madhya Pradesh and others*** [102] and ***Krishan Lal Gera v. State of Haryana and others***[103] wherein also this Court has made a passing reference to reports of the Parliament Standing Committees.

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

135. We have distinguished the said decisions, as we are disposed to think that a party can always establish his case on

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[101] (1995) 5 SCC 27
[102] (2016) 7 SCC 353
[103] (2011) 10 SCC 529

the materials on record and the Court can independently adjudicate the controversy without allowing a challenge to Parliamentary Standing Committee report. We think so as the Court has a constitutional duty to strike a delicate balance between the legislature and judiciary. It is more so when the issue does not involve a fundamental right that is affected by parliamentary action. In such a situation, we may deal with the concept of jurisprudential foundational principle having due regard to constitutional conscience. The perception of self-evolved judicial restraint and the idea of jurisprudential progression has to be juxtaposed for a seemly balance. There is no strait-jacket formula for determining what constitutes judicial restraint and judicial progressionism. Sometimes, there is necessity for the Courts to conceptualise a path that can be a wise middle path. The middle course between these two views is the concept of judicial engagement so that the concept of judicial restraint does not take the colour of judicial abdication or judicial passivism. Judicial engagement requires that the Courts maintain their constitutional obligation to remain the sentinel on *qui vive*. It requires a vigilant progressive judiciary for the rights and liberties of the citizens to be sustained. Thus, as long as a

decision of a Court is progressive being in accord with the theory of judicial engagement, the approach would be to ensure the proper discharge of duty by the Constitutional Courts so as to secure the inalienable rights of the citizens recognized by the Constitution. A Constitutional Court cannot abdicate its duty to allow injustice to get any space or not allow real space to a principle that has certain range of acceptability. Stradford C.J., speaking the tone and tenor in ***Jajbhay v Cassim***[104], has observed:-

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

136. In ***Miranda v. Arizona***[105], the Supreme Court of United States observed:-

> 'That the Court's holding today is neither compelled nor even strongly suggested by the language of the Fifth Amendment, is at odds with American and English legal history, and involves a departure from a long line of precedent does not prove either that

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[104] 1939 AD 537 at p 542
[105] 384 U.S. 436 (1966)

> the Court has exceeded its powers or that the Court is wrong or unwise in its present reinterpretation of the Fifth Amendment. It does, however, underscore the obvious -- that the Court has not discovered or found the law in making today's decision, nor has it derived it from some irrefutable sources; what it has done is to make new law and new public policy in much the same way that it has in the course of interpreting other great clauses of the Constitution. This is what the Court historically has done. Indeed, it is what it must do, and will continue to do until and unless there is some fundamental change in the constitutional distribution of governmental powers."

137. In the Indian context, this Court has recognized the comprehensive, progressive and engaging role of Constitutional Courts in a catena of judgments starting from ***Lakshmi Kant Pandey v. Union of India***[106], ***Vishaka and others v. State of Rajasthan and others***[107], ***Prakash Singh and others v. Union of India and others***[108], ***Common Cause (A Regd. Society) v. Union of India***[109] and ***Shakti Vahini v. Union of India and others***[110]. In all these judgments, the dynamic and spirited duty of the Supreme Court has been recognized and it has been highlighted that this Court ought not to shy away from its primary responsibility of interpreting the Constitution and other

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[106] (1984) 2 SCC 244
[107] (1997) 6 SCC 241
[108] (2006) 8 SCC 1
[109] 2018 (4) SCALE 1
[110] 2018 (5) SCALE 51

statutes in a manner that is not only legally tenable but also facilitates the progress and development of the avowed purpose of the rights-oriented Constitution. The Constitution itself being a dynamic, lively and ever changing document adapts to the paradigm of epochs. That being the situation, it is also for this Court to take a fresh look and mould the existing precepts to suit the new emerging situations. Therefore, the Constitutional Courts should always adopt a progressive approach and display a dynamic and spirited discharge of duties regard being had to the concepts of judicial statesmanship and judicial engagement, for they subserve the larger public interest. In the case at hand, the constitutional obligation persuades us to take the view that the Parliamentary Standing Committee Report or any Parliamentary Committee Report can be taken judicial notice of and regarded as admissible in evidence, but it can neither be impinged nor challenged nor its validity can be called in question.

Q. <u>Conclusions</u>

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

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

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

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

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

(v) The Parliamentary Standing Committee report being in the public domain can invite fair comments

and criticism from the citizens as in such a situation, the citizens do not really comment upon any member of the Parliament to invite the hazard of violation of parliamentary privilege.

139. The reference is answered accordingly.

140. Let the Writ Petitions be listed before the appropriate Bench for hearing.

.....CJI
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

New Delhi;
May 09, 2018