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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3491/2013

Reserved on: 12th April, 2019
Date of decision: 02nd July, 2019

SUBHASH CHANDRA AGARWAL ..... Appellant
Through: Mr. T. Sudhakar, Advocate.

versus

LOK SABHA SECRETARIAT & ANR. ..... Respondents
Through: Mr. Rajshekhar Rao, Advocate with Ms. Gauri Puri, Advocate and Mr.Anand Venkatramani, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ANUP JAIRAM BHAMBHANI, J.

The petitioner, being a citizen of the country, challenges order dated 20.02.2013 made by the Central Information Commission ('CIC', for short) dismissing the second appeal preferred by him and order dated 26.03.2013 made by the Secretariat, Lok Sabha, thereby denying certain information sought on the ground that furnishing it would amount to 'breach of privilege' of Parliament and is therefore exempt under section 8(1)(c) of the Right to Information Act, 2005 ('RTI Act', for short).

The factual matrix

2. The matter arises from an application dated 01.09.2011 made by the petitioner before the Central Public Information Officer, Lok Sabha Secretariat, New Delhi ('CPIO', for short) seeking response to 13 specific queries alongwith 2 omnibus queries relating to extension of the tenure of the then Secretary General of the Lok Sabha. As recited in the RTI application, the queries arose from a news report titled '*Spat brews as BJP opposes Speaker on LS official's term'* dated 31.08.2011 published in the New Delhi edition of the 'Times of India' newspaper. The Secretary General was appointed on 01.10.2010 and was granted extension of tenure w.e.f. 31.08.2011 during the term of the 15th Lok Sabha (2009-2014).

3. By reply dated 01.11.2011, the CPIO however declined to furnish answers to three of the queries posed, the queries and the responses thereto being as follows:-

Sl. No.	*Information sought*	*Reply*
1.	*It is true that Hon'ble Leader of Opposition, Lok Sabha Smt. Sushma Swaraj has written some letter to Hon'ble Speaker, Lok Sabha Smt. Meira Kumar against granting an extension of one year to Secretary General, Lok Sabha Shri T.K. Vishwanathan?*	*The applicant has not sought any information as defined under Section 2(f) of the RTI Act and instead has attempted to elicit information to his query. In such cases, RTI Act*

2.	*If yes, please provide a copy of the letter by Smt. Sushma Swaraj and reply by Hon'ble Lok Sabha Speaker and/or Lok Sabha Secretariat to Smt. Sushma Swaraj also enclosing related file notings/documents/correspondence etc. on drafting the said reply sent, if any to Smt. Sushma Swaraj?*	*does not cast on the public authority any obligation to answer such queries as per the CIC decision dated 21.04.2006.* *However, Office of the Hon'ble Speaker has supplied a copy of the letter written by the Hon'ble Leader of Opposition to the Hon'ble Speaker is enclosed.* *(Annexure -1)* *Further, communication/consultat-ion by Hon'ble Speaker with the functionaries of the House in the discharge of the constitutional duties, which, if disclosed, may cause breach of parliamentary privilege and hence exempted under Section 8(1)(c) of the RTI Act.*
3.	*Complete and detailed information together with related correspondence/file-notings etc. on action taken on letter of Smt. Sushma Swaraj as referred in queries above.*	
4.	*Complete and detailed information on rules for appointing Secretary General of Lok Sabha both on regular appointments and also on extensions*	*Copies of R&CS Order No.PDA-903/96 dated 19.10.1996, PDA-918/97 dated 27.01.1997 and*

	granted.	*recommendations of the 4th Parliamentary Pay Committee regarding position of the Secretary General are enclosed, which are self explanatory (Annexure-II)*
5.	*Number of times and period of extension permissible to grant extension for the post of Secretary General, Lok Sabha*	
6.	*Complete and detailed information together with related correspondence/file notings/documents etc. on extension given to Shri T K Vishwanathan as Secretary General, Lok Sabha perhaps in October 2010*	*Shri T.K. Vishwanathan was first time appointed as Secretary General, Lok Sabha w.e.f. 01st October, 2010. Therefore, the question of granting extension of service in October 2010 in Lok Sabha Secretariat is irrelevant.*
7.	*Complete and detailed information together with related correspondence/ file notings/ documents etc. on first time appointment of Shri T K Vishwanathan as Secretary General, Lok Sabha perhaps in October 2010.*	*Shri T.K. Vishwanathan was appointed as Secretary General, Lok Sabha w.e.f. 01st October, 2010. Copies of the relevant file notings are enclosed (Annexure-III)*

8.	*Is it true that Smt. Sushma Swaraj also registered her objection on the said appointment of Shri T K Vishwanathan as Secretary General, Lok Sabha perhaps in October 2010*	*The applicant has not sought any information as defined under Section 2(f) of the RTI Act and instead has attempted to elicit information to his query. In such cases, RTI Act does not cast on the public authority any obligation to answer such queries as per the CIC decision dated 21.04.2006. Further, communication/consultation by Hon'ble Speaker with the functionaries of the House in the discharge of the constitutional duties, which, if disclosed, may cause breach of parliamentary privilege and hence exempted under Section 8(1)(c) of the RTI Act.*
9.	*If yes, copy of the objection registered by Smt. Sushma Swaraj as referred in query no.(8) above*	

10.	*Names and postings of officers presently in Lok Sabha Secretariat which are presently eligible for appointment as Secretary General, Lok Sabha.*	*There is no feeder post for appointment as Secretary General, Lok Sabha. Copies of R&CS Order No.PDA-903/96 dated 19.10.1996, PDA-918/97 dated 27.01.1997 and recommendations of the 4th Parliamentary Pay Committee regarding position of the Secretary General are enclosed, which are self explanatory.*
11.	*Rules allowing an Hon'ble Member of Lok Sabha to speak during 'Zero Hour'*	*No rules have been provided in the Rules of Procedure and Conduct of Business in Lok Sabha for raising matters of urgent public importance during 'Zero Hour'.*

12.	*Is it true that Rules were by-passed in allowing Hon'ble Lok Sabha Member Shri Rahul Gandhi to speak out of turn during 'Zero Hour' on Saturday, i.e. 27.08.2011 with/without prior notice as also referred in enclosed news clippings*	*The Hon'ble Speaker in discharging her constitutional duties can permit any member to raise any issue of urgent public importance during 'Zero Hour'. As such, there is no violation of Rules for allowing a member to raise a matter of urgent public importance.*
13.	*Any other related and/or follow-up information*	*None.*
14.	*File-noting on movement of this RTI petition as well.*	*Four pages of file noting are enclosed (Annexure-IV)*

(Emphasis supplied)

4. Accordingly, while answering all other queries, the CPIO declined to answer Queries Nos. 3, 8 and 9 for the purported reasons : *firstly*, that the applicant had not sought any 'information' as defined in section 2(f) of the RTI Act; and *secondly*, that communications and consultation by the Speaker of the Lok Sabha ('Speaker' and 'House', for short) with functionaries of the House, in this case the Leader of the Opposition in the

Lok Sabha, in discharge of 'constitutional duties' *may cause* breach of parliamentary privilege and hence is information that is exempt from disclosure under section 8(1)(c) of the RTI Act. For this purpose, the CPIO also cited an earlier decision dated 21.04.2006 made by the CIC, which it was claimed, supported the refusal to furnish information sought by way of the three queries.

5. CPIO's order dated 01.11.2011 was taken-up by the petitioner by way of an appeal before the First Appellate Authority, which was the Joint Secretary, Lok Sabha Secretariat, which appeal was dismissed *vidé* order dated 20.12.2011 thereby upholding the CPIO's order.

6. Thereupon the petitioner preferred a second appeal before the CIC impugning order dated 20.12.2011 made by the First Appellate Authority. By order dated 20.02.2013, the CIC has disposed of the second appeal, in substance declining to issue a direction to the concerned authority to furnish information sought by way of Queries Nos. 3, 8 and 9 and disposing of the second appeal with the following observations:-

> *"9. In the present case also, with reference to the information sought in point numbers (3), (8) and (9) of the second appeal, the Speaker will be the authority to determine the question of privileges. Though, it is noteworthy that the CPIO of the Lok Sabha Secretariat has already given some corresponding information for another year presumably because of a different format.*
>
> *10. The point left for us to decide is about the manner of disposal of the letter written by the Leader of the Opposition to*

> *the Speaker on 30th August 2011 and the recording of objections, if any, in the year 2010. Therefore, the Commission recommends that the information sought at serial no.3,8 and 9 of the RTI Application along with the relevant file be placed before the Speaker of the Lok Sabha for instructions.Thereafter, if the Secretariat claims privilege, it will clearly state the privileges claimed as per Article 105 of the Constitution of India."*
>
> (Emphasis supplied)

7. Pursuant to the directions contained in order dated 20.02.2013 made by the CIC, the Lok Sabha Secretariat responding on behalf of the Speaker of the House has declined to furnish the information sought by way of Queries Nos. 3, 8 and 9 and *vide* response dated 26.03.2013 has said:

> *"I am directed to refer to the subject mentioned above and the recommendation of the CIC under Para 10. The position in this regard is given below:*
>
> *The matter was placed before the Hon'ble Speaker and it has been decided that the information sought against point nos.3,8 and 9 of the application of the appellant cannot be disclosed under section 8(1)(C) of the RTI Act, 2005 as such an act would be breach of parliamentary privilege under Article 105(3) of Constitution of India."*
>
> (Emphasis supplied)

It is noteworthy that the above response does not specify the exact nature or basis of the privilege claimed, thereby not addressing the direction contained in the last part of CIC order dated 20.02.2013.

8. It is these two orders, i.e. order dated 20.02.2013 made by the CIC and order dated 26.03.2013 made by the Lok Sabha Secretariat that are impugned by way of the present writ petition.

9. At this point, it is necessary to set-out exactly what information was provided and what was declined to the petitioner in the present case. This is recorded in para 3 of CIC's order dated 20.02.2013, which is extracted in its entirety herein below :

> *"3. Vide CPIO order dated 1 November 2011, CPIO provided the information sought except for point no.(3)(8) and (9). The information given included the letter from the Leader of the Opposition to the Speaker under section 11(1) of the RTI Act, 2005. Copies of file notings connected with the appointment of the Secretary General of Lok Sabha orders were also given. However, in respect of the points no.(3), (8) and (9) of the RTI Application, CPIO observed that the communication and consultation by the Speaker with the Leader of the House and the Leader of the Opposition is in discharge of constitutional duties which, if disclosed, may cause breach of parliamentary privilege and hence was exempted from disclosure under section 8(1)(c) of the RTI Act, 2005."*
>
> (Emphasis supplied)

To be sure therefore, while a copy of the letter addressed by the Leader of the Opposition to the Speaker as well as the file notings connected with the extension of the Secretary General's tenure were furnished to the petitioner, the 'communication and consultation' by the Speaker with the

Leader of the House and the Leader of the Opposition were declined. This is the narrow scope of the factual controversy on which a decision on point of law is required in the present matter.

Queries for consideration of this court

10. Mr. T. Sudhakar, learned counsel has made submissions on behalf of the petitioner and has also filed written submissions dated 15.04.2019 in the matter. Mr. Rajshekhar Rao, learned counsel has argued on behalf of the respondents; and has also filed a note of arguments dated 25.04.2019 in support of his submissions. I have heard learned counsel for the parties at length ; and have perused the record and the written arguments filed. The submissions made on both sides, though not individually attributed, are reflected in the discussion, inferences and conclusions that follow.

11. Upon a conspectus of the issues raised and submissions made, the following legal queries arise for consideration in the present matter :

(i) Does 'parliamentary privilege' as understood within the meaning of Article 105(3) of the Constitution of India apply to Queries Nos. 3, 8 and 9;

(ii) Does the *inter se* communication and consultation between the Leader of the Opposition, Leader of the House and the Speaker form part of 'proceedings in Parliament' in relation to which parliamentary privilege may be claimed;

(iii) What are the boundaries and contours of the right to receive information under the RTI Act *vis-a-vis* a claim of parliamentary privilege;

(iv) Under the RTI Act who is the arbiter of whether a claim of 'parliamentary privilege' is tenable in relation to a given subject matter in the context of an RTI query; and

(v) Does the direction contained in CIC's order dated 20.02.2013, whereby it has been left to the Speaker to decide if 'parliamentary privilege' is to be claimed in relation to the information sought, amount to abdication by the CIC of its role under the RTI Act ; or, putting it alternatively, does it amount to the CIC delegating its power under the RTI Act to the Speaker.

12. The considerations that weigh with this Court in relation to the queries set-out above are dealt with in the paragraphs that follow.

<u>On parliamentary privilege</u>

13. The constitutional provision relating to the power, privileges and immunities of the Houses of Parliament and its committees relevant for the purposes of the present matter is contained in Articles 105(3) and 105(4) of the Constitution, the text whereof is extracted below :

*"**Article 105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof. –***

(1) *xxxxx*

(2) *xxxxx*

(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 (Forth-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."*

14. Section 15 of the Constitution (Forty Fourth Amendment) Act, 1978 referred to in the above quoted provision came into force w.e.f 30.04.1979 and reads as under:-

"15. Amendment of Article 105.-In article 105 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "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" shall be substituted."

Section 15 therefore merely removes the specific reference to the House of Commons of the Parliament of the United Kingdom from Article 105(3), saying that the powers, privileges and immunities shall continue to remain the same as they were before the amendment. This cosmetic change apart, the position post the amendment remains the same it was prior thereto; and since so far no law has been enacted by Parliament to define its

powers, privileges and immunities, these remain the same as of the House of Commons of the UK Parliament.

15. Article 105(4) extends the powers, privileges and immunities that are available to Members of Parliament also to those persons who by virtue of the Constitution have the right to participate in the proceedings of Parliament or any committee thereof.

16. Since Article 105(3) of the Constitution, whether in the original or amended form, refers to 'privilege' as it existed in the House of Commons in the UK, it would be appropriate to consider how this concept is interpreted by Courts in England, particularly in relation the its application to the proceedings of the House. Judgment dated 01.12.2010 of the Supreme Court of the United Kingdom in the case of ***Regina vs. Chaytor*** reported as [2010] 3 WLR 1707, decided by nine judges of that court, deals extensively *inter alia* with what are 'proceedings in Parliament' to which 'privilege' applies.

17. The case of ***Chaytor*** (supra) related to some members of the House of Commons and a member of the House of Lords, who, having been committed for trial at the Crown's Court on charges of false accounting in relation to claims towards parliamentary expenses, sought to invoke parliamentary privilege. The claim of privilege was based on Article IX of the Bill of Rights Act of 1689, which reads as under:

> *"That the Freedome of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament."*

(Quoted as spelled in original text)

18. It may be noted that Article 105(3) of the Constitution is preceded by Articles 105(1) and 105(2) which pertain to freedom of speech in Parliament and any vote given in Parliament or in any committee thereof, akin to the phrase "Proceedings in Parlyament" appearing in Article IX of the Bill of Rights extracted above.

19. Dealing in detail with earlier judgments on the point, the UK Supreme Court in ***Chaytor*** (supra) construed parliamentary privilege in the context of "proceedings in Parliament" in the following words:

> *"28. The Bill of Rights 1689 reflected the attitude of Parliament, after the Restoration, to events in the reign of Charles I, and in particular the acceptance by the Court of King's Bench that parliamentary privilege did not protect against seditious comments in the chamber: R v Elliot (1629) 3 St Tr 293. The primary object of the article was unquestionably to protect freedom of speech in the House of Commons. The question is, having regard to that primary object, how far the term "proceedings in Parliament" extends to actions that advance or are ancillary to proceedings in the Houses. Erskine May, Parliamentary Practice , 23rd ed (2004), summarises the position as follows, at pp 110–111:*
>
> > *"The term 'proceedings in Parliament' has received judicial attention (not all of it in the United Kingdom) but comprehensive lines of decision have not emerged and indeed it has been concluded that an exhaustive*

definition could not be achieved. Nevertheless, a broad description is not difficult to arrive at. The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the 17th century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision. An individual member takes part in a proceeding usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking."

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33. The suggestion that article 9 should not be narrowly construed conflicted with an observation of Viscount Radcliffe when giving the advice of the Judicial Committee of the Privy Council in Attorney General of Ceylon v De Livera [1963] AC 103 , 120. Section 14 of the Bribery Act of Ceylon made it an offence to offer an inducement or reward to a member of the House of Representatives for doing or forbearing to do any act "in his capacity as such member". The issue was the scope of those words. Viscount Radcliffe drew an analogy with article 9. He said:

"What has come under inquiry on several occasions is the extent of the privilege of a member of the House and the complementary question, what is a 'proceeding in Parliament'? This is not the same question as that now before the Board, and there is no doubt that the proper meaning of the words 'proceedings in Parliament' is influenced by the context in which they appear in article 9 of the Bill of Rights (1 Will & Mary, sess 2, c 2); but the answer given to that somewhat more limited question depends upon a very similar consideration, in what

> *circumstances and in what situations is a member of the House exercising his 'real' or 'essential' function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely within a member's true function."*
>
> (Emphasis supplied)

20. The UK Supreme Court also cited the view taken by the United States Supreme Court when construing the ambit of the 'Speech or Debate' clause in the United States Constitution, where the US Supreme Court said:

> *"38. Ex p Wason has also been cited by the Supreme Court of the United States in the context of considering the ambit of the "Speech or Debate" clause in article 1, section 6 of the Constitution. This provides that "for any speech or debate" in either House, Senators or Representatives "shall not be questioned in any other place": see United States v Johnson (1966) 383 US 169 and United States v Brewster (1972) 408 US 501. Each case involved an allegation of bribery to purchase support in proceedings in the House. In the latter case Burger CJ gave the opinion of the court. At p 518 he commented: "The very fact of the supremacy of Parliament as England's highest tribunal explains the long tradition precluding trial for official misconduct of a member in any other and lesser tribunal." This is not an accurate summary either of parliamentary privilege in this jurisdiction or of the reason for it, but the issue of interpretation facing the Supreme Court mirrors that raised by article 9 and some of the reasoning in Brewster is relevant to consideration of the scope of that article.*
>
> *"39. At pp 524–525 Burger CJ commented:*

> *"As we noted at the outset, the purpose of the Speech or Debate Clause is to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. But financial abuses by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation. Depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of Members of Congress is unlikely to enhance legislative independence."*
>
> (Emphasis supplied)

whereupon the UK Supreme Court observed as under:

> *"47. The jurisprudence to which I have referred is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament."*
>
> (Emphasis supplied)

21. The UK Supreme Court also referred to a definition of "proceedings in Parliament" suggested by the Joint Committee on the Publication of Proceedings in Parliament in its Second Report in 1970 (HL 109, HC 261) where the recommended definition reads as under :

"53. ...

"(1) For the purpose of the defence of absolute privilege in an action or prosecution for defamation the expression 'proceedings in Parliament' shall without prejudice to the generality thereof include

(a) all things said done or written by a member or by any officer of either House of Parliament or by any person ordered or authorised to attend before such House, in or in the presence of such House and in the course of a sitting of such House, and for the purpose of the business being or about to be transacted, wherever such sitting may be held and whether or not it be held in the presence of strangers to such House: provided that for the purpose aforesaid the expression 'House' shall be deemed to include any Committee sub-Committee or other group or body of members or members and officers of either House of Parliament appointed by or with the authority of such House for the purpose of carrying out any of the functions of or of representing such House; and

(b) all things said done or written between members or between members and officers of either House of Parliament or between members and Ministers of the Crown for the purpose of enabling any member or any such officer to carry out his functions as such provided that publication thereof be no wider than is reasonably necessary for that purpose.

(2) In this section 'member' means a Member of either House of Parliament; and 'officer of either House of Parliament' means any person not being a member whose duties require him from time to time to participate in proceedings in Parliament as herein defined."

(Emphasis supplied)

noting however, that no effect has been given to the definition so recommended. The UK Supreme Court also referred to a report given in

1999 by the Joint Committee on Parliamentary Privilege, where, on a detailed consideration of Article IX, the Joint Committee commented :

> *"54. ...*
>
> > *"Freedom of speech is central to Parliament's role. Members must be able to speak and criticise without fear of penalty. This is fundamental to the effective working of Parliament, and is achieved by the primary parliamentary privilege: the absolute protection of 'proceedings in Parliament' guaranteed by article 9 of the Bill of Rights 1689. Members are not exposed to any civil or criminal liabilities in respect of what they say or do in the course of proceedings in Parliament. There is no comprehensive definition of the term proceedings in Parliament, although it has often been recommended there should be. Proceedings are broadly interpreted to mean what is said or done in the formal proceedings of either House or the committees of either House, together with conversations, letters and other documentation directly connected with those proceedings."*

where however, the *Joint Committee expressed the view that members' correspondence did not form part of parliamentary proceedings* in the following words :

> *"55. ...*
>
> *Article 9 protects parliamentary proceedings: activities which are recognisably part of the formal collegiate activities of Parliament." The committee did not recommend the extension of parliamentary privilege to cover members' correspondence. It commented at para 110:*
>
> > *"There is another consideration. Article 9 provides an altogether exceptional degree of protection, as discussed above. In principle this exceptional protection should remain confined to the core activities of Parliament, unless a pressing need is shown for an extension."*
>
> (Emphasis supplied)

22. The UK Supreme Court also quoted the 1999 Report of the Joint Committee aforesaid, where the Committee had considered the *dividing line between matters that fall within parliamentary privilege and those which fall outside* in the following words :

> *"73. A little later the Report considers the dividing line between matters that fall within this type of parliamentary privilege and those which fall outside it. This lies at the heart of these appeals and merits quotation in full:*
>
> > *"246. Putting aside the activities of individuals, there is a need to distinguish between activities of the House which call for protection under this head of privilege and those which do not. The Palace of Westminster is a large building; it requires considerable maintenance; it provides an extensive range of services for members; it employs and caters for a large number of staff and visitors. These services require staff and supplies and contractors. For the most part, and rightly so, these services are not treated as protected by privilege. It is difficult to see any good reason why claims for breach of contract relating to catering or building services, for example, should be excluded from the jurisdiction of the courts, or why a person who sustains personal injury within the precincts of Parliament should not be able to mount a claim for damages for negligence. This has been formally recognised in the Parliamentary Corporate Bodies Act 1992. Under this Act each House established a corporate officer who can sign contracts on behalf of the House and sue or be sued.*
> >
> > *"247. The dividing line between privileged and non-privileged activities of each House is not easy to define. Perhaps the nearest approach to a definition is that the areas in which the courts ought not to intervene extend beyond proceedings in Parliament, but the privileged*

> *areas must be so closely and directly connected with proceedings in Parliament that intervention by the courts would be inconsistent with Parliament's sovereignty as a legislative and deliberative assembly. One example is the Speaker's decision on which facilities within the precincts of the House should be available to members who refuse to take the oath or affirmation of allegiance. Another example might be steps taken by the library of either House to keep members informed upon matters of significant political interest. Such steps, if authorised by the presiding officer of the House, would properly be within the scope of the principle and not amenable to orders of the court.*
>
> *"248. It follows that management functions relating to the provision of services in either House are only exceptionally subject to privilege. In particular, the activities of the House of Commons Commission, a statutory body appointed under the House of Commons (Administration) Act 1978, are not generally subject to privilege, nor are the management and administration of the House departments. The boundary is not tidy. Occasionally management in both Houses may deal with matters directly related to proceedings which come within the scope of article 9. For example, the members' pension fund of the House of Commons is regulated partly by resolutions of the House. So too are members' salaries and the appointment of additional members of the House of Commons Commission under section 1(2)(d) of the House of Commons (Administration) Act. These resolutions and orders are proceedings in Parliament, but their implementation is not."*
>
> (Emphasis supplied)

finally subscribing to the view that the areas to which parliamentary privilege extends must be so closely and directly connected with the proceedings of Parliament that *intervention by the court would be*

inconsistent with Parliament's sovereignty as a legislative and deliberative assembly.

23. The jurisprudential concept of parliamentary privilege has been dealt with in several decisions by our Supreme Court. One of the recent judgments that deals in painstaking detail with the issue is the Constitution Bench decision in ***Amarinder Singh vs. Special Committee, Punjab Vidhan Sabha and Ors.*** reported as (2010) 6 SCC 113 which arose from the expulsion from the Punjab Vidhan Sabha of the former Chief Minister of the State of Punjab by a resolution passed by the Vidhan Sabha based upon a report submitted by a Special Committee of the Vidhan Sabha, which recorded findings that when he was Chief Minister, Amarinder Singh had engaged in criminal conduct. After considering its earlier judgments as also by citing with approval judgments from foreign jurisdictions, the Constitution Bench has crystallised the concept of parliamentary privilege in the following way :

> "***41.*** *In a Canadian case New Brunswick Broadcasting Co. v. Nova Scotia, Lamer, C.J. had cited the following extract from an academic commentary [see Joseph Maingot, Parliamentary Privilege (Toronto: Butterworths, 1982) at p. 12]:*
>
> > *"Parliamentary privilege is the necessary immunity that the law provides for Members of Parliament and for members of the legislatures of each of the ten provinces and two territories, in order for these legislators to do their legislative work. It is also necessary immunity that the law provides for anyone while taking part in a proceeding in Parliament or in a legislature. Finally, it is*

the authority and power of each House of Parliament and of each legislature to enforce that immunity.

Parliamentary privilege and immunity with respect to the exercise of that privilege are founded upon necessity. Parliamentary privilege and the breadth of individual privileges encompassed by that term are accorded to members of the House of Parliament and the Legislative Assemblies because they are judges (sic, adjudged) necessary to the discharge of their legislative function.

The contents and extent of parliamentary privileges have evolved with reference to their necessity. In Precedents of Proceedings in the House of Commons, Vol. I, 3rd Edn. (London: T Payne, 1796), John Hatsell defined at p. 1 the privileges of Parliament as including 'those rights which are absolutely necessary for the due execution of its power'. It is important to note that, in this context, the justification of necessity is applied in a general sense. That is, general categories of privilege are deemed necessary to the discharge of the Assembly's function. Each specific instance of the exercise of a general privilege needs to be shown to be necessary."

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"***43.*** *In State of Karnataka v. Union of India, a seven-Judge Bench of this Court construed the powers contained in Article 194(3) as those "necessary for the conduct of the business of the House": (SCC p. 654, para 57)*

"57. It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the 'powers' meant to be indicated here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons in England for all purposes. ... We need not travel beyond the words of Article 194 itself, read with other provisions of the Constitution, to clearly read such a conclusion."

44. *Y.K. Sabharwal, C.J. (majority opinion) in SCC para 471 of Raja Ram Pal case has quoted from Parliamentary*

Privilege—First Report (Lord Nicholas) which describes parliamentary privilege as: (SCC p. 380)

> *"471. ... 'Parliamentary privilege consists of the rights and immunities which the two Houses of Parliament and their Members and officers possess to enable them to carry out their parliamentary functions effectively. Without this protection Members would be handicapped in performing their parliamentary duties, and the authority of Parliament itself in confronting the executive and as a forum for expressing the anxieties of citizens would be correspondingly diminished.' "*

***45.** In U.P. Assembly case this Court had also drawn a distinction between the exercise of legislative privileges and that of ordinary legislative functions in the following manner: (AIR p. 770, para 70)*

> *"70. ... There is a distinction between privilege and function, though it is not always apparent. On the whole, however, it is more convenient to reserve the term 'privilege' to certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions. The distinctive mark of a privilege is its ancillary character. The privileges of Parliament are rights which are 'absolutely necessary for the due execution of its powers'. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity."*

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"***47.** The observations cited above make it amply clear that the exercise of legislative privileges is not an end in itself. They are supposed to be exercised in order to ensure that legislative functions can be exercised effectively, without undue obstructions. These functions include the right of members to speak and vote on the floor of the House as well as the proceedings of various Legislative Committees. In this respect, privileges can be exercised to protect persons engaged as*

> *administrative employees as well. The important consideration for scrutinising the exercise of legislative privileges is whether the same was necessary to safeguard the integrity of legislative functions. We are also expected to look to precedents involving the British House of Commons."*
>
> *XXXXX*
>
> *"**62.** It would be safe to say that a breach of privilege by a member of the legislature can only be established when a member's act is directly connected with or bears a proximity to his duties, role or functions as a legislator. This test of proximity should be the rule of thumb, while of course accounting for exceptional circumstances where a person who is both a legislator and a holder of executive office may commit a breach of privilege. It is our considered view that such a breach has not occurred in the present case."*
>
> *(Emphasis supplied)*

24. In ***Amarinder Singh*** (supra) the Supreme Court also quotes the list of parliamentary privileges exercised by the British House of Commons as compiled by Prititosh Roy in his book *Parliamentary Privilege in India*, which has also been quoted in ***Raja Ram Pal vs. The Hon'ble Speaker, Lok Sabha & Ors.*** reported as (2007) 3 SCC 184 as under :

> "***48.** The most elaborate list of parliamentary privileges exercised by the British House of Commons has been compiled by Prititosh Roy in his work Parliamentary Privilege in India which has been quoted in Raja Ram Pal case at SCC paras 94-97 and has been reproduced below: (SCC pp. 268-69)*
>
> *(1) Privilege of freedom of speech, comprising the right of exclusive control by the House over its own proceedings. It is a composite privilege which includes:*
>
> *(i) the power to initiate and consider matters of legislation or discussion in such order as it pleases;*

(ii) the privilege of freedom in debate proper—absolute immunity of members for statements made in debate, not actionable at law;

(iii) the power to discipline its own members;

(iv) the power to regulate its own procedure—the right of the House to be the sole judge of the lawfulness of its own proceedings;

(v) the right to exclude the jurisdiction of the courts;

(vi) the right to exclude strangers;

(vii) the right to ensure privacy of debate;

(ix) the right to control or prohibit publication of its debates and proceedings.

(2) Privilege of freedom from arrest or molestation the claim of the Commons to freedom of members from arrest in civil action or suits during the time of Parliament and during the period when a member journeys to or returns from Parliament. This privilege includes:

(i) exemption of a member from attending court as a witness, service of a civil or criminal process within the precincts of the House is a breach of privilege;

(ii) a member cannot be admitted as (sic) bail;

(iii) exemption of a member from jury service;

(iv) no such privilege claimed in respect of criminal offences or statutory detention;

(v) right of the House to be informed of arrest of members on criminal charges;

(vi) extension of the privilege to witnesses summoned to attend before the House or its committees, and to officers in immediate attendance upon the service of the House.

(3) Privilege of freedom of access to the sovereign through the Speaker.

(4) Privilege of the House of receiving a favourable construction of the proceedings of the House from the sovereign.

(5) Power of the House to inflict punishment for contempt on members or strangers—a power akin to the powers possessed by the superior courts of justice to punish for contempt. It includes:

(i) the power to commit a person to prison, to the custody of its own officers or to one of the State prisons (the keystone of parliamentary privilege), the commitment being for any period not beyond the date of the prorogation of the House;

(ii) the incompetence of the courts of justice to admit a person committed by the House to bail;

(iii) when the person is committed by the House upon a general or unspeaking warrant which does not state the particular facts constituting the contempt the incompetence of the courts of justice to inquire into the nature of contempt;

(iv) the power of the House to arrest an offender through its own officers or through the aid and power of the civil government;

(v) the power of the officers of the House to break open outer doors to effect the execution of the warrant of arrest;

(vi) the power of the House to administer reprimand or admonition to an offender;

(vii) the power of the House to secure the attendance, whether in custody or not, of persons whose conduct is impugned on a matter of privilege;

(viii) the power of the House to direct the Attorney General to prosecute an offender where the breach of privilege is also an offence at law and the extent of the power of the House to inflict punishment is not considered adequate to the offence;

(ix) the power of the House to punish a member by (a) suspension from the service of the House, or (b) expulsion, rendering his seat vacant.

(6) Privilege of the House to provide for its own due constitution or composition. It includes:

> *(i) the power of the House to order the issue of new writs to fill vacancies that arise in the Commons in the course of a Parliament;*
>
> *(ii) the power of the House in respect of the trial of controverted elections of Members of the Commons;*
>
> *(iii) the power of the House to determine the qualifications of its members to sit and vote in the House in cases of doubt—it includes the power of expulsion of a member. A major portion of this ancient privilege of the House of Commons has been eroded by the statute.*
>
> *(7) The power of the House to compel the attendance of witnesses and the production of papers." "*

which elaborate list has been quoted *in-extenso* here only to say that none of the matters enumerated in the list includes within its purport or meaning the correspondence and communications exchanged between the Leader of the Opposition, the Leader of the House and the Speaker in relation to extension of the Secretary-General's term, as hereinafter discussed.

25. Holding that the resolution directing expulsion of the former Chief Minister from the Legislative Assembly was constitutionally invalid, the Supreme Court in ***Amarinder Singh*** (supra) relies upon several earlier judgments and authoritative texts; and *inter-alia* cites the following with approval, which are being quoted again for clarity, though at the cost of some repetition:

(i) Quoting from the case of ***Raja Ram Pal*** *case* (supra):-

> *"519. In its creative sense, in England the House did not sit down to build its edifice of the powers, privileges and immunities of Parliament. The evolution of the English parliamentary institution has thus historical development. It is*

the story of conflict between the Crown's absolute prerogatives and the Common's insistence for powers, privileges and immunities; struggle between high handed actions of monarchs and people's claim of democratic means and methods. Parliamentary privileges are the rights which the Houses of Parliament and Members possess so as to enable them to carry out their functions effectively and efficiently. Some of the parliamentary privileges thus preceded Parliament itself. They are, therefore, rightly described by Sir Erskine May as "fundamental rights" of the Houses as against the prerogatives of the Crown, the authority of ordinary courts of law and the special rights of the House of Lords."

(ii) Citing Sir Erskine May on 'what constitutes privilege' in his book *Parliamentary Practice* (16th Ed., page 42):

"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land is, to a certain extent an exemption from the ordinary law."

(iii) Citing Stubbs, *Constitutional History*, (4th Ed. page 504):

"The particular privileges of the Commons have been defined as:-

The sum of the fundamental rights of the House and of its individual Members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords."

(iv) Citing *Halsbury's Laws of England*, 4th Ed. (Volume 34, page 553):

> *"Claims to rights and privileges- The House of Lords and the House of Commons claim for their Members, both individually and collectively, certain rights and privileges which are necessary to each House, without which they could not discharge their functions and which exceed those possessed by other bodies and individuals. In 1705, the House of Lords resolved that neither House had power to create any new privilege and when this was communicated to the Commons, that House agreed...."*

(v) Quoting from a lecture delivered by the Lord High Chancellor of Great Britain on 04.05.1959 at the University of London:

> *"The first question which springs to the mind is, 'What precisely is parliamentary privilege?'- and it is a question which is not altogether easy to answer.*
>
> *A privilege is essentially a private advantage in law enjoyed by a person or a class of persons or an association which is not enjoyed by others. Looked at from this aspect, privilege consists of that bundle of advantages which members of both Houses enjoy or have at one time enjoyed to a greater extent than their fellow citizens: freedom to access to Westminster, freedom from arrest or process, freedom from liability in the courts for what they say or do in Parliament. From another point of view, Parliamentary Privilege is the special dignity and authority and enjoyed by each House in its corporate capacity such as its right to control its own proceedings and to punish both members and strangers for contempt. I think these are really two sides of the coin. Any Parliament if it is to function properly, must have some privileges which will ensure freedom (to a greater or lesser degree) from outside interference. If the*

business of Parliament is of supreme importance, then nobody else must be allowed to impede it, whether by throwing fireworks from the gallery or bringing actions against members for what they say in debate.

A close parallel is provided by the powers of the superior courts to punish for contempt. If you try to interfere with the administration of justice either by throwing tomatoes at the judge or by intimidating a witness you will be liable to be proceeded against for contempt. Once again, a body whose functions are of paramount importance can be seen making certain that outside interference is reduced to a minimum."

(vi) Citing the 76th Report of the Australian Senate Committee of Privilege:

"The word "privilege", modern usage, connotes a special right accorded to a select group which sets that group apart from all other persons. The Macquarie Dictionary's primary definition of privilege is as follows: "A right of immunity enjoyed by a person or persons beyond the common advantage of others. The privileges of Parliament are immunities conferred in order to ensure that the duties of members as representatives of their constituents may be carried out without fear of intimidation or punishment, and without improper impediment. These immunities, established as part of the common law and recognized in statutes such as the Bill of Rights of 1688 (sic, 1689), are limited in number and effect. They relate only to those matters which have common to be (sic, come to be) recognized as crucial to the operation of a fearless Parliament on behalf of the people. As pointed out in a submission by the Department of the Senate to the Joint Select Committee on Parliamentary Privilege, a privilege of Parliament is more properly called an immunity from the operation of certain laws,

which are otherwise unduly restrictive of the proper performance of the duties of members of Parliament."

(vii) Citing John Hastell in *Precedents of Proceedings in the House of Commons*, Vol. I, 3rd Ed.:

> *"In Precedents of Proceedings in the House of Commons, Vol. I, 3rd Ed. (London: T Payne, 1796), John Hatsell defined at p. 1 the privileges of Parliament as including 'those rights which are absolutely necessary for the due execution of its power'. It is important to note that, in this context, the justification of necessity is applied in a general sense. That is, general categories of privilege are deemed necessary to the discharge of the Assembly's function. Each specific instance of the exercise of a general privilege needs to be shown to be necessary."*

(viii) Citing from ***Re : Special Reference 1 of 1964*** also known as the ***U.P. Assembly*** case AIR 1965 SC 745 (Gajendragadkar CJI, para 33):

> *"...The Constitution-makers must have thought that the legislatures will 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)."*

(ix) Quoting from the Constitution Bench of the Supreme Court in the case of ***State of Karnataka vs. Union of India*** (1977) 4 SCC 608 (para 57) :

> *"57. It is evident, from the Chapter in which Article 194 occurs as well as the heading and its marginal note that the 'powers' meant to be indicated here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons for all purposes...*
> *We need not travel beyond the words of Article 194 itself, read with other provisions of the Constitution, to clearly read such a conclusion."*
>
> (Emphasis supplied)

26. In a more recent decision on the issue of parliamentary privilege, a three Judge Bench of the Supreme Court in the case titled ***Lokayukta, Justice Ripusudan Dayal (Retired) & Ors. vs. State of Madhya Pradesh & Ors.*** reported as (2014) 4 SCC 473, the court has yet again clarified, with evermore lucidity, the purpose of conferring privilege upon the House and its members; also observing that the fundamental rights of citizens must have primacy over any privilege or special rights of any class of people *including elected legislators* ; and that all claims to privilege are subject to judicial scrutiny. While considering the applicability of the Madhya Pradesh Lokayukt Evam Up-Lokayukt Act, 1981 to legislators, the Supreme Court has held that *initiation of action against officers belonging to the office of the Speaker of a Legislative Assembly would be tenable since the statute would apply equally to such officers* and the initiation of action thereunder does not amount to breach of privilege of the Legislative Assembly, which has itself conferred the powers in the form of the statute to address the menace of corruption.

27. The Supreme Court has reiterated that the concept of privilege does not exempt members of the House from liability under any statute, which continue to apply to them as it would to ordinary citizens. The relevant paras of the ***Lokayukta, Justice Ripusudan Dayal*** case (supra) which contain the foregoing observations are extracted below :

> *"**51.** The scope of the privileges enjoyed depends upon the need for privileges i.e. why they have been provided for. The basic premise for the privileges enjoyed by the Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House. The Committee of Privileges of the Tenth Lok Sabha, noted the main arguments that have been advanced in favour of codification, some of which are as follows:*
>
> *"(i) Parliamentary privileges are intended to be enjoyed on behalf of the people, in their interests and not against the people opposed to their interests;*
>
> ***
>
> *(iii) the concept of privileges for any class of people is anachronistic in a democratic society and, therefore, if any, these privileges should be the barest minimum—only those necessary for functional purposes—and invariably defined in clear and precise terms;*
>
> *(iv) sovereignty of Parliament has increasingly become a myth and a fallacy for, sovereignty, if any, vests only in the people of India who exercise it at the time of general elections to the Lok Sabha and to the State Assemblies;*
>
> *(v) in a system wedded to freedom and democracy—rule of law, rights of the individual, independent judiciary and constitutional Government—it is only fair that the*

fundamental rights of the citizens enshrined in the Constitution should have primacy over any privileges or special rights of any class of people, including the elected legislators, and that all such claims should be subject to judicial scrutiny, for situations may arise where the rights of the people may have to be protected even against Parliament or against captive or capricious parliamentary majorities of the moment;

(vi) the Constitution specifically envisaged privileges of the Houses of Parliament and State Legislatures and their Members and committees being defined by law by the respective legislatures and as such the Constitution-makers definitely intended these privileges being subject to the fundamental rights, provisions of the Constitution and the jurisdiction of the courts;

***

(viii) in any case, there is no question of any fresh privileges being added inasmuch as (a) under the Constitution, even at present, parliamentary privileges in India continue in actual practice to be governed by the precedents of the House of Commons as they existed on the day our Constitution came into force; and (b) in the House of Commons itself, creation of new privileges is not allowed."

The Committee also noted the main arguments against codification. Argument (vii) is as under:

"(vii) The basic law that all citizens should be treated equally before the law holds good in the case of Members of Parliament as well. They have the same rights and liberties as ordinary citizens except when they perform

their duties in Parliament. The privileges, therefore, do not, in any way, exempt Members from their normal obligation to society which apply to them as much and, perhaps, more closely in thatas (sic, more closely than) they apply to others.

***52.** It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution."*

x x x x x x

*"**54.** The Committee for Privileges of the Lords has considered the effect of the powers of detention under the Mental Health Act, 1983 on the privileges of freedom from arrest referred to in Standing Order No. 79 that "no Lord of Parliament is to be imprisoned or restrained without sentence or order of the House unless upon a criminal charge or refusing to give security for the peace". The Committee accepted the advice of Lord Diplock and other Law Lords that the provisions of the statute would prevail against any existing privilege of Parliament or of peerage."*

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*"**68.** Thus, from the above, it is clear that neither did the House of Commons enjoy any privilege, at the time of the commencement of the Constitution, of a nature that may have the effect of restraining any inquiry or investigation against the*

Secretary or the Deputy Secretary of the Legislative Assembly or for that matter against the Member of the Legislative Assembly or a Minister in the executive Government nor does Parliament or the Legislative Assembly of the State or its Members. The laws apply equally and there is no privilege which prohibits action of registration of a case by an authority which has been empowered by the legislature to investigate the cases. Simply because the officers belong to the office of the Hon'ble Speaker of the Legislative Assembly, the provisions of the Act do not cease to apply to them. The law does not make any differentiation and applies to all with equal vigour. As such, the initiation of action does not and cannot amount to a breach of privilege of the Legislative Assembly, which has itself conferred powers in the form of a statute to eradicate the menace of corruption.

69. *The petitioners cannot, while acting under the said statute, be said to have lowered the dignity of the very Assembly which has conferred the power upon the petitioners. The authority to act has been conferred upon the petitioners under the Act by the Legislative Assembly itself and, therefore, the action taken by the petitioners under the said Act cannot constitute a breach of privilege of that Legislative Assembly."*

(Emphasis supplied)

28. It is necessary at this point to refer to the legal view on public discussion in relation to parliamentary matters, which then leads us to the right to receive information relating to such matters. A Constitution Bench of Supreme Court in its most recent decision in ***Kalpana Mehta & Ors. vs. Union of India and Ors.*** reported as (2018) 7 SCC 1 reiterates the scope and ambit of parliamentary privilege consistent with the above-quoted

position of law; and citing passages from earlier judgments goes further to hold *inter-alia* as follows:

> "***215.*** *The decision of the Privy Council in Buchanan v. Jennings arose from the Court of Appeal in New Zealand. The judgment recognises that while the protection conferred by Article 9 of the Bill of Rights should not be whittled away, yet as the Joint Committee on parliamentary privileges (Chaired by Lord Nicholls of Birkenhead) observed, freedom to discuss parliamentary proceedings is necessary in a democracy: (AC p. 123, para 9)*
>
> > *"9. ... ' Freedom for the public and the media to discuss parliamentary proceedings outside Parliament is as essential to a healthy democracy as the freedom of members to discuss what they choose within Parliament.' "*
>
> *Media reporting of parliamentary proceedings, the Court held, has been an important instrument of public debate. Hence the freedom of the Members of Parliament to discuss freely within its portals must be weighed with the freedom of the public to discuss and debate matters of concern to them: (AC p. 123, para 9)*
>
> > *"9. ... As it is, parliamentary proceedings are televised and recorded. They are transcribed in Hansard. They are reported in the press, sometimes less fully than parliamentarians would wish. They form a staple of current affairs and news programmes on the radio and television. They inform and stimulate public debate. All this is highly desirable, since the legislature is representative of the whole nation. Thus, as the Joint Committee observed in its executive summary (p. 1):*
> >
> > > *'This legal immunity is comprehensive and absolute. Article 9 should therefore be confined to activities justifying such a high degree of protection, and its boundaries should be clear.' "*
>
> *These observations reflect a concern to define the boundaries of the immunities under Article 9 in clear terms. While recognising the absolute nature of the immunity, its boundaries must "be confined to activities justifying such a high degree of*

protection". The right of Members of Parliament to speak their minds in Parliament without incurring a liability is absolute. However, that right is not infringed if a member, having spoken and in so doing defamed another person, thereafter chooses to repeat his statement outside Parliament. In such circumstances, the privilege may be qualified. While it is necessary that the legislature and the courts do not intrude into the spheres reserved to the other, a reference to parliamentary records to prove that certain words were in fact uttered is not prohibited. (Jennings case, AC p. 132, para 18)

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

x x x x x x

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

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

29. As relevant for purposes of the matter in hand, the essence of the Supreme Court decisions in the above-referred cases is that parliamentary privilege serves a distinct purpose and is to be exercised to safeguard the integrity of the legislative function against obstructions which may be caused by members of the House or by non-members; and that breach of privilege would arise if an act is directly connected with or bears proximity to the duties, role or functions of a member as a legislator. Furthermore, the boundaries of parliamentary privilege must be confined to activities of parliamentarians or activities in parliament that would justify the near absolute degree of immunity available.

30. While freedom of speech is certainly the foremost parliamentary privilege enjoyed by parliamentarians, *it is freedom of speech and debate in relation to their parliamentary or legislative function that is protected ; not speech in relation to any and every matter or subject;* and it is speech, including consultation and communication, *in relation to legislative function* that would be immune from action or challenge outside Parliament. In the present case however, no proceedings are contemplated that would amount to *questioning or impeaching* what has been said by the concerned parliamentarians in relation to the extension of the Secretary General's

tenure ; and all that is sought is information of what was said in such consultation and communications with the Speaker, merely as a matter of historical record of an event and information of what was said and no more. Assuming that a challenge is subsequently brought on the basis of information disclosed *and it is found that the information relates to proceedings in Parliament*, then such challenge may not be maintainable in a court of law ; but that is not the case as of now ; and information cannot be denied on a suppositional or conjectural basis that if information is disclosed to the petitioner, a challenge *may possibly* be brought.

Scope of judicial review of claim to parliamentary privilege

31. To be sure, in ***Raja Ram Pal's*** case (supra), while summarising the principles and parameters of judicial review in relation to exercise of parliamentary privilege, Y.K. Sabharwal, CJI speaking for the Court held :

> *"431. We may summarize the principles that can be culled out from the above discussion. They are:*
>
> *(a) Parliament is a co-ordinate organ and its views do deserve deference even while its acts are amenable to judicial scrutiny;*
>
> *(b) 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 co-ordinate constitutional status, or even the status of an exalted constitutional functionaries, does not disentitle this Court from exercising its jurisdiction of judicial review of action*

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;

(e) Having regard to the importance of the functions discharged by the legislature under the Constitution and the majesty and grandeur of its task, there would always be an initial presumption that the powers, privileges etc have been regularly and reasonably exercised, not violating the law or the constitutional provisions, this presumption being a rebuttable one;

(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 & 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 scrutinizing 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 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) Articles 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 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;

(o) The truth or correctness of the material will not be questioned by the court nor will it go into the adequacy of the material or substitute its opinion for that of the legislature;

(p) Ordinarily, the legislature, as a body, cannot be accused of having acted for an extraneous purpose or being actuated by caprice or mala fide intention, and the court will not lightly presume abuse or misuse, giving allowance for the fact that the legislature is the best judge of such matters, but if in a given case, the allegations to such effect are made, the Court may examine the validity of the said contention, the onus on the person alleging being extremely heavy;

(q) The rules which the legislature has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution;

(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)

Subject to the circumspect enunciation of the principles as above however, the Supreme Court did not dilute the power of judicial review that vests in constitutional courts in relation to exercise of parliamentary privilege, holding that there would always be an *initial presumption* that powers and privileges have been regularly and reasonably exercised by the legislature, without violating constitutional provisions ; although such presumption would be a rebuttable one. The Supreme Court also went on to state that there is no foundation to the plea that a legislative body cannot be attributed any constitutional error.

32. For completeness, the applicability of Article 122 of the Constitution may also be briefly examined. Article 122 reads as under :

> "***Article 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.*"
>
> (Emphasis supplied)

on a perusal whereof it is evident that the subject matter of Queries Nos. 3, 8 and 9 is not any '*proceedings in Parliament'* nor does it relate to the action of an officer or member for '*regulating procedure'* or *'conduct of business'* or '*maintaining order'* in Parliament. The subject matter of the queries is the *inter-se* consultation and communication between certain parliamentarians, which was however *not* undertaken in relation to their parliamentary or legislative function. The bar contained in Article 122 is also therefore not applicable in the present case.

33. Even assuming for sake of argument, that the consultation and communications in some way amounted to 'proceedings in parliament', they would yet be amenable of judicial review *if they affected fundamental rights* as held in ***Kalpana Mehta*** (supra) since only matters of procedural irregularity are excluded from judicial review :

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

of substantive or gross illegality or unconstitutionality are not protected from judicial scrutiny."

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

(Emphasis supplied)

On the position and role of the Speaker and the Secretary-General

34. Coming next to the role of the Speaker of the House, it requires to be noted that the Speaker is appointed under Article 93 of the Constitution, which Article reads as under :

> *"**Article 93. The Speaker and Deputy Speaker of the House of the People.-**The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be."*

35. What is also relevant for the present consideration is the provision for establishment of a Secretariat of Parliament under Article 98 of the Constitution, which reads as under :

> *"**98. Secretariat of Parliament** – (1) Each House of Parliament shall have a separate secretarial staff:*
>
> *Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.*
>
> *(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.*
>
> *(3) Until provision is made by Parliament under clause (2), the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause."*

36. As per norm and convention, the Speaker is the overall administrative head of the Secretariat of the House of the People. M.N. Kaul and S.N. Shakdher in their book *Practice and Procedure of Parliament (*7th Ed.), an official publication of the Lok Sabha Secretariat, describe the role of the Speaker in the following words :

> *"The Speaker is the head of the Secretariat which functions under his ultimate control and direction. The Speaker's authority over the secretarial staff of the House, its precincts and its security arrangements is supreme. All strangers, visitors and press correspondents are subject to his discipline and orders, and breach of order may be punished by means of exclusion from the precincts of the Parliament House or stoppage of admission tickets to the galleries for definite or indefinite period, or in more serious cases, dealt with as a contempt or breach of privilege. The Speaker is responsible for the protection of the rights of the members, and for ensuring that all reasonable amenities are provided for them."*

37. The "Rules of Procedure and Conduct of Business in Lok Sabha" framed under Article 118 of the Constitution define the 'Lok Sabha Secretariat/Secretariat' to mean :

> "*Lok Sabha Secretariat/Secretariat" means and includes the Lok Sabha Secretariat at Delhi and any Camp Office set up outside Delhi for the time being for, or under the authority of, the Speaker;"*

38. The Secretary-General of the Lok Sabha is appointed as an advisor to the Speaker and an administrator of the Secretariat; and to quote Kaul and Shakdher (supra) :

> "*The position of the Secretary-General of the Lok Sabha is a most unusual one; one might almost say that it is unique. He is expected to know everything that is to be known about everything that has any reference to the Lok Sabha and its business, whether it relates to some rather abstruse constitutional point or the proper precedence (sic, precedent) that should be followed in certain given circumstances; whatever the problem, members expect immediate and authoritative advice from him. In fact, the efficient and proper working of the House depends largely on the Secretary-General.*
>
> *The Secretary-General is the adviser to the Speaker in the matter of exercise of all the powers and functions that belong to the Speaker, and to the House through the Speaker. He acts under the authority and in the name of the Speaker but does not work under delegated authority. The orders passed by the Secretary-General are the orders in the name of the Speaker and the Speaker accepts full responsibility for those orders. No two persons are more closely associated than the Speaker and the Secretary-General so far as functioning of the House is concerned. A relationship of utmost confidence in each other exists between them. The Secretary-General may be very competent; he may also be in the midst of politics, yet by training he is not a politician. He, therefore, lacks something which is filled in by the Speaker.*"
>
> *x x x x x x*

"The functions of the Secretary-General may be broadly classified into two categories: parliamentary and administrative."

x x x x x x

"The Secretary-General heads a completely separate Secretariat which is under the overall control of the Speaker so that the House is assured of independent advice and its directions are executed and implemented without any interference from outside. In this category fall all those administrative and executive functions which the Secretary-General discharges on behalf of the House or the Speaker, including rendering services and providing facilities to the members. By virtue of his being the Secretary-General of the Lok Sabha, he functions as the Secretary of all parliamentary committees. He either attends to such committees himself or causes his officers to attend to them. He generally supervises all the secretarial work of these committees and gives directions, where necessary. In short, he sees that the secretarial work of the House and its committees, manned by competent and qualified officials, is organized properly and conducted smoothly so that the efficiency of parliamentary life is kept and maintained at a high level."

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"In his capacity as the Secretary-General of the House, he enjoys the privilege of freedom from arrest, save on a criminal charge. He cannot be obstructed in the execution of his duty as it would amount to contempt of the House. The House treats as breach of its privilege not only acts directly tending to obstruct the Secretary-General or other officers in the performance of their duty, but also any conduct which may tend to deter them from doing their duty in future."

The hierarchical position therefore is that the administrative, secretarial and executive wing of the Lok Sabha is headed by the Secretary-General, who functions under, on behalf of and in the name of the Speaker, who (latter) is the overall head of the Lok Sabha Secretariat. What is clear is that the Secretary-General is not a parliamentarian ; he is neither an elected representative of the people nor does he exercise any parliamentary or legislative function, but only *facilitates the exercise of such function* by members of the House by rendering administrative, secretarial and executive support for that purpose.

39. The Lok Sabha Secretariat (Recruitment and Condition of Service) Rules, 1955 framed in exercise of powers conferred under Article 98(3) of the Constitution regulate the recruitment and conditions of service of persons appointed to the secretarial staff of the Lok Sabha. These Rules bear-out the fact that the Speaker is in fact the appointing authority for all posts in the Lok Sabha Secretariat; as also the authority for superintendence, control and discipline of such officers. References in this regard may be had to Rules 6 and 12 of the aforesaid Rules. The architecture of these Rules establishes the position of the Speaker as the 'overall administrative head' of the Secretariat, which role is entirely distinct and different from that of his role as Speaker of the House.

40. It therefore transpires that the Speaker of the House, while being an elected member of the Lok Sabha, enjoys a *unique, dual position of primacy*. While on the one hand the Speaker is the moderator and umpire of parliamentary proceedings and debates; on the other hand, he is also the

head of the entire administrative machinery that supports the functioning of the House. In my opinion *these two roles are completely different and distinct;* and in that sense the Speaker holds a 'parliamentary office' and an 'administrative office', the two offices being disparate.

41. Whatever the Speaker does in discharge of his *'parliamentary office'* and the role and responsibilities he performs towards, in relation to and in connection with parliamentary proceedings, that is proceedings which are the *core and essential legislative function* of the House, enjoys immunity from being answerable outside the House. Even matters that are *adjunct to the parliamentary function* of the Speaker, for instance, communications between a Member of Parliament and the Speaker in relation to any proceedings, debates, discussions, voting or other actions arising from or pertaining to the *legislative function of such Member* would enjoy immunity so that the Member, as also the Speaker, are able to effectively discharge their legislative and parliamentary function for which they hold office. *It is to such parliamentary function that 'parliamentary privilege' would attach*.

42. On the other hand, in discharge of his *'administrative office'* as the head of the administrative establishment of the House, the Speaker performs several functions of administrative and executive nature when he oversees the 'running' of the Secretariat as it were, which Secretariat functions as the 'back office' and performs a supportive and ancillary role to enable the House to perform its legislative function. In this role, the Speaker would *inter alia* administer, manage and oversee the cadre of officers and employees that work for the House. To my mind, the Speaker's role as the

administrative head of the Secretariat does not partake of the character of *legislative function* in any manner. I say so for the reason that while administering the Secretariat, the Speaker does not engage in any legislative or parliamentary role : the Speaker does not moderate any parliamentary debate; nor does he receive any bills or motions tabled in the House; nor does he call to vote any bills or motions so moved; nor does he discipline, disqualify or otherwise monitor the actions or omissions of any Members of the House; nor does he perform any role that is directly related to the core function of the House, namely the law-making function. In his role as head of administration of the Secretariat, the Speaker oversees the cadre that in-turn performs all administrative, secretarial and executive support functions *to enable the House to discharge legislative function;* and for that reason alone, if not for other reasons, the administrative function of the Speaker is distinct from his parliamentary function. *In my view, 'parliamentary privilege' would not apply to such administrative function*.

43. As noticed above, parliamentary privilege is available to protect and maintain the sanctity, purity and integrity of parliamentary function. Parliamentary privilege does not offer any overarching or umbrella protection for *all and any action* of a parliamentarian. Every parliamentarian, including the Speaker who enjoys a position of primacy, has a persona and an identity *other than* that of a parliamentarian, to which *avatar* parliamentary privilege is simply not available.

44. It is in a sense self-evident that *every* conversation and communication between a Member of Parliament and the Speaker, whether

written or oral, will not relate to parliamentary function. Members may communicate with the Speaker in relation to personal, administrative or non-official matters.

45. In the present case it would appear that since most of the information sought had nothing to do with the Speaker's parliamentary function, such information was furnished without demur, including I may note, 'file notings' regarding the appointment of the Secretary-General. What was declined however, was information relating to the consultation and communication that went-on between the Leader of the House, the Leader of the Opposition and the Speaker in relation to the extension of the Secretary-General's term, in relation to which parliamentary privilege has been claimed. It may be noted that privilege is claimed *on point of policy* and *not with reference to any particular or specific aspect* of the consultation or communication in question.

46. One wonders though, as to what might have transpired between the Leader of the House, the Leader of the Opposition and the Speaker in relation to the extension of the Secretary-General's term that would partake of the character of privileged communication; which, if disclosed, would have interfered in the functioning of the said three persons as parliamentarians, or of the House as a whole, thereby impeding, obstructing or sullying the sacred legislative process. At best and at worst, the consultation and communications between the said three persons may contain material that reflects poorly upon the Secretary-General, his eligibility, qualification or merit; or betray some political misgivings or

disagreement in relation to the extension of his term. In my view, none of this, by any stretch or contortion of reasoning or imagination, would have impeded the functioning of the House or hampered the proceedings or legislative function or any other core function of the House.

On the right to information

47. At this point it is essential to address the interplay between 'parliamentary privilege' derived from legacy which Parliament has reserved to itself, without legislating thereupon, on the one hand ; and the 'right to information' that Parliament has by statute mandated for all citizens, on the other hand. On one side is the somewhat nebulous and un-codified protection for its legislative function that Parliament enjoys ; and on the other, is a statutory right granted to citizens by Parliament itself.

48. The right of citizens to receive information about the goings-on in the State establishment has been consistently held to be a fundamental right, flowing from Articles 19(1)(a) and 21 of our Constitution. This right is critical to the functioning of a democratic polity, which requires transparency in governance, for which in-turn, an informed citizenry is a *sine-qua-non*. In the words of the Supreme Court in the recent case titled ***Anjali Bhardwaj vs. Union of India*** reported as 2019 SCC OnLine SC 205, in which the petitioner sought adherence to statutory timelines for effective implementation of the RTI Act, the Supreme Court observes as under :

> *"**10.** Much before the enactment of RTI Act, which came on the statute book in the year 2005, this Court repeatedly emphasised the people's right to information to be a facet of Article 19(1)(a) of the Constitution. It has been held that the right to*

information is a fundamental right and flows from Article 19(1)(a), which guarantees right to speech. This right has also been traced to Article 21 which concerns about right to life and liberty. There are umpteen number of judgments declaring that transparency is the key for functioning of a healthy democracy. In the matter of State of Uttar Pradesh v. Raj Narain, a Constitution Bench of this Court held that:

> *"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil secrecy the common routine business, is not in the interest of the public…."*

11. *S.P. Gupta v. President of India, a Seven-Judge Bench of this court made the following observations regarding the Right to Information:*

> *"….The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest….."*

12. *We may also refer to the following observation from the judgment in the case of Reliance Petrochemicals*

Ltd. v. Proprietors of Indian Express Newspaper, Bombay Private Limited:

> *"....We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to Know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon the responsibility to inform...."*

x x x x x x

*"**14.** The Parliament sprung into action and passed Right To Information Act, 2005, which became effective from 12th October, 2005, persuaded by the message of this Court in its various judgments, outlining the importance of right to information that should be made available to the citizens of the country. After the RTI Act as well, this Court has been emphasising the importance of right to information. We may usefully refer to the judgment in the case of Reserve Bank of India v. Jayantilal N. Mistry where a Two-Judge Bench of this Court while upholding peoples' right to access information, made the following observations regarding the Right to Information.*

> *"Because an informed citizen has the capacity to reasoned action and also to evaluate the actions of the legislature and executives, which is very important in a participative democracy and this will serve the nation's interest better which as stated above also includes its economic interests. Recognizing the significance of this tool it has not only been made one of the fundamental rights under Article 19 of the Constitution also a Central Act has been brought into effect on 12th October 2005 as the Right to Information Act, 2005....."The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of*

> *Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."*
>
> *x x x x x x*
>
> *"**19.** The right to information, therefore, is not only a constitutional right of the citizens but there is now a legislation in the form of RTI Act which provides a legal regime for people to exercise their fundamental right to information and to access information from public authorities. The very preamble of the Act captures the importance of this democratic right which reads as under:*
>
> > *".....democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed."*
>
> (Emphasis supplied)

By the very nature and intent of the statute therefore, the RTI Act must be construed in a manner so as to advance its purpose. It would be relevant at this point to extract the entire preamble to the RTI Act which reads as under:-

> *"An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.*
>
> *WHEREAS the Constitution of India has established democratic Republic;*

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it."

(Emphasis supplied)

With the above prefatory pronouncement, the RTI Act opens with a solemn declaration in section 3 as to the right of citizens to receive information in the following words:

*"**Section 3. Right to information.-**Subject to the provisions of this Act, all citizens shall have the right to information."*

49. Having first cast the net as widely as it could possibly be in section 3, the RTI Act then engrafts certain exemptions from disclosure in section 8, the relevant portion whereof is contained in section 8(1)(c) and reads as under:-

> *"**Section 8 Exemption from disclosure of information.**-(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*
>
> *xxxxx*
>
> *(c)information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;"*

While examining section 8(1)(c), notice must also be taken of section 8(1)(j) and the proviso to section 8(1) which are contextually relevant :

Section 8(1)(j) reads as follows:-

> *(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information"*

Proviso to section 8(1) is also telling and reads as under:-

> *"Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person."*

50. In a widely worded definition, section 2(h) of the RTI Act defines 'public authority' as follows :

> *"**(h) "public authority"** means any authority or body or institution of self-government established or constituted.-*
>
> *(a) by or under the Constitution;*
>
> *(b) by any other law made by Parliament;*
>
> *(c) by any other law made by State Legislature;*
>
> *(d) by notification issued or order made by the appropriate Government, and includes any-*
>
> *(i) body owned, controlled or substantially financed;*
>
> *(ii) non-Government Organisation substantially financed,*
>
> *directly or indirectly by funds provided by the appropriate Government;"*

And defines 'information' in section 2(f) in the following words:-

> ***"(f) "information"** means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;"*

51. To be sure, Section 2(e) of the RTI Act which defines 'competent authority' specifically refers to the Speaker of the House of the People, namely the Lok Sabha, within that definition :

> *" (e) "**competent authority**" means –*
>
> *(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having*

such Assembly and the Chairman in the case of the Council of States of a Legislative Council of States;

(ii) *xxxxx*

(iii) *xxxxx*

(iv) *xxxxx*

(v) *xxxxx"*

At the same time, Parliament and State Legislatures are *not* excluded from the applicability of the RTI Act since they do not figure in the list of organisations to which the statute does not apply as per section 24 of the RTI Act, which section reads as under :

*"**24. Act not to apply to certain organizations**:-*

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty--five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature."

which makes it is clear that it was never the intention of Parliament that the Houses of Parliament or Legislative Assemblies were to be excluded from the purview and applicability of the RTI Act completely, which is why Parliament and State Legislatures were not included within section 24 of the RTI Act ; and a competent authority was in fact defined under section 2(e) in relation to the Houses of Parliament and Legislative Assemblies. Evidently therefore, Parliament itself visualised that there would be at least *some information* that would be amenable to disclosure under the RTI Act in relation to the affairs of Parliament.

52. A conjoint reading of the above-referred provisions of the RTI Act lead to the following inferences :

(a) Houses of Parliament are *not* included in the organisations to which the RTI Act does *not* apply under section 24 of the RTI Act.

(b) there is *no blanket exemption* from disclosure of information relating to Parliament save and except the specific exemption of *parliamentary privilege* available under section 8(1)(c) ;

(c) information relating to Parliament is therefore exempt from disclosure *only* if it results in 'breach of privilege'; and

(d) even information that is personal and information that may amount to invasion of privacy of an individual is liable to be disclosed *provided* such information has a relationship to some public activity or interest or disclosure thereof satisfies a larger public interest.

53. In the present case the *only* reason cited by the Speaker for denying information to the petitioner is that its disclosure *"would be breach of parliamentary privilege under Article 105(3) of the Constitution of India"*. That reason, as discussed above, is untenable since the information sought by way of Queries Nos. 3, 8 and 9 has nothing to do with the Speaker's parliamentary function and therefore is not protected by parliamentary privilege. The information sought also has no connection with 'proceedings in Parliament'; and therefore parliamentary privilege cannot be claimed therefor. Furthermore, when under section 8(1)(j) even personal information and information that may amount to invasion of privacy is liable to be disclosed if such information has a relationship with public activity or interest, then even assuming that information sought by the petitioner fell within the category of personal information or information that may cause invasion of the Secretary General's privacy, disclosure of such information cannot be denied since clearly the Secretary General's role is in the nature of public activity. Then again, the proviso to section 8(1), which says that if information cannot be denied to Parliament, then such information shall not be denied to any person, disposes of any remaining doubt in the matter since information with regard to extension of the Secretary-General's term must surely be liable to be disclosed to Parliament; and must therefore also be made available to any person, such as the petitioner.

54. As stated above, the foregoing discussion in fact exceeds the reasoning given by the Speaker for denying information on Queries Nos. 3, 8 and 9 to the petitioner, inasmuch as the *only* ground cited for denial is parliamentary privilege. Parliamentary privilege, I am afraid, is not a catch-

all phrase to claim blanket protection from disclosure of *any information that is connected with a legislative body*. Once the court comes to the conclusion that the information sought has nothing to do with 'proceedings in Parliament' and is therefore not covered by the very concept of 'parliamentary privilege', the question of the exemption under section 8(1)(c) applying to such information does not arise. Since, in my view, the information sought by way of Queries Nos. 3, 8 and 9 is not covered by parliamentary privilege, the disclosure thereof cannot cause breach of privilege. In the circumstances, I am of the view that information in relation to consultation and communications that went-on between the Leader of the Opposition, the Leader of the House and the Speaker in relation to the extension of the Secretary General's term enjoys no exemption from disclosure, much less on the ground of parliamentary privilege; and ought to have been disclosed. I am also of the view that since the plea of parliamentary privilege affects the petitioner's statutory right, to receive information which is founded on a fundamental right, the claim of privilege is amenable to judicial review by this court. I also hold that in this case the petitioner's statutory right to information must trump the plea of parliamentary privilege, since the latter must be construed so as to confine it to cases where it is necessary for preserving and protecting legislative function. The foregoing answers legal queries Nos.(i), (ii) and (iii) set-out in para 11 above.

On CIC's obligation under RTI Act to decide issue of parliamentary privilege.

55. Another issue raised by the petitioner is that it was incumbent upon the CIC to decide the question of parliamentary privilege and to thereby issue an unequivocal directive to disclose or answer the queries raised; and the CIC could not have relegated the issue of 'privilege' to be decided by the Speaker.

56. Now it is the settled position of law in our jurisprudence that what is privilege, what is breach of privilege; and when, how and in what manner breach of privilege is to be punished is the prerogative of the House. These matters are addressed by the House often on the recommendations of the Committee on Privileges. It is equally a settled proposition of law that an issue relating to breach of privilege is amenable to judicial review by the constitutional courts in exercise of their power under Articles 32 or 226 of the Constitution. The question however is whether the CIC in exercise of its powers under the RTI Act can decide an issue of privilege *while addressing an exemption* from disclosure under section 8 of the RTI Act.

57. It is pertinent to point-out that during the Constituent Assembly debates on 19.05.1949, an amendment was suggested to Article 85 of the Draft Constitution, which provision came to be finally adopted as Article 105, whereby Professor K.T. Shah a member of the Constituent Assembly, suggested the insertion of clause (5) to Article 85 purporting to confer upon

the House the *sole discretion* to decide matters of privilege in the following words :

> *"Prof. K.T. Shah : Sir, I move :*
> *"That after clause (4) of article 85, the following new clause be inserted:-*
> *'(5) In all matters of privilege of either House of Parliament or of members thereof the House concerned shall be the sole judge and any order, decree or sentence duly passed by that House shall be enforced by the officers or under the authority thereof.'"*
> *Sir, this is a simple proposition well known in constitutional practice in other countries also, that a sovereign legislature is the sole judge of the privileges of its members as well as of the body collectively. It follows, therefore, as an inevitable corollary that any breach thereof should be dealt with by the House concerned, and any order or sentence passed by it should also be enforceable by its own officers or under its authority."*

Pertinently, after discussion and debate, the amendment suggested was negatived. It would therefore be correct to infer that an attempt to make the House the sole judge of matters relating to privilege was denied by the Constituent Assembly at the time of drafting what came to be Article 105 of the Constitution.

58. The answer to the foregoing question turns upon the powers of the CIC under the RTI Act as also on an interpretation of section 8(1)(c) thereof. A reference to sections 8(1)(c) and 18 of the RTI Act are relevant for this purpose :

Section 8(1)(c) :

"(c)information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;"

xxxxxx

"18. Powers and functions of Commission –

(1) xxxxx

(2) xxxxx

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) xxxxx

(Emphasis supplied)

59. Section 18 therefore vests the CIC with the powers of a *civil court*. The exact nature of the CIC's function was interpreted by the Supreme Court when challenge was brought to the constitutional validity of sections 12(5), 12(6), 15(5) and 15(6) of the RTI Act. The essential basis of the challenge was that the criteria provided in the said sections for appointment of persons to adjudicate matters under the RTI Act are too vague and general and therefore *ultra vires* the Constitution. It was argued that persons who are so appointed discharge 'judicial' functions and powers and must therefore have a judicial approach, experience, knowledge and expertise. On this issue the Supreme Court initially rendered its judgment dated 13.09.2012 in ***Namit Sharma vs. Union of India*** reported as (2013) 1 SCC 745, in which the Supreme Court *inter-alia* held that the CIC's powers and duties have a color of judicial and quasi-judicial function and therefore the CIC has the essential trappings of a civil court. On review petitions filed against its judgment dated 13.09.2012 however, in its decision in ***"Union of India vs. Namit Sharma*** reported as (2013) 10 SCC 359, the Supreme Court recalled its earlier declarations and directions and finally held :

> "***24.*** *..... Hence, the functions of the Information Commissions are limited to ensuring that a person who has sought information from a public authority in accordance with his right to information conferred under Section 3 of the Act is not denied such information except in accordance with the provisions of the Act.*
>
> ***25.*** *..... While deciding whether a citizen should or should not get a particular information "which is held by or under the control of any public authority", the Information Commission does not decide a dispute between two or more parties concerning their legal rights other than their right to get*

information in possession of a public authority. This function obviously is not a judicial function, but an administrative function conferred by the Act on the Information Commissions.

26. *In the judgment under review, this Court after examining the provisions of the Act, however, has held that there is a lis to be decided by the Information Commission inasmuch as the request of a party seeking information is to be allowed or to be disallowed and hence requires a judicial mind. But we find that the lis that the Information Commission has to decide was only with regard to the information in possession of a public authority and the Information Commission was required to decide whether the information could be given to the person asking for it or should be withheld in public interest or any other interest protected by the provisions of the Act. The Information Commission, therefore, while deciding this lis does not really perform a judicial function, but performs an administrative function in accordance with the provisions of the Act. As has been held by Lord Greene, M.R. in B. Johnson & Co. (Builders) Ltd. v. Minister of Health [(1947) 2 All ER 395 (CA)] : (All ER p. 399 D-E)*

> *"... Lis, of course, implies the conception of an issue joined between two parties. The decision of a lis, in the ordinary use of legal language, is the decision of that issue. The consideration of the objections, in that sense, does not arise out of a lis at all. What is described here as a lis—the raising of the objections to the order, the consideration of the matters so raised and the representations of the local authority and the objectors—is merely a stage in the process of arriving at an administrative decision. It is a stage which the courts have always said requires a certain method of approach and method of conduct, but it is not a lis inter partes, and for the simple reason that the local authority and the objectors are not parties to anything that resembles litigation."*

27. *In the judgment under review, this Court has also held after examining the provisions of the Act that the Information Commission decides matters which may affect the rights of third parties and hence there is requirement of judicial mind ..... The decision taken by the Central Public Information Officer or the State Public Information Officer, as the case may be, under Section 11 of the Act is appealable under Section 19 of the Act before the Information Commission and when the Information Commission decides such an appeal, it decides only whether or not the information should be furnished to the citizen in view of the objection of the third party. Here also the Information Commission does not decide the rights of a third party but only whether the information which is held by or under the control of a public authority in relation to or supplied by that third party could be furnished to a citizen under the provisions of the Act. Hence, the Information Commission discharges administrative functions, not judicial functions.*

28. *While performing these administrative functions, however, the Information Commissions are required to act in a fair and just manner following the procedure laid down in Sections 18, 19 and 20 of the Act. But this does not mean that the Information Commissioners are like Judges or Justices who must have judicial experience, training and acumen. In Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala [AIR 1961 SC 1669] , Hidayatullah, J., explained: (AIR p. 1681, para 33)*

> *"33. In my opinion, a court in the strict sense is a tribunal which is a part of the ordinary hierarchy of courts of civil judicature maintained by the State under its constitution to exercise the judicial power of the State. These courts perform all the judicial functions of the State except those that are excluded by law from their jurisdiction. The word 'judicial', be it noted, is itself capable of two meanings. They were admirably stated by Lopes, L.J. in Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson [(1892) 1 QB 431 :*

(1891-94) All ER Rep 429 (CA)] in these words: (QB p. 452)

> *'The word "judicial" has two meanings. It may refer to the discharge of duties exercisable by a Judge or by Justices in court, or to administrative duties which need not be performed in court, but in respect of which it is necessary to bring to bear a judicial mind—that is, a mind to determine what is fair and just in respect of the matters under consideration.'*
>
> *That an officer is required to decide matters before him 'judicially' in the second sense does not make him a court or even a tribunal, because that only establishes that he is following a standard of conduct, and is free from bias or interest."*

(Emphasis supplied)

60. What requires to be noted though, is that even in the opinion rendered upon review as extracted above, the Supreme Court said :

> "***39.*** *... As the judgment under review suffers from mistake of law, we allow the review petitions, recall the directions and declarations in the judgment under review and dispose of Writ Petition (C) No. 210 of 2012 with the following declarations and directions:*
>
> *x x x x x x*
>
> ***39.6.*** *We also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law."*

(Emphasis supplied)

meaning thereby that although the CIC discharges administrative function, it may yet encounter and be required to decide *"intricate questions*

of law", which, it follows, would have to be decided in accordance with the law as laid down by the superior courts. In the para quoted above the Supreme Court mandates that if such questions of law were to come-up for decision, the matter would be heard and decided by an Information Commissioner with *"wide knowledge and experience in the field of law"*. It cannot therefore be gainsaid that the discharge of its functions by the CIC would certainly entail *application of the law* as laid down by the courts. It also cannot be said that application of the law - in this case law relating to parliamentary privilege - can happen *only* in a court of law and not before the CIC. Whenever the CIC decides the question whether information sought in a given case is covered by *any* of the exemptions contained in section 8 of the RTI Act, it is certainly obligated to apply the law as may be relevant and to then take a considered view in a given matter.

61. On a bare reading of the provisions of the RTI Act, in particular sections 8(1)(c) and 18 thereof, and in view of the above pronouncement by the Supreme Court, to my mind it is clear that the CIC *is tasked with deciding* whether information sought in a given case is to be disclosed or is covered by *any one or more of the exemptions* under section 8(1) of the RTI Act. The exemption contained in section 8(1)(c) *viz.* whether disclosure would amount to breach of privilege of Parliament or of the State Legislature *is just another ground* for exemption and there is no reason to treat it differently from any of the other grounds. The CIC must therefore decide this question just as it would decide the applicability of any of the other exemptions under section 8. It goes without saying, that the CIC's decision on an issue of exemption under section 8(1)(c) would of course be

amenable to judicial review by a constitutional court; but the *CIC would, at its end, be required to decide the issue of parliamentary privilege based upon the legal principles laid down in judgments of superior courts*, as applicable to a given case. If a party, say the RTI applicant or the public authority, is aggrieved by the CIC's decision, it would be entitled to approach the constitutional courts for redressal.

62. The question whether, on the basis of settled legal principles of parliamentary privilege, it was permissible to disclose the information sought, *was required* to be decided by the CIC. If the CIC was of opinion that the information was covered by parliamentary privilege, then the CIC ought to have denied disclosure. If however, in the CIC's view, the information was not protected by parliamentary privilege, the CIC ought to have directed its disclosure.

63. To be clear, the issue to be decided in appeal before the CIC was on this very aspect : whether the disclosure of information is exempt under section 8(1)(c). This issue had arisen within the domain of the RTI Act and ought to have been addressed, considered and decided by the CIC itself. The CPIO, Lok Sabha Secretariat had of course taken a view that the information sought by way of Queries Nos. 3, 8 and 9 could not be disclosed *inter-alia* since it was covered by parliamentary privilege; which view was upheld by the First Appellate Authority ; and this view had to be re-considered by the CIC as the second appellate authority. It is noteworthy that the CPIO and the First Appellate Authority *had decided the issue of applicability of parliamentary privilege against the petitioner*, thereby denying the

information sought by way of Queries Nos. 3, 8 and 9. There was no reason for the CIC to have shirked re-deciding this issue. The statutory power to re-consider this issue could not have been hived-off by the CIC to another entity, in this case, the Speaker. If, inspite of the decision of the CIC the applicant or the public authority was aggrieved, such party would have taken resort to its remedy in law, just as the petitioner has done now by way of the present petition.

64. When the statute itself casts a specific obligation on the CIC to decide whether or not any of the exemptions under section 8 apply in a given case, the CIC is mandated to decide *all or any of the grounds for such exemption* including the ground of parliamentary privilege. Nowhere does the statute say that if the exemption under section 8 relates to parliamentary privilege, the decision thereof shall lie with the Speaker and not with the CIC. If Parliament had intended that the Speaker should not decide an issue of section 8(1)(c) exemption, it would have said so. To apply the law, *as set-out in a statue and/or as interpreted by the superior courts, is the duty and obligation of all State functionaries, else every decision involving application of law would be taken only in a court, which would be wholly unworkable. Accordingly, the CIC is enjoined to decide all exemptions to disclosure, including the exemption contained in section 8(1)(c).*

65. The petitioner is therefore correct in contending that by leaving the decision on parliamentary privilege to the Speaker, the CIC has abdicated its role or to put it differently, has delegated its power, under the RTI Act.

66. It would be sufficient to refer in the passing to the well-settled principle of *delegatus non potest delegare*, that is to say, unless expressly authorised by statute, a delegate cannot sub-delegate its statutory power. The power to decide whether any of the exemptions under section 8 of the RTI Act applies, vests squarely in the authorities empowered under the RTI Act, in this case the CIC.

67. The fact that the Speaker is otherwise empowered to decide parliamentary privilege, if the question arises in parliamentary proceedings or in relation to the affairs of Parliament, does not mean that the *specific power of deciding the exemption under section 8(1)(c) of the RTI Act* would also stand vested in the Speaker. It may be noticed that Chapter XX of the Rules of Procedure and Conduct of Business in Lok Sabha which deals with 'Privileges' *inter-alia* contains Rules 226 to 228 which read as under:

> *"226. If leave under rule 225 is granted, the House may consider the question and come to a decision or refer it to a Committee of Privileges on a motion made either by the member who has raised the question of privilege or by any other member.*
>
> *227. Notwithstanding anything contained in these rules, the Speaker may refer any question of privilege to the Committee of Privileges for examination, investigation or report.*
>
> *228. The Speaker may issue such directions as may be necessary for regulating the procedure in connection with all matters connected with the consideration of the question of privilege either in the Committee of Privileges or in the House."*

meaning thereby that even under the Rules of Procedure and Conduct of Business, it is the *House* that decides the question of parliamentary privilege, whether with or without the report of the Committee of Privileges; and there is no warrant for the proposition that the Speaker on his own can decide a question of parliamentary privilege. In the present case however the decision claiming parliamentary privilege is of the Speaker *alone*.

68. I am therefore of the view that in this case the CIC has committed an error in not deciding whether the information sought by the petitioner falls within the exemption under section 8(1)(c) of the RTI Act ; and instead leaving that issue to be decided by the Speaker. After all, the other exemptions engrafted in section 8(1) of the RTI Act also contain matters of the equal significance and sensitivity, such as matters enumerated in section 8(1)(a) *viz.* information, disclosure of which would prejudicially affect the sovereignty and integrity of India and security interests of the State; section 8(1)(f) *viz.* information received in confidence from foreign governments and others, the applicability of which exemptions is also required to be decided by the CIC under the RTI Act. This answers legal queries Nos. (iv) and (v) set-out in para 11 above.

Conclusions

69. What is clear in the present case is that the information sought, which was denied, related to the consultation and communications as between the Leader of the Opposition, the Leader of the House and the Speaker in relation to the extension of the Secretary General's tenure. The extension of

the Secretary-General's tenure was granted by the Speaker as the head of the administrative wing of the House and not by any collective or collegiate action or decision on the part of the House or any committee of the House. The matter of extension of tenure was not debated or discussed by the House, since it was not part of the legislative function or any other parliamentary function of the House or any committee of the House. The consultation and communications between the Leader of the Opposition, the Leader of the House and the Speaker in relation to the extension of the Secretary General's tenure did not pertain to their role in any proceedings in Parliament; nor did it partake of the character of legislative i.e. the law-making function of the said three persons. Disclosure of such consultation and communications would not, by any stretch of imagination or reasoning, hinder, impede or interfere with the participation of the Leader of the Opposition, Leader of the House and/or the Speaker in any proceedings of the House; and did not have the potential to distort, obstruct or threaten the integrity of the legislative process in any manner. The disclosure would not be prejudicial to the core legislative function of the House.

70. No amount of intellectualisation can dissuade this Court from opining that the extension of the Secretary-General's tenure, whatever may have been the controversy surrounding it and whatever may have been the objection thereto by the Leader of the Opposition, was an executive, managerial and administrative act on the part of the Speaker – plain and simple. This ought to have been evident to the CIC; and accordingly, it would have been clear to the CIC that the exemption contained in section

8(1)(c) had no application to the information sought by the petitioner by way of Queries Nos. 3, 8 and 9 of his RTI application.

71. In view of the foregoing discussion and reasoning, this Court answers the queries framed is para 11 as follows:

> *In answer to Queries Nos. (i), (ii) and (iii) above,*this court holds that disclosure of information sought by way of Queries Nos. 3, 8 and 9 contained in RTI application dated 01.09.2011 was not covered by the exemption contained in section 8(1)(c) of the RTI Act and disclosure of such information would not have amounted to breach of parliamentary privilege;
>
> *In answer to Queries Nos. (iv) and (v) above,* this court holds that the CIC committed an error in disposing of the matter by leaving it to the Speaker, Lok Sabha to decide whether disclosure of such information would amount to breach of privilege of Parliament. The CIC ought to have itself decided the issue of breach of privilege in exercise of the powers conferred upon it under the RTI Act, applying well-settled legal principles relating to parliamentary privilege, such decision of course being amenable to review by constitutional courts. The Speaker, Lok Sabha/Lok Sabha Secretariat also erred in deciding that the information sought was covered by parliamentary privilege, when in fact such information had nothing to do with the parliamentary function of the House.

72. In view of the above, impugned order dated 20.02.2013 made by the CIC and order dated 26.03.2013 made by the Lok Sabha Secretariat are hereby set-aside. It is directed that the information sought by way of Queries Nos. 3, 8 and 9 of the RTI application dated 01.09.2011 be furnished to the

petitioner within four weeks of the date of this order. If however the information sought has already been weeded-out in compliance with the rules for weeding-out or destruction of records of Parliament, an affidavit of the appropriate officer to that effect be filed in this court within four weeks, with a copy to the petitioner, who may then seek such other or further directions as he may be advised.

73. The petition is disposed of in the above terms; without however, any order as to costs.

ANUP JAIRAM BHAMBHANI
(JUDGE)

JULY 02, 2019/Ne/*uj/j*