SUPREME COURT OF INDIA

Justice (Retd.) Markandey Katju

Vs.

The Lok Sabha & Anr.

WP.(Civil)No.504 of 2015

(T.S.Thakur,CJI., R.Banumathi and Uday Umesh Lalit,JJ.,)

15.12.2016

JUDGMENT

Uday Umesh Laiit,J.,

1. This petition under Article 32 seeks quashing 7. of Resolution dated 11.03.2015 passed by Rajya Sabha and Resolution dated 12.03.2015 passed by Lok Sabha. In the alternative, it is also prayed that the Houses of Parliament be directed to give to the petitioner post decisional hearing.

2. On 10.03.2015, the petitioner, a former Judge of this Court published a post on his Facebook Page in respect of Mahatma Gandhi, Father of the Nation. The post was entitled

> "Gandhi - A British Agent" and stated that Mahatma Gandhi did great harm to India. On the same date, another post was published by the petitioner on his Facebook Page in respect of Netaji Subhash Chandra Bose referring to him as an agent of Japanese fascism.

3. These posts evoked immediate response and on 11.03.2015, discussion took place in Rajya Sabha. At the end of the discussion, a Resolution was moved by the Chairman of Rajya Sabha which was passed unanimously by the House. The Resolution was to the following effect :-

> "This House expresses its unequivocal condemnation of the recent remarks of the former judge of the Supreme Court, Shri Justice Markandey Katju, against the Father of the Nation Mahatma Gandhi and Netaji Subhash Chandra Bose led the Indian National Army for the freedom of the country.

4. On the next day, discussion also took place in Lok Sabha whereafter the following Resolution was passed by Lok Sabha on 12.03.2015:-

> "Father of the Nation Mahatma Gandhi and Netaji Shri Subhash Chandra Bose both are venerated by the entire country. The contribution of these two great personalities to the freedom struggle of the country and their dedication is unparalleld. The statement given by the former Judge of Supreme Court and former Chairman of Press Council of India Shri Markandey Katju is deplorable. This House unequivocally condemns the statement given by former Judge of Supreme Court Shri Markandey Katju unanimously."

5. On 23.03.2015, the petitioner sent e-mails to the Chairman, Rajya Sabha and to the Speaker, Lok Sabha that the aforesaid Resolutions condemning his statements on Mahatma Gandhi and Netaji Subhash Chandra Bose were passed by Rajya Sabha and Lok Sabha without giving him any opportunity of hearing and that rules of Natural Justice required that he should have been given an opportunity of hearing. The petitioner, therefore, stated:-

> "I therefore request both Houses of Parliament, through you, to recall the resolutions and apologize to me, or else to suspend the resolutions and give me an opportunity of hearing, personally or through my lawyer.

6. Since the petitioner did not receive any response from either the Chairman, Rajya Sabha or the Speaker, Lok Sabha, he has filed the present petition. The petition states that it does not seek any relief against any Member of Parliament individually but the Resolutions in question do not fulfill jurisdictional requirement, and that whether the statements are deplorable or condemnable can be judged only by bodies performing judicial function and cannot be decided by Rajya Sabha or Lok Sabha. The petition prays for quashing of the aforesaid Resolutions. On 03.08.2015, this Court while granting fuller opportunity to the petitioner to make submissions on the points in question, requested Mr. Fali S. Nariman, Senior Advocate to assist this Court as Amicus Curiae and also requested Mr. Mukul Rohatgi, Attorney General to appear and make his submissions.

7. A written note was filed on behalf of the petitioner framing certain questions and making submissions in respect thereto. The questions so framed and the gist of the submissions are:-

> "I. Does Article 19(1)(a) of the Constitution of India guarantee an individual the freedom to hold and publicly express dissenting opinions? it is submitted that Article 19(1)(a) of the
> Constitution of India guarantees to an individual the freedom to hold and publicly express dissenting opinions without fear of any form. It is the duty of the Legislature to respect and promote respect for such a right and not to curtail the same, either by enacting legislations that run contrary to Article 19(2) or to pass a resolution, condemning the exercise of such free speech.
>
> II. Whether Parliament can in the absence of a 'law' framed under Article 19(2) of the Constitution of India exercise jurisdiction over an individual and express disapproval for the opinions expressed by him or her? It is submitted that in exercise of privilege, the

petitioner's publications and comments could be subject matter of discussion in Parliament, as Parliament is free to discuss any matter. However, it is not open to Parliament to condemn the petitioner and his remarks as doing such an act is not in aid of functioning of Parliament.. In exercise of its powers, Parliament can imprison, admonish or reprimand a "stranger" only when doing so is necessary for functioning of the House. It is submitted that condemnation or disapproval is synonymous with admonishing or reprimanding an individual. A "stranger" who makes a speech outside the house, especially not connected with the functioning of Parliament and not derogatory to Parliament, could not be taken notice of by Parliament to punish him

III. Whether the privilege under Article 105(1) of the Constitution is intended to secure freedom of expression within Parliament or can it be exercised for the purpose of silencing dissenting opinions which are a part of fundamentally guaranteed freedoms under Article 19(1) (a) of the Constitution? Therefore, when Parliament is claiming a privilege, what is to be considered is whether Parliament is claiming the privilege in respect of an act which is fundamental to its functioning. Unless the answer is in affirmative, the claim of privilege is to be disallowed The power available with the House to deal with a stranger is only in relation to contempt of the House and where the act complained of interferes with the functioning of the House
At this present stage, it is necessary to point out that there is no evidence on record or otherwise to suggest that the remarks of the petitioner in the present case affected the functioning or the reputation of either House of Parliament. Thus, the very initiation of action against the individual petitioner is without jurisdiction. In fact, even the text of the resolution is silent on the said aspect

IV. Whether either House of Parliament could condemn any individual or his expression of his speech; when such individuals were not discharging duties in public capacity and where the speech does not interfere with the functioning of Parliament.
The impugned resolutions passed by the Lok Sabha and Rajya Sabha condemn certain statements made by the petitioner, who is a retired judge of the Supreme Court, and former Chairman of the Press Council of India, purely in his private capacity. Further, the resolutions were passed the very next day after the aforesaid statements were made public without even giving the petitioner an opportunity to present his response to either of the House and without taking into consideration the entire analysis of the petitioner including the underlying literature and viewpoints of various scholars Keeping in mind that the above rules stem from an express provision of the Constitution, and further, that these Rules are subject to the mandate of the Constitution, the import of the above extracted rules, may be summarized as follow: First, the subject matter of the resolution being moved must be one of the general public interest. Second, a resolution condemn can only be directed at an act of Government. Third, the resolution shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements. Fourth, it shall not refer to the conduct or character of persons except in their official or public capacity. Fifth, the required notice period of two days has not been complied with....

V. In the event Parliament did have the requisite jurisdiction, could it have passed a resolution without giving an opportunity of hearing to the petitioner?" Assuming but not conceding that Parliament did have the requisite jurisdiction, a resolution could not have been passed condemning the petitioner's views without even giving an opportunity of hearing and taking into consideration the entire material before reaching such an adverse conclusion "

8. Mr. F. S. Nariman, learned Amicus Curiae placed on record a brief note of submissions, submitting inter alia:-

"It is respectfully submitted that the questions raised in the petition are no longer res integra. They stand concluded by a decision of this Hon'ble Court reported in 1970 (2) SCC 272 (Bench of 6 Hon'ble Judges)-upholding a full Bench decision (of 5 Hon'ble Judges) of the High Court of Delhi; (reported in AIR 1971 Delhi 86)- and declaring (in paragraph 8) :-

"The Article (105) confers immunity inter alia in respect of "anything said in Parliament". The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court, this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they said is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none." And

"As was said in Keshav Singh-1965 (1) SCR 413 at 441-442 (Bench of 7 Judges)-quoted in AIR 1971 Delhi 86-clause (2) of Article 194 (as also clause (2) of Article 105) "makes it plain that the freedom (of speech) is literally absolute and unfettered".

9. Mr. Mukul Rohatgi, learned Attorney General in his written note submitted:-

"The petition under Article 32 is not maintainable

a. No fundamental right of the petitioner, the sine qua non of a petition under Article 32 of the Constitution, has been breached.

b. The petitioner had expressed an opinion which caused grave anguish to right thinking people, including the elected representatives of the people. He fully exercised his constitutionally guaranteed right under Article 19(1)

(a). The resolution merely condemns his statement without visiting any other consequence upon the petitioner. There is thus no violation of his fundamental right to speech. The right to speech does not include a right to immunity from criticism.

c. There is no violation of Article 21. The resolution does not defame the petitioner. It is an expression of opinion by the House. Just as the petitioner has his opinion, so do members of the House. In fact, it is the petitioner who has defamed the Father of the Nation and Netaji, both illustrious sons of the soil. The first explanation to Section 499 IPC may be seen. The petitioner, in other words, seeks to make defamatory statements and is unable to bear criticism by other members of the House. Immunity of House Proceedings

a. The present petition, as can be seen from the Memo of Parties, has been filed against the Houses of Parliament. There is complete freedom of speech in the Houses as guaranteed by Article 105 of the Constitution of India. It is submitted that the right guaranteed under Article 105 cannot be abridged, curtailed or called into question in any Court of law. Any attempt to do so would violate the sanctity of free parliament proceedings. Freedom of Speech in the House is not subject to restrictions placed Sunder Article 19 (2) of the Constitution.

b. The proceedings of the House, as well as the officers of the House, have immunity from being proceeded against in any Court of law, inter alia under Article 122(2) of the Constitution. The only restriction on free speech within Parliament is covered by Article 121 of the Constitution and the good sense of Vice-President (Rajya Sabha) and the Speaker (Lok Sabha) to regulate the business of the House. The Resolution merely expresses an opinion

a. The various rules of procedure make it clear that the nature of the Resolution was one without any statutory effect. It was merely an expression of opinion of the House. This is within the domain of the freedom of the House. Since the petitioner was visited with no civil consequences, there is no occasion for him to be heard. To contend otherwise would completely stymie the functioning of Parliament. This Hon'ble Court ought not to exercise its discretion in this matter. The petitioner has been a constitutional functionary, a judge of the Apex Court. It is unbecoming of anybody including the holder of constitutional posts to make scandalous remarks against the father of the Nation and Netaji. This Court ought to summarily reject the petition in exercise of its discretion under Article 32 of the Constitution."

10. The petitioner filed written response to the issue of maintainability and submitted as under:

(a) "..while Parliament is free to discuss any person or conduct of any person, Parliament usually does not discuss the statements made by persons who are not public servants. Even if Parliament does discuss the statements made by private persons, it is not open to it to pass resolutions to condemn such persons or their

statements. Parliament is not expected to take cognizance of statements of private persons. This is rather clear from a bare reading of the Rajya Sabha Rules as well as Lok Sabha Rules which do not allow for any resolution to be passed in respect of private citizens. In fact, passing a resolution to condemn the petitioner or his statements, even in respect of 'historically respected personalities' is not necessary for functioning of Parliament. Thus, there can be no claim to legislative privilege in that regard.

(b)... as opposed to the facts in Tej Kiran Jain where the Members of Parliament had been sued personally, in the present case, the petitioner makes no claim against any Members.

(c). the claim in Tej Kiran Jain emanated from Article 105(2) of the Constitution which confers absolute freedom on the Members of the House. On the other hand, in the present case the resolutions have been passed by the Houses of the Parliament, which certainly do not fall within the plain words of "anything said or vote given". It is submitted that impugned resolutions have been passed in exercise of powers conferred on the houses of Parliament by Article 105(3) of the Constitution..."

11. We heard Mr. Gopal Subramanium, learned Senior Advocate for the petitioner, Mr. Mukul Rohtagi, learned Attorney General for the respondents and Mr. Fali S. Nariman, learned Senior Advocate -Amicus Curiae who assisted the Court. We are grateful for the assistance rendered by all the learned counsel.

12. Before we turn to consider the matter, we may quote Article 105 as well as Articles 121 and 122 of the Constitution:-

"105. Powers, privileges, etc of the Houses of Parliament and of the members and committees thereof:

(1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

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

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

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

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

122. Courts not to inquire into proceedings of Parliament U U LjlYLJllj JNI _L
(1) The validity of any proceedings in Parliament shall not be called in question of 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. " The comparable articles as regards Powers, Privileges and Immunities of Houses of State Legislature, are Articles 194, 211 and 212 of the Constitution."

13. In terms of Article 118 of the Constitution, both Houses of Parliament have made rules for regulating their procedure and conduct of business. Chapter 11 of "Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha)" (hereinafter referred to as "Rajya Sabha Rules") deals with subject "Resolutions" and the relevant Rules are:-

"CHAPTER XI RESOLUTIONS
154. Notice A member other than a Minister who wishes to move a resolution on a day allotted for private members' resolutions, shall give a notice to that effect at least two days before the date of draw of lot. The names of all members from whom such notices are received shall be drawn by lot and those members who secure the first five places in the draw of lot for the day allotted for private members' resolutions shall be eligible to give notice of one resolution each within ten days of the date of the draw of lot.

155. Form A resolution may be in the form of a declaration of opinion by the Council or in such other form as the Chairman may consider appropriate.

156. Subject-matter Subject to the provisions of these rules, any member may move a resolution relating to a matter of general public interest.

157. Conditions of admissibility In order that a resolution may be admissible, it shall satisfy the following conditions, namely:—

(i) it shall be clearly and precisely expressed;

(ii) it shall raise substantially one definite issue;

(iii) it shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements;

(iv) it shall not refer to the conduct or character of persons except in their official or public capacity; and

(v) it shall not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India."

158. Chairman to decide admissibility The Chairman shall decide on the admissibility of a resolution, and may disallow a resolution or a part thereof when in his opinion it does not comply with these rules."

14. Similarly Chapter 13 of "Rules of Procedure and Conduct of Business in Lok Sabha" (hereinafter referred to as Lok Sabha Rules) deals with subject "Resolutions" and the relevant Rules in that Chapter are:-

CHAPTER XIII Notice of Resolution

170. A member other than a Minister who wishes to move a resolution on a day allotted for private members' resolutions, shall give a notice to that effect at least two days before the date of ballot. The names of all members from whom such notices are received shall be balloted and those members who secure the first three places in the ballot for the day allotted for private members' resolutions shall be eligible to give notice of one resolution each within two days after the date of the ballot.

Form of Resolution

171. A resolution may be in the form of a declaration of opinion, or a recommendation; or may be in the form so as to record either approval or disapproval by the House of an act or policy of Government, or convey a message; or commend, urge or request an action; or call attention to a matter or situation for consideration by Government; or in such other form as the Speaker may consider appropriate.

Subject matter of Resolution

172. Subject to the provisions of these rules, a member or a Minister may move a resolution relating to a matter of general public interest.

Admissibility of Resolution

173. In order that a resolution may be admissible, it shall satisfy the following conditions, namely:—

(i) it shall be clearly and precisely expressed;

(ii) it shall raise substantially one definite issue;

(iii) it shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements;

(iv) it shall not refer to the conduct or character of persons except in their official or public capacity; and

(v) it shall not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India.
Speaker to decide Admissibility

174. The Speaker shall decide whether resolution or a part thereof is or is not admissible under these rules and may disallow any resolution or a part thereof when the Speaker is of the opinion that it is an abuse of the right of moving a resolution or calculated to obstruct or prejudicially affect the procedure of the House or is in contravention of these rules."

15. Before we deal with the questions raised by the petitioner, issue of maintainability of this Writ petition must be addressed. According to the petitioner, the reliance on the ratio in *Tej Kiran Jain and others v. N. Sanjiva Reddy and others*[1] is confined to cases where individual Members of Parliament are sued and will not cover cases where resolution(s) of the House(s) are called in question while according to the learned Amicus Curiae the issue stands fully covered by Tej Kiran Jain (supra).

16. The historical background including the discussions in the Constituent Assembly regarding draft Article 85, which Article corresponds to Article 105 of the Constitution has been dealt with in extenso by this Court in *Raja Ram Pal v. Hon'ble Speaker*[2], Lok Sabha in paragraphs 111 to 127 of its judgment and for the present purposes, we may quote paras 111 and 112:-

"111. Dr. Ambedkar, the Chairman of the Drafting Committee of the Constitution, while mooting for the parliamentary system similar to the one obtaining in England noted, in the course of debates in the Constituent Assembly, that in the latter jurisdiction, the parliamentary system relies on the daily assessment of responsibility of the executive by Members of Parliament, through questions, resolutions, no-confidence motions and debates and periodic assessment done by the electorate at the time of election; unlike the one in the United States of America, a system far more effective than the periodic assessment and far more necessary in a country like India. India thus adopted parliamentary constitutional traditions.

112. The concept of parliamentary privileges in India in its modern form is indeed one of graft, imported from England. The House of Commons having been accepted by the Constituent Assembly as the model of the legislature, the privileges of that House were transplanted into the Draft Constitution through Articles 105 and 194."

17. As regards "freedom of speech and debates or proceedings in Parliament", this Court in Special Reference No. 1 of 1964 (Keshav Singh's case)[3] in paragraph No 72 observed:-

> "72. It would be relevant at this stage to mention broadly the main privileges which are claimed by the House of Commons. Freedom of speech is a privilege essential to every free council or legislature, and that is claimed by both the Houses as a basic privilege. This privilege was from 1541 included by established practice in the petition of the Commons to the King at the commencement of the Parliament. It is remarkable that notwithstanding the repeated recognition of this privilege, the Crown and the Commons were not always agreed upon its limits. This privilege received final statutory recognition after the Revolution of 1688. By the 9th Article of the Bill of Rights, it was declared "that the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament".

18. "Freedom of Speech" in discussion and debates in the House, which was so statutorily recognized by Article 9 of the Bill of Rights Act, 1688 in the United Kingdom, found expression in specific terms in sub-section (7) of Section 67 of the Government of India Act, 1915 which declared, "Subject to the rules and standing orders affecting the chamber, there shall be freedom of speech in both chambers of the Indian Legislature. No person shall be liable to any proceedings in any court by reason of his speech or vote in either chamber .

> .". Section 71 of the Government of India Act, 1935 dealt with "Privileges etc. of members of Provincial Legislatures" and sub-section (1) thereof provided:
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> "Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any Committee thereof "
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> Section 86(1) of the Government of India Act, 1935 prohibited discussion in the Provincial Legislature regarding the conduct of any Judge of the Federal Court or High Court in the discharge of his duties while in terms of Section 87, the validity of any proceedings in a Provincial Legislature could not be called in question on the ground of any alleged irregularity of procedure. The Indian Independence Act, 1947 conferred sovereign legislative power on the Indian Dominion Legislature. India (Provisional Constitution) Order, 1947, issued by the Governor General of India on 14.08.1947 made large scale amendments to the Government of India Act, 1935, the important being Sections 28, 38, 40 and 41 which were brought into force for the first time. Sub-sections (1) and (2) of Section 28 were as under:
>
> "(1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Dominion Legislature there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any

proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under authority of the Legislature of any report, paper, votes or proceedings.

(2) In other respects, the privileges of members of the Dominion Legislature and, until so defined, shall be such as were immediately before the establishment of the Dominion enjoyed by members of the Indian Legislature."

The substantive provisions of aforesaid Section 28 find reflected in draft Article 85 which was debated upon in the Constituent Assembly. This part is extensively dealt with by this Court in paragraphs 111 to 127 in its judgment in Raja Ram Pal (supra).

19. We now turn to the ambit and extent of "freedom of speech in Parliament" expressly conferred under Article 105 of the Constitution. While dealing with first three clauses of Article 194 of the Constitution (which are identical in substance to that of Article 105 in its application to Parliament), this Court in Keshav Singh's case (supra) observed as under:-

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

31. Having conferred freedom of speech on the legislators, clause (2) emphasizes the fact that the said freedom is intended to be absolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may give in the legislature or

any committee thereof. In other words, even if a legislator exercises his right of freedom of speech in violation, say, of Article 211, he would not be liable for any action in any court. Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause. He may be answerable to the House for such a speech and the Speaker may take appropriate action against him in respect of it; but that is another matter. It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chamber and clause (2) makes it plain that the freedom is literally absolute and unfettered."

20. Similarly, while dealing with Article 105 of the *Constitution in P.V. Narasimha Rao v. State (CBI/SPE) , Justice S.P. Bharucha* [3] *(*as the learned Chief Justice then was) speaking for majority, observed as under:-

"109. By reason of sub-article (1) of Article 105, Members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that Members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively. Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no Member is answerable in a court of law or any similar tribunal for what he has said in Parliament. This again is recognition of the fact that a Member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that has been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of". It is so given to secure the freedom of speech in Parliament that sub-article (1) provides for. It is necessary, given the role Members of Parliament must perform. The protection is absolute against court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person

shall be liable to any proceedings in any court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any court connected with such publication. The Constitution having dealt with the all-important privilege of Members of Parliament to speak and vote therein as they deem fit, freed of the fear of attracting legal proceedings concerning what they say or how they vote, provides for other powers, privileges and immunities in sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force, that is to say, they are such as were enjoyed by the House of Commons just before 26-1-1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament thought to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. Insofar as the immunity that attaches to what is spoken in Parliament and to a vote given therein is concerned, provision is made in sub-article (2); it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-article (4) gives the protection of the sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General."

21. The observations of this Court in the aforesaid cases make it clear that "freedom of speech in Parliament" is absolute and unfettered; that the freedom of speech so conferred is subject only to such of the provisions of the Constitution which relate to regulation of procedure in Parliament; that this is recognition of the fact that Members need to be free of all constraints of what they say in Parliament; that clause (2) of Article 105 puts negatively what clause (1) states affirmatively; that both clauses must be read together to determine their content; that a vote, whether cast by voice or gesture is an extension of speech or a substitute for speech; that what has protection under these sub-Articles is what has been said and a vote that has been cast; that the protection is broad, being "in respect of"; that if the impugned speech amounts to libel or becomes actionable or indictable under any provision of law, immunity has been conferred from any action in any Court; and that the Constitution makers attached so much importance to the absolute freedom in debates that they thought it necessary to confer complete immunity on the legislators from any action in any Court in respect of their speeches.

22. As against clauses (1) and (2) of Article 105 which guarantee "freedom of speech in Parliament" and correspondingly provide for complete immunity, the other privileges as per clause (3) are those which 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 coming into force of Section 15 of the Constitution (44th Amendment) Act, 1978. "Freedom of speech" in the House is considered so sacrosanct and essential for

the very functioning of the House that it finds specific mention with the immunity clearly specified. The absolute nature of such freedom of speech weighed with this Court in Tej Kiran Jain (supraj, when a Bench of six Hon'ble Judges of this Court held that the expression "anything" is of widest import and is equivalent to "everything" and that the only limitation arose from the expression "in Parliament" which meant during the sitting of Parliament and in the course of business of Parliament. This Court observed:-

> "Once it was proved that parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court this immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they said is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The Courts have no say in the matter and should really have none."

23. The question therefore is, whether the aforementioned observations are confined to individual members.

24. In so far as debates or discussion in the Houses of Parliament are concerned, the only substantive restriction found in the Constitution is in Article 121 of the Constitution which specifically mandates that no discussion shall take place in Parliament in respect of the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties. Barring such provision under Article 121, the Constitution has placed no restriction on what can be debated or discussed in Parliament. It is completely left to the wisdom or discretion of the individual Houses and the presiding authorities in terms of the Rules of Procedure of each House. It is for this reason that this Court in Keshav Singh's case (supra) observed that the "freedom of speech in Parliament" is subject only to such provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament. Substantively, apart from Article 121, the Constitution itself places no restriction on the subject matter of discussion or debate.

25. The history of parliamentary privileges as found by this Court in the aforementioned cases shows that the privileges have been defined as the sum of the fundamental rights of the House and of its individual Members inter alia, as against the prerogatives of the Crown and the authority of the ordinary courts of law, that the term privilege denotes certain fundamental rights of each House which are generally accepted as necessary for the exercise of its constitutional functions, and that the privileges of Parliament are rights which are absolutely necessary for the due execution of its powers. The privileges 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. The expression " there shall be freedom of speech in Parliament " occurring in first clause of Article 105, is general in nature; not confined to individual members and is applicable to all discussions and debates in Parliament. Secondly, the fact that this privilege is available to strangers who publish under

the authority of either House of Parliament under sub-Article (2) and to those who have a right to speak in, and otherwise take part in the proceedings of a House of Parliament or any Committee thereof, is sufficient to refute the argument that it is only an individual privilege of a member of the House. All privileges belong to the House, though some of them may also protect and shield individual members composing the house.

26. In *Richard William Prebble v. Television New Zealand Ltd.*[4] , which was an appeal from Court of Appeal of New Zealand, Privy Council was called upon to consider an interesting question. In terms of Article 9 of the Bill of Rights, 1689, which is enforced in New Zealand by virtue of Section 242 of the Legislature Act, 1908 and the Imperial Laws Application Act, 1988, freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament. The defendant in that case submitted that this parliamentary privilege would not apply where it is the Member of Parliament himself who brings proceedings for libel. The Privy Council did not accept that, the fact that the maker of the statement in the Parliament was the initiator of the Court proceedings would in any way affect the question whether Article 9 was infringed. It was observed,

> "The privilege protected by Article 9 is the privilege of Parliament itself. The actions of any individual member of Parliament, even if he has an individual privilege of his own, cannot determine whether or not the privilege of Parliament is to apply. The wider principle encapsulated in Blackstone's words quoted above prevents the courts from adjudicating on issues arising in or concerning the House, viz. whether or not a member has misled the House or acted from improper motives. The decision of an individual member cannot override that collective privilege of the House to be the sole judge of such matters."
>
> It was thus found that Article 9 could not be waived and the privilege of "freedom of speech" is the privilege of the House as a whole and while it protects individual Members, it still continues to be privilege of the House.

27. While considering effect of Section 3 of the Defamation Act, 1996 under which any individual Member of Parliament bringing defamation proceedings is given power to waive for the purposes of those proceedings, protection of any parliamentary privilege, House of Lords in Hamilton v. Al Fayed observed:-

> "Before the passing of the Act of 1996, it was generally considered that parliamentary privilege could not be waived either by the Member whose parliamentary conduct was in issue or by the House itself. All parliamentary privilege exists for the better discharge of the function of Parliament as a whole and belongs to Parliament as a whole. Under section 13, the individual Member bringing defamation proceedings is given power to waive for the purposes of those proceedings "the protection of any enactment or rule of law which prevents proceedings in Parliament being impeached or questioned in any court or place out of Parliament." The section then provides by subsection (2) that such waiver operates so that evidence, cross-examination or

submissions made relative to the particular M.P. are not to be excluded by reason of parliamentary privilege. The M.P. thus having been given statutory power to waive the protection afforded by the privilege so far as he is concerned, the section goes on to provide that the admission of such evidence, questioning etc., should not be treated as infringing the privilege of either House of Parliament: see sub-section (2)(b). The effect of the section seems to me to be entirely clear. It deals specifically with the circumstances raised by Mr. Hamilton's case against The Guardian. He could waive his own protection from parliamentary privilege and in consequence any privilege of Parliament as a whole would fall to be regarded as not infringed. At least in part, section 13 was passed by Parliament to enable specifically Mr. Hamilton to proceed with The Guardian action. The issues in this present action against Mr. Al Fayed are for the most part identical. It would, indeed, be very strange if the section had failed to enable Mr. Hamilton to bring this action. Mr. Beloff sought to escape this conclusion by submitting that there are a number of parliamentary privileges only some of which are enjoyed by the individual M.P. as well as by the House itself. He submitted that amongst the privileges that belong to the House alone is its autonomous jurisdiction over certain matters. Therefore, Mr. Hamilton, as a former M.P., could not effectively waive the privileges of the House based on its autonomous jurisdiction as opposed to other privileges. In my judgment this argument is fallacious. The privileges of the House are just that. They all belong to the House and not to the individual. They exist to enable the House to perform its functions. Thus subsection (1) of section 13 accurately refers, not to the privileges of the individual M.P., but to "the protection of any enactment or rule of law" which prevents the questioning of procedures in Parliament. The individual M.P. enjoys the protection of Parliamentary privilege. If he waives such protection, then under Section 13(2) any questioning of parliamentary proceedings (even by challenging "findings . . . made about his conduct") is not to be treated as a breach of the privilege of Parliament.” The aforesaid case also goes to show that all parliamentary privileges exist for the better discharge of the function of Parliament and belong to Parliament as a whole. In this case, but for the intervention by Section 13 of 1996 Act, it was not possible for a Member to waive his own protection from parliamentary privilege. Even while discussing the effect of such waiver, House of Lords observed that all privileges belong to the House and that they exist for the better discharge of the functions of the House.

28. Thus, the privilege of “freedom of speech in Parliament” is the privilege of Parliament in the first instance and then of its Members. Further, going by the letter and spirit of first two Clauses of Article 105 and the long history associated with this privilege right from Bill of Rights, 1688, anything said by Members in Parliament cannot be called in question in Court. It is for this reason that in Tej Kiran Jain (supra) this Court observed, “anything said during the course of that business was immune from proceedings in any Court.” The question still remains whether the immunity is also available to collective expression of opinion by all Members culminating in a motion or a resolution by the House and whether the House is also entitled to the same protection under Article 105 (2). If exercise of freedom of speech by individual Members is protected, whether their collective expression in the form of a motion

or resolution is also entitled to such protection. But the matter is set at rest by Raja Ram Pal (supra). It was submitted by the Additional Solicitor General that actions of Parliament, except when they are translated in law, cannot be questioned in Court. The submission was recorded and dealt with in paragraphs 394 and 395 as under:-

> "394. It is the submission of the learned Additional Solicitor General that the proceedings in question were proceedings which were entitled to protection under Article 105(2). In other words, in respect of proceedings, if a Member is offered immunity, Parliament too is offered immunity. The actions of Parliament, except when they are translated into law, cannot be questioned in court.
>
> 395. We find the argument to be founded on ^reading of Article 105(2) beyond its context. What is declared by the said clause as immune from liability "to any proceedings in any court" is not any or every act of the legislative body or Members thereof, but only matters "in respect of anything said or any vote given" by the Members "in Parliament or any committee thereof". If Article 105(2) were to be construed so broadly, it would tend to save even the legislative Acts from judicial gaze, which would militate against the constitutional provisions."

29. In the same case, this Court in para 431 summarised the principles, the relevant for the present discussion being:-

> "(g) While the area of powers, privileges and immunities of the legislature being exceptional and extraordinary its acts, particularly relating to exercise thereof, ought not to be tested on the traditional parameters of judicial review in the same manner as an ordinary administrative action would be tested, and the Court would confine itself to the acknowledged parameters of judicial review and within the judicially discoverable and manageable standards, there is no foundation to the plea that a legislative body cannot be attributed jurisdictional error;
>
> (h) The judicature is not prevented from scrutinising the validity of the action of the legislature trespassing on the fundamental rights conferred on the citizens;
>
> (i) The broad contention that the exercise of privileges by legislatures cannot be decided against the touchstone of fundamental rights or the constitutional provisions is not correct;
>
> (j) If a citizen, whether a non-Member or a Member of the legislature, complains that his fundamental rights under Article 20 or 21 had been contravened, it is the duty of this Court to examine the merits of the said contention, especially when the impugned action entails civil consequences;
>
> (k) There is no basis to the claim of bar of exclusive cognizance or absolute immunity to the parliamentary proceedings in Article 105(3) of the Constitution;"

30. We, therefore, hold the present petition to be maintainable and proceed to consider the questions raised by the petitioner.

31. The first question raised by the petitioner is a time tested question regarding the scope of fundamental right guaranteed under Article 19(1)(a) of the Constitution to hold and express a dissenting opinion. The scope of this article has received judicial consideration on numerous occasions and the issue whether such freedom would include right to express a dissenting opinion is also a non issue; as it is only the maker of an unpopular and dissenting opinion who would need a cover or insulation. A popular or accepted opinion, naturally would not require any protection. In any event, Article 19(1)(a) guarantees free speech and expression and makes no distinction and imposes no caveats, whether such speech is popular or dissenting in nature. What is interesting is that the petitioner, in fact, exercised such freedom of speech and exercised it rather adequately. His comments and views on two famous personalities were available for consumption in public domain. His freedom of speech in publically expressing his views or propagating his ideas was not and is not in any manner curtailed or impaired or placed under any restriction.

32. The submission of the petitioner however is, when Parliament is claiming a privilege what is to be considered is whether the act in respect of which privilege is claimed, is fundamental to the functioning to the Parliament. It is submitted by the petitioner that the power available with the Houses to deal with a stranger is only in relation to such act of that stranger which interferes with the functioning of the House and since the remarks of the petitioner did not in any way impede or interfere with the proceedings of Parliament, it was not within the jurisdiction of any of the Houses to take notice of such remarks and pass the Resolutions in question.

33. The cases decided by this Court concerning rights of citizens, whether Members or non-Members, as against the claim of privilege either under Article 105 or 194 are of two kinds. *Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha and Others*[5] (Pandit Sharma I) , Pandit *M.S.M. Sharma v. Dr. Shree Sri Krishna Sinh*a[6] (Pandit Sharma II) , Keshav Singh case (supra), Raja Ram Pal (supra), Amarinder Singh v. Special Committee, Punjab Vidhan Sabha and Others and Lokayukta, Justice Ripusudan Dayal and Others v. State of Madhya Pradesh and Others are all cases where proceedings for breach of privilege were initiated by the concerned Houses. Tej Kiran Jain (supra) however was not concerned with any breach of privilege but was relating to a non-Member's action against Members. Similarly P.V. Narasimha Rao (supra) raised an issue whether a Member could be prosecuted for having cast his vote for illegal consideration or bribe. The earlier cases were under Clause (3) of Article 105 or 194 while last two were under Clauses (1) and (2) of Article 105.

34. If any action is sought to be initiated against any citizen, whether Member or Non-Member, either in exercise of contempt or breach of privilege, the law that has developed is that the action of such citizen must have interfered with fundamental functioning of the House so as to enable the House to initiate any proceedings against the citizen. The petitioner is right that in cases concerning breach of privilege or contempt such aspect whether the actions of the citizen had interfered with the functioning of the Houses, is crucial and

fundamental. But in the present case no action for either breach of privilege or contempt was initiated or exercised. Chapter 20 of Lok Sabha Rules entitled Privileges and Rules 222 to 228 thereof deal with matters of privileges. Similarly Rules 187 to 203 of Rajya Sabha Rules deal with issues concerning privileges. If an action for breach of privilege was initiated, the enquiry would certainly be on the lines submitted by the petitioner, in that whether his remarks had in any way impeded or interfered with the functioning of the Houses.

35. We are however concerned in the present case with exercise of power in terms of Sub-clause (1) of Article 105 which guarantees 'freedom of speech in Parliament' as against the cases of the first kind mentioned in the present case is one under Article 105 (1) and (2) of the Constitution, without there being any layer of breach of privilege. The question therefore is whether while exercising such power under Article 105(1), is there any restriction on the scope and debate or discussion in Parliament and whether acts of a citizen, whether Member or Non-Member, could not be noticed or debated. As mentioned hereinabove, the only restriction in the Constitution as regards subject matter of any debate or discussion is to be found in Article 121 of the Constitution. It is axiomatic for the free functioning of Houses of Parliament or Legislatures of State that the representatives of people must be free to discuss and debate any issues or questions concerning general public interest. It is entirely left to the discretion of the Presiding Officer to permit discussion so long as it is within the confines of Rules of Procedure.

36. We now deal with the concerned Rules and the Resolutions in question. Rule 156 of Rajya Sabha Rules quoted hereinabove shows that a resolution could relate to a matter of general public interest and under Rule 155 a resolution could be in the form of a declaration of opinion by Rajya Sabha. Under Rule 157 certain conditions are specified, inter alia that the resolution shall not refer to the conduct or character of persons except in their official or public capacity. Rules 171, 172 and 173 of Lok Sabha Rules are also on similar lines. Resolution dated 11th March, 2015 passed by Rajya Sabha expressed "unequivocal condemnation of the recent remarks" of the petitioner against Mahatma Gandhi and Netaji Subhash Chandra Bose. Similarly resolution dated 12th March, 2015 passed by Lok Sabha condemns the statement of the petitioner relating to Mahatma Gandhi and Netaji Subhash Chandra Bose. The condemnation by both the Houses was of the opinion and remarks and did not refer to the conduct or character of the petitioner. These resolutions were purely in the form of declaration of opinion. Both the resolutions made reference to the offices held by the petitioner as a Judge of this Court and Chairman of the Press Council and show that both Houses were conscious of the fact that the remarks about Mahatma Gandhi and Netaji Subhash Chandra Bose were made not by an ordinary person but by one who had occupied high public office. In the context of such remarks from a person of the stature of the petitioner, which were put in public domain, if both Houses thought it fit to pass resolutions in the form of a declaration, it was certainly within their competence. The nature of remarks regarding Mahatma Gandhi and Netaji Subhash Chandra Bose pertain to general public interest and as such the Houses were certainly within their jurisdiction to pass resolutions.

37. It is not as if any action was deliberately undertaken or sanction was issued against the petitioner. The petitioner in exercise of his right under Article 19(a) made certain statements

concerning two famous personalities. We are not for a moment suggesting that he could not or ought not to have made those statements. He is entitled to his views and put those views in public domain for consumption of public in general. The response by both Houses of Parliament was also natural in that the Resolutions in question dealt with his statements in public domain. All that the resolutions did was to condemn his remarks and did not refer to the conduct or character of the petitioner. As stated earlier, the remarks made by the petitioner regarding Mahatama Gandhi and Netaji Subhas Chandra Bose, which were in public domain, were touching subject of general public interest and as such could well be discussed in the Houses. The learned Attorney General is right in submitting that the resolutions had no civil consequences in so far as the conduct and character of the petitioner is concerned. Unlike all the cases referred to herein above which visited upon the concerned individual certain civil consequences, the present resolutions do not inflict any penalty or visit the petitioner with any civil consequences.

38. In Yves Michaud v. Michel Bissonnette Court of Appeal for Province of Quebec of Canada was called upon to consider almost identical situation. The appellant therein had made certain remarks about Jewish Community which led the National Assembly pass following motion:-

> "That the National Assembly uncompromisingly, unequivocally and unanimously denounces the unacceptable remarks about ethnic communities and, in particular, the Jewish community, made by Yves Michaud in Montreal, on December 13, 2000, at the Estates-General hearings on the French language."
>
> The appellant thereafter prayed for a declaratory judgment to declare that the National Assembly did not have constitutional authority to express an opinion regarding remarks made by citizens who were not members, unless there was breach of privileges recognized as necessary for carrying out its legislative function. The Judge in the first instance having rejected the prayer, the matter reached Court of Appeal. It was observed by Court of Appeal that the Members of the National Assembly collectively expressed an opinion denouncing the remarks made by the appellant. Further, the National Assembly expressed itself in a unanimous resolution on a current political issue and acted within its purview. In conclusion, it was observed that both the National Assembly and its Members exercised the privilege of Freedom of Speech by carrying the motion denouncing the remarks made by the appellant. In the course of its judgment, Court of Appeal observed in paragraphs 35 and 36 as under:-
>
> [35] Freedom of speech is not a privilege held only by individual Members, as contended by the appellant. It also protects motions carried by the National Assembly, because they are opinions expressed collectively by its Members. In Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, "privilege" is defined as follows:

> 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 function, 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 the privilege of Parliament are rights which are "absolutely necessary for the due execution of its powers"..
>
> [36] In Great Britain, a joint parliamentary committee examined the privilege of free speech and section 9 of the Bill of Rights of 1689. In its report, the committee affirmed that freedom of speech is not a privilege held by individual members, but clearly the privilege of the deliberative assembly as a whole: freedom of speech is the privilege of the House as a whole and not of the individual member in his own right, although an individual member can assert and rely on it. This judgment of the Court of Appeal was challenged in the Supreme Court but leave to appeal was refused on 23.11.2006 . The view so taken by Court of Appeal in Yves Michaud v. Michel Bissonnette has since then been followed .

39. According to the petitioner, a stranger who makes a speech outside the House, not connected with the functioning of the Parliament and not derogatory to Parliament, could not be taken notice of by Parliament to punish him. The power to punish a stranger, if his acts in any way impede or interfere with functioning of Parliament, will certainly entitle Parliament to initiate action for breach of privilege or in contempt. Such limitation is definitely read into the exercise of power for breach of privilege or contempt. However, such limitation or restriction cannot be read in every debate. A pure and simple discussion or debate may touch upon or deal with a stranger. As stated above, freedom of speech in Parliament is subject only to such of the provisions of the Constitution which relate to regulation of procedure in Parliament. No separate law is required to confer jurisdiction to deal with the opinions expressed by individuals and citizens during debates. If the nature of opinions expressed by such citizens or individuals pertain to matters of general public interest, it would certainly be within the powers of the House to have a discussion or debate concerning such opinions. So long as the debate or discussion is within the confines of the Rules, it will be expressly within the powers of the House to disapprove such opinions. No restriction is placed by the Constitution or the Rules of Procedure and none can be read in any of the provisions. It is true that a citizen or an individual may find himself in a situation where he has no way to reply to the discussion or a resolution passed by the concerned House. The concerned individual or citizen may also find himself in a position where the resolution is passed without giving him any opportunity of hearing. This definitely is a matter of concern and has engaged attention of the concerned in some countries.

40. In 1984, Joint Select Committee of Common Wealth Parliament of Australia recommended that the Houses of Federal Parliament adopt Standing Orders to confer what has now become known as "Citizen's Right of Reply." This recommendation was substantially implemented by resolutions passed by the Senate and the House of Representatives on 25.02.1988 and 28.08.1997 respectively. As a result, a Citizen who has

been named or identified or has been subject to clear, direct and personal attack or criticism is entitled to have his response on merits published. Similarly, Section 25 of Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004, enacted by the Republic of South Africa entitles a person, other than members, who feels aggrieved by a statement or remark made by a member or a witness in or before a House or Committee about that person, to submit a written request to have his response recorded. The issue whether protection similar to the one available in Australia and other jurisdictions regarding entitlement to have a response so recorded, be extended in United Kingdom was considered by Joint Committee of Parliamentary Privileges in 1999. But the Joint Committee recommended that a right of reply scheme should not be adopted in United Kingdom. It is thus a matter of legislative policy whether such right be conferred or not. But in the absence of a clear provision, we cannot read any requirement of hearing.

41. These developments and instances show that on certain occasions a citizen gets noticed or commented upon in debates or discussions in Houses enjoying privilege of freedom of speech. In what manner and to what extent the citizen be protected and insulated is for the concerned Houses and Legislatures to decide.

42. Concluding so, we do not find any merit in the petition, which is dismissed without any order as to costs.

[1]*(1970) 2 SCC 0272*
[2]*(2007) 3 SCC 0184*
[3]*AIR 1965 SC 0745*
[4]*(1998) 4 SCC 0626*
[5]*AIR 1960 SC 1186*
[6]*(2014) 4 SCC 0473*