

## Privilege and democratic accountability

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ACCORDING to media reports, the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs (the Committee) has decided to call Mr. H.T. Imam, Adviser to the Honourable Prime Minister, as a witness in its investigation in the matter of forced retirement of two district judges, and their subsequent reinstatement. This obviously relates to the Parliament's long-standing right to hold the executive branch accountable by exercising its constitutionally mandated privilege to call witnesses and documents. It also raises a new issue of "executive privilege" -- the right of the head of government to receive candid opinion from advisers without fear of scrutiny of the Parliament.

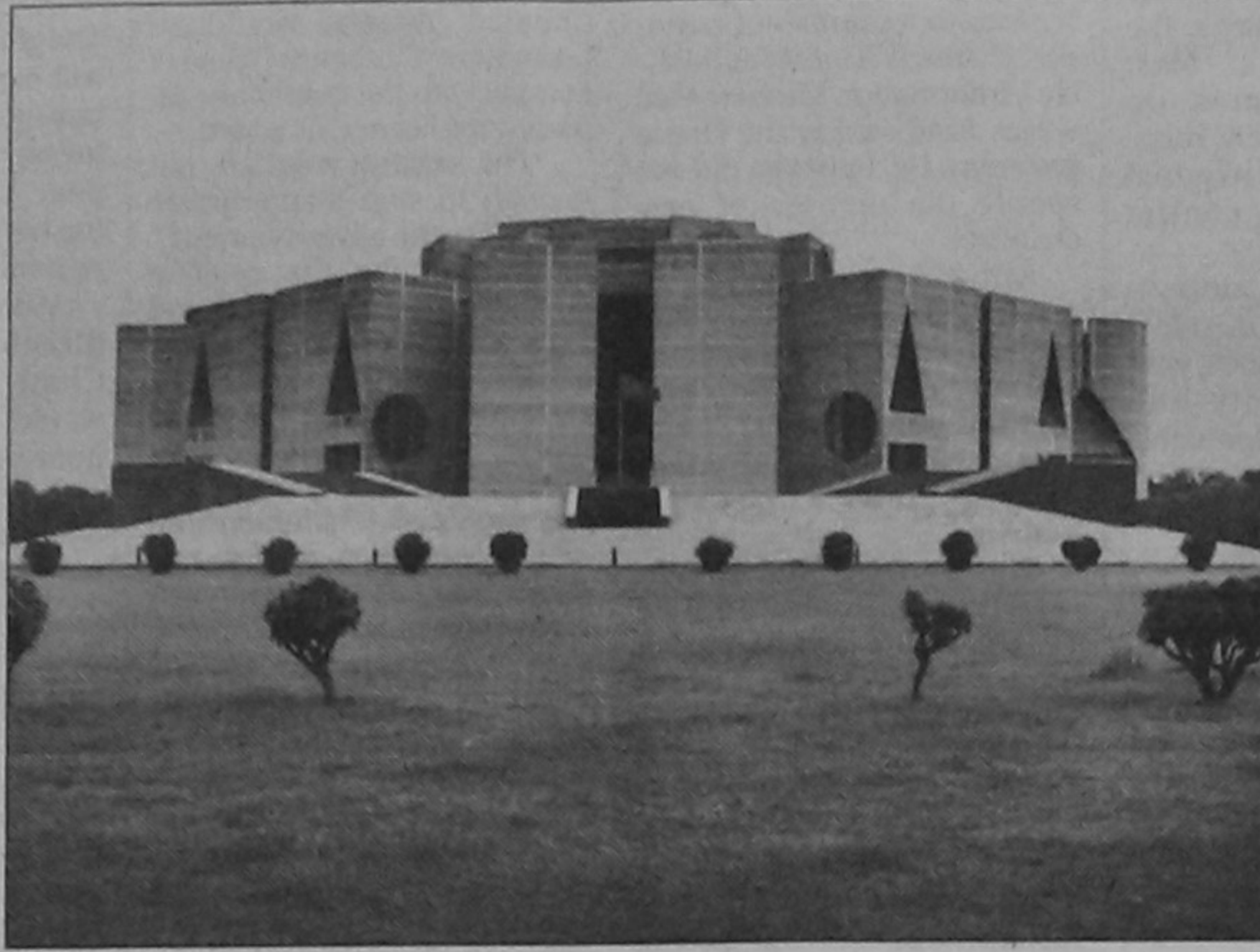
Article 76 of our Constitution empowers the Parliament to appoint various Standing Committees. According to Article 76(3), "Parliament may by law confer on committees appointed under this article powers for -- (a) enforcing the attendance of witnesses and examining them under oath, affirmation or otherwise; (b) compelling the production of documents." Article 78 of the Constitution addresses the issue of privileges and immunities on behalf of Parliament and its members. Again, such parliamentary privileges, according to Article 78(5), need to be determined by an

Act of Parliament.

Our Parliament hasn't yet passed legislation under Article 78 to give effects to parliamentary privileges and immunities. Nor has it done so to regulate the functioning of Standing Committees. However, the Rules of Procedure, which was also adopted by the Parliament, gives its Committees the power to take evidence or call for documents, and also send for persons, papers and records.

For example, Rule 202(1) states that: "A witness may be summoned by an order signed by the Secretary and shall produce such documents as are required for the use of a Committee." Rule 203 provides that: "A Committee shall have power to send for persons, papers and records: Provided that, if any question arises whether the evidence of a person or the production of a document is relevant for the purposes of the Committee, the question shall be referred to the Speaker whose decision shall be final." Thus, under the Rules of Procedure, apparently it is within the rights and jurisdiction of the Committee to call Mr. Imam as a witness before it.

What is parliamentary privilege, anyway? According to Erskine May, Treatise on the Law, Privileges, Proceedings and Usage of Parliament, 23rd ed., "Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collec-



Conflict between privilege and accountability?

tively...and by member of each House individually, without which they could not discharge their functions, and which exceeded those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law." Parliamentary privilege allows the Parliament and its Committees to control its proceedings, including calling witnesses and summoning documents.

Is the executive branch compelled to comply with the Committee's decision to call Mr. Imam? Not necessarily. The prime minister may invoke executive privilege to prevent him from testifying before the Committee. Executive privilege has been invoked by many American presidents, beginning with George Washington.

According to the Congressional Glossary: "Executive privilege refers to the assertion made by the president or other executive branch officials when they refuse to give Congress, the courts, or private parties information or records which have been requested or subpoenaed, or when they order government witnesses not to testify before Congress."

The American Constitution does not provide for executive privilege. However, it is argued that such a privilege is implied in the constitutionally mandated separation of powers. In order to do their jobs, presidents argue, they need candid advice from their advisers and aides -- and they may not be willing to give such advice if they knew they might be called to testify, under oath, before a Congressional Committee or

some other forum.

In 1792, George Washington rebuffed efforts by Congress and the courts to obtain information about a disastrous expedition against Indian tribes along the Ohio River. He lost the battle and handed over all the records. President Eisenhower, by invoking the principle of executive privilege for the first time, successfully kept officials from his administration from testifying during the army's hearings on Senator Joe McCarthy.

During the Watergate investigation, which was a criminal inquest, President Nixon failed in his attempts to withhold White House audio tapes from special prosecutor Leon Jaworski. Nixon had to hand over the tapes, and, four days later, he resigned. In 1998, President Clinton invoked executive privilege and lost to the courts when a federal judge ruled that Clinton aides could be called to testify in the Monica Lewinsky scandal.

Although executive privilege is not a constitutional principle, American courts have recognised this right, which has been invoked over and over again by presidents. In the 1974 Supreme Court decision *United States v. Nixon*, the Court acknowledged "the valid need for protection of communication between high government officials and those who advise and assist them in the performance of their duties."

The Court went on to state that human "experience teaches that those who expect public dissemination of their remarks may well temper candour with concern for appearances and for their own interests to the detriment of the decision making process."

While the Court recognised the need for confidentiality in discussions between presidents and their advisers, it ruled that such right was not absolute, and could be

overturned by the Court. In the Court's majority opinion, Chief Justice Warren Burger wrote: "Neither the doctrine of separation of powers, nor the need for confidentiality of high level communications, without more, can sustain an absolute, unqualified presidential privilege of immunity from judicial process under all circumstances."

The principle of separation of powers is also a fundamental feature of our Constitution, thus the concept of executive privilege should also apply to our situation. In addition, the Rules of Business also give the executive branch the power to "decline to produce a document on the grounds that its disclosure would be prejudicial to the safety or interest of the State" (Rule 203). It is reasonable to expect that the same privilege should apply to advisers called to testify before a Parliamentary Committee.

The decision of the Parliamentary Standing Committee to call an adviser to the prime minister to testify before it raises the dilemma of secrecy vs democratic accountability. In order to perform their oversight function effectively, the Parliamentary Standing Committees must have the right to call witnesses and ask for records, which is part of their privilege. However, this privilege must not be unlimited and must not come at the cost of the chief executive's right to get candid advice and opinions from her advisers.

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## Saffron brotherhood in disarray

The disarrayed BJP hopes that further shocks may not come to crumble its Hindutva edifice built over the years, much to the dislike of secular segments of India. If leaders like Varun Gandhi are entrusted to lead the party, it may peg the last nail on its coffin before long.

Z.A. KHAN

THE saffron's road to the top was mapped mainly by those who believe in Hindu revivalism as they apprehended that Hinduism was endangered. This conclusion has been drawn basing on the perception that "the political assertiveness of minority groups

like the Sikhs and Muslims, efforts to convert the Hindus to other faith, suspicion that the political authorities are 'pandering' to minority groups and the belief that foreign political and religious ideologies undermine Hindu community bonds."

Rashtriya Swayamsevak Sangh (RSS), which is considered as the steel frame

behind the recent flip that Hindutva got in India, is feeling restive at the sight of the insularity that Bharatiya Janata Party (BJP) -- an amalgam of the pro Hindutva political forces -- has plunged itself into. The current murky situation, which stems from the severe blow that it received in the last national election, has shattered the confidence of the leadership, and a feeling of being rudderless is prevailing among the rank and file of the party.

We have observed in India a spate in the growth of religious revivalism in the last few decades, which is also noticeable in the other countries of the South Asian subcontinent. This religious revivalism is not only spreading its wings in the political domain, the countdown of the spread of its influence began in other sectors of national life as well since the '80s of the last century -- reflections of which can also be felt in the social and cultural fields. Religion is being used as a bargaining chip to make political gains.

Some of the revivalist groups speak of defending the traditional religious orthodoxy while some others are favouring an integration of fundamental religious tenets with more adoptable and time and space friendly revisions. Thankfully, so far, no report of discord between the revivalists traditional orthodoxy and the revisionists' passionate liberalism has come about to cause major concern. To many, both the groups have much more to do to gain political mileage.

The recent national election in India gave the verdict against the BJP-RSS nexus. One might be inclined to blame the BJP's hyped emphasis on promoting Hindutva for this appalling performance in the election. The massive mandate in favour of the Congress stemmed from BJP's clinging to traditionalist politicians, who refused to budge from playing

Hindutva card, which they played deftly in 1999, by whipping up religious feeling of the majority Hindus through Rath Yatra from Shomnath Temple to Ayodhya. This culminated in the demolition of the Babri Mosque, which they think was built on a site where there was a Ram Temple.

Although the Rath Yatra gave them the dividend of ruling the largest democratic country in the world, it alienated the second largest religious community who felt unsafe at the government's patronisation of Hindutva. Muslims were constrained to face a massacre in Gujarat -- the home of a few stalwarts of BJP including L.K. Advani -- during BJP rule. Religious intolerance in Mahatma Gandhi's -- the prophet of non-violence -- country of took heavy toll and tore apart the fabric of communal harmony, which was not much savoured by many across the communities.

This made the opposition Congress draw up the strategy of territorial nationalism as a compromise, and it was able to woo the regions that did not have a predominance of Hindus, or places where minorities lived hand-in-glove with the majority community that believe in liberal religious bias. Insofar as political outlook is concerned, the non-BJP parties, unitedly or singly, ruled the roost despite intense efforts of BJP to win the majority community faction of the region.

The other reason for the failure attributed to the BJP is the upsurge of militancy among the Hindu following the much-publicised conversion of low caste Hindus to Islam or Christianity in the poorer regions of India. Deep regional, linguistic and social division among Hindus, as well as inability to enliven their religious institutions because of local opposition, has acted as an impediment in catching up with

majority voters. The regions largely populated by the low caste Hindu found the BJP-RSS combine intensely "aggressive and tended to reflect Kshatriya (warrior) world view."

The Congress, which had carefully crafted its political agenda, made sure that it did not hurt the renegades of Tilak (regarded as BJP's spearhead) who thought that Gandhi's ahimsa (non-violence) "nearly uprooted the very principal of Hinduism and Aryan philosophy, which is against the Hindu ethics, and proposed that the sacred canon made self-protection (probably of religious faith) a higher duty than ahimsa."

BJP's past guru Kurtkoti Shankaracharya was of the view that ahimsa, as employed by Gandhi, undermined Hindu self-respect and encouraged the Muslims to dominate the Hindus. The national election of 2009 has revealed to BJP how serious is its lack of understanding of modern India, which is a partner in the globalisation program that gives primacy to economic development and partnership among the global family -- where faith alone should not be the guiding agenda for political culture.

The recent infighting within the BJP leadership exposes its weakness in handling the views that contradict its traditional orthodox outlook. "The Hindu Mahashava, formed as a forum for protecting the variety of Hindu interests (e.g. cow protection, Hindi, Devangri script, caste reforms etc), which renamed itself as BJP and amalgamated itself with Bishwa Hindu Parishad and its youth outfit RSS could not divorce itself from the orthodox tradition."

Although it rose like a rocket in the late '80s and in the early '90s, it fell like a hot brick in recent years. As a consequence of the remarks of India's former

Foreign Minister Jaswant Singh about Mr. M.A. Jinnah of Pakistan, BJP got embroiled in a bitter debate, which led to the expulsion of one of the prominent members of the BJP hierarchy. It has created shock waves in both the hierarchy and the lower echelon, and brought to fore its embedded weakness.

Mr. Rajnath, Mr. Advani, Mr. Naidu, Mr. Narendra Modi and the likes of them are known to be hardliners who favour pursuance of Hindutva despite the negative verdict that it received in the last election, but are on the wane at the national level. Volleys of flak from all round have targeted them, and it is just a matter of time before they are dispatched to oblivion.

The upcoming leadership of BJP does not promise much to lead the party to its past glory. The sliding BJP is now sniffling to find new leadership to match its arch-rival, the Congress. The disarrayed BJP hopes that further shocks may not come to crumble its Hindutva edifice built over the years, much to the dislike of secular segments of India. If leaders like Varun Gandhi are entrusted to lead the party, it may peg the last nail on its coffin before long.

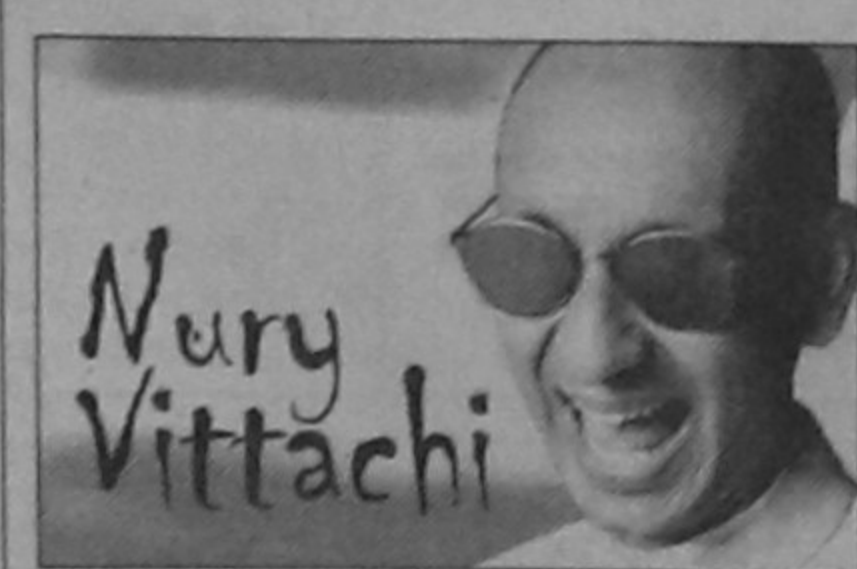
Only now have people realised that BJP's image as the party of "holier than thou" people is a facade and a mere build up. The expulsion of Singh and banning of his book in Narendra Modi's Gujarat state are but indicators of BJP's scepticism about its future. Its outlook about the freedom of expression proved negative because of the expulsion, which is destined to be despised in fiercely democratic India.

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Is the colour fading?

## Fake your life on Facebook



HH! Don't tell his boss. Math teacher Johnnee Sum has two lives. He introduced me to both after inviting me to meet him at a café. I arrived to find a baggy-eyed man in his early 20s (or perhaps 50s) who made me promise to refer to him only by his pseudonym. He moved the laptop to show me the

screen, tipping his latte over his shoe. "Many people your age are skeptical about Facebook," he whispered conspiratorially. "I thought I would show you how to use it."

I bristled a bit at "your age" but let it go. On his Facebook page was a profile picture of him in a nice grey suit at a desk. Next to it were messages from students wanting advice on calculus, algebra and seduction.

A photo album showed him receiving an award. The what-I-am-doing-now line said, "I spent the whole night marking year 11 folders."

"That's how my headmaster thinks I spend my time," Johnnee said. "Now look at this." He pressed a single button up

popped another Facebook page. "This is what I was really doing last night -- er, well, early this morning."

The profile picture showed a blue-bottomed baboon. The messages were from leather-clad people with names like partygirl, spittoon and yabbdabba. The photo albums were "Stoned on the street" and "So what did happen last night?"

The what-I-am-doing-now line was: "Suffering worst hangover of my life again."

Even youngsters are using this software to create double lives. Reader May So said, "My nephew and the children I know have two Facebook pages, one for their friends and the other for their moth-

ers."

I was shocked. A technology guru told me via email that there are hundreds of thousands of fake lives on Facebook. "You used to be able to create a fake life on Wikipedia, but you can't now," he wrote.

I thought back to the last time I had looked him up on Wikipedia. I asked: "You mean you're not a famous nuclear physicist with the body of a porn star?"

He replied: "Not any more, as far as Wikipedia is concerned. But I still am on Facebook."

Meanwhile, apologies to people who don't like Facebook (sorry, Fardel) but this seems to be a hot topic judging by my mailbox.

Many readers shared their worst

Facebook nightmares.

A reader named Dul told me he shares his page with a couple having a long-distance romance. He constantly gets messages such as "we r in love!!" and "so far away yet so close @ heart!!" They post romantic videos and invite him to add applications by which they can share virtual kisses.

Reader Farah Huq said she has friends who update their what-I-am-doing-now line every few seconds.

A reader named Tamanna has a similar problem, sharing a page with "royal emos" who feel the need to make announcements such as "I'm feeling hungry" and "I'm now looking at the sky."

Wendy Tong saw an update, which said: "I can't think of anything interesting to write."

Reader Angela Sias was surprised to find that her elderly parents have signed up on the Facebook network. Oops, better remove all your party pics, Angela.

Or let me introduce you to a guy named Johnnee Sum, who can build you a new identity.

Now, if anyone knows how to Photoshop my head onto Arnold Schwarzenegger's body, drop me a line. (Er, Arnie wants a more impressive profile picture, you see.)

For more on how to live a fake life on Facebook, visit our columnist (not on Facebook) at [www.vittachi.com](http://www.vittachi.com).