2024 INSC 161

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 451 of 2019

Sita Soren …Appellant

Versus

Union of India …Respondent

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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1. Parliamentary privilege, codified in Articles 105 and 194 of the Constitution, is integral to deliberative democracy in facilitating the functioning of a parliamentary form of governance. It ensures that legislators in whom citizens repose their faith can express their views and opinions on the floor of the House without 'fear or favour'. With the protection of parliamentary privilege, a legislator belonging to a political party with a minuscule vote share can fearlessly vote on any motion; a legislator from a remote region of the country can raise issues that impact her constituency without the fear of being harassed by legal prosecution; and a legislator can demand accountability without the apprehension of being accused of defamation.

2. Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege? It is this question of constitutional interpretation that this Court is called upon to decide.

A. Reference

3. The Criminal Appeal arises from a judgment dated 17 February 2014 of the High Court of Jharkhand.[1] An election was held on 30 March 2012 to elect two members of the Rajya Sabha representing the State of Jharkhand. The appellant, belonging to the Jharkhand Mukti Morcha,[2] was a member of the Legislative Assembly of Jharkhand. The allegation against the appellant is that she accepted a bribe from an independent candidate for casting her vote in his favour. However, as borne out from the open balloting for the Rajya Sabha seat,

[1] Writ Petition (Criminal) No 128 of 2013.
[2] "JMM"

she did not cast her vote in favour of the alleged bribe giver and instead cast her vote in favour of a candidate belonging to her own party. The round of election in question was annulled and a fresh election was held where the appellant voted in favour of the candidate from her own party again.

4. The appellant moved the High Court to quash the chargesheet and the criminal proceedings instituted against her. The appellant claimed protection under Article 194(2) of the Constitution, relying on the judgment of the Constitution bench of this Court in **PV Narasimha Rao** v. **State (CBI/SPE)**[3]. The High Court declined to quash the criminal proceedings on the ground that the appellant had not cast her vote in favour of the alleged bribe giver and thus, is not entitled to the protection under Article 194(2). The High Court's reasoning primarily turned on this Court's decision in **PV Narasimha Rao** (supra). The controversy in **PV Narasimha Rao** (supra) and the present case turns on the interpretation of the provisions of Article 105(2) of the Constitution (which deals with the powers, privileges, and immunities of the members of Parliament and Parliamentary committees) and the equivalent provision in Article 194(2) of the Constitution which confers a similar immunity to the members of the State Legislatures.

5. On 23 September 2014, a bench of two judges of this Court, before which the appeal was placed, was of the view that since the issue arising for consideration is "substantial and of general public importance", it must be placed before a larger bench of three judges of this court. On 7 March 2019, a bench of three judges which heard the appeal observed that the precise question was dealt

[3] (1998) 4 SCC 626.

with in a judgment of a five-judge bench in **PV Narasimha Rao** (supra)**.** The bench was of the view that "having regard to the wide ramification of the question that has arisen, the doubts raised and the issue being a matter of public importance", the matter must be referred to a larger bench.

6. Finally, by an order dated 20 September 2023, a five-judge bench of this Court recorded *prima facie* reasons doubting the correctness of the decision in **PV Narasimha Rao** (supra) and referred the matter to a larger bench of seven judges. The operative part of the order reported as **Sita Soren** v. **Union of India**[4], is extracted below:

> **"24.** We are inclined to agree …that the view which has been expressed in the decision of the majority in PV Narasimha Rao requires to be reconsidered by a larger Bench. Our reasons prima facie for doing so are formulated below:
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> Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as members of the Committees of the House without fear of consequences. While Article 19(1)(a) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not prima facie appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the legislature of a state;

[4] 2023 SCC OnLine SC 1217.

> Secondly, in the course of judgment in PV Narasimha Rao, Justice S.C. Agarwal noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe taker were to be accepted: a member would enjoy immunity from prosecution for such a charge if the member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and the member of the legislature would be liable to be prosecuted on a charge of bribery if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Justice Agarwal observed, would be avoided if the words "in respect of" in Article 105(2) are construed to mean 'arising out of'. In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and
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> Thirdly, the judgment of Justice SC Agarwal has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Justice Agarwal but is not dealt with in the judgment of the majority.
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> …
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> **26.** For the above reasons, prima facie at this stage, we are of the considered view that the correctness of the view of the majority in PV Narasimha Rao should be reconsidered by a larger Bench of seven judges."

7. The scope of the present judgment is limited to the reference made by the order of this Court dated 20 September 2023 doubting the correctness of **PV Narasimha Rao** (supra). The merits of the appellant's case and whether she

committed the alleged offence are not being adjudicated by this Court at this stage. Nothing contained in this judgment may be construed as having a bearing on the merits of the trial or any other proceedings arising from it.

B. Overview of the judgment in PV Narasimha Rao

8. The general elections for the Tenth Lok Sabha were held in 1991. Congress (I) emerged as the single largest party and formed a minority government with Mr PV Narasimha Rao as the Prime Minister. A motion of no-confidence was moved in the Lok Sabha against the government. The support of fourteen members was needed to defeat the no-confidence motion. The motion was defeated with two hundred and fifty-one members voting in support and two hundred and sixty-five members voting against the motion. A group of Members of Parliament[5] owing allegiance to the JMM and the Janata Dal (Ajit Singh) Group[6] voted against the no-confidence motion. Notably, one MP belonging to the JD (AS), namely, Ajit Singh, abstained from voting.

9. A complaint was filed before the Central Bureau of Investigation[7] alleging that a criminal conspiracy was devised by which the above members belonging to the JMM and the JD (AS) entered into an agreement and received bribes to vote against the no-confidence motion.[8] It was alleged that PV Narasimha Rao and several other MPs were parties to the criminal conspiracy and passed on

[5] "MP"
[6] "JD (AS)"
[7] "CBI"
[8] "Bribe-takers"

"several lakhs of rupees" to the alleged bribe-takers to defeat the no-confidence motion.[9]

10. A prosecution was launched against the alleged bribe-givers and bribe-takers, and cognizance was taken by the Special Judge, Delhi. The accused moved the High Court of Delhi to quash the charges. The High Court dismissed the petitions. Appeals were preferred to this Court and culminated in the **PV Narasimha Rao** (supra) decision. Two major questions came up for consideration before the Court. First, whether by virtue of Article 105 of the Constitution, an MP can claim immunity from prosecution on a charge of bribery in a criminal court. Second, whether an MP falls within the purview of the Prevention of Corruption Act, 1988, and who is designated as the sanctioning authority for the prosecution of an MP under the PC Act. In the present judgment, we are concerned solely with the holding of the five-judge bench on the first question, i.e., the scope of the immunity from prosecution under Article 105(2) when an MP is charged with bribery.

11. Three opinions were authored in the case – by SC Agarwal, J (for himself and Dr AS Anand, J), SP Bharucha, J (for himself and S Rajendra Babu, J) and an opinion by GN Ray, J.

12. Justice SP Bharucha (as the learned Chief Justice then was) held that the alleged bribe-takers who cast their vote against the no-confidence motion enjoyed immunity from prosecution in a court of law under Article 105(2) of the

[9] "Bribe-givers"

Constitution. However, Ajit Singh (who abstained from voting) and the alleged bribe-givers were held not to enjoy the same immunity. Justice Bharucha held that for breach of parliamentary privileges and its contempt, Parliament may proceed against both the alleged bribe-takers and bribe-givers. Justice Bharucha held:

12.1. The provisions of Article 105(1) and Article 105(2) suggest that the freedom of speech for MPs is independent of the freedom of speech and its exceptions contained in Article 19. MPs must be free of all constraints about what they say in Parliament. A vote is treated as an extension of speech and is given the protection of the spoken word;

12.2. The expression "in respect of" in Article 105(2) must receive a "broad meaning" and entails that an MP is protected from any proceedings in a court of law that relate to, concern or have a connection or nexus with anything said or a vote given by him in Parliament;

12.3. The alleged bribe-takers are entitled to immunity under Article 105(2) as the alleged conspiracy and acceptance of the bribe was "in respect of" the vote against the no-confidence motion. The stated object of the alleged conspiracy and agreement was to defeat the no-confidence motion and the alleged bribe-takers received the bribe as a "motive or reward for defeating" it. The nexus between the alleged conspiracy, the bribe and the no-confidence motion was explicit;

12.4. The object of the protection under Article 105(2) is to enable MPs to speak and vote freely in Parliament, without the fear of being made answerable on that account in a court of law. It is not enough that MPs should be protected against proceedings where the cause of action is their speech or vote. To enable them to participate freely in parliamentary debates, MPs need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is not difficult to envisage an MP who has made a speech or cast a vote that is not to the "liking of the powers that be" being troubled by legal prosecution alleging that he had been paid a bribe to achieve a certain result in Parliament;

12.5. The seriousness of the offence committed by the bribe-takers does not warrant a narrow construction of the Constitution. Such a construction runs the risk of impairing the guarantee of an effective parliamentary democracy;

12.6. The immunity under Article 105(2) is operative only insofar as it pertains to what has been said or voted. Therefore, Ajit Singh, the MP who abstained from voting, was not protected by immunity and the prosecution against him would proceed;

12.7. With regard to whether the bribe-givers enjoy immunity, since the prosecution against Ajit Singh would proceed, the charge against the bribe-givers of conspiracy and agreeing with Ajit Singh to do an unlawful act would also proceed. Further, Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by an MP. The provision merely provides that an MP shall not be answerable in a court of law for

something that has a nexus to his speech or vote in Parliament. Those who have conspired with the MP in the commission of that offence have no such immunity. The bribe-givers can, therefore, be prosecuted and do not have the protection of Article 105(2).

13. On the other hand, SC Agarwal, J held that neither the alleged bribe-takers nor the alleged bribe-givers enjoyed the protection of Article 105(2). An MP does not enjoy immunity under Article 105(2) from being prosecuted for an offence involving the offer or acceptance of a bribe for speaking or giving his vote in parliament or any committee. In his opinion, Justice Agarwal held as follows:

13.1. The object of the immunity under Article 105(2) is to ensure the independence of legislators for the healthy functioning of parliamentary democracy. An interpretation of Article 105(2) which enables an MP to claim immunity from prosecution for an offence of bribery would place them above the law. This would be repugnant to the healthy functioning of parliamentary democracy and subversive of the rule of law;

13.2. The expression “in respect of” precedes the words “anything said or any vote given” in Article 105(2). The words “anything said or any vote given” can only mean speech that has been made or a vote that has already been given and does not extend to cases where the speech has not been made or the vote has not been cast. Therefore, interpreting the expression “in respect of” widely would result in a paradoxical situation. An MP would be liable to be prosecuted for bribery if he accepted a bribe for not speaking or not giving his vote on a matter, but he would enjoy immunity if he accepted the bribe for

speaking or giving his vote in a particular way and actually speaks or gives his vote in that manner. It is unlikely that the framers of the Constitution intended to make such a distinction;

13.3. The phrase "in respect of" must be interpreted to mean "arising out of". Immunity under Article 105(2) is available only to give protection against liability for an act that follows or succeeds as a consequence of making the speech or giving of vote by an MP and not for an act that precedes the speech or vote and gives rise to liability which arises independently of the speech or vote;

13.4. The offence of criminal conspiracy is made out on the conclusion of an agreement to commit the offence of bribery and the performance of the act pursuant to the agreement is not of any consequence. Similarly, the act of acceptance of a bribe for speaking or giving a vote against the motion arises independently of the making of the speech or giving of the vote by the MP. Hence, liability for the offence cannot be treated as "in respect of anything said or any vote given in Parliament;" and

13.5. The international trend, including law in the United States, Australia and Canada, reflects the position that legislators are liable to be prosecuted for bribery in connection with their legislative activities. Most of the Commonwealth countries treat corruption and bribery by members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There is no reason why legislators in India

should not be covered by laws governing bribery and corruption when all other public functionaries are subject to such laws.

14. GN Ray, J in a separate opinion concurred with the reasoning of Agarwal, J that an MP is a public servant under the PC Act and on the question regarding the sanctioning authority under the PC Act. However, on the interpretation of Article 105(2), GN Ray, J concurred with the judgment of Bharucha, J. Hence, the opinion authored by Bharucha, J on the interpretation of Article 105(2) represents the view of the majority of three judges of this Court.[10] The opinion authored by SC Agarwal, J on the other hand, represents the view of the minority.[11]

C. Submissions

15. Over the course of the hearing, we have heard Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant, Mr R Venkataramani, Attorney General for India, Mr Tushar Mehta, Solicitor General of India, Mr PS Patwalia, senior counsel, *amicus curiae*, Mr Gopal Sankarnarayanan, senior counsel, and Mr Vijay Hansaria, senior counsel, appearing on behalf of intervenors. This Court being a court of record, the submissions made by the learned advocates are briefly listed below.

16. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant submitted that the judgment of the majority in **PV Narasimha Rao** (supra) is

[10] The opinion authored by SP Bharucha, J has been referred to as majority judgment hereinafter.
[11] The opinion authored by SC Agarwal, J has been referred to as minority judgment hereinafter.

squarely applicable to the present case. Further, he argued that the majority judgment is well-reasoned and there are no grounds to reconsider the settled position of law. In this regard, he made the following submissions:

16.1. The overruling of long-settled law in **PV Narasimha Rao** (supra) is unwarranted according to the tests laid down by this court on overturning judicial precedents;[12]

16.2. The object behind conferring immunity on MPs and MLAs was to shield them from "being oppressed by the power of the crown". The apprehension of parliamentarians being arrested shortly before or after the actual voting or making of a speech in the Parliament (such vote or speech directed against the Executive) was the precise reason for introducing the concept of privileges and immunities;

16.3. The concept of constitutional privileges and immunities is not in derogation of the Rule of Law, but it is a distinct feature of our constitutional structure. The majority judgment preserves the privilege of MPs and MLAs to protect their dignity as legislators and is not opposed to the rule of law;

16.4. The majority judgment gave due regard and recognition to Parliament's exclusive powers to take appropriate steps against corrupt practices by its members, just as the Parliament recognizes the limits on discussions in the

[12] Keshav Mills Co. Ltd v. CIT, AIR 1965 SC 1636, para 23; Krishena Kumar v. Union of India, (1990) 4 SCC 207, para 33; Shanker Raju v. Union of India, (2011) 2 SCC 132, para 10; Shah Faesal and Ors. v. Union of India (UOI), (2020) 4 SCC 1, para 17.

House, such as the inability to entertain discussions on the conduct of judges of constitutional courts under Article 121 of the Constitution;

16.5. The present position on parliamentary privilege in India and the UK entails that (a) it is fundamental to a democratic polity and courts have exercised judicial restraint; and (b) the privilege must necessarily relate to the exercise of "legislative functions", which in India relates to voting and making of speeches. While determining whether an act is immune from judicial scrutiny, the 'necessity test' is to be applied, i.e., whether there is a nexus between the act in question and the legislative process of voting/making speeches;

16.6. The so-called "anomaly" in the majority judgment flows from the plain language of Articles 105(2) and 194(2) and any attempt to whittle down their protective scope to adhere to what is seemingly "logical", "fair" or "reasonable" would be constitutionally unjustified. However, while advancing his oral submissions in rejoinder, Mr Ramachandran conceded that the view that an abstention from voting would not be protected under Article 105(2) was incorrect and abstaining from voting, in fact, constitutes casting a vote;

16.7. The minority judgment in **PV Narasimha Rao** (supra) has erred in reading "in respect of" as "arising out of". Such a reading is not warranted by either the plain language or the intent of the provision;

16.8. The fact that the offence of bribery in criminal law is complete when the bribe is given and is not dependent on the performance of the promised favour is of no consequence to the constitutional immunity under Articles 105(2) and

194(2). Once a speech is made or a vote is given, the nexus, i.e., "in respect of", is fulfilled;

16.9. The overruling of the majority judgment will have severe unintended consequences. In view of political realities, if the parliamentary immunity conferred upon MPs/ MLAs is whittled down, it would enhance the possibility of abuse of the law by political parties in power; and

16.10. Voting in the Rajya Sabha Elections is within the scope of protection of Article 194(2) as it has all the "trappings" of any other law-making process in the legislature.

17. Mr Venkataramani, the learned Attorney General for India advanced a preliminary submission that the decision in **PV Narasimha Rao** (supra) is inapplicable to the instant case. He submitted that the exercise of franchise by an elected member of the legislative assembly in a Rajya Sabha election does not fall within the ambit of Article 194(2), and thus, **PV Narasimha Rao** (supra) does not have any application to the present case. He submits that the objective of Article 194(2) is to protect speech and conduct in relation to the functions of the legislature. Therefore, any conduct which is not related to legislative functions, such as the election of members to the Rajya Sabha, will fall outside the ambit of Article 194(2). According to the learned Attorney General, the election of members to the Rajya Sabha is akin to any other election process and cannot be treated as a matter of business or function of the legislature.

18. In response to the learned Attorney General's submissions that the polling for Rajya Sabha cannot be considered a proceeding of the House, Mr Ramachandran has submitted that the cases relied on by the learned Attorney General were not rendered in a context where parliamentary privilege or immunity was sought to be invoked and the passing reference to the concept of 'legislative proceedings' was in an entirely different context. Further, certain legislative processes such as ad-hoc committees, standing committees, elections of the constitutional offices of the President/Vice President, and members of the Rajya Sabha, do not necessarily take place on the floor of the House when it is in session. However, they have all the 'trappings' of carrying out the 'legislative process'.

19. Mr P S Patwalia, *amicus curiae* has submitted that the majority judgment must be reconsidered, and the view of the minority reflects the correct position of law. In this regard, Mr Patwalia made the following submissions:

19.1. The majority judgment has erroneously given a wide interpretation to the expression "in respect of" and granted immunity to MPs from criminal prosecution when they accept a bribe to cast a vote in Parliament. The object of Article 105 is not to place MPs above the law when the offence has been committed before the MP enters the House of Parliament;

19.2. The ratio of the judgments of this court rendered after **PV Narasimha Rao** (supra) militates against the grant of immunity to MPs for taking a bribe for casting votes;[13]

19.3. The minority judgment correctly notes that the offence of bribery is complete before the member even enters the House and therefore, the offence has no connection or correlation with the vote that she may cast in Parliament. The protection under Articles 105(2) and 194(2) is not available when the alleged criminal acts are committed outside Parliament;

19.4. The proposition that MPs are immune from prosecution for an offence of bribery in connection with their votes in Parliament is subversive of the rule of law;

19.5. The majority judgment results in an anomalous situation, where an MP who accepts a bribe and does not cast his vote can be prosecuted, while a member who casts his vote is given immunity;

19.6. The position of law in the United Kingdom, as developed over the years, confirms the proposition that the claim of privilege cannot be extended to immunity from prosecution for the offence of bribery; and

19.7. The international trend (particularly in the United States, Canada and Australia) is that parliamentary privilege does not extend to the offence of bribery. This trend is correctly relied on in the minority judgment, while the

[13] Raja Ram Pal v. Hon'ble Speaker Lok Sabha, (2007) 3 SCC 184, Lokayukta, Justice Ripusudan Dayal v. State of M.P. (2014) 4 SCC 473 and State of Kerala v. K. Ajith, (2021) SCC OnLine 510.

majority judgment relies on decisions which have been subsequently diluted even in their original jurisdictions.

20. Mr Gopal Sankarnarayan, senior counsel appearing on behalf of the intervenor endorsed the view taken by the *amicus curiae*. Additionally, he made the following submissions:

20.1. While the majority judgment has been doubted on multiple occasions, the minority judgment has been extensively relied on by this Court;

20.2. The word "any" employed in Articles 105 and 194 of the Constitution ought to be given a narrow interpretation and should not mechanically be interpreted as 'everything', especially as it grants an exceptional immunity not available to the common person;

20.3. The expression "in respect of" must be read narrowly. It must be tied down to 'legitimate acts' that are a part of the legislative process involving speech or a vote in Parliament or before a committee. Any other interpretation would violate the sanctity of the democratic process and the trust placed in the legislators by the public;

20.4. Strict interpretation ought to be given to laws dealing with corruption which affects the public interest;

20.5. The offence of bribery is complete on receipt of the bribe well before the vote is given or speech is made in Parliament. The offence under Section 7 (and Section 13) of the PC Act does not require 'performance'. Therefore, the

delivery of results is irrelevant to the offence being established and the distinction created by the majority is artificial;

20.6. The effect of the majority judgment is that it creates an illegitimate class of public servants which is afforded extraordinary protection which would be a violation of Article 14, as also being manifestly arbitrary; and

20.7. Internationally, the legal position in the USA, UK, Canada, Australia, South Africa and New Zealand supports the minority judgment.

21. Mr Tushar Mehta, the learned Solicitor General of India highlighted the significance of preserving parliamentary privileges. He submitted that the issue for consideration before this Court is not the contours of parliamentary privileges but whether the offence of bribery is complete outside the legislature. Mr Mehta submitted that the offence of bribery under the PC Act, both before and after the 2018 amendment, is complete on the acceptance of the bribe and is not linked to the actual performance or non-performance of the official function to which the bribe relates.

22. Mr Vijay Hansaria, Senior Advocate appearing on behalf of the intervenor, supplemented the arguments assailing the majority judgment. He submitted that the principle of parliamentary privilege must be interpreted in the context of the criminalization of politics and through the prism of constitutional morality. In his written submissions, Mr A Velan, Advocate for the intervenor supported the submission that the majority judgment in **PV Narasimha Rao** (supra) ought to be reconsidered.

D. Reconsidering PV Narasimha Rao does not violate the principle of *stare decisis*

23. We begin by addressing the preliminary argument of Mr Raju Ramachandran, that overruling of the long-settled law in **PV Narasimha Rao** (supra) is unwarranted by the application of the tests laid down by this Court on overturning judicial precedent. The order of reference provides reasons for *prima facie* doubting the correctness of the decision in **PV Narasimha Rao** (supra) including its impact on the "polity and the preservation of probity in public life." However, since the learned Senior Counsel has reiterated the preliminary objection to reconsidering the decision in **PV Narasimha Rao** (supra) before this bench of seven judges, the argument has been addressed below.

24. A decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser strength cannot disagree with or dissent from the view of the law taken by the bench of larger strength. However, a bench of the same strength can question the correctness of a decision rendered by a co-ordinate bench. In such situations, the case is placed before a bench of larger strength.[14]

25. In the present case, the case was first placed before a bench of two judges who referred the case to a bench of three judges. The bench of three judges referred the case to a bench of five judges. In consonance with judicial discipline, the

[14] Central Board of Dawoodi Bohra Community vs. State of Maharashtra, (2005) 2 SCC 673, para 12.

correctness of the decision in **PV Narasimha Rao** (supra) was only doubted by the co-equal bench of five judges of this Court in a detailed order. Accordingly, the matter has been placed before this bench of seven judges.

26. Doubts about the correctness of the decision in **PV Narasimha Rao** (supra) have been raised by this Court in several previous decisions as well. For instance, in **Kalpana Mehta** v. **Union of India,**[15] one of us (D.Y. Chandrachud, J) observed:

> "**221.** The view of the minority was that the offence of bribery is made out against a bribe-taker either upon taking or agreeing to take money for a promise to act in a certain manner. Following this logic, S.C. Agrawal, J. held that the criminal liability of a Member of Parliament who accepts a bribe for speaking or giving a vote in Parliament arises independent of the making of the speech or the giving of the vote and hence is not a liability "in respect of anything said or any vote given" in Parliament. **The correctness of the view in the judgment of the majority does not fall for consideration in the present case. Should it become necessary in an appropriate case in future, a larger Bench may have to consider the issue.**"
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> (emphasis supplied)

27. Similar observations have been made by this Court in **Raja Ram Pal** v. **Hon'ble Speaker, Lok Sabha**.[16] The Court has relied on the minority judgment in several decisions, notably **Kuldip Nayar** v. **Union of India.**[17] and **Amarinder Singh** v. **Punjab Vidhan Sabha**.[18] As the correctness of the decision in **PV Narasimha Rao** (supra) did not directly arise in these cases the Court refrained from making a reference or conclusive observations about the correctness of

[15] (2018) 7 SCC 1.
[16] (2007) 3 SCC 184.
[17] (2006) 7 SCC 1.
[18] (2010) 6 SCC 113.

this decision. However, the present case turns almost entirely on the law laid down in **PV Narasimha Rao** (supra).

28. That the correctness of **PV Narasimha Rao** (supra) arises squarely in the facts of this case becomes clear from the impugned judgment of the High Court. The High Court formulated the question for consideration to be "whether Article 194(2) of the Constitution of India confers any immunity on the Members of the Legislative Assembly for being prosecuted in a criminal court of an offence involving offer or acceptance of bribe." This is the precise question that this Court adjudicated on in **PV Narasimha Rao** (supra) as well, in the context of Article 105(2).

29. Further, both the counsel for the appellant and the counsel for CBI relied on the reasoning in **PV Narasimha Rao** (supra). The High Court, in its analysis, held that since Article 194(2) is *pari materia* to Article 105(2), the law laid down in **PV Narasimha Rao** (supra) covers the field. The High Court relied on **PV Narasimha Rao** (supra) in holding that an MP who has not cast his vote is not covered by the immunity. Since the appellant did not vote as agreed, she was held not to be protected from immunity under Article 194(2).

30. The issue which arose before the High Court turned on the decision in **PV Narasimha Rao** (supra). Therefore, this proceeding provides the correct occasion to settle the law once and for all. There is no infirmity in the reference to seven judges to reconsider the decision in **PV Narasimha Rao** (supra).

31. Mr Raju Ramachandran, senior counsel appearing on behalf of the appellant has argued that a position of law which has stood undisturbed since 1998 should not be interfered with by the Court. We do not consider it appropriate for this Court to confine itself to such a rigid understanding of the doctrine of *stare decisis*. The ability of this Court to reconsider its decisions is necessary for the organic development of law and the advancement of justice. If this Court is denuded of its power to reconsider its decisions, the development of constitutional jurisprudence would virtually come to a standstill. In the past, this Court has not refrained from reconsidering a prior construction of the Constitution if it proves to be unsound, unworkable, or contrary to public interest. This delicate balance was eloquently explained by HR Khanna, J in **Maganlal Chhaganlal (P) Ltd.** v. **Municipal Corpn. of Greater Bombay**[19] in the following terms:

> "**22.** […] The Court has to keep the balance between the need of certainty and continuity and the desirability of growth and development of law. It can neither by judicial pronouncements allow law to petrify into fossilised rigidity nor can it allow revolutionary iconoclasm to sweep away established principles. On the one hand the need is to ensure that judicial inventiveness shall not be desiccated or stunted, on the other it is essential to curb the temptation to lay down new and novel principles in substitution of well-established principles in the ordinary run of cases and the readiness to canonise the new principles too quickly before their saintliness has been affirmed by the passage of time. […]"

[19] (1974) 2 SCC 402.

32. A Bench of seven judges of this Court in **Bengal Immunity Company Limited** v. **State of Bihar and Ors.,**[20] delineated the powers of this Court to reconsider its own decisions in view of the doctrine of *stare decisis*. Both SR Das, CJ and Bhagwati, J, in their separate opinions, detailed the power of this Court to reconsider its judgments, particularly when they raise issues of constitutional importance. SR Das, J explored the judgments delivered in various jurisdictions, such as England, Australia, and the United States to conclude that this Court cannot be denuded of its power to depart from its previous decisions, particularly on questions of interpretation of the Constitution. The Court observed that an erroneous interpretation of the Constitution could result in a situation where the error is not rectified for a long period of time to the detriment of the general public. The test laid down by the Court was rooted in establishing the "baneful effect" of the previous decision on the "general interests of the public". It was observed:

> **"15.** […] in a country governed by a Federal Constitution, such as the United States of America and the Union of India are, it is by no means easy to amend the Constitution if an erroneous interpretation is put upon it by this Court. (See Article 368 of our Constitution). **An erroneous interpretation of the Constitution may quite conceivably be perpetuated or may at any rate remain unrectified for a considerable time to the great detriment to public well being** … **There is nothing in our Constitution which prevents us from departing from a previous decision if we are convinced of its error and its baneful effect on the general interests of the public. Article 141 which lays down that the law declared by this Court shall be binding on all courts within the territory of India quite obviously refers to courts other than this Court. The corresponding provision of the Government of India Act, 1935 also**

[20] 1955 SCC OnLine SC 2.

> **makes it clear that the courts contemplated are the subordinate courts**."
>
> (emphasis supplied)

NH Bhagwati, J also emphasized the distinction between deviating from a decision dealing with the interpretation of statutory provisions and an interpretation of the Constitution, while opining that while an incorrect interpretation of a statute may be corrected by the legislature, it is not as easy to amend the Constitution to correct an unworkable interpretation. Akin to the exposition by SR Das, J, the test to reconsider previous decisions in the opinion of Bhagwati, J is whether the previous decision is "manifestly wrong or erroneous" or "public interest" requires it to be reconsidered.

33. The doctrine of *stare decisis* provides that the Court should not lightly dissent from precedent. However, this Court has held in a consistent line of cases,[21] that the doctrine is not an inflexible rule of law, and it cannot result in perpetuating an error to the detriment of the general welfare of the public. This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the interests of the public or if "it is inconsistent with the legal philosophy of the Constitution". In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to public interest and the polity. The period of time over which the case has held the field is not of primary consequence. This Court has overruled decisions

[21] *See* Sambhu Nath Sarkar v. State of W.B., (1973) 1 SCC 856*;* Lt. Col. Khajoor Singh v. Union of India, (1961) 2 SCR 828; Union of India v. Raghubir Singh, (1989) 2 SCC 754; Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111; Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1.

which involve the interpretation of the Constitution despite the fact that they have held the field for long periods of time when they offend the spirit of the Constitution.

34. The judgment of the majority in **PV Narasimha Rao** (supra) deals with an important question of constitutional interpretation which impacts probity in public life. The decision has been met with notes of discord by various benches of this Court ever since it was delivered in 1998. An occasion has arisen in this case to lay down the law and resolve the dissonance. This is not an instance of this Court lightly transgressing from precedent. In fact, this case is an example of the Court giving due deference to the rule of precedent and refraining from reconsidering the decision in **PV Narasimha Rao** (supra) until it arose squarely for consideration.

35. The appellant has relied on judgments of this Court in **Shanker Raju** v. **Union of India**[22], **Shah Faesal** v. **Union of India**[23], **Keshav Mills Co. Ltd.** v. **CIT**[24] and **Krishena Kumar** v. **Union of India**[25]. These judgments reiterate the proposition that (i) the doctrine of *stare decisis* promotes certainty and consistency in law; (ii) the Court should not make references to reconsider a prior decision in a cavalier manner; and (iii) a settled position of law should not be disturbed merely because an alternative view is available. However, all these judgments recognize the power of this Court to reconsider its decisions in certain circumstances – including considerations of "public policy"; "public

[22] (2011) 2 SCC 132.
[23] (2020) 4 SCC 1.
[24] (1965) 2 SCR 908.
[25] (1990) 4 SCC 207.

good" and to "remedy continued injustice". In the facts which arose in those cases, this Court found that there was no compelling reason to reconsider certain judgments of this Court.

36. In **Shanker Raju** (supra), this Court was dealing with the interpretation of the Administrative Tribunals (Amendment) Act, 2006 and the appointment of a judicial member of the Central Administrative Tribunal. The two-judge Bench observed that it was bound by the decision of a bench of larger strength adjudicating a similar issue and could not reconsider the view taken in that decision merely because an alternative view was available.

37. In **Shah Faesal** (supra), a Constitution Bench of this Court was adjudicating on the question of whether the petitions were to be referred to a larger bench of seven judges on the ground that there were purportedly two contradictory decisions by benches of five judges. The Court observed that references to larger benches cannot be made casually or based on minor inconsistencies between two judgments. In that context, the Court found that the decisions were not irreconcilable with each other nor was one of the decisions *per incuriam*. While laying down the law on the doctrine of *stare decisis*, the Court held that in certain cases the Court may reconsider its decisions, particularly when they prove to be "unworkable" or "contrary to well-established principles". The Court also adverted to the transition in the practice of the House of Lords in the UK, from an absolute prohibition on reconsidering previous decisions to the present position, which permits overruling of decisions in certain circumstances. The Court also quoted the Canadian position to the effect that while precedent

should not routinely be deviated from reconsidering previous decisions is permissible when it is necessary in "public interest".

38. The decision in **Keshav Mills** (supra) interpreted the provisions of the Income Tax Act, 1922 and in the circumstances of that case, the Court did not find any compelling reasons to reconsider previous decisions on a similar point of law. The Court recognized that it is permissible in circumstances where it is in the "interests of the public" or if there are any other "valid" or "compulsive" reasons, to reconsider a prior decision. Further, the Court noted that it would not be wise to lay down principles to govern the approach of the Court in reviewing its decisions as it is based on several considerations, including, the impact of the error on the "general administration of law" or on "public good". This exposition is, in fact, contained in the same paragraph that the appellant relies on to advance a rigid understanding of *stare decisis*. The bench of seven judges of this Court (speaking through Gajendragadkar, CJ) observed:

> "**23.** […] In reviewing and revising its earlier decision, this Court should ask itself **whether in the interests of the public good or for any other valid and compulsive reasons, it is necessary that the earlier decision should be revised.** When this Court decides questions of law, its decisions are, under Article 141, binding on all courts within the territory of India, and so, it must be the constant endeavour and concern of this Court to introduce and maintain an element of certainty and continuity in the interpretation of law in the country. Frequent exercise by this Court of its power to review its earlier decisions on the ground that the view pressed before it later appears to the Court to be more reasonable, may incidentally tend to make law uncertain and introduce confusion which must be consistently avoided. **That is not to say that if on a subsequent occasion, the Court is satisfied that its earlier decision was clearly erroneous, it should hesitate to correct the error**; but before a previous decision is pronounced to be plainly erroneous, the Court must be satisfied with a fair amount of unanimity amongst

> its members that a revision of the said view is fully justified. It is not possible or desirable, and in any case, it would be inexpedient to lay down any principles which should govern the approach of the Court in dealing with the question of reviewing and revising its earlier decisions. It would always depend upon several relevant considerations: —What is the nature of the infirmity or error on which a plea for a review and revision of the earlier view is based? On the earlier occasion, did some patent aspects of the question remain unnoticed, or was the attention of the Court not drawn to any relevant and material statutory provision, or was any previous decision of this Court bearing on the point not noticed? Is the Court hearing such plea fairly unanimous that there is such an error in the earlier view? **What would be the impact of the error on the general administration of law or on public good?** Has the earlier decision been followed on subsequent occasions either by this Court or by the High Courts? **And, would the reversal of the earlier decision lead to public inconvenience, hardship or mischief?** These and other relevant considerations must be carefully borne in mind whenever this Court is called upon to exercise its jurisdiction to review and revise its earlier decisions. These considerations become still more significant when the earlier decision happens to be a unanimous decision of a Bench of five learned Judges of this Court."
>
> (emphasis supplied)

39. Similarly, **Krishena Kumar** (supra) was a case about pension payable to government employees. There, too, although the Court did not find compelling reasons to reconsider its previous decisions in that factual context, it recognized that the Court does have the power to do so in order to "remedy continued injustice" or due to "considerations of public policy".

40. The context in the above cases cited by the appellant is not comparable with the present case. As set out in the order of reference and in the course of this judgment, the decision in **PV Narasimha Rao** (supra) has wide ramifications on public interest, probity in public life and the functioning of parliamentary

democracy. The majority judgment contains several apparent errors *inter alia* in its interpretation of the text of Article 105; its conceptualization of the scope and purpose of parliamentary privilege and its approach to international jurisprudence all of which have resulted in a paradoxical outcome. The present case is one where there is an imminent threat of this Court allowing an error to be perpetuated if the decision in **PV Narasimha Rao** (supra) is not reconsidered.

41. Finally, the appellant also relies on the judgment of this Court in **Ajit Mohan** v. **Legislative Assembly, National Capital Territory of Delhi**[26], where this Court observed that there are "divergent views" amongst constitutional experts on "whether full play must be given to the powers, privileges, and immunities of legislative bodies, as originally defined in the Constitution, or (whether it) is to be restricted." However, it has been urged, that this Court refused to express its views on the matter on the ground that such an opinion must be left to the Parliament. The appellant submits that similarly, in this case, the Court must refrain from taking a conclusive view and leave the issue for the determination of Parliament. The argument is misconceived.

42. This judgment does not seek to determine or restrict the "powers, privileges, and immunities" of the legislature as defined in the Constitution. Rather, this judgment has a limited remit which is to adjudicate on the correct interpretation of Article 105 and Article 194 of the Constitution. Therefore, this Court is

[26] (2022) 3 SCC 529.

adjudicating upon the interpretation of the Constitution as it stands, and not on the question of whether "full play" should be given to the privileges.

43. In a separate but concurring opinion in **Mark Graves** v. **People of the State of New York**[27] while overruling two previous decisions of the United States Supreme Court on a question of constitutional importance, Frankfurter, J pithily observed:

> "Judicial exegesis is unavoidable with reference to an act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the unfolding future. But **the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it**."
>
> (emphasis supplied)

44. The above formulation holds true for the Constitution of India as well, which is a transformative document that raises delicate issues of constitutional interpretation. Cognizant of the consequences of the majority judgment, we endeavour to stay true to what the "Constitution itself" fathomed as the remit of Articles 105(2) and 194(2) even if it may be at the cost of moving away from "what we have said about it" in **PV Narasimha Rao** (supra). We believe that we must not perpetuate a mistaken interpretation of the Constitution, merely because of rigid allegiance to a previous opinion of five judges of this Court.

45. Having adverted to the background, submissions and preliminary issues, we turn to the subject which arises for consideration.

[27] 306 US 466 (1939).

E. History of parliamentary privilege in India

46. In a deliberative democracy, the aspirations of the people are met by discourse in democratic institutions. The foremost among these institutions are Parliament and the State Legislatures. The object of the Constitution to give life and meaning to the aspirations of the people is carried out by its representatives through legislative business, deliberations, and dialogue. Parliament is called the "grand inquest of the nation." Not only can the actions and legislative priorities of the government of the day be scrutinised and criticised to hold it accountable, but Parliament also acts as a forum for ventilating the grievances of individuals, civil society, and public stakeholders. When the space for deliberation in the legislature shrinks, people resort to conversations and democratic actions outside the legislature. This privilege of the citizens to scrutinise the proceedings in Parliament is a concomitant right of a deliberative democracy which is a basic feature of the Constitution. Our Constitution intended to create institutions where deliberations, views and counterviews could be expressed freely to facilitate a democratic and peaceful social transformation.

47. Parliament is a quintessential public institution which deliberates on the actualisation of the aspirations of all Indians. The fulcrum of parliamentary privileges under a constitutional and democratic set up is to facilitate the legislators to freely opine on the business before the House. Freedom of speech in the legislature is hence a privilege essential to every legislative body.

48. A deliberative democracy imagines deliberation as an ethic of good governance and is not restricted to the parliamentary sphere alone. The opinion of Sanjeev Khanna, J. in **Rajeev Suri** v **DDA**,[28] elucidates the contours of deliberative democracy as follows:

> "**653.** Deliberative democracy accentuates the right of participation in deliberation, in decision-making, and in contestation of public decision-making. Contestation before the courts post the decision or legislation is one form of participation. Adjudication by courts, structured by the legal principles of procedural fairness and deferential power of judicial review, is not a substitute for public participation before and at the decision-making stage. **In a republican or representative democracy, citizens delegate the responsibility to make and execute laws to the elected government, which takes decisions on their behalf. This is unavoidable and necessary as deliberation and decision-making is more efficient in smaller groups.** The process requires gathering, processing and drawing inferences from information especially in contentious matters. Vested interests can be checked. Difficult, yet beneficial decisions can be implemented. Government officers, skilled, informed and conversant with the issues, and political executive backed by the election mandate and connected with electorate, are better equipped and positioned to take decisions. This enables the elected political executive to carry out their policies and promises into actual practice. Further, citizens approach elected representatives and through them express their views both in favour and against proposed legislations and policy measures. **Nevertheless, when required draft legislations are referred to Parliamentary Committees for holding elaborate consultation with experts and stakeholders. The process of making primary legislation by elected representatives is structured by scrutiny, consultation and deliberation on different views and choices infused with an element of garnering consensus.**
>
> …
>
> **656.** However, delegation of the power to legislate and govern to elected representatives is not meant to deny the citizenry's right to know and be informed. **Democracy, by**

[28] (2022) 11 SCC 1.

> **the people, is not a right to periodical referendum; or exercise of the right to vote, and thereby choose elected representatives, express satisfaction, disappointment, approve or disapprove projected policies. Citizens' right to know and the Government's duty to inform are embedded in the democratic form of governance as well as the fundamental right to freedom of speech and expression.** Transparency and receptiveness are two key propellants as even the most competent and honest decision-makers require information regarding the needs of the constituency as well as feedback on how the extant policies and decisions are operating in practice. This requires free flow of information in both directions. When information is withheld/denied suspicion and doubt gain ground and the fringe and vested interest groups take advantage. This may result in social volatility. [With reference to Olson's 7th implication, "7. Distributional coalitions … reduce the rate of economic growth…". '*The Rise and Decline of Nations*' by Mancur Olson and subsequent studies.]"
>
> (emphasis supplied)

The freedom of elected legislators to discuss and debate matters of the moment on the floor of the House is a key component of a deliberative democracy in a Parliamentary form of government. The ability of legislators to conduct their functions in an environment which protects their freedom to do so without being overawed by coercion or fear is constitutionally secured. As citizens, legislators have a fundamental right to the freedom of speech and expression. Going beyond that, the Constitution secures the freedom to speak and debate in the legislatures both of the Union and States. This is the protection afforded to individual legislators. The recognition of that right is premised on the need to secure the institutional foundation of Parliament and the State legislatures as key components of the dialogue, debate and critique which sustains democracy.

49. In the Indian context, deliberative democracy as well as the essential privilege of freedom of speech in legislatures cannot be understood without reference to its history and development in the aftermath of the struggle for independence from colonial rule. India provides an example in history where representative institutions have evolved in stages. The privileges of legislatures in India have been closely connected with the history of these institutions. This history can be traced to the history of parliamentary privileges in the House of Commons in the UK as well as the struggle of the Indian Legislatures to claim these privileges under colonial rule. The steps which were initiated under colonial rule to bring political and parliamentary governance to India always fell short of the aspirations of Indians. This can primarily be attributed to the fact that British rule was resistant to the desire of Indians to be independent. Hence, the Indian legislatures were not acknowledged to have comparable privileges to those of the House of Commons in the UK. In **Kielly** v. **Carson**[29], the Privy Council had propounded that the House of Commons in the UK had acquired privileges by ancient usage and colonial legislatures had no *lex et consuetudo parliament* or the law and custom of Parliament as their rights emanated from a statute. This implied that there were no inherent rights granted to legislatures under colonial rule.

50. Under the rule of the East India Company, law making lay in the exclusive domain of the executive till 1833. The Government of India Act 1833 redesignated the Governor-General of Bengal as the Governor-General of India

[29] (1841-42) 4 Moo. PC 63.

with exclusive legislative powers. The Governor-General was to have four members one of whom would be a law member who was not entitled to act as a member of the Council except for legislative purposes. This was an introductory measure for legislatures in India because the Council of the Governor-General would hold distinct meetings to transact its executive functions and legislative functions. This procedure was envisaged for convenience in enacting laws in the vast and diverse social milieu in India rather than a desire to provide representation as a means for framing better laws. However, reflecting the need for legislative privileges in carrying out the duties of the legislators, the first law member, Lord Macaulay, made efforts to secure some special facilities in the nature of powers by his draft standing orders. These special facilities included providing complete information on the subject of the legislation, the right to be present in all meetings of the Council of the Governor-General, freedom of speech, and freedom of voting.[30]

51. The privileges of attendance and voting even in non-legislative business were extended by the Charter Act 1853. It marked a further separation of the executive and legislative functions. The Legislative Council was to have additional members to help transact the legislative business and give their independent considerations to the laws under scrutiny. These members in the Legislative Council did not have any privileges by statute, but the absence of restrictions on their freedom of speech was construed as conferring inherent rights and privileges on them. The Council therefore attempted to assume to

[30] SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 317-18.

itself powers akin to a mini Parliament modelled around the House of Commons in the UK. The Legislative Council under the Acts of 1833 and 1853 had the power to frame their own rules of procedure.

52. This power was taken away in the Indian Council Act 1861. However, Section 10 of the 1861 Act introduced between six and twelve non-official members into the Legislative Councils, who could be British or Indians. There was an implicit recognition of the freedom of speech and vote of these additional members. The British Parliament had recognised the existence of the privilege for the members of the Indian Councils, which was also confirmed by the Secretary of State for India.[31] Nevertheless the provisions of the 1861 Act were sufficiently stringent and did not allow the Council to have any activity beyond the limited sphere prescribed by the Act. Moreover, there was a marked difference between the freedom of speech effectively enjoyed by official members and nominated Indian members.[32]

53. The Government of India Act 1909 marked a significant shift in the evolution of India's political institutions. The Act allowed more Indians to be a part of Legislative Councils and enlarged their functions. Members were allowed to ask questions and supplementary questions to the executive. The Act was a way forward for electoral and representative governance by prescribing the indirect election of Indians to the Council. However, even in these Councils, discussion on certain subjects was not permitted. Non-official members continued to assert the privilege of free speech in the Council. Despite being indirectly elected, the

[31] Legislative Dispatch No. 14 of 9 August 1861, para 23.
[32] SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 102-103.

Indian members of legislatures in India diluted the rigidity of colonial governance in India. In the absence of official support, privileges grew as a convention rather than law. The executive felt at liberty to violate the privileges of the Legislative Council and at any rate maintained that the Councils in India did not have any privilege akin to the UK House of Commons.[33]

54. The Government of India Act 1919 separated the legislatures from executive control. It introduced dyarchy, by prescribing two classes of administrators – the Executive councillors who were not accountable to the legislature and the ministers who would enjoy the confidence of the legislature. The Act extended more powers to the legislatures than previously enjoyed by them. However, members were restricted on the range of subjects which they could discuss, participate in and vote upon. Many privileges were not specified in the 1919 Act or rules of the procedure of the House. Nevertheless, the legislature claimed privileges as an inherent right of the legislature in the face of an unwilling executive. The reason for the hesitation of the colonial Government of India was that a government run by a foreign power was not willing to extend parliamentary privileges to Indian legislators as a recognition of their possessing sovereign powers.[34] The 1919 Act gave a qualified privilege of freedom of speech to the Houses of Legislature. Section 24(7) of the 1919 Act read thus:

> "(7) Subject to the rules and standing orders affecting the Council, there shall be freedom of speech in the Governors' Legislative Councils. No person shall be liable to any proceedings in any court by reason of his speech or vote in any such Council or by reason of anything

[33] SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 139-141, 158.
[34] SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 322.

> contained in any official report of the proceedings of any such Council."

A corresponding provision was made in Section 11(7) of the Act with respect to provincial Legislative Councils. The freedom of speech in the Legislative Councils was subject to the Rules promulgated by the Governor-General. Therefore, while freedom of speech was extended to the Legislative Councils, they were ultimately made subject to the pleasure of the Governor-General and the Secretary of State for India for the legislature's rule making power. The Act therefore did not make provisions to grant freedom of speech to Indian legislatures but rather aimed to place restrictions on the freedom of speech in the House. These restrictions materially impeded the ability of the legislatures to hold discussions on issues of public importance and introduce legislation. The Act however did grant the legislature power to define its own privilege.

55. A committee was set up in 1924 within a few years of the introduction of the Government of India Act 1919. The committee was tasked with enquiring into the difficulties or defects in the 1919 Act and exploring remedies for securing them. The Reforms Committee of 1924 made reference to the privileges of Indian legislative bodies and opined that:

> "…at present such action would be premature. At the same time we feel that the legislatures and the members thereof have not been given by the Government of India Act all the protection that they need. Under the statute there is freedom of speech in all the legislatures and immunity from the jurisdiction of the Courts in respect of speeches or votes. Under the rules the Presidents have been given considerable powers for the maintenance of order, but there the matter ends."[35]

[35] Report of the Reforms Enquiry Committee (1924), 75.

56. Interestingly, the committee suggested that certain additional privileges be granted to Indian Legislatures. The committee further recommended introducing a penal provision for influencing votes within the legislature through *inter alia* bribery. The report stated:

> "We are given to understand that there are at present no means, of dealing with the corrupt influence of votes within the legislature. We are unanimously of opinion that the influencing of votes of members by bribery, intimidation and the like should be legislated against. Here again we do not recommend that the matter should be dealt with as a breach of privilege. We advocate that these offences should be made penal under the ordinary law."

57. The government introduced a Legislative Bodies Corrupt Practices Bill which proposed to penalise (i) the offering of bribe to a member of a legislature in connection with his functions; and (ii) the receipt on demand by a member of the legislature of a bribe in connection with his functions.[36] The Bill ultimately lapsed and was not reintroduced.

58. The provisions of the 1919 Act were substantially retained in Section 28(1) of the Government of India Act 1935. Section 28(1) read thus:

> "(1) Subject to the provisions of this Act and the rules and standing orders regulating the procedure of the Federal 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 the authority of either Chamber of the Legislature of any report, paper, votes or proceedings."

[36] SK Nag, Evolution of Parliamentary Privileges in India till 1947, Sterling Publication, (1978), 213-214.

A corresponding provision was made in Section 71(1) of the 1935 Act with respect to Provincial Legislatures. The House was empowered to make rules for the conduct of proceedings. However, they were always to give way to the rules framed by the Governor-General for the House. Parliamentary privileges had struck root in India on legislators demanding parity with the UK House of Commons with reasonable adjustments to account for Indian needs. This was because legislators in India felt that their discharge of legislative functions would be adversely affected in the absence of these privileges. Prominent among the demands of legislators were the power to punish for contempt of the House, supremacy of the Chair in matters of the House, and freedom of speech and freedom from arrest to allow members to partake in the proceedings and discharge their functions.

59. At no point were these privileges demanded as a blanket immunity from criminal law. Even in the face of colonial reluctance, the demand for parliamentary privileges in India was always tied to the relationship which it bore to the functions which the Indian legislators sought to discharge.

60. This background prevailed when the Constituent Assembly was deciding the fate of Articles 85 and 169 of the draft Constitution which have since become Articles 105 and 194 of the Constitution. Our founding parents intended the Constitution to be a 'modernizing' force. Parliamentary form of democracy was the first level of this modernizing influence envisaged by the framers of the Constitution.[37] The Constitution was therefore born in an environment of

[37] Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), ix.

idealism and a strength of purpose born of the struggle for independence. The framers intended to have a Constitution which would light the way for a modern India.[38]

61. When the Constituent Assembly convened to discuss Article 85 of the draft Constitution, Mr HV Kamath moved an amendment to remove the reference to the House of Commons in the UK and replace it with the Dominion Legislature in India immediately before the commencement of the Constitution. Opposing this amendment Mr Shibban Lal Saxena said, "So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted."[39] The members of the Constituent Assembly were therefore keenly aware that their privileges under the colonial rule were not 'ancient and undoubted' like the House of Commons in the UK but a statutory grant made by successive enactments and assertion by legislatures.

F. Purport of parliamentary privilege in India

I. Functional analysis

62. Article 105 which is located in Part V Chapter II of the Constitution stipulates the powers, privileges, and immunities of Parliament, its members and committees. An analogous provision concerning State Legislatures is in Article 194 of the Constitution. Article 105 reads as follows:

[38] Granville Austin, The Indian Constitution: Cornerstone of a Nation, OUP (1972), xiii.
[39] CAD Vol VIII 19 May, 1949 Draft Article 85.

> "**105. Powers, privileges, etc., of the Houses of Parliament and of the members and committees thereof.**
> (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
> (2) No member of Parliament shall be liable to any proceedings in any court in respect of 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."

63. Article 105 of the Constitution has four clauses. Clause (1) declares that there shall be freedom of speech in Parliament. This freedom is subject to the Constitution and to the rules and standing orders regulating the procedure in Parliament. Therefore, the freedom of speech in Parliament would be subject to the provisions that regulate its procedure framed under Article 118. It is also subject to Article 121 which restricts Parliament from discussing the conduct of any Judge of the Supreme Court or of a High Court in the discharge of their duties except upon a motion for presenting an address to the President praying for the removal of the Judge. The freedom of speech guaranteed in Parliament under Article 105(1) is distinct from that guaranteed under Article 19(1)(a). In

Alagaapuram R Mohanraj v. **TN Legislative Assembly**[40] this Court delineated the differences in these freedoms as follows:

a. While the fundamental right of speech guaranteed under Article 19(1)(a) inheres in every citizen, the freedom of speech contemplated under Articles 105 and 194 is not available to every citizen but only to a member of the legislature;
b. Article 105 is available only during the tenure of the membership of those bodies. On the other hand, the fundamental right under Article 19(1)(a) is inalienable;
c. Article 105 is limited to the premises of the legislative bodies. Article 19(1)(a) has no such geographical limitations; and
d. Article 19(1)(a) is subject to reasonable restrictions which are compliant with Article 19(2). However, the right of free speech available to a legislator under Articles 105 or 194 is not subject to such limitations. That an express provision is made for freedom of speech in Parliament in clause (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and is not restricted by the exceptions contained therein.

64. Clause (2) of Article 105 has two limbs. The first prescribes that a member of Parliament shall not be liable before any court in respect of "anything said or any vote given" by them in Parliament or any committee thereof. The second limb prescribes that no person shall be liable before any court in respect of the

[40] (2016) 6 SCC 82.

publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings. The vote given by a member of Parliament is an extension of speech. Therefore, the freedom of a member of Parliament to cast a vote is also protected by the freedom of speech in Parliament. In **Tej Kiran Jain** v. **N Sanjeeva Reddy,**[41] a six-judge bench of this Court held that Article 105(2) confers immunity in respect of "anything said" so long as it is "in Parliament." Therefore, the immunity is qualified by the fact that it must be attracted to speech during the conduct of business in Parliament. This Court held that the word "anything" is of the widest import and is equivalent to "everything". It is only limited by the term "in Parliament".

65. Clauses (1) and (2) explicitly guarantee freedom of speech in Parliament. Clause (1) is a positive postulate which guarantees freedom of speech whereas Clause (2) is an extension of the same freedom postulated negatively. It does so by protecting the speech, and by extension a vote, from proceedings before a court. Freedom of speech in the Houses of Parliament and their committees is a necessary privilege, essential to the functioning of the House. As we have noted above, the privilege of free speech in the House of Parliament or Legislature can be traced to the struggle of the Indian legislators and was granted in progression by the colonial government. This privilege is not only essential to the ability of Parliament and its members to carry out their duties, but it is also at the core of the function of a democratic legislative institution. Members of Parliament and Legislatures represent the will of the people and

[41] (1970) 2 SCC 272.

their aspirations. The Constitution was adopted to have a modernizing influence. The Constitution is intended to meet the aspirations of the people, to eschew an unjust society premised on social hierarchies and discrimination, and to facilitate the path towards an egalitarian society. Freedom of speech in Parliament and the legislatures is an arm of the same aspiration so that members may express the grievances of their constituents, express diverse perspectives and ventilate the perspectives of their constituents. Freedom of speech in Parliament ensures that the government is held accountable by the House. In **Kalpana Mehta** (supra) one of us (DY Chandrachud, J) had occasion to elucidate the importance of this privilege:

> "**181.** […] Parliament represents collectively, through the representative character of its Members, the voice and aspirations of the people. Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents.
>
> **182.** The Constitution recognises free speech as a fundamental right in Article 19(1)(a). A separate articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. **It embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy.** Elected Members of Parliament represent the voices of the citizens. In giving expression to the concerns of citizens, Parliamentary speech enhances democracy. […]"
>
> (emphasis supplied)

66. Notably, unlike the House of Commons in the UK, India does not have 'ancient and undoubted' rights which were vested after a struggle between Parliament and the King. On the contrary, privileges were always governed by statute in India. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution. However, while the drafters of the Constitution expressly envisaged the freedom of speech in Parliament, they left the other privileges to be decided by Parliament through legislation. Clause (3) of Article 105 states that in respect of privileges not falling under Clauses (1) and (2) of Article 105, 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. Until Parliament defines these privileges, they are to be those which the House and its members and committees enjoyed immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Section 15 reads as follows:

> **"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."

67. The privileges enjoyed by the House and its members and committees immediately before the coming into force of Section 15 of the Forty-fourth amendment to the Constitution were those enjoyed by the House of Commons in the UK at the commencement of the Constitution of India. This was also the

case with Clause (3) of Article 194 which was amended by Section 26 of the Forty-fourth amendment to the Constitution. The reference to the House of Commons was accepted by the Constituent Assembly for two reasons. First, Indian legislators did not enjoy any privilege prior to the commencement of the Constitution and therefore a reference to the Dominion Parliament would leave the House with virtually no privileges. Second, it was not possible to make an exhaustive list of privileges at the time nor was it preferable to enlist such a long list as a schedule to the Constitution.[42]

68. Clause (3) allows Parliament to enact a law on its privileges from time to time. It may be noted here that the House of Commons in the UK does not create new privileges.[43] Its privileges are those which have been practiced by the House and have become ancient and undoubted.

69. Further, unlike the House of Commons in the UK, Parliament in India cannot claim power of its own composition. The extent of privileges in India has to be within the confines of the Constitution. Within this scheme, the Courts have jurisdiction to determine whether the privilege claimed by the House of Parliament or Legislature in fact exists and whether they have been exercised correctly. In a steady line of precedent, this Court has held that in the absence of legislation on privileges, the Parliament or Legislature may only claim such privilege which belonged to the House of Commons at the time of the

[42] See reply of Sir Alladi Krishnaswami Ayyar and Dr BR Ambedkar to the Constituent Assembly, CAD Vol VIII 19 May 1949 Draft Article 85 and Vol X 16 October 1949 Draft Article 85.
[43] It was agreed in 1704 that no House of Parliament shall have power, by any vote or declaration, to create new privilege that is not warranted by known laws and customs of Parliament. The symbolic petition by the Speaker of the House of Commons to the crown claiming the 'ancient and undoubted' privileges of the House of Commons are therefore not to be changed.

commencement of the Constitution and that the House is not the sole judge to decide its own privilege.

70. When the Parliament or Legislatures enact a law on privileges, such a law would be subject to the scrutiny of Part III of the Constitution. The interplay between Part III of the Constitution and Article 105(3) arose in the decision of this Court in **MSM Sharma** v. **Sri Krishna Sinha**,[44] where a Constitution bench speaking through SR Das, CJ held that the privileges of the House of Parliament under Clause (3) of Article 105 are those which belonged to the House of Commons in the UK at the commencement of the Constitution which would prevail over the fundamental rights guaranteed to citizens under Article 19(1)(a) of the Constitution. However, if the Parliament were to enact a law codifying its privilege then it may not step over the fundamental rights of citizens by virtue of Article 13 of the Constitution. K Subba Rao, J (as the learned Chief Justice then was) dissented from the majority and held that the import of privileges held by the House of Commons in the UK was only a transitory provision till the Parliament or legislatures enact a law codifying their respective privileges. Therefore, Justice Subba Rao held in his dissent that the legislature cannot run roughshod over the fundamental rights of citizens who in theory have retained their rights and only given a part of it to the legislature.

71. In **Special Refence No. 1 of 1964**,[45] a seven-judge Bench of this Court opined on the privileges of the State Legislature upon a Presidential reference. The reference was in the aftermath of the Speaker of the UP Legislative Assembly

[44] AIR 1959 SC 395.
[45] 1964 SCC OnLine SC 21.

directing the arrest and production of two judges of the High Court. The two judges had interfered with a resolution to administer reprimand to a person who had published a pamphlet libelling one of the members of the Assembly. Gajendragadkar, CJ speaking for the majority did not disagree with the decision in **MSM Sharma** (supra) which held that Article 105(3) and Article 194(3) would prevail over Article 19(1)(a) of the Constitution. However, the Court held that Article 21 was to prevail over Articles 105(3) and 194(3) in a conflict between the two. The Court held that the Parliament or Legislature is not the sole judge of its privileges and the courts have the power to enquire if a particular privilege claimed by the legislature in fact existed or not, by consulting the privileges of the Commons. The determination of privileges, the Court held, and whether they conform to the parameters of the Constitution is a question that must be answered by the courts. This Court opined that:

> "**37.** The next question which faces us arises from the preliminary contention raised by Mr Seervai that by his appearance before us on behalf of the House, the House should not be taken to have conceded to the Court the jurisdiction to construe Article 194(3) so as to bind it. As we have already indicated, his stand is that in the matter of privileges, the House is the sole and exclusive judge at all stages. […]
>
> …
>
> **42.** In coming to the conclusion that **the content of Article 194(3) must ultimately be determined by courts and not by the legislatures**, we are not unmindful of the grandeur and majesty of the task which has been assigned to the legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today. […]"
>
> (emphasis supplied)

72. The opinion in **Special Reference No. 1 of 1964** (supra) was further affirmed by another seven-judge bench of this Court in **State of Karnataka** v. **Union of India**[46] which held that whenever a question arises whether the House has jurisdiction over a matter under its privileges, the adjudication of such a claim is vested exclusively in the courts. Relying on **Special Reference No. 1 of 1964** (supra) and **State of Karnataka** (supra) a Constitution bench of this Court in **Raja Ram Pal** (supra) held that the court has the authority and jurisdiction to examine if a privilege asserted by the House (or even a member by extension) in fact accrues under the Constitution. Further, in **Amarinder Singh** (supra) a Constitution bench of this Court held that the courts are empowered to scrutinise the exercise of privileges by the House.[47] The interplay between fundamental rights of citizens and the privileges of the Houses of Parliament or Legislature is pending before a Constitution bench of this Court in **N Ravi** v. **Speaker, Legislative Assembly Chennai**.[48]

73. Clause (4) of Article 105 extends the freedoms in the above clauses to all persons who by virtue of the Constitution have a right to speak in Parliament. The four clauses in Articles 105 and 194 form a composite whole which lend colour to each other and together form the corpus of the powers, privileges and immunities of the Houses of Parliament or Legislature, as the case may be, and of members and committees.

[46] (1977) 4 SCC 608, para 63.
[47] (2010) 6 SCC 113, para 54
[48] WP (Crl) No. 206-210/2003 etc.

74. We have explored the trajectory of parliamentary privileges, especially that of freedom of speech in the Indian legislatures. It has been a timeless insistence of the legislators that their freedom of speech to carry out their essential legislative functions be protected and sanctified. Whereas the drafters of our Constitution have expressly guaranteed the freedom of speech in Parliament and legislature, they left the other privileges uncodified.

75. In a consistent line of precedent this Court has held that – firstly, Parliament or the state legislature is not the sole judge of what privileges it enjoys and secondly, Parliament or legislature may only claim privileges which are essential and necessary for the functioning of the House. We have explored the first of these limbs above. We shall now analyse the jurisprudence on the existence, extent and exercise of privileges by the House of Parliament, its members and committees.

II. Parliamentary privilege as a collective right of the House

76. According to Erskine May, parliamentary privilege is the sum of certain rights enjoyed by each House collectively as a constituent part of the "High Court of Parliament" and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.[49] The term 'High Court of Parliament' dates back to the time when all powers of legislating and dispensing justice vested in the Monarch who in turn divested them to a body which would carry out the function of the

[49] Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

legislature as the King sitting in the High Court of Parliament. To that extent, the term is redundant in the Indian context where the Constitution is supreme and the power of the Parliament over its domain flows from and is defined by the Constitution. However, the definition provides an authoritative guide to understanding the meaning and remit of parliamentary privileges. The definition evidently divides privileges into two constituent elements. The first is the sum of rights enjoyed by the House of Parliament and the second is the rights enjoyed by members of the House individually. Rights and immunities such as the power to regulate its own procedure, the power to punish for contempt of the House or to expel a member for the remainder of the session of the House, belong to the first element of privileges held by the House as a collective body for its proper functioning, protection of members, and vindication of its own authority and dignity. The second element of rights exercised individually by members of the House includes freedom of speech and freedom from arrest, among others.

77. The privilege exercised by members individually is in turn qualified by its necessity, in that the privilege must be such that "without which they could not discharge their functions." We shall elucidate this limb later in the course of this judgment. These privileges enjoyed by members of the House individually are a means to ensure and facilitate the effective discharge of the collective functions of the House.[50] It must therefore be noted that whereas the privileges enjoyed by members of the House exceed those possessed by other bodies or

[50] Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 239.

individuals, they are not absolute or unqualified. The privilege of an individual member only extends insofar as it aids the House to function and without which the House may not be able to carry out its functions collectively.

78. Subhash C Kashyap has explained parliamentary privileges as they may be understood in the Indian context.[51] In his book on parliamentary procedure, the author has opined as follows:

> "[…] In Parliamentary parlance the term 'privilege means certain rights and immunities enjoyed by each House of Parliament and its Committees collectively, and by the members of each House individually without which they cannot discharge their functions efficiently and effectively. The object of parliamentary privilege is to safeguard the freedom, the authority and the dignity of the institution of Parliament and its members. They are granted by the Constitution to enable them to discharge their functions without any let or hindrance. **Parliamentary Privileges do not exempt members from the obligations to the society which apply to other citizens. Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the applications of the laws of the land unless there are good and sufficient reasons in the interest of Parliament itself to do so.** The fundamental principle is that all citizens including members of Parliament should be treated equally before the law. The privileges are available to members only when they are functioning in their capacity as members of Parliament and performing their parliamentary duties."
>
> (emphasis supplied)

79. The understanding which unequivocally emerges supports the claim that the privileges which accrue to members of the House individually are not an end in themselves. The purpose which privileges serve is that they are necessary for

[51] Subhash C. Kashyap, Parliamentary Procedure—Law, Privileges, Practice and Precedents, 3rd ed., Universal Law Publishing Co, 502.

the House and its committees to function. Therefore, we may understand parliamentary privileges as those rights and immunities which allow the orderly, democratic, and smooth functioning of Parliament and without which the essential functioning of the House would be violated.

80. The framers of the Constitution intended to establish a responsible, responsive and representative democracy. The value and importance of such a democracy weighed heavily on the framers of the Constitution given the history of an oppressive colonial government to which India had been subjected. The history of parliamentary democracy shows that the colonial government denied India a responsible government where initially Indians were kept out of legislating on laws which would be enforced on its diverse social tapestry. Even when Indians were allowed in legislatures, a responsive government which could be accountable to the people in a meaningful way was yet a distant reality in the colonial period. The ability of the legislature in turn to scrutinise the actions of the executive was effaced and despite the statutory guarantee of freedom of speech for members of the House in the Government of India Act 1919, the guarantee remained illusory to the extent that many subjects were restricted from being discussed in the legislatures.

81. In that sense, the foundations of a deliberative democracy premised on responsibility, responsiveness, and representation sought to ensure that the executive government of the day is elected by and responsible to the Parliament or Legislative Assemblies which comprise of elected representatives. These representatives would be able to express their views on behalf of the citizens

and ensure that the government lends ear to their aspirations, complaints and grievances. This aspect of the functioning of the House is essential to sustain a meaningful democracy. This necessitates that members of the House be able to attend the House and thereafter speak their minds without fear of being harassed by the executive or any other person or body on the basis of their actions as members of the House in the exercise of their duties. In the absence of this feature Parliament and the state legislatures would lose the essence of their representative character in a democratic polity.

82. The privileges enshrined under Article 105 and Article 194 of the Constitution are of the widest amplitude but to the extent that they serve the aims for which they have been granted. The framers of the Constitution would not have intended to grant to the legislatures those rights which may not serve any purpose for the proper functioning of the House. The privileges of the members of the House individually bear a functional relationship to the ability of the House to collectively fulfil its functioning and vindicate its authority and dignity. In other words, these freedoms are necessary to be in furtherance of fertilizing a deliberative, critical, and responsive democracy. In **State of Kerala** v. **K Ajith**,[52] one of us (DY Chandrachud, J) held that a member of the legislature, the opposition included, has a right to protest on the floor of the legislature. However, the said right guaranteed under Article 105(1) of the Constitution would not exclude the application of ordinary criminal law against acts not in direct exercise of the duties of the individual as a member of the House. This

[52] (2021) 17 SCC 318.

Court held that the Constitution recognises privileges and immunities to create an environment in which members of the House can perform their functions and discharge their duties freely. These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal.

83. MN Kaul and SL Shakdher have in their celebrated work on the Practice and Procedure of Parliament endorsed this view by stating that[53]

> "In modern times, parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded as a protection of the members of Parliament against an executive authority not responsible to Parliament. **The entire background in which privileges of Parliament are now viewed has changed because the Executive is now responsible to Parliament. The foundation upon which they rest is the maintenance of the dignity and independence of the House and of its members.**"
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> (emphasis supplied)

The privileges enjoyed by members of the House are tethered intrinsically to the functioning of the House collectively. A House of Parliament or Legislature functions through the collective will of its individual members. These members acting as constituents of the House may not claim any privilege or immunity unconnected with the working of the entire House.

84. While some cherished freedoms exercised individually by members of the House, including the freedom of speech, have been undeniably understood to

[53] MN Kaul and SL Shakdher, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

be essential to the functioning of the House as a whole, other exercises such as damaging public property or committing violence are not and cannot be deemed to have immunity. The privileges and immunities enshrined in Articles 105 and 194 of the Constitution with respect to Houses of Parliament and the Legislatures, their members and committees, respectively belong to the House collectively. The exercise of the privileges individually by members must be tested on the anvil of whether it is tethered to the healthy and essential functioning of the House.

III. Necessity test to claim and exercise a privilege

85. Having established that the privileges and immunities exercisable by members of the House individually must be tethered to the functioning of the House we must now explore which privileges may be deemed to accrue to the House collectively and by extension to individual members. In **State of Karnataka** (supra) a seven-Judge bench of this Court speaking through MH Beg, CJ held that the powers under Article 194 (as well as Article 105) are those which depend upon and are necessary for the conduct of the business of each House. In that sense, these powers may not even apply to all the privileges which accrue to the House of Commons but may not be necessary for the functioning of the House. The learned Chief Justice stated:

> "**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. For

> example, it could not be contended that each House of a State Legislature has the same share of legislative power as the House of Commons has, as a constituent part of a completely sovereign legislature. Under our law it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in legislative power as is assigned to it by the Constitution itself. […]"
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> (emphasis supplied)

86. This Court held that in India the source of authority is the Constitution which derives its sovereignty from the people. The powers and privileges claimed by a House cannot traverse beyond those which are permissible under the Constitution. The Constitution only allows exercise of those powers, privileges, and immunities which are essential to the functioning of the House or a committee thereof. MN Kaul and SL Shakdher have opined that[54]

> "**In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that "they may be able to perform their duties in Parliament without let or hindrance".** They apply to individual members "only insofar as they are **necessary in order that the House may freely perform its functions**. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects". Privileges of Parliament do not place a member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so."
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> (emphasis supplied)

[54] MN Kaul and SL Shakdher, Practice and Procedure of Parliament, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed., 229.

87. The evolution of parliamentary privileges as well as the jurisprudence of this Court establish that members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning. To give any privilege unconnected to the functioning of the Parliament or Legislature by necessity is to create a class of citizens which enjoys unchecked exemption from ordinary application of the law. This was neither the intention of the Constitution nor the goal of vesting Parliament and Legislature with powers, privileges and immunities.

88. In **Amarinder Singh** (supra) a Constitution bench of this Court held that the test to scrutinise the exercise of privileges is whether they were necessary to safeguard the integrity of legislative functions. KG Balakrishnan, CJ after exploring a wealth of material on the subject opined that privileges serve the distinct purpose of safeguarding the integrity of the House. This Court held that privileges are not an end in themselves but must be exercised to ensure the effective exercise of legislative functions. The Chief Justice observed that:

> "**35.** The evolution of legislative privileges can be traced back to medieval England when there was an ongoing tussle for power between the monarch and Parliament. In most cases, privileges were exercised to protect the Members of Parliament from undue pressure or influence by the monarch among others. Conversely, with the gradual strengthening of Parliament there were also some excesses in the name of legislative privileges. **However, the ideas governing the relationship between the executive and the legislature have undergone a sea change since then. In modern parliamentary democracies, it is the legislature which consists of the people's representatives who are expected to monitor executive functions. This is achieved by embodying the idea of "collective responsibility" which entails that those who wield executive power are accountable to the legislature.**

> **36.** However, legislative privileges serve a distinct purpose. **They are exercised to safeguard the integrity of legislative functions against obstructions which could be caused by members of the House as well as non-members.** Needless to say, it is conceivable that in some instances persons holding executive office could potentially cause obstructions to legislative functions. Hence, there is a need to stress on the operative principles that can be relied on to test the validity of the exercise of legislative privileges in the present case.
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> …
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> 47. […] **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.** […]."
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> (emphasis supplied)

89. In **Lokayukta, Justice Ripusudan Dayal** v. **State of MP**,[55] a three-judge bench of this Court held that the scope of a privilege enjoyed by a House and its members must be tested on the basis of the necessity of the privilege to the House for its free functioning. This Court further held that members of the House cannot claim exemption from the application of ordinary criminal law under the garb of privileges which accrue to them as members of the House under the Constitution. P Sathasivam, CJ opined that

> "**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

[55] (2014) 4 SCC 473.

> Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House. […]
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> **52. <u>It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions</u>.** 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.
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> …
>
> **76. <u>It is made clear that privileges are available only insofar as they are necessary in order that the House may freely perform its functions</u>.** For the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, the jurisdiction of the Lokayukt or the Madhya Pradesh Special Police Establishment is for all public servants (except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act) and no privilege is available to the officials and, in any case, they cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply. Privileges do not extend to the activities undertaken outside the House on which the legislative provisions would apply without any differentiation."
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> (emphasis supplied)

90. The necessity test for ascertaining parliamentary privileges has struck deep roots in the Indian context. We do not need to explore the well-established jurisprudence on the necessity test in other jurisdictions beyond the above exposition of Indian jurisprudence on the subject at this juncture. The evolution of parliamentary privileges in various parliamentary jurisdictions has shown a consistent pattern that when an issue involving privileges arises, the test applied is whether the privilege claimed is essential and necessary to the

orderly functioning of the House or its committee. We may also note that the burden of satisfying that a privilege exists and that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege. The Houses of Parliament or Legislatures, and the committees are not islands which act as enclaves shielding those inside from the application of ordinary laws. The lawmakers are subject to the same law that the law-making body enacts for the people it governs and claims to represent.

91. We therefore hold that the assertion of a privilege by an individual member of Parliament or Legislature would be governed by a twofold test. First, the privilege claimed has to be tethered to the collective functioning of the House, and second, its necessity must bear a functional relationship to the discharge of the essential duties of a legislator.

G. Bribery is not protected by parliamentary privilege

I. Bribery is not in respect of anything said or any vote given

92. The question remains as to whether these privileges attract immunity to a member of Parliament or of the Legislatures who engages in bribery in connection with their speech or vote. The test of intrinsic relation to the functioning of the House and the necessity test evolved by this Court in the context of determining the remit of privileges under Articles 105(3) and 194(3) must weigh while delineating the privileges under Clauses (1) and (2) of the provisions as well. When this Court is called upon to answer a question of interpretation of a provision of the Constitution, it must interpret the text in a

manner that does not do violence to the fabric of the Constitution. This Court's opinion in **PV Narasimha Rao** (supra) hinged on two phrases in clause (2) of Article 105 of the Constitution. These phrases were "in respect of" and the following word "anything." Clause (2) of the Article reads as follows

> "(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."

93. In **State (NCT of Delhi)** v **Union of India**,[56] Dipak Misra, CJ observed that the Court should interpret a constitutional provision and construe the meaning of specific words in the text in the context in which the words occur by referring to the other words of the said provision. This Court held in that case that the meaning of the word "any" can be varied depending on the context in which it appears and that the words "any matter" was not to be understood as "every matter".

94. The decision in **Tej Kiran Jain** (supra) interpreted the word "anything" in Clause (1) of Article 105 to be of the widest amplitude and only subject to the words appearing after it which were "in Parliament." The clause does give wide freedom of speech in Parliament. The word 'anything' cannot be interpreted to allow interference of the court in determining if the speech had relevance to the subject it was dealing with at the time the speech was made. In **Tej Kiran Jain** (supra) the followers of a religious head who had made a speech on

[56] (2018) 8 SCC 501

untouchability filed a suit in the High Court seeking damages for defamation alleged to have been committed in the Lok Sabha during a calling attention motion on the speech. This Court held that the Court cannot dissect a speech made in Parliament and adjudicate if the speech has a direct relation to the subject matter before it. Parliament has absolute control over which matters it directs its attention towards and thereafter the members or persons at liberty to speak may not be subjected to the fear of prosecution against anything that they may say in the House.

95. That context evidently changes in Clause (2) of Article 105 which gives immunity to members of the House and the committees thereof in any proceeding in any court in respect of "anything" said or any vote given in the House. MH Beg, CJ in **State of Karnataka** (supra) had foreseen a situation where a criminal act may be committed in the House and had observed that it could not be protected under the Constitution. The Chief Justice opined that :

> "**63.** […] A House of Parliament or State Legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. **For example, the jurisdiction to try a criminal offence, such as murder, committed even within a House vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature**. […]"
>
> (emphasis supplied)

96. In **K Ajith** (supra) a member of the Kerala Legislative Assembly was accused of climbing over the Speaker's dais and causing damage to property during the

presentation of the budget by the Finance Minister of the State. The question which arose before this Court was whether the member could be prosecuted before a court of law for his conduct inside the House of the Legislature. This Court speaking through one of us (DY Chandrachud, J) after exploring the evolution of law in this regard in the UK observed that:

> "**36.** […] it is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity *only if the action bears nexus to the effective participation of the member in the House*."

97. This Court further held that privileges accruing inside the legislature are not a gateway to claim exemption from the general application of the law:

> "**65. <u>Privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen. To claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law.</u>** The entire foundation upon which the application for withdrawal under Section 321 was moved by the Public Prosecutor is based on a fundamental misconception of the constitutional provisions contained in Article 194. The Public Prosecutor seems to have been impressed by the existence of privileges and immunities which would stand in the way of the prosecution. Such an understanding betrays the constitutional provision and proceeds on a misconception that elected members of the legislature stand above the general application of criminal law."
>
> (emphasis supplied)

98. In **Lokayukta, Justice Ripusudan Dayal** (supra) criminal proceedings were initiated against administrative officers of the Madhya Pradesh Legislative Assembly for allegedly engaging in corruption and financial irregularity. The

Speaker of the Assembly initiated proceedings for breach of privilege against the Lokayukta and vigilance authorities. This Court while holding that initiation of criminal proceedings for corruption may not amount to a breach of privilege had opined that:

> "**48. It is clear that in the matter of the application of laws, particularly, the provisions of the Lokayukt Act and the Prevention of Corruption Act, 1988, insofar as the jurisdiction of the Lokayukt or the Madhya Pradesh Special Establishment is concerned, all public servants except the Speaker and the Deputy Speaker of the Madhya Pradesh Vidhan Sabha for the purposes of the Lokayukt Act fall in the same category and cannot claim any privilege more than an ordinary citizen to whom the provisions of the said Acts apply.** […].
>
> 49. As rightly submitted by Mr K.K. Venugopal, in India, **there is the rule of law and not of men and, thus, there is primacy of the laws enacted by the legislature which do not discriminate between persons to whom such laws would apply.** The laws would apply to all such persons unless the law itself makes an exception on a valid classification. No individual can claim privilege against the application of laws and for liabilities fastened on commission of a prohibited act."
>
> (emphasis supplied)

99. The principle which emerges from the above cases is that the privilege of the House, its members and the committees is neither contingent merely on location nor are they merely contingent on the act in question. A speech made in Parliament or Legislature cannot be subjected to any proceedings before any court. However, other acts such as damaging property or criminal acts may be subjected to prosecution despite being within the precincts of the House. Clause (2) of Article 105 grants immunity "in respect of anything" said or any vote given. The extent of this immunity must be tested on the anvil of the tests

laid down above. The ability of a member to speak is essentially tethered to the collective functioning of the House and is necessary for the functioning of the House. A vote, which is an extension of the speech, may itself neither be questioned nor proceeded against in a court of law. The phrase "in respect of" is significant to delineate the ambit of the immunity granted under Clause (2) of Article 105.

100. In **PV Narasimha Rao** (supra) the majority judgment interprets the phrase "in respect of" as having a broad meaning and referring to anything that bears a nexus or connection with the vote given or speech made. It therefore concluded that a bribe given to purchase the vote of a member of Parliament was immune from prosecution under Clause (2) of Article 105. By this logic, the majority judgment concluded that a bribe-accepting member who did not comply with the *quid pro quo* was not immune from prosecution as his actions ceased to have a nexus with his vote. As we have noted above, the interpretation of a phrase which appears in a provision cannot be interpreted in a way that does violence to the object of the provision. The majority in **PV Narasimha Rao** (supra) has taken the object of Article 105 to be that members of Parliament must have the widest protection under the law to be able to perform their function in the House. This understanding of the provision is overbroad and presumptive of enhanced privileges translating to better functioning of members of the House.

101. Privileges are not an end in themselves in a Parliamentary form of government as the majority has understood them to be. A member of Parliament or of the

Legislature is immune in the performance of their functions in the House or a committee thereof from being prosecuted because the speech given or vote cast is functionally related to their performance as members of the legislature. The claim of a member to this immunity is its vital connect with the functioning of the House or committee. The reason why the freedom of speech and to vote have been guaranteed in Parliament is because without that Parliament or the legislature cannot function. Therefore, the extent of privilege exercisable by a member individually must satisfy the two fold test laid down in Part F of this judgment namely its tether to the collective functioning of the House and its necessity.

102. The words “in respect of” in Clause (2) of Article 105 apply to the phrase “anything said or any vote given,” and in the latter part to a publication by or with the authority of the House. We may not interpret the words “anything” or “any” without reading the operative word on which it applies i.e. “said” and “vote given” respectively. The words “anything said” and “any vote given” apply to an action which has been taken by a person who has the right to speak or vote in the House or a committee thereof. This means that a member or person must have exercised their right to speak or abstained from speaking inside the House or committee when the occasion arose. Similarly, a person or member must have exercised their option of voting in favour, against, or in abstention to claim immunity under Articles 105(2) and 194(2).

103. The words “anything” and “any” when read with their respective operative words mean that a member may claim immunity to say as they feel and vote in a

direction that they desire on any matter before the House. These are absolutely outside the scope of interference by the courts. The wide meaning of "anything" and "any" read with their companion words connotes actions of speech or voting inside the House or committee which are absolute. The phrase "in respect of" applies to the collective phrase "anything said or any vote given." The words "in respect of" means arising out of or bearing a clear relation to. This may not be overbroad or be interpreted to mean anything which may have even a remote connection with the speech or vote given. We, therefore, cannot concur with the majority judgment in **PV Narasimha Rao** (supra).

II. The Constitution envisions probity in public life

104. The purpose and object for which the Constitution stipulates powers, privileges and immunity in Parliament must be borne in mind. Privileges are essentially related to the House collectively and necessary for its functioning. Hence, the phrase "in respect of" must have a meaning consistent with the purpose of privileges and immunities. Articles 105 and 194 of the Constitution seek to create a fearless atmosphere in which debate, deliberations and exchange of ideas can take place within the Houses of Parliament and the state legislatures. For this exercise to be meaningful, members and persons who have a right to speak before the House or any committee must be free from fear or favour induced into them by a third party. Members of the legislature and persons involved in the work of the Committees of the legislature must be able to exercise their free will and conscience to enrich the functions of the House. This is exactly what is taken away when a member is induced to vote in a certain

way not because of their belief or position on an issue but because of a bribe taken by the member. Corruption and bribery of members of the legislature erode the foundation of Indian Parliamentary democracy. It is destructive of the aspirational and deliberative ideals of the Constitution and creates a polity which deprives citizens of a responsible, responsive and representative democracy.

105. The minority judgment in **PV Narasimha Rao** (supra) held that the words "in respect of" must be understood as "arising out of" and that a bribe taken by a member of the House cannot be deemed as arising out of his vote. The minority opined that:

> "**46.** […] The expression "in respect of" in Article 105(2) has, therefore, to be construed keeping in view the object of Article 105(2) and the setting in which the expression appears in that provision.
>
> **47.** … the object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basic structure of the Constitution. **An interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law would not only be repugnant to healthy functioning of parliamentary democracy but would also be subversive of the rule of law which is also an essential part of the basic structure of the Constitution.** It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. (See: *Sub-Committee on Judicial Accountability* v. *Union of India* [(1991) 4 SCC 699] SCC at p. 719.) […]"
>
> (emphasis supplied)

106. The minority then points out the paradoxical result which would emerge if members were given immunity from prosecution for their speech or vote but would not be protected if the bribe was received for not speaking or not voting. The minority goes on to hold that:

> "**47.** […] Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of". If the expression "in respect of" is thus construed, the immunity conferred under Article 105(2) would be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member in Parliament even though it may have a connection with the speech made or the vote given by the Member if such an act gives rise to a liability which arises independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Member in Parliament. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament."

107. The offence of bribery is complete on the acceptance of the money or on the agreement to accept money being concluded. The offence is not contingent on the performance of the promise for which money is given or is agreed to be given. The minority opinion in **PV Narasimha Rao** (supra) based its view on another perspective which was not dealt with by the majority. The minority opinion stated that the act of bribery was the receipt of illegal gratification prior to the making of the speech or vote inside the House. Interpreting the phrase "in respect of" to mean "arising out of", the minority concluded that the offence

of bribery is not contingent on the performance of the illegal promise. The minority observed that:

> "**50.** … the expression "in respect of" in Article 105(2) raises the question: Is the liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way."

108. A Constitution bench of this Court in **Kihoto Hollohan** v. **Zachillhu**,[57] while deciding on the validity of the Constitution (Fifty Second Amendment) Act 1985 which introduced the Tenth schedule to the Indian Constitution opined that the freedom of speech in Parliament under clause (2) of Article 105 is not violated. This Court understood the provision to necessarily mean that the politically sinful act of floor crossing is neither permissible nor immunized under the Constitution. This Court held that:

> "**40.** The freedom of speech of a Member is not an absolute freedom. That apart, the provisions of the Tenth Schedule do not purport to make a Member of a House liable in any 'Court' for anything said or any vote given by him in Parliament. It is difficult to conceive how Article

[57] 1992 Supp (2) SCC 651.

> 105(2) is a source of immunity from the consequences of unprincipled floor-crossing.
>
> …
>
> **43.** Parliamentary democracy envisages that matters involving implementation of policies of the government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften (sic) the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines."

III. Courts and the House exercise parallel jurisdiction over allegations of bribery

109. Mr Raju Ramachandran, learned senior advocate on behalf of the Petitioner, has argued that bribery has been treated as a breach of privilege by the House which has used its powers to dispense discipline over bribe-taking members. He argues that immunity for a vote, speech or conduct in the House of Parliament does not in any manner leave culpable members blameless or free from sanction. Such members have been punished including being expelled by the House. Mr Ramachandran cites many examples of actions taken by the House against its members who were found to have received bribes. In our exposition of the history of parliamentary privileges in India, we have illustrated how bribery was initially deemed to be a breach of privilege by the House of

Commons in the UK. Based on the position of law in the UK the British government was uncertain about the position in India but assumed it to be governed as a matter of breach of privilege in the absence of an express statutory enactment. The Report of the Reforms Enquiry Committee in 1924 had recommended bribery to be made a penal offence so that members may be prosecuted for crimes before a court of law.

110. The issue of bribery is not one of exclusivity of jurisdiction by the House over its bribe-taking members. The purpose of a House acting against a contempt by a member for receiving a bribe serves a purpose distinct from a criminal prosecution. The purpose of the proceedings which a House may conduct is to restore its dignity. Such a proceeding may result in the expulsion from the membership of the House and other consequences which the law envisages. Prosecution for an offence operates in a distinct area involving a violation of a criminal statute. The power to punish for criminal wrongdoing emanates from the power of the state to prosecute offenders who violate the criminal law. The latter applies uniformly to everyone subject to the sanctions of the criminal law of the land. The purpose, consequences, and effect of the two jurisdictions are separate. A criminal trial differs from contempt of the House as it is fully dressed with procedural safeguards, rules of evidence and the principles of natural justice.

111. We therefore disagree with Mr Ramachandran that the jurisdiction of the House excludes that of the criminal court for prosecuting an offence under the criminal law of the land. We hold this because of our conclusion above that bribery is

not immune under clause (2) of Article 105. A member engaging in bribery commits a crime which is unrelated to their ability to vote or to make a decision on their vote. This action may bring indignity to the House of Parliament or Legislature and may also attract prosecution. What it does not attract is the immunity given to the essential and necessary functions of a member of Parliament or Legislature.

112. We may refer to the opinion of SC Agrawal, J who arrived at the same view in which he was in the minority:

> "**45.** It is no doubt true that a Member who is found to have accepted bribe in connection with the business of Parliament can be punished by the House for contempt. But that is not a satisfactory solution. In exercise of its power to punish for contempt the House of Commons can convict a person to custody and may also order expulsion or suspension from the service of the House. **There is no power to impose a fine. The power of committal cannot exceed the duration of the session and the person, if not sooner discharged by the House, is immediately released from confinement on prorogation.** (See: *May's Parliamentary Practice*, 21st Edn., pp. 103, 109 and 111.) **The Houses of Parliament in India cannot claim a higher power. The Salmon Commission has stated that "whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions". (para 306) The Salmon Commission has also expressed the view that in view of the special expertise that is necessary for this type of inquiry the Committee of Privileges do not provide an investigative machinery comparable to that of a police investigation**."
>
> (emphasis supplied)

113. Therefore, we hold that clause (2) of Article 105 does not grant immunity against bribery to any person as the receipt of or agreement to receive illegal

gratification is not "in respect of" the function of a member to speak or vote in the House. Prosecution for bribery is not excluded from the jurisdiction of the criminal court merely because it may also be treated by the House as contempt or a breach of its privilege.

IV. Delivery of results is irrelevant to the offence of bribery

114. Another aspect that arises for consideration is the stage at which the offence of bribery crystallizes. It has been urged by the Solicitor General that the offence is complete outside the legislature and is 'independent' of the speech or the vote. Therefore, the question of privilege does not arise in the first place and the question is answered by the provisions of the Prevention of Corruption Act, 1988. Similarly, Mr Gopal Sankarnarayan, learned senior counsel has submitted that the offence of bribery is complete on receipt of the bribe well before the vote is given or speech made in Parliament. It has been urged that the performance of the promise is irrelevant to the offence being made out, and hence, the distinction made in **PV Narasimha Rao** (supra) is entirely artificial.

115. Interestingly, the judgment of the majority in **PV Narasimha Rao** (supra) did not consider this question at all. The minority judgment, on the other hand, discusses this aspect and notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. Agarwal, J observed:

> "**50.** The construction placed by us on the expression "in respect of" in Article 105(2) raises the question: Is the

liability to be prosecuted arising from acceptance of bribe by a Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending consideration before the House an independent liability which cannot be said to arise out of anything said or any vote given by the Member in Parliament? In our opinion, this question must be answered in the affirmative. **The offence of bribery is made out against the receiver if he takes or agrees to take money for promise to act in a certain way. The offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the money will be treated to have committed the offence even when he defaults in the illegal bargain. For proving the offence of bribery all that is required to be established is that the offender has received or agreed to receive money for a promise to act in a certain way and it is not necessary to go further and prove that he actually acted in that way.**"

(emphasis supplied)

116. Section 7 of the Prevention of Corruption Act, 1988 reads as follows:

"7. Offence relating to public servant being bribed. — Any public servant who, —

(a) **obtains or accepts or attempts to obtain** from any person, an undue advantage, with the **intention to perform** or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or

(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or

(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

> Explanation 1. —**For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.**
>
> Illustration. —**A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.**
>
> Explanation 2.—For the purpose of this section,—
> (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
>
> (ii) it shall be immaterial whether such person being a public servant obtains or accepts or attempts to obtain the undue advantage directly or through a third party."
>
> (emphasis supplied)

117. Under Section 7 of the PC Act, the mere "obtaining", "accepting" or "attempting" to obtain an undue advantage with the intention to act or forbear from acting in a certain way is sufficient to complete the offence. It is not necessary that the act for which the bribe is given be actually performed. The first explanation to the provision further strengthens such an interpretation when it expressly states that the "obtaining, accepting, or attempting" to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by a public servant has not been improper. Therefore, the offence of a public servant being bribed is pegged to receiving or agreeing to receive the undue advantage and not the actual performance of the act for which the undue advantage is obtained.

118. It is trite law that illustrations appended to a section are of value and relevance in construing the text of a statutory provision and they should not be readily rejected as repugnant to the section.[58] The illustration to the first explanation aids us in construing the provision to mean that the offence of bribery crystallizes on the exchange of the bribe and does not require the actual performance of the act. It provides a situation where "A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section." It is clear that regardless of whether S actually processes the ration card application on time, the offence of bribery is made out. Similarly, in the formulation of a legislator accepting a bribe, it does not matter whether she votes in the agreed direction or votes at all. At the point in time when she accepts the bribe, the offence of bribery is complete.

119. Even prior to the amendment to the PC Act in 2017, Section 7 expressly delinked the offence of bribery from the actual performance of the act for which the undue advantage is received. The provision read as follows:

> **"7. Public servant taking gratification other than legal remuneration in respect of an official act. —**
>
> Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or

[58] Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 136.

> Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to seven years and shall also be liable to fine.
>
> Explanations. —
> …
> (d) "**A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression**.
> …"
>
> (emphasis supplied)

120. The unamended text of Section 7 of the PC Act also indicates that the act of "accepting", "obtaining", "agreeing to accept" or "agreeing to obtain" illegal gratification is a sufficient condition. The act for which the bribe is given does not need to be actually performed. This was further clarified by Explanation (d) to the provision. In explaining the phrase 'a motive or reward for doing', it was made clear that the person receiving the gratification does not need to intend to or be in a position to do or not do the act or omission for which the motive/reward is received.

121. In **Chaturdas Bhagwandas Patel** v. **State of Gujarat**[59] a two-judge Bench of this Court reiterated that to constitute the offence of bribery, a public servant using his official position to extract illegal gratification is a sufficient condition. It is not necessary in such a case for the Court to consider whether the public servant intended to actually perform any official act of favour or disfavour. In the facts of the case, the public servant induced the complainant to give a bribe to get rid of a charge of abduction. It was later revealed that no complaint had

[59] (1976) 3 SCC 46

even been registered against the complainant for the alleged abduction. However, the Court held that the mere demand and acceptance of the illegal gratification was sufficient, regardless of whether the recipient of the bribe performed the act for which the bribe was received.

122. Recently, in **Neeraj Dutta** v. **State (NCT of Delhi)**[60] a Constitution Bench listed out the constituent elements of the offence of bribery under Section 7 of the PC Act (as it stood before the amendment in 2017). Justice BV Nagarathna formulated the elements to constitute the offence:

> "5. The following are the ingredients of Section 7 of the Act:
> (i) the accused must be a public servant or expecting to be a public servant;
> (ii) he should accept or obtain or agrees to accept or attempts to obtain from any person;
> (iii) for himself or for any other person;
> (iv) any gratification other than legal remuneration; and
> (v) as a motive or reward for doing or forbearing to do any official act or to show any favour or disfavour."

Consequently, the actual "doing or forbearing to do" the official act is **not** a constituent part of the offence. All that is required is that the illegal gratification should be obtained as a "motive or reward" for such an action or omission – whether it is actually carried out or not is irrelevant.

123. During the course of the hearing, a hypothetical question arose in this regard. What happens in a situation when the bribe is exchanged within the precincts of the legislature? Would the offence now fall within the ambit of parliamentary privilege? This question appears to be ill-conceived. When this Court holds that

[60] (2023) 4 SCC 731

the offence of bribery is complete on the acceptance or attempt to accept undue advantage and is not dependent on the speech or vote, it automatically pushes the offence outside the ambit of Articles 105(2) and 194(2). This is not because the acceptance of undue advantage happened outside the legislature but because the offence is independent of the "vote or speech" protected by Articles 105(2) and 194(2). The remit of parliamentary privilege is intricately linked to the nexus of the act to the 'vote' or 'speech' and the transaction of parliamentary business.

124. The majority judgment in **PV Narasimha Rao** (supra) did not delve into when the offence of bribery is complete or the constituent elements of the offence. However, on the facts of the case, the majority held that those MPs who voted as agreed were covered by the immunity, while those who did not vote at all (Ajit Singh) were not covered by the immunity under Articles 105(2) and 194(2). This erroneously links the offence of bribery to the performance of the act. In fact, in the impugned judgment as well, the High Court has relied on this position to hold that the appellant is not covered by the immunity as she eventually did not vote as agreed on and voted for the candidate from her party.

125. The understanding of the law in the judgment of the majority in **PV Narasimha Rao** (supra) creates an artificial distinction between those who receive the illegal gratification and perform their end of the bargain and those who receive the same illegal gratification but do not carry out the agreed task. The offence of bribery is agnostic to the performance of the agreed action and crystallizes based on the exchange of illegal gratification. The minority judgment also

highlighted the *prima facie* absurdity in the paradox created by the majority judgment. Agarwal, J observed that:

> **"47.** […] If the construction placed by Shri Rao on the expression "in respect of" is adopted, a Member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. **It is difficult to conceive that the framers of the Constitution intended to make such a distinction in the matter of grant of immunity between a Member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a Member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the agreement so as to confer an immunity from prosecution on charge of bribery on the former but denying such immunity to the latter.** Such an anomalous situation would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of" […]"
>
> (emphasis supplied)

126. Indeed, to read Articles 105(2) and 194(2) in the manner proposed in the majority judgment results in a paradoxical outcome. Such an interpretation results in a situation where a legislator is rewarded with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but may eventually decide to vote independently will be prosecuted. Such an interpretation belies not only the text of Articles 105 and 194 but also the purpose of conferring parliamentary privilege on members of the legislature.

H. International position on bribery vis-à-vis privileges

127. The above exposition has sought to elucidate the law governing the subject of parliamentary privileges in India and its implications on a member of the legislature engaging in bribery. It has been the leitmotif of most judgments on the subject in India to delve into the law in other jurisdictions before outlining the position of parliamentary privileges in India. The jurisprudence on parliamentary privileges in India has since grown in its own right and we have referred to the rich jurisprudence of this Court and the history of parliamentary privileges in India. However, since both the majority and the minority judgments in **PV Narasimha Rao** (supra) have relied heavily on jurisprudence in foreign jurisdictions, it is appropriate to lay out, in brief, the evolution and position of the law on privileges as it relates to the issue of a bribe received by a member of Parliament in other jurisdictions. We shall first direct our attention to the position of law in the United Kingdom followed by the United States of America, Canada, and Australia.

I. United Kingdom

128. As we have explored above, the law on parliamentary privileges in UK was developed after a struggle by the House of Commons with the Tudor and Stuart Kings. In **The King** v. **Sir John Elliot**,[61] at the peak of the confrontation between the Commons and the King in 1629, the King's Bench prosecuted three members of the House of Commons, Sir John Elliot, Denzel Hollis and Benjamin Valentine, for making seditious speech, disturbing public tranquillity,

[61] (1629) 3 St. Tr. 294

and violently holding the Speaker in his position to stop the House from being adjourned. The members of Parliament were found guilty, fined and imprisoned. Sir John Elliot was sent to be imprisoned in a tower where his health declined and he ultimately passed away. The report of the trial came to be published in 1667 and was noticed by the House of Commons. The House resolved that the judgment was illegal and against the privileges of Parliament. On a writ of error presented by Denzel Hollis, the House of Lords reversed the judgment of the King's Bench.

129. With the glorious revolution of 1688, the last of the Stuart Kings, James, was expelled and a new dynasty was instated. The bitter struggle led to a firmly established constitutional monarchy with the House of Commons ultimately claiming both sovereignty and certain privileges which became ancient and undoubted as a result of the persistence of the House and its gradual recognition. Erskine May notes that:

> "at the commencement of every Parliament it has been the custom for the Speaker, in the name, and on behalf of, the Commons, to lay claim by humble petition to their ancient and undoubted rights and privileges; particularly to freedom of speech in debate, freedom from arrest, freedom of access to Her Majesty whenever occasion shall require; and that the most favourable construction should be placed upon all their proceedings."[62]

130. The clause stipulating freedom of speech in Parliament and immunity from prosecution flows from the Bill of Rights 1689. The Act was a crucial constitutional initiative by Parliament in England to lay claim to its status by

[62] Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament, LexisNexis, 25th ed. (2019) 242.

grounding it in statute. The statute was to secure Parliament from royal interference in or through the courts. Article IX of the Bill of Rights stipulates:

> "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."

The clause guarantees freedom of speech in Parliament and protects it from being "impeached or questioned" in any court or place out of Parliament.

131. Two aspects of Article IX of the Bill of Rights may be outlined at the outset. First, the privilege under Article IX in UK is not attached to individual members only. It immunizes the freedom of speech and debates or proceedings in Parliament and stipulates that it shall not be 'impeached or questioned.' Secondly, Article IX stipulates that the proceedings in Parliament may only be 'impeached or questioned' in Parliament. This has led to debate as to whether any material from Parliamentary proceedings can be placed before the Courts and whether the jurisdiction of Parliament ousts the jurisdiction of the Courts. As we shall elucidate below, the position as it stands allows for material from Parliamentary proceedings in the UK to be placed before the Court provided that it is not used to imply or argue *mala fides* behind the action. The courts in the UK have also interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of Parliament to discipline a member for taking bribe would not automatically oust the jurisdiction of the courts.

132. The parliamentary immunity attracted to speech made in Parliament came to be applied in the case of **Ex Parte Wason**,[63] where a member of Parliament was accused of conspiring to make a statement which they knew to be false. A person had furnished a petition to Earl Russel to present before the House of Lords which charged the Lord Chief Baron of deliberately telling a falsehood before a Parliamentary committee. This would have led to the removal of the Lord Chief Baron upon an address by both Houses of Parliament for such a removal. Earl Russel, Lord Chelmsford, and Lord Chief Baron conspired to make speeches in the House of Lords to the effect that the allegations of falsehood were unfounded despite knowing that the allegations were true. The magistrate refused to take the applicant's recognizance on the grounds that a speech made in Parliament could not disclose any indictable offence. The Queen's Bench affirmed the order.

133. Cockburn, CJ opined that speeches made in either House could not give rise to civil or criminal proceedings regardless of the injury caused to the interests of a third person. Concurring with the opinion Lush, J held that:

> "[…] I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House."

The Queen's Bench therefore held that a speech made inside the House cannot be questioned in any proceeding before a court in a civil or criminal action and neither can the motives behind the performance of such acts be questioned.

[63] (1969) 4 QB 573.

134. The issue of bribery was only governed by common law till 1889. Different common law offences were attracted based on corruption by different offices and their functions. The Public Bodies Corrupt Practices Act 1889, which applied only to local government bodies, created the first statutory offence of corruption. Subsequently, the Prevention of Corruption Act 1906 extended the offence of corruption to the private sector. Neither of these statutes covered the acceptance of bribe by a member of Parliament. In the absence of a statute, the question of taking bribe by a member of Parliament had remained a question of breach of privilege and only the House was empowered to take action against such corruption.

135. The Royal Commission on Standards of Conduct in Public Life, chaired by Lord Salmon, submitted its report in 1976 which *inter alia* recommended bringing "corruption, bribery and attempted bribery of a Member of Parliament acting in his Parliamentary capacity within the ambit of the criminal law." While presenting his report to the House of Lords, Lord Salmon said:

> "To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake. The passage in the Bill of Rights is: "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." **Now this is a charter for freedom of speech in the House. It is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has no more to do with the topic which we are discussing than the Merchandise Marks Act. The crime of corruption is complete when the bribe is offered or given or solicited and taken.**
>
> We have recommended that the Statutes relating to corruption should all be replaced by one comprehensive

> Statute which will sweep away the present anomalies. If you are not an agent—and Members of Parliament neither of this House nor of the other place are agents—if you are not the member of a public body (and we are not members of public bodies) the Statutes do not touch you. At Common Law you cannot be convicted of bribery and corruption unless you are the holder of an office, and most of us are not the holders of an office."
>
> (emphasis supplied)

136. No action was taken by Parliament on this recommendation of the Salmon Report. However, in **R** v. **Greenway**,[64] a member of Parliament was accused of accepting a bribe for helping the interests of a company. A case to quash the prosecution was filed. The member of Parliament asserted that his actions were protected by parliamentary privileges. Rejecting this assertion, Buckley, J held that:

> "That a member of Parliament against whom there is a prime facie case of corruption should be immune from prosecution in the courts of law is to my mind an unacceptable proposition at the present time. I do not believe it to be the law."

137. Another commission was constituted after allegations of sleaze by many members of Parliament. The Standing Committee on Standards in Public Life under the Chairmanship of Lord Nolan submitted its report in 1994. The report expressed doubt as to who would have jurisdiction over a bribe taking member of Parliament. To resolve the jurisdictional question between the House and the court the report recommended for clarity from Parliament in the form of a statute. The report recommended that:

> "The Salmon Commission in 1976 recommended that such doubt should be resolved by legislation, but this has

[64] [1998] PL 357, referred to as *R v Currie* in PV Narasimha Rao (supra).

> not been acted upon. **We believe that it would be unsatisfactory to leave this issue outstanding when other aspects of the law of Parliament relating to conduct are being clarified. We recommend that the Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament**. This could usefully be combined with the consolidation of the statute law on bribery which Salmon also recommended, which the government accepted, but which has not been done. This might be a task which the Law Commission could take forward."
>
> (emphasis supplied)

This recommendation was referred by the government to the Law Commission. The Law Commission submitted its report in 1998 recommending a new law which makes the offence of corruption applicable to all. This led to a sequence of events which ultimately culminated in the enactment of the Bribery Act 2010. The Act covers instances where members of Parliament engage in corruption.

138. While efforts were being made by lawmakers, the courts in UK continued answering questions on the scope of Article IX of the Bill of Rights on members of Parliament who engage in bribery. The allegations which had led to the constitution of the Nolan committee came before the courts in **R** v. **Parliamentary Commissioner for Standards Ex Parte Fayed**,[65] and in **Hamilton** v. **Al Fayed**.[66] In the first case, a person had accused a member of Parliament of taking corruption money from him while the member was serving as a minister in the government. The Parliamentary Commissioner of Standards had cleared a member of Parliament of charges pertaining to taking of bribes.

[65] [1998] 1 WLR 669.
[66] [2001] 1 A.C. 395.

The complainant filed for leave to apply for judicial review. The Court of Appeal allowed the application and held that:

> "It is important on this application to identify the specific function of the Parliamentary Commissioner for Standards which is the subject of complaint on this application. **It is that a Member of Parliament received a corrupt payment. Mr. Pannick rightly says that parliamentary privilege would not prevent the courts investigating issues such as whether or not a Member of Parliament has committed a criminal offence, or whether a Member of Parliament has made a statement outside the House of Parliament which it is alleged is defamatory**. He submits that, consistent with this, the sort of complaint which the applicant makes in this case is not in relation to an activity in respect of which the Member of Parliament would necessarily have any form of parliamentary immunity."
>
> (emphasis supplied)

139. In **Hamilton** v. **Al Fayed** (supra), another case emanating from the same facts against another member of Parliament, a question arose as to whether parliamentary privileges may be waived. The Court while returning specific findings on facts, also held that "courts are precluded from entertaining in any proceedings (whatever the issue which may be at stake in those proceedings) evidence, questioning or submissions designed to show that a witness in parliamentary proceedings deliberately misled Parliament." In arriving at such a conclusion the court relied on the judgment in **Prebble** v. **Television New Zealand**.[67]

140. In the above case, the respondent had transmitted a programme making allegations against the government that a minister had conspired with a

[67] (1994) 3 ALL ER 407

businessman and public officials to promote and implement state asset sales with the object of allowing the businessman to obtain assets at unduly favourable terms. The minister sued the channel for defamation. The channel sought to make a defence of truth and place reliance on things said and acts done in Parliament. It argued that the protection under Article IX of the Bill of Rights would only protect a member from being held liable for his speech in either House. However, they could be placed on record as a defence if it is not being used to inflict liability upon a speech made in either House. The Privy Council held that parties to a litigation cannot bring into question anything said or done in the House or impute any motive to those actions. The Court allowed reliance on the official publication of the House proceedings to the extent that they are not used to suggest that the words were improperly spoken, or any statute was passed for improper use.

141. The question of reliance on legislative material was further weighed in favour of the legislature in 2009. In **Office of Government Commerce** v. **Information Commissioner (Attorney General intervening)**,[68] the Queen's Bench Division held that opinions of parliamentary committees would be irrelevant before a court given the nature of their work. This holding was influenced by the words and associated history of Article IX of the Bill of Rights, which is worded more broadly than Clause (2) of Articles 105 and 194 of the Constitution of India. The minority opinion in **PV Narasimha Rao** (supra) throws light on the issue as follows:

[68] [2009] 3 WLR 627

> "**41.** […] The protection given under clause (2) of Article 105 is narrower than that conferred under Article 9 of the Bill of Rights in the sense that the immunity conferred by that clause is personal in nature and is available to the Member in respect of anything said or in any vote given by him in the House or any committee thereof. The said clause does not confer an immunity for challenge in the court on the speech or vote given by a Member of Parliament. The protection given under clause (2) of Article 105 is thus similar to protection envisaged under the construction placed by Hunt, J. in R. v. Murphy [(1986) 5 NSWLR 18] on Article 9 of the Bill of Rights which has not been accepted by the Privy Council in Prebble v. Television New Zealand Ltd. [(1994) 3 All ER 407, PC] The decision in Ex p Wason [(1869) 4 QB 573 : 38 LJQB 302] which was given in the context of Article 9 of the Bill of Rights, can, therefore, have no application in the matter of construction of clause (2) of Article 105. […]"

The issue of whether courts can rely on observations contained in Parliamentary committee reports now stands settled by a Constitution Bench of this Court in **Kalpana Mehta** (supra).

142. The majority judgment in **PV Narasimha Rao** (supra) relied on the earlier cases from the UK which generally interpret Article IX to protect speech and debate. Relying on these judgments, the majority extrapolated a general principle of not allowing the production of anything before the courts which may be casually or incidentally related to the acts of a legislator. The Court then grounded this principle by interpreting Article 105(2) in an overbroad manner to attach immunity for bribes received in furtherance of legislative functions. The Court brushed aside the opinion of Buckley, J in **R** v. **Greenway** on the ground that it remains to be tested in appeal. The majority therefore failed to contextually apply the different clauses governing the freedom of speech in UK and India. The cases referred to by the majority, while helpful to understand the law

generally, do not aid in immunizing bribes received for influencing of votes. As we have noted above, one of the reasons behind the claim of exclusive jurisdiction over bribery by the Parliament was that members of Parliament were not covered by the anti-corruption statute. However, a constitutional interpretation has to answer whether, in the absence of a statute, a member of Parliament can claim immunity for taking corruption money and thereby influence his vote.

143. Since the judgment of this Court in **PV Narasimha Rao** (supra) the courts in UK have narrowly interpreted the immunity under Article IX. In **R** v. **Chaytor**,[69] members of Parliament were prosecuted for false accounting for having submitted fake claims and making financial gains. The UK Supreme Court held that the purpose of Article IX of the Bill of Rights is to protect the freedom of speech in the House. The Court opined that the provision must be given a narrower view and held that the prosecution would not violate the privilege of Parliament. The Court relied on the holding in **Greenway** (supra) that the nexus between a bribe and a speech made in Parliament does not oust the jurisdiction of the courts. The Court therefore opined that submitting a claim for expenses and taking part in such proceedings has an even more tenuous link to parliamentary privileges and cannot be immune from prosecution. The Court applied the test of whether the action of the member of Parliament which was being questioned bore on the core or essential function of the Parliament. Lord Phillip opined that:

[69] [2010] 3 WLR 1707.

> "**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)

144. Lord Rodger in the course of his concurring opinion further shed light on the issue being amenable to the contempt jurisdiction of the House of Parliament. Lord Rodger held that this would be an overlapping jurisdiction and would not amount to an ouster of the court's jurisdiction. In **Makudi** v. **Baron Triesman of Trottenham**,[70] the Court of Appeal held that a statement made by a witness in public which repeated his testimony before a parliamentary committee would not attract immunity as it was an extra-parliamentary speech which was too remote to the utterance before the parliamentary committee. The Court also opined when the immunity may be attracted. The Court held that:

> "**25.** I accept, however, that there may be instances where the protection of Article 9 indeed extends to extra-Parliamentary speech. No doubt they will vary on the facts, but generally I think such cases will possess these two characteristics: (1) a public interest in repetition of the Parliamentary utterance which the speaker ought reasonably to serve, and (2) so close a nexus between the occasions of his speaking, in and then out of Parliament, that the prospect of his obligation to speak on the second occasion (or the expectation or promise that he would do so) is reasonably foreseeable at the time of the first and

[70] [2014] QB 839.

> his purpose in speaking on both occasions is the same or very closely related. […]"

145. The courts in the UK have, overtime, advanced a narrower view than the earlier cases governing the field of privileges. They have interpreted a narrow scope for the nexus required for non-legislative activities to be immune. This has led to the holding that the jurisdiction of courts is not ousted by the immunity of members or the ability of the House to take contempt action against bribery.

II. United States of America

146. Parliamentary privileges in the United States of America emanate from Section 6 of Article 1 in the Constitution. The relevant part of the provision, referred to as the Speech and Debate Clause, is influenced by Article IX of the English Bill of Rights 1689. The clause reads as follows:

> "**The Senators and Representatives** shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They **shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged** from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and **for any Speech or Debate in either House, they shall not be questioned in any other Place**."
>
> (emphasis supplied)

Courts in the US have given a broad interpretation to the Speech and Debate clause so far as legislative acts of the members of Congress are concerned. Beyond that the Courts have held that a member of Congress may be liable under a criminal statute of general application. All that is prohibited is reliance on the official acts of the member to prove the prosecution case.

147. In **United States** v. **Thomas F Johnson**,[71] a member of Congress was accused of conflict of interest and conspiring to defraud the United States. The allegation against Johnson was that he entered into a conspiracy to exert influence and obtain dismissal of pending indictments against a saving and loan company and its officers on mail fraud charge. As part of the conspiracy, Johnson made speeches favourable to independent savings and loan associations in the House. The accused was found guilty by the trial court. His conviction was set aside by the Court of Appeals for the Fourth Circuit on the ground that the allegations were barred under the Speech and Debate Clause from being raised in the Court. The US Supreme Court in interpreting the Speech and Debate Clause held that the Government may not use the speech made by a member of Congress or question its motivation in a court of law. However, the prosecution may make a case without relying on the speech given by the Congressman. The Court opined that its decision does not apply to a prosecution for violating a general criminal law which 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'

148. The US Supreme Court has relied on **Johnson** (supra) in subsequent cases involving bribery by members of Congress to hold that they may be prosecuted so long as they do not rely on a speech or vote given by the legislator. In **United States** v. **Brewster**,[72] a Senator was accused of accepting a bribe in return for being influenced in his performance of official acts with respect to postage rate

[71] 383 US 169 (1966).
[72] 408 US 501 (1972).

legislation. The trial court dismissed the charges on the ground that the Senator attracted parliamentary privileges. The US Supreme Court by majority held that the Speech and Debate Clause prevented prosecutors from introducing evidence that the member of Congress actually performed some legislative act, such as making a speech or introducing legislation, as part of a corrupt plan, but that other evidence might establish that the member had violated the anti-corruption laws. The Court held that:

> "**43.** The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from too sweeping safeguards. **In order to preserve other values, they wrote the privilege so that it tolerates and protects behavior on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process**. […]
>
> …
>
> **60.** It is beyond doubt that the Speech or Debate Clause protects against inquiry into acts that occur in the regular course of the legislative process and into the motivation for those acts. So expressed, the **privilege is broad enough to insure the historic independence of the Legislative Branch, essential to our separation of powers, but narrow enough to guard against the excesses of those who would corrupt the process by corrupting its Members**. […]
>
> …
>
> **62.** The question is whether it is necessary to inquire into how appellee spoke, how he debated, how he voted, or anything he did in the chamber or in committee in order to make out a violation of this statute. The illegal conduct is taking or agreeing to take money for a promise to act in a certain way. There is no need for the Government to show that appellee fulfilled the alleged illegal bargain; acceptance of the bribe is the violation of the statute, not performance of the illegal promise."
>
> (emphasis supplied)

The US Supreme Court therefore opined that the privileges exercised by members of Congress individually was to preserve the independence of the legislature. The independence was exactly what would be compromised if the Speech and Debate Clause were to be understood as providing immunity to acts of bribery by members of Congress. Therefore, immunity under the Constitution is only attracted to actions which are clearly a part of the legislative process.

149. The Court in **Brewster** (supra) was conscious of the potential misuse of investigating powers by the Executive but held that a House acting by a majority would be more detrimental to the rights of the accused if it were left to be the final arbiter. The Court noted that a member of Congress would be deprived of the procedural safeguards that Court affords to accused persons. The Court further held that:

> "**58.** We would be closing our eyes to the realities of the American political system if we failed to acknowledge that **many non-legislative activities are an established and accepted part of the role of a Member, and are indeed 'related' to the legislative process. But if the Executive may prosecute a Member's attempt, as in Johnson, to influence another branch of the Government in return for a bribe, its power to harass is not greatly enhanced if it can prosecute for a promise relating to a legislative act in return for a bribe.** We therefore see no substantial increase in the power of the Executive and Judicial Branches over the Legislative Branch resulting from our holding today. […]
>
> **59.** […] 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. […]

…

63. Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It is not an 'act resulting from the nature, and in the execution, of the office.' Nor is it a 'thing said or done by him, as a representative, in the exercise of the functions of that office,' 4 Mass., at 27. Nor is inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under this statute or this indictment. **When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act as here or, as in Johnson, for use of a Congressman's influence with the Executive Branch. And an inquiry into the purpose of a bribe 'does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them.'** 383 U.S., at 185, 86 S.Ct., at 758.

64. Nor does it matter if the Member defaults on his illegal bargain. To make a prima facie case under this indictment, the Government need not show any act of appellee subsequent to the corrupt promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act. If, for example, there were undisputed evidence that a Member took a bribe in exchange for an agreement to vote for a given bill and if there were also undisputed evidence that he, in fact, voted against the bill, can it be thought that this alters the nature of the bribery or removes it from the area of wrongdoing the Congress sought to make a crime?

…

67. Mr. Justice BRENNAN suggests that inquiry into the alleged bribe is inquiry into the motivation for a legislative act, and it is urged that this very inquiry was condemned as impermissible in Johnson. That argument misconstrues the concept of motivation for legislative acts. **The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions.** In Johnson, the Court held that, on

> remand, Johnson could be retried on the conspiracy-to-defraud count, so long as evidence concerning his speech on the House floor was not admitted. […]."
>
> (emphasis supplied)

The Court therefore rejected the idea that anything having a nexus to legislative functions would automatically attract immunity under the Speech and Debate Clause of the US Constitution.

150. In **Gavel** v. **United States**,[73] certain secret documents were made part of the record of a sub-committee hearing in the US Senate by Senator Gavel. He then published the entire document in a private publication. An aide to the Senator was subpoenaed by the grand jury which was investigating the matter. The question which arose for consideration of the US Supreme Court was whether the aide of the Senator enjoyed any immunity under the Speech and Debate Clause and to what extent could he be questioned. The US Supreme Court held that given the expansive nature of legislative work, an aide to a member of Congress would be protected under the Speech and Debate Clause but only to the extent that it pertained to aiding the legislator in discharge of his legislative functions. The Court further held that private publication of the document was not a necessary part of the functions of the Senator and no immunity would extend in that regard. The Court held that:

> "**26.** Legislative acts are not all-encompassing. The heart of the Clause is speech or debate in either House. **Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection**

[73] 408 US 606 (1972).

> **of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.** As the Court of Appeals put it, the courts have extended the privilege to matters beyond pure speech or debate in either House, but 'only when necessary to prevent indirect impairment of such deliberations.' United States v. Doe, 455 F.2d, at 760.
>
> …
>
> **27.** Here, private publication by Senator Gravel through the cooperation of Beacon Press was in no way essential to the deliberations of the Senate; nor does questioning as to private publication threaten the integrity or independence of the Senate by impermissibly exposing its deliberations to executive influence. The Senator had conducted his hearings; the record and any report that was forthcoming were available both to his committee and the Senate. Insofar as we are advised, neither Congress nor the full committee ordered or authorized the publication. [The sole constitutional claim asserted here is based on the Speech or Debate Clause. We need not address issues that may arise when Congress or either House, as distinguished from a single Member, orders the publication and/or public distribution of committee hearings, reports, or other materials. Of course, Art. I, § 5, cl. 3, requires that each House 'keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy . . ..' This Clause has not been the subject of extensive judicial examination. See Field v. Clark, 143 U.S. 649, 670–671, 12 S.Ct. 495, 496–497, 36 L.Ed. 294 (1892); United States v. Ballin, 144 U.S. 1, 4, 12 S.Ct. 507, 508, 36 L.Ed. 321 (1892).] We cannot but conclude that the Senator's arrangements with Beacon Press were not part and parcel of the legislative process."
>
> (emphasis supplied)

151. The Court in **Gavel** (supra) applied the same standard it did in **Brewster** (supra) to hold that only acts which are essential to the deliberations of the House or in discharge of the functions vested under the Constitution are immune from prosecution before a court of law. Other acts which may in some way be related to the speech or vote of a legislator will not be protected under the Speech and

Debate Clause unless they were essential to the legislator's function. The Court therefore held a consistent position that members of Congress would only have immunity under the Constitution for their 'sphere of legitimate legislative activity.'

152. In **United States** v. **Helstoski**,[74] a member of the House of Representatives was accused of accepting money in return for introducing certain private bills to suspend the application of immigration laws. Relying on its previous rulings in **Johnson** (supra), **Brewster** (supra) and **Gavel** (supra) the US Supreme Court held that the purpose of the Speech and Debate Clause was to free the legislator from executive and judicial oversight that realistically threatens to control his conduct as a legislator. The Court reaffirmed the position of American law that material from the legislative acts of the accused Congressman may not be relied on or placed before the grand jury but proof of bribe and promise to commit a future legislative act may be investigated as they do not constitute an essential function of the legislator in discharge of his duties.

153. We may helpfully refer to another decision before concluding the analysis of the position of law in the United States. In **Hutchinson** v. **Proxmire**,[75] a Senator would release a publication highlighting what he perceived to be "wasteful government spending". The Senator made a speech on the floor of the Senate and had it published in the press. The complainant, who was funded by public institutes for his research, was named by the Senator. The press release was circulated to over one hundred thousand people including agencies which

[74] 442 US 477 (1979).
[75] 439 US 1066 (1979).

funded the research of the complainant. The complainant filed a suit claiming loss of respect in his profession, loss of income and the ability to earn income in the future. The District Court granted summary judgment in favour of the Senator, holding that the publication fell under the 'information function' of Congress and would be immune under the Speech and Debate Clause.

154. The US Supreme Court held that the intention of the Speech and Debate Clause was not to create an absolute privilege in favour of members of Congress. The clause, the Court held, is only attracted to "legislative activities" and would not protect republishing of defamatory statements. The Court held that:

> "Whatever imprecision there may be in the term "legislative activities," it is clear that **nothing in history or in the explicit language of the clause suggests any intention to create an absolute privilege from liability or suit for defamatory statements made outside the Chamber**.
>
> …
>
> Claims under the clause going beyond what is needed to protect legislative independence are to be closely scrutinized.
>
> …
>
> Indeed, the precedents abundantly support the conclusion that a Member may be held liable for republishing defamatory statements originally made in either House. We perceive no reason from that long-established rule."
>
> (emphasis supplied)

155. The principle which emerges from the approach taken with regard to privileges in the United States is that a member of Congress is not immune for engaging in bribery to perform legislative acts in terms of speech or vote. The Speech

and Debate Clause does not give any absolute immunity to a legislator with respect to all things bearing a nexus with legislative activity. The immunity is attracted only to those functions which are essential and within the legitimate sphere of legislative business. The only privilege a Congressperson may attract in a prosecution is that the content of the speech, vote or legislative acts may not be produced as evidence by the prosecution.

156. The majority judgment in **PV Narasimha Rao** (supra) has interpreted **Johnson** (supra) and the dissenting opinion in **Brewster** (supra) to arrive at the same conclusion which it did upon a reflection of the law in the UK. Here too, the majority judgment fails on two accounts. Firstly, it fails to account for the fact that the Speech and Debate Clause which is substantially borrowed from Article IX of the English Bill of Rights confers immunity to the speech and vote made in parliament. The understanding arrived at in the majority judgment was not informed by the evolution of law in a line of cases in the United States. On the contrary, the majority judgment relied solely on the dissenting opinion in **Brewster** (supra) without adequate substantiation for such reliance. Secondly, the majority judgment has extended its interpretation of the Speech and Debate Clause and pigeon-holed the interpretation of Article 105(2) to satisfy this understanding.

III. Canada

157. The precise question of whether bribing legislators to vote in a certain direction falls within the ambit of parliamentary privilege was adjudicated upon by the

Queen's Bench in **R** v. **Bunting et al.**[76] In that case, the defendants had sought the quashing of an indictment for conspiracy to change the Government of the Province of Ontario by bribing members of the legislature to vote against the government. The Court conclusively held that the offence of bribery and conspiracy to bribe members of the legislature fell within the jurisdiction of the court and such an inquiry would not encroach on parliamentary privilege. Further, it was held that if the defendants were proceeded against by the court, they may also be parallelly inquired against by the legislature for violation of rights and privileges. The proceedings are for different offences, may be conducted in their own right and such situations do not constitute a case of double punishment or double jeopardy. The Court (speaking through Wilson, CJ) held:

> "It is to my mind a proposition very clear that **this Court has jurisdiction over the offence of bribery as at the common law in a case of this kind, where a member of the Legislative Assembly is concerned either in the giving or in the offering to give a bribe, or in the taking of it for or in respect of any of his duties as a member of that Assembly; and it is equally clear that the Legislative Assembly has not the jurisdiction which this Court has in a case of the kind;** and it is also quite clear that the ancient definition of bribery is not the proper or legal definition of that offence.
>
> …
>
> There is nothing more definitely settled than that the House of Commons in England, and the different colonial Legislatures, have not, and never have had, criminal jurisdiction.
> …
>
> But if these three persons had agreed that the two members of the House of Lords should make these false statements, or vote in any particular manner, in consideration of a bribe paid or to be paid to them, that

[76] [1885] 17 O.R. 524.

> would have been a conspiracy to do an act, not necessarily illegal perhaps, but to do the act by illegal means, bribery being an offence against the law; and the offence of conspiracy would have been complete by reason of the illegal means by which the act was to be effected. **That offence could have been inquired into by the Court, because the inquiry into all that was done would have been of matters outside of the House of Lords, and there could therefore be no violation of, or encroachment in any respect upon, the lex parliament".**
>
> (emphasis supplied)

158. The decision in **Bunting** (supra) was before the Court in **PV Narasimha Rao** (supra). The Minority expressly relied on the decision, recognizing that bribing a legislator was treated as a common law offence under the criminal law in Canada and Australia and a legislator can be prosecuted in a criminal court for the offence. Agarwal, J noted:

> "**54.** […] In Australia and Canada where bribery of a legislator was treated as an offence at common law the courts in **White** [13 SCR (NSW) 332], **Boston** [(1923) 33 CLR 386] and **Bunting** [(1884-85) 7 Ontario Reports 524] had held that the legislator could be prosecuted in the criminal court for the said offence. **It cannot, therefore, be said that since acceptance of bribe by a Member of the House of Commons was treated as a breach of privilege by the House of Commons and action could be taken by the House for contempt against the Member, the Members of the House of Commons, on 26-1-1950, were enjoying a privilege that in respect of conduct involving acceptance of bribe in connection with the business of Parliament, they could only be punished for breach of privilege of the House and they could not be prosecuted in a court of law. Clause (3) of Article 105 of the Constitution cannot, therefore, be invoked by the appellants to claim immunity from prosecution in respect of the charge levelled against them.**
>
> **55.** […] In the earlier part of the judgment we have found that **for the past more than 100 years legislators in Australia and Canada are liable to be prosecuted for**

> **bribery in connection with their legislative activities** and, with the exception of the United Kingdom, most of the Commonwealth countries treat corruption and bribery by Members of the legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. **There appears to be no reason why legislators in India should be beyond the pale of laws governing bribery and corruption when all other public functionaries are subject to such laws.** We are, therefore, unable to uphold the above contention of Shri Thakur."
>
> (emphasis supplied)

The majority judgment, on the other hand, makes a reference to **Bunting** (supra) but chooses to not rely on the judgment or any other judgment by Canadian courts placed on record in the case.

159. Another interesting line of jurisprudence, expanded by the Supreme Court of Canada after the decision in **PV Narasimha Rao** (supra), is relevant to answer the question before this Court. While dealing with the remit of parliamentary privilege, the Supreme Court of Canada has adopted the test of 'necessity' in a formulation similar to the test formulated in Part F of this judgment. In this regard, the landmark decision of the Supreme Court of Canada in **Canada (House of Commons)** v. **Vaid**,[77] may be noted in some detail.

160. In the above case, the former Speaker of the House of Commons was accused of dismissing his chauffeur for reasons that allegedly constituted workplace discrimination under the Canadian Human Rights Act, 1985. This was resisted by the House of Commons which contended that such an inquiry constituted an encroachment on parliamentary privilege and the hiring and firing of House

[77] [2005] 1 SCR 667.

employees are “internal affairs” which may not be questioned or reviewed by any tribunal or court apart from the House itself. The court did not accept this contention.

161. The Supreme Court of Canada held that legislative bodies do not constitute enclaves shielded from the ordinary law of the land. The party that seeks to rely on immunity under the broader umbrella of parliamentary privilege has the onus of establishing its existence. In Canada, the House of Commons in the UK is used as the benchmark to determine the existence of parliamentary privilege. Therefore, to determine whether a privilege does in fact exist, the first step is to scrutinize if it is authoritatively established in relation to the Canadian Parliament or the House of Commons. If the existence is not established, the doctrine of necessity is to be applied to determine if the act is protected by parliamentary privilege. In essence, the legislature or the member seeking immunity must prove that the activity for which privilege is claimed is closely and directly connected with the fulfilment by the legislature of its functions and that external interference would impact the autonomy required for the assembly to carry out its functions with “dignity and efficiency”.

162. The Supreme Court of Canada held as follows:

> “While much latitude is left to each House of Parliament, such a purposive approach to the definition of privilege implies important limits. There is general recognition, for example, that privilege attaches to “proceedings in Parliament”. Nevertheless, as stated in Erskine May (19th ed. 1976), at p. 89, not “everything that is said or done within the Chamber during the transaction of business forms part of proceedings in Parliament. Particular words or acts may be entirely unrelated to any business which is in course of transaction or is in a more general sense before the House as having been ordered to come before

> it in due course." (This passage was referred to with approval in Re Clark.) Thus in **R. v. Bunting** (1885), 7 O.R. 524, for example, the Queen's Bench Division held that a conspiracy to bring about a change in the government by bribing members of the provincial legislature was not in any way connected with a proceeding in Parliament and, therefore, the court had jurisdiction to try the offence. Erskine May (23rd ed.) refers to an opinion of "the Privileges Committee in 1815 that the re-arrest of Lord Cochrane (a Member of the Commons) in the Chamber (the House not sitting) was not a breach of privilege. Particular words or acts may be entirely unrelated to any business being transacted or ordered to come before the House in due course.
> …
>
> All of these sources point in the direction of a similar conclusion. **In order to sustain a claim of parliamentary privilege, the assembly or member seeking its immunity must show that the sphere of activity for which privilege is claimed is so closely and directly connected with the fulfilment by the assembly or its members of their functions as a legislative and deliberative body, including the assembly's work in holding the government to account, that outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency.**"
>
> (emphasis supplied)

163. Similarly, the decision of the Supreme Court of Canada in **Chagnon v. Syndicat de la fonction publique et parapublique du Québe**,[78] relies on **Vaid** (supra) and adopts the test of 'necessity' in similar terms. In that case, security guards who were employed by the National Assembly of Québec were dismissed from service by the President of the assembly. The dismissal was assailed before the labour arbitrator. This was objected to on the ground that the decision to dismiss the guards is not subject to review and is protected by

[78] [2018] 2 S.C.R. 687.

parliamentary privilege. The Supreme Court of Canada, in its majority opinion, held that the dismissal of the security guards was not protected by parliamentary privilege. The Court opined that the inherent nature of parliamentary privilege indicates that its scope must be anchored to its rationale, i.e. to protect legislatures in the discharge of their legislative and deliberative functions. A court recognizing a parliamentary privilege entails that the court cannot review its exercise. Therefore, a purposive approach must be adopted to ensure that it is only as broad as necessary to perform the assembly's constitutional role. In the factual context, the Court held that the necessity of a parliamentary privilege over the management of the security guards could not be established. The management of guards could be dealt with under ordinary law without impeding the security of the assembly or its ability to deliberate on issues.

IV. Australia

164. The position of law in Australia has been consistent since 1875. The courts have held that an attempt to bribe a member of the legislature to influence their votes constitutes a criminal offence under common law. The decision of the Supreme Court of New South Wales in **R** v. **Edward White**[79] was a landmark in this regard. Sir James Martin (CJ) observed:

> "The point now for the consideration of the Court, whether or not the objection so taken is a valid one, or in other words, whether an attempt to bribe a member of the Legislative assembly is a criminal offence. **I am clearly of the opinion that such an attempt is a misdemeanor at common law.** Although no case can be found on an

[79] 13 SCR (NSW) 332.

> information or indictment against a person for attempting to bribe a member of the Legislature, there are several cases which show that such an attempt is an offence.
>
> …
>
> The injury to the public is more direct and is certainly greater in tampering with the person actually elected than with the persons who elect him. **A person sent into the Legislature by means of votes corruptly obtained may be an able and conscientious member; but a legislator who suffers his vote to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundation.** It would be a reproach to the common law if the offer to, or the acceptance of, a bribe by such a person were not an offence."
>
> (emphasis supplied)

Similarly, Justice Hargrave also observed as follows:

> "These numerous modern authorities clearly establish that the old common law prohibition against bribery has been long since extended beyond mere judicial officers acting under oaths of office, to all persons whatever holding offices of public trust and confidence; **and it seems impossible to understand why members of our Legislative Assembly and Legislative council, who are entrusted with the public duty of enacting our laws, should not be at least equally protected from bribery and corruption as any Judge or constable who has to carry out the law."**
>
> (emphasis supplied)

165. Subsequently, the decision in **White** (supra) was also followed by the High Court of Australia in **R v. Boston**.[80] This was a case where certain private parties entered into an agreement to bribe members of the legislative assembly such that they would use their official position to secure the acquisition of certain

[80] (1923) 33 CLR 386

estates. The argument that was advanced before the Court was unique. The appellant did not dispute the proposition established in **White** (supra) that an agreement to pay money to a member of the assembly to influence their vote would amount to a criminal offence. However, it was submitted that the bribe in this case was to induce the member of the assembly to use his position outside and not inside the assembly in favour of the bribe-givers. The Court rejected the artificial distinction between illegal gratification to perform acts inside the parliament and acts outside the parliament and held that in both cases, the act of bribery impairs the capacity of the member to exercise a disinterested judgment, thereby, impacting their ability to act as a representative of the people. Knox, CJ held:

> "[…] In my opinion, the payment of money to, and the receipt of money by, a member of Parliament to induce him to use his official position, whether inside or outside Parliament, for the purpose of influencing or putting pressure on a Minister or other officer of the Crown to enter into or carry out a transaction involving payment of money out of the public funds, are acts tending to the public mischief, and an agreement or combination to do such acts amounts to a criminal offence. From the point of view of tendency to public mischief I can see no substantial difference between paying money to a member to induce him to use his vote in Parliament in a particular direction and paying him money to induce him to use his position as a member outside Parliament for the purpose of influencing or putting pressure on Ministers.
> …
>
> Payment of money to a member of Parliament to induce him to persuade or influence or put pressure on a Minister to carry out a particular transaction tends to the public mischief in many ways, irrespective of whether the pressure is to be exercised by conduct inside or outside Parliament. It operates as an incentive to the recipient to serve the interest of his paymaster regardless of the public interest, and to use his right to sit and vote in Parliament as a means to bring about the result which he is paid to achieve. **It impairs his capacity to exercise a**

> **disinterested judgment on the merits of the transaction from the point of view of the public interest and makes him a servant of the person who pays him, instead of a representative of the people.**"
>
> (emphasis supplied)

166. Courts in Australia have also followed the position of law laid down by the Supreme Court of the UK in **Chaytor** (supra) that the House of Commons does not have exclusive jurisdiction to deal with criminal conduct by members of the House. The only exception to such cases is when the existence of parliamentary privilege makes it virtually impossible to determine the issues or if the proceedings interfere with the ability of the House to conduct its legislative and deliberative business. For instance, in **Obeid** v. **Queen**[81], the appellant was charged with the offence of misconduct in office by using his position to gain a pecuniary advantage for himself. One of the grounds argued before the Court of Criminal Appeal for New South Wales was that since Parliament had the power to deal with such contraventions by members of the assembly, the court should have refrained from exercising jurisdiction. The Court followed **Chaytor** (supra) to hold that the Court and Parliament may have concurrent jurisdiction in respect of criminal matters and there was no law which prohibited the court from determining matters that do not constitute "proceedings in parliament".

167. The decisions in **White** (supra) and **Boston** (supra) were placed before the Court in **PV Narasimha Rao** (supra). The minority judgment discussed both judgments in detail and relied on them to conclude that giving a bribe to

[81] [2017] NSWCCA 221.

influence a legislator to vote or speak in Parliament constitutes a criminal offence, which is not protected by Articles 105(2) and 194(2). The majority judgment, however, does not refer to the Australian precedents.

I. Elections to the Rajya Sabha are within the remit of Article 194(2)

168. We may lastly direct our attention to an argument raised by Mr Venkataramani, the learned Attorney General. The Attorney General submitted that the decision **PV Narasimha Rao** (supra) is inapplicable to the facts of the present case. The factual situation in **PV Narasimha Rao** (supra) pertained to a no-confidence motion, while in the present case, the appellant voted to fill vacant seats in the Council of States or the Rajya Sabha. In the counter affidavit filed by the Respondent, it was submitted that since polling for the Rajya Sabha Election was held **outside** the house in the lobby, it cannot be considered as a proceeding of the House like a no-confidence motion. However, during oral arguments and in his written submissions, the Attorney General premised the argument that polling to the Rajya Sabha is not protected by Article 194(2) on the ground that such an election does not form part of the legislative proceedings of the House regardless of the geographical location of the election. To buttress this argument, the Attorney General relied on three judgments of this Court in **Pashupati Nath Sukul** v. **Nem Chandra Jain and Ors.,** [82] **Madhukar Jetly** v. **Union of India,**[83] and **Kuldip Nayar** v. **Union of India.**[84]

[82] (1984) 2 SCC 404.
[83] (1997) 11 SCC 111.
[84] (2006) 7 SCC 1.

169. Such an argument, although attractive at first blush, appears to be misconceived. In essence, the question is whether votes cast by elected members of the state legislative assembly in an election to the Rajya Sabha are protected by Article 194(2) of the Constitution. Before addressing the judgments relied on by the learned Attorney General, we will analyze the provisions of the Constitution that govern this interesting question of constitutional interpretation.

170. Article 80 governs the election of members to the Council of States or the Rajya Sabha. The provision reads as follows:

> **"80**. **Composition of the Council of States. —**
> (1) The Council of States shall consist of—
> (a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
> (b) not more than two hundred and thirty-eight representatives of the States and of the Union territories.
> (2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.
> …
> (4) The representatives of each State in the Council of States shall be **elected by the elected members of the Legislative Assembly of the State** in accordance with the system of proportional representation by means of the single transferable vote.
> …"
>
> (emphasis supplied)

171. Pursuant to Article 80, the Rajya Sabha consists of twelve members who are nominated by the President and not more than two hundred and thirty-eight representatives of the States and Union Territories. Significantly, under Article 80(4), the representatives of the Rajya Sabha shall be elected by the elected members of the Legislative Assembly of the states. Therefore, the power to 'vote' for the elected members of the Rajya Sabha is solely entrusted to the

elected members of the Legislative Assemblies of the states. It constitutes an integral part of their powers and responsibilities as members of the legislative assemblies of each of the states.

172. The next question that arises, therefore, is whether the text of Article 194(2) places any restriction on such a vote being protected by parliamentary privilege. As stated above, Article 194(2) of the Constitution reads as follows:

> "**194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof. —**
>
> …
>
> (2) No member of the Legislature of a State 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 the authority of a House of such a Legislature of any report, paper, votes, or proceedings.
> …"

173. The marginal note to Article 194 uses the phrase "powers, privileges, etc. of the **Houses** of Legislatures and of the members and committees thereof." It is a settled position of law that the marginal note to a section in a statute does not control the meaning of the body of the section if the language employed is clear. With reference to Articles of the Constitution, a marginal note may be used as a tool to provide "some clue as to the meaning and purpose of the Article". However, the real meaning of the Article is to be derived from the bare text of the Article. When the language of the Article is plain and ambiguous, undue

importance cannot be placed on the marginal note appended to it.[85] In **Kesavananda Bharati** v. **State of Kerala**,[86] Hegde, J (speaking for himself and A K Mukherjea, J) observed as follows:

> "**620.** […] To restate the position, Article 368 deals with the amendment of the Constitution. The Article contains both the power and the procedure for amending the Constitution. No undue importance should be attached to the marginal note which says "Procedure for amendment of the Constitution". **Marginal note plays a very little part in the construction of a statutory provision. It should have much less importance in construing a constitutional provision**. The language of Article 368 to our mind is plain and unambiguous. Hence we need not call into aid any of the rules of construction about which there was great deal of debate at the hearing. As the power to amend under the Article as it originally stood was only implied, the marginal note rightly referred to the procedure of amendment. The reference to the procedure in the marginal note does not negative the existence of the power implied in the Article."
>
> (emphasis supplied)

174. Distinct from the marginal note, in the text of the provision, there is a conscious use of the term "**Legislature**" instead of the "**House** of Legislature" at appropriate places. It is evident from the drafting of the provision that the two terms have not been used interchangeably. The first limb of Article 194(2) pertains to "anything said or any vote given by him in the **Legislature** or any committee thereof". However, in the second limb, the phrase used is "in respect of the publication by or under the authority of a **House of such a Legislature** of any report, paper, votes, or proceedings." There is a clear departure from the term 'Legislature' which is used in the first limb, to use the term "House of **such**

[85] Justice GP Singh, Principles of Statutory Interpretation, 15th Ed. (2021), 188-189; Bengal Immunity Company Limited v. State of Bihar, (1955) 2 SCR 603.
[86] (1973) 4 SCC 225.

a Legislature" in the second limb of the provision. It is clear, therefore, that the provision creates a distinction between the "Legislature" as a whole (in the first limb) and the "House" of the same legislature (in the second limb).

175. As correctly submitted by Mr Raju Ramachandran, senior counsel for the appellant, the terms "House of Legislature" and "Legislature" have different connotations. "House of Legislature" refers to the juridical body, which is summoned by the Governor pursuant to Article 174.[87] The term "Legislature", on the other hand, refers to the wider concept under Article 168,[88] comprising the Governor and the Houses of the Legislature. It functions indefinitely and continues to exist even when the Governor has not summoned the House.

176. The use of the phrase "in the Legislature" instead of "House of Legislature" is significant. There are several parliamentary processes which do not take place on the floor of the House, i.e. when it is in session, having been summoned by the Governor. For instance, there are *ad hoc* committees and standing committees which examine various issues, including matters of policy or government administration. Many of these committees do not deliberate on laws or bills tabled in the House or cease to function when the 'House' is not

[87] **174. Sessions of the State Legislature, prorogation and dissolution.—** (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
(2) The Governor may from time to time— (a) prorogue the House or either House; (b) dissolve the Legislative Assembly.]

[88] **168. Constitution of Legislatures in States.—(**1) For every State there shall be a Legislature which shall consist of the Governor, and—
(a) in the States of Andhra Pradesh], Bihar, Madhya Pradesh, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh, two Houses;
(b) in other States, one House.
(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

sitting. There appears to be no reason why the deliberations that take place in such committees ("anything said") would not be protected by parliamentary privilege.

177. The elections to the Rajya Sabha conducted under Article 80 as referred to above, may also take place when the House is not in session as seats may fall vacant when the legislative assembly of the state is not in session. However, the elections remain a part of the functioning of the Legislature and take place within the precincts of the Legislative Assembly. Similarly, the elections for the President of India under Article 54[89] and for the Vice President under Article 66[90] may also take place when Parliament or the state legislative assemblies are not in session. However, they are an integral part of the powers and responsibilities of elected members of the Parliament and state legislative assemblies. The vote for such elections is given in the Legislature or Parliament, which is sufficient to invoke the protection of the first limb of Articles 105(2) and 194(2). Such processes are significant to the functioning of the legislature and in the broader structure of parliamentary democracy. There appears to be no restriction either in the text of Article 105(2) and Article 194(2), which pushes such elections outside of the protection provided by the provisions. Further, the purpose of parliamentary privilege to provide legislators with the platform to "speak" and "vote" without fear is equally applicable to elections to the Rajya Sabha and elections for the President and Vice President as well.

[89] The electoral college consists of elected MPs and MLAs.
[90] The electoral college consists of elected MPs.

178. We will now address the cases relied on by the Attorney General to advance his argument. In **Pashupati Nath Sukul** (supra)**,** a bench of three judges of this Court held that a member of the legislative assembly may propose a candidature for a seat in and vote at an election to the Rajya Sabha even before taking the constitutional oath required under Article 188 of the Constitution. The Court observed that an election to fill seats in the Rajya Sabha does not form a part of the legislative proceedings of the House nor do they constitute a vote given in the **House** on any issue arising before it. Therefore, it is not hit by Article 193 of the Constitution which states that a member of the Legislative Assembly cannot sit and vote in the **House** before subscribing to the oath. Interestingly, the Court also noted that in the intervening period between the name of the elected member appearing in the notification and the member taking the constitutional oath, she is entitled to all the privileges, salaries, and allowances of a member of the Legislative Assembly. It is clear that the Court recognized that members of the legislative assembly are entitled to privileges even when they cannot participate or are not participating in 'law-making'. One of these privileges is the parliamentary privilege bestowed on members of the legislative assembly under Article 194. The Court held as follows:

> "**18.** […] The rule contained in Article 193 of the Constitution, as stated earlier, is that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words "sitting and voting" in Article 193 of the Constitution imply the summoning of the House under Article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting. An elected member incurs the penalty for contravening Article 193 of the Constitution only when he sits and votes at such a meeting of the House. Invariably there is an interval of time between the constitution of a

House after a general election as provided by Section 73 of the Act and the summoning of the first meeting of the House. **During that interval an elected member of the Assembly whose name appears in the notification issued under Section 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly, one of them being the right to function as an elector at an election held for filling a seat in the Rajya Sabha.** That is the effect of Section 73 of the Act which says that on the publication of the notification under it the House shall be deemed to have been constituted. **The election in question does not form a part of the legislative proceedings of the House carried on at its meeting. Nor the vote cast at such an election is a vote given in the House on any issue arising before the House.** The Speaker has no control over the election. The election is held by the Returning Officer appointed for the purpose. As mentioned earlier, under Section 33 of the Act the nomination paper has to be presented to the Returning Officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon before the last day notified for making nominations under Section 30 of the Act. Then all further steps such as scrutiny of nominations and withdrawal of nominations take place before the Returning Officer. Rule 69 of the Conduct of Elections Rules, 1961 provides that at an election by Assembly members where a poll becomes necessary, the Returning Officer for such election shall, as soon as may be after the last date for the withdrawal of candidatures, send to each elector a notice informing him of the date, time and place fixed for polling. Part VI of the Conduct of Elections Rules, 1961 which contains Rule 69 and Part VII thereof deal with the procedure to be followed at an election by Assembly members. Rule 85 of the Conduct of Elections Rules, 1961 provides that as soon as may be after a candidate has been declared to be elected, the Returning Officer shall grant to such candidate a certificate of election in Form 24 and obtain from the candidate an acknowledgment of its receipt duly signed by him and immediately send the acknowledgment by registered post to the Secretary of the Council of States or as the case may be, the Secretary of the Legislative Council. All the steps taken in the course of the election thus fall outside the proceedings that take place at a meeting of the House."

(emphasis supplied)

179. In **Madhukar Jetley** (supra), the Court relied on **Pashupati Nath Sukul** (supra) and reiterated that an election to the Rajya Sabha does not form part of the legislative proceedings of the House and the vote cast at such an election does not constitute a vote given at a sitting of the House. Pertinently, both **Pashupati Nath Sukul** (supra) and **Madhukar Jetley** (supra) did not relate to any question bearing on the interpretation and scope of Article 194(2) or any claim for parliamentary privilege.

180. As stated above, there is no dispute with the proposition that elections to the Rajya Sabha are not part of the law-making functions and do not take place during a sitting of the House. However, the text of Article 194 consciously uses the term 'Legislature' instead of 'House' to include parliamentary processes which do not necessarily take place on the floor of the House or involve 'law-making' in its pedantic sense.

181. Finally, the learned Attorney General placed reliance on **Kuldip Nayar** (supra). In this case, a Constitution bench of this Court was adjudicating the validity of an amendment to the Representation of the People Act, 1951 by which (a) the requirement that a candidate for elections to the Rajya Sabha be an elector from a constituency in the state was removed; and (b) an open ballot was introduced in the elections to the Rajya Sabha.

182. One of the submissions before the Court to assail the use of open ballots in elections to the Rajya Sabha was that the votes are protected by Article 194(2). It was contended that the right to freedom of speech guaranteed to MLAs under Articles 194(1) and (2) is different from the right to free speech and expression

under Article 19(1)(a), which is subject to reasonable restrictions. It was urged that the absolute freedom to vote under Article 194(2) of the Constitution was being diluted through a statutory amendment to the Representation of the People Act, 1951 permitting open ballots. While addressing this argument, the Court held that elections to fill seats in the Rajya Sabha are not proceedings of the legislature but a mere exercise of franchise, which falls outside the net of Article 194. The Court (speaking through YK Sabharwal, CJ) held as follows:

> "**Arguments based on Legislative Privileges and the Tenth Schedule**
>
> …
>
> **372.** It is the contention of the learned counsel that the same should be the interpretation as to the scope and tenor of the provision contained in Article 194(2) concerning the privileges of the Members of the Legislative Assemblies of the States who constitute State-wise electoral colleges for electing representatives of each State in the Council of States under the provisions of Article 80(4). The counsel argue that the freedom of expression without fear of legal consequences as flowing from Article 194(2) should inure to the Members of the Legislative Assemblies while discharging their function as electoral college under Article 80(4).
>
> **373.** This argument, though attractive, does not deserve any credence in the context at hand. **The proceedings concerning election under Article 80 are not proceedings of the "House of the Legislature of the State" within the meaning of Article 194. It is the elected Members of the Legislative Assembly who constitute, under Article 80 the electoral college for electing the representative of the State to fill the seat allocated to that State in the Council of States. It is noteworthy that it is not the entire Legislative Assembly that becomes the electoral college, but only the specified category of members thereof. When such members assemble at a place, they do so not to discharge functions assigned under the Constitution to the Legislative Assembly. Their participation in the election is only on account of their ex-officio capacity of voters for the election. Thus, the act of casting votes by each of them, which also need not occur with all of them present together or at the same time, is merely exercise of franchise and not proceedings of the legislature.**"
>
> (emphasis supplied)

183. The protection under Article 105 and Article 194 guarantees that the vote of an elected member of Parliament or the state legislature, as the case may be, cannot be the subject of proceedings in court. It does not guarantee a "secret ballot". In fact, even when elected members of Parliament or of the state legislature vote on Bills during a sitting of the House, which undisputedly falls within the ambit of Articles 105 and 194, they are not assured of a secret ballot. While voting is ordinarily carried out by a voice vote, members of the legislature can seek what is referred to as a "division vote." In such a case the division of votes, i.e. which member voted in favour or against the motion is visible to the entire House and the general public. It cannot be gainsaid that the purpose of parliamentary privilege under Article 194(2) is not to provide the legislature with anonymity in their votes or speeches in Parliament but to protect them from legal proceedings pertaining to votes which they cast or speeches which they make. That the content of the votes and speeches of their elected representatives be accessible to citizens is an essential part of parliamentary democracy.

184. Mr Raju Ramachandran, senior counsel on behalf of the appellant has argued that the observations in **Kuldip Nayar** (supra) do not constitute the *ratio decidendi* of the judgment and are *obiter*. It is trite law that this Court is only bound by the ratio of the previous decision. There may be some merit to this contention. However, in any event, this being a combination of seven judges of this Court, it is clarified that voting for elections to the Rajya Sabha falls within the ambit of Article 194(2). On all other counts, the decision of the Constitution bench in **Kuldip Nayar** (supra) remains good law.

185. Interestingly, **Kuldip Nayar** (supra) is yet another case where the Court relied on the minority judgment in **PV Narasimha Rao** (supra) to strengthen the proposition that while interpreting the Constitution, the Court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. Applying this proposition of law to the question of whether voting to the Rajya Sabha is covered within the ambit of Article 194(2) also brings us to a similar conclusion.

186. One of us (DY Chandrachud, J) in **K.S. Puttaswamy (Aadhaar-5J.) v. Union of India**,[91] had occasion to reflect on the significance of the Rajya Sabha and bicameralism on the "foundations of our democracy". It was observed that:

> "**1106.** The institutional structure of the Rajya Sabha has been developed to reflect the pluralism of the nation and its diversity of language, culture, perception and interest. The Rajya Sabha was envisaged by the Makers of the Constitution to ensure a wider scrutiny of legislative proposals. **As a second chamber of Parliament, it acts as a check on hasty and ill-conceived legislation, providing an opportunity for scrutiny of legislative business. The role of the Rajya Sabha is intrinsic to ensuring executive accountability and to preserving a balance of power. The Upper Chamber complements the working of the Lower Chamber in many ways. The Rajya Sabha acts as an institution of balance in relation to the Lok Sabha and represents the federal structure of India. Both the existence and the role of the Rajya Sabha constitute a part of the basic structure of the Constitution.** The architecture of our Constitution envisions the Rajya Sabha as an institution of federal bicameralism and not just as a part of a simple bicameral legislature. Its nomenclature as the "Council of States" rather than the "Senate" appropriately justifies its federal importance.
>
> …

[91] 2018 SCC OnLine SC 1642.

> **1108**. […] As a revising chamber, the Constitution-Makers envisioned that it will protect the values of the Constitution, even if it is against the popular will. The Rajya Sabha is a symbol against majoritarianism.
>
> …
>
> 1110. Participatory governance is the essence of democracy. It ensures responsiveness and transparency. An analysis of the Bills revised by the Rajya Sabha reveals that in a number of cases, the changes recommended by the Rajya Sabha in the Bills passed by the Lok Sabha were eventually carried out. The Dowry Prohibition Bill is an example of a legislation in which the Rajya Sabha's insistence on amendments led to the convening of a joint sitting of the two Houses and in that sitting, one of the amendments suggested by the Rajya Sabha was adopted without a division. The Rajya Sabha has a vital responsibility in nation building, as the dialogue between the two Houses of Parliament helps to address disputes from divergent perspectives. The bicameral nature of Indian Parliament is integral to the working of the federal Constitution. It lays down the foundations of our democracy. That it forms a part of the basic structure of the Constitution, is hence based on constitutional principle. The decision of the Speaker on whether a Bill is a Money Bill is not a matter of procedure. It directly impacts on the role of the Rajya Sabha and, therefore, on the working of the federal polity."
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> (emphasis supplied)

187. The Rajya Sabha or the Council of States performs an integral function in the working of our democracy and the role played by the Rajya Sabha constitutes a part of the basic structure of the Constitution. Therefore, the role played by elected members of the state legislative assemblies in electing members of the Rajya Sabha under Article 80 is significant and requires utmost protection to ensure that the vote is exercised freely and without fear of legal persecution. The free and fearless exercise of franchise by elected members of the legislative assembly while electing members of the Rajya Sabha is undoubtedly

necessary for the dignity and efficient functioning of the state legislative assembly. Any other interpretation belies the text of Article 194(2) and the purpose of parliamentary privilege. Indeed, the protection under Articles 105 and 194 has been colloquially called a "parliamentary privilege" and not "legislative privilege" for a reason. It cannot be restricted to only law-making on the floor of the House but extends to other powers and responsibilities of elected members, which take place in the Legislature or Parliament, even when the House is not sitting.

J. Conclusion

188. In the course of this judgment, while analysing the reasoning of the majority and minority in **PV Narasimha Rao** (supra) we have independently adjudicated on all the aspects of the controversy namely, whether by virtue of Articles 105 and 194 of the Constitution a Member of Parliament or the Legislative Assembly, as the case may be, can claim immunity from prosecution on a charge of bribery in a criminal court. We disagree with and overrule the judgment of the majority on this aspect. Our conclusions are thus:

188.1. The doctrine of *stare decisis* is not an inflexible rule of law. A larger bench of this Court may reconsider a previous decision in appropriate cases, bearing in mind the tests which have been formulated in the precedents of this Court. The judgment of the majority in **PV Narasimha Rao** (supra), which grants immunity from prosecution to a member of the legislature who has allegedly engaged in bribery for casting a vote or speaking has wide ramifications on public interest, probity in public life and parliamentary

democracy. There is a grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered;

188.2. Unlike the House of Commons in the UK, India does not have 'ancient and undoubted' privileges which were vested after a struggle between Parliament and the King. Privileges in pre-independence India were governed by statute in the face of a reluctant colonial government. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution;

188.3. Whether a claim to privilege in a particular case conforms to the parameters of the Constitution is amenable to judicial review;

188.4. An individual member of the legislature cannot assert a claim of privilege to seek immunity under Articles 105 and 194 from prosecution on a charge of bribery in connection with a vote or speech in the legislature. Such a claim to immunity fails to fulfil the twofold test that the claim is tethered to the collective functioning of the House and that it is necessary to the discharge of the essential duties of a legislator;

188.5. Articles 105 and 194 of the Constitution seek to sustain an environment in which debate and deliberation can take place within the legislature. This purpose is destroyed when a member is induced to vote or speak in a certain manner because of an act of bribery;

188.6. The expressions “anything” and “any” must be read in the context of the accompanying expressions in Articles 105(2) and 194(2). The words “in respect of” means ‘arising out of’ or ‘bearing a clear relation to’ and cannot be interpreted to mean anything which may have even a remote connection with the speech or vote given;

188.7. Bribery is not rendered immune under Article 105(2) and the corresponding provision of Article 194 because a member engaging in bribery commits a crime which is not essential to the casting of the vote or the ability to decide on how the vote should be cast. The same principle applies to bribery in connection with a speech in the House or a Committee;

188.8. Corruption and bribery by members of the legislatures erode probity in public life;

188.9. The jurisdiction which is exercised by a competent court to prosecute a criminal offence and the authority of the House to take action for a breach of discipline in relation to the acceptance of a bribe by a member of the legislature exist in distinct spheres. The scope, purpose and consequences of the court exercising jurisdiction in relation to a criminal offence and the authority of the House to discipline its members are different;

188.10. The potential of misuse against individual members of the legislature is neither enhanced nor diminished by recognizing the jurisdiction of the court to prosecute a member of the legislature who is alleged to have indulged in an act of bribery;

188.11. The offence of bribery is agnostic to the performance of the agreed action and crystallizes on the exchange of illegal gratification. It does not matter whether the vote is cast in the agreed direction or if the vote is cast at all. The offence of bribery is complete at the point in time when the legislator accepts the bribe; and

188.12. The interpretation which has been placed on the issue in question in the judgment of the majority in **PV Narasimha Rao** (supra) results in a paradoxical outcome where a legislator is conferred with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but eventually decides to vote independently will be prosecuted. Such an interpretation is contrary to the text and purpose of Articles 105 and 194.

189. The reference is answered in the above terms. Having answered the question of law raised by the Impugned Judgement of the High Court in this reference, the Criminal Appeal stands disposed of in the above terms.

190. Pending applications, if any, stand disposed of.

……CJI
[Dr Dhananjaya Y Chandrachud]

……J
[A.S. Bopanna]

……J
[M.M. Sundresh]

……J
[Pamidighantam Sri Narasimha]

……J
[J.B. Pardiwala]

……J
[Sanjay Kumar]

……J
[Manoj Misra]

New Delhi;
March 04, 2024