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With this thought, we hereby present to you

RE-EVALUATING PARLIAMENTARY PRIVILEGES: THE SUPREME COURT'S STANCE ON BRIBERY ALLEGATION IN SITA SOREN V. UNION OF INDIA

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ABSTRACT:

A Seven-Judge Constitution bench of the Supreme Court in the judgment of the *Sita Soren Case [2024] 3 S.C.R. 462* marks a significant notion in the interplay between the principle of parliamentary privilege and combating corruption within Indian legislative frameworks. This judgement is pivotal in the legal landscape as the Supreme Court overruled the majority view taken by the Five-Judge Bench in *P.V. Narasimha Rao V. State (1998)4 SCC 626*, which allowed members of parliament and legislative assemblies to claim immunity under Art 105 (2) and 194 (2) of the Constitution for accepting bribes as part of casting a vote or delivering a speech in the legislature. This ruling reassessed the constitutional provisions of parliamentary privilege and illustrated the Supreme Court's role in safeguarding constitutional principles or morality against desperate governance.

The Supreme Court's decision looks into the privileges and immunity mentioned in the Constitution. It checks to what extent this privilege can be used to maintain the integrity and accountability of legislative processes. Therefore, this judgement underscores the importance of the legitimate acts within parliamentary privilege and balancing the protection of democratic principles with the need to prevent corruption. Hence, this article explores the evolving scope of parliamentary privileges in light of the Sita Soren judgment. It examines the constitutional interpretation of Articles 105 and 194 and their limits. The analysis also looks into the Supreme Court's role in reinforcing legislative accountability and combating corruption.

Keywords: Parliamentary privilege, Corruption, Legislative integrity, Democratic principles, Constitutional morality

INTRODUCTION

Parliamentary privileges refer to the special right or immunity granted to the members of parliament and legislative assemblies, which are granted to them as part of their legislative duty to ensure that they can perform their duty without fear or undue interference. Therefore, these privileges are pivotal to ensuring that they are free from external pressures, that they maintain the independence and effectiveness of the legislative branch, and that they can conduct their speech and vote freely without any fear. One of the main objectives of this parliamentary privilege is the immunity from legal action for any speech or vote conducted within the legislature. This means a legislator will not be liable or cannot be prosecuted for anything they have done during parliamentary proceedings. These privileges are enshrined in Articles 105 and 194 of the Indian Constitution. The Sita Soren case challenged the scope of this immunity and clarified the extent of parliamentary privilege; therefore, the ruling serves as a crucial reminder that these privileges do not extend to actions that contravene the law.

BRIBERY ALLEGATION IN SITA SOREN CASE

Sita Soren, a Jharkhand Mukti Morcha (JMM) member, was accused of accepting bribes to cast votes for a candidate in the Rajya Sabha Election 2012. The Central Bureau of Investigation (CBI) subsequently filed an official charge sheet against Sita Soren for allegedly accepting bribes to cast votes. In 2014, Jharkhand High Court dismissed the plea filed by Sita Soren, stating that the immunity under Article 194(2) of the Constitution did not apply since the bribe had no connection with the vote. An appeal against the High Court's judgement was filed before the Supreme Court on March 7th, 2019; a three-judge bench took note of a decision by the Constitution Bench in *P.V. Narasimha Rao v. State (CBI/SPE)*¹, wherein, the Apex Court held that Parliamentarians enjoy immunity under the Constitution against criminal prosecution regarding their speech and votes in the House. In this context, through the appeal, the Supreme Court reassesses its stance on protecting parliamentary privilege.

LEGAL CLARIFICATIONS:

1. **Scope of Immunity:** parliamentary privileges are granted to ensure independence and effective functioning of the legislature. However, this case clarifies whether a legislator who receives a bribe to cast a vote in a specific direction or speak about specific issues is protected by parliamentary privilege.

¹ P.V. Narasimha Rao v. State (CBI/SPE), (1998) 4 SCC 626.

2. **Application of Anti-Corruption Laws:** the second aspect is applying the Prevention of Corruption Act 1988. It clarifies whether an MP falls within the purview of the Prevention of Corruption Act of 1988 and who is designated as the sanctioning authority for prosecuting an MP under the Prevention of Corruption Act.

CRITICAL ANALYSIS

Sita Soren v. Union of India case, a seven-judge Constitution bench of the Supreme Court overturned a 25-year-old precedent, making a landmark judgement. The court held that parliamentary privileges do not protect bribery charges. The court's observation in this case provides a contemporary context for interpreting parliamentary privileges and their limits. The court's view on parliamentary privilege is crucial as it determines the scope and extent to which legislators are protected from legal scrutiny in performing their duties.

In the PV Narasimha Rao judgement, the Supreme Court held that criminal proceedings could not be initiated against MPs and MLAs who accept bribes for their speech and vote. However, there is uncertainty in this judgement. If an MP or MLA agrees with a bribe to cast a vote and does so, they can claim privilege as per Article 105(2) or 194(2) and not be liable under Section 7 of the PC Act 1988. But if they cast their vote against the bribe or do not cast a vote after taking the bribe, they will be punishable and cannot claim privilege or protection as per the provisions mentioned above in the constitution. This ambiguity in the PV Narasimha Rao judgement could have provided a clearer view of the interpretation of Articles 105 and 194, leading to uncertainty about the extent to which parliamentary privileges can be invoked in such cases and under what conditions.

Through this case, the Supreme Court tried to resolve the issues by explaining these provisions and framing a view on the scope and limits of the privileges mentioned in Articles 105 and 194 of the Constitution. The PV Narasimha Rao judgement has raised doubts about its errors in previous Supreme Court decisions. For instance, in Kalpana Mehta v. Union of India, D.Y. Chandrachud observed that the correctness of the view in the judgement of the majority view does not fall for consideration in the present case. Should it become necessary in an appropriate case in the future, a larger bench may have to consider the issue. The court has made similar observations in many cases. Therefore, it is clear that correctness and doubts regarding the majority judgement are in question. The majority ruling appears to have made many mistakes, notably in how it interpreted the wording of Article 105, conceptualized parliamentary

privilege's extent and intent, and approached the case in global jurisprudence, all of which have produced a contradictory effect. The interpretation of Article 105(2), which allows MPs immunity from bribery prosecution, would place them above the law. This goes against the principle of a healthy parliamentary democracy and undermines the rule of law. The offence of bribery is established upon the acceptance of illegal gratification, regardless of whether the agreed action is performed. This means that when a legislator accepts a bribe, the crime is committed, irrespective of whether they vote as agreed.

An attempt is made here to evaluate and conduct an in-depth analysis of three major areas: the interpretation of Articles 105(2) and 194(2), the offence of taking a bribe as a public servant in Section 7 of the PC Act 1988, and the view on uncertainty or ambiguity in P.V. Narasimha Rao judgement.

PARLIAMENTARY PRIVILEGES AND IMMUNITY: LIMITATIONS **IN THE CASE OF BRIBERY**

The Honorable Supreme Court addressed the concept of parliamentary privileges by analyzing and interpreting Articles 105 and 194 of the Constitution. The court clarified that parliamentary privilege does not protect a legislator who receives a bribe to vote in a specific direction or speak about certain topics. Here, the constitutional provisions, i.e. Articles 105 and 194, were never intended to shield acts of bribery under this privilege. Therefore, these Articles do not safeguard individuals (MPs/MLAs) engaging in corrupt practices within parliamentary duties.

The Supreme Court addressed this issue by taking Justice Agarwal's minority judgment in the PV Narasimha Rao case. So, when we take Articles 105(2) and 194(2), it confers no immunity on an MP/MLA involved in a bribery case. The immunity granted to a member of parliament from criminal prosecution, as stated in Article 105(2) of the Constitution, is limited to the "freedom of speech" and the "right to give vote" exercised by the Member in Parliament or any committee thereof. This immunity or protection is available only regarding these parliamentary or official activities. It is not extended to a member for actions conducted in their private or personal capacity. 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.² So, if an MP/MLA commits bribery or criminal conspiracy outside their parliamentary duties, they can't claim immunity under Art 194(2) and 105(2). Bribery is an illegal offence; therefore, MPs and MLAs are not protected when they engage in criminal activities, even if they hold public office.

In *Gill v. King*³, the Privy Council supported a legal statement made by Justice Vardachariar in the Federal Court decision of *Hori Ram Singh (Dr) v. Emperor*⁴. The observation implies that there are established legal principles regarding when a public servant can be considered to have acted in the discharge of their official duty, especially in bribery cases. These principles are essential in deciding whether a public servant can claim protection from criminal charges for actions performed in their official capacity. It observed that "a public servant can only be considered to be acting in the discharge of their official duty if their actions are directly related to their job. For example, a judge receiving a bribe is not considered acting as a judge, even though delivering a decision is part of their job. Similarly, some offences, like accepting a bribe or committing fraud, cannot be considered part of a public servant's official duty. These actions are not inherently related to the responsibilities of a public servant. In a similar case, a Constitution Bench in *Satwant Singh v. State of Punjab*⁵ agreed with another Constitution Bench decision in *Matajog Dobey v. H.C. Bhari*⁶ and *Amrik Singh v. State of Pepsu*⁷ stating: "In this instance, the court determined that certain offences, by their very nature, cannot be considered as having been committed by public servants while carrying out or supposedly carrying out their official duty. For example, taking a bribe is one of them, and cheating and abetment are other offences. Such offences are not essential to performing their duties as public servants. Therefore, the majority view in the *Narasimha Rao* case lacked the support of previous decisions to justify their claim. Therefore, the word "any" employed in Articles 105 and 194 of the Constitution should be given a narrow interpretation and not mechanically interpreted as 'everything', especially as it grants an exceptional immunity not available to the common person.⁸ 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

² *Sita Soren v. Union of India* (2024) 3 S.C.R 462 (opinion of Agarwal, J.) ¶ 13.1 (citing *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626.

³ *Gill v. King*, (1948) 75 IA 41.

⁴ *Hori Ram Singh (Dr) v. Emperor*, 1939 FCR 159.

⁵ *Satwant Singh v. State of Panjab*, (1960) 2 SCR 89, 100-101.

⁶ *Matajog Dobey v. H.C. Bhari*, (1955) 2 SCR 925, 932-933.

⁷ *Amrik Singh v. State of Pepsu*, (1955) 1 SCR 1302.

⁸ *Sita Soren v. Union of India* (2024) 3 S.C.R 462, ¶ 20.2.

Parliament or before a committee.⁹ Any other interpretation in would violate the sanctity of the democratic process and the public's trust in legislators. So, another aspect is that immunity is only available to a member of the house concerning the acts inside the parliament, which means the acts, whether a vote or speech, must be within the term of 'legitimate acts. As per this provision, the immunity mentioned under Art 105 (2) is subject to the term 'in parliament'. In *Jatish Chandra Ghosh (Dr) v. Hari Sadhan Mukherjee*¹⁰ has held that the immunity available to a speech made by a Member inside the legislative chamber of an Assembly under clause (2) of Article 194¹¹ [equivalent of Article 105(2)] shall not be available regarding the same speech when it was got published by a legislator "outside" the four walls of the Legislative Assembly in a local journal. Similarly, when considering the Sec 114 of the Indian Evidence Act, 1872 (e)¹² in connection with Art 105 (2), the language used in clause (2) of Art 105 grants MP from any legal consequences for "anything said" or "any vote given" during parliamentary proceedings. Thus, when we take the words "any speech made" or "any vote given" in this clause, it simply refers to a member casting their vote or delivering a speech independently, based on merit, and without any improper influence. So, if a legislator accepts a bribe to cast a vote as part of that influence, they lose the protection provided by this provision. Also, the protection can't be treated as an exemption from all illegal activities; it is mentioned in *State of Kerala v. K. Ajith and Others*¹³ held that the privileges aren't gateways to claim exemption from the general law, especially criminal law.

Therefore, the Hon'ble Supreme Court held that MPs and MLAs can't claim protection from criminal prosecution which is committed outside of their official duties, so taking and giving bribes is a criminal act; hence, they will be liable for their acts and won't get immunity under Art 105(2) and 194(2).

⁹ Id ¶ 20.3.

¹⁰ *Jatish Chandra Ghosh (Dr) v. Hari Sadhan Mukherjee*, (1961) 3 SCR 486.

¹¹ Constitution of India, 1950 art. 194; Powers, privileges, etc., of the House 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.

¹² Indian Evidence Act 1872, § 114. Court may presume existence of certain facts.

The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations;

The Court may presume – (e) that the judicial and official acts have been regularly performed.

¹³ *State of Kerala v. K. Ajith and Others*, (2021) 17 SCC 318.

LEGISLATIVE PRECEDENTS AND ANALYSIS OF THE PREVENTION OF CORRUPTION ACT, 1988: APPLICABILITY TO MPs AND MLAs

In dealing with the Prevention of the Corruption Act 1988, numerous legal precedents are related to this matter. In the case of *L.K. Advani v. Central Bureau of Investigation*,¹⁴ the focus was on interpreting the Prevention of Corruption Act, 1988, and whether Members of parliament could be categorized as public servants under this legislation. The court stated that a Member of Parliament will come under the purview of public servant under the 1988 Act. In the case of *Habibulla Khan v. State of Orissa*¹⁵, it was established that MLAs are subject to the definition of “Public Servant”. In *M. Karunanidhi v. Union of India*,¹⁶ the court held that an MLA would be subject to the provision of sec 2(c) of PC Act 1988. Regarding the bribe, there is a case concerning *Chaturdas Bhagwandas Patel v. State of Gujarat*.¹⁷ A two-judge Bench of this Court reiterated that a public servant using his official position to extract illegal gratification is a sufficient condition to constitute the offence of bribery. In such a case, the Court doesn't have to consider whether the public servant intended to perform any official act of favour or disfavour. Recently, in *Neeraj Dutta v. State (NCT of Delhi)*,¹⁸ a Constitution Bench listed the constituent elements of the bribery offence under Section 7 of the PC Act (as it stood before the amendment in 2017). Justice BV Nagarathna outlined the components required to establish the offence: The following are the ingredients of Section 7 of the Act¹⁸: (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 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.” Thus, considering all these relevant case laws, the Hon’ble Court sticks to the point that MP and MLA will fall under the definition of public servant. The other significant aspect of the Prevention of Corruption Act 1988 is that Sec 7(a) and Explanation 1¹⁹ state that if a public servant (like MPs and MLAs)

¹⁴ *L.K. Advani v. Central Bureau of Investigation*, (2010) 7 SCC 752.

¹⁵ *Habibulla Khan v. State of Orissa*, 1995 SCC (2) 437.

¹⁶ *M. Karunanidhi v. Union of India*, 1979 (3) SCC 431.

¹⁷ *Chaturdas Bhagwandas Patel v. State of Gujarat*, AIR 1976 SC 1497.

¹⁸ *Sita Soren v. Union of India* (2024) 3 S.C.R 462, ¶ 122.

¹⁹ Prevention of Corruption Act, 1988 § 7. Offence relating to public servants 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.

accepts or offers a bribe to misuse their position for personal gain instead of dealing with matters impartially, the offence of bribery is committed. Therefore, the Court's view is that they are public servant, and their actions fall under the realm of 'public duty'. Regarding public duty, even when a person holds the office of a public servant, he has the discretion to exercise it legitimately. They possess a certain amount of freedom to make decisions, but this does not imply that they are allowed to participate in activities beyond their official duties or behave in illegal or unethical ways. Hence, offering a bribe is considered beyond the scope of such authorized actions.

The other aspect of this matter pertains to the authority responsible for imposing penalties; it can be explained by citing Sec 19 (1)²⁰ of the PC Act 1988. As per this provision, a court can't take cognizance of punishable under Sec 7, 11, and 15 without the prior approval of the competent authority.

As per Sec 19 (1) (a), for matters related to the union, the central govt is the sanctioning authority, and as per (b), on issues related to the state, it is the State govt. Therefore, when considering Sec 19 (1) (a) and (b) of the PC Act 1988, it establishes two main conditions:

- (i) A public servant must commit the offence and
- (ii) The public servant must be employed in connection with the affairs of the union or state and should not be removable from their office without the sanction of the Central govt or state govt or any other competent authority

These conditions must be met to prevent a court from taking action on an offence listed in the section without the authority's prior approval. This means that if there is an authority with the power to dismiss a public servant and approve their prosecution under Section 19(1) of the 1988 Act, then the requirement of approval prevents a court from taking action on the offences listed in Section 19(1) against the public servant without such approval. However, suppose there is no authority to dismiss a public servant and approve their prosecution under Section 19(1). In that case, there are no restrictions on the court's power to take action. In supporting

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.

²⁰ Prevention of Corruption Act, 1988 § 19. Previous sanction necessary for prosecution. — (1) No court shall take cognizance of an offence punishable under 2[sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 3 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

this CV, *Balan and Others v. State of Kerala and Others*²¹, the Kerala High Court recently held that the investigation of a complaint against a public servant cannot proceed without the sanction of the competent authority as per mentioned under section 19 of the PC Act 1988. Similarly, in *S. A. Venkataraman v. State*,²² the court held that MPs and MLAs are public servants. Thus, they are subject to the provisions of the PC Act 1988. The court can take cognizance without previous sanction if he is not a public servant. Apart from Section 19 of the PC Act, Article 103 gives power to the president to disqualify a member of the house; however, this authority is not meant to remove an MP from office; instead, it is designated to determine whether an MP has become disqualified according to the conditions outlined in Article 102.

CONCLUSION

The judgment mainly deals with an overview of PV Narasimha Rao decision, the history and purpose of parliamentary privilege, and substantiates the reason why Art 105 and 194 do not include protection for accepting a bribe. The majority interpretation in the PV Narasimha Rao case creates a paradox: immunity is granted when a legislator accepts a bribe and votes as agreed, but if they choose to vote independently after accepting the bribe, they face prosecution. Such an interpretation contradicts the intent and language of Art 105 and 194 of the Constitution.

The issue at hand is whether the receipt of a bribe is safeguarded under the specified clauses of the Constitution. The verdict indicates that both acts of offering and accepting a bribe are considered offences and are, therefore, not eligible for any form of protection or immunity, as stated in 105 (2) and 194 (2).

²¹ CV Balan and Ors. v. State of Kerala and Ors., OP (CrI.) 510 of 2022.

²² S. A Venkataraman v. State, 1958 S.C.R 1040.