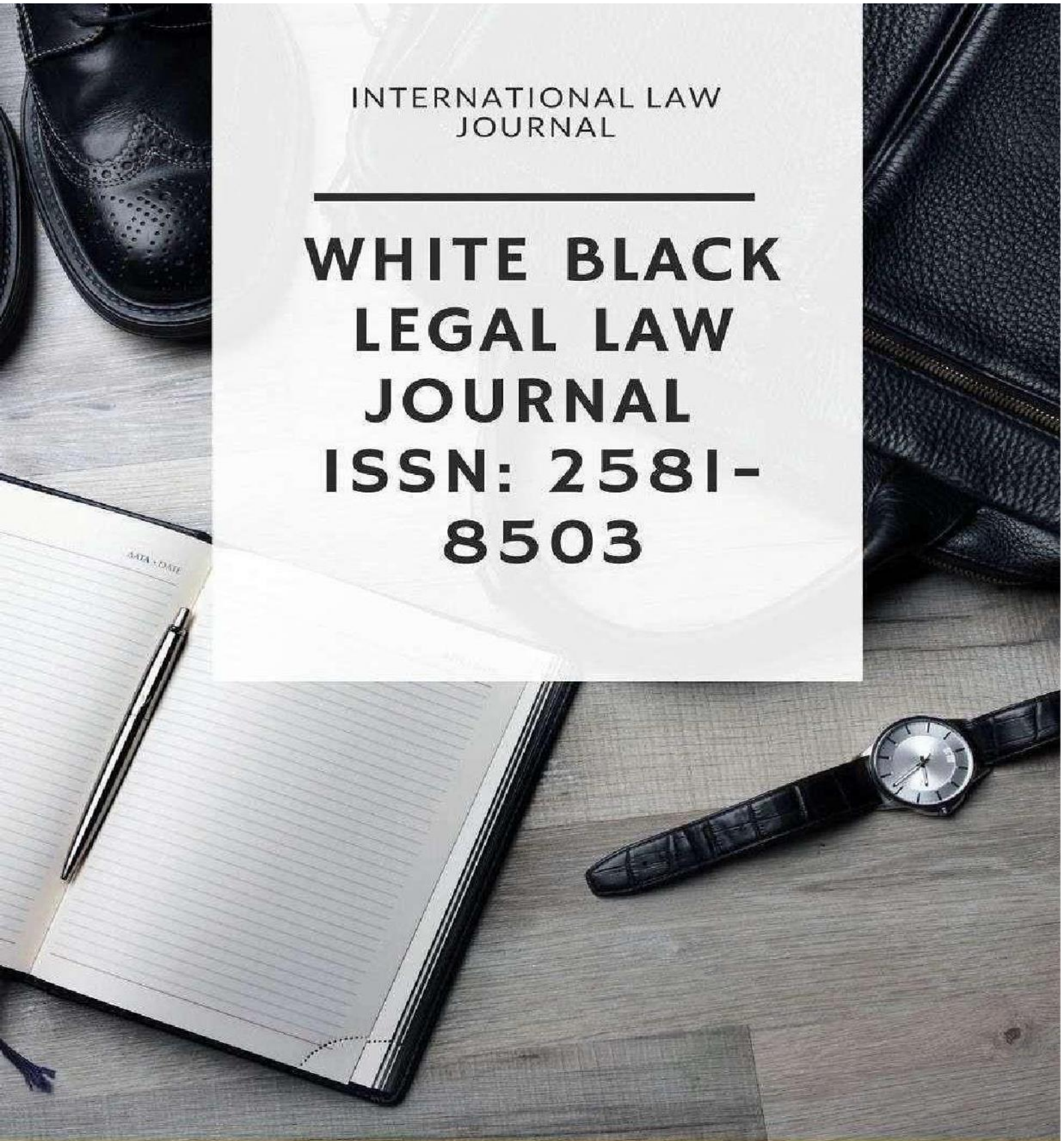




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JUDICIAL INNOVATION AND THE EVOLVING CONCEPT OF PARLIAMENTARY PRIVILEGES IN INDIA

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Abstract

Parliamentary privileges constitute an essential component of the constitutional framework governing the functioning, independence and dignity of legislative institutions in India. Articles 105 and 194 of the Constitution confer privileges and immunities upon Members of Parliament and Members of State Legislatures, particularly in relation to freedom of speech and voting within the House. However, the scope of these privileges has remained subject to judicial interpretation, especially where legislative immunity intersects with criminal liability and constitutional accountability. This paper examines the evolving judicial approach to parliamentary privileges, with particular emphasis on the Supreme Court's landmark judgment in *Sita Soren v. Union of India*, which reconsidered and overruled the majority view in *P.V. Narasimha Rao v. State (CBI/SPE)*. The earlier decision had extended constitutional immunity to legislators who accepted bribes in connection with votes cast in Parliament, whereas the seven-judge Bench in *Sita Soren* clarified that bribery is not protected by Articles 105(2) and 194(2), as acceptance of an undue advantage is not essential to the exercise of legislative functions. The paper critically analyses this judicial transformation alongside the principles emerging from the U.P. Assembly Controversy and other decisions concerning judicial review of legislative privileges. It argues that the Supreme Court has progressively developed a functional and constitutionally balanced approach that protects genuine legislative independence while preventing the misuse of privilege as a shield against criminal conduct. The judgment represents a significant instance of judicial innovation in parliamentary privilege jurisprudence and strengthens the principles of probity, accountability and constitutional supremacy.

Keywords: Parliamentary Privileges; Judicial Innovation; Article 105; Article 194; Legislative Immunity; Bribery; *Sita Soren*; *P.V. Narasimha Rao*; Judicial Review; Constitutional Accountability; Legislative Independence; Constitutional Supremacy.

Introduction

In *Sita Soren's* case, the Apex Court has given a new dimension to the concept of parliamentary privileges enshrined in Article 105 for member of parliament and in Article 194 for member of State Legislative Assembly. The court has made it clear in this case that there can be no immunity for a member of parliament or a state legislative against a bribery charge in connection with a vote or speech in the legislature.

While elaborating upon the purpose of Articles 105 and 194, the Chief Justice pointed out that such privileges are guaranteed to sustain an environment in which debate and deliberation can take place within the legislature. However, such a purpose is destroyed when a member is induced to vote or speak in a certain manner following an act of bribery. He also highlighted that the assertion of any such privilege will be governed by a two-fold 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.

"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," the court elucidated.

Importantly, it underscored that the offence of bribery is complete at the point in time when the legislator accepts the bribe, whether or not it is followed up by voting or making a speech in the manner wanted by the giver of the bribe. Equally, the place where the bribe was offered or received did not matter. Section 7 of the Prevention of Corruption Act strengthens such an interpretation since 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.

Additionally, the petitioners argued that the exercise of the Court's jurisdiction is unwarranted since the Parliament also has the power to punish its members for contempt either by suspending them or sentencing them to a jail term. Dismissing this, the Court said that

parallel jurisdictions can be exercised since its jurisdiction to prosecute a criminal offence and the authority of the House to take action for a breach of discipline operate in distinct spheres.

"The potential of misuse against individual members of the legislature is neither enhanced nor diminished by recognising the jurisdiction of the Court to prosecute a member of the legislature who is alleged to have indulged in an act of bribery," it reasoned.

The Court also clarified that the principles enunciated by the verdict regarding legislative privileges will apply equally to Rajya Sabha elections and appointments of the President and Vice-President of the country. Accordingly, it overruled the observations in *Kuldip Nayar versus Union of India* (2006), which held that elections to the Rajya Sabha are not proceedings of the legislature but a mere exercise of franchise and therefore fall outside the ambit of parliamentary privileges under Article 194.ⁱ

A seven-judge Bench of the Supreme Court on Monday ruled that Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs) cannot claim immunity from prosecution for accepting bribes to cast a vote or make a speech in the House in a particular fashion. Article 105(2) of the Indian Constitution confers on MPs immunity from prosecution in respect of anything said or any vote given in Parliament or on any parliamentary committee. Similarly, Article 194(2) grants protection to MLAs.

Factual Aspect of The Case

Sita Soren, a member of the Jharkhand Mukti Morcha (JMM), was accused of accepting a bribe to cast her vote in favour of a certain candidate in the Rajya Sabha elections of 2012. Soon a chargesheet was filed against her. In 2014, the Jharkhand High Court dismissed Ms. Soren's plea wherein she claimed she enjoyed legal immunity under Article 194(2). The dismissal in the High Court led to an appeal being filed in the Supreme Court. On September 20, 2023, a five-judge Bench headed by CJI Chandrachud while hearing the appeal doubted the correctness of the majority view in *P.V. Narasimha versus State* (1998) and accordingly referred the matter to a seven-judge Bench while underscoring that it is an "important issue that concerns our polity".

What was the 1998 ruling that was overruled?

The *P.V. Narasimha Rao* ruling involves the 1993 JMM bribery case against former Union Minister Shibu Soren, the father-in-law of Sita Soren, the petitioner in the present case. Mr. Soren, along with some of his party members, were accused of taking bribes to vote against the no-confidence motion against the then *P.V. Narasimha Rao* government. While two judges

on the Constitution Bench opined that legislative immunity granted under the Constitution could not be extended to such cases, the majority of them, while acknowledging the seriousness of the offence, ruled that "a narrow construction of the constitutional provisions" may result in the impairment of the guarantee of "parliamentary participation and debate".

Commenting upon the judgment the Hindu wrote editorially-

It was a judgment that has rankled for years. The artificial distinction that the Supreme Court of India made over 25 years ago between 'bribe-givers' and 'bribe-takers' in the infamous JMM bribery case left many aghast that those who paid crores of rupees to MPs for voting in favour of the P.V. Narasimha Rao government in a no-confidence motion were to be prosecuted for corruption, but those who took the money were immune from prosecution. The reason was that those who had voted for money enjoyed the constitutional privilege of not being subject to any legal consequence for "anything said or any vote given in Parliament". There was one exception among the alleged bribe-takers: Ajit Singh, who was accused of taking a payoff, was to be prosecuted because he was absent during the voting, and was thus stripped of the protection enjoyed by those who actually voted in terms of the bribery agreement. The Court has corrected this anomaly in the law related to parliamentary privileges by holding that there can be no immunity for a Member of Parliament or a State legislature against a bribery charge in connection with a vote or speech in the legislature. In over- ruling the majority verdict in P.V. Narasimha Rao vs State (CBI/SPE) (1998), a seven-member Constitution Bench has foregrounded probity as the main aspect of parliamentary functioning.

The Court has made it clear that parliamentary privilege, enshrined in Article 105 (for MPs) and Article 194 (for State legislators) is aimed at protecting the freedom of speech and independence of the legislators in their functioning in the House and cannot extend to bribery, as it is not essential to the casting of the vote or in deciding how to cast it. A key rationale that weighed with the Constitution Bench in 1998 was that parliamentary privilege was essential to protecting members from persecution for anything said or any vote in the House. The majority feared that limiting this privilege might have serious consequences and felt that public indignation over the conduct of some MPs accepting a bribe should not lead to the court construing the Constitution so narrowly that it removes the guarantee for effective parliamentary participation and debate. However, the seven-member Bench has concluded that the potential for such misuse is neither enhanced nor diminished by recognising the court's jurisdiction to prosecute a member for bribery. The Bench has also held that voting in a Rajya Sabha election, being part of a legislator's function, is protected under Article 194 of the Constitution as a privilege. It requires utmost protection for a member to vote freely and with-

out fear of legal persecution. Overall, the verdict meets public expectation that the members they elect do not act under monetary inducement.ⁱⁱ

Judicial Approach – Retrospect and Protect

In *P.V. Narsimha Rao v. State (CBI/SPE)*,ⁱⁱⁱ It was held that It cannot be said that, though the words "in respect of" must receive a broad meaning, the protection under Art. 105(2) is limited to Court proceedings that impugn the speech that is given or the vote that is cast or arise there out or that the object of the protection would be fully satisfied thereby. The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a Court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that a member is not "liable to any proceedings in any Court in respect of any- thing said or any vote given by him". Art. 105(2) does not say, that a member is not liable for what he has said or how he has voted.^{iv}

Therefore the bribe takers MPs who have voted in Parliament against no-confidence motion are entitled to protection of Art. 105(2) and are not answerable in a Court of law for alleged conspiracy and agreement.^v

To the bribe giver MPs., the protection under Art. 105(2) is not available.^{vi}

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

We are acutely conscious of the seriousness of the offence that the alleged bribe taker are said to have committed. If true, they bartered a most solemn trust committed to them by those they represented. By reason of the lucre that they received, they enabled a Government to survive. Even so, they are entitled to the protection that, the Constitution plainly affords them. Our sense of indignation should not lead us to construe the Constitution narrowly, imparting the guarantee to effective Parliamentary participation and debate.

Our conclusion is that the alleged bribe takers, other than Ajit Singh, have the protection of Article 105(2) and are not answerable in a Court of law for the alleged conspiracy and agreement. The charges against them must fail. Ajit Singh, not having cast a vote on the no-

confidence motion, derives no immunity from Article 105(2).

The court thus concluded that the bribe takers are entitled to the protection under Article 105 (2) but to the bribe givers members of parliament. The Protection under Article 105(2), is not available. According to the court – We now set down the effect upon the accused of our findings.

We have held that the alleged bribe takers who voted upon the no-confidence motion, that is, Suraj Mandal, Shibu Soren, Simon Marandi, Shailender Mehto, Ram Lakhan Singh Yadav, Ramsharan Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed (accused Nos. 3, 4, 5, 6, 16, 17, 18, 19, 20 and 21) are entitled to the immunity conferred by Article 105(2).

Article 105(2) provides for the sum total of the privileges and immunity that attach to what is said in Parliament and to votes given therein. Article 105(3) applies only "in other respects". To what we are here concerned with the provisions of Article 105(2) apply, to the extent indicated earlier. The provisions of Article 105(3) are, therefore, not attracted and they do not render assistance to the alleged bribe givers.

Mr. Rao contended that for the offence that the bribe takers had allegedly committed they would be answerable to the Lok Sabha. There was a possibility of the Lok Sabha deciding one way upon the prosecution before it of the alleged bribe takers and the Criminal Court deciding the other way upon the prosecution of the alleged bribe givers. A conflict of decisions upon the same set of facts being possible, it had to be avoided. The charge against the alleged bribe givers had, therefore, to be quashed. There is in the contention a misconception. Article 105(2) does not state that the member of Parliament who is not liable to civil or criminal proceedings in a Court of law is liable to the same civil or criminal proceedings in Parliament. Parliament in India is not a Court of Record. It may not exercise judicial powers or entertain judicial proceedings. The decisions of this Court so holding have already been referred to. The alleged bribe takers except Ajit Singh, who are entitled to the immunity conferred by Article 105(2) are not liable to be tried in the Lok Sabha for the offences set out in the charges against them or any other charges, but the Lok Sabha may proceed against them for breach of privileges or contempt. There is, therefore, no question of two fora coming to different conclusions in respect of the same charges.

Mr. Rao submitted that the alleged bribe givers had breached Parliament's privilege and been guilty of its contempt and it should be left to Parliament to deal with them. By the same sets of acts the alleged bribe takers and the alleged bribe givers committed offences under the criminal law and breaches of Parliament's privileges and its contempt. From prosecution for

the former, the alleged bribe takers, Ajit Singh excluded, enjoy immunity. The alleged bribe givers do not. The criminal prosecution against the alleged bribe givers must, therefore, go ahead. For breach of Parliament's privilege and its contempt. Parliament may proceed against the alleged bribe takers and the alleged bribe givers.

However, the minority opinion of Mr. Justice S.C. Aggrawal and A.S. Ananad J, held sense takes are liable to criminal proceedings.

The protection given under Cl. (2) of Art. 105 is narrower than that conferred under Art. 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 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. Cl. (2) of Art. 105 does not prescribe that a speech made or vote given by a member in Parliament cannot be made the basis of civil or criminal proceedings at all. The said clause only gives protection to the member who has made the speech or has given the vote from liability in any proceeding in a Court of law.

The words "in respect of" in Art. 105(2) have to be construed as "arising out of". So construed the immunity conferred under Art. 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 Art. 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.'

The expression 'in respect of precedes the words anything said or any vote given' in Art. 105(2). The words "anything said or any vote given" can only mean speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given. There may be an agreement where under a Member accepts illegal gratification and agrees not to speak in Parliament or

not to give his vote in Parliament. The immunity granted under Art. 105(2) would not be available to such a Member and he would be liable to be prosecuted on the charge of bribery in a criminal Court. What would be the position if the agreement is that in lieu of the illegal gratification paid or promised the Member would speak or give his vote in Parliament in a particular manner and he speaks and gives his vote in that manner? If wide meaning is given to the expression 'in respect of', the immunity for prosecution would be available to the Member who has received illegal gratification under such an agreement for speaking or giving his vote and who has spoken or given his vote in Parliament as per the said agreement because such acceptance of illegal gratification has a nexus or connection with such speaking or giving of vote by that Member. If the wide construction of 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.

The offence of bribery 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. Similarly the offence of criminal conspiracy would be committed if two or more persons enter into an agreement to commit the offence of bribery. The criminal liability incurred by a Member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner thus arises independently of the making of the speech or giving of vote by the Member and the said liability cannot, therefore, be regarded as a liability 'in respect of anything said or any vote given in Parliament. The protection granted under Art. 105(2) cannot therefore be invoked by any member to claim immunity from prosecution on the substantive charge in respect of the offences punishable under S. 7. S. 13(2) read with S. 13(1)(d) and S. 12 of the 1988 Act as well as the charge of criminal conspiracy under S. 120-B, I.P.C. read with S. 7 and S. 13(2) read with S. 13(1)(d) of the 1988 Act.

The plea that since acceptance of a bribe by a Member of House of Commons was treated as breach of privilege and was not triable as an offence in any criminal court in the United Kingdom, the same privilege and immunity is available to a Member of Parliament in India by virtue of the second part of Cl. (3) of Art. 105 is not correct.

The fact of the case is that- On 26th July, 1993, a motion of no-confidence was moved

in the Lok Sabha against the minority Government of P. V. Narasimha Rao. The support of 14 members was needed to have the no-confidence motion defeated. On 28th July, 1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Suraj Mandal, Shibu Soren, Simon Marandi and Shailender Mahto, members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (the JMM), and Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed, members of the Lok Sabha owing allegiance to the Janata Dal Ajit Singh group (the J.D., A.S.), voted against the no-confidence motion. Ajit Singh, a member of the Lok Sabha owing allegiance to the J.D., A.S., abstained from voting thereon.

It is the respondents' case that the above named members agreed to and did receive bribes, to the giving of which P. V. Narasimha Rao, M.P. and Prime Minister, Satish Sharma, M.P. and Minister, Buta Singh, M.P. V. Rajeswar Rao, M.P., N. M. Ravanna, Ram Linga Reddy, M.L.A., M. Veerappa Moily, M.L.A. and Chief Minister, State of Karnataka, D. K. Adikeshavulu, M. Thimmogowda and Bhajan Lal, M.L.A. and Chief Minister, State of Haryana, were parties, to vote against the no-confidence motion. A prosecution being launched against the aforesaid alleged bribe givers and bribe takers subsequent to the vote upon the no-confidence motion, cognizance was taken by the Special Judge, Delhi.

The persons sought to be charged as aforesaid filed petitions in the High Court at Delhi seeking to quash the charges. By the judgment and order which is under challenge, the High Court dismissed the petitions. Hence, these appeals. The appeals were heard by a Bench of three learned Judges and then referred to a Constitution Bench. The argument on behalf of the appellants to be considered by the Constitution Bench, broadly put, is that, by virtue of the provisions of Art. 105, they are immune from the prosecution and that, in any event, they cannot be prosecuted under the Prevention of Corruption Act, 1988.

The Textual Concept

Explaining the scope of Article 105 of the Constitution, the court observed-

By reason of sub-article (1) of Art. 105, Members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of Art. 105 suggests that this freedom is independent of the freedom of speech conferred by Art. 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that members need to be free of all constraints in the matter of

what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub- article (2) of Art. 105 puts negatively what sub- article (1) states affirmatively. Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no member is answerable in a Court of law or any similar Tribunal for what he has said in Parliament. This again is recognition of the fact that a member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against, A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that has been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of." It is so given to secure the freedom of speech in Parliament that sub-article (1) provides for. It is necessary, given the role members of Parliament must perform. The protection is absolute against Court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person shall be liable to any proceedings in any Court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any Court connected with such publication. The Constitution having dealt with the all important privilege of members of Parliament to speak and vote therein as they deem fit, freed of the fear of attracting legal proceedings concerning what they say or how they vote, provides for other powers, privileges and immunities in sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force; that is to say, they are such as were enjoyed by the House of Commons just before 26th January. 1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament thought to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in Parliament and to a vote given therein is concerned, provision is made in sub-article (2); it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-

article (4) gives the protection of the sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General.

Contents of Article 105

Article 105 of the Constitution reads thus:

"105. Powers, Privileges, etc., of the House 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 any thing 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, papers, 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 S. 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of Cls. (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and other-wise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to Members of the Parliament."

By the Constitution (Forty-second Amendment) Act 1976, the Article was further amended to read as follows: "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 those of each House and of its Members and Committees at the commencement of s. 21 of the Constitution (Forty-second Amendment) Act 1976 and such as may, from time to time, be evolved by such House of Parliament."

This provision was again substituted by the Constitution (Forty-fourth Amendment) Act 1978 which inter alia provides that such powers, privileges, etc., 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 its members and committees immediately before the coming into force of s. 15 of the Constitution (Forty-fourth Amendment) Act 1978.

Summary

The powers, privileges and immunities have been summed up as follows-^{vii}

- Freedom from arrest.
- Freedom of speech and debate.
- Right of access to the Queen.
- Right to regulate its own proceedings.
- Right to regulate its own composition.
- Right to have the most favourable construction placed on the deliberations of the Commons.

The power to punish for breach of privilege or for contempt.

Our Constitution, by Art. 105 cl. (1), expressly safeguards freedom of speech in Parliament. Clause (2) further provides that no Member in 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. Though not expressly provided, the freedom of speech would extend to other acts done in connection with the proceedings of each House, such as notices of motions, questions, reports.

However, the freedom of speech in Parliament is subject to the provisions of the Constitution relating to the procedure in Parliament, i.e., subject to the Articles relating to the procedure in Part V including Arts. 107 and 121. Article 121 specifically imposes an absolute constitutional prohibition against any discussion in Parliament in respect of judicial conduct of a Judge of the Supreme Court or of a High Court.^{viii}

Another thing which is noteworthy in this connection is that Art. 105 protects what is said in the House, but not what is said outside the House. If, therefore, a Member publishes his speech outside Parliament, he will be certainly held liable, if the speech is defamatory. The protection of the freedom of speech guaranteed under cl. (1) of Art. 105 is different from that which is guaranteed to a citizen as a fundamental right under Art. 19(1)(a). The right to freedom of expression which a citizen enjoys is subject to reasonable restrictions under cl. (2) of Art. 19 of the Constitution, that is to say, it is not an unfettered freedom that is conferred on a citizen under Art. 19. On the other hand, a Member is not to be prosecuted for sedition nor to be sued for libel or slander in respect of anything said by such Member during the proceeding in the House.^{ix}

Right to regulate its own proceedings.

(a) To settle disputed elections where irregular practices are alleged.

- (b) To suspend or expel a member.
- (c) To decide what it will discuss and the order of so doing.
- (d) To settle its own procedure in the Chamber and in the House as a whole

In re Article 143^x

The Supreme Court has gone into the whole gamut of the question relating to the privileges, powers and immunities of the Houses and the members thereof. This was the famous U.P. Assembly Controversy case which came before the Supreme Court as a Reference made by the President under Art. 143 of the Constitution. This reference was a sequel to the passing of an order by an unprecedented Full Bench of 28 Judges of the High Court of Allahabad staying the enforcement of the U.P. Assembly resolution ordering two Judges of the High Court to be taken into custody before the bar of the House to show cause why they should not be punished for the contempt of the House. The question of contempt arose, because the two Judges admitted the habeas corpus petition of one Keshav Singh and granted him bail. Shri Singh was undergoing imprisonment in pursuance of a resolution of the U.P. Assembly declaring him guilty of the breach of privilege. The ultimate question to be decided was: Has the High Court the jurisdiction to interfere in the internal affairs of the Assembly and can the Judges be brought into custody before the bar of the House to explain their conduct.

The majority opinion given by GAJENDRAGADKR, CJ. was that, in India, notwithstanding a general warrant issued by the Assembly, the courts could examine the legality of the committal in proper proceedings. The following propositions were laid down by the Supreme Court in this connection:

- (1) It is implicit in the Constitution that the question of determining and the construction of Art. 194 in regard to the nature, scope and effect of powers of the House ultimately rests with the judiciary of the country.
- (2) Article 194(3) cannot be read in isolation. The impact of Arts. 226, 32 and 211 has to be ascertained in order to determine the scope of Art. 194. Article 226 empowers the High Court to issue writ of habeas corpus against any authority. This would not affect the privilege of the legislature since no exception is made in favour of a detention order by the House for breach of its privilege. Article 211, on the other hand, unambiguously indicates that the conduct of a Judge in the discharge of his duties can never become the subject-matter of any action taken by the House in exercise of its powers or privileges conferred by the latter part of Art. 194(3).
- (3) Article 212 does not act as a limitation of the powers of the court to test the legality of an action. This Article ousts the jurisdiction of the courts only in cases of regulation of

procedure inside the House.

- (4) The fact that the first part of Art. 194(3) refers to future laws defining the privileges as being subject to fundamental rights is a significant factor in construing the latter part of Art. 194. Such a State legislation would be 'law' within the meaning of Art. 13 and the courts will be competent to examine its validity vis-a-vis the fundamental rights.
- (5) Possibly there is a well-established convention recognised by the English courts to treat a general or unspeaking order issued by the House as usually conclusive. The basis for this convention is rooted in the history of England where the House of Commons was the highest court of justice at one time. It is because of this history that the House of Commons came to be regarded as a superior court of record, with the result that the general warrants issued by it were not subjected to the close scrutiny just as similar warrants issued by the superior courts of record were held to be exempt from such scrutiny. In India, on the other hand, legislative Assemblies never discharged any judicial functions and their historical and constitutional background does not support their claim to be regarded as courts of record in any sense. No immunity from scrutiny by courts of general warrants issued by a House in India can, therefore, be claimed.

Kerla High Court in *State of Kerla v. R. Sudansan Baba*^{xi} has interrupted Article 194 of the Constitution with regard to privileges, powers and immunities of the member of legislative assemblies.

- (1) A petition under Art. 226 of the Constitution would be maintainable even against the Legislature of the State as such Legislature is within the definition of the term 'State' in Art. 12 of the Constitution.
- (2) The freedom of speech in the Legislature of every State is absolute and it is not controlled by Art. 19(1)(a) of the Constitution. It is unfettered or absolute subject to the limitation in Art. 211 of the Constitution, which provision insulates Judges of the High Court and Supreme Court acting in the discharge of their duties, against discussion by the Legislature.
- (3) The laws made by the Legislature under Art. 194(3) of the Constitution defining the powers, privileges and immunities of a House of the Legislature, of the members and the Committees of the House of such Legislature cannot contravene fundamental rights. It is open to the Court to examine the validity of a plea that such laws are void to the extent they infringe the fundamental rights of the citizens.
- (4) The rules framed under Art. 208 of the Constitution for regulating the procedure of a House of the Legislature and the conduct of its business are liable to judicial review if there is a case of infringement of the fundamental rights.

- (5) Till the Legislature frames laws to define powers, privileges and immunities those asserted and recognised in the House of Commons in the United Kingdom as on 26th January 1950 will be in force.
- (6) In regard to such powers, privileges and immunities as are mentioned in para 5 above, it cannot be said that whenever there is a conflict between them and the fundamental rights in Part III of the Constitution, the latter will yield to the former. An examination may be called for in respect of each of such fundamental rights asserted to determine whether it will survive against such powers, privileges and immunities.
- (7) The fundamental rights guaranteed under Art. 19(1)(a) of the Constitution will not so survive, but fundamental rights secured to citizens under Arts. 20 and 21, will survive.
- (8) The immunity envisaged in Art. 212(1) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular, If the impugned proceedings are challenged as illegal or unconstitutional, such proceedings would be open to scrutiny in a court of law.
- (9) It would be futile to contend that a citizen cannot move the High Courts or the Supreme Court to invoke their jurisdiction in cases where his fundamental rights have been violated. The existence of judicial power in that behalf must necessarily and inevitably postulate the existence of a right in the citizen to move the court in that behalf.

This case, the High Court has referred to and relied upon the following case.^{xii}

Conclusion

The Sita Soren judgment, in doing away with the artificial distinction between bribe givers and bribe takers, is in tune with the minority judgment given in P.V. Nrsingh Rao's case.^{xiii} A dissenting judgment is not binding but it is persuasive and works as a guideline for the intelligence of the future white delivering a remarkable dissenting judgment in *A.D.M. Jabalpur v. Shiva Kant Shukla*,^{xiv} Mr. Justice Khanna concluded with the inspiring words of Chief Justice Hughes of the United States Supreme Court that, "A dissent in a court of last resort ... is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed." In this context the view of the noted constitutional lawyer Mr. H.M. Seervai is very pertinent.

He wrote "It may be that future to which (Mr. Justice Khanna) appealed will prefer his dissent to the majority judgments, as the future has preferred the dissent of Lord AtKin to the

majority judgments of the House of lords in the Liversidge case.^{xv}

The seven judge bench of the apex court deserves our appreciation for correcting the anomaly in the law related to parliamentary privileges. The court has now deprived the bride taken by members of parliament or state legislature. It is, a now innovation in the jurisprudence of parliamentary privileges.

References

Endnote:

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- i. The Hindu, March 7, 2024, p. 8.
ii. The Hindu, March 6, 2024, p. 6.
iii. AIR 1998 SC 120 at 2182.
iv. Paras 131, 134, 135
v. Paras 141, 181, 96, 98
vi. Paras 142, 151, 181, 96, 98
vii. C.F. Padfield British Constitution modescible, Second edition, p. 63.
viii. In Re Article 143, AIR 1965 SC 745.
ix. *Salesh Chandan v. Hari Sadhna*, AIR 1956 Cal 436
x. AIR 1965 SC 745, U.P. Assembly Controversy Case (Keshv Singh Case)
xi. AIR 1984 Kerla 1 (15)
xii. *Kesav Ram Reddy v. Nafisul Hasan*, AIR 1954 SC 636; *M.S.M. Sharma v. Srikrishna Sinha*, AIR 1965 SC 745; *Anand v. Chief Secretary to the Gov. of Madras*, AIR 1966 SC 657.
xiii. Op.cit, para 39
xiv. AIR 1976 S? C 1207 at 1277.
xv. *Liversidge v. Anderson Exp. Sadng* (1942) AC 206.

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