

CHIEF JUSTICE'S COURT

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE MANOJ MISRA**

**COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS**

Crl. A. No. 451/2019

SITA SOREN Petitioner(s)

VERSUS

UNION OF INDIA Respondent(s)

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1 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Solicitor, why the mask if I'm...?

2

3 **TUSHAR MEHTA:** My Lord, I had viral fever two three days back, so that I don't spread.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** You're feeling better now?

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** [UNCLEAR] submission.

8

9 **TUSHAR MEHTA:** Grateful.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Ramachandran.

12

13 **RAJU RAMACHANDRAN:** May it please Your Lordships.

14

15 **TUSHAR MEHTA:** My Lord, If Your Lordship gives me five minutes before my learned
16 friend starts, possibly the controversy can be narrowed down. The learned AG and my, My
17 Lord, submissions are going to be that the view of Justice SC Agrawal is the correct view. There
18 are two aspects to it. Both majority and minority go into two aspects, immunity, etc.. under
19 Article 105 and PC Act when the offense is complete. I have read the judgment My Lord, fully,
20 irrespective of the 105, the contours of immunity, privileges, etc, both come to the conclusion
21 that the offense is complete the moment there is an offer for bribe, and you accept the bribe.
22 That was the statutory position prior to the amendment of the PC Act in 2017 and even
23 thereafter. *Narasimha Rao* judgment is prior to 2017. It was amended thereafter in 2017.
24 That is the position. The offense of bribery is complete, when I offer money to a member of
25 Parliament or a member of assembly, he accepts. Then whether he performs the part of his
26 bargain inside the House or not, has nothing to do with the criminality attached. So, essentially
27 My Lord, In my respectful submission, it's more a question of interpretation of PC Act rather
28 than My Lord, 105.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** But further question as to whether there is
31 immunity still survives...

32

33 **JUSTICE P.S. NARASIMHA:** Whether it extends or not.

34

1 **CHIEF JUSTICE DY CHANDRACHUD:** Because our court has held, the majority held
2 that irrespective of the criminality, immunity attaches. And the only exception they made was
3 to a person who does not fulfil their part of the bargain because they said that the words used
4 in 105 are it's in the past tense. Vote given or speech made. So they said if there's no vote cast
5 or no speech made, though the bribe was taken, then there is no immunity. That's why Mr. Ajit
6 Singh had to stand the prosecution.

7

8 **TUSHAR MEHTA:** Correct. But, My Lord, my respectful submission...

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** So, we'll have to ultimately deal with the issue of
11 immunity as well as to whether they are right on the broader immunity. And what we have to
12 do is this. Since, we are sitting as a bench of seven, we need not look at in all the circumstances
13 what is the extent of the immunity enjoyed. We have to decide a very narrow issue. Can
14 immunity attach when there is an element of criminality?

15

16 **TUSHAR MEHTA:** It's ultimately, My Lord's call. But suppose My Lord, the performance of
17 the part of the bargain by the elected member is not relevant. Whether he voted or he did not
18 vote, whether he spoke or did not speak, may not have relevance because the offense is
19 committed outside the House. Then the privilege, My Lord, question may not arise.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** No but then... actually, you are right but then
22 you will have to say that the immunity does not attach. That's what you are also...

23

24 **TUSHAR MEHTA:** Correct My Lord, correct. But on interpretation...

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** We cannot then say that we don't have to go into
27 whether there is immunity or otherwise. We'll have to say if the offense is committed outside,
28 as you said, then there's no question of the immunity attaching under 105. Immunity can never
29 attach where there's an element of criminality.

30

31 **TUSHAR MEHTA:** Therefore, the respectful submission is the interpretation of PCA may be
32 more relevant than 105.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** That's how we approach it actually. You are right.
35 But it's good. Now the controversy really narrows down because, you are also of the view that
36 the view of Justice Agrawal...

37

1 **TUSHAR MEHTA:** Yes, My Lord.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** ...speaking for two judges, is a more correct view
4 because Justice Bharucha and Justice...

5

6 **TUSHAR MEHTA:** Yes, My Lord, someone takes a bribe outside the House My Lord, and
7 claim immunity...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Justice Bharucha and Justice Anand on the other
10 side and Justice Ray agreed with them, on this issue of immunity. And that's how it became a
11 majority of three.

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** My Lord, that takes us to a narrow
14 question of a nexus.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** But we'll [UNCLEAR] even on the question of
17 immunity, there is now a fair degree of commonality and understanding, we'd like you to assist
18 the Court, because all your research and your lawyers on...

19

20 **TUSHAR MEHTA:** My Lord we have done...

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** ...both sides will assist us to frame it properly.

23

24 **TUSHAR MEHTA:** Certainly, My Lord. The only worry and I'll be very candid My Lord,
25 because of a facts of bribery, etc. 105 may not be revisited, except in case of bribery.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, yes.

28

29 **TUSHAR MEHTA:** The *Raja Ram Pal* line of judgments, etc, what are the contours...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Solicitor, you are entirely right, because we
32 should not be entering on issues which don't strictly arise before us, because the law has
33 evolved in our country by a very interstitial steps, you know there has been some relaxation
34 from the UP case then finally *Raja Ram Pal*, we have followed *Raja Ram Pal*. We'll not
35 revisit that, though we are in a bench of seven, except on the issue bribery, what arises.

36

1 **TUSHAR MEHTA:** That's all. My Lord, because in that case, My Lord, the submission would
2 be, that inside the House, the Legislature would have as much independence, as it has, as much
3 like My Lord, any other organ of the State.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Absolutely. There's no doubt about it. The whole
6 purpose was to encourage free speech, have an unrestrained dialogue in the Parliament and in
7 the State Legislatures, and that we must preserve, it's a very important part of our nation, the
8 Legislature, both in the Union and in the States.

9

10 **ATTORNEY GENERAL R. VENKATARAMANI:** We are not to be heard saying that
11 bribery is condonable.

12

13 **RAJU RAMACHANDRAN:** May I start, My Lords?

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

16

17 **RAJU RAMACHANDRAN:** With a request and promise My Lords, the request is that if the
18 ambient temperature is increased a little bit, My Lords, we are freezing and we promise to be
19 cool in our arguments.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, I'll just tell them.

22

23 **RAJU RAMACHANDRAN:** My Lords, only for the benefit of Justice Narasimha and Justice
24 Sanjay Kumar, who were not there on the previous occasion, just a few lines of introduction,
25 and then I get straight into the matter, My Lords. This, My Lords, is a regular criminal appeal,
26 arising out of a judgment of the Jharkhand High Court, declining to quash prosecution against
27 the appellant, who is being prosecuted, under My Lord's, relevant provisions of the Prevention
28 of Corruption Act and the Indian Penal Code, for the alleged offense, of taking a bribe to vote
29 in a Rajya Sabha election, the appellant was at the relevant time a sitting MLA of Jharkhand.
30 She's alleged to have taken a bribe, from an independent candidate, to vote for him rather than
31 for her party candidate. But in the event, the vote was actually for her party candidate, because
32 that comes out in the open voting, then there were complaints that election was
33 countermanded. There was a fresh election and again, she voted for her party candidate, etc.
34 But she was sought to be prosecuted on this allegation, that is how, My Lords, the matter
35 arises. Your Lordships are, of course not concerned with the merits of the appeal just now, I
36 have in my written submission, My Lords, Volume 1, just touched upon the merits, only to
37 indicate the nature of the controversy. And we contend, My Lords, that we have a strong case

1 on merits, the order granting bail in 2014, passes adverse observations against the CBI, My
2 Lords, and the CBI has not appealed against the order granting bail. So, apart from other
3 things My Lords, apart from immunity, I have a strong case on merits, but of course, Your
4 Lordships are not concerned with that. Now, My Lords, can I first place the language of the
5 Articles, then come to the order of reference, and then come straight to my submissions, My
6 Lords?

7

8 I will read only 105, My Lords, not corresponding 194, because they are *para materia*. All My
9 Lords have got 105(1). 'Subject to the provisions of this Constitution and to the rules and
10 standing orders regulating the procedure of Parliament, there shall be freedom of speech in
11 Parliament'. That is, My Lords, subject to the provisions of the Constitution. But My Lords,
12 105(2), 'No Member of Parliament shall be liable to any proceedings in any Court, in respect
13 of anything said or any vote given by him in Parliament'. Kindly note here the word
14 'Parliament', because I'm going to draw a distinction with the second part of this provision, 'or
15 any committee thereof, and no person shall be so liable in respect to the publication by or
16 under the authority of either House of Parliament of any report, paper, votes, or proceedings'.
17 So, the same clause of Article 105(2) uses 'Parliament' in two different contexts. One,
18 Parliament the other is House of Parliament, and I am going to make a submission on that My
19 Lords, in due course. 'Three, in other respects the powers, privileges and immunities of each
20 House of Parliament and of the members and the committees of each House, shall be such as
21 may, from time to time, be defined by Parliament by law, and until so defined, shall be those
22 of that House and its members and committees immediately before the coming into force of
23 Section 15 of the Constitution 44th Amendment Act, 1978'. 'The provisions of Clauses 1, 2 and
24 3 shall apply in relation to persons by virtue of this Constitution, who, by virtue of this
25 Constitution, have the right to speak in, and otherwise, take part in the proceedings of a House
26 of Parliament or any Committee thereof, as they apply in relation to members of Parliament'.
27 Therefore, my learned friend, the Attorney General addresses Parliament, My Lords, he will
28 also have the same immunity. Now, may I take, My Lords, straight to the Order of Reference
29 dated 20th September. It is a detailed order of 16 pages but, for the present purpose, it's
30 enough for me, My Lords. This will be at page 3 of Volume 3. Page 3 Volume 3, My Lords. I'll
31 take My Lords straight to page 15, because the first part sets out the nature of the controversy,
32 how the reference was made...

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR]

35

36 **RAJU RAMACHANDRAN:** Your Lordship... has pleading and orders, My Lords.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** 28th of September?

2

3 **RAJU RAMACHANDRAN:** 20th, 2-0, My Lords. My Lords have been able to locate it? I'll
4 take My Lords straight to para 24, at page 15. 'We are inclined..' may I read, My Lords? If all
5 My Lords have got it? My Lords, the Chief Justice?

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

8

9 **RAJU RAMACHANDRAN:** 'We are inclined to agree with the submission of the *amicus*
10 *curiae* and Mr. Gopal Sankaranarayanan, Senior Counsel, that the view which has been
11 expressed in the decision of the majority in *P.V. Narasimha Rao*, requires to be
12 reconsidered by a larger bench. Our reasons *prima facie* for doing so are formulated below.

13 (1) Firstly, the interpretation of Article 105(2) and the corresponding provisions of 194(2) of
14 the Constitution must be guided by the text, context, and the object and purpose underlying
15 the provision. The fundamental purpose and object underlying Article 105(2) of the
16 Constitution, is that Members of Parliament, or as the case may be of the State Legislatures,
17 must be free to express their views on the floor of the House, or to cast their votes either in the
18 House or as members of the Committees of the House, without fear of consequences.

19

20 While Article 19(1)(a) of the Constitution recognizes the individual right to the freedom of
21 speech and expression, Article 105(2) institutionalizes that right, by recognizing the
22 importance of the members of the Legislature having the freedom to express themselves and
23 to cast their ballots without fear of reprisal or consequences.' In other words, the object of
24 article 105(2) or article 194(2) does not *prima facie* appear to render immunity from the
25 launch of criminal proceedings for a violation of the criminal law, which may arise
26 independently of the exercise of the rights and duties as a Member of Parliament or of the
27 Legislature of a State. Secondly, in the course of the judgment in *P.V. Narasimha Rao*,
28 Justice SC Agrawal noted a serious anomaly, if the construction and support of immunity
29 under Article 105(2) for a bribe taker were to be accepted, a member would enjoy immunity
30 from prosecution for such a charge, if the member accepts the bribe for speaking or giving
31 their vote in Parliament in a particular manner, and in fact speaks or gives a vote in Parliament
32 in that manner. On the other hand, no immunity would attach, and the Member of the
33 Legislature would be liable to be prosecuted on a charge of bribery, if they accept the bribe for
34 not speaking or for not giving their vote on a matter under consideration before the House,
35 but they act to the contrary. This anomaly, Justice Agrawal observed, would be avoided if the
36 words 'in respect of' in Article 105(2) are construed to mean 'arising out of'. I'm going to
37 contest that, My Lords. In other words, in such a case, the immunity would be available only

1 if the speech that has been made or the vote that has been given is an essential or integral part
2 for the cause of action for the proceedings giving rise to the law. And thirdly, the judgment of
3 Justice SC Agrawal has specifically dwelt on the question as to when the offense of bribery
4 would be complete. The judgment notes that the offense is complete with the acceptance of
5 the money or on the agreement to accept the money being concluded and is not dependent on
6 the performance of the illegal promise by the receiver. The receiver of the bribe would be
7 treated to have committed the offense even when he fails to perform the bargain underlying
8 the tender and acceptance of the bribe. This aspect, bearing on the constituent elements of the
9 offense of bribe, finds elaboration in the judgment of Justice Agrawal, but is not dealt with in
10 the judgment of the majority. I am going to submit My Lords, the fact that the majority did
11 not specifically say when the offense of bribery is complete does not make a difference to the
12 correctness of that conclusion because My Lords, the majority could not have thought
13 otherwise. The offensive bribery was, after all My Lords, in criminal law complete earlier, But
14 that in my respectful submission would not have a bearing on the question. We have already
15 noted that efforts in seeking a review of the judgment in **Narasimha Rao**... rest I need not
16 read, My Lords. Your Lordships only noted that previous attempts failed. But Your Lordships
17 have considered it necessary to refer for the following reasons. Now, I have made a detailed
18 written submission, My Lords, which is Volume 1, but from that written submission only for
19 the convenience of the Court, My Lord, I am handing up six bullet points, My Lords.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Upload *hi kardo* so that all the members of the
22 Bar and the Court can also follow it.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Ramachandran. Overruling...

25

26 **RAJU RAMACHANDRAN:** Overruling the long settled law in **Narasimha Rao**, in the
27 **Narasimha Rao** case is unwarranted according to the test laid down by this Hon'ble Court
28 for itself on the question of overturning judicial precedents. This is going to be my starting
29 point, My Lord, because, this is the reference being made, My Lord, and the reason for
30 emphasizing this at the outset is to highlight the caution which the Court has given to itself in
31 the matter of overruling precedents. So, I hope My Lord, by placing these judgments at the
32 outset Your Lordship's decision to reconsider, would be guided by these tests, which have
33 already been laid down. That's the purpose of citing these cases My Lords, at the outset. So,
34 the first My lords, is an early decision, **Keshav Mills**, My Lords, which was an income tax
35 case. And that My Lords...

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Can we just actually read through your six points
2 so that then we can go to [UNCLEAR] then your judgment.

3

4 **RAJU RAMACHANDRAN:** Very well, Your Lordships. 2) The concept of constitutional
5 privileges and immunities, is not in derogation of the rule of law, but is a distinct pillar in the
6 constitutional edifice. This submission is made, My Lords, in the context of Justice Agrawal's
7 judgment, and something which has been highlighted by those who are questioning the
8 correctness of the majority, that this is the antithesis of the rule of law. My submission is going
9 to be, that no, it is perfectly consistent with the rule of law. The rule of law postulates,
10 constitutionalism and one of the pillars of constitutionalism, historically, traditionally has
11 been a regime of immunities and privileges as well and so there is no inconsistency with the
12 rule of law. 3) The so called anomaly, in the majority view in *Narasimha Rao*, flows from
13 the plain language of Articles 105(2) and 194(2), and to whittle down their protective scope, to
14 adhere to what is seemingly logical, fair or reasonable would be constitutionally unjustified.
15 4) The dissenting judgment in *Narasimha Rao* has erred in reading 'in respect of', as 'arising
16 out of', such a reading is not warranted by either the plain language or intent of the provision.
17 5) The fact that the offense of bribery in criminal law is complete when the bribe is given and
18 is not dependent on the performance of the promised favour, is of no consequence to the
19 constitutional immunity under Articles 105(2), 194(2). Once a speech is made or a vote is
20 given, the nexus 'in respect of' is fulfilled. And My Lords, finally, this is in the context, My
21 Lords, of the submission that in any case, voting for a Rajya Sabha election, is not entitled to
22 this immunity because it is not a vote, it is not a legislative vote, that is the submission. And
23 that is where the distinction which I had drawn, My Lords, I will highlight, that no, it doesn't
24 have to be a legislative proceeding in the sense of voting in a House of the Legislature. It is
25 part of a Legislator's function as a Legislator, Article 80 of the Constitution, constitutes the
26 Electoral College for the Rajya Sabha. An MLA is constitutionally made part of that Electoral
27 College. So one of the essential duties of an MLA, is to vote for a Rajya Sabha election. So this
28 voting though not on the floor of the House, but in the lobby of the House is nevertheless, a
29 vote in the Legislature and so if there is a protection for a vote on a bill in the House equally,
30 the protection should apply to a constitutionally mandated role of an MLA, to vote in a Rajya
31 Sabha election. Your Lordships please.

32

33 **JUSTICE P. S. NARASIMHA:** Whose case is it, that it doesn't extend?

34

35 **RAJU RAMACHANDRAN:** The Attorney General's case, My Lords. One of their reasons for
36 saying, that this reference is not necessary, they contended before the 5 Judge Bench also was,
37 that in any case *Narasimha Rao* will not apply Lordships please, now, My Lords, can I take

1 My Lords, straight to my written submission, Volume 1, page 12, My Lords, the relevant
2 portion starts under the subheading (d) My Lords, whether the concept of Parliament...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second. How long would you take?
5 About an hour or so today?

6

7 **RAJU RAMACHANDRAN:** It will go a little beyond lunch, My Lords. I can't say it'll be over
8 in an hour. My Lord it will go... that's my estimate, My Lords.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** A little beyond lunch? Just so that we can have
11 an assessment of everybody. We are, of course, continuing the hearing now, Mr. Patwalia
12 *amicus*, how long will you take?

13

14 **P.S. PATWALIA:** Depending on how much of the judgment is read by my learned friend,
15 about an hour, and hour and a half.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, what we could do is, we can hear Mr.
18 Patwalia, ideally, after the others have argued. Wouldn't that be better, because we then have
19 a complete unfolding of the case by everyone. And *amicus*, you can then wrap it up for us....

20

21 **P.S. PATWALIA:** After him My Lord, just to give the counterview.

22

23 **GOPAL SANKARANARAYANAN:** ...join, because Mr. Ramachandran is alone against all
24 of us.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Right?

27

28 **GOPAL SANKARANARAYANAN:** He is effectively going to be taking the burden of saying
29 *Narasimha Rao* is right.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Right, all of you are on this side. So, according
32 to you, once Mr. Patwalia concludes then, of course, we'd like the Attorney to give us his vision,
33 because that's a Constitutional interpretation.

34

35 **GOPAL SANKARANARAYANAN:** If the *amicus* and [UNCLEAR] can complete?

36

1 **ATTORNEY GENERAL R. VENKATARAMANI:** Can it be like this then? That if I have
2 the benefit of the *amicus* assistance, then I can refine my thoughts further.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Exactly. Alright then that's perfect. Then we'll
5 hear Mr. Patwalia right after Mr. Ramachandran. And then...

6

7 **GOPAL SANKARANARAYANAN:** We are supporting the *amicus*.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** And then we can see what else is remaining. Of
10 course, then the Attorney can...

11

12 **KANU AGRAWAL:** ... Attorney my Lords, then the learned SG [UNCLEAR]

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Of course. Of course. We'll see, of course. We're
15 here right? No difficulty. But, we'd like to hear an intervenor only if a junior is arguing for the
16 intervenor, not if a senior, then we have enough seniors on the... But if you are arguing
17 personally, then we'll give you an opportunity before the seven judges.

18

19 **RAJU RAMACHANDRAN:** Then we don't hear Mr. Gopal Sankaranarayanan also.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Well, if the juniors are ready, we'd certainly like
22 to hear you, because you must be given an opportunity to appear before the seven judges.

23

24 **RAJU RAMACHANDRAN:** My Lords, page 12.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** By all standards, it's tomorrow.

27

28 **RAJU RAMACHANDRAN:** Yes, we all understand that. We all understand that.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** So, we'll not take the alternative list now because
31 this matter is well and substantially now underway. So, the other members of the Bar who
32 want to hear this matter, of course, you're most welcome to sit in the Court, but we are not
33 going to take the alternative list today. The alternative list, we'll discharge the board. Yes.

34

35 **RAJU RAMACHANDRAN:** Page 12 of Volume 1, under the heading, My Lords, 'Whether
36 the concept of Parliamentary/Legislative privilege, as it stands today, needs to be further
37 refined, if not altered?' Sub-heading (d), towards the bottom of page 12. My Lords have got

1 sub-para 14? 'The need to further refine the already refined concept of
2 Parliamentary/Legislative privilege, may be viewed from three standpoints (a) the law of
3 judicial certainty and *stare decisis* (b) Parliament's views on this matter (c) the unintended
4 consequences which may arise as a result of amending the law by judicial interpretative tools'.
5 Now, on this aspect of judicial certainty, I have culled out the principles and just I'll cite three
6 or four cases, just the relevant parts. This a well-settled principle that law should not be
7 unsettled merely on the ground that an alternative view appears to be more reasonable. A
8 judicial precedent cannot be set aside unless, (a) Certain patent aspects of the question had
9 remained unnoticed, and the attention of the Court on the previous occasion was not drawn
10 to any relevant and material statutory provisions or judicial decisions. (b) There was an error
11 in the previous judgment provided the error had a serious impact on the general
12 administration of law. (c) The previous judgment has not been consistently followed in
13 subsequent decisions. That doesn't apply here at all because this has held the field, My Lord
14 for so long. (d) There has arisen a social, constitutional or economic change since, the
15 pronouncement of the previous judgment necessitating a change in judicial stand.

16

17 There can be a sea change in thinking My Lord, as in the 377 case My Lord, or in the context
18 in which *ADM Jabalpur* was overruled. It was a complete change in thinking My Lord, there
19 has been no such... there is no such need in this case is what I am going to submit. Since
20 political corruption was a phenomenon very much prevalent from 1967 'Aaya Ram, Gaya Ram'
21 came in 1967. It's not a recent phenomenon. Now, 3 or 4 decisions, My Lords, *Keshav Mills*,
22 para 23. Volume 5, Page 87, My Lords and para 23 minutes at 294

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 5?

25

26 **RAJU RAMACHANDRAN:** Volume 5, page 287, the judgment starts. Somewhere in the
27 middle, My Lords, somewhere in the middle of para 23, at page 294. Sentence starts, 'but
28 different considerations must inevitably arise' because earlier was whether you can set aside a
29 judgment of the High Court. So obviously different considerations apply. 'But different
30 consideration must inevitably arise where a previous decision of this Court has taken a
31 particular view.' Justice Pardiwala has got it?

32

33 **JUSTICE J.B. PARDIWALA:** Which paragraph are you?

34

35 **RAJU RAMACHANDRAN:** Paragraph 23, My Lords, at page 294.

36

37 **JUSTICE J.B. PARDIWALA:** It starts...

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RAJU RAMACHANDRAN: In dealing with the...

JUSTICE J.B. PARDIWALA: ... in dealing with the question as to whether the earlier decisions.

RAJU RAMACHANDRAN: That's right, that's right.

JUSTICE J.B. PARDIWALA: Correct.

RAJU RAMACHANDRAN: Then I'm taking My Lord straight to the middle of the paragraph.

JUSTICE J.B. PARDIWALA: Okay.

RAJU RAMACHANDRAN: But different consideration must inevitably arise where a previous decision of this Court has taken a particular view as to the construction of a statutory provision. As, for instance, Section 66(4) of the Act, when it is urged that the view already taken by this Court should be reviewed and revised, it may not necessarily be an adequate reason for such review and revision to hold that, though the earlier view is are reasonably possible view, the alternative view which is pressed on the subsequent occasion, is more reasonable. In reviewing and revising its earlier decision this Court should ask itself whether in the interest of the public good or 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 and 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 this 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, this Court must be satisfied with a fair amount of unanimity among 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 decision. It would always depend upon several relevant considerations. What is the nature of

1 the infirmity or error, on which a plea for a review and revision, of the earlier view is based?
2 On the earlier occasion, did some patent aspects of the question remain unnoticed or was the
3 attention of the Court, not drawn to any relevant and material statutory provision, or was any
4 previous decision of this Court bearing on the point not noticed? Is the Court hearing such
5 plea fairly unanimous, that there is such an error in the earlier view? What would be the impact
6 of the error on the general administration of law or on public good? Has the earlier decision
7 been followed on subsequent occasions, either by this Court or by the High Courts? And would
8 the reversal of the earlier decision lead to, public inconvenience, hardship or mischief? These
9 and other considerations must be carefully borne in mind, whenever this Court is called upon,
10 to exercise its jurisdiction to review and revise its earlier decisions. These considerations
11 become still more significant, when the earlier decisions happen to be a unanimous decision,
12 of a Bench of Five learned Judges of this Court. Of course My Lords, this particular decision,
13 is not a unanimous decision, My Lords, then My Lords...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** But Mr. Ramachandran, in your formulation, in
16 para 15 of your written submission...

17

18 **RAJU RAMACHANDRAN:** Lordship, please, My Lord.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** You say a judicial precedent cannot be set aside
21 unless, and then you sort of break up all the questions which are raised by Chief Justice
22 Gajendragadkar into A, B, C and D. Now what the judgment in *Keshav Mills* lays down, are
23 illustrative of when a review can take place, or revision can take place, as they call it. They're
24 not exhaustive.

25

26 **RAJU RAMACHANDRAN:** No, they say so much. That line... I read out that line. It says it's
27 not possible to give a complete... yes, My Lords I...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** And above all, they emphasize the aspect of
30 public good, for the polity...

31

32 **RAJU RAMACHANDRAN:** I bow to that My Lord, and I am going to submit, when I come
33 to *Narasimha Rao's* judgment that this Court was very... the majority itself was very
34 conscious, of this concept My Lords, of public good. And that's why, in spite of our sense of
35 indignation is the expression used, it is not that the Court was oblivious of that. Rule of law
36 was after all, My Lords, and is always an overarching consideration, when this Court decides
37 any constitutional issue, My Lords. There's nothing which the Court lost sight of, but the court

1 weighed and then preferred the view which the Court felt the plain language of the
2 Constitution warrants.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Apart from *Keshav Mills*, you want to cite
5 anything?

6

7 **RAJU RAMACHANDRAN:** Yes, I would cite one more, My Lord. The other I've given one,
8 *Kishan Kumar* and *Shanker Raju*. But I'll just cite *Shah Faesal* because it's more
9 recent. That was, My Lords, when the earlier Five Judge Bench, in the Article 370, request was
10 made to refer to Seven Judges questioning *Sampat Prakash*. So My Lords, that I'll take My
11 Lord straight to, 2485 at Volume Five, is where the judgment starts and the relevant part is at
12 2494, para 17. Para 17, My Lords, can I read My Lords? If all My Lords have got it?

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

15

16 **RAJU RAMACHANDRAN:** This Court's jurisprudence has shown, that usually the Courts
17 do not overrule the established precedents unless, there is a social, constitutional, or economic
18 change mandating such a development. The numbers themselves speak of restraint, and the
19 value this Court attaches to the Doctrine of Precedent. This Court regards, the use of precedent
20 as an indispensable bedrock upon which this Court renders justice. The use of such precedents,
21 to some extent, create certainty upon which individuals can rely and conduct their affairs, it
22 creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court
23 of the United States, John Roberts observed during his Senate Confirmation hearing, it is a
24 jolt to the legal system, when you overrule a precedent. Precedent plays an important role in
25 promoting stability and even handedness.

26

27 18 and 19... I'll make a brief reference, My Lords. 18 particularly, 'Doctrines of Precedent and
28 *stare decisis* are the core values of our legal system. They form the tools which further the goal
29 of certainty, stability and continuity in our legal system. Arguably, judges owe a duty to the
30 concept of certainty in law. Therefore, they often justify their holdings by relying upon
31 established tenets of law. When a decision is rendered by this Court, it acquires a reliance
32 interest, and the society organizes itself based on the present legal order. When substantial
33 judicial time and resources are spent on references, the same should not be made in a casual
34 or cavalier manner'. We have crossed that stage because the reference has been made. We are
35 now on whether it should be reconsidered My Lords, this particular judgment. I won't read
36 further from here. Now, My Lords, I've dealt with (1) from my bullet point note, My Lords.
37 Now (2), (3), (4) and (5) I'll be dealing with together, when I place, My Lords, the majority and

1 minority views in the *Narasimha Rao* case. All these four will get covered when I place that.
2 And My Lords, before I come back to my written submission, My Lords, I wish to draw
3 attention to a passage from Blackstone, My Lords, with regard to the origin of this concept of
4 privilege, and how that very thought finds reflection in Justice Bharucha's judgment. Let me
5 take My Lords straight to Volume 4, 1481.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4?

8

9 **RAJU RAMACHANDRAN:** Volume 4, My Lords, at 1487. If my all My Lords have got, I can
10 place the passage straight away.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

13

14 **RAJU RAMACHANDRAN:** 'The privileges of Parliament...', the lower paragraph. 'The
15 privileges of Parliament are likewise very large and indefinite, which is occasioned in
16 observation that the principal privilege of Parliament consisted in this, that its privileges were
17 not certainly known to anyone but Parliament itself. And therefore when in '31, Henry VI, the
18 House of Lords propounded a question to the judges touching the privileges of Parliament, the
19 Chief Justice, in the name of his brethren, declared that they ought not to make an answer to
20 that question, for it has not been used a foretime, that the judges should in any wise, determine
21 the privileges of the High Court of Parliament, for it is so high and mighty in its nature, that it
22 may make law, and that which is law, it may make no law, and that determination and
23 knowledge of that privilege belongs to the Lords of Parliament, and not to the Justices.
24 Privilege of Parliament was principally established in order to protect its members, not only
25 from being molested by their fellow subjects, but also more especially from being oppressed
26 by the power of the Crown. It therefore... all the privileges of Parliament were once to be set
27 down and ascertained and no privilege to be allowed. But what was so defined and determined,
28 it was easy for the executive power to devise some new case, not within the line of privilege,
29 and under pretence thereof, to harass any refractory member and violate the freedom of
30 Parliament'. Therefore, My Lords, the central thought, which I wish to emphasize, My Lords,
31 based on the historical origin of privilege, is criminal law is one aspect of My Lord's the public
32 good of public policy but the independence of members of the Parliament from the Crown and
33 in a democracy substitute it with a democratic executive it is equally an important factor and
34 that is where I'll place that relevant passage from Justice Bharucha's judgment. Now, My
35 Lord...

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr Ramachandran.

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RAJU RAMACHANDRAN: Kindly give me a minute

CHIEF JUSTICE DY CHANDRACHUD: Yes.

RAJU RAMACHANDRAN: Your Lordship just give me half a minute more My Lords. That particular line, which I wanted to read at this particular point. My Lords, but I may start by reading the judgment in the meantime. Para 133, Volume 5, page 808. I will come back to the passage, but it's part of the same judgment, so, I emphasize it. 133 onwards, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Volume 5?

RAJU RAMACHANDRAN: Of *Narasimha Rao*, Volume 5, My Lord. Para 133 onwards, I'm reading, page number 808, My Lords. Can I read, My Lords?

CHIEF JUSTICE DY CHANDRACHUD: Yes

RAJU RAMACHANDRAN: 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. The charges against the alleged bribe takers is that they were party to a criminal conspiracy and agreed to or entered into an agreement with the alleged bribe givers to defeat the no-confidence motion by illegal means, namely to obtain or agree to obtain gratification other than legal remuneration from the alleged bribe givers as a motive or reward for defeating the no-confidence motion and in pursuance thereof, the alleged bribe givers passed on several lacks of Rupees to the alleged bribe takers, which amounts were accepted by them. The stated object of the alleged conspiracy and agreement is to defeat the no-confidence motion and the alleged bribe takers are said to have received monies as a motive or reward for defeating it. The nexus between the alleged conspiracy and bribe and the no-confidence motion is explicit. The charge is that the alleged bribe takers received the bribes to secure the defeat of the no-confidence motion. While it is true, that the charge against them does not refer to the votes that the alleged bribe takers, Ajit Singh excluded, actually cast against the no-confidence motion and that it may be established de hors those votes. As the Attorney General argued, we do not think we can ignore the fact that the votes were cast. And if the facts alleged against the bribe takers are true, then they were cast pursuant to the alleged conspiracy and agreement. It must then follow, given the expression 'in respect of' must receive a broad meaning that the alleged conspiracy and agreement had a nexus and were in respect of those votes, and that the

1 proposed inquiry in the criminal proceedings is in regard to the motivation thereof. It is
2 difficult, this paragraph is important My Lord, in the context of Blackstone as well, it is difficult
3 to agree with the learned Attorney General that though the words 'in respect of' must receive
4 a broad meaning the protection under Article 105(2) is limited to court proceedings that
5 impugn the speech that is given, or the vote that is cast or arises thereout, or that the object of
6 the protection would be fully satisfied thereby. The object of the protection is to enable
7 members to speak their mind in Parliament and vote in the same way freed of the fear of being
8 made answerable on that account in a court of law. It is not enough that Members should be
9 protected against civil action and criminal proceedings. The cause of action of which is their
10 speech or their vote, to enable Members to participate fearlessly in parliamentary debates.
11 Members need the wider protection of immunity against all civil and criminal proceedings that
12 bear a nexus to their speech or vote. It is for this reason that a member is not liable to any
13 proceedings, in any Court in respect of anything said or any vote given by him. Article 105,
14 does not say, what it would have, if the learned Attorney General were right, that a member is
15 not liable for what he has said or how he has voted, it would have then been worded differently.
16 While imputing, this is important My Lords, I'm linking this to what Blackstone said then, My
17 Lords, while imputing no such motive to the present prosecution, it is not difficult to envisage
18 a member who has made a speech or cast a vote, that is not to the liking of the powers that be,
19 being troubled by a prosecution alleging that he has been party to an agreement and
20 conspiracy to achieve a certain result in Parliament and had been paid a bribe. Therefore, My
21 Lords, a powerful executive, whatever be the ruling party My Lords, it's a fact of political life
22 in India today, My Lords, that the law is misused. So, this is an equally important
23 consideration. If a member is to vote fearlessly, he should be free from the fear of prosecution
24 and therefore, it is not just My Lords an immunity from criminal law...

25 Para 137.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** 137?

28

29 **RAJU RAMACHANDRAN:** Yes, My Lords. We are acutely conscious of the seriousness of
30 the offense, that the alleged bride takers are said to have committed. If true, they bartered a
31 most solemn trust committed to them by those they represented, by reason of the lucre that
32 they received, they enabled a government to survive, but so they are entitled to the protection
33 that the Constitution plainly affords them. Our sense of indignation should not lead us to
34 construe the Constitution narrowly, impairing the guarantee to effective parliamentary
35 participation and debate. So, the majority was equally anguished, My Lords. This is not an
36 amoral judgment, the majority would have been as shocked as any Court would have been, as

1 any conscientious citizen would have been My Lords, but the majority said, we must read the
2 Constitution as it is written and there is reason for it. Members need protection.

3

4 And then, My Lords, as far as criminal prosecution is concerned, you can't differentiate
5 between corruption and defamation. If there is protection from criminal prosecution, it has to
6 be in all respects, My Lords, as long as it bears a nexus. In **Ajith's** case, this Hon'ble Court
7 sufficiently refined it in the recent **Kerala Assembly** case. If a member commits an act of
8 vandalism, or My Lords, take an extreme case of a physical assault, then it is obviously not
9 protected, because by no standard can it be said to have nexus, My Lords. Similarly, that test
10 may perhaps conceivably be applied to a hate speech situation on the floor of the House also,
11 My Lords, as to whether it had any nexus at all with the role of the member in the performance
12 of his duties? But My Lords, once that immunity is there, then we can't dissect it and say,
13 'Corruption shocks us'. Defamation is of a different character. Defamation is more political in
14 character. It has to be absolute protection, My Lords. And therefore, My Lords, this anguished
15 conclusion of the majority, bearing in mind what weighed with the Constitution makers,
16 bearing in mind the historical background of privilege, is not even 25 years later, something
17 which would shock the conscience of this Court, My Lords. To repeat, My Lords, political
18 corruption is a fact of modern political life, and My Lords, perhaps historical and ancient
19 political life also, My Lords.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

22

23 **RAJU RAMACHANDRAN:** And this... and I'm going to emphasize when I come back to my
24 written submission. It is not that the Constitution gives a complete *carte blanche*. Afterall, the
25 privileges of Parliament are to be exercised by Parliament itself against its members, and we
26 may trust Parliament to do so on given occasions. In the early years, My Lords, in the
27 provisional Parliament... and I've given that instance in my written submission, I'll take my
28 Lord to that straight away. A member, one, Mr. H.G. Mudgal, was expelled by the House for
29 accepting a bribe to ask a question in the House. From 1952 to **Raja Ram Pal** in 2006, it is
30 not that Parliament has not exercised its power. And so, the Constitution leaves it to
31 Parliament to take care of aspects of political morality. Then, I would respectfully submit, that
32 the Court out of a sense of moral outrage, ought not to proceed further. And that is the error
33 in Justice Agrawal's judgment, My Lords, and I'm going to place that passage straight away.
34 Justice Agrawal is conscious of the fact that the power to expel is there. But, the judgment says
35 that is not a satisfactory solution. That's the fundamental error, My Lords. And I say this with
36 great respect, that it is not for the Court to find perfect solutions to all moral dilemmas,
37 political problems, political conundrums, My Lords.

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CHIEF JUSTICE DY CHANDRACHUD: Mr. Ramachandran, if you really interpret 105(2), Justice Bharucha rejected the submission of the Attorney General based on the words 'in respect of'. Let's look at 105(2), what does it say?

RAJU RAMACHANDRAN: Yes, My Lord.

CHIEF JUSTICE DY CHANDRACHUD: No Member of Parliament shall be liable to any proceeding.

RAJU RAMACHANDRAN: To any proceedings.

CHIEF JUSTICE DY CHANDRACHUD: To any proceedings in any court, in respect of anything said or any vote given by him in Parliament or any committee thereof. So, what this really means is that, a member of Parliament, it says, shall be liable to any proceedings. Shall be liable to means? Shall be answerable to, or shall be held to account, in any court. So once a Member of Parliament, has either cast a vote or has spoken, they will not be answerable in any court of law in any proceeding for, the vote which they have cast or the speech which they have made. That's all and that dovetails with Clause 1. Clause 1 begins by saying, there shall be freedom of speech in Parliament, and then 2 says that, freedom of speech in Parliament is protected. I'm saying you will not be held a held to account in a court for a speech which you have made. No court can say that, well, why did you make this speech? Or you are answerable to us as a judicial institutions, in respect of a speech which you made or a vote which you cast. That's the purpose. This does not really seek to implicate other aspects, such as an aspect of criminality. Now some aspects of political morality are dealt with by the Constitution itself, in the Tenth Schedule for instance.

RAJU RAMACHANDRAN: Lordship pleases My Lords, which came later, which came later.

CHIEF JUSTICE DY CHANDRACHUD: Which came much later, but since the 10th Schedule will deal with certain aspects of political morality, namely crossing of floors, casting, acting against the whip or a defection within from the political party. But, to read the words in respect of, has to be construed appropriately. You are right. Normally in respect of, is not treated as a word of limitation. In respect of is always interpreted in a very broad perspective. In relation to, in respect of, but what is in respect of what? In respect of anything said or any vote given. Will this go beyond a criminal consideration underlying the speech or the vote? Of

1 course there is a possible view, I mean you can't... that's why, that's why that judgment is there,
2 obviously to, the majority has taken that view, and we respect that view. What seems to have
3 waded with the majority is, that if you cannot be responsible in respect of a vote given or a
4 speech made to any court in a proceeding, then the underlying motive for the casting of the
5 vote or the speech, whether it is criminal or otherwise equally immune from court proceedings.

6

7 **RAJU RAMACHANDRAN:** Lordship, please. My Lords, and I...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Question is, whether you therefore stretch that
10 in respect of, to cover an underlying motive or an underlying consideration being criminal, has
11 also been immune? Or whether does it stop with the vote cast or the speech which is given and
12 does it really also extend to a possible criminal misdemeanour in the casting of the vote or the
13 making of the speech?

14

15 **RAJU RAMACHANDRAN:** Just a respectful refinement of what My Lord, the Chief Justice
16 has put to me.

17

18 **JUSTICE M.M. SUNDRESH:** Just a minute.

19

20 **JUSTICE P.S. NARASIMHA:** This is the things. One question is, the way you read Sub-
21 Article 2, is perhaps is in two parts. The first part relates to, the vote given by him in the
22 Parliament, anything said or vote given. The later portion which comes after end, after the
23 comma, talks about liability with respect to publication, by or under the authority of either
24 House of the Parliament, of any report, paper, vote, or proceedings. This later ports, later
25 portion talks about liability with respect to publication, etc. The first part talks about the vote
26 as well as what is said, there is a distinction there.

27

28 **GOPAL SANKARANARAYANAN:** Sorry to interrupt. Also, Member of Parliament versus
29 person. First part is Member of Parliament. Second part is person.

30

31 **RAJU RAMACHANDRAN:** No person shall...

32

33 **JUSTICE P.S. NARASIMHA:** It's clear distinction there. So whether the expression, in
34 respect of attached to the first part is a question perhaps, just came to my mind.

35

36 **RAJU RAMACHANDRAN:** Lordship please.

37

1 **JUSTICE P.S. NARASIMHA:** That is one thing. Does it attach to a pristine situation, where
2 a Member of a Parliament, says or votes in a Parliament, this has to be read in consonance
3 with the first Sub-Article 1. Maybe there is perhaps a distinction there, because as they say,
4 publication also and what is published with respect to the proceedings of the House also,
5 attaches some amount of immunity. That is what is said.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** The Lok Sabha debate, the Rajya Sabha debate
8 and that will also attach to a staff of the Legislature, the Secretary General of the Lok Sabha...

9

10 **RAJU RAMACHANDRAN:** Yes My Lords, the printer and publisher also.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** ...who will publish a report of the text of the
13 proceedings in the Parliament would be fully immune, because no person shall be liable in
14 respect of the publication...

15

16 **P.S. PATWALIA:** Therefore the use of the word first [UNCLEAR]...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** First[UNCLEAR]. Much broader.

19

20 **P.S. PATWALIA:** ...beyond the member concerned [UNCLEAR]

21

22 **ATTORNEY GENERAL R. VENKATARAMANI:** My Lord there is a long [UNCLEAR]

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Right, right, right, that's by or under the
25 authority. Something that is an authorized publication of the Parliament...

26

27 **JUSTICE P.S. NARASIMHA:** Which is that expression which connects so to say as the later
28 part uses the expression in respect of, so far as the first part is concerned?

29

30 **RAJU RAMACHANDRAN:** Yes, My Lord.

31

32 **JUSTICE P.S. NARASIMHA:** That's the question. That's a question. But otherwise the
33 other principle that the concept, the activity of corruption, which occurs outside the host, has
34 got nothing to do, with what is said and the vote which is being made in the Parliament. That's
35 the first part of it. But what according to you, controls that?

36

37 **RAJU RAMACHANDRAN:** Yes My Lords.

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JUSTICE P.S. NARASIMHA: The first part?

RAJU RAMACHANDRAN: Yes, My Lord, I'll read the sentence again. I'll read the Clause again. No. Member of Parliament... Lordship please...

JUSTICE M.M. SUNDRESH: Consequence of the speech made, consequence on the publication made. These are the only two conditions. He doesn't say [UNCLEAR]...

RAJU RAMACHANDRAN: That is what, that is where in respect of comes...

CHIEF JUSTICE DY CHANDRACHUD: I'll give you one more, suppose the bribe has been taken by a Member of the Legislature for casting a vote in a particular manner, for making a speech, a court cannot therefore say, that please invalidate this vote, because it was motivated by a bribe. Suppose a person is convicted for the offense of bribery, can a court say, that therefore, that vote should be excluded in computing the Parliamentary majority? Suppose 20 Members of the legislature, have proved to have accepted a bribe, that vote is still a valid vote, cast in favour or against the motion...

JUSTICE P.S. NARASIMHA: It is contextualized in the first part as well as second part when they use that in respect of a vote and what is said, and in respect of what is published. Both are very clearly contextualized.

RAJU RAMACHANDRAN: Lordships please My Lords. And My Lords, in my respectful submission...

CHIEF JUSTICE DY CHANDRACHUD: You can't say impugn a resolution passing a legislation or passing the budget on the ground that any of the votes which were cast...

RAJU RAMACHANDRAN: ... to pass...

CHIEF JUSTICE DY CHANDRACHUD: ... was initiated by a criminal wrongdoing.

RAJU RAMACHANDRAN: If that be so. If I may?

1 **CHIEF JUSTICE DY CHANDRACHUD:** But that immunity, which attaches to the vote
2 which is cast, does not attach to the crime which takes place independent of the casting of the
3 vote or the rendering of the speech.

4

5 **RAJU RAMACHANDRAN:** My respectful submission is... my respectful submission is, if
6 the crime, the anterior crime... So let us assume... and that is a matter of law, My Lords. There
7 can be no two views about it.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** Let me put your argument at its best, at the
10 highest, that the anterior crime of accepting a bribe for casting a vote or making a speech, is
11 integrally related to the casting of the vote or the making of the speech...

12

13 **RAJU RAMACHANDRAN:** That is my argument, My Lords, and that is my...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** And once both are integrally related, according
16 to you, the immunity must dash to go.

17

18 **RAJU RAMACHANDRAN:** In respect of... I'm coming to Justice Narasimha's question
19 also.

20

21 **JUSTICE P.S. NARASIMHA:** And the reason of highlighting what you have said in the
22 previous quotation of Blackstone, he says, it becomes necessary because of the reason that the
23 Executive has a control over the members through some manner or the other. So therefore,
24 the need for an immunity.

25

26 **RAJU RAMACHANDRAN:** Grateful.

27

28 **JUSTICE P.S. NARASIMHA:** You extend even to that. That's your argument.

29

30 **RAJU RAMACHANDRAN:** Grateful. And apropos, the observation...

31

32 **JUSTICE M.M. SUNDRESH:** Let me just elaborate what the Chief is saying, is this. In a
33 case, let us assume voting takes place. Then, on the question of validity of the vote, a decision
34 is made within the Parliament. That cannot be questioned.

35

36 **RAJU RAMACHANDRAN:** That cannot. Undoubtedly...

37

1 **JUSTICE M.M. SUNDRESH:** No. So, that's the reason there is a casual connection,
2 notwithstanding that. The other things, they stand apart. The criminality stands apart. That
3 has got nothing to do with the Parliament.

4

5 **RAJU RAMACHANDRAN:** But that is where my argument, that in respect of...

6

7 **JUSTICE M.M. SUNDRESH:** So, to that extent, the Parliament can... the House can go
8 into, whether babies there or not there, vote is there or not, to that extent it can go, to either
9 validate or invalidate the vote. It is going into.

10

11 **RAJU RAMACHANDRAN:** Lordships, please.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Now, in *P.V. Narasimha Rao* itself, the No-
14 confidence Motion was defeated, right? The Court couldn't have said that the No-confidence
15 Motion has to be now reviewed, and we will therefore now see whether No-confidence vote
16 was passed or otherwise by excluding these votes of persons who have improperly voted in
17 favour or against the motion.

18

19 **JUSTICE P.S. NARASIMHA:** There are two things, Mr. Ramachandran, that not voting is
20 different and voting consequences are different, is one aspect of the matter. Another aspect of
21 the matter is, the scope and extent of the immunity. We need to balance the Constitutional
22 intendment of to what extent the Constitution intended that the immunity must be extended
23 within the context of speech, as well as the vote?

24

25 **RAJU RAMACHANDRAN:** Your Lordships, please.

26

27 **JUSTICE P.S. NARASIMHA:** How deeper it is, depending on what kind of a mischief could
28 happen with the Executive intervention. So that's a matter of interpretation.

29

30 **RAJU RAMACHANDRAN:** Your Lordships, please.

31

32 **JUSTICE M.M. SUNDRESH:** Just to expand this, what we are seeing, we can adversely
33 restrict to the business which the Parliament expected to transact. Nothing more. As
34 [UNCLEAR] some murder takes place. Now, can we say that Parliamentary privilege?

35

36 **RAJU RAMACHANDRAN:** No.

37

1 **JUSTICE M.M. SUNDRESH:** ... trying take to the larger proportion. Then nothing can be
2 done. Supposing, some decision is taken, it can be questioned.

3

4 **RAJU RAMACHANDRAN:** It can be My Lords.

5

6 **JUSTICE M.M. SUNDRESH:** It can be only restricted to the freedom of speech and
7 expression.

8

9 **RAJU RAMACHANDRAN:** No, My Lords, there always has to be a nexus with an MP or
10 MLA's work or duty as an MP or MLA, My Lords. And this is without... I'm not going to my
11 later submission that voting for Rajya Sabha also, not just legislative voting, is also part of the
12 work of an MLA. But it has to be connected with that. And therefore, apropos the observation
13 of the Learned Chief Justice, as to whether 'in respect of', can be stretched... that was My Lord,
14 the Chief Justice's observation... there my respectful submission is, it is not a question of
15 stretching. The question is, can 'in respect of' be restricted? Can 'in respect of' be restricted?
16 We are not stretching. The language is plain and unambiguous, because there is a nexus, there
17 is a causal connection. Then can it be restricted or whittled down, because it is a crime of a
18 particular nature, which is morally abhorrent. My respectful answer, on the plain language of
19 the Constitution is no, it can't be whittled down. We are not expanding 'in respect of', we are
20 unjustifiably, restricting 'in respect of' which ought not, My Lords to be done. Can I take My
21 Lords to Justice Agrawal's judgment, just a couple of paragraphs. Paras 45 and 47, Volume 5,
22 page 751.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Para 47?

25

26 **RAJU RAMACHANDRAN:** Para 45, first My Lords.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

29

30 **RAJU RAMACHANDRAN:** Page, 751. Volume 5. If all My Lords have got it. It is no doubt
31 true that a member, who is found to have accepted bribe in connection with the business of
32 Parliament can be punished by House for contempt. But that is not, a satisfactory solution.
33 This is where My Lords value judgment, moral judgment, etc. come in, My Lords, and this is
34 where the court has fallen into error, the minority has fallen into error. It is with respect not
35 for the court to find a solution to what seems to be illogical, let's put it even more strongly,
36 unfair in the Constitution. No, it is there in the Constitution. It is part of the original
37 Constitution, and therefore that exemption, that exception, that immunity is as much a part

1 of the pillar of the Constitution, and therefore not in the basic structure, basic structure, kind
2 of test My Lords. But that is also part of the Constitution. That's part of the constitutional
3 architecture. Then My Lords, Paras 46 and 47, the expression 'in respect of' has to be construed
4 in this perspective. The cases cited by Sri Rao, do show that this expression has been construed
5 as having a wider meaning to convey some connection or relation in between the two subject
6 matters to which the word refers, words refer, but as laid down by this Court in ***State of***
7 ***Madras vs Swastik Tobacco Factory***, the expression has received a wide interpretation,
8 having regard to the object of the provisions and the setting in which the said words appeared.
9 The expression in respect of an Article 105(2) has therefore to be construed, keeping in view
10 the object of 105(2) and the setting in which the expression appears in that provision. As
11 mentioned earlier, the object of the immunity conferred under the Article under Article 105(2)
12 is to ensure the independence of the individual legislators. Such independence is necessary for
13 healthy functioning of the system of parliamentary democracy adopted in the Constitution.
14 Parliamentary democracy is a part of the basic structure of the Constitution, an interpretation
15 of the provision of Article, provisions of Article 105(2), which would enable a member of
16 Parliament to claim immunity from prosecution in a criminal court for an offense of bribery
17 in connection with anything said by him, or a vote given by him in Parliament or any
18 committee thereof, and thereby place such members above the law would not only be
19 repugnant to a healthy functioning of parliamentary democracy, but would also be subversive
20 with the rule of law, which is an essential part of the basic structure of the Constitution. It is
21 settled law, that in interpreting the constitutional provision, the Court should adopt a
22 construction which strengthens the foundational features and the basic structure of the
23 Constitution. No doubt about that, there is no quarrel with that proposition. The expression
24 'in respect of' precedes the words anything said or any vote given in Article 105(2), apropos
25 Justice Narasimha's question, My Lords.

26

27 The words anything said or any vote given can only mean speech that has already been made
28 or a vote that has already been given. The immunity from liability, therefore, comes into play
29 only if a speech has been made or a vote has been given, the immunity would not be available
30 in a case where a speech has not been made or a vote has not been given, where, when there is
31 a prior agreement, where under a Member of Parliament has received an illegal consideration,
32 in order to exercise his right to speak or to give his vote in a particular manner, on a matter
33 coming up for consideration before the House, there can be two possible situations. There may
34 be an agreement, where under a Member accepts illegal gratification and agrees not to speak
35 in Parliament or not to give his vote in Parliament. The immunity granted under Article 105(2),
36 would not be available to such a Member, and he would be liable to be prosecuted on the
37 charge of bribery in a criminal court. What would be the position, if the agreement is that in

1 lieu of the illegal gratification paid or promised, the Member would speak or give his vote in
2 Parliament in a particular manner, and he speaks and gives his vote in that manner. As per the
3 wide meaning suggested by Sri Rao for the expression in respect of, the immunity for
4 prosecution would be available to the member who has received illegal gratification, under
5 such agreement for speaking or giving his vote and who has spoken or given his vote in
6 Parliament, as per the said agreement, because such acceptance of illegal gratification as a
7 nexus or connection with such speaking or giving of vote by that Member. If the construction
8 placed by Sri Rao on the expression in respect of is adopted, a Member would be liable to be
9 prosecuted on a charge of bribery. If he accepts the bribe, for not speaking or for not giving his
10 vote on a matter under consideration before the House, but he would enjoy immunity from
11 prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament
12 in a particular manner, and he speaks or gives his vote in Parliament in that manner. It is
13 difficult to conceive that the framers of the Constitution intended to make such a distinction
14 in the matter of grant of immunity between a Member of Parliament, who receives bribe for
15 speaking, or giving his vote in Parliament in a particular manner and speaks or gives his vote
16 in that manner. And a Member of Parliament who receives bribe for not speaking or not giving
17 his vote on a particular matter coming up before the House and does not speak or give his vote
18 as per the Agreement as to confer an immunity from prosecution on charge of bribery or on
19 the charge of bribery on the former, but denying such immunity to the latter. Such an
20 anomalous situation would be avoided, if the words in respect of in Article 105(2) are
21 construed to mean, arising out of. In the expression, if the expression in respect of is thus
22 construed, the immunity conferred under Article 105(2), would be confined to liability that
23 arises out of or is attributable to Member, to something that has been said or a vote that has
24 been given by a Member in Parliament or a committee thereof. The immunity would be
25 available only, if the speech has been made that has been made or the vote that has been given
26 is an essential and integral part of the cause of action for the proceedings giving rise to the
27 liability. The immunity would not be available to give protection against liability for an act that
28 precedes the making of the speech or giving the vote by a Member in Parliament, even though
29 it may have a connection with the speech, even though it may have a connection with the
30 speech. So in respect of, is here. But that is not to be whittled down by saying no. It must be in
31 respect of.

32
33 **CHIEF JUSTICE DY CHANDRACHUD:** Of course, this distinction which Justice Agrawal
34 makes, there is, in that sense, an agreement with the majority, also, because that is how Ajit
35 Singh was held not to be immune by the majority as well. So this anomaly so-called, I mean,
36 the anomaly what we have used in that the third formulation which we made in the referral
37 order. This there seems to be an agreement, even with the majority.

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RAJU RAMACHANDRAN: Lordships, please My Lords.

P. S. PATWALIA: I think he's citing it, he's citing it as an extreme example to show, the anomaly which would arise if the other construction is adopted.

CHIEF JUSTICE DY CHANDRACHUD: That's right.

P. S. PATWALIA: He's citing it...

CHIEF JUSTICE DY CHANDRACHUD: And it was actually borne out by what the majority did ultimately by holding that Mr. Ajit Singh is not immune.

P. S. PATWALIA: This is actually true by the result which flows from the majority.

RAJU RAMACHANDRAN: The mistake, the error with respect here is this, that the compendious expression 'in respect of' is sought by this interpretation to say, arising from or arising out of, to something posterior, and eliminate anything happening anterior. But, 'in respect of' is a wide expression, which comprehends anything anterior, anything contemporaneous and anything posterior. There is no justification whatsoever to whittle down. I would go so far as to say, be doing violence to language, if we were to read 'in respect of' in this manner. And this reading flows only from a sense of moral outrage, and with a view to devising what the Court feels is a satisfactory solution, because what obtains today under the Constitutional scheme, according to the minority, is not a good enough solution.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

RAJU RAMACHANDRAN: Can I now take My Lords further to my note, Volume 1? My Lords, at page 14 of my written submission, Volume 1, there was a recent case, My Lords, concerning the daily Assembly and some social media, My Lords. Para 18, page 14, Volume 1.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

RAJU RAMACHANDRAN: Interestingly, this Honourable Court, in the recent case of *Ajit Mohan vs Legislative Assembly, National Capital Territory of Delhi* did observe that there were divergent views among Constitutional experts, on whether full play must be given to the powers, privileges, and immunities of legislative bodies, as originally defined in

1 the Constitution, or is to be restricted? However, despite the divergence of views, this
2 Honourable Court declined to express or impose its views on the matter, and justifiably so, as
3 held by the Honourable Court. Such opinion would have to be debated before Parliament or
4 Legislature of the State to come to a conclusion one way or the other. It is not even a subject
5 matter where it could be said that any one opinion must prevail or a nudge must be given by
6 this Court, or a recommendation must be made for consideration by the legislative body. The
7 Court has left it, My Lords, to the Legislature. Considering, My Lords, we assume the historical
8 background, the high Constitutional status, which privileges themselves have occupied in
9 Constitutions all over the world. Then, My Lords, page 15. What has Parliament felt, because
10 after all, the criticism has been voiced over the years, and this is always a vexed issue.
11 Parliamentary Standing Committee reports, the relevance of which was recognized by this
12 Honourable Court in **Kalpna Mehta**, are documents reflect Parliamentary oversight. The
13 48th Report of this Committee on the Lokpal Bill was tabled before both Houses of Parliament
14 on 9-12-2011. Section 17 of the Lokpal... Section 17 of the Lokpal Bill, which related to the
15 jurisdiction of the Lokpal, contained a Sub-section 2, which prevented the Lokpal from
16 inquiring into any matter connected with the allegations of corruption against any member of
17 either House of Parliament in respect of anything said or a vote given by him in Parliament,
18 or any committee thereof covered under the provisions contained in Clause 2, of Article 105 of
19 the Constitution. A perusal of the 48th Committee Report indicates, that the Committee had
20 indeed extensively discussed the need to omit Section 17(2) from the bill so that the Lokpal
21 could indeed inquire into allegations of corruption against MP's, in this context My Lords, of
22 vote given and the following was the outcome of the said discussion, the Committee itself
23 observed that, Article 105 did not provide MP's immunity or protection from disciplinary
24 proceedings or sanctions initiated and conducted by Parliament itself. A reference was in fact
25 made to the Hon'ble Court's verdict in the **Raja Ram Pal** matter. (B) vote, conduct, or speech
26 within the House was intended to promote independent thought and action without fetters
27 within Parliament. The immunity for vote, speech, or conduct within the Houses of Parliament
28 does not, in any manner leave culpable MPs blameless or free from sanction. In fact, they are
29 liable to and have in the recent past suffered severe Parliamentary punishment, including
30 expulsion from the House from the Houses of Parliament for alleged taking of bribes
31 amounting to as little as Rs. 10,000 for asking questions on the floor of the house. Certain of
32 sighted instances of expulsion of MPs and MLAs for alleged breach of Parliament,
33 parliamentary and legislative privileges are as follows: (a) My Lords, I have given Mr. HG
34 Mudgal's case then, (b) My Lords, Mr. Y.R. Meghawale was expelled by the Madhya Pradesh
35 Assembly, for assaulting the Deputy Speaker of the house. That expulsion was affirmed. (c)
36 Mr. Subramanian Swamy was expelled from the Rajya Sabha, in the context of the events of
37 the emergency My Lords. (d) Mrs. Indira Gandhi was expelled, again in the aftermath My

1 Lords of that very period, they My Lords **Raja Ram Pal**. So there are instances. And now My
2 lords, I come to the next part of the submission. The unintended consequences of further
3 refining the law.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

6

7 **RAJU RAMACHANDRAN:** As stated in para 22 My Lords earlier herein, the purpose of the
8 immunity conferred under Articles 105(2) and 194(2), was never to create a class of super
9 citizens, but to insulate MPs and MLAs from the might of the Executive. Can I just pause here
10 My Lords? Super citizen is a concept which was very much present before the Court in
11 **Narasimha Rao** also, because when you are talking of privilege, the analogy which comes
12 immediately to mind is super citizens. But all constitutional immunities, immunities to
13 Governors, immunities to the President in that sense, because they are a class apart, they are
14 treated differently. Was never to create a class of super citizens, but to insulate MPs and MLAs
15 from the might of the Executive. Votes given in speeches made in the legislature usually relate
16 to matters proposed by the party in power, and every such party would have a natural desire
17 to eliminate as much opposition as possible or at the very least, cause a sense of fear among
18 opposing legislators. The parliamentary privilege and immunity conferred upon MPs, MLAs
19 further whittle down, would only enhance the prospect of abuse of the law by political parties
20 in power. The following hypothetical, yet very probable examples seek to illustrate the
21 submission, assuming that this Honourable Court declares criminal offenses by legislators
22 being unprotected by Articles 105, 194(2), even if they relate to votes made or speeches given
23 in Parliament or legislature. First instance we are given minutes is a case of bribery. A political
24 party, X enjoys a very thin majority of seven seats in a Legislative Assembly, five of which are
25 filled by independent MLAs. The opposition parties form an alliance, and this alliance declares
26 its intent to introduce a No-Confidence Motion following the unearthing of a scam. Given the
27 sensitivity of the issue, the speaker is constrained to grant leave for...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Just a moment.

30

31 **RAJU RAMACHANDRAN:** Given the sensitivity of this issue, the Speaker is constrained to
32 grant leave for discussion and voting on the motion. During the voting, three out of the five
33 independent MLAs, vote in favour of the no confidence motion, despite which X barely
34 manages to prove its majority on the floor. Embarrassed by the negative votes of the said three
35 independent MLAs, the leader of X lodges frivolous FIR's against them, alleging that they had
36 voted after having agreed to take bribes from the opposition party. The MLAs are consequently
37 arrested, and by the time they are able to procure bail for themselves, they miss out on debates

1 or other important bills, which were laid before the House during their absence. My Lords, if
2 the court is to take cognizance of reality, as the Court does, My Lords always, if political
3 corruption is a fact of life, misuse of the law is equally a fact of life and this Court has often
4 come to the protection, of either ordinary citizens or politicians, who have suffered unjust
5 prosecution, intimidation at the hands of agencies of different state governments, irrespective
6 of their political views.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Therefore should we grant immunity to political
9 corruption on the apprehension of a misuse of law?

10

11 **RAJU RAMACHANDRAN:** No. With respect My Lord. No. I'm...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** An apprehended misuse of law is always
14 amenable to protection within the court.

15

16 **RAJU RAMACHANDRAN:** My submission is slightly different My Lords. My submission
17 is that, since this apprehension of misuse, has been at the root of the very grant of privilege
18 and immunity from historical times, it's not that the court is today giving some fresh chit or
19 blanket of immunity. The fact of misuse of persecution by the powers that be is a historical fact
20 of life, whether by powerful monarchs or by powerful executives or even by weak executives,
21 in order to survive. Therefore the court is only being asked to continue, what has stood the
22 test of time.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

25

26 **RAJU RAMACHANDRAN:** Then, My Lords, I give another example of a hate speech. I don't
27 need to read it out. There can be myriad examples My Lords.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

30

31 **RAJU RAMACHANDRAN:** Then My Lords, kindly come to para 25 at page 20. Okay, before
32 that My Lords para 24. Indeed, it does not require much effort to think of other hypothetical
33 examples of adverse consequences of truncating, the already truncated ambit of parliamentary
34 public legislative privileges. While these examples are hypothetical, no doubt what is not
35 hypothetical, is the fact that legislators would be extremely cautious, if not wary, to make
36 statements or give votes against the ruling party in the event the immunity conferred by 105(2)
37 at 194(2) is chiselled even beyond its present form, exposing legislators to prospects of

1 criminal proceedings for votes made or speeches given in the Legislature, merely to equate
2 legislators to common citizens of the country, would only result in them performing their
3 legislative duties with fear and fetters, as against without fears and fetters, which was the
4 original intent of legislative privilege in the first place.

5

6 And My Lords, if the concept of ‘chilling effect’, which Your Lordships have applied in the
7 context of freedom of speech to ordinary citizens; the concept of chilling effect must equally
8 apply in a context like this, My Lords. Then para 25, under the heading ‘Addressing the
9 paradox’ in the **P.V. Narasimha Rao** judgment. ‘One of the criticisms of the of the **P.V.**
10 **Narasimha Rao** judgment, is the paradoxical situation that it has resulted in. An alleged
11 bribe taker, who had abstained from voting, was not granted immunity, while the others
12 were... while the others were who had actually voted in favour of the bribe giver, were granted
13 the said protection. While this paradox may, on the face of it, sound ironic, based on seemingly
14 unintelligible *differentia* between persons of the same class, one does not need to address the
15 following concerns... one does need to address the following concerns before overruling the
16 ratio of **P.V. Narasimha Rao** on this ground. Firstly, (a) this paradox was a result of the
17 reading of the very text of Article 105(2), which confers immunity for a vote made or a speech
18 given by a legislator. A vote not made or a speech not given would, even by the principle of
19 *expressio unius*, stand excluded from the purview of Article 105(2). Secondly, a Constitutional
20 principle resulting in a paradox, does not necessarily mean that such a paradox is not
21 constitutionally permissible. The paradox in the instant case merely results in limiting the
22 scope of immunity conferred under Article 105(2), as observed by this Honourable Court in
23 **Anuradha Bhasin**, albeit in the context of a Constitutional right as against a Constitutional
24 privilege. Such a limitation is certainly permissible, as there is no other alternative measure
25 that may similarly achieve the mischief that Article 105(2) seeks to address, i.e. insulating
26 legislators from being oppressed by the power of the Crown. Paradoxical instances are not
27 unknown to Constitutional law in any case. The very fact the right to vote is not a fundamental
28 right, even though democracy is part of the basic structure of the Constitution, is in itself, the
29 hallmark of a Constitutional paradox. Para 27: It is submitted, that the majority view in **P.V.**
30 **Narasimha Rao** was aware of this dichotomous result, despite which, it laid down the law
31 that it did. The reason for this is certainly not far-fetched. Setting aside a constitutional
32 privilege merely to appeal to what seems ‘logical’, would indeed be antithetical to
33 Constitutional principles, particularly when setting aside the said privilege may lead to
34 catastrophic consequences in the democratic process of the country. I have, My Lords, covered
35 (2) to (5) of my bullet points in my submissions so far.

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37 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

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RAJU RAMACHANDRAN: Now what remains for me, is only to refute the argument of the CBI, that voting in the Rajya Sabha election is not the sort of vote contemplated under 105(2) or 194. I'm sorry, My Lords, in my zeal to stick to time, though there is still time, I omitted to point out two things My Lords, before I come to this last part. Pages 8 and 9.

CHIEF JUSTICE DY CHANDRACHUD: Of the same submission?

RAJU RAMACHANDRAN: Of the same submission, My Lords. Without reading in detail, I'll just draw the court's attention. I'll read out, I won't read out My Lord. The recent *Kerala Assembly* case, where the judgement was authored by My Lord, the Chief Justice.

CHIEF JUSTICE DY CHANDRACHUD: That is my judgment. Right? Where they threw furniture at each other in the Kerala Assembly.

RAJU RAMACHANDRAN: In Parliament, My Lords....

CHIEF JUSTICE DY CHANDRACHUD: Caused a damage of 2,22,000. Let's see, I mean, Constitutional principle emerges on seemingly small issues.

RAJU RAMACHANDRAN: Yeah, they was throwing, My Lords, of objects in Central Parliament My Lords, a Member of Parliament, brought a spray gun, and sprayed pepper, My Lords.

CHIEF JUSTICE DY CHANDRACHUD: Parliament?

RAJU RAMACHANDRAN: Parliament.

CHIEF JUSTICE DY CHANDRACHUD: Bifurcation of the state.

RAJU RAMACHANDRAN: In the context of bifurcation of [UNCLEAR] to the leading industrialist of the State, My Lords. Page 8, My Lords. Yes, I refer to *Ajith* and I just want to read out from the summary of the principles which Your Lordships have culled out from Narasimha Rao's case (a) immunity was granted to the legislators in the **P.V. Narasimha Rao** case. Since the connection between the alleged conspiracy, the bribe and the no-confidence motion was explicit. (b) Given the principles of constitutional supremacy in India, this Court does have the power and authority to determine if a particular case falls within the

1 ambit of Articles 194(2) and 105(2). (c) The purpose of destroying privileges and immunities
2 to elected members of the Legislature is to enable them to perform their functions without
3 hindrance, fear or favour. (d) The first limb of Article 194(2), which provides absolute
4 immunity to members of Legislative Assembly is a manifestation of the freedom provided in
5 Article 194(1). Then para 12, Courts in the UK and Canada have post the **Narasimha Rao**
6 judgment, followed a similar approach when confronted with issues pertaining to
7 Parliamentary public legislative privileges. A necessity test has been uniformly applied to
8 ascertain whether the immunity is sought to be invoked was necessarily connected with
9 legislative functions. Then, given instances of all those cases of different jurisdictions I won't
10 read My Lords.

11

12 And there's only one expression My Lords, which I wanted to draw attention to, because I
13 plagiarized that expression in my submission. I'll just read that. Page 10, bottom, interestingly
14 two learned judges while giving a minority, held that Parliamentary privilege was not an
15 exception to the rule of law, rather, a distinct pillar of the Constitutional architecture. That is
16 what, My Lords, I have plagiarized in para 2, of my bullet points. Now My Lords finally,
17 whether Rajya Sabha election is different in character, from voting on a bill or voting on a
18 motion of no confidence or voting in a Committee of Parliament.

19

20 **P. S. PATWALIA:** This could be on merits [UNCLEAR].

21

22 **RAJU RAMACHANDRAN:** No, there is. It is necessary for this reason...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, that is because the Learned Attorney
25 raised it, would you like to then, just defer it, if the Attorney doesn't raise it, we don't have to...

26

27 **P. S. PATWALIA:** In any case My Lord, this is answered by a separate Five Judge Bench, in
28 ***Kuldip Nayar***..

29

30 **RAJU RAMACHANDRAN:** No, I'm dealing with ***Kuldip Nayar***.

31

32 **P. S. PATWALIA:** So therefore, in coming to the correctness of that view is not before Your,
33 I'm just flagging it for Your Lordship's consideration.

34

35 **RAJU RAMACHANDRAN:** No. In fact, I am dealing with the ***Kuldip Nayar*** here.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Ramachandran, you can summarize that in
2 ten minutes you really help your time. So I'm sure we can give you those ten minutes to look
3 at this last point you're making.

4

5 **RAJU RAMACHANDRAN:** I had said a beyond lunch My Lord. But then...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Very fair, actually. And you can wrap up in 10
8 minutes.

9

10 **RAJU RAMACHANDRAN:** I will.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Then we'll see whether to go into this later,

13

14 **RAJU RAMACHANDRAN:** Lordship please, I'll just give the reference from my written
15 submission and then without reading My Lords, I'll make the argument. Just give me the page
16 for my written submission. Page 22 onwards My Lords.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Let's read that and see how you formulated it.

19

20 **RAJU RAMACHANDRAN:** Yes page 22 (f). Meeting the Respondent's case whether the
21 present case falls within the ambit of Article 194(2). And before that My Lords, I just want to
22 draw attention to Article 80, 80 of the Constitution My Lords. 80, dealing with My Lords, the
23 Council of States, the Rajya Sabha 80(4) Sub-Clause 4, the Representatives of each state in the
24 Council of States, shall be elected by the elected members of the Legislative Assembly of the
25 State, in accordance with the system of proportional Representation by means of the single
26 transferable vote. Therefore voting in the Rajya Sabha, is one of the duties of an MLA, enjoined
27 by the Constitution, not by the representation of People Act. And so the argument is going to
28 be, where is the scope for saying that this voting is not that voting, whether it's on the floor of
29 the House or whether it's in the adjacent lobby. And that is why the distinction which I drew
30 while reading the language of 105 and 194 also. Legislature is used separately, House of
31 Legislature is used separately for authorizing publication, but otherwise legislature is a
32 compendious term. Legislature is something which is in permanent existence, as an organ of
33 the State, just as the Judiciary is in existence and the Executive is in existence. So therefore
34 legislature doesn't mean House of the Legislature. So, if in its capacity as a Member of a
35 Legislature he is constitutionally enjoined to vote, then he has all the protection of Articles 105
36 or 194. And, My Lords, at page 23...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

2

3 **RAJU RAMACHANDRAN:** First part, with para 30 and 31. Para 30, we deal with the sheer
4 logistics of voting. It is in a lobby. In fact, this has also been.... this particular vote that we have
5 given, My Lords, the report of the returning officer, it is in a lobby of the State Legislature.
6 How do you divorce it from the Chamber of the Legislature? This voting has taken place in the
7 Jharkhand Legislature, factually. And then, My Lords, a quick comment My Lords, on the
8 cases which they have cited. One is, *P.N. Sukul*, where the question was whether someone
9 who has been elected to a State Assembly but has not yet taken his oath as a Legislator, whether
10 he can vote in a Rajya Sabha election? That was the question. And in that context, while
11 holding...

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

14

15 **RAJU RAMACHANDRAN:** It was in that context, while holding that his vote was valid, he
16 was entitled to vote, that this Court said that voting in the Rajya Sabha is different from voting
17 on a bill as a Member of the House, and that Mr. Sukul's vote would be valid. No question of
18 immunity or privilege arose. So contrary to the submission made by the Union of India, the
19 facts of the case are relevant. You can't look at the statement of law in the abstract. It arose in
20 the context of this factual submission.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

23

24 **RAJU RAMACHANDRAN:** Similarly, *Madhukar Jetley's* case, My Lords, facts are not
25 clear from what is reported, My Lords. But again, it followed *P.N. Sukul* in this context. And
26 coming to the sheet anchor of both the Attorney General's submission, and the learned amicus'
27 submission, which is *Kuldip Nayar*, so clearly distinguishable on a reading of the mere facts
28 of the case, My Lords. *Kuldip Nayar* challenged two amendments. One is, the domicile
29 requirement. Domicile in a particular state before you could stand for the Rajya Sabha from
30 that particular state. So, this led to very unusual situations it's a historical fact, My Lords, that
31 a distinguished Prime Minister of this country, had to be a resident of Assam to be elected to
32 the Rajya Sabha. This amendment did away with it. First part this Hon'ble Court held it to be
33 valid. The second, was with regard to the secrecy of ballot in a Rajya Sabha election. That was
34 sought to be done away with, to do away with or at least mitigate or reduce the evil of
35 corruption and floor crossing consequent floor quashing in the matter of elections to the Rajya
36 Sabha. So, in the context of the submission, that secrecy of ballot is of the essence of voting,
37 this Honourable Court held while upholding that amendment that, this is not legislative

1 voting, voting for the Rajya Sabha, and that this amendment is valid intended to cure a larger
2 evil. Where was the question of immunity or privilege involved in any of these cases? And how
3 are these cases being cited against me, to say that 194 immunity does not inure to my benefit?
4 So My Lords, completely distinguishable, but if this is to be read as a ratio of **Kuldip Nayar**,
5 then it doesn't have to be part of the order of reference. I am before a bench of seven learned
6 judges, and I submit that if this is what **Kuldip Nayar** means and says, then **Kuldip Nayar**
7 is plainly wrong. But Your Lordships don't have to go to that extent because **Kuldip Nayar**
8 was in such an entirely different context.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

11

12 **RAJU RAMACHANDRAN:** I conclude, My Lords, by earnestly appealing to My Lords, not
13 to interfere with a carefully considered well-reasoned judgment. A judgment which weighs the
14 pros and cons, a judgment which is not unconscious of morality, but still gives plain effect to
15 the words of the Constitution, no ground whatsoever has been made out for Your Lordships
16 upsetting that view. I am grateful for a patient hearing.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank you so much, Mr.
19 Ramachandran.

20

21 **DR. VIVEK SHARMA:** [UNCLEAR] How he can ask me that I have the *locus* or not, Sir?
22 This Court have to [UNCLEAR].

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** These discussions and *taalis* at the Bar have
25 never made a grievance of before the Court, Mr. Counsel. There are some tradition, there are
26 some, exactly as Mr. Sankaranarayanan says, these are privileges.

27

28 **DR. VIVEK SHARMA:** Sir, he is the second highest officer of the Court and he should
29 maintain the decorum of the Court.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** That's all right. This is not a subject matter of
32 this reference. Yes.

33

34 **P. S. PATWALIA:** May it please, Your Lordships.

35

36 **ATTORNEY GENERAL R. VENKATARAMANI:** I didn't want to interrupt in this, it is
37 not my dignity to interfere, but what was said is to offer a seat for so and so assisting me.

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CHIEF JUSTICE DY CHANDRACHUD: One second, sir. One second, sir. Mr. The Attorney General is on his feet. Please observe some dignity of the court. You must observe the dignity of the court. The Attorney General has a right of audience. He's speaking. He's the senior most member of the Bar. He's addressing the court. Allow him to say. Allow him to speak. Yes.

ATTORNEY GENERAL R. VENKATARAMANI: We just asked him whom are you representing, that's about all. I think we should not have asked that question. I think we are wrong. That's about all.

CHIEF JUSTICE DY CHANDRACHUD: Alright, we will leave it at that. We will leave it at that now. That's all right, Mr. we're not going to hear you on this. Leave it at that. Yes, Mr. Patwalia.

P. S. PATWALIA: May it please Your Lordship. My Lord, actually, in my respectful submission, what is really essential for Your Lordships to see is, what is the object and what is the purpose, for which this immunity has been granted, under Article 105, of the Constitution? Because according to me and according to the law, as I have understood it, after **P.V. Narasimha Rao** and even on the international arena, the object is not to give protection to an individual from criminal, ordinary criminal laws. The object instead is, to protect the integrity of the legislative process, by ensuring the independence of the individual legislature. And once that be the object My Lord, the view of course of Justice Agrawal, according to me is the correct view and unless there is participation in a legislative process, there is in my respectful submission no question of the immunity kicking in. And therefore that para which was read according to me, gives the correct enunciation of law. Now My Lord rather than reading, the object and purpose stating in my own words, I wish to read it from **K. Ajith**, a Judgment of Your Lordships. Now I have cited the relevant paragraphs. My written submissions are in Volume 2(A). I have cited the relevant paragraphs in paragraph 15, at page 16, it starts, of Volume 2(A), and I'm just going to read these three, four paragraphs, My Lords, from here itself. This is My Lord, a judgment rendered by My Lords, and authored by My Lord, the Chief Justice, in 2021, so it actually covers the entire earlier period, and also gives a brief background of the historical perspective. I would...

CHIEF JUSTICE DY CHANDRACHUD: Yes.

P. S. PATWALIA: May I just take Your Lordships to para 44 first?

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CHIEF JUSTICE DY CHANDRACHUD: Where are you reading it?

P. S. PATWALIA: Page 16 My Lord.

CHIEF JUSTICE DY CHANDRACHUD: Page 16.

P. S. PATWALIA: Para 15.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

P. S. PATWALIA: From the above cases, it is evident, that a person committing a criminal offense, 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. Then My Lord, Your Lordship traces the entire history of UK development of this law. Tracing the history of the privileges and immunities enjoyed by Members of the House of Common, Askey makes a doctoral division, of the position in the UK, into various phases. However the standout feature which emerges from the privileges and immunities of the Members of the House of Commons, is the absence of an immunity from application of criminal law. This jurisprudential development began in *Sir John Eliot*, was developed by Justice Stephen in *Bradlaugh*, and cemented by the UK Supreme Court in *Chaytor*. There is a valid rationale for this proposition. Now, this paragraph is important My Lord. ‘The purpose of bestowing privileges and immunities to elected members of the Legislature, is to enable them to perform their functions without hindrance, fear or favour. This has been emphasized by a three-judge bench in Lokayukta, Justice Ripu Dayal’. I quoted it separately. I’ll just take Your Lordships there also. ‘The oath of office which members of Parliament and of the State Legislatures have to subscribe, requires them to bear true faith and allegiance to the Constitution of India, as by law established, uphold the sovereignty and integrity of India, faithfully discharge the duty upon which they are about to enter. It is to create an environment in which they can perform their functions and discharge their duties freely, that the Constitution recognizes privileges and immunity’. This is the purpose. ‘These privileges bear a functional relationship to the discharge of functions of a Legislature. They are not a mark of status which make Legislatures stand on an unequal pedestal. It is of significance that, though Article 19(1)(a) expressly recognizes the right to freedom of speech and expression, in as inhering in every citizen, both Articles 105(1) and 194(1) emphasize, that there shall be freedom of speech in Parliament and in Legislature of a State. In a sense, Article 19(1)(a) recognizes an individual right to the freedom

1 of speech and expression, is vested in all citizens. Article 105 and 194 speak about freedom of
2 speech in Parliament and State Legislatures, and in that context, must necessarily encompass
3 the creation of an environment in which free speech can be exercised within their precincts.
4 The recognition that there shall be freedom of speech in Parliament and State Legislature,
5 underlines the need to ensure the existence of conditions, in which elected representatives can
6 perform their duties and functions effectively. These duties and functions are as much a matter
7 of duty and trust, as they are of right inhering in the representatives who are chosen by the
8 people. We miss the wood for the trees if we focus on rights, without corresponding duties cast
9 upon elected representatives. Privileges and immunities are not gateways to claim exemption
10 from general law of the land, particularly as in this case, the criminal law which governs the
11 action of every citizen. To claim an exemption from application of criminal law, would be to
12 betray the trust which is impressed on character of elected representatives as makers and
13 enactors of the law. The entire foundation which is the application for withdrawal of 321...'
14 Then My Lord, I can leave this. The...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** After lunch we'll do.

17

18 **P. S. PATWALIA:** Yes.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Just explain to your learned young junior, some
21 of the traditions of the bar, and just have a word with him.

22

23 **P. S. PATWALIA:** Yes.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Yes Mr.....

26

27 **P. S. PATWALIA:** So My Lord, before I actually take Your Lordships to the Judgment in
28 *P.V. Narasimha Rao*, because ultimately I just want to take Your Lordships through the
29 majority and minority view. Just two paragraphs from the judgment in Lokayukta Justice
30 Ripusudan Dayal's case. I have extracted those two paragraphs. At page 13 of my written
31 submission, in para 14. This is also on the object and purpose why these privileges are there,
32 and what is the purpose they seek to achieve. Para. 14, and at the bottom, I have extracted.
33 This was a judgment, My Lord, where the Lokayukta wanted to start an investigation against
34 some members of the Parliament for construction of the Vidhan Sabah and that was
35 challenged, and 194 was pressed into service to say, that this violates the privileges which are
36 available to members of the Vidhan Sabha. Para. 49, 'After a detailed discussion, Your
37 Lordships have ultimately culled out these conclusions', which are in para. 49 and 52, actually.

1 'As rightly submitted by Mr. K.K. Venugopal, in India there is rule of law and not of men, and
2 thus there is primacy of laws enacted by the Legislature, which do not discriminate between
3 persons to whom such laws would apply. The laws would apply to all such persons, unless the
4 law itself makes an exception on a valid classification. No individual can claim privilege against
5 the application of laws and liabilities fastened on commission of a prohibited Act'. This is... My
6 Lord, the larger issue is as it was discussed in **Raja Ram Pal** also My Lord, that's a detailed
7 judgment of Chief Justice Sabharwal, that rule of law prevails, and that is all pervasive. Now
8 51. 'The scope of privileges enjoyed depends upon the need for privileges. Why they have been
9 provided for. The basic premise for the privilege enjoyed by members is to allow them to
10 perform their functions as members, and no hindrance is caused to the functioning of the
11 House. The Committee of Privileges noted the main arguments that have been advanced in
12 favour of codification, some of which are that', My Lord, then these are... the Committee of
13 Privileges is quoted, actually Clause 1(i), 'are intended to be enjoyed on behalf of the people in
14 their interest and not against the interest'. Then 3(i) they say, that 'these privileges should be
15 the barest minimum, only those necessary for functional purposes'. Then if Your Lordship will
16 come straight away to page 15, para 52. 'It is clear that the basic concept is, that privileges are
17 those rights without which the House cannot perform its legislative function. They do not
18 exempt members from their obligations under any statute which continues to apply to them,
19 like any other law applicable to ordinary citizens. Thus, inquiry or investigation into an
20 allegation of corruption against some members of the Legislative Assembly cannot be set to
21 interfere with the legislative functions of the Assembly. No one enjoys any privilege against
22 criminal prosecution'. So, these two judgments, in my respectful submission, also proceed in
23 line with the minority view. Raja Ram Pal, My Lord, I will come after I take Your Lordships to
24 the judgment in **Narasimha Rao**. My Lord, at page 6, bottom, we have put two extracts from
25 the Parliamentary practice, from May's Parliamentary practice, My Lord, also, which shows
26 why, and for what purpose these privileges exist. And therefore, the effective discharge of
27 legislative functions and protection against any litigation or prosecution on the basis of those
28 legislative functions, My Lord, at page 7, para 16, we have quoted. The sum of... at para 7, page
29 7. Para 7 starts from the previous page. Yeah, para 7, at the top. 'The sum of peculiar rights
30 enjoyed by each House collectively, as a constituent part of the High Court of Parliament, and
31 by members of each House individually, without which they would not discharge their
32 functions and which exceed those possessed by other bodies or individuals'. Then My Lord, it
33 is observed that certain rights and immunities such as 'freedom from arrest or freedom of
34 speech, are exercised primarily by individual members of each House. They exist in order to
35 allow members of each House to effect...contribute effectively to the discharge of functions of
36 their House. Other rights and immunities, such as the power to punish for contempt, and the
37 power to regulate its own Constitution, being primarily to each House as a collective body, for

1 the protection of its members and the vindication of its own authority and dignity.
2 Fundamentally, however, it is only as a means to effective discharge of the collective functions
3 of the House that individual privileges are enjoyed by members'. Then in the restatement of
4 Indian Law, also, the same thing is stated. 'The object and purpose of conferring privilege on
5 Legislature is to safeguard its freedom, authority, and dignity. Privileges are necessary for
6 proper exercise of function entrusted to the Legislature by the Constitution. They are conferred
7 on each House of legislature collectively, to enable it to protect its members, to vindicate its
8 own authority and dignity, and on members and officers in their individual capacity, because
9 the House cannot perform its function without the unimpeded use of the services of its
10 members and offices. Accordingly, privileges are absolutely necessary to enable the Legislature
11 to perform its function'. So, these, in my respectful submission, cannot be stretched to make
12 Members of Parliament immune from ordinary criminal laws, especially for offenses which
13 take place

14 even prior to their coming to Parliament, and which can be independently examined and are
15 complete beforehand. Now My Lord, Your Lordship may kindly come to the judgment in
16 **Narasimha Rao**. It is Volume 5, part 1. Begins at page 705. First, I can take Your Lordships
17 to Justice Agrawal's view, My Lord.

18
19 Correct. These, as my friend rightly points out, there were three issues before the court.
20 Whether Members of Parliament are public servants? So, all three are unanimous, that they
21 are public servants. The second issue was, who is to sanction the prosecution? There, the third
22 judge agrees with Justice Agrawal to say, that in the absence of a sanctioning authority, it is
23 the speaker who can sanction the prosecution, and therefore, Justice Agrawal is the majority
24 view on that issue. It is on the third issue that he becomes the minority view, because the third
25 Judge agrees with Justice Bharucha on that. So, I am only going to take Your Lordships
26 through the relevant parts of the judgment dealing with the issue which arises before Your
27 Lordships. So, My Lords, at 722, the Judgment starts.

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29 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 5?

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31 **P. S. PATWALIA:** Of Volume 5, part 1. At 730....after noticing the factual matrix... at 730,
32 the questions are formulated. The two questions arising for consideration at the bottom of the
33 page, can be thus formulated. 'Does Article 105 of the Constitution confer any immunity on a
34 Member of Parliament from being prosecuted in a criminal court for an offense involving offer
35 or acceptance of bribe?' That is the issue, My Lord, otherwise the second question in two parts
36 was, 'Is a Member of Parliament excluded from the ambit of the 1988 Act for the reason that
37 he is not a person who can be regarded as a public servant as defined under 2(c) of the Act?'

1 This is answered by all three by saying he is, and he is not a person comprehended in Clauses
2 (a), (b), (c) of Sub-section 1 of Section 19, and there is no authority competent to grant sanction
3 also by majority, is answered by the Court. Now, My Lord, the discussion on the first question
4 begins from page 731, and the English position is discussed first. I need not read it. I'll show
5 Your Lordship later ultimately which and the English laws, but just to give Your Lordships a
6 bird's eye view of how the Judgment proceeds. Then, after discussing the English position in
7 detail at page 734, the Australian judgment My Lord, **R vs White** is discussed. Then at 736,
8 **Bunting** is discussed, that is the position in Canada. 736. These two paras My Lord, in fact, I
9 would read them. I can read them right here to Your lordships. These are the only two
10 paragraphs which I also wish to read. If Your Lordship will have Chief Justice Wilson in
11 **Bunting**. To my mind, up... in the middle of... lower half of the page, 'A proposition very clear
12 that this Court has jurisdiction over the offense of bribery, as at the common law, in a case of
13 this kind, where a Member of the Legislative Assembly is concerned, either in the giving or in
14 the offering to give a bribe or in taking of it for or in respect of any of his duties as a Member
15 of that Assembly. It is equally clear, that the Legislative Assembly has not the jurisdiction
16 which this court has in a case of the kind. It is clear that the ancient definition of bribery is not
17 a proper or legal definition of the offense'. Justice Ahmed, this is the very first paragraph of
18 his judgment, My Lord. He opens like this by saying, 'I think it is beyond doubt that bribery of
19 a Member of the Legislative Assembly of the Province of Ontario to do any act in his capacity
20 as such is an offense at common law and is indictable and punishable as a misdemeanour'.
21 Then, My Lord, the position in United States is discussed from page 737. **Burton** is discussed,
22 then **Brewster** is discussed in detail at page 738. I will refer to **Brewster**, My Lord. Just a
23 few paragraphs in **Brewster**, after I finish this judgment. Now, My Lord, then at para 23
24 onwards at page 739, it is recorded that having taken note of the legal position, he examines
25 the legal position in India.

26

27 Then that position is examined, I'm not going to read the whole of it. But, he also notices at
28 para. 26 that, this question as on that day, had not come up for consideration before any court.
29 Para. 26. The question whether a Member of Parliament can claim immunity from prosecution
30 before a criminal court on charge of bribery in relation to proceedings in Parliament, has not
31 come up for consideration before the Court, and has to be examined in the light of the
32 provisions contained in the Constitution. Then the provision is discussed. Really the
33 conclusions start from para 41 onwards. If Your Lordship would come to para 41, at page 749.
34 Para 41 to para 46 are the five paras, where the principle in **Brewster** and other principles
35 all over the world are accepted, and 46... then 47, two conclusions are recorded in para 47, that
36 an interpretation otherwise would be subversive of the rule of law and the immunities after
37 speech. So just kindly at para 41 at page 749. 'As indicated earlier, Article 105(2) is in two parts.

1 In these appeals, we are required to consider the first part, which provides that no Member of
2 Parliament shall be liable to any proceedings in any court in respect of anything done or any
3 vote given by him in Parliament or any committee thereof. The immunity that has been
4 conferred by this provision, is only on a Member of Parliament with regard to liability in any
5 proceedings in any Court, which would include civil as well as criminal proceedings, and in
6 respect of anything said or any vote given by such Member in Parliament, or in any committee
7 thereof. Then, My Lord, 42, I can leave the argument. Just kindly have para43, the Attorney
8 General's argument. 'The learned Attorney General has, on the other hand, argued that
9 immunity granted under Clause 2 of 105 is intended to protect a member from liability arising
10 out of a speech made by him or vote given by him, and it cannot be extended to cover the
11 conduct of a member who has received bribe or has entered into a conspiracy to commence
12 the offense of bribery in order to make a speech or cast a vote in Parliament. The submission
13 is, that the expression 'in respect of' in Clause 2 of Article 105 must be so construed, so as to
14 ensure that the immunity conferred under Clause 2 is only available in respect of legitimate
15 acts of Members of the Parliament, and cannot be invoked to secure immunity against any
16 criminal acts committed by a Member in order to make a speech or give his vote in Parliament
17 or any committee thereof'. Then according to the Attorney General, the expression 'in respect
18 of' must be construed to mean 'for', then reliance has been placed in so and so. Then My Lord
19 in para 44. If Your Lordship can come to page 751, just two lines above Placitum D, that's
20 where the Court is really speaking. 'These observations in **Tej Kiran Jain** emphasized the
21 object underlying the immunity that has been conferred under Article 105(2), namely, that the
22 people's representative should be free to exercise their functions without fear of legal
23 consequences. Borrowing the words of Chief Justice Burger, it can be said that this
24 immunity...' this is the US in *Brewster*, 'that this immunity has been granted to protect the
25 integrity of the legislative process by ensuring the independence of the individual legislatures.
26 It cannot be given a construction which would lead to Article 105, a charter for freedom of
27 speech in Parliament, being regarded as per the phrase by Lord Salmon, 'A charter for
28 corruption source as to elevate members of Parliament as super citizens immune from
29 criminal responsibility'. Chief Justice Burger in **Brewster**. 'It would indeed be ironic if claim
30 from immunity for prosecution founded on the need to ensure independence of Members of
31 Parliament in exercising their rights to speak or pass their vote in Parliament, could be put
32 forward by a member who has bartered away his independence by agreeing to speak or vote in
33 a particular manner in lieu of illegal gratification that has been paid or promised. By claiming
34 immunity, such a member would only be seeking a license to indulge in such corrupt practice.
35 It is no doubt true, that a member who is found to have accepted bribe in connection with
36 business of Parliament, can be punished by the House for contempt, but that is not a
37 satisfactory solution. In exercise of its power to punish for contempt, the House can convict a

1 person to custody, may also order expulsion or suspension from the service of the House.
2 There is no power to impose fine. The power of committal cannot exceed the duration of the
3 session, and the person, if not sooner discharged, is immediately released from confinement
4 on prorogation'. Then My Lord, the Houses in Parliament in India cannot claim a higher
5 power. Then Salmon has stated.... then I can leave all this My Lord, and come straight to para
6 47 actually, because, that's where everything is ultimately concluded. 'As mentioned earlier,
7 the object of the immunity conferred under Article 105(2), is to ensure the independence of
8 the individual legislatures. Such independence is necessary for healthy functioning of the
9 system of Parliamentary democracy adopted in the Constitution. Parliamentary democracy is
10 part of the basic structure of the Constitution. An interpretation of provisions of Article 105(2),
11 which would enable a Member of Parliament to claim immunity from prosecution in a criminal
12 court for an offense of bribery in connection with anything said by him or a vote given by him
13 in Parliament or any committee thereof, and thereby place such member above the law, would
14 not only be repugnant to healthy functioning of Parliamentary democracy, but would be
15 subversive of the rule of law, which is an essential part of the basic structure of the
16 Constitution'. This is very important because we here have a
17 written Constitution, unlike England. 'It is settled law, that while interpreting the
18 Constitutional provisions, the Court should adopt a construction which strengthens the
19 foundational features and the basic structure of the Constitution. The expression 'in respect
20 of' precedes the words, 'anything said' or 'any vote given' in Article 105(2). The words 'anything
21 said' or 'any vote given', can only mean speech which has already been made, or vote which
22 has already been given. The immunity from liability therefore comes into play, only if speech
23 has been made or vote has been given'. Now my learned friend made a comment on this My
24 Lord. My respectful submission is, if we see the object for which the immunity is there, then
25 unless a proceeding takes place in the Parliament, there is no question of the immunity being
26 claimed by that member. The immunity is only for what is said or done in Parliament. And
27 therefore, this view which is taken, that it comes into play only if a speech has been made or
28 vote has been given, is the correct position in law. The immunity would not be available in a
29 case where speech has not been made or a vote has not been given, when there is prior
30 agreement where a Member of Parliament has received an illegal consideration in order to
31 exercise his right to speak or give vote in a particular manner, on a matter coming up for
32 consideration before the House. There can be two possible situations. There may be an
33 agreement wherein there a member accepts illegal gratification and agrees not to speak in
34 Parliament or not to give his vote in Parliament. The immunity granted under 105 would not
35 be available to such a member. He would be liable to be prosecuted on the charge of bribery in
36 criminal court. What be the position? If the agreement is that in lieu of illegal gratification
37 paid or promised, member would speak or give his vote in Parliament in a particular manner,

1 and he speaks and gives his vote. As per the wider meaning suggested by Mr. Rao for the
2 expression 'in respect of', the immunity for prosecution would be available to the member who
3 has received illegal gratification under such an agreement for speaking or casting his vote, and
4 who has spoken or given his vote in Parliament as per the said agreement, because such
5 acceptance of illegal gratification has a nexus or connection with that speaking. If the member
6 would be liable to be prosecuted on a charge of bribery, if he accepts the bribe for not speaking
7 or not giving vote on a matter under consideration before the House, but he would enjoy
8 immunity for prosecution for such charge. If he accepts the bribe for speaking or giving vote
9 in a particular manner, and he speaks or gives his vote in that manner, it is difficult to conceive
10 that framers of the Constitution intended to give such a distinction in the matter of grant of
11 immunity between a Member of Parliament who receives a bribe for speaking or giving in a
12 particular manner, and those who speak, and a Member of Parliament who receives bribe for
13 not speaking'. Then a few lines later, 'Such an anomalous situation would be avoided if the
14 words 'in respect of' are construed to mean arising out of. If the expression 'in respect of' is
15 construed, the immunity conferred under 105(2) would be confined to liability that arises
16 from, out of, or is attributable to something that has been said or to a vote that has been given
17 by a Member in Parliament or any committee thereof. The immunity would be available only
18 if the speech has been made or vote has been given, is an essential and integral part of the
19 cause of action for proceedings giving rise to immunity. The immunity would not be available
20 to give protection against liability for an act that precedes the making of the speech or giving
21 the vote to Member of Parliament, even though it may have a connection with the speech made
22 or the vote given by a member. If such an act gives rise to liability which rises independently
23 and not dependent on the making of speech or giving vote in Parliament'. Now, My Lord,
24 another example arose in *Ajit*, where they started destroying public property. That had
25 nothing to do with their functions in Parliament. And therefore, Your Lordship said, that the
26 immunity would not be available for such an Act. Such...

27

28 **JUSTICE P. S. NARASIMHA:** Mr. Patwalia, here it is about substituting in respect of
29 interpreting 'in respect of', with 'arising out of'. That doesn't fully answer the positive
30 expressions of 'anything said' or 'any vote given'. It doesn't answer...

31

32 **P. S. PATWALIA:** What the judge...

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34 **JUSTICE P. S. NARASIMHA:** It says on the event of positive exercise of 'anything said' or
35 'vote given'.

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37 **P. S. PATWALIA:** Correct.

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JUSTICE P.S. NARASIMHA: It doesn't substitute with proceedings, in other words saying...

P. S. PATWALIA: No Member of Parliament...

JUSTICE P.S. NARASIMHA: proceedings... to convert it as proceedings...

P. S. PATWALIA: No Member of Parliament shall be liable to any proceedings in any court... that's prosecution in any court or other proceeding... of 'anything said' or 'any vote given' by him in Parliament.

JUSTICE P.S. NARASIMHA: There's a positive expression used there, which is, that there is an act of not mere participation. There was a positive expression of 'said', that spoken in the Parliament...

P. S. PATWALIA: Correct or 'any vote given'...

JUSTICE P. S. NARASIMHA: ... as against keeping quiet.

P. S. PATWALIA: Correct.

JUSTICE P.S. NARASIMHA: ...without expressing, or a member can be bribed not to speak.

P. S. PATWALIA: Correct.

JUSTICE P.S. NARASIMHA: So, it says the immunity attaches to what is said. Immunity is attaches to what vote is casted.

P. S. PATWALIA: ...Cast. So, some overt action.

JUSTICE P.S. NARASIMHA: There is an overt action there.

P. S. PATWALIA: Correct is required. In fact, even Justice Bharucha says, if you don't speak, that's what happened to *Ajit*...

1 **JUSTICE P.S. NARASIMHA:** That's the problem.

2

3 **P. S. PATWALIA:** Correct.

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5 **JUSTICE P.S. NARASIMHA:** That's the binary...

6

7 **P. S. PATWALIA:** So, therefore, what Justice Agrawal goes on...

8

9 **JUSTICE P.S. NARASIMHA:** ... 'said' or 'any vote given'.

10

11 **P. S. PATWALIA:** So may I...

12

13 **JUSTICE P.S. NARASIMHA:** ...obligation to actually expecting that immunity will attach
14 only upon being said or a vote casted. But perhaps, whether it is open to interpretation to say,
15 that, this takes within its sweep, participation in the Parliament.

16

17 **P. S. PATWALIA:** Participation can only be...

18

19 **JUSTICE P.S. NARASIMHA:** In the sense, voting or not voting or speaking or not speaking

20

21 **P. S. PATWALIA:** If you are silently participating. Yes. If you are silently participating, then
22 of course there is no immunity, even as the law stands today. If you are silently participating,
23 and you have done something wrong before. Now, may I attempt to respond?

24

25 **JUSTICE P.S. NARASIMHA:** You are agreeing, therefore with Justice Bharucha's view
26 then. In the sense that, if you don't speak in the Parliament...

27

28 **P. S. PATWALIA:** That's the dichotomy, and that's the anomaly which arises with Justice
29 Bharucha's view. That's the dichotomy. So let me attempt to answer this. The object... What is
30 the object of conferring this immunity? To enable a person to freely speak his mind, to freely
31 express himself without fear of being prosecuted for that. To honestly and vote freely, to vote.
32 So unless there is an expression of opinion or there is a casting of the vote, there is no question
33 in my mind...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** No, Mr. Patwalia, that may be a little difficult.
36 I'll tell you why. Forget the issue of bribery for a moment. [UNCLEAR] completely genuine
37 case, what was this Intended to cover? A person makes a speech in Parliament.

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P. S. PATWALIA: Correct.

CHIEF JUSTICE DY CHANDRACHUD: Somebody sues him or somebody sues that particular Member of Parliament, why did you make this speech? You criticize the Plastic Manufacturer's Association. I am the General Secretary of the Plastic Manufacturer's Association. You have said something which is a falsehood. Why did he make this speech? I sue you for damages for expressing this view in Parliament. Not permissible. Alright?

P. S. PATWALIA: So the immunity will attach.

CHIEF JUSTICE DY CHANDRACHUD: But look at it another way. Suppose somebody files a suit against a Member of Parliament, that by keeping quiet on such an important issue, you have made yourself liable to an action in court or an action for a civil wrong. Can that Member of Parliament not say, 'Well, I didn't speak. I kept quiet, but I am equally immune'. Immunity attaches by virtue the fact that you participated in that.

P. S. PATWALIA: You are participating in proceedings in Parliament. Correct. I agree with that.

CHIEF JUSTICE DY CHANDRACHUD: But if you read this very strictly, it will not. That immunity will not attach to mere participation. But that immunity attaches only when you speak or when you cast the vote.

P. S. PATWALIA: No.

CHIEF JUSTICE DY CHANDRACHUD: So, that would be a very restricted meaning.

P. S. PATWALIA: It will also attach to all proceedings which take place in Parliament. So if you are being prosecuted on the basis of participation in a proceeding in Parliament, then the immunity will attach.

CHIEF JUSTICE DY CHANDRACHUD: But where will it attach? Unless you...if you read Clause 2 strictly, that immunity will not attach.

JUSTICE P.S. NARASIMHA: And it's even more serious implication in cases of non-voting.

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CHIEF JUSTICE DY CHANDRACHUD: Could be intent of Clause 2 have been only to protect those Members of the Legislature who either speak or who actually cast a vote. Actually abstention... There may be three situations. You cast a vote in favour of a motion, you cast a vote in against the motion, or you abstain. The act of abstention is as much as a casting of a vote because it is participation.

P. S. PATWALIA: That is like NOTA. That is like..

CHIEF JUSTICE DY CHANDRACHUD: And you know, if you read Clause 2 very strictly, it will refute the purpose of 105(2). The purpose of 105(2) is to ensure that Members of Parliament are able to conduct themselves without fear of any proceedings, either within or outside; really outside. Now, if you confine it only to those who speak and those who cast the vote, the other Members of Parliament who are not speaking, who are not casting their votes, can they may be made liable?

P. S. PATWALIA: But logically, My Lord, that would have to be included, because then they are participative.

CHIEF JUSTICE DY CHANDRACHUD: They have to be included in [UNCLEAR].

P. S. PATWALIA: I cannot suggest to Your Lordships that, that will not have to be included, because that is also equal participation. And there, the liability is arising out of an act of participation in the proceedings of Parliament. So by silence also, you are...

CHIEF JUSTICE DY CHANDRACHUD: But therefore, if you read 105(2)...

P. S. PATWALIA: I understand. If you...

CHIEF JUSTICE DY CHANDRACHUD: ...their participation...

P. S. PATWALIA: Correct.

CHIEF JUSTICE DY CHANDRACHUD: ... is, the dichotomy which arises from the judgment of Justice Bharucha is lost. In which case, even Mr. Ajit Singh would have been entitled by the logic of Justice Bharucha.

1 **JUSTICE P.S. NARASIMHA:** But at the same time, the difficulty of...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** The difficulty which Justice Agrawal felt, has the
4 anomalous consequence which would arise, may not really arise. If you read Article 105(2), to
5 encompass mere participation in Parliament or the State Legislature.

6

7 **P. S. PATWALIA:** Then, as per Justice Bharucha's judgment, even *Ajit Singh* would have
8 had the benefit, of the privilege.

9

10 **JUSTICE P.S. NARASIMHA:** It's a different matter, so therefore they don't...

11

12 **P. S. PATWALIA:** Unless the situation is different, if he did not go at all.

13

14 **JUSTICE P.S. NARASIMHA:** Mr. Patwalia...

15

16 **P. S. PATWALIA:** If he didn't go at all. If he takes the money and doesn't go at all, then the
17 situation is different. Then he... So therefore, what I am trying to submit to Your Lordships is,
18 participation is important.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Participation is important.

21

22 **P. S. PATWALIA:** Because, if he had not gone at all, then of course, there is no question of
23 any immunity.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** On a lighter vein, the lawyer for a Respondent
26 who keeps quiet in the court knowing that he has a difficult case for the Judges against the
27 Petitioner, let me keep quiet, is equally participating in the proceedings [UNCLEAR].

28

29 **P. S. PATWALIA:** He's entitled to his [UNCLEAR].

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** The immunity which attaches to everything
32 which is said in presence of this, realm of this Court.

33

34 **P. S. PATWALIA:** He is entitled to raise his memo, My Lord, equally.

35

36 **JUSTICE P.S. NARASIMHA:** Thats very effective, many times.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Very effective. Likewise, in Parliament also, the
2 immunity attaches to every constituent member of the Parliament, irrespective of what you
3 are doing there. Whether you are actually speaking, whether you are giving your vote.

4

5 **P. S. PATWALIA:** Participation will have to be included. Even a silent participation will have
6 to be included, My Lord. I would also submit that, that's the correct view.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** And that is also, brother Justice Sanjay Kumar
9 goes for lunch also, said your right to speak includes the right not to speak.

10

11 **P. S. PATWALIA:** Yes, yes.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** This will take care of that.

14

15 **P. S. PATWALIA:** Yes. So, participation will equally confer the immunity. That is the correct
16 position.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** So really then, both stand on the same footing.
19 So, Justice Bharucha's dichotomy will cease to exist, and Justice Agrawal's criticism of the
20 dichotomy, they will cease to exist. Now, our question is, whether.... Now the question, the
21 basic question is whether there's an immunity from criminal prosecution, irrespective of
22 whether you spoke or you did not speak?

23

24 **P. S. PATWALIA:** That Your Lordship will have to examine in the light of the object and
25 purpose for which these privileges were granted.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** That's your [UNCLEAR], right?

28

29 **P. S. PATWALIA:** Yes, for which these privileges were granted at all.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** In your submission, bribe given to speak, no
32 immunity. Bribe given not to speak, no immunity. So that dichotomy doesn't exist. Once
33 there's a bribe, that is independent of your... the object is not to protect bribe takers or bribe
34 givers. The object is really to ensure that there is a freedom of dialogue inside, freedom of
35 discussion in Parliament.

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37 **P. S. PATWALIA:** So there...

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CHIEF JUSTICE DY CHANDRACHUD: The only thing which is, which Justice Bharucha has also said, which is a little point which may, we may consider. Of course, that's a question of misuse. But, that weighed with the learned Judge. Will this be then misused by... ?

P. S. PATWALIA: Justice Agrawal also addresses it. He says, 'Merely because there is a possibility of misuse, is no ground to give it any extra coverage or to take it any further'. He's addressed that. But then one thing which Justice Agrawal says, and which my learned friend Mr. Raju, found fault with was, then it is post the event. Participation is essential. Therefore, Justice Agrawal says, 'Unless you participate, and therefore, a prior action, if it attaches, a criminal liability in any case is not immune under this privilege, 105'. There... so unless for any...the 105 even on its bare reading says, 'anything said or any vote given by him in Parliament.' So, participation. Correct. So, para. 50 onwards is precisely this what Justice Agarwal discusses. Para. 50 onwards.

JUSTICE M.M. SUNDRESH: ...will come *quay* the participation.

P. S. PATWALIA: Correct.

JUSTICE M.M. SUNDRESH: So, there's nothing to do with the other one.

P. S. PATWALIA: This is what Justice Agrawal says, 'That the offense of bribery is complete with the acceptance'.

JUSTICE M.M. SUNDRESH: Therefore, it is open to the Parliament to either protect him or take appropriate action on that. You can even... supposing in case of break and then voting takes place. It can incidentally take note of the background and then nullify the vote or clear the vote. To that extent, it has got the power.

P. S. PATWALIA: Now, *Raja Ram Pal* expelled him. Expulsion is also... Now, they are within their powers to expel him also. But that will not take away the offense which he has already committed

JUSTICE M.M. SUNDRESH: That act of the Parliament cannot be questioned in a Court of Law.

P. S. PATWALIA: Correct, correct.

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JUSTICE P.S. NARASIMHA: So, irrespective of whether he has actually acted...

P. S. PATWALIA: Cannot be questioned. *Raja Ram Pal* takes a view, sorry, just one line of answer.

JUSTICE P.S. NARASIMHA: Yes, go ahead.

P. S. PATWALIA: Chief Justice Sabharwal says, 'It is open to judicial review'. And the argument raised there, the Additional Solicitor General said that, 'Only on Constitutional Infirmary'. He rejects that also. He says, even illegalities we can examine, except what is covered under 122, the procedural part, that we cannot examine. I'm sorry... Your Lordships were saying...

JUSTICE P.S. NARASIMHA: No, that's okay.

P. S. PATWALIA: Now, therefore, if Your Lordship will see page 753, two lines above Placitum. G. 'The immunity will be available', this part is correct My Lord, is my respectful submission. 'The immunity would be available only if the speech has been made or the vote has been given, is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity will 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', this is what My Lord Justice Sundresh was saying, 'and does not depend on the action of making the speech or giving the vote in Parliament by such member. Such 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'. My respectful submission is, My Lord, these observations are absolutely correct and deserve to be accepted and approved by Your Lordships. This is the correct position. Then, My Lord, this part finishes here, even though there are next two paragraphs, the quotation. Then Your Lordships may come to para 50, because that's the next thought now, being developed, as to when the offense of bribery is complete. The para 50 to 52 is that thought now. '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 a bribe by the Member of Parliament for the purpose of speaking or giving his vote in Parliament in a particular manner on a matter pending

1 consideration before the House, and independent liability which cannot be said to arise out of
2 anything said or any vote given by the Member in Parliament? In our opinion, this question
3 must be answered in the affirmative. The offense of bribery is made out against the receiver if
4 he takes or agrees to take money for a promise to act in a certain way. The offense is complete
5 with the acceptance of the money or on the agreement to accept the money being concluded,
6 and is not dependent on the performance of the illegal promise by the receiver. The receiver
7 of money will be treated to have committed the offense even when he defaults in the illegal
8 bargain. For proving the offense of bribery, all that is required to be established is, that the
9 offender had received or agreed to receive money for a promise to act in a certain way, and it
10 was not necessary to go further and prove that he actually acted in that way'. So, the offense is
11 independent, is the view taken in para 50. The same view is taken in para 51, for the offense of
12 criminal conspiracy.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

15

16 **P. S. PATWALIA:** Para 51, My Lord, I will not read the definition. Just after the definition is
17 extracted, two lines above placitum D it says, 'The offense is made out when two or more
18 persons agree to do, or cause to be done an illegal act, or when two or more persons agree to
19 do or cause to be done by illegal means, an act which is not illegal. In view of the proviso to
20 Section 120(a) IPC, an agreement to commit an offense shall by itself amount to criminal
21 conspiracy, and it is not necessary that some act besides the agreement should be done by one
22 or more parties to such agreement in pursuance thereof. This means, that the offense of
23 criminal conspiracy would be committed if two or more persons enter into an agreement to
24 commit the offense of bribery. It is immaterial whether in pursuance of that agreement, the
25 act that was agreed to be done in lieu of payment of money, was done or not'. So it is
26 independent, both these. Now this is then concluded in paragraph 52. I'll just read para 52.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Yes

29

30 **P. S. PATWALIA:** The criminal liability incurred by a Member of Parliament who has
31 accepted bribe for speaking or giving vote in Parliament in a particular manner, thus arises
32 independently of the making of the speech or giving of vote by the member, and the said
33 liability cannot therefore be regarded as a liability in respect of anything said or vote given in
34 Parliament. We are therefore of the opinion, that the protection granted by Article 105(2)
35 cannot be invoked by any of the appellants to claim immunity from prosecution on the
36 substantive charge in respect of offenses punishable under Section 7'. Then My Lord 13(2),
37 131(1) et cetera. Then of the Act.

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CHIEF JUSTICE DY CHANDRACHUD: Once you regard it as a criminal... as an independent liability, then it is not contingent on whether he actually gave a vote, didn't a give vote, whether he actually spoke or didn't speak.

P. S. PATWALIA: Correct.

CHIEF JUSTICE DY CHANDRACHUD: Then the actual performance of the bargain in Parliament is irrelevant.

P. S. PATWALIA: Correct. Absolutely. In fact, if Your Lordship will read para 755, at the top, the last line above paragraph... What Your Lordship just observed is exactly what is stated at page 755, three lines above para 51. After discussing on bribery. 'For proving... ' Three lines above para 51, at 755. 'For proving the offense of bribery, all that is required to be established, is that the offender has received or agreed to receive the money for promise to act in a particular way, and it is not necessary to go further and prove that he actually acted in that way. So, whether he actually went and voted or didn't vote, etc. that's not relevant at all. The last para of the judgement is 55, where the apprehension or the fears which were expressed by my learned friend Mr. Raju, were expressed there and they have been dealt with. That that cannot be a ground to give an interpretation which is not as per law. Para 55 at page 758. Before we conclude, on this aspect relating to claim for immunity from prosecution, we would deal with the contention urged by Shri D. D Thakur, wherein he has laid emphasis on the practical political realities. The submission of Shri Thakur is, during the course of election campaign, a candidate receives financial contributions and also makes promises to the electorate, and that if the immunity under Article 105(2) is not available, he would be liable to be prosecuted if after being elected as a Member of Parliament, he speaks or gives his vote in Parliament in fulfilment of those promises. The learned Counsel has placed reliance on the dissenting judgement of Justice White and Brewster where he has expressed the view, that permitting the Executive to initiate prosecution of a member of the Congress for the specific crime of bribery, is subject to serious potential abuse, that might endanger the independence of the legislature. Chief Justice Burger has however, pointed out that there was no basis for such an apprehension, in as much as, no case was cited in which bribery statutes have been applicable to members of the Congress for over 100 years, have been abused by the executive branch. The learned Chief Justice has stated, 'We do not discount entirely the possibility that an abuse might occur. But this possibility which we consider remote, must be balanced against the potential danger flowing from either the absence of bribery statute applicable to the members of the Congress, or a holding that the statute violates the Constitution. As we have

1 noted at the outset, the purpose of the speech or the debate clause is to protect the individual
2 legislature, not simply for its own sake, but to preserve the independence and thereby, the
3 integrity of the legislative process. But financial abuses by way of bribes, perhaps even more
4 than executive power, would gravely undermine legislative integrity and defeat the right of
5 public to honest representation. Depriving the executive of the power to investigate and
6 prosecute and the judiciary of the power to punish bribery of members of Congress, is likely
7 to enhance legislative... is unlikely, sorry, is unlikely to enhance legislative independence. In
8 the earlier part of the judgement we have found, that for the past more than 100 years,
9 legislatures in Australia and Canada are liable to be prosecuted for bribery in connection with
10 their legislative activities. And with the exception of the United Kingdom, most of the
11 Commonwealth countries treat corruption and bribery by members of their legislature as a
12 criminal offense. In the United Kingdom also, there is a move to change the law in this regard.
13 There appears to be no reason why legislatures in India should not be beyond the pale of laws
14 governing bribery and corruption, when all other public functionaries are subject to such law.
15 We therefore, are unable to uphold the above contention of Shri Thakur. So therefore, the
16 point is My Lord, what flows from this is, that this, such an interpretation would maintain the
17 purity of the legislative process. Rather than, and therefore, it is essential that it should be
18 done. Now My Lord, the other judgment is, starts My Lord from page 782. That is Justice Ray's
19 judgment. 783 is Justice Bharucha My Lord. I'll take Your Lordships to Justice Bharucha's
20 view. In fact, Justice Bharucha's judgment, only two paragraphs really need to be read. Those
21 are paras 133 and 134.

22

23 My Lord I would only refer to 3 or 4 paragraphs from this judgement. If Your Lordships will
24 have page 808, para 133. That is the basis of the whole view taken. Page 808. That 'in relation
25 to' should be given a very broad view, and if there is any nexus, then privileges are attached.
26 That is 133-134. That is really the essence of the judgement. 133-134 broadly interpreted at
27 page 808. 'Broadly interpreted as we think it should be, Article 105(2) protects a Member of
28 Parliament against proceedings in court that relate to or concern or have a connection or nexus
29 with anything said or vote given by him in Parliament. The charge against the alleged bribe
30 takers is, that they were party to a criminal conspiracy and agreed to or entered into an
31 agreement with the alleged bribe givers to defeat the No-confidence Motion by illegal means,
32 ways to obtain or agree to obtain gratification other than legal remuneration from the alleged
33 bribe givers as a motive or reward for defeating the No-confidence Motion and in pursuance
34 thereto. The alleged bribe givers passed on several lakhs of rupees to the alleged bribe takers,
35 which amounts were accepted by them. The stated object of the alleged conspiracy and the
36 agreement is to defeat the No-confidence Motion, and the alleged bribe takers are said to have
37 received monies as a motive or reward for defeating it. The nexus between the alleged

1 conspiracy and bribe and the No-confidence Motion is explicit. The charge is that the bribe
2 takers received bribes to secure the defeat of the No-confidence Motion. While it is true that
3 the charge against them does not refer to the votes that the alleged bribe takers, Ajit Singh
4 excluded, actually cast against the No-confidence Motion, and that it may be established *de*
5 *hors* these votes, as their Attorney General argued, we do not think we can ignore the fact that
6 the votes were cast, and if the facts against the bribe takers are true, they were cast pursuant
7 to the alleged conspiracy and agreement. It must then follow, that the expression 'in respect
8 of' must receive a broad meaning that the alleged conspiracy and agreement had a nexus to
9 and were in respect of those votes, and that the proposed inquiry in the criminal prosecution
10 is in regard to the modification thereof.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** So really Justice Barucha's entire logic is down
13 to a very simple formulation. That the words 'in respect of' must receive the broad...

14

15 **P. S. PATWALIA:** Meaning.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** ... and so long as there is a nexus between act of
18 bribe and the casting of a vote or making of a speech, the immunity is attracted.

19

20 **P. S. PATWALIA:** Correct. Any connection. Any as my friend says, any remote connection
21 also, is enough to bring in immunity. Which is with respect not the correct view.

22

23 **JUSTICE P.S. NARASIMHA:** One problem. Only one aspect of it is, in the event of non-
24 cast of a vote, how does that connection get built, is an issue.

25

26 **P. S. PATWALIA:** Yeah.

27

28 **JUSTICE P.S. NARASIMHA:** Because, many a times the charge gets affirmed by the proof
29 of the pudding. In the sense, eventually he voted. Please have a look. This is what he did.
30 Eventually, he spoke exactly in this manner. Perhaps, some instances on facts may require
31 connectivity, or else it becomes incoherent.

32

33 **P. S. PATWALIA:** In this very case, Ajit Singh...

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35 **CHIEF JUSTICE DY CHANDRACHUD:** Ajit Singh was excluded.

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37 **P. S. PATWALIA:** Ajit Singh took the bribe.

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JUSTICE P.S. NARASIMHA: It is *Ajit Singh*'s clear case.

P. S. PATWALIA: And there that is at 143 para. Para 143. So therefore, just kindly see that. 143. 143 at page 81. 'Our conclusion is that the alleged bribe takers, other than Ajit Singh, have the protection under 105(2). They 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, deserves no immunity under Article 105(2)'. Now what if the bribes to not vote? Here, the bribe was to vote. There can be a bribe to not vote. Then the point is, if the offense is complete at the time of acceptance then performance of the... even under normal law...If a *patwari* takes a bribe for doing a legal act, it's now made an example under the Amended PC Act now. Even if you take a bribe for doing a legal act, you are equally guilty of the offense. Even if you take a bribe and don't do the act, you are still equally guilty of the offense. Only the offer and acceptance has to be proved is the law. And there the Solicitor's written submissions agree with this point. He will cite them himself, but paras 11 to 16, he also takes the same view, and he says so. So My Lord, this is all regarding this judgment, that I have to show Your Lordships. There are 3 or 4 four foreign judgments. Now I will start with reference to *Chaytor*. *Chaytor* is the last of the UK judgments, but it quotes the earlier judgments. It is a judgment of 2010. It is in Volume 5(a), PDF page 104.

My Lord, what I can do is, I will refer to *Chaytor*. Then just to give Your Lordships how the... So *Chaytor* follows, approves *Currie, R vs Currie*. Justice Bharucha does not rely on *Currie* saying it has not been tested in appeal. Now, *Chaytor* is the appellate judgment which approves *Currie*. That is the last position in UK. In US, the first judgment is *Johnson*, which takes a view that the privilege attaches. *Johnson* is then considered in *Brewster*. *Brewster*, the Chief Justice says that after considering *Johnson*, that the privilege does not attach in the case of bribery, and therefore, prosecution is possible in the case of bribery. There is a dissent in *Brewster*. Justice Bharucha relies on the dissent in *Brewster*. And then *Brewster* is subsequently confirmed in *Helstoski*. So what I can do is, those judgments are on the record. I can, so far as *Brewster, Helstoski*, then Canada *Bunting* takes the same view which Justice Agrawal has taken. And in Australia, *Boston* takes the same view with Justice Agrawal has taken. To save Your Lordship's time.

CHIEF JUSTICE DY CHANDRACHUD: You can give us a small...

P. S. PATWALIA: Yes. What I will do is, judgments are on the record with the PDF. I'll make a small note.

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CHIEF JUSTICE DY CHANDRACHUD: With the relevant PDF pages also.

P. S. PATWALIA: Yes, everything will be done. There is a note My Lord, but, we have done it. But today morning, I am myself not satisfied with it. So I'll do a better, slightly more, better job. And then give Your Lordship just one note. One small note. That is...

CHIEF JUSTICE DY CHANDRACHUD: Just two pages actually. Two or three pages, not more than that.

P. S. PATWALIA: Yes. I'll just give the judgment and the citation, and I'll just give one paragraph how it proceeds. But this, I'll just take Your Lordships... in fact, Your Lordships have seen it because Your Lordships have referred to this in *Ajit*. And this is the last word in UK, now. And this clearly holds that the charge of bribery is made out and the privilege is not attached. Though this was not a case of bribery, this was a case of accounting expenses. Parliamentary expenses were not properly accounted for.

JUSTICE P.S. NARASIMHA: Which one is that?

P. S. PATWALIA: This is *Chaytor*. If Your Lordships will have Volume 5(a), PDF page 101 at 104. Kindly have My Lord, this judgment at page 106. Just to read Clause... Article 9 of the Bill of Rights. The spellings are a little off, but I'll read it from here anyway.

CHIEF JUSTICE DY CHANDRACHUD: 109?

P. S. PATWALIA: Page 106, para 12. The claim to privilege. The title starts, 'The claim to privilege'. 'The defendant's content that the Crown has no jurisdiction to try them in respect of the charges on the ground it would infringe Parliamentary privilege'. Now, Article 9 says, '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' and it's much wider than the freedom in 105, My Lord. Now, if Your Lordship will come to 110, is where the discussion starts. Your Lordships, may come to page 111. Just a few paragraphs, I'll take Your Lordships. 111, right at the bottom, para 32. Lord Browne-Wilkinson made similar observation when giving the judgment of Judicial Committee in the privy Council in *Prebble vs Television New Zealand Limited*. These observations are of limited assistance while considering the extent on which Article 9 applies to actions that are incidental in some way connected to proceedings on the floor of either House of Parliament. The suggestion that Article 9 should

1 not be narrowly construed, conflicted with an observation of Viscount Radcliffe when giving
2 advice of the Judicial Committee of the Privy Council in Attorney General of Ceylon. Section
3 14 of the Bribery Act of Ceylon made it an offense to offer an inducement or reward to a
4 Member of House of Representative from doing or forbearing to do any act in his capacity as
5 such member. The issue was the scopes of the words drew an analogy of Article 9. What has
6 come under inquiry on several occasions, is the extent of privilege of a Member of the House
7 and the complementary question, what is a proceeding in Parliament? This is not the same
8 question that now before the Board, and there is no doubt that the proper meaning of the
9 words 'proceeding in Parliament' is influenced by the context in which they appear in Article
10 9 in the Bill of Rights. But the answer given to a somewhat more limited question depends
11 upon a limited consideration is, what circumstances, and in what situation is a Member of the
12 House exercising his real or essential functions for giving proper anxiety to the House to
13 confine its own members? It is important to see the privileges do not cover activities that are
14 not squarely within a member's true function. Alleged bribery of members, in respect of
15 participation in proceedings on the floor of the House of Parliament or in committee, has
16 raised the question of whether the connection between the act of bribery outside Parliament
17 and undoubtedly proceeding in Parliament to which the bribe relates, renders the former,
18 subject to Article 9 or similar privilege'. Then, this discussion starts My Lord. If Your Lordship
19 will turn over the next page, in the middle of the page after **Vasan**, then the Chief Justice
20 Burger is, **Brewster**. At page 524, Chief Justice Burger commented, 'We note at the outset,
21 the purpose of the Speech or Debate Clause is to protect the individual legislature, not simply
22 for his own sake, but to preserve the independence and, thereby the integrity of the legislative
23 process. But financial abuses by way of bribes, perhaps even more than executive power, would
24 gravely undermine the legislative integrity and defeat the right of the public to honest
25 representation. Depriving the Executive of the power to investigate and prosecute and the
26 Judiciary of the power to punish bribery, is unlikely to enhance legislative independence. Chief
27 Justice Burger went on to hold that prosecution for bribery did not infringe the Speech and
28 Debate Clause, because there was no need to show that the defendant, in fact, fulfilled the
29 illegal bargain. It was the acceptance of the bribe that constituted the offense.' Then My Lord
30 dissent is considered. Then 41...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** 41 in fact, they referred to the judgment of
33 **Narasimha Rao**.

34

35 **P. S. PATWALIA:** Yes, **Narasimha Rao** is considered similar to that of the dissent. And
36 then 42 onwards, they start considering **R vs Currie**. 'In '92, a prosecution was brought
37 against a Member of Parliament, Mr. Harry Greenway, for the common law offense of bribery

1 to use his position as a Member of Parliament, to further the interest of a company in his
2 constituency. He applied to have the indictment quashed on the ground, inter alia that the
3 prosecution was precluded by parliamentary privilege. Justice Buckley dismissed the
4 application. He referred with approval to the comments of Lord Salmon in the debate of the
5 House of Lords. Lord Salmon had chaired a Royal Commission on standards of conduct in
6 public life, and the debate was on its report. The passage quoted by Buckley were, 'To my mind,
7 equality before the law is one of the pillars of freedom. To say that immunity from criminal
8 proceedings against anyone who tries to bribe a Member of Parliament, and any Member of
9 Parliament who accepts the bribe stems from the Bill of Rights, is possibly a serious mistake.
10 Now, this Bill of Rights is a charter of freedom of speech in the House, it is not a charter of for
11 corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has
12 no more to do with the topic which we are discussing, than the Merchandise Marks Act. The
13 crime of corruption is complete when the bribe is offered or given or solicited or taken'.
14 Justice Buckley then made the following. It's the same thing My Lord. I don't want to read it
15 again just to save Your Lordships time. Ultimately at Para 47 and 48 are the conclusions. At
16 page 115. 'The jurisdiction to which I have referred to is sparse, does not bear directly on the
17 facts of these appeals'. Because these appeals were some accounting expenses, not directly
18 bribing a member. 'It supports the proposition, however, that the principal matter to which
19 Article 9 is directed is freedom of speech and debate in Houses of Parliament and in
20 Parliamentary Committees. This is where the core or essential business of Parliament takes
21 place. In considering whether action outside the Houses and Committees fall within
22 Parliamentary proceedings because of their connection to them, it is necessary to consider the
23 nature of that connection, and whether if such actions do not enjoy privilege, that is likely to
24 impact adversely on the core or essential business of Parliament. If this approach is adopted,
25 the submission of claim forms for allowances and expenses, does not qualify for protection of
26 privilege. Scrutiny of claims will have no impact on core or essential business of Parliament.
27 It will not inhibit debate or freedom of speech. Indeed, it will not inhibit any of the varied
28 activities in which Members of Parliament indulge or bear in one way or the other. The only
29 thing it will inhibit, is making of dishonest claims'. Then it continues. I'll put the paras in my
30 notes. So, My Lord, I would respectfully submit, that the view of Justice Agrawal is the correct
31 view. The object for which Section 105 was enacted is not to protect a Member of Parliament
32 from the ordinary criminal law, the object is to protect the integrity of the legislative process
33 and to ensure the independence of the individual Legislatures. I am grateful My Lord for
34 patient hearing.

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36 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Patwalia.

37

1 **P. S. PATWALIA:** By tomorrow morning. My Lord. I'll give that, and then my learned friend
2 will upload it and I'll give Your Lordships the page.

3

4 **GOPAL SANKARANARAYANAN:** May I please Your Lordships. I appear for the
5 Intervener IA 193363. I'm afraid, my written submission, while it's on the drive, it may not
6 have been downloaded on your laptops, is what I understand. I checked during lunch. It's
7 Volume 2(c). We were tardy. I mean it was given in the morning. It's in the same format as I
8 had done during Kashmir. So you can tap and go up and down. If I may just start with some
9 preliminaries... Your Lordship saw Article...Your Lordship saw Article 105. Just for
10 completeness, Your Lordship shouldn't miss out on this. Just see Article 361(A). These three
11 provisions are together. 105, 194, and 361(A). This was inserted by way of the 44th
12 Amendment, and doesn't have a direct bearing on this question which Your Lordships are
13 considering, but it has a larger bearing with reference to privilege issue. If I may read that?
14 'Protection of Publication of Proceedings of Parliament and State Legislatures. (1) No person
15 shall be liable to any proceedings, civil or criminal, in any court, in respect of the publication
16 in a newspaper of a substantially true report of any proceedings of either House of Parliament
17 or the Legislative Assembly, or, as the case may be, either House of the Legislature of a State,
18 unless the publication is proved to have been made with malice.

19

20 Provided that nothing in this clause shall apply to the publication of any report of the
21 proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or as
22 a case may be, either House of the Legislature of a state. (2) Clause 1 shall apply in relation to
23 reports of matters broadcast by means of wireless telegraphy as part of any program or service
24 provided by means of broadcasting station as it applies in relation to reports or matters
25 published in a newspaper'. There's an explanation. In this Article, newspaper includes a news
26 agency report containing material for publication in a newspaper. 'Only because Article 105
27 has that provision with reference to authority of Parliament with reference to the report,
28 361(A) seems to have a different flavour'. The authority of Parliament isn't necessary if it's a
29 substantially true report.

30

31 **JUSTICE P.S. NARASIMHA:** In England, there was a prohibition against press or anybody
32 reporting...

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34 **GOPAL SANKARANARAYANAN:** Correct, even if it were true.

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36 **JUSTICE P.S. NARASIMHA:** ... they had the exclusive privilege. They have completely
37 done away with it. We had the provision. So therefore, 361(A) had to be brought in.

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GOPAL SANKARANARAYANAN: So, I just wanted to show that, because when we are looking at the provisions. Now, I'll just respond to two points while, I hope they will be able to download that to see. In the meanwhile...

CHIEF JUSTICE DY CHANDRACHUD: We have already got it. It's on the screen as well.

GOPAL SANKARANARAYANAN: Very well. I'll just start with... just responding to two things that Mr...

CHIEF JUSTICE DY CHANDRACHUD: [UNCLEAR] you can also see it on your screen, this screen right next to you. Likewise, Mr. [UNCLEAR] and Mr. Patwalia.

GOPAL SANKARANARAYANAN: There are two submissions that Mr. Ramachandran had made at the outset. and I wanted to respond to those. The first is with reference to *stare decisis*. He said that has been a position of law which has stood for virtually undisturbed for a while, and you shouldn't disturb it. Now, the fact is, we have repeatedly, disturbed such situations. Factually this court has done that, with the automobile, transport and *Jindal*, with the *Kharak Singh, M.P. Sharma* and *Puttaswamy*. And Your Lordships have repeatedly done that. So, it's not like Your Lordships don't do it. But I think it's critical just to see, for example, and if Your Lordships will come to Volume of the judgments, which is Volume 5. The first judgment in that is, *Bengal Immunity*, which was the earliest opportunity Your Lordships had to consider the wide powers the Court had. That seven judges, and it's page 6 of Volume 5. *Bengal Immunity*. The *Bengal Immunity* was dealing with a fairly unique situation where two benches of five constituted to hear appeals from two separate states on the interpretation of Article 286, had, because the judges constituting the bench had not been the same, had arrived at slightly different conclusions. Now, yet those conclusions were consistent, they were not inconsistent. Your Lordships, at para 20, which you will see at page 18. I'm not going into the rest of it, I'm just reading only the relevant portions. Page 20. Sorry, page 18, para 20. If I can just read that. Lordships, have that? It is to get over effectively the *United Motors* and the other judgments. 'Reference is made to the doctrine of finality of judicial decisions, and it is pressed upon us that we should not reverse our previous decision, except in cases where a material provision of law has been overlooked, or where the decision has proceeded upon the mistaken assumption of the continuance of a repealed or expired statute, and that we should not differ from a previous decision merely because a contrary view appears to us to be preferable. It is needless for us to say, that we should not lightly dissent from a previous pronouncement of this Court. Our power of review, which undoubtedly exists,

1 must be exercised with due care and caution, and only for advancing the public well-being in
2 the light of the surrounding circumstances of each case brought to our notice. But we do not
3 consider it right to confine our power with a rigidly fixed limits, as suggested before us. If on
4 a re-examination of the question, we come to the conclusion, as indeed we have, that the
5 previous majority decision was plainly erroneous, then it will be our duty to say so, and not to
6 perpetuate our mistake, even when one learned judge who was party to the previous decision
7 considers it incorrect on further reflection'. There's a reference to Senior Justice N. H.
8 Bhagwati. 'We should do so, all the more readily, as our decision is on a Constitutional
9 question, and our erroneous decision has imposed illegal tax burden on the consuming public
10 and has otherwise given rise to public inconvenience or hardship, for it is by no means easy to
11 amend the Constitution. Sometimes frivolous attempts were made to question our previous
12 decisions. But if the reasons on which our decisions are founded are sound, they will by
13 themselves be sufficient to safeguard against such frivolous attempts. Further, the doctrine of
14 *stare decisis* has hardly any applications on isolated and straight decision of the Court very
15 recently made, and not followed by a series of decisions based thereon. The problem before us
16 does not involve overruling a series of decisions, but only involves a question as to whether we
17 should approve or disapprove, follow or overrule a very recent previous decision as a
18 precedent. In any case, the doctrine of *stare decisis* is not an inflexible rule of law, and cannot
19 be permitted to perpetuate our errors to the detriment to the general welfare of the public, or
20 a considerable section thereof'. So I comment for Your Lordships consideration, the phrase
21 that they repeatedly use, thrice in this paragraph, is the interest of the public, with reference
22 to the public. And that's, I think most germane in this kind of a situation where you're talking
23 about bribery of public servants at the highest levels. And the second, not to perpetuate the
24 mistake. Now, the reason why I mentioned this 'not to perpetuate the mistake' is because,
25 unlike what Mr. Ramachandran submitted, we appear to find this judgment in **Narasimha**
26 **Rao**, the majority, has not been embraced by this court in the last 25 years. On many
27 occasions, Your Lordships have doubted it. On many occasions, Your lordships have in fact,
28 brought in kicking and screaming into the judgment to say that right now we won't comment
29 on it, but we have doubts about it. And that's why, if Your Lordship sees my submissions, it's
30 just... These submissions are exactly just a few bullet points. It's nine of them. But I'll just
31 mention how it's frame framed. If Your Lordships see, there are these bold portions where I've
32 said, See para 1 at page 4. So the way it is arranged it... from pages. Yeah, if I can see that index
33 pagination, and I'll just show Your Lordships. I won't be reading all of this. There's a lot of it.
34 The second serial number, 'Relevant excerpts in support of written submissions'. So that's
35 where I have extracts of the relevant judgment of the statute there. And from the first two
36 pages, written submissions, if you just click on the bold portion, it will take you automatically
37 there. Bring you back up. And then from that second lot, pages 5 to 18 where we have put the

1 extracts, we have mentioned the PDF and the volume number. So from there, if Your
2 Lordships want to go further, all the other annexures are of them in detail and context, which
3 includes the judgments from the US, UK, Australia, Canada, and New Zealand, with the
4 relevant provision of each country, starting from the Bill of Rights in the 17th century in the
5 UK, and each judgment with the relevant extracts of majority, minority. The second column
6 gives you the background of each judgment, what the factual background was. So, try to put it
7 all in one place, though they all are in the PDF volumes separately. So, I'll just go through the
8 first page, page 1, or page 2, written submission. 'The majority opinion in **Rao** is flawed on the
9 following counts. (1) Artificially creating a link with the Post Bribe Act in Parliament (b)
10 Overlooking when the offense is treated as complete under the Prevention of Corruption Act
11 (c) An over broad interpretation of the phrase 'in respect of' (d) Following the dissenting
12 judgment in **Brewster** and (e) Making a distinction that permitted a bribe taker to be
13 immune when he speaks of votes in Parliament. Now, on this last point, if I can just address
14 Your Lordships I think we're concerned about how we would interpret that vote of speech in
15 Parliament or the Legislature. The interpretations I give is that, it would equally apply to where
16 a vote is not given or a speech is not made, because you could be bribed to do precisely that.
17 If, for example, you go and you abstain and you're paid to abstain, then there is one valuable
18 vote that is lost to the party who would have benefited normally by your vote being given. So,
19 it would equally apply. It's a concomitant, just like you've read freedom of expression into
20 Article 19(1)(a), as a concomitant of the right to speech. This is a concomitant, the right not to
21 vote, or where you have not spoken. But, if you're going to be arraigned for that, you have to
22 be secure. Now this, in fact, is in para 47 of **Narasimha Rao**, the minority judgment. In the
23 middle of the page, Your Lordship should remember the sentence where they said 'Our
24 founding fathers could not have conceived of this kind of situation'. So that Court also frowns.
25 The minority frowns on this kind of artificial distinction between one who votes and one who
26 doesn't vote. So we commend that minority judgment for Your Lordship's consideration. Now,
27 if I could take a step back and just mention one thing, and this is there in both the special
28 reference, as well as **M S M Sharma**. The fact that the protections under 105, 194 are
29 protections for the process of the Legislature. These are not meant to be immunity protections
30 for individuals who happen to be Parliament. That's not the primary object of it. The object is
31 to ensure that the legislative process is unimpeded by any kind of external force. So, if a person
32 is intimidated by the fact that I may be hauled up before a court for something slanderous or
33 libellous, that person is deterred from freely expressing his views. For example, in Parliament,
34 if you have to debate on something sensitive, like a minority issue or caste issue, you may have
35 to go into some sensitive facts. You may have to make statements regarding how people
36 perceive certain issues, and many of them may be objectionable if said in public. But
37 Parliament needs to do that because they are implementing policy via law. So, you need to

1 have that freedom. Now this is not, I repeat, that kind of protection for the individual. It is for
2 the legislative process. It is because the legislative process needs to be unimpeded, that the
3 instruments in that legislative process, who are these legislators, are given those immunities.
4 Therefore, it is very clearly linked to the vote or the speech, or, as Your Lordship sees in 105(3),
5 it deals with other aspects apart from speech and voting, for which a law will be made. Until
6 the 44th Amendment, it had adverted to the common law and said what it was in the House
7 of Commons. But now we have said that it will be prior to that amendment. Now, point number
8 two. The majority opinion in **Rao** has been doubted by this Court on multiple occasions,
9 including by judgments of the Constitution Bench in **Raja Ram Pal** and **Kalpna Mehta**.
10 See, para. 1, at page 4. So, if Your Lordships can just see page 4. These are the three
11 extracts of which Justice Thakker says in **Raja Ram Pal**, while conquering, 'I may state that
12 I'm not expressing any opinion one way or the other on the criminal trial of such acts, as also
13 the correctness or otherwise of the law laid down in **Narasimha Rao**. To me, however, there
14 is no doubt, and it is well settle, that in such cases Parliament has power to take up the matter
15 so far as privileges are concerned, and they can take an appropriate action according to the
16 law. If it feels that the case of *cash for query* was made out and it adversely affected the
17 honesty, integrity and dignity of the House, it is open to the House to attempt to ensure
18 restoration of faith in one of the pillars of Democratic polity'. Separate paragraph, Justice
19 Raveendran also makes reference but then, My Lord Justice Chandrachud, as he then was,
20 with Justice Sikri, also said that the correctness of the view and the judgment of the majority
21 does not fall for consideration in the present case, and Your Lordships have referred to this in
22 the reference order. So, far from being a position of law that has been consistently accepted,
23 there have been severe doubts cast on the correctness of the majority. If I can pause for a
24 minute and respond to the other point that Mr. Ramachandran made, which I've seen in the
25 notes that Mr. Mehta has also submitted, that there are previous instances of Mr. Mudgal, then
26 Mr. Subramanian Swamy, who we are familiar with, and Mrs. Gandhi, Indra Gandhi, all of
27 whom were expelled. And the argument appears to be that look, Parliament has the power of
28 expulsion. But, we have to compare that with what is being argued today. This is about criminal
29 prosecution. Now, if you were permitted criminal prosecution, it's full sway, all the
30 consequences that follow would attend that individual. We can't refer to that person as a
31 member, refer to that individual, that accused. That accused would perhaps be convicted by a
32 court of law, would have to face possibly a jail sentence in many of these cases, face a
33 disqualification under Section 8 of the Representation of People Act for a period after his
34 sentence is completed. Compare that with a situation here, where Your Lordships are being
35 told, 'Oh, look, Parliament can expel'. In Indira Gandhi's case, she was expelled in 1978. That
36 expulsion was rescinded in 1980, because the House felt, no we need her back. Now, that can't
37 be the arbitrary manner in which we leave what is a criminal process to the vagaries of the

1 discipline of Parliament. Parliament will decide separately. That is completely different from
2 a criminal prosecution.

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4 Now, point number 3. The well risen minority opinion, on the other hand, has been relied on
5 by Constitution benches as well in **Kuldip Nayar** and **Amarinder Singh**. Now these two
6 judgments, the paragraphs, Your Lordships will find at pages 56 and 58 of this volume.
7 **Kuldip Nayar** is the second judgment there My Lords, and the relevant portion which is
8 extracted, para. 167, if Your Lordship sees on your screen, the right side. The following
9 observations made in para 47 have been relied upon and it's extracted and then this is in
10 arguments. Para 344 is part of their decision making, where the Parliamentary democracy
11 being part of the basic structure, was reiterated in **Narasimha Rao** and they again extracted
12 from the minority. So the minority far from being shunned as if it's some sort of dissent which
13 they shouldn't touch, is in fact considered, and not by small benches, by Constitution Benches.
14 The same My Lord follows in **Amarinder Singh**, which is just lower down at page 58. If you
15 see the bold portion once again. 'Another comparable instance', the bullet point on the extreme
16 right. 'Another comparable instance is noted by **S.C. Agrawal Jain**, is dissenting opinion in
17 **Narasimha Rao**. Then para 25 is extracted. Question of privilege was disallowed since it
18 was considered the conduct of the member, although improper, was not related to the business
19 of the House. Your Lordships can come back again to page 2. So the minority is, in fact, what
20 has been followed by Constitutional benches and relied upon. (4) the word 'any' employed in
21 Articles 105 and 194, ought to be given a narrow interpretation and should not mechanically
22 be interpreted as everything, especially as it grants an exceptional immunity not available to
23 the common woman/man. Now the reason is, that these provisions are dealing with immunity
24 from criminal prosecution. So, far from giving it a wide interpretation, it should be given the
25 narrowest interpretation. Otherwise, the normal criminal law should apply as much to an MP
26 or MLA, as it would apply to any man on the street, anybody else, subject to whatever sanctions
27 or other procedural impediments they may be. This is a complete immunity. So you are saying
28 you can't be prosecuted, you can't be held guilty under the law, which applies to everybody
29 else. All the more reason that when you give that immunity, that immunity must be in the
30 narrowest fashion, not the broadest. The majority takes wide interpretations of the phrase 'in
31 relation to' and does the same with effectively when the word 'any' is used. So it cannot be that
32 if I have taken money for the purposes of a vote, that as long as I've taken that money and I
33 am walking on my way to Parliament, I am a guilty man on the streets of this country. The
34 minute I enter the portals of Parliament and I cast a vote, immunity. That is not at all the
35 intention of the law. Now, if Your Lordship just comes to page 4. Bottom of page 4. Yes. We
36 have referred to the **NCT of Delhi vs Union of India**. And if you see para 229, at the very
37 top of page 5, 'When I see the word 'any' in a statute, I immediately know it's unlikely to mean

1 anything in the universe. 'Any' will have a limitation on it, depending on the context. When
2 my wife says there isn't any butter, I understand that she's talking about what is in our
3 refrigerator, not worldwide. We look at context over and over in life and in law, often how to
4 do things with words'. Well, these are debates from.... lectures from Harvard University in
5 1955, but it squarely applies even now. So you can't take something so tenuous and remote
6 and say that, we will link it now, it is connected to the vote. Because if that was so, every
7 criminal activity, that an MP or an MLA indulges in, he can say, "Oh, it was meant for the vote.
8 I was just on my way to vote. I ran over somebody on the road, but I was on my way to go and
9 vote". Also, there are some things which slip between gaps and it may come for interpretation
10 at later stage. Consider a situation where the Whip of a particular party is told that look... the
11 Whip tells... is put under some kind of influence, whatever influence it is, and the Whip is then
12 told, "There's a threat, or there's a bribe or whatever. Make sure that all these people vote in a
13 particular fashion". Now that is not technically... the Whip's action is not a vote in Parliament.
14 The Whip's action is not a speech in Parliament. Now could it then be said that the Whip, when
15 giving that instruction to his party members has the immunity. This a question that could
16 arise. I'm just flagging it because many of these things will fall between two stools. Right now,
17 we are looking at speech and we're looking at voting. But an instruction that goes from a Whip
18 to his party members to vote in a particular fashion, may not necessarily be treated as one
19 which is immune, because it is not technically a vote in Parliament by the Whip, it's an
20 instruction that's being given. But, it's so inextricably linked to the legislative process, that
21 maybe those kind of things will be on the margins. Those are not remote. Those are very close
22 to it. But an illegal act can never be brought in. Which is why, as I'll show Your Lordships later,
23 if you take a broad interpretation of both, 'in relation to' and 'any', which are the words used
24 here, you can bring anything which is remote and connected to this and claim a cloak of
25 immunity. As long as you keep it proximate. And for which this Court needs to, perhaps, adopt
26 what the majority in *Brewster* did, which is also something that Your Lordships have done
27 recently. in Ajith's, *State of Kerala vs K. Ajith*, I keep getting the name mixed. Similar to
28 what happened *Ajith's* case. And I think, there is also parallel to be drawn, I'll come to that.
29 With the sanction provisions, 197 of the CRPC, 19 in the Prevention of Corruption Act, the
30 intentions are broadly the same, you have to protect people who are carrying out a function.
31 Now, one is a complete immunity. One is another procedural thing where sanction will be
32 given by somebody else. Now, when you are giving that sanction, can you say, that, "Look, it
33 was in the course of my work for me to take bribes. Therefore, I need to have a sanction". Your
34 Lordships have consistently said, and there is judgment of the Federal Court, Justice
35 Vaidyalingam's judgment, which everybody else agreed with in the early 40s, which has held
36 a consistent position till today, through the 50s, through that *Amroj Singh* and all the way
37 up to *Prakash Singh Badal*, et cetera, that those activities couldn't possibly have any

1 relation with your public duties, your official duties. So you can't say that I need a 197 sanction.
2 It's the same thing which applies here. You can't say that taking a bribe has anything to do with
3 the legislative process. Now the third point, which if Your Lordships will come back to that
4 first page. Fourth point, I've done. Fifth point. 'The expression 'in respect of' must be read
5 narrowly. It must be tied down to legitimate acts that are a part of the legislative process
6 involving speech or a vote in Parliament or before a committee. Any other interpretation would
7 violate the sanctity of the democratic process and the trust placed in the legislators by the
8 voting public'. Your Lordship will remember the phrase, 'bartered a solemn trust'. That is
9 exactly what is taking place here. A solemn trust, that's in para 137 of judgment. A solemn trust
10 is placed in each of these representatives by the people of the country when they vote for them
11 and elect them. They do not anticipate that they are going to betray my vote for you to do
12 something which you have come to me at the hustings and said that as per my manifesto, these
13 are things I'm going to do. You didn't add point 3(a) there. "By the way, I will take bribes to
14 vote. I will take bribes to ask questions". That's not part of it. I wouldn't have voted for you. So
15 the bargain which underpins the democratic system, is completely undone when you allow an
16 individual to get away with that. And that is a betrayal of the solemn trust. Again at page 5,
17 bottom. 'In respect of' and similar phrases which are used in the Constitution, has fallen for
18 interpretation. If Your Lordship will see the first one, which is ***Tolaram Relumal***. Yes.
19 Bottom page 5. 'Giving the words 'in respect of' the widest meaning, which is 'relating' to or
20 'with reference to', it is plain that this relationship must be predicated of the grant renewal or
21 continuance of a lease. And unless, a lease comes into existence simultaneously or near about
22 the time that the money is received, it cannot be said that the receipt was in respect of the
23 grant of a lease.

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25 In our opinion, the language of the section in respect of the grant, renewal or continuance of
26 lease, envisages the existence of a lease and the payment of an amount in respect of that lease
27 or with reference to the lease. Without the existence of a lease, there can be no reference to it'.
28 So, this draws a link with proximity. It cannot be remote, it cannot be far away, there has to be
29 something proximate to it. If Your Lordship sees bottom of page 6, in the concurring judgment
30 of Justice Hidayatullah in ***Madhav Rao Scindia***, para. 67, top of page 7. The bold part is all
31 I'm reading, the bold and underlined part. 'Before I do so, I must say that it's a well-known
32 rule of interpretation of provisions barring the jurisdiction of civil courts, that there must be
33 strictly construed for the exclusion of jurisdiction of civil court, and least of all, the Supreme
34 Court is not to be lightly inferred'. This is dealing with the bar of jurisdictional 362, which is
35 where it says 'in relation to'. 69. 'The second part, bars the Court's jurisdiction in any dispute
36 in respect of any right accruing under any or any liability or obligation arising out of any of the
37 provisions of this Constitution relating to any such treaty, et cetera. Here the dispute must be

1 in respect of a right which accrues under a provision of the Constitution or the liability, or
2 obligation must arise similarly from a provision'. Bottom of that para, 'The requirement is that
3 the Article must be a provision relating to a treaty, covenant, et cetera'. Next para. 'The words
4 are 'relating to'. They mean that the provisions must bear upon treaties, et cetera as its
5 dominant purpose or theme. It is not sufficient if the treaties, et cetera are mentioned there
6 for some collateral purpose'. So, a bribe being given is a collateral purpose. The dominant
7 theme or purpose throughout, is effectively to weigh in on behalf of your constituents on a
8 particular question or a speech that you're giving or a vote that you give. None of this can be
9 linked in any way by taking the wide interpretation of 'in relation to' which has been given.
10 Back to the first page, point number 7... point number 6. 'The offense of bribery is complete
11 on receipt of the bribe well before the vote is given or speech made in Parliament. The delivery
12 of results is irrelevant to the offense being made out, and hence the distinction made in **Rao**
13 is entirely artificial'. If Your Lordships will see the extracts there at page 8. We have made
14 reference and it's broader comparison. It is there as Annexure 6, page 99. Page 99 of the same.
15 Annexure 6 is the comparison of the Prevention of Corruption Act before the 2018
16 Amendment, and at present. It's very clear from its own reading My Lords, the bold portion,
17 if Your Lordship sees on the left side (d). This is Section 7. (d)A motive or reward for doing. A
18 person who receives a gratification as a motive (motive is obviously in advance), or reward for
19 doing what he does not intend or is not in a position to do or has not done, comes within this
20 expression. If you look at the main provision and I won't read it out. But Your Lordships can
21 see that the offense is complete on receipt. So, the fact that I go and vote, is completely
22 unconnected. It's already an offense at that point of time. Once it is an offense at that point of
23 time, an act which takes place or does not take place thereafter, is irrelevant to this. The taking
24 of the bribe is a full offense. Whether you're an MP or an MLA makes absolutely no difference.
25 You cannot then go and say, I made a speech or I gave a vote and I've got immunity. On the
26 second column, Explanation 1; 'For the purpose of this Section, the obtaining, accepting, or
27 the attempting to obtain an undue advantage shall itself constitute an offense, even if the
28 performance of a public duty by public servant is not or has not been improper'. That was
29 inserted in 2018, Your Lordships will find, similarly when you see Section 11 and Section 13.
30 There is no requirement, and that's the interpretation, even in law... there is no requirement
31 for the act to be actually carried out. If I can take Your Lordships back to where those extracts
32 were, which is in page 8, the middle of this, after the extracts of the sections in page 9. This is
33 **Neeraj Dutta**, which is a recent Constitution Bench.

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35 **GOPAL SANKARANARAYANAN:** Yes, My Lord.

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37 **JUSTICE P.S. NARASIMHA:** What will be the situation...you are referring to Section 7?

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GOPAL SANKARANARAYANAN: Yes.

JUSTICE P.S. NARASIMHA: Where there is an agreement that you vote in this particular manner, or you speak in the Parliament, and he performs as per the agreement, and thereafter he gets the money, the bribe, which is agreed? The bribe is received after that.

GOPAL SANKARANARAYANAN: Yes. If I can just read that Section 7, the beginning part. I'm looking at the original Section 7. Either way. 'Whoever being or expecting...' this is page 99. 'Whoever being or expecting to be a public servant, accepts or obtains or agrees to accept...'

JUSTICE P.S. NARASIMHA: That is true.

GOPAL SANKARANARAYANAN: So the agreement is part of it.

JUSTICE P.S. NARASIMHA: You are bifurcating it because...

GOPAL SANKARANARAYANAN: Yes.

JUSTICE P.S. NARASIMHA: ...immunity issue doesn't attach to it, because the offense would have already happened the moment the money is already taken.

GOPAL SANKARANARAYANAN: No, I'm not saying that. The minute agreement to accept. So once the agreement to accept is there, it's complete at that stage. I shouldn't be doing that. As a public servant, I have no business accepting anything external to my public duties. So that's a question of prosecution. The minute it is launched under any of these sections under... or attempts to obtain from any person for himself or for any other person any gratification. Now, please note My Lords, it includes expecting to be a public servant. So at that stage, it could include a situation with a person who's not a public servant.

JUSTICE P.S. NARASIMHA: Correct.

GOPAL SANKARANARAYANAN: So it includes, it's broad enough. And now they've split it up into A B C under the new casting. I would argue.. the completion of the offense is at that point, when I make a demand or when I enter into an agreement, it's over there. Yes, so... I'm sorry... I was at Page 9. My Lords, I'm being urged and rightly so to just read page 85, if I may. Page 85. This is *Rajendra Prasad Jain* judgment of 1967. The extract starts at page 84.

1 Page 85, para 13. Your Lordships have in case number so and so [UNCLEAR] of **Coventry**, it
2 was said, 'With respect to bribery as well as with respect to treating, I shall ever hold it to be a
3 wise and beneficial rule of Constitutional law, quiet apart from so and so.. that for the purpose
4 of securing purity and freedom of election, candidates should be answerable for the Acts of the
5 agents, as well as for their own acts. And proceeding further with regard to mere offers of bribe,
6 it was said, 'Although these cases have been classed below dose of bribery by both the learned
7 Counsel, it cannot be supposed that an offer to bribe is not as bad as the actual payment of
8 money. It is a legal offense. Although these cases have been spoken off as being an inferior
9 class, where reason of the difficulty of proof from the possibility of people being mistaken in
10 their accounts of conversations in which offers were made, whereas there can be no mistake
11 as to the actual payment of money'. Next Page, 86. The two portions which are marked in bold,
12 if I can read that. 'We are unable to accept the propositions suggested by learned Counsel, that
13 an offer of bribery cannot be held to be such unless a specific amount is mentioned in the offer.
14 No such requirement is laid down by law. And if we were to accept this proposition, it would
15 lay the field open for corruption in such a manner as to make the provision totally ineffective.
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17 A candidate wanting to secure a vote by bribery can always go and first ask the voter whether
18 he's prepared to accept money as a bribe and need offer a specific sum only after the voter
19 signify his assent. Once the voter actually accepts the offer, it is not likely that evidence of that
20 instance of bribery will be available. The mere fact that a candidate goes and offers some
21 money, is enough to show that he has already made his offer to corrupt the voter and secure
22 his vote. Though there may still be a possibility that if subsequently negotiation as to the
23 precise amount to be paid, if bribe fails, he may not actually succeed in his objective. They offer
24 bribery in the manner provided in the case in our opinion, clearly satisfy the requirements...so
25 and so.' This is, of course, of Corrupt Practices, not of the Prevention of Corruption Act. But I
26 would say that the same principle would apply, My Lords. If I can take Your Lordships back to
27 page 9. I was just reading from **Neeraj Dutta**, the bold portion dealing with Section 7. Just
28 above. Yes. 'Therefore, under Section 7 of the Act, in order to bring home the offense, there
29 must be an offer which emanates from the bribe giver, which is accepted by the public servant,
30 which would make it an offense. Similarly, a prior demand by the public servant, when
31 accepted by the bribe giver, and in turn there is a payment made which is received by the public
32 servant, would be an off offense of obtainment under sections 13(1)(d)(1)at 2 of the Act. In
33 **Syed Ahmed...** and these are three cases, one after the other, where they say the results are
34 irrelevant. **Syed Ahmed**, para 25. **Ram Kishan**. 'It is enough if, by abusing his position as
35 a public servant, a man obtains for himself any pecuniary advantage (I will say woman as well),
36 entirely irrespective of motive or reward for showing favour or disfavour'. And the third,
37 **Dhaneshwar Narain Saxena**, 'It is not necessary to constitute the offense, under Clause

1 D (this is of the old Preventive Corruption Act), of the Section that the public servant must do
2 something in connection with his own duty and thereby obtain any valuable thing or pecuniary
3 advantage. It is equally, et cetera'. My Lords, then there are three other judgments, including
4 a reference to **Brewster** itself. And then if I can take Your Lordships back, if you can just go
5 to Volume 6, My Lords. We have put some legislations at the absolute back of Volume 6. And
6 relevant one. Yes, at page 2025. Volume 6, page 2025. Yes, the absolute last document. 2025,
7 Volume 6. So, this is the Lokpal Act, and this is relevant. One thing you may note is... Of course,
8 this is a classic case, **Narasimha Rao**. If I may digress for a minute. I was in college when
9 this judgment came out, and Professor K.C. Sunny, who was on the Cochin University and set
10 a moot problem, which we had occasionally taken part in, where he merged **Kihoto**
11 **Hollohan's** facts and **Narasimha Rao's** facts. And as the first blush law students, it came
12 as a shock to us that **Narasimha Rao** said what he did, and we had to try and justify it. Now,
13 that judgment was very important, **Narasimha Rao**, because of the way it helps young
14 students understand how ratios are culled up. Because, three judges are majority on one point,
15 they are in min... two of them are in minority on another point, and they're unanimous on the
16 third point. So, on this sanction point, I just want to show, just a minute before you rise.
17 Section 2(c) brings in that the competent authority will be the Speaker and the Chairman. But
18 just see Section 14 for a minute. Section 14 is at page 2030, bottom of 2030 and there, subject
19 to other provisions of this Act, the Lokpal shall inquire a cause and inquiry to be made. And
20 (b) says any person who has been a Minister of the Union, (c) which is at 2031, says any person
21 who is or has been a member of either House of Parliament. And then Sub-Section 2, which is
22 on the next page 2032. Notwithstanding anything contained in Sub-Section 1, the Lokpal shall
23 not inquire into any manner, into any matter involved in arising from or connected with any
24 such allegation of corruption against any member of either House of Parliament in respect of
25 anything said or a vote given by him in Parliament, or any committee thereof covered under
26 the provisions contained in Clause 2 of Article 105 of the Constitution. Therefore, the
27 interpretation that Your Lordships give, will have a direct impact on how the Lokpal and the
28 Lokayuktas, where the states have made the laws, will administer and implement the
29 legislation with reference to corruption. I'm almost done. I'll take about 10-15 minutes, My
30 Lords, tomorrow. In the meanwhile...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** You will take Mr. Hansaria, about 15 minutes or
33 so now? Half an hour we will give you tomorrow. Half an hour to Mr. Hansaria, and then... We
34 can't now hear interveners after this. Everybody else can give us a written note to supplement
35 what has been said.

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37 **CLAIMANT's COUNSEL:** [INAUDIBLE]

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CHIEF JUSTICE DY CHANDRACHUD: Old list?

CLAIMANT'S COUNSEL: [INAUDIBLE] in 2019.

CHIEF JUSTICE DY CHANDRACHUD: So, give us a small note. All the interveners, if you can give us one page, not exceeding one page. Let all the other interveners prepare one page and give it by 08:00 p.m. today to Mr. Gaurav Agarwal. Email your intervener's notes not exceeding one page each to Mr. Gaurav Agarwal. Just the bullet points, because we have seen all the judgments. And that way Mr. Gaurav Agarwal can email it to the Court Master. You can put it in your note, put it in your note. We'll give... all the interveners now will give us a written note not exceeding one page.

CLAIMANT'S COUNSEL: Your Lordship said, some juniors may [UNCLEAR]. Your Lordship may give minutes...

CHIEF JUSTICE DY CHANDRACHUD: Let's see, let's see at the end, but now all interveners presently will give us the...

GOPAL SANKARANARAYANAN: These volumes will be downloaded on your computer, this 2(c) and....

CHIEF JUSTICE DY CHANDRACHUD: Yes, and then the Attorney General tomorrow.

END OF THIS PROCEEDING