P.V. Narasimha Rao vs State(Cbi/Spe) on 17 April, 1998

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Bench: S.C.Agrawal, G.N.Ray, S.P.Bharucha, S.Rajendra Babu

CASE NO.:
Appeal (crl.) 1207 of 1997

PETITIONER:
P.V. NARASIMHA RAO

RESPONDENT:
STATE(CBI/SPE)

DATE OF JUDGMENT: 17/04/1998

BENCH:
S.C.AGRAWAL & G.N.RAY & A.S.ANAND & S.P.BHARUCHA & S.RAJENDRA BABU

JUDGMENT:

JUDGMENT DELIVERED BY:

S.C.AGRAWAL,J.

S.P.BHARUCHA J.

G.N.RAY, J.

S.C. AGRAWAL, J.

Whether by virtue of Article 105 of the Constitution a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal court, and whether a Member of Parliament is a "public servant" falling within the purview of the Prevention of Corruption Act, 1986 [hereinafter referred to as `the 1988 Act']. These are the two questions which have come up for consideration before this bench in these matters.

In the General Election for the Tenth Lok Sabha held in 1991 the Congress (I) part, emerged as the single largest party and it formed the Government with P.V. Narsimha Rao [hereinafter referred to as `A-1] as the Prime Minister. In the Monsoon Session of Lok Sabha July 1993 a `No Confidence Motion' was moved against the Government by Shri Ajay Mukhopadhyaya, a CPI(M) M.P. At that time the effective strength of the House (Lok Sabha) was 528 and Congress (I) party had 251 members. It was short by 14 members for simple majority. The Motion of

No-Confidence was taken up for discussion in the Lok Sabha on July 20 1993 and the debate continued till July 28, 1993. The motion was thereafter put to vote. The motion was defeated with 251 members voting in favour of the motion, while 265 voting against it. On February 28, 1996, on Shri Ravindra Kumar of Rashtriya Mukti Morcha filed a complaint dated February 1, 1996 with the Central Bureau of Investigation [for short `CBI'] wherein it was alleged that in July 1993 a criminal conspiracy was hatched by A-1, Satish Sharma [hereinafter referred to as `A-2], Ajit Singh [hereinafter referred to as `A-13], Bhajan Lal [hereinafter referred to as `A-14], V.C. Shukla, R.K. Dhawan and Lalit Suri to prove a majority of the Government on the floor of the House on July 28, 1993 by bribing Members of Parliament of different political parties, individuals and groups of an amount of over Rs.3 crores and that in furtherance of the said criminal conspiracy a sum of Rs. 1.10 crores was handed over by the aforementioned persons, except A-15, to Suraj Mandal [hereinafter referred to as `A-3]. On the basis of the said complain the CBI registered four cases under Section 13(2) read with Section 13(1)(d)(iii) of the 1988 Act against A-3, Shibu Soren [hereinafter referred to as `A-4], Simon Marandi [hereinafter referred to as `A-5'] and Shallendra Mahto [hereinafter referred to as `A-6'], Members of Parliament belonging to the Jharkhand Mukti Morcha party [for short `JMM']. Subsequently in pursuance of the order dated May 24, 1996 passed by the Delhi High Court in Civil Writ Petition No. 23/96 another case was registered on June 11, 1996 against A-1, A-2, A-3, A-4, A-5, A-6, A-14, A-15. V.C. Shukla, R.K. Dhawan, Lalit Suri and others under Section 120-B-IPC and Section 7, 12, 13(2) read with Section 13(1)(d)(iii) of the 1988 Act. After completing the investigation, the CBI submitted three charge sheets dated October 30, 1996, December 9, 1996 and January 22, 1977 in the court of Special Judge, New Delhi. In the first charge sheet dated October 30, 1996 it was stated that investigation had revealed that A-1, A-2, A-3, A-4, A-5, A- 6, Buta Singh [hereinafter referred to as `A-7'], and other unknown persons entered into a criminal conspiracy to defeat the `No Confidence Motion' by resorting to giving and accepting of gratification as a motive or reward and in pursuance thereof four Members of Parliament belonging to JMM) A-3, A-4, A-5 and A-6) accepted illegal gratification to vote against the Motion and because of their votes and some other votes the Government led by A-1 survived. It was also stated in the charge sheet that investigation has also revealed that the four Members of Parliament belonging to JMM had been bribed in crores of rupees for voting agains the `No Confidence Motion'. The said charge sheet was filed against A-1, A-2, A-3, A-4, A-5, A-6 and A-7 and other unknown persons in respect of offences under Section 120-B IPC and Sections 7, 12, 13(2) read with Section 13(1)(d)(iii) of the 1988 Act and substantive offences thereunder. The second charge sheet dated December 9, 1996 was in the nature of a supplementary charge sheet wherein it was stated that investigation has further revealed that V. Rajeshwar Rao [hereinafter referred to as `A-8'], N.M. Revanna [hereinafter referred to as `A-9], Ramalinga Reddy [hereinafter referred to as `A-12] and M. Thimmegowda [hereinafter referred to as `A-13] were also parties to the criminal conspiracy which is the subject matter of the first charge sheet filed on October 30, 1996 and in pursuance to the said criminal conspiracy they had arranged

funds and bribed the four JMM MPs as the motive or award to secure their support to defeat the `No Confidence Motion' and thereby committed the offences punishable under Section 120-

B IPC and Section 7, 12, 13(2) read with Section 13(1)(d)(iii) of the 1988 Act and substantive offences thereunder along with the original seven accused. In the third charge sheet dated January 22, 1997, which was described as `Supplementary Charge Sheet No. 2', it was stated that further investigation has been carried on under Section 173(8) of Cr. P.C. and as a result identity of remaining accused persons has been established and that they are A-14, A-15, Ram Lakhan Singh Yadav [hereinafter referred to as `A-16'], Ram Sharan Yadav [hereinafter referred to as `A-`7'], Roshan Lal [hereinafter referred to as `A-18'], Abhay Pratap Singh [hereinafter referred to as `A-19'], Anadi Charan Das [hereinafter referred to as `A-20'], Haji Gulam Mohd. Khan [hereinafter referred to as `A-21] and late G.C. Munda [hereinafter referred to as `A-22']. It was stated that even after securing the support of four JMM MPs in the manner stated in the first charge sheet dated October 30, 1996 and second charge sheet dated December 9, 1996 the Congress (I) Government still required the support of some more MPs and that with this objective the Congress (I) led by A-1 was making efforts to win the support of some other MPs including MPs belonging to Janta Dal (Ajit Group) [for short `JD(a)]. In the charge sheet it was also stated that A-14, A-15, A-16, A-17, A-18, A-19, A-20, A-21 and A-22' were parties to the criminal conspiracy along with A-1 to A- 13 already named in the earlier two charge sheets and in pursuance to the said criminal conspiracy A-14 had arranged funds and had paid bribes to A-15 and the seven MPs of the breakaway JD(A) as a motive or award to secure their support to defeat the `No Confidence Motion and thereby committed the offences punishable under Section 120-B IPC and Section 7, 12, 13(2) read with Section 13(1)(d)(iii) of the 1988 Act and substantive offences thereunder.

An application was submitted by A-6 (Shailendra Mahto) under Section 306 Cr. P.C. for grant of pardon for being treated as an approver. The said application was referred to the Magistrate for recording his statement under Section 164 Cr. P.C. and after considering the said statement the Special Judge, by order dated April 5, 1997, allowed the application of A-6 and tendered pardon to him on the condition of his making a full and true disclosure of all the circumstances within his knowledge relating to the offences of every other person concerned, whether as a principal or abettor in the commission of the offences under the charge sheets. After hearing the arguments on charges, the Special Judge passed the order dated May 6, 1997 wherein he held that there is sufficient evidence on record to justify framing of charges against all the appellants. In so far as A-1, A-2, A-7 and A-8' to A-14 are concerned, the Special Judge held that there is sufficient evidence on record to justify framing of charges under Section 120-B IPC read with Section 7, 12, 13(2), read with Section 13(1)(d) of the 1998 Act and also for substantive offence punishable under Section 12 of the 1988 Act against all of them. So far as A-3 to A-5 and A-15 to A-21 are concerned, the Special Judge held that there is sufficient evidence on record to justify framing of charges under Section 120-B IPC read with Section 7,12, 13(2) read with Section 13(1)(d) of t he 1988 Act and as well as charges for substantive offence punishable under Section 7 and Section 13(2) read with Section 13(1)(d) of the 1988 Act against all of them. The Special Judge also held that there is prima facie evidence of commission of offence under Section 193 IPC by accused Nos. A-3 to A-5.

Before the Special Judge, an objection was raised n behalf of the accused persons that the jurisdiction of the Court to try the case was barred under Article 105(2) of the Constitution because the trial is in respect of matters which relate to the privileges and immunities of the House of Parliament (Lok Sabha) and its Members inasmuch as the foundation of the charge sheets is the allegation of acceptance of bribe by some Members of Parliament for voting against the `No Confidence Motion' and that the controversy to be decided in this case would be in respect of the motive and action of Members of Parliament pertaining to the vote given by them in relation to the `No Confidence Motion'. The Special Judge rejected the said contention on the view that in the present case voting pattern of the accused persons was not under adjudication and they were sought to be tried for their illegal acts committed outside Parliament, i.e., demanding and accepting the bribe for exercising their franchise in a particular manner, and the accused persons are not being prosecuted for exercising their right of vote but they are being prosecuted on the allegations that they while holding a public office demanded and accepted illegal gratification for exercising their franchise in a particular manner which is an offence punishable under the 1988 Act and that Article 105 of the Constitution does not provide any protection to the accused persons. Another contention that was urged before the Special Judge was that a Member of Parliament is not a public servant for the purpose of the 1988 Act and as such giving and taking of the alleged illegal gratification does not amount to any offence punishable under the provisions of the 1988 Act and there cannot be any offence of conspiracy of giving and taking of bribe by a Member of Parliament. The said contention was rejected by the Special Judge on the view that the question whether a Member of Parliament is a public servant is concluded by the decision of the Delhi High Court in the cases of L.K. Advani v. Central Bureau of Investigation wherein it has been held that Member of Parliament is a public servant under the 1988 Act. It was also urged before the Special Judge that the case could not be proceeded against the accused persons since previous sanction for prosecution under Section 19 of the 1988 Act had not been obtained. The said contention was also rejected by the Special Judge on the ground that no previous sanction of prosecution for an accuse under Section 19 is necessary if he has ceased to hold a public office which was allegedly misuse by him and in the present case at the time of filing of the charge sheets and on the sate of taking of cognizance by the Court Tenth Lok Sabha had come to an end and after the Election in 1996 at the accused persons who were the members of the Tenth Lok Sabha had ceased to hold the office as Members of the said Lok Sabha and therefore under law no sanction for their prosecution is required and furthermore accused persons are sought to be tried for criminal conspiracy under Section 120-B IPC read with Sections 7, 12, 13(2) OF of the 1988 Act as well as the substantly offences and that according to Section 19 of the 1988 Act sanction is required only in respect of the offences punishable under Section 7 and 13 and these substantive offences were alleged committed by Members of Parliament who had accepted the illegal gratification for voting again the `No Confidence Motion' and that no sanction is required in the case of a Member of Parliament or a Member of the State Legislature though he is a public servant because there is no sanctioning authority qua him. Revision Petitions filed by the appellants against the said order of the Special Judge have been dismissed by the impugned judgment of the Delhi High Court. In the High Court the following contentions were urged by the appellants :-

> (i) Even if the allegations of the prosecution were accepted, the Court would have no jurisdiction to fasten any criminal liability on the accused persons as whatever allegedly happened was in respect of votes given by some of them in the Lok Sabha

and that, in any case, whatever transpired, touched the privileges of the House within the meaning of clauses (2) and (3) of Article 195 of the Constitution.

(ii) Member of Lok Sabha hold no office an d as such are not public servants within the meaning of Section 2(c) of the 1988 Act and that for that reason the 1988 Act would not apply to the alleged acts of omission and commission of the accused persons.

(iii)Even if it be taken that Members of Lok Sabha do fall within Section 2(c) of the 1988 Act and are thus taken to be public servants, yet the Act would not apply for the simple reason that in the case of Lok Sabha Members there is no authority competent to remove them from their office within the meaning of Section 19(1)(c) of the 1988 Act.

(iv) In the case of A-1, A-9, A-10, A-11 and A-13 there is nothing to show that they had conspired or were part of any conspiracy.

(v) Sanction was required under Section 197 Cr. P.C. to prosecute A-1.

(vi) No case is made out for framing the charges against the appellants.

While dealing with the first contention based on clauses (2) and (3) of Article 105 of the Constitution the High Court has held that to offer bribe to a Member of Parliament to influence him in his conduct as a member has been treated as a b reach of privilege in England but merely treating the commission of a criminal offence as a breach of privilege does not amount to ouster jurisdiction of the ordinary court to try penal offences and that to claim that in such matters the courts would have no jurisdiction would amount to claiming a privilege to commit a crime. The High Court has also pointed out that four notices of a question of privilege dated February 26 and 27, 1997 were given by four members of Lok Sabha, namely, Sarva Shri Jaswant Singh, Indrajit Gupta, Arjun Singh and Jagmeet Singh Brar against A-1 and the four members belonging to JMM (A-3 to A-6). The notices were forwarded to the said accused for comments and after discussion on the said notices during which members of all parties expressed their views the Speaker disallowed the notice given by Shri Arjun Singh on March 11, 1996 and the notices of a question of privilege given by Sarva Shri Jaswant Singh, Indrajit Gupta and Jagmeet Singh Brar were disallowed by the Speaker on March 12, 1996. The second submission that a Member of Parliament is not a public servant under Section 2(c) of the 1988 Act was rejected by the High Court on the view that that a member of Parliament holds an office and is a public servant falling under clause

(viii) of Section 2(c) of the 1988 Act. The third contention that the 1988 Act is not applicable to a Member of Parliament since there is no authority competent to remove him from his office for the purpose of granting sanction under Section 19(1)(c) of the 1988 Act was also not accepted by the High Court. It was held in the absence of an authority to remove a Member of Parliament does not mean that the 1988 Act would not be applicable to him. As regards the requirement of sanction under Section 197 Cr. P.C. as against A-1, the High Court held that A-1 was a party to actual bribing

of Members of Parliament and that it is no job of a Prime Minister to hatch or be a party to such a criminal conspiracy and that what A-1 did cannot fall within the ambit of the words "while acting of purporting to act in the discharge of his official duty" in Section 197 Cr. P.C. The High Court thereafter examined the material on record in relation to each accused person and found that there was no ground for interfering with the order passed by the Special Judge.

Felling aggrieved by the said judgment of the High Court, the appellants have filed these appeals. The appeals were heard by a bench of three Judge. After hearing the arguments of the learned counsel, the following order was passed by that bench on November 18, 1997 :-

"Among other questions, a substantial question of law as to the interpretation of Article 105 of the Constitution of India is raised in these petitions. These petitions are, therefore, required to be heard and disposed of by a Constitution Bench.

Accordingly, the Registry is directed to place these petitions before Hon'ble the Chief Justice for necessary orders."

In pursuance of the said order, the matter has been placed before us. At the commencement of the hearing, we passed the following order on December 9, 1997 :-

> "By order dated November 18, 1997 these matters have been referred to this Court for the reason that among other questions, a substantial question of law as to the interpretation of Article 105 of the Constitution of India is raised in these petitions. These petitions are, therefore, required to be heard and disposed of by a Constitution Bench. The learned counsel for the parties agree that the Constitution Bench may only deal with the questions relating to interpretation of Article 105 of the Constitution and the applicability of the Prevention of Corruption Act to a Member of Parliament and Member of State Legislative Assembly and the other questions can be considered by the Division Bench."

During the pendency of the appeals in this Court the Special Judge has framed the charges against the accused persons [appellants herein] on September 25, 1997. All the appellants have been charged with the offence of criminal conspiracy punishable under Sections 120-B IPC read with Section 7, 12 and 13(2) read with 13(1)(d) of the 1988 Act. A-3 to A-5, belonging to JMM and A-15 to A-21, belonging to JD(A), have been further charged with offences under Section 7 and Section 13(2) read with Section 13(1)(d) of the 1988 Act. A-3 to A-5 have also been charged with the off once under Section 193 IPC. The other appellants, viz., A-1, A-2 and A-7 to A-14 have been charged with offence under Section 12 of the 1988 Act for having abetted the commission of the offence punishable under Section 7 of the 1988 Act by the members of Parliament belonging to JMM and JD(A). Section 7, 12 and 13(a)(d) and 13(2) of the 1988 Act may be reproduced as under :-

> "8. Public servant taking gratification other legal remuneration in respect of an official act.- Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other

person, any gratification whatever, other than legal remuneration as a motive or reward for doing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations.- (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then service them, he may be guilty of cheating, but he is not guilt of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecunniary gratifications or to gratifications estimable in money.

(c) "Legal remunerations." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing."

A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this Section."

"12. Punishment for abetment of offences defined in Section 7 or

11.- Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."

"13. Criminal misconduct by a public servant.- (1) A public servant is said to commit the offence of criminal misconduct.-

(a) X X X X

(b) X X X X

(c) X X X X

(d) If he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable or pecuniary advantage without any public interest; or

(e) X X X X (2) Any public servant who commits criminal misconduct shall be punishable imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

The charge of criminal conspiracy as against appellants who are alleged to have agreed to offer gratification (A-1, A-2 and A-7 to A-14) is in these terms:-

> "That you P.V. Narsimha Rao between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or entered into an agreement with your co-
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> accused Capt. Satish Sharma, Buta Singh, V. Rajeshwara Rao, H.M. Revanna, Ramlinga Reddy, M. Veerappa Moily, D.K. Audi Keshvalu, M. Thimmegow, Bhajan Lakl, JMM (Jharkhand Mukti Morcha) MPs. Suraj Mandal, Shibu Sopren, Simon Marandi. Shilendra Mahto (Approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs Ajit Singh , Ram Lakhan Singh, Haji Ghulam Mohd, Khan and late G.C. Munda to defeat the no confidence motion moved on 26.7.93 against the then Congress (I) Government headed by you by illegal means viz., to offer or cause to offer and pay gratification other than the legal remuneration to your co-accused persons namely J.M.M. and Janta Dal (A) MPs named above as a motive or reward for their helping in defeating the said no confidence motion moved by the opposition parties and in pursuance of the said agreement you paid or caused to pay several lacs of rupees to the above referred JMM and Janta Dal (A) MPs who obtained or attempted to obtain the same in the manner stated above and thereby you have committed an offence punishable u/s 120 IPC re/w Section 7, 12, 13(2) r/w 13(1)(d) of the PC Act 1988 and within my cognizance."

The charge of criminal conspiracy as against appellants who are alleged to have agreed to receive the gratification (A-3 to A-5 and A-15 to A-21) is in these terms :-

"Firstly, you between July and august, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or enter into an agreement with your co-accused P.V. Narsimha Rao, Capt. Satish Sharma, Buta Singh, V. Rajeshwara Rao, H.M. Revanna, Ramlinga Reddy, M. Veerapa Moiley, D.K. Audi Keshvalu, M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Shibu Soren, Simon Marandi, Shilendra Mehto (Approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs. Ajit Singh, Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Charan Dass, Abhey Partap Singh, Haji Ghulam Mohd. Khan and late G.C Munda to defeat the no confidence motion moved against the then Congress (I) Government headed by accused Shri P.V. Narsimha Rao on 26.7.93 by illegal means viz. to obtain or agree to obtain gratification other than legal remunerations from your above named accused persons other than JMM and Janta Dal (A) MPs as a motive or reward for defeating the no confidence motion and in pursuance thereof above named accused persons other than JMM and Janta Dal (A) passed on several lacs of rupees to you or your other co-accused namely JMM and Janta Dal (A) MPs which amounts were accepted by you or your said co-accused persons and they by you have committed an offence punishable u/s 120B r/w Sections 7, 12 13(2) r/w Section 13(1)(d) of the P.C Act and within my cognizance."

The charges under Section 13(2) read with Section 13(1)(d) of the 1988 Act agains A-3 to A-5 and A-15 to A-21 are in these terms :-

"Secondly, that you being a public servant while functioning in your capacity of Member of Parliament (10th Lok Sabha) during the aforesaid period and at the aforesaid places in pursuance of the aforesaid conspiracy demanded and accepted from your co-accused other than JMM & JD(A) MPs mentioned above a sum of Rs. 280 lacs for yourself and other JMM MPs named above other your legal remuneration as a motive or reward for defeating above referred no confidence motion moved against the then Government of Congress (I) headed by your co-accused P.V. Narsimha Rao and thereby you have committed an offence punishable u/s 7 of P.C. Act and within my cognizance."

"Thirdly you during the aforesaid period and at the aforesaid places being a public servant while functioning in your aforesaid capacity of Member of Parliament by corrupt or illegal means and by abusing your position as a said public servant obtained for yourself or your other co-accused i.e. JMM MPs named above the pecuniary advantage to the extent of Rs. 280 lacs and thereby committed an offence punishable u/s 13(2) read with Section 13(1)(d) of P.C.. Act and within my cognizance."

The Charge under Section 12 of the Act against A-1, A-2, A- 14 and A-15 is in these terms :-

"Secondly you P.V. Narsimha Rao in pursuance of the aforesaid criminal conspiracy during the aforesaid period and at the aforesaid placed abetted the commission of

> offence punishable u/s 7 of P.C Act by above referred JMM and Janta Dal (A) MPs and thereby you have committed an offence punishable u/s 12 of the P.C Act and with my cognizance."

The two questions arising for consideration can be thus formulated :-

> (1) Does Article 105 of the Constitution confer any immunity on a Member of Parliament from being prosecuted in a criminal court for an offence involving offer or acceptance of bribe ?
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> (2) Is a Member of Parliament excluded from the ambit of the 1988 Act for the reason that : (a) he is not a person who can be regarded as a "public servant" as defined under Section 2(c) of the 1988 Act, and (b) he is not a person comprehended in clauses (a), (b) and
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> (c) of sub-section (1) of Section 19 and there is no authority competent to grant sanction for his prosecution under the 1988 Act?

Immunity From Prosecution In order to answer the first question it would be necessary to examine the scope and ambit of the protection available to a Member of Parliament under Article 105 which deals with the powers, privileges and immunities of the Houses of Parliament and its members. Before we undertake this task, we would briefly set out the prevailing state of law in the United Kingdom a other countries following the common law.

UNITED KINGDOM : During the rule of the Tudor and Stuart Kings the Commons had to wage a bitter struggle to assert their supremacy which culminated in the Bill of Rights, 1989 whereby it was secured "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" (Article 9). On May 2. 1695 the House of Commons passed a resolution whereby it resolved that "the offer of money, or other advantage, to any Member of Parliament for the promoting of any matter whatsoever, depending or to be transacted in Parliament is a high crime and misdemeanor and tends to the subversion of the English constitution". In the spirit of this resolution, the offering to a Member of either House of a bribe to influence him in his conduct as a Member or of any fee or reward in connection with the promotion of or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof, has been treated as a breach of privilege. [See : May's Parliamentary Practice, 21" Edn. p. 128]. In its report submitted in July 1976 the Royal Commission on Standards of Conduct in Public Life (chaired by Lord Salmon) has pointed out that "neither the statutory nor the common law applies to the bribery or attempted bribery of a Member of Parliament in respect of his Parliamentary activities but "corrupt transactions involving a Member of Parliament in respect of matters that had nothing to do with his parliamentary activities would be caught by the ordinary criminal law" (page 98, para 307 and

308). The Salmon Commission has observed that sanctions against bribery introduced by the criminal law in other fields have now outstripped whatever sanctions may be exerted through

Parliament's own powers of investigation and punishment and the Commission was of the view there is a strong case for bringing such malpractice within the criminal law. According to the Salmon Commission, the Committee of Privileges and the Select Committee on Members' Interests do not provide an investigative machinery comparable to that of a police investigation and that having regard to the complexity of most investigations into serious corruption special expertise is necessary for this type of inquiry. (para 310, pp. 98, 99). The Salmon Commission has recommended :-

> "Membership of Parliament is a great honour and carries with it a special duty to maintain the highest standards of probity, and this duty has almost invariably been strictly observed.
>
> Nevertheless in view of our report as a whole, and especially in the light of the points set out in the foregoing paragraph, we recommend that Parliament should consider bringing corruption, bribery and attempted bribery of a Member of Parliament acting in his parliamentary capacity within the ambit of the criminal law." [para 311 p. 99] During the course of the debate in the House of Lords, Lord Salmon said :-
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> "To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bills of Rights is possibly a serious mistake."

After quoting the Bill of Rights Lord Salmon continued :-

> "Now this is a charter for freedom of speech in the House it is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has no more to do with the topic which we are discussing that the Merchandise Marks Act. The crime of corruption is complete when the bribe is offered or given or solicited or taken."

The correctness of the statement in the Report of the Salmon Commission that `common law does not apply to bribery or attempted bribery of a Member of Parliament in respect of his parliamentary activities, has been doubted by Prof. Graham Zellick who has said that Sir James Fitzjames Stephen appears to be the only writer to have taken the same view in his Digest of the Criminal Law (1878) art. 118, and that there is nothing in the English authorities which compels to the conclusion that a Member of Parliament is not a public officer and is not punishable at common law for bribery and breach of trust. [See : Grahma Zellick : Bribery of Members of Parliament and the Criminal Law, 1979 Public Law p. 31 at pp. 39, 40].

The question whether offering of a bribe to and acceptance of the same by a Member of Parliament constitutes an offence at common law came up for consideration before a criminal court (Buckley J.) in 1992 in R.V. Currie & Ors. In that case it was alleged that a Member of Parliament had accepted bribes as a reward for using his influence as a Member in respect of application for British nationality of one of the persons offering the bribe. The indictment was sought to be quashed on the

ground that bribery of a Member of Parliament is not a crime and that in any event the court has no jurisdiction and Parliament alone can try a member for bribery, the matter being covered by parliamentary privilege. The learned Judge ruled against the contention and held :-

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

In 1994 the Attorney General advised the Committee of Privileges of the House of Commons that, in his opinion, though bribery of a Member was not a statutory offence, it might be an offence at the common law. [See : May's Parliamentary Practice, 22nd End, p. 114]. The Committee on Standards in Public Life, Chaired by Lord Nolan (Nolan Committee) in its first report submitted in May 1995, has said :-

> "There is one area of conduct where a need already exists to clarify, and perhaps alter, the boundary between the courts and Parliament. Bribery of a Member, or the acceptance of a bribe by a Member, is contempt of Parliament and can be punished by the House. The test which the House would apply for bribery would no doubt be similar to that which would apply under Common Law. However it is quite likely that Members of Parliament who accepted bribes in connection with their Parliamentary duties would be committing Common Law offences which could be tried by the courts. Doubt exists as to whether the courts or Parliament have jurisdiction in such cases."

{para 103] "The Salmon Commission in 1976 recommended that such doubt should be resolved by legislation, but this has not been acted upon. We believe that it would be unsatisfactory to leave the issue outstanding when other aspects of the law of Parliament relating to conduct are being clarified. We recommend that the Government should now take steps to clarify the law relating to the bribery of or the receipt of a bribe by a Member of Parliament. This could usefully be combined with the consolidation of the statute law on bribery which Salmon also recommended, which the government accepted, but which has not been done. This might be a task which the Law Commission could take forward." [para 104] It appears that the matter is being considered by the Law Commission. In the Law Commission, Consultation Paper No. 145, reference has been made to a document entitled `Clarification of the law relating to the Bribery of Members of Parliament', published by the Home Office in December 1996, whereby the Select Committee on Standards and Privileges has been invited to consider the following four broad options :-

> (1) to rely solely on Parliamentary privileges to deal with accusations of the bribery by Members of Parliament;
>
> (2) subject Members of Parliament to the present corruption statutes in full;
>
> (3) distinguish between conduct which should be dealt with by the criminal law and that which should be left to Parliament itself, and (4) make criminal proceedings

subject to the approval of the relevant House of Parliament.

AUSTRALIA : Even though Article 9 of the Bill of Rights is applicable in Australia but as far back as in 1975 the Supreme Court of New South Wales held that an attempt to bribe a Member of the Legislative Assembly in order to influence his vote was a criminal offence, a misdemeanor at common law.[See : R.V. White, 13 SCR (NSW) 332].

The said decision in White was approved by the High Curt of Australia in R.V. Boston & Ors., (1923) 33 CLR 386. In that case three persons, namely, Walter James Boston, a member of the Legislative Assembly of New South Wales, John Andrew Harrison and Henry Ernest Mitchelmore, were alleged to have unlawfully conspired together and with other persons that certain large sums of money should be corruptly given to Walter James Boston to use his position to secure the inspection of , acquisition and the payment in cash for certain estates by the Government of New South Wales and which estates were to be paid for out of the public funds of the said State and to put pressure upon the Minister for Lands and other officers of the Crown to inspect, acquire and to pay cash for certain estates. The trial Judge upheld the demurrer to the charge by the defendants on the ground that the matters alleged did not include a provision respecting voting in Parliament. In the High Court it was not disputed by the defendants that an agreement to pay money to a member of Parliament in order to influence his vote in Parliament would amount to a criminal offence. It was urged that consistently with the allegations in the information, the agreement between the defendants might have been to pay money to Boston to induce him to use his position exclusively outside Parliament, not by vote or speech in the Assembly, and that the transaction in connection with which he was to use his position to put pressure on the Minister might, consistently with the information, be one which would never come before Parliament and which, in his opinion and in the opinion of those who paid him, was highly beneficial to the State; that such an agreement would not amount to a criminal offence, and that consequently the informations is bad. Rejecting the said contention,. Knox C.J. has observed :-

> "In my opinion, the payment of money to, and the receipt of money by, a Member of Parliament to induce him to use his official position, whether inside or outside Parliament, for the purpose of influencing or putting pressure on a Minister or other officer of the Crown to enter into or carry out a transaction involving payment of money out of the public funds, are acts tending to the public mischief, and an agreement or combination to do such acts amounts to a criminal offence. From the point of view of tendency to public mischief I can see no substantial difference between paying money to a member to induce him to use his vote in Parliament in a particular direction and paying him money to induce him to use his position as a member outside Parliament for the purpose of influencing or putting pressure Ministers. A member of Parliament cannot divest his position of the right which it confers to take part in the proceedings of Parliament he cannot `use his position as a member of Parliament' stripped of its principal attribute. The influence which his position as a member of Parliament enables him to exert on a Minister has its source in his right to sit and vote in Parliament, and it would be idle to pretend that in discussions and negotiations between a Minister and a member that right, or the

power it confers on a member, can be disregarded or ignored. The tenure of office of the Minister and his colleagues may be dependent on the vote or on the abstention from voting of an individual member, or even on his words or his silence in Parliament." [pp. 392, 393] Similarly, Issacs and Rich JJ, have said :-

"It is impossible to sever the voluntarily assumed intervention departmentally from the legislative position to which by custom it is recognised as incidental. A member so intervening speaks as member and is dealt with as member, and not as a private individual. His ulterior power of action, though not intruded into observation, is always existent and is always known to exist. It is scarcely even camouflaged. The importance of even one parliamentary vote on a critical occasion is not entirely unknown." [p. 403] Higgins J., after stating that it was not disputed by the counsel for the defendants that if the agreement were that the member should use his votes or his action in the House to secure the acquisition of the land, the agreement would be criminal conspiracy, expressed the view that he could not read the count as `confining the agreement to action of the member outside the House' and that the words `to use his position as such member' primarily refer to an action in the House. The learned Judge, however, held :-

"A member is the watch-dog of the public; and Cerberus must not be seduced from vigilance by a sop. I see no reason to doubt that even if the count were confined to an agreement as to the action of the member outside the House-action in which the member used his position as member-the agreement would be an indictable conspiracy." [p. 410] Gavan Duffy and Starke JJ., in their dissenting judgment, while holding that the acts charged as intended to be done by the defendant Boston, however important they may be, would not be malversation in his office, or acts done in his office, unless they were done-in the discharge of his legislative functions, have said :-

"It cannot be denied that a member of Parliament taking money or agreeing to take money to influence his vote in Parliament is guilty of a high crime and misdemeanour, and that an agreement to bring about such a state of things constitutes a criminal conspiracy; nor can it be denied that an agreement which has the effect of fettering parliamentary or executive action may sometimes be as dangerous to the community as the direct purchase of a member's vote; and it may be that, under t he words used in the count which we are considering, facts might be proved which would constitute a criminal conspiracy." [pp. 413, 414] Section 73A of the Crime Act, 1914 in Australia makes it an offence for members of the Australian Parliament to accept or be offered a bribe. Under the said provision a member of either House of Parliament who asks for or receives or obtains, or offers or agrees to ask for or receive or obtain, any property or benefit of any kind for himself or any other person, on an understanding that the exercise by him of his duty or authority as such a member will, in any manner, be influenced of affected, is guilty of an offence. So also a person who, in order to influence or affect a member of either House of

Parliament in the exercise of his duty or authority as such a member or to induce him to absent himself from the House of which he is a member, any committee of the house or from any committee of both House of the Parliament, gives or confers, or promises or offers to give or confer, any property or benefit of any kind to or on the member or any other person is guilty of an offence. [See : Gerard Carney - Conflict of Interest : A Commonwealth Study of Members of Parliament.p. 124].

CANADA : In the case of R.V Bunting, (1984-5) 7 Ontario Reports 524, the defendants had moved for quashing of an indictment for conspiracy to bring about a change in the Government of Province of Ontario by bribing members of the Legislature so vote against the Government. It was argued that bribery of a member of Parliament is a matter concerning Parliament or Parliamentary business and is not an indictable offence at common law and that the exclusive jurisdiction to deal with such a case rests with the Legislative Assembly according to t he law and custom of Parliament. Rejecting the said contention, Wilson CJ. held:-

"It is to my mind a proposition very clear that his Court has jurisdiction over the offence of bribery as at the common law in a case of this kind, where a member of the Legislative Assembly is concerned either in the giving or in the offering to give a bribe, or in the taking of it for or in respect of any of his duties as a member of that Assembly; and it is equally clear that the Legislative Assembly had not the jurisdiction which this Court has in a case of the kind; and it is also quite clear that the ancient definition of bribery is not the proper or legal definition of that offence."

[p. 542] Armour J. was of the some view and has said :-

"I think it beyond doubt that the bribery of a member of the Legislative Assembly of the Province of Ontario to do any act in his capacity as such is an offence at the common law, and is indictable and punishable as a misdemeanour." [p. 555] O'Connor J, in his dissenting judgment, held that the bribe of a member of Parliament, in a matter concerning Parliament or Parliamentary business, is not an indictable offence at common law, and has not been made so by any statute.

Section 108 of the Criminal Code in Canada renders it an offence for a bribe to be offered to or accepted by a provincial or federal member, while in Federal Canada and several of the Provinces the acceptance of a reward etc., for promoting a matter within Parliament constitutes a breach of privilege. [See : Gerard Carney : Conflict of Interest : A Commonwealth Study of Members of Parliament, p 123].

Other Commonwealth Countries : After examining the anti-corruption measures in the various Commonwealth countries, Gerrard Carney has concluded :-

"Most countries treat corruption and bribery by Members of Parliament as a criminal offence rather than as a breach of privilege."

[See : Gerard Carney : Conflict of Interest : A Commonwealth Study of Members of Parliament, p 123].

UNITED STATES ; Article 1(6) of the US Constitution contains the `Speech or Debate Clause' which provides that "for any speech or debate in either House, they (Members of the Congress) shall not be questioned in any other place". In 1853 the Congress, by statute, declared a member liable to indictment as for a high crime and misdemeanour in any court of the United States for accepting compensation intended to influence a vote or decision on any question brought before him in his official capacity. In 1862 the Congress enacted another statute to penalise legislators who received money for votes or influence in any matter pending before Congress and in 1864 Conflict of Interest statutes barred Congressmen from receiving compensation for their services before any agency. The Conflict of Interest Statutes were revised in 1962 and are contained in 18 U.S.C.(1964). [See : Note, The Bribed Congressmen's Immunity from Prosecution, (1965-66) 75 Yale L.J. 335, at p. 341].

A distinction is, however, made between the conduct of a Member connected with the proceedings of the House and his conduct not in the House but in connection with other activities as a Member of the Congress. The speech and debate clause does not give any protection in respect of conduct "that is in no sense related to due functioning of the legislative powers". [See : United Stated v. Johnson, 15 L Ed 2d 681, at p. 684]. In Burton v. United States, 202 US 344, the US Supreme Court upheld the conviction of a Senator who had been bribed in order to get a mail fraud indictment quashed under the rationale that Burton's attempt to influence the Post Office Department was unprotected non- legislative conduct. The question regarding immunity in respect of actions connected with the proceedings of the House has been considered by the US Supreme Court in three decisions, namely, Johnson, United State v. Brewster, 33 L Ed 2d 507, and United States v. Helstoski, 61 L Ed 2d 12.

In Johnson a former US Congressman, named Johnson, and three co-defendants were found guilty of conspiracy consisting of an agreement among Johnson and another Congressman and two other co-defendants who were connected with a Maryland saving and loan institution whereby the two Congressmen would exert influence on the Department of Justice to obtain the dismissal of pending indictments of the loan company and it officers on mall fraud charges and as part of this general scheme Johnson read a speech favourable to independent saving and loan associations in the House and that the company distributed copies to allay apprehensions of potential depositors and that the two Congressmen approached the Attorney General and Assistant Attorney General in charge of the Criminal Division and urged them to review the indictment and for these services Johnson received substantial sums in the form of campaign contribution and legal fees. Harlan j., delivering the opinion of the Court, held that the prosecution of the conspiracy count being dependent upon an intensive inquiry with respect to the speech on the floor of the House violated the Speech or Debate Clause so as to warrant the granting of a new trial on the conspiracy count with all elements offensive to the Speech or Debate Clause to be eliminated. The Speech or Debate Clause was given a wider construction so as to exclude the motive for performing the legislative acts being enquired into in a criminal prosecution.

In Brewster a former US Senator, named Brewster, had been charged with accepting bribes and the allegation was that while he was a Senator an d a member of the Senate Committee on Post and Civil Service he received and agreed to receive sums in return for being influenced in his performance of official acts in respect of his action, vote and decision on postage rate legislation which had been pending before him in his official capacity. Brewster moved to dismiss the indictment on the ground that he was immune from prosecution for any alleged act of bribery because of the Speech or Debate Clause. The District Court accepted the said contention and dismissed the counts of the indictment which applied to Brewster. The said judgment of the District Court was reversed by the US Supreme Court and the matter was remanded. Burger CJ., who delivered the opinion of the Court on behalf of six Judges, held that the Speech or Debate Clause protects the members of Congress from inquiry into legislative acts or into the motivation for their actual performance of legislative acts and it does not protect them from other activities they undertake that are political, rather than legislative, in nature and that taking a bribe for t he purpose of having one's official conduct influenced is not part of any legislative process or function and the Speech or Debate Clause did not prevent indictment and prosecution of Brewster for accepting bribes. Brennan and White JJ. (joined by Douglas J.) disssented. The Court construed the Speech or Debate Clause as giving protection to an act which was clearly a part of the legislative process - the due functioning of the process. It was held that the purpose of the Speech or Debate Clause is to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process and that financial abuse, by way of bribes, would grossly undermine legislative integrity and defeat the right of the public to honest representation. The learned Chief Justice has observed :-

> "Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator." [p. 526] In Helstoski a former member of the House of Representatives, named Heistoski, was prosecuted for accepting money for promising to introduce and for introducing private bills which would suspend the application of the immigration laws so as to allow the aliens to remain in the country. Helstoski moved to dismiss the indictment in the District Court contending that the indictment violated the Speech or Debate Clause. The said motion was rejected by the District Court though it was held that the Government would not be allowed to offer evidence at trial of the performance of the past legislative acts by the Congressmen. The said judgment was affirmed by the Court of Appeals which judgment was also affirmed by the US Supreme Court by majority (Brennan J dissenting). Burger CJ. has held that references to past legislative acts of a Member cannot be admitted without considering the values protected by the Speech or Debate Clause which was designed to preclude prosecution of Members for legislative act.
>
> Having taken note of the legal position as it prevails in the various countries, we may now examine the legal position in this regard in India.
>
> Offering of a bribe or payment to a Member of Parliament influence him in his conduct as a member and acceptance of a bribe by such a Member is treated as a

breach of privilege by Indian Parliament even though no money has actually changed hands. [See : M.N. Kaul & S.L. Shakdher : Practice and Procedure of Parliament 4th Edn., at p. 254]. As early as in 1951 an ad hoc Committee of Parliament was appointed to investigate the conduct and activities of a member , H.G. Mudgal, in connection with some of his dealings with a business association which included canvassing support and making propaganda in Parliament on certain problems on behalf of that association in return for alleged financial and other business advantages. A ad hoc Committee of the House was appointed to consider whether the conduct of the member concerned was derogatory to the dignity of the House and inconsistent with the standards which Parliament is entitled to expect from members. The Committee found the member guilty of receiving monetary benefits for putting questions in Parliament, moving amendments to the Forward Contracts (Regulation) Bill and urging interviews with the Ministers, etc. and it held that the conduct of H.G. Mudgal was derogatory tot he dignity of the House and inconsistent with the standards which Parliament was entitled to expect of its members. The Committee recommended the expulsion of the member from the House. While the said report was being considered by the House, the member, after participating in the debate, submitted his resignation from the membership of the House. In the resolution the House accepted the findings of the Committee and deprecated the attempt of the member to circumvent the effects of the motion expelling him from the House, by his resignation, which constituted a contempt of the House and aggravated the offence. [SEE: Kaul & Shakdher at pp. 284, 285].

It does not, however, constitute breach or contempt of the House if the offering of payment of bribe is related to the business other than that of the House. In 1974 the Lok Sabha considered the matter relating to offer or payment of bribe in the Import Licences case wherein it was alleged that a Member of Lok Sabha had taken bribe and forged signatures of the Members for furthering the cause of certain applicants. The question of privilege was disallowed since it was considered that conduct of the Member, although improper, was not related to the business of the House. But at the same time it was held that as the allegation of bribery and forgery were very serious and unbecoming of a Member of Parliament, he could be held guilty of lowering the dignity of the House. [See: Kaul & Shakdher at pp. 254. 255].

The question whether a Member of Parliament can claim immunity from prosecution before a criminal court on charge of bribery in relation to proceedings in Parliament has not come up for consideration before the court and it has to be examined in the light of the provisions contained in the Constitution. The relevant provision which provides for the powers, privileges and immunities of Parliament and its members and its committees is contained in Article 105 of the Constitution. The said Article, in the original form, read as follows :-

"105. Powers, Privileges, etc. of the House of Parliament and of the members and committees thereof.- (1) Subject to the provisions of this Constitution and to the rules

> and standing orders regulating the procedure of Parliament, there sh all b e freedom of speech in Parliament.
>
> (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report paper, votes or proceedings.
>
> (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of the House of Commons of Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution. (4) The provisions of clauses (1), (2), and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of the Parliament."

By Constitution (Forty-fourth Amendment) Act, 1978 clause (3) was replaced but he following clause :-

> "(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, an d until so defined, shall be those of that House and of its members and committees immediately before coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978."

Clause (1) secures freedom of speech in Parliament to its members. The said freedom is "subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament". The words "subject to the provisions of the Constitution" have been construed to mean subject to the provisions of the Constitution which regulate the procedure of Parliament, viz., Article 118 and

121. [See : Pandit M.S.M Sharma v. Shri Sri Krishna Sinha & Ors., 1959 Supp. (1) SCR 806, at o. 856, and Special Reference No. 1 of 1964, also known as the Legislative Privileges case, 1965 (1) SCR 413, at p. 441]. The freedom of speech that is available to Members of Parliament under Article 105(1) is wider in amplitude than the right to freedom of speech and expression guaranteed under Article 19(1)(a) since the freedom of speech under Article 105(1) is not subject to the limitations contained in Article 19(2).

Clause (2) confers immunity in relation to proceedings in courts. It can be divided into two parts. In the first part immunity from liability under any proceedings in any court is conferred on a Member of Parliament in respect of anything said or any vote given by him in Parliament or any committee thereof. In the second part such immunity is conferred on a person in respect of publication by or

under the authority or either House of Parliament of any report, paper, votes or proceedings. This immunity that has been conferred under Clause (2) in respect of anything said or any vote given by a Member in Parliament or any committee thereof and in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, ensures that the freedom of speech that is granted under clause (1) of Article 105 is totally absolute an d unfettered. [See : Legislative Privileges Case pp. 441, 442].

Having secured the freedom of speech in Parliament to the members under clause (a) and (2), the Constitution, in clause (3) of Article 105, deals with powers, privileges and impunities of the House of Parliament and of the members and the committees thereof in other respects. The said clause is in two parts. The first part empowers Parliament to define, by law, the powers, privileges and immunities of each House of Parliament and of the members and the committees of each House. In the second part, which was intended to be trasitional in nature, it was provided that until they are so defined by law the said powers, privileges and immunities shall be those of the House of Commons in the United Kingdom and of its members and committees at the commencement of the Constitution. This part of the provision was on the same lines as the provisions contained in Section 49 of the Australian Constitution an d Section 18 of the Canadian Constitution. Clause (3), as substituted by the Forty-fourth Amendment of the Constitution, does not make any change in the content and it only seeks to omit future reference tot he house of Commons of Parliament in the United Kingdom while preserving the position as it stood on the date of coming into force of the said amendment.

Clause (4) of Article 105 makes the privileges and immunities secured under Clauses (1) and (3) applicable to persons who by virtue of the Constitution have the right to speak otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to Members of Parliament.

Shri P.P. Rao, Shri D.D. Thakur and Shri Kapil Sibal, the learned senior counsel appearing for the appellants, have submitted that having regard tot he purpose underlying the grant of immunity under clause (2) of Article 105, namely, to secure full freedom for a Member of Parliament while participating in the proceedings in the House or its committees by way of speech or by casting his vote, the said provision should be given a wide construction so as to enable the Member to exercise his said rights without being exposed to legal proceedings in a court of law in respect of anything said or any vote given by him in Parliament or any committee thereof. It has been submitted that the immunity from liability that has been conferred on a Member of Parliament under clause (2) of Article 105 would, therefore, extend to prosecution of member on a charge o bribery in making a speech or giving his vote in the House or any committee as well as the charge of conspiracy to accept bribe for making a speech or giving the vote. It is claimed that by virtue of the immunity granted under clause (2) of Article 105 the offer to and acceptance by a Member of Parliament of bribe in connection with his making a speech or giving the vote would not constitute a criminal offence and, therefore, neither the member receiving the bribe nor the person offering this bribe can be prosecuted and so also there can be no offence of criminal conspiracy in respect of such offer and acceptance of bribe. It has been urged that on that view neither the charge of conspiracy under Section 120B IPC nor the charges in respect of the substantive offences under the 1988 Act can be

sustained against the appellants. Strong reliance has been placed on the decision of the Court of Queen's Bench in Ex parte Wason, (1869) LR QBD 573, as well as on the judgment of the U.S. Supreme Court (Harlan J.) in Johnson and on the dissenting judgments of Brennan J. and White J. in Brewster.

The learned Attorney General, on the other hand, has urged that the immunity granted under clause (2) of Article 105 gives protection to a Member of Parliament from any liability for a speech made by him or a vote given by him in the House or any committee thereof, but the said immunity cannot be extended to confer immunity from prosecution of a Member for having received bribe or having entered into a conspiracy to receive bribe for the purpose of making a speech or giving a vote in the House or in any committees thereof. The learned Attorney General has placed reliance on the judgment of the U.S. Supreme Court (Burger CJ.) in Brewster, the Canadian decision in Bunting and the Australian decisions in White and Boston and the ruling of Buckley J. in R.V. Currie & Ors.

Before we proceed to consider these submissions in the light of the provisions contained in clause (2) of Article 105, we may refer to the decision in Ex parte Wason and the other decision in which it has been considered.

In Ex parte Wason information had been laid by Wason before the Magistrate wherein it was stated that the had given Eari Russell a petition to be presented in the House of Lords wherein the Lord Chief Baron was charged with wilful and deliberate falsehood and the object of the petition was that the Lord Chief Baron might be removed from his office by an address of both House of Parliament and that Eari Russell, Lord Chelmsford and the Lord Chief Baron conspired together to prevent the course of justice by agreeing to make statements which they knew to be untrue and that Eari Russell, Lord Chelmsford and the Lord Chief Baron agreed to deceive the House of Lords by stating that the charge of faleshood contained in the petition against the Lord Chief Baron was unfounded and false whereas they knew it to be true. The magistrate refused to take applicant's recognizance on the ground that no indictable offence was disclosed by the information. The Court of Queen's Bench upheld the said order of the magistrate and refused to grant the rule sought by the applicant. Cockburn CJ., after referring to the information which was placed before the magistrate, said :-

> "Now inasmuch as these statements were alleged to have been for the purpose of preventing the prayer of the petition, and the statements could not have had that effect unless made in the House of Lords, it seems to me that the fair and legitimate inference is that the alleged conspiracy was to make, and that the statements were made, in the House of Lords. I think, therefore, that the magistrate, looking at this and the rest of the information, was warranted in coming to the conclusion, that Mr, Wason charged and proposed to make the substance of the indictment, that these three persons did conspire to deceive the House of Lords by statements made in the House of Lords for the purpose of frustrating the petition. Such a charge could not be maintained in a court of law. It is clear that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third person. And a conspiracy to

make such statements would not makes these persons guilty of it amenable to the criminal law.," [p. 576] [emphasis supplied] Blackburn J. said :-

"I perfectly agree with my Lord as to what the substance of the information is; and when the House is sitting and statements are made in either House of Parliament, the member making them is not amenable to the criminal law. It is quite clear that no indictment will lie for making them, nor for a conspiracy or agreement to make them, even though the statements be false to the knowledge of the persons making them. I entirely concur in thinking that the information did only charge an agreement to make statements in the House of Lords, and therefore did not charge any indictable offence."

[p. 576] Lush J. also said :-

"I cannot doubt that it charges a conspiracy to deceive the House of Lords, and so frustrate the application, by means of making false statements in the house. I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House." [p. 577] The observations if Cockburn CJ., with whom Blackburn J. has concurred, show that the substance of the information laid by Wason was that the alleged conspiracy was to make false statements and that such statements were made in the House of Lords and that the said statements had been made the foundation of the criminal proceeding. Though in the judgment there is no reference to Article 9 of the Bill of Rights but the tenor of the abovequoted observations of the learned Judges leave no doubt that the judgment was based on that Article. It has been so understood in later judgments. [See : R.V. Caurrie & Ors.].

Reliance has been placed by Shri Rao on the observations of Lush J. that "the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House".

In Johnson, while dealing with the contention urged on behalf of the Government that the Speech or Debate Clause was meant to prevent only prosecutions based on the content of speech, such as libel actions, but not those founded on the antecedent unlawful conduct of accepting or agreeing to accept a bribe, Harlan J. has observed :-

"Although historically seditious libel was the most frequent instrument for intimidating legislators, this has never been the sole form of legal proceedings so employed, and the language of the Constitution is framed in the broadest terms." [PP. 689, 690] In order to show the broader thrust of the privilege reference was made by the learned Judge to the decision in Ex parte Wason and the observations of Cockburn CJ. and Lush J/. have been quoted. The contention that the Speech or Debate Clause was not violated because the gravamen of the count was the alleged

conspiracy, not the speech, was rejected by pointing out that "the indictment itself focused with particularity upon motives underlying the making of the speech and upon its contents". [p 690]. The learned Judge has further said :-

"We emphasise that our holding is limited to prosecutions involving circumstances such as those presented in the case before us. Our decision does not touch a prosecution which, though as here founded on a criminal statute of general application, does not draw in question the legislative acts of the defendant member of Congress or his motives for performing them."

[pp. 690, 691] "The making of the speech, however, was only a part of the conspiracy charge. With all references to this aspect of the conspiracy eliminated, we think the Government should not be precluded from a new trial on this count, thus wholly purged of elements offensive to the Speech or Debate Clause.: [p. 691] In Brewster Brennan J. and White J. in their dissenting judgments, have referred to the earlier judgment in Johnson and the decision in Ex parte Wason. Brennan J. was of the view that Johnson "can only be read as holding that a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves may not be the subject of a general conspiracy prosecution". [p. 533]. Burger CJ. did not agree with this reading of Johnson and said :-

"Johnson thus stands on a unanimous holding that a Member of Congress may be prosecuted under a criminal statute provided that the Government's case does not rely on legislative acts or the motivation for legislative acts. A legislative act has consistently been defined as an act generally done in Congress in relation to the business before it. In sum, the Speech or Debate Clause prohibits inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts." [pp. 517, 518] After pointing out that the privileges in England is by no means free form grave abuses by legislators, Burger CJ. has observed :-

"The authors of our Constitution were well aware of the history of both the need for the privilege and the abuses that could flow from the sweeping safeguards. In order to preserve other values, they wrote the privilege so that it tolerated and protects behaviour on the part of Members not tolerated and protected when done by other citizens, but the shield does not extend beyond what is necessary to preserve the integrity of the legislative process.' [p. 521] The learned Chief Justice took note of the fact that "Congress is ill-equipped to investigate, try, and punish its Members for a wide range of behaviour that is lossely and incidentally related to the legislative process" and said :-

"In this sense, the English analogy on which the dissents place much emphasis, and the reliance on Ex parte Wason, LR 4 QB 573 (1869), are inapt." [p. 521] While referring to the observations made by Brennan J., the learned Chief Justice has observed :-

"Mr. Justice Brennan suggests that inquiry into the alleged bribe is inquiry into the motivation for a legislative act, and it is urged that this very inquiry was condemned as impermissible in Johnson. That argument misconstrues the concept of motivation for legislative acts. The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions. In Johnson, the Court held that on remand, Johnson could be retried on the conspiracy-to-defraud count, so long as evidence concerning his speech on the House floor was not admitted. The Court's opinion plainly implies that had the Government chosen to retry Johnson on that count, he could not have obtained immunity from prosecutions by asserting that the matter being inquired into was related to the motivation for his House speech."

[p. 527] In his dissenting judgment White J., after referring to Ex parte Wason has observed :-

"The Wason court clearly refused to distinguish between promise and performance; the legislative privilege applied to both." [p. 546] The learned Judge then refers to Johnson and says :-

"I find if difficult to believe that under the statute there involved the Johnson Court would have permitted a prosecution based upon a promise to perform a legislative act." [p. 546].

But in Helstoski White J. was a party to the majority judgment delivered by Burger CJ. wherein it was held :-

"Promises by a member to perform an act in future are not legislative acts". [p. 23] "But it is clear from the language of the clause that protection extends only to an act that has already been performed. A promise to deliver a speech, to vote, or to solicit other votes at some future dates is not `speech or debate'. Likewise a promise to introduce a bill is not a legislative act." [p. 24].

In Bunting Wilson CJ., has considered, Ex parte Wason and has pointed out that in that case the alleged conspiracy could not fall under the head of an agreement to do an illegal act because the truth of falsity of statements made by members in Parliament could not b e enquired into by the court and that it did not also fall under the head of doing an act, nor necessarily illegal, by illegal means because there were no illegal means used or to be used. The learned Chief Justice has, however, observed :-

"But if these three persons had agreed that the two members of the House of Lords should make these false statements, or vote in any particular manner, in consideration of a bribe paid or to be paid to them, that would have been a conspiracy to do an act, not necessarily illegal perhaps, but to do the act by illegal means, bribery being an offence against the law; and the offence of conspiracy would have been

complete by reason of the illegal mans by which the act was to be effected. That offence could have been inquired into by the Court, because the inquiry into all that was done would have been of matters outside of the House of Lords, and there could therefore be no violation of, or encroachment in any respect upon, the lex parliament". [p. 554] In R. V. Currie & Ors. Buckley J. has referred to the observations of Wilson CJ. in Bunting and has ruled that the reasoning in Ex parte Wason would not apply to alleged bribery for the proof of which no reference to goings on in Parliament would be necessary.

in We may now examine whether the decision Ex parte Wason has any bearing on the interpretation of Article 105(2). Clauses (1) and (2) of Article 105 are interlinked, while clause (1) secures to the Members freedom of speech in Parliament, clause (@) safeguards and protects the said freedom by conferring immunity on the Members from liability in respect of anything said or any vote given by him in Parliament or in any committee thereof. This is necessary because for a regulatory body like Parliament, the freedom of speech is of the utmost importance and a full and free debate is on the essence of Parliamentary democracy. In England this freedom of speech in Parliament is secured by Article 9 of the Bill of Rights. Though clause (2) Article 105 appears to be similar to Article 9 of the Bill of Rights but a closer look would show that they certain aspects. Article 9 of the Bill of Rights, by prescribing that "freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament", confers immunity in respect of speech, debates or proceedings in Parliament being questioned in any court or place out of Parliament. The said immunity has been construed to precluded what was said or done in Parliament in the course of proceedings there being examined outside Parliament for the purpose of supporting a cause of action even though the case of action itself arose out of something done outside Parliament. See : Church of Scientology of California v. Johnson Smith, 1972 (1) All ER 378]. In an Australian case R. v. Murphy, (1986) 5 NSWLR 18, a question arose whether in the course of criminal trial, the witness's earlier evidence to the Select Committee could be put to him in cross-examination with a view to showing a previous inconsistent statement. Hunt J. in the Supreme Court of New South Wales, held that Article 9 of the Bill of Rights did not prohibit such cross-examination even if the suggestion was made that the evidence given to the Select Committee was a lie. He further held that the statements of the Select Committee could b e used to draw inferences and could be analysed and be made the basis of submission.

In Prebble v. Television New Zealand Ltd., 12994 All ER

407. Lord Browne Wilkinson, speaking for the Judicial Committee of the Privy Council, after taking note of the decision of Hunt J. in R. v. Murphy (supra), has said :-

"Finally, Hunt J. based himself on a narrow construction of art 9, derived from the historical context in which it was originally enacted.

He correctly identified the mischief sought to be remedied in 1688 as being, inter alia, the assertion by the King's courts of a rights to hold a member of Parliament criminally or legally liable for what he had done or said in Parliament. From this he deduced the principle that art 9 only applies to cases in which a court is being asked to expose the maker of the statement to legal liability for what he has said in Parliament. This view discounts the basic concept underlying art 9 viz. the need to ensure so far as possible that a member of the legislature and witnesses before committees of the House can speak freely without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness at the time he speaks is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statement to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect."

[p. 415] The protection given under clause (2) of Article 105 is narrower than that conferred under Article 9 of the Bill of Rights in the sense that the immunity conferred by that clause in personal in nature and is available to the member in respect of anything said or in any vote given by him in the House or any committee thereof. The said clause does not confer an immunity for challenge in the court on the speech or vote given by a Member of Parliament. The protection given under clause (2) of Article 105 is thus similar to protection envisaged under the construction placed by Hunt J. in R v., Murphy [supra] on Article 9 of the Bill of Rights which has not been accepted by the Privy Council in Prebble v. Television New Zealand Ltd. The decision in Ex parte Wason (supra), which was given in the context of Article 9 of the Bill of Rights, can, therefore, have no application in the matter of construction of clause (2) of Article 105. Ex parte Wason (supra), which holds that the information laid by Wason did not disclose any indictable offence, proceeds on the basis that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings. The position under clause (2) of Article 105 is, however, different. The said clause does not prescribe that a speech made or vote given by a member in Parliament cannot be made the basis of civil or criminal proceedings at all. The said clause only gives protection to the member who has made the speech or has given the vote from liability in any proceeding in a court of law. Therefore, on the basis on t he decision in Ex parte Wason (supra), it cannot be said that no offence was committed by those who are alleged to have offered the illegal gratification and by those who had received such gratification to vote against the No Confidence Motion and for that reason the charge of conspiracy and abetment must also fall. On the basis of Article 105(2) the claim for immunity from prosecution can be made only on behalf of A-3 to A-5 and A-16 to A-21 who are alleged to have voted against the No Confidence Motion. As to whether they are entitled to such immunity under Article 105(2) will, however, depend on the interpretation of the provisions of Article 105(2).

As indicated earlier, Article 105(2) is in two parts. In these appeals we are required to consider the first part which provides that no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof. The immunity that has been conferred by this provision is : (i) only on the Member of Parliament, (ii) with regard to liability in any proceedings in any court, which would include civil as well as criminal proceedings,

(iii) in respect of anything said or any vote given by such Member, (iv) in Parliament of in any committee thereof.

Shri Rao has submitted that having regard to the object underlying the provision, viz., to secure the freedom of speech in Parliament to the members, the immunity granted under clause (2) must be construed in a wide sense and just as the expression "anything" was construed in Tej Kiran Jain & Ors v. N. Sanjiva Reedy & Ors., 1971 (1) SCR 612, as a word of widest import, the expression "in respect of" must also be given a wide meaning so as to comprehend an act having a nexus or connection with the speech made or a vote given by a member in Parliament or any committee thereof and would include, within its ambit, acceptance of bribe by a member in order to make a speech or to cast his vote in Parliament or any committee thereof in a particular manner. In support of his submission for giving a wider meaning to the expression "in respect of" Shri Rao h as relied upon the decisions of this Court in The State of Tripura v. The Province of East Bengal, 1951 (2) SCR 1; Tolaram Relumal and Anr. v. The State of Bombay, 1955 (1) SCR 158; and S.S. Light Railway Co. Ltd. v. Upper Doab Sugar Mills Ltd. & Anr. 1960 (2) SCR 926, and the decision in Paterson v. Chadwick, 1974 (2) All ER 772.

The learned Attorney General has, on the other hand, urged that immunity granted under clause (2) of Article 105 is intended to protect a member form liability arising out of the speech made by him or vote given by him and it cannot be extended to cover the conduct of a member who has received bribe or has entered into a conspiracy to commit the offence of bribery in order to make a speech or cast his vote in Parliament. The submission is that the expression `in respect of' in clause (2) of Article 105 must be so construed as to ensure that the immunity conferred under clause (2) is only available in respect of legitimate acts of a member of Parliament and it cannot be invoked to secure immunity against any criminal acts committed by member in order to make a speech or to give his vote in Parliament or in any committee thereof. According to the learned Attorney General, the expression `in respect of' in Article 105(2) must be construed to moon `foe'. Reliance has been placed by him on the decision of this Court in State of madras v. M/s Swastik Tobacco Factory, Vedaranyam, 1966 (3) SCR 79.

In Tej Kiran Jain the appellants had filed a suit for damages in respect of defamatory statements alleged to have been made by certain members of Parliament on the floor of the Lok Sabha during a calling attention motion. The said suit was dismissed by the High Court on the view that no proceedings could be initiated in respect of anything said on the floor of the House in view of Article 105(2) of the Constitution. Before this Court it was contended on behalf of the plaintiffs that the immunity under Article 105(2) was granted to what was relevant to the business of Parliament and not to something which was irrelevant. The said contention was rejected by the Court. It was

observed :-

> "The article confers immunity inter alia in respect of `anything said ..... in Parliament'. The word `anything' is of the widest import and is equivalent to `everything'. The only limitation arises from the words `in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceeding in any court. This immunity is not only compete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none." [p. 615] These observations in Tej Kiran Jain emphasise the object underlying the immunity that has been conferred under Article 105(2), namely, that the people's representatives should be free to exercise their functions without fear of legal consequences. Borrowing the words Burger CJ. it can be said that this immunity has been `"to protect the integrity of the legislative process by ensuring the independence of the individual legislators". It cannot be given a construction which could lead to Article 105(2), a charter for freedom of speech in Parliament, being regarded, as per the phrase used by Lord Salmon, a "charter for corruption"

so to elevate Members of Parliament as "super citizens, immune from criminal responsibility". (Burger CJ. in Brewster). It would indeed be ironic if a claim for immunity from prosecution founded on the need to ensure the independence of Members of Parliament in exercising their right to speak or cast their vote in Parliament, could be put forward by a Member who has bartered away his independence by agreeing to speak or vote in a particular manner in lieu of illegal gratification that has been paid or promised. Bu claiming the immunity such a Member would only be seeking a licence to indulge in such corrupt conduct.

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

comparable to that of a police investigation. [para 310] The expression `in respect of' has to be construed in this perspective. The cases cited by Shri Rao do show that this expression has been construed as having a wider meaning to convey `some connection or relation in between the two subject matters to which the words refer'. But as laid down by this Court in The State of Madras v. M/s Swastik Tabacco Factory, Vendarayam (supra) the expression has `received a wide interpretation, having regard to the object of the provisions and the setting in which the said words appeared'. The expression `in respect of' in Article 105(2) has, therefore, to be construed keeping in view the object of Article 105(2) and the setting in which the expression appears in that provision.

As mentioned earlier, the object of the immunity conferred under Article 105(2) is to ensure the independence of the individual legislators. Such independence is necessary for healthy functioning of the system of parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of the basic structure of the Constitution. An interpretation of the provisions of Article 105(2) which would enable a Member of Parliament to claim immunity from prosecution in a criminal court for an offence of bribery in connection with anything said by him or a vote given by him in Parliament or any committee thereof and thereby place such Members above the law would not only be repugnant to healthy functioning of Parliamentary democracy but would also be subversive of the Rule of Law which is also an essential part of the basic structure of the Constitution. It is settled law that in interpreting the constitutional provisions the court should adopt a construction which strengthens the foundational features and the basic structure of the Constitution. [See- Committee on Judicial Accountability v. Union of India, 1991 (4) SCC 699, 719]. The expression `in respect of' precedes the words `anything said or any vote given' in Article 105(2). The words `anything said or any vote given' can only mean speech that has already been made or a vote that has already been given. The immunity from liability, therefore, comes into play only if a speech has been made or vote has been given. The immunity would not be available in a case where a speech has not been made or a vote has not been given. When there is a prior agreement whereunder a Member of Parliament has received an illegal consideration in order to exercise his right to speak or to give his vote in particular manner on matter coming up for consideration before the House, there can be two possible situations. There may be an agreement whereunder a Member accepts illegal gratification and agrees not to speak in Parliament or not to give his vote in Parliament. The immunity granted under Article 105(2) would not be available to such a Member and he would be liable to be prosecuted on the charge of bribery in a criminal court. What would b e the position if the agreement is that in lieu of the illegal gratification paid or promised the Member would speak or give his vote in Parliament in a particular manner and he speaks and gives his vote in that manner ? As per the wide meaning suggested by Shri Rao for the expression `in respect of', the immunity for prosecution would be available to the Member who has received illegal gratification under such an agreement for speaking or giving his vote and who has spoken or given his vote in Parliament as per the said agreement because such acceptance of illegal gratification has a nexus or connection with such speaking or giving of vote by that Member. If the construction placed by Shri Rao on the expression `in respect of' is adopted, a Member would be liable to be prosecuted on a charge of bribery if he accepts bribe for not speaking or for not giving his vote on a matter under consideration before the House but he would enjoy immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote in Parliament in a particular manner and he speaks or gives his vote in Parliament in that manner. It is difficult to conceive that the framers of the

Constitution intended to make such a distinction in the matter of grant of immunity between a Member of Parliament who receives bribe for speaking or giving his vote in Parliament in a particular manner and speaks or gives his vote in that manner and a Member of Parliament who receives bribe for not speaking or not giving his vote on a particular matter coming up before the House and does not speak or give his vote as per the denying such immunity to the latter. Such an anamolous situation would be avoided if the words `in respect of' in Article 105(2) are construed to mean `arising our of'. If the express in `in respect of' is thus construed, the immunity conferred under Article 105(2) would be confined to liability that arises out of or is attributable to something that has been said or to a vote that has been given by a Member in Parliament or any committee thereof. The immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part of the cause of action for the proceedings giving rise to the liability. The immunity would not be available to give protection against liability for an act that precedes the making of the speech or giving of vote by a Member in Parliament even though it may have a connection with the speech made or the vote given by the Member if such an act gives rise to a liability which arise independently and does not depend on the making of the speech or the giving of vote in Parliament by the Member. Such an independent liability cannot be regarded as liability in respect of anything said or vote given by the Member in Parliament. The liability for which immunity can be claimed under Article 105(2) is the liability that has arisen as a consequence of the speech that has been made or the vote that has been given in Parliament.

An indication about the liability with regard to which immunity is granted by Article 105(2) is given in the Legislative Privileges Case wherein in the context of clause (2) of Article 194, which confers immunity similar to that conferred by Article 105(2) on Members of the State Legislatures, it has been said :-

> "Having conferred freedom of speech on the legislators, clause (2) emphasises the fact that the said freedom is intended to the abosolute and unfettered. Similar freedom is guaranteed to the legislators in respect of the votes they may given in the Legislature or any committee thereof. In other words, even if a legislator exercises his right of freedom of speech in violation, say, of Article 21, he would not be liable for any action in any court.
>
> Similarly, if the legislator by his speech or vote, is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause." [p. 441] With regard to liability arising from giving of vote in the House an illustration is furnished by the decision of the US Supreme Court in Kilbourn v. Thompson, 26. L.Ed. 377. In the case one Hallet Kilbourn was found guilty of contempt of the House of Representatives and was ordered to be detained in custody under a resolution passed by that House. He brought an action in trespass for false imprisonment against the members of the House who had voted in favour of the resolution. The action was held to be not maintainable against the members in

view of the immunity conferred by the Speech or Debate Clause in the US Constitution.

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

The offence of criminal conspiracy is defined in Section 120A in these terms :-

"120-A. Definition of criminal conspiracy.- When tow or more persons agree to do, or cause to be done,-

(1) an illegal act, or (2) an act which is not illegal by illegal mean, such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

The offence is made out when two or more persons agree to do or cause to be done an illegal act or when two or more persons agree to do or cause to be done by illegal means an act which is not illegal. In view of the proviso to Section 120A IPC an agreement to commit an offence shall by itself amount to criminal conspiracy and it is not necessary that some act besides the agreement should be done by one or more parties to such agreement in pursuance thereof. This means that the offence of criminal conspiracy would be committed if two or more persons enter into an agreement to commit the offence of bribery and it is immaterial whether in pursuance of that agreement that act that was agreed to be done in lieu of payment of money was done or not.

The criminal liability incurred by a Member of Parliament who has accepted bribe for speaking or giving his vote in Parliament in a particular manner thus arises independently of the making of the speech or giving of vote by the Member and the said liability cannot, therefore, be regarded as a liability `in respect of anything said or any vote given' in Parliament. We are, therefore, of the opinion that the protection granted under Article 105(2) cannot be invoked by any of the appellants to claim immunity from prosecution on the substantive charge in respect of the offences punishable under Section 7, Section 13(2) read with Section 13(1)(d) and Section 12 of the 1988 Act as well as the charge of criminal conspiracy under Section 120B IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of the 1988 Act.

Shri P.P. Rao has also invoked the privileges and immunities available to Members of Parliament under clause (3) of Article 105. It has been urged that since no law has been made by Parliament defining the powers, privileges and immunities of each House of Parliament, the powers, privileges and immunities enjoyed by Members of Parliament in India are the same as those enjoyed by the Members of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution on January 26, 1950. In order to show that on January 26, 1950 a Member of the House of Commons in the United Kingdom enjoyed an immunity from prosecution for bribery in connection with the exercise of his functions as such Member, Shri Rao has invited our attention to the following statement in May's Parliamentary Practice :-

"The acceptance by any Member of either House of a bribe to influence him in his conduct as such Member or of any fee, compensation or reward in connection with the promotion of, or opposition to any bill, resolution, matter of thing submitted or intended to be submitted to the House or any committee thereof is a breach of privilege." [18th Edn.p. 138] It has been submitted that since acceptance of a bribe by a Member of House of Commons was treated as breach of privilege and was not triable as an offence in any criminal court in the United Kingdom, the same privilege and immunity is available to a Member of Parliament in India by virtue of the second part of clause (3) of Article 105. It has been further contended that in a case where the conduct which constitutes the breach of privilege is also an offence at law, it is for the House to decide whether the punishment which the House is empowered to inflict is not adequate to the offence and it is necessary that the offender should be prosecuted in a criminal court an d reliance is placed on the following passage in May's Parliamentary Practice :-

"In case of breach of privilege which are also offences at law, where the punishment which the House has power to inflict would not be adequate to the offences, or where for any other cause the House has though a proceeding at law necessary, either as a substitute for, or in addition to, its own proceeding, the Attorney General has been directed to prosecute the offender." [18th Edn. p.127] In the Legislative Privileges Case, while construing clause (3) of Article 194, which was in the same terms as

clause (3) of Article 105, this Court has said :-

"This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to ave subsisted at the commencement of the Constitution, i.e., on January 26, 1950. It is well known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time, and some virtually faded out by desuetude; and so, in every case where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld that under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is : is the power in questions shown or proved to have subsisted in the House of Commons at the relevant time." [pp. 442, 443] [emphasis supplied] The learned Attorney General has submitted that till the decision in R.V. Currie & Ors. the position in England was that acceptance of bribe by a Member of Parliament was not being treated as an offence at common law, the question whether a Member of Parliament enjoys an immunity from prosecution in a criminal court on a charge of bribery never came up before the English courts and, therefore, it cannot be said that on January 26, 1950 the members of the House of Commons in t he United Kingdom enjoyed a privilege, which was recognised by the English courts, that they could not be prosecuted on a charge of bribery in a criminal court and that such a privilege cannot, therefore, be claimed by members of Parliament in India under clause (3) of Article

105. The learned Attorney General has placed reliance on the following observations of Stephen J. in Bradiaugh V. Gossett (1884) 12 QBD 271 :

"I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice."

The learned Attorney General has also placed reliance on the following statement of law in Halsbury's Laws of England, Vol AA(1/), Para 37 at page 40, wherein it is stated :-

"37. Members of Parliament. Except in relation to anything said in debate, a member of the House of Lords or of the House of Commons is subject to the ordinary course of criminal justice, the privileges of Parliament do not apply to criminal matters."

In Footnote (1) to the said para it is stated that :-

> "Although members are probably subject to the jurisdiction of the courts in respect of other conduct in Parliament, they cannot be made criminally responsible in the courts for what is said by them in Parliament while it is sitting; see the Privileges of Parliament Act 1512 (as amended)."

We find considerable force in the aforesaid submission of the learned Attorney General. Since offering of bribe to a Member of Parliament and acceptance of bribe by him had not been treated as an offence at common law by the courts in England, when t he Constitution was adopted in 1950, the fact that such conduct was being treated as a breach of privilege by the House of Commons in England at that time would not necessarily mean that the courts would have been precluded from trying the offence of bribery committed by a Member of Parliament if it were to be treated as an offence. In Australia and Canada where bribery of a legislator was treated as an offence at common law the courts in White, Boston and Bunting has held that the legislator could be prosecuted in the criminal court for the said offence. It cannot, therefore, be said that since acceptance of bribe by a Member of House of Commons was treated as a breach of privilege by the House of Commons and action could be taken by the House for contempt against the Member, the Members of the House of Commons, on January 26. 1950, were enjoying a privilege that in respect of conduct involving acceptance of bribe in connection with the business of Parliament, they could only be punished for breach of privilege of the House and they could not be prosecuted in a court of law. Clause (3) of Article 105 of the Constitution cannot, therefore, be invoked by the appellants to claim immunity from prosecution in respect of the charge levelled against them.

Before we conclude on this aspect relating to the 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 that during the course of the 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 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 judgment of White J. in Brewster wherein he has expressed the view that permitting the executive to initiate the prosecution of a member of Congress for the specific crime of bribery is subject to serious potential abuse that might endanger the independence of the legislature. Burger CJ. has, however, pointed out that there was no basis for such an apprehension inasmuch as no case was cited in which the bribery statutes which have been applicable to members of 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 a bribery statute violates the Constitution. As we noted at the outset, the purpose of the Speech or Debate Clause is to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. But financial abuses, by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation.

Depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of Members of Congress is unlikely to enhance legislative independence." [p. 525] In the earlier part of the judgment we have found that for the past more than 100 years legislators in Australia and Canada are liable to be prosecuted for bribery in connection with their legislative activities and, with the exception of the United Kingdom, most of the commonwealth countries treat corruption and bribery by members of legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There appears to be no reason why legislators in India should be beyond the pale of laws governing bribery and corruption when all other public functionaries are subject to such laws. We are, therefore, unable to uphold the above contention of Shri Thakur.

On a consideration of the submissions urged by the learned counsel we arrive at the conclusion that on the basis of provisions contained in clauses (2) and (3) of Article 105, the appellants cannot claim immunity from prosecution on the charges that have been levelled against them.

Whether a `Public Servant' We may now come to the question whether a Member of Parliament is a public servant for the purposes of the 1988 Act. Prior tot he enactment of the 1988 Act the law relating to prevention of corruption was governed by the Prevention of Corruption Act, 1947 [hereinafter referred to as `the 1947 Act']. In Section 2 of the 1947 Act it was provided that for the purposes of the said Act "public servant" means a public servant as defined in Section 21 IPC. Section 21 IPC provided as follows :

"21. "Public Servant".- The words "public servant" denote a person falling under any of the discriptions hereinafter following, namely:

First. - [Repealed by the Adaptation of Laws Order, 1950.] Second.- Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third.- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions; Fourth.- Every officer of a Court of Justice (including a liquidator, receiver of commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make , authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth.- Every jurymen, assessor, or member of a panchayat assisting a Court of Justice or public servant; Sixth.- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.- Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government. Tenth.- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, atuhenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.- Every person who holds any office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.- Every person-

(a) In the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

In R.S.Nayak v. A.R. Antulay. 1984 (2) SCR 495, this Court construed the provisions of Section 21 IPC in order to determine whether a Member of the Legislative Assembly could be held to be a public servant for the purpose of the 1947 Act. The said question was considered in the light of clauses (3), (7) and (12)(a) of Section 21 IPC. It was pointed out that Members of Parliament in the United Kingdom are not covered by the Prevention of Corruption Act, 1906, the Prevention of Corruption Act, 1916 and the Public Bodies Corrupt Practices Act, 1889. The Court has also referred to the Bill called the Legislative Bodies Corrupt Practices Act, 1925 introduced in 1925 to give effect to the recommendations of the Reforms Enquiry Committee (known as Mudiman Committee) which sought to fill in the lacuna in the existing law and to provide for punishment of corrupt practices by or relating to members of Legislative Bodies constituted under the Government of India Act, 1919, and has taken note that the said Bill was snot enacted into law. The Court has also referred to the Report of the Committee, known as the Santhanam Committee, appointed by the Government of

India to suggest changes which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective, which led to the amendments introduced in Section 21 IPC by the Anti Corruption Laws (Amendment) Act, 1964 as well as the Statement made by Shri Hathi, Minister- in-charge, while piloting in the Lok Sabha the Bill which was enacted as the Anti Corruption laws (Amendment) Act, 1964. The Court held that a Member of the Legislative Assembly was not comprehended in the definition of `public servant' in Section 21 IPC and that the amendments introduced in Section 21 IPC by the Amendment Act of 1964 did not bring about any change. While dealing with clause (12)(a) of Section 21 IPC, as amended by the Amendment Act of 1964, the Court observed that a person would be a public servant under clause (12)(a) if (i) he is in the service of the Government, or (ii) he is in the pay of the Government, or (iii) he is remunerated by fees or commission for the performance of any public duty by the Government. It was held that even though a Member of Legislative Assembly receives his salary and allowances in his capacity as such Member, he is not a person in the pay of the Government inasmuch as the expression `Government' connotes the executive and not eh legislature and a Member of Legislative Assembly is certainly not in the pay of the executive. It was also held that a Member of Legislative Assembly is also not remunerated for performance of any public duty by the Government because he is not remunerated by fees paid by the Government, i.e. the Executive. At the same time, while dealing with the contention that a Member of Legislative Assembly is not performing any public duty it was observed :

> "It is not necessary to examine this aspect because it would be rather difficult to accept an unduly vide submission that M.L.A. is not performing any public duty. However, it is unquestionable that he is not performing any public duty either directed by the Government or for the Government. He no doubt performs public duties cast on him by the Constitution and his electorate. He thus discharges constitutional functions for which he is remunerated by fees under t he Constitution and not by the Executive" [p. 548] The Court also considered the question whether a Member of the Legislative Assembly is a public servant with reference to clauses (3) and (7) of Section 21 IPC and held that a member of the Legislative Assembly did not fall within the ambit of the said clauses.
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> In the 1988 Act the expression `public servant' has been defined in Section 2(c) which reas as follows :-
>
> "2(c) "public servant" means -
>
> (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
>
> (ii) any person int he service or pay of a local authority;
>
> (iii)andy person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the

Companies Act, 1956 (1 of 1956);

iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorise by a court of justice ot perform any duty, in connection with the administration of justice, including a liquidator, receiver of commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a ocurt of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or rrevised an electoral roll or to conduct an election or part of an election;

(viii)any person who holds an office by virtue of which he is authorised or requried to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Compnies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or emplyee of any Service Commission or Board, by whatever name called, or a member of any selection commission appointed by such Commission or Board for the conduct ofr any examination or amking any selection on behalf of such Commission or Board;

(xi) any person who is Vice-Chair man or member of any governing body, professor reader, lecturer or any other teacher or employee, by whatever designatin called, of any Unversity and any person whose services have been avawiled of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office- bearer or an emplyee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1.- Person falling under any of the above sub-clauses are public sevants, whether appointed by the Government or not. Explanation 2.- Wherever the words

> "public servant" occur, they shall be understood of ever person who is in actual possession of the situation of a public servant, whatever legal defeat there may be in his right to hold that situation."
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> The expression "public duty" is defined in Section 2(b) in these terms :-
>
> "2(b) "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;
>
> Explanation.- In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);"

The clause relevant for our purpose is clause (viii) whereunder "any person who holds an office by virtue of which he is authorised or required to perform any public duty" is to be treated as a public servant under the 1988 Act. The said clause postulates that the person must (i) hold an office and (ii) by virtue of that office (iii) he must be authorised or requried to perform (iv) a public duty.

On behalf of the appellants it has been urged that a Member of Parliament does not fall within the amibit of this clause because (1) he does not hold an office; and (2) he is not authorised or requried to perform any public duty by virtue of his office.

We will first examine the question whether a Member of Parliament holds an office. The word `office' is normally understood to mean "a position to which certain duties are attached, esp. a place of trust, authority or service under constituted authority". [See : Oxford Shorter English Dicikonary, 3rd Edn. p. 1362]. In McMillan v. Guest, 1942 AC 561, Lord Wright has said :-

> "The word `office' is of indefinite content. It various meanings cover four columns of the New English Dictionary, but I take as the most relevant for pusposes of this case the following : "A position or place to which certain duties are "attached, especially one of a more or less public character."

In the same case Lord Atkin gave the following meaning :-

> "an office or employment which was subsisting, permanent, substantive position, which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders."

In Stateman (Private)Ltd. v. H.R. Deb & Ors., 1968 (3) SCR 614, and Mahadeo v. Shantibhai & Ors., 1969 (2) SCR 422, this Court has adopted the meaning given by Lord Wright when it said :-

> "An office means on more than a position to which certain duties are attached."

In Kanta Kathuria v. Manakchand Surana, 1970 (2) SCR 835, Sikri J, (as the learned Chief Justice then was) speaking for the majority, while construing the words "

> holds any office of profit" in Articel 19(1)(g), has said that "there must be an office which exists independently of the holder of the office". It was observed that there is no essential difference betweent he definitions given by Lord Wright and Lord Atkin.
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> In White the Supreme Court of New South Wales has held that a member of the State Legislature holds an office. That view has been affirmed byt he High Court of Australia in Boston. Isaacs & Tich, JJ. said :
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> "A membr of Parliament is, therefore, in the highest sense, as servant of the State; his duties are those appertaning to the position he fills, a position of no transient or temporary existence, a position forming a recongnized place in the constitutional machinery of government. Why, then, does he not hold an "office"? In R.V. White it was held, as a matter of cours, that the does. That decision is sound. "Office" is defined in the Oxford Dictionary, as including :- "5. A position or place to which certain duties are attached, esp, one of a more or less public character; a position of turst, authority, or service under constituted authority." And "Officer" is defined (inter alia) as "2. One who holds an ofice, post, or place. (a) One who holds a public, civil, or ecclesiastical office; ... a person authoritatively appointed or elected to exercise some function pertaining to public life." Clearly amember of Parliament is a "public officer" in a very real sense , for he has, in the words of Willams J. in Faulkner V. Upper Boddingtion Overseers, "duties to perform which would constitute in law ian office". [p. 402] In Habibullah Khan v. State of Orissa, 1993 Cr. L.J. 3604, the Orissa Hihg Court has held that a Member of the Legislatvie Assembly holds an office and performs a public duty. The learned Judges have examined the matter keeping in view the meaning given to the expression "office" by Lord Wright as well as by Lord Atkin in McMillan v. Guest [supra]. Taking into consideration the provisions of Articles 168, 170, 172 and 173 of the Constitution relating to Legislative Assembly of the State, the learned Judge ahve held that the Member of the Legislative Assembly if created by the Constitution and that there is a distinction between the office and the holder of the office.
>
> Shri P.P. Rao has, however, pointed out that under the COnstitution a distinction has been made between an 1office' and a 1seat' and that while the expression `office' has been used int he COnstitution inrelation to various constitutional authorities such as President, [Articles 56, 57, 59 a nd 62] Vice-Presiden, [Article 67] Speaker and Deputy Speaker of the Lok Sabha, [Article 93, 94, 95 and 96] Deputy Chairman of Rajya Sabha, [Articl 90] Ministers, [Article 90] Judge of the Supreme COurt [Article 124], Judge of the High Court [Article 217] and the Attorney Genral of India [Article 76] but insofar as a Member of Parliament and a Member of State Legoslature is concerned the expression used in `seat' and not `office' which shows that the COnstitution does not contemplate that a Member of Parliament or a Member of

State Legislature holds an Office. In this context Shri Rao has invited our attention to Article 84, 99, and 101 where the expression `seat' has been used in respect of Members of Parliament and to Article 173 and 190 where the word `seat' has been used in respect of Members of State Legislatures.

The learned Attorney General has, on the other hadn, invited our attention to Section 12, 154, and 155 of the Representation fo the People Act, 1951 wherein th eexpression `term of office' has been used in relation to a Member of the Council of State [Rajya Sabha] and to Section 156 and 157 wherein the said expression has been used in relation to a Member of the Legislative Council of the State [Vidhan Parishad], The learned Attorney General has also invited our attention tot he provisons of The Salary, Allowances and Pension of Memebrs, of Parliament Act, 1854 wherein the expression `term of office', as defined in Section 2(e) coverin members of the Council of State as well as the House of the People, has been used in Section 3 (salaries and daily allowances) Sectuon 4 (travelling allowances) Section 6(2) (free transit by railway) Section 6-A (2) (free transit by steamer) and Section 8A(1) (Pension).

It would thus appear that although in t he Constitution the word `office' has been used in the provisions relating to Members of Parliament and members of State Legislature but in other parliamentary enactment relating toe members of Parliament the word `office' has been used. Having regard to the provisions of the Contitution and the Representation fo the People Act, 1951 as well as the Salary, Allowances and Pension fo Members of Parliament Act, 1954 and the meaning that has been given to the expressiion `office' in the decisions of this Court, we are of the view that Membership of Parliament is an `office' inasmuch as it is a position carrying certain responsibilities which are of a public character and it has an existence independent of the holder of the office. It must, therefore, be held that the Member of Parliament holds an `office'.

The next question is whether a Member of Parliament is authorised or required to perform any public duty by virtue of his office. As mentioned earlier, in R.S. Navak v. A.R. Antulay this Court has said that though a member of the State Legislature is not performing any public duty either directed by the Government or for the Government but he no doubt performs public duties cast on him by the Constitution and by his electorate and he discharges constitutional obligations for which he is remunerated fees under the Constitution.

In the 1988 Act the expression `publid duty' has been defined in Section 2(b) to mean " duty in the dischrge of which the State, the public or the community at large has an interest".

The Form of Oath or Affirmation which is required to be made by a Member of Parliament (as prescribed in Third Schedule to the Constitution) is in these terms :-

> "I, A.B., haing been elected (or nominated) a member of the Council of States (or the House of the People) do swear in the name of God/ Solemnly affirm that I will bear ture faith and allegiance to the Constitution of India as by law established, that I will uphold that sovereignty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

The words "faithfully discharge the duty uponwhich I am about to enter' show that a Member of Parliament is required to discharge certain duties after he is sworn in as a Memebr of Parliament. Under the COnstitution the Union Executive is responsibel to Parliament and Members of Parliament act as watchdogs ont he functioning of the Council of Ministers. In adition, a Member of Parliament plays an importance role in parliamentary proceedings, including enactment of legislation, which is asovereign function. The duties discharged by him are such in which the State, the public and the community at large have an interest and the said duties are, therefore, public duties. It can be said that a Member of Parliament is authorised and requried by the Constitution to perform these duties and the said duties are performed by him by virtue of his office.

In Horne v. Barber, (1920) 27 CLR 494 at p. 500, Isaacs J. has said :-

> "When a man becomes a member of Parliament, he undertakes high public duties. Those duties are inseparable from the position : he cannot retain the honour and divest himself of the duties. One of the duties is that of watching on behalf of the general community the conduct of the Executive, of criticizing it, and if necessary, of calling it to account in the constitutional way by censure from his place in Parliament - censure which, if sufficiently supported, means removal from office. That is the whowle essence of responsibel Government,w hich is the Keystone of our Political system, and is the main consititutional safeguard the community possesses," [p. 402] In Boston while examining the nature of duties of Member of Parliament, Isaacs & Rich, JJ. have reitereated the abovequoted observations in Horne v. Brber and have said :-
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> "The fundamental obligation of a membr in relation to the Parliament of which he is a constituent unit still susbsists as essentially as at any period of our history. That fundamental obligation which is the key to this case is the duty to serve and, in serving, to act with fidelity an d with a single-
>
> mindedness for the welfare of the community." [p. 400] "These duties are of a transcendent nature and involve the greatest responsinbility, for they include the supreme power of moulding the laws to meet the necessities of the people, and the function of vigilantly controlling and faithfully guarding the public finances." [p. 401] We are, therefore, of the view that a Member of Parliament holds an office and by virtue of such office he is required or authorised to perform duties and such duties are in the nature of public duties. A Member of Parliament would, therefore, fall withint he ambit of sub-clause (viii) of clause (c) of Section 2 of the 1988 Act.

The learned counsel for the appellants have, however, urged that while enacting the 1988 Act Parliament did not intend to include Member of Parliament and Members of the State Legislatures within the ambit of the Act and that the expression "public servant" as defined in Section 2(c) of the 1988 Act should be so construed as to exclude Members of Parliament and Members of State Legislatures. The learned counsel ahve placed strong reliance ont eh speeches of Shri P. Chaidambaram, the then Minister of State in the Ministry of Personnel, Public Grievances and Pensions and in the Ministry of Home Affairs during the course of debate on the Prevention of Corruption Bill, 1987 in the Lok Sabha as well as int he Rajya Sabha. Reliance has been palced on the following excerpts from the speech of the Minister in the Lok Sabha on May 7, 1987 and in the Rajya Sabha on May 11 and August 11, 1987 :-

Lok Sabha "A question has been raised what is the position of a Member of Parliament or a Member of a Legislative Assembly ? We have not doen anything different or contrary to the law as it stands today.

Under the law, as it stands today, the Supreme Court has held in Antulay's case that a Member of the Legislative Assmbly is not a public servant within the meaning of Section 21 of the Indian Penal Code.

I personally think that it is very difficult to say when an MLA or an MP becomes a public servant. I believe that when an MP functions qua-MP perhaps he is not a public servant and, therefore, we are not attempting a definition which will lead to difficulties. We think that there could b e situations when an MP of an MLA does centain thing which are really not part of his duties as an MP an MLA. We think that an MP or an MLA could in certain ciecumstances hold an office where he Act. If an MP or an MLA does certain acts not qua-MP or qua-MLA, but as an indicidual, abusing his position, I am not using the word `Office' I think he will be covered like any other individual under Section 8, 9 and

12. When an MP or an MLA holds an office, and by virtue of that office he has to discharge certain public duties, I think he will be covered under Section 2 clause (b) read with Section 2 Clause (c) Sub- clause (viii). I think these two situations are quite adequate to take care of defeaulting Members of Parliament and defaulting Members of the Legislative Assemblies."

Rajya Sabha "Now I will reply to the best of my ability how an MP or an MLA comes within the ambit of this Bill. I have tried to explain it in the Lok Sabha and I will try to do so here within my limits and to the best of my capacity. But if you are quoting my sppech, please quote the entire paragraphs. Don't take one sentence and then para phrase, it and give ypur commentary on its.

Read the whole paragraph, it is very clear. I have said that an MP or an MLA will in my opinion, come within the scope of this Bill in two situations. .....

A law has to be made by Parliament, We make a law with certain intentions. We use a certain language. In may view and in amy best judgment and on the best advice tht I have, this is how we think anMP or an MLA will be covered. This is all that we can say while we are making a law. We believe that our interpretation will be accepted by the courts. If you find fault with our interpretation tell use where we should improve the bill, tell us how we should imporve the language.

A law is a matter of interpretation. We are acting according to the legal advice availabel to us.

A question was asked about the Member of Parliament and Members of Legislative Assembly. Madam, under the law decleared by the Supreme Court, a Member of Parliament or a Member of Legislative Assembly per se is not a public servant. But there can be a number of situations where an MP or an MLA holds another office and discharges other duties which will being him under this Bill. If he holds another office in a cooperative society, if he holds another office in a public institution or if he discharges certain duties which will come under the definition of public duty clearly, then he would be within the definition of `public servant' under this Bill. But these are matters in which you cannot make on a prior assumption. One has to look into the facts of each case and then the courts will decided on the facts of that case.

It has been urged that these excerpts from the speeches of the Minister who has moved the Bill for consideration in both the Houses of Parliament throws considerable light on the meaning of the expression `public servant' as defined in Section 2(c) of the 1988 Act and that provisions of Section 2(c)(viii) of the 1988 Act should be given a construction whihc is in accord with these statements of the Minister. Relying upon the decisions of this Court in K.P. Verghese v. Income Tax Officer, 1982 (1) SCR 629, R.S. Nayak v. A.R. ANTULAY (supra); State of Orissa v. Mahanadi Coal Fields, 1995 Supp. (2) SCC 686; and Marendra Kumar Maheshwari v. Union of India, 1989(3) SCR 43, Shri Rao has urged that the speech of the mover of the Bill can be looked into for construing the provisions of the enactment. It has been pointed out tht in hte recent decision in Pepper v. Hart, 1993 (1) All ER 42, the House of Lorde has also departed from the earlier position taken by the courts in England in this regard and that it has been held that the statement of the Minister who had moved the Bill in Parliament can be taken into consideration for the purpose of interpreting the provisions of the enactment.

The view vwhich prevailed earlier with the courts in England was that references to Parliamentary material as an aid to statutory construction is not permissible. The said exclusionary rule precluded the court from looking even at reports made by Commissioners on which legislation was based. The rigidity of the said rule was relaxed in later decisions so as to permit reports of Commissioners, including Law Commissioners, and white papers to be looked at for the purpose solel,y of ascertaining the mischief the statute is intended to cure but not for the purpsoe of discovering the meaning of the words used by Parliament to effect such cure. Parliamentary debates were, however, not looked at as an aid to construction. The rationale for the exculsion of parliament debates is contained in the speech of Lord Reld in Black-Clawson International Ltd. v. Papierworke Waidhof-Aschaffenburg, 1975 AC 591. The learned Lord Reid has said :-

"We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words whihc Parliament used. We are seeking not what Parliament meant but the true meaning of what they said."

"The questions which give rise to debate are rerely those which later have to be decided by the courts. One might take the views of the promoters of a Bill as an indication of the intention of Parliament but any view the promoters may have had about questions which later come before the court will not often appear in Hansard and often those questions have neve occurred to t he promoters. At best we might get material from which a more or less dubious inference moght be drawn as to what the promoters inmtended or would have intended if they had though about the matter, and it would, I think, gfenerally be dangerous to attach weight to what some other members of either House may have said" [pp. 613-615] The decision in Pepper v. Hart makes an advance. In that case Lord Browne- Wilkisnon, who delivered the main judgment, has said :-

".....In my judgment, subject to the questions of the privileges of the House of Commons, reference to parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to parliamentary material should only be permitted where such material clearly discloses t he mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the minister or other promoter of the Bill is likely to meet these criteria." [p.64] ".....Given the purposive approach to construction now adopted byt eh courts in order to give effect to the true intentions of the legislature, the fine distinctuions between looking for the mischief and looking for the intention in useing words to provide the remedy are technicdal and inappropriate. Clear and unambiguous statements made by ministers in Parliament are as much the background to the enactment of legislation as white papers and parliamentary reports."

[p. 65] In the earlier decisions this court also adopted the rule of exclusion followed by the English courts. Parliamentary debates on a Bull were held to be inadmissible for construction of the Act [See : Aswini Kumar Ghose v. Arabinda Bose. 1953 SCR 1 at p. 29]. But in later judgemnt this court has referred to the speech of the Minister while introducting the Bill in the Legislature for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. In K.P. Verghese v. Income Tax Officer, 1982 (1) SCR 629, Bhagwati,J. (as the learned Chief Justice then was) has siad :

"Now it is true that the speeches made by the Members of the Legislatures on the florr of the House when a Bill for enacting a statutory provision is being debated are inadimissible for the purpose of interpreting the statutory provision but he speech made by the Mover of the Bill explaining the reason for the introduction of the Bill

can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted." [p. 645] The otehr decisions of this Court cited by Shri Rao do not lay down any different principle. On the other hand in Snajeev Coke Manufacturing Co. v. Bharat Coking Coal Ltd., 1983 (1) SCR 1000, this court has laid down :-

"No one may speak for the Parliament and Parliament is never before the Court. After Parliament has said what it intends to say, only the Court may say what the Parliament meant to say. None else. Once a statute leaves Parliament House, the Court's is the only authentic voice which may echo (interpret) the Parliament. This the court will do with reference to the language of the statute and other permissible aids." [p. 1029] It would thus be seen that as per the decisions of this Courtt the statement of the Minister who had moved the Bill in Parliament can be looked at to a scertain mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. The statement of the Minister who had moved the Bill in Parliament is not taken into account for the purpose of interpreting the provisons of the enactment. The decision in Pepper v. Hart permits reference to the statement of the minister or other promoter of the Bill as an aid to construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity provided the statement relied upon clearly discloses the mischief aimed at or the legislative intention lying behind the ambigous or obscure words and that such a statement of the minister must be clear and unambiguous. This rule of contruction laid in Papper v. Hart has no application int he present case because sub-clause

(viii) of Section 2(c) of the 1988 Act cannot be said to be ambiguous or obscure nor can it be said that the literal meaning of the said clause leads to any absurdity.

Moreover, the excerpts from the statement of the Minister on which rellance has been placed byt eh learned counsel fo the appellants cannot be regarded as clear and unambiguous on the questionw hether a Member of Parliament or the Member fo the State Legislature would fall within the ambit of `public servant' under the 1988 Act because according to the statements of the Minister a Member of Parliament and a Memebr of the State legislature would be a `public servant' under Secction 2(c)(viii) of the Act in certain stuations. The statemnt of the Minister does not clearly indicate those situations. The provisions of the 1986 Act also do not give any indication about the situations in whihc a Member of Parliament or a Member of the State Legislature would be treated as apublic servant and the situations in which he will not be treated as a public servant. Shri Kapil Sibal has submitted that what the Minister meant was that if a Member of Parliament or a Member of the State Legislature is given some other assignment, e.g. memebership of a delegation, then in connection witht that assignment his position would be that of a public servant under the 1988 Act. The language used in Section 2(c)(viii) does not lend support to such a limit4d onstruction of the said provision.

Having regard to the object of the 1988 Act as indicated in the Statement of Objects and Reasons, nemely, to widen the scope of the definition of hte expression "public servant". which is sought to be

achieved by itnroducing the definition of "public duty" in Section 2(b) and the definition of `public servant' in Section 2(c) which enlarges the scipe of the existing definition of public servant contained in Section 21 IPC, we do not find any justification for restricting the scope of the wide words used in sub-clause (viii) of Section 2(c) in the 1988 Act on the basis of the statement of the Minister so as to exclude Members of Parliament a nd Members of State Legislatures. In our opinion th eowrds used in sub-clause (viii) of Section 2(c) are clear and ambiguous they cannot be out down on the basis of the statement made by the Minister while piloting the Bill in Parliament.

Shri D.D. Thakur has invoked the doctrine of Promissory Estoppel and ahs submitted that in view of the statement made by the Minister whiel piloting the Bill in Parliament that Members of Parliament and Members of the State Legislatures do not fall withint he sambit of the definition of "public servant" the State is estopped from taking a contrary satand and to claim that a Member of Parliament is a public servant under Section 2(c) of the Act. There is no legal basis for this contention. We are concerned with the provisions of a law made by Parliament. There is no estoppel against the statute.

Shri Thakur has also invoked the rule of statutory construction that the legislature does not intend to make a substantial alteration in law beyond what it wxplicity declares either in express words or by clear implication and that the general words of the Act are not to be so construed as to alter the previous policy of the law. He has placed reliance on the decision in M.K. Ranganathan & Anr v. Government of Madra & Ors., 1955(2) SCR 374. The said rule can have not application int he apresent c ase because the 1988 Act has replaced th 1947 Act. It has been enacted with the specific object o faltering the existing anti-corruption laws so as to make them more effective by widening their coverage and by strengthening the provisions and also to widen the scope of the definition of `public servant'.

Having considered the submissions of the learned counsel ont he meaning of the expression `public servant' in contained Section 2(c) of the 1988 Act , wer are of the view that a Member of Parliament is a public servant for the purpose of the 1988 Act.

Requirement for Sanction for Prosecution In order to show that members of Parliament are outside the purview of the 1988 Act, the learned counsel for appellants have referred to Section 19 of the 1988 Act which prescribes that no court shall take congnizance of an offence punishable under Section 7, 10, 11, 13, and 15 alleged to have been committed by a public servant except witht he previous sanction of the authority specified in clauses (a), (b) or (c) of sub-section (1) of Section 19. It is submitted that none of the clauses (a), (b) or (c) of sub-section (1) of Section 19 is applicable in respect of a Member of Parliament and that there is no authority who can grant sanction for prosecution of a Member of Parliament which means that a Member of Parliament does not fall within the purview of the 1988 Act. Reliance has been placed on the observations of Shetty J. and Verma J. (as the learned Chief Justice then was) in K. Veeraswami v. Union of India & Ors., 1991 (3) SCR 189, and the decision of hte Orissa High COurt in Habibulla Khan.

The learned Attorney Genral has, on the other hand, urged that the requriement of previous sanction under Section 19 of the 1988 Act only imposes a limitation on the power of the court to take

cognizance under Section 190 Cr. P.C. of the offences mentioned in sub-section (1) of Section 19 and that if a public servant is not ocovered by any of the cluses (a), (b) and (c) of Section 19(1) and t here is no authority who could grant sanction for his prosecution, the limitation imposed by Section 19 on the power of the court to take cognizance would not be applicable and it would be open to the competent court ot take cognizance of the offences mentioned in Section 19(1) would insisting on the requriement of sanction. The submission is that merely because none of the clauses (a), (b) and (c) of Section 19(1) is applicable to a Member of Parliament, it cannot be said that he is outside the purview of the 1988 Act. The learned Attroney General has also urged, in the alternative, that in view of he provisions contained in Articles 102 and 103 the President can be regarded as the authority competent to remove a Member of Parliamen and, therefore, the can grant the sanction for his prosecution udner Section 19(1)(c) and it cannot b e said that since there is no authority who can grant sanction for his prosecution a Member of Parliament is outside the purview of the 1988 Act. The learned Attorney General has also submitted tht many of the appellants had ceased to be members of Parliament on the date of filing of the charge-sheet and that the offence of criminal conspiracy under Section 120B IPC read with Section 7 and Section 13(2) read with Section 13(1)(d) of thr 1988 Act as well as the ofence under Section 12 of the 1988 Act are not among the offences mentioned in Section 19(1) and that no sanction was requried with regard to these offences and that sanction ws requried only in respect of ofecnes under Section 7, and Section 13(2) reas with Section 13(1)(d) of thd 1988 Act as against A-4 and A-15 and that in view of sub-section (3) of Section 19 the omission of sanction would nbot have any effect on the trial of the said accused persons.

Section 19 of the 1988 Act provides as follows :-

> <sls> "19. Provious sanctiuon necessary for prosecution.- (1) No court shall take cognizance of an offence punishable under Section 7, 10, 11, 13 and 15 alleged to have been committed by a public sevant, except with the previous sanction,-
>
> a) in the case of a person who is employed in connection with the affairs of the Union and is not removable form his office save by or with the sanction of the Central Governnemnt, of that Governmnt;
>
> b) int he case of aperson who is emplyed in connection with the affairs of the a State and is not emovable from his office save by or with the sanction of the State Government, of that Government;
>
> c) in the case of any other person, of the authority competent ot remove him from his offcie.
>
> 2) Where for any reason whatsover any doubt arises as to whether the previous sanction as requried under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Gvoernment or authority which would have been competent to remove the public servant from his office at the tiem when the offence was alleged to have b een committed.

3) Notwithstanding anything containedc in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) no finding, sentence or orde passed by a special Judge shall be reversed or altered by a Court in appela, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, hte sanction requried under sub-section (1), unless in the opinion of that court, a failure of justicd has in fact been occasioned thereby;

(b) no court shal stay the proceedings under this Act ont he ground of any error, omissionor irrgularily in th esanction granted by the authority, unless it is satisfied tht sich error, omissionor irregularity h as resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other gorund and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection and should have been raised at any earlier stage in the proceedings.

Explanation.- For the ourposes of this section.-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requriement that the prosecution shall be at the instance of a specified authority or with the sanctionj or a specified person or any requirement of a similar nature."

The provisions as regards sanction were earlier contained in Section 6 of the 1947 Act. Sub-section (1) and

2) of Section 19 substantially reproduce the provisions contained in Section 6 of the 1947 Act. Clauses (a), (b) and

(c) of sub-section (1) of Section 19 are in the same terms as clauses (a), (b) and (c) of sub-section (1) of Section 6 of the 19478 Act. Sub-section (3) and (4) of Section 19 of the 1988 Act were not contained in Section 6 of the 1947 Act and have been inserted for the first time in Section 19 of the 1988 Act.

In Veeraswami the question for consideration was whether a Judge of the High Court falls within the ambit of the 1947 Act and in support of the contention that he was not covered by the said Act, it was submitted that for prosecution in respect of an offence under the 1947 Act previous sanction of an authority competent to remove the public servant as provided under Section 6 of the 1947 Act is

imperative and that the power to remove a Judge of the Superior Court is not vested in any single individual authority but is vested in the two Houses of Parliament and the President under Article 124(4) of the Constitution and since there is no authority competent to grant sanction under Section 6 of the 1947 Act a Judge of the Superior Court did not fall within the ambit of the provisions of the 1947 Act. The said contention was rejected by the Court [Verma J. dissenting]. Shetty J., who delivered the main judgment on behalf of the majority, held that for the purpose of Section 6 of the 1947 Act a Judge of the Superior Court fell in clause (c) of Section 6(1) and that the President of India is the authority competent to grant sanction for his prosecution. The learned counsel for the appellants have placed reliance on the following observations in the judgement of Shetty J. wherein the learned Judge h as construed the provisions of Section 6 of the 1947 Act :-

"Section 6 may now be analysed.

Clause (1) of Section 6(1) covers public servants employed in connection with the affairs of the Union. The prescribed authority for giving prior sanction for such persons would be the Central Government. Clause (b) of Section 6(1) cover public servants in connection with the affairs of the State. The competent authority to give prior sanction for prosecution of such persons would be the State Government. Clause (a) and (b) would thus cover the cases of public servants who are employed in connection with the affairs of the Union or State and are not removable from their office save by or with the sanction of the Central Government or the State Government. That is not the end. The section goes further in clause (c) to cover the remaining categories of public servants. Clause (c) states that in the case of any other person the sanction would be of the authority competent to remove him from his office. Section 6 is thus all embracing bringing within its fold all the categories of public servants as defined under Section 21 of the IPC." [p. 238] "The provisions of clauses (a) and

(b) of Section 6(1) of the Act covers certain categories of public servants and the `other ' which means remaining categories are brought within the scope of clause

(c)." [p. 240] It has been pointed out that Verma J., in his dissenting judgment, has also taken the same view when he said :-

"Clauses (a), (b) and (c) in sub-

section (1) of Section 6 exhaustively provide for the competent authority to grant sanction for prosecution in case of all the public servants falling within the purview of the Act. Admittedly, such previous sanction is a condition precedent for taking cognizance for an offence punishable under the Act; of a public servant who is prosecuted during his continuance in the office. It follows that the public servant falling within the purview of the Act must invariably fall within one of the three clauses in sub-section (1) of Section 6. It follows that the holder of an office, even though a `public servant' according to the definition in the Act, who does not fall

> within any of the clauses
>
> (a), (b) or (c) of sub-section (1) of Section 6 must be held to be outside the purview of the Act since this special enactment was not enacted to cover that category of public servants in spite of the wide definition of `public servant' in the Act. This is the only manner in which these provisions of the Act can be harmonised and given full effect." [pp. 285, 286] The said decision in Veeraswami was given in the context of the definition of `public servant' as contained in Section 21 IPC. The various clauses in Section 21 IPC refer to persons who can be removed from the office and keeping in view the criterion of removability from office this Court in Veeraswami has said that clauses (a) (b) and
>
> (c) of sub-section (1) of Section 6 of the 1947 Act cover all the categories of public servants mentioned in Section 21 IPC. In the 1988 Act the concept of `public servant' has been enlarged. A separate provision containing the definition of `public servant' has been introduced in Section 21 IPC and that contained in Section 2(c) of the 1988 Act would show that Section 21 IPC did not indlude persons falling under sub-clauses (ix,(x), (xi) and (xii) of Section 2(c). Sub-clauses (viii) of Section 2(c) is also wider in amplitude than clause 12(a) of Section 21 IPC.

In Veeraswami while considering whether Parliament is the authority which could grant sanction for prosecution of a Judge of the Supreme Court since under Article 124(4) of the Constitution, the address must be passed by each House of Parliament, Shetty J. has said :-

> "The grant of sanction requires consideration of material collected by the investigative agency and Parliament cannot properly consider the meterial. Parliament is wholly unsuitable to that work. It would be reasonable to presume that the legislature while enacting clause
>
> (c) of Section 6(1) of the Act could not have intended Parliament to be the sanctioning authority."

[p. 244] The enlarged definition of public servant in Section 2(c) of the 1988 Act includes persons who are not removable by an y single individual authority and can only be removed by a collective body and the aforementioned observation of Shetty J. made in the context of parliament would be applicable. Reference, in this context, may be made to sub-clauses (ix) and (xii) of Section 2(c). Sub-section (ix) speaks of a person "who is the president, secretary or other office- bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or form any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (a of 1956)". The President, Secretary and other office bearers of a co-operative society hold office in accordance with the provisions of the relevant statute governing such society and the rules and bye-laws made thereunder. The said statute and the rules and

bye-laws may provide for an elected President, Secretary and other office bearers who may be removable by a vote of no- confidence by the body which has elected them. Similarly sub-clause (xii) of Section 2(c) of the 1988 Act talks of a person "who is an office=bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority". There may be an institution run by a society through an elected Managing Committee. The office bearer of such an institution would be the elected President or Secretary of the Managing Committee who would be removable only by the body which elected him. The consideration which weighed with this Court in Veeraswami for holding that Parliament could not be intended to be the sanctioning authority under Section 6(1)(c) of the 1947 Act would equally apply to the general body of members of a co- operative society under clause (ix) and to the generally body of members of a society running an institution referred to in clause (xii) and it can be said that the said bodies could not have been intended by Parliament to be the sanctioning authority for the purpose of Section 19(1)(c) of the 1988 Act.

This would mean that the definition of `public servant' in Section 2(c) of the 1988 Act includes persons who are public servants under that provision though the criterion of removability does not apply to them and there is no single individual authority which is competent to grant sanction for their prosecution under Section 19 of the 1988 Act. In respect of a Member of Parliament the Constitution does not confer on any particular authority the power to remove him. Clause (1) of Article 103 lays down that if any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of Article 102, the question shall be referred to the decision of the President and his decision shall be final. The said function of the President is in the nature of an adjudicatory function which is to be exercised in the event of a dispute giving rise to the question whether a Member o either House of Parliament has become subject to any of the disqualification mentioned in clause (1) of Article 102 being raised. If the President holds that the member has become subject to a disqualifications mentioned in clause (1) of Article 102, the member would be treated to have ceased to be member on the d ate when he became subject to such disqualification. If it is not disputed that a member has incurred a disqualification mentioned in clause (1) of Article 102, the matter does not go to the President and the member ceases to be a member on the date when he incurred the disqualification. The power conferred under Article 103(1) cannot, therefore, regarded as a power of removal of a Member of Parliament. Similarly, under the Tenth Schedule to the Constitution a power has been conferred on the Chairman of the Rajya/ the Speaker of the Lok Sabha to decided the question as to whether a Member of Rajya Sabha/Lok Sabha has become disqualified for being a member on the ground of defection. The said decision of the Chairman of the Rajha Sabha and the Speaker of the Lok Sabha that a Member has incurred disqualification on the ground to defection may result in such Member ceasing to be a Member but it would not mean that the Chairman of the Rajha Sabha/Speaker of the Lok Sabha is the authority competent to remove a Member of Rajya Sabha/Lok Sabha. It is no doubt true that the House in exercise of its power of contempt can pass a resolution for expulsion of a Member who is found guilty of breach of privilege and acceptance of bribe by a Member in connection with the business of the House has the power to remove a Member who is found to have indulged in bribery and corruption. But in view of the decision in Veeraswami wherein Shetty J. has said that legislature while enacting clause (c) of Section 6 of the 1947 Act could not have intended

Parliament to be the sanctioning authority, the House cannot be regarded as the authority competent to grant sanction under Section 19(1)(c) of the 1988 Act. On that view of the matte it must be held that there is no authority who can remove a Member of Parliament and who would be competent under clauses (a), (b) or (c) of Section 19(1) of the 1988 Act to grant sanction for his prosecution. This does not, however, lead to the conclusion that he cannot be treated as `public servant' under Section 2(c)(viii) of the 1988 Act if, on a proper interpretation of the said revision he is found to be public servant. Since on an interpretation of the provisions of Section 2(c)(viii) of the 1988 Act we have held that a Member of Parliament is a public servant, a Member of Parliament has to be treated as public servant of the purpose of the 1988 Act even though there is no authority who can grant sanction for this prosecution under Section 19(1) of the 1988 Act.

It is them urged that if it is found that there is no authority who is competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the 1988 Act then a Member of Parliament would fall outside the purview of the Act because in view of the provisions of Section 19 sanction is imperative for prosecution i respect of an offence under the 1988 Act. In support of this contention reliance has been placed on the following observations in the dissenting judgment of Verma J. in Veeraswami :-

> "The grant of previous sanction under Section 6 being a condition precedent for the prosecution of a public servant covered by the Act, it must follow that the holder of an office who may be a public servant according to the wide definition of the expression in the Act but whose category for the grant of sanction for prosecution is not envisaged by Section 6 of the Act, is outside the purview of the Act, not intended to be covered by the Act. This is the only manner in which a harmonious constitution of the provisions of the Act can be made for the purpose of achieving the object of that enactment." [p. 286] With due respect we find it difficult to agree with these observations. In taking this view the learned Judge has construed Section 6 of the 1947 Act, which like Section 193 and 105 to 197 Cr. P.C. was a limitation on the power of the Court to take cognizance and thereby assume jurisdiction over a matter, as a right conferred on a public servant o mean "no public servant shall be prosecuted without previous sanction". This aspect has been considered by this Court in S.A. Venkataraman v. The State, (1985) SCR 1037. In that case the appellant, who was a public servant, had been dismissed after departmental enquiry and thereafter he was charged with having committed the offence of criminal misconduct under Section 5(1) of the 1947 Act and he was convicted. No sanction under Section 6 was produced before the trial court. It was contended before this Court that the court could not take cognizance of the offence without there being a proper sanction to prosecute. The said contention was rejected on the view that sanction was not necessary for the prosecution of the appellant as he was not a public servant at the time of taking cognizance of the offence. After referring to the provisions contained in Section 190 Cr. P.C. which confers a general power on a criminal court to take cognizance of offences and, after holding that Section 6 is in the nature of a limitation on the said power, it was observed :-

"In our opinion, if a general power to take cognizance of an offence is vested in a court, any prohibition to the exercise of that power, by any provision of law, must be confined to the terms of the prohibition. In enacting a law prohibiting t he taking of a cognizance of an offence by a court, unless certain conditions were complied with, the legislature did not purport to condone the offence. It was primarily concerned to see that prosecution for offences in cases covered by the prohibition shall not commence without complying with the conditions contained therein, such as a previous sanction of a competent authority in the case of a public servant, and in other cases with the consent of the authority or the party interested in the prosecution or aggrieved by the offence." [pp. 1043, 1044] "When the provisions of s. 6 of the Act are examined it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and t he provisions of the section do not stand in the way of a court taking cognizance without previous sanction." [p. 1045] This means that when there is an authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) of the 1988 Act the requirement of sanction preludes a court form taking cognizance of the offences mentioned in Section 19(1) against him in the absence of such sanction, but if there is no authority competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) there is no limitation on the power of the court to take cognizance under Section 190 Cr. P.C. of the offences mentioned in Section 19(1) of the 1988 Act. The requirement of sanction under Section 19(1) is intended as a safeguard against criminal prosecution of a public servant on the basis of malicious or frivolous allegations by interested persons. The object underlying the said requirement is not to condone the commission of an offence by a public servant. The inapplicability of the provisions of Section 19(1) to a public servant would only mean that the intended safeguard was not intended to be made available to him. The rigour of the prohibition contained in sub-section (1) is now reduced by sub-section (#) of Section 19 because under clause (a) of sub-section (3) it is provided that no finding, sentence or order passed by a special Judge shall be reversed or altered by a ******** confirmation or revision on the ground to absence of, ********** This would show that the rquirement of sanction under sub-section (1) of Section 19 is a matter relating to the procedure and the absence of the sanction does not go to the root of the jurisdiction of the court. It must, therefore, be held that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) it cannot be said that Member of Parliament ins outside the Purview of the 1988

Act.

In the absence of requirement of previous sanction for initiating proceedings in a court of law against a Member of Parliament in respect of an offence mentioned in Section 19(1) of the 1988 Act t he possibility of a Member of Parliament being subjected to criminal prosecution on the basis of malicious or frivolous allegations made by interested persons cannot be excluded. It is hoped that Parliament will provide for an adequate safeguard in that regard by making suitable amendment in the 1988 Act. But till such safeguard is provided, it appears appropriate to us that protection from being subjected to criminal prosecution on the basis of malicious or frivolous allegations should be available to Members of Parliament.

In Veeraswami this Court, while considering the question regarding the applicability of the provisions of the 1947 Act to Judges of Superior Courts, has held that Judge of Superior Courts fall within the purview of the said Act and that the President is the authority competent to grant sanction for their prosecution. But keeping in view the need for preserving the independence of the judiciary and the fact that the Chief Justice of India, being the head of the judiciary, is primarily concerned with the integrity and impartiality of the judiciary, the Court has directed that the Chief Justice of India should be consulted at the stage of examining the question of g ranting sanction for prosecution. In relation to Member of Rajya Sabha/ Lok Sabha the Chairman of the Rajya Sabha/ Speaker of the Lok Sabha holds a position which is not very different from that held by the Chief Justice of India in relation to members of the superior judiciary. In the United Kingdom the Speaker of the House of Commons is regarded as the representative of the House itself in its powers, proceedings and dignity and is treated as a symbol of the powers and priviges of the House. [See : May's Parliamentary Practice 21st Edn., pp

170. 190]. The **** position in India. In the words of Pandit Jawahar Lal Nahru : "The Speaker representative House. He represents the dignity of the House, the freedom of the House.." [See : HQP Ocbrts Vol. IX (1954). CC 3447- 48]. In Kihoto Hollophen v. Zachillhu & Ors. 1992 Supp. (2) SCC 651, this Court has said : "The Speakers/ Chairman hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House." The Chairman of the Rajya Sabha/Speaker of the Lok Sabha by virtue of the position held by them are entrusted with the task of preserving the independence of the Member of the House. In order that Members of Parliament may not be subjected to criminal prosecution on the basis of frivolous or malicious allegations at the hands of interested persons, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Section 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.

On the basis of the aforsaid discussion we arrive at the following cunclusion :-

1. A Member of Parliament does not enjoy immunity under Article 105(1) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.

2. A member of Parliament is a public servant under Section 2 (c) of the Prevention of Corruption Act, 1988.

3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Section 7, 10, 11, 13, and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.

BHARUCHA,J.

On 26th July, 1993, a motion of no-confidence was moved in the Lok Sabha against the minority government of P.V. Narasimha Rao. The support of 14 member was needed to have the no-confidence motion defeated. On 28th July, 1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Suraj Mandal, Shibu Soren, Simon Marandi and Shailender Mahto, members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (the JMM), and Ram Lakhan Singh Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed, members of the Lok Sabha owing allegiance to the Janata Dal, Ajit Singh group(the J.D.,A.S.), voted against the no-confidence motion. Ajit Singh, a member of the Lok Sabha owing allegiance to the J.D,A.S., abstained from voting thereon.

It is the respondents case that the abovenamed members agreed to and did receive bribes, to the giving of which P.V. Narasimha Rao, M.P. and Prime Minister, Satish Sharma, M.P. and Minister, Buta Singh, M.P. V.Rajeswar Rao, M.P., N.M. Ravanna, Ram Linga Reddy, M.L.A., M.Veerappa Moily, M.L.A. and Chief Minister, State of Karnataka, D.K.Adikeshavulu, M. Thimmogowda and Bhajan Lal, M.L.A. And Chief Minister, State of Haryana, were parties, to vote against the no-confidence motion. A prosecution being launched against the aforesaid alleged bribe givers and bribe takers subsequent to the vote upon the no-confidence motion, cognizance was taken by the Special Judge, Delhi. The Charge framed against P.V. Narasimha Rao reads thus: "That you P.V. Narasimha Rao between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or entered into an agreement with your co-accused Capt. Satish Sharma, Buta Singh, V.Rajeshwara rao,

HM Revanna, Ramlinga Reddy, M. Veerappa Moiley, D.K. Audi Keshvalu, M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Suraj Mandal, Shibu Soren, Simon Marandi, Shailendra Mahto (approver, since granted pardon on

8.4.97), Janta Dal (Ajit Group) MPs Ajit Singh Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Chran Das, Abhay Pratap Singh , Haji Ghulam Mohd, Khan and late G.C. Munda to defeat the no-

confidence motion moved on 26.7.93 against the then Congress (I) Govt.

headed by you by illegal means viz. To offer or cause to offer and pay gratification other than the legal remuneration to your co-

accused persons namely J.M.M. and Janta Dal (A) MPs named above as a motive or reward for their helping in defeating the said no confidence motion moved by the opposition parties and in pursuance of the said agreement you paid or caused to pay several lacs of rupees to the above referred JMM and Janta Dal (A) MPs who obtained or attempted to obtain the same in the manner stated above and thereby you have committed an offence punishable u/S 120 B IPC r/w Sections 7,12 and 13(2) r/w 13 (2) r/w 13(i)(d) of the PC Act 1988 and within my cognizance.

Secondly you P.V. Narasimha Rao in pursuance of the aforesaid criminal conspiracy during the aforesaid period and at the aforesaid places abetted the commission of offence punishable u/S 7 of P.C. Act by above referred JMM and Janta Dal (A) MPs and thereby you have committed an offence punishable u/S 12 of the P.C. Act and within my cognizance."

Similarly charges were framed against the alleged bribe givers.

The charge framed against Suraj Mandal of the J.M.M. reads thus:

> "Firstly you between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or enter into an agreement with your co-accused P.V. Narasimha Rao, Capt. Satish Sharma, Buta Singh, V.Rajeshwara Rao, H.M. Revanna, Ramlinga Reddy, M.Veerappa Moiley, D.K. Audi Keshvalu. M, Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti MOrcha) MPs Shibu Soren. Simon Marandi, Shailendra Mehto (Approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs, Ajit Singh, Ram Lakhan Singh Yadav. Roshan Lal, Anadi Chran Dass, Abhey Partap Singh, Haji Ghulam Mohd. Khan and late G.C. Munda to defeat the no confidence motion moved against the then Congress (I) Government headed by accused Shri P.V.Narasimha Rao on 26.793 by illegal means viz. To obtain or agree to obtain gratification other than legal remunerations from your above named accused persons other than JMM and Janta Dal (A) MPs as a motive or reward for defeating the no confidence motion and in pursuance thereof above named accused persons other than JMM and Janta Dal (A) passed on several lacs of rupees to you or your other co-accused namely JMM and Janta Dal (A) MPs which

amounts were persons and thereby you have committed an offence punishable u/s 120B r/w Sections 7,12,13(2) r/w section 134(i)(d) of the P.C. Act and within my cognizance.

Secondly, that you being a public servant while functioning in your capacity of Member of Parliament (10th Lok Sabha) during the aforesaid period and at the aforesaid places in pursuance of the aforesaid conspiracy demanded and accepted from your co-accused other than JMM & JD(A) MPs mentioned above a sum of Rs.280 lacs for yourself and other JMM MPs named above other than your legal remuneration as a motive or reward for defeating above referred no confidence motion moved against the then Govt. of Congress (I) headed by your co-accused Shri P.V. Narasimha Rao and thereby you have committed an offence punishable u/S 7 the P.C. Act and within my cognizance.

Thirdly, you during the aforesaid period and at the aforesaid places being a public servant while functioning in your aforesaid capacity of Member of Parliament by corrupt or illegal means and by abusing your position as a said public servant obtained for yourself or your other co-

accused i.e. JMM MPs named above the pecuniary advantage to the extent of Rs.280 lacs and thereby committed an offence punishable u/S 13(2) read with Section 13(i)(d) of P.C. Act and within my cognizance.

Fourthly, that you during the pendency of investigation of present case while writ petition No.789/96 was pending disposal in Hon'ble High Court between February to April, 1996 at Delhi, Ranchi and other places intentionally caused to bring false evidence into existence by fabricating or causing to fabricate the documents or records i. e. books of accounts, proceeding books, etc. of JMM Central Office. Ranchi for the purpose of being used in any stage of judicial proceedings and thereby committed an offence u/S 193 IPC and within my cognizance.

Similar charges were framed against the other alleged bribe takers of the J.M.M Similar charges were also framed against the alleged bribe takers of the J.D., A.S., except that there was no charge against them under Section 193 of the Indian Penal Code. Shailender Mahto of the J.M.M., it may be mentioned, later turned approver and was pardoned.

The persons sought to be charged as aforesaid filed petitions in the High Court at Delhi Seeking to quash the charges. By the judgment and order which is under challenge, the High Court dismissed the petitions. Hence, these appeals. The appeals were heard by a bench of three learned judges and then referred to a Constitution Bench, broadly put, is that, by virtue of the provisions of Article 105, they are immune from the prosecution and that, in any event, they cannot be prosecuted under the Prevention of Corruption Act, 1998.

Privilege.

Article 105 of the Constitution reads thus:

"105. Powers, privileges, etc., of the House of Parliament and of the members and committees thereof. -

(1) Subject to the provisions of this Constitution and to the rules and standing order regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) NO Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, papers, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House. shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of the Parliament."

Mr. P.P.. Rao addressed us on behalf of P.V. Narasimha Rao, Mr. D.D. Thakur on behalf of Satish Sharma, Mr. Kapil Sibal on behalf of Bhajan Lal and Dr.Surat Singh on behalf of some of the J.D., A.S. M.Ps. All of them relied upon sub article (2) OF Article 105. Only Mr. P.P. Rao, learned counsel for P.V. Narasimha Rao, relied, in addition, upon sub article(3) thereof.

Article 105(2).

By reason of Sub-article (1) of Article 105, members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively.

Both sub-articles must be read together to deter mine their content. By reason of the first part of sub-article (2) no member is answerable in a court of law or any similar tribunal for what he has said in Parliament. This again is recognition of the fact that a member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a

substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that has been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of". It is so given to secure the freedom of speech in Parliament that sub-article (1) provides for. It is necessary, given the role members of Parliament must perform . The protection is absolute against court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person shall be liable to any proceedings in any court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any court connected with such publication. The constitution having dealt with the all - important privilege of members of Parliament to speak and vote therein as they deem fir, freed of the fear of attracting legal proceedings concerning what they say or how they vote, provides for other powers, privileges and immunities is sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force; that is to say, they are such as were enjoyed by the House of Commons just before 26th January, 1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament thought to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in Parliament and to a vote given therein is concerned, provision is made in sub-article (2); it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-article (4) gives the protection of the Sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General.

The provisions of Article 105 and of Article 194, which is in the same terms but deals with the privileges of Legislative Assemblies, have been examined by this Court in the past. In the case of Pandit M.S.M. Sharma v.Shri Sri Krishna Sinha And Others, [1959] Supp.1 S.C.R. 806, a portion of the speech made by a member of a Legislative Assembly had been expunged by the orders of the Speaker. Nonetheless, the speech was published in its entirety in a newspaper of which the petitioner was the editor. He was called upon to show cause why action should not be taken against him for breach of privilege of the Legislative Assembly and he challenged the notice by a petition under Article 32. S.R. Das, C.J., speaking for the majority on the Constitution Bench which heard the writ petition, observed that Parliamentary privilege in England was defined in May's Parliamentary practice as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies individuals". The privileges of the House of Commons, as distinct from those of the House of Lords, were defined as "the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords". The privileges of the House of Commons included the

freedom of speech, which had been claimed in 1554. This comprised the right of the House to provide for the due composition of its own body, the right to regulate its own proceedings, the right to exclude stranger, the right to prohibit publication of its debates and the right to enforce observation of its privileges by fine, imprisonment and expulsion. For deliberative bodies like the House of Lords and Commons, this Court said, "freedom of speech is of the utmost importance. A full and free debate is of the essence of Parliamentary democracy." The argument that the whole of article 194 was subject to Article 19(1)(a) overlooked the provisions of article 194(2). The right conferred on a citizen under Article 19(1)(a) could be restricted by a law which fell within sub-article 2 of that Article and he could be made liable in a court of law for breach of such law, but Article 194(2) categorically laid down that no member of the legislature was to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or in committees thereof and that no person would be liable in respect of the publication by or under the authority of the House of such a Legislature of any report, paper or proceedings. The provisions of Article 194(2), therefore, indicated that the freedom of speech referred to in sub-article (1) thereof was different from the freedom of speech and expression guaranteed under Article 19(1)(a) and could not be cut down in any way by any law contemplated by article 19(2). A law made by Parliament in pursuance of the earlier part of Article 105(3) or by a State Legislature in pursuance of the earlier part of Article 194(3) was not law made in exercise of constituent power but law made in exercise of ordinary legislative power under Article 246 read with the relevant entries. Consequently, if such a law took away or abridged any of the fundamental rights, it would contravene the peremptory provisions of Article 13(2) and would be void to the extent of such contravention. It might well be that that was reason why Parliament and the State Legislatures had not made laws defining their powers, privileges or immunities conferred by the latter part of Articles 105 and 194 were repugnant to the fundamental rights, they would be void to the extent of such repugnancy. It could not be overlooked that the provisions of Articles 105(3) and 194(3) were constitutional law and not ordinary law made by Parliament or the State Legislatures and therefore, they were as supreme as the provisions of part II of the Constitution. Further, quite conceivably, the Constitution makers, not knowing what powers, privileges and immunities Parliament or the State Legislatures might claim, though fir not to take any risk and made such laws subject to the provisions of Article 13; but that, knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers, privileges and immunities subject to the fundamental right conferred by Article 19(1)(a).

The case of Dr. Satish Chandra Ghosh V.Hari Sadhan Mukherjee, [1961] 3 S.C.R. 486, dealt with an appellant who was a member of a Legislative Assembly. He had given notice of his intention to put certain questions in the Assembly. The questions being disallowed by the Speaker, he had published them in a journal in his constituency. The first respondent, whose conduct was the subject-matter of the questions, filed a complaint under the Indian Penal Code against the appellant and the printer and publisher of the journal. The appellant pleaded privilege and immunity under Article 194 of the Constitution as a bar to criminal prosecution. The claim of absolute privilege was disallowed by this Court. It was said, with reference to the law in England in respect of the privileges and immunities of the House of Commons, that there was no absolute privilege attaching to the publication of extracts from proceedings in the House. So far as a member of the House of Commons was

concerned, he had an absolute privilege in respect of what he had spoken within the four walls of the House, but there was only a qualified privilege in his favour even in respect of what he had himself said in the House if he caused the same to be published in the public press. The legal position, which was undisputed, was that unless the appellant could make out an absolute privilege in his favour in respect of the publication which was the subject-matter of the charge, the prosecution against him could not be quashed. He having no such absolute privilege, it was held that "he must take his trial and enter upon his defence, such as he may have."

Special Reference No.1 of 1964,[1965] 1 S.C.R. 412 known more commonly as Keshav Singh's case or the Privileges case, deals extensively with the scope of the privileges of legislative bodies. The Presidential Reference was made in the following circumstances: The Legislative Assembly of the State of Uttar Pradesh committed one Keshav Singh, not one of its members, to prison for contempt. The warrant it issued was a general warrant, in that it did not set out the facts which had been found to be contumacious. Keshav Singh moved a petition under Article 226 challenging his committal and he prayed for bail. Two learned judges of the Lucknow Bench of the High Court ordered that Keshav Singh be released on bail pending the decision on the writ petition. The Legislative Assembly passed a resolution requiring the production in custody before it of Keshav Singh, the advocate who had appeared for him and the two judges who has granted him bail. The judges and the advocate filed writ petitions before the High Court at Allahabad. A Full Bench of the High Court admitted their petitions and ordered the stay of the execution of the Assembly's resolution. The Legislative Assembly modified its earlier resolution so that the two judges were now asked to appear before the House and offer an explanation. The President thereupon made the Special Reference. Briefly put, the questions he asked were : whether the Lucknow Bench could have entertained Keshav Singh's writ petition and released him on bail; whether the judges who entertained the petition and granted bail and Keshav Singh and his advocate had committed contempt of the Assembly; whether the Assembly was competent to require the production of the judges and the advocate before it in custody or to call for their explanation; whether the Full Bench of the High Court have entertained the writ petitions of the two judges and the advocate and could have stayed the implementation of the resolution of the Assembly; and whether a judge who entered or dealt with a petition challenging any order of a Legislature imposing penalty or issuing process against the petitioner for its contempt or for infringement of its privileges and immunities committed contempt of the Legislature and whether the Legislature was competent to take proceedings against the judge in the exercise of its powers, privileges and immunities. The adjectival clause "regulating the procedure of the Legislature" in Article 194(1) governed, it was held, both the proceeding clauses relating to "the provisions of the Constitution" and "the rules and standing orders." Therefore, Article 194(1) conferred on legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. By making this sub- article subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Article 19(1)(a). It was legitimate to conclude that Article 19(1)(a) was not one of the provisions of the Constitution which controlled the first part of Article 194(1). Having conferred freedom of speech on the legislators, Article 194(2) emphasized the fact that the freedom was intended to be absolute and unfettered. Similar freedom was guaranteed to the legislators in respect of the votes they might give in the legislature or any committee thereof. "In other words". this Court said, "even if a legislator

exercises his right of freedom of speech in violation, say, of Article , he would not be liable for any action in any court. Similarly, if the legislator by his speech or vote is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts o libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause .... It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chambers and clause (2) makes it plain that the freedom is literally absolute and unfettered." Referring to Article 194(3), this Court said that it was well-known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time and some faded out by desuetude. Accordingly, in every case where a power was claimed, it was necessary to enquire whether it was an existing power at the relevant time. It had also to appear that the power was not only claimed by the House of Commons "but was recognised by the English courts. It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons." In India, this Court said, the dominant characteristic of the British Constitution could not be claimed. The supremacy of the Constitution was protected by an independent judicial body which was the interpreter of the scheme of distribution of powers. It was difficult for this Court to accept the argument that the result of the provisions contained in the latter part of Article 194(3) was intended to be to confer on the State Legislatures in India the status of a superior Court of Record. It was essential to bear in mind the fact that the status of a superior Court of Record which was accorded to the House of Commons was based on historical facts. It was a fact of English history that Parliament had been discharging judicial functions and the House of Lords still continued to be the highest court of law in the country. The Legislative Assemblies in India never discharged any judicial functions and their historical and constitutional background did not support the claim that they could be regarded as Courts of Record in any sense. The very basis on which English courts agreed to treat a general warrant issued by the House of Commons the footing that it was a warrant issued by a superior Court of Record was absent in the case of a general warrant issued by a State Legislature in India.

In the case of T.K.Jain v. N.S. Reddy [1971]1 S.C.R. 612, it was contended that the immunity granted by Article 105(2) was with reference to the business of Parliament and not in regard to something which was something utterly irrelevant. This Court said:

> "The article means what it says in language which could not be plainer. The article confers immunity inter alia in respect of anything said ..... in Parliament. The word "anything is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was

> being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none."

The last of the cases to which reference need be made is State of Karnataka v. Union of India & Another, [1978] 2 S.C.R. 1. It was there held that the Constitution vested only legislative power in Parliament and in the State Legislatures. A House of Parliament or State Legislature could not try anyone or any case directly, as a Court of Justice could. It could proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its privileges and immunities because, in doing so, it sought removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arose, it had to be decided by the courts in appropriate proceedings. Beg, J. added, "For example, the jurisdiction to try a criminal offence, such as murder, committed even within a house vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature".

In Tolaram Relummal and anr. vs. The State of Bombay, 1995 (1) S.C.R. 158, this Court construed the words "in respect of" occurring in Section 18(1) of the Bombay Rent Restriction Act, 1947, the relevant portion of which read thus:

> "If any landlord either himself or through any person acting or purporting to act on his behalf.....receives any fine, premium or other like sum or deposit or any consideration, other than the standard rent.....in respect of the grant, renewal or continuance of a lease of any premises.....such landlord or person shall be punished.....".

The High Court had observed that the expression "in respect of" was very comprehensive but this Court took the view that it had laid undue emphasis thereon. This Court said, "Giving the words "in respect of" their widest meaning, viz, "relating to" or "with reference to", it is plain that this relationship must be predicated of the grant, renewal or continuance of a lease, and unless a lease comes into existence simultaneously or near about the time that the money is received, it cannot be said that the receipt was "in respect of" the grant of a lease.....It is difficult to hold that any relationship of landlord and tenant comes into existence on the execution of an agreement executory in nature or that the expression "premium" can be appositely used in connection with the receipt of money on the occasion of the execution of such an agreement. It may well be that if a lease actually comes into existence then any receipt of money which has a nexus with that lease may fall within the mischief of section 18(1), but it is unnecessary to express any final opinion on the question as in the present case admittedly no lease ever came into existence and the relationship of landlord and tenant was never created between the parties.:"

> The learned Attorney General submitted that the words "in respect of" had not always received a board meaning, and he cited the judgment of this Court in State of Madras vs. M/s. Swastik Tobacco Factory, Vedaranyam, 1966 (3) S.C.R. 79. A provision of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, which stated that, "the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him,...." would be deducted from the gross turnover of a dealer for the purposes of determining the net turnover, was under
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> consideration. The Court noted that the words "in respect of" had been considered by the House of Lords in Inland Revenue Commissioners vs. Courts & Co., [1963] 2 All. E.R.722, and it had observed that "the phrase denoted some imprecise kind of nexus between the property and the estate duty".In Asher v. Seaford Court Estates Ltd., L.R. [1950] A.C. 508, the House of Lords had held that the expression "in respect of" in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, must be read as equivalent to "attribute". The Privy Council in Bicber, Ltd. V. Commissioners of Income-tax,[1962] 3 All. E.R.. 294, had observed that these words could mean more than "consisting of" or "namely". This Court said, "It may be accepted that the said expression received a wide interpretation, having regard to the object of the provisions and the setting in which the said words appeared. On the other hand, Indian tax laws use the expression 'in respect of' as synonymous with the expression 'on'." In the provision under consideration the expression "in respect of the goods" was held to mean "on the goods".

This Court drew a distinction in the above case between the use of the expression "in respect of" in taxing statutes in India and its use elsewhere. In the context of its use in the Constitution and having regard to the object which is intended to be secured by Article 105(2), we think that the broad interpretation thereof is the most appropriate. It is thus that this Court has already interpreted the provision.

The Attorney General submitted that a proceeding in court founded on the allegation that a member of Parliament had received a bribe to vote in a particular way was not a proceeding in respect of a vote that he had given and that, therefore, the member did not enjoy immunity from the proceeding by reason of Article 105(2) did not cover criminal proceedings. It had been held by the courts of the United States of America, Canada, Australia and, recently, England, he said, that a legislator could be proceeded against for corruption. The Attorney General relied upon the decisions and reports in this behalf to which we shall refer.The Attorney General submitted that the immunity given by Article 105(2) should be interpreted in the light of the times in which we live and, so interpreting it, should exclude from its coverage corrupt legislators.

In Bradlaugh v. Gossett, 12 Q.B.D.271, the plaintiff Bradlaugh had been elected to the House of Commons. He required the Speaker to call him to the table to take the oath. By reason of what had transpired on a earlier occation, the Speaker declined to do so and the House resolved that the Serjeant-at-Arms should exclude Bradlaugh until "he shall engage not further to disturb the proceedings of the House". Bradlaugh prayed for an injunction against the Serjeant-at-Arms

restraining him from carrying out the resolution. The suit was dismissed. Lord Coleridge, C.J. said, "What is said or done within the walls of Parliament cannot be inquired into in a court of law.....The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and inefficiency without it."' He added, "The Houses of Parliament cannot act by themselves in a body : they must act by officers; and the Serjeant-at-arms is the legal and recognised officer of the House of Commons to execute its orders. I entertain no doubt that the House had a right to decide on the subject-matter, have decided it, and have ordered their officer to give effect to their decision. He is protected by their decision. They have ordered him to do what they have a right to order, and he has obeyed them.....If injustice has been done, it is injustice for which the Courts of law afford no remedy." Stephen, J., concurring, said that the House of Commons was not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which had relation to its own internal proceedings, and that the use of such actual force as was necessary to carry into effect such a resolution as the one before the court was justifiable. In support, the learned Judge quoted Blackstone, who had said, "The whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere." This principle had been re- stated by the judges who decided Stockdale v. Hansard, 9 Ad. & E.I. Lord Denman had said, "Whatever is dome within the walls of either assembly must pass without question in any other place." Littledale, J., had said, "It is said the House of Commons is the sole judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned." Patteson, J., had said, "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere." And Coleridge, J., had said, "That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity." It seemed to follow that the House of Commons had the exclusive power of interpreting the Parliamentary Oaths Act, so far as the regulation of its own proceedings within its own walls was concerned: and that, even if that interpretation was erroneous , the court had no power to interfere with it "directly or indirectly". It was in regard to a possible case as to the effect of an order by the House of Commons to put a member to death or to inflict upon him bodily harm that the learned Judge said, "I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice". Referring to the old case of Sir John Eliot, Denzil Hollis, and Others, the learned Judge said, "This case is the great leading authority, memorable on many grounds, for the proposition that nothing said in parliament by a member as such, can be treated as an offence by the ordinary Courts".

In the case of Church of Scientology of California vs. Johnson Smith, (1972) ALL E.R. 378, the defendant, a member of Parliament, was sued for libel allegedly published in a television programme. He pleaded fair comment and privilege. The plaintiffs countered by alleging malice, to prove which they sought to bring on record as evidence extracts from Hansard. The trial judge declined to permit them to do so. In his ruling he said, "I am quite satisfied that in these proceedings it is not open to either party to go directly, or indirectly, into any question of the motives or

intentions, of the defendant or Mr. Hordern or the then Minister of Health or any other member of Parliament in anything they said or did in the House."

The report of the Royal Commission on Standards of Conduct in Public Life, chaired by Lord Salmon, was presented in July 1976. It says, "307. Only Parliament can decide what conduct constitutes a breach of privilege or a contempt of Parliament. In cases that are adjudged to be 'contempts', the House may exercise its penal jurisdiction to punish the offenders. The main penal sanctions available to the House are reprimand and committal to the custody of the Serjeant at Arms or to prisons. These sanctions apply both to Members and strangers. In addition, a Member may be suspended from the House or expelled. The House of Commons possesses no power to impose a fine.

"308. Whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions."

The Report states (in para 307), "it is in the light of the foregoing paragraphs that we note the fact that neither the statutory nor the common law applies to the bribery or attempted bribery of a Member of Parliament in respect of his Parliamentary activities". The Report speaks (in para

309) of "the historical circumstances in which the ordinary criminal law has not applied to bribery in respect of proceedings in Parliament". It finds (in para 310) that "the briber of a Member of Parliament would be immune from effective punitive sanctions of the kind that can be inflicted under the criminal law. Public obloquy is unlikely to be an effective sanction against such a person and accordingly we consider that there is a strong case for bringing such malpractices within the criminal law". It reiterates that "the bribery of a Member of Parliament acting in his Parliamentary capacity does not constitute an offence known to the criminal law.....". The conclusion of the Report on the point is contained in para 311:

> "Membership of Parliament is a great honour and carries with it a special duty to maintain the highest standards of probity, and this duty has almost invariably been strictly observed.
>
> Nevertheless in view of our report as a whole, and especially in the light of the points set out in the foregoing paragraph, we recommend that Parliament should consider bringing corruption, bribery and attempted bribery of a Member of Parliament acting in his Parliamentary capacity within the ambit of the criminal law".

In Prebble v. Television New Zealand Ltd., (1994) 3 All E.R. 407, the Privy Council considered Article 9 of the Bill of Rights (1688), which applies by reason of incorporation in New Zealand. It reads thus:

> "That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament."

The defendant, a New Zealand television company, aired a programme in which it was alleged that the plaintiff, Prebble, then a Minister in the New Zealand Government, had conspired with certain businessman and public officials to give the businessmen an unfair opportunity to obtain certain state-owned assets which were being privatised on unduly favourable terms in return for donations to his political party, and he had thereafter arranged for incriminating documents and computer files to be destroyed. The plaintiff having brought an action for libel, the defendant company pleaded justification, alleging that the plaintiff and other ministers had made statements in the House of Representatives which had been misleading and that the conspiracy had been implemented by introducing and passing legislation in the House. The plaintiff applied to strike out these particulars on the ground that parliamentary privilege was infringed. The trial judge upheld the claim to immunity, as did the Court of Appeal. The privileges Committee of the House of Representatives having held that the House had no power to waive the privileges protected by Article 9, the plaintiff appealed to the Privy Council also upheld the claim to immunity. Lord Browne-Wilkinson, speaking for the Board, said that if Article 9 was looked at alone, the question was whether it would infringe that Article to suggest that the statements that were made in the House were improper or that the legislation was procured in pursuance of the alleged conspiracy, as constituting impeachment or questioning of the freedom of speech of Parliament. In addition to Article 9 itself, there was a long line of authority which supported a wider principle, of which Article 9 was merely one manifestation, namely, that the courts and Parliament were both astute to recognise their respective constitutional roles. So far as the courts were concerned, they would not allow any challenge to be made to what was said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges. The basic concept that underlay Article 9, namely , the need to ensure so far as possible that a member of the legislature and witnesses before a committee of the House spoke freely "without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness at the time he speaks is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect." The privilege protected by Article 9 was the privilege of Parliament itself. The actions of an individual member of Parliament, even if he had an individual privilege of his own, could not determine whether or not the privilege of Parliament was to apply. The wider principle that had been encapsulated by Blackstone prevented the courts from adjudicating on "issues arising in or concerning the House, viz whether or not a member has misled the House or acted from improper motives. The decision of an individual member cannot override that collective privilege of the House to be the sole judge of such matters". Cases such as the one before the Privy Council illustrated how public policy, or human rights, issues could conflict. There were "three such issues in play in these cases: first, the need to ensure that the legislature can exercise its powers freely on behalf of its electors, with access to all relevant information; second, the need to protect freedom of speech generally; third, the interests of justice in ensuring that all relevant evidence is available to the courts. Their Lordships are of the view that the law has been long settled that, of these three public interests, the first must prevail."

Very recently, in the case of R. vs. Currie, it was alleged against Harry Greenway, a Member of Parliament, that he had accepted a bribe from Plasser, Jurasek and Brooks as a reward for using his influences as a Member of Parliament in respect of Jurasek's application for British nationality. The indictment of the four was sought to be quashed on the basis that the bribery of a Member of Parliament was not a crime and that, in any event, the court had no jurisdiction for only Parliament could try a member for bribery, the matter being covered by Parliamentary privilege. The trial judge, Buckley, J. did not agree. He quoted the Salmon Commission Report. He also noted that Lord Salmon, speaking in the debates of the House of Lords, had said, after referring to the immunity enjoyed by Members of Parliament from being prosecuted under the criminal law if they took bribes, that, "at Common Law you cannot be convicted of bribery and corruption unless you are a holder of an office, and most of us are not the holders of an office". Viscount Dilhorne had agreed. Buckley, J. could not accept that a question of such great importance could turn on semantics. In his view, "To hold that the existence of a Common Law crime of bribing a Member of Parliament depends upon the meaning to be given to the word "office" in this context, as opposed to looking at the principle involved, would not be calculated to commend the Criminal Law to the public it should serve." Buckley, J. noted what had been said by James Martin, C.J. in R.V. White, 13 SCR (NSW), 332, which case concerned the attempted bribery of a Member of Parliament in New South Wales, ".....a legislator who suffers his votes to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundations. it would be a reproach to the Common Law if the offer to, or the acceptance of, a bribe by such a person were not an offence". Faucett, j., agreeing with the Chief Justice, had said, "The principle is, that any person who holds a public office or public employment of trust, if he accepts a bribe to abuse his trust - in other words, if he corruptly abuses his trust - is guilty of an offence at Common Law; and the person who gives the bribe is guilty of an offence at Common Law". The same view had been taken in Canada in R V. Bunting, 1885 Ontario Reports 524; that was a case of a conspiracy to bring about a change in the Government of the Province of Ontario by bribing members of the Legislature to vote against the Government. R.V.. Boston,(1923) 33 Commonwealth Law Reports 386, was also a case where similar arguments had been advanced and turned down, and Buckley, J.quoted this "memorable sentence "from the judgment of Higgins, J.:" A member is the watch-dog of the public; and Cerberus must not be seduced from vigilance by a sop." Based upon these judgments, Buckley, J., was satisfied that "the undoubted common law offence of bribery is not artificially limited by reference to any particular shade of meaning of the word 'office'. The underlying reason or principle is concerned with the corruption of those who undertake a duty, in the proper discharge of which the public is interested." The learned Judge then considered the question of parliamentary privilege and noted Article 9 of the Bill of Rights, 1688, which has already been quoted. The learned judge quoted Lord Salmon, speaking in the House of Lords, thus: "To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake". After quoting the Bill of Rights, Lord Salmon had continued : "Now this is a charter for freedom of speech in the House it is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect that I have, has no more to do with the topic which we are discussing than the Merchandise Markets Act. The crime of corruption is complete when the bribe is offered or given or solicited or taken." Buckley, J., commented, "It is important to note that which Lord Salmon pointed out, namely, that corruption is

complete when the bribe is offered or given, solicited or taken. If, as is alleged here, a bribe is given and taken by a Member of Parliament, to use his position dishonestly, that is to favour the briber as opposed to acting independently and on the merits, the crime is complete. It owns nothing to any speech, debate or proceedings in Parliament. Proof of the element of corruption in the transaction is another and quite separate consideration. Privilege might well prevent any inquiry by a court into Parliamentary debates or proceedings. See : The Church Of Scientology v. Johnson-Smith, 1972, 1 KB 522. However, it is not a necessary ingredient of the crime that the bribe worked." Referring to the case of Ex parte Wason, to which we shall make more detailed reference later, Buckley, J., observed that the substance of the proposed indictment there was that certain parties had conspired to make false statements in the House of Lords and Cockburn, C.J., had held "that the making of false statements in either House of Parliament could not be the subject of criminal or civil proceedings and nor could not be the subject of criminal or civil proceedings and nor could a conspiracy to do so". It seemed clear to the learned judge that the court had Article 9 of the Bill of Rights well in mind. "The only candidate", he said, "for the unlawful act or means was the very act which was not subject to the criminal law". He added that he could not see that the reasoning of Ex parte Wason, assuming the decision to be correct, would apply to alleged bribery for the proof of which no reference to going on in Parliament would be necessary. This approach, he found, happened to be in line with several United States authorities on their "Speech or Debate Clause" which, for all practical purposes, was the same as Article 9. That a Member of Parliament against whom there was a prima facie case of corruption should be immune from prosecution in the courts of law was to Buckley, J.'s mind an unacceptable proposition "at the present time". He did not believe it to be the law. The Committee of Privileges of the House was "not well equipped to conduct an enquiry into such a cases .....nor is it an appropriate or experienced body to pass sentence ..... The courts and legislatures have over the years built up a formidable body of law and codes of practice t achieve fair treatment of suspects and persons ultimately charged and brought to trial ..... Again, unless it is to be assumed that his peers would lean in his favour why should a Member be deprived of a jury and an experienced judge to consider his guilt or innocence and, if appropriate, sentence ? Why should the public be similarly deprived." The prosecution went ahead against the other accused but the charge was not established. The member of Parliament was., therefore, also acquitted.

The Law Commission in England very recently published a Consultation Paper (No.145) entitled "Legislating the Criminal Code - Corruption". It refers to the Salmon Commission Report, the report of the Nolan Committee on the Standards of Conduct in Public Life and recent judgments (to one of which we shall advert). It states, "Whether Members of Parliament are subject to the criminal law of corruption, and more particularly whether they should be, are both contentious issues currently to the fore in public debate. As to the latter, on the one hand it has been said of Members of Parliament that 'Few are in a higher position of trust or have a duty to discharge in which the public have a greater interest', and they should arguably therefore be subject to the criminal law. On the other hand, they are sui generis, in that, although they have be benefit of Parliamentary privilege, which protects them against criminal liability for things said in Parliamentary proceedings, they are, in consequence, subject to the jurisdiction in Parliament".

Halbury's Laws of England, Fourth Edition, in dealing with Members of Parliament under the subject of "Criminal Law, Evidence and Procedure" (in Volume 11, para 37), sets out the law succintly:

> "37. Members of Parliament. Except in relation to anything said in debate, a member of the House of Lords or of the House of Commons is subject to the ordinary course of criminal justice the privileges of Parliament do not apply to criminal matters."

Before we deal with the judgment of the United States Supreme Court in United States v. Daniel B. Brewster, 33 L. Ed. 2d 507, which lends support to the learned Attorney General's submissions, we should set out the speech or debate clause in the Constitution of the United States and refer to the United States Supreme Court judgment in United States v. Thomas F. Johnson, 15 L.Ed. 2d 681, to which the latter judgment makes copious reference.

Article 1, Section 6 of the United States Constitution contains the speech or debate clause. Referring to United States Senators and Representatives, it says : (F) or any Speech or Debate in either House, they shall not be questioned in any other Place".

Thomas F. Johnson was convicted by a United States Distinct Court for violating a federal conflict of interest statute and for conspiring to defraud the United States. Evidence was admitted and argument was permitted at the trial that related to the authorship, content and motivation of a speech which the Congressman had allegedly made on the floor of the House of Representatives in pursuance of a conspiracy designed to give assistance, in return for compensation, to certain savings and loan associations which had been indicated on mail fraud charges. The conviction had been set aside by the Court of Appeals on the ground that the allegations in regard to the conspiracy to make the speech were barred by the speech or debate Clause. Finding that the evidence that had been adduced upon the unconstitutional aspects of the conspiracy count had infected the entire prosecution, the Court of Appeals had ordered a new trial on the other counts. The Supreme Court , in further appeal, held that the prosecution on the conspiracy charge, being dependent upon an intensive inquiry with respect to the speech on the floor of the House, violated the speech or debate clause warranting the grant of a new trial on the conspiracy count, with all elements offensive to the speech or debate clause eliminated. The earlier cases, it said, indicated that the legislative privilege had to be read broadly to effectuate its purpose. Neither of those cases, however, had dealt with criminal prosecution based upon the allegation that a member of Congress had abused his position by conspiring to give a particular speech in return for remuneration from private interests. However reprehensible such conduct might be, the speech or debate clause extended at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of Government functions. The essence of such a charge in the context was that the Congressman's conduct was improperly motivated, and that was precisely what the speech or debate clause generally foreclosed from executive and judicial inquiry. The Government argued that the clause was meant to prevent only prosecutions based upon the "content" of speech, such as libel actions, but not those founded on "the antecedent unlawful conduct of accepting or agreeing to accept a bribe". Th language of the Constitution was framed in the broadest terms. The broader thrust of the privilege had been

indicated by Ex parte Wason, which dealt specifically with an alleged criminal conspiracy. Government had also contended that the speech or debate clause was not violated because the gravamen of the charge was the alleged conspiracy, not the speech, and because the defendant, not the prosecution, had introduced the speech. Whatever room the Constitution might allow for such factors in the context of a different kind of prosecution, they could not serve to save the Government's case under the conspiracy charge. It was undisputed that the Congressman had centered upon the questions of who first decided that a speech was desirable, who prepared it, and what the Congressman's motives were for making it. The indictment itself focused with particularity upon motives underlying the making of the speech and upon its contents. The prosecution under a general criminal statute dependent on such inquiries necessarily, contravened the speech or dabate clause. The court added that its decision did not touch a prosecution which, though, as here, it was founded on a criminal statute of general application, did not draw in question the legislative acts of a Congressman or his motives for performing them. The court expressly left open for consideration the case of a prosecution, which though it might entail an inquiry into legislative acts or motivations, was founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members.

Daniel B. Brewster was a United States Senator. He had been charged with accepting bribes in exchange for promises related to official acts while a Congressman. The charge was that he had violated the terms of a narrowly drawn statute. The Senator moved to dismiss the indictment before the trial began on the ground that he was immune from prosecution for any alleged act of bribery because of the speech or debate clause. The District Court upheld the claim of immunity. The Government preferred a direct appeal to the Supreme Court. Burger, C.J., spoke for 6 members of the court. Brennan, J. and White, J. delivered dissenting opinions, with which Douglas, J., joined. The charges were that the Senator, while such and a member of the Senate Committee on Post Office and Civil Service, "directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive sums.....in return for being influenced in his performance of official acts in respect to his action, vote and decision on postage rate legislation which might at any time be pending before hm in his official capacity....." The other charge was in respect of official acts performed by him in respect to his action, vote and decision on postage rate legislation which had been pending before him in his official capacity. Burger, C.J. took the view that the immunities of the speech or debate clause were not written into the Constitution simply for the personal or private benefit of members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators. Although the speech or debate clause's historic roots were in English history, it had to be interpreted in the light of the American constitutional scheme of government rather than the English parliamentary system. It had to be borne in mind that the English system differed in that Parliament in England was the supreme authority, not a coordinate branch. The speech or debate privilege was designed to preserve legislative independence, not supremacy. The courts' task , therefore, was to apply the clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government. Referring to the cause of Johnson(ibid). Burger, C.J., said that it unanimously held that a member of Congress could be prosecuted under a criminal statute provided that the Government's case did not rely on legislative acts or the motivation for legislative acts. A legislative act had consistently been defined as an act generally done in Congress in relation to the business

before it. The speech or debate clause prohibited inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts. Counsel on behalf of the Senator had argued that the court in Johnson had expressed a broader test for the coverage of the speech or debate clause. He had urged that the court had held that the clause protected from executive or judicial inquiry all conductg" related to the due functioning of the legislative process." Burger, C.J., said that the quoted words did appear in the Johnson opinion, but they were taken out of context. In context, they reflected a quite different meaning from that urged. In stating the speech or debated clause did not apply to things which "in no wise related to the due functioning of the legislative process" the court in Johnson had not implied as a corollary that everything that "related" to the office of a member was shielded by the clause. In Johnson it had been held that only acts generally done in the course of the process of enacting legislation were protected. In no case had the court ever treated the clause as protecting all conduct relating to the legislative process. In every case thus far before the court, the speech or debate clause had been limited to an act which was clearly a part of the legislative process, the due functioning of the process. The contention on behalf of the Senator for a broader interpretation of the privilege drew essentially on the flavor of the rhetoric and the sweep of the language used by the courts, not on the precise words used in any prior case, and not on the sense of those cases, fairly read. It was not sound or wise, simply out of an abundance of caution to doubly insure legislative independence, to extend the privilege beyond its intended scope, literal language and history, to include all things in any way related to the legislative process. Given such a sweeping reading, there would be few activities in which a legislator engaged that he would be unable somehow to "relate" to the legislative process. The speech or debate clause, admittedly, had to be read broadly to effectuate its purpose was not "to make members of Congress super-citizens, immune from criminal responsibility. In its narrowest scope, the clause is a very large, albeit essential, grant of privilege. It has enabled reckless men to slander and even destroy others with impunity, but that was the conscious choice of the Framers". Burger, C.J., did not discount entirely the possibility that an abuse might occur, but this possibility which he considered remote, had to be balanced against the potential danger flowing from either the absence of a bribery statute applicable to members of Congress or holding that such a statute violated the Constitution. As he had noted at the outset of his judgment, the learned Chief Justice said that the purpose of the speech or debate clause was to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. Financial abuses by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation. Depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of members of Congress was unlikely to enhance legislative independence. The speech or debate clause was broad enough to insure the historic independence. The speech or debate clause was broad enough to insure the historic independence of the Legislative Branch, essential to the separation of powers, but narrow enough to guard against the excess of those who would corrupt the process by corrupting its members. Taking a bribe was no part of the legislative process or function; it was not a legislative act. It was not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It was not an act resulting from the nature, and in the execution, of the office. It was not a thing said or done in the exercise of the functions of that office. Nor was inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under the concerned statute or the indictment. When a

bribe was taken, it did not matter whether the promise for which the bribe was given was for the performance of a legislative act or for use of a Congressman's influence with the Executive Branch. And an inquiry into the purpose of a bribe did not draw in question the legislative acts of the member or his motives for performing them. Nor did it matter if the member defaulted on his illegal bargain. The Government, to make a prima facie case under the indictment, need not show any act of the Senator subsequent to the corrupt promise for payment, for it was taking the bribe, not performance of the illicit compact, that was a criminal act. The learned Chief Justice said, "The only reasonable reading of the clause consistent with its history and purpose, is that it does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself".

Brennan, J., dissenting, said. "I would dispel at the outset any notion that Senator Brewster's asserted immunity strains the outer limits of the Clause. The Court writes at length in an effort to show that 'Speech or Debate' does not cover 'all conduct relating to the legislative process'. .....Even assuming the validity of that conclusion, I fail to see its relevance to the instant case. Senator Brewster is not charged with conduct merely "relating to the legislative process," but with a crime whose proof calls into question the very motives behind his legislative acts. The indictment, then, lies not at the periphery but at the very center of the protection that this Court has said is provided a Congressman under the Clause." The learned Judge said that there could be no doubt that the Senator's vote on new postal rates constituted legislative activity within the meaning of the speech or debate clause. The Senator could not be prosecuted or called to answer for his vote in any judicial or executive proceeding. But the Senator's immunity went beyond the vote itself and "precludes all extra-congressional scrutiny as to how and why he cast, or would have cast, his vote a certain way". The learned Judge quoted Frankfurter, J., speaking in the case of Tenny v. Brandhove, 95 L. Ed. 1019, thus : "One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in Fletcher v Peck, 3 L. Ex. 162, 176, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned..... In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses." Neither the Senator's vote nor his motives for voting, however dishonourable, could be the subject of a civil or criminal proceeding outside the halls of the Senate. There was nothing complicated about this conclusion. It followed simply and inescapably from prior decisions of the United States Supreme Court setting forth the basic elements of legislative immunity. Yet, the majority has adopted "a wholly artificial view of the charges before us". The indictment alleged not the mere receipt of money in exchange for a Senator's vote and promise to vote in a certain way. Insofar as these charges bore on votes already cast, the Government could not avoid proving the performance of the bargained-for acts and any inquiry in this behalf violated the speech or debate clause. The charges of only a corrupt promise to vote were equally repugnant to the speech or debate clause. The majority view might be correct that only receipt of the bribe, and not performance of the bargain, was needed to prove these counts. But proof of an agreement to be "influenced" in the performance of legislative acts was "by definition an inquiry into their motives,

whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself. As our Brother White cogently states, ... Bribery is most often carried out by prearrangement; if that part of the transaction may be plucked from its context and made the basis of criminal charges, the Speech or Debate Clause loses its force. It would be small comfort for a Congressman to know that he cannot be prosecuted for his vote, whatever it might be, but he can be prosecuted for an alleged agreement even if he votes contrary to the asserted bargain'.

Thus, even if this were an issue of first impression. I would hold that this prosecution, being an extra- congressional inquiry into legislative acts and motives, is barred by the Speech or Debate Clause.

What is especially disturbing about the Court's result, however, is that this is not an issue of first impression, but one that was settled six years ago in United States v. Johnson, 15 L.Ed.2d 681." The learned Judge added that the majority could not "camouflage its departure from the holding of Johnson by referring to a collateral ruling having little relevance to the fundamental issues of legislative privilege involved in that case. I would follow Johnson and hold that Senator Brewster's alleged promise, like the Congressman's there, is immune from executive or judicial inquiry". The learned judge said that he yielded nothing to the majority "in conviction that this reprehensible and outrageous conduct, if committed by the Senator, should not have gone unpunished. But whether a court or only the Senate might undertake the task is a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged. It is no answer that Congress assigned the task to the judiciary in enacting 18 USC 201. Our duty is to Nation and Constitution, not Congress. We are guilty of a grave disservice to both nation and Constitution when we permit Congress to shirk its responsibility in favor of the courts. The Framers' judgment was that the American people could have a Congress of independence and integrity only if alleged misbehavior in the performance of legislative functions was accountable solely to a Member's own House and never to the executive or judiciary. The passing years have amply justified the wisdom of that judgment. It is the Court's duty to enforce the letter of the Speech or Debate Clause in that spirit. We did so in deciding Johnson. In turning its back on that decision today, the Court arrogates to the judiciary an authority committed by the Constitution, in Senator Brewster's case, exclusively to the Senate of the United States. Yet the Court provides no principal justification, and I can think of none , for its denial that United States v Johnson compels affirmance of the District Court. The decision is only six years old and bears the indelible imprint of the distinguished constitutional scholar who wrote the opinion for the Court. Johnson surely merited a longer life".

Justice White took substantially a similar view and part of what he said has already been quoted.

The judgment in Brewster was followed in United States v Henry Helstoski, 61 L. Ed. 2d 12 Brennan, J., dissenting, expressed the view that the indictment in question should have been dismissed "since a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves, may not be the subject of a general conspiracy prosecution".

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 charge 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, viz., to obtain or agree to obtain gratification other than legal remunerations" 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 lacs of rupees" to the alleged bribe takers, "which amounts were accepted" by then . 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 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 that we can ignore the fact that the votes were cast and, if the facts alleged against the bribe takers are true, that they were cast and, if the facts alleged against the bribe takers are true, that they were cast pursuant to the alleged conspiracy and agreement. It must then follow, given that the expression "in respect of" must receive a broad meaning, that the alleged conspiracy and agreement has a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings is in regard to the motivation thereof.
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> It is difficult to agree with the learned Attorney General that, though the words "in respect of" must receive a broad meaning, the protection under Article 105(2) is limited to court proceedings that impugn the speech that is given or the vote that is cast or arise thereout or that the object of the protection would be fully satisfied thereby. The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that member is not "liable to any proceedings in any court in respect of anything said or any vote given by him". Article 105(2) does not say, which it would have if the learned Attorney General were right, that a member is not liable for what he has said or how he has voted. While imputing no such motive to the present prosecution, it is not difficult to envisage a member who has made a speech or cast a vote that is not to

the liking of the powers that be being troubled by a prosecution alleging that he had been party to an agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe.

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

We draw support for the view that we take from the decision of United States Supreme Court in Johnson and from the dissenting judgment of Brennan, J. in Brewster.

In Johnson, the United States Supreme Court held that the speech or debate clause extended to prevent the allegation that a member of Congress had abused his position by conspiring to give a particular speech in return for remuneration from being the basis of a criminal charge of conspiracy. The essence of such a charge was that the Congressman's conduct was improperly motivated, and that was precisely what the speech or debate clause foreclosed from executive and judicial inquiry. The argument that the speech or debate clause was meant to prevent only prosecutions based upon the content of the speech, such as libel actions, but not those founded on the antecedent unlawful conduct of accepting or agreeing to accept a bribe was repulsed. Also repulsed was the argument that the speech or debate clause was not violated because the gravamen of the charge was the alleged conspiracy , not the speech. The indictment focused upon the motive underlying the making of the speech and a prosecution under a criminal statute dependent on such inquiry contravened the speech or debate clause. It might be that only receipt of the bribe and not performance of the bargain was needed to prove the charge, but proof of an agreement to be influenced in the performance of legislative acts was "by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself". The Senator's "reprehensible and outrageous conduct", if committed, should not have gone unpunished, but whether a court or only the Senate "might undertake the task was a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged".

We cannot but be impressed by the majority opinion in Brewster but, with respect, are more pursuaded by the dissent. The majority opinion stated that the only reasonable reading of the speech and debate clause was "that it does not prohibit inquiry into activities that are casually or

incidentally related to legislative affairs but Brennan, J., dissenting in Brewster, said that Brewster had been charged with a crime whose proof called into question the motives behind his legislative acts. He could not only not be prosecuted or called to answer for his vote in any judicial or executive proceeding but his immunity went beyond the vote itself and precluded "all extra- congressional scrutiny as to how and why he cast, or would have cast, his vote a certain way". Neither the Senator's vote nor his motives for voting, however dishonourable, could be the subject of a civil or criminal proceeding outside the halls of the Senate. The charge of a corrupt promises to vote was repugnant to the speech or debate clause. It might be that only receipt of the bribe and not performance of the bargain was needed to prove the charge, but proof of an agreement to be influenced in the performance of legislative acts was "by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this land carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself". The Senator's "reprehensible and outrageous conduct", if committed, should not have gone unpunished, but whether a court or only the Senate "might undertake the task was a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged".

We cannot but be impressed by the majority opinion in Brewster but, with respect, are more pursuaded by the dissent. The majority opinion stated that the only reasonable reading of the speech and debate clause was "that it does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself". Upon this construction of the speech or debate clause, it came to the conclusion that a court could investigate whether Brewster had taken a bribe to be influenced in the performance of official acts in respect of his action, vote, and decision on postage rate legislation. With respect, we cannot regard the act of taking a bribe to vote in a particular way in the legislature to be merely "casually or incidentally related to legislative affairs". The Library of Congress publication "The Constitution of the United States of America, Analysis and Interpretation" says, and we respectfully agree, "However, in United States v. Brewster, while continuing to assert that the clause 'must be read broadly to effectuate its purpose of protecting the independence of the Legislative Branch, 'the Court substantially reduced the scope of the coverage of the clause".

For the first time in England Buckley, J. ruled in R. vs. Currie that a Member of Parliament who accepts a bribe to abuse his trust is guilty of the common law offence of bribery. The innovation in English law needs to be tested in appeal. We say this with respect, having regard to earlier English judgments, and we find support in the Twenty-second edition of Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, wherein a foot note (on p.115) apropos the ruling read thus:

> "The court observed: 'that a Member of Parliament against whom there is a prima facie case of corruption should be immune from prosecution in the courts of law is to my mind an unacceptable proposition at the present time' (quoted in Committee of Privileges. First Report, HC351- ii (1994-95) pp 161-162). The Court seems to have had in mind, though no attempt was made to define, an area of activity where a

> Member may act as such, without participating in 'proceedings in Parliament'(whether of course article IX will apply)."

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

What is the effect of this upon the alleged bribe givers? In the first place, the prosecution against Ajit Singh would proceed, he not having voted on the non- confidence motion and, therefore, not having the protection of Article 105(2). The charge against the alleged bribe givers of conspiracy and agreement with Ajit Singh to do an unlawful act would, therefore, proceed.

Mr. Rao submitted that since, by reason of the provisions of Article 105(2), the alleged bribe takers had committed no offence, the alleged bribe givers had also committed no offence. Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a member of Parliament and has a connection with his speech or vote therein. What is provided thereby is that member of Parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. If a member of Parliament has, by his speech or vote in Parliament, committed an offence, he enjoys , by reason of Article 105(2), immunity from prosecution therefor. Those who have conspired with the member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it.

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

Mr. Rao submitted that the alleged bribe givers had breached Parliament's privilege and been guilty of its contempt and it should be left to Parliament to deal with them. By the same sets of acts the alleged bribe takers and the alleged bribe givers committed offences under the criminal law and breaches of Parliament's privileges and its contempt. From prosecution for the former, the alleged bribe takers, Ajit Singh excluded, enjoy immunity. The alleged bribe givers do not. The criminal prosecution against the alleged bribe givers must, therefore, go ahead. For breach of Parliament's privileges and its contempt, Parliament may proceed against the alleged bribe takers and the alleged

bribe givers.

Article 105(3).

Relevant to the submission on Article 105(3) is the judgement in Ex Parte Wason, 1869 L.R.4 QBD 573. Rigby Wason moved the Court of Queen's Bench for a rule to call upon a metropolitan police magistrate to show cause why he should not take on record the complaint of Wason to prosecute Earl Russell, Lord Chelmsford and the Lord Chief Baron for conspiracy. Wason's affidavit in support of the complaint stated that he had given to Earl Russell a petition addressed by him to the House of Lords, which Earl Russell a petition addressed by him to the House of Lords, which Earl Russell had promised to present. The petition charged the Lord Chief Baron, when a Queen's Counsel, with having told a wilful and deliberate falsehood to a committee of the House of Commons sitting as a judicial tribunal. The petition prayed for an inquiry into the charge and, if the charge was found true, for action against the Lord Chief Baron under the law to remove judges. Earl Russell, Lord Chelmsford and the Lord Chief Baron had, according to the Wason's affidavit, prevented the course of justice by making statements, after conferring together, which they knew were not true in order to prevent the prayer of his petition being granted; Wason alleged that Earl Russell, Lord Chelmsford and the Lord Chief Baron had conspired and agreed together to prevent the course of justice and injure himself. The alleged conspiracy consisted in the fact that Earl Russell, Lord Chelmsford and the Lord Chief Baron "did agree to deceive the House of Lords by stating that the charge of falsehood contained in my petition was false, and that I was a calumniator; when Earl Russell, Lord Chelmsford, and the Lord Chief Baron well knew that the charge of falsehood committed by the Lord Chief Baron, when Queen's Counsel, was perfectly true". Wason desired "to prefer an indictment against Earl Russell, Lord Chelmsford, and the Lord Chief Baron for conspiracy". The magistrate had refused to take recognizance of the complaint on the ground that no indictable offence had been disclosed by Wason's information, whereupon Wason moved the Court Cockburn', C.J. said, "I entirely agree that, supposing the matter brought before the magistrate had been matter cognizable by the criminal law, and upon which an indictment might have been preferred, the magistrate would have had no discretion, but would have been bound to proceed.....On the other hand, I have no doubt that, supposing the matter brought before the magistrate does not establish facts upon which an indictment could be preferred and sustained, the magistrate has a discretion which, if rightly exercised, we ought to uphold; and the question is whether the matter brought by the present applicant before the magistrate was subject-matter for an indictment....The information then charges that Earl Russell, Lord Chelmsford, and the Lord Chief Baron agreed to deceive the House of Lords by stating that the charge of falsehood brought against the Lord Chief Baron was unfounded and false, whereas they knew it to be true. Now, inasmuch as these statements were alleged to have been for the purpose of preventing the prayer of the petition and the statements could not have had that effect unless made in the House of Lords, it seems to me that the fair and legitimate inference is that the alleged conspiracy was to make, and that the statements were made, in the House of Lords. I think, therefore, that the magistrate, looking at this and the rest of the information, was warranted in coming to the conclusion, that Mr. Wason charged and proposed to make the substance of the indictment, that these three persons did conspire to deceive the House of Lords by statements made in the House of Lords for the purpose of frustrating the petition. Such a charge could not be maintained in a court of law. It is clear that statements made by members of

either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third person. And a conspiracy to make such statements would not make the persons guilty of it amenable to the criminal law.....". Blackburn, J. was of the same opinion. He said, "When the House is sitting and statements are made in either House of Parliament, the member making them is not amenable to the criminal law. It is quite clear that no indictment will lie for making them, nor for a conspiracy or agreement to make them, even though the statements be false to the knowledge of the persons making them. I entirely concur in thinking that the information did only charge an agreement to make statements in the House of Lords, and therefore did not charge any indictable offence". Lush, J. agreed. He said that he could not doubt that the charge was of "a conspiracy to deceive the House of Lords, and so frustrate the application, by means of making false statements in the House. I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House".

As we read Ex Parte Wason, the Court of Queen's Bench found that wason desired criminal proceedings to be commenced against three members of Parliament for conspiring to make, and making statements in Parliament which he alleged were untrue and made to harm his cause, The Court held that criminal proceedings could not be taken in respect of statements made by members of Parliament in Parliament nor for conspiring to make them. ex parte Wason, therefore, does not support Mr. Rao's submission that his client P.V. Narasimha Rao and others of the alleged bribe givers who were members of Parliament have "immunity from criminal proceedings in a court of law with respect to the charge of conspiracy in connection with the voting in Parliament on the no-confidence motion". The speech or vote of the alleged bribe giving members of Parliament is not in issue nor, therefore, a conspiracy in this beheld. In contrast, all the three alleged conspirators in Ex parte Wason were members of Parliament and what was alleged against them was that they had made false statements to Parliament in consequence of a conspiracy. If what is alleged against members of Parliament in India is that they had made false statements to, or voted in, Parliament in consequence of a conspiracy, they would immune from prosecution by reason of Article 105(2) itself and no occasion would arise ton look into the privileges enjoyed by the House of Commons under Article 105(3). To repeat what we have said earlier, Mr. Rao is right, subject to two caveats, in saying that Parliament has the power not only to punish its members for an offence committed by them but also to punish others who had conspired with them to have the offence committed: first, the actions that constitute the offence must also constitute a breach of Parliament's privilege or its contempt; secondly, the action that Parliament will take and the punishment it will impose is for the breach of privilege or contempt. There is no reason to doubt that the Lok Sabha can take action for breach of privilege or contempt against the alleged bribe givers and against the alleged bribe takers, whether or not they were members of Parliament, but that is not to say that the courts cannot take cognizance of the offence of the alleged bribe givers under the criminal law.

Mr. Rao relied upon observations in the Eighteenth Edition (197) of Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament. There is before us the Twenty-second Edition. Part of what is contained in the earlier edition is not find in the later edition. That May's treatise is an authoritative statement on its subject has been recognised by this Court (Keshav

Singh's case, ibid). May's earlier edition stated, "It is sometimes said that, since the privileges of Parliament do not extend to criminal matters, therefore Members are amenable to the course of criminal justice for offences committed in speech or action in the House.....It may prove to be true that things said or done in Parliament, or some of them, are not withdrawn from the course of criminal justice.....There is more doubt as to whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed.....". Quoting Mr. Justice Stephen in Bradlaugh v.Gosset, where the learned judge said that he "knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice", May observed that "it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech". May went on to state, "It is probably true, as a general rule, that a criminal act done in the House is not outside the course of criminal justice. But this rule is not without exception, and both the rule and the exception will be found to depend upon whether the particular act can or can not be regarded as a proceeding in Parliament.....it would be hard to show that a criminal act committed in the House by an individual Member was part of the proceedings of the House.....Owing to the lack of precedents there is no means of knowing what view the courts would take of a criminal act committed in Parliament, or whether they would distinguish action from speech in respect of amenability to the criminal law. With regard to a crime committed in Parliament, the House in which it was committed might claim the right to decide whether to exercise its own jurisdiction or to hand the offender over to the criminal courts. In taking this decision, it would no doubt be guided by the nature of the offence, and the adequacy or inadequacy of the penalties, somewhat lacking in flexibility, which it could inflict.....In cases of breach of privilege which are also offences at law, where the punishment which the House has power to inflict would not be adequate to the offence, or where for any other cause the House has thought a proceeding at law necessary, either asa a substitute for, or in addition to, its own proceeding, the Attorney General has been directed to prosecute the offender".

May's Twenty-second Edition is more succinct, and this is what it says :

> "Moreover, though the Bill of Rights will adequately protect a Member as regards criminal law in respect of anything said as part of proceedings in Parliament, there is more doubt whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed. In the judgment of the House of Lords in Eliot's case (see pp 73 and 84n), it was deliberately left an open question whether the assault on the Speaker might have been properly heard and determined in the King's bench. The possibility that it might legally have been so determined was admitted by one of the manager for the commo ns in the conference with the Lords which preceded the writ of error. In Bradlaugh v. Gosset, Mr. Justice Stephen said that he 'knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice". Since he went on immediately to refer to Eliot's case and accepted the proposition "that nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts', it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech.

> In such cases, it will be essential to determine where the alleged criminal act stands in relation to he proceedings of the House. An officer carrying out an order of the House is in the same position as the Members who voted the order. In Bradlaugh v Erskine, the Deputy Serjeant at Arms was heldto be justified on committing the assault with which he was charged, since it was committed in Parliament, in pursuance of the order of the House, to exclude Bradlaugh from the House. As Lord Coleridge observed, "The Houses cannot act by themselves as a body; they must act committed by a Member, however, could form part of the proceedings of the House, Apart from Eliot's case 350 years ago, no charge against a Member in respect of an allegedly criminal act in Parliament has been brought before the courts. Were such a situation to arise, it is possible that the House in which the act was committed might claim the right to decide whether to exercise its own jurisdiction. In taking this decision, it would no doubt be guided by the nature of the offence, and the adequacy or inadequacy of the penalties, somewhat lacking in flexibility, which it could inflict."

The learned Attorney General submitted, and the English judgments and Reports dealt with earlier bear out the submission, that the bribery of a member of the House of Commons, acting in his Parliamentary capacity, did not , at the time the Constitution came into effect, constitute an offence under the English criminal law or the common law. Clearly, therefore, no privilege or immunity attached in England to an allegation of such bribery or an agreement or conspiracy in that behalf which could be imported into India at the commencement of the Constitution under the provisions of Article 105(3). Secondly, Article 105(@) provides for the sum total of the privileges and immunity that attach to what is said in Parliament and to votes given Therein. Article 105(3) are, therefore, not attached and they do not render assistance to the alleged bribe givers.

Prevention of Corruption Act, 1988 In consider in the case on the Prevention of Corruption Act, 1988 (the said Act) we shall not take account of what we have already held and write as it were, upon a clean slate. Some reference to the provisions of the said Act is necessary at the threshold.

Section 2(b) of the said Act defines "public duty" thus:

> "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest."

Section 2(c) of the said Act defines publice servant thus:

> "(c) "public servant" means
>
> (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
>
> (ii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the

Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court or justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who is the president, secretary or other office-bearer of a registered cooperative society engages in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board.

(xi) any person who is a Vice-

Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-

bearer or an employee of an educational, scientific, social, cultural, or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

Section 19 of the said Act deals withe the previous sanction that is necessary for prosecution for the offences mentioned therein. It read thus:"

> "19. Previous sanction necessary for prosecution. - (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except withe the previous sanction,
>
> (a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central government, of that Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Gpvernment.
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office oat the time when the offence was alleged to have been committed. (3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -
>
> (a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section(1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
>
> (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority , unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
>
> (c) no court shall stay the proceedings under this Act or any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-

section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. - For the purposes of this section, -

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with sanction of a specified person or any requirement of a similar nature.

Section 7, mentioned in Section 19, defined the offence of a public servant taking gratification other than legal remuneration in respect of an official act and the penalty therefor. Section 10 sets out the punishment for abetment by a public servant of offences defined in Section 8 or 9. Section 11 defines the offence of a public servant obtaining a valuable thing, without consideration, from a person concerned in a proceeding or business transacted by such public servant, and the penalty therefor. Section 13 defines the offence of criminal misconduct by a public servant and the penalty therefor. Section 15 sets out the punishment for an attempt to commit an offence under Section 13 (1) (c) or

(d).

The offences with which the appellants are charged are those set out in Section 120(B) of the Indian Penal Code with Section 7, Section 12 Section 13(1)(d) and Section 13(2) of the said Act. (We do not here need to deal with the offence under Section 293 of the Indian Penal Code with which some of the accused are charged). These provisions read thus:

> "Section 120-B (of the Indian Penal Code). Punishment of criminal conspiracy. - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
>
> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 7 (of the said Act). Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remunerations, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions,

favoure or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or other wise , shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations. - (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this services, the public servant has committed an offence under this section.

Section 12. Punishment for abetment of offences defined in section 7 or 11 - Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 13. Criminal misconduct by a public servant. - (1) A public servant is said to commit the offence of criminal misconduct, -

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7;

or

(b) if he habitually accepts or obtains or agrees to accepts or attempts to obtain for himself or for any other person, any valuable thing without consideration which he knows to be inadequate from

any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so to do;

or

(c) if the dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or(d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. - For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be not less than one year but which may extend to seven years and shall also be liable to fine."

The said Act replaced the Prevention of Corruption Act, 1947 (the 1947 Act). The said Act was enacted "to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith" Its Statements of Objects and Reasons reads thus:

> "Statement of Object and Reasons - 1. The Bill is intended to make the existing anti-
>
> corruption laws more effective by widening their coverage and by strengthening the provisions.
>
> 2. The Prevention of Corruption act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by

way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Bill, inter alia, envisages widening the scope of the definition of the expression "public servant", incorporation of offences under Sections 161 to 165-

A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of Sections 161 to 161-A are incorporated in the proposed legislation with an enhanced punishment it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill."

In the 1947 Act the definition of "public servant" in the Indian Penal Code was adopted, Section 21 whereof reads as follows:

21. "Public servant". - The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:

First. - [Repealed by the Adaptation of Lawsorder,1950.] Second. - Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third. - every Judge including any person empowered by law to discharge, whether by himself or as a member of anybody of persons, any adjudicatory functions;

Fourth. - Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a court of Justice to perform any of such duties;

Fifth. - every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth. - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh. - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection, of the pecuniary interests of the Government; Tenth. - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh. - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; Twelfth. - Every person -

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

Section 6 of the 1947 Act dealt with the previous sanction necessary for prosecution. It read thus :

"6. Previous sanction necessary for prosecution. - (1) No court shall take cognizance of an offence punishable under Section 161 or Section 164 or section 165 of the Indian Penal Code (45 of 1860), or under sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central

> Government, of the Central Government;
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government;
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

It is not in dispute that the prosecutions against all the accused have not received the previous sanction contemplated by Section 19 of the said Act.

Mr. P.P. Rao submitted that a Constitution Bench had in the case of R.S. Nayak v. A.R. Antulay, 1984 (2) S.C.R. 495, held that a member of a State legislature was not a public servant, but that the finding therein that he performed a public duty was erroneous and required reconsideration. The expression 'public duty' in Section 2(b) of the said Act meant a duty in the context of a interest which could be enforced at law. A mandamus could not issue to a member of Parliament or a member of a State legislature to perform his duty for he could not be compelled to speak or to vote. It was permissible to refer to the speech in Parliament of the Minister who had moved the Bill that became the said Act. He had stated, in response to a question about the position of a member of Parliament or a member of a Legislative Assembly , thus:

> ".....We have not done anything different or contrary to the law as it stands today. Under the law, as it stands today, the Supreme Court has held in Antulay's case that a Member of a Legislative Assembly is not a public servant within the meaning of Section 21 of the Indian Penal Code."

That this was really the position was supposed by the fact that two conditions had to be satisfied for the purposes of bringing someone within the purview of the said Act, namely, that he should be a public servant (Section 2) and there should be an authority competent to remove him from his office (Section 19). In this behalf, reliance was placed upon the judgement in K. Veeraswamy vs. Union of India, 1991 (3) S.C.R. 189. The judgment of the Delhi High Court under appeal noted that it was not disputed that there was no authority competent to remove members of Parliament from their office. This had also been found by the Orissa High Court in Habibullah Khan vs. State of Orissa, (1993) Cr.L.J. 3604. A member of Parliament and a member of a State legislature did not hold an office. Section 2 (c)(viii) of the said Act postulated the existence of an office independent of the person holding it, and that by virtue of the office, the holder was authorised or required to perform a public duty. That a member of Parliament did not hold an office was apparent from the Constitution.

Whereas the Constitution spoke of other functionaries holding offices, members of Parliament were said to occupy seats. The conclusion, therefore, was inescapable that the accused could not be prosecuted under the said Act and the charges had to be quashed. Mr. D.D. Thakur echoed these submissions. He added that it was legally permissible, but morally impermissible, for a legislator to vote in exchange for money. The clauses of Section 2(c) had to be constructed ejusdem generis and, so read, could not cover members of Parliament or the State legislatures. Having regard to the he fact that the Minister had made a representation to Parliament when the Bill was being moved that it did not cover members of Parliament and the State legislatures, it could not be argued on behalf of the Union Government, by reason of the principle of promissory estoppel, that the said Act covered members of Parliament and the State legislatures. The said Act only removed the surplusage in the then existing definition of "public servant" and had to be construed only in that light. The inclusion of members of Parliament in the said Act was not "clearly implicit" nor "irresistibly clear." A member of Parliament had only privileges given to him under the Constitution; his only obligation was to remain present for a given number of days. Mr. Sibbal adopted the arguments of Mr. Rao. He added that the Constitution cast no duty or obligation upon a member of Parliament. Consequently, there was no authorisation or requirement to perform a duty under the provisions of Section 2(c)(viii) of the said Act. An authority competent to remove a public servant necessarily contemplated an authority competent to appoint him. There was no authority competent to appoint a member of Parliament and, therefore, there was no authority which could remove him. The Attorney General submitted that the object behind enacting the said Act was to widen the coverage of the anti- corruption laws, as had been stated in its Statement of Object and Reasons. 'Public office' had been defined in Blacks Law Dictionary (Sixth edition, pg 1082) thus, "the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. An agency for the state, the duties of which involve in their performance the exercise of some portion of sovereign power, either great or small." The Shorter Oxford Dictionary (page 1083) defined "Office" thus, "A position to which certain duties are attached, esp. a place of trust, authority or service under constituted authority." In Antulay's case it had been held that a member of a legislative assembly "performs public duties cast on him by the Constitution and his electorate". That a member of Parliament occupied an office had been the view taken in the cases of Bunting and Boston (referred to above). A member of Parliament performed the sovereign function of law making and in regard to the exchequer. He had a fundamental duty to serve. He undertook high public duties which were inseparable from his position. A member of Parliament, therefore, held an office. The Constitution provided the number of seats for members of Parliament. The tenure of a member of Parliament was fixed. He received a salary and other allowances. It was clear from the Constitution that he performed public duties. The oath that he took referred to his obligation to "faithfully discharge the duty" upon which he was about to enter. The Salary, Allowances and Pension of Members of Parliament Act, 1954, specified that a member of Parliament was entitled to receive a salary per mensem "during the whole of his term of office" and an allowance per day "during any period of residence on duty" . The accused, other than D.K. Adikeshavulu and M. Thimmagowda, were, therefore, public servants within the scope of the said Act and could be charged thereunder. Reference to the provisions of Section 19 of the said Act and to the Minister's speech on the Bill that became the said Act was, consequently, not called for. The provisions of Section 19 were attracted only when a public servant had an authority

which was competent to remove him. Where, as in the case of a member of Parliament or a State legislature, there was no authority which was competent to remove a public servant, the provisions of section 19 were not attracted and a prosecution could be launched and taken cognizance of without previous sanction. Alternatively, the authority to remove a member of Parliament was the President under the provisions of Article 103 of the Constitution.

There can be no doubt that the coverage of Section 2(c) of the said Act is far wider than that of Section 21 of the Indian penal Code. The two provisions have only to be looked at side by side to be sure that more people can now be called public servants for the purposes of the anti- corruption law. There is, therefore, no reason at all why Section 2(c) of the said Act should be construed only in the light of the existing law and not on its own terms. It is for the Court to construe Section 2(c). If the Court comes to the conclusion that members of Parliament and the State legislatures are clearly covered by its terms, it must so hold. There is then no reason to resort to extraneous aids of interpretation such as the speech of the Minister piloting the Bill that became the said Act. The true interpretation of a statute does not depend upon who urges it. The principle of promissory estoppel has no application in this behalf. Further., if the court comes to the conclusion, based on Section 2(c) itself, that members of Parliament and the State legislators are, clearly, public servants, no resort to the provisions of Section 19 is required in this regard. The words "public servant" in Section 19 must then bear that meaning that is attributed to them on the construction of the definition thereof in Section 2(c).

A public servant is "any person who holds an office by virtue of which he is authorised or required to perform any public duty." Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(b) of the said Act to mean "a duty in the discharge of which the State, the public or that community at large has an interest." In a which the State, the public or that community at large has an interest." In a democratic form of Government it is the member of Parliament or a State legislature who represents the people of his constituency in the highest law making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest. The submission that this Court was in error in Antulay's case in holding that a member of a State legislature "performs public duties cast on him by the Constitution and his electorate" must be rejected outright. It may be - we express no final opinion - that the duty that a member of Parliament or a State legislature performs cannot be enforced by the issuance of a writ of mandamus but that is not a sine qua non for a duty to be a public duty. We reject the submission, in the light of what we have just said, that a member of Parliament has only privileges, no duties. Members of Parliament and the State legislatures would do well to remember that if they have privileges it is the better to perform their duty of effectively and fearlessly representing their constituencies.

In Antulay's case the question relevant for our purpose was whether a member of a Legislative Assembly was a public servant within the meaning of that expression in clauses 12(a),(3) and (7) of

section 21 of the Indian Penal Code. These Clauses read thus:

> 21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely:
>
> Third- Every Judge including any person empowered by law to discharge, whether by himself or as a member of, any body of persons, any adjudicatory functions.
>
> Seventh - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.
>
> Twelfth - Every person -
>
> (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government."

This Court held that a member of a Legislative Assembly did not satisfy the ingredients of these clauses and that, therefore, he was not a public servant within the meaning of that expression in Section 21 of the Indian Penal Code. It was in this context that this Court made the observation that we have already quoted. Having regard to the fact that there was no clause in section 21 of the Indian Penal Code which is comparable to Section 2(c)(viii) of the said Act, the decision in Antulay's case is of little assistance in this context.

The judgment of the Orissa High Court in the case of Habibulla Khan is of assistance because it considered whether a member of a Legislative Assembly was a public servant within the meaning of Section 2(c)(viii) of the said Act. Paragraphs 5,7,8 and 9 of the principle judgment are relevant. ***ney read thus:

> "5. For the aforesaid clause to be attracted, two requirements must be satisfied; (i) an M.L.A. must hold an office: and (ii) he must perform public duty by virtue of holding that office. The meaning of the word 'office' has been the subject-matter of various decisions of the apex Court and Shri Rath in his written note dated 27-4-1993 has dealt with these decisions in pages 6 to 12, in which reference has been made to what was held in this regard in (1) Maharaj Shri Govindlal Jee Ranchhodlal jee v. C.I.T., Ahmedabad, 34 ITR 92 : (AIR 1959 Bom 100) (which is a judgment of Bombay High Court rendered By Chagla, C.J.); (2) Champalal v.
>
> State of Madhya Pradesh, AIR 1971 MP 88, in which the definition of the word "office" given in Corpus Juris Secundum "A position or station in which a person is employed to perform certain duty" was noted; (3) Statesman v. H.R. Deb, AIR 1968 SC 1495: (1968 Lab IC 1525) which is a rendering by a Constitution Bench stating "an office means no more than a position to which certain duties are attached"; (4) Kanta Kathuria v. Manikchand, AIR 1970 SC 694, in which Hidayatulla, C.J., on behalf of self and J.K. Mitter, J., who were in minority, after referring to the Constitution

Bench decision in Stasteman's case referred to the observations of Lord Wright in Mc Millan v. Guest, 1942 Ac 561, that the meaning of the word 'office' covered four columns of the New English Dictionary, but the one taken as most relevant was "(a) position or place to which certain, duties are attached, especially one of more or less public character"; whereas Sikri, J, speaking for the majority referred to the definition given by Lord Atkin, which was "a subsisting permanent, substantive position which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders" by further stating that there was no essential difference between the definitions given by Lord Wright and Lord Atkin: and (5) Madhukar v. Jaswant, AIR 1976 SC 2283, in which the definition given in the Stateman's case was quoted with approval.

xxx xxx xxx

7. Shri Das, learned Government Advocate, does not contest the submission of Shri Rath that the word 'office' should mean, to repeat, no more than a position to which certain duties are attached, specially of a public character". Let it be seen as to whether the test mentioned by Sikri, J, is satisfied, which, as already noted, is that there must be an office which exists independently of the holder of that office. To substantiate this part of his submission, Shri Rath has referred in his written note first to Article 168 of the Constitution which has proved that for every State there shall be a Legislature which shall consist of the Governor, and in case of some States, two Houses and in case of others one House. Article 170 states that the Legislative Assembly of each State shall consist of not more than 500 and not less than 60 members chosen by direct election from the territorial constituencies in the State for which purpose the State is divided into equal number of territorial constituencies. In Article 172, duration of the Legislative Assembly has been specified to be for five years, and Article 173 deals with the conditions of eligibility.

Reference is than made to certain provisions of the Representation of the People Act, 1950, which has provided for total number of seats in the Legislative Assembly, and so far as Orissa is concerned, the Second Schedule mentions that the Orissa Legislative Assembly shall consist of 147 members.

8. Relying on the aforesaid provisions, it is contended and rightly, by Shri Rath that the office of the M.L.A. is created by the Constitution read with the Representation of the People Act, 1950, whereas the actual election of M.L.As. is supervised, directed and controlled by the provisions contained in Articles 324 to 329 of the Constitution and the provisions of the Representation of the People Act, 1951, which brings home the distinction between "office" and "holder of the office".

9. The aforesaid submission appears to us to be unassailable.

We would, therefore, accept the same by stating that an M.L.a. does hold an office, which is one of the two necessary requirements to attract the definition of "public servant", as given in clause (viii) of the Act. Another requirement, as already mentioned, is performance of public duty as holder of such office. This aspect has been dealt with by Shri Rath in paragraph 7 of his written note wherein mention has been made about various duties attached to the office of the M.L.A., as would appear

from Chapter III of Part VI of the Constitution - the same being, making of laws, acting conjointly to effectively control the activities of the executive, approval of the finance bill, etc. Indeed, no doubt can be entertained in this regard in view of what was stated in paragraph 59 of Antulay's case, which is as below:-

> ".....it would be rather difficult to accept an unduly wide submission that M.L.A. is not performing any public duty. However it is unquestionable that he is not performing any public duty either directed by the Government or for the Government. He no doubt performs public duty cast on him by the Constitution and his electorate. He thus discharges constitutional functions....."

Having held that a member of a Legislative assembly was a public servant under the said Act, the Orissa High Court went on to consider which authority was competent to give sanction for his prosecution. That is an aspect with which we are not immediately concerned and we shall revert to this judgment later.

We think that the view of the Orissa High Court that a member of a Legislative Assembly is a public servant is correct. Judged by the test enunciated by Lord Atkin in Mc Millan v. Guest and adopted by Sikri, J, in Kanta Kathuria's case, the position of a member of Parliament, or of a Legislative Assembly, is subsisting, permanent and substantive; it has an existence independent of the person who fills it and it is filled in succession by successive holders. The seat of each constituency is permanent and substantiative. It is filled, ordinarily for the duration of the legislative term, by the successful candidate in the election for the constituency. When the legislative term is over, the seat is filled by the successful candidate at the next election. There is, therefore, no doubt in our minds that a member of Parliament, or of a Legislative Assembly, holds an office and that he is required and authorised thereby to carry out a public duty. In a word, a member of Parliament, or of a Legislative Assembly, is a public servant for the purposes of the said Act.

This brings us to the issue of sanction under the provisions of Section 19 of the said Act. The Section has been quoted, Sub-section (1) opens with the words "No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15. Secondly, the person charged must be a public servant at the point of time the court is asked to take cognizance; that is the material time for the purposes of the Section. Thirdly, the sanction must proceed cognizance; it must be prior sanction. Fourthly, and this from the point of view of this judgement is most material, the Section covers all public servants. In order words, if any public servant is charged with an offence punishable under the aforesaid sections, the court shall not take cognizance in the absence of sanction. That the Section applies to all public servants is also clear from the three clauses of sub-section(1). Clause (a) says that the sanction must be of the Central Government in the case of a public servant who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government. Clause (b) says that the sanction must be of a State Government in the case of a public servant who is employed in connection with the affairs of that State and is not removable from his office save by or with the consent of that State Government. Clause (c) says that the sanction in the case of any other public servant must be of the authority competent to remove him from his office. Clause (c) is the basket into which all public servants,

other than those covered by the terms of clauses (a) and (b), fall Upon the plain language of sub-section (1) of Section 19, analysed above, the argument of the learned Attorney General that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so must fail.

In support of the argument, the learned Attorney General relied upon the judgment of this Court in S.A. Venkataraman vs. The State, 1958 S.C.R. 1040, in which, with reference to the provisions of Section 6 of the 1947 Act, it was observed :

> " When the provisions of s.6 of the Act are examined it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and provisions of the section do not stand in the way of a court taking cognizance without a previous sanction."

The appellant was a public servant who had been dismissed from service consequent upon a departmental inquiry. After his dismissal he was charged with the offence of criminal misconduct under the 1947 Act and convicted. The appellant contended that no court could have taken cognizance of the charge against him because there was no prior sanction under Section 6 of the 1947 Act. This Court found, as aforestated, that for the applicability of Section 6 two conditions had to be fulfilled, namely, (i) the offence should have been committed by a public servant and (ii) the public servant is removable from his office by the Central Government or a State Government or a competent authority. This Court held that sanction was not a pre-requisite to the cognizance of the offence with which the appellant was charged and conditions were not satisfied because, when cognizance of the offence was taken, the appellant had ceased to be a public servant. That the appellant was a public servant was not in dispute; that no sanction had been obtained was also not in dispute. This Court was not concerned with a situation in which there was a public servant but there was no authority competent to remove him from his office. The observations of this Court quoted above were made in the context of the facts of the case and relative thereto. They cannot be examined de hors the facts and read as supporting the proposition that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so and, if there is no authority competent to remove a public servant from his office, the embargo arising under Section 19 is not attracted and Section 19 does not come in the way of a court taking cognizance. In any event, we cannot, with great respect, agree that the observations fully analyse the provisions of Section 19. We have set out above how we read it; as we read it, it applies to all who are public servants for the purposes of the said Act.

It is incorrect to say that Section 19 contemplates that for every public servant there must be an authority competent to remove him from his office and that, therefore, the effort must be to identify that authority. But if no authority can be identified in the case of a public servant or a particular category of public servant, it cannot lead to the conclusion that was urged on behalf of the accused, namely, that he is not a public servant or this is not a category of public servant within the meaning of the said Act. We have found, based on the language of Section 2(c)(viii) read with Section 2(b), that members of Parliament are public servants. That finding, based upon the definition section, must apply to the phrase 'public servant' wherever it occurs in the said Act. It cannot change if it be found that there is no authority competent to remove members of Parliament from office. Members of Parliament would, then, not be liable to be prosecuted for offences under the said Act other than those covered by sections 7, 10, 11,13 and 15.

The Attorney General drew our attention in this context to the conclusion of the Orissa High Court in the case of Habibullah Khan aforementioned. The Orissa High Court found that there was no authority which could grant previous sanction, as contemplated by Section 19 of the Act, in the case of a member of a Legislative Assembly. Counsel, the High Court recorded, did not contend that even if there be no person competent to give sanction for prosecuting a member of a Legislative Assembly under the said act, nonetheless sanction for his prosecution had to be obtained because he was a public servant. The High Court was satisfied that although "an M.L.A. would come within the fold of the definition of 'public servant', as given in Section 2(c) of the Act, he is not the type of 'public servant' for whose prosecution under the Act, previous sanction as required by Section 19 is necessary. We require realise the anomaly of our conclusion, because though Section 19 of the Act makes no distinction between one public servant and another for the purpose of previous sanction, we have made so. But this is a result which we could not have truly and legally avoided."

We do not think that the view of the Orissa High Court stated above is correct. Since Section 6 of the 1947 Act and Section 19 of the said Act make no distinction between one public servant and another for the purpose of previous sanction, the conclusion must be that where the Court finds that there is no authority competent to remove a public servant, that public servant cannot be prosecuted for offences punishable under Sections 7,10,11,13 and 15 of the said Act because there is no authority that can sanction such prosecution.

This Court in the case of K. Veeraswami v. Union of India and others, [1991] 3 S.C.R. 189, considered the applicability of the 1947 Act to a Judge of a High Court or the Supreme Court. A case under the provisions of Section 5(2) read with Section 5(1)(e) of the 1947 Act had been registered against the appellant, the Chief Justice of a High Court, and on 28th February, 1976, an F.I.R. was filed in the Court of Special Judge. The appellant retired on attaining the age of superannuation on 8th April, 1976. On 15th December, 1977 , a charge sheet was filed and process was issued for appearance of the appellant. The appellant moved the High Court to quash the proceedings. The High Court dismissed the application but granted certificate of fitness to appeal. This Court, by a majority, concluded that a Judge of a High Court and the Supreme Court was a public servant within the meaning of Section 2 if the 1947 Act. A prosecution against him could be lodged after obtaining the sanction of the competent authority under Section 6 of the 1947 Act. For this purpose, the President of India was the authority to give previous sanction. No criminal case could be registered

against a Judge of a High Court unless the Chief Justice of India was consulted. Such consultation was necessary also at the stage of examining whether sanction for prosecution should be granted, which should be guided by and in accordance with the advice of the Chief Justice of India. Specifically, the majority view was that a public servant could not be prosecuted for the offences specified in Section 6 of the 1947 Act unless there was prior sanction for prosecution from a competent authority. A Judge of the superior courts squarely fell within the purview of the 1947 Act. The second requirement under clause (c) of Section 6(1) was that for the purpose of granting sanction for his prosecution there must be an authority and the authority must be competent to remove him. It was, therefore, "now necessary to identify such authority.....".

The learned Attorney General laid stress upon this observation. He submitted that the court should identify the authority competent to remove a member of Parliament, or a State Legislature, from his office if it found such member to be a public servant within the meaning of Section 2(c) and did not accept his contention that the provisions of Section 19 did not apply, there being no authority competent to remove such member from his office. In other words, it was the alternative submission of the learned Attorney General that there was an authority competent to remove such member from his office : in the case of a member of Parliament it was the President and in the case of a member of a State Legislature it was the Governor of the State. We shall address ourselves to the submission in a moment.

The passage in Veeraswamy's case relied upon by learned counsel for the appellants is contained in the dissenting judgment of Verma, J.

He said :

> "Clauses (a),(b) and (c) in sub-section (1) of Section 6 exhaustively provide for the competent authority to grant sanction for prosecution in case of all the public servants falling within the purview of the Act.
>
> Admittedly, such previous sanction is a condition precedent for taking cognizance of an offence punishable under the Act, of a public servant who is prosecuted during his continuance in the office. It follows that the public servant falling within the purview of the Act must invariably fall within one of the three clauses in sub-section (1) of Section 6. It follows that the holder of an office, even though a 'public servant' according to the definition in the Act, who does not fall within any of the clauses (a), (b) or (c) of sub-section (1) of Section 6 must hold to be outside the purview of the Act since this special enactment was not enacted to cover that category of public servants inspite or the wide definition of 'public servant' in the Act. This is the only manner in which these provisions of the Act can be harmonized and given full effect.

The scheme of the Act is that a public servant who commits the offence of criminal misconduct, as defined in the several clauses of sub-section(1) of Section 5, can be punished in accordance with sub-

section (1) of Section 5, can be punished in accordance with sub-

section (2) of Section 5, after investigation of the offence in the manner prescribed and with the previous sanction of the competent authority obtained under Section 6 of the act in a trial conducted according to the prescribed procedure. The grant of previous sanction under Section 6 being a condition precedent for the prosecution of a public servant covered by the Act, it must follow that the holder of an office who may be a public servant according to the wide definition of the expression in the Act but whose category for the grant of sanction for prosecution is not envisaged by Section 6 of the Act, is outside the purview of the Act, not intended to be covered by the act.

This is the only manner in which a harmonious constitution of the provisions of the Act can be made for the purpose of achieving the object of that enactment."

We are unable, with respect, to share this view in the dissenting judgment. It does not appear to take into reckoning the fact that sanction is not a pre-requisite for prosecution for all offences under the statute but is limited to those expressly specified in the sanction provision. Secondly, the question as to whether or not a person is a public servant within the meaning of the statute must be determined having regard to the definition of a public servant contained in the statute. If the person is found to be a public servant within the meaning of the definition, he must be taken to be a public servant within the meaning of the definition, he must be taken to be a public servant for the purposes of all provisions in the statute in which the expression 'public servant' occurs. If therefore, a person is found to satisfy the requirements of the definition of a public servant, he must be treated as a public servant for the purposes of the sanction provision. In our opinion, it cannot be hold, as a consequence of the conclusion that there is no authority competent to remove from office a person who falls within the definition of public servant, that he is not a public servant within the meaning of the statute. Where a person is found to satisfy the requirements of the definition of a public servant, the Court must, as was said by the majority in Veeraswami's case, attempt to identify the authority competent to remove him from his office. The majority identified that authority in the case of a Judge of a High Court and the Supreme Court and did not need to consider the effect upon the prosecution of not being able to find such authority.

It is convenient now to notice a submission made by Mr. Sibal based upon Veeraswami's case. He urged that just as this court had there directed that no criminal prosecution should be launched against a Judge of a High Court or the Supreme Court without first consulting the Chief Justice of India, so we should direct that no criminal prosecution should be launched against a member of Parliament without first consulting the Speaker. As the majority judgment makes clear, this direction was considered necessary to secure the independence of the judiciary and in the light of the "apprehension that the Executive being the largest litigant is likely to abuse the power to prosecute the Judges." Members of Parliament do not stand in a comparable position. They do not have to decide day after day disputes between the citizen and the Executive. They do not need the additional protection that the Judges require to perform their constitutional duty of decision making without fear or favour.

Before we move on to consider the alternative submission of the Attorney General, we must note the judgment in S.A. Venkataraman vs. The State, 1958 S.C.R. 1040, upon which the learned Attorney General relied for his first proposition, namely, that the provisions of Section 19 do not apply to a

public servant in resect of whom there is no authority competent to remove him from his office. The appellant Venkatraman was a public servant. After he was dismissed from service consequent upon a departmental inquiry, he was charged with criminal misconduct under the 1947 Act and was convicted. The contention before this Court was that the trial court could not have taken cognizance of the offence because no sanction for the prosecution had been produced before it. This Court held that no sanction for the prosecution of the appellant was required because he was not a public servant at the time cognizance of the offence was taken. The following passage in this Court's judgment was relied upon :

> " It was suggested that cl.
>
> (c) in s.6(1) refers to persons other than those mentioned in cls.
>
> (a) and (b). The words "is employed" are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. The expressions "in the case of a person" and "in the case of any other person" must refer to a public servant having regard to the first paragraph of the sub-section.

Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and cl.(c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in cl. (c) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority. Section 2 of the Act states that a public servant, for the purpose of the Act, means a public servant as defined in s.21 of the Indian Penal Code. Under cl.

(c), therefore, any one who is a public servant at the time a court was asked to take cognizance, but does not come within the description of a public servant under cls. (a) and (b), is accused of an offence committed by him as a public servant as specified in s.

6 would be entitled to rely on the provisions of that section and object to the taking of cognizance without a previous sanction."

We do not find in the passage anything that can assist the Attorney General's submission; rather, it is supportive of the view that we have taken and indicates that the third clause in the sanction provision is a catch-all clause into which all public servants who are not covered by the first two clauses fall. In the words, to prosecute a public servant the prior sanction of the authority competent to remove him is a must.

For the purposes of appreciating argument that the President is the authority competent to remove a member of Parliament from his office, Articles 101, 102 and 103 under the head "Disqualifications of Members" in Chapter II of Part V of the Constitution need to be set out. (Similar provisions in

relation to members of State Legislatures are contained in Articles 190, 191 and 192 under the same head in Chapter III of Part VI of the Constitution.) Articles 101, 102 and 103 read thus:

> "101. Vacation of seats, - (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other. (2) No person shall be a member both of Parliament and of a House of the Legislature of a State and if a person chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.
>
> (3) If a member of either House of Parliament -
>
> (a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102 or
>
> (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant:
>
> Provided that in the case of any resignation to in sub-clause (b), in from information received or otherwise and after making such inquiry as he thinks fit; the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary of genuine, he shall not accept such resignation.
>
> (4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :
>
> Provided that in computing the said periods of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.
>
> 102. Disqualifications for membership. - (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -
>
> (a) if he holds any offence of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
>
> (b) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is an undischarged insolvent;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament. Explanation - For the purpose of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2)A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth schedule.

103. Decision on questions as to disqualifications of members. - (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final. (2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

By reason of Article 101(3)(a), the seat of a member of Parliament becomes vacant if he becomes subject to the disqualifications mentioned in Article 102(1) and (2).

Those disqualifications are the holding of an office of profit under the Union or State Government, other than an office declared by Parliament by law not to disqualify the holder; the declaration by a competent court of unsoundness of mind; undischarged insolvency; the citizenship of a foreign State or acknowledgement of allegiance or adherence thereto; and disqualification under any law made by Parliament or under the Tenth Schedule. Under the provisions of Article 103, it is only if a question arises as to whether a member of Parliament has become subject to any of the disqualifications aforementioned, other than disqualification under the Tenth Schedule, that the question is referred to the President for his decision. The President's decision is final but, before giving it, the President has to obtain the opinion of the Election Commission and has to act according to such opinion. The question for our purposes is whether, having regard to the terms of Article 101, 102 and 103, the President can be said to be the authority competent to remove a member of Parliament from his office. It is clear from Article 101 that the seat of a member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications, mentioned in Article 102. without more. The removal of a member of Parliament is occasioned by operation of law and is self operative. Reference to the President under Article 103 is required only if a question arises as to whether a member of Parliament has earned such disqualification; that is to say, if it is disputed. The President would then have to decide whether the member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His order would not remove the member

of Parliament from his seat or office but would declare that he stood disqualified. It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word "removal" in service law, it seems clear that the President cannot be said to be the authority competent to remove a member of Parliament from his office.

The Attorney General submitted that the scheme of the said Act, as compared to the 1947 Act, had undergone an important change by reason of the introduction of sub- section (3) in Section 19. Sanction was no longer a condition precedent. A trial in the absence of sanction was not a trial without inherent jurisdiction or a nullity. A trial without sanction had to be upheld unless there had been a failure of justice. This feature has a material bearing on the present case. The trial Court had taken cognizance of the charges against the accused and the High Court had dismissed the revision petition to quash the charges. In the Light of Section 19(3), this Court should not interdict the charges, particularly since a complaint filed today would not require sanction against most of the accused. Having regard to the effect of our findings upon the accused, it is not necessary to consider this submission.

We have, as aforestated, reached the conclusion that members of Parliament and the State legislatures are public servants liable to be prosecuted for offences under the said Act but that they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to grant sanction thereto. We entertain the hope that Parliament will address itself to the task of removing this lacuna with due expedition. Conclusions.

We now set down the effect upon the accused of our findings.

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

D.K. Adikeshavulu and M. Thimmogowda (accused nos.12 and 13) were at all relevant times private persons. The trial on all charges against them must proceed.

When cognizance of the charges against them was taken, Buta Singh and N.M. Ravanna (accused nos. 7 and 9) were not public servants. The question of sanction for their prosecution, does not, therefore, arise and the trial on all charges against them must proceed.

P.V. Narasimha Rao, Satish Sharma, V. Rajeswar Rao, Ram Linga Reddy, M. Veerappa Moily and Bhajan Lal(accused nos.1. 2 8, 10, 11 and 14) were public servants, being either members of Parliament or a State legislature, when cognizance of the charges against them was taken. They are charged with substantive offences under Section 120B of the Indian Penal Code and Section 12 of the said Act. Since no prior sanction is required in respect of the charge under Section 12 of the said Act, the trial on all charges against them must proceed.

Ajit Singh (accused no.15) was a public servant, being member of Parliament, when cognizance of the charges against him was taken. He is charged with substantive offences under Section 120B of the Indian Penal Code and Section 7 and 13(2) of the said Act. The trial of the charge against him under Section 120B of the Indian Penal Code must proceed.

The appeals shall now be placed before a bench of three learned judges for hearing, on any other points that may be involved, and final disposal.

G.N. RAY, J.

I had the privilege of reading both the judgments - one by my learned brother Mr. Justice S.C. Agrawal and the other by learned brother Mr. Justice S.P. Bharucha. Though I respectfully concur with the findings of Mr. Justice Agrawal and agree with the reasonings for such findings that (1) a member of Parliament is a public servant under Section 2[c] of the Prevention of Corruption Act, 1988 and (2) since there is no authority competent to grant sanction for the prosecution of a Member of Parliament under Section 19[1] of the Prevention of Corruption Act 1988, the Court can take cognizance of the offences mentioned in Section 19[1] in the absence of sanction but before filing a chargesheet in respect of an offence punishable under Sections 7,10,11,12 and 15 of 1988 Act against a Member of Parliament in a criminal court, the prosecuting agency shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be, I have not been able to persuade myself to concur with the reasonings and the finding in the judgment of Mr. Justice Agrawal that a member of parliament does not enjoy immunity under Article 105(2) or 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or giving his vote in Parliament or in any committee thereof.

Article 105 of the Constitution deals with powers, privileges etc. of the Houses of Parliament and the members and committees thereof. Sub article (1) of Article 105 makes it evident that subject to the provisions of the Constitution and rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament. The provisions of Sub-article (1) Article 105 indicates in no uncertain term that the freedom of speech guaranteed under sub Article (1) of Article 105 is independent of the freedom of speech guaranteed under Article 19 of the Constitution and such freedom of speech under Article 105 (1) is not inhibited or circumscribed by the restrictions under Article 105 (1) is not inhibited or circumscribed by the restrictions under Article 19 of the Constitution. In order to ensure effective functioning of Parliamentary democracy, there was a felt need that a Member of Parliament will have absolute freedom in expressing his views in the deliberations made in the door of Parliament. Similarly he must enjoy full freedom in casting his vote in Parliament.

The protections to be enjoyed by a Member of Parliament as contained in Sub Article (2) of Article 105 essentially flows from the freedom of speech guaranteed under Sub- Article (1) of Article 105. Both the Sub-articles (1) and (2) compliment each other and indicate the true content of freedom of speech and freedom to exercise the right to vote envisaged in Article 105 of the Constitution. The expression "in respect of" appearing in several articles of the Constitution and in some other

legislative provisions has been noticed in a number of decisions of this Court. The correct interpretation of the expression "in respect of can not be made under any rigid formula but must be appreciated with references to the context in which it has been used and the purpose to be achieved under the provision in question. The context in which the expression "in respect of" has been used in sub article (2) of Article 105 and the purpose for which the freedom of speech and freedom to vote have been guaranteed in sub article (2) of Article 105 do not permit any restriction or curtailment of such right expressly given under sub article (1) and sub article (2) of Article 105 of the Constitution. It must, however be made clear that the protection under sub-article (2) of Article 105 of the Constitution must relate to the vote actually given and speech actually made in Parliament by a Member of Parliament. In any view, the protection against proceedings in court as envisaged under Sub-article (2) of Article 105 must necessarily be interpreted broadly and not in a restricted manner. Therefore, an action impugned in a court proceeding which has a nexus with the vote cast or speech made in Parliament must get the protection under sub- article (2) of Article 105. Sub-Article (3) of Article 105 provides for other powers, privileges and immunities to be enjoyed by a Member of Parliament. The farmers of the Constitution did not catalogue such powers, privileges and immunities but provided in sub article (3) of Article 105 that until such privileges are defined by the Parliament, a member of Parliament will enjoy such powers, privileges and immunities which had been recognised to be existing for a member of House of Commons at the commencement of the Constitution of India. As I respectfully agree with the reasonings indicated in the judgment of the learned brother Mr. Justice S.P. Bharucha that in the facts of the case, protection under Article 105(3) of the Constitution is not attracted but protection under Sub article (2) of Article 105 is available only to those accused, who as Members of Parliament had cast their votes in Parliament, I refrain from indicating separate reasonings in support of such finding.