Supreme Court of India
P.V. Narsimha Rao vs State (Cbi/Spe) on 17 April, 1998
Author: S Agrawal
Bench: S.C. Agrawal, A.S. Anand

PETITIONER:
P.V. NARSIMHA RAO

Vs.

RESPONDENT:
STATE (CBI/SPE)

DATE OF JUDGMENT: 17/04/1998

BENCH:
S.C. AGRAWAL, A.S. ANAND

ACT:

HEADNOTE:

JUDGMENT:

[Withe CRL. A. NOS. 1209/97, 1210-12/97, 1213/97, 1214/97, 1215/97, 1216/97, 1217-18/97, 1219/97, 1220/97, 1221/97, 1222/97, 186/98 (Arising out of S.L.P. (Crl.) No.2/98) AND 187/98 (Arising out of S.L.P. (Crl.) No. 366/98)] J U D G M E N T 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.-

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(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
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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- accused Capt. Satish Sharma, Buta Singh, V. Rajeshwara Rao, H.M.
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> 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.
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> 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."
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> "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 ? (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 :-

> "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:
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> 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.

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."

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.

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 :

"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 :-

> "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.
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> 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
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> 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.
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> A law is a matter of interpretation. We are acting according to the legal advice availabel to us.
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> 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."
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> "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 :-
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> "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
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> (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-
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> section (1) of Section 6 exhaustively provide for the competent authority to grant
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> 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.