

AN OVERVIEW OF FREEDOM OF SPEECH & EXPRESSION AND PRIVILEGES OF LEGISLATURE IN INDIA

By

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I. The concept of Freedom of speech and expression in general:-

“I do not fear thousand guns, but I fear with one pen.” *Napolean*.

The Freedom of speech and expression benefits more the hearer than the Speaker. The hearer and the Speaker suffer as violation of their spiritual liberty if they are denied access to the ideas of each other”.- *Franklylyn S. Haiman*.

Individual is the Supreme Consideration, he is the centre of authority and value. No great progress can ever be made if the individual do not have opportunity or perfect development of their personality. *Mahatma Gandhi*. Thoughts of Gandhi & Tagore by *Bri J. Kishore Goyal*.

i. Freedom of speech and expression is used in very wide sense. It gives individuals to express one’s own view’s or ideas through any communicable medium or visible representation like expressing freely by Sign’s Musical performance by way of Radio, Film T.V. stage video *etc.*

ii. Freedom of speech under Indian Constitution:-One of the fundamental rights guaranteed by the Constitution of India is the right to freedom of speech and expression a right which is absolutely essential not only for the successful working of Parliamentary institutions but also for full development of a human being. [Indian Constitutional law: *M.P. Jain* Fourth Edition 1994 Publisher Wadhwa & Company, Nagpur.]

Article 19 of the Constitution of India *inter alia* guarantees the freedom of speech and expression to all citizens.

The phrase ‘Speech and expression’ used in Article 19 (1) (a) has wide connotation. It includes the freedom of press, the freedom to express one’s own views and also the views of others. The Supreme Court of India expressed the implication of this right as follows :

“There can be no doubt that freedom of speech and expression includes freedom of propagation of Ideas etc and also includes right to paint or sing or dance or to write poetry or literature.

iii. Nature of Freedom of Freedom of speech and expression:-

In a democratic country it has four broad purposes to serve :

1. It helps an individual to attain self fulfilment.
2. It assist in the discovery of truth.
3. It strengthens the capacity of an individual in participating in decision making.
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social charges. All members of society should be able to form their own beliefs and communicate them freely to others.

The fundamental principle involved here in the people’s right to know freedom of speech and expression should, therefore, receive generous support from all those who believe in the participation of people in the Administration. [*Indian express News paper v Union of India*, (1985) 1 SCC 641: *Relian*

Petro chemicals Ltd v. Indian News papers (Bombay) Pvt. Ltd., AIR 1989 SC 190.]

The words “Freedom of speech and expression” must be broadly construed to include the freedom to circulate one’s views by words of mouth or in writing or through audio visual instrumentalities. It, therefore, includes the right to propagate one’s views through the print media or through any other communication channel *e.g.*, the radio and the Television. Every citizen of this country, has the right to air his or her views through the printing and or the electronic media subject to reasonable restrictions [Article 19(2)] of the Constitution.

iv. It is not absolute but subject to reasonable restrictions:-

It is to be noted that the freedom is not as it cannot be free from all restraints and the State itself may impose by law reasonable restrictions on the freedom of speech and expression. [Article 19 (2) of the Constitution.]

- (a) in the interest of the—
 - (i) Security of the State;
 - (ii) Friendly relation with foreign States;
 - (iii) Public order;
 - (iv) decency and Morality; or
- (b) in relation to—
 - (v) Sovereignty and integrity of India;
 - (vi) Contempt of Court;
 - (vii) defamation; or
 - (viii) incitement to an offence.

So those laws which impose reasonable restrictions on the freedom of speech and expression are not unConstitutional. This cannot be easily answered, no hard and fast rule can be applied and it only depends upon the facts of each case and no general

formula can be laid down for that however, it requires a balancing of the right of the individual with what may be considered by the State is socially good. [Indian Constitutional Law by *M.P. Jain* 1994 Central Law Agency.]

V. Various dimensions of freedom:-

Freedom of speech is one of the most precious liberties in our Secular, Socialist Republic. It is a prized privilege to speak one’s discussion. This liberty may be regarded as an autonomous and fundamental good and its value gets support from the need to develop our evolving society from unequal past to a vigorous homogeneous egalitarian order in which each gets equality of status and of opportunity [AIR 2492 SC in *Re SC Saxena*, AIR 1996 SC 2481 in *Re SC Saxena*:] Social, economic and political justice with dignity of person so as to build an integrated and united Bharat.

Freedom of expression equally generates and disseminates ideas and opinions, information of political and social importance in a free market place for peaceful social transformation under rule of law. The doctrine of discovery of truth does require free exchange of ideas and use of appropriate language words are the skin of the language which manifests the intention of its maker of the speaker. The right to free speech is, therefore, an integral aspects of right to self development and fulfilment of person’s duties some of which are proselytised in Part IVA of the Constitution as Fundamental Duties. The end of the State is to secure to the citizens freedom to develop his faculties; freedom to think as he will, to speak as he thinks and as indispensable tools to the discovery of truth and realisation of human knowledge and human rights. Public discussion is political liberty. The purpose of freedom of speech is to understand political issues so as to protect the citizens and to enable them to participate effectively in the working of the democracy in a

representative form of Government. Freedom of expression would play crucial role in the formation of public opinion on social, political and economic question. Therefore, political speeches and expressions. The importance of speaker's potential development on political and social questions is also relevant to encourage human development for effective functioning of democratic institutions.

It not only means the right to express one's convictions and opinion freely words of mouth, but also by various modes like writing, printing, pictures *etc.* This freedom includes the freedom of press.

The fundamental right of the freedom of the press implicit in the right the freedom of speech and expression, is essential for political liberty and proper functioning of democracy. The Indian Express Commission expressed it's view that democracy can thrive not only under the vigilant eye of its Legislature, but also under the care and guidance of public opinion and the press is per excellence, the vehicle through which opinion can become articulate. The Indian Constitution does not expressly mention the liberty of the press but it has been held that liberty of the press is included in the freedom of speech and expression. The freedom of the press is not confined to newspapers and periodicals. It includes pamphlets and circulars and every sort of publication which a vehicle of information and opinion (1985) 1 SCC 641. The expression "freedom of the press" has not been used in Article 19 but in comprehended within Article 19(1)(a). The expression means freedom from interference from authority which would have the effect of interference with the content and circulation of Newspaper's. There cannot be any interference with that freedom in the name of public interest. The purpose of the press is to advance the public interest by publishing facts and opinions without which a democracy electorate cannot make responsible judgments. Freedom of the press in the heart of the Democracy. It

is the primary duty of the Courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the Constitutional mandate.

Freedom of press has always bear a cherished right on all democratic countries. The newspaper not only purvey news but also opinions and ideologies. They are supposed to guard public interest by bringing to fore the misdeeds, failings and lapses of the Government and other bodies exercising governing power. Rightly therefore, it has been described as fourth estate.

In short we can say the right to speech and expression includes freedom of press and right to publish one's opinion, right to circulation and propagation of one's ideas, freedom of peaceful demonstration, damatric performance and cinematography etc.

vi) New Dimension to freedom of Speech and Expression:-

In a historic Judgment in *Secretacy Ministry of I & B v. Cricket Association of Bengal (CAB)*, (1995) 2 SCC 161, the Supreme Court has considerably widened the scope and extent of the right to freedom of speech and expression and held that the Government has no monopoly on electronic media and a citizen has a right to telecast and broadcast to the viewers/listeners through electronic media. The Court directed the Government to set up an independent autonomous broadcasting authority which will free Democracy and Akashwani from the Shackles of Government control and ensure conditions in the which the freedom of speech and expression can be meaningful and effectively enjoyed by one and all. These rights can be restricted only a grounds specified in clause (2) of Article 19 and not on any other grounds by Government. The Court held that the fundamental right to freedom of speech and expression includes the right to communicate effectively and to as a large population not only in this country

but also abroad. There are no geographical barriers on communication and as such have an access to telecasting for the purpose. At present electronic media viz, TV and radio is the most effective means of communication. Since airways are public property and they must be used for public good; subjected to certain limitations. The Court directed the Government to establish an independent autonomous public authority representing all sections of society to control and regulate the use of airways. A monopoly over electronic media is inconsistent with the right to freedom of speech and expression. Broadcasting media must be under the control of public.

In a significant judgment in *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*; a three Judges bench (Kuldip Singh, B.C. Hansaria and S.B. Majumdar, JJ) has held that a commercial speech (advertisement) is a part of the freedom of speech and expression granted under Article 19 (1) (a) of the Constitution. The advertisement has two facts. Advertising which is no more than a commercial transaction, is none the less dissemination of information regarding the product - Advertised public at the large is benefited by the information made available through the advertisements. In a democratic economy, free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system is a democracy would be handicapped without there being freedom of "Commercial speech". The Court examined from another angle the public at large has a right to receive the "Commercial speech" Article 19 (1) (a) of Constitution not only guaranteed freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech.

This shows that freedom of speech and expression has no geographical limitation,

Individual has right to gather information and exchange thoughts and ideas with others in India and also outside the country.

In view of freedom of press stands at a higher footing than other enterprises. Freedom of press has always been a cherished right on all democratic countries.

(vii) Judicial Interpretation:-

1. In *Life Insurance Corporation of India v. Manu Bhai D. Shah*, (1992) 3 SCC 637, Supreme Court expressed that freedom of speech and expression includes freedom of propagation of ideas and the freedom is secured by the freedom of circulation.

2. In *National Anthem case Bijoe Emanuel v. State of Kerala*, (1986) 3 SCC 615. The Supreme Court held that fundamental right under Article includes the freedom of silence.

3. In a historic judgment in *Secretary Minister of I & B V Cricket Association of Bengal (CAB)*, (1995) 2 SCC 161. The Supreme Court held that there is no geographical barriers on communication. The Court directed the Government to establish autonomous public authority representing all sections of society to control and regulate the use of airways. A monopoly over electronic Media is inconsistent with the right to freedom of speech and expression. Broadcasting media must be under the control of public.

4. In *Tata Press Ltd. v. Mahanagar Telephone Nigam Ltd.*, (1995) 5 SCC 139. The Court examined in different angle that the public at large has a right to receive the "Commercial Speech" Article 19 (1) (a) of the Constitution not only guarantee freedom of speech and expression, it also protects the right of an individual to listen, read and receive the said speech.

5. In *Maneka Gandhi v. Union of India*, AIR 1978 SC 597. The Supreme Court

held that freedom of expression carries with it right to gather information as also to speak and express oneself at home and abroad and to exchange thoughts and ideas with others not only in India but also outside.

6. In *Indian Express Newspapers v. Union of India*, (1985) 1 SCC 641. The Court observed that it is the primary duty of the Courts to uphold the freedom of the press and invalidate all laws or administrative actions which interferes with it contrary to the Constitutional mandate.

II. Privileges of Legislature

Articles 105 and 194:

1. Article 105 (1) subjected to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

2. No Member of Parliament shall be liable to any proceedings in any Courts in respect of anything said or any vote given by him in Parliament or any committee there of 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 the 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 proceeding of a House of Parliament or any committee there of as they apply in relation to members of Parliament.

1. *Article 194:—*(1). Subject to the provision of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

2. No Member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any Committee there of and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

3. In other respects, the powers, privileges and immunities of a House of the Legislature of State, and of the members and the committee of a House of such Legislature, shall be such as way from time to time be defined by the Legislature by law, and until so defined, shall be those of the House of Commons of the 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 House of the Legislature of a State or any Committee thereof as they apply in relation to members of that Legislature. The Constitution has, in both these articles provided that in other respects the privilege of the Members of Legislature will be the privileges of the House of Commons at the commencement of the Constitution.

The Constitution has conferred on the Legislature certain privileges.

1. The Members of the Parliaments and committees has freedom of speech in Parliaments subject to rules and standing order regulating the procedure of Parliament.

2. For smooth functioning of Parliament or State Legislative no Member of Parliament is liable to any proceeding in any Court.

i. Necessity:-

1. The Legislature has to perform high and multifarious functions and without privilege individual members cannot perform its functions. [Sir Thomas Erskine May: Parliamentary Practice, 16th Edition Chapter III p.42.]

2. Privilege is necessary for the protection of its members and use of the services of its members without hinderance.

A) *Freedom from Arrest:-* A Member cannot be arrested on a civil proceeding within a period of 40 days before and 40 days after a Session of the House.

B) *Right to conduct secret Session :-* In the interests of the Nation and Public, the Parliament or State Legislature has right to exclude strangers from its proceedings and the to conduct secret sessions, on exceptional occasions.

C) *Right of publication of its proceedings:-* No members is liable to any proceedings in any Court in respect of publication of any report paper, votes or proceedings by a under the authority of a House.

D) *Right to regulate internal proceedings :-* The House has the right to make the rules, regulations for the smooth administration of its internal proceedings.

E) *Right to punish Members or outsiders for contempt :-* The Parliament or State Legislature has the right to punish Members and also outsiders for contempt of the House.

ii) Freedom of speech & expression within or inside the Legislature.

The House has an exclusive right to regulate its own internal proceedings

Article 122 says that the validity of the proceeding cannot be questioned on the ground of any alleged irregularity of procedure.

(iv) Comparative position

In Great Britain:

(a) The privileges of the two House of Commons and House of Lords in England, are identical to each House of Parliament of the House of Parliament, accordingly belong the privileges which are passed by the House of Commons in United Kingdom [V.N. Shukla Constitution of India page No.385.] The English Constitution have expressed the views that the House of Commons has complete control over the publication of its proceedings Anson observes.

“We are accustomed, therefore, to be daily informed, throughout the Parliament session, of every detail of events in the House of Commons, and so we are apt to forget two things. The first is the reports are made on sufferance, the House can at any moment exclude strangers and clear the reporters gallery and that they are also published on sufferance, for the House may at any time resolve the publication is a breach of privilege and deal with it accordingly. [Law and custom of the Constitution page 174: T.K. Tope.]

The second is that though the privileges of the House confer a right to privacy of debate they do not confer a corresponding right to the publication of debate “Halsbury laws of English [Halsbury’s laws of England 2nd Edition Vol 24 P 350 - 351], also State this privilege. It is within the power of either House of Parliament, should it deem it expedient, to prohibit the publication of its proceedings.

v. Judicial Interpretation:-

In *Keshav Singh* case, AIR 1965 SC 345 the Supreme Court drew distinction between

British and Indian Parliaments. The former in sovereign and latter is subject to the provisions of the Constitution, our being a federal Constitution the interpretation of the Constitution is judicial function including the interpretation of the privileges of the Legislature.

2. *Ramoji Rao v. A.P. Legislative Council* [The Hindustan Times March 30, 1984] the Supreme Court observed that is judicial function to interpret the privileges of Legislature.

3. In *S.M. Sharma v. Sri Krishan Sinha*, AIR 1959 SC 395 the Supreme Court held that 'the validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that procedure laid down by law has been strictly followed.

4. In *J.M.M* case [The Hindu 1998]. The Court gave wider interpretation to Article 105(2) of the Constitution to hold that MP's voting or making a speech inside Parliament should be accorded wider protection of Parliament should be accorded wider protection of immunity in respect of civil action and criminal proceedings.

III Freedom of Speech & Expression v. privileges of Legislature (i) One of the fundamental rights guaranteed by the Constitution of India is the right to the freedom of speech and expression, a right to the freedom of speech and expression, a right which is absolutely essential not only for the successful working of Parliamentary institutions but also for the full development of a human being. It is not only a civil right, but cultural one also, probably it is more cultural than civil. This right has a very wide connotation. It includes the freedom of press, freedom to propagate one's own views and also views of others. It also includes the freedom to communicate the views of others.

(ii) 1950 Privileges of Legislature onwards :-

The Supreme Court of India expressed the implication of this right as follows : There can be no doubt that freedom is secured by the freedom of circulation. Liberty of circulation is an essential to that freedom as the liberty of publication. Indeed without circulation the publication will be little value. [*Ramesh Thapper v. the State of Madras*, 1950 SCR 594 (599)]. Thus, the freedom of press becomes a fundamental right under the Constitution of India.

The fundamental right guaranteed by Article 19 however, are available to be citizens of India. A foreigner cannot claim these rights.

Moreover, these rights are not absolute rights. As a matter of fact rights in a civilized society cannot be absolute rights for, an adjustment of one's own rights with the rights of fellow citizen is absolutely essential in such a society. The framers of the Indian Constitution knew this well. Hence, they have provided in the Constitution itself for the curtailment of these rights under certain circumstances. This right to the freedom of speech and expression may be restricted by the State in the interest of the security of the State, friendly relations with foreign states, public order, decency or morality, or in the relation to contempt of Court, defamation or incitement to an offence Article 19 (2). The restrictions imposed by the State, however must be reasonable restrictions. It is for the judiciary to decide whether the restrictions are reasonable or not. Thus, an element of Judicial review of the restrictions which State may impose on the right of the freedom of speech and expression has been introduced in the Constitution of India.

The freedom of press in India is not wider than the freedom of speech and expression guaranteed to an individual hence,

the restrictions on the right of the individual are also the restrictions on the freedom of press. However, the freedom of press is not subject to only these limitation. There is another limitation also under the Constitution of India. The press reports not only view or proceedings of public meeting, but also proceedings of Legislature. It is in this context that the real problem of the freedom of press arise.

iv. In *Tamil Nadu Press case* :—[J.M. Pandey 31 edition page No.462]. In this case there was direct confrontation between the Legislature and the Court when the Tamil Nadu Assembly speaker issued warrants of arrest against the Editor of Tamil Nadu daily 'Kovai Malai Mara Su'. The privilege committee had directed the editor to appear before the Bar of the House to receive a reprimand for allegedly publishing a 'false' report that AIADMK MLA attacked a DMK MLA in the Assembly for he sought to raise the issue of his life being in danger.

The Supreme Court stayed the summons issued by the Speaker. The Speaker had taken stand that he was not bound by the order of the Court. The Attorney concedes before the Court that the resolution of the Assembly constituted contempt of Court. Such actions like that of the Tamil Nadu Assembly are calculated to destroy the very fabric of the Constitution. The Central Government was left with no option but to exercise its power under Article 356 and dissolve the Assembly and impose president rule in the State in order to prevent such a situation.

In *Re Keshav Singh case*:-[AIR 1965 SC 745]. The Court held that the powers and privileges under Article 194 (3) other provisions of the Constitution must be considered harmoniously. Article 226 confers wide power on High Courts to issue writ of *habeas corpus* against any authority which according to Article 12 includes the Legislature and so the High

Court can exercise its power even against the Legislature Article 121 prohibits any discussion in a State Legislature with respect to the conduct of any Judge of Supreme Court or High Court in discharge of his duties.

In *Ramaji's Rao v. A.P. legislative Council*. [The Hindustan Times, March 30, 1984] the Chief Editor of a Telugu News paper Eenadu was found guilty of contempt of the Andhra Pradesh Legislative Council for publishing an item Elder's commotion - in his newspaper and was ordered by the House to appear before it for admonition. The Supreme Court had issued an order to the Secretary of the House not to arrest him. He refused to appear in the House unless "arrested and taken". Despite the Court's stay order, the Council proceeded with the discussion of the matter and during the discussion the Member expressed the view that the House was Supreme and Sovereign in the matter of privileges and the Court had no place in the matter and during the discussion the members expressed the view that the House was Supreme and Sovereign in the matter of privileges and the Court had no place in the matter and it should not surrender to the Supreme Court and the Editor should be arrested and brought before the House for admonition. At this stage seeing that the matter was taking an ugly conflict between the Legislature and the Court, the Chief Minister intervened and requested the House to postpone the deliberations on the subject as he had requested the president to refer to the matter to the Supreme Court for its advisory opinion, before the Supreme Court could give its verdict in the Eenadu case the Council opted for a show a Legislative power.

Conclusion

IV *Summary*:- Freedom of speech and expression is used in very wide sense. It gives individuals to express one's own views

or ideas through any communicable medium or visible representation. In a democratic country it has four broad purpose to serve

1) To attain self fulfilment of an individual 2) to assist in the discovery of truth. 3) It strengthens the capacity of an individual is participating in decision making.

Simultaneously the State may impose reasonable restriction on the freedom of speech and expression, because too much freedom may result against the state; safeguarding the rights of an individual.

The Court has examined freedom of speech and expression in a new Dimension depending upon the facts of each case, *i.e.*, Government had no monopoly on electronic media, safeguarding the rights of an individual to listen read and receive the commercial speech, and it has no geographical limitation, it also includes freedom of circulation, and Broadcasting media must be under the control of public.

The Members of the Parliaments has privileges of Legislature for smooth functioning of Parliament or State Legislature subject to rules and standing orders regulating the procedure of Parliament they are freedom from arrest, Right to conduct secret session, Right to of publication of its proceedings, Right to regulate internal proceedings, Right to punish members or outsider for contempt.

Comparing with British Constitution the privileges of the two House of Commons and House of Lords in English are identical. To each House of Parliament of the Parliament accordingly belong the privileges which are passed by the House of Commons in United Kingdom.

ii) Critism:-

1. The *Keshav Singh* case:-AIR 1965 SC 745. The question whether the privileges and immunities enjoyed by Legislature under the later part of Article 194(3) are

subject to the provisions of Part III of the Constitution was not discussed by the Court in general terms. The Supreme Court made a simple observation that such privileges are necessarily subject to Articles 21 and 22 of the Constitution. The Court should permanently find a solution for this problem.

2. In *Ramoji Rao v. A.P. legislative Council* and in *Allahabad High Court and the U.P.*, AIR 1965 SC 745, AIR 1984 SC 960 *Vidhan Sabha* case the Supreme Court clearly held them under Article 194 (3) a Legislature can determine its own privileges, the judiciary can still examine the question of *mala fide* or arbitrariness in the exercise of that power. The Court Constitutional confrontation between the Legislative Council of a State and the Supreme Court there is no guarantee that after the decision of the Supreme Court, it could not be raised again. On April 22, 1984 the Presiding Officers of Legislative bodies unanimously adopted a resolution that the legislatures had 'exclusive jurisdiction' to decide all matters relating to the privileges of the House their members and Committees without any interference from Courts of law. The claim of House that the Legislature is sovereign in this matter is fallacious. It is the Constitution which is sovereign in India. The legislatures derives its powers from the Constitution. The Legislature is sovereign only to the extent that Constitution grants it powers and it is open to the judiciary to examine the illegality of the exercise of Legislative power. This pertains to the questions of legislative privileges as well.

In *J.M.M. case:- The Hindu* 1998. The Supreme Court gave green signal for the prosecution of communication Minister *Buta Singh*, former Prime Minister *P.V. Narsimha Rao* and others charged with the offence of 'bribe giving' in the *J.M.M. MPs. Bribery* case under the Prevention of Corruption Act.

Rejecting their plea for being discharged from the case claiming immunity as MPs, the five Judge Constitution Bench headed by Justice *S.C. Agarwal*, said these persons could not claim exemption from prosecution under Article 105(2) of the Constitution regarding protection of privileges as MPs, as they have committed offences outside Parliament.

The Judges, however ruled that all the accused coming under the category of "bribe takers" including the *Jharkand Mukh Morcha* MPs., enjoyed the protection of Article 105(2) of the Constitution and were therefore, immune from being prosecuted as the offences inside Parliament.

The only exception among the alleged 'bribe takers' category who could not claim privilege against prosecution was former M.P. *Ajit Singh* who did not vote on the No Confidence Motion against the *Narasimha Rao* Government in July 1993, the Judges held *Rao* is one of the 10 accused persons in the case charged with conspiracy and various sections of the Prevention of Corruption Act.

The Judges gave wider interpretation to Article 105 (2) of the Constitution to hold that MPs. voting or making a speech inside Parliament should be accorded under protection of immunity in respect of civil action and criminal proceedings.

"We are, however acutely conscious of the serious offences of alleged bribe taking levelled against the MPs. who are accused of voting for the *Narsimha Rao* Government for consideration of bribes.

If this was true that they have bartered a solemn trust of the public.

The Apex Court held even so these MPs. were entitled to protection under Article 105(2) the Court not construe the

Constitution in a narrow moreover so as to restrict Parliamentary debate.

Directing prosecution of *Ajit Singh* as he had not cast his vote the Court held that he tried for an unlawful act. The Judges said Parliament could take action regarding both the bribe takers and bribe givers for breach of privilege and contempt of the House and Article 105 (3) could not come to the aid of even the alleged bribe takers.

Three separate judgments were pronounced by the five Judge Bench with the majority view taken that MPs. and Member of the State Legislatures were public servants under the Prevention of Corruption Act. There is no doubt that these persons hold an office and are authorised to carry out a public duty "The Judges said adding that where the offences committed by these accused did not come under Sections 7, 10, 11, 13 and 15 of the Act, the Courts shall not take cognizance. The Court held that there seemed to be no competent authority to grant sanction for prosecution of the accused the earliest.

iii) Suggestion incorporated:-

In order to find the permanent solution to worst Constitutional confrontation between legislative Council of a State and the Supreme Court; privileges of the legislation must be codified. In view of the seriousness of matter bearing no alternative except to codify them.

The recent controversy between Court and the Legislature further support the view that that the privileges should be codified to solve the permanent solution of the problem.

In *J.M.M.* case we only hope that Parliament would set right to competent authority to grant sanction for prosecution of the accused.