when a particular function can be considered as a 'sovereign' function. The distinction between the sovereign and non-sovereign functions had been discussed and demonstrated with reference to Indian as well as foreign precedents and text-books by Chief Justice *Subba Rao* in his inimitable style.

In *Bangalore Water Supply v. State of Rajappa*, AIR 1978 SC 548, the principles of formulated by the Supreme Court earlier were raised to their prestine glory.

In this case the Supreme Court held that the term 'Industry' as defined in Section 2(j) has a wide import. Where there is: (i) systematic activity, (ii) organized by co-operation between employer and employee, (the direct and substantial element is chimerical); (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss *e.g.,* making on large scale, prasad or food) *prima facie* there is an 'Industry' in that enterprise.

Absence of profit motive or gainful objective is irrelevant, the venture in the public, joint, private or other sector.

The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employer- employee relations. If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking. Although Section 2(j) uses the words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

'Undertaking' must suffer a contextual and associational shrinkage as explained in AIR 1953 SC 58, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements above-mentioned, although not trade or business, may still be "Industry" provided the nature of the activity, *viz.,* the employer-employee basis, bears resemblance to what is found in trade or business. This takes into the fold of 'Industry' undertakings, callings and services adventures analogous to the carrying on of trade or business. All features, other than the methodology of carrying on the activity *viz.,* in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if on the employment terms there is analogy.

Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more……"

The above guidelines of the Supreme Court in explaining the meaning and definition of the term 'Industry' have gone a long way in a new definition being adopted by the Legislature for the old definition of 'Industry' in Section 2(j) of the Act.

FREEDOM OF SPEECH IN PARLIAMENT UNDER INDIAN CONSTITUTION

By

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Under Article 19(1) of the Constitution every citizen of India has freedom of speech and expression. This freedom however is subject to reasonable restrictions which may

be imposed by the State by law on permissible grounds. In addition to the freedom guaranteed under Article 19 of the Constitution citizens who are Members of Parliament have freedom of speech under yet another provision of the Constitution. This particular freedom of the Members of Parliament has the status of a Parliamentary Privilege. A privilege of this kind is provided for in the Constitutions of other democratic countries as well.

This article has the object of discussing the nature and scope of the Freedom of Speech as guaranteed to Members of Parliament under Article 109 of the Constitution. Reference is made to the provisions of other Constitutions and the cases decided by the Court on the privilege of Members of Parliament the Constitution provides for the freedom of speech of Members of Parliament, thus:

In United Kingdom the House of Commons had passed a resolution on May 2, 1695 resolving that "the offer of money or other advantage to any Member of Parliament for promoting any matter whatsoever pending or to be transacted in Parliament is high crime and misdemeanor and tends to the subversion of the English Constitution." In the 1970's, a Royal company mission of Standards of Conduct in Public Life chaired by Lord *Salmon* was constituted to examine this question. The Commission submitted its report in July, 1976 pointing 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."

While stating that 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, they recommended, in the light of the nature of the duties of a Member of Parliament 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". Indeed, during the course of debate, Lord *Salmon* stated: "to my mind, equality before the law is one of the pillars of freedom to say that immunity from criminal proceedings against anyone who attempts to bribe Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of rights is possibly a serious mistake…now this (Bill of rights) is a charter for freedom of speech in the House; it is not a charter of corruption".

In Australia, as far back as 1875 the Supreme Court of New South Wales held that an attempt to bribe a Member of Legislative Assembly in order to influence his vote was a criminal offence triable by Common Law. The said decision was approved by the High Court of Australia in *R v. Boston*, (1923) 33 CIR 386. In fact, Section 73A of the Crimes Act, 1914 makes it an offence for Member of Australian Parliament to accept a bribe. Similarly a person who seeks to bribe a Member of Parliament is equally guilty of an offence.

In Canada, the law is similar to the law in Australia. Section 108 of the Criminal Code in Canada makes it an offence either to offer or to accept a bribe by a provincial or a federal Member of Parliament.

In USA, the Supreme Court considered this question in two cases namely, *US v. Brewster*, (1972) 33 Lawyer Edition 2d 507 and *US v. Helstoski*, (1979) 61 Lawyers Edition 2d 12. In *Brewster*, a majority of six Judges led by *Burger*, CJ., held that the speech or debate clause contained in Article 1(6) of the US Constitution protects the Members of Congress from inquiry into legislative acts or into the motivation for their actual performance of legislative acts but that it does not protect them from other activities they undertake that are political rather than

legislative in nature and that taking a bribe for the purpose of having one's official conduct influenced is not part of any legislative process or function and further that the speech or debate clause did not prevent indictment and prosecution of *Brewster* for accepting bribes. Three Judges, *Brennan, White* and *Douglas*, JJ., however, dissented and held that *Brewster* cannot be [prosecuted in a criminal Court. The Judges in minority held that the trial of the crimes with which *Brewster* was charged calls for an examination of the motives behind his legislative act and hence prohibited by Article 1(6) of the US Constitution. They held that the immunity goes beyond the vote itself and "precludes all extra congressional scrutiny as Congress men are to be subject to prosecutions in criminal Courts, the speech and debate clause in Article 1(6) loses its force and that the argument that while a Congress men cannot be prosecuted for his vote whatever it might be but he can be prosecuted for an alleged agreement (of bribery), even if he votes contrary to the bargain, is unacceptable.

In India, the Constitution provides for freedom of speech in Parliament as follows:

> "*Article 105: Powers, Privileges etc. of the House of Parliament and of the members and committees thereof* :—(1) Subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament there shall be freedom of speech in Parliament.
>
> (2) No Member of Parliament shall be liable to any proceedings in any Court in respect of 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 committee of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-Fourth Amendment) Act, 1978.
>
> (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution 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."

According to the aforesaid provision Members have freedom of speech in the House and enjoy immunity from proceedings in any Court in respect of anything said or any vote given by them in Parliament or in any committee thereof. The freedom of speech of members in the House, in fact, is the essential pre-requisite for the efficient discharge of their Parliamentary duties, in the absence of which, they may not be able to speak out their mind and express their views in the House without any fear. Importance of this right for the Members of Parliament is underlined by the immunity accorded to them from civil or criminal proceedings in a Court of law for having made any speech disclosure or any vote cast inside the House or a committee thereof. Any investigation outside Parliament of anything that a member says or does in the discharge of his Parliamentary duties amounts to a serious interference with the member's freedom of speech in the House. Therefore, to attack a member or to take or even threaten to take any action against him including institution of legal proceedings on account of anything said or any vote given by him on the floor of the House would amount to a gross violation of the privilege of a member.

The immunity granted to members under Article 105(2) covers anything said in

Parliament even though it does not strictly pertain to the business before the House. As stated by the Supreme Court

> "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 business of Parliament. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of the business would be immune from proceedings in any Court. This immunity is not only complete but is as it should be. The Courts have no say in the matter and should really have none."

The freedom of speech available to the members on the floor of the House is different from that available to the citizens under Article 19(2). A law made under this Article providing for reasonable restrictions on the freedom of speech of the citizens would not circumscribe the freedom of speech of the members within the walls of the House. Members enjoy complete protection even though the words uttered by them in the House are malicious and false to their knowledge. Courts have no jurisdiction to take action against a member for his speech made in the House even if it amounts to contempt of the Court.

The express constitutional provisions contained in clauses (1) and (2) of Article 105 are thus a complete and conclusive code in respect of the privilege of freedom of speech and immunity from legal liability for anything said in the House or the publication of its reports. Anything which falls outside the ambit of these provisions, therefore, is liable to be dealt with by the Courts in accordance with law. Thus, if a member publishes questions which have been disallowed by the Chairman and which are defamatory, he will be liable to be dealt with in a Court under the law of defamation.

The right of freedom of speech in the House is, however, circumscribed by the constitutional provisions and the rules of procedure. When a member violates any of the rules, the Chairman has ample powers conferred by the rules to deal with the situation.

In view of the immunity conferred on the member's right to speech and action in the House, its misuse can have serious effects on the rights and freedoms of the people who could otherwise seek the protection of the Courts of law. Members, therefore, as people's representatives, are under greater obligation to exercise this right with utmost care and without any prejudice to the law of the land. The Committee of Privileges has emphasized that a Member of Parliament does not enjoy unrestricted licence of speech within the walls of the House. The Committee has observed:

"It is against the rules of Parliamentary debate and decorum to make defamatory statements or allegations of incriminatory nature against any person and the position is all the worse if such allegations are made against persons who are not in a position to defend themselves on the floor of the House. The privilege of freedom of speech can only be secured, if members do not abuse it."

Members cannot be held accountable/ questioned by an outside body for any speech/disclosure made or a vote given inside the House. This is essentially for giving effect to their freedom of speech in the House. It is also a settled procedure that no member or officer of the House or produce any such document in a Court of law without the leave of the House being first obtained.

As regard the disclosure that may be made by a member on the floor of the House and his accountability to any outside

body, the Committee of Privileges has, inter alia, observed:

> "It would be impeding a Member of Parliament in the discharge of his duties as such member if he is to be questioned in any place outside Parliament for a disclosure that he may make in Parliament. The right of a Member of Parliament to function freely and without fear or favour is in India, as in the United Kingdom, apply only to the rules of the House and ultimately to the disciplinary jurisdiction of the House itself…any investigation outside Parliament of anything that a member says or does in the discharge of his duties as a member of Parliament would amount to a serious interference with the member's right to carry out his duties as such member. If in a case a member states something on the floor of the House which may be directly relevant to a criminal investigation and is, in the opinion of the investigating authorities, of vital importance to them as positive evidence, following procedure has been prescribed by the Committee…the investigating authority may make a report to the Minister of Home Affairs accordingly. If the member is satisfied that the matter requires seeking the assistance of the member concerned, he would request the member through the Chairman to meet him. If the member agrees to meet the Home Minister and also agrees to give required information, the Home Minister will use it in a manner which will not conflict with any Parliamentary rights of the member. ….."

After knowing the nature and scope of the Freedom of Speech as provided in the Constitution of India and the Constitution of the United Kingdom, let us look to the interpretation of the Supreme Court on the provisions of Article 105 of the Constitution of India.

In *Tejkiran Jain v. Sanjeeva Reddy*, 1970 (2) SCC 272, it was held that:

> "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 limitation arises from the words 'in Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any Court. This immunity is not only complete but is as it should be. It is of the essence of Parliamentary system of government that people's representatives should be free to express themselves without fear of legal circumstances. 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 being none".

Tejkiran Jain was a case where certain individuals 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 Lok Sabha during a call attention motion. Such action was held to be not maintainable.

The interpretation of clause (2) of Article arose again in *P.V. Narasimha Rao v. State*. The facts of this case were: A charge-sheet was filed against Shri *P.V. Narasimha Rao* and some other Members of Parliament under Section 120B IPC and Sections 7, 12, 13(2) read with Section 13(1)(D)(iii) of the Prevention of Corruption Act, 1988. The substance of the charge was that Shri *P.V. Narasimha Rao* and some others had entered into a criminal conspiracy to bribe certain other Members, namely, Suraj Mandal and other Members of Parliament, to induce them to vote against the Motion of No Confidence moved against Shri *P.V. Narasimha Rao's*

Government in Lok Sabha. Both the bribe givers and bribe takers were charge-sheeted. A preliminary objection was raised on behalf of the accused before the Special Judge contending that the jurisdiction of the Court to try the accused for the aforementioned offences was barred by clause (2) of Article 105 of the Constitution inasmuch as the charges and the prospective trial is in respect of matters which relate to the privileges and immunities of the Members of Parliament. It was contended that inasmuch the foundation of the charge-sheets is the allegation of acceptance of bribe by some Member of Parliament for voting against the no confidence motion. The Special Judge rejected the said contention. He held that the issue before him was not the voting pattern of that Member of the House but their alleged illegal acts, namely, demanding and accepting bribe for exercising their franchise in particular manner. He held further that Members of Parliament are holding a public office and accepting illegal gratification for exercising their franchise in a particular manner is an offence punishable under the P.C. Act. Certain other contentions raised by the accused were also rejected. The matter was then taken to the Delhi High Court where the judgment of the Special Judge was upheld.

The matter was then carried to the Supreme Court. A five-Judge Bench heard the matter. As to the question whether a Member of Parliament is a 'public servant' within the meaning of the Prevention of Corruption Act is concerned, the Bench was unanimous that he is. But on the question of interpretation of clause (2) of Article 105, there was sharp division of opinion. Two Judges, *S.C. Agrawal* and *A.S. Anand*, JJ. held that "a Member of Parliament does not enjoy immunity under Article 105(2) or 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". On the other hand, *S.P. Barucha* and *Rajendra Babu*, JJ., held that while bribe-givers who are Members of Parliament cannot invoke the immunity conferred by clause (2) of Article 105. The bribe-takers (Members of Parliament) can invoke that immunity if they have actually spoken or voted in the House pursuant to the bribe taken by them; if however a Member of Parliament takes a bribe for speaking or voting in the House in a particular manner but does not so speak or construction of the words "in respect of" occurring in the said clause. The learned Judges held that the said words were of wide amplitude and therefore the integral connection between the bribe taking and the vote in the House cannot be dissected or separated. *G.N. Ray*, J., agreed with *Barucha* and *Rajendra Babu*, JJ., on this question.

In *Kilbourn v. Thompson*, (1881) 103 US 68, the Supreme Court of the United States of America, for the first time considered the scope of the Freedom of Speech clause of the Constitution in regard to Privileges of the Congressmen and said the clause is to be read broadly to include anything generally done in a session of the House by one of its members in relation to the business before it.

In *United States v. Johnson*, (1966) 383 US 169, the Supreme Court reviewed the conviction of a Representative on seven counts for violating the federal conflict of interest statute (18 USC Section 281), and on one count of conspiracy to defraud the United States. The Court of Appeals had set aside the conviction on the count for conspiracy to defraud as violating the Freedom of Speech clause. Mr. Justice *Harlan*, speaking for the Court cited the oft-quoted passage of Mr. Justice *Lush* in *Ex parte Wason* which read as follows:

> "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."

In this case, Mr. Justice *Harlan* canvassed the history of the clause and concluded that it was the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Common and the Tudor an and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain and throughout the history of United States the privilege has been recognized as an important protection of the independence and integrity of the Legislature.

The Supreme Court said, although the speech or debate clause has its historic roots in English Law, it must be interpreted in the light of the American experience, and in the context of the American Constitutional scheme of Government rather than the English Parliamentary system.

In *US v. Brewster*, (1972) 33 Lawyers Ed. 24 507, majority of the Judges led by *Burger*, C.J. held that the speech or debate clause contained in Article 1(6) of the US Constitution protects the Members of Congress from inquiring into legislative acts or into the motivation for their actual performance of legislative acts but that it does not protect them from other activities they undertake that are political rather than legislative in nature and that taking a bribe for the purpose of having one's official conduct influenced is not part of any legislative process or function and further that the speech or debate clause did not prevent indictment and prosecution of Brewster for accepting bribes. Three Judges, *Bewnnan*, *White* and *Douglas*, JJ., however dissented and held that *Brewster* cannot be prosecuted in a criminal Court.

Chief Justice *Bruger* who delivered the majority opinion said, "The author of our Constitution was 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 tolerates 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…Congress is ill-equipped to investigate, try and punish its Members for a wide range of behaviour that is loosely and incidentally related to the legislative process."

In *P.V. Narsimha Rao v. State*, AIR 1998 SC 2120, the substance of the charge was that certain Members of Parliament had conspired to bribe certain other members to vote against a No Confidence Motion in Parliament. By a majority decision were members of Parliament could claim immunity under Article 105.

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CONTEMPT POWER OF THE SUPREME COURT UNDER INDIAN CONSTITUTION

By

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The Constitution of India declares the Supreme Court and the High Courts to be Courts of Record. In English Law, the expression: 'Court of record' stands for a superior Court whose acts and proceedings are enrolled for permanent record such a Court has power to punish for the contempt of its authority. The category of superior