

CHIEF JUSTICE'S COURT
HON'BLE THE CHIEF JUSTICE DY CHANDRACHUD
HON'BLE MR. JUSTICE A.S. BOPANNA
HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE P.S. NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE P.V. SANJAY KUMAR
HON'BLE MR. JUSTICE MANOJ MISRA

COURT NO.1
SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Crl. A. No. 451/2019

SITA SOREN Petitioner(s)

VERSUS

UNION OF INDIA Respondent(s)

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11:00 AM IST

1 **CHIEF JUSTICE DY CHANDRACHUD:** I'm sorry for the delay. We were with the
2 members of the Bar this morning because there's a new canteen and it's a long pending
3 demand of the Bar you know... There was no canteen in the ABC Complex. The Additional
4 Building Complex.

5

6 **P. S. PATWALIA:** I just wish to point out to Your Lordships that I have filed that written
7 submission additional. It is in Volume 8 at pages 28 to 30. Just Your Lordship may note there,
8 the judgments.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 8?

11

12 **P. S. PATWALIA:** Volume 8, page 28 to 30.

13

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

15

16 **P. S. PATWALIA:** Grateful.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank You, Mr. Patwalia.

19

20 **GOPAL SANKARANARAYANAN:** My Lords, yesterday, when My Lords had risen, I had
21 finished Point 6. Your Lordships, have my note? It's 2(c), now, Volume 2(c) it's been uploaded.
22 Yes, 2(c). My Lord, the Chief Justice has 2(c)?

23

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

25

26 **GOPAL SANKARANARAYANAN:** Point 6, I had concluded by showing Your Lordship
27 that Section 14(2) of the Lokpal Act, which reproduces effectively Section 105 and its import.
28 So, whatever is the interpretation that Your Lordships give here will have an impact there as
29 well. Sorry. My Lords have it? Volume 2(c)?

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Just display it.

32

33 **GOPAL SANKARANARAYANAN:** I don't know if it... because it's interactive as well, the
34 note so... it's interactive as well, so it will be helpful. My Lords, there are two judgments on
35 Point 7. Point 7 is, it is established that a strict interpretation ought to be given to laws dealing

1 with corruption which affects the public wheel. Before I take Your Lordships to that para 5 at
2 page 11 and maybe before it gets uploaded on Justice Sundresh's system, I could take Your
3 Lordships to Volume 8. There are 2 judgments which I had alluded to yesterday in the context
4 of section 197 of the CrPC, that was, of course, on the question of sanction, but obviously a
5 similar interpretation would apply between a sanction which is a lower bar and an immunity,
6 which is much higher. It's at page 31 of Volume 8, it's *Hori Ram Singh vs The Crown*
7 volume 8, Page 31. All Your Lordships have that? Now this was dealing with a situation where
8 one Mr. Henderson had conspired before he fled to Britain to cheat the government out of
9 certain payments that had to be made and he falsified entries, etc. Interestingly, it was argued
10 by the Sir Brojendra Mitter, Advocate General of India, before the Federal Court. His portrait
11 hangs in my friend, the Attorney General's Chambers. If Your Lordship will just come
12 immediately to Justice Varadachariar whose judgment everybody else agrees with which is at
13 page 55.

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** How do we take judicial notice of the portrait
16 which hangs in the Attorney General's chambers?

17

18 **GOPAL SANKARANARAYANAN:** No, it's just that because I, in fact, had visited the
19 Chambers when his predecessor was there. And we had the names of all the previous Attorney
20 Generals with their portraits. And there were two portraits without names below, which were
21 the two Advocates General for India that we had prior to... so, one was Brojendra Mitter, I
22 think the other gentleman's name I have forgotten but the names are not there. Maybe that
23 can be repaired. Page 187, because 183 is where the majority starts. Just if Your Lordships can
24 come to page 180, page... I'm sorry. I should have read the other page.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** What's the PDF page.

27

28 **GOPAL SANKARANARAYANAN:** 59. Sorry, page 59, My Lord. PDF is 59.

29

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

31

32 **GOPAL SANKARANARAYANAN:** At the bottom that paragraph, if I can just read that the
33 reported decisions on the application of Section 197 of the CrPC are not by any means uniform.
34 In most of them the actual conclusion will probably be found to be unexceptionable in view of
35 the facts of each case. But in some the test has been laid down in terms which it is difficult to
36 accept as exhaustive or correct. Much the same may be said even of decisions pronounced in
37 England on the language of similar statutory provisions. See observations in [UNCLEAR]. It

1 does not seem to be necessary to review in detail the decisions given under 197 of the CrPC,
2 which may roughly be classified as falling into three groups. So far as they attempted to state
3 something in the nature of a test. In one group of cases, it is insisted that there must be
4 something in the nature of the act complained of that attaches it to the official character of the
5 person doing, judgments are cited. In another group, more stress has been laid on the
6 circumstance that the official character or status of the accused gave him the opportunity to
7 commit the offense. It seems to me that the first is the correct view. In the third group of cases,
8 stress is laid almost exclusively on the fact that it was at a time when the accused was engaged
9 in his official duty that the alleged offense was said to have been committed. The use of the
10 expression while acting, etc., in 197 has been held to lend some support to this view. While I
11 do not wish to ignore the significance of the time factor, it does not seem to me right to make
12 it the test. To take an illustration suggested in the course of the argument, if a medical officer
13 while on duty in the hospital is alleged to have committed rape on one of the patients, or to
14 have stolen a jewel from the patient's person, it is difficult to believe that it was the intention
15 of the legislature that he could not be prosecuted for such offenses, except with the previous
16 sanction of the local government. Two reported decisions these are from the High Courts of
17 Madras and Calcutta, one in **Ganapathy Goundan** under 197 and the other **Dakshina**
18 **Ranjan Ghose** under 80 of the CPC may be referred to as instructive, since in each of them
19 2 acts were complained of, and notwithstanding the apparent connection between the acts in
20 the sense of relation in time or opportunity. The Court held that one of the acts was an official
21 act, but not the other. In the Madras case, the village Magistrate held in confinement certain
22 persons who are suspected to have committed a murder, and also tortured them in order to
23 extort a confession from them. He was charged for committing offenses under 330, 343 and
24 348 of the IPC.

25
26 Wallace, J. held that, sanction to prosecute him under Sections 343 and 348 was required
27 under 197 of the CrPC, but not for prosecuting him under 330. In the Calcutta case, a trader
28 sued a police officer for recovery of two sums of money, namely Rs 50 being damages for
29 wrongful arrest, and Rs 75 being the amount alleged to have been extorted by the police officer
30 from the Plaintiff. As regards the second head of claim, the learned judges were of opinion that
31 no notice on the 80 of the CPC was necessary, as nobody could suppose that he was purporting
32 to act in his official capacity in demanding and obtaining the sum of Rs 75. Just one quick
33 follow up, which, My Lords, is at page 65. This is **Satwant Singh**. It's in 1960. It's page 60
34 from the same volume. Again, five judges' judgment, where just one paragraph if I can read,
35 which is para 16, at page 70, bottom of page 70. If I can read that, para 16. 'Under section 197,
36 no Court shall take cognizance of an offense committed by a public servant who is removable
37 from his office by the Governor General Council or a provincial government, save upon a

1 sanction by one or another, as the case may be when such offense is committed by him, while
2 acting or purporting the act in the discharge of his official duty. Henderson was charged with
3 intentionally aiding the Appellant in the commission of an offense punishable under 420 of
4 the Indian Penal Code, by falsely stating as a fact in his reports, that the Appellant's claims
5 were true, and that statement had been made knowing all the while, that the claims in question
6 were false and fraudulent, and that it accordingly committed an offense under 420, 109 of the
7 Indian Penal Code.' 'It appears to us...' please mark this, to be clear, 'that some offenses cannot,
8 by their very nature, be regarded as having been committed by public servants while acting or
9 purporting to act in the discharge of the official duty. For instance, acceptance of a bribe, an
10 offense punishable under 161 of the IPC', at that time My Lord, before the Prevention of
11 Corruption... 'is one of them, and the offense of cheating or abetment thereof is another. We
12 have no hesitation saying that when a public servant commits the offense of cheating or abets
13 another so to cheat, the offense committed by him is not one while he is acting or purporting
14 to act in the discharge of his official duty, as such offenses have no necessary connection
15 between them, and the performance of the duties of a public servant, the official status,
16 furnishing only the occasion or opportunity for the commission of the offense. The act of
17 cheating or abetment thereof, has no reasonable connection with the discharge of official duty.
18 The act must bear such relation to the duty that the public servant could lay a reasonable, but
19 not a pretended or fanciful claim that he did it in the course of the performance of his duties
20 vide ***Matajog Dobey***.' Now, if Your Lordships will come back to my note 2(c), now this
21 position has been consistent in the ***Prakash Singh Badal*** and elsewhere. Over 70 years,
22 Your Lordships, 80 years Your Lordships have followed this kind of reasoning as far as
23 sanction is concerned. Now, the reason why I'm showing this parallel... the reason I'm showing
24 this parallel, is to commend to Your Lordships to fairly nuanced points. One is this, that even
25 the minority which we are relying on of ***Narasimha Rao***, there might be one or two things
26 Your Lordships may just look at again, because I would not believe that that is the correct
27 position. Some aspects of the minority itself. So, rather than embracing the minority in full,
28 there are some aspects which may require some kind of clarity, including that 'arising out of',
29 whether you don't give a vote or a speech, those aspects may require some clarity. But, the
30 second aspect is this, that when you interpret the entire cloak of 105, and the immunity that it
31 gives, some distinction has to be made between the various types of activities. Now, in the
32 recent judgment, which we had referred to yesterday also in ***Ajith***, there was a distinction
33 drawn between what are the legislative and non-legislative functions. Now, it is similar to what
34 virtually every other jurisprudence that we could find, comparatively, has similar approaches
35 with what is essential, what is part of your duties, and where immunity could lie, and where it
36 clearly doesn't and it can't be a part of. Now, if Your Lordship considers a scenario, for
37 example, because this immunity attends not only proceedings in Parliament, but also before

1 committees. Now, those who are appearing before the committees, for example, are not only
2 MPs and MLAs; they may be experts, they may be advocates, they may be people from civil
3 society who have to weigh in for example, on an environment bill. Or, if there is an inquiry into
4 ethnic violence somewhere, and Parliament has a Standing Committee set up and people are
5 coming in to make their statements. Now, if an MP or an MLA, who is somebody who may be
6 affected by that committee's findings against him or her, were to threaten or intimidate or, in
7 any way detain, for example, that witness who's supposed to appear before Parliament, now
8 those are all questions where the MP or MLA may say, "this immunity is available to me,
9 because it's with reference to a proceeding of Parliament."

10

11 So it shouldn't be that that cloak is available to that gentleman or that lady for that purpose.
12 That is not the intention. The intention is that the minute it is a criminal act, that criminal act,
13 can only be immune if it is very directly related to the speech that is made or the vote that is
14 given. It has to be direct, it has to be proximate, in every sense of the term it has to be there.
15 So, for that proximity to be obtained in a situation where I threaten or disable an individual
16 from taking the legislative process forward, that is very proximate, because without that the
17 outcome may have been different. If I detain the balancing vote in Parliament on a particular
18 issue which may require a bye-election to take place, or a fresh election to take place, whatever
19 else it is. And I detain the person who's going to give the balancing vote in his house. I am
20 interfering with the legislative process because if I had not done that, that person would have
21 come and cast that vote. Similarly, if I had not detained the witness or intimidated the witness,
22 the witness would have appeared before the parliamentary committee and made his
23 intervention. So those are very proximate and the test, I would suggest, is to see the
24 consequence or the effect of that act. If that... I'm sorry. Yes, My Lord.

25

26 **JUSTICE P.S. NARASIMHA:** To speak about the connectivity and context is one thing.
27 And reformulating the scope and extent of the immunity is another thing. So what you are now
28 suggesting as against till now what the arguments were, was that the crime was before the
29 occurrence of the immunity. So, therefore it can be bifurcated. Now you would want us to also
30 give certain conditions on the basis of which this scope of immunity is to be measured...

31

32 **GOPAL SANKARANARAYANAN:** Yes, My Lord because...

33

34 **JUSTICE P.S. NARASIMHA:** ... gets into a little difficulty.

35

36 **GOPAL SANKARANARAYANAN:** I'll explain the reason why. Because before seven
37 judges, these are not adversarial issues. These are issues that we all must be nuanced about.

1 One of the contra arguments, which is taken regularly not only in this jurisdiction but
2 elsewhere, is that if you have a powerful executive and that powerful executive can then go
3 after legislators and disable legislators, if the legislators don't have the protective cloak. So,
4 when you are balancing this, you have to be careful of ensuring that the legislators gets the
5 immunity that the Constitution intended, that we can't run away from. We shouldn't make the
6 cloak so small that it disappears. So, if we are doing that, we have to have some kind of
7 formulation or test on the basis of which we will say this immunity, I think, is fair and it is
8 deserved. Now, if... and the immunity obviously will arise, as Mr. Ramachandran said
9 yesterday, only when the crime is there, because if there is no crime, there is no question of
10 the immunity. The immunity is there is a crime, and then there is a question of immunity. So,
11 we take it that there is a crime, but what sort of crime. So, the test here is to see what that sort
12 of crime is. Because otherwise, if there's no crime, there is no immunity. The crime which we
13 are dealing with is a crime which attends a speech that is given or as I argue, not given a vote
14 that is given or not given as a consequence of something that is extraneous. There the cloak
15 will not arise, if it is in the normal legislative process. Unfortunately, Your Lordships have seen
16 a live example of this two weeks ago, when I don't know the phrase parliamentary language
17 can be used anymore after what took place. But we saw expletives being thrown around in
18 Parliament. The gentleman who threw those expletives around Parliament took care of
19 ensuring that those words were struck off the record, but what took place was a crime, it's my
20 view. My view is that what took place was a crime. It's many hues of hate speech, and many
21 provisions of the IPC would be attracted. But whether we like it or not, palatable or not, it is
22 something he said during a debate and he said it on a subject. I don't think it would be fair for
23 us to say that that gentleman, however reprehensible his conduct may have been did not have
24 privilege when he said that.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** So, an action for criminal defamation will not lie
27 on the basis of the speech?

28

29 **GOPAL SANKARANARAYANAN:** No, in my view very clearly no. And that's what we're
30 seeing, our hands are tied. Obviously we find this repulsive. But our hands are tied and the
31 Court's hands are unfortunately tied, because that is the deference that we give to the
32 parliamentary process. It was not germane. But if Your Lordships were to embark on that
33 inquiry, on whether that word you said, this sentence that crept in was germane to that debate
34 or not then we are treading on dangerous territory. I don't think we should be going that far,
35 examining a speech in a particular context and saying that these two sentences from the speech
36 is actually constituting something else. But that's international position.

37

1 **JUSTICE P.S. NARASIMHA:** Case to case basis.

2

3 **GOPAL SANKARANARAYANAN:** I'm sorry.

4

5 **JUSTICE P.S. NARASIMHA:** Perhaps is to go case to case basis. It's very difficult to lay
6 down a proposition saying that far, no further.

7

8 **GOPAL SANKARANARAYANAN:** No, no, I agree.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** How can the Court say that well this was the
11 speech, these offending words, which you used were unnecessary for the speech. That's not a
12 part of the Court's obligation, or duty.

13

14 **GOPAL SANKARANARAYANAN:** We expect responsible Parliament and
15 Parliamentarians to take much more stringent action. That's what we expect. We have come
16 to expect. I'm not normally a conservative, but I feel that this is something that Your Lordship
17 may look at. Now, I'll just come back to the note quickly. If Your Lordships will just come to
18 point number 7, which is at page 2 and if you'll just tap on that see Para 5, at page 11, just
19 quickly, the very relevant extracts are there. This is page 11. My Lord Justice Sundresh has the
20 note? Page 11. The first one under 5 is the *Subramanian Swamy* case that was under
21 Section... I'm sorry Page 11 of Volume 2(c). It's on the screen also.

22

23 **JUSTICE M.M. SUNDRESH:** I got it.

24

25 **GOPAL SANKARANARAYANAN:** So, this is in the context of Section 6A of the Delhi
26 Special Police Establishment Act. What was struck down in *Vineet Narain* is a single
27 directive. The section provided an additional layer of protection to certain classes of officers,
28 etc., and these are the observations of a unanimous Constitution Bench there. Para 59,
29 'irrespective of their status or position, corrupt public servants are corruptors of public power.
30 The corrupt public servants whether high or low are birds of the same feather and must be
31 confronted with the process of investigation and inquiry equally. Based on the position or
32 status and service, no distinction can be made between public servants against whom there
33 are allegations amounting to an offense under the PC Act.' Next para, only the underlined
34 portion, 'there is no rational basis to classify the two sets of public servants differently on the
35 ground that one set of officers are decision making officers and not the other set of officers. If
36 there is an accusation of bribery, graft, illegal gratification or criminal misconduct against a
37 public servant, then we fail to understand as to how the status of offenders is of any relevance.

1 Where there are allegations against a public servant should amount to an offense under the
2 PC act, no factor pertaining to expertise of decision making is involved. Yet, Section 6A makes
3 a distinction. It is this vice which renders 6A violative of Article 14.' Then page 12, para. 72, the
4 bold portion. 'The status or position of public servant does not qualify such public servant from
5 exemption from equal treatment.' The dissent of Justice Pasayat in **Rameshwar Prasad**,
6 'but after getting elected, if the candidate deviates from the course of fairness and purity and
7 becomes a purchasable commodity, he not only betrays the electorate..' that trust which we
8 had discussed yesterday... 'but also pollutes the pure stream of democracy.' If Your Lordships
9 will come back to the top. Just back to top at the top of each page. So, if Your Lordship just
10 comes back, it'll take you back to the note. Next proposition, that's Proposition 8, that's on
11 page 3. The effect of the **Rao** majority is that it creates an illegitimate class of public servants
12 that are afforded an extraordinary protection, which would be a violation of Article 14 as also
13 being manifest manifestly arbitrary. If Your Lordship will tap that, it'll take you to page 13. My
14 Lords, at the end of each of these extracts in pages 7, I mean pages 5 to 18...

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Some hyperlinks have not come out. *Dekh lo*
17 hyperlinks *kyun nahi aa rahe hain*

18

19 **GOPAL SANKARANARAYANAN:** The hyperlinks are not coming on that? *Aapke mein aa*
20 *raha hai na?* My Lords, it's not coming on any of yours? It's coming?

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** That's okay, I'll check it out. Yes, item 8, no?

23

24 **GOPAL SANKARANARAYANAN:** Yes.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Point 8?

27

28 **GOPAL SANKARANARAYANAN:** Yes, page 13, I was on.

29

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

31

32 **GOPAL SANKARANARAYANAN:** Yes, from 8, if you go, it will take you to page 13. Top of
33 page 13

34

35 'Creating a class of public servants, MPs, MLAs, within the broad class of public servants, is a
36 violation of Article 14'. There's the 'Super Citizens' which even **Brewster** refers to and
37 **Narasimha Rao** refers to. Justice Khanna in **Indira Gandhi**, 'This Court rejected that

1 contention, and held that the true constitutional position, is that so far as the valid order of
 2 detention is concerned, a Member of Parliament can claim no special status higher than that
 3 of an ordinary citizen, and that he is as much liable to be arrested and detained under it as any
 4 other citizen'. In the Special Courts Bill, My Lords, Justice Chandrachud speaking for the
 5 majority, at para 4, the underlined portion again. 'It only means that all persons, similarly
 6 circumstanced shall be treated alike, both in privileges conferred and liabilities imposed.
 7 Equal laws would have to be applied to all in the same situation, and there should be no
 8 discrimination between one person and another, if as regards the subject matter of the
 9 legislation, their position is substantially the same'. And finally, this **Lokayukta, Justice**
 10 **Ripusudan Dayal**, the small, the bold portion there. 'The basic premise for the privileges
 11 enjoyed by the members, is to allow them to perform their functions as members, and no
 12 hindrance is caused to the functioning of the House. The Committee of Privilege of the 10th
 13 Lok Sabha noted the main arguments that have been advanced in favour of codification, some
 14 of which are follows'. And this extract, 'the basic law that all citizens should be treated equally
 15 before the law, holds good in the case of Members of Parliament as well. They have the same
 16 rights and liberties as ordinary citizens, except when they perform their duties in Parliament.
 17 The privileges therefore, do not in any way, exempt members from their normal obligation to
 18 society, which apply to them as much, and perhaps more closely, in that as they apply to
 19 others'. And the next page, that last bold line. 'No one enjoys any privilege against criminal
 20 prosecution.' Now, this is a consistent position that Your Lordships have adopted. Final point
 21 is, 'the legal position in USA, UK, Canada, Australia, South Africa, and New Zealand, supports
 22 the minority opinion of **Rao**, and the same is commended before this Court's consideration.
 23 This includes an undisturbed line of cases following the majority decision in **Brewster**'. If
 24 Your Lordships were to see at page 14, the extracts, the first is the United States, and this we
 25 have... the extract is there of Article 1, Section 1, Clause 1, which is known as the Speech and
 26 Debates Clause, that, 'the Senators and Representatives shall be privileged for any speech or
 27 debate in either House. They shall not be questioned in any other place'. The full language of
 28 it, My Lords will find in that relevant Annexure, Annexure-11. But, the relevant parts of
 29 **Daniel B. Brewster** in the majority opinion, are these bold portions, I'll just read small parts
 30 of it. 'A legislative act has consistently been defined as an act generally done in Congress in
 31 relation to the business before it'. Next, 'in no case has this Court ever treated the Clause as
 32 protecting all conduct relating to the legislative process'. Third one, 'but no more than the
 33 statutes apply, was its purpose to make members of Congress Super Citizens immune from
 34 criminal responsibility'. This is where the phrase 'Super Citizens' comes. And the next one,
 35 which is not bold but relevant, para 50. 'The sweeping claims Appellee would render members
 36 of Congress virtually immune from a wide range of crimes, simply because acts in question
 37 were peripherally related to their holding office. Such claims are inconsistent with the reading

1 this Court has given, not only to the Speech or Debate Clause, but also to the other legislative
2 privileges embodied in Article 1, para 6'. Next page, page 15, 'There is no need for the
3 government to show this'... para. 62. 'There's no need for the government to show that
4 Appellee fulfilled the alleged illegal bargain. Acceptance of the bribe is the violation of the
5 statute, not performance of the illegal promise', similar to us. 'Taking a bribe is obviously no
6 part of the legislative process or function. It is not a legislative act'. My Lord, this is followed
7 in the judgments of **Gravel**, **McDade**, **Renzi**, and the extract here... and **Menendez**. Here
8 we have taken out the extracts only of **Gravel** and **Menendez**. The entire details you'll find
9 in Annexure 11. White's opinions, speaking for the Court in **Gravel** is, 'Legislative acts are
10 not all encompassing. The heart of the Clause is speech or debate in either House. Insofar as
11 the Clause is construed to reach other matters, they must be an integral part of the deliberative
12 and communicative processes by which Members participate in committee and House
13 proceedings with respect to the consideration in passage, or rejection of proposed legislation,
14 or with respect to other matters which the Constitution places within the jurisdiction of either
15 House. While the Speech or Debate Clause recognizes speech, voting and other legislative acts
16 as exempt from liability that might otherwise attach, it does not privilege either Senator or
17 Aid, to violate an otherwise valid criminal law in preparing or implementing Legislative Acts'.
18 Now, **Brewster** has been consistently followed in the US. The latest case is this 2016, which
19 is **Menendez**. And there are these two paragraphs, specific sentences. Opinion of the Court
20 of Justice [UNCLEAR]. 'First, we look to the form of the act to determine whether it is
21 inherently legislative or non-legislative. Some acts are so clearly legislative in nature that no
22 further examination is to be made to determine the appropriate status. Examples of manifestly
23 legislative acts include introducing and voting on proposed resolutions and legislation,
24 introducing evidence and interrogating witnesses during committee hearings, subpoenaing
25 records for committee hearings, inserting material into congressional record, and delivering a
26 speech in Congress. On the other side of the spectrum some acts are so clearly non-legislative
27 there are no inquiry into the content or underlying motivation or purpose is needed to classify
28 them. Examples include legitimate constituent service, such as the making of appointments,
29 government agencies, assistance in securing government contracts, preparing so called
30 newsletters to constituents, news releases, and speeches delivered outside the Congress and
31 of course illegitimate activities, such as accepting bribes in exchange for taking official action.
32 This is echoed, My Lords, in Your Lordship's judgment in **Ajith**. And I would commend that
33 this be the test that Your Lordships will apply. That if it is an illegitimate... Your Lordships can
34 see the three categories here which the US Supreme Court has adopted. One is, manifestly
35 legislative acts, the second are clearly non-legislative and the third is illegitimate activities.
36 What **Narasimha Rao's** majority has done is taken illegitimate activities and said no, even
37 they received the cloak of protection and I don't think that was intended. My Lords, the rest of

1 it is, I'm sorry, bottom of page 16. 16 deals with the UK, just the Joint Committee on
2 Parliamentary Privilege. This is a report of '13-'14. If I can just read the bold portion,
3 'requesting or agreeing to receive a bribe are now statutory criminal offenses irrespective of
4 whether or not the acts for which the bribe was sought or offered were actually carried out'.
5 This makes the situation in the United Kingdom analogous to that in the United States, where
6 the case of **US vs Brewster** established that a Senator could be prosecuted by demonstrating
7 that an unlawful agreement was entered into, without the need to show that the bribe led to
8 specific conduct which may be privileged. Similar views in Australia, in Canada. In Canada,
9 my friend, the *amicus* read **R vs Bunting**. We have also extracted the criminal codes in each
10 of these countries. And for a minute, if Your Lordships would just go to, sorry, Annexure-8,
11 which is page 112. I'm not going to read it. I'm just going to explain how we have split it up.
12 Page 112, that's Annexure-8. Annexure-8, Your Lordships will that first page, page 112 deals
13 with United States. So, we have put the statute, the relevant statute or the clause of the
14 Constitution at the top and the relevant clauses of other related laws, then the case name on
15 left, the facts and the extracts of the opinions, majority, minority, whatever is relevant,
16 including highlighting in red what we would want Your Lordships to consider. In this light
17 before concluding. I just want Your Lordships to look at and there are others to argue, so I'll
18 just mention the paras. In **Narasimha Rao**, if Your Lordships will kindly just see para 45,
19 47, 50 and 52. Now, these are parts of the majority judgment, sorry, minority judgment. 45
20 deals with the fact that a punishment by the House is not satisfactory. 46 is the interpretation
21 of 'in respect of'. 47 deals with the question of the vote or the speech already having been cast
22 and the question of something already having taken place is only where the words can be read
23 as 'arising out of', where it has already taken place. There is one small issue there, if Your
24 Lordship sees page 752, Page 752, Volume 5. I'm sorry. Volume 5, page 752.

25
26 Last sentence there on that page, which is part of para 47. If I may read that, 'the immunity...'
27 or the second last sentence, four lines up, 'the immunity from liability, therefore, comes into
28 play only if a speech has been made or vote has been given. The immunity would not be
29 available in a case where a speech has not been made or a vote has not been given.' I would
30 feel that this is problematic and this would not be the correct position, despite it being in the
31 minority. Then the next page deals with that distinction and how our founding fathers did not
32 mean for a distinction between what eventually took place between those who voted and those
33 who did not vote in a specific fashion. And para 15 deals with when the offense is complete
34 because that aspect was also considered. And para 52 says that the criminal liability for taking
35 the bribe was independent completely. These other paragraphs which I've mentioned, I think
36 should be the correct position and should be followed, My Lords. If Your Lordships, could just
37 now come to the judgment in **Ajith** which is in Volume 5, starts at page 2680, My Lord. 2680

1 and I just want to read two specific parts of it. The first is para 74 to 75, which is at page 2704,
2 Volume 5, Page 2704. May I read that? All Your Lordships have that?

3

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

5

6 **GOPAL SANKARANARAYANAN:** Para 74, page 2704.

7

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

9

10 **GOPAL SANKARANARAYANAN:** 'Privileges and immunities are not gateways to claim
11 exemptions from the general law of the land, particularly as in this case the criminal law which
12 governs the action of every citizen. To claim an exemption from the application of criminal
13 law, would be to betray the trust which is impressed on the character of elected representatives
14 as the makers and enactors of law. The entire foundation upon which the application for
15 withdrawal under 321 was moved by the public prosecutor is based on a fundamental
16 misconception of the constitutional provisions contained in 194. The public prosecutor seems
17 to have been impressed by the existence of privileges and immunities which would stand in
18 the way of the prosecution. Such an understanding betrays the constitutional provision and
19 proceeds on a misconception that elected members of the legislature stand above the general
20 application of criminal law.' The reliance placed by the appellants on ***P.V. Narasimha Rao***
21 to argue that the action of the Respondent accused inside the house was a form of protest,
22 which bears a close nexus to the freedom of speech and thus is covered by 194 is unsatisfactory.
23 The majority in ***Narasimha Rao*** dealt with the interpretation of the phrase 'in respect of'
24 and gave it a wide import. At the same time, the majority observed that there must be a nexus
25 between the act or incident, which in that case was the act of bribery in the context of votes
26 cast in the motion of no-confidence and the freedom of speech or to vote. It was emphasized
27 that the bribe was given to manipulate the votes of the MPs, and thus it bore a closed nexus to
28 the freedom protected under Article 105(2). The case, however, did not deal with the ambit of
29 the privilege of freedom of speech provided to the members of the House. It was in
30 ***Lokayukta Justice Ripusudan Dayal*** that a 3 judge bench of this Court laid down the
31 law for the identification of the content of the privileges. It was held that the members shall
32 only possess such privileges that are essential, please mark this, My Lords, for undertaking
33 their legislative functions. An alleged act of destruction of public property within the House
34 by the members to lodge the protest against the presentation of the budget cannot be regarded
35 as essential for exercising their legislative functions. The actions of the members have trodden
36 past the line of constitutional means and is thus not covered by the privileges guaranteed
37 under the Constitution. So this is a test which I would commend, My Lord. The fact that it has

1 to be essential for undertaking the legislative function. It's a better test than the test of
2 proximity of in time or that the vote or speech is already completed. The question is only
3 whether while giving that speech or casting that vote, was it a part of the essential legislative
4 function, which was done. If it was done, you have the protection. But if there is any
5 interference with that flow of what the wheels of Parliament or legislature are undertaking, if
6 there is any interference of any sort that cloak cannot come to protect. That protection would
7 not be available. I'll just finally say one thing. There is an article by Professor Shubhankar Dam
8 which is annexed, My Lords.

9

10 **JUSTICE P.S. NARASIMHA:** Ordinance.

11

12 **GOPAL SANKARANARAYANAN:** I'm sorry

13

14 **JUSTICE P.S. NARASIMHA:** He's written a book on ordinance.

15

16 **GOPAL SANKARANARAYANAN:** He's written a book on ordinance.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** I cited it, I think in my judgment in *Krishna*
19 *Kumar Singh*.

20

21 **GOPAL SANKARANARAYANAN:** Yes. So, he in fact, has written a series of very, very well
22 researched articles, including on the Constitutional Right to Vote, and whether it's a
23 Constitutional Right or not, etc. But this one is specifically with reference... it makes for an
24 interesting reading, especially I think if you're a judge, because he talks in... like how many
25 writers write about philosophies in the US. Same way, he talks about *Narasimha Rao* and
26 *Raja Ram Pal* and the philosophies which attended them.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Where is that article?

29

30 **GOPAL SANKARANARAYANAN:** See the page numbers. It's 1951 of Volume 6. 1951 to
31 1953. 1951 to 1953, is where *Narasimha Rao* is discussed, and he says how, perhaps, the
32 Supreme Court had a revisiting of its philosophy between *Narasimha Rao* and between
33 *Raja Ram Pal*. My Lords, I'm done. I would just believe that the minority lays down the
34 correct law. I'm grateful for a patient hearing. Two points of gratitude, quickly. Two points of
35 quick gratitude. One, I have a very able team of lawyers who've put all of this together, I'm sum
36 of their parts. So, Tanya, Vishal, Janvi, Trisha, Shivani and Aditi. And Mr. Ramachandran,
37 because he repeatedly stands in this Court and takes completely difficult cases, and somehow

1 makes arguments out of them. He's an example to all of us at the at the Bar My Lord. I'm most
2 grateful.

3

4 **P. S. PATWALIA:** I support the second part.

5

6 **VIJAY HANSARIA:** Yes, My Lord, we are...

7

8 **P.S. PATWALIA:** ... yesterday, he did a very good job.

9

10 **VIJAY HANSARIA:** In a rough weather, My Lord.

11

12 **GOPAL SANKARANARAYANAN:** And unpopular cases.

13

14 **P.S. PATWALIA:** Correct.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Hansaria.

17

18 **VIJAY HANSARIA:** My Lord, my submissions Your Lordships will get it in Volume 2(a),
19 page 47. Volume 2(a), page 47, my submissions start. But before I take Your Lordships to the
20 submissions, may I just briefly summarize what I intend to persuade Your Lordships, to agree
21 with the minority view, to say that, My Lord, Justice Bharucha, the test propounded is the
22 nexus test. And Justice Agrawal propounded essential and integral part test. My Lord, this
23 nexus test is in paragraph 133, 134, 135, 136 and 145 of *Narasimha Rao* judgment.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** 133, 134?

26

27 **VIJAY HANSARIA:** 133, 134, 135, 136 and 145, is the nexus test propounded and held to be
28 the correct law by the majority. And, My Lord, Justice Agrawal's test was essential and integral
29 part test, in para 47, which my friend Mr. Sankaranarayanan also said, essential and integral
30 part test would be the correct test. And, Your Lordships would kindly make a note, it is not
31 only bribery, it will...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Justice Agrawal is para 46, no?

34

35 **VIJAY HANSARIA:** Para 47, My Lord, I'm so sorry. I'm so sorry. Para 47 is the essential and
36 integral part test. And what Your Lordship says is not only in relation to an offense of
37 Prevention of Corruption Act, it gives immunity to all sorts of crimes committed, if at all.

1 Hopefully not, My Lord. Suppose, there is a nexus with an underground organization, terrorist
2 organization, to vote in a particular manner. There is a meeting on a previous day, and say
3 that... a terrorist organisation says you don't vote or vote in a particular manner. It has a nexus.
4 If nexus theory is accepted, My Lord, that immunity is applicable to an offense under the UAPA
5 Act also. That immunity is available to an offense under the PMLA Act also, or various other
6 acts. So, My Lord, to say that only the bribery issues involved, what Your Lordships would say,
7 would involve all crimes, which... unfortunately we have the list of more than 5,000 cases
8 pending against the legislators in the country, and it is not a stray incident of one or two cases
9 My Lord, which has come to Your Lordships in **Narasimha Rao** or in this case. With that
10 preface, may I just humbly meet the four submissions which my learned friend Mr.
11 Ramachandran made My Lord, and take Your Lordships to my written submissions thereafter.
12 The first test... the first submission which my learned friend, Mr. Ramachandran said, that it
13 had stood by the test of time, **Narasimha Rao** judgment, My Lord, which is not correct. Your
14 Lordships have repeatedly doubted it, and Mr. Sankaranarayanan had dealt with that aspect.
15 I don't want to give it... If mistake is there, it must not be perpetuated. That is what Your
16 Lordships have held. The second is more disturbing.

17

18 My learned friend says that 'corruption is a way of life in our political spectrum', accept it My
19 Lord, which My Lord, cannot be done. '*Aaya Ram, Gaya Ram*' has been there since 1967. It is
20 there, it was there and it will be there. So, turn a blind eye to this My Lord, which I would
21 commend Your Lordships to say, to interpret the privilege in a manner which will not flourish
22 the criminality among the politicians or the political class. It will, My Lord, curb the
23 criminalization of politics and it will not surge it. An interpretation Your Lordships would give.
24 So, that's saying that you accept the reality and the Court should turn a blind eye My Lord,
25 that yes, it will be there, it was there. It's not a correct proposition of law. Because, My Lord, I
26 will give you the facts which is there in the... on record available to the Court, that how many
27 cases are there? We have cases more than the Parliamentarians or the Legislators in the
28 country. We have total 4778 lawmakers in the country, all MLAs, all MPs, both Houses and we
29 have more than 5000 cases against the politicians My Lord, pending in the courts as on date.
30 So, could Your Lordships say, all those, all that the person has to say, I have... this offense has
31 a nexus with what I have done in the House. Nexus theory is sufficient to exclude him from
32 the criminal liability. That interpretation would go against the constitutional ethos My Lord,
33 against the constitutional morality which I have developed in my written submissions. My
34 learned friend also says, that the Justice Agrawal said it's not a satisfactory solution. The Court
35 is not there to satisfy the solution. It is the Parliament which will deal it. And my learned friend
36 gave five examples since 1947 till 2023, where Parliamentarians have been expelled for some
37 time. My Lord, is it a substitute? We know these offenses have been there and My Lord, for

1 five occasions it has been expelled for, say, 5 days, 10 days, 15 days, a month. Thereafter, he
2 comes back as a Member of Parliament. But if he's convicted in a criminal offense My Lord, he
3 cannot come back. And as on date, My Lord, till 6 years of the release, he does not come back.
4 He cannot contest the election. So, he cannot continue to be a parliamentarian. But, if those
5 five instances is the sufficient exercise of power by the Legislature or the House, My Lord,
6 which, as Mr. Sankaranarayanan said, we expected much more, My Lord. It has not happened,
7 so it has to be taken into consideration that is not a satisfactory solution, as observed by My
8 Lord, Justice Agrawal. And finally, my learned friend says, there's an apprehension of misuse.
9 Apprehension of misuse is being said by a person who has taken 1.5 crore to vote in a House,
10 in an election. And there is a sufficient safeguard, there's a sanction is required for prosecution
11 by the Chairman and the Speaker, My Lord. Where is the question of a frivolous prosecution?
12 You require a sanction of the Chairman of the Rajya Sabha. You require the sanction of the
13 Speaker of the Rajya Sabha. So, there is a sufficient safeguard against any apprehended misuse
14 of any provisions, My Lord. With this preface, My Lord, may I request Your Lordships, to
15 kindly come to Volume 2(a) para, page 47. The first two pages are regarding issues involved.
16 Your Lordship has already considered it at great length. At page 49, it is submitted that... My
17 Lords have got it?

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Yes

20

21 **VIJAY HANSARIA:** That the Constitution must be interpreted having regard to the
22 challenges and evolution over a period of time and must reflect the hopes and aspirations of
23 the people. It is not a frozen document, which I have borrowed it from Your Lordship's
24 judgment. I'll just quoted it subsequently and must be interpreted to meet exigencies of time.
25 My Lord, Justice Chandrachud as Your Lordship then was in *Puttaswamy* held, the
26 interpretation of the Constitution cannot be frozen by original understanding, which is sought
27 to be conversed and Constitution has evolved and must continuously evolve to meet the
28 aspirations and challenges of the present and future, nor can the judges foresee every
29 challenge and contingency which may arise in future. But we never foresee My Lord, that so
30 many persons with criminal background would come to the August House of Parliament, My
31 Lord. But this is what has happened. So, it has to be in that context. Then, in *Kalpna*
32 *Mehta*, the Chief Justice Deepak Mishra said, 'Constitution being an organic document, an
33 ongoing interpretation is permissible. The supremacy of the Constitution is essential to bring
34 changes. Then, while doing so, the Constitutional Courts are not only required to take into
35 account their own experience over time, international treaties and covenant, but also keep the
36 Doctrine of Flexibility in mind'. And My Lord, Justice Chandrachud has said My Lord in the
37 same judgment in finding an answer to the question in reference, this question must of

1 necessary travel from a literal and perhaps superficial approach to an understanding of the
2 essence of what the Constitution seeks to achieve. At one level, our Constitution [UNCLEAR]
3 the power of political power from a [UNCLEAR] Your Lordship may skip over that. And last 3
4 lines of page 50 of our interpretation of the Constitution must reflect a keen sense of awareness
5 of the basic changes of the Constitution has been made to the polity and to its governance. A 5
6 judge bench in **Dawoodi Bohra Community** has laid emphasis that the Constitution must
7 be interpreted as a living instrument considering the changes in the society. My Lord, Justice
8 Oka has held in that judgment, My Lord, para 25 'while interpreting the constitutional
9 provision, we must remember that the Constitution is a living instrument, the organized
10 interpretation rendered by the provisions of the Constitution decades back cannot continue to
11 be valid for all times to come, if the Constitution is to continue as a living instrument with
12 continued relevance. In view of what we have stated above, the role of the Constitutional Court
13 to interpret the Constitution, considering changing need of the society assume importance. In
14 the light of the aforesaid pronouncement by this Court...' Yes, all these 11 pages are given. I have
15 filed this before the compilation was available. So, I have not linked that, My Lord. Maybe I'll
16 give it to the Court Master, because these are in Compilation 5, page 2794. I could not give it
17 because I filed it before that convenience compilation was there. I'll just give those, My Lord,
18 to the Court Master so that it can be linked. 'In the light of the afforded pronouncement of law
19 by this Hon'ble Court, it is respectfully submitted that the issue of immunity from criminal
20 prosecution by the legislators under Article 105(2) of the Constitution need to be interpreted
21 in the present context... I'm so sorry... in the present context where there is extensive
22 criminalization of politics and large number of persons with criminal antecedents have
23 entered the Parliament and the Legislative Assemblies. Now these figures are very startling,
24 My Lord. These are... from the proceedings in another case this Hon'ble Court in a PIL filed
25 by Ashwini Kumar Upadhyaya directed setting up Special Courts in MPs and MLAs and passed
26 a series of directions. However, the number of pending cases have increased from time to time
27 and the number of cases, My Lord Justice, Chief Justice, My Lord Justice Narasimha, My Lord
28 Justice Mishra has heard these, My Lord, but for Your Lordships benefit, My Lord, for other
29 Hon'ble judges on the Bench. In December 2018, there were 4122 pending cases of which 1675
30 were against MPs and 2324 against the MLAs. Out of these cases, cases involving life
31 imprisonment or death penalty were 430. So, 430 cases of death and life imprisonment cases
32 are pending against legislators, 180 against sitting MPs, and 250 against the former MPs or
33 MLAs. In December 2021 after, Your Lordships have passed series of directions in that case
34 for expedite trial. The number of pending cases were increased from 4984, out of which 1899
35 were pending for more than 5 years. November 2022, the number of cases further increased
36 to 5175 out of is 2166, 40 percent cases are more than 5 years old. Now in a report of the
37 Association for Democratic Rights, 234 out of 542 members of Lok Sabha, 71 out of...

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JUSTICE P.S. NARASIMHA: Hansaria, nobody is claiming a 105 privilege in any of those cases...

VIJAY HANSARIA: No, this shows... Your Lordship would take into account these figures while interpreting the provisions of the Constitution. That's what I'm trying to emphasize to Your Lordships. Then there are various reports...

CHIEF JUSTICE DY CHANDRACHUD: Can we go straight now to page 61, 'Parliamentary privilege, not a shield to commission of crime.'

VIJAY HANSARIA: My Lord, Para 61, page 61 before that, can I just 2 or 3 odd pages, My Lord, just show to Your Lordships before. 2 or 3 pages, My Lord, there are various reports which I have quoted My Lord, including Justice...

JUSTICE P.S. NARASIMHA: National Commission for Review of the Constitution, Justice Venkatachaliah...

VIJAY HANSARIA: Yes, My Lord, Justice Venkatachaliah's report.

CHIEF JUSTICE DY CHANDRACHUD: Where they cast doubt on *P.V. Narasimha Rao*.

VIJAY HANSARIA: Directly, Hon'ble Commission says, My Lord, it's a wrong view and it may be corrected. And in Law Commissions 239th Report headed by Justice Reddy, 244th Report headed by Justice [UNCLEAR] and at page 54 Justice Venkatachaliah's Commission specifically says, 'it is obvious...' Page 54, middle of that page, My Lord, that quotation from that report. 'It is obvious that this interpretation of immunity of Members of Parliament run counters to all notions of justice, fair play, and good conduct expected from the Members of Parliament.' I can say no more, My Lord. 'Freedom of speech inside the House cannot be used...'

CHIEF JUSTICE DY CHANDRACHUD: Page 62. Actually now, page 62, you formulate the test. The expression 'in respect of' must be interpreted to mean only those acts that are essential for undertaking the legislature. So, you're adopting test of the...

1 **VIJAY HANSARIA:** Yes, that is the crux of my submission. Before that, can I just show to
2 Your Lordships, Volume 4, page 1513, what May has to say, and I'll commend Your Lordships
3 to accept that interpretation. Volume 4, page 1513. It starts... and paragraph 16.4, I'm so sorry.

4
5 **JUSTICE P.S. NARASIMHA:** What is this document?

6
7 **VIJAY HANSARIA:** The documents starts from... It is May's Parliamentary Practice. The
8 document starts at page 1502. 1501, the heading, the cover page is there, 1501. And, at 1513...
9 My Lords have got it? 'Earlier mid-20th century, many subsequent cases have their origin in
10 desire. In the desire to determine the proper limits of the statutory phrase proceedings in the
11 Parliament, some of them with a particular concern of what is integral part of Parliament, or
12 to Parliament in the context its claim to exclusive... In general, the judges have taken the
13 view...'

14 Now, this is what I want Your Lordships to kindly consider and accept this proposition. 'That
15 in a matter in a proceeding of the House, beginning and terminating within its walls'. As Mr.
16 Sankaranarayanan says, Lord, there was a statement recently, we may not like it, My Lord, but
17 it has been said 'within beginning from, and terminating within the walls of the House'. My
18 Lord, that is privileged, that nothing can be done. Obviously, outside the jurisdiction of the
19 court. So, My Lord, the expression is 'beginning and terminating within the walls... within its
20 own walls', would be privileged, My Lord, but nothing outside it. And same thing is being said
21 at page one 1514, at the last two lines of the first paragraph. My Lord, page 1514. 'He
22 [UNCLEAR] those with rights to be exercised out of, and independently of the House'. I'll say
23 rights and liabilities. I'll add that word 'rights and liabilities' arising out of, and independently
24 of the House, in which the Court must be the arbiter. Yes. Even within that My Lord... I'm
25 grateful to Mr. Patwalia, the learned *amicus*. I can read that 1513 again, the last lines. 'In
26 general, the judges have taken the view, that when a matter in a proceeding of the House,
27 beginning or terminating within its walls, it is obviously outside judicial Court, unless criminal
28 acts are involved'. So there also, if a criminal act is involved, it is not. So, an interpretation
29 which protects the criminal act, is definitely outside the privilege, My Lord. And what rights
30 or liabilities arise independently of the House, the Court is the arbiter. That is the test which
31 May has said, and I'll appeal to Your Lordship to accept that test My Lord, and lay down that
32 as the correct law. Now, My Lord, may I just summarize, as My Lord, the Chief Justice has
33 said, page 62, para 27 to 29. That is my final submissions My Lord, which I am beseeching
34 Your Lordships to accept. It is submitted that the majority judgment granting immunity to all
35 the acts of Parliament that relates to... that is para 133, the nexus... relate to or concern or have
36 a connection or nexus. These four expressions do not correlate which is sought to be immune,
37 which is too wide, My Lord. 'Anything said' or 'vote given in Parliament' is too wide and does

1 not encompass within the expression 'in respect of' used in Clause 2 of Article 105. The
2 expression 'in respect of' must be interpreted to mean not only those acts... or, must be
3 interpreted to mean only those acts which are essential for undertaking the legislative
4 function. No privilege can be claimed from criminal persecution. The penal laws of the country
5 are applicable to the legislators in the same way as are applicable to ordinary citizens. The
6 privileges are only those which begin and terminate within the walls of the House, as May has
7 said. All actions outside the House are subject to adjudication by the Courts.

8

9 The immunity conferred by Article 105(2) and 194(2) is confined, is only a qualified immunity
10 and not an absolute immunity. The qualified immunity balances two competing rights, namely
11 'grant of freedom of speech and expression' to the vote in the Parliament inside the House and
12 hold them accountable for any crime committed outside the House. My learned friend will
13 deal with it. It is submitted that commission of any crime can never relate to, in respect of
14 anything said or vote given by him in Parliament and no legislator can claim immunity from
15 criminal persecution by seeking the protection of parliamentary privilege conferred under
16 Article 105(2) or 194(2). Every person is liable for prosecution for offenses, committed by him
17 or her under the penal law of the country. If immunity from prosecutions is granted, the
18 criminalization of politics will get a boost instead of being curbed. The immunity would be an
19 easy escape for the lawmakers to avoid penal consequences of all penal offenses, including any
20 of those offenses, by claiming that such an act was in respect of anything said or done or vote
21 given by him in Parliament. The immunity if allowed would be limited not only to corruption
22 cases, which I started saying that, but it can be claimed in respect of serious offenses such as
23 POCSO, Unlawful Activities Act, Money Laundering Acts, hate speech, etc. It would be a
24 license for the legislator to commit a crime without fear of prosecution and thereafter claim
25 immunity by creating a so called nexus with the speech or vote given in the House. It is
26 submitted that the criminalization of politics has been deep rooted in the parliamentary
27 democracy of our country. The Parliament and Legislature cannot seek immunity from
28 prosecution in the garb of parliamentary privilege. The majority in the *Narasimha Rao* only
29 encourage the people with criminal antecedent to enter politics, enter the precincts of
30 Parliament and State Legislature, and the number of such people will surge, increase or
31 expand instead of being truncated or brought down. So My Lord. I appeal to Your Lordships
32 that the minority judgment My Lord, may be...

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you, Mr. Hansaria. Thank you.

35

36 **VIJAY HANSARIA:** May I just say this, My Lord. The additional submissions which have
37 been made, My Lord, there are four counsels who wish to address Your Lordships, which is in

1 Volume 8, My Lord. There are four counsels which have said, Your Lordships may give five
2 minutes to each of them, the four counsels, who have said, My Lord, in that order only. Ms.
3 Kalita, Dr. Sharma, Mr. Bhandari, and Ms. Kariya Jabherwala. I'm saying that let it be in the
4 same order. That's what... it will be easier.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Bhandari, you want to argue? We will
7 hear Mr. Bhandari for two minutes and then...

8

9 **SNEHA KALITA:** Please, Your Lordship... I will take two minutes of Your Lordship's time.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, tell us.

12

13 **SNEHA KALITA:** I am grateful to Your Lordship. Your Lordship, my submission... I have
14 given a short submission Your Lordship, in Volume 8 page number 3 and 4, Volume 8. Your
15 Lordship, my humble submission would be that the Parliamentary privilege, Your Lordship, I
16 would read... I would wish to read from my note.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second.

19

20 **SNEHA KALITA:** Your Lordship, Justice Narasimha, has?

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Yes

23

24 **SNEHA KALITA:** My humble submission, Your Lordship, is that the Parliamentary privilege
25 and the immunity that are conferred on the members under Article 105(2) and 194(2) of the
26 Constitution of India, for smooth functioning of the Parliament, so that they can vote and
27 speak without any fear, which has been quoted in *State of Kerala vs K. Ajith* Your
28 Lordship, which is referred in Volume 5 of page number 2996 of para 44. Your Lordship, it is
29 respectfully submitted that such privilege has to be read in consonance with the basic structure
30 of the Constitution of India. And, if the privilege is treated in an absolute shield, then the very
31 essence of the democracy for the protection of the rights of the citizens will be lost. Therefore,
32 Your Lordships, the legislators are the citizens' representatives and they work for the welfare
33 of the people and therefore they are the lawmakers and cannot be the law breakers. Secondly,
34 Your Lordship, my humble submission is that the reason for grant of immunity in respect of
35 anything said or vote given was to ensure that inside the House, the statement made should
36 not be criminally punishable. But today, Your Lordship, this privilege has taken the colour of
37 criminalization and the provision is being misused under the cover of broad interpretation

1 given by the majority of the judgment in the case of *P.V. Narasimha Rao*. Your Lordship,
2 my humble submission is that the immunity was never intended to place the parliamentarians
3 at the higher pedestal and grant immunity to them. No matter how grave or the criminal their
4 acts might be.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** You're adopting the minorities stance... of
7 arising out of...

8

9 **SNEHA KALITA:** Adopting the minority view.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** Fair enough.

12

13 **SNEHA KALITA:** And Your Lordship, therefore, if the members of the Parliament have done
14 unethical acts and otherwise contrary to the law, which is out of the periphery of the
15 discharging their Parliamentary duties and responsibilities, then they should not confer the
16 immunity.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank you.

19

20 **SNEHA KALITA:** And thirdly, Your Lordship, 'in respect of' Your Lordship. The term, the
21 interpretation, Your lordship, 'in respect of', should be interpreted to mean arising out of and
22 therefore it should be purpose of interpretation, limiting the immunity granted under Clause
23 2...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Now whose...

26

27 **SNEHA KALITA:** To only acts and the words..

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29 **CHIEF JUSTICE DY CHANDRACHUD:** Fair enough. We will have a look Sneha. Thank
30 you.

31

32 **SNEHA KALITA:** Which should also include mere participation Your Lordship.

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34 **CHIEF JUSTICE DY CHANDRACHUD:** Now, the next submission we have is of Dr. Vivek
35 Sharma, right?

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37 **SNEHA KALITA:** I'm grateful Your Lordship.

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CHIEF JUSTICE DY CHANDRACHUD: Thank you. Thank you.

DR. VIVEK SHARMA: Volume 8, page number 6, Sir.

CHIEF JUSTICE DY CHANDRACHUD: Volume 8, page 6, right?

DR. VIVEK SHARMA: Page number 6, Sir.

CHIEF JUSTICE DY CHANDRACHUD: Right, let's see what you say.

DR. VIVEK SHARMA: To decide basic issue, the immunity from the criminal prosecution involved in this case, three points should be kept in the consideration. What was the intention of our Constitution makers under Article 105 and 194? And the second point is that, whether in democracy, a voter can expect from his elected representative that he should be allowed to take money or bribe for speech or vote in the House. The third one is, whether immunity from the criminal prosecution for taking bribes, money, for vote or speech in the House to MPs, MLAs is creating the different class, who are allowed to corrupt, the basic foundation of the democracy. In a healthy and honest democracy, elected representative is for the service of nation, there is no place of immunity, for taking bribes or cash. And the last one and the D point is that our Constitution makers took the different provision of the Constitution from the birth democracies according to Indian perspective. They borrowed parliamentary form of government from the United Kingdom, but they did not accepted the Parliamentary supremacy, their ideals and aspirations are very high for the newly born Republic of India. Our Constitution makers never wanted that by the virtue of privilege under Article 105 and 194, the lawmakers would seek criminal immunity from the bribes, it is not only the immoral but also destroyed the basic structure of the democracy. Today lawmakers would took bribes or money for vote or speech in the House, tomorrow the voters would take money for the vote. Then what would happen? Certainly there is no place for immunity from criminal prosecution for taking bribes or money for vote or speech in house to MP and the MLA. So, the minority statement in the *P.V. Narasimha Rao* case, I think so...

CHIEF JUSTICE DY CHANDRACHUD: Thank you. Thank you Dr. Sharma. Yes, Mr. Bhandari.

ABHIMANYU BHANDARI: I'm going to take very briefly, My Lords. I think the debate has surrounded, My Lords and we've looked at it from a perspective, where we are all looking at it

1 as a person, as a parliamentarian who accepts some money before he walks into the Parliament
2 and votes in a particular manner. But My Lords, there will be a large number of permutation
3 and combinations. There could be a parliamentarian My lords, who takes no money, walks
4 into the Parliament, votes in a particular manner, but comes out, and then after that, takes
5 certain illegal gratification. So while, yes, My Lords, I support as an intervener that the cloak
6 should be trimmed. But, My Lords, how far it should be trimmed? And what should be the
7 boundaries, is something that this court should endeavour to set it out? Now the minority view
8 in **Narasimha's** case and the majority view, both look at American Jurisprudence, both look
9 at the **Brewster's** Judgment which has been read to this court. The minority, My Lords, when
10 they look at **Brewster's** Judgment, they come out with a test that it should be an essential
11 and integral part of the cause of action. Now, My Lords to say that it should be an essential
12 and integral part of the cause of action, would leave My Lords, a lot of parliamentarian to
13 prosecution, would be my humble submission. And therefore, there needs to be a far more
14 rigid test that needs to be propounded and needs to be laid down, because My lords, we in a
15 Westminster form of Parliament, are not only My Lords, parliamentarians who don't
16 necessarily belong to a big political party. We have to also ensure that, the cloak is strong
17 enough to protect, let's say an independent member of Parliament. So therefore, when a cloak
18 is being trimmed, there should be some checks and balances to ensure that false prosecutions
19 and prosecutions which necessarily penetrate the cloak and starts looking into what the
20 parliamentarian did in the Parliament, should not be allowed. Now My Lords, this according
21 to me, this test, which is propounded in the minority judgment of **Narasimha**, is actually My
22 Lords, in tandem with all the judgments in the US. Now My Lords, before **Brewster** came,
23 there was a very important judgment called **Johnson**. And **Johnson** has been critically
24 analysed in the American Jurisprudence as saying that it gave too much of protection to
25 parliamentarians. However, **Brewster** did not overrule, **Johnson** did not say **Johnson** is
26 wrong law, rather explained that **Johnson** was right law. My Lords, I just wanted to show you
27 one or two paragraphs of **Johnson's** to show that really even if one looks at **Johnson**, which
28 is seen as a very restrictive case, still the test propounded there would also work in our Indian
29 context. My Lords, **Johnson** is item number 13, in Volume 5(a). Item 12, My Lords. It's page
30 202 it starts, in Volume 5(a). Now interestingly, My Lords, **Johnson's** notes, that the reason
31 this whole immunity came, was not only to save the parliamentarians from the Crown, but also
32 from the judiciary. And way back, the more fear was the judiciary acting at the behest of the
33 Crown, and that's why this protection came in. So, the reasons might be quite misplaced in
34 today's times, and therefore, those reasons may not apply, But My Lords, I don't want to take
35 the time of the Court, because I know I'm on very limited time. I don't want to read why the
36 protection was given, but it's very well explained at para 3 and 5 and 6. But, I want to come
37 to... straight at the test. If I can read para 5 in **Johnson**, because **Johnson** is seen as

1 something which is far more expansive, and gives more protection to a parliamentarian than
2 what he deserves. My Lords, page 205, para 15. 'In the same vein, the government contends
3 that the Speech or Debate Clause was not violated because the gravamen of the count was the
4 alleged conspiracy, not the speech, and because the defendant, not the prosecution, introduced
5 the speech itself. Whatever room the Constitution may allow for such factors in the context of
6 a different kind of prosecution, we conclude that they cannot serve to save the government's
7 case under this conspiracy count. It was undisputed that Johnson delivered the speech. It was
8 likewise undisputed that Johnson received the funds. Controversy centred upon the question
9 of who first decided that a speech was desirable, who prepared it, and what Johnson's motives
10 were for making it. The indictment itself focused with particularity upon the motives
11 underlying the making of the speech and upon its content'. I won't read the charge in
12 paraphrase 16. 'We hold, that the prosecution under a general criminal statute dependent on
13 such inquiries, necessarily contravenes the Speech or Debate Clause. We emphasize that our
14 holding is limited to prosecutions involving circumstances, such as those presented in the case
15 before us. Our decision does not touch a prosecution which, though as here founded on a
16 criminal statute of general application, does not draw in question the legislative acts of the
17 defendant member of the Congress, or his motives for performing them. And without
18 intimating any view thereon, we expressly leave open for consideration when the case arises,
19 a prosecution, which though possibly entailing inquiry into legislative acts of motivation, is
20 founded upon a narrowly drawn statute passed by Congress in the exercise of his legislative
21 power to regulate the conduct of its members'. So, here the court clearly says it does not touch
22 upon a prosecution, though as here founded on a criminal statute of general application, does
23 not draw in question the legislative acts of the defendant member of the Congress or his motive
24 for performing them. So, My Lords, the issue is not what he did when he entered the
25 Parliament. what speech did he make, who prepared it, and how he prepared it, how he
26 delivered it, and how much did he emphasize on certain aspects of his speech in favour of
27 someone? What matters is what he did before entering into the Parliament, or what he did
28 after he exited the Parliament in pursuant of a criminal agreement for illegal gratification.
29 So, whether the bribe is paid before or after, would have no consequence, because that act
30 would not be actually looking at the content of the speech. My Lords, the Court in **Brewster**,
31 then My Lord says, at para 39, at page 216. And this is, I think the aspect that comes out,
32 **Brewster** doesn't say that **Johnson** is bad law. It explains **Johnson** by saying that the
33 prosecution should be able to make good the charge, without asking the prosecution to adduce
34 evidence as to what happened in the Parliament. So, it does not matter My Lords, how he
35 voted, because even a bribe taker may cheat to the bribe giver. But that is not the gravamen of
36 the offense. The offense is that, he agreed and accepted to take a bribe. Section 7 of the
37 Prevention of Corruption Act of our country does not inquire whether actually the bribe taker

1 did perform what the bribe giver asked him to do. The fact that he agreed to do something is
2 good enough for the offense to happen. Therefore, one does not need to look into what
3 happened inside the Parliament and that is where should be the hard boundary that can the
4 prosecution make a charge and take it good to the end without looking into what actually
5 happened inside the Parliament, what was the tenor of the speech? Whether he voted in a
6 particular manner or not, or whether he abstained from voting. If that is the test that whether
7 prosecution can be brought in without scrutinizing the act inside the Parliament, within the
8 confines of the Parliament, then My Lords according to me, that the cloak would be good
9 enough to protect what its intention was to protect the freedom of the parliamentarian. And
10 para 39 in **Brewster**, really catches that.

11

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

13

14 **ABHIMANYU BHANDARI:** Para. 39 and paragraph two in **Brewster** catches that. So My
15 Lords, even judgments in the US, which have taken a slightly different view from **Brewster**,
16 have been reasoned. And My Lords the last judgment I'm not going to read it My Lords, but
17 where.... which was not cited in **Narasimha**, it was actually there at that time, which
18 considers both **Brewster** and **Johnson** is in, My Lords, Volume 6, which is very important.
19 It's **McDade** , My Lord, **US vs McDade**, which is... the relevant paragraph is at page 294,
20 where the court says that, yes, prosecution can't bring in the evidence as to what happened in
21 the Parliament. Prosecution has to make its case good on what happened outside the
22 Parliament to bring home a charge. But the defence can. So, it will not stop a parliamentarian
23 to show, oh, you are charging me for corruption, but actually I did not vote in such a manner.
24 So, he might be able to bring in but the prosecution cannot. And that is where the test should
25 be. I'm deeply obliged.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Bhandari.

28

29 **PETITIONER'S COUNSEL:** If I may please, My Lords. My submissions start from page 22,
30 Volume 8.

31

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

33

34 **PETITIONER'S COUNSEL:** My Lords, my submissions would be limited to the
35 interpretation of the term 'in respect of'. My Lords, Clause 1 of Article 105, confers 'freedom of
36 speech' in Parliament, subject not only to other provisions of Constitution, but also to rules
37 and standing orders regulating the procedure of Parliament. Thus, the freedom of speech is

1 not absolute, but is subject to various other provisions, as has been mentioned in the Article.
2 My Lords, Clause 2, grants immunity to the members from proceeding in any court in respect
3 of anything said or vote given by him in Parliament. My Lords, my humble submission is the
4 first part of Clause 2 has to be juxtaposed with the second part and cannot be read in isolation.
5 They both have to be read together. Further My Lords, the term, 'in respect of' cannot be
6 colourably exercised by parliamentarians to cover within its ambit of being involved in any act
7 or conspiracy or crime outside the walls of the House. There is no reason to grant complete
8 immunity by interpreting the word, 'in respect of' to mean anything that relates to, or concern
9 or have connection with or nexus, as held by majority judgment of Hon'ble Justice Bharucha.
10 My Lords, in point 3, I've mentioned that the expression, 'in respect of' is used in Constitution
11 in 65 other places, apart from Article 105(2), and 194, and in PDF pages 24 to 27, I have
12 attached the chart of those articles with the relevant provision. My Lords, if the extraordinarily
13 wide meaning is given to the expression 'in respect of' as per the majority opinion, the same
14 would also apply to other provisions of the Constitution where these words have been used.
15 And according to me, this would result in serious and grave consequences and may lead to
16 incongruous results. Hence, such a wide interpretation should not be given. For example, My
17 Lords, I've taken in point 4, under Article 34 of the Constitution, Parliament may by law
18 indemnify any person in the service of the Union 'in respect of' any act done by him in
19 connection with restoration of or maintenance of order in any area where martial law was
20 enforced. My Lord, if an extremely wide interpretation would have the effect of indemnifying
21 or granting immunity for all acts to that person, when done during the martial law was
22 enforced, even if the same is not directly related to the restoration or maintenance of order.
23 Similarly My Lord, if Article 122, Clause 2 and 212 Clause 2, would if 'in respect of' would be
24 interpreted in a wider sense, it would mean the immunity can be claimed even in respect of
25 any action taken outside the House... which may relate or concern or have nexus with. So, My
26 Lord my humble submission is, that the expression 'in respect of' must be interpreted to mean
27 something that is intimately connected with the subject, immediately followed by the said
28 words, 'in respect of'. It means something directly associated with or banded together or
29 closely linked with the subject and not any remote nexus. Therefore, My Lord, the majority
30 judgment, in my humble submission 'in respect of', should be limited and should not be given
31 a wide interpretation. Obligated.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank you. Now anybody else?

34

35 **VIJAY HANSARIA:** [UNCLEAR]

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. All of you have formulated it well. All
2 the juniors have really formulated it well. Yes, Mr Attorney. Has your task become lighter or
3 heavier, Mr. Attorney?

4

5 **ATTORNEY GENERAL R. VENKATARAMANI:** Two written submissions, one earlier...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Have they made your task lighter or heavier?
8 Have all the juniors made your task lighter or heavier, Mr. Attorney?

9

10 **ATTORNEY GENERAL R. VENKATARAMANI:** There's a brief note which I had
11 circulated in the morning. Before I take Your Lordship through that... Court Master today's
12 morning note, it is there? Before I take your Lordships through that, having been a part of the
13 239th and 244th Law Commission Report, and having partly been author of the report and
14 concept note written about the importance of looking at criminalisation of politics, I am
15 personally [UNCLEAR] from saying anything to the contrary. But apart from that, we are
16 looking at a very, very important consideration of how do we deal with, an ancient principle of
17 Law, that those who are elected representatives, will enjoy certain protection. This principle
18 of law has... we will gather all the Constitutions of the world today, they are there in some form
19 or the other, phraseology notwithstanding. That means that this principle is very important
20 for, one valid reason that the person shall be free in the exercise of a function as a member of
21 a legislative body, without being impeded by any act of impression or impairment. Probably
22 those good old days when [UNCLEAR] executive was a very important aspect to be looked
23 into. It may also undergo some forms, metamorphosis today. The executive need not, cannot
24 be probably directly impair A legislators function, but it can devise various methods and way
25 of doing this issue as you talk about it. Therefore if, the importance of ensuring that a person
26 elected or a representative shall not be impaired and shall not be exposed to, undue exertions
27 or coercions, for the same time that, this office of [UNCLEAR] being elected to a public office,
28 shall not be so exercised, as to completely dilute the trust and the importance of the office.
29 Then we are looking at how do we balance them. I don't propose to go into the questioners to
30 the minority versus the majority view, because if, broadly speaking, all those aspects in a way,
31 a good part of my thoughts and ideas have been stolen and pirated by all my learned counsel.
32 So, you can use this very strong expressions. But I'm trying to summarize why are we so
33 concerned about it, is a concern expressed by each and every one of them in different ways.
34 But if you have to grapple with the concern and produce a norm, you're looking at the Court,
35 you're asking the court to produce or generate a norm, which can probably interpret or apply
36 in the application of Article 105 and 192. It's not really an interpretation, what we're asking
37 the Court, is not really an interpretation, something beyond that. A mere interpretation giving

1 meanings like, whether the words 'any' or 'in respect of' by giving such meaning we are trying
2 to clarify, what this important provision the Constitution intends to convey is one aspect of the
3 matter. Well you want to go beyond that and say that the efforts made so far in various
4 jurisdictions, undertaking the perspectives, whether in US or in Australia and Canada. I've
5 also looked at, for instance, countries like Philippine, Czechoslovakia, and many other
6 European countries.

7
8 There's a report in the European Parliament on this question. The Transparency International,
9 looking at importance of public life being on ethical and moral consideration. The same
10 concern runs through universally in all these places. So, if you are talking about not really
11 interpretation of any word or an expression in Article 105. But as I said, interpretations are
12 probably not able to go beyond a stage where you keep on repeatedly saying, 'Well, crime is
13 punishable. Guilty outside, but not guilty inside'. So, if crime is punishable, then why can't it
14 be said so. So, if the Court had to come and say that 105 does not contemplate, 194 does not
15 contemplate commission of a crime, whether it is connected or in respect of or concerning,
16 then, of course, the story is complete. So, while the majority try to grapple with this question,
17 I don't think that they were not alive to the importance of reading 105 and 194 very correctly.
18 They were alive to it, but they took a pragmatic view. They look at it from the point of... if you
19 have to say something very radical about crime should be punished, which have nexus or no
20 nexus, it may be punished, then it probably would require, to some extent, a rewriting of
21 Article 194 and 105, in one sense of the term. Now, if you're looking at actions or proceedings
22 and liabilities which may arise posterior to a conduct or a speech or vote in a Parliament, that's
23 what on a plain reading of 105 and 194 it seems to protect, posterior to a conduct, and what
24 the minority also tries to say that. So, posterior to your conduct has no difficulty at all. What
25 speech, what vote was given in the Parliament, motives will not be inquired into. So, what
26 persuasions went to, will not be inquired into. Talking about something anterior to what
27 happens inside, and before the speech or vote is given, that's what you're talking about. And
28 then, I am clearly of the opinion that, anything which is offensive under any law prescribed by
29 a statute, clearly prescribed by statute, cannot have a refuge under the Article 105 or 194(2).
30 I'm very clear about that. And I don't think any responsible government or any public authority
31 can take a contrary stand. Let me take Your Lordships, before I go further, on this two-page
32 note, and then read my earlier written note. I don't think I need to trouble Your Lordships with
33 the reading and re-reading of all the US judgments. Because what emerged in the course of
34 reading the judgments was, the distinction drawn between external versus internal activities.
35 Legislative versus political activities. So, lines are drawn probably to push the protection one
36 way or the other. So, what is a non-legislative activity for a person who's elected as a
37 representative to serve the constituency, you have to do a wide range of things. **Brewster**

1 talks about it in paragraphs somewhere. So, are they protected? Of course, they will be
2 protected, as long as there is no criminal or unlawful dimension involved in any one of them.
3 So, the entire corpus of US law tries to look at that. But, somewhere I find this clear line to be
4 drawn. Easy line that can be drawn between external versus internal activities, can be
5 somewhat problematic. I just want to flag that. Because in that context, the whole range of
6 today, whole range of work in the Parliament, depends on an information flow. So, one of the
7 cases in US was talking about the mail fraud issue, where for the purpose of getting a particular
8 legislation, you work through a criminal process and lobbied, the US have a lobbying act. You
9 can pay for a lobby, register as a lobbyist. So, we have all that kind of legislative proceedings
10 which have tried to look at this issue from various angles. Therefore, the information flow is
11 required for a legislator to act may sometimes involve unwittingly getting into a crime
12 situation, there can be a trap, there can be something which one does not know. Therefore,
13 these are consideration probably may have to be taken very carefully before the Court lays
14 down a very inflexible norm as to whether anything which happens outside the Parliament, we
15 want the speech and vote activity inside the Parliament, anything which happens outside,
16 which may have a tinge of a... or a share of a criminal activity will be questionable could be
17 little broadly stated. I only want to... a little concern about that. Not that I want to say that,
18 crimes ought not to be... so, they can't get the protection under Article 105, I'm not saying that.
19 And then as I said, the political versus legislative activity is also important aspect. We try to
20 draw distinction between political, in a sense, broadly political propositions outside, political
21 campaigns outside. But they all translate ultimately into a legislative activity. And that's one
22 of the... Joseph Schumpeter noted Austrian economists who said, democracy is all about
23 competition, getting into getting people's minds. So therefore, this political activity of getting
24 into people's minds and then organizing, arranging a whole range of political activity,
25 translating them into legislative process. So, that's where the connection sometimes will have
26 to be kept in mind. I thought these are important aspects to be reckoned. And one of the earlier
27 cases I find either in US or somewhere, is it... the question asked is, is it a protection? Is it a
28 special advantage or a special protection? The distinction is very important. You're not asking
29 for a special advantage, but a special protection. So, the dimensions of a special protection will
30 be therefore seen from all these angles, from all these dimensions. Let me now take Your
31 Lordships from a brief note which is in Volume 9. My Lords have that?

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** It's not coming...

34

35 **ATTORNEY GENERAL R. VENKATARAMANI:** It's just a two page note. It's there in
36 the... I have a... Court Master... yeah. Protection under Article 105(2) and 194(2) is confined
37 only to the work because it's in the context of the argument that, Sita Soren is [UNCLEAR] to

1 a business or work of functions of the House, it's only in that regard. Is confined only to the
2 work within or the functions of the Parliament or the legislature as the case may be. Election
3 to Rajya Sabha is an independent process, regulated by a special set of rules and is not a
4 business work or function of the Parliament. The premises where the election takes place is
5 not determinative of the matter. What is not a function or the business of Parliament or the
6 Legislature, [UNCLEAR] Articles 105(2) and 194(2). The protection extended in Articles
7 105(2) is a part of the larger scheme of protection and immunity to Parliament and its
8 functions. The question is not, whether the words, 'in respect of' should be narrowly read or
9 expansively read. The view of the majority that the nexus between an antecedent conduct and
10 a speech made or a vote given in Parliament would be the reason for extension of the protection
11 under Article 105(2) stems from the view that the antecedent conduct, right or wrong, shall
12 not affect or weaken the importance of the protection to speech or vote inside the legislatures.
13 The nexus test, thus may have the effect of exclusion, criminal liability, civil or criminal,
14 regardless of the unlawfulness or otherwise of the context, which leads to or is connected to
15 the speech made or vote given. This test requires disregarding the nature of the antecedent
16 conduct. All that 197 CrPC sanction etc. The nexus test will not be a safe guide. At the same
17 time, the possibility of any hostile or adverse action being taken on an estimation of perception
18 of a speech or vote should also be kept in mind. The view of the minority that an act that
19 precedes the making of a speech or giving of a vote may not at all qualify a protection
20 regardless of it's connection to speech made or vote given, also deserves to be moderated. On
21 a plain reading of Articles 105(2) and 194(2), and keeping in mind the need for freedom of
22 conduct of elected representative, without being exposed to undue and unreasonable action
23 and proceeding. It can be said that, conduct which is otherwise clearly unlawful, and unlawful
24 by reason we're being prescribed by a statute, will not ordinarily receive the protection against
25 liabilities. However, as a matter of prudence and without sacrificing the importance of high
26 ethical and moral standards in the political field, it will be worthwhile to propose an In-House
27 Committee of the respective Legislatures, to be the speech and vote watch, whose,
28 recommendation can be the basis for all liabilities. The Tenth Schedule to the Constitution of
29 India is a parallel. See **Narasimha Rao** is only in the context to a vote given in Parliament.
30 The review by the Court, be advisedly confined, only to limited aspect, and not to any of the
31 larger questions of powers, privileges, and immunities, and perhaps not even to the question
32 of the ambit of speech made in the legislature. Right, I say this so because the speech check
33 can have a variety of dimensions, whether you take away the antecedent part of it or not. Then
34 one has to explain the extent of the speech which requires protection. Therefore, I thought the
35 speech part of it in the context of the facts of this case, the speech part of it does not arise at
36 all, even though Counsel have advised the Court on the entirety of the spectrum of vote and

1 speech. So that's... I thought will be the narrow ground on which I... under... the Court, Your
2 Lordship may therefore take to the earlier written note where I have a few other aspects.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 2, right?

5

6 **ATTORNEY GENERAL R. VENKATARAMANI:** That is in Volume 2. Because if 105 and
7 194 are as integral part of the Constitution as, Article 14.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR]... before I forget. Yes.

10

11 **ATTORNEY GENERAL R. VENKATARAMANI:** Well I'm not sure whether if I read it, I
12 just want to in conclusion with the line of thought which I shared with Your Lordships. I'm not
13 sure whether we need to go that far, as to look in the Basic Structure Doctrine on... test this on
14 Article 14, etc. Because I think once the freedom of speech and the Article 105(1) and 105(3),
15 they are the broader aspects of parliamentary independence and functioning. In that context
16 105 is nestled to say to a different extent. And if that's part of the Constitution, I say it's also
17 part of the basic structure of the Constitution. The freedom over the function of the Parliament
18 members elected there, to say that their freedom will be impaired by anything which not dealt
19 with, by law, but by any other understanding of the law. I mean, it's going to be little
20 problematic. Therefore, let us not go to an Article 14 dimension or Basic Structure Doctrine,
21 to look at the relevance or importance of the reading or construction of Article 105. Now, if we
22 complete the reading of this written submission. This is, the first part of it is of course confined
23 to the facts of this case, because an argument is that *Narasimha Rao* would apply,
24 *Narasimha Rao* need not be revisited, to just respond to that. I think in my understanding
25 and the facts of this case where the election to the Council of States happens outside and not
26 a function or a business or a work or the Parliament or the Legislature, then *Narasimha Rao*
27 would not apply. *Narasimha Rao* is a case where a no confidence motion, there is a lot of
28 literature in what exactly the functions of a Legislature. Today it's a wide range of functions,
29 there are even an advisory function. The number of committees that have been constituted by
30 the Parliament across the world, they're truly very exemplary. I mean, you look at the range of
31 functions, Parliament cannot deal with them all over. The Committees are the alter egos of the
32 Parliament in one sense of the term.

33

34 Therefore the question as to what happens as a conductor, the worker, is also important. So
35 on the facts of this case, I think that *Narasimha Rao* would not apply. And if it does not
36 apply, the asking of the Appellant, perhaps *Narasimha Rao* to be revisited or not, does not
37 arise. Let me quickly read this part of the written submissions.

1 'The Appellant has sought the protection of Article 194 to the Constitution as a ground for
2 discharge in the criminal prosecution launched against us. Neither before the Hon'ble High
3 Court, nor before this Hon'ble Court, any other contention has been raised as relevant for the
4 purpose of this charge. Full reliance is placed on the **P.V. Narasimha Rao** dictum.
5 Therefore, the short question for the purpose of disposal of the appeal would be, as to whether
6 **Narasimha Rao** would apply at all. The question as to whether the Appellant has committed
7 any offense at all, solely with reference to the fact, is not a matter for consideration in these
8 proceedings. The question would be, whether the conduct attributed to her does not have that
9 colour of an offense by reason of the protective clause of Article 194(2). For that purpose, the
10 only matter to be considered will be, whether the exercise of the franchise of an elected
11 member of the State Legislature, for the purpose of election to the Council of States, will be
12 speech and vote, within the meaning of Article 194(2). The submission that the invocation of
13 Article 194(2) by the Appellant, is not a compulsion to wriggle out of an act of bribery, can
14 [UNCLEAR] any submission in relation to invocation of Article 194(2) The distinctions sought
15 to be made in paragraphs 1, 2, 3 of the written submission of Mr. Raja Ramachandran, under
16 the heading, 'The case at hand', is no distinction at all. The speech and vote immunity is an
17 ancient immunity, and is being considered to be a shield against executive operation of
18 persecution. Long history of decided cases show the relevance of protecting the speech and
19 vote conduct to the elected representatives, from being exposed to civil or criminal action.
20 Either speech and conduct in relation to the manifold functions of the Legislature, where the
21 elected representatives participate, that stands protected. In all cases where the elected
22 representative seeks to protect his shelter of Article 194(2), the inquiry will be, as to whether
23 the speech and vote is in relation to the manifold functions of Legislature discharge as a
24 Legislative Assembly. Any conduct, other than conduct related to legislative function, will thus
25 fall outside Article 194(2). For the purpose of disposal of case with the Appellant, the inquiry
26 as to what is speech and vote in relation to the manifold functions of the Legislature, need not
27 be taken recourse for the reason, that the process of election to the Council of State is like any
28 other election process, and cannot be treated as a matter of business that are functions of the
29 work of the Legislature. Casting a vote for the purpose of election of members to the Council
30 of State, is not to be equated with the words 'vote given' in the Legislature in any committee
31 thereof. It submitted that reliance placed in **Pashupati Nath Sukul, Mukul**, so and so,
32 **Kuldip Nayar**, is in order. The question is not whether Parliamentary immunity has been
33 sought and invoked in the said cases. The statement of law, that matters of election, either to
34 the Council of State or exercised to the President Vice President or not, speech and vote, within
35 the scope of Article 105(2) and 194(2), will hold good, regardless of the context in which the
36 statements have been made. The submission to the contrary, in paragraph F of the Appellant's
37 written submission, is not persuasive. Legislature is a term which is synonymous with

1 Legislative Assembly, which is a body of persons invested with the power of enacting laws. In
2 the context of Parliament, Legislature means either House of Parliament. In the context of
3 State Legislature, it will comprehend the Legislative Assembly or the Legislative Council, as
4 the case may be. The speech and vote expression therefore relate the discharge of functions of
5 both the Houses. The distinction, if any, between Legislature and House of Legislature, has no
6 bearing on the issue of understanding the speech and vote expression. Whether the Governor
7 would be included to the term Legislature, is no matter relevance for the purpose of
8 [UNCLEAR] of the speech and vote expression'. See in this regard so and so. 'The question
9 again is not one of proceedings on the floor of premises of the House. The question would
10 already be whether the conduct in person, is in the context of the business or function of the
11 Legislature. All proceedings of all Parliamentary committees are accorded the same status of
12 the proceedings in Parliament or State Legislature, as the case may be. The question is not the
13 place or venue of the proceedings of the committees, what qualifies as a respective task
14 assigned to the committee and what transpires in the course of deliberation with the
15 committees. It is submitted, the conduct of the Appellant in relation to the election to the
16 Council of States, not being a conduct relating to the function of Legislature, will not qualify
17 for the protection under Article 194(2).

18

19 Then the next part of it, generally will address the submissions I made, but quickly I run
20 through them. The subject of privileges and immunities of elected representatives is
21 universally found in constitutional documents. Similarly, despite difference in phraseology,
22 protection is extended to speeches that we made or votes that we tendered by elected
23 representatives in relation to the conduct or business of work in the legislative body. It would
24 be a tedious and contentious exposure if elected representatives have to defend themselves in
25 respect of their conduct and in relation to their work or business of the legislative body. The
26 logic and relevance of the protection is well settled. The question of connection and nexus
27 between conduct antecedent to the speech and vote exercised in a legislative body, particularly
28 when the antecedent conduct may be designated as unlawful or prosecuted by law, has been a
29 vexed question. Instance of corrupt or undesirable motives whether in presentation of private
30 member bills or working in mainstream legislation have received the attention of Hon'ble
31 Courts. See, in this regard the three articles which give a complete understanding what the US
32 and is also in European context. I'll just read a few pages of them, but I don't want to trouble
33 Your Lordships with the entirety of these three articles. Then paragraph 12. Extreme case of
34 submission of bills of expenditure by elected representatives beyond legally sanctioned limits,
35 have been found to be on the protection of immunity and privileges, *Chaytor*. Such instances,
36 do not present a difficulty in understanding the scope of immunity. Conduct falling in such
37 class being otherwise unlawful and with no connection or relationship with the business,

1 function or work of the legislative body will fall outside the immunity's umbrella. The view
2 taken by the majority in *Narasimha Rao* is a guarded view. It is not that this Hon'ble Court
3 lost sight of the shades of opinion. The Supreme Court of the United States in *Johnson* and
4 *Brewster*. The opinions of the minority judges, we consider as coming close to the
5 desirability of looking at high standards of conduct where elected members of legislatures and
6 the needs of parliamentary intervention in that regard. Your brief glance, at deliberations and
7 debates across different jurisdictions and the scope of Parliamentary immunity and the
8 incompatibilities of the conduct which is offensive, undesirable, unlawful, etc. demonstrate
9 the need for raising the ethical and moral level of conduct of elected representative. Now, then
10 paragraph 13, 15. The question asked whether *Narasimha Rao* deserves reconsideration
11 may not hinge only on the majority or the minority understanding of the law. While it is highly
12 desirable that the elected members and legislators conduct themselves at the highest level of
13 ethical and moral [UNCLEAR], in order that the values of trust and democracy are not
14 impaired. The question as to laying down norms, as guiding criteria would still be and
15 desirably so, a matter of parliamentary deliberation. While the desirability of delineating and
16 setting down the principle, which may govern the scope and applications of the speech and
17 vote clause, is not to be doubted. The matter of laying down enforceable norms may warrant
18 a wide debate and legislative intervention, including intervention by state legislators and with
19 regard to the multitude of functions of legislative bodies both directly and through their
20 committee proceedings in *Keshav Singh*, all state legislatures and then all High Courts
21 [UNCLEAR], in fact, probably I could have suggested the Hon'ble Court to take recourse to
22 that. But now that the Court has convened and we have presented our arguments, I only say
23 that in the context of these important deliberations the norm laying down, you know,
24 importance.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Anything else Mr. Attorney? Interestingly, the
27 Attorney General has suggested, a more functional test. He has steered clear of either the nexus
28 test or the essential legislative functions test. And it's more of a functional test. So broadly,
29 what that would mean, the third test, it should be a functional test. Immunity would extend to
30 speech or acts of voting necessary for the discharge of the duties of a member of the Legislature
31 without fear of consequences. So, it's more functional that you are really having regards to the
32 object and purpose of the grant of that immunity.

33

34 **ATTORNEY GENERAL R. VENKATARAMANI:** Yeah. That's why I thought that the
35 Court is not required to go into the second part of Article 105(2).

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Actually, Article 105(2), the first part refers to in
2 Parliament. It uses the word in Parliament, so in Parliament would therefore possibly refer to
3 the physical space of Parliament. The latter part is not qualified by in Parliament, so you
4 publish something under the authority of Parliament. You'll publish it outside, Parliament
5 may authorize somebody to publish something outside, but it's protected.

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** No. Even there in that context
8 whether...

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** Because you are publishing a record of what
11 happened in Parliament. That's why the second part says, the second part is 105(2), says... in
12 respect of any report, paper, votes or proceedings. So report, paper, votes or proceedings is
13 obviously something which took place in Parliament. So though you are publishing it outside,
14 if it's done with by or under the authority of Parliament,

15

16 **ATTORNEY GENERAL R. VENKATARAMANI:** It's beyond any question.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, it's protected, but the first part says in
19 Parliament.

20

21 **ATTORNEY GENERAL R. VENKATARAMANI:** Therefore, it's proceedings... so in
22 respect of the Parliament or a committee thereof.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** In fact, Article 105(1) also says in Parliament, it
25 says in Parliament, there shall be freedom of speech in Parliament.

26

27 **ATTORNEY GENERAL R. VENKATARAMANI:** Freedom of speech, in Parliament.
28 That's a general, the wholesale proposition. Parliamentary independence, doing what it
29 intends to do, and nobody will say from outside, look here how did you speak in Parliament
30 like this?

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** So if a parliamentarian makes a speech outside
33 Parliament, that's not protected. There's no immunity, which attaches to that.

34

35 **ATTORNEY GENERAL R. VENKATARAMANI:** No, even... the US Constitutional law is
36 littered with all those examples of the speeches made outside Parliament, outside the

1 Congress, but in connection... that's why the question is whether it is a political activity or a
2 legislative activity? That kind of a dialogue.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** In part as such.

5

6 **ATTORNEY GENERAL R. VENKATARAMANI:** No, we are not concerned.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Because that says no person, so obviously person
9 is used in contradistinction to a member of Parliament. It will include, of course, a member of
10 Parliament also. No person shall be so liable, so liable means to a Court in any proceeding, in
11 respect of the publication, by or under the authority of either House of Parliament. So, if the
12 publications done by or under the authority of either House of Parliament...

13

14 **ATTORNEY GENERAL R. VENKATARAMANI:** That's completely protected.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** And a publication of what? A publication of a
17 report, paper, votes or proceedings.

18

19 **ATTORNEY GENERAL R. VENKATARAMANI:** Like the search light.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Thank you for your intervention and
22 for assisting us.

23

24 **ATTORNEY GENERAL R. VENKATARAMANI:** Your Lordship, please?

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Anything else, Mr. Attorney?

27

28 **ATTORNEY GENERAL R. VENKATARAMANI:** I just want to draw your attention to few
29 a articles, where I thought some reflections seem to be important.

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** We'll have a look at those article... two articles
32 which you have referred.

33

34 **ATTORNEY GENERAL R. VENKATARAMANI:** I'll just give those references.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Just give us the...

37

1 **ATTORNEY GENERAL R. VENKATARAMANI:** In Volume 4(a), I also don't propose to
2 go into the question, whether on a proper reading or a correct reading or the Prevention of
3 Corruption Act... this question need not be even gone into, because once they fall under
4 Prevention of Corruption Act, nothing else needs to be inquired into.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Volume 4A, page?

7

8 **ATTORNEY GENERAL R. VENKATARAMANI:** Page 550.

9

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

11

12 **ATTORNEY GENERAL R. VENKATARAMANI:** It's an article of the Transparency
13 International and I'll just give the few page references at page 551.

14

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

16

17 **ATTORNEY GENERAL R. VENKATARAMANI:** Where they deal with the whole
18 question of narrow versus wide immunity and they also give some illustrations in different
19 countries. 551, 552, 553, thereafter at 556.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, any other article? Would you like us to
22 look at any other article?

23

24 **ATTORNEY GENERAL R. VENKATARAMANI:** Just a minute.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, sure.

27

28 **ATTORNEY GENERAL R. VENKATARAMANI:** In the same volume...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Yes

31

32 **ATTORNEY GENERAL R. VENKATARAMANI:** Distinction between Britain, Canada,
33 and France... France has a slightly different position, not only on accountability, but also in
34 violability. That's a certain important shade of difference. That Your Lordships will find in
35 page 44.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Same volume?

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ATTORNEY GENERAL R. VENKATARAMANI: In the same volume. They're all in the same volume. Page 44. Then next is an article at page 66, in the same volume.

CHIEF JUSTICE DY CHANDRACHUD: 66?

ATTORNEY GENERAL R. VENKATARAMANI: 66. Then page 329. This takes stock of the law in the European Parliament situation. And at page 161, again, it's a publication by the Directorate General of European Parliament. So, they virtually look at the European position in various countries. And one is, not surprised to note... is that, the crime part of the elected members. It's is not something very peculiar to any particular part of the globe. So, these I thought would probably throw some light on the generality of these issues, and as I submitted to Your Lordships, the question of laying down a norm in reading 194 and 105. It has to be...

CHIEF JUSTICE DY CHANDRACHUD: Thank You, Mr. Attorney. The SG is going to argue now, Mr...

TUSHAR MEHTA: I'm not going to take more than 20 minutes.

CHIEF JUSTICE DY CHANDRACHUD: All right. We'll come back at 2:00.

TUSHAR MEHTA: My Lord, can Your Lordship permit me to address virtually, My Lord?

CHIEF JUSTICE DY CHANDRACHUD: Absolutely, yes, yes. There's no difficulty. We are on the hybrid mode. Please feel free. No difficulty at all. So, we'll resume at 02:00. And after the learned SG completes, then Mr. Ramachandran, a brief rejoinder from you?

TUSHAR MEHTA: I am not going to repeat anything. Only one new dimension, which may assist Your Lordship.

GOPAL SANKARANARAYANAN: I have one suggestion to the learned AG, that these articles which are mentioned in Volume 4(a), they don't have the citation. So, if you have to cite it, it may be a little difficult.

CHIEF JUSTICE DY CHANDRACHUD: Yes. Mr. Attorney, if you can just ask your junior after lunch, to just give us the citation. Those four articles or five articles, just the citation...

1 **ATTORNEY GENERAL R. VENKATARAMANI:** We'll do that.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** ... on a separate page of piece of paper. Yes, thank
4 you, Mr. Attorney General.

5

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Ramachandran? We will hear Mr.
8 Ramachandran now in rejoinder. Oh, Solicitor, oh so sorry. Mr. Solicitor has to argue. Mr.
9 Solicitor?

10

11 **TUSHAR MEHTA:** Yes My Lords. I'm extremely sorry once again. I am unable to join
12 physically which I should have My Lord but I'm still under the bout of some viral. That's the
13 reason, otherwise I would have been physically before Your Lordships, but my coming there
14 would be harmful to others.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** Yes [UNCLEAR]

17

18 **TUSHAR MEHTA:** Please come to page 3. I'm not repeating anything.

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Yeah, page 3 of your written submission?

21

22 **TUSHAR MEHTA:** My written submissions. Your Lordships would find at Volume 6. I am
23 sorry, Volume 2(b). This can be perhaps, one more angle from which Your Lordships can
24 consider the question whether bribery can at all be protected by the immunity or the privilege.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, you are referring to page 3, para 5, Mr.
27 Solicitor?

28

29 **TUSHAR MEHTA:** Yes, because neither the majority nor the minority in *Narasimha Rao*
30 examines the issue from this point of view.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** Right, let's see para 5 onwards. Let's see how you
33 have formulated it.

34

35 **TUSHAR MEHTA:** I have formulated para 5. It is submitted that the real issue is not the
36 contours of legislative privilege in relation to the Parliament or the State Legislatures. Rather
37 the short question on which the present reference can be decided easily, whether the offense

1 of bribery is complete outside the Legislature House, Legislative House. If it is complete
2 outside the House then Your Lordships need not be bothered by us as to whether they would
3 be protected, immunity would stand extended, privilege will be granted et cetera. Please see...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** But actually the place, Mr. Solicitor, the place
6 where it is completed or whether it is antecedent or subsequent to the speech or vote, really
7 should not matter in that sense, because then it will be a fortuitous circumstance. So, suppose,
8 we'll just give you a hypothetical example. Suppose the agreement to pay a bribe is arrived at
9 within the House itself, may not be within the, beyond the realm of possibility, that then
10 agreement to pay the bribe is the offer and the acceptance takes place within the House. Maybe
11 when somebody is, some third party is visiting the House for a committee meeting. We're just
12 giving you a hypothetical possibility. Just the argument. It makes no difference. So, it would
13 not really in that sense, it should make no difference to the final argument or the legal position,
14 in that sense.

15

16 **TUSHAR MEHTA:** There is a reason why I would...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Of course, bribery, you are right. This has come
19 on a very very strong footing that well, the offense of bribery is complete outside the House,
20 you said.

21

22 **TUSHAR MEHTA:** Yes, My Lord. There is a reason why I'm reading the provisions of Section
23 7, where it existed, when *Narasimha Rao* judgment was decided. The reason is in '18...
24 2018, Section 7 came to be amended. The argument in *Narasimha Rao* is that the
25 performance of the promise for which you took the money would be a relevant guiding
26 principle.

27

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

29

30 **TUSHAR MEHTA:** Whether you voted, you voted in favour, whether you voted against it, et
31 cetera. If that is the logic, which according to me is a flawed logic, then that gets further My
32 Lord substantiated. My submission is substantiated by the amended provision. But before that
33 I may show the...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Fair enough. I now got it. Let's see para 5
36 onwards. We can first read your formulation and then you can maybe explain it to us.

37

1 **TUSHAR MEHTA:** Para 6. The privilege in terms of Article 105(2) and 194(2) of the
2 Constitution attaches to anything said or any vote given, by a member in Parliament or the
3 State Legislature, as the case may be. If on the reading of Section 7, the offense thereunder can
4 be said to be complete, independent of and without a reference to anything said, or any vote
5 given, in Parliament or the State Legislature, no question of any legislative privilege being
6 effected can arise if the member is prosecuted for taking a bribe for the speech or the vote.
7 Now please see, My Lord, Section 7, which existed at the time of the judgement. Public servant
8 taking gratification other than legal remuneration in respect of an official act. Whoever being
9 or expecting to be a public servant, I'm just giving a hypothetical example, I am contesting the
10 election and I'm promising that if I become an MP, I'll do something for you expecting to be a
11 public servant, then accepts or obtains or agrees to accept or attempts to obtain, now from
12 whom? Any person. For whom? For himself or for any other person. What? Any gratification
13 whatsoever, whatever other than legal remuneration. For what? As a motive or reward for
14 doing or forbearing to do, either to vote or abstain from voting, either to vote in favour, vote
15 against, or abstain from voting. Any official act or for showing or forbearing to show in the
16 exercise of his official functions, favour or disfavour to any person for rendering or attempting
17 to render any service or disservice to any person with the Central Government. Please note
18 this, or any State Government or Parliament or the Legislature of the state. My Lord, the
19 Legislature, while formulating Section 7 was conscious or at least presumed to be conscious of
20 the provisions contained in Section 105 and 194.

21

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

23

24 **TUSHAR MEHTA:** And therefore specifically makes reference to Parliament or Legislative
25 Assembly while defining and providing for the punishment for bribery. My Lord, perhaps
26 maybe this is a little, it can be said to be a little far-fetched but is it not... I am posing a question
27 to myself, a manifestation of Article 194(3). 194(3) says that the Parliament can legislate as to
28 what would be excluded from the immunities of privileges. So by incorporating Parliament
29 and Legislature in the definition of the Prevention of Corruption Act itself.

30

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

32

33 **TUSHAR MEHTA:** The second ingredients My Lords, which is quite startling, Your
34 Lordships are aware, that [UNCLEAR] places the majority in *P.V. Narasimha Rao* case
35 holds that if everything would depend what you do, after you go inside the all of hall of
36 Parliament or within the Parliament, whether you vote, you do not vote, you vote as per the
37 promise given, et cetera. Here performance of that motive or reward for which My Lord, you

1 were paid bribe is not an ingredient at all. The moment I accept or agrees to accept or attempts
2 to accept or obtain, the crime is complete.

3

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

5

6 **TUSHAR MEHTA:** So performance, which is an underlying ratio in the senior, in majority
7 view *P.V. Narasimha Rao* case is absent.

8

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

10

11 **TUSHAR MEHTA:** Similarly at page 4, I have placed for Your Lordships consideration
12 Section 13, as it existed there. Again performance what you do, is irrelevant. Your Lordships
13 are right, My Lord, in many cases, it is quite possible that the agreement takes place within the
14 House. In extraordinary cases, even the acceptance of money also can take place inside the
15 House. But Your Lordship would not interpret the provision based upon...

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** The place at which the bribe is given.

18

19 **TUSHAR MEHTA:** Yes. And some extraordinary circumstances. Suppose one MP hands
20 over a bag containing two crores to another MP inside the House that you vote in a particular
21 way. Quite possible, but it is one out of thousand possibility. Generally, we go by the
22 Prevention of Corruption Act the way in which bribery takes place. So Your Lordships'
23 interpretation may perhaps not be guided by extreme examples.

24

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

26

27 **TUSHAR MEHTA:** Now, if Your Lordship, can ignore, there are some judgments which
28 analyses these provisions. But please directly come to the amended part. Thereafter I have
29 quoted the minority view of My Lord Justice S C Agarwal. Your Lordships have been taken
30 through this. I don't think I would be justified in reiterating, or re- reading the whole thing.
31 Your Lordships may kindly directly come to para 60. Now, this is amended Section 7. I'm sorry.
32 Page 60. This is amended Section 7 where the performance which is the underlying ratio in
33 the majority judgment is specifically excluded. Does Your Lordships, My Lords have Section
34 7?

35

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

37

1 **TUSHAR MEHTA:** This is Section 7 of 2018 amendment. Please read My Lord. Any public
2 servant who obtains or accepts or attempts to obtain from any person an undue advantage
3 with the intention to perform or cause performance of public duty improperly, his intention
4 not that he will perform but it becomes further clear. When I pay the bribe, my intention is
5 that somebody would either perform something or will not perform something, improperly or
6 dishonestly or to forbear or cause forbearance to perform such duty, either by himself or by
7 another public servant or, it is disjunctive, or obtains or accept or attempts to obtain an undue
8 advantage from any person as a reward for the improper or dishonest performance of a public
9 duty or for forbearing to perform such duty, either by himself or another public servant. So my
10 expectation is that you will perform or not perform. But for the purpose of completing the
11 offense, that performance is not necessary. That is becoming clear in explanation 1. Before that
12 I must read C. After "two disjunctive expressions or" please see C, "performs or induces
13 another public servant to perform improperly or dishonestly a public duty, or to forbear
14 performance of such duty in anticipation of or in consequence of accepting an undue
15 advantage from any person." These are three separate categories of offenses.

16

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

18

19 **TUSHAR MEHTA:** Now, it is made exceptionally clear in the explanation 1, immediately My
20 Lord, following Subsection C. Explanation 1; for the purpose of this Section obtaining, the
21 obtaining, accepting or the attempting to obtain an undue advantage shall itself constitute an
22 offence even if the performance of a public duty by a public servant is not, or has not been
23 improper. Suppose he goes inside and discharges his duties properly, but he accepts the
24 money. My respectful submission is that the connection essentially established in majority
25 view of *Narasimha Rao* as to have you perform your part of the bargain, is irrelevant for the
26 offense of bribery.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** The majority does not typically dwell on this at
29 all. Actually, it is the minority. Justice Agarwal says that well the offense of bribery is complete,
30 the moment that there is an agreement.

31

32 **TUSHAR MEHTA:** That's My Lord, the correct view. This is completely, what happens is,
33 the majority says...

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** The majority did not deal with it at all. Nor did
36 the majority say that unless there is performance, there is no bribery. They don't say to the
37 contrary also.

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TUSHAR MEHTA: Yes, My Lord. But, when they say that unless there is performance, there is no bribery.

CHIEF JUSTICE DY CHANDRACHUD: That's how they... alright.

TUSHAR MEHTA: May perhaps run contrary to the [UNCLEAR]. Thats the [UNCLEAR].

CHIEF JUSTICE DY CHANDRACHUD: Alright.

TUSHAR MEHTA: My Lord, para 50 on the page 70. My Lord, that's exactly what Your Lordships hinted. Interestingly, on the aspect of the offense of bribery being complete outside the Legislative House or Parliament itself even the majority view holds the same. Majority view to the extent it holds that prosecution against so and so would continue thus on the sole understanding that the offense of bribery was complete outside the House itself and does not require a vote in the House. Then My Lord, I may not read. Your Lordships, have read and reread the provisions. I am just taking Your Lordships through what we could find out to assist Your Lordships. I'm not reading it because now, the way in which even the petitioners have argued, this may not have any direct relationship because it's nobody's case that there need not be a privilege or immunity. Everyone says that there has to be. The only question is, whether bribery can ever be protected under the privilege or immunity. The nature of Parliamentary privilege, Your Lordships are aware, I am not reading it. I have quoted several authors et cetera. Then page 21, 'need for the privilege'. Your Lordships are aware, to ensure that I vote, I exercise my rights and perform my duties freely and fearlessly. That's My Lord, in one line, 'the object of the privilege'. Then Your Lordships, may directly come to the position in India, at page 24, at the foot. I am not reading it, My Lord. We have catered various provisions and for example, page 26, Government of India Act 1935 had similar provisions for immunity and privileges. That was Section 28 of the Government of India Act. Substantially, that is adopted in the Constitution but I am not reading it. Then Your Lordships may kindly come to page 29. Case Law on privilege. My Lord, whatever judgments are delivered so far to our knowledge, there may have been few which we have missed, are quoted, relevant provision is quoted. If Your Lordships would like to go through them. Then page 33, is position across the world. We have tried and culled out the position across the world. Again My Lord, for this limited question which Your Lordships are examining, this may perhaps not be the relevant, except for some academic interest. Then My Lord 37 is *Chaytor*. This is the judgement, My Lord that I respectfully rely upon. But I'm told this is also read before Your Lordships. Do I read it, or I may not trouble Your Lordship? But I think I should not trouble Your Lordships.

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CHIEF JUSTICE DY CHANDRACHUD: Which one were you saying?

TUSHAR MEHTA: Page 37.

CHIEF JUSTICE DY CHANDRACHUD: 37.

TUSHAR MEHTA: *R versus Chaytor*.

CHIEF JUSTICE DY CHANDRACHUD: *Chaytor*...I think we have looked at. Yes .

TUSHAR MEHTA: My Lordships have seen that. So I have just put in the relevant paragraph for ready reference. But I don't think I... but at the foot of page 39 there is one para 246. This is the concurring view in *Chaytor*.

CHIEF JUSTICE DY CHANDRACHUD: Yes.

TUSHAR MEHTA: 73 not 246... 73. A little later, the report considers the dividing line between matters that fall within the type of Parliamentary privilege and those which fall outside. This lies at the heart of these appeals and [UNCLEAR] quotation in full. This quotation is the concurring view in *Chaytor*. It takes the same view in a different phraseology and different way. That also My Lordships are taken through. There is no much development in America after the *Narasimha Rao* judgment. That's what we found, subject to the other side pointing out anything new. There is virtually none. Then page 42, voting or speech in Parliament is the core Parliament activity. Your Lordships are aware but may not be a matter of contention. Nobody would dispute this proposition, but the judgments including *Raja Ram Pal*, I have quoted, but as Your Lordships have very rightly and kindly pointed out that Your Lordships are not going to revisit that, therefore I'm not troubling Your Lordships. Then page 45. This, My Lord, as a proposition of law, could be very, very relevant, because self-regulation is essential ingredient of separation of powers. All the three. Basically My Lordships are aware, Parliamentary privilege is essentially against the Crown, against the Executive but the law which has developed or evolved is, that all three organs of the State would have the right and power of exclusive self-regulation without any interference by the other. In other words, My Lord, the independence of self-regulatory power of Parliament is as sacrosanct as My Lord, independence of Judiciary or independence of Executive. That's the judgment on this. Then My Lord, page 46. Examples of exercise of power by Parliament itself. This may be of some interest to Your Lordships. Of course, this may not assist Your Lordships in arriving

1 at any conclusion on the question on it but whatever examples we could find out in India, that
2 how this power of self-regulation is utilized by our Parliament, those examples are cited. Right
3 from My Lord, *Mudgal case*, then *cash for votes case* where some MPs came and throw
4 some bundles of money, et cetera, et cetera. But I'm not taking Your Lordship because this is
5 more for some other academic interest rather than assisting Your Lordships. My Lord again,
6 I'm emphasizing privilege as a concomitant of separation of powers, but Your Lordships are
7 not examining the concept of privilege as such, and therefore I am not reading any of these
8 judgments. Then, development of the law on privileges, again from the narrow compass of
9 bribery vis-a-vis privilege do not have much assistance. But since Your Lordship said that
10 whatever research we have done, please place it, so that Your Lordships gets everything on one
11 page. So that's what we have done.

12

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

14

15 **TUSHAR MEHTA:** This is my respectful submission that bribery can never be a subject
16 matter of immunity. Unless of course, one out of thousand cases takes place within the House.
17 This exam, this is not examined. This angle is not examined either by majority or minority. So
18 this is not just for Your Lordship's kind consideration. Instead of declaring *Narasimha Rao*
19 to be not a good law, My Lordships may have an option of saying that it is per *in curium*
20 because it does not take into account the statutory scheme of the prevention of corruption.

21

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

23

24 **TUSHAR MEHTA:** Performance is irrelevant and the offense which encompass all its
25 ingredients does not include performance, and when everything is outside the House is the
26 offense is complete outside the House, there is no question of privilege being claimed or
27 immunity being established [UNCLEAR].

28

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

30

31 **TUSHAR MEHTA:** These are my respectful submissions.

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Solicitor. Thankyou.

34

35 **TUSHAR MEHTA:** Apologies My Lord. Thankful My Lords permitted me for virtual.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you Mr. Solicitor. Yes Mr.
2 Ramachandran.

3
4 **RAJU RAMACHANDRAN:** Yes. Grateful Your Lordship. Firstly, [UNCLEAR] an
5 observation from the bench about not speaking, not voting. I, respectfully bow down to that
6 observation and respectfully agree that the immunity must extend not just to speaking and
7 voting but also remaining silent and abstention and in this context, kindly bear in mind that
8 when you are voting on the floor of the House in a modern House, there is an "Aye" button,
9 there is a "No" button, and there is an "Abstention" button. So an abstention is also a vote
10 given. And the significance of an abstention also whether it is in the matter of a vote of no
11 confidence on which the survival or otherwise of a Government depends or in the only known
12 case in our constitutional history, My Lords, of impeachment of a Judge of this Court, it's the
13 abstention, which made the difference. And there of course, it was a Whip of the ruling party,
14 so the ruling party en bloc abstained. But in a given case, an individual abstention or two or
15 three abstentions could make the difference. And so if such abstention is also made culpable,
16 it would definitely be in respect of a vote given and therefore, my respectful concurrence of the
17 observation which came from the bench.

18
19 **CHIEF JUSTICE DY CHANDRACHUD:** Yes.

20
21 **RAJU RAMACHANDRAN:** Now as far as the learned Attorney General's submission is
22 concerned, he says My Lords, that the judgment in *Narasimha Rao's* case, the majority,
23 takes a guarded view. I haven't understood the Attorney's submission as saying that the
24 majority is wrong. I understood him and that is why My Lord, I took the precaution in my
25 main argument of addressing his argument on why *Narasimha Rao* is not attracted. The
26 Attorney General's argument is only this that voting is not Legislative and I would reiterate it
27 as Legislative for an additional reason, which I am going to give, but otherwise the Attorney
28 General seems to be ad idem with our submission that the guarded view **Narasimha Rao**
29 deserves to be preserved.

30
31 The Solicitor General's argument is concentrated on the offense of bribery being complete and
32 that is the argument My Lords, of the learned amicus and they are interveners led by Mr.
33 Sankaranarayanan. Now, that argument begs the question of what does 'in respect of' mean?
34 Yes, there can be no doubt that the offense of bribery has been committed at an anterior point
35 of time. But if it is in contemplation of the vote, notwithstanding the criminality, the link with
36 the future vote brings it within the umbrella of privilege, notwithstanding the anterior
37 criminality.

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CHIEF JUSTICE DY CHANDRACHUD: Yes.

RAJU RAMACHANDRAN: Today, two of the learned Counsel for the interveners, Mr. Sankaranarayanan and Mr. Hansaria, made a reference to hate speech, in the context of the recent hate speech. Now, I am fortified in my argument by that example for the reason My Lords... Let us take that hate speech example.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Ramachandran, if the ingredients of the offense...

RAJU RAMACHANDRAN: Your Lordship, please.

CHIEF JUSTICE DY CHANDRACHUD: The situs of the ingredients of the offense is in the speech itself, then there is a... then it is immune. Then the immunity is attracted. We are not on the morality of it or whether it is proper or improper. But if the offense lies in the speech itself.

RAJU RAMACHANDRAN: If it was only in the speech, yes.

CHIEF JUSTICE DY CHANDRACHUD: But now, suppose right now you are, you are on your [UNCLEAR]. You say something about your opponent or you say something about a Community, all right. That speech itself is the offense, that is immune. The speaker of that speech is therefore clearly immune, because that is the matter of privilege.

RAJU RAMACHANDRAN: Absolutely. But I'm going... I am not on the...

CHIEF JUSTICE DY CHANDRACHUD: You are now saying that, irrespective of the... if the antecedent criminality, if the vote is a consequence of the antecedent criminality, then that itself is also within the ambit of the privileges and [UNCLEAR]

RAJU RAMACHANDRAN: Your Lordship please, and for that, I didn't complete that hate speech example. Of course My Lords, if the situs is the hate speech itself, but there can be an anterior event even in respect of a hate speech. A hate speech need not be necessarily a spontaneous speech on the floor of the House. There can be an example of a pre-planned...

1 **CHIEF JUSTICE DY CHANDRACHUD:** Of course. there may be a bribe given in, there
2 may be a bribe given in consideration of a hate speech which is made on the floor of the House.

3

4 **RAJU RAMACHANDRAN:** There can be a pre-planned conspiracy. There can be a pre-
5 planned conspiracy.

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** But then the prosecution is not for the hate
8 speech but for the bribery, which was underlying feature of the hate speech.

9

10 **RAJU RAMACHANDRAN:** I am on the offense of conspiracy, which is an offense by itself.
11 It's a conspiracy to commit a crime. Now, therefore if MP X, five days prior to the sitting of
12 Parliament, has a meeting in his constituency with three or four of his constituents, that let us
13 put these people in their place. I'm going to say this, this, this and I'll say it in Parliament. Let's
14 see what happens. Nobody can do anything. And in pursuance of such a conspiracy between
15 an MP and his constituents, it is decided to therefore make that speech on that occasion
16 because of the immunity. The offense of conspiracy is complete five days earlier because they
17 have conspired to commit a crime. Therefore how far do we then go in attaching criminality
18 and the submission which I made, which I reiterate now, in this context, is that you can't
19 bifurcate criminal offenses and say, we are talking only of bribery. Don't touch anything else.
20 Bribery. No, it is not just bribery which has an antecedent element because the physical act
21 has taken place before. Any other criminal act can have an antecedentary element.

22

23 **JUDGE:** That's the proviso to 128.

24

25 **RAJU RAMACHANDRAN:** Yes My Lordship. Lordships please, or as Justice Narasimha
26 just observed, defamation. So someone's character is to be besmudged. So you agree among
27 yourselves, that I'll say it in Parliament. What is 120(a) My Lords? See the definition of
28 criminal conspiracy. When two or more persons agree to do or cause to be done, one, an illegal
29 act, so let us take 153(a) , enmity between different groups.

30

31 **JUSTICE M.M. SUNDRESH:** Ramachandran, you are trying to read something into this
32 provision, which we don't find it there and then. Scope is totally different. That is what we are
33 trying to tell you.

34

35 **RAJU RAMACHANDRAN:** With respect... No My Lords.

36

1 **JUSTICE M.M. SUNDRESH:** 105. It deals with a right of a member to have his freedom of
2 expression, speech, and to vote. That right is recognized, number one. Recognition of the right,
3 if he exercises his right, by way of speech, by a voting, the consequence also protected. While
4 doing that the Parliament has got its own privilege, how they deal with it, like we can expunge
5 it or we can...

6

7 **RAJU RAMACHANDRAN:** Expel the member.

8

9 **JUSTICE M.M. SUNDRESH:** We can expel him or if the vote is invalid, it can do that. Now
10 where is a question of criminality coming here? Protection is very limited. What is happening
11 within the House, we are trying to make it much more wider, which is not even under the
12 provision. Now the privilege which is given is maintaining the sanctity of the House. Alright,
13 anything is happening here, please don't take it out to street. Nobody should be able to deal
14 with it. What is happening otherwise, what they do see, we are not able to decipher anything
15 under the provision. Whichever way you like to read it, whatever interpretation you give, let
16 us give a simple interpretation. What are the objective behind this? [UNCLEAR] beyond that.

17

18 **RAJU RAMACHANDRAN:** Therefore My Lords, my submission is that we are going away
19 from that simple interpretation, if we try to say that bribery is anterior, offense is committed,
20 and for that I am drawing an analogy with this, that if you conspire to defame, if you conspire
21 to commit hate speech which is anterior and then go and commit it in the House, then by that
22 logic...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** The defamation which is to take place is on the
25 floor of the House, then the act of defamation itself, is immune from any prosecution. In such
26 a situation can the conspiracy itself become actionable under 120(a)?

27

28 **RAJU RAMACHANDRAN:** Because 120(a). Let us see. Let us see the definition. Let us see
29 the definition. When two or more persons...

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** Agree. It just says agreement.

32

33 **JUSTICE P.S. NARASIMHA:** [UNCLEAR] 120(a) is agreement.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Agree to do what? An illegal act? Now if the
36 agreement is to make a speech in Parliament or the State Legislature, which is going to be

1 allegedly defamatory, that act itself is not illegal because that act is completely within the scope
2 of the immunity, the speech itself is protected.

3

4 **RAJU RAMACHANDRAN:** I'm sorry, can I just read out the ingredients of the section and
5 My Lords, respond to My Lord the Chief Justice? When two or more persons agree to do or
6 cause to be done, an illegal act...

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** [UNCLEAR] The essence or the element, the
9 critical element is the agreement. Once there's an agreement that itself, the offense is
10 complete. But the agreement constitutes an offense, if what is intended to be done is an illegal
11 act or an act which is not illegal by illegal means.

12

13 **RAJU RAMACHANDRAN:** My Lordship [UNCLEAR] .

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** So, if the act which you are going to, two people
16 sit in the House of a Member of Parliament, or five people sit in the House of a Member of
17 Parliament and say on this day in this at this point he or she is going to make a statement
18 which is defamatory, if that statement itself is not defamatory, or if it is defamatory, it is within
19 the protection of Article 105, then clearly, it's not a conspiracy within the meaning of 120(a)
20 then.

21

22 **RAJU RAMACHANDRAN:** But on the other hand, those who entered into that conspiracy,
23 with him. First, the conspiracy is hatched, consciously, to go and make that speech. So on the
24 one hand is the defamation contained in the speech, but anterior to that is the conspiracy to
25 commit.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Defamation.

28

29 **RAJU RAMACHANDRAN:** Defamation or hate speech under 153(a).

30

31 **CHIEF JUSTICE DY CHANDRACHUD:** But there is no conspiracy to commit a
32 defamation, because there is no defamation on the floor of the House.

33

34 **RAJU RAMACHANDRAN:** I'm sorry, My Lord. The conspiracy is to defame.

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36 **CHIEF JUSTICE DY CHANDRACHUD:** You are saying that the conspiracy is
37 independent of...

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RAJU RAMACHANDRAN: My Lordship, please.

CHIEF JUSTICE DY CHANDRACHUD: ...the actual act.

RAJU RAMACHANDRAN: The conspiracy is to defame individual X. The conspiracy is to make a hate speech.

CHIEF JUSTICE DY CHANDRACHUD: Anyway [UNCLEAR] hypothetical, We are really on a hypothetical, but I'm not sure you are entirely right on the interpretation because the act itself is not illegal, there cannot be a conspiracy.

RAJU RAMACHANDRAN: My submission is the act is illegal if you conspire to make a hate speech or to defame, and then go ahead and do it. And that hypothetical example has to be given because now we are trying to stretch this to the fact that bribery is anterior. Therefore, it is necessary, My Lords, to illustrate the fallacy of that approach by giving this [UNCLEAR] example.

JUSTICE P.S. NARASIMHA: It would depend on the nature of the offense. So far as, I'm not expert in Criminal Law, but so far as conspiracy 120(a) is concerned, agreement, which is illegal itself, is sufficient as a crime. Nothing more need to be 120, there are judgments saying that. So therefore prior to the participation in the Parliament, if an offense prescribed is complete at that point of time, then you can be prosecuted. On the other hand, take the example of defamation. Defamation is complete on the happening, the effect of it on the reputation of the person. Though there is a conspiracy prior to the proceedings of the House, eventually, the offense comes into place only upon the utterance in the Parliament and the effect of the utterance on the people. There, in that cases, then the immunity, perhaps attached but in 120 case, 120(a), that you are talking about, the offense is complete in the type of a conspiracy before the proceedings have commenced.

JUSTICE M.M. SUNDRESH: In other words, while the House is not concerned with the conspiracy per se, it's concerned with the effect of the conspiracy and that will take care of the decision to be made. When it comes to conspiracy, if it construes a criminal offense then the law will be set in motion. So, the House is concerned with that offending part of the speech or the vote and the resultant action to be taken by it. That they, only to that action you can take note of the conspiracy, to that action it will find fault with the speech made or the voting made only for arriving at its own conclusion. That will not take away the role of the prosecution

1 agency in a case where, offence is made out. 105 is not meant to be protected such a
2 contingency. The idea is to maintain the sanctity of the House. We can't stretch it too far to say
3 that what has happened earlier even assuming an offense made out, then we should not,
4 immunity will apply.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** Offense of bribery is in contemplation of a vote
7 to be given in the House or cast in the House. This brings it within...

8

9 **RAJU RAMACHANDRAN:** The protective ambit.

10

11 **CHIEF JUSTICE DY CHANDRACHUD:** The protective ambit of privileges and
12 immunities, notwithstanding the anterior criminalities. That's your formulation.

13

14 **RAJU RAMACHANDRAN:** Lordship please. And therefore, also my submission My Lords,
15 which is a part of this that you can't make a distinction between different types of criminal
16 offenses because always conspiracy abetment, et cetera are also part, are also offenses. And
17 therefore we can't say, we are only looking at bribery because it's shocking our conscience. We
18 can't compartmentalize it. Anything which is criminal is criminal. That's how we have to view
19 it. An attempt was made to remove defamation from the criminal law.

20

21 **JUSTICE P.V. SANJAY KUMAR:** [INAUDIBLE] that part of the majority judgment is
22 to be diluted.

23

24 **RAJU RAMACHANDRAN:** That doesn't affect because it doesn't affect my case.

25

26 **JUSTICE P.V. SANJAY KUMAR:** First proposition you are giving up then because we need
27 to dilute the majority judgement.

28

29 **RAJU RAMACHANDRAN:** The first proposition...

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31 **JUSTICE P.V. SANJAY KUMAR:** [UNCLEAR] on that count.

32

33 **RAJU RAMACHANDRAN:** The first proposition is in the context of my submission of
34 relating to the facts of my case. Because of vote...

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36 **JUSTICE SANJAY KUMAR:** [UNCLEAR] This counting needs to be diluted because the
37 majority judgment turns on that.

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RAJU RAMACHANDRAN: [UNCLEAR] Ajith Singh.

JUSTICE SANJAY KUMAR: Speech made, not made. Ajith Singh is let off because there was no speech made.

RAJU RAMACHANDRAN: Lordship, please, I am happy

JUSTICE SANJAY KUMAR: So [UNCLEAR] it would have to go now.

RAJU RAMACHANDRAN: I am happy if Ajith Singh had also got the protection, to that extent, by my agreeing...

JUSTICE SANJAY KUMAR: To that extent [UNCLEAR]

RAJU RAMACHANDRAN: I am only happy that the late Ajith Singh.

JUSTICE SANJAY KUMAR: To that extent the judgment needs to be modified Mr. Ramachandran. To that extent it needs to be modified. The judgment needs to be modified. That logic would have to go. So your first proposition goes.

RAJU RAMACHANDRAN: I still don't concede that my first proposition goes. My first proposition may be refined.

JUSTICE SANJAY KUMAR: Your first proposition needs to be diluted.

CHIEF JUSTICE DY CHANDRACHUD: What happened to [UNCLEAR]

RAJU RAMACHANDRAN: My first proposition may be refined, needs to be nuanced.

CHIEF JUSTICE DY CHANDRACHUD: By the way does anybody knows what happened to the prosecution of Mr. Aijt Singh thereafter? What happened actually in fact?

JUDGE: I'll [UNCLEAR] only to academic discussions in the Court. Reality what happens, God only knows.

JUSTICE SANJAY KUMAR: Bribe givers were acquitted. because the [UNCLEAR]

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JUSTICE P.S. NARASIMHA: Lawyers have the last laugh [UNCLEAR]

RAJU RAMACHANDRAN: On the *Jain Hawala case* ultimately, what happened to the prosecution?

JUSTICE P.S. NARASIMHA: There is no escape from PC Act Ramachandran.

RAJU RAMACHANDRAN: Now, My Lords, my second point. I'm making basically three points in my Rejoinder. My second point is with regard to Parliament and House of Parliament, Legislature and House of Legislature. Because My Lord, the Chief Justice today emphasized a different aspect of it because 105(ii), as I had also pointed out in my submission uses Legislature in the first limb and House of Legislature in the second limb.

CHIEF JUSTICE DY CHANDRACHUD: So what is the second submission?

RAJU RAMACHANDRAN: My submission is that the significance of this distinction, is not only what My Lord, the Chief Justice emphasized in his observations earlier in the day that House of Legislature authority pertains to what is published outside. That was the emphasis which, My Lord, the Chief Justice laid. But this distinction is also important in the context of my submission that voting as a member of the Legislature for the Rajya Sabha election is a vote given in the Legislature though it is not in the House of the Legislature, and let us not, and therefore the submission of the learned Attorney General is misplaced when he, with respect, contends that this is not the kind of vote which is protected under the immunity. I pointed out Article 80 of the Constitution, as an MLA it is my constitutional duty to vote. It's an integral part of my duty as an MLA to vote. And let us not look at this only from the point of view of an election of an MP or two to the Rajya Sabha. Voting in the Legislature and in Parliament as against in the House of Parliament, also happens in the Presidential and Vice Presidential election. That is also not done in the Chamber. It's done in the lobbies. And Your Lordship will recall, in 1969, a President of India, was elected as a result of a conscience vote, whereas against the official candidate of a ruling party.

CHIEF JUSTICE DY CHANDRACHUD: Mr. Giri. V.V. Giri, became the official party? Neelam Sanjeeva Reddy was the official candidate.

RAJU RAMACHANDRAN: Now therefore, voting, this vote whether it was my client Sita Soren's vote for an ex Rajya Sabha MP ex or whether it was a Congress MP's vote for V.V. Giri

1 or Neelam Sanjeeva Reddy. They are both of the same character. These were votes in
2 Parliament. These were votes in Legislature and My Lord, the same protection must arise. My
3 reason for emphasizing, the Presidential, Vice Presidential poll is that these are not just stray
4 Rajya Sabha elections...

5

6 **JUSTICE P.S. NARASIMHA:** [UNCLEAR] vote [UNCLEAR]

7

8 **RAJU RAMACHANDRAN:** Lordship please.

9

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

11

12 **RAJU RAMACHANDRAN:** Finally, My Lord. When I contend before Your Lordships, to
13 take note of the majority's caution that this can be misused that passage in Justice Bharucha's
14 judgment, which I read out My Lord. It is not something alarmist, mere possibility of misuse,
15 mere possibility of misuse is not something which I appreciate the Courts will not countenance
16 because the Courts are there to protect. But the possibility of misuse going back to Blackstone.
17 Blackstone is not quoted by Justice Bharucha, but the same thought is echoed in Justice
18 Bharucha's judgment, is the very basis of privilege. Misuse of the criminal law inter alia apart
19 from other law is the historical basis of privilege and therefore, if Your Lordships keep that in
20 mind, Your Lordships are not surrendering to the forces of fear, but Your Lordships are only
21 recognizing the historical and constitutional basis of this particular privilege we are talking
22 about. I'm grateful, and as I've already said, we have a strong case on merits for reasons which
23 we have set out in our information.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you very much for assistance. Thank you
26 Mr. Attorney, Mr. Patwalia, Sankaranarayanan...

27

28 **RAJU RAMACHANDRAN:** Thank you for a very pleasant hearing.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you very much for assisting us. All the
31 interveners and the juniors also. Thank you very much.

32

33 **JUDGE:** Thanks to the Amicus.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** And the Amicus. Mr Solicitor also, thank you.
36 Attorney as well. Thanks.

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1 **RAJU RAMACHANDRAN:** Very grateful.

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END OF THIS PROCEEDING