

**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 J.B. PARDIWALA**  
**HON'BLE MR. JUSTICE MANOJ MISRA**

**COURT NO.1**  
**SUPREME COURT OF INDIA**  
**RECORD OF PROCEEDINGS**

**Writ Petition (C) No.274/2009**

**ASSAM PUBLIC WORKS Petitioner(s)**

**VERSUS**

**UNION OF INDIA Respondent(s)**

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TRANSCRIPT OF HEARING

20-September-2023  
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10:45 AM IST

1 **TUSHAR MEHTA:** 501 as we, My Lord, tentatively mentioned before My Lord, the Chief  
2 Justice. If Your Lordships can provide for some schedule of deeds because many things are yet  
3 to be filed, we have done our best My Lord, to go as per My Lord, Your Lordship's formula,  
4 which is working very well. But My Lord, written submissions etc. My Lord, everything needs  
5 to be...

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Now, as you know, we have prepared an SOP  
8 which we followed in Maharashtra, particularly, very beautifully followed in Article 370, and  
9 it's an SOP dated 22nd August 2023, which sort of now basically the very same format which  
10 we followed, Mr. Dave was there, Attorney, and Solicitor were there, Mr. C.U. Singh was there  
11 in Article 370. So, if all of you can really prepare the common compilation, you know, because  
12 what happens is the SOP has been very useful. Otherwise, our problem you know, when you  
13 are dictating a judgment is, suppose there are 8-10 lawyers. You have ten compilations of case  
14 laws of different lawyers and becomes impossible to track each one of those cases, you have to  
15 go to... If you have one compilation, it becomes so much easier.

16

17 **TUSHAR MEHTA:** May we make a suggestion...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** How do we go about it, should we give you about  
20 two weeks' time for you to prepare the compilation..

21

22 **TUSHAR MEHTA:** One aspect...

23

24 **KAMAL NAYAN CHOUDHURY:** It has already been done, My Lord...

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** It has already been done?

27

28 **KAMAL NAYAN CHOUDHURY:** Yes. In five volumes.

29

30 **TUSHAR MEHTA:** Whatever...Whatever

31

32 **SHYAM DIVAN:** It's not in the format. It's not in the SOP format.

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34 **TUSHAR MEHTA:** No, no. Whatever is there, My Lord, on our side is brought in the SOP  
35 format, but it's not adept.

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**CHIEF JUSTICE DY CHANDRACHUD:** Can we suggest one thing, can we suggest one thing. We'll appoint as usual, two Nodal Counsel. One from your side. One from the Government's side.

**KAMAL NAYAN CHOUDHURY:** That is already done.

**CHIEF JUSTICE DY CHANDRACHUD:** That is already done. Now they will ensure...they will ensure that the compilations are brought in conformity with our SOP, so that once that is done it will help your convenience also in arguing the matter.

**NODAL COUNSEL:** [INAUDIBLE]

**ATTORNEY GENERAL R. VENKATARAMANI:** I told, the Nodal Counsel tells me, the computers are crashing. The weight of material that's been put on both sides. We need to croon it so that we don't have this problem.

**KAMAL NAYAN CHOUDHURY:** In fact, My Lord, the referral order is not part of the compilation that needs to be incorporated.

**CHIEF JUSTICE DY CHANDRACHUD:** All right. Only now, one more thing was the...Sorry!

**VIJAY HANSARIA:** If you see, Your Lordships, on 10th of January, where Lordships have appointed Nodal Lawyers on both sides, My Lord and formulated the motion. They have done a good job...they have made a compilation in that My Lord, but something needs to be added. So if Lordship gives us two weeks' time for both the parties, My Lord? We will inform the Nodal Lawyer, and anything to be added thereafter You will find out My Lord, the submissions.

**CHIEF JUSTICE DY CHANDRACHUD:** And written submissions also now in the next two weeks so that ...

**TUSHAR MEHTA:** My Lord, can it be three weeks?

**SHYAM DIVAN:** My Lord, my suggestion is, as far as the documents are concerned, the pleadings and the case law let that be done within two weeks because it is more or less ready. Thereafter please give us at least one week time, if not two weeks, because the written

1 submissions have to be cross referenced to those documents. So therefore we need that least  
2 time. Once we have those volumes which have the documents volume et cetera, then the  
3 written submissions can be easily...

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** Can we not shorten it down to three weeks?  
6 Because if we say four weeks, if we are on the one the ....

7

8 **TUSHAR MEHTA:** Three plus one if Your Lordships, can say?

9

10 **VIJAY HANSARIA:** Your Lordship can bifurcate that. The common compilation may be  
11 prepared within two weeks. Within two weeks thereafter, we will file our written submission,  
12 giving cross reference to those ones.

13

14 **SHYAM DIVAN:** Two weeks or one week. One week thereafter, whatever.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** File your submissions within one week  
17 thereafter, so...

18

19 **KAMAL NAYAN CHOUDHURY:** Three weeks in all.

20

21 **INDIRA JAISING:** With Your Lordship's permission may I just point out one thing?

22

23 **TUSHAR MEHTA:** It's there in the SOP. It's there in the SOP, all can cross reference it.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** Who are the two Nodal Counsels? They are here?

26

27 **KAMAL NAYAN CHOUDHURY:** Mr. Gautam Jain.

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Goutam Jain, and on your side?

30

31 **RESPONDENT'S COUNSEL:** And Diksha Roy.

32

33 **TUSHAR MEHTA:** Diksha Roy and Fuzail Ayyubi, Mr. Ayyubi, these are the two on our side.

34

35 [NO AUDIO]

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** For the written submission. It's just that once a  
2 common compilation is filed, the juniors will have to just put the pages of the common  
3 compilation.

4 That's all that has to be done.

5

6 **VIJAY HANSARIA:** I think three weeks is good enough.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** In terms of the .....

9

10 **TUSHAR MEHTA:** One aspect My Lord Mr. C.U. Singh is sitting on the centre. Mr. Sibal is  
11 on the right. But in fact, all of us are on the same side for a change.

12

13 **RESPONDENT'S COUNSEL:** Substantially.

14

15 **ADVOCATE CHANDER UDAY SINGH:** Since Your Lordships on 10th January, have  
16 narrowed it down to one question. Today, Your Lordships have said 6-A. Whether Section 6-  
17 A is valid or not? In view of that, it's not now petitioners and respondents. It is those who are  
18 challenging the same and those who are supporting 6-A. Some of them might be petitioners  
19 and some of them might be respondents. But the question now in Delhi, for all of us, Mr.  
20 Sibal...

21

22 **PETITIONER'S COUNSEL:** Media is supporting 6-A.

23

24 **ADVOCATE CHANDER UDAY SINGH:** Mr. Dwivedi et cetera. We are all for either  
25 interveners or respondents.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** So that's the only point before the Constitution  
28 Bench.

29

30 **KABIL SIBAL:** That's only one point, which is why the...

31

32 **INDIRA JAISINGH:** My Lord, with Your Lordship's permission.

33

34 **TUSHAR MEHTA:** That's on the merit.

35

36 **ADVOCATE CHANDER UDAY SINGH:** The basic thing is, those who are supporting the  
37 motion, so to speak, and those who are opposing the motion. We are all on the same side saying

1 that 6-A is validly enacted, and within the powers of Parliament and etc. etc. Now my learned  
2 friend Mr. Divan, Mr. Hansaria and all representing those who are challenging the validity.

3

4 **KAPIL SIBAL:** So that's why the Solicitor said and blamed me and saying I'm on the right  
5 side.

6

7 **TUSHAR MEHTA:** Geographically right side My Lord. Geographically on the right side.

8

9 **KAMAL NAYAN CHOUDHURY:** There is one request, My Lord. I think the lead case has  
10 been wrongly shown that Assam Public Work is not the lead case, My Lord. 562 of 2012 is the  
11 lead case. Your Lordship may kindly pass this order for verification.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** What we will do is, we'll say In Re: Section 6A.

14

15 **TUSHAR MEHTA:** In Re...Yes..[UNCLEAR]

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** One second. Procedural directions have also  
18 already...have been issued on 10 January, 2023. The title of the proceedings shall be as agreed:  
19 "In Re: Section 6-A of The Citizenship Act 1955."

20 The Nodal Counsel, appointed by the previous orders, has prepared a common compilation.  
21 However, the common compilation needs to be brought in conformity with the circular, which  
22 was issued on 22 August 2023, to streamline the filing of soft copies of common compilation,  
23 particularly in matters before the Constitution Bench of this court.

24

25 The Nodal Counsel, shall now take steps to ensure, that the common compilation are brought  
26 in conformity, with the circular and common Index is accordingly prepared for that purpose  
27 as well. The common compilations, the soft copies of the common compilation, shall be  
28 prepared on or before, this within...after two weeks, within two weeks. Written submissions  
29 shall be filed, on or before, *ek saptah aur extend kar do*. So, the common compilation will be  
30 filed, on or before, 3rd October, and written submissions on or before 10th October.

31

32 **INDIRA JAISING:** My Lord, I wish to point out one little thing.....

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** It has been agreed, that the contesting party,  
35 shall consist of, those who are challenging the Constitutional Validity of Section 6-A, of the  
36 Citizenship Act 1951, 1955, on one hand, and those including the Union of India, who are  
37 supporting the...

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**TUSHAR MEHTA:** In the State of Assam.

**KAMAL NAYAN CHOUDHURY:** In some of the case...

**CHIEF JUSTICE DY CHANDRACHUD:** ...Union of India in the case of Assam, who are supporting the validity of the provision.

**INDIRA JAISING:** My Lord, I wish to point out that...

**CHIEF JUSTICE DY CHANDRACHUD:** Common compilations shall accordingly be prepared, bifurcating the submissions, bifurcating those who seek to impugn the validity of the provision, and on the other hand, those who support the provision.

**INDIRA JAISING:** My Lord, may I just make a point. My Lord, My Lordship, may be aware, that this reference has been narrowed down, from the original terms to one order of reference only. And that is, whether Section 6-A, of The Citizenship Act, suffers from any constitutional infirmity, by order dated, 14th February 2023. Therefore, while making the compilation, My Lord, the Council should be aware, that their materials must be confined only to this one issue, My Lord. Otherwise this hearing will become very unfair.

**CLAIMANT'S COUNSEL:** That's exactly what is the case My Lord.

**KAMAL NAYAN CHOUDHURY:** It gets into ....

**INDIRA JAISING:** This is the sole Order of reference.

**KAMAL NAYAN CHOUDHURY:** In fact, on an earlier occasion Your Lordship wish to grant us relief on all the points.

**CHIEF JUSTICE DY CHANDRACHUD:** The common compilation and the written submissions, shall be confined, to the issue...

[UNCLEAR]

1 **KAMAL NAYAN CHOUDHURY:**...Lordship will recollect, on an earlier occasion, this  
2 question did crop up, My Lord, when we say the referral Bench referred 13 issues, that the  
3 Lordship was pleased to observe, that you can argue all the points.

4

5 **INDIRA JAISING:** No, no...

6

7 **KAMAL NAYAN CHOUDHURY:** Where's is the question of bogging down on us?

8

9 **TUSHAR MEHTA:** Question has several facets.

10

11 **KAMAL NAYAN CHOUDHURY:** Yes.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** We'll now, not say anything on that.

14

15 **SHYAM DIVAN:** Yes.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Everybody is now, we have already clarified that  
18 the issue is whether Section 6-A is valid. That's the..

19

20 **INDIRA JAISING:** It's the only issue that is referred now, My Lord.

21

22 **KAPIL SIBAL:** The date for the hearing...

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** The entire exercise will be completed on the 10th.  
25 Should we start at the 17th?

26

27 **SHYAM DIVAN:** Yes. Very well.

28

29 **KAPIL SIBAL:** Yes.

30

31 **RESPONDENT'S COUNSEL:** 17th of?

32

33 **SHYAM DIVAN:** October.

34

35 **RESPONDENT'S COUNSEL:** There be a vacation immediately.

36

37 **CHIEF JUSTICE DY CHANDRACHUD:** Otherwise it will have to start...



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**TUSHAR MEHTA:** Post Diwali, My Lord, if it can be? It would be November, My Lord, it can be November.

**CHIEF JUSTICE DY CHANDRACHUD:** Problem with Diwali would be, then it would be pushing it back.

**ATTORNEY GENERAL R. VENKATARAMANI:** 21st of November.

**KAMAL NAYAN CHOUDHURY:** No, no.

**RESPONDENT'S COUNSEL:** From the 17th to the 20th October, you have three days, My Lord, this is not a matter which will conclude that way.

**TUSHAR MEHTA:** Safest is after 19th of November.

**KAMAL NAYAN CHOUDHURY:** No, no, no, it will be too late.

**RESPONDENT'S COUNSEL:** There are holidays...

**KAMAL NAYAN CHOUDHURY:** No, no, it can't be. Let it be 17th of October, My Lord.

**TUSHAR MEHTA:** Your Lordship can hear it after 9th of November...

**SHYAM DIVAN:** Let it be 17th of October, My Lord.

**KAMAL NAYAN CHOUDHURY:** Yes, yes, it's a matter of 2012.

**RESPONDENT'S COUNSEL:** There are only two working days, My Lord's. 20th would be a miscellaneous day in October.

**CHIEF JUSTICE DY CHANDRACHUD:** So if we start on 17th, you get 17th, 18th and 19th of October.

**TUSHAR MEHTA:** Correct, there will be a break. It can't be over.

**RESPONDENT'S COUNSEL:** It won't be over My Lord.

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**CHIEF JUSTICE DY CHANDRACHUD:** It will be a only one week break.

**SHYAM DEVAN:** Yes.

**CHIEF JUSTICE DY CHANDRACHUD:** We can resume again.

**SHYAM DIVAN:** Yes, then we can resume immediately after the break.

**CHIEF JUSTICE DY CHANDRACHUD:** 31st again, we will start.

**SHYAM DIVAN:** Yes, correct. That's right.

**CHIEF JUSTICE DY CHANDRACHUD:** That will also give parties on both sides, a little time to prepare once the matter has been opened.

**KAMAL NAYAN CHOUDHURY:** Absolutely yes, My Lord.

**SHYAM DIVAN:** Grateful.

**CHIEF JUSTICE DY CHANDRACHUD:** 17th?

**SHYAM DIVAN:** Yes, very well.

**TUSHAR MEHTA:** 17th of October, My Lord?

**CHIEF JUSTICE DY CHANDRACHUD:** Yes.

**TUSHAR MEHTA:** There is no difficulty My Lord, but otherwise, considering the intervening holidays...

**RESPONDENT'S COUNSEL:** It will also give us time...

**TUSHAR MEHTA:** To focus, My Lord. If it can be in the November, after Diwali?

**CHIEF JUSTICE DY CHANDRACHUD:** Let's start on the 17th. What happens is, that after Diwali, at least we get started. Once the matter opens, we know we are in [UNCLEAR] of

1 this otherwise... And this side will be arguing, I guess for two days or three days. So we will  
2 have enough time until after Dussehra.

3

4 **CLAIMANT'S COUNSEL:** Sir, good food for thought during Diwali.

5

6 **SHYAM DIVAN:** It won't be lasting till Diwali. But certainly we'll last... for that first week  
7 till the Dussehra break, we will definitely take on our side.

8

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

10

11 **TUSHAR MEHTA:** Or other alternative is 31st...Sir, let's not table it. I leave it up to you.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, we start on the 17th. We will have a  
14 flavour of the matter when it opens. We will also have a week to do our own little reading, etc.  
15 And that's better. So, in fact, what I'll perhaps do is, all the other Constitution Benches because  
16 you know it's like a permanent Constitution Bench, we'll progressively.. we'll be listing all  
17 matters for directions so that then everybody gets a little time to prepare their compilation. So  
18 at least the matters are ready for hearing.

19

20 **TUSHAR MEHTA:** When it is listed, Yes..

21

22 **KAMAL NAYAN CHOUDHURY:** Yes, correct.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** We are having 7 judge, 9 judge matter, we will  
25 do that. That exercise so that everybody gets enough time. Then we can space out the hearings  
26 later, there's no difficulty....And it was so streamlined because everything was in just one set  
27 of compilation. It has become very simple for everyone on both sides to argue actually.

28

29 **ADVOCATE CHANDER UDAY SINGH:** Specially Your Lordship can't mark as it is and  
30 judges and all. You can't mark it in one volume...There was only one copy of each judgement...

31

32 **TUSHAR MEHTA:** This SOP has worked really effectively well, My Lord. Really effectively.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** So we will... same set of lawyers in 502 or  
35 different set of lawyers in 502?

36

1 **RESPONDENT'S COUNSEL:** In 501. Which Your Lordship and on an earlier occasion  
2 permitted me to fight that intervention may be formally allowed. I'll just give the number of  
3 interventions.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** We have allowed interventions, right?

6

7 **RESPONDENT'S COUNSEL:** I'll give the number to the Court Master.

8

9 **RESPONDENT'S COUNSEL NO.2:** One more submission My Lord, item 501, it may not  
10 be de-tagged from the list, My Lord.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** We're not de-tagging anything right now.

13

14 **ARYAMA SUNDARAM:** My Lord, one development which we did make was Learned  
15 Attorney and I were able to arrive at seven broad issues. I mean, there are a lot of arguments  
16 which will come up, but we came up with seven broad issues which will arise in this case. And  
17 would Your Lordships consider, otherwise, we have to come back to the same scheduling, My  
18 Lords and following Your Lordship's SOP, the timelines we can agree on because I don't think  
19 we should take more than three weeks to be ready, we are completely ready.

20

21 **ATTORNEY GENERAL R. VENKATARAMANI:** We have the same problem of having  
22 our documentation complete.

23

24 **ARYAMA SUNDARAM:** Sorry, I can't hear you.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Sundaram was not able to hear you.

27

28 **ATTORNEY GENERAL R. VENKATARAMANI:** Unless we have the documentation part  
29 completed and then sometimes we have an issue frame and we have some material to be read,  
30 some fine tuning position of an issue also happens. So therefore, I think we should...

31

32 **ARUNESHWAR GUPTA:** There are four more issues, Your Lordship, which we have raised.  
33 I'm in the transfer petition.

34

35 **ARYAMA SUNDARAM:** May I, just one minute...May I say this, it was because of this, My  
36 Lord, the documentation, everything else because especially this issue becomes historical.  
37 Otherwise it goes on My Lords to...we go back to even prior to the Constituent Assembly. So

1 the point here, My Lords was, because of that we thought we would draft the issues which we  
2 felt would arise. So our documentation can thereafter be centred around those issues.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, tell the issues which you have  
5 [UNCLEAR] in the court...

6

7 **ARYAMA SUNDARAM:** Yes, we have. Learned Attorney...

8

9 **ARUNESHWAR GUPTA:** Four more issues that we have...

10

11 **ARYAMA SUNDARAM:** One minute...one minute.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Step by step..

14

15 **ARYAMA SUNDARAM:** Hand over the issues which...

16

17 **RESPONDENT'S COUNSEL:** I am sorry to say that I have some different issues, My Lord  
18 so I tried to make them...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** One second, let him place the issue which he  
21 wants us to look at. We're not going to suddenly dictate an order without hearing everybody .

22

23 **ARYAMA SUNDARAM:** My Lord, these are brought within it, because if we go into sub  
24 issues, we'll come to 21 issues. So what we thought was we just brought seven issues which  
25 would arise in this matter.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Yes. Would like to read it out?

28

29 **ARYAMA SUNDARAM:** Yes, My Lord. Whether the proposition that...Sorry, I have My  
30 Lord's...'Whether the proposition that reservation of seats for the Scheduled Castes and  
31 Scheduled Tribes in this Lok Sabha and their State Legislative Assemblies, seize after a certain  
32 period, can it be said to be constitutionally final? Whether the right to stand as a candidate or  
33 to vote for a candidate in direct elections to the lower House of Parliament, as well as the  
34 Legislative Assemblies from all walks of societies, an integral part of principle of equality and  
35 democracy, and as such, a part of the basic structure of the Constitution...' My Lords, in fact,  
36 this would be the major issue because it would then decide how the matters to be decided,  
37 whether it's part of the basic structure or not. This would be the major issue. 'Whether the

1 amendments to Article 334 of the Constitution extending the period of reservations are not  
2 subject to closer judicial review, in view of a limited reservation policy enshrined in the original  
3 Constitution? Whether objective and quantifiable data was present for such extensions to save  
4 them from manifest arbitrators and the requirements of Article 14? Whether the Constitution  
5 104th Amendment Act is therefore unconstitutional, and whether consequently, all provisions  
6 contained in any enactment which provide for or facilitate such reservation of seats in the Lok,  
7 Sabha and State Legislative Assemblies...'. And various examples are given, My Lords. 'Will  
8 thus become constitutionally invalid..', because the direct effect is on these specific statutes.  
9 'Given the language of Article 329(a), the original based provision of the Constitution, whether  
10 it can be said to be in violation of the basic structure of the Constitution by taking away judicial  
11 review of challenge to delimitation of constituencies, allotment of seats to them under Articles  
12 327 and 328. Whether distribution of number of seats...'. Now My Lord, if Your Lordship say  
13 that it can be continued and decide against us on the other issues, then another issue arise is  
14 whether the distribution of number of seats for the SC and ST without rotation is violative of  
15 Article 14, and whether the Delimitation Act is violative of Articles 81, 82, 170 of the  
16 Constitution? My Lords, it is my belief that a lot of subsidiary issues will arise out of this play  
17 of 19(1)(a), play of 14 with that play of 15, 16. But this would be broadly all that I feel would be  
18 covered when Your Lordships are considering issue number 2. And I feel this more or less  
19 what we did, My Lords is when we went into specific issues given by everyone we ran into  
20 compilation of...

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney, I will come to you in a moment.  
23 Just one second Mr. Attorney. Mr. Aruneshwar Gupta's four issues are all subsumed in Mr  
24 Sundaram's formulation. I think because Aruneshwar your issues are submissions actually,  
25 they are not issues. They are all subsumed.

26

27 **ARUNESHWAR GUPTA:** My Lords, my issues are...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** Just one second, Mr. Attorney have been able  
30 to...

31

32 **ATTORNEY GENERAL R. VENKATARAMANI:** I think I had some issues earlier. We'll  
33 have re-look at it. I think issue number 4, is only issue which requires to be considered. The  
34 rest are all, of course satellite issues.

35

36 **TUSHAR MEHTA:** Arguments on 4 says, that's the only direct issue to be considered.

37

1 **ARYAMA SUNDARAM:** That is a very wide format. But to arrive at the conclusion for 4, I  
2 feel that decision under 2 is vital My Lords. Whether it's basic structure or not?

3

4 **ATTORNEY GENERAL R. VENKATARAMANI:** So therefore, issue number 4, the first  
5 part of it is a direct issue to be considered. And even number 6 may not arise here at all.

6

7 **TUSHAR MEHTA:** It would be different facets or

8

9 **ATTORNEY GENERAL R. VENKATARAMANI:** Satellite...

10

11 **TUSHAR MEHTA:** These are arguments, arguments, submissions, or...

12

13 **GOPAL SANKARANARAYANAN:** May I make a submission? I agree with the AG. The  
14 central issue is 334. They should be called in In Re: 334. 334 proviso is what we are challenging  
15 tenure extension. Everything else is consequential. Many of the other issues are consequential.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** There are really arguments under different...

18

19 **GOPAL SANKARANARAYANAN:** Exactly. As far as the Constitution Bench is concerned,  
20 the constitutionality of the 334 proviso has to be looked at. The rotation issue is only if we,  
21 that doesn't necessarily have to be dealt with by Constitution. That could be even dealt with..

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Can we just look at the proviso? Let's read it for  
24 a moment before we formulate Constitution, whether.. because that is very useful actually.

25

26 **SR. ADV S.M. CHANDRASHEKHAR:** 334 My Lords, 'Notwithstanding anything in the  
27 foregoing provisions of this part, the provision of this Constitution relating to,  
28 (a) reservation of seats for the SCs and STs in the House of People and the Legislative Assembly  
29 of the States, and:

30 (b) representation of the Anglo Indian Community in the House of People and in the  
31 Legislative Assembly of the States were nominated shall cease to have effect on the expiration  
32 of a period of...' and this is where the emanates of...[UNCLEAR]...

33

34 **ARYAMA SUNDARAM:** Every ten years.

35

36 **SR. ADV S.M. CHANDRASHEKHAR:** 'In respect of Clause A, so that continues, and 70  
37 years in respect Clause B. The [UNCLEAR] has come to an end from the commencement of

1 this Constitution, provided that nothing in this Article shall affect any representation in the  
2 House of People or Legislative Assembly until the resolution then existing also as the case may  
3 be....'

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** So Anglo Indians, it has come to an end IN 2020.

6

7 **ARYAMA SUNDARAM:** That's come to an end.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** So now, we are now left with really that challenge  
10 to SC, ST.

11

12 **ARYAMA SUNDARAM:** In fact, the issue is My Lords, every ten years, the proviso is being  
13 amended, every ten years the proviso is being amended. For example, now it is 80 years, earlier  
14 10 years ago, it was 70 years, before that, it was 60 years. So the present amendment is, this  
15 last amendment is saying 80 years. Earlier the amendment, if Your Lordship, would kindly  
16 see, it replaced the 70 years which was there earlier. So every time the period is expiring...

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** So, Mr. Sundaram, your argument in issue  
19 number two, I'm just to understand your argument is, that by reserving certain seats for a  
20 certain community, or a group of communities, that affect the rights of other communities to  
21 contest for those seats, and this is a part of the basic structure, that's your argument.

22

23 **ARYAMA SUNDARAM:** Absolutely, My Lord.

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** But this is a submission.

26

27 **ARYAMA SUNDARAM:** My Lord, that is one, I have no, I just tried to highlight this. If Your  
28 Lordship feel it can be all dealt with in one issue, I have no...

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** No, what we would want to know is, when you  
31 open the argument, you can say that you are challenging it on the following grounds, which  
32 will...

33

34 **ARYAMA SUNDARAM:** My Lords, obviously the other issue, which I did not include, was  
35 the nature of temporary legislations, et cetera, which, again is a matter of argument  
36 completely.

37



1 **CHIEF JUSTICE DY CHANDRACHUD:** A matter of argument completely. So really  
2 speaking, we should frame the issue in terms of 4, as in...[UNCLEAR].

3

4 **TUSHAR MEHTA:** That's part of 4, My Lord because 3rd is...

5

6 **ARYAMA SUNDARAM:** Then My Lord, everything will be subsumed in it. Everything will  
7 be subsumed in 4.

8

9 **TUSHAR MEHTA:** That's what the learned AG is suggesting.

10

11 **ARYAMA SUNDARAM:** No, I have no problem on that at all My Lord.

12

13 **TUSHAR MEHTA:** Whether the Constitution's 104th Amendment Act, is therefore  
14 unconstitutional, and whether consequently, all provisions are taken on everything. It's an  
15 umbrella issue, which takes care of the proposition.

16

17 **SR ADV S.M. CHANDRASHEKHAR:** With Lordship's permission, may I make one  
18 submission, My Lord?

19

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

21

22 **SR ADV S.M. CHANDRASHEKHAR:** My Lord, I would request two of three issues, to be  
23 added My Lord, but I have also My Lord, given the issues to the Nodal Counsel, but  
24 unfortunately, My Lord, it is not there.

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Chandrashekhar, one second. Just give us  
27 who has the issue that you are proposing, you have them? Just one second Mr.  
28 Chandrashekhar, we will just get it circulated to us. Where is it?

29

30 **SR ADV S.M. CHANDRASHEKHAR:** Do you have a hard copy for Your Lordships?

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** You have mailed it? When did you mail it?

33

34 **ATTORNEY GENERAL R. VENKATARAMANI:** May I submit, My Lord?

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Oh just now, then, all right, what are the issues,  
37 you tell us Mr. Chandrashekhar?

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**SR ADV S.M. CHANDRASHEKHAR:** My Lord, I have political reservations, in the absence of productive reservation under Part 2, protective discrimination under Part 3.

**CHIEF JUSTICE DY CHANDRACHUD:** One second. he'll just take more print out for all the colleagues, 1 second. *Woh upload kar do.* So that, all the lawyers will get it. *Unko ek de dejiye upload karne ke liye. Woh upload kar do.*

**ARYMA SUNDARAM:** I think the same. These would be the various arguments under the same issue.

**TUSHAR MEHTA:** These are again submissions and proposals.

**ARYMA SUNDARAM:** This becomes argumentative again to substantiate the meaning

**CHIEF JUSTICE DY CHANDRACHUD:** All right let's read, whether providing political reservation, valid in the absence of protective display, providing perfect reservation. That is fundamentalized.... to enter the program in any consequences [INAUDIBLE] ....are given. These are your arguments.

[INAUDIBLE]

**ATTORNEY GENERAL R. VENKATARAMANI:** Comprehensive enough to come.

**ARYAMA SUNDARAM:** If Your Lordship say 4, is the umbrella, then even my other issues will fall within 4. I've just maybe perhaps supplemented the...

**TUSHAR MEHTA:** First part.

**CHIEF JUSTICE DY CHANDRACHUD:** The following issue is framed for a decision by the Constitution Bench; whether the Constitution(104th Amendment) Act 2019 is unconstitutional.

**ARYAMA SUNDARAM:** My Lords...My Lords, I was just wondering, subject to what Your Lordship say, the 104th Amendment is an amendment. Before that, there was an earlier amendment for the 70 years, 60 years. So perhaps the umbrella issue would be, whether constitutional amendments extending periods of reservation under the proviso?

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**CHIEF JUSTICE DY CHANDRACHUD:** ...In the past..[UNCLEAR] get themselves out.

**ARYAMA SUNDARAM:** No. Not in the past. Not in the past. I'm saying 104th, Your Lordship is then limiting it to ten year period. I'm not asking Your Lordships to go behind the ten year period. I'm asking My Lords to... whatever Your Lordships will decide, be forward, after the ten year period also. Because the 104th Amendment may be replaced by a subsequent amendment ten years later.

**ATTORNEY GENERAL R. VENKATARAMANI:** We have to go back to the point where...[UNCLEAR]

**ARYAMA SUNDARAM:** So all I'm saying is that the principle is what is the major issue which has to be decided. Otherwise My Lord, I am not going behind the 104th Amendment. But the point is, if Your Lordship says, 104th Amendment is bad then there might be a subsequent amendment after 10 years for another 10 years. So Your Lordships will have to see whether...

**CHIEF JUSTICE DY CHANDRACHUD:** Or if you want...

**ARYAMA SUNDARAM:** The concept of extending the reservation.

**CHIEF JUSTICE DY CHANDRACHUD:** Should we formally adjourn here...Just *le lo* but we will say whether we will include it. Whether the exercise of the constituent power of amendment to extend the period prescribed for the expiration of the period of reservations under Article 334 of the Constitution is constitutionally valid. Mr. Aryama, Learned Senior Counsel. Issue 2, it is clarified they are not impinged on the legitimacy of the Amendments to the Constitution which were made prior to the 104th amendment.

**ARYAMA SUNDARAM:** My Lords.

**GOPAL SANKARANARAYANAN:** The 104th Amendment, to the extent it applies to SC/ST because the amendment applies to Anglo-Indians as well.

**CHIEF JUSTICE DY CHANDRACHUD:** Alright. The validity of the 104th Amendment shall be determined to the extent, that it applies to the Scheduled Castes and Scheduled Tribes

1 only. Since the reservation for Anglo Indians...in Article 334(b), has come to an end on the  
2 expedition of 70 years after the adoption of the Constitution.

3

4 **ARYAMA SUNDARAM:** My Lords...

5

6 **GOPAL SANKARANARAYANAN:** Your Lordships, will all this In Re: 334?

7

8 **TUSHAR MEHTA:** My Lords, that again, these are arguments.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** No, we will just say...Title, title. The reference to  
11 the Constitution Bench shall be titled as: 'In Re: Article 334 of the Constitution'. We will say,  
12 in terms of the SOP dated... the Circular dated 22 August 2023... who are the two Nodal  
13 Counsels?

14

15 **CLAIMANT'S COUNSEL:** What I have done is in terms of the SOP, I have prepared a Google  
16 form and I've circulated around the lawyers. They can upload it on the form and it will  
17 automatically come.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Now, who is on your side?

20

21 **TUSHAR MEHTA:** Mr. Chitwan Singal would be on our side, My Lord. Chitwan Singal. My  
22 Lords, we would also like to place material on record...so that, the [UNCLEAR] ...reservation  
23 can go on...

24

25 **CHIEF JUSTICE DY CHANDRACHUD:** The common compilation of case law documents  
26 and written submissions shall be prepared in terms of the Circular dated 22 August 2023. In  
27 modification of the procedural directions, issued on 1 November 2022, Mr. Puneet Jain and  
28 Mr. Chitwan Singal....Mr. Punit Jain on to the side of the petitioners and Mr. Chitwan Singal  
29 on the side of the Respondents are appointed as Nodal Counsel. The Nodal Counsel shall  
30 prepare soft copies of the common compilation duly indexed in terms of the above circular.  
31 This exercise shall be common compilation of documents, including statutes, shall be tried  
32 within a period of two weeks...alright...within a period of...

33

34 **TUSHAR MEHTA:** Four weeks, My Lord because...

35

36 **ARYAMA SUNDARAM:** Three weeks I think is enough.

37

1 **TUSHAR MEHTA:** We will be common in Assam also...we will do our personal research  
2 also...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Alright, within a period of four weeks. Within a  
5 period of...on or before...*aisa kar lo*...on or before, today is the 20th, right? On or before 17th  
6 October 2023. The written submission shall be filed on or before 7 November 2023. The  
7 proceedings shall be listed before the Constitution Bench on 21 November 2023. I think 21st  
8 we will have finished, in that time we'll finish Assam.

9

10 **ARYAMA SUNDARAM:** Yes, because that will take some time.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Motor Vehicle Act is on the 22nd, is it? When is  
13 that, Mr. Chitwan?

14

15 **CHITWAN SINGAL:** 21st October.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Oh, we have kept Motor Vehicle Act on 21st but  
18 Motor Vehicle Act, we don't know whether you'll be ready with your...

19

20 **ATTORNEY GENERAL R. VENKATARAMANI:** We will take about an hour or so.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** So, we take up this after the... then we can take  
23 it up on the 22nd instead of 21st.. that Motor Vehicle Act because that, we have heard  
24 arguments now, the Government has to tell us what they want.

25

26 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes. 22nd is okay.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** *Aap aisa kar lo mere liye*..you can prepare for  
29 all five of us the Constitution Benches and dates. So we know. So my learned judges also  
30 presiding on their Benches, they also know what matters not to fix. And tell the Court Masters  
31 also so that...

32

33 **GOPAL SANKARANARAYANAN:** There are some interventions also, My Lordship if you  
34 allow me..

35

36 **TUSHAR MEHTA:** Interveners, can be heard My Lord...

37

1 **ARYAMA SUNDARAM:** My Lord, otherwise, it increases the pleadings...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** The interveners will be given an appropriate time  
4 slot for the purpose of the arguments. And you say, all the Learned Counsel on behalf of the  
5 petitioners. And, how long would you take?

6

7 **ARYAMA SUNDARAM:** I would say about 3 days My Lords.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** All of you?

10

11 **ARYAMA SUNDARAM:** I'll try to finish in 2, I might spill over to the third, possibly My Lords,  
12 but the rest I think...

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** At the beginning of the hearing you may not...

15

16 **ARYAMA SUNDARAM:** I don't think everybody else will take more than a day.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** All the Learned Counsel appearing on behalf of  
19 the petitioners, including the interveners and the Learned Counsel appearing on behalf of the  
20 Respondents shall provide to the Court, a statement of the tentative time limit within which  
21 they seek to complete their respective arguments. Then we will fix time as we did in the earlier  
22 matter. Otherwise we just get repetition, so that's why. We also suggest that all the Learned  
23 Counsel for the petitioners and the respondents to have a meeting between yourself and  
24 petitioners so that you can bifurcate who is going to argue what issues. After the first two  
25 Counsels have argued for the others you can supplement. Then it will be much easier for us as  
26 well. If some nuances have remained of course you can add to the nuances. But otherwise it  
27 doesn't get. Otherwise we felt, I must...There is no secret that Mr. Sankaranarayanan at the  
28 end who had done all the hard work, got least amount of time in the previous matter.

29

30 **TUSHAR MEHTA:** He got 2 hours.

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** He got 2 hours in the original, but in the  
33 rejoinder nothing at all.

34

35 **ATTORNEY GENERAL R. VENKATARAMANI:** I have the pleasure of hosting this  
36 meeting.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** Attorney is going to host the meeting for all of  
2 you, he will also give you some nice snacks as well.

3

4 **TUSHAR MEHTA:** Learned Attorney, is a very good host also. Very good. Grateful.

5

6 **CHIEF JUSTICE DY CHANDRACHUD:** That's only Motor Vehicles no? Get that Motor  
7 Vehicles thing on the 22nd. Arbitration, what's your genuine assessment. Arbitration will be  
8 ready to go on by then or you think that Committee will be still...

9

10 **ATTORNEY GENERAL R. VENKATARAMANI:** Committee has given us report but I  
11 think there is some.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** Development. That may or may not go on.

14

15 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** Motor Vehicles will be..

18

19 **ATTORNEY GENERAL R. VENKATARAMANI:** It's only a report giving exercise.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Motor Vehicles. So I think we can keep it on the  
22 21st. Then let's see. We can..

23

24 **ATTORNEY GENERAL R. VENKATARAMANI:** Probably those two matters...

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** On 22nd we can take this after lunch or  
27 something like that, because *woh jyada nahi chalega*. We'll start on the 21st, I think.

28

29 **ATTORNEY GENERAL R. VENKATARAMANI:** In case I can probably in advance assist  
30 the Court by bringing those reports and they are...may be for the...

31

32 **CHIEF JUSTICE DY CHANDRACHUD:** In case you are ready, let us know, we can list  
33 Motor Vehicle on 21st. The Motor Vehicles will get over and say, an hour or so. And we can  
34 start this on the afternoon on the 21st.

35

36 **ATTORNEY GENERAL R. VENKATARAMANI:** I'll get it done.

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** So that...Today we will keep on the 21st. At the  
2 worst we will have to break this for maybe half an hour or so on the 21st. We can avoid that.

3

4 **TUSHAR MEHTA:** Connected matters would follow. Otherwise this would be never ending.  
5 Mr Biju's ..

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Biju you argue, forget the...again the  
8 matters. We are not going to look at the individual pleadings. We have the question of law  
9 which is important.

10

11 **TUSHAR MEHTA:** Obligated.

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** In 503, we have Learned Amicus is here  
14 and I am ready with the matter but only thing is even though compilations have being filed on  
15 behalf of Amicus, I didn't have that done from part.

16

17 **RAJU RAMACHANDRAN:** For the Petitioner I wish to say something. For the Appellant.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Ramchandran you are for the Appellant. Are  
20 you all ready then we can start something, we have assembled our brains, Benches are not...

21

22 **RAJU RAMACHANDRAN:** And I'm going to try to persuade My Lords that this reference  
23 was not necessary at all in the first place, and that the matter needs to be heard by a Regular  
24 Division Bench. Because compilations are all My Lords which my Learned Attorney General  
25 wishes to file Your Lordship may decide after hearing me on whether the reference itself was  
26 necessary or not. Because according to me, on the basis on facts of the case and on the orders  
27 passed themselves a reference is not warranted. I'll just place that before My Lords.

28

29 **PARAMJIT SINGH PATWALIA:** No, in fact what happened on the last day also, I had the  
30 next matter, Article 319, I was in the court. So both the sides were saying, that perhaps then  
31 both felt [INAUDIBLE] the correctness of the decision in P V Narasimha Rao, So that is what  
32 they asked me to assist the court, as to whether Narasimha Rao, according to me is correctly  
33 decided or needs a fresh look by a larger Bench. So that's the scope of my assessments to Your  
34 Lordships. So I am ready with that. According to me, it does need a fresh, is my respectful  
35 submission.

36



1 **RAJU RAMACHANDRAN:** But the occasion has not yet arisen, according to me, I'll  
2 persuade my notes, My Lords.

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** Then we can really open on that actually  
5 because...

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** Even I said, that there's no need for a  
8 reconsideration of Narasimha Rao.

9

10 **GOPAL SANKARANARAYANAN:** My Lord, I am for an intervener, I support, Mr.  
11 Patwalia, 100%, there's no question of a bribe giver, to be insulated in some way, when the  
12 bribe taker, is made a vote in the Parliament.

13

14 **PARAMJIT SINGH PATWALIA:** And a person who takes a bribe to vote and does not vote.  
15 As per Narasimha Rao, is capable of being prosecuted, but a person who does vote, then  
16 becomes immune from prosecution. As for the majority in that judgment. I have made some  
17 points for Your Lordship's considerations, in my written submission.

18

19 **ATTORNEY GENERAL R. VENKATARAMANI:** I only want to add this, that the law  
20 through over, whether it in the UK or USA, the proceedings in Parliament is a core issue. Your  
21 speech or vote, must relate to the proceedings in Parliament as a function of the business in  
22 Parliament. Something unconnected really, is not protected at all. *Sita-Charan* falls in that  
23 category. So election to Rajya Sabha is something unequivocal with the proceedings the  
24 business of the House. For the larger reference may not be necessary at all, but I think....

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** All right, then we can actually start, because  
27 instead of just placing it some other day, we can at least hear what is your nuances on this and  
28 Mr. Patwalia, is also ready. If we decide to enter upon the reference, then, of course, we will be  
29 hearing Mr. Patwalia.

30

31 **ATTORNEY GENERAL R. VENKATARAMANI:** Only assistance is, of course I can place  
32 all some articles and judgments from....[UNCLEAR]

33

34 **RAJU RAMACHANDRAN:** The Attorney's submissions are not on the record. I was asking  
35 that, Mr. Gaurav Agrawal, even yesterday from their side nothing has as per the SOP...

36

37 **TUSHAR MEHTA:** I need, Amicus's submissions we received, yesterday.

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**PARAMJIT SINGH PATWALIA:** Yes, yes, but because the matter came up, so...

**TUSHAR MEHTA:** So I'm not saying, I'm not complaining.

**PARAMJIT SINGH PATWALIA:** So really. As for the SOP, I'm ready to go on. My submissions are there.

**GOPAL SANKARANARAYANAN:** So, Your Lordship, can start the matter.

**CHIEF JUSTICE DY CHANDRACHUD:** Mr. Attorney..

**TUSHAR MEHTA:** Let the parties first address, interveners will like to start, but our submissions, judgment et cetera, should be under...

**PARAMJIT SINGH PATWALIA:** My Lord, the learned Attorney has given some articles...

**CHIEF JUSTICE DY CHANDRACHUD:** Today we are on Wednesday... when...

**PARAMJIT SINGH PATWALIA:** The learned Attorney, has given some articles, but in really speaking, as to what amounts to a proceeding in Parliament. Now I have not looked into that issue, because I didn't know they would be coming up with that going to say that, voting at an election for a *Rajya Sabha* member, is not a proceeding in Parliament, then there is an earlier, Full Bench in *Kuldip Nayar*, where Your Lordships, have held in Para 373, that yes, it is not. If that is not, then his petition has to fail straight away on that, because then there's no question of immunity if it's not a proceeding in Parliament at all. But if that issue also is to be raised, then My Lord, I have only been, I have only been appraised of that today morning, in fact, at about 10:30, that those articles. So some reaction time. If they file it, then I can have. But on the question. whether on a pure legal submission, whether that judgment needs a fresh look, there is no doubt in my mind that the judgment needs a fresh look, but...

**CHIEF JUSTICE DY CHANDRACHUD:** That's filed?

**PARAMJIT SINGH PATWALIA:** That's filed. That's filed.

**GOPAL SANKARANARAYANAN:** But we are not dealing with an abstract situation.

1 **PARAMJIT SINGH PATWALIA:** The judgment is very interesting.

2

3 **RAJU RAMACHANDRAN:** But we are not dealing with an academic debate on whether  
4 this is right or wrong. The question is whether a reference to five judges, on whether  
5 Narasimha Rao should be reconsidered, in which case seven judges, whether all that is  
6 warranted on the facts of this case and on the judicial orders of this case, that's the question  
7 not generally whether Narasimha Rao was a good judge or a bad judge.

8

9 **PARAMJIT SINGH PATWALIA:** Then My Lord, I suggest what can be done. Let them file  
10 those articles because they are both together on that and we have been confronted with that  
11 only today morning. So let them file that and let us have some reaction time on that.

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** The subjective codification still eludes  
14 almost several...

15

16 **TUSHAR MEHTA:** It would have ramification..

17

18 **RAJU RAMACHANDRAN:** Another House we completely...

19

20 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Ramachandran, once the reference has been  
21 made, we should hear the reference. Ultimately, these are important matters. It's so difficult  
22 otherwise for Constitution Benches to reference, assembling, then it goes into the loop for its  
23 own order per hearing. Now that we have the reference we should hear the matter.

24

25 **RAJU RAMACHANDRAN:** Please see only two orders. And then, if Your Lordship still feels  
26 it's necessary, Your Lordship can go ahead. Just two orders of this Honourable Court in this  
27 case. Just two orders. In Volume 3 pleadings, the record of proceedings. And just two times  
28 on what this appeal is about. The appellant My Lords, may I just give two lines of introduction  
29 to the merits of the case as to how this appeal came to be filed. The appellant, My Lords, was  
30 at the relevant time an MLA of the Jharkhand Legislative Assembly belonging to the  
31 Jharkhand Mukti Morcha. She was sought to be prosecuted for allegedly receiving a bribe from  
32 an independent candidate, not her own party candidate for an election to the Rajya Sabha.  
33 There were two Rajya Sabha seats to be filled. MLAs were voting. She as a voter, MLA is alleged  
34 to have received a bribe. She was sought to be prosecuted. The appellant moved the Jharkhand  
35 High Court for quashing, claiming the protection of My Lords, Article 194(2) on the ground  
36 that Narasimha Rao has delineated the scope and she is immune in respect of any vote given,  
37 irrespective of whether she actually voted for that person or ultimately did not. As it happens

1 in this case, she didn't ultimately vote for that alleged bribe given. The High Court decided  
2 against my client holding that since she did not in fact, vote for the bribe giver, voted for  
3 someone else, she is on the same footing as Ajit Singh in Narasimha Rao's case because Ajit  
4 Singh in Narasimha Rao's case did not get the benefit of immunity because he did not vote in  
5 the confidence motion. He abstained. So **Narasimha Rao** itself held that immunity is only  
6 in respect of a vote given, a speech made or a vote given. Since he did not vote therefore, he is  
7 not immune. That was Narasimha Rao's case, My Lords. Ajit Singh was liable to be prosecuted.  
8 The High court says in our present case that if Ajit Singh is not immune for prosecution  
9 because he abstained equally, my client would not be immune for prosecution because she did  
10 not vote for a bribe giver but colloquially, she ditched him and voted for somebody else. So we  
11 are in appeal against that judgment. So that is a regular criminal appeal, which only involves  
12 the application of Narasimha Rao. It only involves the application of Narasimha Rao. Now  
13 Lords, when that came up before this Honourable Court, the first order, I'm just drawing  
14 attention to two orders. Page 12, My Lords, PDF of the Pleadings Volume, Volume 3, that's the  
15 Record of Proceedings Rules contains all the orders of this Honourable Court. Do My Lords  
16 have it? This is Order dated 23-09, which is... 23-09. Yes, sir. Two Learned judges. Pleadings  
17 are complete since the issue arises for consideration is substantial and of general public  
18 importance. Issue that arises, should be we refer these matters to a larger Bench of three  
19 Honourable Judges to be constituted by Honourable Chief Justice of India. The petitioner  
20 shall be free to press his application for ad interim stay before the larger Bench. The issue  
21 which arises, which is in the appeal nothing else is articulated here, because whether  
22 Narasimha Rao ratio of Ajit Singh can be extended to my client itself is an issue of importance  
23 which merited a Three Judge Bench, reference My Lords I'm not quarrelling with that at all.  
24 When the matter then came up before a Bench of three honourable judges. Now, My Lords,  
25 PDF at page 4. Do My Lords have it? It's a detailed order. 7th of March 2019.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** 'Leave granted.'

28

29 **RAJU RAMACHANDRAN:** 'Leave granted'. The criminal prosecution launched against the  
30 appellant is sought to be nullified on a claim of immunity under Article 194(2), of the  
31 Constitution of India. The gravamen of the charge against the appellant is that he, it is she  
32 actually, had accepted a bribe to vote in favour of a particular candidate in the Rajya Sabha  
33 election that was held sometime in 2012 in Jharkhand. The precise question was dealt with  
34 by a Five Judge's Bench of this court in PV Narasimha Rao. While two judges of the Bench  
35 took the view that the protection and Article 105(2)/194(2), of the Constitution and the  
36 immunity granted cannot extend to cases where bribery for making a speech or vote in a  
37 particular manner in the House is alleged. The majority view, while acutely conscious of the

1 seriousness of the offense, felt that the wrongful act and the sense of indignation, the same  
2 thing which is being expressed My Lords now also by Mr. Sankaranarayanan, of the Bench,  
3 should not lead to a narrow construction of the Constitutional Provisions, which may have the  
4 effect of impairing the guarantee to effective parliamentary participation and debate. Having  
5 considered the matter we are of the view that having regard to the wide ramification of the  
6 question that has arisen. The doubts raised and the issue being a matter of substantial public  
7 importance, we should be requesting for a reference of the matter to a larger Bench, as may be  
8 considered appropriate to hear and decide the issue arising. We order accordingly. Now,  
9 kindly just this one sentence, My Lords . 'Having considered the matter', para 5, only I wish to  
10 emphasize. 'The matter, we are of the view that having regard to the wide ramification.' Of  
11 course, My Lords, a matter like this of bribery, alleged bribery of an MLA will always have  
12 ramifications. 'The doubts raised...', My Lords...I pause here. Where have the doubts been  
13 raised, by which judicial order? The doubt has only been raised in the dissenting judgment. If  
14 that constitutes doubt raised, then in every case, My Lords, where there's a dissenting  
15 judgment, there's sufficient ground for reconsideration because a doubt has been raised. So  
16 that doubt raised cannot refer to the dissenting judgment of that very case.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** Having regard to the ramifications of the  
19 question that has arisen.

20

21 **RAJU RAMACHANDRAN:** Lordship please.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** And the doubt and the doubts raised and the  
24 issue being a matter of substantial public importance. The Court felt that this requires  
25 consideration by a larger Bench in that sense.

26

27 **RAJU RAMACHANDRAN:** But the question still remains. Where is the articulation by a  
28 judicial order? Neither side is questioned Narasimha Rao. Judicially, there is no articulation  
29 of a doubt that Narasimha Rao. There is just one more thing, I wish to point out apart from  
30 these two orders.

31

32 **CHIEF JUSTICE CHANDRACHUD:** But how do you stand in relation to *Narasimha*  
33 *Rao*? *Narasimha Rao*, will apply to you according to and you'll be protected by  
34 *Narasimha Rao*.

35

36 **RAJU RAMACHANDRAN:** I will be protected, because according to me...

37

1 **CHIEF JUSTICE DY CHANDRACHUD:** But then, that's the point. Therefore...

2

3 **RAJU RAMACHANDRAN:** That's what I mean.

4

5 **CHIEF JUSTICE CHANDRACHUD:** You are saying, therefore you apply, *Narasimha*  
6 *Rao's* dictum, and allow my appeal and set aside the impugned order of the High Court.

7

8 **RAJU RAMACHANDRAN:** That's a matter of three judges, not for five judges.

9

10 **CHIEF JUSTICE DY CHANDRACHUD:** No. But therefore, the correctness of the  
11 judgment of the majority is clearly something which arises here.

12

13 **RAJU RAMACHANDRAN:** With respect, in any case with regard to application, for  
14 instance,

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** You may be right to this limited extent, that if  
17 you decide to refer to *Narasimha Rao*, to a Bench of seven, we may have to formulate some  
18 reasons why we are doing that, we may have to formulate some, though of course, Justice  
19 Gogoi, Chief Justice Gogoi's Referring Order says, reference of the matter to a larger Bench,  
20 as may be considered appropriate. It could have been well placed before Seven directly, is  
21 being placed today before Five. We may have to formulate some reasons, why we feel that  
22 *Narasimha Rao*, requires reconsiderations.

23

24 **RAJU RAMACHANDRAN:** There is just one more aspect My Lord. The Chief Justice was a  
25 party to two decisions, where *Narasimha Rao*, was cited. One was, the Standing Committee  
26 Resolutions, *Mehta* My Lords.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** *Kalpna Mehta*.

29

30 **RAJU RAMACHANDRAN:** Where My Lord, in one of the judgments, concurring  
31 judgments with the majority, observed, that correctness of *Narasimha Rao* was not  
32 involved in this case, if it is questioned in some appropriate case, it will have to be considered.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** Considered.

35

1 **RAJU RAMACHANDRAN:** Thereafter, in the *Kerala Legislative Assembly case, K*  
2 *Ajit, Narasimha Rao* was directly cited, and was invoked, was invoked by the accused and  
3 Your Lordship..

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** We distinguished it.

6

7 **RAJU RAMACHANDRAN:** ...[UNCLEAR] *Narasimha Rao*, narrowed it to the most  
8 narrow interpretation possible, that it can't apply to vandalism, etc.

9

10 **CHIEF JUSTICE CHANDRACHUD:** That is the case where they broke furniture and the  
11 Legislative Assembly, et cetera,

12

13 **RAJU RAMACHANDRAN:** So if free speech and freedom of expression, extend to breaking  
14 of furniture that is not protected, Your Lordship clarified. Even in that judgment, an occasion  
15 did not arise, for this Court to doubt, *Narasimha Rao*. Therefore, on this tenuous, one  
16 sentence My Lords is it sufficient for Your Lordships, to spend judicial time, is my respectful  
17 submission. I leave it to Your Lordships.

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Patwalia, Mr. Attorney,..

20

21 **ATTORNEY GENERAL R. VENKATARAMANI:** I concur with Mr. Ramchandran, on this  
22 question. No need for a reference to a larger Bench. The Three judgments, that Your Lordships  
23 which clarify, the position that, what exactly would qualify for a 194 protection? There must  
24 be proceeding, the reasons of the function of the House, so whether *Narasimha Rao*, will  
25 be considered, does not arise in the fact of this case at all.

26

27 **RAJU RAMACHANDRAN:** That's right.

28

29 **ATTORNEY GENERAL R. VENKATARAMANI:** The bribe given outside for voting in  
30 favour of the candidature again, for the Council, elected for the Council of the States. So it has  
31 nothing to do with the business or the function of the worker or the Legislative worker of the  
32 Assembly. So that's why the US example. You make it very clear.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** The bribe is given to, so that's the discharge of  
35 functions of a Member of Parliament or State Legislative Assembly, should take place in a  
36 particular way, in accordance with the bribe giver's intent, is that not alleged to the...

37

1 **ATTORNEY GENERAL R. VENKATARAMANI:** It was a case of a no confidence motion,  
2 in the Parliament. Therefore, anything which is relatable directly or even indirectly. For in the  
3 number of cases where members that ask to make preparation for the purpose of their  
4 legislative business, even they may have exercised that. But where this has nothing to do with  
5 that, it's an election pure and simple, a process regulated by set of rules or regulations.  
6

7 **CHIEF JUSTICE CHANDRACHUD:** Here what is the allegation, where was a bribe given  
8 in this case? What is the allegation in our case here?  
9

10 **ATTORNEY GENERAL R. VENKATARAMANI:** For the purpose of election to the Rajya  
11 Sabha.  
12

13 **CHIEF JUSTICE CHANDRACHUD:** Right.  
14

15 **ATTORNEY GENERAL R. VENKATARAMANI:** So she received the bribe. Nothing to do  
16 with the business of the House. The Function, the Legislative Act, as I call it in US, all the  
17 running thing is, it must have a nexus with a legislative deliberation, or the legislative purpose  
18 or legislative business. It has nothing to do with that.  
19

20 **RAJU RAMACHANDRAN:** That is their stand on merits which we are contesting.  
21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Mr. Patwalia, what do you have to say? Let's see  
23 what Mr Patwalia has to say.  
24

25 **ATTORNEY GENERAL R. VENKATARAMANI:** I have a my brief note I prepared for  
26 Your Lordships.  
27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Let's see, what the Attorney's note is?  
29

30 **ATTORNEY GENERAL R. VENKATARAMANI:** Your Lordships have it?  
31

32 **CHIEF JUSTICE DY CHANDRACHUD:** We will just circulate it now. *Mil gaya?*  
33

34 **RAJU RAMACHANDRAN:** And what I have argued, is also articulated in my written  
35 submission. In the first part of my written submission, I have set out exactly what I stated  
36 before My Lords.  
37



1 **CHIEF JUSTICE DY CHANDRACHUD:** Where is your written submissions? Are they in  
2 a separate compilation?

3

4 **RAJU RAMACHANDRAN:** Lordships please, note. Volume 1. Volume 1, is my written  
5 submission. So contents itself, Your Lordships will see. A and B deal with the same question,  
6 My Lords. I have only orally articulated what I have stated here.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** Where do we get it, in your written submission?

9

10 **RAJU RAMACHANDRAN:** Yes, My Lords.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Okay, let's just first see Mr. Attorney's  
13 submission. I just opened that.

14

15 **ATTORNEY GENERAL R. VENKATARAMANI:** The case on hand, on facts not being  
16 similar are parallel to the case of so and so. The need for reconsideration of *Narasimha Rao*,  
17 dictum does not arise. There is no conflict of views. Even in *Narasimha Rao judgement*,  
18 as to direct for the purpose of responsible applications in the case on hand, it is subject to the  
19 context of Narasimha Rao being a matter relating to proceedings. In the course of the business  
20 of the House, a no confidence motion, to be be dealt with a collective body of the House. His  
21 application to cases where the context is known as a business proceedings or functions of the  
22 House will not arise, and the protection of Article 194(2), will not be available. The width of  
23 protection available to Members of Parliament or State Legislature in regard to speeches made  
24 in the House, or what tenders in the House will depend upon the core question as to whether  
25 the speeches or the oath in relation to the powers, functions, or the vision of the legislative  
26 bodies. It is submitted that the prosecutor election to the Council of State is not a matter of  
27 distance or function or a work or the House. It is regulated by rules and procedures to be  
28 supervised by the competent authority. I rely on these two. In fact, three more judgments, I  
29 draw Your Lordship's attention to it now. The conducting question, which is a subject matter  
30 prosecution does not relate to the functions also, casting a word for the purpose of election of  
31 members to the Council of State is not to be equated to reverse oath in their legislature.  
32 Conduct unconnected to the legislative function and services cannot aspire to be covered by  
33 the Immunity Clauses of the Constitution. The appellant cannot take any benefit to the  
34 advantage in Narasimha Rao principle. The prosecution question is not hit by Article 194.  
35 There are three judgments of your Lordships, if you just share it with a Court Master. One is  
36 *Pashupati Nath Sukul versus Nem Chandra Jain 1984 to SCC 40* for the...

37

1 **CHIEF JUSTICE CHANDRACHUD:** 1984?

2

3 **ATTORNEY GENERAL R. VENKATARAMANI:** We have shared the judgment to the  
4 Court Master. My Lord it was a case of disqualification to the Section of Rajya Sabha.  
5 Paragraph 18, PDF page 16.

6

7 **CHIEF JUSTICE CHANDRACHUD:** Is it here in the compilation?

8

9 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes, there are three judgments in the  
10 compilation. It is the first one. *Pashupati Nath Sukul versus Nem Chandra Jain*.

11

12 **CHIEF JUSTICE CHANDRACHUD:** The first compilation itself or in Volume Five?

13

14 **ATTORNEY GENERAL R. VENKATARAMANI:** No we have shared it separately.

15

16 **CHIEF JUSTICE CHANDRACHUD:** Alright.

17

18 **ATTORNEY GENERAL R. VENKATARAMANI:** We have shared with you, not shared  
19 with the rest of the Counsel.

20

21 **CHIEF JUSTICE CHANDRACHUD:** Alright. It's visible now on the Screen, **1985, 2 SCC**  
22 **204.**

23

24 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes. This is...**1984, 2 SCC 404.**

25

26 **CHIEF JUSTICE CHANDRACHUD:** How many judges is this? Is this three judges or two  
27 judges? Three judges.

28

29 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes.

30

31 **CHIEF JUSTICE CHANDRACHUD:** Which is the paragraph you want us to...

32

33 **ATTORNEY GENERAL R. VENKATARAMANI:** Paragraph 18. The question was if we  
34 don't take the oath, you can still cast a vote in.... Article 191 of the Constitution, My Lord, you  
35 have that?

36

37 **CHIEF JUSTICE CHANDRACHUD:** Yes, yes.

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**ATTORNEY GENERAL R. VENKATARAMANI:** Prescribe the disqualifications for membership of the Legislative Assemblies so and so. Then Article 193, the Constitution provides for the penalty for sitting and voting before making oath and affirmation. The Article 188 to the Constitution were not qualified and disqualified penalty being so and so. My Lordship, please skip a few sentences thereafter. The sentence bearing...Now, that question is.

**CHIEF JUSTICE CHANDRACHUD:** Now the question, middle of the para.

**ATTORNEY GENERAL R. VENKATARAMANI:** 'Whether the making of oath or affirmation is a condition precedent for being eligible to act as a proposal of a valid nomination selection in the Rajya Sabha. The rule contained in Article 193. the Constitution stated earlier that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words sitting and voting in Article 193, of the Constitution implies that summoning of the Article 174 of the Constitution by the Governor to meet at such time and play that the things sit and hold and the holding of the meeting of the House pursuant to the summons of an adjourned meeting. An elected member, incurs a penalty for contravening Article 193, only when he sits and votes in such a meeting of the House. Invariably that the interval between Constitutional House after general elections also and the summoning under [UNCLEAR] .During the interval an elected member whose name appears a notification issued in 673(a) has had, is entitled all the privileges, salaries and so. One of them being the right to function election. Elected held acquiring seat in the Rajya Sabha.' Then few sentences later, 'the election in question does not form part of the proceedings of the House carried on in its meeting.'

**CHIEF JUSTICE CHANDRACHUD:** Where do we get that?

**ATTORNEY GENERAL R. VENKATARAMANI:** You get that at page 418 of Page 17.

**CHIEF JUSTICE CHANDRACHUD:** Second line...

**ATTORNEY GENERAL R. VENKATARAMANI:** And it's the effect of so and so, second line. 'The election in question does not form part of the legislative proceedings of the House carried on in the meeting.' And this is affirmed by other Bench of three Judges in **1997, 11 SCC, 111.**

**CHIEF JUSTICE CHANDRACHUD:** 1997?

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**ATTORNEY GENERAL R. VENKATARAMANI:** 11, SCC 111, is just a one paragraph order where it affirms. PDF Page 20.

**CHIEF JUSTICE CHANDRACHUD:** In *1997, 11 SCC?*

**ATTORNEY GENERAL R. VENKATARAMANI:** *111.*

**CHIEF JUSTICE CHANDRACHUD:** This is again three Judges, Justice Ahmadi Justice ....

**ATTORNEY GENERAL R. VENKATARAMANI:** The Learned Counsel for the petitioner asked the Attorney General who had the attention of the Divisional Court, so and so. In that case, two questions were raised for consideration. And one of them was whether a person elected the Member of the Legislative Assembly, but who has made not, who has not made and subscribed the prescribed those in affirmations as required by so and so can invariably propose a person as a candidate at an election held for favouring a seat in the Rajya Sabha. Dealing with this contentions, the Court examined the provisions of the Constitution and then came to the conclusion, recorded in para 20. The elected Member could not take an oath but whose name appears in the notification corporation so and so can take part in all non-legislative activities of an elected Member. Your Lordships further point outs, the right of voting at elections in Rajya Sabha can also be exercised by him. This conclusions be it in the premise, the election Rajya Sabha does not form part of the legislative proceedings the House carried out on its meeting. Nor is the vote cast election is a vote given in the House at any issue or anything before the House.' 194 or 105, talks about speeches made at Parliament, or a vote given in connection with the business as a function or the work of the House. As wide as it should be. Because the US Case Law shows that even as I said preparations for your legislative activity are still protected. Speeches made outside a Congress. The third judgment is *Kuldip Nayyar..* also in the same Volume. In *2006, 7 SCC 1.*

**CHIEF JUSTICE DY CHANDRACHUD:** What is the PDF Page of Volume 7? Page 1.

**ATTORNEY GENERAL R. VENKATARAMANI:** PDF page is 126, 125.

**CHIEF JUSTICE DY CHANDRACHUD:** PDF 125.

[INAUDIBLE]

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**ATTORNEY GENERAL R. VENKATARAMANI:** Paragraph 372 and 373. Where on the one hand is important that nothing has a chilling effect in the Members of Parliament, to do what they were called upon to as elected members.

**CHIEF JUSTICE DY CHANDRACHUD:** Which para, Mr. Attorney?

**ATTORNEY GENERAL R. VENKATARAMANI:** 372.

**CHIEF JUSTICE DY CHANDRACHUD:** Para 372.

**ATTORNEY GENERAL R. VENKATARAMANI:** It is a contention...

**CHIEF JUSTICE DY CHANDRACHUD:**...that's the same...

**ATTORNEY GENERAL R. VENKATARAMANI:** ..the learned Counsel is the same, should be the interpretation as to the scope and tenor of the provision contained in Article 194(2), concerning, the privileges of the Members of the Legislative Assembly, to the State who constitute State wise Electoral Colleges, of electing the Representatives of each State, in the Council of State, under the provisions of Article 84. The council argued that, the freedom of expression without fear of legal consequences as flowing from Article 194(2), shall [UNCLEAR] to the members of the Legislative Assembly, while discharging their function as Electoral College in Article 84. This argument, though attractive, does not deserve any credence in the context at hand. The proceedings concerning election under Article 80 or not, proceedings of the House of the Legislature of the State, within the meaning of Article 194. It is the elected members the Legislative Assembly, will constitute under Article 80, the Electoral College for electing the Representative of the State, to fill the seat allocated to the State in the Council of State. It's noteworthy, that it is not the entire Legislative Assembly, that becomes the Electoral College, where only the specified category of members thereof. When such members assemble at a place, they do so not, to discharge functions assigned under the Constitution, to the Legislative Assembly. Their participation in the election is only their exception capacity, of voters for the election. The act of casting votes for each of them, which also did not occur with all of them present together, or at the same time is merely exercise a franchise and not proceedings of the legislature. So it is absolutely confusing. Just what plays into other treatise is... Your Lordships can go back to my compilation. Part One is about this three Judgments of the Supreme Court, and then I have three judgments in the US Supreme Court. I will not trouble Your Lordships for the time being with the US Supreme Court

1 judgement, but there are about five articles and extracts from two books. It's serial number 7  
2 called Political Guide to Parliament by so and so.

3

4 **CHIEF JUSTICE CHANDRACHUD:** This is your written submission. Mr Attorney?

5

6 **ATTORNEY GENERAL R. VENKATARAMANI:** No. This is an article, the compilation of  
7 my judgments.

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** The articles which you are referring to?

10

11 **RESPONDENT'S COUNSEL:** We have not received on the compilation.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** We are just sharing. We also just got it on the e-  
14 mail.

15

16 **ATTORNEY GENERAL R. VENKATARAMANI:** Okay.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** What did the article say Mr. Attorney? You are  
19 referring to the articles or the foreign judgments?

20

21 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes, yes. These are two textbooks in fact  
22 it is on Parliamentary Practice. One I picked up only for the purpose of showing that it...Your  
23 Lordship, kindly turn to PDF 283. One paragraph. The second paragraph at page 283. 'A  
24 member is entitled to protection for what may be a slanderous statement, when it forms part  
25 of a proceeding of the House. What exactly is a proceeding? The proceeding is usually taken  
26 to mean the formal transaction or business with a speaker in the Chair or in a properly  
27 constituted committee. The member will not be subject to the jurisdiction of the ordinary  
28 reports for anything said in debate, however criminal in nature. He or she may be subject to  
29 the disciplinary procedure on the [UNCLEAR] it is a transaction of business with a speaker in  
30 the chair.

31

32 **CHIEF JUSTICE CHANDRACHUD:** So according to you, in our case the bribe is alleged  
33 to have been given?

34

35 **ATTORNEY GENERAL R. VENKATARAMANI:** This is nothing to do with the business  
36 of the house.

37

1 **CHIEF JUSTICE CHANDRACHUD:** So there is no immunity attached

2

3 **ATTORNEY GENERAL R. VENKATARAMANI:** That's right.

4

5 **CHIEF JUSTICE CHANDRACHUD:** Voting for election as a member of the Rajya Sabha.

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** The election take place entirely...

8

9 **CHIEF JUSTICE CHANDRACHUD:** But according to therefore the Learned Attorney's  
10 line of submission, that has nothing to do with the proceedings of the House.

11

12 **PARAMJIT SINGH PATWALIA:** In *Kuldip Nayar* para 373, Your Lordships have taken  
13 the view that for such an vote, Article 105 or 194 is not [UNCLEAR]. So if Your Lordships  
14 accept that and that's five honourable judges, in that view of the matter, this writ petition  
15 deserves to be dismissed. This petition deserves to be dismissed straight away because there  
16 is no question of any immunity.

17

18 **CHIEF JUSTICE CHANDRACHUD:** There is no immunity at all.

19

20 **PARAMJIT SINGH PATWALIA:** Correct! Whether the judgment is right or the judgment  
21 is not right, in law, there is no question of any immunity. Now, if that's the view Your Lordship  
22 takes, then the proceedings terminate right here and now. Now if he manages to distinguish it  
23 or otherwise, Your Lordship wants to go into the issue, then I can assist Your Lordship saying  
24 that the judgment needs reconsiderations. I have made those bullet points and for Your  
25 Lordship's consideration, because essentially, according to me the judgment which now  
26 becomes majority. It is two versus two, accepted, and then concurred by a third honourable  
27 Judge, Justice Ray. There were three issues. On one issue, whether they are public servants,  
28 all three judgments are unanimous. On the second issue as to who is the authority to grant  
29 sanction, the judgment of Justice Bharucha says, because there is no authority to grant  
30 sanction, therefore, proceedings cannot be initiated at all. The Justice Agrawal says, that if  
31 there is no authority to grant sanction, taking cue from Veeraswamy, he says it is the Chairman  
32 of the Rajya Sabha, and that is concurred by, by the third judge. But the third judge then does  
33 not concur on this issue of immunity and concurs with the other one there. So it's actually  
34 quite a fractured kind of... It's three versus two plus one from one judgment and two plus one  
35 from the other. So it's too important an issue to go like that. That's point one. Point two, the  
36 majority judgment of Justice Bharucha extensively relies on Johnson. Johnson, in fact,  
37 subsequently in the United States is distinguished in Brewster. So therefore, and then he relies

1 on the dissent in Brewster and then he does not follow *Currie*, which is a judgment from the  
2 UK saying it has not been tested in appeal. So essentially he relies on a judgment which even  
3 in the original jurisdiction, is no longer being followed, supports it by a dissent. The dissenting  
4 view in the subsequent judgment, and then comes to the conclusion that yes, there is immunity  
5 even if a crime is committed. Two more points. He does not go into the issue as to when the  
6 crime of bribe is complete. The crime of bribe is complete even before the man enters the  
7 House. Once you accept a bribe to do a particular act, the act of acceptance is complete at that  
8 point of time. Justice Agrawal goes into that issue and says that yes, that's a very important  
9 and then there are consequences of reaching that conclusion. For example, if I accept a bribe,  
10 and then after accepting I don't vote as *Ajit Singh*, then I am liable for prosecution. But in  
11 case I do vote, then I'm not liable for prosecution. So there is quite a contradiction in the  
12 judgment.

13

14 **CHIEF JUSTICE CHANDRACHUD:** So I mean, taking a very narrow view of the matter,  
15 we could as well dismiss this petition, this SLP. But the point is that these issues will still  
16 survive to be argued on another agitated at another point of time. Why use the law in state  
17 of...

18

19 **PARAMJIT SINGH PATWALIA:** Point is whether a Your Lordship wants to look into it  
20 now. Therefore this is an occasion to do so and I feel subject to what the others will say, that  
21 this is a matter which needs a larger. Your Lordship needs to look at it. In Your Lordship  
22 subsequent judgment in *Ajit* therefore, Your Lordships have narrowed it down. And in all  
23 other jurisdictions now the view is that a crime has to be considered under the ordinary  
24 criminal. And this, the purpose of this immunity is only to protect what happens in Parliament.  
25 Speeches given in Parliament. The purpose of this immunity is not to make a super citizen who  
26 is immune, as the ordinary criminal

27

28 **CHIEF JUSTICE CHANDRACHUD:** *Ajit* what actually happened was on the floor of the  
29 Kerala Legislative Assembly because of the throwing it was vandalism. We said, well, this is  
30 not even then we sort of narrowed down the...

31

32 **PARAMJIT SINGH PATWALIA:** This is a matter which eminently needs to be relooked.  
33 If I read those points which I made on that alone. I need not take Your Lordships through all  
34 the judgments reading. I will do that.

35

36 **CHIEF JUSTICE CHANDRACHUD:** Can you just show us your points Mr. Patwalia?

37



1 **CHIEF JUSTICE CHANDRACHUD:** Yes. If Your Lordship will just have the point .

2

3 **CHIEF JUSTICE CHANDRACHUD:** Mr. Attorney this is the line. The article which you  
4 were referring are on this particular...

5

6 **ATTORNEY GENERAL R. VENKATARAMANI:** I will certainly canvas a proposition that  
7 important issue. But then every time there is the largeness of the issues does not mean it has  
8 to go before unless now the facts are taken care there is a conflict of views and then... I will just  
9 read one more paragraph. While Narasimha Rao's presence...I do see Narasimha Rao's  
10 presence certain internal two verses three. But, just want to ...The appellant has not voted even  
11 after taking bribe. That may be a dishonesty beyond corruption. That is a different matter.  
12 That we are not getting in the...

13

14 **RAJU RAMACHANDRAN:** Justice Ramasubramaniam on the previous benchmark made  
15 reference to Contract Act and breach of promise, etc. My Lords. In a lighter vein, in a lighter  
16 vein when the same matter came up.

17

18 **ATTORNEY GENERAL R. VENKATARAMANI:** In my compilation there is one more  
19 path because the US law is littered with large number of examples. We have interesting  
20 spectrum of conduct of Members outside the Parliament.

21

22 **CHIEF JUSTICE CHANDRACHUD:** What we will do is we just look at the Learned  
23 Attorney's the last Article which he wants to show us. And then we look at Mr. Patwalia's notes.

24

25 **PARAMJIT SINGH PATWALIA:** Certainly, correct.

26

27 **CHIEF JUSTICE CHANDRACHUD:** We don't have to go to all the underlying judgments  
28 because we have to refer it to...

29

30 **PARAMJIT SINGH PATWALIA:** That has to be done by the larger Bench.

31

32 **CHIEF JUSTICE CHANDRACHUD:** We will see what groundwork you have laid in your  
33 notes.

34

35 **PARAMJIT SINGH PATWALIA:** Yes, yes, yes.

36

1 **RAJU RAMACHANDRAN:** I would also like to be heard for two minutes My Lords before  
2 Your Lordships' call for Mr. Patwalia a. It's only in response to Attorney and then....

3

4 **CHIEF JUSTICE CHANDRACHUD:** Let's complete with the Learned Attorney's  
5 submissions.

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** PDF Page 292... 291 this an extract  
8 from both Parliament and Congress. The comparison of the...

9

10 **CHIEF JUSTICE CHANDRACHUD:** The earlier article was, what page 281, I think right,  
11 earlier one, which you referred to as 281?

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes.

14

15 **CHIEF JUSTICE CHANDRACHUD:** Now 290....

16

17 **ATTORNEY GENERAL R. VENKATARAMANI:** It's another, page 291 bottom, last  
18 paragraph PDF 291.

19

20 **CHIEF JUSTICE CHANDRACHUD:** 291. What does it say Mr. Attorney. A brief overview  
21 in the Supreme Court...

22

23 **ATTORNEY GENERAL R. VENKATARAMANI:** In the area of speech or debate,  
24 protections in Kilburn is appropriate to establish the context for litigation testing the validity  
25 of an FBI search warrant of a sitting members congressional office. The Court of Appeals for  
26 the District of Columbia Circuit in the case of so and so accurately recites the background legal  
27 principle and jurisprudence and is quoted here at length. Next page, the Clause confers  
28 Members of Congress, immunity for all actions within the legislative sphere, even though their  
29 conduct if performed, in other than legislative contexts, would in itself be unconstitutional or  
30 otherwise contrary to criminal or civil statutes. The purpose of their protection is to ensure,  
31 that the legislative function, the Constitutional [UNCLEAR], Congress, will be performed  
32 independently, without regard to the distractions of private civil litigation, or the peril of  
33 criminal prosecution. The Clause does not, for example, prevent the criminal prosecution and  
34 members of Congress for misconduct, even if somehow connected with their performance of  
35 official responsibilities. Maleficence by a member, does not fall within the legislative sphere,  
36 simply because it is associated with the congressional duties. As the Supreme Court explained,  
37 in allowing a bribery prosecution to go forward in forms of Rooster, where the prosecution

1 established a *prima facie* case, without relying on the members constitutionally protected,  
2 legislative speech as evidence, the Constitutional Protection Act, within the legislative sphere,  
3 does not extend to all conduct relating to the legislative process, but only to those activities  
4 that are clearly part of the legislative, the due functioning of the process. Very beautifully  
5 stated. While on the one hand certainly...Your Lordship will see that even the... find this one  
6 area, where the codification exercise, has eluded Congress and legislatures and Parliament.  
7 For a number good number of reasons, for if *Narasimha Rao* was to be reopened, in a given  
8 case where, this [UNCLEAR] to 194.

9

10 **CHIEF JUSTICE CHANDRACHUD:** If you are relying on this extract, this would indicate  
11 that *Narasimha Rao*, is wrong.

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** Therefore, in a given case, where the  
14 principle has to be directly tested.

15

16 **CHIEF JUSTICE DY CHANDRACHUD:** You are on this that, look in this case, it does not,  
17 strictly speaking, arise.

18

19 **ATTORNEY GENERAL R. VENKATARAMANI:** That's right.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** But this enumeration of the legal position  
22 indicates that the decision, *Narsimha Rao* is wrong.

23

24 **ATTORNEY GENERAL R. VENKATARAMANI:** Correct, correct, therefore even the US  
25 law is...

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** Then the only case is, should we, await it to arise  
28 sometime in the future, or lay down something?

29

30 **ATTORNEY GENERAL R. VENKATARAMANI:** But provided, provided, in the question  
31 of *Narasimha Rao* [UNCLEAR].

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** We must also not ignore, that if it also furthers  
34 public morality on the part of our elected representatives, then we should not really defer our  
35 decision to some uncertain day in the future. Isn't it?

36

1 **ATTORNEY GENERAL R. VENKATARAMANI:** This case should rest in its own facts.  
2 Prosecution must continue. Therefore, the question of, question of 194, does not arise here.  
3 That's my submission.

4  
5 **CHIEF JUSTICE CHANDRACHUD:** Right. But on the reference, Mr. Attorney, you are  
6 then, also taking the view, which the *amicus* is taking that a bribe taken for the purpose of...

7  
8 **ATTORNEY GENERAL R. VENKATARAMANI:** ... if the court were to go in an abstract  
9 [UNCLEAR]

10  
11 **PARAMJIT SINGH PATWALIA:** The CBI, moved a review in *Narsimha Rao*. I have put  
12 it in my submission. I have put it in my written submission, they moved a...

13  
14 **ATTORNEY GENERAL R. VENKATARAMANI:** I find the disconnect between...

15  
16 **CHIEF JUSTICE CHANDRACHUD:** Mr. Attorney, in which case, your stand has to be  
17 clear, that you are supporting the prosecuting agency here.

18  
19 **ATTORNEY GENERAL R. VENKATARAMANI:** Yes, yes, I say that. He has to be  
20 prosecuted.

21  
22 **CHIEF JUSTICE DY CHANDRACHUD:** He has to be prosecuted, and should we go into  
23 the correctness of *Narasimha Rao*, you would be also urging that *Narasimha Rao*, is  
24 wrongly decided,

25  
26 **ATTORNEY GENERAL R. VENKATARAMANI:** I say, I say prosecuted, not because  
27 *Narasimha Rao*, was rightly or wrongly decided. I said *Narasimha Rao*, has no  
28 application to this case.

29  
30 **CHIEF JUSTICE DY CHANDRACHUD:** Right, right, so independent of **Narasimha**  
31 **Rao**, it has to be rejected, because this is not, this is in connection with an election to the  
32 House, which is not a part of the functioning of the House, but if you were to go into the  
33 correctness of it, the extract which you are relying upon here., you must then say, that  
34 according to you, *Narasimha Rao*, is wrongly decided, If you want to go into it...

35

1 **ATTORNEY GENERAL R. VENKATARAMANI:** [UNCLEAR] to show that, in what  
2 context, probably the court will be called upon to look into the sweep of 194. I don't think this  
3 case probably, would warrant that.

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** This case, we got your point.

6

7 **ATTORNEY GENERAL R. VENKATARAMANI:** But otherwise 194, the proposition...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** You are right, but you know as a Constitutional  
10 Bench, which, I mean, particularly an issue deeply affects, the morality of our polity, we should  
11 not in that sense, not take an opportunity to straighten, the law.

12

13 **ATTORNEY GENERAL R. VENKATARAMANI:** But would Your Lordships will always  
14 laid down, a law only in the context of a certain set of facts which call for interference by the  
15 Court. So the set of facts are absent here, could *Narasimha Rao*, be the abstract revisited is  
16 the... I have reservations about *Narasimha Rao*.

17

18 **CHIEF JUSTICE CHANDRACHUD:** You have four eminent Counsel, appearing on this.  
19 What better opportunity for the Court to straighten the law? Normally, you don't want to get  
20 into a broader issue of law where you feel you may not get the correct assistance because in  
21 the entire burden is on us. Even there we take up the burden sometimes.

22

23 **ATTORNEY GENERAL R. VENKATARAMANI:** [UNCLEAR] concerns.

24

25 **CHIEF JUSTICE CHANDRACHUD:** But when you have a squarely I mean, a conflict  
26 between the opposing viewpoints. Mr. Ramchandran is arguing on one side, we have Mr.  
27 Patwalia and Mr. Sankaranarayanan and we have the Attorney General, we should, we should  
28 set the law straight, you know. This is an ideal case for the Attorney General must also say,  
29 that look please make a reference and set the law straight. Ultimately, this is something which  
30 concerns our polity.

31

32 **ATTORNEY GENERAL R. VENKATARAMANI:** Why did he not say that? I think I made  
33 my position very clear .

34

35 **CHIEF JUSTICE CHANDRACHUD:** No, no, in fact by citing this, by citing this you have  
36 indicated where your line of argument would be...

37

1 **ATTORNEY GENERAL R. VENKATARAMANI:** I definitely want to cite to show that for  
2 the sake of the law but that does not mean that I want to flow along with this with because on  
3 the facts of the case...

4

5 **CHIEF JUSTICE CHANDRACHUD:** That we got your point. That look here, it was not in  
6 connection with legislative business, therefore, in any case, there's no immunity. This appeal  
7 has to be dismissed.

8

9 **ATTORNEY GENERAL R. VENKATARAMANI:** But where the court has to go into the  
10 question, what will be their sweep of legislative business, and what context it may have a direct  
11 or in indirect nexus with legislative business would fall within one end therefore, is the  
12 ultimate matter to be discussed.

13

14 **CHIEF JUSTICE CHANDRACHUD:** Thank you, Mr. Attorney. Let's hear Mr.  
15 Ramchandran for 2 minutes and then we will call upon Mr. Patwalia.

16

17 **RAJU RAMACHANDRAN:** Thank you, Sir. I was drawing attention to my written  
18 submission only apropos what the Attorney General said is written submission because I'd  
19 only said it orally just Volume 1 My Lords. Just two paragraphs I want to show. Volume One.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Which para?

22

23 **RAJU RAMACHANDRAN:** PDF page 3, para 4. Para 4 and para 8. That's all I wish to show.  
24 Only paras 4 and 8. Para 4 is only to indicate the question involved. PDF page 3, Volume 1,  
25 para 4. 'The main issue in this case is whether the appellant is sitting member of the Legislative  
26 Assembly, could be prosecuted in the case of alleged bribery, particularly when this matter in  
27 no uncertain terms relates to events pertaining to a vote given by the appellant in a capacity  
28 as a member of the Legislative Assembly in the background of Article 194(2) and the law laid  
29 down in PV Narasimha Rao.' Then Para 8. It is para 8, PDF page 4. It is submitted... My Lords  
30 have got it My Lords? "It is submitted that none of the contesting parties have ever challenged  
31 the ratio of PV Narasimha Rao. On the contrary, both the contesting parties are *ad idem* that  
32 the ratio of PV Narasimha Rao case holds good and should govern the ambit of  
33 parliamentary/legislative privileges envisaged in Article 105(2) and 194(2) of the Constitution.  
34 What is being contested is the applicability of PV Narasimha Rao's judgment. The Respondent,  
35 this is the Attorney General's stand also here in bullets. The Respondent CBI believes that the  
36 said judgment does not apply in the instant case, as the polling for Rajya Sabha election was  
37 held outside the House in the lobby and cannot be taken as a proceeding of the House like a

1 No Confidence motion. And in support of this My Lords, they rely on **PN Sukul** and My Lord,  
2 **Kuldip Nayar**. When this appeal is argued on merits before the regular criminal bench My  
3 Lords, I would be arguing that both **PN Sukul and Kuldip Nayar** are clearly  
4 distinguishable because **PN Sukul**, neither of the cases involved a question of immunity,  
5 whatever be the references to what constitutes a proceeding in the House or not. The question  
6 of immunity did not come up for consideration. **PN Sukul** was whether a person who has not  
7 yet sworn in as a member of the State Legislature can still vote as an elector in the Rajya Sabha  
8 election and My Lords **Kuldip Nayar**. In the context, there are two questions involved. One  
9 was domicile earlier you had to be domiciled in that State. That was done away with My Lords.  
10 That's how people from other States stand for Rajya Sabha from other States, that has been  
11 upheld. One part. Then this open voting system. It is because of that open voting system that  
12 it has come out that I have also not voted for this person. That My Lords, in the context of  
13 secrecy of ballot, there this Honourable Court holds that this is not part of parliamentary  
14 proceedings, so that secrecy is not violated. It was in that context. Neither of these cases  
15 involves a question of immunity. Therefore clearly distinguishable. And if at all anyone has to  
16 challenge the correctness of any judgment it would be me My Lords in the appeal saying, if  
17 this is your interpretation of **Kuldip Nayar** or **PN Sukul** then those judgments need to be  
18 reconsidered is what I will submit there. But the question of Narasimha Rao reconsideration  
19 does not arise.

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, Mr. Patwalia.

22

23 **PARAMJIT SINGH PATWALIA:** My written submission is Volume 2A. Volume 2A.  
24 Firstly, Justice Bharucha for himself and Justice Rajendra Babu, in his judgment relies upon  
25 ex-Party Wilson and **United States versus F. Johnson** and the dissenting judgment in  
26 **United States versus Brewster**. This actually distinguishes and waters down **Johnson**  
27 to reach the conclusion that he does that is Article 105(2), protects a Member of Parliament  
28 against proceedings in Court that relate to or concern or have a connection or nexus with  
29 anything said or vote given by him in Parliament. Apart from this, Justice Bharucha discards  
30 the judgment in **R versus Currie** on the ground that it has not been tested in Appeal. Para.  
31 142 is for the first time in England. Justice Buckley ruled in **R versus Currie** that a Member  
32 of Parliament who accepts a bribe to abuse his trust is guilty of the common law of offense of  
33 bribery. The innovation in English law needs to be tested in appeal. So therefore, this judgment  
34 relies on if *ex parte Vasan* which is clearly distinguishable, Justice Agarwal distinguishes it  
35 that was actually a proceeding in Parliament only and **F. Johnson** is distinguished and not  
36 followed in **Brewster**. As against this, 1.2. Justice Agarwal relies upon the view in **R versus**  
37 **Currie**, supported by the majority view in **United States versus Brewster**. The

1 subsequent judgment in *United States versus Helstoski* both of which consider the  
2 judgment passed in *F. Johnson* and explain it by taking a different view. Justice Agarwal  
3 further places reliance on judgment passed by the Canadian court in *Bunting* and the  
4 Australian decision in *White and Boston* to support his decision. Thus, the judgment of  
5 Justice Agarwal follows the international trend while the Judgment of Justice Bharucha still  
6 seeks to hold on to a view which was subsequently explained and diluted even in the original  
7 jurisdiction. So therefore in all original jurisdictions. Now the view is that this is not a class of  
8 super citizens which is immune. In fact, the view is that if you commit a crime, you have to be  
9 tried by the ordinary criminal court of the land. That's one. That's one point. Secondly, the  
10 view of Justice Agarwal, carries out and effectuates the real purpose of Article 105(2) of the  
11 Constitution, which is to secure freedom for legislative acts, and does not intend to create  
12 super citizens who cannot be prosecuted under normal criminal laws. It is important to note,  
13 that the same was observed by the Supreme Court of United States in *United States versus*  
14 *Brewster*, at para 40 that, admittedly, the Speech or Debate Clause, must be read broadly to  
15 effectuate its purpose of protecting the independence of the Legislature. But no more than the  
16 statutes we apply, was its purpose to make members of Congress, super citizens, immune from  
17 criminal liability. That's the, that's the point My Lord. The purpose of this Clause, is to protect  
18 the integrity of the legislative process, by ensuring independence of a Legislature, of his actions  
19 in the Legislature. Now, then thirdly, Justice Agarwal examines the matter in hand, and holds  
20 that any other interpretation of Article 105, would be subversive of the rule of law. The Hon'ble  
21 Judge at para 47, states, any an interpretation of the provision of Article 105(2), which would  
22 enable a Member of Parliament to claim immunity from prosecution, in a criminal court, for  
23 an offense of bribery, in connection with anything said by him or vote given by him in  
24 Parliament or any committee, thereof, and thereby place such member above the law, would  
25 not only be repugnant, to the healthy functioning of parliamentary democracies, but would  
26 also be subversive of the rule of law, which is an essential part of the basic structure of the  
27 Constitution. This issue has not even been considered in the judgment of Justice Bharucha.  
28 The real purpose, the point here is, what is the purpose of 105? That real purpose has not been  
29 considered at all, by Justice Bharucha. In fact, I'll read a paragraph, a couple of paragraphs  
30 from Justice Bharucha's view, where he says, we have to give it the broadest interpretation,  
31 any nexus, any connection with the bribe, and the proceeding is enough to give you immunity.  
32 That's not the view, My Lord, anywhere in the world today.

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** So a Member of Parliament, according to you,  
35 should not be proceeded against, even criminally, for the expression of a view, in Parliament  
36 or the State Legislative Assembly.

37



1 **PARAMJIT SINGH PATWALIA:** Correct, correct.

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** Because that would, impinge upon the freedom  
4 to express views, without any sense of fear.

5

6 **PARAMJIT SINGH PATWALIA:** Absolutely.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** For instance, if you were to be proceed against,  
9 for defamation, for a view which you expressed in the floor of the House, that would directly  
10 prevent Members of Parliament from expressing their views in a very candid and forthright  
11 manner. But according to you, if you are prosecuted for bribery, this has nothing to do with  
12 your legislative, the object of that immunity.

13

14 **PARAMJIT SINGH PATWALIA:** And *Vasan* was a case where the prosecution was for  
15 perjury, that the member in Parliament, spoke something which he knew to be untrue. There  
16 the protection was granted, in *Vasan*, saying that, yes, that's a proceeding in Parliament. And  
17 if he makes an expression in Parliament, then he is immune from ordinary criminal laws, for  
18 that expression made by him in Parliament. Now that is quite different and apart from an Act  
19 like accepting a bribe, which is never accepted in Parliament. Now the fourth thing. Fourthly,  
20 Justice Agarwal also examines the issue, as to when the offense of bribery is complete. The  
21 same has again not been examined in the Judgment of Justice Bharucha. It is important to  
22 consider the observations made by Justice Agarwal at para 50, wherein it is stated that, the  
23 offense of bribery is made out against the receiver, if he takes or agrees to take money, from a,  
24 for a promise to act in a certain way, the offense is complete with the acceptance of the money  
25 or on the agreement to accept the money being concluded, and is not dependent on the  
26 performance of the illegal promise, by the receiver. The receiver of money will be treated to  
27 have committed the offense, even when he defaults in the illegal bargain. For proving the  
28 offense of bribery, all that is required to be established is, that the offender has received or  
29 agreed to receive the money, for a promise to act in a certain way, and it is not necessary to go  
30 further, and prove that he actually acted in that way. This is also very important, because the  
31 offense is complete, even before the member actually steps into the Parliament, let alone  
32 perform any Parliamentary Act. And nothing proves it, from the next part, which I have  
33 mentioned.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** Look at the simple prosecution, under the  
36 Prevention of Corruption Act. Suppose a [UNCLEAR] accepts money for mutating, the Land  
37 Revenue records. Now, if the acceptance of the bribe or the agreement to accept the bribe is

1 established correct. You didn't have to establish that he actually mutated the land records.  
2 What he [UNCLEAR] is irrelevant.

3  
4 **PARAMJIT SINGH PATWALIA:** Correct! This aspect has not even been considered by  
5 Justice Bharucha. Now kindly see the next sentence because that makes the point. Nothing  
6 demonstrates this more clearly than the fact that Shri Ajit Singh, MP, who abstained from  
7 voting, was held liable for the offense of bribery because the protection granted under 105 of  
8 the Constitution can only be granted to those who voted, thus completely proving the point  
9 that the offense of bribery is complete on acceptance of the money and is independent of  
10 whatever action follows in Parliament. So even Justice Bharucha says that Ajit Singh, having  
11 accepted the money, did not vote and because he did not vote, the parliamentary immunity is  
12 not attracted to him, and therefore he can be prosecuted and therefore holds that he can be  
13 prosecuted and therefore further holds that the bribe givers can be prosecuted under 120(b),  
14 because he is being prosecuted. So therefore, this goes to conclusively prove that the offense  
15 of bribery is independent of whatever action they had taken in Parliament and this is  
16 considered by the subsequent English laws also. Now My Lord, this is on merits. Now, the  
17 next. There is also another very interesting and important issue, which surfaces upon a reading  
18 of the three judgments in *PV Narasimha Rao's* case. Bharucha, Justice Bharucha for  
19 himself and Justice Babu, Justice Agarwal for himself and Justice Anand and then the third  
20 judgment of Justice G N Ray. Three issues were considered by the court, the first issue being  
21 as to whether a legislator is a public servant or not. All three judgments are concurring on this  
22 aspect that a legislature is a public servant. The second issue was, as to which is the competent  
23 authority to grant sanction. As per Justice Agarwal, the Chairman of the Rajya Sabha and  
24 Speaker in the Lok Sabha is competent to grant sanction till provision is made by Parliament  
25 and therefore proceedings can be initiated after taking approval. As per Justice Bharucha,  
26 there is no authority to grant sanction as yet. Therefore, till such time no proceedings can be  
27 commenced against the Legislature. On this issue Justice Ray agrees with Justice Agarwal and  
28 says that with the sanction of the Chairman, it can be done. However, on the third issue  
29 regarding interpretation of Article 105 of the Constitution and the protection given, Justice  
30 Ray disagrees with Justice Agarwal and agrees with Bharucha that protection under Sub-  
31 Article 2 of Article 105 must relate to the vote actually given and speech made in Parliament  
32 by a member, and that Sub-Article 2 of 105 must be interpreted broadly and not in a restricted  
33 manner. Thus, the net result is that on one issue, all three judges are concurring. On the second  
34 issue, the second judge agrees with the first judge, and on the third issue, the second judge  
35 agrees with the third judge. Therefore, it is submitted that for such an important issue relating  
36 to interpretation of a constitutional provision and in view of three, in view of the diverse  
37 verdict which is rather fractured, there is a pressing need for the same to be examined by a

1 larger Bench. The three issues are there. Then one judge is agreeing. All three are agreeing on  
2 one, then two are agreeing on one, and then on the other, the other two are agreeing, so it's  
3 rather quite fractured in that sense also.

4  
5 Then My Lord, next, it's important to note that it's not as if efforts were not made in the past  
6 to get a fresh look at this issue. After the judgment was passed in *PV Narasimha Rao's* case,  
7 the review petition 2210 to 2227 of '98 were filed, which was, however, dismissed subsequently  
8 by a bench of five honourable judges on the ground of delay of 179 days. The Order of  
9 Dismissal of Review petition is reported in (2001) 9 SCC page 249. It is at Volume 5, page 666  
10 of Your Lordship's paper book. Apart from the above, writ petition bearing 7490 of '99 was  
11 filed before this Court, challenging the majority judgment in *Narasimha Rao's* case. This  
12 Honourable Court vide order dated 1st May, referred the same to a bench of five judges  
13 noticing a submission regarding maintainability of such a petition. Thereafter, however, that  
14 writ repetition was dismissed on 18th July 2002, keeping in view the principles laid down in  
15 *Rupa Ashok Hurra*. Clearly, the Bench of five honourable judges would have been of the  
16 view that the petition did not meet the requirements of a curative petition. Finally, in this third  
17 proceeding now, the matter has again come up in reference before this. Actually the review  
18 was by the CBI, to begin with. The CBI filed a review saying that the judgment needs a fresh  
19 look. That review ultimately is dismissed on the ground of delay. Then a fresh writ was filed,  
20 referred to five judges. Ultimately, it was rejected, saying after noticing the judgment in  
21 *Ashok Hurra* saying possibly that it doesn't meet the parameters of a curative, and therefore  
22 it was rejected. So it's not as if efforts have not been made to get this judgment a fresh look.  
23 Now My Lords, the purpose this is more in the nature of argumentative My Lord, 6.3. I need  
24 not read this at the moment My Lords, because this is more on merits and not on the reference  
25 alone. Now, if I can show Your Lordships some paragraphs of the Judgment itself to show how  
26 the judgments proceed, if Your Lordship will have Volume 5, part 1. The judgment begins at  
27 page 531. If Your Lordship will have first Justice Bharucha's view.

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29 **CHIEF JUSTICE DY CHANDRACHUD:** What page does it begin at?

30  
31 **PARAMJIT SINGH PATWALIA:** Volume 5. Yes. So it's at 609. The Judgment begins. 610,  
32 sorry.

33  
34 **CHIEF JUSTICE DY CHANDRACHUD:** Of Volume 5? 610? Actually, I have it at 532  
35 actually.

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37 **PARAMJIT SINGH PATWALIA:** Lordships are referring to the PDF My Lords?

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**CHIEF JUSTICE DY CHANDRACHUD:** 5, page 532 is the judgment at page 610.

**PARAMJIT SINGH PATWALIA:** Correct. Kindly come to page 613, para 109, where the discussion actually begins. Article 105 is quoted there My Lord. 105, Sub-Article 2. 107, 105, Sub-Article 2, says no Member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament, or any committee thereof, and no person shall be so liable in respect of the publication by or authority under.... authority of either House of Parliament or any report, paper, board or proceeding. Now the discussion starts at page 109 onwards. And if Your Lordship will see, come to straight away page... various Indian judgments are quoted My Lord. Then Your Lordship may come to para 117... 118. The question was... 118. The Attorney General submitted that a proceeding in Court founded on the allegation that a Member of Parliament had received a bribe to vote in a particular way was not a proceeding in respect of a vote that he had given, and therefore, the Member did not enjoy immunity from proceedings by reason of Article 105(2). He submitted that the immunity given by the Article 105(2), did not cover criminal proceedings. It had been held by the courts of the United States of America, Canada, Australia, and recently England. He said that a legislator could be proceeded against for corruption. The Attorney General relied upon decisions and reports in this behalf to which we shall refer. The Attorney General submitted that the immunity given by 105(2), should be interpreted in the light of the times in which we live. And so interpreting it should preclude from its coverage corrupt legislature. So the question was whether it a wide view or a narrow view is to be given. Now, My Lord after quoting series of judgments, ultimately, Your Lordship may come to para 123, that is, page 625, where **Currie** is cited... just kindly see para 123. Para 123. Very recently.... Just see para 123. Very recently, in the case of **R versus Currie**.... Now this is United Kingdom, My Lord. It was alleged against Harry Greenway, a member of Parliament, that he had accepted a bribe from Placar, so and so and Brooks, as a reward for using his influence as a Member of Parliament, in respect of duress application for British nationality. The indictment of the four was sought to be quashed on the basis, that bribery of a Member of Parliament was not a crime, and that in any event the Court had no jurisdiction for only Parliament could try a Member for bribery, the matter being not covered by Parliamentary privilege. The trial judge, Justice Buckley, did not agree. He quoted the Salmon Commission Report. He also noted that Lord Salmon speaking in the debates of the Houses of Lords, had said after referring to the immunity enjoyed by Members of Parliament, from being prosecuted under the criminal law, if they took bribes, that at common law, you cannot be convicted of bribery and corruption, unless you are a holder of office and most of us, are not holders of office. Viscount Dillon had agreed. Buckley did not accept that a question of such great importance could turn on

1 semantics. In his view, to hold that existence of common law crime of bribing a Member of  
2 Parliament, depends upon meaning to be given to the word office in this context, as opposed  
3 to looking at the principle involved, would not be calculated to commend the criminal law to  
4 the public. It should serve. Then My Lord, he notes Chief Justice James Martin in **R versus**  
5 **White**. That is, New South Wales, a Legislature who suffers his votes to be influenced by a  
6 bribe, does that which is calculated to sap the utility of the representative institutions at their  
7 foundation. It would be reproach, to the common law, If the offer to or of acceptance of a bribe,  
8 was not an offense. Then if Your Lordship, can leave the next one, the same view has been  
9 taken in Canada in **R versus Bunting**. But however, he then goes to discard all of these, on  
10 the conclusion he reaches. The same view is taken in Canada, in **R versus Bunting**. I need  
11 not read the whole of it but, if Your Lordship will then go further, at page 628, para 125,  
12 Halsbury's laws are also quoted, where Clause 36, actually makes them liable under the  
13 criminal law. Just kindly see para 125. Halsbury's Laws of England is dealing with Members  
14 of Parliament, under the subject of criminal law, evidence and procedure, 36 Members of  
15 Parliament, except in relation to anything in debate, a member of the House of Lords or of the  
16 House of Commons, is subject to the ordinary course of criminal justice. The privileges of  
17 Parliament do not apply to in criminal matters. That's what Halsbury says. Then 126, My Lord,  
18 he says before we deal with the judgment in United States Supreme Court in **United States**  
19 **versus Brewster**, which lends support to the Attorney General's submission, we should set  
20 the Speech or Debate Clause in the Constitution and refer to the judgment in **Johnson**. Now  
21 My Lord, **Johnson**, is distinguished and not followed in **Brewster**. So now the next few  
22 pages, are dedicated to **Johnson**, then page 630, para 129, the facts of **Brewster** are cited,  
23 and then My Lord at page 632... yes. And we're on at 627 at the bottom My Lord, this is page  
24 631, page 631, at the top, referring to the case of **Johnson**, Chief Justice Berger, this is  
25 **Brewster** now. This is the extract from the judgment in **Brewster**. And if Your Lordships  
26 will go to the bottom of the page, the Speech or Debate Clause. Your Lordship has got it? At  
27 page 631. Placitum F.

28

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

30

31 **PARAMJIT SINGH PATWALIA:** Just next to Placitum F. The Speech or Debate Clause,  
32 admittedly, has to be read broadly, to effectuate its purpose of protecting the independence of  
33 the legislative branch. But its purpose was not to make, Members of the Congress, super  
34 citizens, immune from criminal responsibility. In its narrow scope, the clause is a very large  
35 albeit, essential grant of privilege. It has enabled reckless men to slander and destroy others  
36 with immunity. That was the conscious choice of the framers. Chief Justice Berger did not  
37 discount entirely the possibility that an abuse might occur, but this possibility, which he

1 considered remote, had to be balanced against the potential danger flowing from either abuse  
2 or bribery. Then, My Lord, it goes on discussion. Para 130 then he starts the dissenting view,  
3 which goes on to the next few pages. And then ultimately, if Your Lordship will come to page  
4 635, para 132. 133-34 are actually the main concluding paras. 132, it is noted, the judgment in  
5 Brewster was followed in United States in *Helstoski*. Justice Brennan dissenting expressed  
6 the view that indictment in question should have been dismissed since a corrupt agreement to  
7 perform legislative act, even if provable without reference to the Acts, may not be subject of  
8 general conspiracy protection. That was a dissent. Now 33, 34 actually is what he concludes.  
9 Broadly interpreting as we think it should be, Article 105(2) protects a Member of Parliament  
10 against proceedings in court that relate to or concern or have a connection or nexus with  
11 anything said or a vote given by him in Parliament. This is too broad My Lord. The submission  
12 is this is far too broadly stated. The Learned Attorney General argued against this broad  
13 construction, but the very broad construction is accepted.

14

15 Now 133, 134, 135 are the three main paragraphs, My Lord, where the learned judge leans  
16 towards the broadest possible construction of any nexus which is enough to attract the  
17 immunity. Now 133 I have read. 134. The charge against the alleged bribe takers is that they  
18 were party to a criminal conspiracy and agreed to or agreed into entered into an agreement  
19 with the alleged bribe givers to defeat the no-confidence motion by illegal means. I can leave  
20 the next few, My Lord...last four lines of this para. The nexus between the alleged conspiracy  
21 and bribe and the no-confidence motion is explicit. The charge is that the alleged bribe takers  
22 received the bribe to secure the defeat of the no-confidence motion. So some nexus. Any nexus,  
23 when the offense is complete, has not even gone into the consideration in this judgment at all  
24 with Justice Agarwal will then consider. So the learned Attorney General said, don't give it a  
25 broad interpretation. That is, the argument is at para 117, that is rejected in paras 132, 133,  
26 134. He says any, the broadest possible nexus is enough to attract the immunity. And then 135,  
27 while it is true that the charge against them does not refer to the votes that the alleged bribe  
28 takers Ajit Singh excluded, actually cast against the no confidence motion, it may be  
29 established *dehors* these votes, as the Attorney General argued. We do not think that we can  
30 ignore the fact that the votes were cast and in the facts alleged against the bribe takers are true.  
31 They were tasks pursuant to the alleged conspiracy and agreement. It must then follow, given  
32 the expression in respect, in respect of must receive a broad meaning that the alleged  
33 conspiracy and agreement had a nexus to and were in respect of those votes, and that the  
34 proposed inquiry in the criminal proceedings in this regard is the motivation thereof. It is  
35 difficult to agree with the learned Attorney General that though the words in respect of must  
36 receive a broad meaning, the protection is limited to court proceedings. And that is on a  
37 slightly different point, My Lord. Then My Lord, if Your Lordship will see at page 136, 137. At

1 page 636, para 137. We are acutely conscious of the seriousness of the offense that the alleged  
2 bribe takers are set to have committed. If true, they bartered a most solemn trust committed  
3 by them to those they represent by reason of the lure that they received. They enabled the  
4 Government to survive. Even so, they are entitled to the protection that the Constitution  
5 plainly affords them. Our sense of indignation should not lead us to construe the Constitution  
6 narrowly empowering the guarantee to effective parliamentary participation and debate. My  
7 submission is that it is not what is being protected is not the guarantee of effective  
8 parliamentary participation and debate. It is much more than that which is being protected.  
9 Now 138 important. We draw support from the view we take from the decision in **Johnson**  
10 and dissent in **Brewster**. So what is the support comes from **Johnson**, which is dissented in  
11 **Brewster** not followed in **Brewster**. And in **Brewster**, then My Lord picks up the  
12 dissenting view and not the majority view, which will be picked up by Justice Agarwal . My  
13 Learned friend is right to note that the word sense of indignation, in fact, is what led to the  
14 reference itself, which is recorded. Then My Lord, if Your Lordship will see at para 142 **R**  
15 **versus Currie** at page 637, Para. 142. **R versus Currie** is discarded because it says it needs  
16 to be tested an appeal. Just see Para 142, for the first time in England, Justice Buckley ruled  
17 in **R versus Currie** that a Member of Parliament who accepts a bribe, who abuse his trust is  
18 guilty of the common law offense of bribery. The innovation in English law needs to be tested  
19 an appeal. We say this with respect having regard to earlier English judgments, and we find  
20 support in the 22nd edition of Erskine May's treatise on law privileges, etc. Then that is quoted  
21 then 143 and 144. Now this is the inconsistency which emerges from the view taken, 143. Our  
22 conclusion is that the alleged bright takers other than Ajit Singh have the protection of 105(2)  
23 and are not answerable in a court of law for the alleged conspiracy and agreement. Charges  
24 against them must fail. Ajit Singh, having not passed a vote on the no confidence motion,  
25 deserves no immunity. So they all took bribes. The one who did not act does not get immunity.  
26 And the others who did act are immune is also a grave contradiction which arises from the  
27 ratio of the law laid down. And because Ajit Singh has no immunity, then the rest also can be  
28 prosecuted is the next paragraph. What is the effect of this upon the alleged bribe givers? In  
29 the first place, the prosecution against Ajit Singh would proceed he not having voted on the  
30 no-confidence motion, therefore not having the protection of Article 105(2). The charge  
31 against the alleged bribe givers of conspiracy an agreement with Ajit Singh to do an unlawful  
32 act, therefore, must proceed. So the conspirators can be proceeded.

33

34 So My Lord, this broadly is the view taken by Justice Bharucha. Now as against this Your  
35 Lordship will kindly see now the judgment of Justice Agrawal. It starts at PDF 549. After the  
36 preliminary facts and everything, at 557 Placitum G are the questions which are formulated.  
37 557 the questions are formulated. Now the two questions arising for consideration can be, does

1 Article 105 of the Constitution confer any immunity on a Member of Parliament from being  
2 prosecuted in a criminal court for an offense involving offer or acceptance of bribe? Is Member  
3 of Parliament excluded from the ambit of the 1988 Act for the reason that he is not a person  
4 who can be regarded as a public servant? They're all unanimous on this and he's not a person  
5 comprehended. So on these two here, they are unanimous. Now, if Your Lordship will see page  
6 558 first, the law in United States is... I need not read the whole of it. My Lords. The entire  
7 from Powder and Stuart King, the original Bill of Rights. Everything is traced My Lords. Then  
8 the progress. In fact, Your Lordships also had occasion to cover all this in Your Lordship's  
9 judgment of that Karnataka case... Kerala sorry...Ajit. Then the My Lord, English position is  
10 considered up to para number 11. That is page 560. Then 561, the Australian position is  
11 considered.

12

13 Then 563, the Canadian position is considered, and all of these jurisdictions lean in favour of  
14 the fact that they can be prosecuted under criminal law. The Canadian position is considered.  
15 This **Bunting**, My Lord **R versus Bunting**. 563, para 15. I can just quickly take Your  
16 Lordships through this My Lord. In the case of **R versus Bunting**, the defendants had  
17 moved for quashing of an indictment for conspiracy, to bring about a change in the  
18 government of the province of Ontario, by bribing members of the Legislative, to vote against  
19 the government. It was argued that bribery of Member of Parliament, is a matter concerning,  
20 Parliament or parliamentary business and is not an indictable offense at common law, and  
21 that the exclusive jurisdiction to deal with such a case, rests with the Legislative Assembly,  
22 according to the law and custom of Parliament. Rejecting the said contention, Chief Justice  
23 Wilson held, it is to my mind, a proposition very clear, that this court has jurisdiction over the  
24 offense of bribery, as at the common law in a case of this kind, where a member of the  
25 Legislative Assembly is concerned, either in the giving or offering of a bribe, or taking of it, or  
26 in respect of his duties as a member of that assembly. It is equally clear, that Legislative  
27 Assembly has not the jurisdiction, which this court has in that, in a case of that kind. It is quite  
28 clear that the ancient definition of bribery, is not proper or legal definition. Then other  
29 Honourable Judges also agreed My Lord. At page 564, the United States position is  
30 considered. In para 19, **Johnson** is referred to. Then My Lord, at 565, para 21, **Brewster** is  
31 discussed completely, the majority judgment. And 5.... I'm sorry. I hope I'm not going...

32

33 **CHIEF JUSTICE DY CHANDRACHUD:** No, no, we are with you.

34

35 **PARAMJIT SINGH PATWALIA:** Since Your Lordship is only looking at it for the purpose  
36 of reference. My Lord, I'm just giving you a...

37



1 **CHIEF JUSTICE DY CHANDRACHUD:** A broader perspective.

2

3 **PARAMJIT SINGH PATWALIA:** ...what is happening. Now at 566, para. 23, then the  
4 learned Judge says, having taken note of the legal position, and Your Lordships, may take it,  
5 all these judgments are on the record. They all are consistent on the point that, bribery is an  
6 offense, which is, there is no immunity. Now, having taken note para 23 of the legal position,  
7 as it prevails in the various countries, we may examine the legal position in India. Then, after  
8 noticing the position at 567, para 26, the Judge frankly records, that this has never come up,  
9 in an Indian Court before. Para 26. If Your Lordship will see, the question, the question,  
10 whether a Member of Parliament, can claim immunity from prosecution before a criminal  
11 court, on charge of bribery in relation to proceedings in Parliament, has not come up for  
12 consideration before the Court. It has to be examined, in the light of the provisions contained,  
13 in the Constitution. Now it is with this preface My Lord, that the learned judge examines it,  
14 and then 569 arguments of Counsel, para 32, is the Attorney General's argument.

15

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

17

18 **PARAMJIT SINGH PATWALIA:** Then that is all referred to. Then 575, the judgment in  
19 *Prebble* is also referred to, that is arising from New Zealand. Then para 41 onwards, that is  
20 572... 576 sorry. 576. The learned judge starts discussing, though the conclusions are in paras  
21 43, 44, 45. But from para 41, I'll just take Your Lordships through the Learned Judges. Para  
22 41, at 576. As indicated earlier, Article 105(2) is in two parts. In these appeals, we are required  
23 to consider the first part, which provides that no Member of Parliament, shall be liable in any  
24 proceedings in any court in respect of anything said or any vote given by him, in Parliament  
25 or any committee thereof. The immunity that has been conferred by this provision is, only on  
26 a Member of Parliament, with regard to liability in any proceedings in any court which would  
27 include civil as well as criminal proceedings, in respect of anything said or vote given by such  
28 member, in Parliament or any committee thereof. Then My Lord Mr. Rao has submitted, that  
29 having regard to the object underlying the provision to secure freedom of speech in Parliament  
30 to members, the immunity must be considered in a wide sense, just as expression anything  
31 was considered. That's the argument on the petitioner's side. Para 43. The Attorney General,  
32 the Learned Attorney General has, on the other hand, argued that immunity granted under  
33 Clause 2 of Article 105 is intended to protect a member from liability arising out of a speech  
34 made by him or a vote given by him. It cannot be extended to cover the conduct of a member  
35 who has received bribe or has entered into a conspiracy to commit the offense of bribery in  
36 order to make a speech or cast his vote in Parliament. The submission is that the expression  
37 in respect of in Article, in Clause 2 of Article 105, must be so construed so as to ensure that the

1 immunity conferred under Clause 2 is only available in respect of legitimate acts of Member  
2 of Parliament, and it cannot be invoked to secure immunity against criminal acts committed  
3 by a member in order to make a speech or give a vote in Parliament or Committee. According  
4 to the learned Attorney General, the expression in respect of, must be construed to mean for  
5 reliance has been placed on decision of this court in **State of Madras versus Swastik**  
6 **Tobacco Factory**. Then My Lord, **Tej Kiran Jain** is considered. If Your Lordship will  
7 come to page 578 in the middle next to Placitum D, because this is the observations in **Tej**  
8 **Kiran**, after the extracted portion, emphasized the object underlying the immunity that has  
9 been conferred under Article 105(2), namely, that the people's representatives should be free  
10 to exercise their functions without fear of legal consequences. Borrowing the words of Chief  
11 Justice Berger, it can be said that this immunity has been granted to protect the integrity of  
12 the legislative process by ensuring the independence of the individual legislatures. This is  
13 emphasized. It cannot be given a construction which would lead to Article 105. A charter for  
14 Freedom of Speech in Parliament being regarded as per the phrase used by Lord Salmon, a  
15 charter for corruption so as to elevate members of Parliament as super citizens immune from  
16 criminal responsibility, that is Chief Justice Berger in **Brewster**. It would indeed be ironic if  
17 claim for immunity from prosecution founded on the need to ensure independence of  
18 Members of Parliament in exercising their right to speak or cast votes in Parliament would be  
19 put forward by a member who has bartered away his independence by agreeing to speak or  
20 vote in a particular manner in lieu of illegal gratification that he has been paid or promised.  
21 By claiming immunity such a member would be seeking a license to indulge in corrupt  
22 practice. This is the crux My Lord. It is no doubt too, that a member who is found to have  
23 accepted bribe in connection with the business of the Parliament can be punished by a House  
24 for contempt, but that is not a satisfactory solution. In exercise of power to punish for  
25 contempt, House of Commons can convict a person for custody, etc. My Lord. Then May's  
26 Parliament, just a few more paragraphs, I want to show from this judgment. And then I am  
27 quite done to say that in fact...

28

29 **CHIEF JUSTICE DY CHANDRACHUD:** We will come back after lunch.

30

31 **PARAMJIT SINGH PATWALIA:** Yes.

32

33 **PARAMJIT SINGH PATWALIA:** At page 579, para 47 just Volume 5, just 4 to 5 paragraphs  
34 from this judgment, where actually para 47 is the real crux of the ratio in Justice Agrawal's  
35 Judgment. 47 is where he really lays... is the finale and then paras 50 to 52 are when the offense  
36 of bribery is complete, it's prior. Now, "as mentioned", 47. "As mentioned earlier, the object of  
37 the immunity conferred under Article 105(2) is to ensure the independence of the individual

1 legislatures. Such independence is necessary for healthy functioning of the system of  
2 parliamentary democracy adopted in the Constitution. Parliamentary democracy is a part of  
3 the basic structure of the Constitution, an interpretation of the provisions of Article 105(2),  
4 which would enable a member of Parliament to claim immunity from prosecution in a  
5 Criminal Court for an offense of bribery in connection with anything said by him, or a vote  
6 given by him in Parliament or any committee thereof, and thereby place such member above  
7 the law would not only be repugnant to healthy functioning of parliamentary democracy, but  
8 would also be subversive of the rule of law, which is an essential part of the basic structure of  
9 the Constitution, it is settled law that in interpreting the constitutional provisions, court  
10 should adopt a construction which strengthens the foundational features and the basic  
11 structure of the Constitution that is Sub-Committee of Judicial Accountability. The expression  
12 'in respect of' precedes the words, anything said or any vote given in Article 105(2). The words  
13 'anything said or any vote given' can only mean, speech that has already been made or a vote  
14 already been given. The immunity from liability therefore, comes into play, only if speech has  
15 been made or vote has been given. Immunity would not be available in a case where speech  
16 has not been made or vote has not been given. When there is a prior agreement under,  
17 whereunder a Member of Parliament has received an illegal consideration, in order to exercise  
18 his right to speak up or give vote in a particular manner, on a matter coming for consideration  
19 before the House, there can be two possible situations. There may be an agreement  
20 whereunder a Member accepts illegal gratification and agrees not to speak in Parliament and  
21 not to give his vote in Parliament. The immunity granted under 105 would not be available to  
22 such a member and he would be liable to be prosecuted on the charge of bribery in a Criminal  
23 Court. This is, Justice Bharucha also agrees, when he lets Ajit Singh go. What would be the  
24 position if the agreement is, that in lieu of illegal gratification, paid or promised, the member  
25 would speak or give his vote in Parliament in a particular manner and speaks and gives his  
26 vote in that manner, as per the wide meaning suggested by Shri Rao, for the expression 'in  
27 respect of' the immunity for prosecution would be available to the member who has received  
28 illegal gratification under such an agreement, for speaking or giving his vote and who has  
29 spoken or given his vote in Parliament as per the agreement. Because such acceptance of illegal  
30 gratification has a nexus or connection with such speaking or giving a vote by that member. In  
31 the construction placed by Sri Rao on the expression 'in respect of' is adopted, the member  
32 would be liable to be prosecuted on the charge of bribery if he accepts bribe for not speaking  
33 or not giving vote on a matter under consideration by the House, but would enjoy immunity  
34 from prosecution for such a charge if he accepts bribe for speaking or giving his vote in  
35 Parliament in a particular manner and he speaks or gives in vote in Parliament in that manner.  
36 It is difficult to conceive that the framers of Constitution intended to make such a distinction  
37 in the matter of grant of immunity between a member of Parliament who receives bribe for

1 speaking or giving vote in Parliament in a particular manner and speaks or gives vote in that  
2 manner, and a member of Parliament who receives bribe for not speaking or giving vote in a  
3 particular matter coming in the House and does not speak or give vote as per agreement, so as  
4 to confer an immunity on prosecution on the charge of bribery on the former, but denying  
5 such immunity on the latter. Such an anomalous situation would be avoided if the words 'in  
6 respect of' in Article 105 are construed to mean, arising out of. If the expression 'in respect of'  
7 is thus construed, the immunity conferred under 105(2) would be confined to liability that  
8 arises out of or is attributable to something that has been said or vote that has been given by a  
9 member of Parliament or Committee thereof. The immunity would be available only if, the  
10 speech has been made or vote has been given, is an essential and integral part of the cause of  
11 action for the proceedings, giving rise to liability. The immunity would not be available to give  
12 protection against liability for an act that precedes the making of the speech or giving of the  
13 vote by Member in Parliament, even though it may have a connection with the speech made  
14 or vote given by the Member. If such an act gives rise to liability, which arises independently,  
15 does not depend on the making of speech or giving of vote in Parliament. Such independent  
16 liability cannot be regarded as liability in respect of anything said or vote given by Member in  
17 Parliament. The liability for which immunity can be claimed under 105(2) is the liability that  
18 has arisen as a consequence of the speech that has been made or the vote that has been given  
19 in Parliament. That's the crux of the matter. Now, this is further, sort of cemented or  
20 supported by what is said in now in para 50 onwards. The construction placed on us, on the  
21 expression 'in respect of', in Article 105(2) raises the question, is the liability to be prosecuted  
22 arising from acceptance of bribe by Member of Parliament for the purpose of speaking or  
23 giving vote in Parliament in a particular manner, or a matter pending consideration before a  
24 House, an independent liability which cannot be said to arise out of anything said or vote given  
25 by a member of Parliament. In our opinion, the question must be answered in the affirmative.  
26 The offense of bribery is made out against the receiver. If he agrees, takes or agrees to take  
27 money, for promise to act in a certain way, the offense is complete with the acceptance of the  
28 money or on agreement to accept the money being concluded, is not dependent on the  
29 performance of the illegal promise by the receiver. The patwari example which Your Lordship  
30 gave. The receiver of the money will be treated to have committed the offense even when he  
31 defaults in the illegal bargain for approving the offense of bribery, all that is required to be  
32 established is that the offender has received or agreed to receive money for a promise to act in  
33 a certain way, it is not necessary to go further and prove that he actually acted in that way. And  
34 the promise to receive an act is not nowhere connected with proceedings in the House, that  
35 precedes that. Then, My Lord, the offense of criminal conspiracy is defined in section 120(A)  
36 IPC in the following terms, "when two or more persons agree or to do or cause to be done an  
37 illegal act, an act which is not illegal by illegal means, such an agreement is designated a

1 criminal conspiracy." Then the proviso says, "no agreement except an agreement to commit  
2 an offense should amount to criminal conspiracy unless some act decides the agreement is  
3 done by one of the parties to such agreement in pursuance thereof." The offense is made out  
4 when two or more persons agree to do or cause to be done an illegal act, or when two or more  
5 persons agree to do or cause to be done by illegal means an act which is not illegal. In view of  
6 the proviso to Section 120 IPC, an agreement to commit an offense shall by itself amount to  
7 criminal conspiracy. It is not necessary that some act besides the agreement, should be done  
8 by one or more parties to such agreement and pursuance thereof. This means that the offense  
9 of criminal conspiracy would be committed if two or more persons enter into an agreement to  
10 commit the offense of bribery. It is immaterial whether in pursuance of that agreement, the  
11 act that was agreed to be done in lieu of payment of money was done or not. The criminal  
12 liability incurred by Member of Parliament who has accepted bribe for speaking or giving his  
13 vote in Parliament in a particular manner thus arises independently of the making of the  
14 speech or giving of vote, and the said liability cannot be regarded as liability in respect of  
15 anything done or vote given in Parliament. We are therefore of the opinion that the protection  
16 granted under Article 105(2) cannot be invoked by any of the appellants to claim immunity  
17 from prosecution. So first, the interpretation of 105, then when the offense is complete. And  
18 the second part, in fact, Justice Bharucha does not even deal with it at all from what is  
19 discussed from paras 50 to 52. So, this is basically the essence. Also, if Your Lordship will have  
20 page 586 just before 56 in the concluding para, the position in the rest of the world is also  
21 considered, and there is a comment on that. 586, just Placitum A, "in the earlier part of the  
22 judgment." "In the earlier part of the judgment, we have found that for the past more than 100  
23 years, legislatures in Australia and Canada are liable to be prosecuted for bribery in connection  
24 with their legislative activities and with the exception of United Kingdom most of the  
25 Commonwealth countries treat corruption and bribery by Members of the Legislature as a  
26 criminal offense. In the United Kingdom also, there is a move to change the law in this regard.  
27 There appears to be no reason why legislatures in India should be beyond the pale of laws  
28 governing bribery and corruption when all other public functionaries are subject to such law.  
29 We are unable to hold the contention. In United Kingdom now the bribery act has been  
30 enacted. We have placed it on the record. I have not made it part of my submission for the  
31 reason, under the bribery act, public servants are all liable for the offense of bribe. Now, as per  
32 this judgment, all our legislators are public servants, which is unanimously accepted by all. So  
33 therefore, we did not come across a direct judgment saying legislatures in UK are also public  
34 servants, though *Currie* has been taken forward and that appears to be the legal position  
35 there as well. But the bribery act has been enacted and run up to the bribery act. In fact, Your  
36 Lordships, I'm going to cite *K Ajit* after this. Your Lordships have noticed that entire  
37 development over there. And then Your Lordships have said some three paras of *Ajit* also I'll

1 cite to Your Lordships. Now, the Third judgment of Justice Ray is at page 609 of this. It's a  
2 short order. I'll just read to Your Lordships where he agrees in parts with both the judgments.  
3 "I have had the privilege..."  
4 609. "I have had the privilege of reading both the judgments one of my learned brother, Justice  
5 Agrawal, and other by my learned brother, Justice Bharucha. Though I respectfully concur  
6 with the finding of Justice Agrawal and agree with the reasoning for such finding that 1) a  
7 Member of Parliament is a public servant under Section 2(c) of the Prevention of Corruption  
8 Act 1988; and 2) since there is no authority competent to grant sanctioned for prosecution of  
9 a Member of Parliament under Section 19(1) of the Prevention of Corruption Act 1988, the  
10 court can take cognizance of the offences mentioned in section 19(1) in the absence of sanction  
11 but before filing a charge sheet in respect of an offense punishable under Section 7, 10, 11, 12,  
12 15, 88 Act against a Member of Parliament in a Criminal Court, the prosecuting agency shall  
13 obtain the permission of the Chairman of the Rajya Sabha, Speaker of the Lok Sabha as the  
14 case may be, I have not been able to persuade myself to concur with the reasonings and  
15 findings in the judgment of Justice Agrawal that a Member of Parliament does not enjoy  
16 immunity under Article 105(2) or 105(3) of the Constitution from being prosecuted before a  
17 Criminal Court for an offense involving offer or acceptance of bribe for the purpose of speaking  
18 or giving vote in Parliament. Article 105 of the Constitution deals with powers, privileges, etc.  
19 of Houses of Parliament, Members, and Committees thereof. Sub-Article 1 of Article 105  
20 makes it evident that subject to the provisions of the Constitution, rules and standing orders  
21 regulating procedure of Parliament, there shall be freedom of speech. The provisions of Article  
22 1 of Article 105 indicate in no uncertain terms that freedom of speech guaranteed under Sub-  
23 Article 1 of Article 105 is independent of the freedom of speech guaranteed under 19 of the  
24 Constitution, and such freedom of speech under Article 105(1) is not inhibited or  
25 circumscribed by the restrictions under Article 19. In order to ensure effective functioning of  
26 parliamentary democracy there was a need felt that a Member of Parliament would have  
27 absolute freedom in expressing his views when deliberations made on the floor of Parliament.  
28 Similarly, he must enjoy full freedom of casting vote. The protection to be enjoyed as contained  
29 essentially flow from the freedom of speech guaranteed under Article 1 of 105. Both Articles  
30 complement each other. Then, My Lord discusses that and on the next page, just above  
31 Placitum E, as I respectfully agree with the reasonings indicated in the judgment of learned  
32 brother, Justice Bharucha, that in the facts of the case, protection under 105(3) of the  
33 Constitution is not attracted, but protection under Sub-Article 2 of 5 is available only to those  
34 accused, who as Members of Parliament have cast their vote. I refrain from indicating separate  
35 reasons." So, he agrees on two points with Justice Agrawal and then agrees on the third point  
36 with Justice Bharucha. While on the first point, all three agree with each other. So that's the  
37 way how the judgment is. Now, Your Lordships may also see one more judgment before I make

1 my submission. That is the judgment in **K Ajit**. This is again Volume 5 My Lord, page 1526,  
2 the Judgment starts. Three paragraphs I want to read to Your Lordships, that is the State of  
3 Kerala. The factual matrix is in para 4, where Your Lordships have... just one paragraph 1526  
4 on "13th March 15, the then Finance Minister was presenting the budget for the financial year  
5 15-16 in the Kerala Legislative Assembly, the respondent accused who at the time were  
6 members of the Legislative Assembly belonging to the party in opposition disrupted the  
7 presentation of the budget, climbed over to the Speaker's dais, damaged furniture and articles  
8 including the Speaker's chair, computer, mike, emergency lamp, and panel. Causing loss of  
9 2,20,000. The incident was reported to the Museum Police Station by the Legislative  
10 Secretary. Crime was registered under 447, 427 read with 34 of the Penal Code, 3(1) of the  
11 Prevention of Damage to Public Property Act on completion. Then final report was submitted.  
12 Then the APP sought sanction to withdraw the case. Then, ultimately, they had lost at all  
13 stages. I need not go into the facts in more detail, but the discussion, My Lord, on immunities  
14 and privileges is at 1538, para 27 onward the discussion starts. Your Lordships, notice Article  
15 105, para 27 at the bottom of 1538. Notice, Article 105, 194 of the Constitution. Then, My Lord,  
16 Your Lordships have discussed it. Then, Your Lordships have at 1540, discussed at the top, the  
17 position in the United Kingdom. Shall I? Just, I need not read the whole of...

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** No, you need not...

20

21 **PARAMJIT SINGH PATWALIA:** The position is discussed. Then, Your Lordships have  
22 concluded at para 44, at Page 1542 from the, now the conclusion is, "from the above cases it is  
23 evident that, a person committing a criminal offense within the precincts of the House does  
24 not hold an absolute privilege. Instead, he would possess a qualified privilege and he would  
25 receive the immunity only if the action bears nexus to the effective participation of the member  
26 in the House." So, the narrow construction. What Your Lordships have actually leaned towards  
27 is, Justice Agrawal's view, not the broad, not somehow, anyhow. Then, Your Lordships have  
28 discussed the position in India from para 45 onwards and Your Lordships have discussed this  
29 judgment also. At Page 1545, Your Lordships have considered **Raja Ram Pal**, the "cash for  
30 query" case also. Page 56, we are governed by a written Constitution, and therefore, the  
31 Constitution is supreme. That's 56, para 56 at Page 1545. The principle which emphatically  
32 emerges from this judgment is, that whenever a claim from privilege or immunity is raised in  
33 the context of Article 105 or 194, the Court is entrusted with the authority and jurisdiction to  
34 determine whether the claim is sustainable on the anvil of the Constitutional Provision. The  
35 Constitution Bench held that, neither Parliament nor State Legislature can assert the power of  
36 self-composition or in other words, the power to regulate their own Constitution in the manner  
37 claimed by the House of Commons in the UK or in the UK. The decision therefore emphasizes

1 the Doctrine of Constitutional Supremacy in India, as distinct from Parliamentary Supremacy  
2 in the United Kingdom, which is also the view taken by Chief Justice in **Brewster**. Then, Your  
3 Lordships quote this Justice Ripusudan Dayal, para 51, 52 on the next page. "The scope of  
4 privilege enjoyed depends on the need for privilege. Why they have been provided for. The  
5 basic premise for the privilege enjoyed by the members is to allow them to perform their  
6 function as members, and no hindrance can be caused in the functioning of the House". Then  
7 again, the next para 52. It is clear, basic concept is that privileges are those rights without  
8 which the House cannot perform its legislative function. They do not exempt members from  
9 their obligations under any statute, which continue to apply to them like any other law  
10 applicable to ordinary citizens. In fact, this is what Justice Agrawal says and this is actually the  
11 view which Your Lordships have also taken. Then My Lord, Your Lordships have gone into the  
12 facts of that case. But at Page 1549, 3 more paragraphs, I want to read. 72, 73, 74. Para 72, if  
13 Your Lordship will kindly see. Para 72, tracing the history of the privileges and immunities  
14 enjoyed by Members of the House of Commons, may, makes a [UNCLEAR] division of the  
15 position in the UK into various phases. However, the standout feature, which emerges from  
16 the privileges and immunities of Members of the House of Common, is the absence of an  
17 immunity from the application of criminal law. That this jurisprudential development began  
18 in Sir John Elliott, was developed by Justice Stephen in Brad Law and cemented by the UK  
19 Supreme Court in [UNCLEAR]. Actually, we have attached My Lord, those paras I can give  
20 Your Lordships in a note, I need not read it. It takes it further and cements the position  
21 actually, that they are not immune from ordinary criminal statutes. Then, there is a valid  
22 rationale for this position. The purpose of bestowing privileges and immunities to elected  
23 members of the legislature, is to enable them to perform their functions without hindrance,  
24 fear or favour. This has been emphasized by 3 judge bench in **Lokayukta**, Justice Ripusudan  
25 Dayal. The oath of office which Members of Parliament and of the State Legislatures have to  
26 subscribe requires them to bear true faith and allegiance to the Constitution of India, as by law  
27 established, uphold the sovereignty and integrity of India, faithfully discharged the duty upon  
28 which they are about to enter. It is to create an environment in which they can perform their  
29 functions and discharge their duties freely that the Constitution recognizes privileges and  
30 immunity. The privileges bear a functional relationship to the discharge of functions of a  
31 legislature. They are not a mark of status which makes legislatures stand on unequal pedestals.  
32 It is of significance that, though Article 19(1)(a) expressly recognizes the right to freedom of  
33 speech and expression as inherent in every citizen, both Articles 105(1) and 194(1) emphasize  
34 that there shall be freedom of speech in Parliament and legislature of a State. In essence  
35 19(1)(a) recognizes an individual right of to freedom of speech and expression as vested in all  
36 citizens. Article 105, 94 speak about freedom of speech in Parliament and State Legislatures,  
37 and in that context must necessarily encompass the creation of an environment in which free



1 speech can be exercised within their precincts. The recognition that there shall be freedom of  
2 speech in Parliament and State Legislature underlined the needs to ensure the existence of  
3 conditions in which elected representatives can perform their functions effectively. The duties  
4 and functions are as much a matter of duty and trust as they are a right in hearing in the  
5 representatives who are chosen by the people. We miss the wood for the trees, if we focus on  
6 rights without corresponding duties upon elected public representatives. Privileges and  
7 immunities are not gateways to claim exemption from the general law of the land, particularly  
8 as in this case the criminal law which governs the action of every citizen. Very important  
9 statement. To claim an exemption from the application of criminal law would be to betray the  
10 trust which is impressed on the character of elected representatives as the makers and in actors  
11 of law. The entire foundation upon which the application for withdrawal under 321 was moved  
12 by the public prosecutor is based on fundamental misconceptions of the constitutional  
13 provision contained in Article 194. The public prosecutor seems to have been impressed by the  
14 existence of privileges and immunities which would stand in the way of prosecution. Such an  
15 understanding betrays the constitutional provision and proceeds on a misconception that  
16 elected members of Legislature stand above the general application of the law. That is what I  
17 want to read from here and ultimately submit therefore that this is a case where a reference is  
18 needed to a larger bench because one, the judgment which ultimately finds acceptance of the  
19 third judge, actually proceeds and relies on judgments which are no longer good law in the  
20 original jurisdiction. Relies on the dissenting judgment, that is point number one. Point  
21 number two, My Lord...

22

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

24

25 **PARAMJIT SINGH PATWALIA:** It accepts the very wide definition of the provision and  
26 says any nexus which is not the correct position in law. The object of the privilege is to be seen  
27 to ensure freedom within the legislature. Freedom of expression and not to confer an  
28 immunity from ordinary criminal laws. This is para 47 of Justice Agrawal's view. Third, it  
29 completely misses the point as to when the offense is complete, paras 50 to 52 of Justice  
30 Agrawal's view. The offense is actually complete much before the legislature goes to the  
31 Parliament. And My Lord lastly, as Your Lordships have also said in *Ajit* in paragraph 72  
32 onwards. First para. 42. Para 44 and then 72 onwards. The international trend is also that  
33 legislatures are not beyond the criminal law and law of the land and therefore My Lords on  
34 these points I would submit that a fresh look is required, and the matter should go to a larger  
35 bench.

36

1 **CHIEF JUSTICE DY CHANDRACHUD:** Thank You, Mr. Patwalia. Yes, Mr.  
2 Sankaranarayanan.

3

4 **GOPAL SANKARANARAYANAN:** Just a few points I won't take long. The entirety of the  
5 Jharkhand case revolves entirely on an interpretation of three words in Article 105 and Article  
6 194. Those are the words 'in respect of' if I can trouble Your Lordships with that part, because  
7 that is the... My Lords I've got four copies...

8

9 **CHIEF JUSTICE DY CHANDRACHUD:** In *Narasimha Rao* did they summarize their  
10 conclusions?

11

12 **GOPAL SANKARANARAYANAN:** Yes, yes.

13

14 **CHIEF JUSTICE DY CHANDRACHUD:** Let's just see that and then..

15

16 **GOPAL SANKARANARAYANAN:** My Lords these Red copies of the Constitution, I've got  
17 four more. I'll get you a fifth. I have just..

18

19 **CHIEF JUSTICE DY CHANDRACHUD:** So I get a second one because of the second  
20 Constitution Bench.

21

22 **PARAMJIT SINGH PATWALIA:** Amicus should also get, My Lord.

23

24 **GOPAL SANKARANARAYANAN:** Yeah, you will. What I could arrange now, I got. If Your  
25 Lordships will see Article 105, Sub-Clause 2, "no Member of Parliament shall be liable to any  
26 proceedings in any Court, in respect of anything said or any vote given by him in Parliament  
27 or any committee thereof." I'll pause there. This in respect of is what had to be interpreted by  
28 the Court. And the cleavage of opinion between the majority and the minority is on how 'in  
29 respect of' will be interpreted. So I just want to read... large parts of the Judgment have been  
30 read by the Learned Amicus. If I can just trouble Your Lordships with just one small passage  
31 which is in para 47 of the judgment at page 580, PDF 580 which is one little passage because  
32 this is the heart of..

33

34 **CHIEF JUSTICE DY CHANDRACHUD:** PDF page 580 of?

35

1 **GOPAL SANKARANARAYANAN:** 580 of same Volume 5, *Narasimha Rao's* judgment.  
2 If I can have Your Lordship's attention at Placitum C, just between C and D. My Lords have it?  
3 Page 580. If I can read. If the construction..

4

5 **CHIEF JUSTICE DY CHANDRACHUD:** 579 is it?

6

7 **GOPAL SANKARANARAYANAN:** 580, Mr Lord. PDF 580.

8

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

10

11 **GOPAL SANKARANARAYANAN:** The big numbered page will be 576 but PDF is 580.  
12 Yeah, this is para 47, which continues from the previous. Somewhere exactly halfway down  
13 the page. It says, if the construction placed by Sri Rao, Your Lordships have that?

14

15 **JUSTICE A.S. BOPANNA:** Yes.

16

17 **GOPAL SANKARANARAYANAN:** "On the expression in respect of is adopted, a member  
18 would be liable to be prosecuted on a charge of bribery if he accepts bribe, for not speaking or  
19 for not giving his vote on a matter under consideration before the House, but he would enjoy  
20 immunity from prosecution for such a charge if he accepts bribe for speaking or giving his vote  
21 in Parliament in a particular manner, and he speaks or gives his vote in Parliament in that  
22 manner. It is difficult to conceive that the framers of the Constitution intended to make such  
23 a distinction in the matter of grant of immunity between a Member of Parliament who receives  
24 bribe for speaking or giving his vote in Parliament in a particular manner, and speaks of gives  
25 his vote in that manner, and a Member of Parliament who receives bribe for not speaking or  
26 not giving his vote on a particular matter coming up before the House and does not speak or  
27 give his vote as per the agreement, so as to confer an immunity from prosecution on charge of  
28 bribery on the former, but denying such immunity to the latter." So by the mere act of  
29 abstaining from voting. And if he's been bribed to abstain from voting, he would be immune.  
30 I'm sorry, he would not be immune, not be. But if he acted and voted in a particular fashion,  
31 he would be immune. Now this artificial distinction, they say that it's difficult to conceive the  
32 Framers of the Constitution meant that. Such an anomalous situation would be avoided if the  
33 words 'in respect of' in Article 105(2) are construed to be.

34

35 **CHIEF JUSTICE DY CHANDRACHUD:** *Ajit* was not granted?

36

1 **GOPAL SANKARANARAYANAN:** He was not. In fact, the conclusions Your Lordships  
2 asked if Your Lordships come to the conclusion, I'll just come to that 'in respect of' an Article  
3 105(2) are construed to mean arising out of. If the expression 'in respect of' is thus construed,  
4 the immunity conferred under Article 105(2) would be confined to liability that arises out of  
5 or is attributable to something that has been said or to a vote that has been given by a member  
6 in Parliament or any committee thereof. The immunity would be available only if the speech  
7 that has been made or the votes that has been given is an essential and integral part of the  
8 cause of action for the proceedings giving rise to the liability. The immunity would not be  
9 available to give protection against liability for an act that precedes the making of the speech  
10 or giving a vote by a Member in Parliament, even though it may have a connection with the  
11 speech made or the vote given by the member. If such an act gives rise to a liability, which  
12 arises independently and does not depend on the making of the speech or the giving of vote in  
13 Parliament by the Member, such an independent liability cannot be regarded as liability, in  
14 respect of anything said or vote given by the Member in Parliament. The liability for which  
15 immunity can be claimed under 105(2) is the liability that has arisen as a consequence of the  
16 speech that has been made or the vote that has been given in Parliament. This is the reasoning  
17 that the minority adopts, My Lords. The conclusions, Your Lordships wanted to see, of the  
18 majority is at 604. PDF 604, para 98 My Lords, which is, sorry, PDF 608, para 98. Now, these  
19 are the conclusions of the minority. On the basis of the aforesaid discussion, we arrive at the  
20 following conclusion. And the first conclusion is the one that we are concerned with, that a  
21 Member of Parliament does not enjoy immunity under Article 105(2) or under 105(3) of the  
22 Constitution from being prosecuted before a Criminal Court for an offense involving offer or  
23 acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any  
24 Committees thereof. There's a one page concurring judgment of Justice Ray's with the  
25 majority, that's the next page My Lords. Para 101, Your Lordship will see, once again the  
26 interpretation of 'in respect of' is there, that's Para 101, that's Justice Ray's, after which Justice  
27 Bharucha's judgment, My Lords, starts thereafter for himself and Justice Babu. And if Your  
28 Lordships will be kind enough to come to para. 139, which is PDF, page 636. 636, para 140.  
29 Mr. Patwalia read the next paragraph, I just thought this may be relevant. Brennan J. Para  
30 140, Your Lordships have? Brennan J. dissenting in **Brewster**, said that **Brewster** had been  
31 charged with a crime, whose proof called into question, the motives behind his legislative acts.  
32 He could not only, not be prosecuted or called to answer for his vote in any judicial or executive  
33 proceeding, but his immunity went beyond the vote itself and precluded all extra congressional  
34 scrutiny as to how and why he cast or would have cast his vote a certain way. Neither the  
35 Senator's vote, nor his motives for voting however dishonourable, could be the subject of a  
36 civil or criminal proceeding outside the halls of the Senate. The charge of a corrupt promise to  
37 vote was repugnant to the Speech or Debate Clause. It might be that, only receipt of the bribe

1 and not performance of the bargain was needed to prove the charge, but proof of an agreement  
2 to be influenced in the performance of Legislative Act was, quote "by definition, an inquiry  
3 into their motives, whether or not the Acts themselves or the circumstances surrounding them  
4 are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind  
5 carries with it, the same dangers to legislative independence that are held to bar accountability  
6 for the official conduct itself". The Senator's reprehensible and outrageous conduct, if  
7 committed, should not have gone unpunished but whether a court only the Senate might  
8 undertake the task as a Constitutional issue of portentous significance, which must, of course,  
9 be resolved uninfluenced by the magnitude of the perfidy alleged. These two quotes are  
10 relevant because this is effectively what the majority takes and uses as the basis for the entire  
11 judgment. See para 141. "We cannot but be impressed by the majority opinion in **Brewster**,  
12 but with respect, are more persuaded by the dissent." These two paragraphs I read out. The  
13 majority opinion stated, that the only reasonable reading of the Speech and Debate Clause  
14 was, that it does not prohibit inquiry into activities that are casually or incidentally related to  
15 legislative affairs, but not a part of the legislative process itself. Upon this construction of the  
16 Speech or Debate Clause, it came to the conclusion that, a Court could investigate whether  
17 **Brewster** had taken a bribe to be influenced in the performance of official acts in respect of  
18 his action, vote, and decision on postage rate legislation. With respect, we cannot regard the  
19 act of taking a bribe to vote in a particular way in the Legislature to be merely casually or  
20 incidentally related to legislative affairs." And then they rely on this Library of Congress  
21 Publication, and they approve it My Lords. That extract is there and then, My Lord at para 143  
22 Your Lordship have seen the conclusion that they've drawn after that. Next page, PDF 638.  
23 "Our conclusion is that the alleged bribe taker other than Ajit Singh have the protection of  
24 105(2) and are not answerable in a court of law for the alleged conspiracy and agreement. The  
25 charges against them must fail. Ajit Singh, not having cast a vote on the no confidence motion,  
26 derives no immunity from Article 105(2)." I ask myself if I were to take a bribe and then have  
27 second thoughts a prick of conscience and I decide not to vote as the bribe has demanded. I  
28 would not have my immunity. But if I were a good boy and I acted as per the bribe and I went  
29 and voted in accordance with that, I would suddenly be immune. This absurdity My Lords has  
30 led to when this judgment itself came out contemporaneously, there were many criticisms of  
31 this and a slew of articles came out, just one of them by an author, I will just read one sentence  
32 from that. "In the nearly half century of its existence..." This is Mr. Noorani writing in his  
33 Constitutional Questions on Citizens Rights. "In the nearly half a century of its existence, few  
34 rulings of the Supreme Court incurred such odium and so deservedly than that so merrily  
35 handed down on 17th April '98 in the **Jharkhand Mukti Morcha** case. It holds that  
36 legislators, MPs or MLAs who take bribes enjoy constitutional protection from prosecution for  
37 their crimes. Lesser mortals, however, who offer the bribes do not, and this in the name of free

1 speech and free vote in the House." If I may draw parallel, My Lord will recall in Section 6A of  
2 the Delhi Special Police Establishment Act there was the single directive which had been struck  
3 down in **Vineet Narain** and then they brought it back by way of statute. Your Lordships had  
4 occasion sitting in five to entertain the challenge to section 6A. Section 6A provided that if you  
5 are a particular class of officer, a consent is required in order to prosecute you, created two  
6 classes of officers and that was struck down by Your Lordships. The effect of this judgment is  
7 that it says that you are welcome to take bribes provided you are acting in accordance with  
8 that bribe as far as the House is concerned. But if any other individual, if a PWD engineer on  
9 the street is taking a bribe, there is absolutely no immunity available to him. It is not Article  
10 105 and 194. These provisions are not meant to spread that limited dragnet of protection so  
11 far afield that a taking of a bribe for this tenuous purpose is to be protected. And if I may, just  
12 for a minute, take Your Lordships to one Para from **Kalpana Mehta** My Lords, which is in  
13 this same volume. It's at PDF 1325. This is **Kalpana Mehta**. PDF 1325. It starts at 1214, PDF  
14 2114. This is the Constitution Bench of My Lords dealing with Parliamentary Committee  
15 Report and whether privilege attached to that. I just want to read one paragraph. Actually, two  
16 paragraphs. One is paragraph 221, which is at PDF 1325. Do My Lords have that?

17

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

19

20 **GOPAL SANKARANARAYANAN:** 1324-1325. This is My Lord, Justice Chandrachud's  
21 judgment as part of the Bench. My Lord has para 220?

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** Yes, that is 1324.

24

25 **GOPAL SANKARANARAYANAN:** PDF 1324. Now this is also Constitution Bench. Para  
26 220 deals with My Lord summation of **P.V. Narasimha Rao**. Para 221 is with reference to  
27 the submission of the Attorney General at that point and I just want to read that para after  
28 Para 221's extract at page 1325, just after the extract, Your Lordships have the view? 1325, 2nd  
29 paragraph.

30

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

32

33 **GOPAL SANKARANARAYANAN:** The view of the minority was that the offence of bribery  
34 is made out against a bribe taker either upon taking or agreeing to take money for a promise  
35 to act in a certain manner. Following this logic, SC Agrawal J. held that the criminal liability  
36 of a Member of Parliament who accepts a bribe for speaking or giving a vote in Parliament  
37 arises independent of the making of the speech or the giving of the vote, and hence is not a

1 liability in respect of anything said or any vote given in Parliament. The correctness of the view  
2 in the judgment of the majority does not fall for consideration in the present case. Should it  
3 become necessary in an appropriate case in future, a larger bench may have to consider the  
4 issue. It is our submission that it squarely false for consideration here, because the impugned  
5 judgment in the main case deals with this and the defence Mr. Ramachandran was very fair to  
6 disclose, relies on the majority in **Narasimha Rao**. Now the majority in **Narasimha Rao**  
7 does not come to his aid if it is overruled then the conclusion is there for all to see. Just two  
8 small things in addition, on is the judgment in **Dawoodi Bohra** that's also here but I'm not  
9 taking Your Lordships... fairly clear that the only other avenue, apart from concurrent benches  
10 referring matters to a larger bench if there is a disagreement is where it is placed on the  
11 administrative side. Your Lordships may have seen the orders which were passed in this case,  
12 the first order was by a Bench of 2, the second order was a by a Bench of 3. Now that Bench of  
13 3, placed it on the administrative side. The last sentence places it on...

14

15 **CHIEF JUSTICE DY CHANDRACHUD:** At least five judges...

16

17 **GOPAL SANKARANARAYANAN:** At least five judges for consideration. I just... this is  
18 only to meet with Mr. Ramachandran's submission that it doesn't call for a reference or even  
19 the Attorney General's... That was a call that was taken on the administrative side to place it  
20 before this Bench. So, now that this Bench is already constituted for it, there's no question of  
21 reversing it, because that's a call that's been taken and that call is not open to judicial review,  
22 because it was taken on the administrative side. Now, that having been done and keeping in  
23 mind that between 1998, when the judgment was delivered and now, we have had substantial  
24 progresses as far as the law is concerned, in fact, in the same judgment of **Kalpna Mehta**,  
25 while answering the reference at para 271, Your Lordships noticed the passage of time from  
26 the time of independence till now. That's at page 1345 bottom, I won't take more of your time  
27 by reading it out, but para 271 and para 274 talk about how the passage of time and the changes  
28 that have been brought... specifically this sentence, "We no longer live in a political culture  
29 based on the subordination of individuals to the authority of the State. Our interpretation of  
30 the Constitution must reflect a keen sense of awareness of the basic change with the  
31 Constitution as made to the polity and to its governance." This is page 1346, the last sentence  
32 of para. 271. Now in the 25 years since **P.V. Narasimha Rao's** judgment has come, we've  
33 had many developments, including the fact of Article 14, Article 19 21, individual rights being  
34 expanded, public morality, this fell from Your Lordships that has undergone a change and an  
35 expensive interpretation has been given. Also, My Lord in the **CVC's** case. **CVC Thomas's**  
36 case, which was Centre for Public Interest Litigation, institutional integrity was coined as an  
37 important phrase to be borne in mind when dealing with a writ of [UNCLEAR]. Now, if we

1 keep all these phrases in mind and consider the developments in law since then, clearly, all  
2 these principles are now available, perhaps to persuade a larger bench that could be  
3 constituted in this case to accept that the **Narasimha Rao** minority has the correct view and  
4 why it should be revisited. I think those developments also need to be borne in mind so that  
5 we can reverse the idea, that a parliamentarian or a legislator can have some sort of  
6 constitutional immunity only because he has acted in terms of the bribes. In the US, recently  
7 this Senator Lindsey Graham was questioned, he's been arraigned and he's been questioned  
8 about the phone calls that he made during the elections for Georgia. He sought to appeal that  
9 saying, it's a privilege which he has under the same Article 1, Section 6 of the US Constitution.  
10 That has been rejected by the US Supreme Court, saying, "Look, we can't expand that at the  
11 moment." So, they haven't even granted *cert, certiorari* for that. But it is a subject that is  
12 keeping courts engaged in those jurisdictions, where we haven't stepped far enough. But in the  
13 US, in the UK, everywhere else, in the developed world, we have gone far enough to say, as the  
14 majority in **Brewster** did that, "You will not have this protection of immunity." India stands  
15 out like a sword thumb with having this wafer thin majority in **Narasimha Rao** changing  
16 what should be right.

17

18 **GOPAL SANKARANARAYANAN:** Therefore, I join the Amicus completely. This matter  
19 needs to be referred to a larger bench and this judgment needs to be reconsidered. I am most  
20 grateful.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Sorry, who are you appearing for?

23

24 **DR. VIVEK SHARMA:** Yes, pardon sir?

25

26 **CHIEF JUSTICE DY CHANDRACHUD:** Who are you appearing for?

27

28 **DR. VIVEK SHARMA:** N.B. Tiwari, intervenor.

29

30 **CHIEF JUSTICE DY CHANDRACHUD:** Intervenor? You are supporting the reference, or  
31 you are opposing the reference?

32

33 **DR. VIVEK SHARMA:** Sir, we are assisting the court and we are putting the independent  
34 points regarding this matter. Only the points.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** Do you want us to make a reference or you are  
37 opposing the reference?



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**DR. VIVEK SHARMA:** We are in favour of the reference to the larger bench. So, please sir, only two minutes, please.

**CHIEF JUSTICE DY CHANDRACHUD:** Two minutes, yes.

**DR. VIVEK SHARMA:** Sir, the point 1 is that, what was the intention of our Constitution Makers under Article 105, and 194? Whether immunity from criminal prosecution for taking bribes or money for vote or speech in House to MP, MLAs is creating a different class, who are allowed to corrupt the basic structure or the foundation of the democracy. First point is that. And second point is that, whether in democracy like India, a voter can expect from his elected representative, that he should be allowed to take money or bribe for speech or votes in House. Sir, we are deciding from the point of view of the lawmakers, from the past decisions, but we are not considering the point of view our Constitution Makers and like as the common voter. Because in India, we have the constitutional supremacy, not the parliamentary supremacy. So, the reference should be the larger bench in this.

**CHIEF JUSTICE DY CHANDRACHUD:** Yes, thank you. Yes, Mr. Attorney General.

**R. VENKATARAMANI:** I stand by what the Attorney has said in the earlier occasion. Not that... I remember a catchy phrase of one of the earlier Attorney Generals of US somewhere in the 90s about the sanctuaries of corruption. So, Parliament or Legislators should not become sanctuaries of corruption. That's well taken. But, I also said that probably the Court is now called upon to sit in review over *Narasimha Rao* on a particular fact situation then one can understand that. But we are now thinking in the abstract. Reviews over curative petitioners withdrawn. Now, in the abstract, on the facts of this case, I don't think there's need for even applying *Narasimha Rao*. If I am clear on that, if *Narasimha Rao* will not even apply, then what is that the question, which the Court needs to formulate and doubt or accept the minority view or go with the majority view? I am, probably I have not assisted the Court either way in my submission. My only, I'm sorry... So, if you go entirely by the...

**CHIEF JUSTICE DY CHANDRACHUD:** Are you abiding by the stance which was taken by the Attorney General in *Narasimha Rao*?

**R. VENKATARAMANI:** Now, what the Attorney argued in *Narasimha Rao* is entirely, what [UNCLEAR] as a proposition of law. But I, as an Officer of the Court. Now, there is a view taken by the Bench. Just take a few preliminary observations. Now, paragraph 74 and 77, the

1 minority view. If you have to go by that and take it as a total, as a view of the Bench in  
2 **Narasimha Rao**, then this appeal will have to be dismissed because the appellant will have  
3 to be prosecuted. I say yes, the appellant will have to be prosecuted on the facts of this case,  
4 not because **Narasimha Rao** is rightly or wrongly decided. Because I started by saying, my  
5 observation statement in the morning saying that **Narasimha Rao** does not fall for the  
6 application on the facts of this case.

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** But Mr. Attorney General, the impugned  
9 judgment of the High Court relies upon the judgment in **Narasimha Rao**.

10

11 **R. VENKATARAMANI:** Now, that's it, they could not have relied upon the judgement.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** [INAUDIBLE]

14

15 **R. VENKATARAMAI:** The appellant could not have relied upon the judgment in  
16 **Narasimha Rao**.

17

18 **CHIEF JUSTICE DY CHANDRACHUD:** [INAUDIBLE] Mr. Ramachandran, also rest on  
19 the judgment to the majority.

20

21 **R. VENKATARAMANI:** That's how they came. That's how they travel this length, this  
22 length.

23

24 **CHIEF JUSTICE DY CHANDRACHUD:** That's right. We have to.

25

26 **R. VENKATARAMANI:** Otherwise, the matter would have been over somewhere else. So  
27 the question of invoking **Narasimha Rao** does not arise on the facts of this case. A very  
28 important distinction whether a narrow view is to be taken or an expansive view to taken will  
29 then be dictated by the facts of a given case. But now, as I said in the abstract, a narrow view  
30 would probably comment to the court or a broader view. Because as I see the law which has  
31 grown over a period of time, US, UK, Canada, Australia on the one hand, there's a need to keep  
32 the integrity of the Speech and Debate Clause. The protection of immunity on the one hand,  
33 same time in an over broad protection can probably bring in distortions on the functions of a  
34 parliamentarian. So on the balance of his considerations, the majority view has taken a  
35 particular perspective. So if for the purpose of this case, I am little worried whether on the  
36 facts of this case, there's a need for a reference to a larger bench. The answer would be no and  
37 prosecution will have to go on but I stand with the other principle, that how do you really

1 expound Article 194 or 105? Maybe there is a case where out for expounding it. But as I said,  
2 that...

3

4 **CHIEF JUSTICE DY CHANDRACHUD:** The criminal appeal arises from a Judgment in  
5 Order dated 17 February 2014 of the High Court of Jharkhand. In writ petition criminal 128  
6 of 2013. An election took place on 30 March 2012 for two members of the Rajya Sabha  
7 representing the State of Jharkhand. The Appellant was a member of the Legislative Assembly  
8 from a seat reserved for the Scheduled Tribes and contested as a candidate belonging to the  
9 Jharkhand Mukti Morcha. The allegation against the Appellant is that she accepted a bribe  
10 from an independent candidate for casting her vote in his favour. However, according to the  
11 Appellant she did not cast her vote in favour of the alleged bribe giver and in fact cast her vote  
12 in favour of a candidate belonging to her own party, this having emerged from the open  
13 balloting for the Rajya Sabha seat. Moreover the round of election in question was rescinded  
14 and a fresh election was held at which the Appellant voted in favour of a candidate belonging  
15 to her own party. The Appellant moved the High Court for quashing the charge sheet and the  
16 criminal proceedings instituted against her, relying on the provisions of Article 194(2) of the  
17 Constitution. The High Court declined to quash the proceedings on the ground that the  
18 appellant had not cast her vote in favour of the alleged bribe giver. That has given rise to the  
19 appeal. On 23 September 2014, when the proceedings were placed before a two judge bench,  
20 the Court was of the view that since the issue arising for consideration "is substantial and of  
21 general public importance" it should be placed before a larger bench of three judges.

22

23 On 7 March 2019 when a bench of 3 judges took up the appeal, it noted that the [UNCLEAR]  
24 of the charge against the appellant is that, she had accepted a bribe to vote in favour of a  
25 particular candidate in the Rajya Sabha election, for Jharkhand. The precise question as a  
26 three judge bench noted, as a three judge bench observed, was dealt by.... was dealt with... in  
27 a judgment of a Constitution bench in ***P.V. Narasimha Rao versus State*** 1998 4 SCC  
28 626. While, two judges on the bench, (Justice S.P. Bharucha and Justice S. C. Agrawal and  
29 Justice A.S. Anand) took the view, that the protection under Article 105(2) and corresponding  
30 the Article 194(2) of the Constitution and the immunity granted would not extend to cases  
31 where bribery for making a speech or vote in a particular manner in the House is alleged. The  
32 view of the majority was to the contrary. The 3 judge bench, hearing the present appeal, was  
33 of the view that, "having regard to the wide ramification of the question that has arisen, the  
34 doubts raised and the issue being is a matter of substantial public importance" it required to  
35 be referred to a larger bench as may be considered appropriate. The matter has been placed  
36 pursuant to the administrative directions of the Chief Justice before this bench of 5 judges.

37

1 **PETITIONER'S COUNSEL:** [UNCLEAR] Otherwise Your Lordships may [UNCLEAR]...

2

3 **CHIEF JUSTICE DY CHANDRACHUD:** We need to take note of that?... I mean...

4

5 **PETITIONER'S COUNSEL:** [UNCLEAR]

6

7 **CHIEF JUSTICE DY CHANDRACHUD:** Give us the PDF page. Just give us the PDF page,  
8 because that was not shown to us in the morning.

9

10 **PETITIONER'S COUNSEL:** Page 1, My Lords.

11

12 **CHIEF JUSTICE DY CHANDRACHUD:** Page 1.

13

14 **PETITIONER'S COUNSEL:** It's not there on the PDF... It's not there. It's an order dated  
15 15-11-22.

16

17 **CHIEF JUSTICE DY CHANDRACHUD:** You have a copy of that order?

18

19 **PETITIONER'S COUNSEL:** 15-11-22. Just see if we have a printed copy...

20

21 **CHIEF JUSTICE DY CHANDRACHUD:** You have a printed copy? Mr.  
22 Sankaranarayanan, you may not get it back.

23

24 **PETITIONER'S COUNSEL:** Please share one of the printed copies.

25

26 **PETITIONER'S COUNSEL:** Your Lordships.

27

28 **CHIEF JUSTICE DY CHANDRACHUD:** Thank you. Returned with thanks. Yes. We must  
29 note at the outset that Mr. Raju Ramachandran, learned Senior Counsel, appearing on behalf  
30 of the Appellant, submitted that, strictly speaking a reference to... a reference of the  
31 correctness of the decision in *P.V. Narasimha Rao (supra)* may not secretly speaking be  
32 necessary in the facts of the present case. This submission has been also advanced by the  
33 Learned Attorney General for India. Mr. Ramachandran, in his note of submissions, as well as  
34 in the course of the oral arguments submitted that none of the contesting parties has  
35 challenged the ratio in *Narasimha Rao (supra)*. On the contrary, it is urged, that the  
36 contesting parties are ad idem on the ratio and is thought to be contested is the applicability  
37 of the judgment. The Respondent, it is submitted urges that the judgment does not apply in

1 the instant case as polling for the Rajya Sabha election was held outside the precincts of the  
 2 House Of Parliament, outside the precincts of the House [UNCLEAR] the Legislative Assembly  
 3 and cannot be taken as a proceeding of the House in a manner similar to a no confidence  
 4 motion. On this basis, it has been submitted that the reference would not be warranted. At this  
 5 stage it would be necessary to note that Mr. R. Venkataramani, Learned Attorney General for  
 6 India has also advanced the same submission, relying on the decisions of this Court, (1) 1984  
 7 2 SCC 404; (2) 1997 11 SCC 111; (3) 2006 7 SCC 1. Before proceeding further, it would be  
 8 appropriate to note that a review petition (Review Petition Number 2210-27 of 1998) review  
 9 petitions, namely, review petition Numbers 2210-27 of 1998, were instituted before this Court  
 10 to seek a review, to questioning the correctness of the decision in **Narasimha Rao**. The  
 11 petitions for review were dismissed on the ground that there was a delay, on the ground of  
 12 delay in a judgment reported as State (CBI) SPE versus P. V. Narasimha Rao 2001  
 13 9 SCC 249. Apart from this a petition under Article 32 of the Constitution (Writ Petition Civil  
 14 D-7490/1999) was instituted before this court. By an order dated 1 May 2000 in **Centre for**  
 15 **Public Interest Litigation versus Union of India** 2009 SCC 393. The petition was  
 16 referred to a Bench of five judges while noticing a submission regarding the maintainability of  
 17 the petition. Eventually the petition was dismissed on 18 July 2002 on the ground that the  
 18 petition did not meet the requirements...

19

20 **PARAMJIT SINGH PATWALIA:** Order only says dismissed keeping in view the judgment.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Alright. Was dismissed keeping in view the  
 23 judgment in **Rupa Ashok Hurra versus Ashok Hurra** 2002 4 SCC 388. In the present  
 24 case, the bench of two learned judges was of the view that having regard to the significance of  
 25 the issues raised, it should be placed before a bench of three judges. In the same manner the  
 26 bench of three judges was of the view for the reasons which have been noted earlier that the  
 27 entire issue required to be considered by a larger bench. Such a decision has been made on the  
 28 administrative side to constitute a bench of five judges for that purpose. We are not inclined  
 29 at this... apart from the significance of the issues raised, which shall be explained in brief a  
 30 little later in the course of this order, we're not inclined to accept the plea that the correctness  
 31 of the decision in **P.V. Narasimha Rao (supra)** does not arise in this case. Firstly it is  
 32 common ground with the impugned judgment of the High Court relies upon the judgment of  
 33 the majority in **P.V. Narasimha Rao**. Secondly, it is beyond doubt that the defence itself  
 34 relies on the decision of the majority. The correctness of the view which has been propounded  
 35 in the judgement of the majority in **P.V. Narasimha Rao** would have to be enquired into  
 36 during the course of the hearing of the criminal appeal. Therefore, I as both the benches of two  
 37 and three judges respectively in the present case have opined, it becomes necessary for us to

1 determine prima facie as to whether reconsideration of the judgment in **P.V. Narasimha**  
2 **Rao** is warranted. The controversy turns on the interpretation of the provision of Article  
3 105(2) of the Constitution and the equivalent Article, Article 194(2); the former dealing with  
4 the powers, privileges and immunities of the Members of the Houses of Parliament and the  
5 latter of those applicable to the Members of the State Legislatures.  
6 Article 105(2) provides as follows. *Woh copy kar lijiye*. The crucial words of Article 105(2), the  
7 words of... the language of Article 105(2) indicates that an immunity attaches to a Member of  
8 Parliament "in respect of anything said or any vote given by him" in Parliament or any  
9 Committee thereof. The expression anything said or any votes given could postulate that the  
10 immunity attaches in respect of conduct which has taken place namely the giving of a vote or  
11 upon speech which is made in Parliament or any Committee of Parliament. The expression, in  
12 respect of anything said or any vote given arises for considerations squarely before the  
13 Constitution bench in **P.V. Narasimha Rao**. The charge in that case was that the bribe  
14 takers had taken bribes to secure the defeat of a no confidence motion on the floor of the  
15 House. In analysing the expression, in analysing the above expression, Justice S. P. Bharucha  
16 took the view, that Article 105(2) would have to be interpreted broadly and so interpreted  
17 would protect a Member of Parliament against proceedings in court that relate to a concern or  
18 have a connection on nexus with anything said or a vote given by him in Parliament (paragraph  
19 133 at Page 729). The Court is of the view that the nexus between the alleged conspiracy and  
20 bribe and the no confidence motion was explicit, the charge being that the alleged bribe takers  
21 have received bribes to secure the defeat of the no confidence motion. The Attorney General  
22 for India in that case has urged before the Constitution bench that though the words in respect  
23 of must receive a broad meaning, the protection under Article 105(2) is limited to court  
24 proceedings, that impugned the speech that is given or the vote that is cast or arises therefrom.  
25 Noting that the object of the protection was to enable members to speak their mind in  
26 Parliament and vote in the same way without the fear of being made answerable, the judgment  
27 of Justice S.P. Bharucha contains the following observation... just copy down para 136 at PDF  
28 page 636. I'll give you the first three words. "It is not enough" to the end of the paragraph. The  
29 Court, Justice Bharucha observed... Justice S. P. Bharucha... The learned Judge observed that  
30 he was conscious of the seriousness of the offense which the alleged bribe takers were said to  
31 have committed and that by reason of the lucre that they had received, they enabled the  
32 Government to survive, the judgement opined, "our sense of indignation should not lead us to  
33 construe the Constitution narrowly impairing the guaranty to effective parliamentary  
34 participation and debate". Para. 137, page 636. However, the Court is of the view that the  
35 immunity which attached to the other bribe takers would not attach to a Member of Parliament  
36 who had not cast the vote on the no confidence motion and would not therefore be entitled to  
37 the protection. The contrary viewpoint of the minority in **Narasimha Rao** was espoused in

1 the judgment of Justice Agrawal. The Learned Judge observed that the expression "in respect  
2 of would have to be construed in its true perspective." The judgement emphasized that the  
3 object and purpose of Article 105(2) of the Constitution is to enable Members of Parliament to  
4 speak freely, how to cast their votes without fear of consequences. In that context, the  
5 divergence in view with that of the majority, with that of Justice S. P. Bharucha emerges from  
6 the following extract in paragraph 47 of the judgement. Copy down at page 579. PDF para 47.  
7 Justice Agrawal, in the course of his judgement also dwelt on the issue as to when the offence  
8 of bribery is made out or complete. According to his view, according to the view of the learned  
9 judge, the offence of bribery is made out against the receiver if he takes or agrees to take money  
10 for a promise to act in a certain way. The offence would be complete with the acceptance of the  
11 money or on the agreement to accept the money being concluded and is not dependent on the  
12 performance of the illegal promise by the receiver. The receiver of the money will be treated  
13 to have committed the offence even if he were to default in the performance of the bargain.  
14 Hence the learned Judge held that for approving the offence of bribery all that is required to  
15 be established is that the offender has received or agreed to receive money for a promise to act  
16 in a certain way and it was not necessary to prove further that he had actually acted in the way  
17 as promised.

18

19 The third judgment in *P.V. Narasimha Rao*, in *P.V. Narasimha Rao's* case was  
20 delivered by Justice G. N. Ray. Justice G. N. Ray observed that he was unable to concur with  
21 the finding in the judgment of Justice Agrawal that a member of Parliament does not enjoy  
22 immunity under Article 105(2) from being prosecuted before a criminal court for an offense  
23 involving offer or acceptance of bribe for the purpose of speaking or giving his vote in  
24 Parliament or in any committee. A reading of the judgment of Justice G. N. Ray indicates that  
25 the learned Judge concurred with Justice Agrawal in coming to the conclusion (1) a Member  
26 of Parliament is a public servant under Section 2(c) of the Prevention Of Corruption Act 1988  
27 and (2) since there is no authority competent to grant sanction for the prosecution of a  
28 Member of Parliament under section 19(1) of the Prevention Of Corruption Act 1988, the Court  
29 can take cognizance of the offenses mentioned in the provision but before filing a charge sheet  
30 against a Member of Parliament in a criminal court, the prosecution agency must obtain the  
31 permission of the Chairperson of the Rajya Sabha or as the case may be, the speaker of the  
32 Lord Sabha. Hence on the above two issues Justice G. N. Ray concurred with the judgment of  
33 Justice Agrawal. However, on the interpretation of Article 105(2) Justice Ray concurred with  
34 the Judgment of Justice S.P. Bharucha, speaking for two judges. Hence, the judgment of  
35 Justice S.P. Bharucha on the interpretation of Article 105(2) represents the view of the  
36 majority of three learned judges. We may note at this stage that we have heard besides Mr.  
37 Raju Ramachandran learned Senior Counsel and Mr. R Venkataramani. learned Attorney

1 General for India. We've also heard Mr. Paramjit Singh Patwalia, learned Senior Counsel who  
2 has been appointed as *amicus curiae* to assist the Court and Mr. Gopal Sankaranarayanan  
3 intervenor *ke liye bhi naam le de dijiye unka*.

4 We are inclined to agree with the submission of the learned amicus curiae and Mr. Gopal  
5 Sankaranarayanan learned Senior Counsel that the view which has been expressed in the  
6 decision of the Constitution Bench in ***PV Narasimha Rao*** requires to be reconsidered by...

7

8 [NO AUDIO]

9

10 ... the State Legislature must be free to express their views on the floor of the House or to cast  
11 their votes, either in the House or as Members of Committees of the House without fear of  
12 consequences. While Article 19(1)(a) of the Constitution recognizes the individual right to the  
13 freedom of speech and expression, Article 105(2) institutionalizes that right by recognizing the  
14 importance of the Members of the Legislature having the freedom to express themselves and  
15 to cast their ballots without fear of reprisal or consequences. In other words, the object of  
16 Article 105(2) or Article 194(2) does not prima facie appear to be... to render immunity from  
17 the launch of civil proceedings for a violation of the Criminal Law, which may arise  
18 independently of the exercise of the rights and duties as a Member of Parliament. Secondly, in  
19 the course of his judgment in ***P.V. Narasimha Rao***, Justice S. C. Agrawal, noted that if the  
20 construction in support of the immunity under Article 105(2), for a bribe taker were to be  
21 accepted, a member would be liable to be prosecuted on a charge of bribery if he accepts the  
22 bribe for not speaking or for not giving his vote on a matter under consideration before the  
23 House, but he would enjoy immunity from prosecution for such a charge, if he accepts the  
24 bribe for speaking or giving his vote in Parliament in a particular manner and he in fact speaks  
25 or gives his vote in Parliament in that manner. This anomaly Justice Agrawal observed would  
26 be avoided, if the words 'in respect of' in Article 105(2) are construed to mean arising out of,  
27 in other words, in such a case the immunity would be available only if the speech that has been  
28 made or the vote that has been given is an essential and integral part of the cause of action for  
29 the proceedings giving rise to the liability; thirdly, the judgment of Justice S. C. Agrawal has  
30 specifically dwelt on the question as to when the offense of bribery would be complete. The  
31 judgment notes that the offence is complete with the acceptance of the money or on the  
32 agreement to accept the money being concluded and is not dependent on the performance of  
33 the illegal promise by the receiver. The receiver of the bribe would be treated to have  
34 committed the offence even when he fails to perform the bargain underlying the tender and  
35 acceptance of the bribe. This aspect of... this aspect bearing on the constituent elements of the  
36 offence of the bribe finds elaboration in the judgement of Justice Agrawal but has not been  
37 dealt with in the judgement of Justice. S. P. Bharucha, in the judgment of the majority. We've



1 already noted above that the efforts in seeking a review of the Judgement in **P. V.**  
2 **Narasimha Rao** and later in proceedings under Article 32 of the Constitution did not bear  
3 fruit. One of us, (Chief Justice DY Chandrachud) while delivering the concurring opinion for  
4 a Constitution Bench in **Kalpna Mehta versus and so and so** page 12142 had occasion  
5 to observe that the correctness of the view in **P.V. Narasimha Rao** would fall for  
6 reconsideration in an appropriate case in future, should it become necessary to do so. For the  
7 above reasons prima facie at this stage, we are of the considered view that the correctness of  
8 the view of the majority in **P.V. Narasimha Rao** should be considered by a larger bench of  
9 seven judges. Above all, it must be noted that the purpose of Article 105(2) and Article 194(2)  
10 is to ensure that Members of the Parliament and of the State Legislature are able to discharge  
11 their duties in an atmosphere of freedom without fear of the consequences which may follow  
12 for the manner in which they speak or exercise their right to vote on the floor of the House.  
13 The object clearly is not to set apart the Members of the Legislature as persons who wield  
14 higher privileges in terms of an immunity from the application of the general criminal law of  
15 the land which citizens of the land do not possess. We accordingly request the Chief Justice  
16 and the Registry to place the papers before the Chief Justice for constituting a larger bench of  
17 seven judges.

18

19 **R. VENKATARAMANI:** My only concern was that the Appellant does not get the benefit of  
20 this long reference because of prosecution... the long pending prosecution.

21

22 **CHIEF JUSTICE DY CHANDRACHUD:** Sorry?

23

24 **R. VENKATARAMANI:** The Appellant in this case ought not to get the benefits of it. That's  
25 my concern.

26

27 **CHIEF JUSTICE DY CHANDRACHUD:** What we'll do is, we have heard this substantially  
28 in all probability, we will constitute a bench in the next week or two and we'll get another bench  
29 of two judges and we'll resolve it because there's no point in again now putting this in the whole  
30 loop because you've all argued for such a long time, the learned Attorney General has argued.  
31 So I think what we'll do we'll notify the bench.

32

33 **R. VENKATARAMANI:** We are right on the question that he doesn't get a benefit of  
34 **Narasimha Rao** either way. Then why should I hang on here.

35

36 **CHIEF JUSTICE DY CHANDRACHUD:** I think what we'll do is I'll try and constitute a  
37 bench in the next week or two and because really I mean all the pleadings are complete.

1 Everything is here before us. We'll resolve it once and for all. Sorry? You'll have to get two  
2 more of these. I can share one of mine because I've got one at home now.

3

4 **R. VENKATARAMANI:** That will be constitutional [UNCLEAR]. Then the question to be  
5 placed before the larger bench is only the question of correctness of the majority view or  
6 because then you open a canvas too wide

7

8 **CHIEF JUSTICE DY CHANDRACHUD:** We'll say only the correctness of the majority  
9 view on the interpretation of Article 105(2).

10

11 **PARAMJIT SINGH PATWALIA:** Therefore, Your Lordship would go into the  
12 interpretation of the article.

13

14 **R. VENKATARAMANI:** That will open up a large canvas.

15

16 **PARAMJIT SINGH PATWALIA:** Yes. 7 judges, we must open up large canvas.

17

18 **PETITIONER'S COUNSEL:** And My Lord, amicus may be requested to continue for 7  
19 judges also.

20

21 **PARAMJIT SINGH PATWALIA:** I'm not going anywhere now, My Lord.

22

23 **CHIEF JUSTICE DY CHANDRACHUD:** You know Mr. Attorney, what will happen is if  
24 you were to lose this opportunity. I mean we would have... the easiest thing is to close it  
25 because we would have have closed it in five minutes. But God knows when this opportunity  
26 will arise before a Constitution Bench in the future. I mean we may still accept the contrary  
27 viewpoint and come to the conclusion that on the balance Justice Bharucha's view was right.  
28 It was a more conservative view. He felt that look, that's the correct view. I mean, we may still  
29 come to that conclusion but to even reconsider this may probably take another two decades,  
30 because who knows which case will arise again for us to... So we shouldn't allow an opportunity  
31 to go by without... on such an important issue which concerns our polity.

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33 **R. VENKATARAMANI:** I want to... that outer limits of expanding sometimes the inclination  
34 of the Court to go a little beyond what may be necessary to look into.

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36 **JUSTICE M.M. SUNDRESH:** [UNCLEAR] itself is very limited only... [UNCLEAR] on the  
37 construction of 194 read with...

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**R. VENKATARAMANI:** As they said, even today no... I think Parliament has enacted a law on immunities and privileges because there's a subject...

**CHIEF JUSTICE DY CHANDRACHUD:** If a person accepts a bribe and votes or abstains from voting then immunity. If a person accepts the bribe and doesn't fulfil their bargain...

**PARAMJIT SINGH PATWALIA:** If he abstains he's punished for that.

**CHIEF JUSTICE DY CHANDRACHUD:** If he's abstains...

**PARAMJIT SINGH PATWALIA:** He is punished for that.

**R. VENKATARAMANI:** That may be another dimension of cheating or dishonesty

**PARAMJIT SINGH PATWALIA:** It turns the whole [UNCLEAR]. Then you are not giving immunity for anything...

**R. VENKATARAMANI:** To be or not to be

**CHIEF JUSTICE DY CHANDRACHUD:** That is a key part of it. That is the key part. Otherwise, if you just look at the word 'in respect of' there are number of judgments that say in respect of must be construed very broadly whether in commercial law or in the Constitution itself. But this part really is a special issue which arises in relation to Article 105.

**R. VENKATARAMANI:** To vote or not to vote is a question.

**PETITIONER'S COUNSEL:** To ditch or not to ditch.

**CHIEF JUSTICE DY CHANDRACHUD:** Thank you very much Mr. Patwalia, Mr Sankaranarayanan, Mr. Attorney and Mr. Ramachandran, thank you so much.

**PETITIONER'S COUNSEL:** Would My Lord be convening...

**CHIEF JUSTICE DY CHANDRACHUD:** We missed you in Article 370, though.

1 **PETITIONER'S COUNSEL:** My Lords would be convening for the... reconvening for the  
2 regular matter?

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4 **CHIEF JUSTICE DY CHANDRACHUD:** No, I think it's just 15 minutes left

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6 **PETITIONER'S COUNSEL:** I had a difficulty in 101, I can mention that in the morning also.

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8 **CHIEF JUSTICE DY CHANDRACHUD:** You can mention in the morning. Just ask junior  
9 to mention if you're not in court tomorrow.

10

11 **PETITIONER'S COUNSEL:** I had a difficulty after an hour. It's 101.

12

13 **CHIEF JUSTICE DY CHANDRACHUD:** No problem. Just ask, if you are in difficulty, ask  
14 your junior to...

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16 **PETITIONER'S COUNSEL:** My Lord, I had a request in 102, same request, My Lord.

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18 **CHIEF JUSTICE DY CHANDRACHUD:** Provided people after you keep us busy for the  
19 rest of the day.

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***END OF THIS PROCEEDING***