

PETITIONER:
P.V. NARASIMHA RAO

Vs.

RESPONDENT:
STATE(CBI/SPE)

DATE OF JUDGMENT: 17/04/1998

BENCH:
S.P. BHARUCHA, S. RAJENDRA BABU

ACT:

HEADNOTE:

JUDGMENT:

WITH

Crl.A.No.1209/97,1210-1212/97, 1213/97, 1214/97, 1215/97,
1216/97,1217-18/97, 1219/97, 1220/97, 1221/97,1222/97,186/98
& 187/98

J U D G M E N T

BHARUCHA, J.

On 26th July, 1993, a motion of no-confidence was moved in the Lok Sabha against the minority government of P.V. Narasimha Rao. The support of 14 member was needed to have the no-confidence motion defeated. On 28th July, 1993, the no-confidence motion was lost, 251 members having voted in support and 265 against. Suraj Mandal, Shibu Soren, Simon Marandi and Shailender Mahto, members of the Lok Sabha owing allegiance to the Jharkhand Mukti Morcha (the JMM), and Ram Lakhan Singh Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed, members of the Lok Sabha owing allegiance to the Janata Dal, Ajit Singh group(the J.D.,A.S.), voted against the no-confidence motion. Ajit Singh, a member of the Lok Sabha owing allegiance to the J.D,A.S., abstained from voting thereon.

It is the respondents case that the abovenamed members agreed to and did receive bribes, to the giving of which P.V. Narasimha Rao, M.P. and Prime Minister, Satish Sharma, M.P. and Minister, Buta Singh, M.P. V.Rajeswar Rao, M.P., N.M. Ravanna, Ram Linga Reddy, M.L.A., M.Veerappa Moily, M.L.A. and Chief Minister, State of Karnataka, D.K.Adikeshavulu, M. Thimmogowda and Bhajan Lal, M.L.A. And Chief Minister, State of Haryana, were parties, to vote against the no-confidence motion. A prosecution being launched against the aforesaid alleged bribe givers and bribe takers subsequent to the vote upon the no-confidence motion, cognizance was taken by the Special Judge, Delhi. The Charge framed against P.V. Narasimha Rao reads thus:

"That you P.V. Narasimha Rao between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or entered into an agreement with your co-accused Capt. Satish Sharma, Buta Singh, V.Rajeshwara

rao, HM Revanna, Ramlinga Reddy, M. Veerappa Moiley, D.K. Audi Keshvalu, M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Suraj Mandal, Shibu Soren, Simon Marandi, Shailendra Mahto (approver, since granted pardon on 8.4.97), Janta Dal (Ajit Group) MPs Ajit Singh Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Anadi Chran Das, Abhay Pratap Singh, Haji Ghulam Mohd, Khan and late G.C. Munda to defeat the no-confidence motion moved on 26.7.93 against the then Congress (I) Govt. headed by you by illegal means viz. To offer or cause to offer and pay gratification other than the legal remuneration to your co-accused persons namely J.M.M. and Janta Dal (A) MPs named above as a motive or reward for their helping in defeating the said no confidence motion moved by the opposition parties and in pursuance of the said agreement you paid or caused to pay several lacs of rupees to the above referred JMM and Janta Dal (A) MPs who obtained or attempted to obtain the same in the manner stated above and thereby you have committed an offence punishable u/S 120 B IPC r/w Sections 7,12 and 13(2) r/w 13 (2) r/w 13(i)(d) of the PC Act 1988 and within my cognizance.

Secondly you P.V. Narasimha Rao in pursuance of the aforesaid criminal conspiracy during the aforesaid period and at the aforesaid places abetted the commission of offence punishable u/S 7 of P.C. Act by above referred JMM and Janta Dal (A) MPs and thereby you have committed an offence punishable u/S 12 of the P.C. Act and within my cognizance."

Similarly charges were framed against the alleged bribe givers.

The charge framed against Suraj Mandal of the J.M.M. reads thus:

"Firstly you between July and August, 1993 at Delhi and Bangalore were party to a criminal conspiracy and agreed to or enter into an agreement with your co-accused P.V. Narasimha Rao, Capt. Satish Sharma, Buta Singh, V.Rajeshwara Rao, H.M. Revanna, Ramlinga Reddy, M.Veerappa Moiley, D.K. Audi Keshvalu. M. Thimmegowda, Bhajan Lal, JMM (Jharkhand Mukti Morcha) MPs Shibu Soren. Simon Marandi, Shailendra Mehto (Approver, since granted pardon on 8.4.97), Janta Dal (Ajit

Group) MPs, Ajit Singh, Ram Lakhan Singh Yadav. Roshan Lal, Anadi Chran Dass, Abhey Partap Singh, Haji Ghulam Mohd. Khan and late G.C. Munda to defeat the no confidence motion moved against the then Congress (I) Government headed by accused Shri P.V.Narasimha Rao on 26.7.93 by illegal means viz. To obtain or agree to obtain gratification other than legal remunerations from your above named accused persons other than JMM and Janta Dal (A) MPs as a motive or reward for defeating the no confidence motion and in pursuance thereof above named accused persons other than JMM and Janta Dal (A) passed on several lacs of rupees to you or your other co-accused namely JMM and Janta Dal (A) MPs which amounts were persons and thereby you have committed an offence punishable u/s 120B r/w Sections 7,12,13(2) r/w section 134(i)(d) of the P.C. Act and within my cognizance.

Secondly, that you being a public servant while functioning in your capacity of Member of Parliament (10th Lok Sabha) during the aforesaid period and at the aforesaid places in pursuance of the aforesaid conspiracy demanded and accepted from your co-accused other than JMM & JD(A) MPs mentioned above a sum of Rs.280 lacs for yourself and other JMM MPs named above other than your legal remuneration as a motive or reward for defeating above referred no confidence motion moved against the then Govt. of Congress (I) headed by your co-accused Shri P.V. Narasimha Rao and thereby you have committed an offence punishable u/S 7 the P.C. Act and within my cognizance.

Thirdly, you during the aforesaid period and at the aforesaid places being a public servant while functioning in your aforesaid capacity of Member of Parliament by corrupt or illegal means and by abusing your position as a said public servant obtained for yourself or your other co-accused i.e. JMM MPs named above the pecuniary advantage to the extent of Rs.280 lacs and thereby committed an offence punishable u/S 13(2) read with Section 13(i)(d) of P.C. Act and within my cognizance.

Fourthly, that you during the pendency of investigation of

present case while writ petition No.789/96 was pending disposal in Hon'ble High Court between February to April, 1996 at Delhi, Ranchi and other places intentionally caused to bring false evidence into existence by fabricating or causing to fabricate the documents or records i. e. books of accounts, proceeding books, etc. of JMM Central Office. Ranchi for the purpose of being used in any stage of judicial proceedings and thereby committed an offence u/S 193 IPC and within my cognizance.

Similar charges were framed against the other alleged bribe takers of the J.M.M. Similar charges were also framed against the alleged bribe takers of the J.D., A.S., except that there was no charge against them under Section 193 of the Indian Penal Code. Shailender Mahto of the J.M.M., it may be mentioned, later turned approver and was pardoned.

The persons sought to be charged as aforesaid filed petitions in the High Court at Delhi Seeking to quash the charges. By the judgment and order which is under challenge, the High Court dismissed the petitions. Hence, these appeals. The appeals were heard by a bench of three learned judges and then referred to a Constitution Bench, broadly put, is that, by virtue of the provisions of Article 105, they are immune from the prosecution and that, in any event, they cannot be prosecuted under the Prevention of Corruption Act, 1998.

Privilege.

Article 105 of the Constitution reads thus:

"105. Powers, privileges, etc., of the House of Parliament and of the members and committees thereof. -

(1) Subject to the provisions of this Constitution and to the rules and standing order regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) NO Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, papers, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House. shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth

Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of the Parliament."

Mr. P.P.. Rao addressed us on behalf of P.V. Narasimha Rao, Mr. D.D. Thakur on behalf of Satish Sharma, Mr. Kapil Sibal on behalf of Bhajan Lal and Dr. Surat Singh on behalf of some of the J.D., A.S. M.Ps. All of them relied upon sub article (2) OF Article 105. Only Mr. P.P. Rao, learned counsel for P.V. Narasimha Rao, relied, in addition, upon sub article(3) thereof. Article 105(2).

By reason of Sub-article (1) of Article 105, members of Parliament enjoy freedom of speech subject only to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. That express provision is made for freedom of speech in Parliament in sub-article (1) of article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and unrestricted by the exceptions contained therein. This is recognition of the fact that members need to be free of all constraints in the matter of what they say in Parliament if they are effectively to represent their constituencies in its deliberations. Sub-article (2) of Article 105 puts negatively what sub-article (1) states affirmatively.

Both sub-articles must be read together to determine their content. By reason of the first part of sub-article (2) no member is answerable in a court of law or any similar tribunal for what he has said in Parliament. This again is recognition of the fact that a member needs the freedom to say what he thinks is right in Parliament undeterred by the fear of being proceeded against. A vote, whether cast by voice or gesture or the aid of a machine, is treated as an extension of speech or a substitute for speech and is given the protection that the spoken word has. Two comments need to be made in regard to the plain language of the first part of sub-article (2). First, what has protection is what has been said and a vote that has been cast, not something that might have been said but was not, or a vote that might have been cast but was not. Secondly, the protection is broad, being "in respect of". It is so given to secure the freedom of speech in Parliament that sub-article (1) provides for. It is necessary, given the role members of Parliament must perform. The protection is absolute against court proceedings that have a nexus with what has been said, or a vote that has been cast in Parliament. The second part of sub-article (2) provides that no person shall be liable to any proceedings in any court in respect of the publication of any report, papers, votes or proceedings if the publication is by or under the authority of either House of Parliament. A person who publishes a report or papers or votes or proceedings by or under the authority of Parliament is thereby given protection in the same broad terms against liability to proceedings in any court connected with such publication. The constitution having dealt with the all - important privilege of members of Parliament to speak and vote therein as they deem fit, freed of the fear of attracting legal proceedings concerning what they say or how they vote, provides for other powers,

privileges and immunities is sub-article (3). Till defined by Parliament by enactment, they are such as were enjoyed before the Constitution came into force; that is to say, they are such as were enjoyed by the House of Commons just before 26th January, 1950. For it to be established that any power, privilege or immunity exists under sub-article (3), it must be shown that power, privilege or immunity had been recognised as inhering in the House of Commons at the commencement of the Constitution. So important was the freedom to speak and vote in Parliament thought to be that it was expressly provided for, not left to be gathered, as other powers, privileges and immunities were, from the House of Commons. In so far as the immunity that attaches to what is spoken in Parliament and to a vote given therein is concerned, provision is made in sub-article (2); it is only in other respects that sub-article (3) applies. For the sake of completeness, though we are not here concerned with it, we must add that sub-article (4) gives the protection of the Sub-articles that preceded it to all who have the right to address the House, for example, the Attorney General.

The provisions of Article 105 and of Article 194, which is in the same terms but deals with the privileges of Legislative Assemblies, have been examined by this Court in the past. In the case of Pandit M.S.M. Sharma v. Shri Sri Krishna Sinha And Others, [1959] Supp.1 S.C.R. 806, a portion of the speech made by a member of a Legislative Assembly had been expunged by the orders of the Speaker. Nonetheless, the speech was published in its entirety in a newspaper of which the petitioner was the editor. He was called upon to show cause why action should not be taken against him for breach of privilege of the Legislative Assembly and he challenged the notice by a petition under Article 32. S.R. Das, C.J., speaking for the majority on the Constitution Bench which heard the writ petition, observed that Parliamentary privilege in England was defined in May's Parliamentary practice as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies individuals". The privileges of the House of Commons, as distinct from those of the House of Lords, were defined as "the sum of the fundamental rights of the House and of its individual members as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords". The privileges of the House of Commons included the freedom of speech, which had been claimed in 1554. This comprised the right of the House to provide for the due composition of its own body, the right to regulate its own proceedings, the right to exclude stranger, the right to prohibit publication of its debates and the right to enforce observation of its privileges by fine, imprisonment and expulsion. For deliberative bodies like the House of Lords and Commons, this Court said, "freedom of speech is of the utmost importance. A full and free debate is of the essence of Parliamentary democracy." The argument that the whole of article 194 was subject to Article 19(1)(a) overlooked the provisions of article 194(2). The right conferred on a citizen under Article 19(1)(a) could be restricted by a law which fell within sub-article 2 of that Article and he could be made liable in a court of law for breach of such law, but Article 194(2) categorically laid down that no member of the legislature was to be made liable to any proceedings in any court in respect of anything said or any vote given by him in the

Legislature or in committees thereof and that no person would be liable in respect of the publication by or under the authority of the House of such a Legislature of any report, paper or proceedings. The provisions of Article 194(2), therefore, indicated that the freedom of speech referred to in sub-article (1) thereof was different from the freedom of speech and expression guaranteed under Article 19(1)(a) and could not be cut down in any way by any law contemplated by article 19(2). A law made by Parliament in pursuance of the earlier part of Article 105(3) or by a State Legislature in pursuance of the earlier part of Article 194(3) was not law made in exercise of constituent power but law made in exercise of ordinary legislative power under Article 246 read with the relevant entries. Consequently, if such a law took away or abridged any of the fundamental rights, it would contravene the peremptory provisions of Article 13(2) and would be void to the extent of such contravention. It might well be that that was reason why Parliament and the State Legislatures had not made laws defining their powers, privileges or immunities conferred by the latter part of Articles 105 and 194 were repugnant to the fundamental rights, they would be void to the extent of such repugnancy. It could not be overlooked that the provisions of Articles 105(3) and 194(3) were constitutional law and not ordinary law made by Parliament or the State Legislatures and therefore, they were as supreme as the provisions of part II of the Constitution. Further, quite conceivably, the Constitution makers, not knowing what powers, privileges and immunities Parliament or the State Legislatures might claim, though fir not to take any risk and made such laws subject to the provisions of Article 13; but that, knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers, privileges and immunities subject to the fundamental right conferred by Article 19(1)(a).

The case of Dr. Satish Chandra Ghosh V. Hari Sadhan Mukherjee, [1961] 3 S.C.R. 486, dealt with an appellant who was a member of a Legislative Assembly. He had given notice of his intention to put certain questions in the Assembly. The questions being disallowed by the Speaker, he had published them in a journal in his constituency. The first respondent, whose conduct was the subject-matter of the questions, filed a complaint under the Indian Penal Code against the appellant and the printer and publisher of the journal. The appellant pleaded privilege and immunity under Article 194 of the Constitution as a bar to criminal prosecution. The claim of absolute privilege was disallowed by this Court. It was said, with reference to the law in England in respect of the privileges and immunities of the House of Commons, that there was no absolute privilege attaching to the publication of extracts from proceedings in the House. So far as a member of the House of Commons was concerned, he had an absolute privilege in respect of what he had spoken within the four walls of the House, but there was only a qualified privilege in his favour even in respect of what he had himself said in the House if he caused the same to be published in the public press. The legal position, which was undisputed, was that unless the appellant could make out an absolute privilege in his favour in respect of the publication which was the subject-matter of the charge, the prosecution against him could not be quashed. He having no such absolute privilege, it was held that "he must take his trial and enter upon his defence,

such as he may have."

Special Reference No.1 of 1964,[1965] 1 S.C.R. 412 known more commonly as Keshav Singh's case or the Privileges case, deals extensively with the scope of the privileges of legislative bodies. The Presidential Reference was made in the following circumstances: The Legislative Assembly of the State of Uttar Pradesh committed one Keshav Singh, not one of its members, to prison for contempt. The warrant it issued was a general warrant, in that it did not set out the facts which had been found to be contumacious. Keshav Singh moved a petition under Article 226 challenging his committal and he prayed for bail. Two learned judges of the Lucknow Bench of the High Court ordered that Keshav Singh be released on bail pending the decision on the writ petition. The Legislative Assembly passed a resolution requiring the production in custody before it of Keshav Singh, the advocate who had appeared for him and the two judges who has granted him bail. The judges and the advocate filed writ petitions before the High Court at Allahabad. A Full Bench of the High Court admitted their petitions and ordered the stay of the execution of the Assembly's resolution. The Legislative Assembly modified its earlier resolution so that the two judges were now asked to appear before the House and offer an explanation. The President thereupon made the Special Reference. Briefly put, the questions he asked were : whether the Lucknow Bench could have entertained Keshav Singh's writ petition and released him on bail; whether the judges who entertained the petition and granted bail and Keshav Singh and his advocate had committed contempt of the Assembly; whether the Assembly was competent to require the production of the judges and the advocate before it in custody or to call for their explanation; whether the Full Bench of the High Court have entertained the writ petitions of the two judges and the advocate and could have stayed the implementation of the resolution of the Assembly; and whether a judge who entered or dealt with a petition challenging any order of a Legislature imposing penalty or issuing process against the petitioner for its contempt or for infringement of its privileges and immunities committed contempt of the Legislature and whether the Legislature was competent to take proceedings against the judge in the exercise of its powers, privileges and immunities. The adjectival clause "regulating the procedure of the Legislature" in Article 194(1) governed, it was held, both the proceeding clauses relating to "the provisions of the Constitution" and "the rules and standing orders." Therefore, Article 194(1) conferred on legislators specifically the right of freedom of speech subject to the limitation prescribed by its first part. By making this sub-article subject only to the specified provisions of the Constitution, the Constitution-makers wanted to make it clear that they thought it necessary to confer on the legislators freedom of speech separately and, in a sense, independently of Article 19(1)(a). It was legitimate to conclude that Article 19(1)(a) was not one of the provisions of the Constitution which controlled the first part of Article 194(1). Having conferred freedom of speech on the legislators, Article 194(2) emphasized the fact that the freedom was intended to be absolute and unfettered. Similar freedom was guaranteed to the legislators in respect of the votes they might give in the legislature or any committee thereof. "In other words". this Court said, "even if a legislator exercises his right of freedom of speech in violation, say, of Article 19(1)(a), he would not be liable for any action in any court."

Similarly, if the legislator by his speech or vote is alleged to have violated any of the fundamental rights guaranteed by Part III of the Constitution in the Legislative Assembly, he would not be answerable for the said contravention in any court. If the impugned speech amounts to libel or becomes actionable or indictable under any other provision of the law, immunity has been conferred on him from any action in any court by this clause It is plain that the Constitution-makers attached so much importance to the necessity of absolute freedom in debates within the legislative chambers that they thought it necessary to confer complete immunity on the legislators from any action in any court in respect of their speeches in the legislative chambers in the wide terms prescribed by clause (2). Thus, clause (1) confers freedom of speech on the legislators within the legislative chambers and clause (2) makes it plain that the freedom is literally absolute and unfettered." Referring to Article 194(3), this Court said that it was well-known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time and some faded out by desuetude. Accordingly, in every case where a power was claimed, it was necessary to enquire whether it was an existing power at the relevant time. It had also to appear that the power was not only claimed by the House of Commons "but was recognised by the English courts. It would obviously be idle to contend that if a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons." In India, this Court said, the dominant characteristic of the British Constitution could not be claimed. The supremacy of the Constitution was protected by an independent judicial body which was the interpreter of the scheme of distribution of powers. It was difficult for this Court to accept the argument that the result of the provisions contained in the latter part of Article 194(3) was intended to be to confer on the State Legislatures in India the status of a superior Court of Record. It was essential to bear in mind the fact that the status of a superior Court of Record which was accorded to the House of Commons was based on historical facts. It was a fact of English history that Parliament had been discharging judicial functions and the House of Lords still continued to be the highest court of law in the country. The Legislative Assemblies in India never discharged any judicial functions and their historical and constitutional background did not support the claim that they could be regarded as Courts of Record in any sense. The very basis on which English courts agreed to treat a general warrant issued by the House of Commons the footing that it was a warrant issued by a superior Court of Record was absent in the case of a general warrant issued by a State Legislature in India.

In the case of *T.K.Jain v. N.S. Reddy* [1971] 1 S.C.R. 612, it was contended that the immunity granted by Article 105(2) was with reference to the business of Parliament and not in regard to something which was something utterly irrelevant. This Court said:

"The article means what it says in language which could not be plainer. The article confers immunity *inter alia* in respect of anything said in Parliament. The word 'anything' is of the widest import and is equivalent to 'everything'. The only limitation arises from the words 'in

Parliament' which means during the sitting of Parliament and in the course of the business of Parliament. We are concerned only with speeches in Lok Sabha. Once it was proved that Parliament was sitting and its business was being transacted, anything said during the course of that business was immune from proceedings in any court. This immunity is not only complete but is as it should be. It is of the essence of parliamentary system of Government that people's representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament, the good sense of the members and the control of proceedings by the Speaker. The courts have no say in the matter and should really have none."

The last of the cases to which reference need be made is State of Karnataka v. Union of India & Another, [1978] 2 S.C.R. 1. It was there held that the Constitution vested only legislative power in Parliament and in the State Legislatures. A House of Parliament or State Legislature could not try anyone or any case directly, as a Court of Justice could. It could proceed quasi-judicially in cases of contempts of its authority and take up motions concerning its privileges and immunities because, in doing so, it sought removal of obstructions to the due performance of its legislative functions. If any question of jurisdiction arose, it had to be decided by the courts in appropriate proceedings. Beg, J. added, "For example, the jurisdiction to try a criminal offence, such as murder, committed even within a house vests in ordinary criminal courts and not in a House of Parliament or in a State Legislature".

In Tolaram Relummal and anr. vs. The State of Bombay, 1995 (1) S.C.R. 158, this Court construed the words "in respect of" occurring in Section 18(1) of the Bombay Rent Restriction Act, 1947, the relevant portion of which read thus:

"If any landlord either himself or through any person acting or purporting to act on his behalf.....receives any fine, premium or other like sum or deposit or any consideration, other than the standard rent.....in respect of the grant, renewal or continuance of a lease of any premises.....such landlord or person shall be punished.....".

The High Court had observed that the expression "in respect of" was very comprehensive but this Court took the view that it had laid undue emphasis thereon. This Court said, "Giving the words "in respect of" their widest meaning, viz, "relating to" or "with reference to", it is plain that this relationship must be predicated of the grant, renewal or continuance of a lease, and unless a lease comes into existence simultaneously or near about the time that the money is received, it cannot be said that the receipt was "in respect of" the grant of a lease.....It is difficult to hold that any relationship of landlord and tenant comes into existence on the execution of an agreement executory in nature or that the expression "premium" can be appositely used in connection with the receipt of money on the occasion of the execution of such an agreement. It may well be that if a lease actually comes into existence then any receipt of money which has a nexus with that lease may fall within the mischief of section 18(1), but it is unnecessary to express any final opinion on the question as

in the present case admittedly no lease ever came into existence and the relationship of landlord and tenant was never created between the parties.:"

The learned Attorney General submitted that the words "in respect of" had not always received a broad meaning, and he cited the judgment of this Court in *State of Madras vs. M/s. Swastik Tobacco Factory, Vedaranyam*, 1966 (3) S.C.R. 79. A provision of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, which stated that, "the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him,...." would be deducted from the gross turnover of a dealer for the purposes of determining the net turnover, was under consideration. The Court noted that the words "in respect of" had been considered by the House of Lords in *Inland Revenue Commissioners vs. Courts & Co.*, [1963] 2 All. E.R.722, and it had observed that "the phrase denoted some imprecise kind of nexus between the property and the estate duty". In *Asher v. Seaford Court Estates Ltd.*, L.R. [1950] A.C. 508, the House of Lords had held that the expression "in respect of" in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, must be read as equivalent to "attribute". The Privy Council in *Bieber, Ltd. V. Commissioners of Income-tax*, [1962] 3 All. E.R.. 294, had observed that these words could mean more than "consisting of" or "namely". This Court said, "It may be accepted that the said expression received a wide interpretation, having regard to the object of the provisions and the setting in which the said words appeared. On the other hand, Indian tax laws use the expression 'in respect of' as synonymous with the expression 'on'." In the provision under consideration the expression "in respect of the goods" was held to mean "on the goods".

This Court drew a distinction in the above case between the use of the expression "in respect of" in taxing statutes in India and its use elsewhere. In the context of its use in the Constitution and having regard to the object which is intended to be secured by Article 105(2), we think that the broad interpretation thereof is the most appropriate. It is thus that this Court has already interpreted the provision.

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 that, therefore, the member did not enjoy immunity from the proceeding by reason of 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 the decisions and reports in this behalf to which we shall refer. The Attorney General submitted that the immunity given by Article 105(2) should be interpreted in the light of the times in which we live and, so interpreting it, should exclude from its coverage corrupt legislators.

In *Bradlaugh v. Gossett*, 12 Q.B.D.271, the plaintiff Bradlaugh had been elected to the House of Commons. He required the Speaker to call him to the table to take the oath. By reason of what had transpired on a earlier occasion, the Speaker declined to do so and the House resolved that the Serjeant-at-Arms should exclude Bradlaugh until "he shall engage not further to disturb the proceedings of the House". Bradlaugh prayed for an injunction against the Serjeant-at-Arms restraining him from carrying out the resolution. The suit was dismissed. Lord

Coleridge, C.J. said, "What is said or done within the walls of Parliament cannot be inquired into in a court of law.....The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive. To use the words of Lord Ellenborough, "They would sink into utter contempt and inefficiency without it." He added, "The Houses of Parliament cannot act by themselves in a body : they must act by officers; and the Serjeant-at-arms is the legal and recognised officer of the House of Commons to execute its orders. I entertain no doubt that the House had a right to decide on the subject-matter, have decided it, and have ordered their officer to give effect to their decision. He is protected by their decision. They have ordered him to do what they have a right to order, and he has obeyed them.....If injustice has been done, it is injustice for which the Courts of law afford no remedy." Stephen, J., concurring, said that the House of Commons was not subject to the control of Her Majesty's Courts in its administration of that part of the statute law which had relation to its own internal proceedings, and that the use of such actual force as was necessary to carry into effect such a resolution as the one before the court was justifiable. In support, the learned Judge quoted Blackstone, who had said, "The whole of the law and custom of Parliament has its original from this one maxim, 'that whatever matter arises concerning either House of Parliament ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.'" This principle had been restated by the judges who decided *Stockdale v. Hansard*, 9 Ad. & E.I. Lord Denman had said, "Whatever is done within the walls of either assembly must pass without question in any other place." Littleton, J., had said, "It is said the House of Commons is the sole judge of its own privileges; and so I admit as far as the proceedings in the House and some other things are concerned." Patteson, J., had said, "Beyond all dispute, it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled, that whatever is said or done in either House should not be liable to examination elsewhere." And Coleridge, J., had said, "That the House should have exclusive jurisdiction to regulate the course of its own proceedings, and animadvert upon any conduct there in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity." It seemed to follow that the House of Commons had the exclusive power of interpreting the Parliamentary Oaths Act, so far as the regulation of its own proceedings within its own walls was concerned: and that, even if that interpretation was erroneous, the court had no power to interfere with it "directly or indirectly". It was in regard to a possible case as to the effect of an order by the House of Commons to put a member to death or to inflict upon him bodily harm that the learned Judge said, "I know of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice". Referring to the old case of *Sir John Eliot, Denzil Hollis, and Others*, the learned Judge said, "This case is the great leading authority, memorable on many grounds, for the proposition that nothing said in parliament by a member as such, can be treated as an offence by the ordinary Courts".

In the case of *Church of Scientology of California vs. Johnson Smith*, (1972) ALL E.R. 378, the defendant, a member of Parliament, was sued for libel allegedly published in a

television programme. He pleaded fair comment and privilege. The plaintiffs countered by alleging malice, to prove which they sought to bring on record as evidence extracts from Hansard. The trial judge declined to permit them to do so. In his ruling he said,

"I am quite satisfied that in these proceedings it is not open to either party to go directly, or indirectly, into any question of the motives or intentions, of the defendant or Mr. Hordern or the then Minister of Health or any other member of Parliament in anything they said or did in the House."

The report of the Royal Commission on Standards of Conduct in Public Life, chaired by Lord Salmon, was presented in July 1976. It says,

"307. Only Parliament can decide what conduct constitutes a breach of privilege or a contempt of Parliament. In cases that are adjudged to be 'contempts', the House may exercise its penal jurisdiction to punish the offenders. The main penal sanctions available to the House are reprimand and committal to the custody of the Serjeant at Arms or to prisons. These sanctions apply both to Members and strangers. In addition, a Member may be suspended from the House or expelled. The House of Commons possesses no power to impose a fine."

"308. Whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions."

The Report states (in para 307), "it is in the light of the foregoing paragraphs that we note the fact that neither the statutory nor the common law applies to the bribery or attempted bribery of a Member of Parliament in respect of his Parliamentary activities". The Report speaks (in para 309) of "the historical circumstances in which the ordinary criminal law has not applied to bribery in respect of proceedings in Parliament". It finds (in para 310) that "the briber of a Member of Parliament would be immune from effective punitive sanctions of the kind that can be inflicted under the criminal law. Public obloquy is unlikely to be an effective sanction against such a person and accordingly we consider that there is a strong case for bringing such malpractices within the criminal law". It reiterates that "the bribery of a Member of Parliament acting in his Parliamentary capacity does not constitute an offence known to the criminal law.....". The conclusion of the Report on the point is contained in para 311:

"Membership of Parliament is a great honour and carries with it a special duty to maintain the highest standards of probity, and

this duty has almost invariably been strictly observed. Nevertheless in view of our report as a whole, and especially in the light of the points set out in the foregoing paragraph, we recommend that Parliament should consider bringing corruption, bribery and attempted bribery of a Member of Parliament acting in his Parliamentary capacity within the ambit of the criminal law".

In *Prebble v. Television New Zealand Ltd.*, (1994) 3 All E.R. 407, the Privy Council considered Article 9 of the Bill of Rights (1688), which applies by reason of incorporation in New Zealand. It reads thus:

"That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of Parliament."

The defendant, a New Zealand television company, aired a programme in which it was alleged that the plaintiff, Prebble, then a Minister in the New Zealand Government, had conspired with certain businessmen and public officials to give the businessmen an unfair opportunity to obtain certain state-owned assets which were being privatised on unduly favourable terms in return for donations to his political party, and he had thereafter arranged for incriminating documents and computer files to be destroyed. The plaintiff having brought an action for libel, the defendant company pleaded justification, alleging that the plaintiff and other ministers had made statements in the House of Representatives which had been misleading and that the conspiracy had been implemented by introducing and passing legislation in the House. The plaintiff applied to strike out these particulars on the ground that parliamentary privilege was infringed. The trial judge upheld the claim to immunity, as did the Court of Appeal. The privileges Committee of the House of Representatives having held that the House had no power to waive the privileges protected by Article 9, the plaintiff appealed to the Privy Council also upheld the claim to immunity. Lord Browne-Wilkinson, speaking for the Board, said that if Article 9 was looked at alone, the question was whether it would infringe that Article to suggest that the statements that were made in the House were improper or that the legislation was procured in pursuance of the alleged conspiracy, as constituting impeachment or questioning of the freedom of speech of Parliament. In addition to Article 9 itself, there was a long line of authority which supported a wider principle, of which Article 9 was merely one manifestation, namely, that the courts and Parliament were both astute to recognise their respective constitutional roles. So far as the courts were concerned, they would not allow any challenge to be made to what was said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges. The basic concept that underlay Article 9, namely, the need to ensure so far as possible that a member of the legislature and witnesses before a committee of the House spoke freely "without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness at the time he speaks is not inhibited from stating fully and

freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect." The privilege protected by Article 9 was the privilege of Parliament itself. The actions of an individual member of Parliament, even if he had an individual privilege of his own, could not determine whether or not the privilege of Parliament was to apply. The wider principle that had been encapsulated by Blackstone prevented the courts from adjudicating on "issues arising in or concerning the House, viz whether or not a member has misled the House or acted from improper motives. The decision of an individual member cannot override that collective privilege of the House to be the sole judge of such matters". Cases such as the one before the Privy Council illustrated how public policy, or human rights, issues could conflict. There were "three such issues in play in these cases: first, the need to ensure that the legislature can exercise its powers freely on behalf of its electors, with access to all relevant information; second, the need to protect freedom of speech generally; third, the interests of justice in ensuring that all relevant evidence is available to the courts. Their Lordships are of the view that the law has been long settled that, of these three public interests, the first must prevail."

Very recently, in the case of *R. vs. Currie*, it was alleged against Harry Greenway, a Member of Parliament, that he had accepted a bribe from Plasser, Jurasek and Brooks as a reward for using his influences as a Member of Parliament in respect of Jurasek's application for British nationality. The indictment of the four was sought to be quashed on the basis that the 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 covered by Parliamentary privilege. The trial judge, Buckley, J. did not agree. He quoted the Salmon Commission Report. He also noted that Lord Salmon, speaking in the debates of the House 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 an office, and most of us are not the holders of an office". Viscount Dilhorne had agreed. Buckley, J. could not accept that a question of such great importance could turn on semantics. In his view, "To hold that the existence of a Common Law crime of bribing a Member of Parliament depends upon the meaning to be given to the word 'office' in this context, as opposed to looking at the principle involved, would not be calculated to commend the Criminal Law to the public it should serve." Buckley, J. noted what had been said by James Martin, C.J. in *R.V. White*, 13 SCR (NSW), 332, which case concerned the attempted bribery of a Member of Parliament in New South Wales, ".....a legislator who suffers his votes to be influenced by a bribe does that which is calculated to sap the utility of representative institutions at their foundations. it would be a reproach to the Common Law if the offer to, or the acceptance of, a bribe by such a person were not an offence". Faucett, j., agreeing with the Chief Justice, had said, "The principle is, that any person who holds a public office or public employment of trust, if he accepts a bribe to abuse his trust - in other words, if he

corruptly abuses his trust - is guilty of an offence at Common Law; and the person who gives the bribe is guilty of an offence at Common Law". The same view had been taken in Canada in R V. Bunting, 1885 Ontario Reports 524; that was a case of a conspiracy to bring about a change in the Government of the Province of Ontario by bribing members of the Legislature to vote against the Government. R.V.. Boston, (1923) 33 Commonwealth Law Reports 386, was also a case where similar arguments had been advanced and turned down, and Buckley, J. quoted this "memorable sentence" from the judgment of Higgins, J.: "A member is the watch-dog of the public; and Cerberus must not be seduced from vigilance by a sop." Based upon these judgments, Buckley, J., was satisfied that "the undoubted common law offence of bribery is not artificially limited by reference to any particular shade of meaning of the word 'office'. The underlying reason or principle is concerned with the corruption of those who undertake a duty, in the proper discharge of which the public is interested." The learned Judge then considered the question of parliamentary privilege and noted Article 9 of the Bill of Rights, 1688, which has already been quoted. The learned judge quoted Lord Salmon, speaking in the House of Lords, thus: "To my mind equality before the law is one of the pillars of freedom. To say that immunity from criminal proceedings against anyone who tries to bribe a Member of Parliament and any Member of Parliament who accepts the bribe, stems from the Bill of Rights is possibly a serious mistake". After quoting the Bill of Rights, Lord Salmon had continued: "Now this is a charter for freedom of speech in the House it is not a charter for corruption. To my mind, the Bill of Rights, for which no one has more respect than I have, has no more to do with the topic which we are discussing than the Merchandise Markets Act. The crime of corruption is complete when the bribe is offered or given or solicited or taken." Buckley, J., commented, "It is important to note that which Lord Salmon pointed out, namely, that corruption is complete when the bribe is offered or given, solicited or taken. If, as is alleged here, a bribe is given and taken by a Member of Parliament, to use his position dishonestly, that is to favour the briber as opposed to acting independently and on the merits, the crime is complete. It owns nothing to any speech, debate or proceedings in Parliament. Proof of the element of corruption in the transaction is another and quite separate consideration. Privilege might well prevent any inquiry by a court into Parliamentary debates or proceedings. See: The Church Of Scientology v. Johnson-Smith, 1972, 1 KB 522. However, it is not a necessary ingredient of the crime that the bribe worked." Referring to the case of Ex parte Wason, to which we shall make more detailed reference later, Buckley, J., observed that the substance of the proposed indictment there was that certain parties had conspired to make false statements in the House of Lords and Cockburn, C.J., had held "that the making of false statements in either House of Parliament could not be the subject of criminal or civil proceedings and nor could not be the subject of criminal or civil proceedings and nor could a conspiracy to do so". It seemed clear to the learned judge that the court had Article 9 of the Bill of Rights well in mind. "The only candidate", he said, "for the unlawful act or means was the very act which was not subject to the criminal law". He added that he could not see that the reasoning of Ex parte Wason, assuming the decision to be correct, would apply to alleged bribery for the proof of which no reference to going on in Parliament would be

necessary. This approach, he found, happened to be in line with several United States authorities on their "Speech or Debate Clause" which, for all practical purposes, was the same as Article 9. That a Member of Parliament against whom there was a prima facie case of corruption should be immune from prosecution in the courts of law was to Buckley, J.'s mind an unacceptable proposition "at the present time". He did not believe it to be the law. The Committee of Privileges of the House was "not well equipped to conduct an enquiry into such a casesnor is it an appropriate or experienced body to pass sentence The courts and legislatures have over the years built up a formidable body of law and codes of practice to achieve fair treatment of suspects and persons ultimately charged and brought to trial Again, unless it is to be assumed that his peers would lean in his favour why should a Member be deprived of a jury and an experienced judge to consider his guilt or innocence and, if appropriate, sentence ? Why should the public be similarly deprived." The prosecution went ahead against the other accused but the charge was not established. The member of Parliament was., therefore, also acquitted.

The Law Commission in England very recently published a Consultation Paper (No.145) entitled "Legislating the Criminal Code - Corruption". It refers to the Salmon Commission Report, the report of the Nolan Committee on the Standards of Conduct in Public Life and recent judgments (to one of which we shall advert). It states, "Whether Members of Parliament are subject to the criminal law of corruption, and more particularly whether they should be, are both contentious issues currently to the fore in public debate. As to the latter, on the one hand it has been said of Members of Parliament that 'Few are in a higher position of trust or have a duty to discharge in which the public have a greater interest', and they should arguably therefore be subject to the criminal law. On the other hand, they are sui generis, in that, although they have the benefit of Parliamentary privilege, which protects them against criminal liability for things said in Parliamentary proceedings, they are, in consequence, subject to the jurisdiction in Parliament".

Halbury's Laws of England, Fourth Edition, in dealing with Members of Parliament under the subject of "Criminal Law, Evidence and Procedure" (in Volume 11, para 37), sets out the law succinctly:

"37. Members of Parliament. Except in relation to anything said in debate, a member of the House of Lords or of the House of Commons is subject to the ordinary course of criminal justice the privileges of Parliament do not apply to criminal matters."

Before we deal with the judgment of the United States Supreme Court in *United States v. Daniel B. Brewster*, 33 L. Ed. 2d 507, which lends support to the learned Attorney General's submissions, we should set out the speech or debate clause in the Constitution of the United States and refer to the United States Supreme Court judgment in *United States v. Thomas F. Johnson*, 15 L.Ed. 2d 681, to which the latter judgment makes copious reference.

Article 1, Section 6 of the United States Constitution contains the speech or debate clause. Referring to United States Senators and Representatives, it says : (F) or any Speech or Debate in either House, they shall not be

questioned in any other Place".

Thomas F. Johnson was convicted by a United States District Court for violating a federal conflict of interest statute and for conspiring to defraud the United States. Evidence was admitted and argument was permitted at the trial that related to the authorship, content and motivation of a speech which the Congressman had allegedly made on the floor of the House of Representatives in pursuance of a conspiracy designed to give assistance, in return for compensation, to certain savings and loan associations which had been indicated on mail fraud charges. The conviction had been set aside by the Court of Appeals on the ground that the allegations in regard to the conspiracy to make the speech were barred by the speech or debate Clause. Finding that the evidence that had been adduced upon the unconstitutional aspects of the conspiracy count had infected the entire prosecution, the Court of Appeals had ordered a new trial on the other counts. The Supreme Court, in further appeal, held that the prosecution on the conspiracy charge, being dependent upon an intensive inquiry with respect to the speech on the floor of the House, violated the speech or debate clause warranting the grant of a new trial on the conspiracy count, with all elements offensive to the speech or debate clause eliminated. The earlier cases, it said, indicated that the legislative privilege had to be read broadly to effectuate its purpose. Neither of those cases, however, had dealt with criminal prosecution based upon the allegation that a member of Congress had abused his position by conspiring to give a particular speech in return for remuneration from private interests. However reprehensible such conduct might be, the speech or debate clause extended at least so far as to prevent it from being made the basis of a criminal charge against a member of Congress of conspiracy to defraud the United States by impeding the due discharge of Government functions. The essence of such a charge in the context was that the Congressman's conduct was improperly motivated, and that was precisely what the speech or debate clause generally foreclosed from executive and judicial inquiry. The Government argued that the clause was meant to prevent only prosecutions based upon the "content" of speech, such as libel actions, but not those founded on "the antecedent unlawful conduct of accepting or agreeing to accept a bribe". The language of the Constitution was framed in the broadest terms. The broader thrust of the privilege had been indicated by *Ex parte Wason*, which dealt specifically with an alleged criminal conspiracy. Government had also contended that the speech or debate clause was not violated because the gravamen of the charge was the alleged conspiracy, not the speech, and because the defendant, not the prosecution, had introduced the speech. Whatever room the Constitution might allow for such factors in the context of a different kind of prosecution, they could not serve to save the Government's case under the conspiracy charge. It was undisputed that the Congressman had centered upon the questions of who first decided that a speech was desirable, who prepared it, and what the Congressman's motives were for making it. The indictment itself focused with particularity upon motives underlying the making of the speech and upon its contents. The prosecution under a general criminal statute dependent on such inquiries necessarily, contravened the speech or debate clause. The court added that its decision did not touch a prosecution which, though, as here, it was founded on a criminal statute of general application, did not draw in question the legislative acts of a

Congressman or his motives for performing them. The court expressly left open for consideration the case of a prosecution, which though it might entail an inquiry into legislative acts or motivations, was founded upon a narrowly drawn statute passed by Congress in the exercise of its legislative power to regulate the conduct of its members.

Daniel B. Brewster was a United States Senator. He had been charged with accepting bribes in exchange for promises related to official acts while a Congressman. The charge was that he had violated the terms of a narrowly drawn statute. The Senator moved to dismiss the indictment before the trial began on the ground that he was immune from prosecution for any alleged act of bribery because of the speech or debate clause. The District Court upheld the claim of immunity. The Government preferred a direct appeal to the Supreme Court. Burger, C.J., spoke for 6 members of the court. Brennan, J. and White, J. delivered dissenting opinions, with which Douglas, J., joined. The charges were that the Senator, while such and a member of the Senate Committee on Post Office and Civil Service, "directly and indirectly, corruptly asked, solicited, sought, accepted, received and agreed to receive sums.....in return for being influenced in his performance of official acts in respect to his action, vote and decision on postage rate legislation which might at any time be pending before him in his official capacity....." The other charge was in respect of official acts performed by him in respect to his action, vote and decision on postage rate legislation which had been pending before him in his official capacity. Burger, C.J. took the view that the immunities of the speech or debate clause were not written into the Constitution simply for the personal or private benefit of members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators. Although the speech or debate clause's historic roots were in English history, it had to be interpreted in the light of the American constitutional scheme of government rather than the English parliamentary system. It had to be borne in mind that the English system differed in that Parliament in England was the supreme authority, not a coordinate branch. The speech or debate privilege was designed to preserve legislative independence, not supremacy. The courts' task, therefore, was to apply the clause in such a way as to insure the independence of the legislature without altering the historic balance of the three co-equal branches of Government. Referring to the cause of Johnson (ibid). Burger, C.J., said that it unanimously held that a member of Congress could be prosecuted under a criminal statute provided that the Government's case did not rely on legislative acts or the motivation for legislative acts. A legislative act had consistently been defined as an act generally done in Congress in relation to the business before it. The speech or debate clause prohibited inquiry only into those things generally said or done in the House or the Senate in the performance of official duties and into the motivation for those acts. Counsel on behalf of the Senator had argued that the court in Johnson had expressed a broader test for the coverage of the speech or debate clause. He had urged that the court had held that the clause protected from executive or judicial inquiry all conduct "related to the due functioning of the legislative process." Burger, C.J., said that the quoted words did appear in the Johnson opinion, but they were taken out of context. In context, they reflected a quite different meaning from that urged. In

stating the speech or debated clause did not apply to things which "in no wise related to the due functioning of the legislative process" the court in Johnson had not implied as a corollary that everything that "related" to the office of a member was shielded by the clause. In Johnson it had been held that only acts generally done in the course of the process of enacting legislation were protected. In no case had the court ever treated the clause as protecting all conduct relating to the legislative process. In every case thus far before the court, the speech or debate clause had been limited to an act which was clearly a part of the legislative process, the due functioning of the process. The contention on behalf of the Senator for a broader interpretation of the privilege drew essentially on the flavor of the rhetoric and the sweep of the language used by the courts, not on the precise words used in any prior case, and not on the sense of those cases, fairly read. It was not sound or wise, simply out of an abundance of caution to doubly insure legislative independence, to extend the privilege beyond its intended scope, literal language and history, to include all things in any way related to the legislative process. Given such a sweeping reading, there would be few activities in which a legislator engaged that he would be unable somehow to "relate" to the legislative process. The speech or debate clause, admittedly, had to be read broadly to effectuate its purpose was not "to make members of Congress super-citizens, immune from criminal responsibility. In its narrowest scope, the clause is a very large, albeit essential, grant of privilege. It has enabled reckless men to slander and even destroy others with impunity, but that was the conscious choice of the Framers". Burger, C.J., did not discount entirely the possibility that an abuse might occur, but this possibility which he considered remote, had to be balanced against the potential danger flowing from either the absence of a bribery statute applicable to members of Congress or holding that such a statute violated the Constitution. As he had noted at the outset of his judgment, the learned Chief Justice said that the purpose of the speech or debate clause was to protect the individual legislator, not simply for his own sake, but to preserve the independence and thereby the integrity of the legislative process. Financial abuses by way of bribes, perhaps even more than Executive power, would gravely undermine legislative integrity and defeat the right of the public to honest representation. Depriving the Executive of the power to investigate and prosecute and the Judiciary of the power to punish bribery of members of Congress was unlikely to enhance legislative independence. The speech or debate clause was broad enough to insure the historic independence. The speech or debate clause was broad enough to insure the historic independence of the Legislative Branch, essential to the separation of powers, but narrow enough to guard against the excess of those who would corrupt the process by corrupting its members. Taking a bribe was no part of the legislative process or function; it was not a legislative act. It was not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It was not an act resulting from the nature, and in the execution, of the office. It was not a thing said or done in the exercise of the functions of that office. Nor was inquiry into a legislative act or the motivation for a legislative act necessary to a prosecution under the concerned statute or the indictment. When a bribe was taken, it did not matter whether the promise for which the bribe was given was for

the performance of a legislative act or for use of a Congressman's influence with the Executive Branch. And an inquiry into the purpose of a bribe did not draw in question the legislative acts of the member or his motives for performing them. Nor did it matter if the member defaulted on his illegal bargain. The Government, to make a prima facie case under the indictment, need not show any act of the Senator subsequent to the corrupt promise for payment, for it was taking the bribe, not performance of the illicit compact, that was a criminal act. The learned Chief Justice said, "The only reasonable reading of the clause consistent with its history and purpose, is that it does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself".

Brennan, J., dissenting, said. "I would dispel at the outset any notion that Senator Brewster's asserted immunity strains the outer limits of the Clause. The Court writes at length in an effort to show that 'Speech or Debate' does not cover 'all conduct relating to the legislative process'.Even assuming the validity of that conclusion, I fail to see its relevance to the instant case. Senator Brewster is not charged with conduct merely "relating to the legislative process," but with a crime whose proof calls into question the very motives behind his legislative acts. The indictment, then, lies not at the periphery but at the very center of the protection that this Court has said is provided a Congressman under the Clause." The learned Judge said that there could be no doubt that the Senator's vote on new postal rates constituted legislative activity within the meaning of the speech or debate clause. The Senator could not be prosecuted or called to answer for his vote in any judicial or executive proceeding. But the Senator's immunity went beyond the vote itself and "precludes all extra-congressional scrutiny as to how and why he cast, or would have cast, his vote a certain way". The learned Judge quoted Frankfurter, J., speaking in the case of *Tenny v. Brandhove*, 95 L. Ed. 1019, thus : "One must not expect uncommon courage even in legislators. The privilege would be of little value if they could be subjected to the cost and inconvenience and distractions of a trial upon a conclusion of the pleader, or to the hazard of a judgment against them based upon a jury's speculation as to motives. The holding of this Court in *Fletcher v Peck*, 3 L. Ex. 162, 176, that it was not consonant with our scheme of government for a court to inquire into the motives of legislators, has remained unquestioned..... In times of political passion, dishonest or vindictive motives are readily attributed to legislative conduct and as readily believed. Courts are not the place for such controversies. Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses." Neither the Senator's vote nor his motives for voting, however dishonourable, could be the subject of a civil or criminal proceeding outside the halls of the Senate. There was nothing complicated about this conclusion. It followed simply and inescapably from prior decisions of the United States Supreme Court setting forth the basic elements of legislative immunity. Yet, the majority has adopted "a wholly artificial view of the charges before us". The indictment alleged not the mere receipt of money in exchange for a Senator's vote and promise to vote in a certain way. Insofar as these charges bore on votes already cast, the Government could not avoid proving the performance of the bargained-for acts and any inquiry in this behalf violated the speech or debate clause.

The charges of only a corrupt promise to vote were equally repugnant to the speech or debate clause. The majority view might be correct that only receipt of the bribe, and not performance of the bargain, was needed to prove these counts. But proof of an agreement to be "influenced" in the performance of legislative acts was "by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself. As our Brother White cogently states, Bribery is most often carried out by prearrangement; if that part of the transaction may be plucked from its context and made the basis of criminal charges, the Speech or Debate Clause loses its force. It would be small comfort for a Congressman to know that he cannot be prosecuted for his vote, whatever it might be, but he can be prosecuted for an alleged agreement even if he votes contrary to the asserted bargain'.

Thus, even if this were an issue of first impression. I would hold that this prosecution, being an extra-congressional inquiry into legislative acts and motives, is barred by the Speech or Debate Clause.

What is especially disturbing about the Court's result, however, is that this is not an issue of first impression, but one that was settled six years ago in *United States v. Johnson*, 15 L.Ed.2d 681." The learned Judge added that the majority could not "camouflage its departure from the holding of *Johnson* by referring to a collateral ruling having little relevance to the fundamental issues of legislative privilege involved in that case. I would follow *Johnson* and hold that Senator Brewster's alleged promise, like the Congressman's there, is immune from executive or judicial inquiry". The learned judge said that he yielded nothing to the majority "in conviction that this reprehensible and outrageous conduct, if committed by the Senator, should not have gone unpunished. But whether a court or only the Senate might undertake the task is a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged. It is no answer that Congress assigned the task to the judiciary in enacting 18 USC 201. Our duty is to Nation and Constitution, not Congress. We are guilty of a grave disservice to both nation and Constitution when we permit Congress to shirk its responsibility in favor of the courts. The Framers' judgment was that the American people could have a Congress of independence and integrity only if alleged misbehavior in the performance of legislative functions was accountable solely to a Member's own House and never to the executive or judiciary. The passing years have amply justified the wisdom of that judgment. It is the Court's duty to enforce the letter of the Speech or Debate Clause in that spirit. We did so in deciding *Johnson*. In turning its back on that decision today, the Court arrogates to the judiciary an authority committed by the Constitution, in Senator Brewster's case, exclusively to the Senate of the United States. Yet the Court provides no principal justification, and I can think of none, for its denial that *United States v Johnson* compels affirmance of the District Court. The decision is only six years old and bears the indelible imprint of the distinguished constitutional scholar who wrote the opinion for the Court. *Johnson* surely merited a longer life".

Justice White took substantially a similar view and

part of what he said has already been quoted.

The judgment in *Brewster* was followed in *United States v Henry Helstoski*, 61 L. Ed. 2d 12 *Brennan, J.*, dissenting, expressed the view that the indictment in question should have been dismissed "since a corrupt agreement to perform legislative acts, even if provable without reference to the acts themselves, may not be the subject of a general conspiracy prosecution".

Broadly interpreted, as we think it should be, Article 105(2) protects a Member of Parliament against proceedings in court that relate to, or concern, or have a connection or nexus with anything said, or a vote given, by him in Parliament.

The charge against the alleged bribe takers is that they "were party to a criminal conspiracy and agreed to or entered into an agreement with" the alleged bribe givers "to defeat the no-confidence motion.....by illegal means, viz., to obtain or agree to obtain gratification other than legal remunerations" from the alleged bribe givers "as a motive or reward for defeating the no-confidence motion and in pursuance thereof "the alleged bribe givers "passed on several lacs of rupees" to the alleged bribe takers, "which amounts were accepted" by them. The stated object of the alleged conspiracy and agreement is to defeat the no-confidence motion and the alleged bribe takers are said to have received monies "as a motive or reward for defeating" it. The nexus between the alleged conspiracy and bribe and the no-confidence motion is explicit. The charge is that the alleged bribe takers the bribes to secure the defeat of the no-confidence motion.

While it is true that the charge against them does not refer to the votes that the alleged bribe takers; Ajit Singh excluded, actually cast against the no-confidence motion and that it may be established de hors those votes, as the Attorney General argued, we do not think that we can ignore the fact that the votes were cast and, if the facts alleged against the bribe takers are true, that they were cast and, if the facts alleged against the bribe takers are true, that they were cast pursuant to the alleged conspiracy and agreement. It must then follow, given that the expression "in respect of" must receive a broad meaning, that the alleged conspiracy and agreement has a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings is in regard to the motivation thereof.

It is difficult to agree with the learned Attorney General that, though the words "in respect of" must receive a broad meaning, the protection under Article 105(2) is limited to court proceedings that impugn the speech that is given or the vote that is cast or arise thereout or that the object of the protection would be fully satisfied thereby. The object of the protection is to enable members to speak their mind in Parliament and vote in the same way, freed of the fear of being made answerable on that account in a court of law. It is not enough that members should be protected against civil action and criminal proceedings, the cause of action of which is their speech or their vote. To enable members to participate fearlessly in Parliamentary debates, members need the wider protection of immunity against all civil and criminal proceedings that bear a nexus to their speech or vote. It is for that reason that member is not "liable to any proceedings in any court in respect of anything said or any vote given by him". Article 105(2) does not say, which it would have if the learned Attorney General were right, that a member is not liable for what he has said or how he has voted. While imputing no such motive to the

present prosecution, it is not difficult to envisage a member who has made a speech or cast a vote that is not to the liking of the powers that be being troubled by a prosecution alleging that he had been party to an agreement and conspiracy to achieve a certain result in Parliament and had been paid a bribe.

We are acutely conscious of the seriousness of the offence that the alleged bribe takers are said to have committed. If true, they bartered a most solemn trust committed to them by those they represented. By reason of the lucre that they received, they enabled a Government to survive. Even so, they are entitled to the protection that the Constitution plainly affords them. Our sense of indignation should not lead us to construe the Constitution narrowly, impairing the guarantee to effective Parliamentary participation and debate.

We draw support for the view that we take from the decision of United States Supreme Court in Johnson and from the dissenting judgment of Brennan, J. in Brewster.

In Johnson, the United States Supreme Court held that the speech or debate clause extended to prevent the allegation that a member of Congress had abused his position by conspiring to give a particular speech in return for remuneration from being the basis of a criminal charge of conspiracy. The essence of such a charge was that the Congressman's conduct was improperly motivated, and that was precisely what the speech or debate clause foreclosed from executive and judicial inquiry. The argument that the speech or debate clause was meant to prevent only prosecutions based upon the content of the speech, such as libel actions, but not those founded on the antecedent unlawful conduct of accepting or agreeing to accept a bribe was repulsed. Also repulsed was the argument that the speech or debate clause was not violated because the gravamen of the charge was the alleged conspiracy, not the speech. The indictment focused upon the motive underlying the making of the speech and a prosecution under a criminal statute dependent on such inquiry contravened the speech or debate clause. It might be that only receipt of the bribe and not performance of the bargain was needed to prove the charge, but proof of an agreement to be influenced in the performance of legislative acts was "by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself". The Senator's "reprehensible and outrageous conduct", if committed, should not have gone unpunished, but whether a court or only the Senate "might undertake the task was a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged".

We cannot but be impressed by the majority opinion in Brewster but, with respect, are more persuaded by the dissent. The majority opinion stated that the only reasonable reading of the speech and debate clause was "that it does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but

Brennan, J., dissenting in Brewster, said that Brewster had been charged with a crime whose proof called into question the motives behind his legislative acts. He could not only not be prosecuted or called to answer for his vote in any judicial or executive proceeding but his immunity

went beyond the vote itself and precluded "all extra-congressional scrutiny as to how and why he cast, or would have cast, his vote a certain way". Neither the Senator's vote nor his motives for voting, however dishonourable, could be the subject of a civil or criminal proceeding outside the halls of the Senate. The charge of a corrupt promises to vote was repugnant to the speech or debate clause. It might be that only receipt of the bribe and not performance of the bargain was needed to prove the charge, but proof of an agreement to be influenced in the performance of legislative acts was "by definition an inquiry into their motives, whether or not the acts themselves or the circumstances surrounding them are questioned at trial. Furthermore, judicial inquiry into an alleged agreement of this kind carries with it the same dangers to legislative independence that are held to bar accountability for official conduct itself". The Senator's "reprehensible and outrageous conduct", if committed, should not have gone unpunished, but whether a court or only the Senate "might undertake the task was a constitutional issue of portentous significance, which must of course be resolved uninfluenced by the magnitude of the perfidy alleged".

We cannot but be impressed by the majority opinion in *Brewster* but, with respect, are more persuaded by the dissent. The majority opinion stated that the only reasonable reading of the speech and debate clause was "that it does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not a part of the legislative process itself". Upon this construction of the speech or debate clause, it came to the conclusion that a court could investigate whether *Brewster* had taken a bribe to be influenced in the performance of official acts in respect of his action, vote, and decision on postage rate legislation. With respect, we cannot regard the act of taking a bribe to vote in a particular way in the legislature to be merely "casually or incidentally related to legislative affairs". The Library of Congress publication "The Constitution of the United States of America, Analysis and Interpretation" says, and we respectfully agree, "However, in *United States v. Brewster*, while continuing to assert that the clause 'must be read broadly to effectuate its purpose of protecting the independence of the Legislative Branch, 'the Court substantially reduced the scope of the coverage of the clause'".

For the first time in *England Buckley, J.* ruled in *R. vs. Currie* that a Member of Parliament who accepts a bribe to abuse his trust is guilty of the common law offence of bribery. The innovation in English law needs to be tested in appeal. We say this with respect, having regard to earlier English judgments, and we find support in the Twenty-second edition of *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, wherein a foot note (on p.115) apropos the ruling read thus:

"The court observed: 'that a Member of Parliament against whom there is a prima facie case of corruption should be immune from prosecution in the courts of law is to my mind an unacceptable proposition at the present time' (quoted in *Committee of Privileges. First Report, HC351-ii (1994-95) pp 161-162*). The Court seems to have had in mind, though no attempt was made to define, an area of activity where a Member may

act as such, without participating in 'proceedings in Parliament' (whether of course article IX will apply)."

Our conclusion is that the alleged bribe takers, other than Ajit Singh, have the protection of Article 105(2) and are not answerable in a court of law for the alleged conspiracy and agreement. The charges against them must fail. Ajit Singh, not having cast a vote on the no-confidence motion, derives no immunity from Article 105(2).

What is the effect of this upon the alleged bribe givers? In the first place, the prosecution against Ajit Singh would proceed, he not having voted on the no-confidence motion and, therefore, not having the protection of Article 105(2). The charge against the alleged bribe givers of conspiracy and agreement with Ajit Singh to do an unlawful act would, therefore, proceed.

Mr. Rao submitted that since, by reason of the provisions of Article 105(2), the alleged bribe takers had committed no offence, the alleged bribe givers had also committed no offence. Article 105(2) does not provide that what is otherwise an offence is not an offence when it is committed by a member of Parliament and has a connection with his speech or vote therein. What is provided thereby is that member of Parliament shall not be answerable in a court of law for something that has a nexus to his speech or vote in Parliament. If a member of Parliament has, by his speech or vote in Parliament, committed an offence, he enjoys, by reason of Article 105(2), immunity from prosecution therefor. Those who have conspired with the member of Parliament in the commission of that offence have no such immunity. They can, therefore, be prosecuted for it.

Mr. Rao contended that for the offence that the bribe takers had allegedly committed they would be answerable to the Lok Sabha. There was a possibility of the Lok Sabha deciding one way upon the prosecution before it of the alleged bribe takers and the criminal court deciding the other way upon the prosecution of the alleged bribe givers. A conflict of decisions upon the same set of facts being possible, it had to be avoided. The charge against the alleged bribe givers had, therefore, to be quashed. There is in the contention a misconception. Article 105(2) does not state that the member of Parliament who is not liable to civil or criminal proceedings in Parliament. Parliament in India is not a Court of Record. It may not exercise judicial powers or entertain judicial proceedings. The decisions of this Court so holding have already been referred to. The alleged bribe takers, except Ajit Singh, who are entitled to the immunity conferred by Article 105(2) are not liable to be tried in the Lok Sabha for the offences set out in the charges against them or any other charges, but the Lok Sabha may proceed against them for breach of privileges or contempt. There is, therefore, no question of two fora coming to different conclusions in respect of the same charges.

Mr. Rao submitted that the alleged bribe givers had breached Parliament's privilege and been guilty of its contempt and it should be left to Parliament to deal with them. By the same sets of acts the alleged bribe takers and the alleged bribe givers committed offences under the criminal law and breaches of Parliament's privileges and its contempt. From prosecution for the former, the alleged bribe takers, Ajit Singh excluded, enjoy immunity. The alleged bribe givers do not. The criminal prosecution

against the alleged bribe givers must, therefore, go ahead. For breach of Parliament's privileges and its contempt, Parliament may proceed against the alleged bribe takers and the alleged bribe givers.

Article 105(3).

Relevant to the submission on Article 105(3) is the judgement in *Ex Parte Wason*, 1869 L.R.4 QBD 573. Rigby Wason moved the Court of Queen's Bench for a rule to call upon a metropolitan police magistrate to show cause why he should not take on record the complaint of Wason to prosecute Earl Russell, Lord Chelmsford and the Lord Chief Baron for conspiracy. Wason's affidavit in support of the complaint stated that he had given to Earl Russell a petition addressed by him to the House of Lords, which Earl Russell a petition addressed by him to the House of Lords, which Earl Russell had promised to present. The petition charged the Lord Chief Baron, when a Queen's Counsel, with having told a wilful and deliberate falsehood to a committee of the House of Commons sitting as a judicial tribunal. The petition prayed for an inquiry into the charge and, if the charge was found true, for action against the Lord Chief Baron under the law to remove judges. Earl Russell, Lord Chelmsford and the Lord Chief Baron had, according to the Wason's affidavit, prevented the course of justice by making statements, after conferring together, which they knew were not true in order to prevent the prayer of his petition being granted; Wason alleged that Earl Russell, Lord Chelmsford and the Lord Chief Baron had conspired and agreed together to prevent the course of justice and injure himself. The alleged conspiracy consisted in the fact that Earl Russell, Lord Chelmsford and the Lord Chief Baron "did agree to deceive the House of Lords by stating that the charge of falsehood contained in my petition was false, and that I was a calumniator; when Earl Russell, Lord Chelmsford, and the Lord Chief Baron well knew that the charge of falsehood committed by the Lord Chief Baron, when Queen's Counsel, was perfectly true". Wason desired "to prefer an indictment against Earl Russell, Lord Chelmsford, and the Lord Chief Baron for conspiracy". The magistrate had refused to take cognizance of the complaint on the ground that no indictable offence had been disclosed by Wason's information, whereupon Wason moved the Court Cockburn', C.J. said, "I entirely agree that, supposing the matter brought before the magistrate had been matter cognizable by the criminal law, and upon which an indictment might have been preferred, the magistrate would have had no discretion, but would have been bound to proceed.....On the other hand, I have no doubt that, supposing the matter brought before the magistrate does not establish facts upon which an indictment could be preferred and sustained, the magistrate has a discretion which, if rightly exercised, we ought to uphold; and the question is whether the matter brought by the present applicant before the magistrate was subject-matter for an indictment....The information then charges that Earl Russell, Lord Chelmsford, and the Lord Chief Baron agreed to deceive the House of Lords by stating that the charge of falsehood brought against the Lord Chief Baron was unfounded and false, whereas they knew it to be true. Now, inasmuch as these statements were alleged to have been for the purpose of preventing the prayer of the petition and the statements could not have had that effect unless made in the House of Lords, it seems to me that the fair and legitimate inference is that the alleged conspiracy was to make, and that the statements were made, in the House of Lords. I think, therefore, that the magistrate, looking at this and

the rest of the information, was warranted in coming to the conclusion, that Mr. Wason charged and proposed to make the substance of the indictment, that these three persons did conspire to deceive the House of Lords by statements made in the House of Lords for the purpose of frustrating the petition. Such a charge could not be maintained in a court of law. It is clear that statements made by members of either House of Parliament in their places in the House, though they might be untrue to their knowledge, could not be made the foundation of civil or criminal proceedings, however injurious they might be to the interest of a third person. And a conspiracy to make such statements would not make the persons guilty of it amenable to the criminal law.....". Blackburn, J. was of the same opinion. He said, "When the House is sitting and statements are made in either House of Parliament, the member making them is not amenable to the criminal law. It is quite clear that no indictment will lie for making them, nor for a conspiracy or agreement to make them, even though the statements be false to the knowledge of the persons making them. I entirely concur in thinking that the information did only charge an agreement to make statements in the House of Lords, and therefore did not charge any indictable offence". Lush, J. agreed. He said that he could not doubt that the charge was of "a conspiracy to deceive the House of Lords, and so frustrate the application, by means of making false statements in the House. I am clearly of opinion that we ought not to allow it to be doubted for a moment that the motives or intentions of members of either House cannot be inquired into by criminal proceedings with respect to anything they may do or say in the House".

As we read Ex Parte Wason, the Court of Queen's Bench found that Wason desired criminal proceedings to be commenced against three members of Parliament for conspiring to make, and making statements in Parliament which he alleged were untrue and made to harm his cause, The Court held that criminal proceedings could not be taken in respect of statements made by members of Parliament in Parliament nor for conspiring to make them. ex parte Wason, therefore, does not support Mr. Rao's submission that his client P.V. Narasimha Rao and others of the alleged bribe givers who were members of Parliament have "immunity from criminal proceedings in a court of law with respect to the charge of conspiracy in connection with the voting in Parliament on the no-confidence motion". The speech or vote of the alleged bribe giving members of Parliament is not in issue nor, therefore, a conspiracy in this beheld. In contrast, all the three alleged conspirators in Ex parte Wason were members of Parliament and what was alleged against them was that they had made false statements to Parliament in consequence of a conspiracy. If what is alleged against members of Parliament in India is that they had made false statements to, or voted in, Parliament in consequence of a conspiracy, they would be immune from prosecution by reason of Article 105(2) itself and no occasion would arise to look into the privileges enjoyed by the House of Commons under Article 105(3). To repeat what we have said earlier, Mr. Rao is right, subject to two caveats, in saying that Parliament has the power not only to punish its members for an offence committed by them but also to punish others who had conspired with them to have the offence committed: first, the actions that constitute the offence must also constitute a breach of Parliament's privilege or its contempt; secondly, the action that Parliament will take and the punishment it will impose is for the breach of privilege or contempt. There is no

reason to doubt that the Lok Sabha can take action for breach of privilege or contempt against the alleged bribe givers and against the alleged bribe takers, whether or not they were members of Parliament, but that is not to say that the courts cannot take cognizance of the offence of the alleged bribe givers under the criminal law.

Mr. Rao relied upon observations in the Eighteenth Edition (197) of Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament. There is before us the Twenty-second Edition. Part of what is contained in the earlier edition is not found in the later edition. That May's treatise is an authoritative statement on its subject has been recognised by this Court (Keshav Singh's case, *ibid*). May's earlier edition stated, "It is sometimes said that, since the privileges of Parliament do not extend to criminal matters, therefore Members are amenable to the course of criminal justice for offences committed in speech or action in the House.....It may prove to be true that things said or done in Parliament, or some of them, are not withdrawn from the course of criminal justice.....There is more doubt as to whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed.....". Quoting Mr. Justice Stephen in *Bradlaugh v. Gosset*, where the learned judge said that he "knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice", May observed that "it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech". May went on to state, "It is probably true, as a general rule, that a criminal act done in the House is not outside the course of criminal justice. But this rule is not without exception, and both the rule and the exception will be found to depend upon whether the particular act can or can not be regarded as a proceeding in Parliament.....it would be hard to show that a criminal act committed in the House by an individual Member was part of the proceedings of the House.....Owing to the lack of precedents there is no means of knowing what view the courts would take of a criminal act committed in Parliament, or whether they would distinguish action from speech in respect of amenability to the criminal law. With regard to a crime committed in Parliament, the House in which it was committed might claim the right to decide whether to exercise its own jurisdiction or to hand the offender over to the criminal courts. In taking this decision, it would no doubt be guided by the nature of the offence, and the adequacy or inadequacy of the penalties, somewhat lacking in flexibility, which it could inflict.....In cases of breach of privilege which are also offences at law, where the punishment which the House has power to inflict would not be adequate to the offence, or where for any other cause the House has thought a proceeding at law necessary, either as a substitute for, or in addition to, its own proceeding, the Attorney General has been directed to prosecute the offender".

May's Twenty-second Edition is more succinct, and this is what it says :

"Moreover, though the Bill of Rights will adequately protect a Member as regards criminal law in respect of anything said as part of proceedings in Parliament, there is more doubt whether criminal acts committed in Parliament remain

within the exclusive cognizance of the House in which they are committed. In the judgment of the House of Lords in Eliot's case (see pp 73 and 84n), it was deliberately left an open question whether the assault on the Speaker might have been properly heard and determined in the King's bench. The possibility that it might legally have been so determined was admitted by one of the managers for the commons in the conference with the Lords which preceded the writ of error. In *Bradlaugh v. Gosset*, Mr. Justice Stephen said that he 'knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice'. Since he went on immediately to refer to Eliot's case and accepted the proposition "that nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts", it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech.

In such cases, it will be essential to determine where the alleged criminal act stands in relation to the proceedings of the House. An officer carrying out an order of the House is in the same position as the Members who voted the order. In *Bradlaugh v. Erskine*, the Deputy Serjeant at Arms was held to be justified on committing the assault with which he was charged, since it was committed in Parliament, in pursuance of the order of the House, to exclude Bradlaugh from the House. As Lord Coleridge observed, "The Houses cannot act by themselves as a body; they must act committed by a Member, however, could form part of the proceedings of the House, Apart from Eliot's case 350 years ago, no charge against a Member in respect of an allegedly criminal act in Parliament has been brought before the courts. Were such a situation to arise, it is possible that the House in which the act was committed might claim the right to decide whether to exercise its own jurisdiction. In taking this decision, it would no doubt be guided by the nature of the offence, and the adequacy or inadequacy of the penalties,

somewhat lacking in flexibility, which it could inflict."

The learned Attorney General submitted, and the English judgments and Reports dealt with earlier bear out the submission, that the bribery of a member of the House of Commons, acting in his Parliamentary capacity, did not, at the time the Constitution came into effect, constitute an offence under the English criminal law or the common law. Clearly, therefore, no privilege or immunity attached in England to an allegation of such bribery or an agreement or conspiracy in that behalf which could be imported into India at the commencement of the Constitution under the provisions of Article 105(3). Secondly, Article 105(4) provides for the sum total of the privileges and immunity that attach to what is said in Parliament and to votes given therein. Article 105(3) are, therefore, not attached and they do not render assistance to the alleged bribe givers.

Prevention of Corruption Act, 1988

In consider in the case on the Prevention of Corruption Act, 1988 (the said Act) we shall not take account of what we have already held and write as it were, upon a clean slate. Some reference to the provisions of the said Act is necessary at the threshold.

Section 2(b) of the said Act defines "public duty" thus:

"public duty" means a duty in the discharge of which the State, the public or the community at large has an interest."

Section 2(c) of the said Act defines public servant thus:

"(c) "public servant" means

(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;

(ii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court or justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral

roll or to conduct an election or part of an election;

(viii) any person who is the president, secretary or other office-bearer of a registered cooperative society engages in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board.

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural, or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

Explanation 1. - Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2. - Wherever the words "public servant" occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation."

Section 19 of the said Act deals with the previous sanction that is necessary for prosecution for the offences mentioned therein. It reads thus:"

"19. Previous sanction necessary

for prosecution. - (1) No court shall take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government.

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section(1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;

(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of,

or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation. - For the purposes of this section, -

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with sanction of a specified person or any requirement of a similar nature.

Section 7, mentioned in Section 19, defined the offence of a public servant taking gratification other than legal remuneration in respect of an official act and the penalty therefor. Section 10 sets out the punishment for abetment by a public servant of offences defined in Section 8 or 9. Section 11 defines the offence of a public servant obtaining a valuable thing, without consideration, from a person concerned in a proceeding or business transacted by such public servant, and the penalty therefor. Section 13 defines the offence of criminal misconduct by a public servant and the penalty therefor. Section 15 sets out the punishment for an attempt to commit an offence under Section 13 (1) (c) or (d).

The offences with which the appellants are charged are those set out in Section 120(B) of the Indian Penal Code with Section 7, Section 12 Section 13(1)(d) and Section 13(2) of the said Act. (We do not here need to deal with the offence under Section 293 of the Indian Penal Code with which some of the accused are charged). These provisions read thus:

"Section 120-B (of the Indian Penal Code). Punishment of criminal conspiracy. - (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in the Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

Section 7 (of the said Act). Public servant taking gratification other than legal remuneration in respect of an official act. - Whoever,

being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remunerations, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favours or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Explanations. - (a) "Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

(b) "Gratification." The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.

(c) "Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.

(d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for his services, the public servant has committed an offence under this section.

Section 12. Punishment for abetment of offences defined in section 7 or 11 - Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 13. Criminal misconduct by a public servant. - (1) A public servant is said to commit the offence of criminal misconduct, -

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in Section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so to do; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or (d) if he, -

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) if he or any person on his behalf, is in possession or has, at

any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation. - For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

(2) Any public servant who commits criminal misconduct shall be not less than one year but which may extend to seven years and shall also be liable to fine."

The said Act replaced the Prevention of Corruption Act, 1947 (the 1947 Act). The said Act was enacted "to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith" Its Statements of Objects and Reasons reads thus:

"Statement of Object and

Reasons - 1. The Bill is intended to make the existing anti-corruption laws more effective by widening their coverage and by strengthening the provisions.

2. The Prevention of Corruption act, 1947, was amended in 1964 based on the recommendations of the Santhanam Committee. There are provisions in Chapter IX of the Indian Penal Code to deal with public servants and those who abet them by way of criminal misconduct. There are also provisions in the Criminal Law Amendment Ordinance, 1944, to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. The Bill seeks to incorporate all these provisions with modifications so as to make the provisions more effective in combating corruption among public servants.

3. The Bill, inter alia, envisages widening the scope of the definition of the expression "public servant", incorporation of offences under Sections 161 to 165-A of the Indian Penal Code, enhancement of penalties provided for these offences and incorporation of a provision that the order of the trial court upholding the grant of sanction for prosecution would be final if it

has not already been challenged and the trial has commenced. In order to expedite the proceedings, provisions for day-to-day trial of cases and prohibitory provisions with regard to grant of stay and exercise of powers of revision on interlocutory orders have also been included.

4. Since the provisions of Sections 161 to 161-A are incorporated in the proposed legislation with an enhanced punishment it is not necessary to retain those sections in the Indian Penal Code. Consequently, it is proposed to delete those sections with the necessary saving provision.

5. The notes on clauses explain in detail the provisions of the Bill."

In the 1947 Act the definition of "public servant" in the Indian Penal Code was adopted, Section 21 whereof reads as follows:

21. "Public servant". - The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely:

First. - [Repealed by the Adaptation of Laws Order, 1950.]

Second. - Every Commissioned Officer in the Military, Naval or Air Forces of India;

Third. - every Judge including any person empowered by law to discharge, whether by himself or as a member of anybody of persons, any adjudicatory functions;

Fourth. - Every officer of a Court of Justice (including a liquidator, receiver or commissioner) whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a court of Justice to perform any of such duties;

Fifth. - every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth. - Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent

public authority;

Seventh. - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. - Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth. - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection, of the pecuniary interests of the Government;

Tenth. - Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh. - Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth. - Every person -

- (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;
- (b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in Section 617 of the Companies Act, 1956 (1 of 1956)."

Section 6 of the 1947 Act dealt with the previous sanction necessary for prosecution. It read thus :

"6. Previous sanction

necessary for prosecution. - (1) No court shall take cognizance of an offence punishable under Section 161 or Section 164 or section 165 of the Indian Penal Code (45 of 1860), or under sub-section (3A) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction.

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of the Central Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises whether the previous sanction as required under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed."

It is not in dispute that the prosecutions against all the accused have not received the previous sanction contemplated by Section 19 of the said Act.

Mr. P.P. Rao submitted that a Constitution Bench had in the case of *R.S. Nayak v. A.R. Antulay*, 1984 (2) S.C.R. 495, held that a member of a State legislature was not a public servant, but that the finding therein that he performed a public duty was erroneous and required reconsideration. The expression 'public duty' in Section 2(b) of the said Act meant a duty in the context of a interest which could be enforced at law. A mandamus could not issue to a member of Parliament or a member of a State legislature to perform his duty for he could not be compelled to speak or to vote. It was permissible to refer to the speech in Parliament of the Minister who had moved the Bill that became the said Act. He had stated, in response to a question about the position of a member of Parliament or a member of a Legislative Assembly, thus: ".....We have not done anything different or contrary to the law as it stands today. Under the law, as it stands today, the Supreme Court has held in *Antulay's* case that a Member of a Legislative Assembly is not a public servant within the meaning of Section 21 of the Indian Penal Code." That this was really the position was supposed by the fact that two conditions had to be satisfied for the purposes of bringing someone within the purview of the said Act, namely, that he should be a public servant (Section 2) and there

should be an authority competent to remove him from his office (Section 19). In this behalf, reliance was placed upon the judgement in K. Veeraswamy vs. Union of India, 1991 (3) S.C.R. 189. The judgment of the Delhi High Court under appeal noted that it was not disputed that there was no authority competent to remove members of Parliament from their office. This had also been found by the Orissa High Court in Habibullah Khan vs. State of Orissa, (1993) Cr.L.J. 3604. A member of Parliament and a member of a State legislature did not hold an office. Section 2 (c)(viii) of the said Act postulated the existence of an office independent of the person holding it, and that by virtue of the office, the holder was authorised or required to perform a public duty. That a member of Parliament did not hold an office was apparent from the Constitution. Whereas the Constitution spoke of other functionaries holding offices, members of Parliament were said to occupy seats. The conclusion, therefore, was inescapable that the accused could not be prosecuted under the said Act and the charges had to be quashed. Mr. D.D. Thakur echoed these submissions. He added that it was legally permissible, but morally impermissible, for a legislator to vote in exchange for money. The clauses of Section 2(c) had to be constructed ejusdem generis and, so read, could not cover members of Parliament or the State legislatures. Having regard to the fact that the Minister had made a representation to Parliament when the Bill was being moved that it did not cover members of Parliament and the State legislatures, it could not be argued on behalf of the Union Government, by reason of the principle of promissory estoppel, that the said Act covered members of Parliament and the State legislatures. The said Act only removed the surplusage in the then existing definition of "public servant" and had to be construed only in that light. The inclusion of members of Parliament in the said Act was not "clearly implicit" nor "irresistibly clear." A member of Parliament had only privileges given to him under the Constitution; his only obligation was to remain present for a given number of days. Mr. Sibbal adopted the arguments of Mr. Rao. He added that the Constitution cast no duty or obligation upon a member of Parliament. Consequently, there was no authorisation or requirement to perform a duty under the provisions of Section 2(c)(viii) of the said Act. An authority competent to remove a public servant necessarily contemplated an authority competent to appoint him. There was no authority competent to appoint a member of Parliament and, therefore, there was no authority which could remove him.

The Attorney General submitted that the object behind enacting the said Act was to widen the coverage of the anti-corruption laws, as had been stated in its Statement of Object and Reasons. 'Public office' had been defined in Blacks Law Dictionary (Sixth edition, pg 1082) thus, "the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. An agency for the state, the duties of which involve in their performance the exercise of some portion of sovereign power, either great or small." The Shorter Oxford Dictionary (page 1083) defined "Office" thus, "A position to which certain duties are attached, esp. a place of trust, authority or service under constituted authority." In Antulay's case it had been held that a member of a legislative assembly "performs public duties cast on him by the Constitution and his electorate".

That a member of Parliament occupied an office had been the view taken in the cases of Bunting and Boston (referred to above). A member of Parliament performed the sovereign function of law making and in regard to the exchequer. He had a fundamental duty to serve. He undertook high public duties which were inseparable from his position. A member of Parliament, therefore, held an office. The Constitution provided the number of seats for members of Parliament. The tenure of a member of Parliament was fixed. He received a salary and other allowances. It was clear from the Constitution that he performed public duties. The oath that he took referred to his obligation to "faithfully discharge the duty" upon which he was about to enter. The Salary, Allowances and Pension of Members of Parliament Act, 1954, specified that a member of Parliament was entitled to receive a salary per mensem "during the whole of his term of office" and an allowance per day "during any period of residence on duty". The accused, other than D.K. Adikeshavulu and M. Thimmagowda, were, therefore, public servants within the scope of the said Act and could be charged thereunder. Reference to the provisions of Section 19 of the said Act and to the Minister's speech on the Bill that became the said Act was, consequently, not called for. The provisions of Section 19 were attracted only when a public servant had an authority which was competent to remove him. Where, as in the case of a member of Parliament or a State legislature, there was no authority which was competent to remove a public servant, the provisions of section 19 were not attracted and a prosecution could be launched and taken cognizance of without previous sanction. Alternatively, the authority to remove a member of Parliament was the President under the provisions of Article 103 of the Constitution.

There can be no doubt that the coverage of Section 2(c) of the said Act is far wider than that of Section 21 of the Indian penal Code. The two provisions have only to be looked at side by side to be sure that more people can now be called public servants for the purposes of the anti-corruption law. There is, therefore, no reason at all why Section 2(c) of the said Act should be construed only in the light of the existing law and not on its own terms. It is for the Court to construe Section 2(c). If the Court comes to the conclusion that members of Parliament and the State legislatures are clearly covered by its terms, it must so hold. There is then no reason to resort to extraneous aids of interpretation such as the speech of the Minister piloting the Bill that became the said Act. The true interpretation of a statute does not depend upon who urges it. The principle of promissory estoppel has no application in this behalf. Further, if the court comes to the conclusion, based on Section 2(c) itself, that members of Parliament and the State legislators are, clearly, public servants, no resort to the provisions of Section 19 is required in this regard. The words "public servant" in Section 19 must then bear that meaning that is attributed to them on the construction of the definition thereof in Section 2(c).

A public servant is "any person who holds an office by virtue of which he is authorised or required to perform any public duty." Not only, therefore, must the person hold an office but he must be authorised or required by virtue of that office to perform a public duty. Public duty is defined by Section 2(b) of the said Act to mean "a duty in the discharge of which the State, the public or that community at large has an interest." In a which the State, the public

or that community at large has an interest." In a democratic form of Government it is the member of Parliament or a State legislature who represents the people of his constituency in the highest law making bodies at the Centre and the State respectively. Not only is he the representative of the people in the process of making the laws that will regulate their society, he is their representative in deciding how the funds of the Centre and the States shall be spent and in exercising control over the executive. It is difficult to conceive of a duty more public than this or of a duty in which the State, the public and the community at large would have greater interest. The submission that this Court was in error in Antulay's case in holding that a member of a State legislature "performs public duties cast on him by the Constitution and his electorate" must be rejected outright. It may be - we express no final opinion - that the duty that a member of Parliament or a State legislature performs cannot be enforced by the issuance of a writ of mandamus but that is not a sine qua non for a duty to be a public duty. We reject the submission, in the light of what we have just said, that a member of Parliament has only privileges, no duties. Members of Parliament and the State legislatures would do well to remember that if they have privileges it is the better to perform their duty of effectively and fearlessly representing their constituencies.

In Antulay's case the question relevant for our purpose was whether a member of a Legislative Assembly was a public servant within the meaning of that expression in clauses 12(a), (3) and (7) of section 21 of the Indian Penal Code. These Clauses read thus:

21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely:

Third- Every Judge including any person empowered by law to discharge, whether by himself or as a member of, any body of persons, any adjudicatory functions.

Seventh - Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement.

Twelfth - Every person -
(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government."

This Court held that a member of a Legislative Assembly did not satisfy the ingredients of these clauses and that, therefore, he was not a public servant within the meaning of that expression in Section 21 of the Indian Penal Code. It was in this context that this Court made the observation that we have already quoted. Having regard to the fact that there was no clause in section 21 of the Indian Penal Code which is comparable to Section 2(c)(viii) of the said Act, the decision in Antulay's case is of little assistance in this context.

The judgment of the Orissa High Court in the case of Habibulla Khan is of assistance because it considered whether a member of a Legislative Assembly was a public servant within the meaning of Section 2(c)(viii) of the

said Act. Paragraphs 5,7,8 and 9 of the principle judgment are relevant. ***ney read thus:

"5. For the aforesaid clause to be attracted, two requirements must be satisfied; (i) an M.L.A. must hold an office: and (ii) he must perform public duty by virtue of holding that office. The meaning of the word 'office' has been the subject-matter of various decisions of the apex Court and Shri Rath in his written note dated 27-4-1993 has dealt with these decisions in pages 6 to 12, in which reference has been made to what was held in this regard in (1) Maharaj Shri Govindlal Jee Ranchhodlal jee v. C.I.T., Ahmedabad, 34 ITR 92 : (AIR 1959 Bom 100) (which is a judgment of Bombay High Court rendered By Chagla, C.J.); (2) Champalal v. State of Madhya Pradesh, AIR 1971 MP 88, in which the definition of the word "office" given in Corpus Juris Secundum "A position or station in which a person is employed to perform certain duty" was noted; (3) Statesman v. H.R. Deb, AIR 1968 SC 1495: (1968 Lab IC 1525) which is a rendering by a Constitution Bench stating "an office means no more than a position to which certain duties are attached"; (4) Kanta Kathuria v. Manikchand, AIR 1970 SC 694, in which Hidayatulla, C.J., on behalf of self and J.K. Mitter, J., who were in minority, after referring to the Constitution Bench decision in Statesman's case referred to the observations of Lord Wright in Mc Millan v. Guest, 1942 AC 561, that the meaning of the word 'office' covered four columns of the New English Dictionary, but the one taken as most relevant was "(a) position or place to which certain, duties are attached, especially one of more or less public character"; whereas Sikri, J, speaking for the majority referred to the definition given by Lord Atkin, which was "a subsisting permanent, substantive position which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders" by further stating that there was no essential difference between the definitions given by Lord Wright and Lord Atkin: and (5) Madhukar v. Jaswant, AIR 1976 SC 2283, in which the definition given in the Statesman's case was quoted with approval.

xxx xxx xxx
7. Shri Das, learned
Government Advocate, does not
contest the submission of Shri Rath
that the word 'office' should mean,
to repeat, no more than a position
to which certain duties are
attached, specially of a public
character". Let it be seen as to
whether the test mentioned by
Sikri, J, is satisfied, which, as
already noted, is that there must
be an office which exists
independently of the holder of that
office. To substantiate this part
of his submission, Shri Rath has
referred in his written note first
to Article 168 of the Constitution
which has proved that for every
State there shall be a Legislature
which shall consist of the
Governor, and in case of some
States, two Houses and in case of
others one House. Article 170
states that the Legislative
Assembly of each State shall
consist of not more than 500 and
not less than 60 members chosen by
direct election from the
territorial constituencies in the
State for which purpose the State
is divided into equal number of
territorial constituencies. In
Article 172, duration of the
Legislative Assembly has been
specified to be for five years,
and Article 173 deals with the
conditions of eligibility.
Reference is then made to certain
provisions of the Representation of
the People Act, 1950, which has
provided for total number of seats
in the Legislative Assembly, and so
far as Orissa is concerned, the
Second Schedule mentions that the
Orissa Legislative Assembly shall
consist of 147 members.

8. Relying on the aforesaid
provisions, it is contended and
rightly, by Shri Rath that the
office of the M.L.A. is created by
the Constitution read with the
Representation of the People Act,
1950, whereas the actual election
of M.L.As. is supervised, directed
and controlled by the provisions
contained in Articles 324 to 329 of
the Constitution and the provisions
of the Representation of the People
Act, 1951, which brings home the
distinction between "office" and
"holder of the office".

9. The aforesaid submission
appears to us to be unassailable.
We would, therefore, accept the

same by stating that an M.L.A. does hold an office, which is one of the two necessary requirements to attract the definition of "public servant", as given in clause (viii) of the Act. Another requirement, as already mentioned, is performance of public duty as holder of such office. This aspect has been dealt with by Shri Rath in paragraph 7 of his written note wherein mention has been made about various duties attached to the office of the M.L.A., as would appear from Chapter III of Part VI of the Constitution - the same being, making of laws, acting conjointly to effectively control the activities of the executive, approval of the finance bill, etc. Indeed, no doubt can be entertained in this regard in view of what was stated in paragraph 59 of Antulay's case, which is as below:-

".....it would be rather difficult to accept an unduly wide submission that M.L.A. is not performing any public duty. However it is unquestionable that he is not performing any public duty either directed by the Government or for the Government. He no doubt performs public duty cast on him by the Constitution and his electorate. He thus discharges constitutional functions....."

Having held that a member of a Legislative assembly was a public servant under the said Act, the Orissa High Court went on to consider which authority was competent to give sanction for his prosecution. That is an aspect with which we are not immediately concerned and we shall revert to this judgment later.

We think that the view of the Orissa High Court that a member of a Legislative Assembly is a public servant is correct. Judged by the test enunciated by Lord Atkin in *Mc Millan v. Guest* and adopted by Sikri, J, in *Kanta Kathuria's* case, the position of a member of Parliament, or of a Legislative Assembly, is subsisting, permanent and substantive; it has an existence independent of the person who fills it and it is filled in succession by successive holders. The seat of each constituency is permanent and substantive. It is filled, ordinarily for the duration of the legislative term, by the successful candidate in the election for the constituency. When the legislative term is over, the seat is filled by the successful candidate at the next election. There is, therefore, no doubt in our minds that a member of Parliament, or of a Legislative Assembly, holds an office and that he is required and authorised thereby to carry out a public duty. In a word, a member of Parliament, or of a Legislative Assembly, is a public servant for the purposes of the said Act.

This brings us to the issue of sanction under the provisions of Section 19 of the said Act. The Section has been quoted, Sub-section (1) opens with the words "No court shall take cognizance of an offence punishable under

Sections 7, 10, 11, 13 and 15. Secondly, the person charged must be a public servant at the point of time the court is asked to take cognizance; that is the material time for the purposes of the Section. Thirdly, the sanction must proceed cognizance; it must be prior sanction. Fourthly, and this from the point of view of this judgement is most material, the Section covers all public servants. In other words, if any public servant is charged with an offence punishable under the aforesaid sections, the court shall not take cognizance in the absence of sanction. That the Section applies to all public servants is also clear from the three clauses of sub-section(1). Clause (a) says that the sanction must be of the Central Government in the case of a public servant who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government. Clause (b) says that the sanction must be of a State Government in the case of a public servant who is employed in connection with the affairs of that State and is not removable from his office save by or with the consent of that State Government. Clause (c) says that the sanction in the case of any other public servant must be of the authority competent to remove him from his office. Clause (c) is the basket into which all public servants, other than those covered by the terms of clauses (a) and (b), fall.

Upon the plain language of sub-section (1) of Section 19, analysed above, the argument of the learned Attorney General that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so must fail.

In support of the argument, the learned Attorney General relied upon the judgment of this Court in S.A. Venkataraman vs. The State, 1958 S.C.R. 1040, in which, with reference to the provisions of Section 6 of the 1947 Act, it was observed :

" When the provisions of s.6 of the Act are examined it is manifest that two conditions must be fulfilled before its provisions become applicable. One is that the offences mentioned therein must be committed by a public servant and the other is that that person is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government or is a public servant who is removable from his office by any other competent authority. Both these conditions must be present to prevent a court from taking cognizance of an offence mentioned in the section without the previous sanction of the Central Government or the State Government or the authority competent to remove the public servant from his office. If either of these conditions is lacking, the essential requirements of the section are wanting and provisions of the section do not stand in the way of a court taking cognizance

without a previous sanction."

The appellant was a public servant who had been dismissed from service consequent upon a departmental inquiry. After his dismissal he was charged with the offence of criminal misconduct under the 1947 Act and convicted. The appellant contended that no court could have taken cognizance of the charge against him because there was no prior sanction under Section 6 of the 1947 Act. This Court found, as aforesaid, that for the applicability of Section 6 two conditions had to be fulfilled, namely, (i) the offence should have been committed by a public servant and (ii) the public servant is removable from his office by the Central Government or a State Government or a competent authority. This Court held that sanction was not a pre-requisite to the cognizance of the offence with which the appellant was charged and conditions were not satisfied because, when cognizance of the offence was taken, the appellant had ceased to be a public servant. That the appellant was a public servant was not in dispute; that no sanction had been obtained was also not in dispute. This Court was not concerned with a situation in which there was a public servant but there was no authority competent to remove him from his office. The observations of this Court quoted above were made in the context of the facts of the case and relative thereto. They cannot be examined de hors the facts and read as supporting the proposition that the provisions of Section 19 are applicable only to a public servant who is removable from his office by an authority competent to do so and, if there is no authority competent to remove a public servant from his office, the embargo arising under Section 19 is not attracted and Section 19 does not come in the way of a court taking cognizance. In any event, we cannot, with great respect, agree that the observations fully analyse the provisions of Section 19. We have set out above how we read it; as we read it, it applies to all who are public servants for the purposes of the said Act.

It is incorrect to say that Section 19 contemplates that for every public servant there must be an authority competent to remove him from his office and that, therefore, the effort must be to identify that authority. But if no authority can be identified in the case of a public servant or a particular category of public servant, it cannot lead to the conclusion that was urged on behalf of the accused, namely, that he is not a public servant or this is not a category of public servant within the meaning of the said Act. We have found, based on the language of Section 2(c)(viii) read with Section 2(b), that members of Parliament are public servants. That finding, based upon the definition section, must apply to the phrase 'public servant' wherever it occurs in the said Act. It cannot change if it be found that there is no authority competent to remove members of Parliament from office. Members of Parliament would, then, not be liable to be prosecuted for offences under the said Act other than those covered by sections 7, 10, 11, 13 and 15.

The Attorney General drew our attention in this context to the conclusion of the Orissa High Court in the case of Habibullah Khan aforementioned. The Orissa High Court found that there was no authority which could grant previous sanction, as contemplated by Section 19 of the Act, in the case of a member of a Legislative Assembly. Counsel, the High Court recorded, did not contend that even if there be no person competent to give sanction for prosecuting a member of a Legislative Assembly under the said act, nonetheless sanction for his prosecution had to be obtained

because he was a public servant. The High Court was satisfied that although "an M.L.A. would come within the fold of the definition of 'public servant', as given in Section 2(c) of the Act, he is not the type of 'public servant' for whose prosecution under the Act, previous sanction as required by Section 19 is necessary. We require realise the anomaly of our conclusion, because though Section 19 of the Act makes no distinction between one public servant and another for the purpose of previous sanction, we have made so. But this is a result which we could not have truly and legally avoided."

We do not think that the view of the Orissa High Court stated above is correct. Since Section 6 of the 1947 Act and Section 19 of the said Act make no distinction between one public servant and another for the purpose of previous sanction, the conclusion must be that where the Court finds that there is no authority competent to remove a public servant, that public servant cannot be prosecuted for offences punishable under Sections 7,10,11,13 and 15 of the said Act because there is no authority that can sanction such prosecution.

This Court in the case of K. Veeraswami v. Union of India and others, [1991] 3 S.C.R. 189, considered the applicability of the 1947 Act to a Judge of a High Court or the Supreme Court. A case under the provisions of Section 5(2) read with Section 5(1)(e) of the 1947 Act had been registered against the appellant, the Chief Justice of a High Court, and on 28th February, 1976, an F.I.R. was filed in the Court of Special Judge. The appellant retired on attaining the age of superannuation on 8th April, 1976. On 15th December, 1977, a charge sheet was filed and process was issued for appearance of the appellant. The appellant moved the High Court to quash the proceedings. The High Court dismissed the application but granted certificate of fitness to appeal. This Court, by a majority, concluded that a Judge of a High Court and the Supreme Court was a public servant within the meaning of Section 2 of the 1947 Act. A prosecution against him could be lodged after obtaining the sanction of the competent authority under Section 6 of the 1947 Act. For this purpose, the President of India was the authority to give previous sanction. No criminal case could be registered against a Judge of a High Court unless the Chief Justice of India was consulted. Such consultation was necessary also at the stage of examining whether sanction for prosecution should be granted, which should be guided by and in accordance with the advice of the Chief Justice of India. Specifically, the majority view was that a public servant could not be prosecuted for the offences specified in Section 6 of the 1947 Act unless there was prior sanction for prosecution from a competent authority. A Judge of the superior courts squarely fell within the purview of the 1947 Act. The second requirement under clause (c) of Section 6(1) was that for the purpose of granting sanction for his prosecution there must be an authority and the authority must be competent to remove him. It was, therefore, "now necessary to identify such authority.....".

The learned Attorney General laid stress upon this observation. He submitted that the court should identify the authority competent to remove a member of Parliament, or a State Legislature, from his office if it found such member to be a public servant within the meaning of Section 2(c) and did not accept his contention that the provisions of Section 19 did not apply, there being no authority competent to remove such member from his office. In other words, it

was the alternative submission of the learned Attorney General that there was an authority competent to remove such member from his office : in the case of a member of Parliament it was the President and in the case of a member of a State Legislature it was the Governor of the State. We shall address ourselves to the submission in a moment.

The passage in Veeraswamy's case relied upon by learned counsel for the appellants is contained in the dissenting judgment of Verma, J.

He said :

"Clauses (a), (b) and (c) in sub-section (1) of Section 6 exhaustively provide for the competent authority to grant sanction for prosecution in case of all the public servants falling within the purview of the Act. Admittedly, such previous sanction is a condition precedent for taking cognizance of an offence punishable under the Act, of a public servant who is prosecuted during his continuance in the office. It follows that the public servant falling within the purview of the Act must invariably fall within one of the three clauses in sub-section (1) of Section 6. It follows that the holder of an office, even though a 'public servant' according to the definition in the Act, who does not fall within any of the clauses (a), (b) or (c) of sub-section (1) of Section 6 must hold to be outside the purview of the Act since this special enactment was not enacted to cover that category of public servants in spite of the wide definition of 'public servant' in the Act. This is the only manner in which these provisions of the Act can be harmonized and given full effect. The scheme of the Act is that a public servant who commits the offence of criminal misconduct, as defined in the several clauses of sub-section (1) of Section 5, can be punished in accordance with sub-section (1) of Section 5, can be punished in accordance with sub-section (2) of Section 5, after investigation of the offence in the manner prescribed and with the previous sanction of the competent authority obtained under Section 6 of the act in a trial conducted according to the prescribed procedure. The grant of previous sanction under Section 6 being a condition precedent for the prosecution of a public servant covered by the Act, it must follow that the holder of an office who may be a public servant according

to the wide definition of the expression in the Act but whose category for the grant of sanction for prosecution is not envisaged by Section 6 of the Act, is outside the purview of the Act, not intended to be covered by the act. This is the only manner in which a harmonious constitution of the provisions of the Act can be made for the purpose of achieving the object of that enactment."

We are unable, with respect, to share this view in the dissenting judgment. It does not appear to take into reckoning the fact that sanction is not a pre-requisite for prosecution for all offences under the statute but is limited to those expressly specified in the sanction provision. Secondly, the question as to whether or not a person is a public servant within the meaning of the statute must be determined having regard to the definition of a public servant contained in the statute. If the person is found to be a public servant within the meaning of the definition, he must be taken to be a public servant within the meaning of the definition, he must be taken to be a public servant for the purposes of all provisions in the statute in which the expression 'public servant' occurs. If therefore, a person is found to satisfy the requirements of the definition of a public servant, he must be treated as a public servant for the purposes of the sanction provision. In our opinion, it cannot be held, as a consequence of the conclusion that there is no authority competent to remove from office a person who falls within the definition of public servant, that he is not a public servant within the meaning of the statute. Where a person is found to satisfy the requirements of the definition of a public servant, the Court must, as was said by the majority in Veeraswami's case, attempt to identify the authority competent to remove him from his office. The majority identified that authority in the case of a Judge of a High Court and the Supreme Court and did not need to consider the effect upon the prosecution of not being able to find such authority.

It is convenient now to notice a submission made by Mr. Sibal based upon Veeraswami's case. He urged that just as this court had there directed that no criminal prosecution should be launched against a Judge of a High Court or the Supreme Court without first consulting the Chief Justice of India, so we should direct that no criminal prosecution should be launched against a member of Parliament without first consulting the Speaker. As the majority judgment makes clear, this direction was considered necessary to secure the independence of the judiciary and in the light of the "apprehension that the Executive being the largest litigant is likely to abuse the power to prosecute the Judges." Members of Parliament do not stand in a comparable position. They do not have to decide day after day disputes between the citizen and the Executive. They do not need the additional protection that the Judges require to perform their constitutional duty of decision making without fear or favour.

Before we move on to consider the alternative submission of the Attorney General, we must note the judgment in S.A. Venkataraman vs. The State, 1958 S.C.R. 1040, upon which the learned Attorney General relied for his first proposition, namely, that the provisions of Section 19 do not apply to a public servant in respect of whom there is

no authority competent to remove him from his office. The appellant Venkatraman was a public servant. After he was dismissed from service consequent upon a departmental inquiry, he was charged with criminal misconduct under the 1947 Act and was convicted. The contention before this Court was that the trial court could not have taken cognizance of the offence because no sanction for the prosecution had been produced before it. This Court held that no sanction for the prosecution of the appellant was required because he was not a public servant at the time cognizance of the offence was taken. The following passage in this Court's judgment was relied upon :

" It was suggested that cl. (c) in s.6(1) refers to persons other than those mentioned in cls. (a) and (b). The words "is employed" are absent in this clause which would, therefore, apply to a person who had ceased to be a public servant though he was so at the time of the commission of the offence. Clause (c) cannot be construed in this way. The expressions "in the case of a person" and "in the case of any other person" must refer to a public servant having regard to the first paragraph of the sub-section. Clauses (a) and (b), therefore, would cover the case of a public servant who is employed in connection with the affairs of the Union or a State and is not removable from his office save by or with the sanction of the Central Government or the State Government and cl.(c) would cover the case of any other public servant whom a competent authority could remove from his office. The more important words in cl. (c) are "of the authority competent to remove him from his office". A public servant who has ceased to be a public servant is not a person removable from any office by a competent authority. Section 2 of the Act states that a public servant, for the purpose of the Act, means a public servant as defined in s.21 of the Indian Penal Code. Under cl. (c), therefore, any one who is a public servant at the time a court was asked to take cognizance, but does not come within the description of a public servant under cls. (a) and (b), is accused of an offence committed by him as a public servant as specified in s. 6 would be entitled to rely on the provisions of that section and object to the taking of cognizance without a previous sanction."

We do not find in the passage anything that can assist the Attorney General's submission; rather, it is supportive of

the view that we have taken and indicates that the third clause in the sanction provision is a catch-all clause into which all public servants who are not covered by the first two clauses fall. In the words, to prosecute a public servant the prior sanction of the authority competent to remove him is a must.

For the purposes of appreciating argument that the President is the authority competent to remove a member of Parliament from his office, Articles 101, 102 and 103 under the head "Disqualifications of Members" in Chapter II of Part V of the Constitution need to be set out. (Similar provisions in relation to members of State Legislatures are contained in Articles 190, 191 and 192 under the same head in Chapter III of Part VI of the Constitution.) Articles 101, 102 and 103 read thus:

"101. Vacation of seats, - (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of a House of the Legislature of a State and if a person chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

(3) If a member of either House of Parliament -

(a) becomes subject to any of the disqualifications mentioned in clause (1) or clause (2) of article 102 or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant:

Provided that in the case of any resignation to in sub-clause (b), in from information received or otherwise and after making such inquiry as he thinks fit; the Chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary of genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his

seat vacant :

Provided that in computing the said periods of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

102. Disqualifications for membership. - (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament -

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is an undischarged insolvent;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation - For the purpose of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth schedule.

103. Decision on questions as to disqualifications of members. -

(1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion.

By reason of Article 101(3)(a), the seat of a member

of Parliament becomes vacant if he becomes subject to the disqualifications mentioned in Article 102(1) and (2). Those disqualifications are the holding of an office of profit under the Union or State Government, other than an office declared by Parliament by law not to disqualify the holder; the declaration by a competent court of unsoundness of mind; undischarged insolvency; the citizenship of a foreign State or acknowledgement of allegiance or adherence thereto; and disqualification under any law made by Parliament or under the Tenth Schedule. Under the provisions of Article 103, it is only if a question arises as to whether a member of Parliament has become subject to any of the disqualifications aforementioned, other than disqualification under the Tenth Schedule, that the question is referred to the President for his decision. The President's decision is final but, before giving it, the President has to obtain the opinion of the Election Commission and has to act according to such opinion.

The question for our purposes is whether, having regard to the terms of Article 101, 102 and 103, the President can be said to be the authority competent to remove a member of Parliament from his office. It is clear from Article 101 that the seat of a member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications, mentioned in Article 102. without more. The removal of a member of Parliament is occasioned by operation of law and is self operative. Reference to the President under Article 103 is required only if a question arises as to whether a member of Parliament has earned such disqualification; that is to say, if it is disputed. The President would then have to decide whether the member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His order would not remove the member of Parliament from his seat or office but would declare that he stood disqualified. It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word "removal" in service law, it seems clear that the President cannot be said to be the authority competent to remove a member of Parliament from his office.

The Attorney General submitted that the scheme of the said Act, as compared to the 1947 Act, had undergone an important change by reason of the introduction of sub-section (3) in Section 19. Sanction was no longer a condition precedent. A trial in the absence of sanction was not a trial without inherent jurisdiction or a nullity. A trial without sanction had to be upheld unless there had been a failure of justice. This feature has a material bearing on the present case. The trial Court had taken cognizance of the charges against the accused and the High Court had dismissed the revision petition to quash the charges. In the Light of Section 19(3), this Court should not interdict the charges, particularly since a complaint filed today would not require sanction against most of the accused. Having regard to the effect of our findings upon the accused, it is not necessary to consider this submission.

We have, as aforesaid, reached the conclusion that members of Parliament and the State legislatures are public servants liable to be prosecuted for offences under the said Act but that they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to grant sanction thereto. We entertain

the hope that Parliament will address itself to the task of removing this lacuna with due expedition.

Conclusions.

We now set down the effect upon the accused of our findings.

We have held that the alleged bribe takers who voted upon the no-confidence motion, that is, Suraj Mandal Shibu Soren, Simon Marandi, Shailender Mehto, Ram Lakhan Sing Yadav, Roshan Lal, Anadicharan Das, Abhay Pratap Singh and Haji Gulam Mohammed (accused nos. 3, 4, 5, 6, 16, 17, 18, 19, 20 and 21) are entitled to the immunity conferred by Article 105(2).

D.K. Adikeshavulu and M. Thimmogowda (accused nos.12 and 13) were at all relevant times private persons. The trial on all charges against them must proceed.

When cognizance of the charges against them was taken, Buta Singh and N.M. Ravanna (accused nos. 7 and 9) were not public servants. The question of sanction for their prosecution, does not, therefore, arise and the trial on all charges against them must proceed.

P.V. Narasimha Rao, Satish Sharma, V. Rajeswar Rao, Ram Linga Reddy, M. Veerappa Moily and Bhajan Lal (accused nos.1, 2, 8, 10, 11 and 14) were public servants, being either members of Parliament or a State legislature, when cognizance of the charges against them was taken. They are charged with substantive offences under Section 120B of the Indian Penal Code and Section 12 of the said Act. Since no prior sanction is required in respect of the charge under Section 12 of the said Act, the trial on all charges against them must proceed.

Ajit Singh (accused no.15) was a public servant, being member of Parliament, when cognizance of the charges against him was taken. He is charged with substantive offences under Section 120B of the Indian Penal Code and Section 7 and 13(2) of the said Act. The trial of the charge against him under Section 120B of the Indian Penal Code must proceed.

The appeals shall now be placed before a bench of three learned judges for hearing, on any other points that may be involved, and final disposal.