Reserved on : 24.02.2025
Pronounced on : 02.05.2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF MAY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.791 OF 2025

BETWEEN:

SRI C.T.RAVI
AGED ABOUT 58 YEARS,
S/O THIMMEGOWDA,
RESIDING AT CHIKKA
DEVADUTTA NILAYA,
V G PURA MAIN ROAD,
CHIKKAMAGALURU – 577 101.

... PETITIONER

(BY SRI PRABHULING K NAVADGI, SR.COUNSEL A/W
SRI SIDDHARTH SUMAN, ADVOCATE)

AND:

1 . STATE BY BAGEWADI P.S.,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING
VIDHANA VEEDHI
BENGALURU – 560 001.

2 . SMT. LAXMI R. HEBBALKAR
AGED ABOUT 49 YEARS.
W/O RAVINDRA HEBBALKAR
RESIDING AT H NO 27/B,
BASAV KUNJA, KUVEMPU NAGAR,
HINDALGA BELAGAVI – 590 108.

3 . STATE BY CRIMINAL INVESTIGATION DEPARTMENT
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING
VIDHANA VEEDHI
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI B.A.BELLIAPPA, SPP A/W
SRI B.N.JAGADEESHA, ADDL.SPP FOR R1 AND R3;
SRI K.A.PHANEENDRA, SR.COUNSEL FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF BHARATIYA NAGARIK SURAKSHA SANHITA, PRAYING TO QUASH THE COMPLAINT AND FIR REGISTERED BY THE BAGEWADI P.S., AGAINST THE PETITIONER IN CR.NO.186/2024 DTD 19.12.2024, FOR THE OFFENCES P/U/S 75 AND 79 OF THE BHARATIYA NYAYA SANHITA, 2023, PENDING ON THE FILE OF THE HONBLE XLII ACJM, (SPECIAL COURT FOR CASE AGAINST MLA AND MP) AT BENGALURU, ANNEXURE A AND B.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 24.02.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner, a Member of Legislative Council of the State of Karnataka now stands before this Court seeking quashing of registration of crime, in Crime No.186 of 2024, which alleges offences penal under Sections 75 and 79 of the BNS 2023.

2. Shorn of unnecessary details, facts in brief, are as follows:-

The petitioner, a people's representative, is said to be in public field for over 3 decades. He is presently a Member of Vidhana Parishad/Legislative Council. The 2nd respondent is the complainant, a woman, Member of the Legislative Assembly. The genesis of the imbroglio lies, in the tumultuous events that unfolded on 19-12-2024, in the Vidhana Parishad. It is the allegation of the 2nd respondent that on 19-12-2024 amidst disorderly adjournment of Legislative Council, the petitioner is alleged to have made utterances, that undermined the dignity of the Vidhana Parishad, and those utterances had outraged the modesty of the complainant. A complaint then comes to be registered on the same day before

the jurisdictional Police at Belagavi for offences punishable under Sections 75 and 79 of the BharatiyaNyaya Sanhita ('BNS'). The investigation is sought to be conducted. In the interregnum, it appears, the Chairman of the Legislative Council who was seized of the matter is said to have closed the issue by observing that nothing of that kind has happened in the Council,on the score, that it is only the domain of the Chairman to have enquired into anything that happens inside the House, the Chairman has decided the issue. It appears, the petitioner fails to cooperate with the further investigation as he denies giving of his voice sample for the purpose of investigation. It is at that juncture the petitioner knocks at the doors of this Court in the subject petition, seeking **reprieve** from the **sword** of **criminal prosecution**.

3. Heard Sri Prabhuling K. Navadgi, learned senior counsel appearing for the petitioner, Sri B.A. Belliappa, learned State Public Prosecutor appearing for respondents 1 and 3 and Sri K.A.Phaneendra, learned senior counsel appearing for respondent No.2.

SUBMISSIONS:

Petitioner:

4. The learned senior counsel **Sri Prabhuling K Navadgi** would vehemently contend:

a. The Chairman of the Legislative Council, after hearing both the parties i.e., the petitioner and the complainant, has rendered his decision on 19-12-2024. The decision forms a part of the privilege of the House. The decision is in favour of the petitioner.

b. The protection given to a Member of the Legislature from any proceeding in the Court of law in Article 194(2) of the Constitution of India is not qualified, it is complete protection.

c. Registration of a crime before the jurisdictional police, in respect of words spoken by the petitioner inside the House is completely barred having constitutional injunction under Article 194(2) of the Constitution of India.

d. Article 194(2) of the Constitution of India protects a Member of the Legislature from any proceeding, in any Court, in respect of anything said by him in the Legislature.

e. It is not in dispute that the alleged act is a word spoken by the petitioner while he was in the Legislature. Hence, the FIR runs counter to the mandate of Article 194(2). He would again reiterate that the protection under Article 194(2) for anything said by a Member is absolute and unqualified.

f. He would above all contend that if crime is permitted to be investigated into, it would become catastrophic, as it would be rewriting the constitution and qualifying, the unqualified privilege conferred upon the Legislator, by the Constitution.

4.1. Elaborating the aforesaid contentions, it is his submission that there is vast difference between what is spoken inside the House and acts done inside the House. If an overt act of physical assault of any person inside the House or damaging the property of the House would be done by any Legislator, he would not have

absolute immunity, as they are acts which come within the ingredients of any crime that can be registered from the smallest to the highest. But, it is his submission that a spoken word of any kind in the House cannot become a subject matter of crime and judicial review in such cases is extremely limited. He would seek to place reliance upon the following judgments:

(1) **SURENDRA MOHANTY v. NABAKRISHNA CHOUDHURY**[1].
(2) **DR. SURESH CHANDRA BANERJEE v. PUNIT GOALA**[2]
(3) **TEJ KIRAN JAIN v. N.SANJIVA REDDY**[3]
(4) **A.K. SUBBIAH v. CHAIRMAN, KARNATAKA LEGISLATIVE COUNCIL**[4].
(5) **SITA SOREN v. UNION OF INDIA**[5].

to buttress his submissions.

State Public Prosecutor:

5. To the contrary, the learned **State Public Prosecutor** representing the State **Sri B.A.Belliappa**, would vehemently refute the submissions contending that parliamentary/legislators privilege,

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[1] 1958 SCC OnLine Ori.17
[2] 1951 SCC OnLine Cal.235
[3] (1970) 2 SCC 272
[4] 1978 SCC OnLine KAR 237
[5] (2024) 5 SCC 629

that the learned senior counsel for the petitioner is speaking of, does not extend to the immunity of the petitioner from criminal prosecution. It is his contention that assertion of privilege by a Legislator is governed by two-fold test. The privilege must have an intrinsic relation to the collective functioning of the House. The other test is that its necessity must bear functional relationship to the discharge of the essential duties as a Legislator and would submit that prosecution cannot be excluded from the jurisdiction of criminal Court, merely because it may be treated by the House as a contempt.

5.1. It is his submission that Section 509 of the IPC which is Section 79 of the BNS, now alleged, would attract outraging the modesty of a woman by action or by gesture or spoken word. What is allegedly spoken, in the case at hand by the petitioner, is the word "prostitute" against the complainant. It is his submission that if this is not permitted to be investigated into, it would lead to a situation where any Legislator inside the House can get away with outraging the modesty of a woman, by spoken words. It is his

submission that the privilege granted is qualified and not absolute. He would also seek to place reliance on the following judgments:

(1) **STATE OF KERALA v. K.AJITH**[6]
(2) **A.KUNJAN NADAR v. STATE**[7], as also
(3) **SITA SOREN** *supra*.

Complainant:

6. Refuting the submissions of the leaned senior counsel for the petitioner, the learned senior counsel **Sri K.N. Phaneendra** representing the 2nd respondent/complainant would also toe the lines of the learned State Public Prosecutor for the State and contend that by no stretch of imagination it can be said that the petitioner enjoys such privilege to get away with such verbal attack which amounts to outraging the modesty of the complainant, a woman. It is his submission that the judgment relied on by the learned counsel for the petitioner in the case of **SITA SOREN** *supra* itself resolves the dispute as to whether the Legislator would enjoy absolute immunity or qualified immunity depending upon the facts

[6] (2021) 17 SCC 318
[7] 1955 SCC OnLine Ker. 19

of the case. Both the learned counsel, in unison, would seek dismissal of the petition and permitting further investigation into the matter, as the petitioner has uttered these words or not is a matter of evidence, for which cooperation of the petitioner for investigation would become necessary.

7. The learned senior for the petitioner would join issue by contending that the petitioner has the highest respect for women. It is not today that he has been a Member of the House. He has been in political life for close to three decades and has not incurred the wrath of anybody, particularly on the allegation concerning a woman. But, he would submit that the core issue would be, whether the SIT or the CID can investigate into the happenings inside the House. He would seek quashment of registration of crime.

8. I have, with attentive gravity, rendered my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In

furtherance whereof the following issues emerge for my consideration:

(i) Whether parliamentary/legislative privileges under Articles 194(2) and 194(3) of the Constitution generate absolute immunity of happenings inside the House?

(ii) Whether the ingredients of offences are made out in the case at hand?

Issue No.(i):

(i) Whether parliamentary/legislative privileges under Articles 194(2) and 194(3) of the Constitution generate absolute immunity of happenings inside the House?

9. The afore-narrated facts, dates, link in the chain of events are all a matter of record. The issue is, whether any Member of the House, be it the Parliamentarian or the Legislator would enjoy absolute immunity for everything that happens inside the House either spoken words or acts done. It, therefore, becomes necessary to notice certain articles of the Constitution of India. Article 194 reads as follows:

> "**194. Powers, privileges, etc., of the Houses of Legislatures and of the members and committees thereof**.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.
>
> **(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.**
>
> **(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 26 of the Constitution (Forty-fourth Amendment) Act, 1978.**
>
> (4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."
>
> (Emphasis supplied)

Article 194 deals with powers and privileges of the House of Legislature and of Members and Committees thereof. Sub-Article (2) of Article 194 mandates that no Member of the Legislature of the State shall be liable to any proceedings in any Court in respect

of anything said or any vote given in the Legislature and no person shall be liable in respect of the publication under the authority of the House. Sub-Article (3) speaks of privileges. It starts with the words 'in other respects' the powers, privileges and immunities of the House of Legislature of a State shall be such as may from time to time defined by the Legislature by law or until so defined shall be those obtaining before the coming into force of the 26th Amendment to the Constitution. The fulcrum *inter alia*, of the *lis* revolves round the privileges of the Members of the House as obtaining under Article 194 of the Constitution.

10. Article 194 of the Constitution has fallen for interpretation before the Apex Court and other Courts of the country. Therefore, it becomes germane to notice the judgments relied on by the learned senior counsel for the petitioner, which have been relied on to buttress the submissions, that anything spoken in the House cannot become the subject matter of proceedings before any Court of law, much less, an investigation at the hands of any jurisdictional Police.

11. The High Court of Orissa in the case of **SURENDRA MOHANTY** *supra* has held as follows:

"…. …. ….

54. Hence, the alternative construction which while giving full effect to the wide words of Article 194 ensures the harmonious working of the High Court and the Legislature and also effectuates the two important objectives of the framers of the Constitution, namely the independence of the Judiciary and the exclusive jurisdiction of the Legislature over its internal proceedings, should be preferred.

62. Whatever that may be, the language of clause (2) of Article 194 is quite clear and unambiguous, and is to the effect that no law Court can take action against a member of the Legislature for any speech made by him there. That immunity appears to be absolute.

84. In cases where the question of privilege was raised directly, it was held that Courts must disclaim jurisdiction. Where, however, the matter arose incidentally it was the right of the Court to examine privilege. It is well-settled law now that it is the exclusive jurisdiction of either House over its internal proceedings. In this, connection I would refer to the famous case of *Stockdale* v. *Hansard*, (1839) 9 Ad and El 1 at pp. 193, 243 : 112 E.R. 1112 (Z5) as a result of which the 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" — became practically restricted to matters solely concerning the internal proceedings of either House. The comprehensive review of Parliamentary privilege which was forced upon the House of Commons and the Courts in two famous cases of the early 19th century, *Burdett* v. *Abbot*, (1810) 14 East 1 at pp. 88-89 : 104 ER 501 (Z6) and (1837) 9 Ad El 1 at pp. 193, 243 : 112 ER 1112 (Z5) made it clear that some of the claims to jurisdiction made in the name of privilege by the House of Commons were untenable in a Court of law.

> **89.** There can be no doubt that this was directly a matter of internal management of the House. **The Assembly had a right to decide it and the speaker had permitted Sri Chaudhuri to speak. Sri Chaudhuri is hereby protected by the decision of the Speaker. It is said that Sri Chaudhuri had exceeded the limits and made breach of privilege. It is not a matter in which this Court can examine or investigate**."
>
> **93.** But our constitution, by adopting the privileges of the House of Commons in toto, confers this power upon each House of Union Parliament (Article 105(3)) as well as of the State Legislatures (Article 194(3)). In short, Legislature has exclusive jurisdiction to commit for contempt as is possessed by every Court and the Courts cannot enquire into the grounds for commitment for contempt by the Legislature."

(Emphasis supplied)

The High Court of Orissa holds that clause (2) of Article 194 is clear and unambiguous and it is to the effect that no law Court can take action against a Member of the Legislature for any speech made by him there. The Court observes that the issue of what is spoken inside the House is not a matter which the High Court can examine or investigate.

12. In the case of **DR. SURESH CHANDRA BANERJEE** *supra,* the High Court of Calcutta has held as follows:

"…. …. ….

> **8. Clauses (1) and (2) of Art. 194 protect absolutely and completely a member in respect of any speech made by him in the Legislative Assembly or in any committee of the Legislature. His words spoken within the four walls of the Assembly are clearly absolutely privileged and no proceeding, either civil or criminal, may be taken in respect of them**. It is therefore clear that Dr. Suresh Chandra Banerji who made the speech in the Assembly containing the alleged defamatory matter cannot be prosecuted for uttering the words complained of in the Assembly. **It is to be observed however that in the complaint it is not suggested that he is liable in respect of the words spoken in the Assembly. What is suggested in the complaint is that he is liable in respect of the publication made at his instigation in the Loka Sevak on the following day**."
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> (Emphasis supplied)

The High Court of Calcutta holds that clauses (1) and (2) of Article 194 protect absolutely and completely a Member in respect of any speech made by him in the Legislative Assembly or in any Committee of the Legislature. Member's words spoken within the four walls of the Assembly are clearly absolutely privileged and no proceeding either civil or criminal, may be taken in respect of that even against those Members. The afore-quoted two views of the High Courts of Orissa and Calcutta were in the 1950s.

13. A Constitution Bench of the Apex Court, in the case of **TEJ KIRAN JAIN** *supra,* while considering the speech made at the Parliament and immunity thereof under Article 105(2) of the Constitution of India, holds as follows:

"…. …. ….

> **7.** Mr Lekhi in arguing this appeal drew our attention to an observation of this Court in *Special Reference No. 1 of 1964* [(1965) 1 SCR 413 at 455] , **where this Court dealing with the provisions of Article 212 of the Constitution pointed out that the immunity under that Article was against an alleged irregularity of procedure but not against an illegality, and contended that the same principle should be applied here to determine whether what was said was outside the discussion on a Calling Attention Motion. According to him the immunity granted by the second clause of the one hundred and fifth article was to what was relevant to the business of Parliament and not to something which was utterly irrelevant**.
>
> **8.** In our judgment it is not possible to read the provisions of the article in the way suggested. **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."
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> (Emphasis supplied)

The Constitution Bench interpreting the word "anything said .... in the Parliament, holds that it is of the widest import and 'anything' is equal to 'everything'. Therefore, anything and everything said in the Parliament had complete immunity. The Apex Court only said that good sense should prevail the Members and the proceedings should be appropriately controlled by the Speaker.

14. Heavy reliance is placed upon the judgment rendered by a learned single Judge of this Court in the case of **A.K.SUBBIAH** *supra,* wherein it is held as follows:

> "…. …. ….
>
> **16. It is in the above terms, the Supreme Court while holding that in certain circumstances it was open to the High Court to take action in a matter which came within the latter part of Art. 194(3) of the Constitution as it stood then, emphasised that Art. 194(2) of the Constitution stood entirely on a different footing and the immunity guaranteed thereunder was inviolable**.
>
> **… … …**
>
> **18. This is not a case where any individual's fundamental right is involved. No prayer based on any ordinary civil or criminal law is made in this case**. This is

not a case where any objectionable words had been used in the course of the speech of a member made outside the agenda of the House or on a subject which had been disallowed by the Chairman. **The specific case is that some words which contravened Art. 211 of the Constitution had been used by the Member and the Chairman had not expunged even though he was bound to do so. In substance what is prayed for is that this Court should in exercise of its power under Art. 226 of the Constitution investigate into the correctness of the action or ruling of the Chairman of the House and if it is found that any portion of the speech made by the member contravenes Art. 211 of the Constitution, then this Court should direct that such part should be expunged from the proceedings of the House or declare them as non-existent. In other words, the petitioners request the Court to exercise supervisory jurisdiction over the proceedings of the house even though it may be to the limited extent of enforcing obedience to Art. 211 of the Constitution**. If the prayers made by the petitioners have to be granted, the following steps have to be taken by this Court:—

(1) Issue of notices to the Chairman of the House and the member concerned;

(2) Calling for the relevant records relating to the proceedings of the House;

(3) Investigation into the truth or otherwise of the words used in the speech of the member concerned;

(4) Determination of the issue whether any part of the speech contravened Art. 211 of the Constitution;

(5) Decision on the question relating to the correctness of the decision of the Chairman or on the question relating to his omission to take action; and

(6) If it is found that the decision of the Chairman was erroneous or his omission was unconstitutional, then to issue direction to him or to the House to expunge the objectionable part from the proceedings of the House or to make a declaration that they are unconstitutional.

> **19.** It was contended that the expression "proceedings in any court" appearing in Art. 194(2) of the Constitution related only to criminal or civil proceedings and not to proceedings under Art. 226 of the Constitution which has conferred power on the High Court to enforce the provisions of the Constitution in appropriate cases. It is difficult to place such a narrow construction on the expression "proceedings" appearing in Art. 194(2) of the Constitution. That expression, having regard to the object with which Art. 194 is enacted, should be given the widest meaning possible and proceedings under Art. 226 of the Constitution also fall within the scope of that expression. No court whether it is the Supreme Court or a High Court or a Civil or a criminal court can initiate proceedings against a member in respect of anything said on the floor of the House.
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> … … …
>
> **23. It is unfortunate that an occasion has arisen in this Court to hear a case of this nature. But at the same time the Court cannot take any action which interferes with the immunity which a member has been granted under Art. 194(2) of the Constitution merely because what he may have said is in violation of Art. 211 of the Constitution. Was it not Voltaire who said like this: "I do not agree with you; but I will fight for upholding your right to disagree with me till the end of my life". In the same spirit, this Court which has a special obligation to uphold the Constitution and the laws, upholds Art. 194(2) of the Constitution and the immunity guaranteed to the members of the Legislature thereunder, leaving it to them to uphold Art. 211 of the Constitution in their deliberations. I am of the view that no action is called for in this case. The petition is dismissed**."
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> (Emphasis supplied)

The learned single Judge in the afore-quoted judgment observes that it is unfortunate that an occasion has arisen in this Court to hear a case concerning interpretation of Article 194(2) of the Constitution of India. It is held that, in certain circumstances it was

open to the High Court to take action in a matter, which came within the latter part of Article 194(3) and emphasised that Article 194(2) of the Constitution of India stood entirely on a different footing and the immunity guaranteed thereunder is inviolable. The case before the Court was utterances/deliberations of Members of the House against the judiciary, on which action was sought to be taken. The Court refuses that it would run counter to the immunity granted to the Members of the Legislature under Article 194(2). It was, therefore, said that no action could be taken in the case.

Judgments relied on by the State and the Complainant:

15. The learned State Public Prosecutor has relied on the judgment of the Apex Court in the case of **K. AJITH** *supra*. It is the submission of the learned State Public Prosecutor that the said judgment is his ***sheet anchor***. The Apex Court in the case of **K.AJITH,** has held as follows:

> "…. …. ….
>
> **3.** On 13-3-2015, the then Finance Minister was presenting the Budget for Financial Year 2015-2016 in the Kerala Legislative Assembly. The respondent-accused [The term "respondent-accused" refers to Respondents 1 to 6 in SLP (Crl.) No. 4009 of 2021 and the petitioners in SLP (Crl.)

No. 4481 of 2021.] , who at the time were Members of the Legislative Assembly ("MLA") belonging to the party in opposition, disrupted the presentation of the Budget, climbed over to the Speaker's dais and damaged furniture and articles including the Speaker's chair, computer, mike, emergency lamp and electronic panel, causing a loss of Rs 2,20,093. **The incident was reported to the Museum Police Station by the Legislative Secretary. Crime No. 236 of 2015 was registered under Sections 447 and 427 read with Section 34 of the Penal Code, 1860 ("IPC") and Section 3(1) of the Prevention of Damage to Public Property Act, 1984.** On the completion of the investigation, the final report under Section 173CrPC was submitted and cognizance was taken by the Additional CJM, Ernakulam of the said offences [Cri MP 2577 of 2019.] .

… … …

C.2. *Immunities and Privileges of MLAs*

26. Articles 105 and 194 of the Constitution provide in similar terms for the privileges and immunities of Members of Parliament ("MPs") and MLAs respectively. Article 194 of the Constitution is extracted below:

"**194. *Powers, privileges, etc. of the Houses of Legislatures and of the members and committees thereof***.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) *No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings*.

(3) In other respects, the powers, privileges and immunities of a House of the legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature 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 26 of the Constitution(Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

(emphasis supplied)

… … …

28. At the time of the adoption of the Constitution, clause (3) of Article 194 provided that the privileges, immunities and powers of a House of the legislature of a State (and of its members and committees) shall be such as may from time to time be defined by the legislature by law, and until so defined, shall be those of the House of Commons of Parliament of the United Kingdom at the commencement of the Constitution. By Section 34 of the Forty-second Amendment to the Constitution, clause (3) of Article 194 was amended and embodied a transitory provision under which until the powers, privileges and immunities of a House of the legislature of a State (and of the members and its committees) were defined by a law made by the legislature, they shall be those of the British House of Commons and the privileges of each House "shall be such as may from time to time be evolved by such House". However, Section 34 was not brought into force by issuing a notification under Section 1(2) of the Constitution(Forty-second Amendment) Act, 1976. Eventually, clause (3) in its present form was substituted by Section 26 of the Constitution(Forty-fourth Amendment) Act, 1978 with effect from 20-6-1979 [Section 26 of the Constitution(Forty-fourth Amendment) Act, 1978, w.e.f. 20-6-1979, read as follows:"26. *Amendment of Article 194*.—In Article 194 of the Constitution, in clause (3), for the words 'shall be those of the House of Commons of Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution', the words, figures and brackets 'shall be those of that House and of its members and

committees immediately before the coming into force of Section 26 of the Constitution(Forty-fourth Amendment) Act, 1978' shall be *substituted*."(emphasis in original)] . The present position of clause (3) is that:

28.1. The ultimate source of the powers, privileges and immunities of a House of a State Legislature and of the members and committees would be determined by way of a legislation.
This extract is taken from *State of Kerala v. K. Ajith*, (2021) 17 SCC 318 : 2021 SCC OnLine SC 510 at page 352

28.2. Until such legislation is enacted, the position as it stood immediately before the coming into force of Section 26 of the Constitution(Forty-fourth Amendment) Act, 1978 would govern.
This extract is taken from *State of Kerala v. K. Ajith*, (2021) 17 SCC 318 : 2021 SCC OnLine SC 510 at page 352

28.3. The amendment to the Constitution introducing the concept of evolution of privileges and immunities by the House of the legislature never came into force and now stands deleted.

C.2.1. *Position in the United Kingdom*

29. Now, in this backdrop, it would be necessary to assess at the outset the nature of the privileges and immunities referable to the House of Commons in the United Kingdom. Erskine May's *Parliamentary Practice* [Erskine May, *Parliamentary Practice*, Chapter 17, p. 281 (24th Edn., Lexis Nexis, 2011).] provides a comprehensive statement of law, indicating the phases through which parliamentary privilege evolved in the UK.
This extract is taken from *State of Kerala v. K. Ajith*, (2021) 17 SCC 318 : 2021 SCC OnLine SC 510 at page 353

29.1.*First phase* : The first phase of the conflict between Parliament and the courts was "about the relationship between the *lex parliament* and the common law of England". In this view, the House of Parliament postulated that "they alone were the Judges of the extent and application of their own privileges, not examinable by any court or subject to any appeal". The first phase of the conflict has been described thus:

"The earlier views of the proper spheres of court and Commons were much influenced by political events and the constitutional changes to which they gave rise. Coke in the early seventeenth century regarded the law of Parliament as a particular law, distinct from the common law. For that reason 'Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common laws but *secundumlegem et consuetudinem parliament* [Sir Edward Coke, *Fourth Part of the Institutes of the Laws of England* 14 (1797).] '."

However, even during this period, "elements of the opposing view that—decision of Parliament on matters of privilege can be called in question in other courts, that the *lex parliament* is part of the common law and known to the courts, and that resolutions at either House declaratory of privilege will not bind the courts—are found at almost as early a date, and they gained impetus as time went by."

29.2.*Second phase* : Erskine May tells us that in the second phase of the nineteenth century:

"… some of the earlier claims to jurisdiction made in the name of privilege by the House of Commons were untenable in a court of law : that the law of Parliament was part of the general law, that its principles were not beyond the judicial knowledge of the Judges, and that the duty of the common law to define its limits could no longer be disputed. At the same time, it was established that there was a sphere in which the jurisdiction of the House of Commons was absolute and exclusive."

29.3.*Third phase* : In the early and mid-twentieth century:

"*In general, the Judges have taken the view that when a matter is a proceeding of the House, beginning and terminating within its own walls, it is obviously outside the jurisdiction of the courts, unless criminal acts are involved*. Equally clearly, if a proceeding of the House results in action affecting the rights of persons exercisable outside the House, the person who published the proceedings or the servant who executed the order (for example) will be within the jurisdiction of the courts, who may inquire whether the act complained of is duly covered by the order, and whether the privilege claimed by the House does, as pleaded, justify the act of the person who executed the order."

(emphasis supplied)

In the later twentieth century, the House of Commons came to a significant conclusion about the limits of the phrase and the protection afforded to proceedings in Parliament.

30. The privileges of the British House of Commons at the commencement of the Constitution as embodied in clause (3) of Article 194 as it then stood has significant consequences. First, the nature and extent of the privileges enjoyed by the members was to be decided by the courts and not by the legislature, following the English principle that the courts have the power to determine whether the House possessed a particular privilege. Second, the courts had the power to determine whether any of the privileges of the British House of Commons that existed at the date of the commencement of the Constitution, had become inconsistent with the provisions of the Constitution.

31. As mentioned above, since Parliament is yet to enact a law on the subject of parliamentary privileges, according to Article 194(3) of the Constitution, the MLAs shall possess privileges that the members of the House of Commons possessed at the time of enactment of the Constitution. It is thus imperative that we refer to judgments of the United Kingdom on whether criminal offences committed within the

precincts of the House of Commons are covered under "parliamentary privileges", receiving immunity from prosecution.

32. In *R.* v. *Elliot* [*R.* v. *Elliot*, (1629) 3 St Tr 292-336. **Ed.** : See also 1629 Cro Car 181 : 79 ER 759 (KB)] , Sir John Eliot and his fellows in the House of Commons protested against the Armenian movement in the English Church in the House. During the course of the protest, three members of the House used force to hold the Speaker down, preventing him from adjourning the House. They were charged for seditious speech and assault. The court of King's Bench rejected [*R.* v. *Elliot*, (1629) 3 St Tr 292-336. **Ed.** : See also 1629 Cro Car 181 : 79 ER 759 (KB)] the argument of the members that only the House had the exclusive jurisdiction to examine their conduct, and imposed fine and sentenced them to imprisonment. The House of Lords reversed [*R.* v. *Elliot*, 1668 Cro Car 605 : 79 ER 1121 (HL)] the judgment of the *King's* Bench on the writ of error. One of the errors specified was that the charge of seditious speech and assault on the Speaker should not have been disposed of by the same judgment. It was observed that while the former was within the exclusive jurisdiction of the House, the latter could "perhaps" be tried by the courts. It was not expressly and categorically stated that the assault inside the House could only be tried by the House.

33. In *Bradlaugh* v. *Gossett* [*Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 1884 EWHC 1] , an elected member of the House of Commons prevented the Speaker from administering oath. Subsequently, the Sergeant-at-Arms exerted physical force to remove the member from the precincts of the House. The elected member initiated action against the Sergeant and the same was dismissed. Stephen, J. in his concurring judgment observed that the House—similar to a private person—has an exercisable right to use force to prevent a trespasser from entering the House, and authorise others to carry out its order. In that context he observed : (QBD p. 283)

"… The only force which comes in question in this case is, such force as any private man might employ to prevent a

trespass on his own land. *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*."

(emphasis supplied)

Stephen, J. sought to differentiate "ordinary crimes" from "crimes". By the former, he referred to criminal offences that are committed within the precincts of the House, but bear no nexus to the effective participation in essential parliamentary functions.

34. In *R.* v. *Chaytor* [*R.* v. *Chaytor*, (2011) 1 AC 684 : (2010) 3 WLR 1707 : 2010 UKSC 52] , the UK Supreme Court was dealing with the four accused persons who were charged with false accounting in relation to parliamentary expenses and had claimed immunity from legal proceedings as it infringed their parliamentary privilege. Against them, disciplinary proceedings were initiated by the House. Article 9 of the Bill of Rights, 1689 provides that the freedom of speech and debates or proceedings in Parliament must not be questioned by any court or place outside Parliament. The question before the Court was what constituted "proceedings in Parliament". Lord Phillips observed that : (AC p. 717, para 83)

"*83. The House does not assert an exclusive jurisdiction to deal with criminal conduct, even where this relates to or interferes with proceedings in committee or in the House. Where it is considered appropriate the police will be invited to intervene with a view to prosecution in the courts.* Furthermore, criminal proceedings are unlikely to be possible without the cooperation of Parliament. Before a prosecution can take place it is necessary to investigate the facts and obtain evidence."

(emphasis supplied)

The Law Lord further held that the submission of claims is *incidental to the administration* of Parliament and not *proceedings of Parliament* : (*Chaytor case* [*R.* v. *Chaytor*, (2011) 1 AC 684 : (2010) 3 WLR 1707 : 2010 UKSC 52] , AC p. 719, para 90)

"*90*. Where the House becomes aware of the possibility that criminal offences may have been committed by a Member in relation to the administration of the business of Parliament in circumstances that fall outside the absolute privilege conferred by Article 9, the considerations of policy to which I have referred at para 61 above require that the House should be able to refer the matter to the police for consideration of criminal proceedings, or to cooperate with the police in an inquiry into the relevant facts. That is what the House has done in relation to the proceedings brought against the three defendants."

35. Referring to the distinction made by Stephen, J. in *Bradlaugh* [*Bradlaugh* v. *Gossett*, (1884) LR 12 QBD 271 : 1884 EWHC 1] , Lord Lodger observed : (*Chaytor case* [*R.* v. *Chaytor*, (2011) 1 AC 684 : (2010) 3 WLR 1707 : 2010 UKSC 52] , AC p. 726, para 118)

"*118*. That remains the position to this day. I have therefore no doubt that, if the offences with which the appellants are charged are to be regarded as "ordinary crimes", then—even assuming that they are alleged to have been committed entirely within the precincts of the House—the appellants can be prosecuted in the Crown Court. *The only question, therefore, is whether there is any aspect of the offences which takes them out of the category of "ordinary crime" and into the narrower category of conduct in respect of which the House would claim a privilege of exclusive cognizance*."

(emphasis supplied)

36. From the above cases it is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity *only if the action bears nexus to the effective participation of the member in the House*.

C.2.2. *Position in India*

37. The immunity available to the MPs under Article 105(2) of the Constitution from liability to "any

proceedings in any court in respect of anything said or any vote given by him in Parliament" [similar to Article 194(2) of the Constitution in case of MLAs] became the subject-matter of the decision of the Constitution Bench in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . The judgment of the Constitution Bench, which consisted of S.C. Agrawal, J., G.N. Ray, J., Dr A.S. Anand, J., S.P. Bharucha, J. and S. Rajendra Babu, J., comprised of three opinions. The first opinion was by S.C. Agrawal, J. (on behalf of himself and Dr A.S. Anand, J.), the second by S.P. Bharucha, J. (on behalf of himself and S. Rajendra Babu, J.) and the third, by G.N. Ray, J.

38. In understanding the judgment of the Constitution Bench in *P.V. Narasimha Rao case* [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , it becomes necessary at the outset to dwell on the decision of G.N. Ray, J. In the course of his judgment, G.N. Ray, J. agreed with the reasoning of S.C. Agrawal, J. that:

38.1. An MP is a public servant under Section 2(*c*) of the Prevention of Corruption Act, 1988.

38.2. Since there is no authority to grant sanction for the prosecution of an MP under Section 19(1) of the Prevention of Corruption Act, 1988 ("the PC Act"), the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction. However, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 12 and 15 against an MP in a criminal court, the prosecuting agency must obtain the sanction of the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha as the case may be.

39. Therefore, on the first aspect, while understanding the context and text of the decision, it is important to bear in mind that Section 19(1) of the PC Act specifically mandates sanction for prosecution of a public servant, a description which is fulfilled by an MP. However, there being no authority

competent to grant sanction for the prosecution of a Member of Parliament, S.C. Agrawal, J., speaking for himself and Dr A.S. Anand, J., held that : (*P.V. Narasimha Rao case* [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , SCC pp. 702-703, para 98)

"*98*. … *3*. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be."

G.N. Ray, J. as noted earlier agreed with the above formulation.

40. However, it is necessary to appreciate the factual context of the case before dealing with the interpretation of Article 105(3) of the Indian Constitution. On 26-7-1993, a motion of no confidence was moved in the Lok Sabha against the minority Government of Shri P.V. Narasimha Rao. The support of fourteen members was needed to defeat the no-confidence motion. The motion was sought on 28-7-1993. 251 members voted in support, while 265 voted against the motion. It was alleged that certain MPs agreed to and did receive bribes from certain other MPs. A prosecution was launched against the bribe-givers and the bribe takers and cognizance was taken by the Special Judge, Delhi.

41. Before the Constitution Bench, a question was raised as to whether the legal proceedings against the said MPs would be protected under the privileges and immunities granted under Article 105(3) of the Constitution "in respect of anything said or any vote given" by an MP. On the interpretation of Article 105(3), the judgment of S.P. Bharucha, J. speaking for himself and S. Rajendra Babu, J., received the concurrence of G.N. Ray, J. The charge against

the bribe givers, who were MPs, was in regard to the commission of offences punishable under the PC Act or the abetment of those offences. S.P. Bharucha, J. in the course of his judgment held that Article 105(2) protects an MP 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 judgment of the majority on this aspect held : (*P.V. Narasimha Rao case* [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , SCC pp. 729-30, para 136)

"*136*. 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 arises 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 a 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."

(emphasis supplied)

42. S.C. Agrawal, J. and Dr A.S. Anand, J. reached a contrary conclusion on the subject : (*P.V. Narasimha Rao*

case [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , SCC pp. 702-703, para 98)

"*98*. On the basis of the aforesaid discussion we arrive at the following conclusion:

1. A Member of Parliament does not enjoy immunity under Article 105(2) or under Article 105(3) of the Constitution from being prosecuted before a criminal court for an offence involving offer or acceptance of bribe for the purpose of speaking or by giving his vote in Parliament or in any committees thereof.

2. A Member of Parliament is a public servant under Section 2(*c*) of the Prevention of Corruption Act, 1988.

3. Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be."

43. The view of S.C. Agrawal, J. and Dr A.S. Anand, J. on the construction of Article 105(2) and Article 105(3) was however the minority view since G.N. Ray, J. had concurred with the view of S.P. Bharucha, J. and S. Rajendra Babu, J. on this aspect. Analysing the decision of the majority led by the judgment of S.P. Bharucha, J., the stand out feature is this : the charge against the alleged bribe takers was that they were party to a criminal conspiracy in pursuance of which they had agreed to accept bribes to defeat the no-confidence motion on the floor of the House. In pursuance of the conspiracy, it was alleged that the bribe-givers had passed on bribes to the alleged bribe takers. It was in this context that the judgment noted : (*P.V. Narasimha Rao*

case [*P.V. Narasimha Rao* v. *State*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , SCC p. 729, para 134)

"*134*. … The nexus between the alleged conspiracy and bribe and the no-confidence motion is explicit. The charge is that the alleged bribe-takers received the bribes to secure the defeat of the no-confidence motion."

44. Thus, the court observed that the connection between the alleged conspiracy, the bribe and the no-confidence motion was explicit, and came to the conclusion that the alleged bribe takers received the bribe to manipulate their votes to secure the defeat of the no-confidence motion. It was in this context that the Court observed that the expression "in respect of" under Article 105(2) must receive a broad meaning and the alleged conspiracy and bribe had a nexus to and were in respect of those votes and that the proposed inquiry in the criminal proceedings was in regard to their votes in the motion of no-confidence.

45. The next judgment which is of significance in the evolution of this body of law is the decision of the Constitution Bench in *Raja Ram Pal* v. *Lok Sabha* [*Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184] . The case has become known in popular lore as the "cash for query case", where a sting operation on a private channel depicted certain MPs accepting money either directly or through middlemen as consideration for raising questions in the House. Similarly, another channel carried a telecast alleging improper conduct of an MP in relation to the implementation of the MPLADS Scheme. Following an enquiry by the committees of the House, these MPs were expelled. This led to the institution of writ petitions challenging the expulsion. In that context, the issues which were for determination were : (SCC p. 249, para 36)

"*36*. … *1*. Does this Court, within the constitutional scheme, have the jurisdiction to decide the content and scope of powers, privileges and immunities of the legislatures and its Members?

2. If the first question is answered in the affirmative, can it be found that the powers and privileges of the legislatures in India, in particular with reference to Article 105, include the power of expulsion of their Members?

3. In the event of such power of expulsion being found, does this Court have the jurisdiction to interfere in the exercise of the said power or privilege conferred on Parliament and its Members or committees and, if so, is this jurisdiction circumscribed by certain limits?"

46. Y.K. Sabharwal, C.J. speaking for the majority (C.K. Thakker, J. concurring) held that : (*Raja Ram Pal case* [*Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184] , SCC p. 259, para 62)

"*62*. In view of the above clear enunciation of law by Constitution Benches of this Court in case after case, there ought not be any doubt left that whenever Parliament, or for that matter any State Legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or Article 194(3), as the case may be, *it is the Court which has the authority and the jurisdiction to examine, on grievance being brought before it, to find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of Parliament of the United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian Legislatures*."

(emphasis supplied)

47. The principle which emphatically emerges from this judgment is that whenever a claim of privilege or immunity is raised in the context of Article 105(3) or Article 194(3), the Court is entrusted with the authority and the jurisdiction to determine whether the claim is sustainable on the anvil of the constitutional provision. The Constitution Bench held that neither Parliament nor the State Legislatures in India can assert the power of "self-composition or in

other words the power to regulate their own constitution in the manner claimed by the House of Commons or in the UK". The decision therefore emphasises the doctrine of constitutional supremacy in India as distinct from parliamentary supremacy in the UK.

48. A three-Judge Bench of this Court has made a distinction between legislative functions and non-legislative functions of the members of the House for determination of the scope of the privileges. In *Lokayukta* [*Lokayukta* v. *State of M.P.*, (2014) 4 SCC 473] , the petitioner initiated action against certain officers of the State Legislative Assembly for indulging in corruption relating to construction work and initiated criminal proceedings against the officials. In turn, the Speaker of the House issued a letter to the petitioner alleging breach of privilege, against which the petitioner filed a writ petition before this Court. Allowing the petition, P. Sathasivam, C.J. speaking for a three-Judge Bench observed that privileges are available only as far as they *are essential for the members to carry out their legislative functions*. He held that the scope of the privileges must be determined based on the need for them. The Court observed : (SCC pp. 497-98, paras 51-52)

"*51. The scope of the privileges enjoyed depends upon the need for privileges i.e. why they have been provided for. The basic premise for the privileges enjoyed by the Members is to allow them to perform their functions as Members and no hindrance is caused to the functioning of the House*. The Committee of Privileges of the Tenth Lok Sabha, noted the main arguments that have been advanced in favour of codification, some of which are as follows:

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52. It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continues to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the

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(emphasis supplied)

49. Having detailed the position of law above, the next section would discuss the validity of the argument invoking the immunities and privileges under Article 194 as a hypothesis for barring legal proceedings for acts of destruction of public property in the present case.

(emphasis supplied)

…. …. ….

59. The gravity of the offence involving a destruction of public property was considered by this Court in Destruction of Public & Private Properties, In re [Destruction of Public & Private Properties, In re, (2009) 5 SCC 212 : (2009) 2 SCC (Civ) 451 : (2009) 2 SCC (Cri) 629] , where it took suomotu cognizance to remedy the large-scale destruction of public and private properties in agitations, bandhs, hartals and other forms of "protest". The Court formed two committees chaired by K.T. Thomas, J. (former Judge of this Court) and Mr Fali S. Nariman, Senior Counsel and adopted the recommendations of both the committees in laying down specific guidelines for investigation and prosecution of offences involving destruction of public property, assessment of damages and determination of compensation in cases involving destruction of property. In the more recent decision in Kodungallur Film Society v. Union of India [Kodungallur Film Society v. Union of India, (2018) 10 SCC 713 : (2019) 1 SCC (Cri) 517] , this Court noted that the guidelines in Destruction of Public & Private Properties, In re [Destruction of Public & Private Properties, In re, (2009) 5 SCC 212 : (2009) 2 SCC (Civ) 451 : (2009) 2 SCC (Cri) 629] have been considered by the Union of India and a draft Bill for initiating legislative changes along the lines of the recommendations is under consideration. The Court also issued guidelines on preventive measures to curb mob violence, determining compensation and fixing liability for offences, and in regard to the responsibility of police officials for investigation of such crimes.

60. Based on the above, it is evident that there has been a growing recognition and consensus both in this Court and Parliament that acts of destruction of public and private property in the name of protests

should not be tolerated. Incidentally, the Kerala Legislative Assembly also enacted the Kerala Prevention of Damage to Private Property and Payment of Compensation Act, 2019 (9 of 2019) to complement the Central legislation, the Prevention of Damage to Public Property Act, 1984, with a special focus on private property.

61. The persons who have been named as the accused in the FIR in the present case held a responsible elected office as MLAs in the Legislative Assembly. In the same manner as any other citizen, they are subject to the boundaries of lawful behaviour set by criminal law. No member of an elected legislature can claim either a privilege or an immunity to stand above the sanctions of the criminal law, which applies equally to all citizens. The purpose and object of the 1984 Act was to curb acts of vandalism and damage to public property including (but not limited to) destruction and damage caused during riots and public protests.

62. A member of the legislature, the opposition included, has a right to protest on the floor of the legislature. The right to do so is implicit in Article 105(1) in its application to Parliament and Article 194(1) in its application to the State Legislatures. The first clauses of both these Articles contain a mandate that "there shall be freedom of speech" in Parliament and in the legislature of every State. Nonetheless, the freedom of speech which is protected by the first clause is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the legislature. The second clause provides immunity against liability "to any proceedings in any court" in respect of "anything said or any vote given" in the legislature or any committee. Moreover, no person is to be liable in respect of the publication by or under the authority of Parliament or of the House of the State Legislature of any report, paper, votes or proceedings. We have earlier traced the history of clause (3) of Article 194 as it originally stood under which the powers, privileges and immunities of the members of Parliament and of the State Legislatures were those which were recognised for Members of the House of

Commons immediately before the enforcement of the Constitution. This provision, as we have seen, was sought to be amended by the Forty-second Amendment and was ultimately amended by the Forty-fourth Amendment, from which it derives its present form. It recognises the powers, privilege and immunities as they stood immediately before the enforcement of Section 26 of the Forty-fourth Amendment.

63. Tracing the history of the privileges and immunities enjoyed by the Members of the House of Commons, Erskine May makes a doctrinal division of the position in the UK into various phases. However, the stand-out feature which emerges from the privileges and immunities of the members of the House of Commons is the absence of an immunity from the application of criminal law. This jurisprudential development began in Elliot [R. v. Elliot, (1629) 3 St Tr 292-336. **Ed.** : See also 1629 Cro Car 181 : 79 ER 759 (KB)] , was developed by Stephen, J. in Bradlaugh [Bradlaugh v. Gossett, (1884) LR 12 QBD 271 : 1884 EWHC 1] , and cemented by the UK Supreme Court in Chaytor [R. v. Chaytor, (2011) 1 AC 684: (2010) 3 WLR 1707 : 2010 UKSC 52] .

64. There is a valid rationale for this position. The purpose of bestowing privileges and immunities to elected members of the legislature is to enable them to perform their functions without hindrance, fear or favour. This has been emphasised by the three-Judge Bench in Lokayukta [Lokayukta v. State of M.P., (2014) 4 SCC 473] . The oath of office which members of Parliament and of the State Legislature have to subscribe requires them to

(i) bear true faith and allegiance to the Constitution of India as by law established;

(ii) uphold the sovereignty and integrity of India; and

(iii) faithfully discharge the duty upon which they are about to enter.

It is to create an environment in which they can perform their functions and discharge their duties

freely that the Constitution recognises privileges and immunities. These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal. It is of significance that though Article 19(1)(a) expressly recognises the right to freedom of speech and expression as inhering in every citizen, both Articles 105(1) and 194(1) emphasise that "there shall be freedom of speech" in Parliament and in the legislature of a State. In essence, Article 19(1)(a) recognises an individual right to the freedom of speech and expression as vested in all citizens. Articles 105(1) and 194(1) speak about the freedom of speech in Parliament and State Legislatures and in that context must necessarily encompass the creation of an environment in which free speech can be exercised within their precincts. The recognition that there shall be freedom of speech in Parliament and the State Legislatures underlines the need to ensure the existence of conditions in which elected representatives can perform their duties and functions effectively. **Those duties and functions are as much a matter of duty and trust as they are of a right inhering in the representatives who are chosen by the people. We miss the wood for the trees if we focus on rights without the corresponding duties cast upon elected public representatives**.

65. Privileges and immunities are not gateways to claim exemptions from the general law of the land, particularly as in this case, the criminal law which governs the action of every citizen. To claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives as the makers and enactors of the law. The entire foundation upon which the application for withdrawal under Section 321 was moved by the Public Prosecutor is based on a fundamental misconception of the constitutional provisions contained in Article 194. The Public Prosecutor seems to have been impressed by the existence of privileges and immunities which would stand in the way of the prosecution. Such an

understanding betrays the constitutional provision and proceeds on a misconception that elected members of the legislature stand above the general application of criminal law.

66. The reliance placed by the appellants on P.V. Narasimha Rao [P.V. Narasimha Rao v. State, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] to argue that the action of the respondent-accused inside the House was a form of "protest" which bears a close nexus to the freedom of speech, and thus is covered by Article 194(2) is unsatisfactory. The majority in P.V. Narasimha Rao [P.V. Narasimha Rao v. State, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] dealt with the interpretation of the phrase "in respect of" and gave it a wide import. At the same time, the majority observed that there must be a nexus between the act or incident (which in that case was the act of bribery in the context of the votes cast on a motion of no-confidence) and the freedom of speech or to vote. It was emphasised that the bribe was given to manipulate the votes of the MPs and thus, it bore a close nexus to the freedom protected under Article 105(2). The case however, did not deal with the ambit of the privilege of "freedom of speech" provided to the members of the House. It was in Lokayukta [Lokayukta v. State of M.P., (2014) 4 SCC 473] that a three-Judge Bench of this Court laid down the law for the identification of the content of the privileges. **It was held that the members shall only possess such privileges that are essential for undertaking their legislative functions. An alleged act of destruction of public property within the House by the members to lodge their protest against the presentation of the Budget cannot be regarded as essential for exercising their legislative functions. The actions of the members have trodden past the line of constitutional means, and is thus not covered by the privileges guaranteed under the Constitution**."

(Emphasis supplied)

The facts obtaining in the case of **K.AJITH** is noticed at paragraph 3 supra. A complaint comes to be registered before the Museum

Police Station of Kerala by the Legislative Secretary which becomes a crime, in **Crime No.236 of 2015 for the offences punishable under Sections 427, 447 r/w 34 of the IPC and Section 3(1) of the Prevention of Damage to Public Property Act**. Police conduct investigation and file a final report and it is then the High Court of Kerala was approached seeking quashment of proceedings on account of it being violative of Article 194 of the Constitution. The Apex Court answers analysing the entire spectrum of law or the legal position in England and in India and holds that **privileges and immunities are not gateways to claim exemptions from general law of the land, particularly as in that case, the criminal law which governs the action of every citizen. The Apex Court further holds that to claim an exemption from the application of criminal law would be to betray the trust which is impressed on the character of elected representatives. The Apex Court thrusts functional nexus for every act of a Parliamentarian in the Parliament or a Legislator in the Legislature. It holds that members shall only possess such privileges that are essential for undertaking their legislative functions. The alleged act**

therein which was of destruction of public property within the house by the members by lodging a protest against presentation of the Budget was no part of legislative function. Therefore, the Apex Court declines to hold that criminal case should be obliterated owing to the privilege of a legislators.

16. He would further seek to place reliance upon the Division Bench judgment of the High Court of Kerala in the case of **A.KUNJAN NADAR v. THE STATE**[8] wherein it is held as follows:

"…. …. ….

> **4.** As stated before there is no statutory provision granting the privilege or immunity invoked by the petitioner and it is clear from *May's Parliamentary Pratice*, 15th Edn. 1950), p. 78 **that "the privilege of freedom from arrest is not claimed in respect of criminal offences or statutory detention" and that the said freedom "is limited to Civil causes, and has not been allowed to interfere with the administration of criminal justice or emergency legislation**.""

(Emphasis supplied)

The High Court of Kerala in the afore-quoted paragraph holds that the privilege of freedom from arrest cannot be claimed in respect of

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[8] 1955 SCC OnLine Ker.19

criminal offences or statutory detention. At best it is limited to civil causes and privilege cannot be allowed to interfere with the administration of criminal justice.

Judgment, relied on in unison, by all the Protagonists:

17. The respective learned senior counsel for the petitioner and the complainant and the learned State Public Prosecutor, have in common, placed reliance upon the judgment of the 7 Judge judgment of the Apex Court in the case of **SITA SOREN** *supra*. *Albeit*, their reliance is upon different paragraphs. I, therefore, deem it appropriate to notice those paragraphs:

> "…. …. ….
>
> **A. *Reference***
>
> **3.** The criminal appeal arises from a judgment dated 17-12-2014 [*Sita Soren* v. *Union of India*, 2014 SCC OnLineJhar 302] of the High Court of Jharkhand. An election was held on 30-3-2012 to elect two Members of the Rajya Sabha representing the State of Jharkhand. The appellant, belonging to the Jharkhand Mukti Morcha ("JMM"), was a Member of the Legislative Assembly of Jharkhand. The allegation against the appellant is that she accepted a bribe from an independent candidate for casting her vote in his favour. However, as borne out from the open balloting for the Rajya Sabha seat, she did not cast her vote in favour of the alleged bribe-giver and instead cast her vote in favour of a candidate belonging to her own party. The round of election in question was annulled and a fresh election was

held where the appellant voted in favour of the candidate from her own party again.

4. The appellant moved the High Court to quash the charge-sheet and the criminal proceedings instituted against her. The appellant claimed protection under Article 194(2) of the Constitution, relying on the judgment of the Constitution Bench of this Court in *P.V. Narasimha Rao* v. *CBI* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . The High Court declined to quash the criminal proceedings on the ground that the appellant had not cast her vote in favour of the alleged bribe-giver and thus, is not entitled to the protection under Article 194(2). The High Court's reasoning primarily turned on this Court's decision in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . The controversy in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] and the present case turns on the interpretation of the provisions of Article 105(2) of the Constitution (which deals with the powers, privileges, and immunities of the Members of Parliament and Parliamentary Committees) and the equivalent provision in Article 194(2) of the Constitution which confers a similar immunity to the Members of the State Legislatures.

5. On 23-9-2014 [*Sita Soren* v. *Union of India*, 2014 SCC OnLine SC 1889], a Bench of two Judges of this Court, before which the appeal was placed, was of the view that since the issue arising for consideration is "substantial and of general public importance", it must be placed before a larger Bench of three Judges of this Court. On 7-3-2019 [*Sita Soren* v. *Union of India*, (2024) 3 SCC 797: (2024) 2 SCC (Cri) 339], a Bench of three Judges which heard the appeal observed that the precise question was dealt with in a judgment of a five-Judge Bench in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] . The Bench [*Sita Soren* v. *Union of India*, (2024) 3 SCC 797: (2024) 2 SCC (Cri) 339] was of the view that "having regard to the wide ramifications of the question that has arisen, the doubts raised and the issue being a matter of public importance", the matter must be referred to a larger Bench.

6. Finally, by an order dated 20-9-2023 [*Sita Soren* v. *Union of India*, (2024) 3 SCC 786: (2024) 2 SCC (Cri) 328], a five-Judge Bench of this Court recorded prima facie reasons doubting the correctness of the decision in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] and referred the matter to a larger Bench of seven Judges. The operative part of the order reported as *Sita Soren* v. *Union of India* [*Sita Soren* v. *Union of India*, (2024) 3 SCC 786: (2024) 2 SCC (Cri) 328], is extracted below: (*Sita Soren case* [*Sita Soren* v. *Union of India*, (2024) 3 SCC 786: (2024) 2 SCC (Cri) 328] , SCC pp. 795-96, paras 24 & 26)

> "*24*. We are inclined to agree… that the view which has been expressed in the decision of the majority in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] requires to be reconsidered by a larger Bench. Our reasons prima facie for doing so are formulated below:
>
> *24.1*. Firstly, the interpretation of Article 105(2) and the corresponding provisions of Article 194(2) of the Constitution must be guided by the text, context and the object and purpose underlying the provision. The fundamental purpose and object underlying Article 105(2) of the Constitution is that Members of Parliament, or as the case may be of the State Legislatures must be free to express their views on the floor of the House or to cast their votes either in the House or as Members of the Committees of the House without fear of consequences. While Article 19(1)(*a*) of the Constitution recognises the individual right to the freedom of speech and expression, Article 105(2) institutionalises that right by recognising the importance of the Members of the Legislature having the freedom to express themselves and to cast their ballots without fear of reprisal or consequences. In other words, the object of Article 105(2) or Article 194(2) does not prima facie appear to be to render immunity from the launch of criminal proceedings for a violation of the criminal law which may arise independently of the exercise of the rights and duties as a Member of Parliament or of the Legislature of a State;
>
> *24.2*. Secondly, in the course of judgment in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4

> SCC 626 : 1998 SCC (Cri) 1108] , S.C. Agarwal, J. noted a serious anomaly if the construction in support of the immunity under Article 105(2) for a bribe-taker were to be accepted : a Member would enjoy immunity from prosecution for such a charge, if the Member accepts the bribe for speaking or giving their vote in Parliament in a particular manner and in fact speaks or gives a vote in Parliament in that manner. On the other hand, no immunity would attach, and the Member of the Legislature would be liable to be prosecuted on a charge of bribery, if they accept the bribe for not speaking or for not giving their vote on a matter under consideration before the House but they act to the contrary. This anomaly, Agarwal, J. observed, would be avoided if the words "in respect of" in Article 105(2) are construed to mean "arising out of". In other words, in such a case, the immunity would be available only if the speech that has been made or the vote that has been given is an essential and integral part for the cause of action for the proceedings giving rise to the law; and
>
> *24.3*. Thirdly, the judgment of S.C. Agarwal, J. has specifically dwelt on the question as to when the offence of bribery would be complete. The judgment notes that the offence is complete with the acceptance of the money or on the agreement to accept the money being concluded and is not dependent on the performance of the illegal promise by the receiver. The receiver of the bribe would be treated to have committed the offence even when he fails to perform the bargain underlying the tender and acceptance of the bribe. This aspect bearing on the constituent elements of the offence of a bribe finds elaboration in the judgment of Agarwal, J. but is not dealt with in the judgment of the majority.
>
> ***
>
> *26*. For the above reasons, prima facie at this stage, we are of the considered view that the correctness of the view of the majority in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626: 1998 SCC (Cri) 1108] should be reconsidered by a larger Bench of seven Judges."

7. The scope of the present judgment is limited to the reference made by the order of this Court dated 20-9-2023 [*Sita Soren* v. *Union of India*, (2024) 3 SCC 786 : (2024) 2

> SCC (Cri) 328] doubting the correctness of *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] . The merits of the appellant's case and whether she committed the alleged offence are not being adjudicated by this Court at this stage. Nothing contained in this judgment may be construed as having a bearing on the merits of the trial or any other proceedings arising from it."

The reference was due to the doubt that arose before a subsequent Bench, *qua* the correctness of the judgment in the case of **P.V.NARASIMHA RAO v. STATE (CBI/SPE)**[9] and the judgement in the case of **SITA SOREN v. UNION OF INDIA**[10]. This led to the constitution of the 7 Judge Bench. The views that fell from the dissenting opinion formed the fulcrum of the reference. Therefore, it is necessary to notice what was the view. It reads as follows:

> "…. …. ….
>
> **13.** On the other hand, S.C. Agarwal, J. held that neither the alleged bribe-takers nor the alleged bribe-givers enjoyed the protection of Article 105(2). An MP does not enjoy immunity under Article 105(2) from being prosecuted for an offence involving the offer or acceptance of a bribe for speaking or giving his vote in Parliament or any Committee. In his opinion, Agarwal, J. held as follows:
>
> **13.1. The object of the immunity under Article 105(2) is to ensure the independence of legislators for the healthy functioning of parliamentary democracy. An interpretation of Article 105(2) which enables an MP to claim immunity from prosecution for an offence of bribery would place them above the law. This would**

[9] **(1998) 4 SCC 626**
[10] **(2024) 3 SCC 786**

be repugnant to the healthy functioning of parliamentary democracy and subversive of the rule of law;

13.2. The expression "in respect of" precedes the words "anything said or any vote given" in Article 105(2). The words "anything said or any vote given" can only mean speech that has been made or a vote that has already been given and does not extend to cases where the speech has not been made or the vote has not been cast. **Therefore, interpreting the expression "in respect of" widely would result in a paradoxical situation. An MP would be liable to be prosecuted for bribery if he accepted a bribe for not speaking or not giving his vote on a matter, but he would enjoy immunity if he accepted the bribe for speaking or giving his vote in a particular way and actually speaks or gives his vote in that manner. It is unlikely that the framers of the Constitution intended to make such a distinction**;

13.3. The phrase "in respect of" must be interpreted to mean "arising out of". Immunity under Article 105(2) is available only to give protection against liability for an act that follows or succeeds as a consequence of making the speech or giving of vote by an MP and not for an act that precedes the speech or vote and gives rise to liability which arises independently of the speech or vote;

13.4. The offence of criminal conspiracy is made out on the conclusion of an agreement to commit the offence of bribery and the performance of the act pursuant to the agreement is not of any consequence. Similarly, the act of acceptance of a bribe for speaking or giving a vote against the motion arises independently of the making of the speech or giving of the vote by the MP. Hence, liability for the offence cannot be treated as "in respect of anything said or any vote given in Parliament;" and

13.5. The international trend, including law in the United States, Australia and Canada, reflects the position that legislators are liable to be prosecuted for bribery in connection with their legislative activities.

Most of the Commonwealth countries treat corruption and bribery by Members of the Legislature as a criminal offence. In the United Kingdom also there is a move to change the law in this regard. There is no reason why legislators in India should not be covered by laws governing bribery and corruption when all other public functionaries are subject to such laws.

14. G.N. Ray, J. in a separate opinion concurred with the reasoning of Agarwal, J. that an MP is a public servant under the PC Act and on the question regarding the sanctioning authority under the PC Act. However, on the interpretation of Article 105(2), G.N. Ray, J. concurred with the judgment of Bharucha, J. Hence, the opinion authored by Bharucha, J. on the interpretation of Article 105(2) represents the view of the majority of three Judges of this Court. [The opinion authored by S.P. Bharucha, J. has been referred to as majority judgment hereinafter.] The opinion authored by S.C. Agarwal, J. on the other hand, represents the view of the minority. [The opinion authored by S.C. Agarwal, J. has been referred to as minority judgment hereinafter.]"

(Emphasis supplied)

The Apex Court elucidates Articles 105(2) and 194 of the Constitution of India which deal with privileges of Parliamentarians and Legislators as follows:

"…. …. ….

60. The provisions of the 1919 Act were substantially retained in Section 28(1) of the Government of India Act, 1935. Section 28(1) reads thus:

"**28. (1)** Subject to the provisions of this Act and the rules and standing orders regulating the procedure of the Federal Legislature, there shall be freedom of speech in the Legislature, and no Member of the Legislature shall be liable to any proceedings in any court in respect of

> anything said or any vote given by him in the Legislature or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings."

61. A corresponding provision was made in Section 71(1) of the 1935 Act with respect to Provincial Legislatures. The House was empowered to make rules for the conduct of proceedings. However, they were always to give way to the rules framed by the Governor General for the House. Parliamentary privileges had struck root in India on legislators demanding parity with UK House of Commons with reasonable adjustments to account for Indian needs. This was because legislators in India felt that their discharge of legislative functions would be adversely affected in the absence of these privileges. Prominent among the demands of legislators were the power to punish for contempt of the House, supremacy of the Chair in matters of the House, and freedom of speech and freedom from arrest to allow Members to partake in the proceedings and discharge their functions.

62. At no point were these privileges demanded as a blanket immunity from criminal law. Even in the face of colonial reluctance, the demand for parliamentary privileges in India was always tied to the relationship which it bore to the functions which the Indian legislators sought to discharge.

63. This background prevailed when the Constituent Assembly was deciding the fate of Articles 85 and 169 of the draft Constitution which have since become Articles 105 and 194 of the Constitution. Our founding parents intended the Constitution to be a "modernising" force. Parliamentary form of democracy was the first level of this modernising influence envisaged by the framers of the Constitution. [Granville Austin, *The Indian Constitution : Cornerstone of a Nation* (OUP, 1972) ix.] The Constitution was therefore born in an environment of idealism and a strength of purpose born of the struggle for Independence. The framers intended to have a Constitution which would light the way for a modern India. [

Granville Austin, *The Indian Constitution : Cornerstone of a Nation* (OUP, 1972) xiii.]

64. When the Constituent Assembly convened to discuss Article 85 of the draft Constitution, Mr H.V. Kamath moved an amendment to remove the reference to the House of Commons in UK and replace it with the Dominion Legislature in India immediately before the commencement of the Constitution. Opposing this amendment Mr Shibban Lal Saxena said, "So far as I know there are no privileges which we enjoy and if he wants the complete nullification of all our privileges he is welcome to have his amendment adopted." [CAD Vol. VIII 19-5-1949 draft Article 85.] The members of the Constituent Assembly were therefore keenly aware that their privileges under the colonial rule were not "ancient and undoubted" like the House of Commons in UK but a statutory grant made by successive enactments and assertion by legislatures.

F. *Purport of parliamentary privilege in India*

I. *Functional analysis*

65. Article 105 which is located in Part V Chapter II of the Constitution stipulates the powers, privileges, and immunities of Parliament, its Members and Committees. An analogous provision concerning State Legislatures is in Article 194 of the Constitution. Article 105 reads as follows:

> "**105. *Powers, privileges, etc. of the Houses of Parliament and of the Members and Committees thereof***.—(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
>
> (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.
>
> (3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the

> Members and the 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 have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any Committee thereof as they apply in relation to Members of Parliament."

66. Article 105 of the Constitution has four clauses. Clause (1) declares that there shall be freedom of speech in Parliament. This freedom is subject to the Constitution and to the rules and standing orders regulating the procedure in Parliament. Therefore, the freedom of speech in Parliament would be subject to the provisions that regulate its procedure framed under Article 118. It is also subject to Article 121 which restricts Parliament from discussing the conduct of any Judge of the Supreme Court or of a High Court in the discharge of their duties except upon a motion for presenting an address to the President praying for the removal of the Judge.

67. The freedom of speech guaranteed in Parliament under Article 105(1) is distinct from that guaranteed under Article 19(1)(*a*). In *Alagaapuram R. Mohanraj* v. *T.N. Legislative Assembly* [*Alagaapuram R. Mohanraj* v. *T.N. Legislative Assembly*, (2016) 6 SCC 82] this Court delineated the differences in these freedoms as follows:

67.1. While the fundamental right of speech guaranteed under Article 19(1)(*a*) inheres in every citizen, the freedom of speech contemplated under Articles 105 and 194 is not available to every citizen but only to a Member of the Legislature;

67.2. Article 105 is available only during the tenure of the membership of those bodies. On the other hand, the fundamental right under Article 19(1)(*a*) is inalienable;

67.3. Article 105 is limited to the premises of the legislative bodies. Article 19(1)(*a*) has no such geographical limitations; and

67.4. Article 19(1)(*a*) is subject to reasonable restrictions which are compliant with Article 19(2). However, the right of free speech available to a legislator under Articles 105 or 194 is not subject to such limitations. That an express provision is made for freedom of speech in Parliament in clause (1) of Article 105 suggests that this freedom is independent of the freedom of speech conferred by Article 19 and is not restricted by the exceptions contained therein.

68. Clause (2) of Article 105 has two limbs. The first prescribes that a Member of Parliament shall not be liable before any court in respect of "anything said or any vote given" by them in Parliament or any Committee thereof. The second limb prescribes that no person shall be liable before any court in respect of the publication by or under the authority of either House of Parliament of any report, paper, vote or proceedings. The vote given by a Member of Parliament is an extension of speech. Therefore, the freedom of a Member of Parliament to cast a vote is also protected by the freedom of speech in Parliament. In *Tej Kiran Jain* v. *N. Sanjiva Reddy* [*Tej Kiran Jain* v. *N. Sanjiva Reddy*, (1970) 2 SCC 272] , a six-Judge Bench of this Court held that Article 105(2) confers immunity in respect of "anything said" so long as it is "in Parliament". Therefore, the immunity is qualified by the fact that it must be attracted to speech during the conduct of business in Parliament. This Court held that the word "anything" is of the widest import and is equivalent to "everything". It is only limited by the term "in Parliament".

69. Clauses (1) and (2) explicitly guarantee freedom of speech in Parliament. Clause (1) is a positive postulate which guarantees freedom of speech whereas clause (2) is an

extension of the same freedom postulated negatively. It does so by protecting the speech, and by extension a vote, from proceedings before a court. Freedom of speech in the Houses of Parliament and their Committees is a necessary privilege, essential to the functioning of the House. As we have noted above, the privilege of free speech in the House of Parliament or Legislature can be traced to the struggle of the Indian legislators and was granted in progression by the Colonial Government. This privilege is not only essential to the ability of Parliament and its Members to carry out their duties, but it is also at the core of the function of a democratic legislative institution. Members of Parliament and Legislatures represent the will of the people and their aspirations.

70. The Constitution was adopted to have a modernising influence. The Constitution is intended to meet the aspirations of the people, to eschew an unjust society premised on social hierarchies and discrimination, and to facilitate the path towards an egalitarian society. Freedom of speech in Parliament and the legislatures is an arm of the same aspiration so that Members may express the grievances of their constituents, express diverse perspectives and ventilate the perspectives of their constituents. Freedom of speech in Parliament ensures that the Government is held accountable by the House. In *Kalpana Mehta* [*Kalpana Mehta* v. *Union of India*, (2018) 7 SCC 1] one of us (D.Y. Chandrachud, J.) had occasion to elucidate the importance of this privilege : (SCC p. 92, paras 181-82)

> "*181*. … Parliament represents collectively, through the representative character of its Members, the voice and aspirations of the people. Free speech within Parliament is crucial for democratic governance. It is through the fearless expression of their views that Parliamentarians pursue their commitment to those who elect them. The power of speech exacts democratic accountability from elected Governments. The free flow of dialogue ensures that in framing legislation and overseeing government policies, Parliament reflects the diverse views of the electorate which an elected institution represents.
>
> *182*. The Constitution recognises free speech as a fundamental right in Article 19(1)(*a*). A separate

> articulation of that right in Article 105(1) shows how important the debates and expression of view in Parliament have been viewed by the draftspersons. Article 105(1) is not a simple reiteration or for that matter, a surplusage. *It embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy*. Elected Members of Parliament represent the voices of the citizens. In giving expression to the concerns of citizens, parliamentary speech enhances democracy."
>
> (emphasis supplied)

71. Notably, unlike the House of Commons in UK, India does not have "ancient and undoubted" rights which were vested after a struggle between Parliament and the King. On the contrary, privileges were always governed by statute in India. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution. However, while the drafters of the Constitution expressly envisaged the freedom of speech in Parliament, they left the other privileges to be decided by Parliament through legislation. Clause (3) of Article 105 states that in respect of privileges not falling under clauses (1) and (2) of Article 105, 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. Until Parliament defines these privileges, they are to be those which the House and its Members and Committees enjoyed immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Section 15 reads as follows:

> "**15. *Amendment of Article 105***.—In Article 105 of the Constitution, in clause (3), for the words 'shall be those of the House of Commons of the Parliament of the United Kingdom, and of its Members and Committees, at the commencement of this Constitution', the words, figures and brackets "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" shall be *substituted*."

72. The privileges enjoyed by the House and its Members and Committees immediately before the coming into force of Section 15 of the Forty-fourth Amendment to the Constitution were those enjoyed by the House of Commons in UK at the commencement of the Constitution of India. This was also the case with clause (3) of Article 194 which was amended by Section 26 of the Forty-fourth Amendment to the Constitution. The reference to the House of Commons was accepted by the Constituent Assembly for two reasons. First, Indian legislators did not enjoy any privilege prior to the commencement of the Constitution and therefore a reference to the Dominion Parliament would leave the House with virtually no privileges. Second, it was not possible to make an exhaustive list of privileges at the time nor was it preferable to enlist such a long list as a Schedule to the Constitution. [*See* reply of Sir Alladi Krishnaswami Ayyar and Dr B.R. Ambedkar to the Constituent Assembly, CAD, Vol. VIIIth 19-5-1949 draft Article 85 and Vol. Xth 16-10-1949 draft Article 85.]

73. Clause (3) allows Parliament to enact a law on its privileges from time to time. It may be noted here that the House of Commons in UK does not create new privileges. [It was agreed in 1704 that no House of Parliament shall have power, by any vote or declaration, to create new privilege that is not warranted by known laws and customs of Parliament. The symbolic petition by the Speaker of the House of Commons to the Crown claiming the "ancient and undoubted" privileges of the House of Commons are therefore not to be changed.] Its privileges are those which have been practised by the House and have become ancient and undoubted.

74. Further, unlike the House of Commons in UK, Parliament in India cannot claim power of its own composition. The extent of privileges in India has to be within the confines of the Constitution. Within this scheme, the courts have jurisdiction to determine whether the privilege claimed by the House of Parliament or Legislature in fact exists and whether they have been exercised correctly. In a steady line of precedent, this Court has held that in the absence of legislation on privileges, Parliament or Legislature may only claim such privilege which belonged to the House

of Commons at the time of the commencement of the Constitution and that the House is not the sole judge to decide its own privilege.

… … …

76. In *Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964* [*Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21] , a seven-Judge Bench of this Court opined on the privileges of the State Legislature upon a Presidential reference. The reference was in the aftermath of the Speaker of the U.P. Legislative Assembly directing the arrest and production of two Judges of the High Court. The two Judges had interfered with a resolution to administer reprimand to a person who had published a pamphlet libelling one of the Members of the Assembly. Gajendragadkar, C.J. speaking for the majority did not disagree with the decision in *M.S.M. Sharma* [*M.S.M. Sharma* v. *Sri Krishna Sinha*, 1958 SCC OnLine SC 11 : AIR 1959 SC 395] which held that Article 105(3) and Article 194(3) would prevail over Article 19(1)(*a*) of the Constitution. However, the Court held that Article 21 was to prevail over Articles 105(3) and 194(3) in a conflict between the two. The Court held that Parliament or Legislature is not the sole judge of its privileges and the courts have the power to enquire if a particular privilege claimed by the legislature in fact existed or not, by consulting the privileges of the Commons. The determination of privileges, the Court held, and whether they conform to the parameters of the Constitution is a question that must be answered by the courts. This Court opined that : (*Special Reference No. 1 of 1964 case* [*Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21] , SCC OnLine SC paras 37 & 42)

> "*37*. The next question which faces us arises from the preliminary contention raised by Mr Seervai that by his appearance before us on behalf of the House, the House should not be taken to have conceded to the Court the jurisdiction to construe Article 194(3) so as to bind it. As we have already indicated, his stand is that in the matter of privileges, the House is the sole and exclusive Judge at all stages.
> …

* * *

> *42*. In coming to the conclusion that *the content of Article 194(3) must ultimately be determined by courts and not by the legislatures*, we are not unmindful of the grandeur and majesty of the task which has been assigned to the legislatures under the Constitution. Speaking broadly, all the legislative chambers in our country today are playing a significant role in the pursuit of the ideal of a Welfare State which has been placed by the Constitution before our country, and that naturally gives the legislative chambers a high place in the making of history today."
>
> (emphasis supplied)

77. The opinion in *Special Reference No. 1 of 1964* [*Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21] was further affirmed by another seven-Judge Bench of this Court in *State of Karnataka* v. *Union of India* [*State of Karnataka* v. *Union of India*, (1977) 4 SCC 608, para 63.] which held that whenever a question arises whether the House has jurisdiction over a matter under its privileges, the adjudication of such a claim is vested exclusively in the courts. Relying on *Special Reference No. 1 of 1964* [*Powers, Privileges & Immunities of State Legislatures, In re, Special Reference No. 1 of 1964*, 1964 SCC OnLine SC 21] and *State of Karnataka* [*State of Karnataka* v. *Union of India*, (1977) 4 SCC 608] a Constitution Bench of this Court in *Raja Ram Pal* [*Raja Ram Pal* v. *Lok Sabha*, (2007) 3 SCC 184] held that the Court has the authority and jurisdiction to examine if a privilege asserted by the House (or even a Member by extension) in fact accrues under the Constitution. Further, in *Amarinder Singh* [*Amarinder Singh* v. *Punjab Vidhan Sabha*, (2010) 6 SCC 113 : (2010) 2 SCC (Cri) 1343] a Constitution Bench of this Court held that the courts are empowered to scrutinise the exercise of privileges by the House. [*Amarinder Singh* v. *Punjab Vidhan Sabha*, (2010) 6 SCC 113, para 54 : (2010) 2

SCC (Cri) 1343] The interplay between fundamental rights of citizens and the privileges of the Houses of Parliament or Legislature is pending before a Constitution Bench of this Court in *N. Ravi* v. *Chennai Legislative Assembly* [*N. Ravi* v. *Chennai Legislative Assembly* WPs (Cri) Nos. 206-210 of 2003, etc.]

78. Clause (4) of Article 105 extends the freedoms in the above clauses to all persons who by virtue of the Constitution have a right to speak in Parliament. The four clauses in Articles 105 and 194 form a composite whole which lend colour to each other and together form the corpus of the powers, privileges and immunities of the Houses of Parliament or Legislature, as the case may be, and of the Members and Committees.

79. We have explored the trajectory of parliamentary privileges, especially that of freedom of speech in the Indian legislatures. It has been a timeless insistence of the legislators that their freedom of speech to carry out their essential legislative functions be protected and sanctified. Whereas the drafters of our Constitution have expressly guaranteed the freedom of speech in Parliament and Legislature, they left the other privileges uncodified.

80. In a consistent line of precedent this Court has held that — firstly, Parliament or the State Legislature is not the sole judge of what privileges it enjoys and secondly, Parliament or Legislature may only claim privileges which are essential and necessary for the functioning of the House. We have explored the first of these limbs above. We shall now analyse the jurisprudence on the existence, extent and exercise of privileges by the House of Parliament, its Members and Committees.

… … …

82. The privilege exercised by Members individually is in turn qualified by its necessity, in that the privilege must be such that "without which they could not discharge their functions". We shall elucidate this limb later in the course of this judgment. These privileges enjoyed by Members of the House individually

are a means to ensure and facilitate the effective discharge of the collective functions of the House. [*Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (LexisNexis, 25th Edn., 2019) 239.] It must therefore be noted that whereas the privileges enjoyed by Members of the House exceed those possessed by other bodies or individuals, they are not absolute or unqualified. The privilege of an individual Member only extends insofar as it aids the House to function and without which the House may not be able to carry out its functions collectively.

… … …

87. The privileges enshrined under Article 105 and Article 194 of the Constitution are of the widest amplitude but to the extent that they serve the aims for which they have been granted. The framers of the Constitution would not have intended to grant to the legislatures those rights which may not serve any purpose for the proper functioning of the House. The privileges of the Members of the House individually bear a functional relationship to the ability of the House to collectively fulfil its functioning and vindicate its authority and dignity. In other words, these freedoms are necessary to be in furtherance of fertilising a deliberative, critical, and responsive democracy. In *State of Kerala* v. *K. Ajith* [*State of Kerala* v. *K. Ajith*, (2021) 17 SCC 318] , one of us (D.Y. Chandrachud, J.) held that a Member of the Legislature, the Opposition included, has a right to protest on the floor of the legislature. However, the said right guaranteed under Article 105(1) of the Constitution would not exclude the application of ordinary criminal law against acts not in direct exercise of the duties of the individual as a Member of the House. This Court held that the Constitution recognises privileges and immunities to create an environment in which Members of the House can perform their functions and discharge their duties freely. These privileges bear a functional relationship to the discharge of the functions of a legislator. They are not a mark of status which makes legislators stand on an unequal pedestal.

… … …

92. The evolution of parliamentary privileges as well as the jurisprudence of this Court establish that Members of the House or indeed the House itself cannot claim privileges which are not essentially related to their functioning. To give any privilege unconnected to the functioning of Parliament or Legislature by necessity is to create a class of citizens which enjoys unchecked exemption from ordinary application of the law. This was neither the intention of the Constitution nor the goal of vesting Parliament and Legislature with powers, privileges and immunities.

… … …

95. The necessity test for ascertaining parliamentary privileges has struck deep roots in the Indian context. We do not need to explore the well-established jurisprudence on the necessity test in other jurisdictions beyond the above exposition of Indian jurisprudence on the subject at this juncture. The evolution of parliamentary privileges in various parliamentary jurisdictions has shown a consistent pattern that when an issue involving privileges arises, the test applied is whether the privilege claimed is essential and necessary to the orderly functioning of the House or its Committee. We may also note that the burden of satisfying that a privilege exists and that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege. The Houses of Parliament or Legislatures, and the Committees are not islands which act as enclaves shielding those inside from the application of ordinary laws. The lawmakers are subject to the same law that the law-making body enacts for the people it governs and claims to represent.

96. We therefore hold that the assertion of a privilege by an individual Member of Parliament or Legislature would be governed by a two-fold test. First, the privilege claimed has to be tethered to the collective functioning of the House, and second, its necessity must bear a functional relationship to the discharge of the essential duties of a legislator.

… … …

101. In *K. Ajith* [*State of Kerala* v. *K. Ajith*, (2021) 17 SCC 318] a Member of the Kerala Legislative Assembly was accused of climbing over the Speaker's dais and causing damage to property during the presentation of the Budget by the Finance Minister of the State. The question which arose before this Court was whether the Member could be prosecuted before a court of law for his conduct inside the House of the Legislature. This Court speaking through one of us (D.Y. Chandrachud, J.) after exploring the evolution of law in this regard in UK observed that : (SCC p. 356, para 36)

> "*36*. … it is evident that a person committing a criminal offence within the precincts of the House does not hold an absolute privilege. Instead, he would possess a qualified privilege, and would receive the immunity *only if the action bears nexus to the effective participation of the Member in the House*."
>
> (emphasis in original)

… … …

104. The principle which emerges from the above cases is th**at the privilege of the House, its Members and the Committees is neither contingent merely on location nor are they merely contingent on the act in question. A speech made in Parliament or Legislature cannot be subjected to any proceedings before any court. However, other acts such as damaging property or criminal acts may be subjected to prosecution despite being within the precincts of the House. Clause (2) of Article 105 grants immunity "in respect of anything" said or any vote given. The extent of this immunity must be tested on the anvil of the tests laid down above. The ability of a Member to speak is essentially tethered to the collective functioning of the House and is necessary for the functioning of the House. A vote, which is an extension of the speech, may itself neither be questioned nor proceeded against in a court of law. The phrase "in respect of" is significant to delineate the ambit of the immunity granted under clause (2) of Article 105**.

… … …

> **193. The Rajya Sabha or the Council of States performs an integral function in the working of our democracy and the role played by the Rajya Sabha constitutes a part of the basic structure of the Constitution. Therefore, the role played by elected Members of the State Legislative Assemblies in electing Members of the Rajya Sabha under Article 80 is significant and requires utmost protection to ensure that the vote is exercised freely and without fear of legal persecution. The free and fearless exercise of franchise by elected Members of the Legislative Assembly while electing Members of the Rajya Sabha is undoubtedly necessary for the dignity and efficient functioning of the State Legislative Assembly. Any other interpretation belies the text of Article 194(2) and the purpose of parliamentary privilege. Indeed, the protection under Articles 105 and 194 has been colloquially called a "parliamentary privilege" and not "legislative privilege" for a reason. It cannot be restricted to only law-making on the floor of the House but extends to other powers and responsibilities of elected Members, which take place in the Legislature or Parliament, even when the House is not sitting.**
>
> (Emphasis supplied)

Upon the aforesaid reasoning, the Apex Court draws certain conclusions. The conclusions drawn as found at paragraph 194 read as follows:

> "…. …. ….
>
> **J. *Conclusion***
>
> **194.** In the course of this judgment, while analysing the reasoning of the majority and minority in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] we have independently adjudicated on all the

aspects of the controversy, namely, whether by virtue of Articles 105 and 194 of the Constitution a Member of Parliament or the Legislative Assembly, as the case may be, can claim immunity from prosecution on a charge of bribery in a criminal court. We disagree with and overrule the judgment of the majority on this aspect. Our conclusions are thus:

194.1. The doctrine of stare decisis is not an inflexible rule of law. A larger Bench of this Court may reconsider a previous decision in appropriate cases, bearing in mind the tests which have been formulated in the precedents of this Court. The judgment of the majority in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] , which grants immunity from prosecution to a Member of the Legislature who has allegedly engaged in bribery for casting a vote or speaking has wide ramifications on public interest, probity in public life and parliamentary democracy. There is a grave danger of this Court allowing an error to be perpetuated if the decision were not reconsidered;

194.2. Unlike the House of Commons in UK, India does not have "ancient and undoubted" privileges which were vested after a struggle between Parliament and the King. Privileges in pre-Independence India were governed by statute in the face of a reluctant Colonial Government. The statutory privilege transitioned to a constitutional privilege after the commencement of the Constitution;

194.3. Whether a claim to privilege in a particular case conforms to the parameters of the Constitution is amenable to judicial review;

194.4. An individual Member of the Legislature cannot assert a claim of privilege to seek immunity under Articles 105 and 194 from prosecution on a charge of bribery in connection with a vote or speech in the legislature. Such a claim to immunity fails to fulfil the two-fold test that the claim is tethered to the collective functioning of the House and that it is necessary to the discharge of the essential duties of a legislator;

194.5. Articles 105 and 194 of the Constitution seek to sustain an environment in which debate and deliberation can take place within the legislature. This purpose is destroyed when a Member is induced to vote or speak in a certain manner because of an act of bribery;

194.6. The expressions "anything" and "any" must be read in the context of the accompanying expressions in Articles 105(2) and 194(2). The words "in respect of" means "arising out of" or "bearing a clear relation to" and cannot be interpreted to mean anything which may have even a remote connection with the speech or vote given;

194.7. Bribery is not rendered immune under Article 105(2) and the corresponding provision of Article 194 because a Member engaging in bribery commits a crime which is not essential to the casting of the vote or the ability to decide on how the vote should be cast. The same principle applies to bribery in connection with a speech in the House or a Committee;

194.8. Corruption and bribery by Members of the Legislatures erode probity in public life;

194.9. The jurisdiction which is exercised by a competent court to prosecute a criminal offence and the authority of the House to take action for a breach of discipline in relation to the acceptance of a bribe by a Member of the Legislature exist in distinct spheres. The scope, purpose and consequences of the court exercising jurisdiction in relation to a criminal offence and the authority of the House to discipline its Members are different;

194.10. The potential of misuse against individual Members of the Legislature is neither enhanced nor diminished by recognising the jurisdiction of the court to prosecute a Member of the Legislature who is alleged to have indulged in an act of bribery;

194.11. The offence of bribery is agnostic to the performance of the agreed action and crystallises on the exchange of illegal gratification. It does not matter whether the

> vote is cast in the agreed direction or if the vote is cast at all. The offence of bribery is complete at the point in time when the legislator accepts the bribe; and
>
> **194.12. The interpretation which has been placed on the issue in question in the judgment of the majority in *P.V. Narasimha Rao* [*P.V. Narasimha Rao* v. *CBI*, (1998) 4 SCC 626 : 1998 SCC (Cri) 1108] results in a paradoxical outcome where a legislator is conferred with immunity when they accept a bribe and follow through by voting in the agreed direction. On the other hand, a legislator who agrees to accept a bribe, but eventually decides to vote independently will be prosecuted. Such an interpretation is contrary to the text and purpose of Articles 105 and 194.**"
>
> (Emphasis supplied)

The Apex Court considers entire spectrum of privilege obtaining to a parliamentarian or a legislator in terms of Articles 105 and 194 of the Constitution of India and concludes by drawing up 12 conclusions. Conclusion at paragraph 194.6 answers the contentions of the learned senior counsel for the petitioner. The Apex Court holds that expressions "anything" and "any", must be read in the context of the accompanying expressions in Articles 105(2) and 194(2). The words in respect of, the Apex Court holds would mean, arising out of or bearing a clear relation to, and cannot be interpreted to mean anything which may have even a remote connection with the speech.

18. The Apex Court holds that unlike the House of Commons in United Kingdom, India does not have ancient and undoubted privileges; an individual member of the legislature cannot assert a claim of privilege on a charge of bribery in connection with a vote or speech; the expression 'anything' and 'any' as obtaining in Articles 105(2) and 194(2) must be read in the context of accompanying expressions in the said articles. The words 'in respect of' and 'arising out of' are clear that they are in relation to the proceedings of the House and cannot be interpreted to mean anything which may have a remote connection with the speech; the potential of misuse against individual members of the Legislature is neither enhanced or diminished by prosecuting a member. The unmistakable inference that can be drawn from the elucidations of the Apex Court are that, judicial review of what transpires in the parliament or the legislature in certain circumstances is available. A member of the legislature cannot claim that he cannot be prosecuted and if prosecuted it would bring down the dignity of the House. The Apex Court was of the view that the offence of bribery by a Legislator inside the house can be prosecuted. The reference was thus answered.

19. On a blend of the elucidation of law by the Apex Court and other High Courts as quoted hereinabove, the unmistakable inference is that, judicial review is permissible even in cases where the parliamentary privilege is projected, but not in all circumstances, only on a case to case basis. The Apex Court has clearly held that Article 194 of the Constitution does not bestow absolute immunity for the actions done by Legislators, if those actions have no nexus to the functioning of the House. Therefore, the test laid down is, nexus to the functioning of the House or nexus to the transaction of business of the House. Therefore, there is no absolute immunity that the Legislators can claim nor absolute bar of interference by the Constitutional Courts. Spoken word in the Legislature by the Legislators would ordinarily come within the immunity under Article 194(2) of the Constitution of India, but not in certain exceptional circumstances. **The subject issue is answered accordingly**. Whether the fulcrum of the *lis* comes within the exceptional circumstance/s is what is required to be noticed. Therefore, it is necessary to notice the genesis of the issue. It is the act of the petitioner and the allegation of the act that results in the registration of the complaint.

Issue No.(ii):

(ii) Whether the ingredients of offences are made out in the case at hand?

THE COMPLAINT:

20. Since the entire issue triggered from the complaint, I deem it appropriate to notice the complaint. The complaint reads as follows:

"LAXMI R.HEBBALKAR
Minister for Women and Child
Development, Disabled
And Senior Citizens Empower-
Ment& Udupi District
In-charge Minister.

Room No.301, 301A,
3rd Floor,
VidhanaSoudha,
Bangalore-560 001.

No.WCD/1632/2024

Date: 19-12-2024

To
The Police Inspector,
Hirebagewadi Police Station,
Belagavi.

Sir,

Sub: Complaint regarding insult to Modesty of Woman, Sexual Harassment and Outraging the Modesty of Woman by C.T. Ravi, MLC.

--

I, the undersigned, am an elected member of the Karnataka Legislative Assembly and a Cabinet Minister in the current Karnataka Government headed by Sri Siddaramaiah ji.

To-day, I was attending my duties in the Legislative Council on the 1st Floor of the Legislative Council Hall at Suvarna Soudha, Belagavi.

At approximately 1 p.m. when the house had just been adjourned due to protests by the opposition, Sri C.T. Ravi, MLC, made derogatory remarks against our senior Party leaders. I strongly objected to these baseless allegations, demanding that he retract his statement.

During this verbal exchange, Sri C.T. Ravi who was less than 10 meters away from me, made inappropriate and obscene gestures and began shouting at me, repeatedly calling me a "Prostitute", which left me utterly shocked. Despite my visible distress, he continued to approach me, making lewd gestures and continuing to call me a "Prostitute" more than a dozen times in the presence of Sri M.Nagaraj, Sri DT Srinivas, Smt. BilkisBano, Sri Ramoji Gowda among other Members of the Legislative Council.

By his actions, Sri C.T. Ravi, MLC has clearly outraged my modesty, committed sexual harassment and insulted me as a woman, committing offences punishable under the relevant provisions of the law: Bharatiya Nyaya Sanhitha: 75, 79 and other relevant sections of law.

I kindly request that you register this complaint and initiate appropriate legal action against him.

Regards,

Yours sincerely,
Sd/-
(Laxmi R.Hebbalkar)"

(Emphasis supplied)

The complaint is that on a heated verbal of words the petitioner who was 10 meters away had made inappropriate and obscene

gestures and began shouting at the complainant repeatedly calling her a "prostitute". Despite visible distress of the complainant, the petitioner is said to have attacked making lewd gestures and continuing to call her a 'prostitute' for more than ten times in the presence of several Members. It is her allegation that the petitioner has outraged her modesty and has committed sexual harassment inside the House. Thus, the offences under the BNS spring.

THE OFFENCES:

21. The offences under Sections 75 and 79 of the BNS have sprung. Sections 75 and 79 read as follows:

> "**75. Sexual harassment**.—(1) A man committing any of the following acts—
>
> *(i)* physical contact and advances involving unwelcome and explicit sexual overtures; or
>
> *(ii)* a demand or request for sexual favours; or
>
> *(iii)* showing pornography against the will of a woman; or
>
> *(iv)* **making sexually coloured remarks**,
>
> **shall be guilty of the offence of sexual harassment**.
>
> (2) Any man who commits the offence specified in clause (*i*) or clause (*ii*) or clause (*iii*) of sub-section (1) shall be

> punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
>
> (3) Any man who commits the offence specified in clause (*iv*) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.
>
> … … …
>
> **79. Word, gesture or act intended to insult modesty of a woman**.—**Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object in any form, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine**."
>
> (Emphasis supplied)

Section 75 deals with sexual harassment. Clause (iv) of sub-section (1) of Section 75 punishes the person who make sexually coloured remarks of the offence of sexual harassment. The other offence is under Section 79 which punishes a person who utters a word, gesture or an act to insult the modesty of a woman. Since the offences are the ones punishable under Sections 75 and 79 of BNS which are Sections 354 and 509 of the IPC, it becomes germane to notice interpretation of the Apex Court and other High Courts of the said offences.

JUDICIAL INTERPRETATION OF THE ALLEGED OFFENCES:

22. The Apex Court in the case of **RUPAN DEOL BAJAJ v. KANWAR PAL SINGH GILL**[11] has held as follows:

"…. …. ….

13. Coming now to the moot point as to whether the above allegations constitute any or all of the offences for which the case was registered, we first turn to Sections 354 and 509 IPC, both of which relate to modesty of woman. These sections read as under:

> "354. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
>
> * * *
>
> **509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."**

14. Since the word 'modesty' has not been defined in the Penal Code, 1860 we may profitably look into its dictionary meaning. According to *Shorter Oxford English Dictionary* (3rd Edn.) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". *Webster's Third New International Dictionary of the English Language* defines modesty as

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[11] **(1995)6 SCC 194**

"freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the *Oxford English Dictionary* (1933 Edn.) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

15. In *State of Punjab* v. *Major Singh* [AIR 1967 SC 63: 1967 Cri LJ 1: 1966 Supp SCR 286] a question arose whether a female child of seven and a half months could be said to be possessed of 'modesty' which could be outraged. In answering the above question Mudholkar, J., who along with Bachawat, J. spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of mankind that must fall within the mischief of Section 354 IPC. Needless to say, the "common notions of mankind" referred to by the learned Judge have to be gauged by contemporary societal standards. The other learned Judge (Bachawat, J.) observed that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex. From the above dictionary meaning of 'modesty' and the interpretation given to that word by this Court in *Major Singh case* [AIR 1967 SC 63: 1967 Cri LJ 1 : 1966 Supp SCR 286] it appears to us that the ultimate test for ascertaining whether modesty has been outraged is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When the above test is applied in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr Gill in slapping Mrs Bajaj on her posterior amounted to "outraging of her modesty" for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady — "sexual overtones" or not, notwithstanding."

(Emphasis supplied)

The Apex Court holds modesty is the quality of being modest and in relation to woman means womanly propriety of behaviour. Womanly propriety of behaviour would include scrupulous chastity of thought, speech and conduct. The Apex Court, in a later judgment, in the case of **RAJU PANDURANG MAHALE v. STATE OF MAHARASHTRA**[12] has held as follows:

"…. …. ….

> **12.** What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. **Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC**. The *Shorter Oxford Dictionary* (3rd Edn.) defines the word "modesty" in relation to a woman as follows:
>
> > "Decorous in manner and conduct; not forward or lewd; Shamefast; Scrupulously chaste."
>
> **13. Modesty is defined as the quality of being modest; and in relation to a woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". It is the reserve or sense of shame proceeding**

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[12] (2004) 4 SCC 371

from instinctive aversion to impure or coarse suggestions. As observed by Justice Patteson in *R.* v. *James Lloyd* [(1836) 7 C&P 317 : 173 ER 141] :

> In order to find the accused guilty of an assault with intent to commit a rape, court must be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person but that he intended to do so at all events, and notwithstanding any resistance on her part.

The point of distinction between an offence of attempt to commit rape and to commit indecent assault is that there should be some action on the part of the accused which would show that he was just going to have sexual connection with her.

14.*Webster's Third New International Dictionary* of the English language defines modesty as "freedom from coarseness, indelicacy or indecency: a regard for propriety in dress, speech or conduct". In the *Oxford English Dictionary* (1933 Edn.), the meaning of the word "modesty" is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

(Emphasis supplied)

The Apex Court holds that modesty is the quality of being modest and womanly propriety of behaviour. If modesty is likely to be outraged, it is sufficient to constitute an offence.

23. The High Court of Kerala in the case of **ABHIJEET J.K v. STATE OF KERALA**[13] holds as follows:

"…. …. ….

8. Section 509 of the Penal Code, 1860 provides that, whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

9. Utterance of any word or making of any sound or gesture by a person, intending to insult the modesty of a woman, attracts the offence punishable under Section 509 I.P.C, if such act was made intending that such word or sound shall be heard, or that such gesture shall be seen by such woman.

10. There is distinction between an act of merely insulting a woman and an act of insulting the modesty of a woman. In order to attract Section 509 I.P.C, merely insulting a woman is not sufficient. Insult to the modesty of a woman is an essential ingredient of an offence punishable under Section 509 I.P.C. The crux of the offence is the intention to insult the modesty of a woman.

11. Section 509 I.P.C. criminalises a 'word, gesture or act intended to insult the modesty of a woman' and in order to establish this offence it is necessary to show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or physical act (See *Khushboo* v. *Kanniammal*: (2010) 5 SCC 600: AIR 2010 SC 3196).

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[13] 2020 SCC OnLine Ker.703

> **12. The essence of a woman's modesty is her sex. The modesty of an adult female is writ large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty (See *State of Punjab* v. *Major Singh* : AIR 1967 SC 63). Modesty is a virtue which attaches to a female owing to her sex (See *Raju Pandurang Mahale* v. *State of Maharashtra* : (2004) 4 SCC 371 : AIR 2004 SC 1677).**
>
> **13. If the word uttered or the gesture made could be perceived as one which is capable of shocking the sense of decency of a woman, then it can be found that it is an act of insult to the modesty of the woman (See *RupanDeol Bajaj* v. *K.P.S. Gill* : (1995) 6 SCC 194 : AIR 1996 SC 309).**
>
> … … …
>
> **22.** Section 354 I.P.C. prescribes the punishment for outraging the modesty of a woman by an act of assault or use of criminal force. Inspite of the existence of the aforesaid provision in the Penal Code, 1860, the legislature has incorporated Section 509 in it, making punishable even a verbal attack of insulting the modesty of a woman. The intention of the legislature is evident. Commission of acts, **which may not necessarily involve even any physical advances or assault, is also made punishable under Section 509 I.P.C. Originally, the punishment prescribed for the offence under Section 509 I.P.C. was simple imprisonment for a term which may extend to one year or fine or both. The punishment provided for the offence now stands enhanced to simple imprisonment for a term which may extend to three years with fine. The intention of the legislature is also evident from the enhancement of the punishment prescribed for the offence."**
>
> (Emphasis supplied)

The learned single judge of the High Court of Kerala follows the judgments of the Apex Courts quoted hereinabove and considers that for an offence under Section 509 of the IPC, it is necessary to

show that the modesty of a particular woman or a readily identifiable group of women has been insulted by a spoken word, gesture or a physical act. The Court holds that if the word uttered or a gesture made could be perceived as one, which is capable of shocking the sense of decency of a woman, it would become the ingredient of Section 509 of the IPC.

24. The High Court of Delhi in the case of **VARUN BHATIA v. STATE**[14] while considering the offence under Section 509 of the IPC and its interplay with Section 354 of the IPC has held as follows:

"…. …. ….

> **15. Thus, it is imperative to determine whether, in the current context, there exists a *prima facie* case against the accused. The central allegation put forth by the prosecution revolves around the accused's use of the term '*GandiAurat*', and the contention is that this utterance of the said word has amounted to an outrage of the complainant's modesty, under Section 509 of IPC. Therefore, it becomes crucial to delve into the scope and essence of the term 'Modesty' within the legal framework, and to assess whether, on an initial review, the use of these specific words can be deemed as having *prima facie* transgressed the boundaries of the complainant's modesty. This examination would lay the foundation for determining the validity of the charges and the need for further legal proceedings in the matter.**

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[14] 2023 SCC OnLine Del. 5288

LAW OF SECTION 509 OF Penal Code, 1860

i. Section 509 of IPC

16. Since the charge in the present case has been framed under Section 509 of IPC, it shall be imperative to refer to the same, which reads as under:

> "…**509**. **Word, gesture or act intended to insult the modesty of a woman.—Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both…"**

ii. Essential Ingredients of Section 509 of IPC

17. The essential ingredients of Section 509 IPC are as under:

i. Intention to insult the modesty of a woman;

ii. The insult must be caused by:

a. uttering any words, or making any sound or gesture, or exhibiting any object intending that such word or sound shall be heard or that the gesture or object shall be seen by such woman, or

b. intruding upon the privacy of such a woman.

18. Section 509 of the Penal Code, 1860 delineates two pivotal components for establishing an offence : firstly, the presence of an intention to insult the modesty of a woman, and secondly, the manner in which this insult is perpetrated. The cornerstone of this provision is the requirement of intent, where the accused must possess a deliberate intention to affront or

insult the modesty of a woman. This intent sets apart ordinary speech or actions from those that amount to an offence under Section 509. The insult itself can take place through two distinct modes. It can occur verbally or visually by uttering specific words, making sounds, or displaying gestures or objects, with the deliberate intent that these words, sounds, gestures, or objects are heard or seen by the woman involved. Alternatively, insult can manifest as an intrusion upon the woman's privacy, meaning thereby encroaching upon her personal space or violating her sense of privacy intentionally, in a manner that affronts her modesty. In essence, Section 509 emphasizes that intent is the linchpin of this offence, necessitating a deliberate affront to a woman's modesty for the Section to be invoked.

iii. Difference between Section 354 and Section 509 of IPC

19. While discussing the jurisprudence of outraging the modesty of a woman, the discussion cannot be complete without discussing the difference between Section 354 IPC and Section 509 IPC. Section 354 IPC and Section 509 IPC both use the word 'Outraging the modesty of a woman' though by different means.

20. Section 354 IPC reads as under:

> "…354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both…"

21. In essence, both Section 354 and Section 509of Penal Code, 1860 addressed the issue of outraging the modesty of a woman, but they do so in distinct ways. Section 354 primarily deals with cases involving physical assault or the use of force against a woman, wherein her modesty is violated through actions that involve direct contact or physical harm. On the other hand, Section 509 concerns instances where words, gestures, or acts are employed with the deliberate intent to insult or offend a woman's modesty, without necessarily

involving physical force. This distinction in legal provisions reflects the recognition that outraging a woman's modesty can take various forms, both physical and verbal, and the law seeks to address each of these forms distinctly to ensure justice and protection for women in different situations. In the present case, the complainant has raised allegations solely under Section 509 of the Penal Code, 1860 against the accused.

… … …

THE TEST OF OUTRAGING MODESTY OF A WOMEN

i. Defining 'Modesty'

30. According to *Shorter Oxford English Dictionary* (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". *Webster's Third New International Dictionary of the English language* defines modesty as "freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct". In the *Oxford English Dictionary* (1933 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions". *Cambridge Dictionary* defines modesty as 'Correct or socially acceptable behavior and clothes, representing traditional cultural values".

31. In view of the above, "Modesty", as defined by various dictionaries, encompasses a range of meanings that converge on a common theme of propriety, chastity, and adherence to societal norms. In the context of women, modesty signifies a commitment to, scrupulous chastity in thought, speech, and conduct, and a sense of shame-fastness that arises from an aversion to impure or coarse suggestions. It also implies freedom from

coarseness or indecency, emphasizing the importance of adhering to accepted social norms in one's actions and expressions. This multifaceted concept underscores the significance of maintaining moral purity, integrity, and decorum in one's conduct, reflecting a sense of reserve and propriety that transcends mere modesty and extends to broader cultural and societal expectations.

ii. Defining 'Outrage'

32. The *Shorter Oxford English Dictionary* (Third Edition) defines 'outrage' as a strong feeling of shock and anger; an act or event that is violent, cruel or very wrong that shocks people or makes them very angry. *Cambridge Dictionary* defines outrage as '(an unfair action or statement) to cause someone to feel very angry, shocked, or upset'.

33. 'Outrage' is a term that encapsulates the profound emotions of shock and anger in response to actions, events, or statements perceived as morally reprehensible, cruel, unjust, or deeply offensive. It signifies an intense and visceral reaction, often triggered by the violation of accepted societal norms or standards. In essence, outrage is a powerful emotional response that highlights the gravity of perceived wrongdoing, aiming to draw attention to and condemn actions or events that shock people's conscience and evoke a sense of moral indignation.

iii. Defining Outraging Modesty of a Women

34. 'Modesty of women' refers to a culturally and socially defined set of behaviors, manners, and dress codes that are intended to preserve a woman's sense of privacy, decency, and dignity. It encompasses the idea of maintaining a respectful and reserved demeanor, particularly in terms of appearance to safeguard a woman's personal space, honor, and reputation. The concept of modesty can vary across different cultures and societies and is often associated with norms related to interactions, and conduct in public and private settings. It is rooted in the belief that certain behaviors and appearances are deemed appropriate to protect a woman's honor and prevent any potential harm or exploitation.

35. The intent of the legislature is to safeguard a woman's integrity and ensuring that she is not subjected to any form of unwarranted or inappropriate behavior that could undermine her self-respect or social standing.

36. Modesty often intersects with traditional gender roles and societal expectations. In many cultures, women are held to higher standards of modesty than men, with emphasis placed on covering the body and maintaining a demure demeanor. This can sometimes lead to gender inequality and restrict women's freedoms.

37. Crucially, the interpretation of what constitutes an outrage to modesty can be context-specific, as it depends on societal norms, cultural values, and individual perspectives. What may be considered an affront to one person's sense of modesty might not be the same for another. Therefore, legal systems often rely on objective standards to evaluate these violations, taking into account the reasonable person's reaction in a given situation.

38. In essence, "outraging the modesty of a woman" transcends a mere definition; it is an embodiment of the collective commitment to respect, equality, and the preservation of individual rights. It underscores the importance of upholding the dignity and self-worth of every woman, acknowledging the unique and multifaceted nature of this concept in different cultural and societal contexts. Ultimately, it reinforces the imperative to protect and empower women, ensuring their right to live free from insults, affronts, or abuses to their feminine sense of propriety and decorum.

iv. Defining Intention in context of Section 509 IPC

39. Outraging modesty has been defined as circumstances involving indecent conduct on the part of the accused, wherein the accused's behaviour or actions are such that they deliberately and egregiously offend or insult the modesty, dignity, and self-respect of a woman.

40. Indeed, an essential aspect of outraging the modesty of a woman is the presence of indecent

intention. In legal terms, it's not merely the act itself but the intent behind it that matters. To qualify as an outrage to modesty, the accused must have a deliberate and indecent intention in their actions or behaviour. This means that their conduct is not accidental or innocent but is driven by a specific purpose to offend or insult the modesty, dignity, or self-respect of a woman. The requirement of indecent intention serves as a crucial element in distinguishing between regular interactions and actions that constitute an offence against a woman's modesty, emphasizing the need to prove both the act and the intent in such cases.

41. In the assessment of an accused individual's intention to outrage the modesty of a woman, a comprehensive examination of numerous factors becomes essential. This evaluation extends beyond the mere act itself, delving into the accused's intent and the context in which the action occurred. Factors such as the nature of the act, the choice of words or gestures, the surrounding circumstances, the accused's background, and the complainant `s perspective are all meticulously considered. Furthermore, cultural and social norms, as well as any independent evidence, play pivotal roles in this determination. By scrutinizing these multifaceted elements, the legal system strives to discern whether the accused possessed the indecent intention to insult, offend, or abuse the woman's modesty. Such a thorough approach recognizes the complexity of human behaviour and ensures that justice is met with a comprehensive understanding of the unique circumstances of each case.

42. Indeed, a delicate balance must be struck when construing the intention of the accused in cases of outraging the modesty of a woman. It is not appropriate to automatically presume the existence of this intention without thoroughly considering the multifaceted elements mentioned above. Precise and context-specific assessments are required to ensure that justice is both fair and accurate. This balanced approach acknowledges the need to protect the rights and dignity of women while also recognizing the complexities and nuances of human

> **behaviour, as well as the importance of considering the specific circumstances and background of each case."**

(Emphasis supplied)

The High Court of Delhi in elaboration considers whether the words "GandiAurat" uttered against a woman in front of entire staff would amount to outraging the modesty of a woman as obtaining under Section 509 of the IPC or otherwise.

25. The High Court of Bombay in the case of **JOSEPH PAUL DE SOUSA v. STATE**[15] has held as follows:

"…. …. ….

> **8.7 As enunciated in the above cases, there is absolutely no quarrel with the principle that the interpretation of a provision is related to the intent of the legislature. In fact, the mischief sought to be addressed by Section 509 of the I.P.C. is an insult or affront to the dignity of a woman which outrages her modesty. When the manner in which this mischief plays up arises for determination, it is the bounden duty of the Court to adopt a purposive approach of interpretation; i.e., which gives rational meaning to the language of the legislature. Advent of modern technology has opened-up wide spectrum of means to communicate an insult. When an e-mail containing objectionable content likely to outrage the modesty of a woman stares at her, can we permit the perpetrator to walk away undaunted, simply because the insult is written and not spoken. Interpretation must correspond to societal transformations and re-evaluate legal principles to ensure fairness, justice, and equity.**

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[15] 2024 SCC OnLine Bom.2719

8.8 As society evolves, so must the interpretation of the law to address emerging challenges and promote social progress. The law is a dynamic entity capable of reflecting and adapting to a society's changing needs and values. As Lord Denning cautioned in the case of Seaford Court Estate that, 'the English language is not an instrument of mathematical precision'. It must be understood to support legislative intent. The intention of the legislature is to deter action of the offender as could be perceived as one which can shock the sense of decency of a woman. The manner in which the offender does this is not restricted to oral abuse or gesture alone. The word 'utterances' include statements, speeches, exclamations, notes and all of it can well be in a text form relayed physically or by electronic medium.

8.9 In the case of *R* v. *Ireland* it is held that, the rule of strict construction does not also prevent the Court in interpreting a statute according to its current meaning and applying the language to cover developments in science and technology not known at the time of passing of the statute. Thus psychiatric injury caused by silent telephone calls was held to amounts to 'assault' and 'bodily harm' under Sections 20 & 47 of the Offense Against Persons Act, 1861.

8.10 Closer home, the State of Chhattisgarh by an amendment to Section 509 of the I.P.C. has introduced a new category of offense of outraging the modesty of a woman. Section 509-B of the I.P.C. is inserted to include harassment of a woman by 'means of telecommunication device or other electronic mode including internet' also made punishable. Although there is no such amendment made in the State of Maharashtra, penal statutes are known to be interpreted having regard to the subject matter of the offense and the object of law it seeks to achieve. The purpose of law is not to allow the offender to sneak out of the meshes of law. Criminal jurisprudence does not say so.

8.11 According to us the word 'utterance' must not be given a pedantic interpretation. If such narrow interpretation is accepted, many a men will walk away, unhindered by consequences merely by shooting e-mails or using social media platforms to malign and insult a woman and outrage her modesty. Modern technology

makes such manner of perpetrating the offense verily real. Similarly, to 'exhibit' an object is not restricted to actually and physically exhibiting it by the accused himself, but the exhibition can be by way of an agency of a device such as a personal computer, mobile phone or any other electronic device.

8.12 In a decision of this Court in the case of *Emperor* v. *Tarak Das Gupta* (supra), both the learned Judges separately opined that, a letter sent by post is included in the act of 'exhibiting an object' even if it be not by the accused himself but by the agency of a post office. Fawcett, J. (Madgavkar, J. concurred) held as under:

> *"The only point of substance that has been urged by Mr. Sopher for the petitioner is that the case does not come under the words "exhibits any object" contained in section 509, which is the part of the section on which the conviction rests. No doubt the word "exhibit" does ordinarily express the idea of actually showing a thing to a person. On the other hand, such showing need not be immediate. It was admitted by Mr. Sopher that "exhibit" was practically equivalent to the word "expose", and a thing can be exhibited or exposed to a person, although at first it may be wrapped in something which prevents that person from actually seeing the object contained in the wrapper.*
>
> *xxx*
>
> *…In the present case, the accused did not himself go to the complainant and show her the letter, but he employed the agency of the Post Office for the purpose of securing its receipt by her. The natural result of his posting the letter would be its receipt by the addressee and her opening the envelope and seeing its contents. In my opinion, the fact that the accused used these means for letting the complainant see the letter, instead of himself taking it and showing it to her is immaterial. The maxim qui facit per alium per se is one entirely applicable to the present circumstances; and the mere fact that the letter was in a closed envelope before it reached the complainant, and that the accused did not himself tear*

open that envelope but that this was done by the complainant, does not prevent it being a case falling within the meaning of the words "exhibits any object"."

8.13 In the case of *M. M. Harries* v. *State of Kerala* (supra) the Learned Single Judge, while holding that a bunch of anonymous letters received by a woman containing offensive and foul words, outraging her modesty falls within the scope and ambit of the offense under Section 509 of the I.P.C., observed as follows:

"8. …But, what does the expression 'gesture' actually mean? Lord Denning, an English Judge cautioned in Seaford Court Estates's case *(vide [1949] 2 All ER 155) that 'the English language is not an instrument of mathematical precision'. To an Indian Judge, English is even more intrinsic being a foreign language. So, to understand the real meaning of an English word, I shall safely depend upon the dictionary first.*

9. A reference to the dictionary is inevitable in this case because the word 'gesture' not defined under the Penal Code, 1860. The meaning of the word 'gesture' as per Concise Oxford Dictionary,*eighth edition is, "a significant movement of a limb or the body; the use of such movements esp. to convey feeling or as a rhetorical device; an act to evoke a response or convey intention". As per* Collins Cobuild 'English Dictionary for advanced learners' *third edition, 'gesture' is "something that you say or do in order to express your attitude or intentions, often something that you know will not have much effect". As per Law Lexicon, the word 'gesture' means "a posture or movement of the body; an action expressive of the sentiment or passion of intended to show inclination or disposition".*

10. It is thus clear from the above discussion that the word 'gesture' refers not merely to body signs. Though the word 'gesture' is ordinarily used to

mean movement of the limbs or body to convey a person's feelings, it can also connote an act done by a person to convey his intentions. According to dictionary meaning, an act done by a person to express his attitude or intentions also is a 'gesture'. A person can express his attitude or convey his intentions in a number of ways. For example, by speaking, giving, looking, writing etc., etc. In that sense of the word, a person can make a gesture by doing an act without involving any body signs.

xxx

13. But the question is whether the interpretation of the expression 'making gesture' referred to in Section 509 I.P.C., going by the mere dictionary-meaning will in any way be in conflict with the intention of the legislature or whether it will be in consonance with the same. While answering this question, I shall bear in mind, the cardinal principles which are to be followed in interpreting a word or expression in a statute. As observed in Chief Justice of *A.P.* v. *L.V.A. Dixitulu*, (1979) 2 SCC 34 "the primary principle of interpretation is that a constitutional or statutory provision should be construed 'according to the intent of they that made it'(Coke). Normally, such intent is gathered from the language of the provision".

xxx

18. Later, legislature found that a woman must be protected not only from physical aggressions made in the course of outraging her modesty, but she should also be shielded from various other acts which do not involve even a touch. Legislature was quite aware that a woman's modesty can be insulted or outraged in various ways. A mere word, a wink, a touch or even a look would suffice to insult the modesty of a Woman. Physical advances may not be necessary in all cases. Everything depends on the intention of the mischief-maker and the manner in which he conveys his intentions. It is evident that legislature intended that any aggression into a woman's modesty whether by any word, deed, touch or look need be curbed and deterred.

19. That is why even a verbal attack on a woman, a gesture and other acts stated in Section 509 I.P.C. were brought under the said Section. It is clear from a reading of Section 509 I.P.C. that by introducing the said provision, legislature intended that any sort of aggression into a woman's modesty whether by any word, deed or act should be deterred, as evident from the title to the Section itself. Thus, the acts which are done intending to insult the modesty of a woman which may not necessarily involve even any physical advances are also brought within the sweep of a separate provision viz., Section 509 I.P.C.

20. In such circumstances, can it be for a moment presumed that the legislature intended that a person who writes a letter to a woman with the intention to insult her modesty should go unpunished? If such a person, instead of uttering the insulting words, puts in writing all what he determines to utter against a woman and sends it to her, intending to insult her modesty, will any Court be justified in holding that the legislature expected such person to escape safely? was it the intention of the legislature that such a culprit must go unhurt only because he used his pen and not his tongue, to insult the victim? After suffering all the trauma, when a woman comes before Court with the best proof for the assault or violence made on her modesty by producing the letter, can the Court refuse to look into the same on the ground that the legislature never intended to bring cases involving writings within the purview of Section 509 I.P.C.?

21. I find it extremely difficult to reach a conclusion which will defeat the very object of Section 509 I.P.C. There can be little doubt that the legislature would not have intended that a person who insults the modesty of a woman by his writings must be kept out of the province of Section 509 I.P.C. In a country like India, legislature would not have ever intended that a person who expresses his attitude or intention to insult modesty

of a woman by sending a letter should be absolved from criminal liability. I am of view that the very object of the provision will be defeated if a contrary view is taken. Thus, while interpreting the meaning of the relevant expression in Section 509 I.P.C. in the light of the relevant rules of interpretation, I find that 'writing of letter' to a woman, intending to insult her modesty can be construed as 'making a gesture' under Section 509 I.P.C. I feel quite confident to hold that Indian legislature's intention will not be contrary to what I have already concluded."

8.14 This decision in the case of *M. M. Haries* v. *State of Kerala* (supra) was tested before the Apex Court[24]. The Apex Court upheld the decision only expunging the words 'an offense' under Section 509 of the I.P.C. will clearly be attracted' appearing in paragraph no. 22 of the decision, at the behest of the counsel appearing in the matter. Thus, the ratio of the decision is upheld by the Supreme Court thereby ratifying the overarching interpretation of the words 'utterance' and 'gesture' to remove the mischief in interpretation of the section.

… … …

8.17 The above stated judgment of the Apex Court underscores that, the offense of outraging a woman's modesty hinges primarily on the intention or knowledge of the accused rather than the woman's actual reaction. It clarifies that the legal requirement is that the act must be done "intending to outrage or knowing it to be likely that he will thereby outrage her modesty." This places the emphasis on the accused's intent or awareness and the woman's emotional response is not the determining factor. The judgment acknowledges the variability in women's senses of modesty and the impracticality of proving the accused's knowledge of an individual woman's standard of modesty. Instead, it suggests that a reasonable person, considering the circumstances and the woman's characteristics, should assess whether the accused intended to or knew that the act was likely to outrage the woman's modesty.

… … …

8.21 Thus, from the plain reading of the F.I.R. and the subject e-mails, we are of the considered opinion that the e-mails prima-facie intrude upon the privacy of the Respondent No. 2 apart from being prone to outrage her modesty.

… … …

8.26 Lastly, Mr. Jagtiani relied on the decision of the Supreme Court in the case of *Khushboo* v. *Kanniammal* (supra), where F.I.R.s were lodged against a well-known actress. She expressed her personal opinion to a magazine conducting a survey on the subject of sexual habits of people residing in bigger cities in India to the effect that increasing incidence of premarital sex, especially in the context of live-in relationships, called for societal acceptance of the same. The Supreme Court observed that, offense under Section 509 of the I.P.C. cannot be made out when the Complainants' grievance is with publication of what Khushboo had stated in written form. Mr. Jagtiani laid emphasis on this observation that, the Petitioner cannot be held liable for 'publication' of the e-mails. This argument is totally misconceived. The case was primarily relating to the opinion expressed by Khushboo being protected by Article 19(1)(a) of the Constitution of India. The transmission by the Petitioner of the offensive e-mails to her and other residents in the society demonstrates clear intent of the Petitioner to insult the Respondent No. 2. As we have already discussed hereinabove that, no matter that the offensive material was transmitted through electronic media, it would still be ensconced in the interpretation of the words 'utter' and 'gesture' and 'exhibit'. Alternatively, it intrudes on the Respondent No. 2's privacy.

… … …

9.1 Thus, we are of the view that a plain reading of the F.I.R. and the e-mails mentioned therein prima-facie discloses commission of the alleged offenses under Section 509 of the I.P.C. & Section 67 of the I.T. Act only and not under Sections 354 & 506(2) of the I.P.C."

(Emphasis supplied)

The High Court of Bombay holds that on a plain reading of the subject e-mails therein, was indicative of the fact that it intruded upon the privacy of the complainant, apart from being prone to outrage her modesty. The Bombay High Court holds that whether words, spoken or written, would not make any difference.

UNDERMINING OF DIGNITY:

26. Respect and reputation of a woman in any civilized society, shows basic civility of any such civilized society. No citizen, in a civilized society, can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable, but deplorable. What forms the fulcrum of the conundrum is certain words spoken on the floor of the house, not by an ordinary citizen, but a responsible representative of the people.

27. The issue in the *lis* is not physical acts of the petitioner, but, verbal acts, which has the effect of outraging the modesty of a woman. Section 79 is section 509 of the earlier regime, the IPC. Section 509 was amended to make it punishable by Act 13 of 2013.

Therefore, it was inserted by Act 13 of 2013 to make any word or gesture, which in effect insults the modesty of a woman to become punishable. The alleged words that the petitioner has uttered is calling the complainant a "prostitute". This undoubtedly forms the ingredient of both Sections 75 and 79 of the BNS. Whether such word spoken is immune from any action. The unequivocal and emphatic answer is, a **"NO"**. **The alleged word spoken, if spoken, or gesture made, if made, against a woman, certainly outrages her modesty and it above all, can have no nexus to the functioning of the House or no relation to a transaction of the business of the House.**

28. Factually, whether the petitioner has spoken or uttered the word "prostitute" against the complainant or has used such gestures which would demean her dignity or outrage her modesty is till now a mystery, as it has to be investigated into. There is an allegation and the complaint, registered with alacrity, is vivid that words have been spoken. Therefore, these acts which eroded the dignity of a woman or outraged her modesty cannot be protected under the ***parasol*** of legislator's privilege of anything done inside

the House. Immunity from any proceedings is, as observed by the Apex Court in the case of **K.AJITH** *supra*, is not absolute. Criminal acts inside the House are not immune from prosecution. In the case at hand it is still under investigation. **The subject issue is answered accordingly.**

29. The submission of the learned senior counsel for the petitioner is that it would open a ***pandora's box*** where every legislator tomorrow will knock at the doors of constitutional Courts alleging that fellow legislator has defamed him, insulted him or otherwise, it is a submission that is noted only to be rejected, owing to the facts obtaining in the case at hand, as it concerns the dignity or modesty of a woman and allegedly calling a woman, a fellow legislator, a 'prostitute', on the floor of the house, not only *prima facie* outrages her modesty, but **sullies the sanctity of the House**. In that light, I find no merit in the challenge to the registration of crime in Crime No.186 of 2024. Calling a fellow woman Legislator a prostitute, in the legislature has no nexus to the functioning of the House nor has nexus to the transaction of business in the House. **No Nexus; No Privilege.**

EPILOGUE:

In the grand tapestry or the labyrinth of democracy, the privilege of legislative speech is a vital thread. Therefore, it must be woven with the fibers of responsibility and ethical conduct. The legislature is an exalted forum for deliberation, not a forum for personal vilification. While this Court will always remain the sentinel of legislative autonomy, it cannot permit invocation of privilege to *stymie* the imperatives of justice. The distinction sought to be drawn between the spoken word and overt physical actions, within the house is a *tenuous* one. The legislature is not a sanctuary for defamation or gendered invective, rather an institution where robust debate must be tempered with decorum and respect. I find neither in the alleged acts of the petitioner.

30. For the aforesaid reasons, the petition lacking in merit should necessarily meet its rejection. It is accordingly ***rejected.***

It is made clear the observations made in the course of the order are only for the purpose of considering the case of the petitioner under Section 482 of the Cr.P.C. The observations would not influence or bind the investigating agency or the concerned Court.

Interim order of any kind operating, shall stand dissolved.

SD/-
(M.NAGAPRASANNA)
JUDGE

Bkp
CT:MJ