



KAMARAJ IAS ACADEMY
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Bribery and Corruption

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Why is in news? It is necessary to reconsider “the correctness” of a 1998 5-judge Constitution Bench judgment in the P V Narasimha Rao case — where the majority had held that legislators have immunity against criminal prosecution on bribery charges for any speech or vote in Parliament — the Supreme Court on Wednesday referred the decision to a 7-judge Bench.

About the issue:

Sita Soren, an MLA, was accused of accepting a bribe to vote for an independent candidate in the 2012 Rajya Sabha elections.

A case was subsequently filed against Sita and the Jharkhand High Court in 2014 ruled that she is not immune from prosecution.

She challenged the case in the Supreme Court and the matter came before a three-judge bench of the Supreme Court

In 2019, a three-judge bench of the Supreme Court referred the matter to a five-judge bench

Now, in 2023, the Constitution Bench of the Supreme Court has referred the case to a larger bench that would finally re-examine whether lawmakers are immune from prosecution if they take bribe to cast a vote.

A 5-judge Constitution Bench presided by Chief Justice of India D Y Chandrachud said the larger Bench would deal with the **question of correctness of the verdict on the interpretation of Articles 105(2) and 194(2)** of the Constitution, which extend the privilege to members of Parliament and State Legislatures respectively.

P. V. Narasimha Rao case:

The **P V Narasimha Rao case refers to the 1993 JMM bribery case**, in which Shibu Soren and some of his party MPs were accused of taking bribes to vote against the no-confidence motion against the then P V Narasimha Rao government.

The Supreme Court had quashed the case against the JMM MPs, citing immunity under Article 105(2).

The 1998 Supreme Court judgment, in the PV Narasimha Rao (JMM bribery), provided absolute immunity to legislators from prosecution for bribery.

10 Members of Parliament who belonged to the JMM and the Janata Dal cast their votes to defeat a no-confidence motion moved in the Lok Sabha against the minority government of Prime Minister PV Narasimha Rao in 1993.

The Supreme Court at that time held that the bribe-taking MPs who voted on the no-confidence motion are **entitled to immunity from criminal prosecution for the offences of bribery and criminal conspiracy** conferred on them by **Article 105(2)** of the Constitution.

Privileges and Immunities to the MPs and MLAs:

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Privileges are **special rights, immunities and exemptions enjoyed by the two Houses of Parliament and legislature of States**, and their committees and their members.

The Constitution has **also extended these privileges to those persons who are entitled to speak and take part in the proceedings of a House or any of its committees.**

Article 105 and Article 194 to the Constitution of India grant privileges or advantages to the MPs (Article 105) and to the MLAs (Article 194) of every State.

These powers, privileges and immunities should be defined by the law from time-to-time.

These privileges are considered as special provisions and have an overriding effect in conflict.

It must be clarified here that these privileges do not extend to the President (or Governor) who is also an integral part of the Parliament (or state legislature).

Constitution Provision:

It gives the MPs freedom of speech [**Article 115 (1)**].

Article 105(2) of the Constitution states that **no member of Parliament (MP)** 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.**

Also, no person will be held liable for any publication of any report, paper, votes or proceedings if the publication is made by the parliament or any authority under it.

The same provisions are stated under **Article 194**, where **MLAs of a state** are referred instead of MPs.

Purpose: These privileges and immunities -

Are granted so that MPs/MLAs can perform their duties or can function properly without any hindrances - essential for democratic functioning of the legislatures.

Without these privileges, the Houses can **neither maintain** their authority, dignity and honour **nor can protect** their members from any obstruction in the discharge of their parliamentary responsibilities.

Corruption:

Corruption refers to **unethical behaviour**, which is characterized by **misuse of public or organizational power**, causing harm not only to organizations but also to society.

The word corrupt is from the Latin word 'corruptus' meaning to break or destroy

Corruption is an important manifestation of the failure of ethics. Corruption misuse of entrusted power for private gain

Transparency International (TI) defines corruption as "the abuse of entrusted power for private gain or specific group interest".

The **United Nations** points out that corruption can take many forms that vary in degree, from the minor use of influence to institutionalized bribery, and that "this can mean not only financial gain but also non-financial advantages" (UN, 2010).

Bribery: The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other

advantages (taxes, services, donations, favours etc.).

Government measures for Fighting Corruption:

Prevention of Corruption Act, 1988 provides for penalties in relation to corruption by public servants and also for those who are involved in the abetment of an act of corruption. Amendment of 2018 **criminalised both bribe-taking by public servants as well as bribe giving by any person.**

The **Prevention of Money Laundering Act, 2002** aims to prevent instances of money laundering and prohibits use of the 'proceeds of crime' in India.

The **Companies Act, 2013** provides for corporate governance and prevention of corruption and fraud in the corporate sector. The term '**fraud**' has been given a broad definition and is a criminal offence under the Companies Act.

The **Indian Penal Code, 1860** sets out provisions which can be interpreted to cover bribery and fraud matters, including offences relating to criminal breach of trust and cheating.

The **Foreign Contribution (Regulation) Act, 2010** regulates the acceptance and use of foreign contributions and hospitality by individuals and corporations.

The **Lokpal and Lokayuktas Act, 2013** provides for an establishment of an ombudsman for the central and state governments (Lokpal and Lokayuktas, respectively). These bodies are required to act independently from the government and have been empowered to investigate allegations of corruption against public servants, which include the prime minister and other ministers.

The **Central Vigilance Commission** is mandate is to oversee the vigilance administration and to advise and assist the executive in matters relating to corruption.

Reason for corruption in India:

Use of black money in elections: In the last 10 year the declared expenditure has increased by more than 400% for the LS elections with 69% of their income coming from unknown sources.

Criminalization of politics: More than 30% of the legislators in the country have pending criminal cases against them.

Crony capitalism: The economic reforms of 1991 has led to the growth of unholy nexus between Politicians and businessmen.

Politicization of bureaucracy: Example of honest officers being witch-hunted like Ashok Khemka and Amitabh Thakur are the indicators of the bigger malaise.

Colonial bureaucracy: The bureaucracy essentially remains colonial in nature characterized by 19th century laws e.g. Police Act 1861, complex rules, wide discretion, secrecy, moral responsibility devoid of legal accountability and the ivory tower attitude.

Judicial failure: The judiciary has failed to bring to book the corrupt officials including politicians.

Failed reforms: Lack of political will and resistance from within the bureaucracy has led to failure of major reforms like citizen charter, RTI and e-governance.

Changes in lifestyle: Increasing shift towards individualization and materialism has led to increased penchant for a luxurious lifestyle.

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Social discrimination: The poor and marginalized due to their lack of awareness and high dependence on the state become the easy target of exploitation by corrupt officials

Failure of education system: The value education has failed miserably in India to inculcate the value of empathy, compassion, integrity, equity etc. in the young generation.

High inequalities: In India 1% of the rich hold about 60% of the total wealth. People at lower income levels are forced to pay bribes to officials even to get their basic needs fulfilled.

High share of informal sector: In India more than 80% of the workforce is in the informal sector. Such enterprises usually bribe the officials to keep out of the ambit of laws where compliance is costly and complex.

Low wages: The remuneration in the public sector remains below par with the private sector along with poor career growth opportunities and harsher working conditions.

Way forward:

There is a need for windfall reforms in each and every section of the system to fight the menace. Every aspect of governance must be improved for efficiency, economy, and effectiveness.

By making election reforms like imposing limits on the overall expenditure of the political parties, Empowering ECI by giving legal force to MCC and making paid news a criminal offence.

Strengthening of **autonomous institutions**

By establishing the **Civil Service Board** to curb the excessive political control over the administration.

Simplifying the **disciplinary proceedings and strengthening preventive vigilance** within the departments to ensure corrupt civil servant do not occupy the sensitive position. Police and judicial reforms– implementation of **Prakash Singh recommendations**.

e-gov apart from advancing the good governance objectives of accountability and transparency also seeks to reduce the manual interface between state and citizen thus preventing the incidences of bribery

Improving corporate governance by implementing corporate governance committee reports

Conclusion:

Integrity, transparency, and fight against corruption have to be part of the culture. They must be thought of as fundamental values of the society we live in. In India, some recent anti-corruption initiatives have been taken.

For example, various Supreme Court's ruling in pursuit of curbing criminalization of politics, many e-governance initiatives will improve transparency and accountability. These measures are indeed steps in the right direction, but bringing behavioural change in society will act as the most potent weapon against corruption.