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SOCIO-ECONOMIC CRIMES

*Anurag Deep**

I. INTRODUCTION

THE SURVEY of 2024 has a couple of things to smile about and a ray of hope for a better future. It covers a few cases on bail under special enactments like the Prevention of Corruption Act, 1988 (PCA), the Prevention of Money Laundering Act, 2002(PMLA), which advances "rights" discourse. Two judgments of the constitution bench have impliedly restored "constitutional morality"; one of them (*Sita Soren*) has rectified a judicial blunder committed in the *JMM bribery* case. Dowry laws and socio-economic crimes under traditional laws, state enactment has also been covered.

II. FRAUDULENT TRANSACTIONS AND CIVIL SETTLEMENTS

Anil Bhavarlal Jain* v. *State of Maharashtra[1]

If a mutual settlement between parties is executed under the law, can a criminal case still be registered for the same transaction? For a law student who has some command over jurisprudence, the following three sentences are relevant, though they may sound contradictory.

a. A civil settlement is not a legal prohibition of a criminal action.

b. The common law rule of "*nullum tempus aut locus occurrit regi*" (lapse of time is no bar to the Crown in proceeding against offenders) is applicable in India.

c. *Interest republicae ut sit finis litium* – In the interest of society as a whole, there should be an end to litigation.

The above two maxims [in Latin] serve different interests, though they seem inconsistent. Litigation and multiplicity of litigation must stop. Does it mean that a conclusion of a civil litigation should prohibit a criminal case in the same matter? The simple answer is that, in India, in serious cases of socio-economic crime, the criminal case must continue. The conclusion in civil cases is hardly a deterrent in India, as the remedy remains inefficient and insufficient compared to Western jurisdictions.

* Professor, Indian Law Institute.

1 2024 INSC 1039.

Another question is whether a criminal case can be registered after a civil settlement is reached, even if all the facts were available before the settlement? In other words, after the civil settlement, no new evidence emerged. Can the aggrieved register an FIR even though it could have been registered before the civil settlement?

Anil Bhavarlal Jain addresses these questions as discussed above. In this case, the directors of a company obtained permission for a building permit from the competent authority. He obtained a commencement certificate from the government for certain plots in 2013. A loan of 50 crore was sanctioned by the SBI. The company changed the building plans of the project without the consent of the Bank. This resulted in the reduced value of the collateral security. There was a diversion of funds.

In 2017, the loan was declared a non-performing asset [NPA]. In 2019, there was an outstanding of Rs 23 crore, but the dispute was settled for Rs 15 crore, which both agreed on. In the agreement, there was a clause that the agreement does not bar criminal proceedings.

After the settlement, the officer in charge at the bank changed. The new officer smelled a rat, and a complaint was lodged by the bank on 30th October 2019. But the FIR was registered after 9 months, i.e. on 24th July 2020, by CBI under sections 409, 420 and 120B of the Indian Penal Code, 1860, along with section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The complaint led to a departmental enquiry. In the final report of this inquiry, certain charges were dropped, and it was stated that the remaining charges are of a technical nature and had to be submitted to the Disciplinary Authority for consideration.

It raised a few obvious questions of proprietary- (a) why the FIR was registered in 2020 when all information of alleged diversion of funds, cheating, etc. was already available with the Bank? (b) When a complaint was registered in 2019, why was the FIR registered in 2021? (c) When a civil compromise was sealed, why FIR? (d) When charges were dropped in the inquiry, why FIR again?

The high court (Bombay) refused to use section 482 of the CrPC to quash the FIR. The Supreme Court supported the high court. The FIR shall continue. The reasoning of the Supreme Court will guide us well on what to do in such cases.

As there is no statutory rule in such cases, the courts have to rely on principles of criminal jurisprudence and the precedential mandates. One such precedent is *Gian Singh* v. *State of Punjab*.[2] The unanimous opinion is a leading precedent on

2 2012 (10) SCC 303. It is a three-judge bench ruling. This is a leading case on the power of section 482 vis a vis section 320 of CrPC. One of the issues was, if a non-compoundable offence is quashed because of compromise between parties, is the court making a non-compoundable offence as compoundable. In 2010 the same case i.e. *Gian Singh* [a division bench opinion] was of the view that the high court cannot quash non compoundable offenses if a compromise is achieved. The Court thought that if such cases are quashed section 320 of CrPC will be amended and the Court must exercise restraint. However, in a higher bench of three judges the Supreme court held that section 482 is entirely different than 320. If "ends of justice" so require then a non-compoundable offence can also be quashed. The high court is not amending CrPC but only exercising its legitimate, extraordinary power.

the issue of the power of quashing. It throws some guidance which can be paraphrased as follows:

a. Certain cases can have a civil nature. They may be commercial, financial, mercantile, or civil partnerships. Another category can be matrimonial offences related to dowry, etc., or family disputes.

b. The wrong in these cases is basically private or personal in nature.

c. Parties can resolve their entire dispute.

d. If the above cases are registered as criminal cases, the High Court may quash criminal proceedings if, in its view.

   i. There is an *independent* compromise between the offender and the victim.

   ii. The possibility of conviction is now remote because of a compromise, as the complainant or victim himself is not interested. The witness can be predictable and will turn hostile.

   iii. Continuation of the criminal case would put the accused to great oppression, and extreme injustice would be caused to him by not quashing the criminal case.

   iv. The high court must consider that it would be unfair or contrary to the interest of justice to continue with the criminal proceedings, or the continuation of the criminal proceedings would be tantamount to an abuse of the process of law.

   v. All four points are not essential at the same time.

e. However, serious offences like attempt to murder, robbery, dowry death, offences relating to corruption, etc., cannot be quashed even if some compromise is presented between parties.

***Gian Singh* distinguished**

The accused argued the ruling of *Gian Singh* in his favour. The Supreme Court in the present case [*Anil Bhavarlal Jain*] identified that *Gian Singh* is not applicable here because the *Gian Singh case* was a criminal trial and the interpretation of section 320 vis-à-vis 482 of CrPC[3] was in issue. In *Anil Bhavarlal Jain,* the civil dispute was compromised. The criminal case was never compromised. On the contrary, the criminal case was opened by one party [Bank here] who was willing to pursue this case. In many criminal cases where a quashing was done by

3 *Gian Singh case* was a matter referred by a division bench to higher bench to determine the controversy whether under section 482 a high court can quash FIR if a compromise is arrived at by parties in a non-compoundable offence. The full bench conclusively decided that section 482 can be used to quash an FIR if a compromise is reached between two parties in a non-compoundable case like section 498A of the Indian Penal Code, 1860 [or sections 85 and 86 of the Bharathiya Nyaya Samhita, 2023]. When section 482 is used to quash a criminal proceeding, the order of the court does not turn a non compoundable offence into a compoundable offence. Compoundability depends on provision and is limited to provisions which can be used by trial courts. Quashing is a wide power of the high court to be used in many cases.

the high court, those cases were where both parties [especially the victim] were ready to move on following "forgive and forget".

Correctional objective and theory of deterrence

Moreover, *Gian Singh* does recognise those cases where the gravity of offence, like intentional cheating, violent crimes of a non-private nature, etc., shall act as a restriction on the power of section 482 of CrPC. The Court observed:

61. ……. The offences of mental depravity under the Indian Penal Code or offences of moral turpitude under special statutes like the Prevention of Corruption Act or the offences committed by the public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all.

Anil Bhavarlal Jain also took support from *Parbatbhai Aahir* v. *State of Gujarat*[4], where it was held that "economic offences involving financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between the private disputants."

Gender or cultural argument in socio-economic crimes

Anil Bhavarlal Jain also refers to *State* v. *R Vasanthi Stanley*[5], which is of additional significance. In *R Vasanthi Stanley, the* conservative wife's argument was advanced, "who was following the command of her husband, "and had signed certain documents without being aware of the nature of the fraud which was being perpetrated on the bank." It can be reproduced for clarity:[6]

> ... Lack of awareness, knowledge or intent is neither to be considered nor accepted in economic offences. The submission assiduously presented on gender leaves us unimpressed. An offence under the criminal law is an offence, and it does not depend upon the gender of an accused. True it is, there are certain provisions in the Code of Criminal Procedure relating to the exercise of jurisdiction under section 437, etc. therein, but that altogether pertains to a different sphere. A person committing a murder or getting involved in a financial scam or forgery of documents cannot claim discharge or acquittal on the ground of her gender, as that is neither constitutionally nor statutorily a valid argument. The offence is gender neutral in this case. We say no more on this score…

The passage is hard-hitting and establishes that deterrence is more important in the case of socio-economic crimes. There is some merit in this argument that the wife, or mother or sister or father or children sign documents under trust and confidence. Therefore, the above passage from *R Vasanthi Stanley* has limited application to quashing only. In case the case proceeds for conviction, the prosecution will have to establish positive *mens rea.*

4 (2017) 9 SCC 641.

5 (2016)1 SCC 376.

6 *Anil Bhavarlal Jain* has quoted a different passage.

The Supreme Court in *Anil Bhavarlal Jain* finally upheld the High Court's decision that the case cannot be quashed. The bank had suffered losses of approximately Rs. 6.13 Crores, a substantial injury to the public exchequer. Public interest has been hampered. The present case is under a special statute, i.e., the. The case has an impact on the parties as well as society at large. So, the trial will continue.

III. PRIMA FACIE CASE UNDER SOCIO-ECONOMIC CRIMES

Manik Madhukar Sarve* v. *Vithal Damuji Meher[7]

Khemchand Meharkure was the President of Jai Shriram Urban Credit Co-operative Society Limited, Nagpur. Around 798 depositors alleged that they deposited 29.06 crores, which were never returned to them. His friend Vitthal Meher deposited 2.38 crores with the society. At the direction of the President, he received 9.69 crores as so-called "financial assistance"[loan]. Statement of Prashant Sawai and Anil Nagdeve, the employees of the Society, was on record that the payment was made on the directions of the alleged mastermind (Khemchand Meharkure). Vitthal Meher purchased a property worth 10 crores in the name of Khemchand Meharkure. In 2019, the case was registered under sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (MPID Act). Respondent No.1 (Vitthal Meher) was arrested on April 28, 2021. 3,25,000 (about 3.25 lakhs) as interest from the Society was paid in cash to Vitthal Meher, but no entry was made in the cashbook or other account books. Instead, a note-sheet was prepared by the Society. Another employee also made a similar claim that he prepared vouchers, fixed deposits, and made entries in the cashbook, but these entries do not appear in the Society's official books.

Bank statements of Vitthal Meher, respondent no.1, seized from Vidarbh Konkan Gramin Bank, showed credits of 37.5 lakhs, five lakhs, and 45.28 lakhs in his name. More than one crore [85.75 + 32.9 lakhs] was traced in the name of respondent no.1's wife. It is not reflected in income tax records. These details are consistent with the Forensic Audit Report. Respondent no.1 and the Society's President executed Sale Deeds to buy various properties using cash. Later, they applied to correct these deeds, claiming that the payments were made by cheque, not cash.

The High Court granted bail. The Supreme Court set aside the bail order on the following grounds:

a. The charge sheet has already been filed. There is some evidence suggesting respondent no.1 is involved in the withdrawal of Nine Crores, though he had only invested about 2.38 crore for which there are records available.

b. He made investments in the name of his relatives. The victims were people with meagre earnings. It seems that the President of the Society systematically

7 2024 INSC 636. The case was decided by a division bench of Hima Kohli and Ahsanuddin Amanullah, JJ. Hereinafter referred as *Manik Madhukar Sarve*-I.

siphoned off these funds, with the aid of other office-bearers, as also through respondent no.1. (Para 24)

c. Serious economic offences affecting many people, where the accused has played an active role and seeks anticipatory or regular bail, the court granting bail should impose strict and additional conditions. However, in this case, the High Court has only imposed the usual, basic conditions without any extra safeguards.

d. Respondent no.1 had already spent about six months in jail before bail was granted. Due to the serious nature of the alleged offence, granting bail risks the possibility that properties purchased with the Society's funds could be wasted or lost. The interests of the victims of this scam must also be taken into account.

Another judicial development was the review (in open court) of this judgment [*Manik Madhukar Sarve*-I]. *Vithal Damuji Meher* v. *Manik Madhukar Sarve*[8] filed a review petition and argued that (i) all other accused were granted bail, but in his case, 'Bail is the Rule, Jail is the exception' has been ignored. (ii) precedents have not been followed. (iii) Supreme Court in *Manik Madhukar Sarve* I held that the accused could apply for bail at a later period or if circumstances changed, but "later period' or 'change in circumstances' has not been specified by the Supreme Court. The Supreme Court addressed all arguments one by one. (i)On 'single(d) out' argument the court referred *Sanjay Dubey* v. *State of Madhya Pradesh*[9] where it was observed that "… It is too well-settled that judgments are not to be read as Euclid's theorems; they are not to be construed as statutes, and; specific cases are authorities only for what they actually decide. "[10] and "the facts of every case vary and are to be judged in their unique perspective. Grant of bail to co-accused would not *ipso facto* entitle the instant Petitioner to the same." (ii) *K A Najeeb* rule[11] of 'incarceration for a significant period of time' is not applicable because the accused Vithal Damuji Meher was in the jail not even for 6 months. (iii) The accused was in jail for around 6 months, and he was outside jail for around three years on bail. When the chargesheet was filed, the evidence created a *prima facie* case against him.

Lessons for the high court

The accused was ordered to surrender. The high court committed an error on two points. (i) It has granted bail without giving due weight to the material on

8 2024 INSC 785. The review was decided by Dipankar Datta and Ahsanuddin Amanullah, JJ. The main order was by Hima Kohli, Ahsanuddin Amanullah, JJ. But Hima Kohli, J retired in June 2024. New member inducted was Dipankar Datta,J. Hereinafter referred as *Manik Madhukar Sarve*-II.

9 2023 SCC OnLine SC 610.

10 The Court also referred *Sreenivasa General Traders* v *State of Andhra Pradesh*, (1983) 4 SCC 353 and *Amar Nath Om Prakash* v *State of Punjab*, (1985) 1 SCC 345 - which have been reiterated, inter alia, in *BGS SGS Soma JV* v *NHPC Limited*, (2020) 4 SCC 234, and *Chintels India Limited* v *Bhayana Builders Private Limited*, (2021) 4 SCC 602.

11 *Union of India* v. *KA Najeeb*, (2021) 3 SCC 713.

record. (ii) The high court considered the facts and issues as if they were conventional crimes. In case of socio-economic crimes, it has to impose stringent bail conditions, which the high court failed to do.

Points for the Supreme Court

One of the grounds of cancellation of bail is "his release on bail can seriously lead to dissipation [the process of gradual disappearance] of the properties where investments have allegedly been made out of Society funds". If the dissipation of property is a grave concern to compromise the liberty of the accused, the property documents can be ordered to be seized if not already done. A notice can be displayed at the place of property that it is disputed. This property could be proceeds of crime for which there are provisions for attachment under various laws.

Bearer Bonds to Electoral Bonds: corrupt practices, black money and transparency

Politics and elections have guided modern civilisation. It has made the State action more responsible, mature and welfare-oriented. However, it has also emerged as a place where traditional crimes, socio-economic crimes and white-collar crimes meet at one place. The end of democracy is met by the means of corrupt practices by political parties. In *R.K. Garg v. Union of India,*[12] [*Bearer Bond* case], the Court underlined the grave dangers of black money as under:

> The first casualty of this evil of black money is the revenue because it loses the tax that should otherwise have come to the exchequer. The generation of black money through tax evasion throws a greater burden on the honest taxpayer and leads to economic inequality and concentration of wealth in the hands of the unscrupulous few in the country. In addition, since black money is, in a way, 'cheap' money because it has not suffered reduction by way of taxation, there is a natural tendency among those who possess it to use it for lavish expenditure and conspicuous consumption. The existence of black money is to a large extent responsible for inflationary pressures, shortages, a rise in prices and economically unhealthy speculation in commodities. It also leads to leakage of foreign exchange, making our balance of payments rather distorted and unreal and tends to defeat the economic policies of the Government by making their implementation ineffective, particularly in the field of credit and investment. Moreover, since black money has to be suppressed in order to escape detection, it results in immobilisation of investible funds which would otherwise be available to further the economic growth of the nation and, in turn, foster the welfare of the common man. It is therefore no exaggeration to say that black money is a cancerous growth in the country's economy, which, if not checked in time, is certain to lead to chaos and ruination. There can be no

12 (1981) 4 SCC 675.

> doubt that urgent measures are therefore required to be adopted for preventing further generation of black money, as also for unearthing existing black money so that it can be canalised for productive purposes with a view to effective economic and social planning.

In another precedent, thirty years ago, the court in the case of Common Cause (A Registered Society) v. Union of India expressed deep concern about the use of money power in politics and elections, saying, "From where the money comes from nobody knows. In a democracy where the rule of law prevails, this naked display of black money, by violating the mandatory provisions of law, cannot be permitted." The astronomical expenses in elections by unlawful means are a hard reality and a top secret known to everyone. There is a systematic failure in not addressing this huge source of corruption. The nexus between big corporations and political parties is an essential evil of democracy in the Globe, and so in India.

ADR v. *Union of India*[13] highlights the complexities in the regulation of corporate funding to political parties. The idea was to record political donations so that corrupt practices by the corporate as well as the political parties can be checked. The law relating to financial contributions to political parties focuses on three things: (a) corporate contributions, (b) disclosure of information on corporate donors, and (c) income tax exemptions. For the first time, the law began regulating it through the Companies (Amendment) Act 1960 by including section 293A7 to regulate contributions by companies. The Companies (Amendment) Act 1969 amended section 293A8 so as to ban contributions to political parties and for political purposes, but again amended section 293A9 to permit contributions to political parties and for political purposes. The Taxation Laws (Amendment) Act 1978 included section 13A to the IT Act, exempting the income of political parties through financial contributions and investments from income tax to curb the menace of black money. Through the Election and Other Related Laws (Amendment) Act 2003, sections 80GGB16 and 80GGC17 were inserted in the IT Act, making contributions made to political parties tax-deductible to "incentivise contributions." The Companies Act 2013, section 182, enabled a company to contribute any amount directly or indirectly to any political party, with restrictions on government companies. The Finance Act 2017 made a few changes through section 13A of the Income Tax Act, as follows:

a. The political party was not required to maintain a record of contributions if the contribution was received by electoral bonds.
b. The political party must receive a donation in excess of two thousand rupees only by a cheque, bank draft, electronic clearing system or through an electoral bond. The Electoral Bond Scheme was an attempt to regulate the

13 2024 INSC 113. It was a constitution bench of five judges and the judgement was unanimous. Dr DY Chandrachud and Sanjiv Khanna delivered two opinions, hereinafter referred as as *Electoral bond* judgement.

14 Electoral Bond Scheme, Clause 2(a).

black money issue. "The electoral bond is defined as a bearer banking instrument which does not carry the name of the buyer.[14] It had four fallouts:

a. A new scheme for financial contribution to political parties is introduced in the form of electoral bonds.
b. The political parties need not disclose the contributions received through electoral bonds.
c. Companies are not required to disclose the details of contributions made in any form; and
d. Unlimited corporate funding is permissible.

Maintaining the anonymity of the contributor is a crucial and primary characteristic of the Electoral Bond Scheme. The law mandates the authorized bank to not disclose the information furnished by the buyer except when demanded by a competent court or upon the registration of a criminal case by law enforcement agencies." One of the objections of RBI and Election Commission of India on these changes was that "this would impact the principles of the Prevention of Money Laundering Act 2002" and they suggested certain measures. The Committee of the Central Board apprehended that "The electoral bond may not only be seen as facilitating money laundering but could also be projected (albeit wrongly) as enabling it", and the ECI expressed its unease as it may have "a serious impact on transparency of political finance/funding of political parties." Election Bonds, Amendments to section 29C of the RPA, section 182(3) of the Companies Act and section 13A(b) of the IT Act were challenged as violative of article 14 or 19(1)(a). One of the issues was whether these changes were in pursuance of pure economic policy.

Judicial Review and Economic Policy

The Government of India argued that the legislative regime regarding electoral bonds is a matter of political decisions. It referred to various precedents[15] to convince that, in matters of economic and financial policy, the judiciary must adhere to judicial restraint. In other words, the rule of "go slow" if not "hands off" should be the approach of the judiciary. *R.K. Garg* v. *Union of India,*[16] [*Bearer Bond* case], the same argument was accepted that "the court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved." The constitution bench in *ADR* v. *Union of India*[17] agreed on this proposition but declined to accept that every law termed by the government as a matter of economic

15 *Rustom Cavasjee Cooper* v. *Union of India,* (1970) 1 SCC 248; *R.K Garg* v. *Union of India*, (1981) 4 SCC 675; *Premium Granites* v. *State of Tamil Nadu*, (1994) 2 SCC 691; *Peerless General Finance and Investment Co* v. *RBI*, (1992) 2 SCC 343, BALCO *Employees Union* v. *Union of India*, (2002) 2 SCC 333. *RK Garg* v. *Union of India*, (1981) 4 SCC 675 [8]; See *Balco Employees Union* v. *Union of India*, (2002) 2 SCC 333; *DG of Foreign Trade* v. *Kanak Exports*, (2016) 2 SCC 226

16 (1981) 4 SCC 675. Hereinafter referred to as *RK Garg* or *Bearer Bond.*

17 2024 INSC 113.

policy automatically becomes an economic question. The test is the true nature of the enactment. Dr DY Chandrachud, J, made an analysis of the amendment. He disagreed that the "Bonds were introduced only to curb black money in the electoral process and protect informational privacy of financial contributors to political parties." It was an electoral reform rather than a part of pure economic policy. Sanjiv Khanna, J., also held that "matters of economic policy normally pertain to trade, business and commerce, whereas contributions to political parties relate to the democratic polity, citizens' right to know and accountability in our democracy."

The court referred to *Dharam Dutt* v. *Union of India* and other precedents[18] to appreciate the first principle of presumption of constitutionality. The Presumption of constitutionality can be "rebutted when a prima facie case of violation of a fundamental right is established. The onus then shifts on the State to prove that the violation of the fundamental right is justified." In the *Electoral Bond* case, the constitution bench highlighted the cause-and-effect relationship as under:

> The challenge to the statutory amendments and the Electoral Bond Scheme cannot be adjudicated in isolation without a reference to the actual impact of money on electoral politics. This Court has, in numerous judgments, held that the effect and not the object of the law on fundamental rights and other constitutional provisions must be determined while adjudicating its constitutional validity. The effect of provisions dealing with electoral finance cannot be determined without recognising the influence of money on politics. Therefore, we must bear in mind the nexus between money and electoral democracy while deciding on the issues that are before us in this batch of petitions.

Ultimately, the court declared the law dealing with electoral bonds as violative of article 14, 19(1)(a). In strict terms, it did not serve the purpose of regulating black money and corrupt practices. Indeed, the scheme provided advantages to bigger parties or parties in power. The Government and the Parliament were in a moral dilemma to choose between two evils, and in its political judgement, it has chosen the lesser evil, as it was done in the 1980s.

Sanjiv Khanna, J. has given a new reasoning taking support from international law as under:

> Money laundering can be undertaken in diverse ways. Political contributions for a quid pro quo may amount to money laundering, as defined under the Prevention of Money Laundering Act, 2002. The Financial Action Task Force has observed that the signatory States are required to check money laundering on account of

18 AIR 2004 SC 1295; Also see *Ramlila Maidan Incident, In re*, (2012) 5 SCC 1; *State of Bombay* v. *FN Balsara*, 1951 SCR 682; *Ameerunissa Begum* v. *Mahboob Begum*, 1952 2 SCC 697

> contributions made to political parties.[19] Article 7(3) of the United Nations Convention against Corruption, 2003 mandates the state parties to enhance transparency in the political funding of candidates and parties.[20] The said convention is signed and ratified by India. By ensuring anonymity, the policy ensures that the money laundered on account of quid pro quo or illegal connection escapes the eyes of the public.

Another important part of his reasoning is that the pressure groups exert persuasion to secure selective access to those in power, within the boundaries of law. "However, when money is exchanged as quid pro quo, then the line between persuasion and corruption gets blurred."

***Quid pro quo* corruption, Clientelism and War-chest Corruption**

Sanjiv Khanna, J. has quoted from the High Court of Australia in *Jeffery Raymond McCloy* v. *State of New South Wales*[21], where three types of corruption have been identified. (i) "When a wealthy donor makes a contribution to a political party in return for a benefit, it is described as quid pro quo corruption." (ii) When those in power decide issues not on merits or the desires of their constituencies, but according to the wishes and desires of those who make large contributions, it is 'clientelism' corruption. This is more subtle corruption because a political party is dependent on a wealthy patron. (iii)Warchest corruption arises when a large amount is unleashed to kill political competition, influence voters and "the power of money may also pose a threat to the electoral process itself".

Relying on the doctrine of proportionality, Khanna J. concluded as follows:

> Proviso to section 29C(1) of the Representation of the People Act 1951, section 182(3) of the Companies Act 2013 (as amended by the Finance Act 2017), section 13A(b) of the Income Tax Act 1961 (as amended by the Finance Act 2017), are held to be unconstitutional. Similarly, section 31(3) of the RBI Act 1934, along with the Explanation enacted by the Finance Act 2017, has to be struck down as unconstitutional, as it permits the issuance of Bonds payable to a bearer on demand by such person.

Morality and Constitutional Morality

It is worthwhile to also remember the *RK Garg case,* where the Special Bearer Bonds (Immunities and Exemptions) Act 1981 was under challenge, and the validity was upheld by the constitution bench. The Court observed*:*

> It was then contended that the Act is unconstitutional as it offends against morality by according to dishonest assessees who have

19 Paragraph 3, Section B, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation – The FATF Recommendations, 2012.

20 See also United Nations General Assembly Resolution A/RES/S-32/1, 02.06.2021, para 12.

21 (2015) HCA 34.

> evaded payment of tax, immunities and exemptions which are denied to honest taxpayers. Those who have broken the law and deprived the State of its legitimate dues are given benefits and concessions, placing them at an advantage over those who have observed the law and paid the taxes due from them, and this, according to the petitioners, is clearly immoral and unwarranted by the Constitution.

RK Garg declined to accept the above argument of morality:

> It is necessary to remember that we are concerned here only with the constitutional validity of the Act and not with its morality. Of course, when we say this, we do not wish to suggest that morality can in no case have relevance to the constitutional validity of a legislation. There may be cases where the provisions of a statute may be so reeking with immorality that the legislation can be readily condemned as arbitrary or irrational and hence violative of article 14. But the test in every such case would be not whether the provisions of the statute offend against morality, but whether they are arbitrary and irrational, having regard to all the facts and circumstances of the case. Immorality by itself is not a ground of constitutional challenge, and it obviously cannot be, because morality is essentially a subjective value, except insofar as it may be reflected in any provision of the Constitution or may have crystallised into some well-accepted norm of special behaviour. …The provisions of the Act may thus seem to be putting a premium on dishonesty, and they may not, without some justification, be accused of being tinged with some immorality, but however regrettable or unfortunate it may be, they had to be enacted by the legislature in order to bring out black money in the open and channelise it for productive purposes.

The *Electoral Bond* case has not made any serious reference to the *Bearer Bond* case except a note reference, though both were challenged on the ground of article 14. On the touchstone of moral compass, Bearer Bond was more immoral than Electoral Bond. However, the constitution bench has upheld Bearer Bond*s* in order to choose the lesser evil, while the constitution bench in the Electoral bond declared it unconstitutional.

IV. PREVENTION OF MONEY LAUNDERING ACT, 2002

Arvind Kejriwal v. *Central Bureau of Investigation*

In *Arvind Kejriwal* v. *Central Bureau of Investigation*[22] the legality of the arrest was in question. The accused was arrested for FIR under PCA and PMLA. A more important question was "whether the filing of a chargesheet is a change in circumstances of such a decisive nature that an accused would be liable to be relegated to the Trial Court to make out a case for grant of regular bail?" It was a division bench and two opinions were given. Both granted bail to the accused. Both agreed that in case of circumstances the accused need not go back to the trial court and directly approach the higher court. Suryakant J. held that the arrest is legal while Ujjawal Bhuyan, J. has questioned the timing of the arrest of Arvind Kejriwal. In his own words:

22 2024 INSC 687.

Thus, it is evident that CBI did not feel the need and necessity to arrest the appellant from 17.08.2022 till 26.06.2024, i.e. for over 22 months. It was only after the learned Special Judge granted regular bail to the appellant in the ED case that the CBI activated its machinery and took the appellant into custody. Such action on the part of the CBI raises a serious question mark on the timing of the arrest; rather, on the arrest itself. For 22 months, CBI did not arrest the appellant, but after the learned Special Judge granted regular bail to the appellant in the ED case, CBI sought his custody. In the circumstances, a view may be taken that such an arrest by the CBI was perhaps only to frustrate the bail granted to the appellant in the ED case.

"Evasive reply" by the accused cannot be grounds to justify arrest and detention. A reply does not become evasive just because the version of the accused does not support the State. Article 20(3) guarantees him the fundamental right not to say anything which can be incriminatory. He can remain silent on questions that may be inculpatory in nature. This is applicable even when the person is accused, and no trial has started. The Court has gone to the extent of stating that "No adverse 15 inference can be drawn from the silence of the accused". When the CBI did not arrest the accused for 22 months, it shows there was no need to arrest him for these months. Suddenly, one day, it arrests him; there must be some compelling reasons for exercising this power of arrest, and the power of arrest is not the same as the need for arrest. It was concluded, and rightly so, that the timing of the arrest is suspicious and the need for the arrest lacks clarity. Investigation must not only be fair but must be seen to be fair. From the CBI, there is an expectation like "Caesar's wife".

Ujjawal Bhuyan, J., seems to disagree on the point of legality of arrest, but did not expressly mention it because it was merely academic in nature. He quoted from *Joginder Kumar* v. *State of U.P.*[23], *Sidhartha Vashisht alias Manu Sharma* v. *State (NCT of Delhi)*[24], *Arnesh Kumar* v. *State of Bihar.*[25] One of the difficulties with the fair enforcement of law, like investigation, is that many times the Police or authority exercises its power to please the masters. The arrest of Kejriwal after 22 months indicates the direction that, too, when he was granted bail by a trial court in a different case. Such intentional or negligent wrong has been continuing for a long time. *Joginder Kumar* (1994) is one example. What happened to the erring police officers? Was any action taken? The authority hardly takes action or takes action on a token basis. Had the proportionate action been taken in *Joginder Kumar,* the media must have reported it, and someone must have known about the action taken. To remedy such matters and to arrest such instances of abuse of power under the guise of legal power, the court can be an effective tool. The Supreme Court judges ought to take a little more pains to issue notice to the authority and consider such cases as a continuing mandamus. Had *Joginder*

23 (1994) 4 SCC 260.
24 (2010) 6 SCC 1.
25 (2014) 8 SCC 273.

Kumar v. *State of U.P.,* the Supreme Court took that case to its logical end to see that the guilty police officers are brought to justice, we could have been in a better position after 30 years. If we begin taking it now, the criminal justice system will be in better shape in the next ten years. This will further burden the load of the Supreme Court, but ultimately, justice will be the winner. This will, of course, be governed by the judiciary, but the risk of this criticism is worth taking.

Manish Sisodia* v. *CBI

Manish Sisodia v. *CBI*[26] is a case where an arrest was made under PCA and PMLA. The bail was rejected earlier, and it was mentioned that bail may be asked for again if circumstances change. In such cases, if a chargesheet was filed, a fresh application for bail is moved, should the accused begin from the trial court? The court held as under:

> It could thus be seen that this Court had granted liberty to the appellant to revive his prayer after the filing of the chargesheet. Now, relegating the appellant to again approach the trial court and thereafter the High Court and only thereafter this Court, in our view, would be making him play a game of "Snakes and Ladders". The trial court and the High Court have already taken a view, and in our view, relegating the appellant again to the trial court and the High Court would be an empty formality in a matter pertaining to the life and liberty of a citizen, which is one of the most sacrosanct rights.

The Supreme Court lamented that the courts below are not liberal in granting bail. "Over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of the grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straightforward open and shut cases, this Court is flooded with a huge number of bail petitions, thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that "bail is the rule and jail is the exception".

The trial court's not granting bail is a well-known unwritten rule. This situation may change if the administrative judges of the district, who happen to be high court judges, assure the trial judges that unnecessary action will not be taken against them in case of complaints. They must encourage trial court judges to grant bail. A request may also be sent by the Supreme Court on the administrative side to the high court judges in this regard.

Kalvakuntla Kavitha* v. *Directorate of Enforcement*[27]*: Special Treatment for Women

26 2024 INSC 595.

27 2024 SCC OnLine SC 2269; Delivered by B.R Gavai J.(Division Bench consisting of B.R Gavai & K.V. Viswanathan JJ.)

Section 45 of PMLA has attracted many cases from the Supreme Court, especially on bail. *K Kavitha* has provided the interpretation of the word "women" under the proviso of section 45. section 45 provides the strict twin condition of bail. However, in the first proviso, it gives greater discretion to "women" in granting bail. One of the questions was whether it is correct to interpret the term "woman" as "vulnerable women" only, or if it includes all women, even if they are "rich and famous". The Supreme Court held that no distinction can be made between a woman and a vulnerable woman.

Kalvakuntla Kavitha is also an application of the *Maneesh Sishodia* v. *ED*[28], where it was held that possible long incarceration due to the number of witnesses, evidence, etc, will amount to punishment without trial and violates article 21. "Bail is the rule, and refusal is an exception" is the product of constitutional and criminal jurisprudence.

The Court also distinguished this case from *Saumya Chaurasia* v. *Directorate of Enforcement*.[29] The *Saumya Chaurasia* case was the first case where the proviso to section 45 of PMLA was interpreted. It was held that many educated women are now in business, and therefore, knowingly or unknowingly, they become part of illegal activities like fraud, forgery, corruption, bribery, etc. Therefore, the beneficial provision for women must be interpreted in the light of the seriousness of the offence, involvement of the person, etc. In this case, there was a misrepresentation of facts, for which a cost of Rs 1L was imposed, besides the rejection of bail. However, in *K Kavitha,* the situation was a little different. The court granted bail.

V. Senthil Balaji* v. *ED

V. Senthil Balaji v. *Deputy Director, Directorate of Enforcement*,[30] is a case regarding bail. There are various FIRs between 2015 and 2018, and there are more than 2000 accused. The allegation is that the transport minister [2011-2016], in connivance with his personal assistant and his brother, collected large amounts in lieu of job opportunities [Drivers, Conductors, Junior Tradesmen, Junior Engineers, Assistant Engineers] from several persons in various positions in the Transport Department. The offences alleged in the aforementioned crimes are mainly under sections 120B, 419, 420, 467 and 471 of the Indian Penal Code and sections 7, 12, 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988. section 34 of the Indian Penal Code has been invoked. These offences are scheduled offences within the meaning of section 2(y) of the PMLA. Therefore, relying on the final reports filed in the aforementioned scheduled offences, an offence of money laundering under section 3 of the PMLA, punishable under section 4, the Enforcement Directorate (ED) registered an Enforcement Case Information Report (for short "ECIR") 2021.

28 2024 SCC OnLine SC 1920: 2024 INSC 595.

29 (2024) 6 SCC 401: 2023 INSC 1073.

30 2024 INSC 739.

The accused was in jail for 14 months. Evidence like pen drives, other files in electronic forms, etc, is already in the possession of ED. In predicate offences, 2000 accused, and 600 prosecution witnesses were in the list, showing the trial is not going to conclude in the near future. Unless the trials pertaining to scheduled offences are concluded, the trial under PMLA cannot be decided. Statements of the witnesses under section 50 of the PMLA have already been recorded.

There was material to show a cash deposit of Rs. 1.34 crores in the bank account of Senthil Balaji. Senthil Balaji claimed that this amount was a deposit of remuneration received as MLA and agricultural income. However, there was no *prima facie* evidence to show the existence of this fact. Therefore, at this stage, it will be very difficult to hold that there is no prima facie case against the appellant in the complaint under section 44 (1)(b) of the PMLA and the material relied upon therein.

Senthil Balaji is accused under section 4 of the PMLA. The minimum punishment for an offence punishable under section 4 is imprisonment for three years, which may extend to seven years. If the scheduled offences are under paragraph 2 of Part A of the Schedule in the PMLA, the sentence may extend to 10 years. In the appellant's case, the maximum sentence can be of 7 years as there is no scheduled offence under paragraph 2 of Part A of Schedule II alleged against the appellant.

Fast-forwarding of the trial and dropping the witnesses are inconsequential.

In this case, the number of accused and witnesses is numerous. The sanction of various public servants has also not been obtained. Charges have not been framed for the scheduled offences. Even if the trial of scheduled offences is fast-forwarded, "the process of framing charges may take a few months, as many advocates representing more than 2000 accused persons will have to be heard." More than 600 witnesses will have to be examined. Documentary and electronic evidence are relied upon in the scheduled offences. Even if a few witnesses are dropped, a few hundred witnesses will have to be examined. The presence of all the accused will have to be procured, and their statements under section 313 of the Code of Criminal Procedure,1973, will have to be recorded. Therefore, even in ideal conditions, the possibility of the trial of scheduled offences concluding even within a reasonable time of three to four years appears to be completely ruled out.

Delay is Imminent

Existence of proceeds of crime is a condition precedent for the offence under section 3, for which the condition precedent is a scheduled offence. Trial of the scheduled offence needs to be concluded. Neither scheduled offence nor PMLA offence can be decided in the near future, ie a few years, because of the quantum of evidence.

On Substantive Aspects

The Court also took basic support from the *K.A. Najeeb* case. *K.A. Najeeb's* case[31] has identified the power of the constitutional court to harmonise the statutory

31 *K.A. Najeeb* v. *Union of India* (2021) 3 SCC 713. .

provision of twin conditions with article 21 so that the competing claims of crime control with due process can be addressed. Legislative policy is strict. The bail provisions under many special enactments do not allow an accused of socio-economic crimes or white-collar crimes to be freed from jail even if the trial has not started. The purpose of law is to create terror of law, deterrence of law. In this whole deterrence theory of white-collar crimes, the presumption of innocence is the first casualty. Special laws with special provisions follow the doctrine of "stronger enemy, stronger power. This is justifiable also. However, delay in cases on technical grounds, and chances of abuse of power [by agencies like ED] multiply the problem. Therefore, *K.A. Najeeb* [a case on UAPA 1967] is extended to [*Senthil Balaji- PMLA*]. A substantial part of the punishment is spent in jail. Suppose the punishment is 3 years and the accused has spent 1 year, is it wise and just to keep him in jail, when the trial is not likely to be over in years? Bail in such cases can ensure the constitutional right to a speedy trial. *Manish Sisodia* v. *Directorate of Enforcement* [32] was another precedent that helped the Supreme Court. Here, the Court also held that 17 months' incarceration without trial violates the right to a speedy trial.

Among the old precedents, *Javed Gulam Nabi Shaikh* v. *State of Maharashtra*[33] was also used as a precedent, where the Supreme Court restated that speedy trial is enshrined under article 21 of the Constitution. And "if the State or any prosecuting agency, including the court concerned, has no wherewithal" (resources) to protect this fundamental right of an accused, then they "should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."

It was reminded through various precedents, foreign[34] as well as Indian, that bail is asked or refused not to punish a person but to ensure his presence whenever required. The Court in *Manish Sisodia* acknowledged the problem that

> … it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of the non-grant of bail even in straightforward open and shut cases, this Court is flooded with a huge number of bail petitions, thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognise the principle that "bail is the rule and jail is the exception".

Application of precedential principles

In the *Senthil Balaji* case, there were 493 witnesses, thousands of hard copies, and over a lakh pages of digitised documents. There is no remotest possibility of the conclusion of the trial in the near future. Keeping him inside jail "for an unlimited period of time in the hope of speedy completion of the trial would

32 See, paragraphs 49 to 57.

33 The accused was prosecuted under the Unlawful Activities (Prevention) Act,1967. This case is a comprehensive survey of various cases.

deprive him of his fundamental right to liberty under article 21 of the Constitution. As observed time and again, prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial."

As the purpose of bail is to ensure the presence of the suspect, the Court found that the suspect, Maneesh Sisodia, has "deep roots in society." He is not a flight risk and is not likely to escape the court dates. On the possibility of tampering with the evidence, the Court noted that "the case largely depends on documentary evidence which is already seized by the prosecution." With regard to influencing the witnesses, imposing stringent conditions can address it.

Special Penal statutes (PMLA): Swift, Certain and Harsh

While interpreting PMLA in the light of article 21, the Court was conscious that special statutes like PMLA have a designed purpose. "A higher threshold is provided in these statutes for the grant of bail" because "money laundering poses a serious threat not only to the country's financial system but also to its integrity and sovereignty." The legislature wanted expeditious disposal of trials in these cases to create a sustainable deterrent effect. The Parliament made special provisions to ensure that the trial is swift, conviction is secured, and punishment is certain as the offence is grave. A higher threshold for bail was also to further the interest of expeditious disposal of PMLA cases. "Hence, the requirement of expeditious disposal of cases must be read into these statutes. Inordinate delay in the conclusion of the trial and the higher threshold for the grant of bail cannot go together." It is a well-settled principle of our criminal jurisprudence that 'bail is the rule, and jail is the exception." These stringent provisions regarding the grant of bail, such as section 45(1)(iii) of the PMLA, cannot become a tool that can be used to incarcerate the accused without trial for an unreasonably long time.

The law laid down is that if there is no possibility of trial and conclusion of trial in a couple of years because of peculiar situations like *Senthil Balaji*, he cannot be detained in jail continuously because of the twin conditions of bail under PMLA. The reason is that such detention "will amount to an infringement of his fundamental right under article 21 of the Constitution of India of speedy trial."

The Supreme Court imposed strict conditions of bail. One of the conditions is "if the appellant seeks adjournments on nonexistent or frivolous grounds or creates hurdles in the early disposal of the cases mentioned above, the bail granted to him shall be liable to be cancelled". This condition is not imposed on conventional trials like murder, robbery, etc.

V. PREVENTION OF CORRUPTION ACT, 1988

Privileges: A License for Liberty, not a License for Corruptibility

Articles 105 and 194 of the Constitution protect the right of the legislator to speak or vote inside the legislature without fear or favour. It is "integral to

34 *R* v. *Rose*, (1898) 18 Cox.

deliberative democracy."[35] article 19(1)(a) guarantees free speech of individual citizens, while article 105 or 195 institutionalises free speech because this right is available inside an institution and available to those who have the right to speak or vote only. Whether this institutionalised right protects corrupt practices also in the name of privileges and texts of the constitution? While dealing with political corruption and parliamentary privileges under the constitution, regarding electoral representatives, should the judicial approach be Austinian positivist in nature, or should it follow the realist school to reform the law? An Austinian positivist is one who has hardly any concern for morality in the constitutional jurisprudence but is blind to the command of the sovereign [here, the constitution]. Should the provisions be literally interpreted, though they protect a corrupt person? Or a judge should interpret it in such a manner that the purpose of the law is served in such a way that corrupt practices are checked and nipped in the bud. Through the *PV Narsimha Rao case*[36] [also known as the *JMM Bribery case*], the Austinian positivism dominated the field of the law against corruption for more than two decades. The majority judgment constitutionalised and legitimised bribery and corruption in the garb of privileges. At the policy level, zero tolerance against corruption remained inscribed in theory only for tokenism. The precedent of *PV Narasimha Rao* and the provisions under article 105/194 of the Constitution of India preserved, protected and promoted the corrupt practices of MPs/MLAs. Thankfully, in the *Sita Soren case*[37], a larger bench overruled it to make a new beginning, and the constitutional morality was restored with its vigour and honour.

***Sita Soren* case**

Election for the Rajya Sabha was notified in 2012. Sita Soren was MLA from the Jama constituency, Dumka, Jharkhand. Two businessmen, RK Agrawal and Pankaj Dhoot, allegedly contacted Sita.

Soren to vote for money. (MLAs vote in Rajyasabha elections, article 80). She allegedly accepted the proposal of 'vote for note'. It was also alleged that her people took around two crores for the vote of Sita Soren. On March 30, 2012, voting was done, but Sita Soren did not cast her vote in favour of that businessman candidate. RK Agrawal asked for his money back. She allegedly refused.

CBI registered a case and started an investigation under the Prevention of Corruption Act, 1988. Sita Soren went to the high court, arguing that as an MLA, the legislative privileges protect her from any criminal action for casting votes. Therefore, the case against her should be quashed. In 2014, the High Court refused to quash the case, considering that bribery in respect of voting was not a protected privilege because she did not vote in favour of the businessmen.[38] The high court

35 *Sita Soren* v. *Union of India*, (2024) 5 SCC 629, hereinafter referred to as *Sita Soren*.

36 (1998) 4 SCC 626. It was a split verdict of 3:2, hereinafter referred to as *PV Narsimha Rao*.

37 *Sita Soren* v. *Union of India*, (2024) 5 SCC 629. It was unanimously decided by a constitution bench consisting of seven judges authored by Dhananjaya Y Chandrachud, CJI. Other members were A.S. Bopanna, M.M. Sundresh, Pamidighantam Sri Narasimha, JB Pardiwala, Sanjay Kumar, Manoj Mishra.

relied on the binding precedent of *PV Narsimha Rao* (1998), where it was held by the majority that after taking money if an MP or MLA votes in favour of the bribe giver, it is protected(bizarre logic). If a vote is not given in the legislature, it is not protected. As Sita Soren has not voted in favour of the alleged businessman, her privilege to vote is not protected. Therefore, the criminal case will proceed. Sita Soren appealed before the Supreme Court. This became the "launching point to revisit" the *PV Narsimha Rao* judgement.

Initial Developments in the Supreme Court

In 2014, a division bench of the Supreme Court referred this matter to a larger bench because it was a matter of "substantial and of general public importance". After four years in 2019, a bench of three judges referred this case to another larger bench "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 three judges discovered that the controlling precedent on the issue of parliamentary privileges and criminal prosecution for voting was the *PV Narshimha Rao* case, which was a judgment of the constitution bench, and therefore it has to go to a constitution bench. (Why did the office of registry in the Supreme Court not notice it? Or is it a procedure that the Supreme Court has to follow?) In 2023, after four years in the case of *Sita Soren* v. *Union of India*[39], a five-judge bench noted that the *PV Narsimha Rao* case was also a five-judge bench. Therefore, it referred the case to another larger bench because they have *prima facie* doubts on the reasoning of the majority. The *PV Narsimha Rao* case laid down two things. (1) It unanimously held that an MP/MLA is a public servant. (2) The majority held that parliamentary privileges under article 105 of the Constitution immunise an MP/MLA from criminal prosecution for bribery offences if a vote is cast in the Parliament. The reference bench of five judges in *Sita Soren* did not agree on the interpretation of article 105. They advised that the "text, context and the object and purpose of article 105 is not to provide immunity to the corrupt and criminal practices of bribery. Such criminal conduct is independent of the rights and duties of the legislator. *Secondly,* there is an anomaly in the impact of the judgment because those who take bribes and vote are protected, while those who take bribes but do not vote are not protected. The constituent assembly never intended to make this distinction. Agrawal, a minority judge in *the PV Narsimha Rao* case, has held that to avoid this anomaly, "in respect of" in article 105(2) ought to be construed to mean 'arising out of'. There are two offences. *One,* the alleged offence of conspiracy was complete the moment there was any agreement to commit an offence[to offer a bribe]. Two, the alleged bribe was given, and it was accepted by MPs. The offence of bribery was also complete. After this, a bribe-taker MP gives a vote as promised, and another MP does not give a vote as promised. If this author analyses it, the offence of a bribe is a conduct offence, and no consequence is essential. Once A1 takes a bribe or even agrees to take a bribe, the mere conduct of taking a

38 2014 SCC OnLine Jhar 302.

39 2023 SCC OnLine SC 1217.

bribe is an offence. Taking bribes is the *actus reus.* The offence is complete here. A1 further does something in pursuance of a bribe or not is an essential element of the offence. The judicial interpretation goes like this: a vote in pursuance of a bribe protects the bribe taker and makes him immune to criminal investigation. On the other hand, if the bribe taker does not give a vote in pursuance of the promise, he shall be prosecuted. This interpretation of the *PV Narasimha Rao case* made the offence a consequence offence only and not a conduct offence. The criminal jurisprudence was reversed by this case. "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 was the *third* reason. The majority in the *PV Narasimha Rao case* has not addressed this argument of Agarwal, J. Therefore, the five judges recommended it to seven judges. Seven Judges in *Sita Soren* unanimously overruled the majority in the *PV Narasimha Rao* case and restored the minority opinion. DY Chandrachud, J., in the lead opinion, held that parliamentary privileges under article 105 or 194 cannot immunise criminal conduct because parliamentary privileges only conceive that conduct which is *necessary* for the joint functioning of the legislature. 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.

The Law Laid Down

The law laid down in *Sita Soren* can be summarised as follows:

The issue before the Court was "Would a legislator who receives a bribe to cast a vote in a certain direction or speak about certain issues be protected by parliamentary privilege?"

1. Parliamentary privileges are not absolute or independent and do not protect corrupt practices at all.
2. Only those conduct that are necessary for the fearless and joint functioning of the legislature can be treated as privileges and not others.
3. 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" 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 or vote given.
4. Legal proceedings in the court for prosecution under the PCA, as well as proceedings in the legislature, can go concurrently. Both exist in distinct spheres. The court exercises jurisdiction in relation to a criminal offence, and the House exercises authority to discipline its members.
5. *PV Narsimha Rao* is overruled.

The combo of Necessity and Functionality theory

Sita Soren, therefore, holds 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." The purpose of privileges is well known; they can freely discharge their *function* in the legislature as legislators. Article 105/194 creates functional relationships. Something which is essential to their function, like the right to protest. This combo of essentiality and functionality is decisive. Article 105 does not give the legislator a special status. 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. The essential function of the house is to deliberate on Bills, debate on issues, give a vote or abstain from it. "Other exercises, such as damaging public property or committing violence, are not and cannot be deemed to have immunity."

The majority in *PV Narasimha Rao* ignored the theory of the necessity of collective function. *Sita Soren* did not propound it the first time. Twenty-one years before *PV Narasimha Rao,* a seven-judge bench in *State of Karnataka* v. *Union of India,*[40] speaking through MH Beg, CJ, observed that the word 'power' used under article 194 [legislative privileges] is not independent. They "depend upon and are necessary for the conduct of the business of each House." They cannot be equated with the powers of the House of Commons in England, unlike in England, where the sovereignty lies in the Constitution. Therefore, they are also dependent upon the constitution.

The Supreme Court has quoted from professional opinion about the "privileges", where Kaul and Shakdher observe that:[41]

> They apply to individual members "only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects". They propounded the interest theory, ie does the immunity serve the interest of the Parliament?

The constitution does not consider a legislator as a special category of citizen. Indeed, an MP/MLA has obligations to be accountable to his voters outside and in the house. This special duty grants him special rights. This cannot be extended beyond this. This is possible only if the necessity and functionality test is honoured as a rule of law and not only as a rule of prudence.

Prior to that, way back in 1970, a six-judge bench in Tej Kiran Jain v. N Sanjeeva Reddy held that "article 105(2) confers immunity in respect of 'anything said' so long as it is 'in Parliament." The first necessity was the geographical limitation that privilege is available only if the conduct is inside the Parliament. Despite this precedent, *PV Narasimha Rao* held that the privilege can be granted to conduct outside the Parliament. It is relevant because the offer of bribery by an MP/MLA was made outside the Parliament. The offer was accepted by the MP/

40 (1977) 4 SCC 608, para 63.

41 MN Kaul and SL Shakdher, *Practice and Procedure of Parliament*, 229, Lok Sabha Secretariat, Metropolitan Book Co. Pvt. Ltd., 7th ed.

MLA outside the Parliament. Offer and acceptance constitute an agreement to do something illegal, ie conspiracy, which was committed outside the Parliament. The bribe was also paid outside the Parliament. But the vote was given or not given inside the Parliament. In the case of *PV Narasimha Rao,* the bribe was given outside the Parliament, but the conduct of the vote transaction was inside the Parliament. In the *Tej Kiran Jain* case, a Shankaracharya made remarks regarding untouchability being in harmony with Hinduism. In the Lok Sabha, his statement and conduct were criticised severely. The followers of Shankaracharya sued them for 26000/ damages. They argued that the speech in Parliament regarding Shankaracharya was irrelevant and unrelated. The Supreme Court held that the word 'anything' under article 105 is of the widest import and is equivalent to "everything", and it was in the Parliament. The Court cannot intervene.

Sita Soren also identified that the necessity test "has struck deep roots" in India. Therefore, there is no need to "explore the well-established jurisprudence" in other jurisdictions. A conduct which is necessary for the orderly functioning of the House is a necessity test. The burden of proof that privilege exists and "that it is necessary for the House to collectively discharge its function lies with the person or body claiming the privilege."

Unprincipled conduct

Necessity and Functionality test under article 105 includes everything essential for the legislature to function without fear or favour. However, illegality or something that goes against the values or principles of democracy cannot be immune or covered by privileges. A constitution bench in *Kihoto Hollohan* v. *Zachillhu*[42] opined the same about article 105. The validity of the Constitution (Fifty Second Amendment) Act 1985, which introduced the Tenth Schedule to the Indian Constitution, was challenged. One of the grounds was that the MP/MLAs have freedom of speech, the right to dissent and freedom of conscience inside the legislature. Therefore, s/he has the freedom to choose his party and go against the direction of his own party while speaking and voting. In other words, the right to commit defection is a privilege under section 105. The constitution bench held that article 105(2) is not violated and wondered how "105(2) is a source of immunity from the consequences of unprincipled floor-crossing."

Conduct with criminality

Sita Soren uses the doctrine of precedents to support its findings. There were various precedents which held contrary [if not contrary, inconsistent] to the *ratio decidendi* of *PV Narasimha Rao*.

MH Beg, CJ in *State of Karnataka* v. *Union of India*[43] observed as under:

> But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, *the jurisdiction to try a criminal offence,*

42 1992 Supp (2) SCC 651.

43 (1977) 4 SCC 608, para 63.

> *such as murder, committed even within a House, vests* in ordinary criminal courts and not in a House of Parliament or in a State Legislature. […]" (emphasis supplied)

Lokayukta, Justice Ripusudan Dayal v. *State of MP*,[44] was another case that identifies that a privilege must be necessary for free functioning. An absolute exemption from criminal law is not necessary for such functioning, and therefore, members of the House cannot claim exemption from the application of ordinary criminal law. The Lokayukt Act and the Prevention of Corruption Act, 1988, were applicable to all, and privileges do not extend to the activities undertaken outside the House, on which the legislative provisions would apply without any differentiation.

State of Kerala v. *K. Ajith*[45] 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. The MLAs who committed violence and damaged property inside the Legislative Assembly in 2015 can be prosecuted. The government wanted to withdraw the prosecution on the grounds of privilege. In cases like *Kuldip Nayar* v. *Union of India*[46], *Raja Ram Pal* v. *Hon'ble Speaker, Lok Sabha*,[47] and *Amarinder Singh* v. *Punjab Vidhan Sabha*[48], doubts on the reasoning of *PV Narasimha Rao* were raised. *Kalpana Mehta* v. *Union of India*,[49] the constitution bench flagged its doubts on the *PV Narasimha Rao* case but left the matter open for an appropriate bench.

Jurisdiction of the House vis-à-vis the court: distinction with difference

Sita Soren has addressed the argument that the jurisdiction of the legislative house prevails over the court because the nature of privilege excludes the jurisdiction of the court. The article 194(2) expressly excludes it.[50] It was argued that the house has the power to punish the wrongdoer. Therefore, the purpose of criminal punishment is also served.

It is correct that the transaction of a bribe by an MP/MLA is taken care of under the jurisdiction of the contempt of the house. The House Committee on Privileges takes action, and the wrong conduct is not remedyless. The Court addressed this issue with clarity. The transaction of a bribe by an MP or MLA attracts two different areas of jurisprudence. Under constitutional jurisprudence, it hits the dignity of the house for which the legislature is empowered to take

44 (2014) 4 SCC 473. It was decided by a full bench.

45 (2021) SCC OnLine 510, *per se* DY Chandrachud, J.

46 (2006) 7 SCC 1.

47 (2007) 3 SCC 184.

48 (2010) 6 SCC 113.

49 (2018) 7 SCC 1.

50 Article 105(2) No member of Parliament [the Legislature of a State under article 194(2)] shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament[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 House of Parliament[of a House of such a Legislature] of any report, paper, votes or proceedings.

action. Under criminal jurisprudence, the conduct violates a law made by the State that too, a special enactment, ie PCA. The former cannot substitute the other because both have different purposes and consequences. The jurisdiction of the House cannot exclude that of the criminal court for prosecuting an offence. The Court observed:

> A member engaging in bribery commits a crime that is unrelated to their ability to vote or to make a decision on their vote. This action may bring indignity to the House of Parliament or the Legislature and may also attract prosecution. What it does not attract is the immunity given to the essential and necessary functions of a member of Parliament or the Legislature.

SC Agrawal, J, in *PV Narsimha Rao,* also provided his reasoning, which can be summarised as under:

> An MP/MLA engaged in a bribery transaction can be punished by the House for contempt. The House of Commons could convict but had no power to impose a fine. "The power of committal cannot exceed the duration of the session, and the person, if not sooner discharged by the House, is immediately released from confinement on prorogation.[51] The Salmon Commission has stated that "whilst the theoretical power of the House to commit a person into custody undoubtedly exists, nobody has been committed to prison for contempt of Parliament for a hundred years or so, and it is most unlikely that Parliament would use this power in modern conditions". Also, they do not have investigative machinery like the Police.

Therefore, prosecution for bribery is not excluded from the jurisdiction of the criminal court merely because it may also be treated by the House as contempt or a breach of its privilege.

The majority in *the PV Narasimha Rao* case has not addressed whether the offence of bribery or its promise is an independent offence, or whether it is dependent on the vote given/not given. The minority judgment has discussed it threadbare. *Sita Soren* discusses it further. Section 7 of PCA, be it before 2017, or after 2017, the offence is completed the moment the public servant agrees to accept or demands a bribe. Nothing more is required. It is a criminal offence. As "the delivery of results is irrelevant to the offence of bribery," the distinction made in *PV Narasimha Rao* is artificial.

The PCA does not need the completion of the alleged promise in lieu of bribery, and a mere promise is enough to attract PCA. *Chaturdas Bhagwandas Patel* v. *State of Gujarat*[52] is a decisive verdict where it was held that the demand of a bribe by a public servant in the false fear of a fake abduction case is sufficient to convict a constable. The court in *Sita Soren* also took support from *Neeraj*

51 See: *May's Parliamentary Practice*, 21st Edn., pp. 103, 109 and 111.

52 (1976) 3 SCC 46.

Dutta v. *State (NCT of Delhi)*[53], where a Constitution Bench identified the ingredient of section 7 of PCA. Chandruchud, J, rightly concluded that "the actual 'doing or forbearing to do' the official act is not a constituent part of the offence. All that is required is that the illegal gratification should be obtained as a 'motive or reward' for such an action or omission – whether it is carried out or not is irrelevant."

Bribe transaction inside the legislature and privileges

In *Tej Kiran Jain,* it was held that privileges are available for conduct inside the Parliament. The Court in *Sita Soren* posed a hypothetical question: "What happens in a situation when the bribe is exchanged within the precincts of the legislature? Would the offence now fall within the ambit of parliamentary privilege?" The Court considered this question to be ill-conceived and answered:

> When this Court holds that the offence of bribery is complete on the acceptance or attempt to accept undue advantage and is not dependent on the speech or vote, it automatically pushes the offence outside the ambit of articles 105(2) and 194(2). This is not because the acceptance of undue advantage happened outside the legislature, but because the offence is independent of the "vote or speech" protected by articles 105(2) and 194(2). The remit of parliamentary privilege is intricately linked to the nexus of the act to the 'vote' or 'speech' and the transaction of parliamentary business.

The dual test of essentiality as well as functionality is decisive. Is a bribe transaction inside the legislature essential to exercise the legislative function? Is this a part of the joint function of the legislature? The answer is a strong negative.

Global Scenario

The constitutional jurisprudence on privileges is well settled and correctly explained in the minority judgement of SC Agrawal, J, in the *PV Narsimha Rao* case. Chandrachud J., in *Sita Soren,* also referred the foreign jurisdictions to examine the parliamentary privileges and corrupt practices because the majority in the *PV Narsimha Rao* case has relied upon foreign precedents.

UK

In the UK, he traced the history of privileges from the 17th century to developments in the 20th century. In *R* v. *Greenway*,[54] Buckley, J held that:

> That a member of Parliament against whom there is a *prima facie* case of corruption should be immune from prosecution in the courts of law is, to my mind, an unacceptable proposition at the present time. I do not believe it to be the law.

The Law Commission of the UK in 1998 recommended a new law that makes the offence of corruption applicable to all. Therefore, the Bribery Act 2010 was passed to cover "instances where members of Parliament engage in corruption."

53 (2023) 4 SCC 731.

54 [1998] PL 357, referred to as *R* v *Currie* in *PV Narasimha Rao*.

With the help of various case laws[55] of the UK, the Court in *Sita Soren* concluded that the privileges given in the UK were gradually narrowed in comparison to earlier cases. Non-legislative activities could be immunised only if there is a narrow nexus. Therefore, the jurisdiction of the court in the UK is not ousted by the immunity of members.

USA

Sita Soren has referred to section 6 of article 1 in the Constitution, which deals with privileges. It is often called the Speech and Debate Clause. Courts have held that a member of Congress may be liable under a criminal statute of general application. *United States* v. *Thomas F Johnson*[56] propounded the principle that "the prosecution may make a case without relying on the speech given by the Congressman". It was applied and further developed in *United States* v. *Brewster* bribery[57] which observed that "the shield does not extend beyond what is necessary to preserve the integrity of the legislative process by members of Congress to hold that they may be prosecuted so long as they do not rely on a speech or vote given by the legislator." It further held that the privilege is "narrow enough to guard against the excesses of those who would corrupt the process by corrupting its members." Chandrachud J., summarised the legal position as under:

> The US Supreme Court, therefore, opined that the privileges exercised by members of Congress individually were to preserve the independence of the legislature. The independence was exactly what would be compromised if the Speech and Debate Clause were to be understood as providing immunity to acts of bribery by members of Congress. Therefore, immunity under the Constitution is only attracted to actions that are clearly a part of the legislative process.

Brewster was very clear on corrupt practices by the legislature:

> 63. Taking a bribe is, obviously, no part of the legislative process or function; it is not a legislative act. It is not, by any conceivable interpretation, an act performed as a part of or even incidental to the role of a legislator. It is not an 'act resulting from the nature, and in the execution, of the office.' Nor is it a 'thing said or done by him, as a representative, in the exercise of the functions of that office…When a bribe is taken, it does not matter whether the promise for which the bribe was given was for the performance of a legislative act, as here or, as in Johnson, for use of a Congressman's influence with the Executive Branch…

It further observed:

> To make a prima facie case under this indictment, the Government need not show any act of the appellee subsequent to the corrupt

55 *R* v. *Chaytor,* [2010] 3 WLR 1707. *Makudi* v. *Baron Triesman of Trottenham*, [2014] QB 839.

56 383 US 169 (1966).

57 408 US 501 (1972).

> promise for payment, for it is taking the bribe, not performance of the illicit compact, that is a criminal act. If, for example, there were undisputed evidence that a Member took a bribe in exchange for an agreement to vote for a given bill and if there were also undisputed evidence that he, in fact, voted against the bill, can it be thought that this alters the nature of the bribery or removes it from the area of wrongdoing the Congress sought to make a crime? …The Speech or Debate Clause does not prohibit inquiry into illegal conduct simply because it has some nexus to legislative functions.

Gavel v. *United States*,[58] *United States* v. *Helstoski*,[59] cases also lead to one inference that the immunity is not absolute and a legislator is "not immune for engaging in bribery to perform legislative acts in terms of speech or vote".

While *PV Narasimha Rao*[60] has referred *to Johnson* (supra) and the dissenting opinion in *Brewster* (supra), Dr Chandrachud J. has identified four serious lacunae in the majority judgment. One, it has not taken note of the legal position that immunity is available for speech and votes made in parliament. Two, it is not "informed by the evolution of law in a line of cases in the United States". Three, it has "relied solely on the dissenting opinion in Brewster (supra) without adequate substantiation for such reliance." Four, "majority judgment has extended its interpretation of the Speech and Debate Clause and pigeon-holed the interpretation of article 105(2) to satisfy this understanding."

Canada

In *Sita Soren,* the Supreme Court has taken note of a century-old case of Canada. *R* v. *Bunting et al. "*conclusively held that the offence of bribery and conspiracy to bribe members of the legislature fell within the jurisdiction of the court and such an inquiry would not encroach on parliamentary privilege". Minority judgment in *PV Narasimha Rao* has discussed *Bunting* in detail. The majority judgment, though it refers to it, chose not to rely on it without assigning any reason.

The "necessity" test propounds whether the conduct under question is necessary to perform the assembly's constitutional role. Is the dismissal of an employee of the legislature by the Speaker immune from judicial review because of privileges? Yes, is it a necessary function for the legislature? No, if that is not a necessary function of the legislature. Legislature deliberates on issues, discusses, disagrees, protests, votes, abstains, makes laws, or refuses to do so. The appointment and dismissal are not essential to legislative function. No privilege can be claimed. It can be judicially reviewed. In Australia, the Supreme Court of New South Wales in *R* v. *Edward White*[61] held that "an attempt to bribe a member of the legislature to influence their votes constitutes a criminal offence under

58 408 US 606 (1972).

59 442 US 477 (1979).

60 (1998) 4 SCC 626.

61 13 SCR (NSW) 332: (1875) 13 SCR (NSW) 322.

common law". In *Obeid* v. *Queen*[62], it was held that the court can have concurrent jurisdiction with the Parliament in respect of criminal matters.

In *PV Narasimha Rao,* the majority does not refer to the precedents from Australia, while the minority refers to White (supra) and Boston (supra).

It was also clarified that voting for elections to the Rajya Sabha falls within the ambit of article 194(2).

Rules of precedents

Another feature of *Sita Soren* is the well-established doctrine of precedent. A decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength. A Bench of lesser strength cannot disagree with or dissent from the view of the law taken by a bench of larger strength. However, a bench of the same strength can question the correctness of a decision rendered by a coordinate bench. In such situations, the case is placed before a bench of larger strength.[63] Though it has been held many times, a seven-judge bench, that too, unanimous, creates a different decisive value for the judges for future disputes.

P6 is restored

The original intent in the constituent assembly suggests that the concern for parliamentary privileges never extended to blanket immunity like "legislator can do no wrong" if s/he votes, even if by corrupt practices. It was closely connected to legislative responsibilities.

The offence of bribery is independent of the promise of a vote. "In respect of" when literally interpreted, makes it dependent on the vote given or not given. It makes the promise, acceptance of bribery and the vote given as one transaction. On the other hand, "arising out of" does not make it dependent. "In respect of" criminalises one part only, but "arising out of" criminalises both parts, whether a vote is given or not given. *PV Narsimha Rao* decriminalised corrupt practices by the legislators. *Sita Soren* has criminalised the conduct. Such criminalisation is not just good for society but is essential for the rule of law and democracy. If immunity is granted from criminal prosecution in the name of privileges, taking resort to "in respect of" in the literal sense, it will place an MP/MLA above the law. It will violate the rule of law, which is a part of the basic structure.

However, the majority in *PV Narasimha Rao* has not considered this significant point. The offence of bribery may contain the *actus reus* of a promise to pay a bribe, an agreement for the transaction, actual payment of a bribe, and fulfilment of the promise against a bribe. It contains the *actus reus of* expression, agreement, conduct and consequence. The offence is committed at the very first stage and the second stage. The third *actus reus,* ie conduct of accepting or paying a bribe, is not an essential element of the offence. *PV Narasimha Rao* has

62 [2017] NSWCCA 221. *Chaytor,* a UK precedent was followed.

63 *Central Board of Dawoodi Bohra Community* v. *State of Maharashtra*, (2005) 2 SCC 673, para 12.

neither appreciated the element of offence correctly nor paid any attention to the minority verdict, nor has he discussed the minority verdict. This was an abdication of judicial duty.

The interpretation by the majority was an incentive to wrong and criminal conduct. Such interpretation was against three norms, original intent, text of article 105 or 194 and the purpose of parliamentary privileges. From the above discussion, it can be concluded that *PV Narasimha Rao* was against the principles, provisions, precedents, policy, professional opinion and practices in other jurisdictions. It can be termed as the rule of P6. *Sita Soren* has rejuvenated the rule of P6.

VI. DOWRY DEATH: SECTION 304B

Shoor Singh* v. *State of Uttarakhand [64]

This case is significant for its facts as well as for the clarification of criminal jurisprudence. Dowry death case under section 304b of IPC is one of the applications or illustrations of "shall presumption".[65] There is a popular misconception that the reverse onus under this presumption is a presumption of guilt and not a presumption of innocence. It is often argued with a degree of confidence and criticism that the presumption of innocence is not applicable in cases of "shall presumption". It further misled the inference that the accused has to establish his innocence right from the beginning, and the prosecution has hardly anything to establish. The Court rightly explains as under:

When all the above ingredients of 'dowry death' are proved, the presumption under section 113-B of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under section 113-B is not in respect of the commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of the commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond a reasonable doubt by the ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death', the burden is on the prosecution.

Presumption of innocence vis-à-vis presumption of Guilt

If the words of Manoj Misra, J., in this case are further dilated, this author may explain the criminal jurisprudence in the case of the offence of dowry death as under:

a. In the case of section 304B, too, the doctrine of presumption of innocence is applicable. The accused of dowry death is innocent until proven guilty beyond a reasonable doubt by the prosecution.

64 2024 INSC 713. The case was heard by the division bench of the Supreme court comprising Sh. J.B Pardiwala and Sh. Manoj Mishra, JJ. and was authored by Sh. Manoj Mishra,J. and was pronounced on 20th September,2024.

65 Section 80 of the Bharatiya Nyaya Sanhita, 2023.

b. When an accused of dowry death is brought before a court, there is no presumption of guilt. It is a misnomer. On the contrary, the court is obliged to presume him innocent. The elements of section 304B have to be established by the prosecution first, like in a murder case. The elements of both [dowry death and murder] are different.

c. The standard of proof is beyond a reasonable doubt for the prosecution. Unless the prosecution is able to establish it, the accused is still innocent, and there is no concept of presumption of guilt at this stage.

d. Once the prosecution establishes all elements of section 304B beyond a reasonable doubt, only then is the presumption of innocence shattered, and the presumption of guilt comes into play.

e. Now the accused has the responsibility to defend himself. This he can do by two means —

   i. By proving himself innocent or

   ii. By raising doubts in the story of the prosecution

f. If the accused proves himself innocent, the acquittal is honourable.

g. If he is successful in raising doubts in the story of prosecution, he gets an acquittal for want of evidence beyond a reasonable doubt.

h. If the accused cannot do either of the things above, the court presumes him guilty, and his conviction is confirmed.

Another feature of this case is the fact that hearsay evidence can be relevant. The parents of D1, the daughter, depose that their daughter told them about the demand for dowry and the threat of death if the demands are not met. The daughter's statement is hearsay as she is no longer. However, it cannot be hit by the rule against hearsay evidence because it is related to one of the circumstances of the transaction resulting in their daughter's unnatural death. [Dying Declaration] But the Court cautioned that a distinction must be drawn between the admissibility and acceptability of a piece of evidence. "Merely because a piece of evidence is admissible does not mean that it must be accepted. Before accepting the evidence to hold that the fact in issue stands proved beyond a reasonable doubt, the Court must evaluate the same against the weight of surrounding circumstances and other facts proven on record."

In this case, the daughter died in the matrimonial home. The parents complained that she was threatened multiple times for dowry; however, they took it as a joke. The Court was surprised how a parent could take it as a joke if it was repeated multiple times. The allegation was also against a relative of the accused who was a doctor and was staying in another village. The statement in the FIR and in court did not match. There was no evidence of cruelty. The prosecution could

not prove that the accused were present at the crime scene. There was a possibility of the mental instability of the bride because she was not able to stay with her husband, and some pictures of her with another person also disturbed her. These facts raised reasonable doubts in the story of the prosecution, and the accused were acquitted. What is surprising is that another accused who was convicted by the high court did not appeal to the Supreme Court, as he had already served his sentence.

Delay issue

Justice delayed is justice denied. This case shows extreme delay in the disposal of a case at the level of the Supreme Court. The F.I.R. was lodged in 2007, and the trial court disposed of the matter within three years, i.e. in 2010. The appeal to the High Court was made in 2010 and was finally disposed of in 2012. In fact, it was heard only in 2012. Thereafter, an appeal was filed in the Supreme Court in 2012, and it was disposed of in 2024.[66] The Supreme Court took 12 years to decide it. Such delays need to be reduced.

VII. CONCLUDING REMARKS

For the purpose of section 45 of PMLA, *Kalvakuntla Kavitha* refused to interpret women as vulnerable women only. In the opinion of this author, even if an accused is a highly resourceful woman, she can be treated differently because the law considers all women as a distinct group. The interpretation is literal in nature. To consider an adjective like "vulnerable" will lead to the amendment of section 45, which ought to be resorted to only if it is essential. A resourceful woman may also be a mother whose love for children is irreplaceable. She may be a daughter or daughter-in-law whose care the elderly parents or in-laws desperately deserve. And as a wife, the company of a husband may be essential. Article 19(1)(c) guarantees every citizen the fundamental right "to form associations or unions". To associate with family members is also a fundamental right.

Senthil Balaji identifies two exceptions to the rule of undue delay. (i)If the delay is attributed to the accused himself, "the Constitutional Courts can always decline to exercise jurisdiction to issue prerogative writs." (ii) The antecedents of the accused are such that, "there is every possibility of the accused on bail becoming a real threat to society if enlarged on bail. If bail under section 45 is not interpreted in the light of article 21 in case of a clean acquittal, crucial years in the life of the accused are lost. The Court suggests that in case of a clean acquittal, it "may amount to a violation of the rights of the accused under article 21 of the Constitution, which may give rise to a claim for compensation."

From 20th 20th-century *Bearer Bond* to the 21st-century *Electoral Bond,* it is a full circle. Arguments of morality in *Bearer Bond* were expressly rejected, while in *Electoral Bond,* it was implicitly accepted. The *Bearer Bond* was more positivist because it did not consider morality as a basis of law. The change in approach may

66 The author is thankful to Ms. Shivani Bhardwaj, LL.M 3 Years (1st Semester), University of Delhi for her help on this aspect.

be because of the development of the doctrine of arbitrariness to declare an enactment as unconstitutional, greater reliance on constitutional morality [though this is not discussed at all in the judgment] and also because of a more mature democracy. *RK Garg* [*Bearer Bond*] came in 1980 when our republic was 30 years old, and the State was unable to unearth black money. In 2024, when the *ADR* [*Electoral Bond*] came, the republic was 75 years old. The government cannot keep on arguing that it is inequipped to deal with the menace of black money when it has laws like PCA, PMLA, etc and enforcement machinery like more empowered CBI, ED, etc. The judgment was a setback for the government and the majority in the Parliament, but it is a reminder that shortcut methods cannot make a democracy great.

Sita Soren has overruled *PV Narasimha Rao,* which was a wrong judgment right from the beginning. Parliamentary privilege does not protect corrupt practices. *PV Narasimha Rao* had a "rotten foundation". The executive [PM and other ministers], the lawmakers and the Judiciary became party to the corruption. Various distinguished experts have criticised the judgment. Annual Survey of Indian Law has correctly highlighted that "Be that as it may, the majority decision which selectively bails out the bribe-taker from the criminal legal process on a bizarre distinction requires to be reviewed and it is to be regretted that the Supreme Court has rejected the request of the Union Government for such a review on the debatable ground of inordinate delay."[67] A grave danger to constitutional morality and probity in public life continued to perpetuate between 1998 and 2024. *Sita Soren* has corrected the blunder.

The *Shoor Singh* case clarifies the difference between the presumption of innocence and the presumption of guilt. There is a confusion that in the cases of socio-economic crimes, the "shall presumption" means presumption of guilt, and presumption of innocence is not applicable in dowry death cases. This is a misconception. In socio-economic crimes like PCA, PMLA, dowry death, NDPSA, there are presumption clauses. However, that does not mean the presumption of innocence is not to be followed. The foundational facts [elements to be established before presumption comes to play] have to be proved beyond a reasonable doubt.

67 A. Lakshminath, "Constitutional Law II," *Annual Survey of Indian Law*, 199, vol 33-34, 1997-98, ILI.