PARLIAMENTARY PRIVILEGE IN INDIAN CONSTITUTIONAL LAW: M.S.M. SHARMA (1959) AND P.V. NARASIMHA RAO (1998)

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ABSTRACT

This article traces the profound transformation of parliamentary privilege in Indian constitutional law by explaining the Supreme Court's landmark decisions in '*M.S.M. Sharma v. Sri Krishna Sinha* (1959) and *P.V. Narasimha Rao v. State* (1998)'. For decades following the Sharma judgment, legislative privilege under Articles 105 and 194 operated as a supreme constitutional exception, an automatic, self-executing shield that actively eclipsed ordinary fundamental rights and insulated lawmakers from judicial scrutiny. However, the Narasimha Rao bribery scandal forced a critical re-evaluation of this absolute immunity.

This paper argues that while Narasimha Rao formally honors the rhetoric of Sharma regarding unfettered parliamentary speech, it subtly but fundamentally dismantles its core holding. Through detailed case analysis, the article demonstrates how the Court downgraded privilege from an 'automatic constitutional bar' to a 'mere procedural defense' that must be explicitly pleaded and proven by an accused legislator in a criminal trial. Ultimately, this doctrinal pivot represents a vital evolution in Indian jurisprudence, it preserves the necessary freedom of legislative debate while firmly establishing that parliamentary immunity is no longer a 'carte blanche' to bypass the rule of law.

Introduction:

Parliamentary privilege in India - particularly the immunity of legislators for things said and done in the House - has long been contentious when it intersects with fundamental rights and criminal law. This paper examines two landmark Supreme Court cases, *Pandit M.S.M. Sharma v. Sri Krishna Sinha* (1959)[1] and *P.V. Narasimha Rao v. State (CBI/SPE)* (1998)[2], which together define the scope of Article 105(2) and 105(3) of the Constitution.

The core thesis is that the 1998 Narasimha Rao decision purports to follow M.S.M. Sharma in language and rationale but in effect overrules its key holding.

In M.S.M. Sharma, the Court treated legislative privileges as a special constitutional carve-out, an "exception" to ordinary rights, where as In *P.V. Narasimha Rao*, the Court reframed privilege as only a procedural "defense" to prosecution, limiting immunity and effectively undoing the breadth of *Sharma*.

We analyze both majority and dissenting judgments, focusing on Articles 194(3) and 105(2–3), and trace the evolution of the **"exception vs. defense"** concept. Finally, we consider the impact of this shift on parliamentary accountability and separation of powers.

Constitutional Framework of Parliamentary Privilege:

The Constitution grants MPs and State legislators extensive immunities to secure free speech in the Legislature. Article 105(1) guarantees MPs "freedom of speech in Parliament," while Article 105(2) provides that "no member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament." Clause (3) empowers Parliament to define its privileges by law and, until then, preserves the privileges of the UK House of Commons at the commencement of the Constitution. Article 194(2–3) contain parallel provisions for State legislatures.

Hence, Article 105(2)/194(2) grant **absolute immunity from legal proceedings for speeches and votes**, while 105(3)/194(3) preserve the residuum of British privileges. For example: Excluding strangers, controlling publication of debates, punishing contempts. Etc. The

[1] *Pandit MSM Sharma v Sri Krishna Sinha AIR 1959 SC 395.*
[2] PV Narasimha Rao v State (CBI/SPE) (1998) 4 SCC 626.

difficulty has been reconciling these privileges with Article 19(1)(a) (free speech) and with the ordinary criminal law.

In M.S.M. Sharma, the issue was whether a journalist's fundamental right to publish a legislative debate could override a State Assembly's claim of privilege under Article 194(3).

In *Narasimha Rao*, the issue was whether MPs could claim privilege to avoid prosecution for bribery in connection with votes. Both cases hinge on how privilege functions, "as an exception to other laws or as a defense at trial".

M.S.M. Sharma v. Sri Krishna Sinha (1959):

Facts and Issues:

M.S.M. Pandit Sharma involved an editor who published verbatim a speech in the Bihar Legislative Assembly, including portions the Speaker had ordered expunged as a breach of privilege. The Assembly summoned Sharma to answer for contempt, and he challenged this under Article 32, invoking his right to free speech under Article 19(1)(a).

The questions were:

a) Whether Article 194(3) (state-assembly privileges) included the power to prohibit publication of its proceedings? and

b) If so, whether that power was subject to the citizen's fundamental right of free speech. In essence, did Article 194(3) create an "exception" to Article 19(1)(a)?

Majority Opinion (Das, C.J. and Bhagwati, J. etc.):

The majority held that the constitutional scheme treated parliamentary privilege as independent of and superior to ordinary fundamental rights. Since Article 194(2) grants absolute immunity "from any proceedings in any court in respect of anything said or any vote given" in the Legislature, that realm of legislative speech is outside the ambit of Article 19(1)(a) entirely.

In other words, freedom of speech in the Legislature is a special constitutional guarantee not subject to general limitations. The majority found that the framers deliberately omitted any express qualification making Article 194(3) "subject to the provisions of this Constitution,"

which implies that clauses (2)-(4) of Article 194 are on the same footing as free speech. Thus, Article 19(1)(a) "must yield" to the privileges under Article 194(3).

The Court concluded that the Bihar Assembly did have the traditional powers of the House of Commons, including to expunge and bar publication of its proceedings and that it could enforce them even if that abridged a citizen's right under Article 19(1)(a).

As Chief Justice Das put it, the privileges conferred by Article 194(3) "could not be subject to fundamental rights" because they are themselves part of the constitutional law. Consequently, M.S.M. Sharma's Article 19 argument failed, he could not use free speech as an "exception" to negate the Assembly's privilege. The petition was dismissed.

Dissenting Opinion (Justice, K. Subba Rao, Justice Natwarlal. H. Sinha.):

The dissent took a diametrically opposite view, treating legislative privileges as subordinate to the fundamental rights of citizens. Justice Subba Rao observed that the House of Commons had, by 1950, long abandoned the privilege of excluding truthful reporting of its debates except under secret sessions. He held that Article 194(3) should be read in harmony with Article 19, just as Article 19 freedom can be restricted by law.

Article 194(3) was not an absolute grant trumps the entire Constitution. Justice Subba Rao's view, Article 194(3) did not expressly state that it overrides Article 19, so a harmonizing construction is required. He and Justice H. Sinha argued that fundamental rights (in Part III) are of higher order and presumptively govern other provisions unless clearly excluded. Shri H. Sinha., explicitly warned that if privileges could abridge the free-speech rights of citizens, "the Legislature would become sovereign against the Constitution". Both dissenters concluded that absent clear malice or falsity, the journalist's right to publish the Assembly debate should prevail. Justice Subba Rao summarized that, *"The petitioner's fundamental right under Article 19(1)(a) is preserved despite the provisions of Article 194(3)"* and without a showing of mala fide, the Assembly's privileges could not shut down a faithful report.

P.V. Narasimha Rao v. State (CBI/SPE) (1998):

Facts and Issues:

Nearly four decades later, Mr. P.V. Narasimha Rao presented a very different context.

Following the 1993 No-Confidence debate in Parliament, allegations arose that MPs were bribed to vote against the government. The CBI registered corruption charges against several MPs, including then, Prime Minister P.V. Narasimha Rao.

The constitutional questions were:

1) Whether Article 105 affords MPs immunity from prosecution on bribery charges? and

2) Whether MPs are "public servants" under the Prevention of Corruption Act?

We focus on:

1) Can MPs claim privilege under Article 105(2–3) to bar the bribery prosecutions? In particular, is offering or accepting a bribe "an act in respect of anything said or vote given" in Parliament?

Majority Judgment (Justice S.P. Bharucha., for himself, Justice S. Rajendra Babu and Justice G.N. Ray.):

The majority held by a 3–2 margin that Article 105(2) grants **no blanket immunity for bribe-taking**. They interpreted "in respect of anything said or any vote given" in Article 105(2) narrowly, essentially as "arising out of" an actual speech or vote. Thus bribery, the act of taking an illicit payment is a separate antecedent act not covered by privilege. Justice Bharucha's lead opinion reasoned that once the Constitution-makers intended only to protect legitimate parliamentary acts, the phrase **"in respect of"** should not be read so expansively as to shield corruption. Quoting precedents, the Court emphasized that immunity attaches only when a speech or vote has been made. The quoted test was whether the criminal liability is an essential consequence of that speech/vote; if not as in bribery, which occurs beforehand, privilege does not cover it. The Court explicitly rejected the absurd result that a member who takes a bribe and then votes as promised would escape all punishment, while one who takes a bribe and withholds his vote would face prosecution. To avoid this "anomalous situation," Article 105(2)'s immunity was construed to mean "liability arising out of" the speech or vote, not the crimes leading up to it.

In concrete terms, the Court held that only those accused MPs who had actually cast votes in Parliament could even invoke Article 105(2), but having done so, they would not be immune

from bribery charges because the offence arose independently of the legislative act. In short, the majority built on the "in Parliament" immunity in Article 105(2) but limited it so that an MP remains prosecutable for accepting illegal gratification, even if that bribe was given to influence his vote.

The majority supported this narrow construction by appealing to constitutional structure and basic principles. They warned that giving the broad privilege urged by Mr P.V. Narasimha Rao would place legislators "above the law" and subvert the rule of law, This itself is part of the basic structure. After chronicling the limited enforcement powers of legislative privilege, For example: No prison terms beyond a session, etc., The Court noted that parliamentary privilege is subject to judicial oversight when fundamental constitutional values are at stake. The end result was that Mr P.V. Narasimha Rao upheld prosecution and MPs could not claim an absolute exemption from bribery charges under Article 105.

Dissenting Judgment (Justice S.C. Agrawal and Justice A.S. Anand.):

The dissent took the opposite position, in effect extending the immunity as in *M.S.M Sharma*. Justice Agrawal along with Justice Anand read Article 105(2) broadly in the light of its purpose to secure "the independence of individual legislators." He reviewed foreign precedents like, **"Wason v. Walter"[3], "Johnson v. United States"[4]," R. V. Currie & Ors"** to argue that the U.S. Speech-or-Debate Clause had been held to cover bribery in the course of legislative acts[5]. Rejecting the narrow "arising out of" construction, Justice Agrawal. would have interpreted "in respect of" as encompassing any act having a nexus to a speech or vote, including accepting a bribe to influence that vote. In his view, once an MP votes in Parliament even pursuant to an illegal agreement, the entire transaction is *in respect of* that vote and thus constitutionally protected[6]. He criticized the majority's distinction that taking a bribe for speaking is shielded but taking a bribe for silence is not as unsound. Justice Agrawal. warned that immunity claims by a "member who has bartered away his independence" would let MPs "indulge in such corrupt conduct" with impunity, but he still maintained that the constitutional protection for legislative acts was paramount. He advocated that, if Congress wished to punish bribery of MPs, it should enact a special statute defining parliamentary corruption, rather than the Court

[3] *Wason v Walter* (1868) LR 4 QB 73.
[4] *United States v Johnson 383 US 169 (1966).*
[5] *Ibid 2*
[6] *Ibid 2*

imply such a restriction. Hence, the dissent saw Article 105(2) as an absolute bar to prosecuting any bribery connected to a speech or vote.

Exception vs. Defense:

A central conceptual shift between M.S.M. Sharma and P.V. *Narasimha Rao* is the treatment of privilege as an exception versus a defense. In M.S.M. Sharma, the majority effectively treated legislative privilege as an *exception* to free speech rights, which is a constitutional carve-out that overrides Article 19(1)(a). The Assembly's privileges were treated as part of the Constitution itself, not subject to ordinary law, so they were an exception to the general rule of free expression. Under that view, a breach of privilege could legally nullify a right guaranteed by Part III, without recourse to ordinary legal defenses.

By contrast, in P.V. Narasimha Rao the majority insisted privilege is not an absolute exception to criminal law but only a potential defense available at trial. As noted in M.S.M. *Sharma*'s discussion of **Jatish Chandra Ghosh v. Mukherjee (1961)[78],** once it is established that a privilege claim is not absolute, the accused "must take his trial and enter upon his defence". P.V. *Narasimha Rao* reinforced this notion that Article 105(2) does not oust the courts' jurisdiction or validate an offence, it merely precludes conviction for acts *solely* ascribed to parliamentary speech or vote. Thus, the privilege can be pleaded in defense of prosecution but does not negate the existence of criminal liability.

Hence, in practical terms, Sharma's approach meant the Assembly could treat any violation of privilege as a ground of contempt, an exception from legal scrutiny, whereas P.V. Narasimha Rao's approach means MPs accused of bribery can go to trial and only then claim privilege to shield the speech or vote element of the offense. If privilege fails, prosecution proceeds. This shift reflects a move from treating privilege as a predetermined immunity (exception) to treating it as a matter that must be proven and argued (defense) in court.

M.S.M. *Sharma* and *Narasimha Rao* Comparison:

- **Legislative Privilege vs. Fundamental Rights:**

In M.S.M. Sharma, the majority treated Article 194(3) privileges as superseding Article

[7] *Dr Jatish Chandra Ghosh v Hari Sadhan Mukherjee* [1961] 3 SCR 486.
[8] *Ibid 7*

19(1)(a). As one judge explained, "Part III, fundamental rights cannot be read so as to render any portion of the Constitution invalid", implying privileges are co-equal with other constitutional provisions. Thus, privileges were not "subject to" Article 19 but outside its ambit.

Where as In P.V. Narasimha Rao, the majority similarly acknowledged that the freedom of speech under Article 105(1) is "wider in amplitude" than Article 19(1)(a) and not subject to the restrictions of Article 19(2).

But crucially, P.V. Narasimha Rao then imposes a constitutional limitation on privileges themselves, interpreting Article 105(2) narrowly to preserve the rule of law. Thus, while both cases quote M.S.M. Sharma's language to affirm the sanctity of parliamentary speech, P.V. Narasimha Rao departs by confining privilege so as not to shield corrupt conduct.

- **Scope of the Privilege Claimed:**

In M.S.M. Sharma, the Assembly claimed a sweeping privilege by mirroring 16th–17th century Commons to prohibit publication of accurate reports. The majority upheld that broad claim. The dissent would have limited it to malicious misreports.

In P.V. Narasimha Rao, MPs invoked only Article 105(2) (speech/vote immunity) for the bribery conspiracy, neither side relied on Article 105(3) privileges, As Justice Bharucha noted 105(3) "is not attracted" here. The real debate was whether receiving a bribe was "in respect of" giving a vote. The majority built on M.S.M. Sharma's definition of privilege but took the very *action* of vote as a protected act while treating the bribery itself as outside privilege. The dissent wanted to extend privilege even to the bribery as the means to cast the vote, effectively a broader view than M.S.M. Sharma.

- **Majority's Use of *Sharma* Language:**

The majority in P.V. Narasimha Rao heavily invoked M.S.M. Sharma and the later *Privileges* cases to define what privileges exist. They quoted M.S.M. Sharma for the historical breadth of Commons privileges, including the right "to prohibit publication of its debates" and to fine or imprison for breaches. They reaffirmed that "freedom of speech is of the utmost importance" to legislative debates, echoing M.S.M. Sharma's emphasis on vigorous debate. However, the substance of P.V. Narasimha Rao's holdings turned out different. Although ostensibly "following" Sharma's precedents on privileges, the majority used constitutional principles like,

basic structure, rule of law. Etc, to carve out a major limitation that M.S.M. Sharma had not contemplated.

- **Majority vs. Minority Outcome:**

Both cases were split 3–2. In Sharma, C.J. Das and co formed the majority, with Justice Subba Rao and Justice Sinha dissenting. In P.V. Narasimha Rao, Justice Bharucha, Justice Rajendra Babu and Justice Ray formed the majority by endorsing a restricted immunity, while Justice Agrawal and Justice Anand dissented by favouring broad immunity. The P.V. Narasimha Rao majority echoed M.S.M. Sharma's majority in using colonial authorities to define privilege, but its final holding, which says that bribery alone is not protected, **"reverses"** the practical outcome of M.S.M. Sharma's sweeping stance.

Indeed, one may view P.V. Narasimha Rao as overruling M.S.M. Sharma to the extent that M.S.M. Sharma had implied that legislative privilege could effectively nullify conflicting laws. P.V. Narasimha Rao explicitly disavowed such a proposition in the criminal context.

- **Exception vs. Defense in Practice:**

In M.S.M. Sharma, the legislative privilege operated as an exception to ordinary rights, the Assembly could unilaterally decide a journalist violated privilege and punish him without his rights prevailing. The privileges were treated as a self-executing, "immunity".

By contrast, P.V. Narasimha Rao held that Article 105(2) cannot be invoked outside the trial, it is not a jurisdictional shield but a matter to be judged on the facts of each prosecution. Thus, while M.S.M. Sharma's Assembly actions were insulated, which says "no member…to be made liable to any proceedings", in P.V. Narasimha Rao the prosecution went forward and the privilege claim was only a point to be resolved in court as the minority put it, granting immunity here "would indeed be ironic" and an impermissible license to corruption.

The difference is akin to the distinction between saying **"a law itself excludes this conduct" (exception) versus "a defendant may invoke this provision as a defense at trial" (defense).** *Narasimha Rao* clearly favours the latter view.

Evolution and Implications:

The P.V. Narasimha Rao judgment thus overrules M.S.M. Sharma in effect, despite the

majority's rhetoric of continuity. By insisting that Article 105(2) immunizes only the substantive speech or vote and not antecedent criminal acts, P.V. Narasimha Rao undercuts the idea that privilege can be an absolute exception.

"Privilege", the Court held, it must be tied functionally to legitimate legislative acts. As Justice. Bharucha noted, allowing a member who has "bartered away his independence" to claim immunity would subvert democracy.

In result, P.V. Narasimha Rao limits parliamentarians' immunity. It can no longer serve as a general shield for related crimes. This is a sharp departure from the M.S.M. Sharma majority's premise that legislative immunities derived from British practice were sacrosanct and not easily curtailed by fundamental rights.

The doctrinal shift also affects separation of powers. After M.S.M. Sharma, Assemblies were in theory arbiters of their own privileges which subject to judicial review only in limited respects. P.V. Narasimha Rao empowers the judiciary to scrutinize privilege claims more strictly in criminal cases, ensuring that statutory criminal law retains primacy except where the offense is integrally part of a protected legislative act.

In other words, parliamentary accountability is strengthened. Legislators are no longer beyond legal reach for corruption in connection with their functions. At the same time, P.V. Narasimha Rao reaffirms that legitimate legislative speech and votes remain protected, preserving the core purpose of Article 105(2)- free debate.

This evolution has broad impact. It suggests that privileges "follow the law" rather than stand above it. It tempers M.S.M. Sharma's characterization of privileges as an "exception" by casting them as a limited defense.

In practical terms, criminal allegations against legislators must now pass normal judicial tests. For ex: The Sita Soren case, which discussed the extent of legislative immunity granted under Article 105 (2) and Article 194 (2) of the Constitution of India, The Supreme Court in this case overturned a longstanding controversial ratio. This judgment will go a long way in protecting the sanctity of democracy in our country. Corruption is a disease that does not let any democracy function properly. The decision of **PV Narsimha Rao v. UOI (1998)** legitimized corruption. The overturning of this decision has finally resulted in an interpretation that is in

consonance with the Constitutional and democratic principles[9].

In the same manner the future challenges are likely to interpret ***Narasimha Rao*'s two-fold test: immunity applies only if:**

1) The act is connected to the collective functions of the House, and

2) It has a bona fide "functional relationship" to a legislator's duty[10]. Bribery and corruption, unless trivially linked to a speech or vote, will fail that test. This aligns with *Narasimha Rao*'s conclusion that "engaging in bribery commits a crime which is unrelated to a member's ability to vote or make a decision"[11].

Conclusion:

In conclusion, P.V. Narasimha Rao v. State (CBI/SPE) (1998) represents a pivotal recalibration of M.S.M. Pandit Sharma v. Sri Krishna Sinha (1959). While Narasimha Rao invokes Pandit Sharma's language and logic regarding the importance of parliamentary speech, it departs from Sharma's outcome by narrowing the scope of privilege. Sharma enshrined legislative privilege as an almost sacrosanct exception to ordinary rights, whereas Narasimha Rao redefined it as merely a potential defense to be assessed against constitutional values. This shift effectively overrules the broad immunity implied by M.S.M. Sharma, subjecting MPs to criminal accountability for corruption so long as their speech or vote was not the sole cause of the offence. The result is a more balanced relationship between parliamentary privilege and the rule of law, with greater parliamentary accountability and a reaffirmed separation of powers.

[9] *Sita Soren v Union of India [2024] 3 SCR 462*.
[10] *Ibid 9*
[11] *Ibid 9*