THE PROSECUTION VACUUM IN LEGISLATOR BRIBERY CASES POST-SITA SOREN V. UNION OF INDIA (2024) AND THE NEED FOR AN INDEPENDENT LEGISLATIVE ANTI-CORRUPTION PROSECUTOR IN INDIA

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ABSTRACT

The paper offers a detailed assessment of the implications of the *Sita Soren v. Union of India* case for prosecuting bribery of members of the legislature in India. Although the decision represents a major change in constitutional principles, it does not guarantee actual consequences for wrongdoing. The Supreme Court, in overturning *P.V. Narasimha Rao v. State*, eliminated the considerable protection that had for a long time allowed legislators to avoid bribery charges related to their votes in parliament. However, this legal adjustment does not resolve the more fundamental, systemic problems within India's system for countering corruption.

The study introduces the idea of a "prosecution vacuum", outlining the discrepancy between acknowledging that bribery is a crime and the lack of a functioning, effective system for making it happen. It shows that laws such as Sections 17A and 19 of the Prevention of Corruption Act of 1988, which require permission from the government beforehand, are still used to control what investigations and prosecutions can begin. Furthermore, the fact that investigative bodies like the Central Bureau of Investigation are heavily reliant on the executive branch makes it harder for them to act without bias.

By using analysis of legal principles, a critical examination of institutions, and a comparison of India with systems elsewhere in the world. The paper contends that India does not have a separate, independent body with the authority to prosecute corruption by the legislature. The research indicates that the Sita Soren decision is important as a statement of change, but it will not have a real impact unless the whole system is altered.

Keywords: Legislator bribery, parliamentary immunity, prosecution vacuum, Sita Soren v. Union of India, P.V. Narasimha Rao v. State, Prevention of Corruption Act, 1988, Section 17A, Section 19, executive sanction, Central Bureau of Investigation (CBI), Lokpal, anti-corruption law, institutional independence, legislative accountability

INTRODUCTION:

For 26 years, the Supreme Court's judgment in *P.V. Narasimha Rao v. State (1998)*[1] shielded legislators who accepted bribes and voted as promised from any criminal prosecution, treating the vote as a constitutionally protected legislative act. This created a paradox: a legislator who broke the corrupt bargain could be prosecuted, but one who honoured it was immune. On March 4, 2024, a seven-judge Constitution Bench unanimously overruled this position in *Sita Soren v. Union of India,*[2] holding that parliamentary immunity under Articles 105(2) and 194(2) does not extend to bribery. The ruling was celebrated as a landmark in anti-corruption law. However, this paper argues that the judgment addressed only half of the problem, the immunity shield. The prosecution machinery that would convert the ruling into actual accountability remains structurally compromised, creating what this paper terms the "prosecution vacuum."

RESEARCH GAP:

Three interlocking statutory gaps together constitute the prosecution vacuum. First, Section 17-A and Section 19 of the Prevention of Corruption Act, 1988 require prior government sanction before prosecuting any public servant, a requirement that places the executive (controlled by the ruling party) as the gatekeeper of opposition prosecutions. Second, the CBI, India's primary agency for legislator corruption cases, operates under executive control with no statutory independence. Third, India has no independent legislative anti-corruption prosecutor, meaning prosecution decisions on legislator bribery are ultimately political decisions.

RESEARCH QUESTION:

1. Does Sita Soren v. Union of India create an effective system to prosecute legislator bribery, or does it simply shift immunity from constitutional protection to statutory barriers, creating a “prosecution vacuum”?

2. How did P.V. Narasimha Rao v. State create immunity for legislators, and how has Sita Soren (2024) changed or limited that position?

[1] *P.V. Narasimha Rao v. State (CBI/SPE)*, AIR 1998 SC 2120.
[2] *Sita Soren v. Union of India*, 2024 INSC 161

3. Do Section 17A of the Prevention of Corruption Act, 1988, and executive control over the CBI continue to act as barriers to prosecuting legislators even after Sita Soren?

4. What legal and constitutional reforms are needed in India to create an independent anti-corruption prosecutor for legislators and make Sita Soren practically effective?

PREVENTION OF CORRUPTION ACT (PCA), 1988[3]

The Prevention of Corruption Act, 1988[4] is the primary legislation in India dedicated to combating bribery and corruption within the public sector. Its central focus is the conduct of public servants and the procedures for punishing those who abuse their official positions for personal gain. Chapter III of the Act is particularly significant, as it codifies various forms of corruption and specifies the penalties for public servants who solicit or accept "gratification" other than their legal remuneration. This Act effectively replaced the corruption-related provisions originally found in the Indian Penal Code, centralising the legal response to administrative malpractice.

1. ANALYSIS OF SECTION 17-A OF THE PREVENTION OF CORRUPTION ACT, 1988:

Section 17A[5] was inserted into the PCA through the Prevention of Corruption (Amendment) Act 2018, with effect from 26 July 2018[6]. It mandates that no police officer can initiate any enquiry, inquiry, or investigation against a public servant for offences related to decisions or recommendations made in the discharge of official duties without prior approval of the competent authority. The provision reads as follows:

"No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval — (a) in the case of a person who is or was employed in connection with the affairs of the Union, of that Government; (b) in the case of a person who is or was employed in connection with the affairs of a State, of that

[3] The Prevention of Corruption Act, 1988 (Act 49 of 1988).
[4] *Ibid*
[5] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A.
[6] The Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), s. 12 (w.e.f. 26-7-2018).

Government; (c) in the case of any other person, of the authority competent to remove him from his office."[7]

There are two exceptions to this rule: (i) when someone is arrested after being discovered accepting a bribe; and (ii) when the accusation has nothing to do with a "recommendation made or decision taken" in the course of performing official duties.

The apparent or patent objective of this provision is to protect honest public servants from frivolous, vexatious, or politically motivated investigations, thereby ensuring that administrative decision-making is not paralysed by fear of prosecution.

The High Court of Karnataka captured this objective in *Shreeroopa v. State of Karnataka*[8] holding that the overarching objective behind Section 17A[9] of the PCA is to provide a protective shield, preventing arbitrary or frivolous investigations against public servants and to strike a balance in the manner investigation is conducted against public officials. This is, in principle, a legitimate legislative goal: honest public servants deserve protection from malicious prosecution, and democratic governance requires that civil servants can advise and decide without constant fear of criminal proceedings.

However, the hidden effect of Section 17A has been rigorously probed by judicial scrutiny, especially in a split decision of the Supreme Court. The Court noted that, in reality, the clause serves as a protective barrier for dishonest public employees rather than a shield for honest authorities, because it effectively prevents investigations from starting at the outset by requiring prior consent.[10]

The Court noted that this requirement forecloses even a preliminary inquiry, thereby enabling corrupt officials to evade scrutiny and potentially frustrate the entire criminal justice process.

A significant constitutional concern raised was that Section 17A creates an impermissible classification among public servants under Article 14 of the Constitution of India.[11] Although the provision appears to apply uniformly, in substance it disproportionately benefits higher-level decision-making officials, since the terms “recommendation made” and “decision taken”

[7] Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A.
[8] *Shreeroopa v. State of Karnataka*, 2023 SCC OnLine Kar 68.
[9] Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A.
[10] M.P. Jain, *Indian Constitutional Law* (LexisNexis, New Delhi, 8th edn., 2018).
[11] The Constitution of India, art. 14.

inherently relate to officers exercising policy or administrative authority. In contrast, lower-level officials, who merely prepare notes and do not make decisions, do not enjoy the same level of protection.

The Court further remarked that, ideally, an independent and autonomous authority, free from executive control, should have been entrusted with the decision to approve. In the absence of such a mechanism, Section 17A becomes vulnerable to misuse and lacks sufficient safeguards to ensure impartiality.

"Section 17A is arbitrary in its operation as it forecloses even a bare inquiry/enquiry/investigation without prior approval," according to Justice B.V. Nagarathna of the Supreme Court, who ruled in the January 2026 split decision on the constitutionality of Section 17A that this part of the law violates the rule of law.[12]

By requiring government clearance to investigate corruption, even when the same government may be involved, or benefit, Section 17A of the Prevention of Corruption Act, 1988 presents a significant conflict of interest. This is particularly troublesome in cases of lawmaker bribery, because the government must authorise an inquiry against its own members even though the bribery may have been used to maintain the government's authority.

In the petitioner's appeal to Section 17A, Senior Advocate Prashant Bhushan made the following straight argument: A conflict of interest arises because Section 17A permits executive members, including ministers who may participate in decision-making, to determine whether an investigation should start[13]. This is the structural fact of how the provision operates, not a theoretical issue. A probe of a legislator's corrupt vote will not be easily approved by a government that benefited politically from it.[14]

Justice Nagarathna noted in her dissent that this judicial reading-down replaces the word "Government" with "Lokpal" in the statute text, an act of legislative rewriting by the Court that lacks a textual foundation and might not withstand a rigorous textual scrutiny.[15] The fact that Section 17A reintroduces protections that the Supreme Court had previously declared to be

[12] *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (per Nagarathna J., dissenting).
[13] *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (W.P. (Civil) No. 1373 of 2018, submissions of Mr. Prashant Bhushan, Senior Advocate for the Petitioner).
[14] *supra note 5*.
[15] *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (per Nagarathna J., dissenting)

unconstitutional in a different statutory form may be its most fundamental legal flaw. There is a legal history for the previous approval architecture:

"The 'Single Directive' was a set of guidelines released by the Central Government in 1969 that stipulated that senior officers at the rank of Joint Secretary and higher could not be investigated without the government's prior concurrence."[16]

The Supreme Court overturned the Single Directive in *Vineet Narain v. Union of India*[17], ruling that it created an unjustified hierarchical protection for senior officials in violation of Article 14 (equality before the law). Section 6A of the Delhi Special Police Establishment Act 1946[18], which required prior approval before investigating officers of the rank of Joint Secretary and above, was overturned by the Supreme Court *in Dr Subramanian Swamy v. Director, CBI*,[19] ruling it unconstitutional as discriminatory and impeding independent investigation.

Section 17-A of the Prevention of Corruption Act was added in 2018 and is thought to be an attempt to restore previous protections for public employees that were overturned in the cases of *Vineet Narain v. Union of India*[20] and *Subramanian Swamy v. Director, CBI.*[21] It prevents early investigation by extending the requirement of prior permission to all government decisions. This has been criticised by courts as being at odds with the goal of anti-corruption legislation since it hinders investigation and could ultimately shield dishonest officials from prosecution.

Whether Section 17A of the Prevention of Corruption Act, 1988, applies to actions taken before 2018 is a matter of legal ambiguity. The Supreme Court rendered a split decision in *Nara Chandrababu Naidu v. State of Andhra Pradesh*[22]. One judge restricted it to acts passed after 2018, while the other judge mandated clearance if an investigation began after 2018. Due to the fact that courts must first determine approval before moving further with an investigation, this unresolved problem produces uncertainty and delays. Although this

[16] Single Directive No. 4.7(3), Government of India (1969), as discussed in *Dr Subramanian Swamy v. Director, Central Bureau of Investigation*, (2014) 8 SCC 682, 689–690.
[17] *Vineet Narain v. Union of India*, (1998) 1 SCC 226.
[18] The Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), s. 6A (inserted by the Central Vigilance Commission Act, 2003 (Act 45 of 2003), s. 26(c), subsequently struck down).
[19] *Dr. Subramanian Swamy v. Director, Central Bureau of Investigation*, (2014) 8 SCC 682.
[20] *Ibid 17*
[21] *Ibid 18*
[22] *Nara Chandrababu Naidu v. State of Andhra Pradesh*, 2024 INSC 41 (Supreme Court, decided on 16 January 2024, per Aniruddha Bose J. and Bela M. Trivedi J., split verdict; matter referred to larger Bench).

language is ambiguous and subject to interpretation, Section 17A of the Prevention of Corruption Act, 1988, only applies to offences pertaining to decisions or recommendations made in official duties.

It is questionable whether a legislator's vote qualifies as an "official function" under this clause in situations of parliamentary bribery, such as accepting payment for a vote. Authorities may still view it as a "decision," nevertheless, and require prior authorisation before conducting an inquiry. Important evidence may be lost by the time courts decide the matter, particularly in situations of white-collar corruption, and this ambiguity permits authorities to postpone or obstruct investigations.[23]

2. ANALYSIS OF SECTION 19: PRIOR SANCTION FOR PROSECUTION

Section 19(1) of the PCA 1988[24], as amended in 2018[25], provides:

"No Court shall take cognizance of an offence punishable under Sections 7, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction — (a) in the case of a person who is or was employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government; (b) in the case of a person who is or was employed in connection with the affairs of a State, of that Government; (c) in the case of any other person, of the authority competent to remove him from his office."

Section 19 also includes three important provisos:

- A three-month timeline (extendable by one month with reasons) for the sanctioning authority to decide on a sanction request.
- A requirement that private complainants (other than police officers or investigation agencies) must first have their complaint registered in court and not dismissed before seeking a sanction.

[23] Upendra Baxi, "Corruption, Accountability and Governance" 25 Econ. & Pol. Wkly. 2405 (1990).
[24] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 19(1).
[25] The Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), s. 12 (w.e.f. 26-7-2018) (inserting and substituting various provisions of the Prevention of Corruption Act, 1988, including the amended text of s. 19).

- A provision that any error or irregularity in the sanction does not automatically vitiate proceedings unless it has caused actual failure of justice (Section 19(3))[26].

A structural fault exists in Section 19 of the Prevention of Corruption Act, 1988, since the government, which may have a direct or indirect interest in shielding the accused public worker, has the authority to impose sanctions. A conflict of interest arises in lawmaker bribery cases because the legislator receives authority from the ruling party, the government may rely on the legislator, and the alleged bribery may even help the same government.

Therefore, mandating that the government approve the prosecution of its own lawmakers establishes a closed loop of political protection, consolidating disproportionate authority in the hands of the executive and posing grave questions regarding fair accountability.

The mandatory sentence requirement applies to offences under Sections 7, 11, 13, and 15 of the PCA, but not to other offences under the Act. This is a technical but important flaw in Section 19. In particular, Section 19(1) does not include Section 12 (abetment of offences). In 2009, the Supreme Court affirmed this, holding that Section 12 is purposefully left out and that "the language employed in Section 19 of the PC Act is couched in mandatory form directing the court not to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 only, alleged to have been committed by a public servant, except with the previous sanction of the government."

This exclusion was reiterated by the Supreme Court in the year 2009 when it set aside a contrary order of the Bombay High Court holding that the statutory language is mandatory and the court cannot supply words which the legislature has not used on an assumption of an omission.[27] The Court noted that the language employed in Section 19 of the Act is in mandatory terms directing the courts not to take cognizance of offences punishable under Sections 7, 10, 11, 13 and 15 only, alleged to have been committed by a public servant, except with the previous sanction of the government.

The Prevention of Corruption Act, 1988's Section 19 does not require the sanctioning authority

[26] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 19(3)

[27] *State of Maharashtra v. Sheshrao Waman Meshram*, (2009) 14 SCC 288. *See also* the discussion of the same ruling in Library of Congress, Global Legal Monitor, "India: Supreme Court Ruling on the Offence of Abetment of Corruption by a Public Servant" (September 18, 2009), available at https://www.loc.gov/item/global-legal-monitor/2009-09-18 (last visited May 2026).

to justify a sanction denial, nor does it offer a precise or organised way to contest a sanction denial. Therefore, if the sanction is denied, the investigating agency will have to go to court, which will cause delays and protracted litigation. Because the evidence may deteriorate, witnesses may become hostile, and the accused may continue to hold public office throughout the delay, this reduces the effectiveness of the case.

The Supreme Court ruled in *Aiyappa v. Anil Kumar [(2013) 10 SCC 705*[28] that the Act's provisions are meant to shield an innocent public servant against unjustified and dishonest prosecution. This is the formal rationale for Section 19. The provision does not, however, address the operational reality that a guilty public servant is shielded by the government's failure to punish.[29]

THE RELATIONSHIP BETWEEN SECTIONS 17A AND 19:

It is important to note that Sections 17A and 19 of the Prevention of Corruption Act, 1988 are cumulative requirements and operate at different stages of the enforcement chain and not alternatives to each other. Section 17A applies before a police officer is even in a position to start an inquiry, it is a pre-investigation gate.[30] Section 19 functions in the prosecution phase, after the investigation is over and before the court can take cognizance of the offence.[31] Thus a corrupt public servant can be protected at both ends, the executive can prevent the inquiry from starting under section 17A and if investigation proceeds, prevent prosecution by refusing sanction under section 19.

PARLIAMENTARY IMMUNITY:

"Some of the peculiar rights enjoyed by each House collectively as a constituent part of the Parliament and by the members of each House individually, without which they could not discharge their functions and which exceed those possessed by other bodies or individuals."[32]

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[28] *Anil Kumar v. M.K. Aiyappa*, (2013) 10 SCC 705 (Supreme Court, per K.S. Radhakrishnan and Pinaki Chandra Ghose JJ., decided on 1 October 2013).
[29] Bibek Debroy and Laveesh Bhandari, "Corruption in India: The DNA and the RNA" 44 Econ. & Pol. Wkly. 45 (2009).
[30] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A (inserted by the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), s. 12, w.e.f. 26-7-2018); *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (Supreme Court, decided on 13 January 2026).
[31] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 19(1); *Anil Kumar v. M.K. Aiyappa*, (2013) 10 SCC 705, 712–713.
[32] J.N. Pandey, *Constitutional Law of India* 625 (Central Law Agency, Allahabad, 58th edn., 2021).

The definition of Parliamentary privilege provided by Sir Thomas Erskine May holds prime importance while discussing this concept.[33] One of the main foundations of Indian democracy, Parliament serves as the country's legislative body. Because of this, it becomes crucial that Parliament be able to act without interruption and carry out its duties as efficiently as possible. This is also the reason why members of the parliament are granted privileges and immunities. It's interesting to observe that members of parliament enjoy somewhat more independence and liberty than citizens do. [34] The immunities of the State Legislature are covered by Article 194 of the Constitution, whilst the immunities of the Parliament are covered by Article 105.[35]

Article 105 acts as a "legal shield" that protects Members of Parliament (MPs) so they can do their jobs without fear. In simple terms, it guarantees that no MP can be sued or taken to court for anything they say or any vote they cast inside the Parliament or its committees. Essentially, it keeps the courtroom out of the meeting room to ensure the independence of the legislature.

The first significant right granted to legislators, "Freedom of Speech in the Parliament," which is covered by "Articles 105[36] and 194[37] of the Constitution," will be the exclusive subject of the study for the time being. For the sake of conciseness, the study would only analyse Article 105(2) since both provisions follow the same path. The text says:

"(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."[38]

In a nutshell, it says that lawmakers cannot be held legally responsible for "anything said or any vote given by them in the Parliament." Thus, it may be argued that voting is a part of a member of parliament's right to free expression. The Supreme Court also examined the reasoning behind this in the *Kalpana Mehta v. Union of India*[39] case, ruling that protecting

[33] T.F. May, *A Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (LexisNexis, London, 24th edn., 2011).
[34] *P. Sudhir Kumar v. Speaker, Andhra Pradesh Legislative Assembly*, (2003) 10 SCC 256.
[35] The Constitution of India, arts. 105 and 194.
[36] *Ibid.*, art. 105(2).
[37] The Constitution of India, art. 194.
[38] *Ibid.*, art. 105(2).
[39] *Kalpana Mehta v. Union of India*, AIR 2018 SC 2493.

lawmakers is crucial because "it embodies the fundamental value that the free and fearless exposition of critique in Parliament is the essence of democracy."

DYNAMICS OF P.V. NARASIMHA RAO V. STATE (CBI/SPE) [AIR 1998 SC 2120]:[40]

A. The 1991 Elections and the Formation of a Minority Government

P.V. Narasimha Rao, as prime minister, the Congress (I) Party formed a minority government in the 1991 Lok Sabha election after falling fourteen seats short of the majority. The party had less than the simple majority of 265 needed to rule with confidence. Acknowledging this weakness in the Narasimha Rao administration, the opposition parties made the no-confidence motion. The Lok Sabha began debating the Motion of No-Confidence on July 20, 1993, and the discussion lasted till July 28, 1993. [41]

B. The Bribery Conspiracy: Operationalising Legislative Deviance

In response to the motion of no confidence, the government used bribery rather than political persuasion or coalition building. Due to the party's minority status, some JMM (Jharkhand Mukti Morcha)[42] members received payments and were persuaded to vote against the resolution. With 251 members voting in favour of the motion and 265 voting against it, the party managed to defeat it in some way. The analysis of this scheme from the standpoint of elite deviance theory, as developed by David R. Simon[43], is instructive. This was not opportunistic bribery but an organised, state-sponsored conspiracy at the highest levels of executive government.

This was an organised, state-sponsored conspiracy at the highest levels of executive government, not opportunistic bribery by a desperate individual. The corrupt deal allegedly started in the Prime Minister's office. Legislators from the ruling party were the bribe-givers, while members of a regional party (JMM), whose votes were necessary for survival, were the bribe-takers. This is the most typical example of elite deviance: the ruling class corrupting the

[40] *P.V. Narasimha Rao v. State (CBI/SPE)*, AIR 1998 SC 2120.
[41] *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, 629–630
[42] The Jharkhand Mukti Morcha (JMM) is a regional political party operating principally in the present-day State of Jharkhand and was, at the relevant time, a constituent of the opposition in the Tenth Lok Sabha. *See* generally *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, 630.
[43] David R. Simon, *Elite Deviance* (Pearson Education, Boston, 10th edn., 2012). *See also* the foundational framework in David R. Simon and D. Stanley Eitzen, *Elite Deviance* (Allyn and Bacon, Boston, 1st edn., 1982)

very legislative process that gives them legitimacy through the use of institutional resources and political power.

C. The Complainant, the CBI Investigation, and the Charges

The alleged bribery during the 1993 Lok Sabha no-confidence motion went unanswered for almost three years, demonstrating the reliance on whistleblowers for accountability. Shri Ravindra Kumar accused MPs of being bought off in a complaint he submitted to the CBI on February 28, 1996. Financial incentives were utilised to sway votes, according to the CBI inquiry.[44]

P. V. Narasimha Rao and others were charged with criminal conspiracy under Section 120-B of the IPC[45] and sections 7, 12 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988[46]. The defendants contested the charges before the Delhi High Court, which denied their appeal, after the Special Judge in Delhi took cognisance. The issue was then appealed to the Supreme Court.

D. The Constitutional Questions Before the Court

Whether by virtue of Articles 105(1) and 105(2) of the Constitution, a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal court in relation to the proceedings in Parliament?

E. The Majority's Wide Construction of "In Respect Of"

Article 105(2) of the Constitution of India provides:

"No member of Parliament shall be liable to any proceedings in any court in respect of anything said, or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

The majority, in a close three-to-two decision, took a broad view of what "in respect of" means. Their main argument: parliamentary privilege should cover a wide range of activities so

[44] H.M. Seervai, *Constitutional Law of India* (Universal Law Publishing Co., New Delhi, 4th edn., 2013).
[45] The Indian Penal Code, 1860 (Act 45 of 1860), s. 120-B.
[46] The Prevention of Corruption Act, 1988 (Act 49 of 1988), ss. 7, 12, 13(1)(d) and 13(2).

lawmakers can do their jobs without worrying about potential consequences. Basically, they said that as long as an act connects to parliamentary proceedings, even something as serious as taking a bribe for a vote, it's protected. If what someone does results in a legislative action, immunity applies. If not, it doesn't. The Court pointed out that without this kind of protection, lawmakers could face prosecution by those in power just for making a speech or casting a vote someone doesn't like, if there's even a hint they were bribed.[47]

F. The Tripartite Classification:

The majority's most distinctive and most criticised analytical move was to divide the accused into three legally distinct categories:

Category 1 — Bribe-givers: P.V. Narasimha Rao and the ruling party legislators who paid the bribes. The majority held that these persons were not entitled to any immunity under Article 105(2) because they were not members who voted or spoke in Parliament on the matter. They could be prosecuted.

Category 2 — Bribe-takers who voted as directed: The JMM members who accepted the bribe and voted against the no-confidence motion. The majority held that these persons were protected by Article 105(2) because there was a direct nexus between the bribe (the motive) and their vote (a protected legislative act).

Category 3 — Bribe-takers who did not vote: Ajit Singh, a member of JMM, abstained from voting after accepting the bribe. The majority held that Ajit Singh was not protected because his abstention meant his bribe had no nexus with a legislative act, the vote was never cast, so the protection of Article 105(2) could not be invoked. But one member who had taken the bribe but did not vote was held guilty of prosecution.

This tripartite classification produced the paradox that the seven-judge bench in the *Sita Soren case*[48] would identify as the central constitutional error of the majority judgment.

[47] *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626, 672 (per S.P. Bharucha J., majority).
[48] *Sita Soren v. Union of India*, 2024 INSC 161 (Supreme Court, seven-judge Constitution Bench, per D.Y. Chandrachud CJI., A.S. Bopanna, M.M. Sundresh, P.S. Narasimha, J.B. Pardiwala, Sanjay Kumar and Manoj Misra JJ., decided on 4 March 2024).

SITA SOREN V. UNION OF INDIA (2024): OVERRULING P.V. NARASIMHA RAO CASE:[49]

1. The Factual Background:

On March 30, 2012, during a Rajya Sabha election, Sita Soren, an MLA from Jharkhand and a JMM member, faced accusations of taking a bribe from an independent candidate in exchange for her vote. But here's the twist: because Rajya Sabha elections use an open-ballot system, she actually voted for her own party's candidate, not the person accused of bribing her.[50]

That put her in a spot that lined up with what's called "Category 3" from the old Narasimha Rao case, meaning she could be prosecuted under how the law stood in 1998. Sita Soren argued she deserved parliamentary immunity under Article 194(2)[51], even though she didn't vote as promised. Still, the Jharkhand High Court didn't buy her argument and refused to stop the criminal proceedings. She took her case to the Supreme Court with a Special Leave Petition on March 26, 2014.

The three judges were sent up. By September 20, 2023, a five-judge bench wasn't convinced the old Narasimha Rao decision was right, so they bumped it to seven judges. Finally, on March 4, 2024, the seven-judge Constitution Bench, led by Chief Justice D.Y. Chandrachud, unanimously overruled the P.V. Narasimha Rao judgment.[52]

2. The Twofold Test for Parliamentary Privilege:

The twofold test that determines when a lawmaker may assert immunity under Articles 105(2) and 194(2) is the main focus of the Sita Soren verdict. According to paragraph 91 of CJI Chandrachud's ruling, the test is:[53]

- **First limb:** The act for which immunity is sought must be related to the legislature's employment of its collective institutional function. This means that the privilege must be linked to the House's collective functioning.

[49] *Sita Soren v. Union of India*, 2024 INSC 161.
[50] *Sita Soren v. Union of India*, 2024 INSC 161, para. 3–6 (setting out the factual matrix of the 30 March 2012 Rajya Sabha election and the allegation of bribery against the appellant).
[51] The Constitution of India, art. 194(2).
[52] *Sita Soren v. Union of India*, 2024 INSC
[53] *Sita Soren v. Union of India*, 2024 INSC 161, para. 91

- **Second limb:** The necessity of the privilege must have a functional relationship to the performance of a legislator's essential duties. This means that it must be demonstrated that the particular act is necessary for the legislator to carry out their essential duties, rather than just that it took place in a legislative setting.

The doctrinal innovation was the "essentiality" requirement in the second limb. Voting is a legislative act, and one need not take a bribe to cast a ballot. Bribery corrupts and taints the vote, doesn't allow for the free exercise of the vote. The Court ruled that bribery is a private unlawful dealing between the bribe-giver and the member, which usually occurs outside the House for personal gain. It is not, therefore, protected by the privilege of Parliament, which applies only to legitimate legislative acts such as voting and speech.

3. Dismantling the Narasimha Rao Distinction:

The former difference between lawmakers who voted as promised (immune) and those who did not (prosecutable) was invalidated by the Court in *P.V. Narasimha Rao v. State*.[54] It concluded that this distinction is unconstitutional since accepting a bribe takes place prior to voting and is not covered by Articles 105 or 194. Regardless of the legislator's vote, bribery is the same crime, and recognising just "completed" corruption as protected produces an absurd and unfair outcome.[55]

4. The Court's Rejection of the Hate Speech Analogy Argument:

The appellant's claim that bribery is comparable to protected activities like hate speech in Parliament was dismissed by the court. It made it clear that prior private agreements like conspiracy or bribery, are not protected by Article 105(2)[56], only the actual legislative act (speech or vote). Pre-act agreements, such as taking payment for a vote, are not covered by parliamentary privilege because they are distinct from the act itself.

5. The Ruling's Silence on Prosecution Machinery: The Central Gap

What the verdict does not mention is the most significant critical observation regarding Sita Soren and the one that drives the main point of this study. The constitutional issue was resolved

[54] *Ibid*
[55] *Sita Soren v. Union of India*, 2024 INSC 161, para. 100–107.
[56] *Ibid*

by the seven-judge panel: bribery is not immune. The question of what institutional mechanisms will now translate this constitutional decision into actual prosecutions was left unanswered.

The prior sanction requirement under Sections 17-A and 19 of the Prevention of Corruption Act, 1988,[57] nor the analogous sanction provision under Section 218 of BNSS[58], was not discussed by the Court. The CBI's structural reliance on the executive was not addressed. The establishment of an impartial legislative anti-corruption prosecutor was neither suggested nor required. It did not instruct Parliament to pass legislation that would allow its constitutional decision to be put into practice. Thus, the decision established a legal right without establishing a means of enforcement.

The Court is not being criticised by this silence because the purpose of constitutional adjudication is not to create prosecutorial institutions. However, if the decision is to be more than a symbolic constitutional corrective, this article contends that legislative action is necessary to close this gap. According to the constitution, a member is guilty of bribery as soon as they accept a bribe, regardless of how they vote in the house. However, the verdict makes no changes to the institutional mechanism that determines whether somebody is prosecuted for that offence.

6. A Landmark That Is Necessary but Not Sufficient

P.V. Narasimha Rao's overruling corrected a twenty-six-year constitutional error that had provided structural impunity for legislative bribery at the highest levels of Indian democracy. The two-part test is doctrinally sound, and the seven-judge bench's unanimity lends the decision solid institutional authority.[59]

A landmark, however, is insufficient if the path it designates ends in a dead end. In this way, Narasimha Rao and Sita Soren's relationship is a study of the development of constitutional protection for elite deviance. The constitutional home of impunity was constructed by Narasimha Rao and dismantled by Sita Soren.

[57] The Prevention of Corruption Act, 1988 (Act 49 of 1988), ss. 17A and 19; *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (Supreme Court, split verdict on the constitutional validity of s. 17A, decided on 13 January 2026).

[58] The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 218.

[59] *Sita Soren v. Union of India*, 2024 INSC 161 (unanimously delivered by all seven judges of the Constitution Bench, thereby overruling the earlier 3:2 majority in *P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626).

Demolition, however, is not construction. The absence of an independent prosecutorial authority, institutional dependency (the CBI), and statutory gatekeeping protect legislative bribery, which continues to thrive in the vacant lot where the home once stood. In order to completely comprehend Sita Soren, it is necessary to comprehend both its decisions and its unfinished business.

INDIA'S EXISTING ARCHITECTURE: THE LOKPAL AND LOKAYUKTA

A. THE LOKPAL: STATUTORY BASIS AND MANDATE[60]

After forty years of unsuccessful legislative attempts starting in 1968, the Lokpal and Lokayuktas Act 2013[61] established the Lokpal as India's highest anti-corruption watchdog at the Union level. According to the Lokpal and Lokayuktas Act 2013, Section 14, the institution was designed as a means of looking into claims of corruption against high-level public officials, such as the Prime Minister (with very few exceptions), Union Ministers, Members of Parliament, and Group A–D employees of the central government.[62] At the state level, the Lokayukta carries out a similar role. This section shows how the design has been consistently compromised in practice.

B. A STRUCTURAL ANALYSIS OF THE LOKPAL'S FAILURES

1. Delayed Appointment: Five Years of Institutional Vacancy

The Lokpal system's slow operationalisation, notwithstanding its legislative foundation, is its most fundamental problem. Despite the fact that the Lokpal and Lokayuktas Act, 2013, went into effect on January 16, 2014, the institution was not operational for more than five years because the first Lokpal was only appointed on March 23, 2019.[63]

Politics and bureaucracy really slowed things down here. After the 2014 election, there was no recognised Leader of the Opposition, and that left the statutory selection committee stuck; the Act required the Leader’s involvement. The government insisted it couldn’t move forward

[60] Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014).
[61] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014) (the Act received the assent of the President on 1 January 2014 and came into force on 16 January 2014).
[62] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 14(1).
[63] Justice Pinaki Chandra Ghose was appointed as the first Lokpal of India on 19 March 2019 and administered the oath of office by President Ram Nath Kovind on 23 March 2019. *See* "Justice Pinaki Chandra Ghose Appointed India's First Lokpal", *The Tribune*, March 19, 2019.

without this position filled, and nothing happened until the Supreme Court finally stepped in and told the committee to get on with it.[64] The whole mess reveals a big problem in how appointments work, tying the process to a political role that the party in power had no real reason to create, which merely produced an avoidable standstill.

2. Persistent Vacancy in Important Roles

Due to ongoing vacancies in critical positions, the Lokpal has remained structurally unfinished even after its formation in 2019. Two judicial member positions are still open after Justice Dilip Babasaheb Bhosale resigned in January 2020 and Justice Ajay Kumar Tripathi passed away in May 2020.[65] Additionally, the organisation has been operating under an interim chairperson, Justice Pradip Kumar Mohanty, since Justice Pinaki Chandra Ghose's term ended on May 27, 2022.[66]

In addition to these leadership deficiencies, there have been protracted vacancies in a number of important statutory positions required by the Lokpal and Lokayuktas Act, 2013, such as the Secretary, Director of Inquiry, and Director of Prosecution.

As a result, the Lokpal's efficacy as India's top anti-corruption body is severely compromised by its ongoing operation under an inadequate institutional structure.

3. Zero Effective Prosecutions in a Decade

The most damning proof of the Lokpal's institutional failure is its operational record. Only 24 investigations and six criminal sanctions have been issued by the Lokpal since its founding, which is a record of nearly complete operational inefficiency for an organisation having authority over the whole central government structure.[67] More than 90% of complaints have

[64] The selection committee constituted under s. 4 of the Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), is headed by the Prime Minister and includes the Lok Sabha Speaker, the Leader of the Opposition in the Lok Sabha, the Chief Justice of India or a nominee, and an eminent jurist. The absence of a recognised Leader of the Opposition following the 2014 general elections (the Congress party having secured fewer than 10 per cent of seats required for that status) created an institutional deadlock.

[65] "80% of 1,427 Complaints Filed with Lokpal in 2019–20 Outside Anti-Corruption Ombudsman's Remit", *Deccan Herald*, October 18, 2020 (reporting the deaths and resignations of judicial members of the Lokpal, including Justice Ajay Kumar Tripathi, who died of Covid-19 in May 2020, and Justice Dilip B. Bhosale, who resigned earlier that year).

[66] Transparency International, *Corruption Perceptions Index 2024* (Transparency International, Berlin, 2025), available at: https://www.transparency.org/en/cpi/2024 (last visited on 19 May 2025).

[67] Siddhanth Pradhan, "The Lokpal and Lokayuktas Act" 11(3) *International Journal of Research and Innovation in Applied Science* 86–94 (2026)

been denied, mostly due to procedural issues, including improper format or failure to comply with filing standards. These issues prioritise form over content and therefore prevent regular people from using the institution.

The Lokpal received 226 complaints between April and December of 2024 alone; nonetheless, the rate of investigation and prosecution authorisation is still quite low.[68] Legal experts have referred to the Lokpal as a "toothless tiger" and noted that "growing public mistrust in its effectiveness".[69] The Lokpal procedures have not resulted in the prosecution of any prominent political person.[70]

4. No Suo Motu Powers

Investigations cannot be started by the Lokpal on its own initiative. It must await the filing of complaints, which must adhere to stringent procedural criteria. The Lokpal is reactive rather than proactive since it lacks Suo motu powers; instead, it waits for citizens to disclose things that political elites would prefer to keep hidden.

5. Reliance on the CBI for Research

The Lokpal lacks a capable, independent investigation wing. The Central Vigilance Commission (CVC) or the CBI shall be consulted for major investigations.[71] This produces the same closed loop found in the prosecution vacuum analysis: the executive is the topic of the investigation, the Lokpal refers to the CBI, and the CBI is under executive control. The CBI is unreliable as the Lokpal's principal investigative tool due to the same structural dependency that renders it untrustworthy as an impartial investigator of lawmakers.

6. Lokpal is also subject to the Prior Sanction Barrier.

[68] Lokpal of India, Annual Statistics on Complaints Received and Disposed (2024) (official data reporting receipt of 226 complaints between April and December 2024 with disproportionately low rates of investigation authorisation and prosecution sanction), available at https://www.lokpal.gov.in (last visited May 2026).
[69] *Ibid 67*
[70] Association for Democratic Reforms (ADR) and National Election Watch, *Analysis of Criminal Background, Financial, Education, Gender and Other Details of Winning Candidates: Lok Sabha Elections 2024* (ADR, New Delhi, 2024), available at: https://adrindia.org/content/analysis-criminal-background-financial-education-gender-and-other-details-winning-31 (last visited on 19 May 2025).
[71] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 20(2) (providing that the Lokpal may request the CBI or CVC to conduct investigations); *see also* s. 20(4) (supervisory role of the Lokpal over the investigating agency).

Importantly, the matter must be prosecuted through the CBI and is still subject to the prior sanction requirement under Section 17A of the Prevention of Corruption Act[72], even if the Lokpal authorises prosecution. Cases are sent to the Special Court by the Lokpal's prosecution department, but the executive-controlled sanction route is still in place. As a result, the Lokpal does not fill the prosecution void; instead, it adds another level of institutional procedure before encountering the same obstacle.

THE LOKAYUKTA: STATE-BY-STATE VARIABILITY

Another issue with the state-level Lokayukta system is its excessive inconsistency. The implementation of the 2013 Act, which required states to set up Lokayuktas within a year, has been incredibly inconsistent.[73] Certain states, including Maharashtra and Karnataka, have comparatively powerful Lokayuktas with the ability to conduct independent investigations. Others have Lokayuktas that are only on paper, have limited jurisdiction, or lack investigative personnel. The laws of each state differ; there is no single Lokayukta Act. Because of this discrepancy, a legislator's accountability before a Lokayukta mostly depends on the state they represent, which is an outcome that is arbitrary under the constitution.

TRANSNATIONAL COMPARATIVE ANALYSIS:

A. Hong Kong: The ICAC Model[74]

In response to a serious governance problem characterised by systematic corruption, especially within the police force, the Independent Commission Against Corruption (ICAC) was founded on February 15, 1974, under the Independent Commission Against Corruption Ordinance.[75] Hong Kong civil servants studied anti-corruption systems in Singapore and Sri Lanka before deciding to create an independent body. The decision was precipitated by the escape of corrupt police superintendent Peter Godber in 1973.[76]

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[72] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A (inserted by the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), s. 12, w.e.f. 26-7-2018); *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55 (Supreme Court, split verdict on constitutional validity of s. 17A, decided on 13 January 2026).

[73] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 63 (requiring every State to establish a Lokayukta within one year of the Act's commencement, i.e., by 16 January 2015).

[74] Independent Commission Against Corruption Ordinance (Cap. 204) (Hong Kong).

[75] Independent Commission Against Corruption Ordinance (Cap. 204) (Hong Kong), enacted 15 February 1974.

[76] ICAC, Hong Kong, "History" (2024), available at https://www.icac.org.hk/en/about/history/index.html (last visited May 2026.

The ICAC has a holistic three-pronged approach: law enforcement (investigating corruption), corruption prevention (reviewing administrative procedures) and community education (raising public awareness). Article 57 of the Basic Law of the Hong Kong Special Administrative Region guarantees its independence under the Constitution,[77] which states that it shall be independent and directly responsible to the Chief Executive and shall not be subject to the interference of other branches of the Government.

This important constitutional entrenchment shields the ICAC's independence from frequent legislative changes and presidential influence. Crucially, prosecutorial choices are free from political influence, guaranteeing that decisions to prosecute are based on legal merit rather than political factors, a quality that continues to be a major obstacle in many countries, including India. Alongside a general change in public perceptions of corruption, there has been a significant drop in corruption allegations over time, especially inside the police force.

Importantly, strict substantive laws cannot be the only reason for these results. The anti-bribery legislation of Hong Kong and India is largely similar. Instead, the ICAC's success stems from its institutional framework, which is characterised by independence, integration, accountability, and strategic coherence and guarantees reliable and consistent enforcement.

B. Singapore: The CPIB Model[78]

One of Asia's first specialised anti-corruption organisations is the Corrupt Practices Investigation Bureau (CPIB), which was founded in 1952. It was put under the Prime Minister's Office in 1969[79], a structural arrangement that initially seems to jeopardise institutional independence. However, a unique constitutional protection ingrained in Singapore's judicial system resolves this seeming conflict.

The perceived conflict between executive placement and institutional independence is addressed through a constitutional safeguard unique to Singapore. Article 22G of the Constitution of the Republic of Singapore authorises the Director of the Corrupt Practices Investigation Bureau (CPIB) to seek the President's approval to proceed with investigations,

[77] Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, art. 57.
[78] Prevention of Corruption Act 1960 (Cap. 241, 1993 Rev. Ed.) (Singapore).
[79] Corrupt Practices Investigation Bureau (CPIB), Singapore, "Roles and Functions" (2024), available at https://www.cpib.gov.sg/who-we-are/our-work/roles-functions/ (last visited May 2026); Prevention of Corruption Act 1960 (Singapore), Cap. 241, enacted 17 June 1960.

including those involving the Prime Minister, if the Prime Minister withholds consent.[80] This presidential override mechanism serves as a constitutional counterbalance, thereby ensuring operational independence within a dual-control structure.

Scholars further attribute the CPIB's effectiveness to a norm of "political self-denial" observed by the ruling People's Action Party (PAP), which refers to the institutional tradition of permitting the CPIB to investigate members of the ruling elite without interference.[81] Historically, the CPIB has investigated sitting ministers and senior officials, demonstrating a consistent pattern of non-selective enforcement. In 2024, the CPIB achieved a conviction rate of 97 per cent.[82]

C. United Kingdom: The Serious Fraud Office[83]

A specialised institutional model for dealing with sophisticated economic crimes, such as bribery and corruption, is the Serious Fraud Office (SFO), which was created under the Criminal Justice Act of 1987[84]. The SFO eliminates procedural discontinuities between detection and prosecution by functioning as a single, integrated authority that combines both investigative and prosecutorial tasks, in contrast to dispersed enforcement regimes. The Attorney General appoints the Director of the SFO, who has considerable discretion in starting and handling cases. The SFO's operational functioning is intended to guarantee professional independence in decision-making, particularly in high-profile or politically sensitive issues, even if the Attorney General retains some superintendence. By avoiding the delays and institutional friction that can occur when investigative and prosecutorial responsibilities are divided among several entities, this structure facilitates a simplified enforcement procedure.

The Serious Fraud Office's (SFO) principal operational characteristic is the "Roskill model," which originated from the 1986 Report of the Fraud Trials Committee chaired by Lord

[80] Constitution of the Republic of Singapore, art. 22G
[81] Jon S.T. Quah, "An Overview of Singapore's Anti-Corruption Strategy" in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, *Resource Material Series No. 104* 261, 265 (UNAFEI, Tokyo, 2014).
[82] Dentons Rodyk & Davidson LLP, "Bribery and Corruption Laws and Regulations 2026 – Singapore" in *Global Legal Insights: Bribery and Corruption* (Global Legal Group, London, 2026) (reporting the CPIB's 97 per cent conviction rate in 2024).
[83] The Criminal Justice Act, 1987 (c. 38) (UK).
[84] The Criminal Justice Act, 1987 (c. 38) (UK), s. 1 (establishing the Serious Fraud Office) (the Act implemented the recommendations of the Fraud Trials Committee Report of 1986).

Roskill.[85] This model employs multidisciplinary teams of investigators, prosecutors, forensic accountants, and legal specialists who collaborate from the outset of each case. By aligning prosecution standards and evidentiary techniques from the beginning, this integrated approach increases the likelihood of successful convictions. The SFO's unified jurisdiction removes the gap between investigation, sanction, and prosecution. The UK Bribery Act 2010[86] further advanced the anti-corruption framework by clarifying the limits of parliamentary immunity, particularly in relation to Article 9 of the Bill of Rights 1689[87], within the context of bribery prosecutions involving Members of Parliament.

D. South Korea: The ACRC

Established in 2008, the Anti-Corruption and Civil Rights Commission (ACRC)[88] is a unique style of anti-corruption administration that combines civil rights protection with anti-corruption enforcement. The founding statute, the Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission[89], represents a conceptual departure from conventional anti-corruption institutions. In this framework, corruption is regarded not only as a criminal offence but also as a violation of citizens' rights and democratic governance. Accordingly, the ACRC integrates anti-corruption oversight with administrative grievance redress, thereby linking public integrity to the protection of civil liberties.

A key feature of the ACRC model is its preventive approach. Rather than relying solely on post-incident enforcement, the Commission identifies patterns of administrative inefficiency and corruption risk, then implements systemic interventions to address underlying causes. Since the ACRC's establishment, South Korea's score on the Transparency International Corruption Perceptions Index has improved significantly,[90] suggesting that institutional design,

[85] Fraud Trials Committee, *Report of the Fraud Trials Committee* (HMSO, London, 1986) (chaired by Lord Roskill; recommending the creation of a unified body integrating investigative and prosecutorial functions for serious fraud cases — the "Roskill model"). *See also* Serious Fraud Office, "SFO Historical Background and Powers" (2023), available at https://www.sfo.gov.uk/publications/corporate-information/sfo-historical-background-powers/ (last visited May 2026).
[86] The Bribery Act, 2010 (c. 23) (UK).
[87] Bill of Rights, 1689 (1 Will. & Mar., sess. 2, c. 2) (UK), art. 9 (providing that freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament).
[88] Anti-Corruption and Civil Rights Commission (ACRC), Republic of Korea, "History and Vision" (2024), available at https://www.acrc.go.kr/menu.es?mid=a20102000000 (last visited May 2026)
[89] The Act on the Prevention of Corruption and the Establishment and Management of the Anti-Corruption and Civil Rights Commission (Act No. 9402 of 2008) (Republic of Korea).
[90] Transparency International, *Corruption Perceptions Index* (Transparency International, Berlin, published annually since 1995), available at https://www.transparency.org/en/cpi (last visited May 2026).

particularly independence, integration, and prevention, directly influences anti-corruption outcomes.

THE SURVIVING BARRIERS: ANATOMY OF THE PROSECUTION VACUUM

Following the constitutional correction established in *Sita Soren v. Union of India*,[91] this section examines the structural barriers that collectively create the "prosecution vacuum." This condition arises when the constitutional bar to prosecution has been removed, yet the institutional mechanisms necessary for prosecution remain inadequate. The vacuum does not represent a gap in the law, but rather a disconnect between the existence of a legal right and the institutional capacity to enforce it.

1. BARRIER ONE: THE CBI'S STRUCTURAL DEPENDENCY ON THE EXECUTIVE:

The Central Bureau of Investigation (CBI) serves as the primary investigative agency in cases of legislator bribery, as illustrated in *Sita Soren v. Union of India*,[92] where the prosecution itself originated from a CBI chargesheet.[93] However, the CBI derives its powers from the Delhi Special Police Establishment Act, 1946[94] and remains institutionally dependent on the executive for its budget, personnel, and operational functioning.

Although the Supreme Court in *Vineet Narain v. Union of India*[95] aimed to insulate the Central Bureau of Investigation (CBI) from executive interference, these safeguards have not proven fully effective in practice. In May 2013, during proceedings in *Manohar Lal Sharma v. Principal Secretary*,[96] a bench led by Justice R.M. Lodha described the CBI as a "caged parrot speaking in its master's voice" after it was revealed that the agency's draft status report in the Coal Block Allocation (Coalgate) scam had been shared with, and altered based on suggestions from, the Law Minister and senior officials of the Prime Minister's Office.

[91] *Sita Soren v. Union of India*, 2024 INSC 161
[92] *Ibid*
[93] *Sita Soren v. Union of India*, 2024 INSC 161, paras. 3–7 (setting out the factual matrix, including the filing of the chargesheet by the CBI in the Jharkhand court proceedings).
[94] The Delhi Special Police Establishment Act, 1946 (Act 25 of 1946), ss. 2–6 (providing the statutory basis for the constitution, powers, and jurisdiction of the CBI).
[95] *Vineet Narain v. Union of India*, (1998) 1 SCC 226
[96] *Manohar Lal Sharma v. Principal Secretary*, (2014) 2 SCC 709

This structural dependency is further exacerbated by the requirement for prior government sanction. Even after completing an investigation and filing a chargesheet, the CBI cannot proceed without government approval, which is often required from the very administration whose legislators are under investigation. This arrangement creates a closed loop of executive control, as investigation, sanction, and prosecution are all subject to influence by the same authority, thereby fundamentally undermining accountability in cases involving legislator bribery.

2. BARRIER TWO: THE ABSENCE OF AN INDEPENDENT LEGISLATIVE ANTI-CORRUPTION PROSECUTOR

The executive dependence of the Central Bureau of Investigation (CBI) and the flawed design of statutory law are not the most fundamental structural deficiencies; both issues could be addressed through legislative intervention. The most significant gap is the absence of an independent prosecution authority with special jurisdiction over elected officials.

Several jurisdictions have established institutions to address this need. Hong Kong's Independent Commission Against Corruption (ICAC), created under the Independent Commission Against Corruption Ordinance[97], operates independently of both the government and the police. Singapore's Corrupt Practices Investigation Bureau (CPIB), established under the Prevention of Corruption Act, 1960,[98] reports directly to the Prime Minister and is constitutionally guaranteed operational independence under Article 22G of the Constitution of the Republic of Singapore. The United Kingdom's Serious Fraud Office (SFO), established by the Criminal Justice Act 1987,[99] possesses exclusive prosecutorial authority over complex economic crimes, distinct from the Crown Prosecution Service. In the United States, the Public Integrity Section (PIN) of the Department of Justice, established in 1976 and operating under 28 C.F.R. § 0.64,[100] addresses corruption by appointed and elected officials at all levels of

[97] Independent Commission Against Corruption Ordinance (Cap. 204) (Hong Kong), enacted 15 February 1974; Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, art. 57 (providing constitutional entrenchment of the ICAC's independence).

[98] Prevention of Corruption Act, 1960 (Cap. 241) (Singapore), enacted 17 June 1960; Constitution of the Republic of Singapore, art. 22G

[99] The Criminal Justice Act, 1987 (c. 38) (UK), s. 1; Fraud Trials Committee, *Report of the Fraud Trials Committee* (HMSO, London, 1986) (Lord Roskill, Chairman)

[100] 28 C.F.R. § 0.64 (US); *see also* US Department of Justice, Criminal Division, "About the Public Integrity Section" (2024), available at https://www.justice.gov/criminal/criminal-pin/about (last visited May 2026) (the Section was established in March 1976 in the aftermath of the Watergate scandal).

government, with exclusive jurisdiction over federal judges and nationwide supervision of election crime prosecutions.

No comparable institution exists in India. The Lokpal and Lokayuktas Act, 2013,[101] which was intended to address this gap, contains inherent design limitations: the Lokpal cannot investigate sitting judges, must refer prosecutions to the CBI rather than pursue them independently, and remains subject to the prior sanction requirement under Section 17A of the Prevention of Corruption Act, 1988.[102] As a result, the Lokpal is a structurally weakened institution; it depends on the CBI, whose independence is itself uncertain, lacks direct prosecutorial powers, and cannot act *suo motu*.[103] The accountability that *Sita Soren* pledged remains without an institutional foundation.

3. THE SITA SOREN RULING IS "SYMBOLICALLY SIGNIFICANT BUT OPERATIONALLY INEFFECTIVE"[104]

The *Sita Soren* ruling holds symbolic significance, as it rectified a 26-year constitutional error and affirmed that corruption and bribery among legislators undermine the foundation of Indian parliamentary democracy.[105] Nevertheless, for three interrelated reasons, the decision remains operationally ineffective as a basis for independent prosecution.

First, the prior sanction requirement under Sections 17A and 19 of the Prevention of Corruption Act, 1988[106] constitutes an ongoing executive veto over prosecution, which itself faces constitutional challenge, as evidenced by the split verdict in *Centre for Public Interest Litigation v. Union of India.*[107] Second, the principal investigating agency, the Central Bureau of Investigation (CBI), remains structurally dependent on the executive responsible for sanction decisions, resulting in a self-reinforcing system. Third, there is no autonomous prosecutorial body with the requisite authority, jurisdiction, and operational security to

[101] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), ss. 14, 20.
[102] The Prevention of Corruption Act, 1988 (Act 49 of 1988), s. 17A (inserted by the Prevention of Corruption (Amendment) Act, 2018 (Act 16 of 2018), s. 12, w.e.f. 26-7-2018).
[103] The Lokpal and Lokayuktas Act, 2013 (Act 1 of 2014), s. 20(2)
[104] T.R.S. Allan, *Constitutional Justice: A Liberal Theory of the Rule of Law* (Oxford University Press, Oxford, 2001).
[105] *Sita Soren v. Union of India*, 2024 INSC 161, para. 5
[106] The Prevention of Corruption Act, 1988 (Act 49 of 1988), ss. 17A and 19(1); *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55
[107] *Centre for Public Interest Litigation v. Union of India*, 2026 INSC 55.

investigate and prosecute legislator bribery independently of executive control.

4. EMPIRICAL EVIDENCE OF THE PROSECUTION VACUUM:

The empirical record demonstrates the persistence of a prosecution vacuum. No prominent lawmaker has faced bribery charges as a direct result of the *Sita Soren* ruling. Data from the Association for Democratic Reforms (ADR) indicate that 251, or 46 per cent, of the 543 Members of Parliament elected in the 2024 Lok Sabha elections declared criminal cases against themselves. This represents the highest such figure in Indian electoral history and marks an increase in the year following the historic decision.[108] These findings offer preliminary evidence that the constitutional ruling has not resulted in greater prosecutorial accountability.

CONCLUSION AND RECOMMENDATIONS

The paper contends that while Sita Soren v. Union of India corrected a significant constitutional error by removing parliamentary immunity for legislators involved in bribery, the judgment alone does not guarantee accountability. For decades, P.V. Narasimha Rao v. State (CBI/SPE) shielded legislators who accepted bribes and voted accordingly, resulting in constitutional impunity. Although the Supreme Court in Sita Soren clarified that bribery is not a protected legislative act, India still lacks an effective and independent mechanism to investigate and prosecute such corruption. Consequently, the judgment is constitutionally important but remains limited in practice.

The study focuses on the "prosecution vacuum" in India's anti-corruption framework. It notes that Sections 17A and 19 of the Prevention of Corruption Act, 1988 keep investigations and prosecutions under executive control through prior sanction requirements, and agencies like the Central Bureau of Investigation remain dependent on the government. By comparing India with anti-corruption models in Hong Kong, Singapore, and the United Kingdom, the paper finds that strong laws are insufficient without independent prosecutorial institutions. The research concludes that unless India establishes an autonomous anti-corruption prosecutor and reforms its sanction-based system, legislator bribery may persist despite the constitutional progress in Sita Soren.

[108] Association for Democratic Reforms (ADR), "Record 46% of Newly-Elected Lok Sabha MPs Facing Criminal Cases" (June 6, 2024), available at https://adrindia.org/content/record-46-of-newly-elected-lok-sabha-mps-facing-criminal-cases (last visited May 2026)

The necessary reforms to address the prosecution vacuum and enhance legislative accountabil ity in India are outlined below.

- *An Independent Legislative Anti-Corruption Prosecutor* should be established through dedicated legislation, integrating enforcement, prevention, and education in line with transnational models. The appointment committee should consist of the Chief Justice of India, the Comptroller and Auditor General, and the Presiding Officers of Parliament, with the executive excluded. Exclusive jurisdiction over legislators under the Prevention of Corruption Act, 1988, as well as *suo motu* powers, should be conferred upon the Prosecutor. Its expenditure should be charged to the Consolidated Fund of India through an appropriately amended constitutional provision.

- *The Lokpal and Lokayuktas Act, 2013*, should be reformed to grant the Lokpal direct prosecution powers, allowing the filing of charge sheets independently of the Central Bureau of Investigation. The prior sanction requirement under Section 17A of the Prevention of Corruption Act, 1988, for Lokpal-initiated prosecutions should be removed. The Lokpal should be constitutionally entrenched through the insertion of a new provision, proposed as Article 315A of the Constitution of India. All Lokpal vacancies should be filled within 90 days, with Supreme Court intervention mandated in the event of delay.

- *A Uniform Model Lokayukta Law* should be enacted under the Concurrent List to eliminate disparities among states regarding the jurisdiction, powers, and appointment procedures of Lokayuktas.

- *The three-pronged anti-corruption strategy of* enforcement, prevention, and education, modelled on the ICAC framework, should be institutionalised through the creation of a dedicated corruption prevention division responsible for systemic risk assessment and public education initiatives aimed at transforming societal attitudes toward corruption.

- Establish a *dedicated corruption prevention division* for systemic risk assessment of governance processes.

- Develop *public education and awareness mechanisms* to transform societal attitudes toward corruption.