R. S. NAYAK

v.

A. R. ANTULAY

February, 16, 1984

[D. A. DESAI, R. S. PATHAK, O. CHINNAPPA REDDY, A. P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Prevention of Corruption Act, 1947—S. 6—*Interpretation of. Whether court can take cognizance of offences enumerated in s. 6 against public servant without sanction of competent authority—Which is competent authority to give sanction—What is relevant date on which sanction be there—For attracting s.6 accused should be a public servant both on date of offence and on date when court takes cognizance of offence. In cases where accused holds several offices each one of which makes him public servant—Whether sanction of competent authorities of all the offices necessary or whether sanction of that competent authority alone under which public servant has misused his office is sufficient.*

Indian Penal Code—s.21, clauses (3), (7) *and* (12) (*a*)—*Defenition of 'public servant'—Scope of—Whether Member of State Legislative Assembly a 'public servant'. Expressions 'or', 'pay', in the pay of, and 'Government, used in s.* 21 *explained.*

Construction of Statutes—Rule of—Construction must advance object of Act—Court must give effect to natural meaning of words—In case of ambiguity court must ascertain intenation of legislature behind Act—Court can take help of external aids—While constructing ancient statute court can look at surrounding circumstances when statute was enacted.

Words and Phrases—Words 'or' and 'pay', meaning of, Phrase 'in the pay of,'—Explained.

The appellant, R.S. Nayak, filed a complaint against the respondent, A.R. Antulay, a public servant being the Chief Minister of Maharashtra State, under ss. 161, 165 I.P.C. and s. 5 of the Prevention of Corruption Act, 1947 (1947 Act) alleging abuse of office of Chief Minister. The complaint was rejected on account of absence of necessary sanction of the Governor of Maharashtra State under s.6 of the 1947 Act to prosecute the respondent. After the Governor issued necessary sanction, the appellant filed a fresh complaint in the Court of Special Judge against the respondent on the same grounds. However, on the date of filing fresh complaint the respondent had already resigned as Chief Minister. The respondent contended that the Special Judge had no jurisdiction to try him under s. 7 of the Criminal Law Amendment Act, 1952 and that no cognizance could be taken on private complaint. The Special Judge rejected both the contentions. In the meantime the State Government issued a notification under s. 7(2) of the Criminal Law Amendment Act, 1752 under which the case was transferred to another Special Judge. In a criminal revision application filed by the repsondent against the order of earlier

A Special Judge, a Division Bench of the High Court held that the Soecail Judge had jurisdiction to try the respondent and that the private complaint was maintainable. When the latter Special Judge proceeded with the case the respondent filed an application for his discharge on the grounds that the charge against him was baseless and that he being a Member of Legislative Assembly (M.L.A) requisite sanction under s. 6 of the 1947 Act was necessary. The Special Judge discharged the respondent holding that the respondent being M L A was a public servant within s. 21 B (12)(a) of I.P.C. and in the absence of the sanction of the Legislative Assembly he could not take cognizance of offence. The Special Judge also held that the material date for deciding the applicability of s. 6 of the 1947 Act was the date on which the Court was asked to take cognizance of the offence. The appellant challenged the order of the Special Judge in this Appeal.

The questions which arose for consideration were:—

C

(a) What is the relevant date with reference to which a valid sanction is a a pre-requisite for the prosecution of a public servant for offences enumerated in s. 6 of the 1947 Act ?

(b) If the accused holds several offices occupying each of which makes him a public servant, is sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him necessary and if anyone of the competent authorities fails or declines to grant sanction, is the Court precluded or prohibited from taking cognizance of the offence with which the public servant is charged, or is it implicit in s. 6 of the 1947 Act that sanction of that competent authority alone is necessary which is entitled to remove the public servant from the office which is alleged to have been abused or misused for corrupt motives ?

D

E

(c) Is M.L.A. a public servant within the meaning of the expression in clauses 12(a), 3 and 7 of s. 21 I.P.C. ?

(d) Is sanction as contemplated by s. 6 of the 1947 Act necessary for prosecution of M.L.A. and if so, which is the sanctioning authority competent to remove M.L.A. from the office of Member of the Legislative Assembly ?

F Allowing the appeal.

HELD: The provisons of the Act must receive such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is is the plainest duty of the court to give effect to the natural meaning of the words, used in the provisions. In the event of an ambiguity of the plain meaning of the words used in the statute being self-defeating, the court is entitled to sascertain the G intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. Whenever a question of construction arises upon ambiguity or where two views are possible of of a provision, it would be the duty of the court to adopt that construction which H would advance the object underlying the Act. [512 A—C]

The basic purpose underlying all canons of construction is the ascertainment

with reasonable certainty of the intention of Parliament in enacting the legislation. For this purpose why should the aids which Parliament availed of such as report of a special committee preceding the enactment, existing state of law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to court whose function is primarily to give effect to the real intetion of the Parliament in enacting the legislation. Such denial would deprive the court of a substantial and illuminating aid to construction. Therefore, departing from the earlier English decisions, the reports of the committee which preceded the enactment of a legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. [527A; D—E]

In construing a statute more especially the ancient statute, the court may look at the surrounding circumstances when the statute was enacted. The construction of ancient statutes may be eludicated by what in the language of the courts is called *contemporanea expositio*, that is, by seeing how they were understood at the time when they were passed. [528F—G]

Standard dictionaries as a rule give in respect of each word as many meanings in which the word has either been used or it is likely to be used in different contexts and connections. While it may be permissible to refer to dictionaries to find out the meaning in which a word is capable of being used or understood in common parlance, the well-known cannon of construction should not even for a minute be overloohed that the meaning to the words and expressions used in a statute ordinarily take their colour from the context in which they appear. [539F—G]

Deputy Chief Controller of Imports & Exports, New Delh v. K.T. Kosalram & Ors., [1971] 2 S.C.R. 507 at 517; and *State Bank of India v. N. Sundara Money*, [1976] 3 S.C.R. 160, referred to.

Section 6 of the Prevention of Corruption Act, 1947 bars the courts from taking cognizance of the offences therein enumerated alleged to have been committed by a public servant except with the previous sanction of the competent authority empowered to grant the requisite sanction. Therefore, when the court is called upon to take cognizance of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by him as public servant. Undoubtedly the accused must be a public servant when he is alleged to have committed the offence of which he is accused because ss. 161, 164, 165 I.P.C. and s. 5(2) of the 1947 Act clearly spell out that the offences there in defined can be committed by a public servant. A trial without a valid sanction where one is necessary under s.6 would be a trial without jurisdiction by the court. It is well settled that the relevant date with reference to which a valid sanction is *sine qua non* for taking cognizance of an offence committed by a public servant as required by s.6 is the date when the court is called upon to take cognizance of the offence of which he is accused. If, therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be a public servant, s. 6 will not be attracted and no sanction would be necessary for tahing cognizance of the offence against him. This approach is in accord with the policy underlying s.6 in that a public servant is not to be exposed to harassment of a frivolous or speculative prosecution. If he has ceased to be a public

A servant in the meantime, this vital consideration ceases to exist. [512D; H; 513 A—E]

C.R. Bansi v. State of Maharashtra, [1971] 3 S.C.R. 236; *R.R. Chari v. State of U.P.*, [1963] 1 S.C.R. 121; *S.N. Bose v. State of Bhar*, [1968] 3 S.C.R. 561; *Mohd. Iqbal Ahmed v. State of A.P.*, [1979] 2 S.C.R. 1007; *S.A. Venkataraman v. The State.* [1958] S.C.R. 1040 at 1052; *K.S. Dharmadatan v. Central Government & Ors.*, [1979] 3 S.C.R. 832, referred to.

B

In the instant case, long before the date on which the cognizance was taken by the Special Judge, the accused had ceased to hold the office of the Chief Minister, and as such had ceased to be a public servant in his capacity as Chief Minister. A *fortiori* no sanction as contemplated by s. 6 was necessary before cognizance of the offence could be taken against the accused for offences alleged to have been committed in his former capacity as public servant. [514D—E]

C

The submission that if the accused has held or holds a plurality of offices occupying each one of which makes him a public servant, under s. 6 sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him, would be necessary and if anyone of the competent authorities fails or declines to grant sanction, the court is precluded or prohibited from taking cognizance of the offence with which the public servant is charged, is not acceptable. Such an interpretation of s.6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and there by defeat the process of law. Such an interpretation is contrary to all cannons of construction and leads to an absurd end product which of necessity must be avoided. [520G; 518F—G]

D

E

The State (S.P.E. Hyderabad) v. Air Commodore Kailash Chand, [1980] 2 S.C.R. 697, referred to and partly dissented from.

The expression 'office' in the three sub-clauses of s.6(1) clearly denotes that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused. The sanction to prosecute a public servant can be given by an authority competent to remove him from the office which he has misused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. The authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched against public servants. Therefore, it is implicit in s.6 that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched a gainst him. [516H; 517A—D]

F

G

H

Mohd. Iqbal Ahmed v. State of A.P., [1979] 2 S.C.R. 1007, referred to.

The finding of the Special Judge that the respondent being M.L.A. was a public servant within clauses (12)(a) (3) and (7) of s.21 I.P.C. and sanction of the Legislative Assembly to prosecute him was necessary, is not correct. A person would be a public servant under clause (12)(a) of s. 21 I.P.C. if he falls under any of the following three categories: (i) if he is in the service of the Government; or (ii) if he is in the pay of the Government; or (iii) if he is remunerated by fees or commission for the performance of any public duty by the Government. Looking into the history and evolution of s.21 I.P.C. as traced and adopted as an external aid to construction, it is clear that M.L.A. was not and is not a 'public servant' within the meaning of expression in any of the clauses of s. 21 I.P.C. Assuming that it would not be legally sound or correct according to well-accepted canon of construction of a statute to construe s. 21(12)(a) by mere historical evolution of the section, the constitutionally valid approach would be to look at the language employed in the section to ascertian whether M.L.A. is a public servant within the meaning of the expression in that section. Depending upon the context, 'or' may be read as 'and' but the court would not do it unless it is so obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. The use of the expression 'or' in the context in which it is used in cl.(12) (a) does appear to be a disjunctive. Therefore, these three categories are independent categories and if a person falls in any of them he would be a public servant. The question is whether M.L.A. falls under any of the above three categories ? It was conceded that M.L.A. is not in the service of the Government but it was contended that M.L.A. is in the pay of the Government. Undoubtedly, M.L.A. receives a salary and allowances in his capacity as M.L.A. under the relevant statute. But does it make him a person 'in the pay of the Government'? The word 'pay' standing by itself is open to various shades of meaning and when the word is used in a phrase in the pay of' it is more likely to have a different connotation. than when standing by itself. The phrase 'in the pay of' would ordinarily import the element of employment or paid employment or employed and paid by the employer. The phrase does not import of necessity a master-servant relationship. In its setting the phrase 'in the pay of the Government' in cl. (12)(a) may comprehend a situtation that the person may be in the pay of the Government without being in the employment of the Government or without there being a master-servant relationship between the person receiving the pay and the Government as payer. Next what does the expression 'Government' in cl.(12)(a) of s. 21 I.P.C. connote? Section 17 I.P.C. provides that the word 'Government' denotes the Central Government or the Government of a State. Sec. 7 I.P.C. provides that 'every expression which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation'. Let it be noted that unlike the modern statute s.7 does not provide unless the context otherwise indicate', a phrase that prefeaces the dictionary clauses of a modern statute. Therefore, the expression "Government' in s.21(12)(a) must either mean the Central Government or the Government of a State. The Central Government being out of consideration the question is whether M.L.A. is in the pay of the Government of a State or is remunerated by fees for the performance of any public duty by the Government of a State. Even though M.L.A. receives pay and allowances, he is not in the pay of the State Government because legislature of a State cannot be comprehended in the expression 'State Government'. This conclusion would govern also the third part of cl. (12)(a) i.e. 'remunerated by fees for performance of any public duty by the Government. Therefore, if M.L.A. is not in the pay of the Government in the sense of executive government or is not remunerated by fees for performance of any public duty by the exe-

A cutive government, certainly he would not be comprehended in the expression 'public servant' within the meaning of the expression in cl: (12) (a). He is thus not a public servant within the meaning of the expression in cl. (12)(a). This conclusion rein forces the earlier conclusion reached after examining the historical evolution of cl. (12)(a). [537 A—B; 536G; E; H; 537 H;E; 539 D—E; 541 A; D—F; 543 D—E; 551 A—B]

B *Evolution of Parliamentary Privileges by S. K. Nag; Legislative Bodies Corrupt Practices Act*, 1925; *Prevention of Corruption Act*, 1947 *by Sethi and Anand* P. 60; *Santhanam Committee Report dt.* 31-3-1964; *Lok Sabha Debates* (*Third Series*). Vol. 35, Cls. 729 and 731; *The Anti-Corruption Laws* (*Amendment*) *Bill.* 1964 (enacted as Act 40 of 1964); *G.A. Monterio v. The State of Ajmer*, [1956] S.C.R. 682; *The State of Ajmer v. Shivji Lal.* [1959] Supp. 2 S.C.R. 739; *Prabhashanker Dwivedi and Anr. v. The State of Gujarat*, AIR 1970 Gujarat 97; *State of Gujarat v. Manshanker Prabhashanker Dwivedi*, [1973] 1 S.C.R. 313; *Green v. Premier Glynrohonwy*
C *Slate Co. Ltd.*, [1928] 1 K.B. 561 at 568; *Babi Manmohan Das Shah & Ors. v. Bishnu Das*, [1967] 1 S.C.R. 836 at 839; *Kamta Prasad Aggarwal etc. v. Executive Engineer, Ballabgarh & Anr.*, [1974] 2 S.C.R. 827 at 830; *M. Karunanidhi v. Union of India*, [1979] 3 S.C.R. 254; *Constituent Assembly Debates*, Vol. VII p. 984; *Rai Sahib Ram Jawaya Kapur & Ors. v. The State of Punjab.* [1955] 2. S.C.R. 225 at p. 236; *Shamshet Singh & Anr. v. State of Punjab*, [1975] 1 S.C.R. 841; *Sardari Lalv. Union of India & Ors;*, [1971] 3 S. C. R. 461; *His Majesty the King v. Boston & Ors.*, [1923-24]
D 33 Commonwealth Law Report 386....82; *Earskine May Parliamentary Practice* 20 *edition.* p. 149, referred to.

The Submission that the accused would be a public servant within the meaning of the expression any person empowered by law to discharge any adjudicatory functions, in cl. (3) of s.21 I.P.C. must be rejected. Participation in a debate on a motion of breach of privilege or for taking action for contempt of the House and voting
E thereon in a constitutional function discharged by the members and therefore, it cannot be said that such adjudicatory functions if it can be so styled, constitutes adjudicatory function undertaken by M.L.A. as; empowerd by law. [554 E—F]

Special Ref. No. 1 *of* 1964, [1965] 1 S.C.R. 413 *at pages* 490, 491 *and* 472; *I.C. Golaknath* v. *State of Punajab*, [1967] 2 S.C.R. 672; *Sripadangalavaru v. State of Kerala and Anr.*, [1973] Supp. S.C.R. 1 referred to.

F The submission that M.L.A. would be a public servant within cl. (7) of s.21 I.P.C. must be rejected. Cl. (7) takes within its ambit 'every person who holds any office by virture of which he is empowered to place or keep any person in confinement'. Broadly stated the expression comprehends police and prison authorities or those under an obligation by law or by virtue of office to take into custody and keep in confinement any person. To say that M.L.A. by virtue of his office is performing 'policing or prison officers' duties would be apart from doing violence to language
G lowering him in status. Additionally cl.(7) does not speak of any adjudi catory function. It appears to comprehend situations where as preliminary to or an end product of an adjudicatory function in a criminal case, which may lead to imposition of a prison sentence, and a person in exercise of the duty to be discharged by him by virtue of his office places or keeps any person in confinement. [554 G; 555 F—H]

H In view of the finding that M.L.A. is not a public servant under clauses (12)(a), (3) and (7) of s.21 I.P.C. and no sanction under s.6 of the Prevention of Corruption

Act, 1947 is necessary to prosecute him, it is not necessary to ascertain which would be the authority competent to sanction prosecution of M.L.A. [557 C] A

In the instant case, the allegations in the complaint are all to the effect that the accused misused or abused his office as Chief Minister for corrupt motives. By the time the Court was called upon to take cognizance of those offences, the accused had ceased to hold the office of Chief Minister. The sanction to prosecute him was granted by the Governor of Maharashtra but this aspect is irrelevant for concluding that no sanction was necessary to prosecute him under s.6 on the offences alleged to have been committed by the accused. Assming that as M.L.A. the accused would be a public servant under s.21, in the absence of any allegation that he misused or abused his office as M.L.A. that aspect becomes immaterial. Further s.6 postulates existence of a valid sanction for proseoution of a public servant for offences punishable under ss.161, 164, 165 I.P.C. and s.5 of the 1947 Act, if they are alleged to have been committed by a public servant. In view of the finding that M.L.A. is not a public servant within the meaning of the expression in s.21 I.P.C., no sanction under s.6 is necessary to prosecute him for the offences alleged to have been committed by him. [556 G; 557 A—B] B C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal no. 356 of 1983

D

From the judgment and order dated 25-7-83 of the Special Judge, Bombay in Special Case No. 24 of 1983.

AND

Transferred Case No. 347 *of* 1983

AND E

Transferred Case No. 348 *of* 1983

Ram Jethmalani P.R. Vakil, Ms. Rani Jethmalani, Mukesh Jethmalani, O.P. Malviya, Shailendra Bhardwaj and *Harish Jagatlani* for the appellant. F

Dr. L.M. Singhvi, Dalveer Bhandari, A.M. Singhvi, S.S. Parkar, H. Bhardwaj, U.N. Bhandari, H.M. Singh, Ranbir Singh and *S.G. Hasnain* for the respondent.

Ashok Desai and *Mrs. J. Wad* for the petitioner in T.C. No. 348 of 1983. G.

M.N. Shroff for State of Maharashtra

K. Parasaran, Attorney General, *Ms. A. Subhashini, Gopal Subramanian, R.N. Poddar* and *C.V. Subba Rao* for Union of India. H

A The Judgment of the Court was delivered

DESAI, J. Respondent Abdul Rehman Antulay (hereinafter referred to as the accused) was the Chief Minister of the State of Maharashtra from 1980 till he submitted his resignation on January 12, 1982, which became effective from January 20, 1982. He thus ceased to hold B the office of the Chief Minister from January 20, 1982 but continues to be a sitting member of the Maharashtra Legislative Assembly till today.

As the contentions canvassed before this Court are mainly questions of law, facts at this stage having a peripheral relevance in the C course of discussion, it is unnecessary to set out the prosecution case as disclosed in the complaint filed by complainant Ramdas Shrinivas Nayak (complainant for short) in detail save and except few a pertinent and relevant allegations. In the process the brief history of the litigation may also be traced.

D The complainant moved the Governor of Maharashtra by his application dated September 1, 1981 requesting him to grant sanction to prosecute the accused as required by Sec. 6 of the Prevention of Corruption Act, 1947 ('1947 Act' for short) for various offences alleged to have been committed by the accused and neatly set out in the application. Complainant then filed the first complaint in the Court E of Chief Metropolitan Magistrate, 28th Esplanade, Bombay on September 11, 1981 being Criminal Case No. 76/Misc. of 1981 against the accused and others known and unknown collaborators alleging that the accused in his capacity as Chief Minister and thereby a public servant within the meaning of Sec. 21 of the Indian Penal Code (IPC) has committed offences under Secs. 161, 165 IPC and Sec. 5 of the F 1947 Act, Sec. 384 and Sec. 420 IPC read with Secs. 109 and 120-B IPC. The complaint runs into 31 closely typed pages and carried the list of 37 witnesses. The learned Metropolitan Magistrate invited the complainant to satisfy him as to how the complaint for offences under Secs. 161, 165 IPC and Sec. 5 of the 1947 Act is maintainable without a valid sanction as contemplated by Sec. 6 of 1947 Act and ultimately G held that in the absence of a valid sanction from the Governor of Maharashtra, the complaint filed by the complainant for the aforementioned three offences was not maintainable. The learned Metropolitan Magistrate accordingly held as per order dated October 6, 1981 that the complaint was maintainable only for offences alleged to have H been committed by the accused under Secs. 384 and 420 read with Secs. 109 and 120B of the IPC and directed that the case be fixed for

examining the complainant as required by Sec. 200 of the Cr. P.C. The complainant questioned the correctness of this order in Special Criminal Application No. 1742 of 1981 filed in the High Court of Judicature at Bombay.

In the meantime, another development had taken place which may be briefly noticed. One Shri P.B. Samant, who has also filed an identical complaint against the accused, along with several others filed a Writ Petition No. 1165 of 1981 in the High Court of Judicature at Bombay challenging the method of distribution of ad hoc allotment of cement in the State of Maharashtra as being contrary to the rule of law and probity in public life. The accused was the second respondent in this petition, the first and third respondents being the State of Maharashtra and Union of India respectively. By an exhaustive speaking order dated September 23, 1981, a learned Single Judge of the High Court granted rule nisi and made it returnable on November 23, 1981. The writ petition came up for hearing before another learned Single Judge who by his judgment dated January 12, 1982 made the rule absolute. Probably as a sequel to this decision of the High Court, the accused tendered his resignation as Chief Minister on the same day and when the resignation was accepted he ceased to hold the office of the Chief Minister with effect from January 20, 1982.

Special Criminal Application No. 1942 of 1981 filed by the complainant against the order of the learned Chief Metropolitan Magistrate was dismissed by a Division Bench of the High Court on April 12, 1982. Not the accused but the State of Maharashtra preferred an appeal by special leave under Art. 136 of the Constitution against the decision of the Division Bench of the High Court rejecting the special criminal application. This Court rejected the application for special leave at the threshold on July 28, 1982. (See *State of Maharashtra* v. *Ramdas Shrinivas Nayak and Others*[1]). Promptly, on the heels of the judgment of this Court, the Governor of Maharashtra on the same day granted the sanction under Sec. 6 of the 1947 Act to prosecute the accused in respect of specific charges set out in the order according sanction. Armed with this sanction, the complainant filed a fresh complaint in the Court of the Special Judge, Bombay registered as Criminal Case No. 24 of 1982 against the accused as Accused No. 1 and others known and unknown. In this complaint it is broadly alleged that the accused who was the Chief Minister of the State of Maha-

(1) [1982] 2 S.C.C. 463.

A rashtra between the period August 1980 to September 1981 conceived a scheme of aggrandisement involving obtaining of funds from the members of the public and putting them substantially under his own control for the disbursal of the funds so obtained. The complaint proceeded to refer to the setting up of various trusts and alleged that the corner-stone of the scheme involved receipt by the accused of illeB gal gratification other than legal remuneration as a motive or reward for doing or forebearing to do any official act, or for showing or forebearing to show in the exercise of his official functions, favour or disfavour to persons, or for rendering or attempting to render any service or dis-service to such persons who dealt with the State Government in general and with public servants who formed part of C the Government. It was specifically alleged that the scheme devised by the accused was a flagrant abuse of his official position as Chief Minister for obtaining control over funds which would be used for purposes conducive to the interest of the accused himself. The complainant proceeded to set out the abuse of office of Chief Minister by the accused citing various alleged instances such as distribution of ad D hoc cement contrary to law and the binding circulars, granting liquor licences as and by way of distribution of Government largesse, issuing no objection certificates for letting out premises by obtaining a price for the same. The running thread through various allegations is that the accused by abusing or misusing his office of Chief Minister obtained or attempted to obtain gratification other than legal remunerations E a motive or reward for doing or forebearing to do any official act as Chief Minister or for showing or forebearing to show in the excercise of his official functions, favour or disfavour to persons etc. To this complaint, the order granting sanction to prosecute the accused made by the Governor of Maharashtra was annexed and produced. After recording the vericfiation of the complainant, the learned Special Judge F took cognizance of the offences and issued process by directing a bailable warrant to be issued in the sum of Rs. 10,000 with one surety and made it returnable on September 3, 1983.

On the process being served the accused appeared and sought exemption from personal appearance which was granted for a day G and the case was adjourned to October 18, 1982 for recording the evidence of the complainant and his witnesses for the prosecution.

When the case was called out on October 18, 1982, an application was moved on behalf of the accused inter alia contending that the H Court of the learned special Judge had no jurisdiction in view of the provision contained in Sec. 7 of the Criminal Law Amendment Act,

1952 ('1952 Act' for short) and that no cognizance can be taken of offences punishable under Secs. 161, 165 IPC and Sec. 5 of the 1947 Act on a private complaint. The case was at that time pending in the Court of the special Judge presided over by one Shri P.S. Bhutta. The learned special Judge by his order dated October 20, 1982 rejected both the contentions and set down the case for November 29, 1982 for recording evidence of the prosecution. The learned special Judge made it abundantly clear that under no circumstance the case would be adjourned on the next occasion and if any revision or appeal is intended to be filed against the order, the learned counsel for the accused should give advance notice to the learned counsel for the complainant.

A B C

The accused filed Criminal Revision Application No. 510 of 1982 against the order of the learned special Judge dated October 20, 1982 rejecting his application. On January 16, 1983, the Government of Maharashtra issued a notification in exercise of the powers conferred by sub-sec. (2) of Sec. 7 of 1952 Act and in modification of the earlier Government Order dated April 12, 1982, directing that in Greater Bombay on and after the date of the notification the offences specified in sub-sec. (1) of sec. 6 of the 1947 Act which are investigated by the Anti-Corruption Bureau of Police in Greater Bombay, except special cases No. 14, 15 and 16 of 1977 and Special Case No. 31 of 1979 to 37 of 1979 (both inclusive) shall continue to be tried by Shri R.B. Sule. The net outcome of this notification was that Special Case No. 24 of 1982 pending in the Court of Special Judge Shri P.S. Bhutta would stand transferred to the Court of Shri R.B. Sule, Additional Special Judge for Greater Bombay.

D E

On a reference by the learned Single Judge, a Division Bench of the Bombay High Court heard and dismissed on March 7, 1983 Criminal Revision Application No. 510 of 1982 filed by the accused against the order of learned special Judge Shri P.S. Bhutta dated October 20, 1982. The Division Bench in terms held that the private complaint was maintainable and as the required notification has already been issued, Shri R.B. Sule will have jurisdiction to try Special Case No. 24 of 1982. The learned trial Judge Shri R.B. Sule on receipt of the record of the case issued a notice on April 27, 1982 calling upon all parties to appear before him on April 21, 1983. It appears on July 8, 1783, two applications were moved on behalf of the accused urging the learned trial Judge; (i) to discharge the accused *inter alia* on the ground that the charge was groundless and that even though the accused

F G H

had ceased to be the Chief Minister, on the date of taking cognizance of the offences, he was a sitting member of the Maharashtra Legislative Assembly and as such a public servant and in that capacity a sanction to prosecute him would have to be given by the Maharashtra Legislative Assembly and the sanction granted by the Governor would not be valid in this behalf. The second petition requested the learned Judge to postopone the case till the petition for special leave filed by the accused against the decision of the Division Bench of the High Court holding that the private complaint was maintainable is disposed of. Both these applications came up for hearing before Shri R.B. Sule, who by his order dated July 25, 1783 upheld the contention of the accused that M.L.A. was a public servant within the meaning of the expression in Sec. 21 (12) (a) IPC and that unless a sanction to prosecute him by the authority competent to remove him from his office as M.L.A. was obtained which in the opinion of the learned Special Judge was Maharashtra Legislative Assembly, the accused is entitled to be discharged. So saying, the learned Judge discharged the accused. The complainant filed a petition for special leave to appeal No. 1850 of 1983 and a Writ Petition (Crl.) No. 145 of 1983 against the decision of the learned special Judge. Both these matters came up before this Court on August 3, 1983 when the matters were adjuorned to August 10, 1983 to enable the petitioner, original complainant to file a criminal revision application against the order of the learned special Judge in the High Court. Accordingly, the complainant filed Criminal Revision Application No. 354 of 1983 in the High Court against the order of learned special Judge Shri R.B. Sule. This Court ultimately granted special leave to appeal as also rule nisi in the writ petition. By an order made by this Court, the criminal revision application filed by the petitioner stands transferred to this Court.

It may be mentioned that this Court has granted special leave to the accused against the decision of the Division Bench of the Bombay High Court holding that a private complaint is maintainable etc. Criminal Appeal No. 247 of 1983 arising out of the said special leave petition is being heard along with this matter but that will be dealt with separately.

While discharging the accused, the learned special Judge held that the material date for deciding the applicability of Sec. 6 of the 1947 Act is the date on which the court is asked to take cognizance of the offence. Proceeding further it was held that even though the accused had ceased to hold the office of the Chief Minister on the date

on which cognizance was taken by the learned special Judge, Shri Bhutta, yet on that date he was a sitting M.L.A. and was therefore, a public servant within the meaning of the expression in Sec. 21 (12)(a) in as much as the M.L.A. is a person in the pay of the Government or at any rate he is remunerated by fees for performance of public duty by the Government and therefore, he is a public servant. As a corollary, the learned Judge held that as on the date of taking cognizance of the offence the accused was a public servant, he could not be prosecuted without a valid sanction as contemplated by Sec. 6 of the 1947 Act. The learned Judge further held that the M.L.A. holds an office and he can be removed from that office by the Legislative Assembly because the latter has the power to expel a member which would amount to removal from office. The learned Judge further held that as there was no sanction by the Maharashtra Legislative Assembly to prosecute the accused and as the Governor had no power to sanction prosecution of the accused in his capacity as M.L.A., the accused is entitled to be discharged for the offences under Secs. 161, 165, 120-B, 109 IPC and Sec. 5 of the 1947 Act for want of a valid sanction for prosecution, and in respect of the other offences, the accused is entitled to be discharged on the ground that the court of the special Judge had no jurisdiction to try the accused for those offences. In respect of those other offences, the learned Judge directed the complaint to be returned to the complainant for presenting it to the proper court. It may be mentioned that by a common order in Special Case No. 3 of 1983 instituted upon the complaint of Mr. P.B. Samant, the accused was discharged.

Sec. 21 IPC defines a 'Public Servant'. The relevant clauses may be extracted as under:

> "21. The words 'public servant' denote a person falling unde rany of the descriptions hereinafter following, namely:—
>
> Third—Every Judge including any person empowerd by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.
>
> Seventh: Every person who holds any office by virtue of which he is empowerd to place or keep any person in confinment.
>
> Twelfth—Every person—
>
> (a) in the service or pay of the Government or remunerated

A by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government Company as
B defined in Section 617 of the Companies Act, 1956.

Explanation 1: Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not".

C Sec. 17 defines the expression 'Government' to denote the Central Government or the Government of a State. Sec. 14 defines the expression 'servant of Government' to denote any officer or servant continued, appointed or employed in India by or under the authority of Government.

D Sec. 19 defines the word 'Judge' as under:

"The word "Judge" denotes not only every person who is officially designated as a Judge, but also everyperson

E Who is empowered by law to give, in any legal proceeding, civil or criminal; a definitive judgment, or a judgment which if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowerd by law to give such a judgment."

F Sec. 7 provides that 'every expression which is explained in any part of the Code (IPC), is used in every part of this Code in conformity with the explanation.'

G Sec. 5 of the 1947 Act defines the offence of criminal misconduct and a public servant who commits an offence of criminal misconduct is liable to be punished with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine.

H Sec. 6 provides for a sanction as a pre-condition for a valid prose-

cution for offences punishable under Sec. 161, 164, 165 IPC and Sec. 5 of the 1947 Act. It reads as under: A

> "6(1) No court shall take cognizance of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, or under sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction, B
>
> (a) in the case of a person who is employed in connection with affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, C
>
> (b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, D
>
> (c) in the case of any other person, of the authority competent to remove him from his office.
>
> (2) Where for any reason whatsoeve any doubt arises whether the previous sanction as rrequired under sub-section (1) should be given by the Central or State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed". E F

With a view to eradicating the evil of bribery and corruption, the Government of India set up a Committee to make recommendations for the improvement of the laws relating to bribery and corruption under the Chairmanship of Dr. Bakshi Tek Chand. The recommendations of the Committee led to the enactment of the Criminal Law Amendment Act, 1952. By the 1952 Act, power was conferred on the State Government to appoint special Judges as may be necessary for such area or areas as may be specified in the notification to try the following offences namely; offences punishable under Sections 161, 162, 163, 164, 165 and 165A IPC and Sec. 5 of the 1947 Act and any conspiracy to commit or any attempt to commit or any abetment of G H

any of the offences hereinabove mentioned. Sec. 7 conferred exclusive jurisdiction on the special Judges appointed under Sec. 6. Sub-sec. (2) of Sec. 7 provides for specific territorial jurisdiction of a special Judge. Sub-sec. (3) conferred power on the special Judge also to try any offence other than an offence specified in Sec. 6 with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial. Sec. 8 prescribed the procedure to be follwed by the special Judge in the trial of the offences. The Court of special Judge was deemed to be a Court of Sessions trying cases without a jury within the local limits of the jurisdiction of the High Court for the purposes of Chapter XXXI and XXXII of the Code of Criminal Procedure as provided by Sec. 9.

The appellant, the original complainant, contends that the learned special Judge was in error in holding that M.L.A. is a public servant within the meaning of the expression under Sec. 21(12)(a). The second submission was that if the first question is answerd in the affirmative, it would be necessary to examine whether a sanction as contemplated by Sec. 6 is necessary. If the answer to the second question is in the affirmative it would be necessary to identify the sanctioning authority. The broad sweep of the argument was that the complainant in his complaint has alleged that the accused abused his office of Chief Minister and not his office, if any, as M.L.A. and therefore, even if on the date of taking cognizance of the offence the accused was M.L.A., nonetheless no sanction to prosecute him is necessary as envisaged by Sec. 6 of the 1947 Act. It was urged that as the allegation against the accused in the complaint is that he abused or misused his office as Chief Minister and as by the time the complaint was filed and cognizance was taken, he had ceased to hold the office of the Chief Minister no sanction under Sec. 6 was necessary to prosecute him for the offences alleged to have been committed by him when the accused was admittedly a public servant in his capacity as Chief Minister.

On behalf of the accused, it was contended that not only the accused would be a public servant as falling within the meaning of the expression in Sec. 21(12)(a) but he would also be a public servant within the contemplation of clauses (3) and (7) of Sec. 21. The next limb of the argument was that if an accused hold plurality of offices, each of which confers on him the status of a public servant and even if it is alleged that he has abused or misused one office as a public servant, notwithstanding, the fact that there no allegation of abuse or misuse of other office held as public servant, sanction of each authority com-

petent to remove him from each of the offices would be a *sine qua non* under Sec. 6 before a valid prosecution can be launched against the accused. A

On these rival contentions some vital and some not so vital points arise for consideration, some easy of answer and some none-too-easy. For their scientific and logical treatment they may be formulated : B

(a) What is the relevant date with reference to which a valid sanction is a pre-requisite for the prosecution of a public servant for offences enumerated in Sec. 6 of the 1947 Act?

(b) If the accused holds plurality of offices occupying each of which makes him a public servant, is sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him necessary and if anyone of the competent authorities fails or declines to grant sanction, is the Court precluded or prohibited from taking cognizance of the offence with which the public servant is charged ? C D

(c) Is it implicit in Sec. 6 of the 1947 Act that sanction of that competent authority alone is necessary, which is entitled to remove the public servant from the office which is alleged to have been abused for misused for corrupt motives ? E

(d) Is M.L.A. a public servant within the meaning of the expres sion in Sec. 21(12)(a) IPC ?

(e) Is M.L.A. a public servant within the meaning of the expression in Sec. 21(3) and Sec. 21(7) ICP ? F

(f) Is sanction as contemplated by Sec. 6 of the 1947 Act necessary for prosecution of M.L.A. ?

(g) If the answer to (f) is in the affirmative, which is the Sanctioning Authority competent to remove M.L.A. from the office of Member of the Legislative Assembly? G

Re. (*a*): The 1947 Act was enacted, as its long title shows, to make more effective provision for the prevention of bribery and corruption. Indisputably, therefore, the provisions of the Act must receive H

A such construction at the hands of the court as would advance the object and purpose underlying the Act and at any rate not defeat it. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in the provision. The question of construction arises only in the event of an ambiguity or the plain meaning of the words used in the B statute would be self-defeating. The court is entitled to ascertain the intention of the legislature to remove the ambiguity by construing the provision of the statute as a whole keeping in view what was the mischief when the statute was enacted and to remove which the legislature enacted the statute. This rule of construction is so universally accepted that it need not be supported by precedents. Adopting this rule C of construction, whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the court to adopt that construction which would advance the object underlying the Act namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it.

D Section 6 bars the court from taking cognizance of the offences therein enumerated alleged to have been committed by a public servant except with the previous sanction of the competent authority empowered to grant the requisite sanction. Sec. 8 of 1952 Act prescribes procedure and powers of special Judge empowered to try offences E set out in Sec. 6 of 1947 Act. Construction of Sec. 8 has been a subject of vigorous debate in the cognate appeal. In this appeal we will proceed on the assumption that a special Judge can take cognizance of offences he is competent to try on a private complaint. Sec. 6 creates a bar to the court from taking cognizance of offences therein enumerated except with the previous sanction of the authority set out in clause (a), F (b) & (c) of sub-Sec. (1). The object underlying such provision was to save the public servant from the harassment of frivolous or unsubstantiated allegations. The policy underlying Sec. 6 and similar sections, is that there should not be unnecessary harassment of public servant. (See *C.R. Bansi* v. *State of Maharashtra*[1]). Existence thus of a valid sanction is a pre-requisite to the taking of cognizance of G the enumerated offences alleged to have been committed by a public servant. The bar is to the taking of cognizance of offence by the court. Therefore, when the court is called upon to take cognizances of such offences, it must enquire whether there is a valid sanction to prosecute the public servant for the offence alleged to have been committed by

H

(1) [1971] 3 S.C.R. 236.

him as public servant. Undoubtedly, the accused must be a public servant when he is alleged to have committed the offence of which he is accused because Sections 161, 164, 165 IPC and Sec. 5(2) of the 1947 Act clearly spell out that the offences therein defined can be committed by a public servant. If it is contemplatded to prosecute public servant who has committed such offences, when the court is called upon to take cognizance of the offence, a sanction ought to be available otherwise the court would have no jurisdiction to take cognizauce of the offence. A trial without a valid sanction where one is necessary under Sec. 6 has been held to be a trial without jurisdiction by the court. (See *R.R. Chari* v. *State of U.P.*[1] and *S.N. Bose* v. *State of Bihar*[2]) In *Mohd. Iqbal Ahmed* v. *State of A.P.*[3], it was held that a trial without a sanction renders the proceedings *ab initio* void. But the *terminus a quo* for a valid sanction is the time when the court is called upon to take cognizance of the offence. If therefore, when the offence is alleged to have been committed, the accused was a public servant but by the time the court is called upon to take cognizance of the offence committed by him as public servant, he has ceased to be public servant, no sanction would be necessary for taking cognizance of the offence against him. This approach is in accord with the policy underlying Sec. 6 in that a public servant is not to be exposed to harssment of a frivolous or speculative prosecution. If he has ceased to be a public servant in the meantime, this vital consideration ceases to exist. As a necessary corollary, if the accused has ceased to be a public servant at the time when the court is called upon to take cognizance of the offence alleged to have been committed by him as public servant, Sec. 6 is not attracted. This aspect is not more *res integra*. In *S.A. Venkataraman* v. *The State*[4] this Court held as under:

> "In or opinion, in giving effect to the ordinary meaning of the words used in s. 6 of the Act, the conclusion is inevitable thatat the time a court is asked to take cognizance not only the offence must have been committed by a public servant but the person accused is still a public servant removable from his office by a competent authority before the provisions of s. 6 can apply. In the present appeals, admittedly, the appellants had cease to be public servants alleged to have been commited by them as public servants. Accordingly, the provisions of s.6 of the Act

(1) [1963] 1 S.C.R. 121.
(2) [1968] 3 S.C.R. 561.
(3) [1979] 2 S.C.R. 1007.
(4) [1958] S.C.R. 104 at 1052

A did not apply and the prosecution against them was not vitiated by the lack of a previous sanction by a competent authority".

And this view has been consistently followed in *C.R. Bansi's case* and *K.S. Dharmadatan* v. *Central Government & Ors.*[1]. It therefore appears well-settled that the relevant date with reference to which B a valid sanction is *sine qua non* for taking cognizance of an offence committed by a public servant as required by Sec. 6 is the date on which the court is called upon to take cognizance of the offence of which he is accused.

The accused tendered resignation of his office as Chief Minister C and ceased to hold the office of Chief Minister with effect from January 20, 1982. The complaint from which the present appeal arises and which was registered as Criminal Case No. 24/82 appears to have been filed on August 9, 1982 and the cognizance was taken by the learned Magistrate on th same day. It unquestionably transpires that long before the date on which the cognizance was taken by the learned D special Judge, the accused had ceased to hold the office of the Chief Minister and as such had ceased to be a public servant. In other words, he was not a public servant in his capacity as Chief Minister on August 9, 1982 when the court took cognizance of the offence against him. *A fortiori* no sanction as contemplated by Sec. 6 was necessary before cognizance of the offence could be taken against the accused for offen- E ces alleged to have been committed in his former capacity as public servant. *Re: (b) and (c):* It was strenuously contended that if the accused has held or holds a plurality of offices occupying each one of which makes him a public servant, sanction of each one of the competent authorities entitled to remove him from each one of the offices held by him, would be necessary and if anyone of the competent F authorities fails or declines to grant sanction, the court is precluded or prohibited fome taking cognizance of the offence with the public servant is charged. This submission was sought to be repelled urging that it is implicit in Sec. 6 that sanction of that authority alone is necessary which is competent to remove the public servant from the office which he is alleged to have misused or abused for corrupt motives. G Sec. 6(1)(c) is the only provision relied upon on behalf of the accused to contend that as M.L.A. he was a public servant on the date of taking cognizance of the offences, and therefore, sanction of that authoriy competent to remove him from that office is a *sine qua non* for taking cognizance of offences. Sec. 6 (1)(c) bars taking cognizance of an H

(1) [1979] 3 S.C.R. 832

offence alleged to have been committed by public servant except with the previous snaction of the authorty competent to remove him from his office. A

In order to appreciate the rival contentions the fact situation relevant to the topic under discussion may be noticed. At a general election held in 1980, accused was elected as Member of the Legislative Assembly of Maharashtra State fom Shrivardhan Assembly Constitutency. He was appointed as Chief Minister of Maharashtra State, and he was holding that office at the time he is alleged to have committed the offences set out in the complaint filed against him. He tendered his resignation of the office of the Chief Minister and ceased to hold that office with effect from January 20, 1982. However, he coninued to retain his seat as M.L.A. The contenion is that as M.L.A., he was a public servant, a submission seriously controverted, which we would presently examine and that he was such public servant even on the date on which the court took cognizane of the offences set out in the complaint without a valid sanction and therefore the court had no jurisdiction to take cognizance of the offences. In support of the sumbission it was urged that if the policy undelying Sec. 6 and similar provisions like Sec. 197 Cr. P.C. was to spare the harassment to the public servant consequent upon launching of frivolous or speculative prosecutions, the sme would be defeated if it is held that the sanction to prosecute is necessary from an authority competent to remove the public servant from the office which he is alleged to have misused or abused. Proceeding along this line it was urged that even if the accused has ceased to be a public servant in one capacity by ceasing to hold the office which he is alleged to have misused or abused yet if he continued to be a public servant in another capacity, the authority competent to remove him from the latter office would have to decide whether the prosecution is frivolous or speculative and in larger public interest to thwart it by declining to grant the sanction. It was also urged that if a public servant has to discharge some public duty and perform some public functions and he is made to cool his heels in law courts, public interest would suffer by keeping him away from his public duty and therefore, to advance the object underlying Sec. 6, the court must hold that if the public servant who is being prosecuted holds more than one public office occupying each one of which makes him public servants, a sanction to prosecute of each competent authority entitled to remove him from each office is necessitus before taking cognizance of offences against him. It was urged that this approach would advance and B C D E F G H

A buttress the policy underlying Sec. 6 and the contrary view would defeat the same.

Offences prescribed in Sec. 161, 164 and 165 IPC and Sec. 5 of the 1947 Act have an intimate and inseparable relation with the office of a public servant. A public servant occupies office which renders B him a public servant and occupying the office carries with it the powers conferred on the office. Power generally is not conferred on an individual person. In a society governed by rule of law power is conferred on office or acquired by statutory status and the individual occupying the office or on whom status is conferred enjoys the power of office or power flowing from the status. The holder of the office alone would C have opportunity to abuse or misuse the office. These sections codify a well-recognised truism that power has the tendency to corrupt. It is the holding of the office which gives an opportunity to use it for corrupt motives. Therefore, the corrupt conduct is directly attributable and flows from the power conferred on the office. This interrelation and interdependence between individual and the office he holds D is substantial and not serverable. Each of the three clauess of sub-s. (1) of Sec. 6 uses the expression 'office' and the power to grant sanction is conferred on the authority competent to remove the public servant from his office and Sec. 6 requires a sanction before taking cognizance of offences committed by public servant. The offence culd be committed by the public servant by misusing or abusing the power of office E and it is from that office, the authority must be competent to remove him so as to be entitled to grant sanction. The removal would bring about ceasation of interrelation between the office and abuse by the holder of the office. The link between power with opportunity to abuse and the holder of office would be severed by removal from office. Therefore, when a public servant is accused of an offence of taking F gratification other than local remuneration for doing or forebearing to do an official act (Sec. 161 IPC) or as a public servant abets offences punishable under Secs. 161 and 163 (Sec. 164 IPC) or as public servant obtains a valuable thing without consideration from person concerned in any proceeding or business transacted by such public servant (Sec. 165 IPC) or commits criminal misconduct as defined in Sec. 5 of the G 1947 Act, it is implicit in the various offences that the public servant has misused or abused the power of office held by him as public servant. The expression 'offices' in the three sub-clauses of Sec. 6(1) would clearly denote that office which the public servant misused or abused for corrupt motives for which he is to be prosecuted and in respect H of which a sanction to prosecute him is necessary by the competent authority entitled to remove him from that office which he has abused.

This interrelation between te office and its abuse if severed would render Sec. 6 devoid of any meaning. An this interrelation clearly provides a clue to the understanding of the provision in Sec. 6 providing for sanction by a competent authority who would be able to judge the action of the public servant before removing the bar, by granting sanction, to the taking of the cognizance of offences by the court against the public servant. Therefore, it unquestionably follows that the sanction to prosecute can be given by an authority competent to remove the public servant from the office which he has missused or abused because that authority alone would be able to know whether there has been a misuse or abuse of the office by the public servant and not some rank outsider. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act which removes the umbrella of protection of government servants against frivolous prosecutions and the aforesaid requirements must therefore, be strictly complied with before any prosecution could be launched aganst public servants. (See *Mohd. Iqbal Ahmad* v. *State of Andhra Pradesh*). The Legislature advisedly conferred power on the authority competent to remove the public servant from the office to grant sanction for the obvious reason that that authority alone would be able, when facts and evidence are placed before him, to judge whether a serious offence is committed or the prosecution is either frivolous or speculative. That authority alone would be competent to judge whether on the facts alleged, there has been an abuse or misuse of office held by the public servant. That authority would be in a position to know what was the power conferred on the office which the public servant hold, how that power could be abused for corrupt motive and whether prima facie it has been so done. That competent authority alone would know the nature and functions discharged by the public servant holding the office and whether the same has been abused or misused. It is the vertical hierarchy between the authority competent to remove the public servant from that office and the nature of the office hold by the public servant against whom sanction is sought which would indicate a hierarchy and which would therefore, permit inference of knowledge about the functions and duties of the office and its misuse or abuse by the public servant. That is why the legislature clearly provided that that authority alone would be competent to grant sanction which is entitled to remove the public servant against whom sanction is sought from the office.

A B C D E F G H

A Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Sec. 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to use. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned counsel that a Minister who is indesputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Sec. 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Sec. 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Sec. 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of 11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant, while abusing one office which he may have ceased to hold. Such an interpretation in contrary to all canons of construction and leads to an absurd and product which of necessity must be avoided. Legislation

must at all costs be interpreted in such a way that it would not operate as a rougue's charter. (*See Davis & Sons Ltd.* v. *Atkins*)[1]

Support was sought to be drawn for the submission from the decision of the Andhra Pradesh High Court in *Air Commodore Kailash Chand* v. *The State* (*S.P.E. Hyderabad*)[2] and the affirmance of that decision by this Court in *The State* (*S.P.E. Hyderabad*) v. *Air Commodore Kailash Chand.*[3] In that case accused Kailash Chand was a member of the Indian Air Force having entered the service on 17th November 1941. He retired from the service on 15th June, 1965, but was re-employed for a period of 2 years with effect from 16th June, 1965. On 7th September, 1966, the respondent was transferred to the Regular Air Force Reserve with effect from June 16, 1965 to June 15, 1970 i.e. for a period of 5 years. On 13th March, 1968, the re-employment given to the respondent ceased and his service was terminated with effect from April 1, 1968. A charge-sheet was submitted against him for having committed an offence under Sec. 5(2) of the Prevention of Corruption Act, 1947 during the period March 29, 1965 to March 16, 1967. A contention was raised on behalf of the accused that the court could not take cognizance of the offence in the absence of a valid sanction of the authority competent to remove him from the office held by him as a public servant. The learned special Judge negatived the the contention. In the revision petition filed by the accused in the High Court, the learned Single Judge held that on the date of taking cognizance of the offence, the accused was a member of the Regular Air Force Reserve set up under the Reserve and Auxiliary Air Force, 1952 and the rules made there under. Accordingly, it was held that a sanction to prosecute him was necessary and in the absence of which the court could not take cognizance of the offences and the prosecution was quashed. In the appeal by certificate, this Court upheld the decision of the High Court. This Court held following the decision in *S.A. Venkataraman's case* that if the public servant had ceased to be a public servant at the time of taking cognizance of the offence, Sec. 6 is not attracted. Thereafter the court proceeded to examine whether the accused was a public servant on the date when the court took cognizance of the offence and concluded that once the accused was transferred to the Auxiliary Air Force, he retained his character as a public servant because he was required to undergo training and

(1) [1977] Imperial Court Reports, 66.
(2) (1973) II Andhra Weekly Report 263
(3) [1980] 2 S.C.R. 697.

A to be called up for service as and when required. The court further held that as such the accused was a public servant as an active member of the Indian Air Force and a sanction to prosecute him under Sec. 6 was necessary. This decision is of no assistance for the obvious reason that nowhere it was contended before the court, which office was alleged to have been abused by the accused and whether the two offices B were separate and distinct. It is not made clear whether the accused continued to hold the office which was alleged to have been abused or misused even at the time of taking cognizance of the offence. But that could not be so because the service of the accused was terminated on April 1, 1968 while the cognizance was sought to be taken in June, 1969. Indisputably, the accused had ceased to hold that office as C public servant which he was alleged to have misused or abused. The court was however, not invited to consider the contention canvassed before us. Nor was the court informed specifically whether the subsequent office held by the accused in that case was the same from which his service was terminated meaning thereby he was re-employed to the same office. The decision appears to proceed on the facts of the D case. We would however, like to make it abundantly clear that if the two decisons purport to lay down that even if a public servant has ceased to hold that office as public servant which he is alleged to have abused or misused for corrupt motives, but on the date of taking cognizance of an offence alleged to have been committed by him as a public servant which he ceased to be and holds an entirely different public E office which he is neither alleged to have misused or abused for corrupt motives, yet the sanction of authority competent to remove him from such latter office would be necessary before taking cognizance of the offence alleged to have been committed by the public servant while holding an office which he is alleged to have abused or misused and which he has ceased to hold, the decisions in our opinion, do not lay F down the correct law and cannot be accepted as making a correct interpretation of Sec. 6.

Therefore, upon a true construction of Sec. 6, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which G he is alleged to have misused or abused for corrupt motive and for which a prosecution is intended to be launched against him.

In the complaint filed against the accused it has been repeatedly H alleged that the accused as Chief Minister of Maharashtra State accepted gratification other than legal remuneration from various sources

and thus committed various offences set out in the complaint. Nowhere, not even by a whisper, it is alleged that the accused has misused or abused for corrupt motives his office as M.L.A. Therefore, it is crystal clear that the complaint filed against the accused charged him with criminal abuse or misuse of only his office as Chief Minister. By the time, the court was called upon to take cognizance of the offences, so alleged in the complaint, the accused had ceased to hold the office of the Chief Minister. On this short ground, it can be held that no sanction to prosecute him was necessary as former Chief Minister of Maharashtra State. The appeal can succeed on this short ground. However, as the real bone of contention between the parties was whether as M.L.A. the accused was a public servant and the contention was canvassed at some length, we propose to deal with the same.

The learned special Judge held that the accused as M.L.A. is a public servant because he is in the pay of the Government or he is remunerated by fees for the performance of public duty by the Government. The learned special Judge simultaneously rejected the contention canvassed on behalf of the accused that the accused is a public servant because he is a person empowered by law to discharge as a member of a body of persons adjudicatory functions as contemplated by the Third clause of Sec. 21.

Re: (*d*) : We would first examine the correctness or otherwise of the finding of the the learned special Judge whether the accused as M.L.A. was in the pay of the Governmment or was remunerated by fees for the performance of any public duty by the Government so as to be clothed with the status of a public servant within the meaning of cl. (12)(a) of Sec. 21 IPC. Cl. (12)(a) provides that every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government would be a public servant. The three limbs of cl. (12)(a) according to the learned special Judge are:

(i) Every person in the service of the Government; or

(ii) Every person in the pay of the Government; or

(iii) Every person remunerated by fees or commission for the performance of any public duty by the Government.

If any person falls in any of the three limbs according to the

learned special Judge, he would be a public servant within the meaning of the expression in Sec. 21, IPC.

It was conceded before the learned special Judge and not retracted before us that the case of the accused does not fall in the first limb i.e. the accused as M.L.A. could not be said to be in the service of the Government. The contention is that the accused while receiving his salary as M.L.A. under the Maharashtra Legislature Members' Salaries and Allowances Act, 1956 was and is in the pay of the Government. The second limb of the submission was that even if the pay which the accused received as M.L.A. under the relevant Act would not make the accused a person in the pay of the Government, nevertheless the pay received by him would be the remuneration which the accused would receive for performance of public duty from the Government. It was contended on behalf of the complainant that the expression 'in the pay of the Government' would, in the context in which the expression is used in Sec. 21(12)(a), mean only one thing that the payment must be by a master to a servant and unless there is relationship of master and servant or relationship of command and obedience between the payer and the payee, mere payment even if styled as pay would not mean that the payee is in the pay of the payer. Proceeding along it was submitted that M.L.A. could not be said to be subject to obedience of any command by the Government, and therefore the accused as M.L.A. could not be said to be 'in the pay of the Government'. And as regards the third limb, it was urged that the accused as M.L.A. was not performing any public duty for the performance of which he was remunerated by the Government. Additionally, it was urged that the expression 'Government' in cl. (12) (a) must receive the same meaning assigned to it in Sec. 17 IPC meaning thereby that it denotes the Central Government or the Government of a State as the context requires. It was urged that in that sense the expression 'Government' in cl. (12) (a) would mean 'Executive Government' and it would be adding insult to injury if it can ever be said that M.L.A. is in the pay of the Executive Government or State Government. On behalf of the accused these submissions were repelled by urging that the use of word 'or' signifies a disjunctive and not conjuctive and that viewed from this angle the first part of cl. (12) (a) 'in the service of the Government' would import the notion of master servant or command obedience relationship, but the expression 'in the pay of the Government' would signify someone other than that included in the first limb and as the legislature could not be accused of tautology or redundancy the expression 'in the pay of the Government' would exclude any notion of master servant or command obedience relationship. It was submit-

ted that conceivably there can be a person in the service of the Government though not paid by the Government and conversely there can be a person 'in the pay of the Government' without being in the service of the Government. It was also submitted on behalf of the accused that it would be constitutional impertinence to say that M.L.A. does not perform any public duty. His duty may be political or moral as urged on behalf of the complainant but it is nontheless a constitutional duty which he is performing and that duty would be comprehended in the expression 'public duty' in cl. (12) (a). As a corollary it was submitted that the remuneration in the form of pay which the accused receives and has been receiving since he ceased to be the Chief Minister under the relevant Act is remuneration for the performance of the public duty by the Government. The neat question that emerges on the rival contentions is one of construction of the expression 'in the pay of' and the expression 'Government' in cl. (12) (a).

A

B

C

At the threshold learned counsel for the accused sounded a note of caution that the Court should steer clear of the impermissible attempt of the appellant to arrive at a true meaning of a legislative provision by delving deep into the hoary past and tracing the historical evolution of the provision awaiting construction. It was submitted with emphasis that this sugested external aid to construction falls in the exclusionary rule and cannot be availed of. Therefore, it has become necessary to examine this preliminary objection to the court resorting to this external aid to construction. Sec. 21 (12) (a) acquired its present form in 1964.

D

E

Mr. Singhvi contended that even where the words in a statute are ambiguous and may be open to more than one meaning or sense, a reference to the debates in Parliament or the report of a Commission or a Committee which preceded the enactment of the statute under consideration is not a permissible aid to construction. This is what is called the exclusionary rule. In support of the submission, reliance was placed upon *Assam Railways and Trading Co. Ltd.* v. *Inland Revenue Commissioners*[1] in which the House of Lords declined to look into the Report of the Royal Commission on Income tax in order to ascertain the meaning of certain words in the Income Tax Act, 1920 on the ground that no such evidence for the purpose of showing the intention, that is the purpose or object, of an Act is admissible. The intention of the legislature must be ascertained from the words of the

F

G

H

(1) [1934] All. E.R. 646 (Reprint)

A statute which such extraneous assistance as is legitimate. This view appears to have been consistently followed in United Kingdom because in *Katikiro of Buganda* v. *Attorney General*[1], the Privy Council held in agreement with the Court of Appeal of Eastern Africa that the contents of the White Paper were not admissible in evidence for the purpose of construing the schedule. Similarly in *Central Asbestos Co. Ltd.* v. B *Dodd*[2], the House of Lords declined to look at the Committee Report which preceded the drafting of the Act. In the *Administrator General of Bengal* v. *Premlal Mullick & Ors*[3], the Privy Council disapproved the reference to the proceeding of the Legislature which resulted in the passing of the Act II of 1874 as legitimate aids to the construction of Sec. 31 by the Appeal Bench of Calcutta High Court. Relying on C these decisions, a valiant plea was made to persuade us not to depart from this well accepted proposition of law in England. The trend of law manifested by these decisions broadly indicate that in the days gone by the courts in England were of the view that reference to the recommendations of a Commission or Committee appointed by the Government or statements in White Paper which shortly preceded the D statute under consideration were not legitimate aids to construction of the statute even if the words in the statute were ambiguous.

The trend certainly seems to be in the reverse gear in that in order to ascertain the true meaning of ambiguous words in a statute, E reference to the reports and recommendations of the Commission or Committee which preceded the enactment of the statute are held legitimate external aids to construction. The modern approach has to a considerable extent roded the exclusionary rule even in England. A Constitution Bench of this Court after specifically referring to *Assam Railways and Trading Co. Ltd.* v. *I.R.C.* in *State of Mysore* v. *R.V. Bidap*[4] F observed as under:

> "The trend of academic opinion and the practice in the European system suggest that interpretation of a statute being an exercise in the ascertainment of meaning, every thing which is logically relevant should be admissible..... There is a strong case for whittling down the Rule of Exclusion G followed in the British courts and for less apologetic reference to legislative proceedings and like materials to read the meaning

(1) [1960] 3 All. E.R. 849
(2) [1972] 2 All. E.R. 1135 at 1138. H
(3) I.L.R. 22 Cal. 788
(4) [1974] 1 S.C.R. 589 at 594.

of the words of a statute.. Where it is plain, the language prevails, but where there is obscurity or lack of harmony with other provisions and in other special circumstances, it may be legitimate to take external assistance such as the object of the provisions, the mischief sought to be remedied, the social context, the words of the authors and other allied matters."

Approaching the matter from this angle, the Constitution Bench looked into the proceedings of the Constitutent Assembly and "The Framing of India's Constitution; A Study' by B. Shiva Rao. It was however urged that before affirmatively saying that in *Bidap's case* this Court has finally laid to rest this controversy, the court may refer to *Commissioner of Income Tax, Andhra Pradesh, Hyderabad* v. *Jayalakshmi Rice and Oil Mills Contractor Co.*[1] At page 368 a bench of three Judges of this Court without so much as examining the principle underlying the exclusionary rule dissented from the view of the High Court that the report of the Special Committee appointed by the Government of India to examine the provisions of the Bill by which Sec. 26A was added to the Income-tax Act, 1922 can be taken into consideration for the purpose of interrpreting relevant provisions of the Partnership Act. However it may be stated that the Court did not refer to exclusionary rule. It dissented from the view of the High Court on the ground that the statement relied upon by the the High Court was relating to clause 58 corresponding to Sec. 59 of the Partnership Act and that statement cannot be taken into consideration for the purpose of interpreting the relevant provisions of the Partnership Act. This decision was not noticed in *Bidap's case* but the decision in *Assam Railways & Trading Co. Ltd.* relied upon by Mr. Singhvi was specifically referred to. This decision cannot therefore be taken as an authority for the proposition canvassed by Mr. Singhvi. Further even in the land of its birth, the exclusionary rule has received a serious jolt in *Black-Clawson International Ltd.* v. *Papierworke Waldhef Aschaffenburg AC*[2] : Lord Simon of Claisdale in his speech while examining the question of admissibility of Greer Report observed as under:

"At the very least, ascertainment of the statutory objective can immediately eliminate many of the possible meanings that the language of the Act might bear: and, if

(1) [1971] 3 S.C.R. 365.
(2) [1975] 1 All. E. R. 810.

A an ambiguity still remains, consideration of the statutory objective is one of the means of resolving it.

The staturory objective is primarily to be collected from the provisions of the statute itself. In these days, when the long title can be amended in both Houses, I can B see no reason for having recourse to it only in case of an ambiguity—it is the plainest of all the guides to the general objectives of a statute. But it will not always help as to particular provisions. As to the statutory objective of these, a report leading to the Act is likely to be the most potent aid; and, in my judgment, it would be more obscurantism not C to avail oneself of it. here is, indeed clear and high authority that it is available for this purpose".

And in support of this statement of law, a number of cases were relied upon by the learned Law Lord. It may also be mentioned that Per Curiam it was held that "where there is an ambiguity in a statute, D the court may have regard to the Report of a Committee presented to Parliament containing proposals for legislation which resulted in the enactment of the statute, in order to determine the mischief which the statute was intended to remedy". Though the unanimous view was that the report of a committee presented to Parliament preceding the statute could be seen for finding out the then state of the law and E the mischief required to be remedied, it must be stated that the majority were of the opinion that report could not be looked at to ascertain the intention of Parliament. The minority (per Lord Dilporne and Lord Simon) were of the opinion that when a draft bill was enacted in a statute without any alteration, Parliament clearly manifested its intention to accept committee's recommendation which would imply F that Parliament's intention was to do what committee wanted to achieve by its recommendations. A reference to Halsbury's Laws of England, Fourth Edition, Vol. 44 paragraph 901, would leave no one in doubt that 'reports of commissions or committees preceding the enactment of a statute may be considered as showing the mischief aimed at and the state of the law as it was understood to be by the G legislature when the statute was passed.' In the footnote under the statement of law cases quoted amongest others are *R.* v. *Ulugboja*[1] *R.* v. *Blexham*[2] in which Eigth report of Criminal Law Revision Committee was admitted as an extrinsic aid to construction. Therefore, it can be confidently said that the exclusionary rule is flickering in its

H

(1) [1981] All. E. R. 443
(2) [1982] 1 All. E. R. 582

dying embers in its native land of birth and has been given a decent burial by this Court. Even apart from precedents the basic purpose underlying all canons of construction is the ascertainment with reasonable certainty of the intention of Parliament in enacting the legislation. Legislation is enacted to achieve a certain object. The object may be to remedy a mischief or to create some rights, obligations or impose duties. Before undertaking the exercise of enacting a statute, Parliament can be taken to be aware of the constitutional principle of judicial review meaning thereby the legislation would be dissected and subjected to microscopic examination. More often an expert committee or a Joint Parliamentary committee examines the provisions of the proposed legislation. But language being an inadequate vehicle of thought comprising intention, the eyes scanning the statute would be presented with varried meanings. If the basic purpose underlying construction of a legislation is to ascertain the real intention of the Parliament, why should the aids which Parliament availed of such as report of a special committee preceding the enactment, existing state of law, the environment necessitating enactment of legislation, and the object sought to be achieved, be denied to court whose function is primarily to give effect to the real intention of the Parliament in enacting the legislation. Such denial would deprive the court of a substantial and illuminating aid to construction. Therefore, departing from the earlier English decisions we are of the opinion that reports of the committee which preceded the enactment of a legislation, reports of Joint Parliamentary Committee, report of a commission set up for collecting information leading to the enactment are permissible external aids to construction. In this connection, it would be advantageous to refer to a passage from Crawford on Statutory Construction (page 388). It reads as under:

> "The judicial opinion on this point is certainly not quite uniform and there are American decisions to the effect that the general history of a statute and the various steps leading upto an enactment including amendments or modifications of the original bill and reports of Legislative Committees can be looked at for ascertaining the intention of the legislature where it is in doubt; but they hold definitely that the legislative history is inadmissible when there is no obscurity in the meaning of the statute".

In *United States* v. *St. Paul, M.M. Rly. Co.*[1] it is observed that

(1) 62 Law ed. 1130 at 1134

A the reports of a committee, including the bill as introduced, changes 'made in the frame of the bill in the course of its passage and the statement made by the committee chairman incharge of it, stand upon a different footing, and may be resorted to under proper qualifications'. The objection therefore of Mr. Singhvi to our looking into the history of the evolution of the section with all its clauses, the Reports of Mudi-
B man Committee and K. Santhanam Committee and such other external aids to construction must be overruled.

Tracing the history of cl. (12) of Sec. 21 IPC with a view to ascertaining whether M.L.A. would be comprehended in any of the
C clauses of Sec. 12 so as to be a public servant, it must be noticed at the outset that Indian Penal Code is a statute of the year 1860 when there were no elected legislatures and *a fortiori* there were no M.L.As. Even if Macaulay is to be adjudged a visionary, who could look far beyond his times yet in 1860 it was inconceivable for him to foresee the constitutional development of India stages by stages and to envisage
D the setting up elected legislatures, the members of which would without anything more be comprehended as public servant in any of the sub-clauses of Sec. 21. Undoubtedly, framing of a legislation is generally not of a transient nature but it is enacted and put on the statute book for reasonably long period until the society for which it is meant undergoes a revolutionary transformation so as to make the law irrele-
E vant or otiose. A visionary can foresee possible changes which may be inter-connected with the present situation one leading to the other. But the East India Company rule which had just ended in 1857 after the first war of independence, it was difficult to devine the possible revolutionary changes that may come in by 1919. At any rate at the time when the Indian Penal Code was enacted, there was no elected
F legislature and therefore, there was no M.L.A. In construing a statute more especially the ancient statute, the court may look at the surrounding circumstances when the statute was enacted. In Halsbury's Laws of England, Fourth Edition, Vol. 44 paragraph 898, it is observed that the construction of ancent statutes may be eludicated by what in the language of the courts is called *contemporanea expositio*, that is, by
G seeing how they were understood at the time when they were passed. Undoubtedly, this doctrine cannot be applied to modern statutes or indeed to any statute whose meaning appears to the court to be plain and unambiguous. At any rate, one can justifiably say that M.L.A. could not be comprehended in any of the clauses of Sec. 21 to be a
H public servant when the Indian Penal Code was enacted in 1860.

The next stage in the historical evolution of the law with regard to corrupt actions of members of public bodies is the one to be found in a Bill introduced in 1925 called Legislative Bodies Corrupt Practices Act, 1925. This Bill was introduced to give effect to the recommendations of the Reforms Enquiry Committee known as Mudiman Committee. In the book 'Evolution of Parliamentary Privileges', by Shri S.K. Nag, the author traced the steps which led to the introduction of the Bill. In the statement of objects and reasons accompanying the Bill, it was stated that the corrupt influencing of votes of members of the legislature by bribery, intimidation and like should be made penal offences under the ordinary criminal law and para 124 indicates that this recommendation was a unanimous recommendation of the Committee as a whole. Then comes the more important statement which may be extracted:

> "The tender of a bribe to, or the receiving of a bribe by, a member of a legislature in India as an inducement for him to act in a particular manner as a member of the legislatur is not at present an offence."

The Bill sought to fill in the lacuna. It thus follows that till 1925, it was clearly understood that the M.L.A. as the holder of that office, which must have come into existence by the time under the Government of India Act, 1919, was not a public servant falling in any of the clauses of Sec. 21 and this lacuna was sought to be remedied by introducing Chapter 9-B bearing the heading 'Of offences by or relating to members of Legislature Bodies'. The dictionary clause in the Bill would have included M.L.A. in the expression "Member of Legislative Bodies'. The object of the Bill was to provide for punishment of corrupt practice by or relating to members of Legislative Bodies constituted under the Government of India Act. This was to be passed by the Central Legislature. It was an abortive attempt by members themselves to be brought within the purview of the penal law. One can write a finale by saying that the Bill was not enacted into law. That is the second stage in the history of evolution.

Before we proceed further in the journey, it is necessary to take note of one intermediate stage to which our attention was not drawn during the arguments. In Prevention of corruption Act, 1947 by Sethi and Anand at page 50, it is mentioned that till Criminal Law (Amendment) Act, 1958 (Act No. II of 1958) was put on the statute book, Sec. 21 of the IPC consisted only of eleven clauses. Clause 12

A

was introduced by the aforementioned Act and it read: 'Every officer in the service or pay of a local authority or of a Corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government Company as defined in Sec. 617 of the Companies Act, 1956'. Obviously, as incorporated clause 12 would B not comprehend M.L.A. and cl. 9 as it stood till then, could not have comprehended him as would be presently pointed out. Cl. 12 introduced by Act II of 1958 is re-enacted as cl. 12 (b) and it is nobody's case that M.L.A. is covered in cl. 12 (b).

The next stage of development may now be noticed. While C participating in the debate on the demand for grants for the Ministry of Home affairs in June 1962, some members of the Lok Sabha specifically referred to the growing menace of corruption in administration. In reply to the debate, the then Home Minister suggested that some Members of Parliament and if possible some other public men do sit with the officers in order to review the problem of corruption and make D suggestions. Pursuant to this announcement, a Committee chaired by Shri K.Santhanam, M.P.was appointed with nine specific terms of reference which *inter alia* included: "to suggest changes which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective'. This Committee submitted its report on March 31, 1964 . While examining the fourth term of E reference extracted hereinabove, the Committee in Section 7 of its report considered the question of proposed amendment to Indian Penal Code. The Committee focussed its attention on the definition of 'public servant' in Sec. 21. Paragraph 7.6 is most important for the present purpose. It reads as under:

F

> "7.6 Section 21 defines "public servant'. Twelve categories of public servants have been mentioned, but the present definition requires to be enlarged. The ninth category describes a large variety of officers charged with the performance of different kinds of duties relating to pecuniary interG ests of the State. The last sentence of this category, namely, "every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty" should be put as a general definition. After the word "government", he twords "local authority", "public H corporation", or "government company" should be added.' The words "engaged in any trade or industry" may also be deleted from the twelfth clause of Section 21 as these words

have a restrictive effect. It should also be made clear that all Ministers, Ministers of State, Deputy Ministers, Parliamentary Secretaries and members of local authorities come under the definition of 'public servant' A futher category should be added to include all persons discharging adjudicatory functions under any Union or State Law for the time being in force. We also consider it necessary to include the following categories within the definition of the term 'pulbic servant':—

President, Secretary and all members of Managing Committee of a registered Co-operative Society;

Office bearers and employees of eductional, social, religious and other institutions, in whatever manner established, which receive aid in any form from the Central or State Government".

This recommendation led to three important amendments in cls. 3, 9 and 12 of Sec. 21. The unamended clauses and the effect of the amendment in 1964 must be brought out in sharp contrast so as to appreciate the change made and its effect on the language employed.

Clause as they stood prior to the 1964 Amendment	Amendded by the 1964 Amendment.
Third: Every Judge;	Third: Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
Ninth: : Every officer whose duty it is, as such officer to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment, or contract on behalf of the Government or to execute any revenue—process, or to investigate, or to report, on any matter affec-	Ninth : Every officer whose duty it is, as such officer to take, receive, keep, or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Governmentt or to

ting the pecuinary interest of the Government or to make authenticate or keep any document relating to the pecuniary interest of the Government, or to prevent he infraction of any law for the protection of the pecuniary interests of the Government, *and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty.*

(Underlining ours);

execute any revenue—process, or to investigate, or to report, on any matter affecting the pecuniary interest of the Government, or make authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government.

Twelfth: Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act or of a Government Company as defined in section 617 of the Companies Act, 1956.

Twelfth : Every person: (a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under Central, Provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956.

A bare comparison of the two cls. (9) and (12) would reveal the change brought by the Amending Act 40 of 1964. The last part (underlined portion) in the unamended cl. (9): 'every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any 'public duty' has been severed from the 9th clause and incorproated as an independent clause (12) (a). The original clause (12) was deleted and has been re-enacted, as cl. (12) (b) with minor modifications. This history of development is noteworthy for a very compelling reason to be presently mentioned.

discretionary power and this included Minister both Cabinet and State, Deputy Ministers and parliamentary Secretaries. M L.As were not considered holding poliuical offices capable of abuse of power. The Committee recomended amendment of the definition of the expression 'public servant in Sec. 21 IpC so as to include Ministers of all rank of Central and State level and Parliamentary Secretaries in the definition of 'public servant'. The Committee did not recommend that the proposed amendment should comprehend M.L.A. The Committee separately dealt with the M.L.As in paragraph 11.4 in Sec. 11 of the Report'. After stating that, ''next to the Minister, the integrity of Members of Parliament and of legislatures in the State will be a great factor in creating a favourable soical climate against corruption. . . . .It is desirable that a Code of Conduct for legislators embodying these and other principles should be framed by a speeial committee of reprsentatives of Parliament and the legislatures nominated by the Speakers and Chairman. This Code should be formally approved by resolutions of Parliament and the legislatures and any infringement of the Code should be treated as a breach of privilege to be inquired into by the Committee of privileges, and if a breach is established, action including termination of membership may be taken. Necessary snactions for enforcing the Code of Conduct should also be brought into existence".

The Government minutely examined the Report. The recommendations of the Committee which were accepted by the Government led to the introduction of The Anti- Corruption Laws (Amendment) Bill 1964 (Bill No. 67 of 1964) in the Parlirment. The salient features of the Bill worth—noticing are that cl. (3) of Sec. 21 was proposed to be amended as recommended with minor strrctural change. Cl. (9) of Sec 21 was dissected as recommended and its last part 'and every officer in the service are pay of the Government or remunerated by fees or commission for the performance of any public duty' was detached and re-enacted as cl. (12) (a) and the original cl. (12) was renumbered as Cl. (12) (b) with slight modification. This would imply that no attempt was made to bring in M,L.A. within the conspectus of clauses in Sec. so as to make him. public servant. The position of the Minister was slightly fluid but a clear picture emerged during the debate on the Bill in the Lok Sabha. Mr. Hathi Minister—incharge while piloting the Bill, on November 7, 1964 amongst others stated that the will not deal with those recommendations which had not been accepted by the Government, but would explain them later, if any point is raised in that behalf, (See Lok Sabha Debates (Third

A that he will not deal with those recommendations which had not not been accepted by the Government, but would explain them later, if any point is raised in that behalf. (See Lok Sabha Debates (Third Series), Vol. XXXV, Col. 245) While replying to the debate, Mr. Hathi stated that the code of conduct has already been evolved for Ministers because the recommendation of Santhanam Committee for including B Ministers of all ranks and Parliamentary Secretaries in the definition of 'public servant' was not accepted by the Government. But there is an interesting caveat to this statement to which we would presently revert. He further stated that the specific recommendations about the definition 'public servant' to include Ministers has not been accepted and included in the Bill because Ministers are not merely public ser- C vants but they have a greater moral and social responsibility towards the people. Later on in the debate it was conceded that the Minister is already included in the definition of 'public servant' even before the proposed amendment in view of the decision of the Supreme Court in *Shiv Bahadur Singh's case* in which Minister was held to be a public servant. It was further stated that in view of this judgment, the Govern- D ment was advised that the recommendation of the Santhanam Committee for inclusion specifically of Ministers of all rank and Parliamentary Secretaries was redundant. (See Lok Sabha Debates (Third Series) Vol. 35 cols. 729 and 731). Whatever that may be the conclusion is inescapable that till 1964 at any rate M.L.A. was not comprehended in the definition of 'public servant' in Sec. 21. And the Santhanam E Committee did not recommend its inclusion in the definition of 'public servant' in Sec. 21.

Bill No. 47 of 1964 was enacted as Act 40 of 1964. Now if prior to the enactment of Act 40 of 1964 M.L.A. was not comprehended as a public servant in Sec. 21, the next question is: did the amendment F make any difference in his position. The amendment keeps the law virtually unaltered. Last part of cl. 9 was enacted as cl. 12 (a). If M.L.A. was not comprehended in clause 9 before its amendment and dissection, it would make no difference in the meaning of law if a portion of cl. 7 is re-enacted as cl. 12 (a). It must follow as a necessary corollary that the amendment of Cls. (9) and (12) by Amending Act 40 of 1964 G did not bring about any change in the interpretation of cl. (9) and cl. (12)(a) after the amendment of 1964. In this connection, it would be advantageous to refer to *G.A. Monterio* v. *The State of Ajmer*[1] followed and approved in *The State of Ajmer* v. *Shivji Lal*[2] in both of

H (1) [1956] S.C.R. 682.
(2) [1959] Supp. 2 S.C.R. 739.

which cl. (9) as it stood prior to its amendment came up for construction. In the first mentioned case, the accused was a chaser in the Railway Carriage Workshop at Ajmer. He was held to be an officer in the pay of the Government, comprehended in the last part of cl. (9) of Sec. 21 as it then stood. In the second case, accused was a teacher in a railway school at Phulera. His contention was that he was not a public servant and that contention had found favour with the learned Judicial Commissioner but in reaching the conclusion, he appeared to have ignored the last part of cl. (9) prior to its amendment in 1964. In the appeal by the State, this Court held that the case of the accused would be covered by the last part of cl. (9) because the accused fulfilled the twin conditions of either being in the service or pay of the Government and was entrusted with the performance of a public duty. It may also be mentioned that the last three words 'by the Government' found in cl. (12) (a) after the amendment were not there in the last part of cl. 9' The question was whether addition of words 'by the Government' made any difference in the interpretation of last part of cl. (9) which is substantially re-enacted as cl. (12)(a). The Gujarat High Court in *Manshanker Prabhashanker Dwivedi and Anr.* v. *The State of Gujarat*[1] traced the history of amendment that payment by the Government was implicit in cl. (9) though the words 'by the Government' were not there and were added to cl. (12)(a) after re-enacting the last part of cl. (9) as (12)(a). This becomes clear from the decision of this Court in the appeal against the judgment of the Gujarat High Court in the *State of Gujarat* v. *Manshanker Prabhashanker Dwivedi*.[2] The accused in that case was charged for having committed offences under Sec. 161 IPC and Sec. 5 (2) of the 1947 Act. The facts alleged were that the accused—respondent before this Court was an examiner appointed by the University for the first year B.Sc. examination. He was alleged to have accepted gratification of Rs. 500/- other than legal remuneration for showing favour to a candidate by giving him more marks than he deserved in the Physics practical examination. The learned special Judge convicted him. In the appeal, the High Court after taking note of cl. 9 and cl. 12 of Sec. 21 prior to their amendment by Act 40 of 1964 held that for cl. 9 to apply the person should be an officer 'in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty 'and that such pay or remuneration or commission must come from the Government'. It was further held that the context of the whole of the Ninth Clause, as

(1) AIR 1970 Gujarat 97.
(2) [1973] 1 S.C.R. 313.

A remuneration or in respect of the performance of public duty.' It was further held that the use of the word 'officer' read in the context of the words immediately preceding the last part would indicate that the remuneration contemplated was remuneration by Government. The High Court further held that the amendment made in 1964 and in particular the addition of the words 'by the Government' in sub-cl B (a) of clause Twelfth showed the legislative interpretion of the material portion of clause Ninth as it stood before the amendment under consideration. After extraction these reasons which appealed to the High Court, this Court observed than the reasoning of the High Court does not suffer from any imfirmity. It would transpire that payment C by the Government was implied without the use af the expression, by the Government in cl. 9. The words 'by the Government' are added in cl. (12)(a) amennded. This apparently does not make any difference. It would therefore necessarily follow that the amendment of cls (9) and (12) did not bring about any change in the coverage and construction of the two clauses prior to and since their amedment. If that D be so, it would follow as necessary corollary that if M.L.A was not a public servant with in the meaning of the expression prior to Act 40 of 1964, since the Act, the law, legal effect ande onverage of expriss tion public servant remains unaltered and hance, M.L.A. is not a 'public servant' comprehended in cl. (12)(a). Thus looking to the history and evolution of Sec. 21 as traced, it is clear that till 1964 M.L.A. could E not have been conceivably comprehended in expression 'publice servant' and the law did not undergo any change since the amendment. On the contrary, the recommendation of the Santhanam Committee which recommended inclusion of Ministers and Parliamantary Secretaries but not of M.L.A separately recommended a code of conduct for M.L.A for seving them from the spectre of corruption would F clearly and unmistakably show that till 1964 M.L.A. was not comprehended in expression 'public servant' in Sec. 21 IPC and the amenment by Amending Act 40 of 1964 did not bring about the slightest change in this behalf concerning the position of M.L.A. Therefor, apart from anything else, on historical evolution of Sec. 21 adopted as an external aid to construction, one can confidently say that M.L.A. G was not and is not a 'public servant' within the meaning of the expression in any of the clauses of Sec. 21 IPC.

Assuming that it would not be legally sound or correct according to well—accepted canon of construction of a statute to construe Sec. H 21 (12) (a) by mere historical evolution of the section and the constitutionally valid approach would be to look at the language em-

Sec. 21 (12) (a) by mere historical evolution of the section and the constitutionally valid approach would be to look at the language employed in the section and upon its true construction, ascertain whether M.L.A. is a public servant within the meaning of the expression in that sub-clause. The learned special Judge held that M.L.A. is a public servant because he is either in the pay of the Government or is remunerated by fees for the performance of any public duty by the Government.

A person would be a public servant under cl. (12) (a) if (i) he is in the service of the Government; or (ii) he is in the pay of the Government; or (iii) he is remunerated by fees or commission for the performance of any public duty by the Government.

On behalf of the complainant-appellant, it was contended that in order to make a person a public servant on the ground that he is in the pay of the Government, there must exist a master-servant relationship or a command-obedience relationship, and if these elements are absent even if a person is in the pay of the Government, he would not be a public servant. On behalf of the respondent, it was countered asserting that the concept of master servant relationship or command—obedience relationship is comprehended in the first part of cl. (12) (a) which provides that every person in the service of the Government would be a public servant. It was urged that if even for being comprehended in the second part of the clause namely, a person would be a public servant if he is in the pay of the Government, their ought to be a master-servant or command-obedience relationship, the Legislature would be guilty of tautology and the disjunctive 'or' would lose all significance. The use of the expression 'or ' in the context in which it is found in cl. (12)(a) does appear to be a disjunctive. Read in this manner, there are three independent categories comprehended in cl. (12) (a) and if a person falls in any one of them, he would be a public servant. The three categories are as held by the learned special Judge; (i) a person in the service of the Government; (ii) a person in the pay of the Government; and (iii) a person remunerated by fees or commission for the performance of any public duty y the Government. One can be in the service of the Government and may be paid for the same. One can be in the pay of the Government without being in the service of the Government in the sense of manifesting master-servant or command-obedience relationship. The use of the expression 'or' does appear to us to be a disjunctive as contended on behalf of the respondent. Depending upon the context,

'or' may be read as 'and' but the court would not do it unless it is so obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. (See *Green* v. *Premier Glyrhonwy Slate Company Ltd.*'[1] *Babu Manmohan Das & Ors.* v. *Bishun Das*,[2] *Ramta Prasad Agarwal etc.* v. *Executive Engineer, Ballabgarh & Anr.*[3] and serveral others which we consider it unnecessary to enumerate here.

Once it is accepted that 'a person in the pay of the Government' connotes a specific and independent category of public servant other than' a person in the service of the Government' does not inhere a masster-servant or command-obedience relationship between the Government as the payer and the public servant as the payee, no part of the section is rendered superfluous. Each part will receive its own construction. We therefore consider it unnecessary to refer to those decisions, which were cited on behalf of the respondent that the correct canon of construction to be adopted in such a situation is that effect must be given, if possible, to the words used in the statute, for the Legislature is deemed not to waste its words or to say anyting in vain.

What then is the true interpretation of the expression 'in the pay of the Government'. In other words, is M.L.A. a person 'In the pay of the Government' so as to be public servant within the meaning of the expression in Sec. 21 (12) (a). The expressions that call for construction are (i) 'in the pay of' and (ii) 'Government'.

Art. 195 of the Constitution provides that 'Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of the Constitution applicable in the case of members of the Legislative Assembly of the corresponding Province.' Armed with this power, the Maharashtra State Legislative Assembly has enacted 'The Maharashtra Legislature Members' Salaries and Allowances Act, 1956 (Bombay Act XLIX of 1956)'. Sec. 3 (1) provides that 'there shall be paid to each member during the whole of his term of office a salary at the

(1) [1928] 1 K. B. 561 at 568.
(2) [1967] 1 S.C.R. 836 at 839.
(3) [1974] 2 S.C.R. 827 at 830.

rate of Rs. 450/-per month' and sub-sec. (2) provides that 'there shall be paid to each Member during the whole of his term of office per month a sum of Rs. 400/- as a consolidated allowance for all matters not specifically providedf or by or under the provision of the Act'. Sec. 4 provides for daily allowances to be paid to Members. Sec. 5 provides for travelling allowance to be paid to Members. Sec. 5AC provides for a free travel by railway and steamer by a Member subject to the conditions therein prescribed. Members are also eligible for some allowances as specified in various sections of the Act. The Maharashtra Legislature Members Pensions Act, 1976 makes provision for payment of pension with effect from April 1, 1981 at the rate of Rs. 300 per month to every person who has served as a Member of the State Legislature for a term of 5 years subject to other conditions prescribed in the section. There is a similar Act which makes provisions for salaries and allowances of the Ministers of Maharashtra State.

Undoubtedly, M.L.A. receives a salary and allowances in his capacity as M.L.A. Does it make him a person 'in the pay of the Government'? Our attention has been drawn to the meaning of the word 'pay' in different dictionaries and to the decision in *M. Karunanidhi* v. *Union of India*[1] wherein after ascertaining the meaning of the word 'pay' given in different dictionaries, the Court observed that the expression 'in the pay of' does not signify master-servant relationship. The word 'pay' standing by itself in open to various shades of meaning and when the word is used in a phrase 'in the pay of', it is more likely to have a different connotation than when standing by itself. Before referring to the various shades of meaning set out in the dictionaries, it would be advisable to caution ourselves against an unrestricted reference to dictionaries. Standard dictionaries as a rule give in respect of each woad as meanings in which the word has either been used or it is likely to be used in different contexts and connections. While it may be permissible to refer to dictionaries to find out the meaning in which a word is capble of being used or understood in common parlance, the well-known canon of construction should not even for a minute be overlooked that the meaning of the words and expressions used in a statute ordinarily take their colour from the context in which they appear. In *Dy. Chief Controller of Imports & Exports, New Delhi* v. *R. T. Kosalram & Ors.*[2] this Court observed as under:

(1) [1979] 3 S.C.R. 254.
(2) [1971] 2 S.C.R. 507 @ 517.

A "It is not always a safe way to construe a statute or a contract by dividing it by a process of etymological dissection and after separating words from their context to give each word some particular definition given by lexicographers and then to reconstruct the instruments upon the basis of those definitions. What particular meaning should be B attached to words and phrases in a given instrument is usually to be gathered from the context; the nature of the subject matter, the purpose of the intention of the author and the effect of giving to them one or the other permissible meaning on the object to be achieved. Words are after all used merely as a vehicle to convey the idea of the speaker C or the writer and the words have naturally, therefore, to be so construed as to fit in with the idea which emerges on a consideration of the entire context. Each word is but a symbol which may stand for one or a number of objects. The context, in which a word conveying different shades of meanings is used, is of importance in determining the precise D sense which fits in with the context as intended to be conveyed by the author".

In *State Bank of India* v. *N. Sundara Money*[1], Krishna Iyer, J. speaking for the Court observed in his inimitable style that 'dictionaries are not dictators of statutory construction where the benignant E 'mood of a law, may furnish a different denotation'. With this caution, we may briefly refer to the meaning of the expression 'pay' and 'in the pay of' given by different dictionaries.

As far as the expression 'pay' is concerned, a Constitution Bench F of this Court in *Karunanidhi's case* referred to various dictionaries and concluded that the word odinarily means 'salary, compensation, wages or any amount of money paid to the person who is described as in the pay of the payer'. Serious exception was taken on behalf of the appellant that no canon of construction would permit picking out shades of meaning of word 'pay' and then read the phrase 'in the G pay of' as synonymous with the word 'pay'. On the other hand, it was asserted that the point is concluded by the observation of the Constitution Bench that 'so far as the second limb of the clause, 'in the pay of the Government' is concerned, that appears to be of a much wider amplitude so as to include within its ambit even a public servant who

H

(1) [1976] 3 S.C.R. 160.

pay of the other person anb yet there may not be a master servant relationship between them. The court did not ascertain the meaning ascribed to phrase 'in the pay of' in different dictionaries. The phrase 'in the pay of' would ordinarily import the element of employment or paid employment or employed and paid by the employer. In Concise Oxford Dictionary, 7th edition at page 753, the meaning assigned to the expression 'in the pay of' is 'in the employment of'. In New Collins Concise English Dictionary at page 831, 'in the pay of 'carries one meaning as 'one in paid employment'. In Websters New World Dictionary, the phrase 'in the pay of' carries the meaning 'employed and paid by'. Relying on all these shades of meaning, it was urged that the phrase 'in the pay of' does necessarily import the element of master-servant relationship and its absence cannot be countenanced. It was submitted even if A is paid by B a sum styled as pay unless B is servant of A, it cannot be said that B is in the pay of A. We see force in this submission. However, it is not implicit in the expression 'in the pay of' that there ought to exist a master-servant relationship between payer and payee. One can be in the pay of another without being in employment or service of the other. We are not inclined to accept the submission that 'in the pay of' must in the context, imply master-servant relationship for the obvious reason that the court has to construe the phrase 'in the pay of' in its setting where it is preceded by the expression 'in the service of the Government' and succeeded by the expression 'remunerated by fees or commission for the prformance of any public duty by the Government'. The setting and the context are very relevant for ascertaining the true meaning of the expression. In order to avoid the charge of tautology, the phrase 'in the pay of the Government' in cl. (12) (a) may comprehend a situation that the person may be in the pay of the Government without being in the employment of the Government or without there being a master-servant relationship between the prson rceiving the pay and the Government as payer.

It was however, contended that the question whether a person 'in the pay of the Governmnt' is *ipso facto* a public servant is no more *res integra* and concluded by the decision of the Constitution Bench in *Karunanidhi's* case? In that case before adverting to the dictionary meaning of the expression 'pay', the Constitution Bench speaking through Fazal Ali, J. observed as under at page 282:

"We are of the opinion that so far as the second limb 'in the pay of the Governments' is concerned, that appears to be of

A "We are of the opinion that so far as the second limb 'in the pay of the Government' is concerned, that appears to be of a much wider amplitude so as to include within its ambit even public servant who may not be a regular employee receiving salary from his master".

B The Court further observed that "the expression 'in the pay of' connote that a person is getting salary, compensation, wages or any amount of money. This by itself however, does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary". We are also of the opinion that the phrase 'in the pay of the Government' does not import of necessity C a master-servant relationship. It is perfectly possible to say that a person can be in the pay of the Government if he is paid in consideration of discharging an assignment entrusted to him by the Government without there necessarily being a master-servant relationship between them. It is not unusual in common parlance to speak of a person being in the pay of another if he is paid for acting at the behest or D according to the desire of the other without the other being his master and he the servant, that is to say without the control over the manner of doing the work which a master-servant relationship implies. It is such a category in addition to the one 'in the service of the Government' that is sought to be comprehended in cl. (12)(a). In respect of the extracted observation of the Constitution Bench, there is no attempt E to distinguish the dicision in *Karunanidhi's* case and therefore, it is not necessary to consider the dicisions cited in support of the submission that a judgment of the Supreme Court sespecially of the Constitution Bench cannot be distinguished lightly and is binding on us and unless questions of fundamental importance to national life are involved, need not be by us. We must however point out that the ratio F of the dicision in *Karunanidhi's* case is not what is extracted hereinbefore but the ratio is to be found at page 290 where the Constitution Bench held the Chief Minister to be a public servant as comprehended in cl. (12)(s) of Sec. 21 on the finding:

G "1. That a Minister is appointed or dismissed by the Governor and is, therefore, subordinate to him whatever be the nature and status of his constitutional functions.

2. That a Chief Minister or a Minister gets salary for the public work done or the public duty performed by him.

H 3. That the said salary is paid to the Chief Minister or the Minister from the Government funds".

It would appear at glance that no argument was advanced and none has been examined by the Constitution Bench bearing on the interpretation of the expression 'Government' in cl. (12)(a). It was assumed that salary and allowances paid to the Chief Minister are by Government. What does expression 'Government' in the clause connote was not even examined. And it is on the aforementioned finding that the Chief Minister was held to be a public servant but that does not conclude the matter.

This is not the end of the matter. The question may be posed thus: 'Even if M.L.A. receives salary and allowances under the relevant statute, is he in the pay of the Government'? In other words, what does the expression 'Government' connote?

There is a short and a long answer to the problem. Sec. 17 IPC provides that 'the word 'Government' denotes the Central Government or the Government of a State'. Sec. 7 IPC provides that 'ever expression which is explained in any part of the Code, is used in every part of the Code in conformity with the explanation'. Let it be noted that unlike the modern statute Sec. 7 does not provide 'unless the context otherwise indicate' a phrase that prefaces the dictionary clauses of a modern statute. Therefore, the expression 'Government' in Sec. 21 (12)(a) must either mean the Central Government or the Government of a State. Substituting the explanation, the relevant portion of Sec. 21 (12) (a) would read thus: 'Every person in the pay of the Central Government or the Government of a State or remunerated by fees or commission for the performance of any public duty by the Central Government or the Government of a State'. At any rate, the Central Government is out of consideration. Therefore, the question boils down to this: whether M.L.A. is in the pay of the Government of a State or is remunerated by fees for the performance of any public duty by the Government of a State ?

In the debate between the Presidential form and Parliamentary form of democracy, during the early days of the Constitutent Assembly, the balance tilted in favour of Parliamentary form of Government. Mr. K. M. Munshi, one of the members of the Drafting Committee spoke in this connection as under :

> "We must not forget a very important fact that, during the last hundred years, Indian public life has largely drawn upon the traditions of British Constitutional Law . Most of us have

looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of the country. Our constitutional traditions have become parliamentary and we have now all our Provinces functioning more or less on the British model."[1]

In *Rai Sahib Ram Jawaya Kapur & Ors.* v. *The State of Punjab*[2] a Constitution Bench of this Court observed as under:

> "Our Constitution, though federal in its structure, is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of this responsibility is its retaining the confidence of the legislative branch of the State".

It was further observed that "in the Indian Constitution executive as in England and the Council of Ministers we have the same system of parliamentary consisting, as it does, of the members of the legislature is, like the British Cabinet, 'a hyphen which joins, a buckle which fastens the legislative part of the State to the executive part". In *Shamsher Singh & Anr.* v. *State of Punjab*[3], a seven Judges Bench unanimously overruled the decision in *Sardari Lal* v. *Union of India and Ors.*[4] and held that 'our Constitution embodies generally the Parliamentary or Cabinet system of Government of the British Model both for the Union and the States'. This view has not been departed from. Now in parliamentary form of Government modelled on British model, the executive, legislature and judicial powers are in the main entrusted to separate instruments of the State. It is not for a moment suggested that there is strict or water-tight division of powers, but the functions are certainly divided. In Halsbury's Laws of England, Fourth Edition, Vol. 8 para 813, separation of executive, legislative and judicial powers in the Westminster Model have been adverted to. It reads as under:

> "It is clear that the powers of government are divided. The executive, legislative and judicial powers are in the main

(1) (See Constituent Assembly Debates, Vol. VII p. 984)
(2) [1955] 2 S.C.R. 225 at p. 236.
(3) [1975] 1 S.C.R. 814.
(4) [1971] 3 S.C.R. 461.

entrusted to separate instruments of the State; and local government is further administered separately. Thus the original concentration of power in the Sovereign no longer exists; in the eighteenth century this division of the powers of government seemed to be such an essential characteristic of the English Constitution that it was made the basis for the doctrine of separation of powers. This doctrine, which is to the effect that in a nation which has political liberty as the direct object of its constitution no one person or body of persons ought to be allowed to control the legislative, executive and judicial powers, or any two of them, has never in its strict form corresponded with the facts of English government mainly because, although the functions and powers of government are largely separated, the membership of the separate instruments of state overlap. Only in one aspect of the constitution can it be said that the doctrine is strictly adhered to, namely, that by tradition, convention and law the judiciary is insulated from political matters".

Parliament that is the Legislature exercises control over the executive branch of the Government because it is a postulate of Parliamentary form of Government that Executive is responsible to the Legislature. In other words the Government of the country is controlled by a ministry and Cabinet chosen by the electorate which while remaining responsible to the electorate is responsible directly to the Legislature and such effective means of exercising control is that any expense from Consolidated Fund of the State must have been earlier placed before the Legislature. In Halsbury's Laws of England, Fourth Edition, Vol. 34 para 1005, it is stated that Parliament exercises control over the actions of the executive government and the administration of the laws it has enacted in various ways, one such being by the doctrine of the constitution by which supply is granted annually by the House of Commons and must receive legislative sanction each year and the supply granted must be appropriated to the particular purposes for which it has been granted. It may also be noticed that the staff of the House of Commons is appointed by the House of Commons Commission comprising the Speaker, the Leader of the House of the Commons, a member of the House nominated by the the Leader of the opposition and three other members appointed by the House. This Commission is charged with a duty to determine the number and remuneration and other terms and conditions of service. This Commission is also responsible for laying before

A the House an estimate of the expenses of the House departments and of any other expenses incurred for the service of the House of Commons. (ibid para 1155).

Let us turn to relevant provisions of the Constitution. Part VI of the Constitution provides that 'the executive power of the State B shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution.' Chapter III in Part VI provides for State Legislature. Every State is to have a Legislature which shall consist of the Governor and it can be unicameral or bicameral as the case may be. Where the State has a unicameral legislature, the assembly is called C Legislative Assembly. Art. 170 provides for members of the Legislative Assembly being chosen by direct election from territorial constituencies in the State. Arts. 178 to 186 provide for officers of the State Legislatures such as the Speaker and Deputy Speaker of the Legislative Assembly and Chairman and Deputy Chairman of Legislative Council as the case may be, their powers, functions and their either D vacating the office or removal from the office. Art. 187 (1) prrovides that 'the House or each House of the Legislature of a State shall have a separate secretarial staff'. Marginal note of the article is 'Secretariat of State Legislature'. Sub-art.(2) of Art. 187 provides that 'the Legislature of a State may by law regulate the recruitment, and the conditions E of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State'. Art. 266 obliges the State to set up its Consolidated Fund. Art. 203 prescribes the procedure with respect to estimates. The estimates as relate to expenditure charged upon the Consolidated Fund of a State shall not be submitted to the vote of the Legislative Assembly but the discussion in the Legislature F is permissible thereon. However, so much of the said estimates as relate to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein. In other words, Legislative Assembly has complete power G of purse. Art. 204 casts an obligation to introduce a Bill to provide for appropriation out of the Consolidated Fund of the State of all moneys required to meet—(a) the grants so made by the Assembly; and (b) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the statement H previously laid before the House or Houses. A conspectus of these provisions clearly indicate that the Legislature enjoys the power of

purse. Even with regard to expenses charged on the Consolidated Fund of the State to be set up under Art. 266, an appropriation bill has to be moved and adopted, undoubtedly, the same would be non-votable. And it is not disputed that salaries and allowances payable to M.L.A. are not charged on the Consolidated Fund of the State. This probably is an emulation of the situation in England where salary and allowances of the members of the Parliament are not charged on the Consolidated Fund. As a necessary corollary, it would be a votable item.

There thus is a broad division of functions such as executive, legislative and judicial in our Constitution. The Legislature lays down the broad policy and has the power of purse. The executive executes the policy and spends from the Consolidated Fund of the State what Legislature has sanctioned. The Legislative Assembly enacted the Act enabling to pay to its members salary and allowances. And the members vote the grant and pay themselves. In this background even if there is an officer to disburse this payment or that a pay bill has to be drawn up are not such factors being decisive of the matter. That is merely a mode of payment, but the M.L.As. by a vote retained the fund earmarked for purposes of disbursal for pay and allowances payable to them under the relevant statute. Therefore, even though M.L.A. receives pay and allowances, he is not in the pay of the State Government because Legislature of a State cannot be comprehended in the expression 'State Government'.

This becomes further clear from the provision contained in Art. 12 of the Constitution which provides that 'for purposes of Part III, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India'. The expression 'Government and Legislature', two separate entities, are sought to be included in the expression 'State' which would mean that otherwise they are distinct and separate entities. This conclusion is further reinforced by the fact that the executive sets up its own secretariat, while Art. 187 provides for a secretarial staff of the Legislature under the control of the Speaker, whose terms and conditions of the service will be determined by the Legislature and not by the executive. When all these aspects are pieced together, the expression 'Government' in Sec. 21 (12)(a) clearly denotes the executive and not the Legislature. M.L.A. is certainly not in the pay of the executive. Therefore,

A the conclusion is inescapable that even though M.L.A. receives pay and allowances, he can not be said to be in the pay of the Government i.e. the executive. This conclusion would govern also the third part of cl. (12)(a) i.e. 'remunerated by fees for performance of any public duty by the Government'. In other words, M.L.A. is not remunerated by fees paid by the Government i.e. the executive.

B

It was also contended that M.L.A. is not performing any public duty. It is not necessary to examine this aspect because it would be rather difficult to accept an undly vide submission that M.L.A. is not performing any public duty. However, it is unquestionable that he is not performing any public duty either directed by the Government or

C for the Government. He no doubt performs public duties cast on him by the Constitution and his electorate. He thus discharges constitutional functions for which he is remunerated by fees under the Constitution and not by the Executive.

It was further contended that on the analogy of the decision in

D *His Majesty the King* v. *Boston & Ors.*,[1] M.L.A. would be a public servant. In *Boston's case*, the allegation was that Harrison and Mitchelmore paid to defendant Boston in his official capacity as a Member of the Legislative Assembly of New South Wales and the latter corruptly accepted in that capacity as inducement to him in violation of

E his official duty to use his position as such member; (a) to secure the acquisition by the Government of the State of New South Wales of certain estates and the payment for such estates out of the public funds of the State; and (b) to put pressure upon the Minister for Lands and other officers of the Crown to acquire and pay for such estates. The contention was that the agreement between the defendants might have

F been to pay money to Boston to induce him to use his position exclusively outside Parliament, and not by vote or speech in the Assembly, and that the transaction in connection with which he was to use his position to put pressure on the Minister might consistently with the information, be one which would never come before Parliament and which, in his opinion and in the opinion of those who paid him, was

G highly beneficial to the State; that such an agreement would not amount to a criminal offence, and that consequently the information is bad. Negativing this contention, it was held that it is settled law that an agreement or combination to do an act which tends to produce a public mischief amounts to a criminal conspiracy. It was further

H

(1) (1923-24) 33 Commonwealth Law Report 386

held by the majority that the payment of money to, and the receipt of money by, a member of Parliament to induce him to use his official position, whether inside or outside Parliament, for the purpose of influencing or putting pressure on a Minister or other officer of the Crown to enter into or carry out a transaction involving payment of money out of the public funds, are acts tending to the public mischief, and an agreement or combination to do such acts amounts to a criminal offence. The question has been examined in the light of the settled law that an agreement or combination to do an act which tends to produce a public mischief amounts to a criminal conspiracy. Isaacs and Rich, JJ posited the question: how far a member of the Legislative Assembly of New South Wales can, without incurring any real personal responsibility—that is—other than political rejection,—make his public position the subject of profitable traffic by engaging in departmental intervention on behalf of individuals in return for private pecuniary consideration to himself? The concurring judgment examined the general position of a member of Parliament and then proceeded to examine the special provisions of the relevant clause. On this point it was concluded that the fundamental obligation, which is the key to this case, is the duty to serve and, in serving, to act with fidelity and with a single-mindedness for the welfare of the community. It was further observed that a member of Parliament is, therefore, in the highest sense, a servant of the State; his duties are those appertaining to the position he fills, a position of no transient or temporary existence, a position forming a recognized place in the constitutional machinery of government. It was also held that he holds an office. In the third concurring judgment of Higgins, J, while conceding that the member of Parliament has to discharge a duty in which the public is interested, but after examining provisions of the public Service Acts, it was held that he is not a public officer within the meaning of that Act because he is not required to obey the commands of the King or of the departmental heads. It was however concluded that as a member of Parliament, he holds a fiduciary relation towards the public, and that is enough. The minority judgment of Gavan Duffy and Starke, JJ. clearly proceeds on their holding that a member of Legislative Assembly of New South Wales is not the holder of a public office within the meaning of the common law and even if he could be regarded as the holder of such an office, the acts charged as intended to be done by the defendant Boston, however improper they may be, would not be malversation in his office or acts done in his office, unless they were done in the discharge of his legislative functions. As we are concerned with a legislative enactment—Sec. 21(12)(a), this decision based on the

A concept of common law and some of the statutes as prevailing in Australia would not be very helpful. It may be mentioned while comparing M.L.A. and M.P. in India with M.P. in U.K. that the M.P. in U.K. is neither covered by the Prevention of Corruption Act, 1906 nor the Prevention of Corruption Act, 1916. It may also be mentioned that The Public Bodies Corrupt Practices Act, 1889 does not cover B M.P. in U.K. 'The acceptance by any member of either House of Parliament of a bribe to influence him in his conduct as such member or of any fees, compensation or reward in connection with the promotion of, or opposition to any bill, resolution, matter or thing submitted or intended to be submitted to the House or any committee thereof is C a breach of privilege.'(1) Attempts to bring M. P. in U.K. either under the provisions of the Prevention of Corruption Act or the Public Bodies Corrupt Practices Act have not met with success. Even such modicum of decency in public life as disclosing relevant, pecuniary interest or benefit of whatever nature whether direct or indirect that he may have had or may be expecting to have while participating in D a debate or proceeding in House by M.P. in U.K. was stoutly resisted in 1974. But Paulson Affair stirred many and Royal Commission on Corruption in Public Life headed by Lord Justice Salmon was set up. The Commission *inter alia* recommended in 1976 that M.Ps. should be brought within the scope of the corruption laws regarding their actions inside as well outside Parliament. No follow up legislative action E appears to have been taken since then.

If M.L.A. is not in the pay of the Government in the sense of Executive government or is not remunerated by fees for performance of any public duty by the Executive Government, certainly he would not be comprehended in the expression 'public servant' within the F meaning of the expression in cl. (12) (a). He is thus not a public servant within the meaning of the expression in cl. (12) (a). This conclusion reinforces the earlier conclusion reached by us after examining the historical evolution of cl. (12) (a).

Mr. Singhvi, however, strenously contended that M.L.A. would G be comprehended in cl. (3) or cl. (7) of Sec. 21 IPC to be a public servant He went so far as to suggest that, his emphasis would have been more on cl. (3) comparatively and not on cl. (12) (a). Therefore, it may now be examined whether M.L.A. is comprehended either in cl. (3) or cl. (7) of Sec. 21 IPC.

H

(1) See Earskine May Parliamentary Practice 20 edition, page 149.

Re (e) : Cl.(3) of Sec. 21, as it at present stands, takes within its purview every Judge including any person empowered by law to discharge whether by himself or as a member of any body of persons, any adjudicatory functions. Prior to its amendment by Act 40 of 1964 the cl. (3) read simply 'Every judge'. Cl. (3) was amended to read, as it at present stands, pursuant to the recommendations of the Santhanam Committee. In Para 7.6 of the Report, it was recommended that 'a further category should be added to include all persons discharging adjudicatory functions under any Union or State Law for the time being in force'. With this end in view, the Committee recommended that cl. (3) should read: 'Every Judge including any person entrusted with adjudicatory functions in the course of enforcement of any law for the time being in force'. At the Bill stage, the clause was recast so as to give full effect to the recommendation of the Committee and this equally becomes clear from the Statement of Objects and Reasons accompanying Bill No. 67 of 1964 which when adopted became Act 40 of 1964. In para 2 (a) of the Statement of Objects and Reasons, it is stated that 'the definition of public servant in Sec. 21 of the Indian Penal Code is proposed to be amended so as to bring within its purview certain additional categories of persons such as persons performing adjudicatory functions under any law, liquidators, receivers, commissioners etc.' If we recall the earlier discussion about the history of evolution of cl. (12) (a) and the entire range of recommendasions of the Santhanem Committee, it can be confidently said the M.L.A. was never intended to be brought within the conspectus of clauses of Sec. 21 so as to clothe him with the status of a public servant.

Independent of this historical evolution and focussing attention on the language of cl. (3) it is difficult to hold that M.L.A. as a member of a body of persons such as the Legislative Assembly performs any adjudicatory functions empowered by law to discharge that function. In fact, Santhanam Committee contemplated covering such officers like liquidators, receivers, commissioners etc. each of whom is empowerd by different statutes to discharge such adjudicatory functions as prescribed by the concerned law.

It was however, contended that expression 'Judge' has been defined in Sec. 19 IPC to denote 'not only every person who is officially designated as a Judge, but also every prson who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment, if confirmed by some other authority, would be definitive,

A or who is one of a body of persons, which body of persons is empowered by law to give such a judgment', and in cl. (3) this definition cannot be substituted because it is an inclusive definition which means it is extensive in character. Accepting the position that inclusive definition extends the specific meaning of the expression which it would not otherwise bear, it is necessary to determine whether this extension of B the expression 'Judge' is so wide as to cover within its umbrealla M.L.A. on the ground that while voting upon a motion for breach of privilege or for contempt of the House, he is discharging adjudicatory functions and that he is so empowered by law to do so. When with the permission of the Speaker, a motion for breach of privilege is moved in the Legislative Assembly or a motion C for taking action for contempt of the House is moved, undoubtedly, every member of the House has a right to participate and after the motion is debated upon, the majority vote is recorded as a decision of the House. Does that make M.L.A. a person as a member of a body persons who discharges adjudicatory functions? The definition of expression 'Judge' comprehends adjudication in any legal proceeding, D civil or criminal and in which the person as a Judge is empowerd to give a definitive judgment. It is difficult to accept the submission that the proceedings before the House either upon a motion for breach of privilege or for contempt is a civil or criminal proceeding, as these terms ordinarily connote. A motion for breach of privilege or for contempt of the House is brought before the House when the mover E feels that the powers, privileges and immunities of the House have been violated. 'The House has the power to punish for contempt' and 'the penal jurisdiction of the House is not confined to their own Members nor to offences committed in their presence, but extends to all contempts of the Houses; whether committed by Members or by persons who are not Members, irrespective of whether the the offence F is committed within the House or beyond its walls'. (See Earskine May Parliamentary Practice 20 ed. p. 122). This power of commitment is truely described as a key-stone of Parliamentary Practice. It was pointed out that 'the origin of the power which is judicial in its nature is to be found naturally in the medieval conception of Parliament as primarily a court of justice—the High Court of Parliament' (ibid page G 124). It is however, difficult to say that a State Legislature functioning under our Constitution can be described as High Court of Legislative Assembly. In blindly tailoring our Constitutional Law to the Parliamentary Practice in U.K., one is apt to overlook the obvious fact that House of Lords always possessed the judicial power as any Court H of Westminster Hall. (ibid p. 124). In this connection in *Special*

Ref. No. 1 of 1964,[1] it was clearly stated that the result of the provision contained in the latter part of Art. 194(3) was not intended to be confer on the State Legislatures in India the status of a superior Court of Record. It was further observed that 'the House and indeed all Legislative Assemblies in India never discharged any judicial functions and their historical and constitutional background does not support the claim that they can be regarded as Court of Record in any sense'. Undoubtedly, the Legislative Assembly in view of the provisions contained in Art. 194(3) has the power to inflict punishment for breach of privilege and for contempt of the House. And when a motion is moved complaining breach of privilege or for taking action for the contempt of the House, the members would participate in the debate, analyse evidence and absence thereof in support of the motion and against the motion and ultimately decide as a body by a democratic process whether the motion is affirmed or rejected. The question is whether this process can be styled as an adjudicatory process discharged by M.L.A. as empowered by law. If the expression 'law' were to include the Constitution, certainly this power is enjoyed by M.L.A. but expression 'law' ordinarily does not include the Constittion. Art. 13(1) of the Constitution provides that 'all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are consistent with the provision of Part III shall, to the extent of inconsistency be void.' Sub-Art. (2) imposes a restriction on the legislative power of the State to make any law whih takes away or abridges the rights conferred by Part III and any law made in contravention of sub-Art (2) shall, to the extents of the contraver tion, be void 'Expression 'law' as used here would be law other than Constitution, in other words, law enacted in exercise of the legislative power. The majority view in *I. C. Golaknath* v. *State of Punjab*,[1] that amondment of the Constitution is part of the legislative process does not survive as valid any longer because it was admitted that Constitution (Twenty Fourth) Amendment Act, 1971 in so far as it tansfers the power to amend the Constitution from the residuary entry or Article 248 of the Constitution to Article 368 is valid. After so saying the trend of discussion in various judgments in *H.H. Keshvnand Bharathi Sripadanaga galavaru* v. *State of Kerala and another*[2] shows that when the power amend the Constitution is exercised by Parliament, it exercises Constituent power and this is independent of the oridinary

(1) [1965] 1 S.C.R. 413 at pages 490, 491 and 492.
(2) [1967] 2 S.C.R. 672.
(3) [1973] Suppi. S.C.R. 1.

A legislative process. And this approach is borne out by a reference to the definition of expression 'Indian law' in the General Clauses Act which does not include the Constituttion. A passing reference may also be made to the form of oath prescribed for a Judge of the Supreme Court and the Judge of the High Court in the Third Schedule which separately refere to the Constitution and the laws.

B

Participation in a debate on a motion of breach of privilege or for taking action for contempt of the House and voting thereon is a constitutional function discharged by the members and therefore, it cannot be said that such adjudicatory function if it can be so styled, constitutes adjudicatory function undertaken by M.L.A. as empowered C by law. Viewed from this angle it is not necessary to examine the contention that adjudication and a resultant judgment presupposes a *lis* between persons other than adjudicator, and M.L.A. has no *lis* before him as a body of persons when passing upon the motion for contempt or breach of privilege. Accordingly the sumbission that D the accused would be a public servant within the meaning of the expression in cl. (3) of Sec. 21 IPC must be rejected.

The last limb of the submission was that at any rate, the accused would be a public servant within the meaning of cl. (7) of Sec. 21 IPC, which takes within its ambit 'every person who holds any office by E virtue of which he is empowered to place or keep any person in confinement'. This limb of the submission was not placed for consideration of the learned trial Judge. And it has merely to be stated to be rejected. We, however, did not want to reject it on this narrow ground. Expanding this contention, it was urged that M.L.A. is empowered to adjudge a person guilty of breach of privilege or contempt of the House and F when prison sentaence is imposed to keep him in confinment. Assuming for the purpose of this argument that M.L.A. holds an office, is he a person empowered to place or keep any person in confinement. Power to impose punishment is independent of the power to keep a person in confinement. First is the power to impose a prison sentence. but second is the power flowing from the execution of the sentence to G place or keep any person in confinement meaning thereby, there is an execution of warrant. Persons whose duty it is to deprive a person directed to be imprisoned to deprive him of his liberty to remain free and to keep or place him in confinement in due execution of the warrant would be comprehended in cl. (3). It is difficult to accept the H submission that M.L.As. as a body can keep or place any person in confinement. Reference was, however, made to some of the passages

in Parliamentary Practice by Earskine May, 20th Edn. as also to Practice and Procedure of Parliament, Third Edition by Kaul and Shakdher, p. 208. The authors observed at page 208 that 'each House of the Legislature of State, has the power to secure the attendence of persons on matters of privilege and to punish for breack of privilege or contempt of the House and commit the offender to custody or prison'. At page 212, it is observed that 'each House has the power to enforce its orders including the power for its officers to break open the doors of a house for that purpose, when necessary, and execute its warrants in connection with contempt proceedings'. We fail to see how these observations assist us in understanding the expression 'empowered to place or keep any person in confinement.' Broadly stated, the expression comprehends Police and Prison Authorities or those under an obligation by law or by virtue of office to take into custody and keep in confinement any person. In *M.P. Dwivedi's case*, this Court observed that Seventh and Eighth clauses of Sec. 21 deal with persons who perform mainly policing duties. To say that M.L.A. by virtue of his office is performing policing or prison officers' duties would be apart form doing violence to language lowering him in status. Additionally, cl. (7) does not speak of any adjudicatory function. It appears to comprehend situations where as priliminary to or an end product of an adjudicatory function in a criminal case, which may lead to imposition of a prison sentence, and a person in exercise of the duty to be discharged by him by virtue of his office places or keeps any person in confinement. The decisions in *Homi D. Mistry* v. *Shree Nafisul Hassan & Ors.*[1], *Harendra NathBarua* v. *Dev Kanta Barua & Ors.*[2] and *Edward Kelley* v. *William Carson, John Kent & Ors.*[3] hardly shed any light on this aspect. Therefore, the submission that M.L.A. would be comprehended in cl. (7) of Sec. 21 so as to be a public servant must be rejected.

Having meticulously examined the submission from diverse angles as presented to us, it appears that M.L.A. is not a public servant within the meaning of the expression in cl. (12)(a), cl. (3) and cl.(7) of Sec. 21 IPC.

Re: (f) & (g) : The learned Judge after recording a finding that M.L.A. is a public servant within the comprehension of cl. (12)(a) and further recording the finding that as on the date on which the Court

(1) ILR 1957 Bombay 218.
(2) AIR 1959 Assam. 160.
(3) (1841-42) 4 Moore Privy Council Cases 63.

A was invited to take cognizance, the accused was thus a public servant proceeded to examine whether sanction under Sec. 6 of the 1947 Act is a pre-requisite to taking cognizance of offences enumerated in Sec. 6 alleged to have been committed by him. He reached the conclusion that a sanction is necessary before cognizance can be taken. As a corollary he proceeded to investigate and identify, which is the B sanctioning authority who would be able to give a valid sanction as required by Sec. 6 for the prosecution of the accused in his capcity as M.L.A.? We have expressed our conclusion that where offences as set out in Sec. 6 are alleged to have been committed by a public servant, sanction of only that authority would be necessary who would C be entitled to remove him from that office which is alleged to have been misused or abused for corrupt motives. If the accused has ceased to hold that office by the date, the court is called upon to take cognizance of the offences alleged to have been committed by such public servant, no sanction under Sec. 6 would be necessary despite the fact that he may be holding any other office on the relevant date which may D make him a public servant as understood in Sec 21, if there is no allegation that office has been abused or misused for corrupt motives. The allegations in the complaint are all to the effect that the accused misused or abused his office as Chief Minister for corrupt motives. By the time the Court was called upon to take cognizance of those offences, the accused had ceased to hold the office of Chief Minister. E The sanction to prosecute him was granted by the Governor of Maharashtra but this aspect we consider irrelevant for concluding that no sanction was necessary to prosecute him under Sec. 6 on the date on which the court took cognizance of the offences alleged to have been committed by the accused. Assuming that as M.L.A. the accused would be a public servant under Sec. 21, in the absence of any allegation F that he misused or abused his office as M.L.A. that aspect becomes immaterial. Further Sec. 6 postulates existence of a valid sanction for prosecution of a public servant for offences punishable under Secs. 161, 164, 165 IPC and Sec. 5 of the 1947 Act, if they are alleged to have been committed by a public servant. In view of our further finding that M.L.A. is not a public servant within the meaning of the expression in Sec. 21 IPC, no sanction is necessary to prosecute him for the G offences alleged to have been committed by him.

In view of the conclusions reached by us, we consider it unnecessary to ascertain which would be the authority competent to sanction H prosecution of M.L.A. as envisaged by Sec. 6, thought it must be frankly confessed that considerable time was spent in the deliberations

in search of competent sanctioning authority. The vital question has become one of academic interest. We propose to adhere to the accumulated wisdom which has ripened into a settled practice of this Court not to decide academic questions. The question is left open.

Before we conclude let it be clarified that more often in the course of this judgment, we have used the words 'Office of M.L.A.' It was debated whether the M.L.A. holds seat or office ? Our use of the expression 'office' should not be construed to mean that we have accepted that the position of M.L.A. can be aptly described as one holding 'public o ce' or 'office' for that matter.

To sum up, the learned special Judge was clearly in error in holding that M.L.A. is a public servant within the meaning of the expression in Sec. 12(a) and further erred in holding that a sanction of the Legislative Assembly of Maharashtra or majority of the members was a condition precedent to taking cognizance of offences committed by the accused. For the reasons herein stated both the conclusions are wholly unsustainable and must be quashed and set aside.

This appeal accordingly succeeds and is allowed. The order and decision of the learned Special Judge Shri R.B. Sule dated July 25, 1983 discharging the accused in Special Case No. 24 of 1982 and Special Case No. 3/83 is hereby set aside and the trial shall proceed further from the stage where the accused was discharged.

The accused was the Chief Minister of a premier State—the State of Maharashtra. By a prosecution launched as early as on September 11, 1981, his character and integrity came under a cloud. Nearly 2½ years have rolled by and the case has not moved an inch further. An expeditious trial is primarily in the interest of the accused and a mandate of Art. 21. Expeditious disposal of a criminal case is in the interest of both, the prosecution and the accused. Therefore, Special Case No. 24 of 1982 and Special Case No. 3/83 pending in the Court of Special Judge, Greater Bombay Shri R.B. Sule are withdrawn and transferred to the High Court of Bombay with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court. On being so assigned, the learned Judge may proceed to expeditiously dispose of the cases preferably by holding the trial from day to day.

H.S.K. *Appeal allowed.*