Orissa High Court
Sri Surendra Mohanty vs Sri Nabakrishna Choudhury And ... on 26 February, 1958
Equivalent citations: AIR 1958 Ori 168, 1958 CriLJ 1055
Author: R Narasimham
Bench: R Narasimham, S Barman
JUDGMENT R.L. Narasimham, C.J.

1. This is a proceeding for contempt started against the former Chief Minister of Orissa, Sri Naba Krishna Choudhury in respect of a speech made by him in the Orissa Legislative Assembly on 8-3-1956. An extract from the speech was published in a local daily known as 'Matrubhumi' on 10-3-1956. The Editor and the Printer and Publisher of the said daily were also called upon to show cause why they may not be committed for contempt, but they have both tendered an unqualified apology.

2. In October 1953 a Division Bench of this Court, (Panigrahi C. J. and Mohapatra J) in an application under Article 226 of the Constitution filed by one of the Zammdars of Ganjam district delivered judgment holding that the survey made in Ganjam District was not authorised by law inasmuch as the proper notification under the Madras Survey and Boundaries Act of 1923 was not issued, and also gave consequential reliefs to the applicant. This judgment was reported in Mohan Prasad Singh Deo v. State of Orissa, ILR (1953) Cut 725: (AIR 1954 Ori 97) (A). On 18-12-1953 the State of Orissa applied for leave to appeal to the Supreme Court, against the aforesaid decision, in S. C. A. 44 of 1953 and leave was granted on 2-2-1956.

The appeal has not yet been heard by the Supreme Court. During the pendency of this appeal the then Chief Minister of Orissa Sri Nabakrishna Choudhury introduced a Bill in the Orissa Legislative Assembly entitled "The Ganjam and Koraput Survey, Record of Rights and Settlement Operations (Validating) Bill 1956" with the primary object of validating all actions taken by survey officers in those two districts. He moved the Bill before the Legislature on 8-3-1956 and there ensued a discussion in which several Members of the Assembly participated.

In the course of his speech, the Chief Minister stated that though the appeal to the Supreme Court was pending, yet there was necessity for passing the validating Bill. A member, named Sri Nishamoni Khuntia interrupted as follows :

"If we validate those actions which were declared by the High Court to be illegal, we will be accepting the position that those actions are illegal. Hence, where is the necessity of spending money by filing an appeal in the Supreme Court?"

Sri Nabakrishna Choudhury gave the following reply in Oriya.

"I cannot say definitely. Even if we validate past actions yet in connection with what is likely to happen in future there may be necessity of going to the Supreme Court. At present our Constitution is new, the High Court is new. In many instances (Aneka kshetrate) the immaturity of the High Court is apparent. In many instances, the decision given by the High Court has been corrected by

the Supreme Court. The Supreme Court also held that in many instances the High Court has abused (apabyabahar) the powers given to it."

3. On the 16th March, 1956, one Surendra Mohanty who is a Member of Parliament, filed a petition before this Court inviting its attention to the aforesaid passage and requesting the Court to initiate proceedings for contempt against the Chief Minister, Sri N. K. Choudhury and the Editor, Printer and Publisher of 'Matrubhumi'. There was a preliminary hearing as regards the jurisdiction of this Court to initiate proceedings for contempt against the Chief Minister and after hearing the Advocate-General, a Bench of this Court decided on the 6th August 1956, to issue the notice.

At the time of issuing notice, the Courts had before it only the uncorrected copy of the proceedings of the Orissa Legislative Assembly, supplied to it by the Secretary of the Assembly. At the time of the final hearing, however, the official 'report, of the proceedings was made available and Sir S. M. Bose, who appeared for the contemner very properly, did not challenge the correctness of the report.

4. Sir S. M. Bose urged the following three important points:

(i) The petitioner Sri Surendra Mohanty had no right to apply to this Court for initiating contempt proceedings in the circumstances of this case.

(ii) The so called offending passages in the speech of Sri Nabakrishna Choudhury would not amount to contempt.

(iii) In any case Sri Nabakrishna Choudhury is immune from proceedings for contempt in view of the provisions of Clause (2) of of Article 194 of the Constitution.

5. The first point raised by Sir Bose does not appeal to me. This is not an application under Article 226 of the Constitution so as to attract the principle laid down by their Lordships of the Supreme Court in State of Orissa v. Madangopal Rungta, AIR 1952 SC 12 (B), to the effect that the existence of a right is the foundation for seeking relief under Article 226. The maintenance of the prestige and dignity of the High Court is the concern of every citizen of India and is safeguarded by some of the important provisions of the Constitution such as Articles 211 and 215.

It is also the special concern of a Member of Parliament who, by the oath taken by him while sitting as a member, undertakes to bear true faith and allegiance to the Constitution. If therefore the petitioner who is a Member of Parliament feels that a member of the State Legislature has misused the right of freedom of speech conferred on him by the Constitution and that his speech has a tendency to impair the dignity and prestige of the High Court, I do not see how it can be said that he is not entitled to bring to the notice of this Court the objectionable passage, for such action as the Court may desire to take. The right of freedom of speech conferred on a Member of Parliament by Article 105 is identical with the right conferred on a member of the State Legislature by Article 194.

The public spirit shown by the petitioner in bringing this matter to the notice of this Court, though it might at first sight appear to be against his own interests, is indeed commendable. Sir Bose has not

cited any authority to show that an objectionable speech of this type made on the floor of a Legislature cannot be brought to the notice of this Court by a private party.

6. On the second point also I do not think there can be any difference of opinion. It is well settled that "any act done or writing published calculated to bring a Court or the Judge of a Court into contempt or to lower his authority" is contempt of Court : Queen v. Gray (1900) 2 QBD 36 (at p. 40) (C). The Chief Minister made a sweeping statement to the effect that 'in many instances' (Aneka kshetrate) the immaturity of the High Court is apparent. This statement contains an aspersion regarding the competency of the Judges of this Court.

He has further stated that "in many instances" the judgments of this Court were corrected by the Supreme Court and that "in many instances" the "Supreme Court held that the High Court has abused (apabyabahara) the powers given to it. Remarks of this type made by a responsible person like the Chief Minister of a State whose words would ordinarily be taken as being based on facts, would lower the authority of the High Court to a considerable extent and bring the Judges into contempt.

The use of the expression 'apabyabahara' conveys the idea that the High Court has abused its powers, and is indeed objectionable and contains an imputation to the effect that the powers were used improperly. I do not know on what materials Sri Nabakrishna Choudhury made such a sweeping statement.

7. With a view to test its accuracy, I prepared a list of the reported decisions of the Supreme Court arising out of the judgments of this Court from the commencement of the Constitution till the year 1956. In the following decisions the judgments of the High Court were confirmed and the appeals were dismissed:

(1) Gajapati Narayan Deo v. State of Orissa ILR (1954) Cut 351 : AIR 1953 SC 375) (D).

(2) Nisa Stree v. The State of Orissa AIR 1954 SC 279 (E).

(3) Biswabhusan Naik v. The State of Orissa, AIR 1954 SC 359 (F).

(4) Sri Jagannath Ramanuja Das v. The State of Orissa, AIR 1954 SC 400 (G).

(5) Dasrath Gond v. The State of Orissa, (S) AIR 1955 SC 583 (H).

(6) Sakhawant Ali v. The State of Orissa, (S) AIR 1955 SC 166 (I).

(7) Bimbadhar Pradhan v. The State of Orissa, (S) AIR 1956 SC 469 (J).

(8) Sailendra Narayan Bhanja Deo v. The State of Orissa, 1956 SCR 72 : ((S) AIR 1956 SC 346) (K).

In the following instances, the decisions of the High Court were reversed and the appeals were allowed in full:

(1) AIR 1952 SC 12 (B).

(2) Arjunlal Misra v. State of Orissa, AIR 1953 SC 411 (L).

(3) Vice-Chancellor, Utkal University v. S. K. Ghosh, AIR 1954 SC 217 (M).

(4) Bansidhar Mohanty v. State of Orissa, (S) AIR 1955 SC 585 (N).

(5) S. S. Roy v. State of Orissa, (unreported decision of the Supreme Court in Cri. Appeal No. 93 of 1952), DA 14-5-1954 (O).

In the following instance, the appeal was partly allowed and partly dismissed.

(1) Biswambhar Singh v. State of Orissa, AIR 1954 SC 139 (P).

8. Apart from these instances there are innumerable instances where the special leave petitions filed before the Supreme Court were summarily dismissed. One would have expected a person holding the responsible position of the Chief Minister of the State to use more guarded language and not to state that in 'many instances' the judgments of the High Court were corrected by the Supreme Court.

9. I have also been unable to find any passage in any of the judgments of the Supreme Court in the cases cited above, where their Lordships held that the High Court has 'abused' its powers. Sir S. M. Bose invited my attention to Rungta's case reported in AIR 1952 SC 12 (B) and AIR 1954 SC 217 (M), In the former case the Supreme Court while reversing the decision of the High Court held that the power of the High Court under Article 226 of the Constitution cannot be used for granting merely interim relief without giving any decision as regards the rights of the parties and that the existence of the right is the foundation for the exercise of jurisdiction under that article.

But nowhere in that judgment have their Lordships held that the High Court has abused its powers under Article 226. They only disagreed with the High Court with regard to the true scope of that article. Difference of opinion between two Courts regarding the interpretation of a provision of the Constitution is very natural and it does not necessarily mean that the view taken by one of the Courts amounts to abuse of its powers. In a later decision of the Supreme Court reported in Maharaj Umegh Singh v. State of Bombay, 1955 SCJ 472: ((S) AIR 1956 SC 540) (Q), their Lordships of the Supreme Court have themselves granted interim relief to a party, without deciding any question of right and this decision provoked an interesting comment from the Editor of the Calcutta Weekly Notes 59 Cal WN CXXXIII.

This only shows that the view taken by the Orissa High Court was also one of the possible views and it could not by any stretch of imagination, be called an abuse of its powers. Similarly, in the Utkal University case (M), also the Supreme Court while endorsing the view taken by the High Court to

the effect that, in exercise of its powers under article of the. Constitution it cannot sit in judgment like an appellate Court over the decisions of public authorities held, on the facts of that case, that the High Court in effect acted like an appellate Court.

This again may be due to difference of opinion and will not necessarily show that the High Court has abused its power. Merely because an appeal to the Supreme Court is successful, it does not follow that the decision of the lower Court amounts to abuse of its powers. Sir S. M. Bose has not invited my attention to any such remark made by the Supremo Court in any of the judgments cited above. In my opinion, therefore, the Chief Minister had no justification tor saying that 'in many instances the Supreme Court has held that the High Court has abused its powers'. I have no doubt that the aforesaid passage in the speech of Sri Nabakrishna Choudhury (to put it mildly) was somewhat hasty and uninformed and would clearly amount to contempt of this Court.

10. The most important question which yet remains to be decided is whether he can claim protection under Clause (2) of Article 194 of the Constitution. That Article reads as follows:

"194(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court, in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this constitution.

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature." The marginal heading is : "powers, privileges, etc, of the Houses of Legislatures and of the members and committees thereof."

Clause (1) expressly confers freedom of speech in the Legislature but also says that such freedom is 'Subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature'. Apparently the framers of the Constitution had in mind Article 211 which forbids any discussion in the Legislature of a State with respect to the conduct, of a Judge of the Supreme Court or of the High Court in discharge of his duties.

It was rightly conceded by Sir S. M. Bose that the freedom of speech referred to in Clau

further restrict that freedom of speech. Rule 189 of the said Rules is as follows :

"189. A member while speaking shall not

(1) refer to any matter of fact on which a judicial decision is pending.

(2) make a personal charge against a member;

(3) use offensive expressions about the conduct or proceedings of Parliament or any Stat

(4) reflect upon the conduct of the President or any Governor or any Rajpramukh (as distinct from the Government of which they are respectively the heads) or any Court of l

(5) use the President's name or the name of Governor for the purpose of influencing the debate:

(6) utter treasonable, seditious or defamatory words;

(7) use his right of speech for the purpose of obstructing the business of the Assembly.

Clause (i) of Rule 189 is intended to prevent discussion of any matter which is sub judice in law Courts and Clause (iv) is wider in its language than Article 211 of the Constitution inasmuch as it prohibits any reflection on any Court of law (not only of High Courts) in exercise of its judicial functions. It is thus clear that a member of a Legislature does not enjoy absolute freedom of speech and that that freedom is of a limited nature.

But Sub-clause (2) of Article 194 does not contain the restrictive words 'Subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of the Legislature. On the contrary it confers absolute immunity to a member of the Legislature from "any proceeding" in "any Court", in respect of "anything said" by him in the Legislature. Sir S. M. Rose, therefore, contended that the use of the expression 'any' at several places in Clause (2) of Article 194 shows that the framers of the Constitution intended to give absolute immunity to a member of the Legislature from interference by a Court of law (including a High Court) in respect of a speech made by him in the Legislature and that, in the absence of the restrictive words, the High Court's jurisdiction to punish for contempt, derived from Article 215 would not avail even though the speech may amount to contempt of Court. According to Sir S. M. Rose Clause (2), though a part of Article 194 is an independent clause and should not be given a restrictive meaning by importing the

restrictive words occurring in Sub-clause (1) of that Article.

11. It is an elementary rule of statutory construction that if the words of a statute are themselves precise and unambiguous, nothing more is necessary than to expound those words in their natural and ordinary sense. Hence, if a literal construction is put on the words 'any proceeding' "any Court", "in respect of anything said or done" etc. occurring in Clause (2) of Article 194, Sir Rose's contention would be unassailable. On the other hand, Mr. M. Mohanty appearing for the petitioner urged that a particular clause of an Article cannot be construed in isolation from the other clauses, that the ether provisions of the Constitution should also be looked into, and the main objective of the framers of the Constitution should also be borne in mind.

According to him, the proceedings in Courts contemplated in Clause (2) of Article 194, would be only ordinary proceedings, in law Courts including the High Court and would not include a proceeding for contempt which is a special proceeding in a High Court based on tho express power conferred by Article 215 of the Constitution. That clause does not contain the restrictive words "Subject to the provisions of the Constitution" nor does it contain the non-obstante clause "Notwithstanding any provision of the Constitution". Mr. Mohanty urged that the insertion of the express words "Subject to the provisions of the Constitution" etc., in Clause (1) of Article 194 and the deliberate omission of those words in Article 215 must lead to the necessary conclusion that Article 194 in its entirety, including Clause (2), is subject to Article 215 and that there can be no absolute immunity for any member of the State Legislature from contempt proceedings in respect of anything said by him in the Legislature.

12. It is true that in construing a statutory provision the other provisions of the statute should also be looked into and the statute construed as a whole. Wide general words of a statute have sometimes been construed in a restrictive manner in view of the context. Thus in Macleod v. Attorney-General of New South Wales, 1891 AC 455 (R), Lord Halsbury gave a restrictive interpretation to the wide words "Whosoever" and "Wheresoever" occurring in Section 54 of the Criminal Law Amendment Act, 1883 of New South Wales (Australia) by adding some qualifying words on the principle of comity which confines the operations of a statute within the territorial jurisdiction of the enacting State.

Again in Butcher v. Poole Corporation, 1942-2 All ER 572 (S), the Court of Appeal, while construing Sub-section (2) of Section 1 of the Courts (Emergency Powers) Act 1939, gave a restrictive meaning to that sub-section, bearing in mind the provisions of the other sub-sections of that Section and also the preamble and the long title of the Act. pu Parcq, L. J.'s observations are worth quoting :

"It is of course impossible to construe particular words in an Act of Parliament without reference to their context and to the whole tenor of the Act. I should be prepared to agree with the counsel for the respondent to this extent, that if one gives one's attention only to the words "any remedy by way of re-entry upon any land" they would be wide enough to include re-entry upon land of which a trespasser has taken possession, but for the reasons given by Lord Greene M. R. I am quite clearly of opinion that when one looks at the whole Act, it is manifest that when the Legislature speaks of a person to whom the remedy of re-entry upon land is available, it means, in this context, a person

who has the right of re-entry by reason of the antecedent failure of the occupier of the land to fulfil some obligation."

This case is clear authority for the view that notwithstanding the use of such wide expressions as "any remedy", or "any land" in the aforesaid sub-section, a Court may be justified in restricting the scope of that sub-section in view of the other provisions of the Act and the context. In a recent decision of the Privy Council reported 'in Attorney-General v. Prince Ernest August of Hanover, 1957 AC 436 (T), the same principle was reiterated by Lord Simonds as follows :

"For words and particularly general words, cannot be read in isolation; their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have' already indicated as including not', only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

Again, at page 462 of the report he says :

"Now I do not deny that it is impossible that words of this generality should be restricted by their context. But if I may say so without adding to the number of conflicting generalisations, I would say that for such restriction a compelling reason must be found. Perhaps an obvious example may be found outside an Act, in a principle of comity which confines its operation within the territorial jurisdiction of the; enacting State : or it may be found in a repugnancy between the immediate enacting provisions and other provisions of the same Act."

Lord Normand conveyed the same idea in the following passage at page 465 ;

"In order to discover the intention of Parliament it is proper that the Court should read the whole Act, inform itself of the legal context of the Act, including Acts so related to it that they may throw light upon its meaning, and of the factual context, such as the mischief to be remedied and those circumstances which Parliament had in view. It is the merest common place to say that words abstracted from context may be meaningless or misleading."

Thus, there is abundant authority for the view that general words of a particular provision of a statute may be given a restrictive' meaning if the context requires it. By 'context' is meant not only the textual context arising out of the other provisions of the statute, but also factual context including the mischief to be remedied, and the circumstances under which the statute was passed. But a note of caution was sounded by Viscount Simonds by the observation that "for such restriction a compelling reason must be found." One such reason may be the repugnancy between the immediate enacting provisions and the other provisions of the Act.

13. These principles of statutory construction also apply to the interpretation of a Constitution subject to the rule that a Constitution should not be interpreted in a narrow and pedantic sense : James v. Commonwealth of Australia, 1936 AC 578 at p. 614 (U). A construction most beneficial to

the widest possible amplitude of its powers must be adopted: British Coal Corporation v. King, AIR 1935 PC 158 (V). The Federal Court also in In re : C. P. Motor Spirit Taxation Act, 1939-2 FLJ 6: (AIR 1939 FC 1) (W), while saying that "a broad and liberal spirit should inspire those whose duty it is to interpret it," added the following words :

"but it does not imply that they are free to stretch or prevent the language of the enactment in the interest of any legal or Constitutional theory, or even for the purpose of supplying an omission or correcting supposed errors."

14. Applying the aforesaid principles, the question is whether the context requires that Clause (2) of Article 194 should also be construed as "subject to the other provisions of the Constitution and to the rules and standing orders regulating the procedure of the Legislature." It was urged that Clause (2) is a mere ancillary provision to Clause (1) which alone confers the substantive right of freedom of speech and when that substantive right itself is made subject to certain restrictions, there is no justification for saying that the immunity of the members flowing from that right should be absolute. It is true that the provision in Clause (2) of that Article may be assumed to be consequential to the provision in Clause (1).

There is no point in saying that a person has freedom of speech unless it is further provided that he is immune from action in a Court of law for any speech made by him in exercise of that freedom. It is also right to say that if a particular freedom is made restrictive absolute immunity cannot be given where that freedom is exercised in transgression of the restrictive provision. Such immunity flows from the said freedom and it cannot be wider in ambit than the freedom itself, on the well-known illustrative analogy that "a stream cannot rise higher than its source" (per Lord Halsbury in Mohammad Yusuf-u-din v. The Queen Empress, in 24 Ind App 137 at p. 145 (PC) (X). For instance, if Clause (2) of Article 194 had stated that a member of the Legislature of a State shall be absolutely immune from any action before any Court, authority, or person, for anything said or done by him in the Legislature, such a provision will have to be construed restrictively, because, otherwise, there will be repugnancy between that clause and Clause (1) of Article 194.

Once a restriction is put on the freedom of speech, there must be some provision for taking suitable action where the restriction is transgressed. Clause (2) of Article 194 does not confer such absolute immunity from any action by any authority. It only gives a limited immunity from any action in a Court of law. It does not affect the power of the Legislature or the Speaker, to take suitable action against a member who, while exercising his freedom of speech under Clause (1) transgresses the limits laid down in that clause.

Hence, there is no such repugnancy between the two clauses as to compel this Court, out of sheer necessity, to construe Clause (2) also as subject to the limitations imposed on Clause (1).

15. In Clause (3) of Article 194 it is further provided that in other respects, until defined by law made by the competent Legislature, the powers, privileges and immunities of a member of a Legislature shall be the same as those of the House of Commons of the United Kingdom. In the well known case of Bradlaugh v. Cosset, (1884) 12 QBD 271 (Y), it was held that "what is said or done within the walls

of Parliament cannot be enquired into in any Court of law." Again at page 279 it was observed :

"Beyond all dispute it is necessary that the proceedings of each House of Parliament should be entirely free and unshackled; that whatever is said or done in either House, should not be liable for examination elsewhere" .... "That the House should have exclusive jurisdiction to regulate the course of its own proceedings and animadvert upon any conduct there, in violation of its rules or derogation from its dignity, stands upon the clearest grounds of necessity,"

When the provisions of Article 212 and of Sub-clauses (1) and (2) of Article 194 are thus construed along with the aforesaid settled view as regards the respective spheres of jurisdiction of the law Courts and the Parliament in England, it seems a fair inference that the immunity from interference by law Courts referred to in Clause (2) of Article 194 was intended to be absolute. Anything said or done in the House is a matter to be dealt with by the House itself.

16. It will be helpful to compare the language used in the corresponding provision of the Government of India Act 1935. Sub-section (1) of Section 71 of that Act corresponds to Clauses (1) and (2) of Article 194 of the Constitution. It reads as follows :

"71 (1) Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such Legislature of any report, paper, vote or proceeding."

It would appear that both freedom of speech and immunity of a member of the Legislature were placed in one sub-section containing the restrictive words "Subject to the provisions of this Act and to the Rules and standing orders regulating the procedure of the Legislature". There was thus some room for argument that the aforesaid restrictive words would apply not only to a member's freedom of speech inside the Legislature but also to his immunity from proceedings in law Courts.

But the framers of the Constitution improved upon this sub-section and used two separate clauses dealing with these two matters, They deliberately used the restrictive words only in Clause (1) but omitted the same from Clause (2). Hence there is considerable force in Sir S. M. Bose's contention that the intention of the framer of the Constitution was that the immunity conferred by Clause (2) of Article 194 should be unfettered.

17. It was then contended that one of the aims of the framers of the Constitution was to preserve the independence of the Judiciary and that Articles 211 and 215 were deliberately inserted in the Constitution so as to confer necessary powers on the Judiciary to maintain. its independence and that if Clause (2) of Article 194 is construed literally, the purpose for which the other provisions were made in the Constitution would bs defeated.

It was urged that under the modern democratic set-up Government are parties in innumerable cases in the High Court, that if they lose some cases they are inclined to develop 'litigant's mentality and to abuse the Judges in the State Assembly taking advantage of the immunity conferred by Clause (2) of Article 194. Irresponsible statements may then be made by members of the Government on the floor of the Assembly which, after due publication in the official reports, would cause irreparable harm to the prestige of the High Court and thereby affect its independence. It was also urged that in many instances the opposition may not be effective in checking such misuse of the right of freedom of speech and that the Speaker of the Legislature also may not be vigilant enough to call any member to order it he exceeds the limit.

Under the modern democratic system a contingency of this type may have to be faced, especially when both the Opposition and the Speaker are not vigilant enough to see that no member of the Assembly abuses his right of freedom of speech on the floor of the House. But I do not think that the possibility of the aforesaid contingency would be such a "compelling reason" as to justify my departing from the normal rules of construction of Clause (2) of Article 194. It is not also correct to say that, the framers of the Constitution had in view only the independence of the Judiciary.

That was doubtless one of their objectives, as will be clear from a scrutiny of the provisions dealing with the method of appointment of Judges, their security of tenures and conditions of service, and their extraordinary powers, (See Articles 211, 215, 218, 221 and 226), These provisions are obviously intended to preserve the independence of the Judiciary from the executive and the Legislature, because as pointed out by the Privy Council in Attorney General of Australia v. Reginam, 1957-2 All ER 45 at p. 53 (Z) :

"In a Federal system the absolute independence of the judiciary is the bulwark of the Constitution against encroachment whether by the Legislature or by the executive."

In framing Article 226 they were further aware that many applications to High Courts under that Article would be against the orders of the Executive and consequently there was always the possibility that the executive may feel annoyed or upset over some of the decisions of the High Court. But one of the objectives of the framers of the Constitution was also to preserve the immunity of the Legislature from external control.

Apparently, the intention was to keep the Legislature and the Judiciary supreme within their own respective spheres and a conflict between these two bodies was sought to be avoided by the provisions of Clause (2) of Article 194 and Article 212. If the construction put on Clause (2) of Article 194 by Mr. Mohanty be accepted there will be innumerable occasions in which a conflict between these two bodies would ensue.

Thus a passage in a speech of a member of the Legislature may be held to amount to contempt of Court and that member may be punished by the High Court, whereas the same passage may be held by the Speaker and the Committee of Privileges of the Legislature to be innocuous. Again, the Committee of Privileges may hold a portion of a speech to amount to a contravention of Article 211 of the Constitution and Clauses (1) and (4) of Rule 189 of the Orissa Legislative Assembly Rules and

may take disciplinary action against the offending member and punish him.

But when the same matter is taken up before the High Court, that Court may hold that the said statutory provisions have not been contravened and that the member was within his rights in making the offending speech and cancel the punishment. There is no compelling reason why Clause (2) of Article 194 should be so construed as to lead to such conflicting results. The Indian Constitution is a happy compromise between the American principle of judicial supremacy and the British principle of Parliamentary sovereignty.

Hence, the alternative construction which while giving full effect to the wide words of Article 194 ensures the harmonious working of the High Court and the Legislature and also effectuates the two important objectives of the framers of the Constitution, namely the independence of the Judiciary and the exclusive jurisdiction of the Legislature over its internal proceedings, should be preferred.

18. The Constitution and the Rules framed by the Orissa State Legislative Assembly contain adequate provisions for safeguarding the independence of the Judiciary even on the floor of the Assembly. I have already referred to Article 211 which prohfbits discussion of the conduct of a High Court Judge in the discharge of his duties. Again Clauses (i) and (iv) of Rule 189 of the Orissa Legislative Assembly Rules prohibit a member from making any speech which may amount to contempt of Court, either by way of a comment on a pending proceeding or a comment on the conduct of a Court of law in exercising its judicial functions. It is primarily the function of the Speaker of the Legislature to see that a member while exercising his right of freedom of speech does not contravene the provisions of Article 211 and Rule 189 mentioned above. Even if the Speaker is not vigilant, any member of the House may raise a point of order and draw the attention of the Speaker to this contravention. The Committee of Privileges also may examine this question later on.

19. But merely because, in the instant case there has been a transgression of the provisions of Rule 189 (iv) of the aforesaid Rules and of Article 211 of the Constitution, 1 do not think, as a matter of construction, the wide words of Clause (2) of Article 194 should be circumscribed. The contingency visualised by Mr. Mohanty may also happen in future and the existing provisions in the Constitution may not provide an adequate remedy. A reckless speech by a member of the Government on the floor of the House, attacking the Judges of the High Court, might have a bad effect, but in this connection I can do no better than quote the words of Lord Coleridge, C. J. (at page 27.5 in Bradlaugh's case (Y), cited above):

"But while I do not deny that as a matter of reasoning such things might happen, it is consoling to reflect that they have scarce ever happened in the long centuries of our history and that in the present state of things it is but barely possible that they should ever happen again."

As far as I know, this is the only instance in which a member of the Legislature has abused the privilege given to him, without being checked by the authority concerned. Ample powers are given both by the Constitution and by the Rulers of the Assembly, to the Speaker and it must be presumed by a Court of law that the Speaker would act vigilantly and reasonably on such occasions.

A member of the Government also, while taking his oath of office undertakes to act in accordance with the Constitution and if by escaping the vigilance of the Speaker and the other members of the Assembly and also of the Committee of Privileges he misuses the freedom of speech on the floor of the House, the remedy appears to be not by way of an action in a Court of law but by the democratic process of an appeal to the constituency which ne represents.

20. Aid was also sought from the provisions of Clause (3) of Article 194 for the purpose of construing Clause (2). In Gunnupati Keshavram Reddy v. Nafisul Hasan, AIR 1954 SC 636 (Zl), a person was arrested and kept under the custody of the Speaker of the U. P. Legislative Assembly to answer a charge of breach of privilege. Though the aforesaid report is not clear, it seems obvious that this sower of arrest and detention was exercised by the Speaker in exeicise of his powers under the provisions of Clause (3) of Article 194. Their Lordships of the Supreme Court held that such detention in contravention of the provisions of Article 22(2) of the Constitution, was invalid and directed his release.

This decision may to some extent support Mr. Mohanty's contention that the powers under Clause (3) of Article 194 are subject to the provisions of Article 22 (2) even though the restrictive words are not there. But this clause was not expressly discussed in the judgment of their Lordships of the Supreme Court. Sir S. M. Bose, however, drew my attention to a later decision of the Bombay High Court reported in Homi D. Mistry v. Nafizul Hassan, ILR (1957) Bom 218 (Z2), where a single Judge of that High Court held that the provisions of Clause (3) are not subject to the other provisions of the Constitution. . But in that decision the principle laid down in AIR 1954 SC 636 (Z1), was not fully discussed and I am not sure whether it can be said that the provisions of Clause (3) of Article 194 are not subject to the other provisions of the Constitution.

Whatever that may be, the language of Clause (2) of Article 194 is quite clear and unambiguous, and is to the effect that no law Court can take action against a member of the Legislature for any speech made by him there. That immunity appears to be absolute.

21. To sum up: The speech of Sri Nabakrishna Choudhury extracted above is somewhat hasty and uninformed and amounts to contempt of this Court. Presumably the sudden interruption of his speech by Sri Nishamoni Khuntia irritated him and made him use words which he might not have used in a calmer atmosphere.

It would have been more gracious -- and perhaps proper -- if at the next sitting of the Assembly he himself had made suitable amends by taking steps to get the offending passage expunged. Unfortunately he was not persuaded to make such gentlemanly amends. Neverthe-

less he is entitled to claim immunity under Clause (2) of Article 194. The rule issued against him is discharged.

22. So far as the Editor, and the Printer and Publisher of Matrubhumi are concerned, I have no doubt that they have committed contempt of Court by publishing the speech of the Chief Minister in their daily. The slight discrepancy between the extract of the speech as given in the daily, and as

given in the official report is immaterial. They cannot claim immunity under Clause (2) of Article 194 because their daily is not an authorised publication. In view of their unconditional apology, I do not wish to pass any sentence on them, but I would direct them to pay Rs. 100/- (one hundred only) as costs to the petitioner.

S. Barman, J.

23. I agree with the order proposed by my Lord the Chief Justice. But in view of the importance of the subject I consider it necessary to give my own reasons.

24. The background and the context in which the matter has come before us by way of contempt application are fully stated in the main, judgment. I should only add this that at the time the Ganjam-Koraput Survey, Record of Rights and Settlement Operations Validation Bill (hereinafter referred to as the said Bill), which was the genesis of the present controversy, was introduced in the Orissa Legislative Assembly at Bhubaneswar, there was strong opposition to the said validation Bill made by the opposition Members on the floor of the House. Sri Nabakrushna Chaudhuri (hereinafter referred to as Sri Chaudhuri) who is the opposite party No. 1 in the present application was then the Member-in-charge of the said Bill and had to sponsor in support of it.

Incidentally Sri Chaudhuri has since ceased to be the Chief Minister of Orissa and did not seek re-election to the Assembly. It appears that by way of stating to the House the objects and necessity for the Bill, Sri Chaudhuri expressed the urgency of the Bill in a manner and in such language which then perhaps the exigencies of the situation required and now has become the subject-matter of the present controversy. On March 10, 1956 in the daily issue of 'Matrubhumi' the offending speech of Sn Chudhuri was published.

25. In reply to the show-cause notice no affidavit has been filed either by Sri Chaudhuri or by the printer, publisher and Editor of 'Matrubhumi'. A memo, however, was submitted on behalf of Sri Chaudhuri signed by the Advocate-General stating that Sri Chaudhuri had not committed any contempt of this Hon'ble Court nor was he liable to be proceeded against and further that the cause would be shown by the Counsel at the time of argument as the matter involved questions of Law.

At the time of the hearing of this matter I asked Sir S. M. Bose, learned Counsel appearing for Sri Chaudhuri, whether his client would like to file an affadavit explaining the context and background in which he made that speech on the floor of the House. The learned Counsel, however, submitted that his client would not rely on any affidavit and would have the matter decided on questions of Law.

26. The petitioner's case as stated in the petition is quite simple in that Sri Chaudhuri in his speech on the floor of the Assembly had made disparaging remarks and improper imputations derogatory to the dignity of this Hon'ble Court, and tending to prejudice the mind of the actual and prospective litigants against the integrity, ability and impartiality of this Hon'ble Court.

His further case is that the aspersions as reported in the daily Matrubhumi scandalised this Hon'ble Court as abusing its powers vested under the Constitution and exhibiting its minority or immaturity in most cases. Furthermore, it was alleged that the said speech was calculated to bring this Court to contempt, lower its authority in the public, undermine the confidence of the litigants and embarrass the Judges in the discharge of then sacred duties.

The petitioner took the further point that the said discussion in the Legislature of the State with respect to the conduct of the Judges of this Court in the discharge of their duties is in direct defiance of the absolute bar unequivocally imposed under Article 211 of the Constitution.

The basis of the petitioner's case is that the freedom of speech in the Legislature was subject to the provisions of the Constitution and the Rules and Standing Orders regulating the procedure of the Legislature as stated in Article 194(1) of the Constitution of India. This, in short, is the petitioner's case.

27. The main points raised on behalf of the opposite party for consideration are as follows :

(i) The application by the petitioner is not maintainable inasmuch as he has no such right to make the application and no breach of fundamental light is involved;

(ii) The so-called offending speech does not amount to contempt;

(iii) Assuming that the so-called offending speech amounts to contempt, it is privileged and this Court has no jurisdiction.

28. On the question of maintainabilitv of the application the point was faintly pressed on behalf of the opposite party. I do not think that there is any substance in the point inasmuch as this Court can take cognisance of the contempt even suo motu. The petition was only by way of information to this Court and nothing beyond that.

29. Before dealing with the point whether the offending speech amounts to contempt, I shall first deal with the point of privilege which involves the question of jurisdiction of this Court to decide the matter. The point is, assuming the so-called offending speech amounts to contempt, it is privileged and this Court has no jurisdiction.

30. In this connection the opposite party is relying on Article 194(1) of the Constitution of India. According to him Article 194(2) gives an absolute privilege, that is, immunity in respect of anything said in the Legislature. On behalf of the petitioner, however, it was argued that Article 194(2) should be read as subject to the provisions of the Constitution and the Rules and Standing orders regulating the procedure of the Legislature as provided in Article 194(1).

On this point there are certain decisions of the different High Courts in India. Sir S. M. Bose on behalf of the opposite party relied on a Bombay decision in ILR (1957) Bom 218 (Z2), where Coyajee J., held that the manner in which Article 194 is framed gives an indication on this point, because

Article 194(1) alone is made subject to the provisions of the Constitution and it is a legitimate inference to draw that the framers of the Constitution did not make the other clauses subject to the provisions of the Constitution.

The next case relied on behalf of the opposite party was a Calcutta case in Dr. Suresh Chandra Banerji v. Punit Goala, 55 Cal WN 745: AIR 1951 Cal 176 (Z3), whera Harries C. J., held that Clause (2) of Article 194 protects absolutely and completely a Member in respect of any speech made by him in the Legislative Assembly or in any Committee of the Legislature and that the Member's words spoken within the four walls of the Assembly are absolutely privileged and no proceedings, either civil or criminal, can be taken in respect of them Then again, the decision in Jatish Chandra Ghose v. Harisadhan Mukherjee, 60 Cal WN 971: ((S) AIR 1956 Cal 433) (Z4), also supports the contention of the opposite party that the rights of a Member of a Legislature are well-defined and that under Article 194(2) of the Constitution the immunity from liability to prosecution extends to what is said within the walls of the Legislature and to publications of reports, papers etc., made by or under the authority of the House of Legislature. This contention of the opposite-party is reinforced by a reference to certain extracts from May's Parliamentary Practice to which the learned Judge referred in his judgment.

31. On a question of interpretation of Clause (2) of Article 194 it was argued that the clause was a substantive enactment in itself and in support of his contention Sir S. M. Bose relied on 31 Halsbury, para 566, p. 464 (2nd edition). He also referred to the General Clauses Act, Section 3, Clauses (9), (54) and (61),

32. By way of testing the correctness of his interpretation of Article 194(2) Sir S. M. Bose submitted that the words "any vote given" referred to in Article 194(2) cannot be subject to the provisions of the Constitution and therefore considered from that aspect the interpretation given on behalf of the petitioner seeking to attract the words 'subject to the provisions of the Constitution" occurring in Article 194(1) to Article 194(2) is untenable. In this connection it was argued at length whether Clauses (3) and (4) of Article 194 could also stand the test.

33. This discussion on the question of privilege leads us to the question of jurisdiction, that is to say, whether breach of privilege was a matter for Courts or whether it was a matter for the Committee of Privilege to decide. In this connection reference was made to May's Parliamentary Practice (15th Edition PP. 49, 52, 162, 168 and 171). The question here is whether the point of privilege was raised directly incidentally.

In cases where the question of privilege was raised directly, it was held that Courts must disclaim jurisdiction. Where, however, the matter arose incidentally it was the right of the Court to examine privilege. It is well-settled law now that it is the exclusive jurisdiction of either House over its internal proceedings. In this, connection I would refer to the famous case of Stockdale v. Hansard, (1839) 9 Ad and El 1 at pp. 193, 243: 112 E. Rule 1112 (Z 5) as a result of which the maxim that "Whatever matter arises concerning either House of Parliament ought to be examined, discussed and adjudged in that House to which, it relates and not elsewhere"

-- became practically restricted to matters solely concerning the internal proceedings of either House. The comprehensive review of Parliamentary privilege which was forced upon the House of Commons and the Courts in two famous cases of the early 19th century, Burdett v. Abbot, (1810) 14 East 1 at pp. 88-89 : 104 E R 501 (Z 6) and (1837) 9 Ad El 1 at pp. 193, 243 : 112 E R 1112 (Z 5) made it clear that some of the claims to jurisdiction made in the name of privilege by the House of Commons were untenable in a Court of law.

In spite of this conflict of jurisdiction there was certain sphere in which the jurisdiction of the House was absolutely exclusive. The Courts had undertaken the task to define the sphere and state the principles on which it was based. This process was carried a long way towards completion by the notable judgment in (1884) 12 Q B D 271 (Y) where it was held that the House of Commons is not subject to the Control of Her Majesty's Courts in its administration of that part of the Statute law which has relation to its internal procedure only. What is said or done within its walls cannot be inquired into in a Court of Law. There may be cases which might by possibility occasion unseemly conflicts between the Courts and the Houses. In Bradlaugh's case (Y), however, Lord Coleridge C. J. (p. 275) said as follows:

"... .what is said or done within the walls of Parliament cannot be inquired into in a court of law.... The jurisdiction of the Houses over their own members, their right to impose discipline within their walls is absolute and exclusive" In the words of Lord Ellenborough "They would sink into utter contempt and inefficiency without it."

In his judgment Stephen J. observed:

"It seems to follow that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned; and that, even if that interpretation should bo erroneous, this Court has no power to interfere with it directly or indirectly" (p 280) .... If they misunderstand it or wilfully disregard it, they resemble mistaken or unjust Judges; but in either case, there is no appeal from their decision. The law of the land gives no such appeal; no precedent has been or can be produced in which any Court has ever interfered with the internal affairs of either House of Parliament, though the cases are no doubt numerous in, which the Courts have declared the limits of their power outside of their respective Houses", Stephen J. closed his judgment further observing as follows:

"We ought not to try to make new laws, under the pretence of declaring the existing law.... It seems to me that, if we were to attempt to erect ourselves into a Court of Appeal from the House of Commons, we should consult neither the public interest, nor the interests of parliament and the constitution, nor our own dignity. We should provoke a conflict between the House of Commons and this Court, which in itself would be a great evil."

Now let us apply the principles as laid down above to the present case. It appears from paragraph 4 of the petition itself of Sri Surendra Mahanty M. P., the petitioner, that the Speaker of the Orissa Legislative Assembly permitted the offending speech to be made in violation of Clauses (i) and (iv) of Rule 189 in Chapter XXIII of the Rules of Procedure and Conduct of Business in the Orissa

Legislative Assembly.

There can, be no doubt that this was directly a matter of internal management of the House. The Assembly had a right to decide it and the speaker had permitted Sri Chaudhuri to speak. Sri Chaudhuri is hereby protected by the decision of the Speaker. It is said that Sri Chaudhuri had exceeded the limits and made breach of privilege. It is not a matter in which this Court can examine or investigate.

If Sri Chaudhuri had exceeded the limits it is a matter for which the Courts of law can afford no remedy. It is on good principle that it was established that it is necessary that proceedings in the Assembly should be entirely free and unshackled. It is needless to say, however, that all these principles were based on fundamental basis that everybody concerned should act reasonably and their conduct should be according to normal standards of reasonableness.

The authorities both here and England are based on sound principles which never contemplated that such powers should be either abused or misused. On this point reference was also made to C. Shrikishen v. State of Hyderabad, (S) AIR 1956 Hyd 186 (Z 7) where it was held that a Speaker of Parliament or Legislature is an officer within the meaning of Articles 122 and 212 of the Constitution. Ministers of the Government whether of the centre or of States are also Members respectively of Parliament or Legislature; as such the Courts cannot interfere with them in the part they play in the proceedings or business or the Assemblies nor can they interfere with their privileges, as the rights of any one of them to introduce any bill in their respective Assemblies are rights and privileges of these Members whether as Members or as Ministers and further that there is an inherent right in the Legislatures to conduct their affairs without any interference from any outside body.

34. It is for the Legislature's own Committee of Privilege to decide and it is the sole judge of the question whether any of its privileges has been infringed. In an appropriate case the Legislature has power to commit for contempt. In this respect the Legislature under the Government of India Act, 1935 suffered from a serious disability namely, that there was no power to commit for contempt (Section 28(3)) just as Colonial Legislatures did not possess this power.

But our constitution, by adopting the privileges of the House of Commons in toto, confers this power upon each House of Union Parliament (Article 105(3)) as well as of the State Legislatures (Article 194(3)). In, short, Legislature has exclusive jurisdiction to commit for contempt as is possessed by every Court and the Courts cannot enquire into the grounds for commitment for contempt by the Legislature.

35. The above view is further strengthened by the fact that the Rules of Procedure and Conduct of Business in the Orissa Legislative Assembly framed under Clause (1) of Article 208 of the Constitution make detailed provisions laying down the entire procedure. In fact, Chapter XVI of the Rules under heading "Question of Privilege" makes wide provisions in this respect. It is worthwhile quoting the relevent Rules in this context for ready reference and optical impression of the scheme of the Rules.

"(139). Question of Privilege. -- Subject to the provisions of these rules, a member may, with the consent of the Speaker, raise a question involving a breach of privilege either of a member, or of the assembly or of a Committee thereof.

(142). Mode of raising a question of privilege. -- (1) The Speaker, if he gives consent and holds that the matter proposed to be discussed is in order, shall, after the questions and before the list of business is entered upon call the member concerned, who shall rise in his place and, while asking for leave to raise the "question of privilege made a short statement relevant thereto:

Provided that where the Speaker has refused his consent or is of opinion that the matter proposed to be discussed is not in order, he may, if he thinks it necessary, read the notice of question of privilege and state that he refuses consent or holds that the notice of question of privilege is not in order:

Provided further that the Speaker may, if he is satisfied about the urgency of the matter, allow a question of privilege to be raised at any time during the course of a sitting after the disposal of questions.

(2) When a statement under Sub-rule (1) is made the Speaker shall request those members who are in favour of leave being granted to rise in their places and if not less than ten members rise accordingly, the Speaker shall intimate that leave is granted. If less than ten members rise, the Speaker shall inform the members that! he has not the leave of the assembly.

143. Consideration of question of privilege to which leave is granted.: If leave under Rule 142 is granted the Assembly may consider the question and come to a decision or refer it to a Committee of Privileges on a motion made by the Leader of the House or any other member to whom he may delegate his function under this rule.

144. Constitution of Committee of Privileges : (1) At the Commencement of the Assembly or from time to time as the case may be the Speaker shall nominate a Committee of Privileges consisting of five members.

(2) The Committee nominated under Sub-rule (1) shall hold office until a new Committee is nominated.

145. Quorum of Committee: The quorum of the Committee shall be three.

146. Examination of the question by Committee: (1) The Committee shall examine every question referred to it and determine with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the circumstances leading to it and make such recommendations as it may deem fit.

(2) Subject to the provisions of sub-rule (1) of this rule, the report may also state the procedure to be followed by the Assembly in giving effect to the recommendations made by the Committee.

147. Sitting of Committee of Privileges : As soon as may be after a question of privilege has been referred to the Committee of Privileges the Committee shall meet from time to time and shall make a report.

148. Oath : (1) All evidence shall be taken on oath.

(2) The form of the Oath shall be taken as follows: 'I swear in the name of God (or solemnly affirm) that the evidence which I shall give in this case shall be true, that I will conceal nothing, and that no part of my evidence shall be false."

150. Consideration of report : (1) After the report has been presented, the Chairman or any member of the Committee or any other member may move that the report be taken into consideration, whereupon the Speaker may put the question to the Assembly.

(2) Before putting the question to the Assembly the Speaker may permit a debate on the motion, not exceeding half an hour in duration, and such debate shall not refer to the details of the report further than is necessary to make out a case for the consideration of the report by the Assembly.

(3) After the motion made under Sub-rule (1) is agreed to, the Chairman or any member of the Committee or any other member, as the case may be, may move that the Assembly, agrees, or disagrees or agrees with amendments with the recommendations contained in the report.

153. Power of Speaker to refer questions of privilege to Committee : Notwithstanding anything contained in these rules, the Speaker may refer any question of privilege to the Committee of Privileges for examination, investigation or report."

36. It appears from the above that a member in appropriate cases with the consent of the Speaker may raise a question involving a breach of privilege either of a Member or of the Assembly or of a Committee thereof (Rule 139). It further appears that the Assembly may itself consider the question and come to a decision or refer it to a Committee of Privilege on a motion made by the Leader of the House or any other Member to whom he may delegate his function (Rule 143).

Furthermore, the constitution of the Committee of Privileges is also provided for by Rule 144 and the quorum of the Committee is also specifically mentioned in Rule 145. In this connection I should pointedly refer to Rule 146 where it has been provided that the Committee shall examine every question referred to it and determine with reference to the facts of each case whether a breach of privilege is involved and, if so, the nature of the breach, the circumstances leading to it and make such recommendations as it may think fit and it also provides that the report may also state the procedure to be followed by the Assembly in giving effect to the recommendations made by the Committee.

Then the next stage in the procedure is that as soon as may be after a question of privilege has been referred to the Committee of Privileges, the Committee shall meet from time to time and shall make a report (Rule 147). It is also to be noted that as in ordinary Courts of the land all evidence is

required to be taken on oath and the form of oath has also been provided in Rule 148 (2).

Then after the report has been presented, the Chairman or any Member of the Committee or any other member may move that the report be taken into consideration, whereupon the Speaker may put the question to the Assembly (Rule 150), I should also in this connection draw attention to Rule 153 whereby the Speaker may refer any question of privilege to the Committee of Privileged for examination, investigation and report.

Then comes Chapter XXIII under heading "General Rules of Procedure" under which come Rules 181-230. Rule 185 provides for rules to be observed by the Members while present in the Assembly while Rule 189 which has been quoted in extenso in paragraph 10 of the judgment of my Lord the Chief Justice, prescribes rules to be observed by the Members while speaking. Rules 196-213 are the rules of procedure in Committees in general.

It is therefore very clear that exhaustive rules have been laid down for the conduct of business in the Assembly required to be observed by the Members. The rules also show that in case of breach of privilege it can be referred to the Committee of Privileges for examination, investigation and report. Furthermore, the Constitution, itself makes provisions with regard to the procedure to be adopted by a House of Legislature under the heading 'Procedure generally' which covers Articles 208-212. Article 211 restrains the Legislature of a state from discussing the conduct of any Judge of Supreme Court or High Court in the discharge of his duties which is more or less the same as Rule 189 (i) and (iv) of the Rules of Procedure and Conduct of Business above referred to.

Furthermore, Article 194(3) is the residuary provision providing that in all other respects, the powers, privileges and immunities of a House of the Legislature of a State and of the Members and the Committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its Members and Committees at the commencement of our Constitution.

37. The above shows that the Legislature has a Code of its own regulating the conduct of its Members, making wide and detailed provisions as to the procedure to be followed when there is a question of breach of privilege by any of its Members. In my view that is the jurisdiction which is entirely exclusive and the Courts cannot interfere with it.

38. In this view of the position in law, this Court has no jurisdiction to take action against a Member of the Legislature for his speech in the Legislature even if it amounts to contempt. I think the appropriate procedure would be to leave the matter to the Orissa Legislative Assembly to be referred to its Committees of Privileges for such examination, investigation and report as may be necessary in accordance with its own Rules of procedure and the provisions of the Constitution.

In so doing they will also be guided by the powers, privileges and immunities of the Members of the House of Commons of Parliament of the United Kingdom and of its Members and Committees in matters which are not specifically provided for either in the Constitution or by the Rules of

procedure and Conduct of Business in the Assembly.

It is needless for me to dilate on the subject in further details and I would only refer to May's Parliamentary Practice which throws light in the matter.

39. Now on the question whether the offending speech amounts to contempt or not the Jaw on the subject has been well settled by authoritative judicial decisions and legal interpretation both in England and in this Country. In cases of contempt, it is not the intention of the alleged contemner but the effect of undermining or lowering the Court in the estimation of the public or its tendency or likelihood to so undermine or lower the Court is the real test. In Rex v. Dolan (1907) 2 Ir. Rule 260 (Z8), having posed the question whether a speech, the subject of the motion, would have a tendency to prejudice the fair trial, Palles C. B, said :

"As to the law applicable to the case, there is no v doubt. Actual intension to prejudice is immaterial. I wholly deny that the law of this Court has been that absence of an actual intention to prejudice is to excuse the party from being adjudged guilty of contempt of Court, if the court arrives at the conclusion, which I have arrived at, that there is a real danger that it will affect the trial: or that absence of intention is to excuse the party from punishment....."

(p. 284).

The principles laid down in Rex v. Dolan, (Z8), were followed by Goddard C. J. in his recent decision in Regina v. Odhams Press Ltd., (1957) 1 Q. B. 73: (1956) 3 W. L. R. 796, at p. 801 (Z 9), where it was held that mens rea was not a necessary constituent of a contempt of which the Court would take cognizance. In his judgment, Goddard C. J. made an emphatic statement of the law as follows : (p. 801) "The test is whether the matter complained of is calculated to interfere with the course of justice not whether the authors, intended that result, just as it is not defence for the person responsible for the publication of a libel to plead that he did not know that the matter was defamatory and had no intention to defame.."

40. The punishment for contempt is inflicted not for the purpose of protecting either the Court as a whole or the individual Judges of the Court from a repetition of the attack but for protecting 'the public and specially those who either voluntarily or by compulsion are subject to the jurisdiction of the Court, from the mischief they will incur if the authority of the Tribunal is undermined or impaired, Nothing is more incumbent on the Courts of Justice than to preserve their proceedings from being misrepresented; nor is there anything of more pernicious consequence than to prejudice the minds of the public. In this connection there are certain English decisions which were followed by Indian High Courts.

41. In Mc Leod v. St. Aubyn, (1899) A. C. 549 (Z 10), Lord Morris while delivering judgment held that committal for contempt of court is a weapon to be used sparingly and always with reference to the interest of the administration of justice. In (1900) 2 Q. B. D. 36, at p. 41 (C), Lord Russell C. J. also held the same view observing as follows :

"It is a jurisdiction, however, to be exercised with scrupulous care, to be exercised only when the case is clear and beyond reasonable doubt."

The English decisions were fully discussed and followed in a well-known case decided by the Calcutta High Court in the matter of Tushar Kanti Ghosh, ILR 63 Cal 217: (AIR 1935 Cal 419) (FB) (Z 11), where the Special Bench discussed in details the entire legal position from a broad perspective. Lort-Williams, J. (at p. 280) (of ILR Cal): (at p. 448. of AIR), in his judgment held as follows :

"Nothing can be more serious than to publish statements calculated to diminish or destroy public confidence in Courts of justice and no offence calls for or deserves more --summary punishment."

42. The Courts, however, are not too sensitive or touchy in this respect. The dignity of the Court it not so frail as to be easily affected by causal remarks or comments. In the language of Lord Atkin in Ambard v. Attorney General, (1936) A. C. 322, 335: (AIR 1936 P. C. 141 at p. 146) (Z 12).

"Justice is not a cloistered virtue; she must be allowed to suffer the scrutiny and respectful, even though outspoken, comments of ordinary men."

43. In this light of the legal position as stated above let us now consider the question whether the offending speech amounts to contempt or not. I reproduce below for ready reference the relevant portion of the offending speech.

"I cannot say definitely. Even if we validate past actions, yet in connection with what is likely to happen in future there may be necessity of going to Supreme Court. At present our Constitution is new, the High Court is new. In many instances (aneka kshetrare) the immaturity of the High Court is apparent. In many instances, the decision given by the High Court has been corrected by the Supreme Court. The Supreme Court also held that in many instances the High Court has abused (apabyabahar) the powers given to it."

It appears that Sri Chaudhuri's first two sentences in the speech were directly in reply to a pointed question put by one of the Opposition Members of the Assembly who participatr ed in the debate on the said Validation Bill. Then the rest of the offending speech which follows was made to substantiate nis reply to the Member's question. As regards the sentence referring to our newness, it is not disputed that our Constitution is new and the High Court is also new as Sri Chaudhuri has said in his speech.

Before I come to deal with the sentence alleging apparent immaturity of the High Court, I shall first deal with the last two sentences of the speech which contains reference to the Supreme Court. There is apparently nothing wrong in saying that in some instances the decision given by the High Court has been corrected by the Supreme Court. But a sweeping incorrect statement that "in many instances," such correction has been made, is indeed unfortunate. With regard to the very last sentence, it was conceded on behalf of the petitioner that while objecting to the words 'abuse of power' there would have been no cause for complaint if it was said that the High Court 'acted with

material irregularity' within the meaning of Section 115(1)(c) of the Civil Procedure Code.

Furthermore, it is not that Sri Chaudhuri said that the High Court has abused powers. All that he said is that "the Supreme Court also held that in many instances the High Court has abused the powers given to it." But on an analysis of reported decisions of the Supreme Court arising out of the judgments of this High Court as fully made and discussed in the main judgment, of my Lord the Chief Justice, it appears that from the date of the Constitution of the Supreme Court there have been some instances where this High Court's decision has been set aside.

But nowhere the Supreme Court has expressed the view that the High Court has abused its powers as alleged in the last sentence of the offending speech. I am inclined to take the view that this part of the speech has a tendency and is likely to undermine the administration of justice and shake the confidence of the public in the High Court.

44. It now remains for me to deal with the most vital sentence in the speech, namely, "In many instances (Aneka kshetrare) the immaturity of the High Court is apparent." This sentence has caused headache to all of us. The attack on the High Court that in many instances its immaturity is apparent, on the face of it sounds scandalous. It was contended on behalf of Sri Chaudhuri that he did not mean any disrespect to the High Court by this statement.

Having foreseen that this Court may have to give a finding of fact on the question whether the speech amounts to contempt or not, on the second day of the hearing of this application we again asked the learned Counsel for Sri Chaudhuri whether he would still be advised to make an affidavit stating the facts showing the context and background of the speech which are matters of fact. No affidavit, however, has yet been filed.

I should have been happy if some sort of an affidavit had been filed on behalf of Sri Chaudhuri and that perhaps could have at least helped to clear that misunderstanding and ease the consequent controversy over his speech. Be that as it may, the expression in the speech that 'In many instances the immaturity of the High Court is apparent' can lightly be questioned and can well be objected to. It will not be out of place for me to express that a person in the position of Sri Chaudhuri should have been more guarded in his expressions to avoid any criticism and consequent controversy, as has arisen in the present case.

Words expressed are like arrows thrown and are irrevocable. How often do we see in this world that irreparable mischief is caused by unguarded expressions both in private and public life.

45. I have seriously considered this sentence of the offending speech imputing apparent immaturity to the High Court "in many instances".

In the ultimate analysis, reading the offending speech as a whole, it appears to me that Sri Chaudhuri just exceeded the limits of a justifiable speech in support of the said Validation Bill at the Orissa Legislative Assembly in course of a debate on the floor of the House of the Assembly while facing strong criticism from the Opposition Members.

I am constrained to take the view that this sentence in the speech has surely a tendency and is likely to shake the confidence of the public in the High Court and to impair the administration of Justice. I could not help coming to this view because it is not only the dignity of the High Court or of the individual Judges constituting the High Court which is involved but it will also directly or indirectly affect the public who look to the High Court for due administration of Justice. The essence of the offence is that it is against the public not the Judge, an obstruction to public justice: In the matter of Bahama Islands, (1893) AC 138 (Z13).

46. I, therefore, find that the speech read as a whole, amounts to contempt.

47. In view of our finding that the offending speech is privileged and that this Court has no jurisdiction, the Rule against Sri Chaudhuri is discharged.

48. As regards the Editor and the Printer and Publisher, I agree with the order proposed by my Lord the Chief Justice.