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CONTEMPT POWER OF LEGISLATIVE BODIES PROSECUTOR, JUDGE AND GAOLER ROLLED IN ONE

However disappointing one may find the Supreme Court's holding in the "Searchlight" case that Parliamentary Privilege prevails over Fundamental Rights, that must be accepted now as the law of the land, and other means must be sought to secure if possible that the Freedom of the Press, e. g., will not unduly suffer on account of too rigid an exercise of the powers and privileges of the Legislatures in circumstances wholly different from those in which these powers and privileges were first brought into use in England.

Our Constitution contemplates legislation by Parliament and the State Legislatures defining the parliamentary privilege that will be in force in this country, and we hope the legislation to be adopted will also permit the laying down of procedures in accordance with which the privilege can be enforced, so as to ensure that established principles of justice shall be applied in cases concerning breach of privilege. So far as we are concerned, the procedure to be followed in deciding upon and punishing breaches of privilege is of far more importance than the specific powers and privileges which should be conferred upon Legislatures. The most important of the privileges asserted in England, viz., freedom of speech in Parliament, is already separately incorporated in Arts. 105 (2) and 194 (2) of our Constitution. It provides that a member may not be held to account by legal process outside of the Legislatures for anything he may have said in the course of the debates or proceedings in the legislative chambers. It is open to doubt whether such an extended immunity is now required in circumstances which have changed considerably from those that prevailed when the privilege was asserted in England. Anyhow that privilege in its fullness forms even now part of our Constitution. The only other power and privilege that in our opinion may be thought of is freedom from arrest, which in England is enjoyed by members of the House of Commons throughout a session and for forty days before and after, but it does not protect a member from the consequences of any indictable offence, nor, in civil actions, from any process save arrest. We do not believe that there is any other privilege which can be claimed as essential either to the dignity or to the proper exercise of the authority

of the Legislatures, unless it be the Legislatures' right to regulate their own proceedings, which we believe does not require to be specifically mentioned as a privilege.

But whatever the privileges may be, the far more important consideration is in what manner they are to be enforced. The prevailing practice in England is that Parliament itself determines whether any act, either of a member or of an outsider, constitutes a breach of privilege and contempt, and if it decides that it is a breach it proceeds to award punishment by its own process, such decisions being supposed to be not liable to review by courts of law. Parliament takes these decisions, sitting as the High Court of Parliament. This is a unique feature of Britain's constitutional law, dating from the period when originally the two Houses of Parliament were each courts of judicature, and though they have now been divested by usage and by statute of many of their judicial functions, they "have yet retained so much of that power as enables them, like any other court, to punish for a contempt of these privileges and authority." But there is no reason for us in India, where we are proceeding upon the principle of the constitutional separation of judicial from legislative power, to follow the procedure, even while adopting some of the House of Commons' privileges, which is followed in England in dealing with those privileges; we need not particularly accept the doctrine that Parliament's decisions on these matters cannot be inquired into by the courts.

The exercise by Parliament itself of an uncontrolled jurisdiction in the case of breaches of privilege and contempt is peculiar to England. In no other country which does not slavishly follow England's example, does this practice prevail. In the U. S. A., for instance, where Congress does not suffer from any lack of adequate authority in carrying out its proper legislative functions, the practice is very different. There Congress is in no sense a court, and does not claim, like the British Parliament, absolute and plenary authority over its privileges; and if it exercises any functions of a judicial nature they "are limited to punishing its own members and determining their election." Judicial review of the assertion of privilege is not precluded in that country. As Chief

Justice Warren, in tracing the history of parliamentary privilege in England, said in *Watkins v. United States*, 354 U. S. 178 (1957)—vide p. iv : 328 of the BULLETIN : "Unlike the English practice, from the very outset the use of contempt power by the legislature was [in the United States] subject to judicial review." Especially is such review required when the privileges come into conflict with the legal and constitutional rights of individual citizens outside Parliament. And it is because of this that, in order to preserve the newspapers' right of public comment, the "Times" was prompted recently (see p. iv : 262 of the BULLETIN) to suggest that jurisdiction over matters of parliamentary privilege should be transferred from Parliament to the courts, so that "the normal protection for accused persons in the courts will be available, viz., public hearings, legal representation and the right to cross-examine."

A similar suggestion was put forward by Dr. Evatt, Leader of the Opposition in the Australian House of Representatives in 1955, when a case involving contempt of the House arose in that chamber for consideration. The Constitution of the Commonwealth of Australia contains an Article similar to Art. 105 (3) of our Constitution. It provides that the privileges of the Australian Parliament "shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom" at the establishment of the Commonwealth. But for some 55 years, till this case arose, the Commonwealth had not "declared" its privileges, and, as Dr. Evatt said, the privileges had to be discovered "by referring to the musty precedents of another country and looking up what is done in another country under circumstances that are quite out of keeping in many respects with what is demanded by basic democracy and basic justice in this country." Australians till then had not found it necessary to define their own parliamentary privilege, because, although during the period of half a century, cases of breach of privilege as understood in England had occurred, the breaches had not been so severe as to call for punitive action; in every case, the privileges committee had recommended, after finding that there had been a breach of privilege, that it would be more befitting the dignity of the House to proceed no further in the matter.

But when it became necessary to inflict punishment upon the offenders in 1955 Dr. Evatt urged that a law be passed which would not only prescribe suitable punishment for different kinds of contempt or breach of privilege, but also prescribe procedures for considering such cases that would be in consonance with the essential principles of justice, which he said was not the case at present. The House of Representatives was then considering the case of two men, one the owner and the other the editor of a provincial newspaper, which was indulging incessantly in vituperative propaganda against a member of the House; the propaganda was, as the

Prime Minister observed, "in substance a conspiracy to blackmail a member of the Parliament into silence," trying to destroy that member's capacity to represent his electors and reduce Parliament to impotence. There was no question that the offence was very grave and merited condgn punishment. The punishment recommended for them was imprisonment for three months. Dr. Evatt took this opportunity to point out that the procedure adopted in adjudging breach of privilege was not fair; that "it was quite outside the ordinary course of the law" and that "none of the normal safeguards was present."

The procedure followed in the case of the two men, he said, "is not proper procedure where there is no charge, no hearing of a charge, and the fact is accomplished before the witness comes to the bar of the House. The fact is accomplished because the very fact of guilt has been pronounced in their absence." "There is no appeal from (the sentence of three months proposed). Supposing a court of law thought that the sentence was in the circumstances most unjust, there is no remedy, no right of redress. It is unique. I say that it is out of keeping. The absence of the right of appeal, or to have a chance of checking the matter, is quite contrary to all that is best in the traditions of Australian justice." Dr. Evatt endorsed the criticism that had then appeared in a local newspaper to the effect that the result of the Australian Parliament following the ancient forms and procedures of the House of Commons in dealing with breaches of privilege was that Parliament "found itself performing the duties of prosecutor, judge and gaoler." And he suggested that if Parliament was not formally to give up the judicial function it performs in this business, and if it was to act as a court of justice, it should at least act judicially and in consonance with the procedure of courts of justice. The procedure should be like that followed by courts in dealing with cases of contempt of court. "There would (then) be an application to the court for a preliminary order to the persons concerned to show cause why they should not be dealt with. They would be represented normally by counsel before the court. Then the day would come for the argument. Both sides would be heard as to whether there was a contempt of court . . . (and if the judges are) wrong on law or on fact, there is a right of appeal." If Parliament insisted as a matter of form upon maintaining its jurisdiction, legislation should be adopted for "putting jurisdiction, in the case of contempt, in the hands of some authority, under parliamentary direction." (It may be mentioned that the Australian Prime Minister, Mr. Menzies, had already expressed his readiness to have parliamentary privilege defined by an Act of the Australian Parliament, which would also provide for a just procedure in dealing with breaches of privileges.)

It is of the utmost importance that in India too we should ensure that proceedings in connection with contempt of the Legislatures are governed by a procedure that will be in keeping with modern conditions and that will accord with established principles of justice.

Parliamentary Privilege**I—PARLIAMENT'S RIGHT TO SUPPRESS****THE "SEARCHLIGHT" CASE**

Loud and bitter complaints are latterly heard in England that too rigid an interpretation of Parliamentary Privilege often leads to a serious interference with Freedom of the Press, and newspapers like the "Times" have gone the length of suggesting as a remedy that a convention be established by which Parliament should surrender to the courts of law the judicial function it now performs in determining whether a breach of privilege has taken place—the suggestion really amounts to asking Parliament to give up its right to punish for contempt, which is the core of Parliamentary Privilege. Everyone will admit that members of Parliament must have the freedom to express their views without fear. Such freedom of debate is of course the foundation of democratic government, and in order to ensure such freedom it is provided in the Bill of Rights that any member is free to say what he pleases, whether it be wise or foolish, without fear of any process being invoked against him, the only power which may call him to account being his electors or Parliament itself. It may be doubted whether MPs must be accorded such an excessive immunity in modern times when the absolute monarchs who imposed their will on the representatives of the people are no longer in existence to curb freedom of debate in Parliament, but what cannot be doubted is that if members' freedom to express their views is vital to the functioning of democracy, no less vital is it that the freedom of the press to criticize the operations of government and the transactions of Parliament should remain untrammelled.

If anyone had hoped that because our Constitution enshrines Fundamental Rights imposing constitutional limitations on legislative power, the fundamental right of free speech and a free press will not suffer any infringement in the process of an assertion and enforcement of parliamentary privilege, he will be sadly disillusioned by the Supreme Court's ruling in the "Searchlight" case. Here what came into clash with parliamentary privilege was not even the right of the press to criticize proceedings in Parliament but its mere right to issue a true and faithful report of those proceedings. And the parliamentary privilege with which this right came into conflict was the obsolete power claimed by Parliament to treat publication of the report at all as an offence. When autocratic sovereigns were in the habit of punishing members of Parliament for the criticism the latter indulged in, Parliament found it advisable to exclude strangers from its precincts and to prevent the reports of its debates in the public press. And accordingly it set up these two minor privileges. But when the struggle with the repressive power of the sovereigns came to an end, Parliament changed its mind. Instead of objecting to the publication of the debates it came, in time,

to desire it. And as formerly it insisted upon its right to forbid publication, it now began insisting upon its right of publication, even if the report contained any defamatory matter. Here again it came into collision with the judiciary, the Queen's Bench deciding in *Stockdale v. Hansard* (9 A. & E., 1), that a publisher might be liable in damages to a person injured by such matter, although the report might have been issued by order of Parliament itself. The privileges of prohibiting publication and excluding strangers from the Houses, like most of the other privileges, "are matters of historical rather than present political significance." They were invented only as means, as the Supreme Court itself says in the instant case, to ensure freedom of speech in the Houses of Parliament; but now that they are no longer required to make the privilege of freedom of debate effective, they have lost all meaning. However, true to the conservative instinct of the British, the orders prohibiting publication have never been formally rescinded but in practice they are treated as having been waived. As Lord Halsbury's "Laws of England" puts it, "At the present time, however, neither House will consider a report of its proceedings in a newspaper or other publication to be a breach of its privileges unless such report is manifestly inaccurate or untrue." In that state of law regarding this privilege of the House of Commons, it was argued on behalf of the editor of the "Searchlight" that the privilege as it existed in India consisted only in preventing inaccurate and untrue reports. But to the Supreme Court the fact that the privilege in its wider aspect has not been repealed in England and can be brought into exercise to prevent all publication counted for far more than the fact that, practically speaking, it is not asserted in modern times for the purpose of preventing publication of a truthful account. Here, it appears to us, the Court was being more royal than the King.

Even assuming that the privilege in regard to prohibiting publication is to be interpreted in this wide sense, the question was whether the fundamental right of the Freedom of the Press with which the privilege comes into conflict was not to be given greater weight in the scale of constitutional values than the provision in the Constitution prescribing the privilege. One would have thought that here the petitioner urged a conclusive argument: viz., that if the Bihar Legislative Assembly were to make a law declaring the privilege it would have contravened the fundamental right, and therefore it followed that if it asserted a Commons' privilege without making a law of its own, that too must be understood to be in contravention of the fundamental right. The Supreme Court's bland answer to this argument is that "it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made a

law" on the subject. This means that if our legislative bodies wish to preserve the wholly unjustifiable right to prevent even a true and accurate publication of their proceedings, they must not enact a law declaring parliamentary privileges at all but must go on asserting the privilege in the way in which it is not asserted even in the country from which we borrow it!

That a Supreme Court with a different personnel would have assigned greater authority to Fundamental Rights than to Parliamentary Privilege becomes clear from the ruling in *Gunupati Keshavram Reddy v. Nafisul Hasan and the State of U. P.* (A. I. R. 1954 S. C. 636), which Mr. Justice Subba Rao has cited in his dissenting judgment with great effect. In this case the power to arrest for breach of privilege by the warrant of the Speaker of the U. P. Legislative Assembly came into conflict with Art. 22 (2) of the Constitution, and Chief Justice Mr. Patanjali Sastri, with the concurrence of all the other four Justices on the Bench, allowed the habeas corpus petition, holding that the detention of the Assistant Editor of "Blitz" was illegal as contravening the "peremptory" provision of Art. 22 (2) of the Constitution to the effect "no such person shall be detained in custody beyond the said period [twenty-four hours] without the authority of a magistrate." Agreeing with this view, the Press Commission, of which a High Court Judge was Chairman, said: "It is no answer to Art. 22 that the Legislature was exercising the powers, privileges and immunities of the House of Commons." But if the present Supreme Court were to decide that case, it would have put forward, one believes, exactly the reasoning which the Commission thought was untenable. The Court would have said: "It is true that the detention has exceeded the limit prescribed by Art. 22; still it is not for that reason illegal, being the result of the U. P. Legislature exercising its privilege. And there is no reason why the privilege should give way

to an Article of the Constitution defining one of the fundamental rights of citizens."

If the Supreme Court in the instant case had some justification for the view it upheld that the parliamentary privilege concerning prohibition of the publication of debates extends to prohibition of entire publication instead of being limited to that of inaccurate publication, whatever the current practice in England might be, there seems to have been hardly any reason for the Court to go out of its way to say:

We are well persuaded that our Houses, like the House of Commons, will appreciate the benefit of publicity and will not exercise the powers, privileges and immunities except in gross cases.

The facts alleged in his case alone should have led the Court to be more guarded than it is in bearing a testimonial to the Legislatures, which in any case it was none of its business to do. After the matter had been referred to a privileges committee, nothing was done for about one year, and after such a lapse of time the committee suddenly woke up; and the question was revived, the petitioner stated, "with a view to victimise and muzzle him," since he was engaged in criticising the Chief Minister. The charge of mala fides here brought cannot be sustained (as it hardly ever is), but in trying to bring a breach of privilege home to the editor of the "Searchlight" the Bihar Assembly could hardly have any other motive than that of withholding part of the news of what actually took place in the Assembly from the public. We may assume that the Assembly acted in good faith and in accordance with what it believed was required in the public interest. But the fact remains that the Supreme Court, in widely interpreting this particular privilege originally intended to subserve the high purpose of ensuring freedom of debate in the House, has by its ruling in effect only facilitated suppression of public criticism outside the House.

II—MPS.' RIGHT TO DEFAME

STRAUSS PRIVILEGE AFFAIR

Since privilege means the enjoyment by someone of an advantage beyond the common advantage of others, the assertion of any privilege necessarily involves the denial or invasion of somebody else's right; and however justifiable a privilege may have been when it was first granted, it inevitably leads to abuses as circumstances change unless those who assume such special powers have the good sense to give them up. The royal prerogatives in Britain were in course of time curtailed by Parliament, but Parliament has now become all-powerful and claims privileges for itself. Moreover, it being sovereign, with sole and exclusive jurisdiction to determine upon both the existence and extent of its privileges, and the courts being supposed to be ousted in the matter of deciding

cases of breach of privilege, there is no authority in that country which can properly limit Parliamentary Privilege or check its excesses. If the "Searchlight" case shows how the privilege of freedom of speech, so necessary for members of legislatures if they are to perform their duty of offering fearless criticism as representatives of the people, can be used to suppress Freedom of the Press which is equally necessary for the proper functioning of a democratic system of government, a recent case that happened in England shows how the members of the House of Commons were on the point of so enlarging Parliamentary Privilege as to confer on them the Right to Defame or, in the words of the Attorney-General, "unrestricted freedom to defame and injure members of

the public in the exercise of malice." Luckily this attempt was foiled largely on account of the exposition of law by the Attorney-General himself, and by a very small minority the Commons refused to sanction such a dangerous extension of its privileges. Because we in India are so much under the influence of British rules and conventions of government, it would be useful to our readers to have an account of this case so that they may fully realize how the adoption of the doctrine of parliamentary privilege is likely to injure the civil rights of private citizens.

Mr. G. R. Strauss, a Labour M. P. and a former Minister of Supply, wrote a letter to the Paymaster-General in February 1957, complaining about the methods employed by the London Electricity Board in disposing of scrap cable. It was said in the letter that the Board's "day-to-day maladministration," was "in the nature of a public scandal." The Chairman of the Board, to whom as the responsible authority the Paymaster-General sent the letter, found that the statements made therein were completely unjustified and asked for their unqualified withdrawal, with a suitable apology. Else, it was intimated, proceedings for libel would be started against Mr. Strauss the following week. The proceedings did not materialise, however, for Mr. Strauss soon after raised the matter in the House of Commons, claiming privilege. The House appointed a committee of privileges to go into facts. The committee decided that the letter of Mr. Strauss to the Paymaster-General was "a proceeding in Parliament" and therefore the Board's threat to take libel action against Mr. Strauss was a breach of privilege as in contravention of Art. 9 of the Bill of Rights, which states:

The freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.

Parliament has always claimed that it is the exclusive judge of its own privileges and that its judgments on that matter are not examinable by any other Court (i. e., except by the High Court of Parliament) or subject to appeal. In this particular case whether a breach of privilege was committed by the London Electricity Board in instituting or threatening to institute legal proceedings against Mr. Strauss depended on whether the latter's letter to the Paymaster-General was "a proceeding in Parliament" within the meaning of the Bill of Rights. The Attorney-General strongly expressed the opinion that Mr. Strauss' letter was in no sense a "proceeding in Parliament" so as to attract privilege and warned the committee of privileges that its decision that the serving of a writ for libel against a member of Parliament constituted a breach of privilege was in itself contrary to the law of England and that by punishing the London Electricity Board for contempt, Parliament itself would be breaking the country's law. For though Parliament had the authority to put its own meaning on the words

"proceedings in Parliament," that meaning would not be binding upon any court of law, and if the courts, as he felt certain, interpreted the words differently, a conflict would arise between the House and the courts, which they had so long carefully avoided. For the courts have never accepted the claim of the House of Commons that it is the sole arbiter of its own privileges. On this point Eiskine May says:

On the other hand, the courts regard the privileges of Parliament as parts of the law of the land of which they are bound to take judicial notice. They consider it their duty to decide any question of privilege arising directly or indirectly in a case which falls within their own jurisdiction and to decide it according to their own interpretation of the law. The decisions of the courts are not accepted as final by the House in matters of privilege, nor the decisions of the House by the courts. Thus the old dualism remains unresolved.

This expression of opinion on the part of the Attorney-General led the privileges committee to obtain an advisory opinion of the Judicial Committee of the Privy Council on the question whether the House of Commons would be acting contrary to the Parliamentary Privilege Act of 1770 (which sought to remove some of the hardships ordinary citizens had to undergo as a result of members' privileges) if it treated the issue of a writ for libel against an M. P. "in respect of a speech or a proceeding by him in Parliament as a breach of its privileges." On this narrow legal point the judges could only express the opinion that the House of Commons would not actually be breaking the law. But this favourable opinion was of little avail since the crucial question was whether an MP's letter to a Minister was to be accounted a "proceeding in Parliament" subject to the doctrine of privilege. And that question was not referred to the Judicial Committee, nor the question "whether the mere issue of a writ would in any circumstances be a breach of privilege." The Committee was further careful to point out that the courts have on occasion contested the claim of Parliament to be the sole judge of its privileges. This judicial expression made the privileges committee a little more cautious, for though in its final report it reiterated its condemnation of the London Electricity Board, viz., that the Board had acted in breach of the privilege of Parliament, it also recommended that no action should be taken against the offenders.

The committee perhaps expected that matters would be allowed to rest there, but some members felt that this new interpretation of parliamentary privilege was fraught with such dangerous consequences not only to the boards in charge of public corporations but to the ordinary citizens that some prominent members resolved to thrash out the whole matter fully in Parliament, and when the question came up in the House of Commons, Mr. Herbert

Morrison succeeded in carrying by a small majority the proposition that Mr. Strauss' letter was not "a proceeding in Parliament" and that the writ for libel action against Mr. Strauss constituted no breach of privilege. This happened on 8th July 1958. The decision, in the words of a commentator, was in effect that "it is more important to preserve the rights of the citizens under the law than to enlarge the immunity of the MPs."

The decision of the committee of privileges that a private letter written by an MP to a Minister is covered by parliamentary privilege seems so strange that we must indicate the reasoning by which the committee arrived at that conclusion. It was ruled by the Speaker in April 1948 that questions concerning the day-to-day administration of nationalised industries controlled by autonomous corporations (and the London Electricity Board was one such) would not be accepted as in order. The most usual method of bringing to light any matter by interpellation being thus ruled out, it was felt that the only remedy left to MPs for ventilating their grievances was by means of letters addressed to the responsible Minister, and as a member is immune from any legal action for a question asked or a speech made, even if it be libellous, so should a communication which is intended to do duty for a question be treated as not exposing him to liability for libel proceedings. Apart from the fact that other remedies than asking a question about a public corporation are open to MPs, the immunity which attaches to their statements in Parliament cannot possibly be extended to their communications to Ministers. For there is a great deal of difference, from the practical point of view, between libellous statements uttered by MPs on the floor of the House and those contained in their letters to Ministers. As the "Economist" pointed out: "If an MP utters a provable calumny on the floor of the House, some other MP (usually from the other side) will always expose him for it; the original offender may then apologise for uttering his protected slanders, or else he will suffer from the evident disapproval of his fellow-members. There is no similar check of publicity and disapproval to hold back MPs of the future from including any accusations they like in their private letters to Ministers." But if the privileges committee's decision had been endorsed, it would have set an exceedingly dangerous precedent, viz, that if MPs chose to libel a member of the public in their letters, they would be immune from legal action and the member of the public so libelled would be deprived of his inalienable right to have recourse to the courts for the remedy of his wrongs. (And it should be remembered that the committee of privileges does not afford the defamed person an opportunity to put forward his point of view. The London Electricity Board was not afforded any such opportunity.)

It was contended by the supporters of the privileges committee's conclusions that if MPs were to be contin-

ously threatened by legal action they would be greatly handicapped in exposing scandals and effectively ventilating the complaints of their constituents unless they were protected from libel action. The answer to that is twofold: 1. it should surely be possible for an MP to bring such matters to the notice of Ministers without using language which is not libellous, and 2. that, in case he is threatened with legal action, which is rare, he still has the defence that he acted without malice, which gives him qualified privilege. As Sir Hartley Shawcross said at the time in a letter to the "Times":

The MP discharging his duty as he does in an honest and responsible way has no need of the protection of any "absolute" privilege in the circumstances now under discussion.

If what he says is true he can, under the law, plead justification in the unlikely event of his being sued.

And when he cannot show that what he said was true the law of "qualified" privilege—that is to say, the ordinary law of the land—will give him complete protection provided he acted honestly and without malice, even though stupidly and unreasonably.

Can more be reasonably required?

It is hardly necessary to consider the constitutional points any further, but we must make a few excerpts from the speech of Mr. Herbert Morrison in which he enlarged on the main point which has to be kept in the forefront on this matter, viz., Parliamentary Privilege must not be claimed or asserted in such a way as to encroach upon the rights and liberties of ordinary citizens. Mr. Morrison said:

I believe in the democracy of our country. I believe in the equality of rights of the citizen. I think that this House is in danger of elevating the rights of its own members ... markedly above the rights of the citizens outside, and that we are in danger of a tendency that could be injurious to the liberty and equality of the British people. ... I am a House of Commons man, and I will fight in the last ditch for the rights and liberties of the House of Commons. I believe in freedom of speech here, but in the assertion of the rights of the House we ought to be careful not to injure the legitimate rights of the private citizen outside.

The question is: Should we elevate our rights and privileges to the extent of improperly denying normal rights to ordinary citizens outside, because they as well as Members of Parliament also have rights? I would urge the House not to bring itself into conflict with the public outside by overdoing our claims to Privilege, which I think we have been a little in danger of doing during this episode.

I want the House of Commons to uphold its legitimate rights, but I want it to uphold the rights of the

ordinary humble citizen outside as well, for it must be remembered that it is not only a matter of what the Committee asks the House to approve, but of denying the right of certain people to take legal action. I hope that the House of Commons, while being determined to uphold its traditional privileges, will reject a Report [of the Privileges Committee] which is denying the rights and the liberties of ordinary people outside.

The sequel showed that the London Electricity Board had right on its side. Although the House of Commons refused to accord absolute privilege to Mr. Strauss' letter, the Board did not institute libel proceedings against Mr. Strauss, as it was entitled to do. On the other hand it invited an inquiry into its methods of scrap disposal. An eminent accountant conducted the inquiry and, although he has suggestions to offer to both parties in his report, his conclusions are: 1. The Board's present methods of scrap disposal (which Mr. Strauss had described as a "scandal" which "must cost the Board, and of course the public, substantial sums which may amount to many tens of thousands of pounds a year") is a method which the Board has been justified in adopting; and 2. None of the Board's decisions has ever been influenced by any ulterior or improper motive on the part of any of its officials. It is strange that even after the publication of the report Mr. Strauss had not the decency to apologise for the imputations which he had made. Some MPs apparently believe that their status as Members of Parliament gives them the unfettered right to trample upon even the elementary civil rights of ordinary citizens.

CONTEMPT OF LEGISLATURE

Parliamentary Privilege Prevails over Fundamental Rights

Supreme Court's Decision

The Constitution Bench of the Supreme Court on 12th December held, by a majority of 4 to 1, that under the Constitution Indian Legislatures have the right or privilege to prohibit absolutely the publication of even a true and faithful report of the debates or proceedings that take place within the House and to inflict punishment for a breach of such privilege. The Court also held that the right to freedom of speech and expression guaranteed to citizens under Art. 19 (1) (a) of the Constitution must be read subject to Art. 194 (3), which vests in the State Legislatures the powers, privileges and immunities enjoyed by the House of Commons in England. [The corresponding provision for the Union Legislature is contained in Art. 105 (3)].

This interpretation of the relevant provisions of the Constitution was given by the Supreme Court on a writ

petition filed by Mr. M. S. M. Sharma, editor of the "Searchlight" of Patna. On 30th May 1957, Mr. Maheshwar Prasad Narayan Sinha, a Congress M. L. A., made a speech in the Bihar Legislative Assembly criticising the administration and the Chief Minister. In this speech the member had made some reference to one who was well understood to be Mr. Mahesh Prasad Sinha, a minister in the previous Cabinet, who was defeated at the last general election. Mr. Maheshwar Prasad Narayan Sinha had alleged that this gentleman was encouraging corruption in the Government and that the Chief Minister was being guided by his advice. On a point of order being raised in the House, the Speaker directed that all references made to "Mahesh Babu" should be expunged from the proceedings. However, in the issue of the "Searchlight" dated 31st May, the entire speech was published. Thereafter, on 10th June, 1957, a motion was placed before the Assembly that Mr. Sharma had committed contempt of the Speaker and of the House by publishing the expunged portions of the speech. The motion was passed, and the matter was referred to the Committee of Privileges. But the Committee did not take up the consideration of the question for a long time, and on 10th August 1958 it passed a resolution calling upon the editor of the "Searchlight" to show cause why action should not be taken against him. Accordingly, on 14th August 1958 a notice was served on Mr. Sharma by the Secretary of the Assembly informing him of the fact that the Committee of Privileges had found a prima facie case of breach of privilege against him and calling upon him to show cause why action should not be recommended against him for a breach of privilege. Mr. Sharma thereupon filed the present petition for a writ in the Supreme Court against the Chief Minister and two others.

It was contended on behalf of the petitioner that the proceedings against him by the Privileges Committee were in violation of his fundamental rights to freedom of speech and expression under Art. 19 (1) (a) and to the protection of his personal liberty under Art. 21 of the Constitution. It was claimed that as a citizen and an editor of a newspaper the petitioner had the absolute right, subject of course, to any law that might be protected by cl. 2 of Art. 19, to publish a true and faithful report of the publicly heard and seen proceedings of Parliament or any State Legislature, including portions of speeches directed to be expunged. The respondents on the other hand contended that under Art. 194 (3) the State Legislatures had the same powers as the House of Commons. Since the House of Commons had the right to prohibit publication and take action for breach of such prohibition, the State Legislatures had the same powers.

On these contentions the Supreme Court thus formulated the main points:

1. Has the House of the Legislature in India the privilege under Art. 194 (3) of the Constitution to prohi-

bit entirely the publication of the publicly seen and heard proceedings that took place in the House or even to prohibit the publication of that part of the proceedings which had been directed to be expunged ?

2. Does the privilege of the House under Art. 194(3) prevail over the fundamental right of the petitioner under Article 19 (1) (a) ?

1—Privilege of Prohibiting Publication

As to point 1, relating to the privilege of the House of Commons which consists in forbidding the publication of the reports of its debates and proceedings, the Chief Justice traced the history of the origin and growth of this privilege and pointed out how the House of Commons of the Long Parliament in 1641 framed a standing order in this behalf and how in subsequent years it passed resolutions prohibiting newspapers from publishing the proceedings in the House. Latterly the House had even encouraged such publication, but "from this it does not follow that the House has given up this valuable privilege." He cited some authorities to show that the privilege is still retained. Anson, for instance, says that the reports of debates are made and published "on sufferance," "for the House may at any time resolve that publication is a breach of privilege and deal with it accordingly." Similarly May says, in regard to false or perverted reports of proceedings :

But as the Commons have repeatedly made orders forbidding the publication of the debates or other proceedings of their House or any committee thereof which, though not renewed in any subsequent session, are considered to be still in force, it has been ruled that an alleged misrepresentation is not in itself a proper matter for the consideration of the House, the right course being to call attention to the report as an infringement of the orders of the House and then to complain of the misrepresentation as an aggravation of the offence.

His Lordship concludes this part of the judgment with the following observations :

The result of the foregoing discussion, therefore, is that the House of Commons had at the commencement of our Constitution the power or privilege of prohibiting the publication of even a true and faithful report of the debates or proceedings that take place within the House. A fortiori, the House had at the relevant time the power or privilege of prohibiting an inaccurate or garbled version of such debates or proceedings. The latter part of Art. 194 (3) confers all these powers, privileges and immunities on the Houses of the Legislatures of the States, as Art. 105 (3) does on the Houses of Parliament.

It is said that the conditions that prevailed in the dark days of British history, which led to the Houses of Parliament to claim their powers, privileges and immunities, do not now prevail either in the United

Kingdom or in our country and that there is, therefore, no reason why we should adopt them in these democratic days. Our Constitution clearly provides that until Parliament or the State Legislature, as the case may be, makes a law defining the powers, privileges and immunities of the House, its members and committees, they shall have all the powers, privileges and immunities of the House of Commons as at the date of the commencement of our Constitution and yet to deny them those powers, privileges and immunities, after finding that the House of Commons had them at the relevant time, will be not to interpret the Constitution but to remake it. Nor do we share the view that it will not be right to entrust our Houses with these powers, privileges and immunities, for we are well persuaded that our Houses, like the House of Commons, will appreciate the benefit of publicity and will not exercise the powers, privileges, and immunities except in gross cases.

2—Which is Superior: Art. 19 (1) (a) or Art. 194(3) ?

The Chief Justice then turned to point 2 and examined the arguments urged by counsel for the petitioner intended to prove that Parliamentary Privilege must give way to the fundamental right of a free press ; that Art. 194 (3) is subject to Art. 19 (1) (a). Among these arguments one was that, though cl. (3) of Art. 194 has not, in terms, been made "subject to the provisions of the Constitution," as cl. (1) has been, even so, all the clauses should be read as being so subject. His Lordship rejected the argument. He said :

If the Constitution-makers wanted that the provisions of all the clauses should be subject to the provisions of the Constitution, then the Article would have been drafted in a different way. . . . It may well be argued that the words "regulating the procedure of the Legislature" occurring in cl. (1) of Art. 194 should be read as governing both "the provisions of the Constitution" and "the rules and standing orders." So read, freedom of speech in the Legislature becomes subject to the provisions of the Constitution regulating the procedure of the Legislature, that is to say, subject to Articles relating to procedure in Part VI including Art. 208 [Rules of Procedure] and 211 [Restrictions on Discussion in the Legislature].

The argument on which counsel for the petitioner had laid great stress to show that Art. 19 (1) (a) is superior in authority to Art. 194 (3) was that the latter Article provides, first, that the privileges of a State Legislature shall be such as may be defined by the Legislature by law, and, secondly, that until so defined, the privileges will be those of the House of Commons. If, as contemplated in the first part of Art. 194 (3), the Legislature makes a law defining its privileges and if the privileges so conferred on the House are repugnant to the fundamental rights of

the citizens, then "such law will, under Art. 13, to the extent of such repugnancy, be void." and "such being the intention of the Constitution-makers in the earlier part of Art. 194 (3) and there being no apparent indication of a different intention in the latter part of the same clause," under which the House of Commons' privileges are enforced in State Legislatures in the absence of a law defining the privileges, the House of Commons' privileges that would be enforced "must also be taken as subject to the fundamental rights." The same reasoning would apply to Art. 105 (3) relating to the privileges of Parliament. The Chief Justice said :

"We are unable to accept this reasoning. It is true that a law made by Parliament in pursuance of the earlier part of Art. 105 (3) or by a State Legislature in pursuance of the earlier part of Art. 194 (3) will not be a law made in exercise of constituent power like the law which was considered in *Sankari Prasad Singh Deo v. Union of India* but will be one made in exercise of its ordinary legislative powers under Art. 246 read with the entries referred to above [74 in List I and 39 in List II] and that consequently if such a law takes away or abridges any of the fundamental rights it will contravene the peremptory provisions of Art. 13 (2) and will be void to the extent of such contravention, and it may well be that that is precisely the reason why our Parliament and the State Legislatures have not made any law defining the powers, privileges and immunities just as the Australian Parliament had not made any under sec. 49 of their Constitution corresponding to Art. 194 (3) upto 1955 when the case of *The Queen v. Richardson* was decided.

It does not, however, follow that if the powers, privileges or immunities conferred by the latter part of those Articles are repugnant to the fundamental rights, they must also be void to the extent of such repugnancy. It must not be overlooked that the provisions of Art. 105 (3) and Art. 194 (3) are constitutional laws and not ordinary laws made by Parliament or the State Legislatures and that, therefore, they are as supreme as the provisions of Part III. Further, quite conceivably our Constitution-makers not knowing what powers, privileges and immunities Parliament or the Legislature of a State may arrogate and claim for its House, members or committees, thought fit not to take any risk and accordingly made such laws subject to the provisions of Art. 13; but that knowing and being satisfied with the reasonableness of the powers, privileges and immunities of the House of Commons at the commencement of the Constitution, they did not, in their wisdom, think fit to make such powers privileges and immunities subject to the fundamental right conferred by Art. 19 (1) (a).

In our judgment the principle of harmonious construction must be adopted and, so construed, the provisions of Art. 19 (1) (a), which are general, must yield to Art. 194 (1) and the latter part of its cl. (3), which are special.

Art. 21

The Court also expressed the opinion that the power to impose punishment equally vested in the House and there was no question of any violation of Art. 21. This Article provides that "No person shall be deprived of his life or personal liberty according to procedure established by law." His Lordship said :

The Bihar Legislative Assembly has framed rules in exercise of its powers under Art. 208. It follows, therefore, that Art. 194 (3) read with the rules so framed has laid down the procedure for enforcing its powers, privileges and immunities. If, therefore, the Legislative Assembly has the powers, privileges and immunities of the House of Commons and if the petitioner is eventually deprived of his personal liberty as a result of the proceedings before the Committee of Privileges, such deprivation will be "in accordance with procedure established by law" and the petitioner cannot complain of the breach, actual or threatened, of his fundamental right under Art. 21.

On these considerations the Court dismissed the petition.

Justice Subba Rao's Dissenting Judgment

Mr. Justice Subba Rao delivered a dissenting judgment, in which he stated that in his view the petitioner's fundamental right under Art. 19 (1) (a) was preserved despite the provisions of Art. 194 (3) and that the petition should be allowed.

On the nature and extent of the privilege relating to prohibition of publication of proceedings, Mr. Justice Subba Rao expressed the opinion that the House of Commons exercises the privilege in preventing only mala fide publication of its proceedings, and among the authorities cited by him to support this view were the following extracts from May's "Parliamentary Practice" :

The repeated orders made by the House forbidding the publication of the debates and proceedings of the House or of any committee thereof . . . and directing punishment of offenders against such rules have long since fallen into disuse.

So long as the debates are correctly and faithfully reported, however, the privilege which prohibits their publication is waived.

So long as the debates are correctly and faithfully reported, the orders which prohibit their publication are not enforced; but when they are reported mala fide, the publishers of newspapers are liable to punishment,

He also quotes from the judgment of Cockburn, C. J., in *Wason v. Walter*, 4 Q. B. 73 (1868):

Practically speaking, therefore, it is idle to say that the publication of parliamentary proceedings is prohibited by Parliament. The standing orders which prohibit it are obviously maintained to give each House the control over the publication of its proceedings and the power of preventing or correcting any abuse of the facility offered.

On the basis of these and other authorities Mr. Justice Subba Rao arrives at the following conclusion:

I therefore hold that in the year 1950 the House of Commons had no privilege to prevent the publication of correct and faithful reports of its proceedings save those in the case of secret sessions held under exceptional circumstances and had only a limited privilege to prevent mala fide publication of garbled, unfaithful or expunged reports of the proceedings.

Then he points out that no mala fide intention has been imputed to the petitioner in the notice served on him or in the enclosures annexed thereto. His Lordship further says:

The petitioner in his petition states that till the 31st May it was not known to any member of the staff of the "Searchlight," including the petitioner, that any portion of the debate in question had been expunged from the official record of the Assembly. Though in the official record of the proceedings portions of the speech have been expunged, no order of the Speaker expunging any portions of the speech made on the 30th May has been produced. Admittedly, there was no order of the Speaker prohibiting the publication of the expunged portion of the speech. In the counter-affidavit filed by the respondents, they did not allege any mala fides to the petitioner but they took their stand on the fact that the Legislature had the privilege of preventing the petitioner from publishing the expunged portion of the speech. In the circumstances, neither the notice nor the documents enclosed with the notice disclose that the petitioner published the speech, including the expunged portion, mala fide or even with the knowledge that any portion of the speech was directed to be expunged.

As I have pointed out, the Legislature has the privilege of preventing only mala fide publication of the proceedings of the Legislature and, as in this case the petitioner is not alleged to have done so, the Legislature has no power to take any action in respect of the said publication.

As to the status of Art. 194 (3) in relation to Art. 19 (1) (a), Mr. Justice Subba Rao said:

Cl. (2) of Art. 13, which is one of the Articles in Part III relating to fundamental rights, prohibits the State from making any law which takes away or abridges the rights conferred by that Part and declares

that any law made in contravention of that clause shall to the extent of contravention be void. It is, therefore manifest that the law made by the Legislature in respect of the powers, privileges and immunities of a House of the Legislature of a State, would be void to the extent the law contravened the provisions of Art. 19 (1) (a) of the Constitution, unless it is saved by any law prescribing reasonable restrictions within the ambit of Art. 19 (2). So much is conceded by the learned Solicitor-General. Then, what is the reason or justification for holding that the second part of that clause should be read in a different way as to be free from the impact of the fundamental rights? When the Constitution expressly made the laws prescribing the privileges of the Legislature of a State of our country subject to the fundamental rights, there is no apparent reason why they should have omitted that limitation in the case of the privileges of the Parliament of the United Kingdom in their application to a State Legislature.

We cannot assume that the framers of the Constitution thought that the privileges of the House of Commons were subject to the fundamental rights in that country; for, to assume that is to impute ignorance to them of the fact that the Parliament of the United Kingdom was supreme and there were no fetters on its power of legislation. The contention also, if accepted, would lead to the anomaly of a law providing for privileges made by Parliament or a Legislature of our country being struck down as infringing the fundamental rights, while the same privilege or privileges, if no law was made, would be valid. Except the far-fetched suggestion that the Constitution-makers might have thought that all the privileges of the House of Commons, being the mother of Parliaments, would not in fact offend the fundamental rights and that, therefore, they designedly left them untouched by Part III as unnecessary or the equally untenable guess that they thought that for a temporary period the operation and the extent of the said privileges need not be curtailed, no convincing or even plausible reason is offered for the alleged different treatment meted out to the said privileges in the said two parts of cl. (3). If the Constitution intended to make the distinction, it would have opened the second part of clause (3) with the words "Notwithstanding other provisions of the Constitution or those of Article 19".

I cannot also appreciate the argument that Art. 194 should be preferred to Art. 19 (1) and not vice versa. Under the Constitution, it is the duty of this Court to give a harmonious construction to both the provisions so that that effect may be given to both, without the one excluding the other. There is no inherent inconsistency between the two provisions. Art. 19

(1) (a) gives freedom of speech and expression to a citizen, while the second part of Art. 194 (3) deals with the powers, privileges and immunities of the Legislature and of its members and committees. The Legislature and its members have certainly a wide range of powers and privileges and the said privileges can be exercised without infringing the rights of a citizen, and particularly of one who is not a member of the Legislature. When there is a conflict, the privilege should yield to the extent it affects the fundamental right. This construction gives full effect to both the Articles.

This Court in *Gunupati Keshavram Reddy v. Nafisul Hasan and the State of U. P.* (A. I. R. 1954 S. C. 636) held that the order of arrest of Mr. Mistry and his detention in the Speaker's custody was a breach of the provisions of Art. 22 (2) of the Constitution. In that case, the said Mistry was directed by the Speaker of the U. P. Legislative Assembly to be arrested and produced before him to answer a charge of breach of privilege. Though the question was not elaborately considered, five judges of this Court unanimously held that the arrest was clear breach of the provisions of Art. 22 (2) of the Constitution indicating thereby that Art. 194 was subject to Articles of Part III of the Constitution. I am bound by the decision of this Court.

In the result, I hold that the petitioner has the fundamental right to publish the report of the proceedings of the Legislature and that, as no reasonable restrictions were imposed by law on the said fundamental right, the action of the respondents infringes his right entitling him to the relief asked for.

This case does not, as it is supposed or suggested, illustrate any conflict between the Legislature and the Court, but it is one between the Legislature and the citizens of the State whose representatives constituted the Legislature. I yield to none in my respect for that august body, the Legislature of the State; but we are under a duty, enjoined on this Court by Art. 32 of the Constitution, to protect the rights of the citizens who in theory reserved to themselves certain rights and parted only with the others to the Legislature. Every institution created by the Constitution, therefore, should function within its allotted field and cannot encroach upon the rights of the people who created the institutions.

"In the result," His Lordship said, "the petition is allowed. A writ of prohibition will issue restraining the respondents from proceeding against the petitioner for the alleged breach of privilege" by publishing an account of the Bihar Legislative Assembly in the "Searchlight."

LAND LAWS

Gujarat Taluqdari Act

RIGHT TO ENHANCE LAND REVENUE UPHELD

The Supreme Court by a judgment delivered on 16th December upheld the right of the State of Bombay to levy

land revenue under the Land Revenue Code on Taluqdari estates on the expiry of the period fixed in the "jama" declaration under the provisions of the Gujerat Taluqdars Act.

The three appeals and writ petitions filed by Maharana Shri Jayavant Singhji and others against the State of Bombay were dismissed by a single judgment delivered by Mr. Justice Subba Rao of the Supreme Court. The appeals and the petitions raised the common question whether the Government could charge an enhanced rate of land revenue on Taluqdari lands in respect of which a fixed "jama" had been declared under the Gujerat Taluqdars Act.

The material facts and points of law involved in all the appeals and petitions were similar. The appellants were taluqdars owning several taluqdari villages in Ahmedabad district. In 1925-26 in exercise of the powers conferred under sec. 22 of the Gujerat Taluqdars Act, the Government of Bombay ascertained and declared that a fixed "jama" was payable by the appellants in respect of the taluqdari villages owned by them and this declaration was to remain in force for a period of 30 years from 1925-26.

In 1950 the Bombay Taluqdari Abolition Act came into force. It abolished the taluqdari tenure and all its incidents and converted the appellants into occupants of the lands held by them.

After the expiry of the 30-year period fixed under the aforesaid declaration the appellants were called upon to pay the full land revenue assessment in respect of the lands. The appellants contended that they were liable to pay only the amount fixed under the "jama" in spite of the fact that the period under the declaration had expired.

On a construction of the relevant provisions of the Gujerat Taluqdars Act 1888 and the Bombay Taluqdari Tenure Abolition Act 1949, the Supreme Court stated that the declaration of a "jama" by the Governor in Council under the former Act did not amount to a settlement of land revenue under the Bombay Land Revenue Code. "The entire scheme of the Abolition Act was that after the passing of that Act, the taluqdars became occupants with the result that they would be liable to pay land revenue in accordance with the provisions of the Land Revenue Code."

The Supreme Court accordingly held that the declaration made by the Governor in Council in 1925-26 expired in 1955-56 and the appellants became liable to pay the entire land revenue according to the settlement under the Bombay Land Revenue Code. The appeals and the writ petitions were consequently dismissed.

U. P. Consolidation of Holdings Act VALIDITY UPHELD BY SUPREME COURT

The validity of the U. P. Consolidation of Holdings Act 1954 which enables the State Government to consolidate agricultural holdings compulsorily was upheld by a judgment of the Constitution Bench of the Supreme Court on 17th December.

The Act was enacted in 1954 as it was felt that consolidation would improve agriculture and some kind of compulsory machinery was necessary to achieve it. The object of the Act was to allot a compact area of land in lieu of scattered plots to tenure-holders so that large-scale cultivation would be possible with all its attendant advantages. A notification was issued under

this Act for the consolidation of land in 223 villages in tehsil Kairana.

The petitioners whose lands were included in this scheme challenged the proceedings on the ground that the Act violated Arts. 14 and 31 of the Constitution. They submitted that the provisions of the Act were discriminatory as they enabled the Government to select some villages for enforcing the scheme, that the enactment conferred arbitrary powers on the authorities to deprive a tenure-holder of his land rights, and finally that the compensation under the provisions of the Act was inadequate.

The Supreme Court stated that in order to appreciate the contentions advanced against the validity of the Act it was necessary to see its object. According to the Court, it was clear from the objects of the Act and the advantages accruing from its implementation that it was a piece of legislation which should be a boon to the tenure-holders in a village and should also lead to the development of agriculture and increase in food production. Since it was necessary to achieve consolidation within a reasonable period, the Court felt that it was necessary to have a procedure which was shorter than the ordinary procedure.

Examining the contention that the Act debarred the petitioners from having access to the ordinary courts of the land, the Supreme Court stated that the classification under the Act was a proper one and that the procedure set up "cannot by any means be said to be arbitrary or lacking in the essentials of the principles of natural justice" so as to make the court strike down the provision as discriminatory and violative of Art. 14.

On the question of the adequacy of the compensation provided under the Act, the Court found that apart from the direct benefits of consolidation there were a number of other benefits which would accrue to the tenure-holders. On a consideration of all these benefits it said :

We are of opinion that taking into account the peculiar conditions in cases of this kind and remembering that the land taken from each individual tenure-holder may be a small bit and it is then consolidated and the whole is then used for the advantage of the whole body of tenure-holders, it cannot be said that the cash compensation, added to the advantages which the tenure-holders get, is inadequate.

The Supreme Court accordingly held that the enactment did not violate Arts. 14 and 31 of the Constitution and dismissed the petition preferred against the State of U. P.

GLEANINGS

Africaner Liberalism

The following is an extract from an article by Professor Pistorius of Pretoria University which appeared in the "Cape Times" on the day of the election of South Africa's Prime Minister.

The real issue is the colour issue and the fact that we must be just or be doomed. . . . The racial problems

of South Africa are more than a struggle between various groups in the country for group supremacy or group survival. We as a people are so small and puny that we are unable to see those problems in any other light, and this is the main reason why we are swiftly moving towards the destruction of all those values that we claim to be working for. The future of the black man in South Africa is not in danger. The African may have to go through hard times, but he will win, because of our puny approach and our group stupidity. We can create fanatical emotions, but we cannot control those emotions when they have been aroused.

Our racial problems are a cross-section of the problems facing the world. The world problem of living together, of recognizing human rights and human values, is with us in an accentuated form. We are, as it were, the laboratory where the world can learn, or could have learnt, what its own approach to its problems should be. In that sense we have been honoured above all nations. We have been called to set the example, not only of Christianity, but of humanity itself. The world looks on while we struggle. . . .

But we have been too small for the challenge. . . . What has been a task given by God and a challenge to humanity itself has been demeaned by us to a petty quarrel of parties, of flags, of limited ideologies and of a desire to demean God Himself to the status of a tribal god to whom the domination of one group is more important than eternal values, more important than justice and more important even than the world as a whole.

There is only one possible solution, and that lies in the heart and conscience of the common man. We must accept our own humanity as being of more account than the specific language we speak or the specific colour of our skins. We must regard the brotherhood of man as more important than the brotherhood of the group or the party. In that loyalty more than South Africa must be included. We are expendable, but humanity is not. If we can . . . do justice to one another, the world could take heart.

For that we must believe in the brotherhood of man, be he African, European or Asiatic. Unless we can merge our narrow loyalties in that greater loyalty, we shall perish. . . .

That brotherhood of man need not remain an empty and emotional concept. Its application will widen with its acceptance, but let us at least accept it in its very slightest application, and that would be the recognition of the basic rights of all human beings to life, liberty and happiness, and the recognition of our own duty not only to refrain from inflicting injustice and violating those rights, but the recognition of the duty incumbent on us all not to tolerate injustice towards our fellow men. . . .

Unless this can be done . . . we are criminals against humanity, and our petty squabbles about flags and republics and language rights and the divine calling of a particular group or section constitute high treason against South Africa and the world, for which we will be punished by history.