

## PART II.

### PREVENTIVE LAW.

#### CHAPTER XVI.

##### ORIGIN AND HISTORY OF PREVENTIVE MEASURES.

PREVENTIVE legislation may be said to have had its origin in India in the year 1823. Whatever may have been the causes which contributed to produce the first measure, there can be no doubt that Sir Thomas Munro's celebrated minute on the Indian Press had a good deal to do with it.

On the 12th April, 1822, that distinguished statesman, then Governor of Madras, had occasion to put on record his views on this important subject, and the opinions which he then expressed, as the result of a unique experience, both military and civil, are still regarded as authoritative. But apart from this, its historical value can hardly be over-estimated, for it affords a striking picture of the conditions which prevailed in the country at the time it was written, and of the circumstances which preceded the legislation of the following year.

This important record, which is entitled "Danger of a Free Press in India," has been published in the memoir of the distinguished governor by Sir A. Arbuthnot, himself a prominent figure in the Legislative Councils of India, and may be there referred to. It will suffice to cite here only the more important passages.

"A great deal has of late been said," he wrote, "both in this country and in England, regarding the liberty of the Indian press; and although nothing has occurred to bring the question regularly before the Board, yet as I think it one on which, according to the decision which may be given, the preservation of our dominion in India may depend, and as it appears to me desirable that the Honourable Court of Directors should be in possession of the sentiments of this Government

at as early a period as possible, I deem it my duty to call the attention of the Board to the subject.

“ I cannot view the question of a free press in this country without feeling that the tenure with which we hold our power never has been and never can be the liberties of the people. I therefore consider it as essential to the tranquillity of the country and the maintenance of our government that all the present restrictions should be continued. Were the people all our own countrymen, I would prefer the utmost freedom of the press, but as they are, nothing could be more dangerous than such freedom. In place of spreading useful knowledge among the people, and tending to their better government, it would generate insubordination, insurrection, and anarchy.

“ Those who speak of the press being free in this country have looked at only one part of the subject. They have looked no further than to Englishmen, and to the press as a monopoly in their hands for the amusement or benefit of their countrymen. They have not looked to its freedom among the natives to be by them employed for whatever they also may consider to be for their own benefit and that of their countrymen. A free press and the dominion of strangers are things which are quite incompatible, and which cannot long exist together. For what is the first duty of a free press ? It is to deliver the country from a foreign yoke, and to sacrifice to this one great object every meaner consideration ; and if we make the press really free to the natives as well as to Europeans, it must inevitably lead to this result. We might wish that the press should be used to convey moral and religious instruction to the natives, and that its efforts should go no further. They might be satisfied with this for a time, but would soon learn to apply it to political purposes, to compare their own situation and ours, and to overthrow our power.

“ The restraint on the press is very limited. It extends only to attacks on the character of Government and its officers, and on the religion of the natives. On all other points it is free. The removal of these restrictions could be of advantage to none but the proprietors of newspapers. It is their business to sell their papers, and they must fill them with such

articles as are most likely to answer this purpose. Nothing in a newspaper excites so much interest as strictures on the conduct of Government or its officers; but this is more peculiarly the case in India, where, from the smallness of the European society, almost all the individuals composing it are known to each other, and almost every European may be said to be a public officer. The newspaper which censures most freely public men and measures, and which is most personal in its attacks, will have the greatest sale.

“The law, it may be supposed, would be able to correct any violent abuse of the liberty of the press; but this would not be the case. The petty jury are shop-keepers and mechanics, a class not holding in this country the same station as in England—a class by themselves, not mixing with the merchants or the civil and military servants, insignificant in number, and having no weight in the community. They will never, however differently the judge may think, find a libel in a newspaper against a public officer. Even if the jury could act without bias, the agitation arising from such trials in a small society would far outweigh any advantage they could produce.

“Were we sure that the press would act only through the masses of the people, after the great body of them should have imbibed the spirit of freedom, the danger would be seen at a distance and there would be ample time to guard against it; but from our peculiar situation in this country this is not what would take place, for the danger would come upon us from our native army, not from the people. In countries not under a foreign government the spirit of freedom usually grows up with the gradual progress of early education and knowledge among the body of the people: this is its natural origin, and were it to arise in this way in this country, while under our rule, its course would be quiet and uniform, unattended by any sudden commotion, and the change in the character and opinions of the people might be met by suitable changes in the form of our government. But we cannot with any reason expect this silent and tranquil revolution; for, owing to the unnatural state in which India will be placed under a foreign government with a free press and a native army, the spirit of independence will spring up in this army, long before it is ever thought of among the people.

“The high opinion entertained of us by the natives, and the deference and respect for authority which have hitherto prevailed among ourselves, have been the main cause of our success in this country, but when these principles shall be shaken or swept away by a free press, encouraged by our juries to become a licentious one, the change will soon reach and pervade the whole native army. I do not apprehend any immediate danger from the press. It would require many years before it could produce much effect on our native army. But though the danger be distant, it is not the less certain, and will inevitably overtake us if the press become free. The liberty of the press and a foreign yoke are already stated to be quite incompatible: we cannot leave it free with any regard to our own safety. We cannot restrain it by trial by jury, because, from the nature of juries in this country, public officers can never be tried by their peers. No jury will ever give a verdict against the publisher of any libel upon them, however gross it may be. The press must be restrained either by a censor, or by the power of sending home at once the publisher of any libellous or inflammatory paper at the responsibility of Government, without the Supreme Court having authority, on any plea whatever, to detain him for a single day.

“Such restrictions as those proposed will not hinder the progress of knowledge among the natives, but rather insure it, by leaving it to follow its natural course, and protecting it against military violence and anarchy. Its natural course is not the circulation of newspapers and pamphlets among the natives immediately connected with Europeans, but education gradually spreading among the body of the people, and diffusing moral and religious instruction through every class of the community.

“If we take a contrary course—if we, for the sole benefit of a few European editors of newspapers, permit a licentious press to undermine among the natives all respect for the European character and authority, we shall scatter the seeds of discontent among our native troops, and never be secure from insurrection. We are trying an experiment never yet tried in the world,—maintaining a foreign dominion by means of a native army, and teaching that army, through a free press,

that they ought to expel us and deliver their country. As far as Europeans only, whether in or out of the service, are concerned, the freedom or restriction of the press could do little good or harm, and would hardly deserve any serious attention. It is only as regards the natives that the press can be viewed with apprehension, and it is only when it comes to agitate our native army that its terrible effects will be felt. Many people, both in this country and in England, will probably go on admiring the efforts of the Indian press, and fondly anticipating the rapid extension of knowledge among the natives, while a tremendous revolution, originating in this very press, is preparing, which will, by the premature and violent overthrow of our power, disappoint all those hopes, and throw India back into a state more hopeless of improvement than when we first found her.

“ Though I consider the danger as still very distant, I think that we cannot be too early in taking measures to avert it: and I trust that the Honourable the Court of Directors will view the question of the press in India as one of the most important that ever came before them, and the establishment of such an engine—unless under the most absolute control of their Governments—as dangerous in the highest degree to the existence of the British power in this country.”

On the 14th of March, 1823, a “ Rule, Ordinance, and Regulation for the good order and civil government of the Settlement of Fort William in Bengal ” was passed in Council, and registered in the Supreme Court of Judicature on the 4th of April following.

On the 5th of April, 1823, a “ Regulation for preventing the establishment of Printing-presses, without license, and for restraining under certain circumstances, the circulation of printed books and papers,” was passed by the Governor-General in Council. This was Regulation III of 1823, and its sphere of operation was “ the territories immediately subordinate to the presidency of Fort William.”

Its immediate effect was to place the entire Press—in the words of Sir Thomas Munro—‘ under the absolute control of the Government.’ The new measure prohibited, under a penalty of one thousand rupees, the printing of any book or

paper, or the possession or use of any printing-press or materials for printing, without a license from Government. Applications for such licenses, containing a true and complete description of the applicant and "verified on oath or solemn obligation," could be made through the local magistrate. The Governor-General in Council might grant or withhold the license, at his discretion. In any case the grant was conditional, and might at any time be withdrawn.

The use of a printing-press or materials for printing, after notice of withdrawal of a license, involved a fine of one thousand rupees, as well as forfeiture of the press and all printed matter found on the premises. All books and papers printed under license were required to bear the name and residence of the printer, and to be submitted for inspection. The circulation of any newspaper or book might be prohibited by notice in the Government Gazette. The wilful circulation of such paper or book after notice, was visited with fine, or in default to imprisonment.

In Bombay, two years later, a "Rule, Ordinance, and Regulation for preventing the mischief arising from the printing and publishing Newspapers, and Periodical and other books and papers by persons unknown," was passed by the Governor in Council on the 2nd March, 1825. This, in like manner, was followed by a "Regulation for restricting the establishment of Printing-presses and the circulation of printed books and papers," which was passed by the Governor of Bombay in Council on the 1st January, 1827.

These Regulations, which are now only of historical interest, continued in force until the 15th of September, 1835, when they were repealed and replaced by Act XI of that year. The reasons for the repeal of these Regulations, Rules and Ordinances, and the substitution of a less exacting system of control over the Press are to be found in the minutes of the Governor-General of India Sir Charles Metcalfe, and his Law Member Mr. Macaulay. These minutes, though frequently referred to in subsequent discussions on Press legislation, have never been officially published. They may, however, be referred to in the original manuscript, with the permission of the Government.

It is unnecessary to allude to them here, further than to mention that the reasons stated by Sir Charles Metcalfe, in his minute of the 17th April 1835, were—first, that in his opinion ‘the Press ought to be free, if consistently with the safety of the State it could be;’ and secondly, that ‘it *was* practically free,’ for the existing restrictions were never put in force, and ‘the Government had no intention of enforcing them.’

But he went on to add that a simple repeal of these restrictions would not be enough, and that they were compelled to substitute for them ‘an enactment for the purpose of making printers and publishers accessible to the laws of the land.’

The measure proposed, which had been drawn by the Hon’ble Mr. Macaulay, was explained by him as an ‘Act to establish a perfect uniformity in the laws regarding the Press throughout the Indian Empire.’ ‘Every person,’ he said, ‘who chose would be at liberty to set up a newspaper without applying for previous permission, but no person would be able to print or publish sedition or calumny without imminent risk of punishment.’ The Hon’ble Mr. Prinsep while giving his assent to the Bill observed that ‘the late Governor-General, Lord William Bentinck, had regarded the existing Press Laws as good materials to have available in case the necessity should arise for State interference.’ ‘It would be very wrong,’ he thought, ‘to take any step calculated to tie the hands of the Government hereafter, or to deprive it of any of its authority in such a matter. But, as Mr. Macaulay had said, the Council had but to decide, and a law suitable to any emergency could be produced in a day.’ He regarded the existing provisions ‘as inefficient as they were inoperative,’ and therefore assented to their repeal, ‘leaving future measures, so far as concerned the security and protection of the Government against the Press, to be determined in the future as circumstances might arise to call for legislation or other interference.’

Another Member, with apparently more pronounced misgivings, proposed the addition of a saving clause which should have the effect of safeguarding the Government in any emergency. Sir Charles Metcalfe, however, removed all apprehensions by stating that ‘the power of providing for the safety of the State was inherent in the Legislature and the Govern-

ment of every country, and that it was not probable that the safety of the State would be endangered so suddenly, by any operations of the Press, as not to afford time to the Legislative Council to apply a remedy.' 'But,' he added, 'if such an extreme case of sudden and imminent danger could be conceived, what Government would hesitate to protect itself until the Legislature of India could provide for the case?'

The new measure, which was the first Press Act introduced for the whole of India, was obviously drawn by the Law Member on the lines of the Statute 38 Geo. III, c. 78, which was "An Act for preventing the mischiefs arising from the printing and publishing Newspapers and Papers of a like nature by persons not known, and for regulating the printing and publication of such Papers in other respects."

Act XI of 1835, which was intended to substitute a system of Registration for the system of Licenses then in vogue, was a short Act of nine sections. The first section purported to repeal the four Regulations mentioned above, while the remaining eight sections provided the new rules which were to operate in place of them.

It was enacted in section 2, that after the 15th September, 1835, "no printed Periodical work whatever, containing public news or comments on public news, shall be published within the Territories of the East India Company, except in conformity with the rules hereinafter laid down." By these rules every printer and publisher of any periodical work was obliged, under a penalty, to sign and file before a magistrate a declaration in a particular form, setting forth "a true and precise account of the premises" wherein his printing or publishing was carried on, and to renew the same as often as the premises were changed. Printing or publishing any such periodical without conforming to these rules involved, on conviction, a fine of five thousand rupees as well as imprisonment extending to two years.

Section 5 provided that the production of a duly attested copy of such declaration in any proceeding, civil or criminal, was *prima facie* evidence of the responsibility of the declarant for the publication of "every portion of every Periodical work whereof the title shall correspond with the title of the



Periodical work mentioned in the said declaration." A declaration might, however, be revoked by a fresh declaration to that effect under section 6.

A similar declaration was required by section 8 from the owner of a printing-press, and the breach of this rule likewise involved the liability to a fine of five thousand rupees and imprisonment extending to two years.

Every book or paper was moreover required to bear the name and place of the printer and publisher. The neglect of this rule was visited with a like penalty. A false declaration was similarly punished.

These provisions were re-enacted in 1867, almost without modification, and incorporated with a new Press Act which is still in force. They will be found reproduced in sections 3 to 8 and 12 to 15 of Act XXV of 1867 (see *Appx.*). It may therefore be said that the provisions enacted in 1835 have continued in force, practically undisturbed by any intermediate legislation, down to the present day.

A period of twenty-two years elapsed before the Press was affected by any fresh legislation, but the events of the year 1857 rendered further legislation of some kind imperatively necessary. On the 13th of June of that year the Legislative Council met to consider matters of "pressing and paramount importance."

His Excellency Lord Canning, the President, addressed the Council as follows:—"Those whom I have the honor to address are well acquainted with the present aspect of public affairs. The general disaffection of the Bengal Army in the North-Western Provinces; the lawlessness and violence of the evil-minded part of the population to which this disaffection has given opportunity and encouragement; the pillage, the heart-rending loss of life, and the uprooting of all order in that part of the country, are painfully notorious. I will not dwell upon them. Neither will I trace the causes which have led to these calamitous results, or describe the means by which the Government is meeting and repressing them. But there is one quarter to which I desire to direct the attention of the Council—a quarter from which the evil influences which now pervade so many minds have been industriously put in motion, and to

which a large portion of the discontent instilled into our troops and our ordinarily harmless and peaceable community is attributable. I doubt whether it is fully understood or known to what an audacious extent sedition has been poured into the hearts of the native population of India within the last few weeks, under the guise of intelligence supplied to them by the native newspapers."

"It has been done," his Excellency continued, "sedulously, cleverly, artfully. Facts have been grossly misrepresented—so grossly, that with educated and informed minds the very extravagance of the misrepresentations must compel discredit. But to native readers of all classes, scattered through the country, imperfectly acquainted with the proceedings of the Government, and not well instructed as to what is passing even immediately around them, these misrepresentations come uncontradicted, and are readily credited. In addition to perversion of facts, there are constant vilifications of the Government, false assertions of its purposes, and unceasing attempts to sow discontent and hatred between it and its subjects."

"Against such poisoned weapons," his Excellency went on to add, "I now ask the Legislative Council to give to the Executive Government the means of protecting itself, its army, and its subjects; and I know no means by which this can be effectually accomplished other than a law which shall give to the Executive Government a more absolute and summary control over the Press than it now has in its hands. With this view I propose to introduce a Bill this day. The measure is framed upon the principle that no press shall exist without a license from the Government; that the license shall be granted by the Governor-General in Council under such conditions as he may think fit; that on the infraction of any of these conditions, it shall be in the power of the Governor-General in Council, and, in distant parts of the Empire, of local governments to whom he may delegate the authority, to withhold such license, or, if one has been already granted, to recall it. One of the sections provides that the Bill shall have effect for one year only. At the end of that period, the subject will again be before the Legislative Council, and the Legislative Council will know how to deal with it according to the circumstances of the

moment. It is also provided that the Bill shall be applicable, not only to Bengal, but to all India. I also propose that the Act shall extend to all periodical and other publications, European as well as Native, whatever their condition or character. I do not see any reason, nor do I consider it possible in justice to draw a line of demarcation between European and native publications. The Bill accordingly applies to every kind of publication, whatever the language in which it may be printed, or the nation of the persons who are responsible for what is put forth in it."

His Excellency concluded in the following terms:—"I cannot conceal from the Council that I have proposed this measure with extreme reluctance. It is one which no man bred in the atmosphere of English public life can propose to those who are vested with the high authority of legislating for English dominions, without some feelings of compunction and hesitation. But there are times in the existence of every State in which something of the liberties and rights which it jealously cherishes and scrupulously guards in ordinary seasons, must be sacrificed for the public welfare."

The Chief Justice, Sir James Colville, in supporting the Bill said that "the gravity of the step which the Council was about to take could not be denied. It was called upon suddenly to suspend a privilege which had now been enjoyed for nearly a quarter of a century by the population of this country—a privilege to which all Englishmen were naturally and strongly attached. Having heard the statement of his Lordship to-day, he thought it right emphatically to declare that he was ready to take his share of the responsibility involved in the adoption of the measure. The freedom of the Press, like any other privilege, was to be prized only in so far as it conduced to the public good."

The Hon'ble Mr. Peacock in referring to the penalties provided in the Bill, explained that "by Act XI of 1835 a much higher penalty was provided for a much smaller offence."

The Bill was passed the same day, and remained in operation for a year, as Act XV of 1857.

This Act, so frequently referred to in subsequent discussions as a temporary suspension of the liberty of the Press,

merely re-enacted, with slight modifications, the provisions of Regulation III of 1823, for the whole of India. At the same time the provisions of Act XI of 1835 were expressly maintained. It therefore restored the system of licenses, already referred to, without disturbing the later system of registration then in force, and this for the space of a single year.

The next step in Press legislation was Act XXV of 1867. This Act had originally been intended to provide rules for the preservation and registration of books only, but at a later stage the Bill was altered so as to include the provisions of Act XI of 1835, as already mentioned, although as a fact they could hardly be considered *in pari materid.* The Hon'ble Mr. Hobhouse who was in charge of the Bill thus explained it:—"It was considered advisable," he said, "when the Bill was being considered in Committee, to repeal and re-enact in the Bill a cognate law on the subject of printing-presses and the registration of periodicals. It would therefore be observed that sections 3 to 8 of the amended Bill were simply re-enactments of Act No. XI of 1835 relating to printing-presses and periodicals, and that sections 12 to 15 were also repetitions of the same law, but in these latter sections there had been an amendment of some value. Under Act No. XI of 1835 a person guilty of infringement of the Act was liable to fine and imprisonment, but that was considered a very severe penalty, and, in accordance with the provisions of the Penal Code, it had been altered to fine or imprisonment, or both."

The provisions of "the Press Act of 1867, so far as they relate to the Press, are contained in Part II, ss. 3—9, and in Part IV, ss. 12—15, the portions in fact which were taken from the Press Act of 1835. Although the Act was amended subsequently (by Act X of 1890), these portions remained undisturbed.

Part II of the Act contains the salutary rules, so frequently referred to in previous chapters, for obtaining declarations from printers and publishers and the owners of printing-presses, and for the registration of their names. Section 7 makes such declarations *prima facie* evidence of the liability of the declarant, whether printer or publisher, for the publication

of every portion of the matter appearing in the periodical mentioned therein.

Part IV provides the penalties for breach of the rules contained in Part II. Offences against the Press law are, shortly,—keeping or using a printing-press without having made a declaration; making any false declaration; and printing or publishing any book or paper without disclosing the name of the printer or publisher, and the place of publication (see *Appx.*).

In the year 1870, it will be remembered, the offence of sedition was added to the Penal Code (see *Ch. i*). In 1876, however, another preventive measure was introduced, and this time with a view to establish a better control over the Stage. This was the 'Dramatic Performances Act' (XIX of 1876), intended to prevent performances of a seditious or scandalous nature.

The necessity for legislation of this character was explained by the Hon'ble Mr. Hobhouse, when introducing the Bill on the 14th March, as follows:—"The subject of stage plays," he said, "is one on which our law stands in need of amendment. If, indeed, a play is of a defamatory, an obscene, or a seditious character, those who exhibit it may be punished for the offence of defamation, obscenity, or sedition. But the Government have been advised that they have no power to prevent the performance of any such play, unless, indeed, in the very rare instances in which it could be said that it was so certain to lead to a breach of the peace as to constitute the actors and audience an unlawful assembly."

"This imperfection of our law," he added, "has been brought pointedly under our attention by some cases which have recently happened. In the course of last year there was composed a work in a dramatic form, called the '*Chá-ka-Darpan*,' which I am told means the Mirror of Tea. I do not know who was the author, or what his motives were, but the work itself was as gross a calumny as it is possible to conceive. The object was to exhibit as monsters of iniquity the tea planters and those who are engaged in promoting emigration to the tea districts,—bodies of men as well conducted as any in the empire. These gentlemen, who are carrying on their business to the benefit of everybody concerned, and perhaps

with a greater proportion of benefit to the labourers they employ than to any body else, have what is called a mirror held up to them in which the gratification of vile passions, cruelty, avarice, and lust is represented as their ordinary occupation. I do not know that this play was ever acted, but it is written, and in all respects adapted for the stage, and it might, for any power of prevention the Government have, be acted at any moment."

"It was," he continued, "on account of the defect in the law that His Excellency the Viceroy thought it right to issue an Ordinance giving power to the Government of Bengal to prohibit objectionable performances of this kind. And it is a Bill on the model of that Ordinance which I am now asking leave to introduce."

"Now in all times and countries," he went on to add, "the drama has been found to be one of the strongest stimulants that can be applied to the passions of men. And in times of excitement no surer mode has been found of directing public feeling against an individual, a class, or a Government than to bring them on the stage in an odious light. It is doubtless for these reasons that the laws of civilised countries give to their Governments great controlling power over the stage. I will state briefly what is the law of England. By that law it is not lawful for any person to have or to keep any house or other place of public resort for the public performance of stage plays without the authority either of Royal Letters Patent or of the Lord Chamberlain's license, or of a license given by Justices of the Peace. Then there are rules requiring licensees to give bonds for good conduct, and there are powers given to the Lord Chamberlain and to the Justices to suspend licenses and to shut up theatres. The most stringent rule of all is the one which gives to the Lord Chamberlain complete control over the stage. First, it is required that a copy of every new play or alteration in a play shall, seven days before it is acted, be sent to the Lord Chamberlain, who has absolute discretion to allow or disallow its performance. Secondly, the Lord Chamberlain is empowered to forbid the acting of any play, even though already put upon the stage, 'whenever he shall be of opinion that it is fitting for the preservation of good

manners, decorum, or the peace, public so to do.' We shall not propose to take such large powers as those which are vested in the Lord Chamberlain, but shall propose to take what will probably be quite effective in this country."

On a subsequent occasion the Hon'ble Member further explained the terms of the Bill as follows:—"What was proposed was that whenever the Government was of opinion that any dramatic performance was scandalous or defamatory, or likely to excite feelings of disaffection to the Government, or likely to deprave and corrupt the persons present at the performance, or to be in other ways prejudicial to the interests of the public, the Government might prohibit the performance. The Bill provided that a copy of the order might be served on the persons about to take part in the performance, or on the owner or occupier of the house or place in which it was to take place, and then penalties were imposed for disobedience to the order, and power was given to the Magistrate to seize the scenery, dresses and other articles which were used in the play which was prohibited. The powers conferred by section 10 were nearly the same as those which the Lord Chamberlain had in England. It was proposed that after notification in the particular place no dramatic performance should take place except in some licensed house; that those about to perform should be bound to give prior notice to the Government, who might then prohibit the performance if they thought fit."

When the Bill was finally considered, on the 6th December, 1876, the Hon'ble Member, in answer to some of the objections raised, said:—"There were many cases in which prevention was worth all the punishment in the world. That was particularly true in times of excitement, and in cases where the play was of a seditious character. If the performance took place a few times, the mischief was done, and it was a poor satisfaction to punish the offenders afterwards."

The Bill was passed as Act XIX of 1876, and is now in force (see *Appx.*).