

CHAPTER XIX.

RECENT PREVENTIVE LEGISLATION.

It has been seen that the year 1898 was memorable for the introduction of two legislative measures directed against sedition, the one of a penal, and the other of a preventive character. Act IV of 1898 was passed to amend the general law of sedition and cognate offences, while Act V introduced concurrently a special procedure founded on the principle of personal security. These remedies would seem to have been unavailing, for in 1907 the Government were compelled to resort to fresh legislation.

The next measure was directed against seditious oratory. On the 18th October, 1907, a Bill was introduced by Sir Harvey Adamson "to make better provision for the prevention of meetings likely to promote sedition, or to cause a disturbance of public tranquillity."

In explaining the measure he said:—"This Bill is founded on, and is a sequel to, the 'Regulation of Meetings Ordinance, 1907.' The Ordinance was enacted in May last on account of the acute disorder that prevailed in the Punjab and in Eastern Bengal. The limit of the life of an Ordinance is six months, and it will in natural course expire on the 10th November. We had hoped that the need for an enactment of this kind would cease before the Ordinance expired, but in this hope we have been disappointed. It has become painfully apparent that persistent attempts continue to be made to promote sedition; and to cause such ill-feeling as is calculated to disturb the public tranquillity, and that these attempts are not confined to the two provinces which came under the scope of the Ordinance. The Bill which I have introduced extends to the whole of British India, but its operation is restricted to such provinces as the Governor-General in Council may from time to time notify, and even within these provinces the operation is restricted to such areas as the Local Government may declare to be proclaimed areas. It is not necessary for me to reiterate the provisions of the Ordinance, which has already been before the public for

some months. Suffice it to say that the Ordinance gave power to prohibit only such meetings as, on a scrutiny of the circumstances, a responsible officer believed to be likely to promote sedition or disaffection, or to cause a disturbance of the public tranquillity. And a chief object of the Ordinance was not to prohibit public meetings, but to insure that our officers should have admission to all public meetings, so that evidence might be available if the proceedings were unlawful. These also are the principles of the Bill."

"The Government of India," the Hon'ble Member added, "have all along recognised that unrest is not solely the outcome of seditious agitation, but has its basis on the natural aspirations of educated Indians. To meet these aspirations and to associate Indians more closely in the administration of the country we formulated a large and generous scheme of reform which is now before the public for criticism. With this earnest of our desire to meet grievances we had hoped that the necessity for repression would cease. But as time rolled on it became more and more apparent that such hopes were doomed to disappointment, that we had to deal with a section of irreconcilables, and that it would be necessary to continue the principles of the Ordinance as substantive law. The recognition of a necessity for legislation involved also a recognition of the necessity that there should be no *hiatus*, and that the substantive law should be ready to come into operation when the Ordinance expired."

When the Bill was before the Council on the 1st November, for final consideration, the Hon'ble Member, in answer to the objection raised by the opponents of the measure that it was wholly unnecessary, said:—"As regards the necessity, I almost feel that I should apologise for wasting the time of the Council, for the course of events during the past few months has surely been sufficient, without words of mine, to prove to reasonable men that a preventive measure is necessary. The party of extreme agitation, at least so far as they consist of men of matured understanding, may be comparatively few, but they exercise a baneful influence. They are teaching the schoolboys and students of the country that the Government as established in India is a government of despots, whose only desire is to enrich themselves and to impoverish and depopulate the country. They are

teaching the younger generation, who in a few years will, in the natural course of affairs, take a large share in the administration of India, that that administration is one of chicanery and deceit. It is no light thing that by the action and avowed policy of this disloyal party, the masses of the common people, who are contented and law-abiding when left to their own devices, but whose natures contain elements that are easily stirred to violence, have been excited by plausible lies to plunge the country into disorder. Nor is it a light thing that determined attempts have been made to seduce the police and even the native army from its allegiance. The whole aim of the seditious party is to subvert the government of the country. But I will not content myself with general statements. I will take up the challenge, and will show that in every part of India where seditious oratory has been poured on the people during the past eight months, the immediate result has been grave lawlessness and disorder."

The Hon'ble Member then referred to a large number of instances of serious disturbances in various parts of India. "In Calcutta," he said, "there had been meetings almost daily since the beginning of August, and a stream of seditious oratory was poured forth on the town. The police were urged to forsake their duty, the people were incited to attack the police, especially the European police, and students were advised to arm themselves with *lathis*—advice which they accepted. The result was that disturbances took place on August 7th and 26th, September 9th, and October 2nd to 5th, which became so serious that the authorities were compelled to take extraordinary action under section 144 of the Criminal Procedure Code in restraint of public meetings."

"In Western countries," he continued, "public sentiment is against the breakers of the law. If in a European country treason were preached at a public meeting many of those present would, from patriotic motives, come forward and denounce, and testify against the traitors. But what happens in India? It may be a moral certainty that sedition was preached, but no witnesses of respectability are to be found. That is the reason why in India we cannot rely on prosecutions, and are obliged to resort to preventive measures which entail inconvenience. The truth is that India under British government has enjoyed a

liberty—whether in the press or on the platform—that has been given to no other country in the world except England. That liberty has degenerated into a license which would not for a moment be tolerated in any country in the world—even in England. This abuse of freedom not only retards progress, but it threatens to engulf India in anarchy and riotousness, and no government on earth—unless it abnegated its functions—could dare to leave such an evil unchecked.”

So much for the necessity for preventive measures. The Hon'ble Member next dealt with the various clauses of the Bill in detail, pointing out the numerous safeguards against abuse of its provisions, and observed:—“Any contention, therefore that the Bill allows any dubious or questionable interference by the police falls completely to the ground. The effect of the operative clauses of the Bill may be summed up in three sentences,—(1) they require notice to be given of the intention to hold public meetings for the discussion of political topics in order that accurate reports of the proceedings may be obtained; (2) they enable officers only of the highest standing to prohibit seditious public meetings; (3) they completely exclude dubious action on the part of the police.”

“The Hon'ble Members who oppose the Bill,” he said in conclusion, “do not deny that there has been a considerable amount of seditious platform oratory. They cannot but admit that inflammatory oratory working on the minds of an ignorant and excitable people must be a grave source of danger. Their criticism is rather destructive than constructive, but I gather that rather than risk any interference with liberty they would let matters drift, and let sedition run its course, in the hope that things will eventually right themselves. I may point out that this was the policy followed for many years in respect of the native Press. In Bongal for over thirty years sedition in the Press was neither punished nor prevented. During the whole of this time the dissemination of sedition in the Press never ceased. Did the forbearance of Government lead to any good result? On the contrary the native Press went from bad to worse, until now, when the evil that it does can be ignored no longer, it seems that it is almost impossible by the strictest enforcement of the criminal law to stem a tide of sedi-

tion, which by inaction has been allowed to increase to enormous proportions. Can it be doubted that the same result will follow in the case of seditious platform oratory if we do not take timely measures to check it ? ”

Sir Edward Baker, in supporting the Bill, said :—“ We have been told to-day with characteristic force and eloquence that there is little or no sedition in India, and that those persons whose acts have led to the present legislation are a class insignificant both in numbers and influence. A similar argument has I think been used in a part of the Press, but, so far as I have observed, it only acquired prominence after it became known that legislation was in contemplation. It is a matter of common knowledge that there is a section of the Press, published largely but not exclusively in Bengal, which has openly endeavoured to excite hatred of the Government, and advocated its subversion,—which has sought to make the administration impossible, and has denounced all Indian servants of the State as traitors to their country. During the last two or three years, perhaps even during the last few months, these organs have increased in numbers, in circulation, and in the virulence and audacity of their attacks on the established order. If those by whom these journals are supported are really so insignificant and negligible as is represented, how is it that the latter are able to appeal to so large and expanding a circle of readers ? Sedition in the Press can be reached by the ordinary law of the land. But that is only one weapon in the armoury of disorder. Not less dangerous, but more difficult to touch, is the seditious harangue, delivered often by men who are skilled in the arts of the demagogue, not for the legitimate ventilation of any real or fancied grievance, but to work upon the immature, ill-informed minds of their hearers, to instil into them feelings of hatred and hostility towards the State, and to incite them to the open use of force and violence for its disruption. Are we to believe that these addresses always fall on deaf, unwilling ears ? I wish that I could think so. But I fear that a sufficient answer is to be found in the rioting and disorder which have only too often followed in their train, in the grotesque yet mischievous organisations known as the national volunteers, in the forcible interference with the freedom of purchase and sale of foreign goods, and in the constant

resort to social ostracism of those who adhere to a different way of thinking."

His Excellency Lord Minto, the President, in closing the proceeding said:—"I am afraid my Hon'ble colleagues have allowed their enthusiasm for the cause of political reform to blind them to the necessities of the moment, and that they have failed to recognise that the first duty of any government is the maintenance of law and order, and the protection of the people, entrusted to its charge. They would have us believe that we have been frightened by a phantom, that we have accepted the vapourings of a few agitators as evidence of dangerous sedition, and that by the Act which we have passed we are imputing disloyalty to the masses of the people of India—that I emphatically deny—but at the same time I refuse altogether to minimise the meaning of the warnings and anxieties of the last few months. We cannot afford to forget the events of the early spring—the riots, at Lahore and gratuitous insults to Europeans, the Pindi riots the promulgation of the Ordinance, and, contemporaneously with all this, a daily story from Eastern Bengal of assault, of looting, of boycotting, and general lawlessness encouraged by agitators, who, with an utter disregard of consequences, no matter how terrible, have by public addresses, by seditious newspapers, by seditious leaflets, and itinerant secret agents, lost no opportunity of inflaming the worst passions of racial feeling and have not hesitated to attempt to tamper with the loyalty of our magnificent Indian Army. The seeds of sedition have been unscrupulously scattered throughout India, even amongst the hills of the frontier tribes. We are grateful that it has fallen on much barren ground, but can no longer allow the dissemination of unlimited poison. That is the position the Government of India have had to face. That is why we have felt compelled to provide ourselves with a weapon against insidious attacks. The Bill is aimed at the inaugurators of dangerous sedition, not at political reform, not at the freedom of speech of the people of India."

The Bill was passed to operate for a period of three years only, from the 1st November, 1907. It was however extended by the continuing Act, 1910, for a further period of six months, and was finally replaced by the Act of 1911 which is now in force (see *Appx.*).

In the following year another preventive measure of an urgent character was enacted concurrently with the 'Explosive Substances Act.' This was a 'Bill for the prevention of incitements to murder and other offences in newspapers.' When introducing the Bill on the 8th June, 1908, Sir Harvey Adamson said :—“The Bill is a sequel to the Explosive Substances Bill, and is intended to meet the same emergency. There are two factors in this emergency, neither of which it is possible to ignore, if the evil is to be adequately dealt with. The first is the actual making and using of bombs, which has been met by the Bill which has just been passed into law. The second is the public incitement to murder and acts of violence carried on through the medium of an infamous section of the Press. These two factors are as inseparable as cause and effect. If you legislate for the effect without legislating for the cause, you do nothing. The present Bill is therefore as urgent as the one with which we have just been dealing. In the opinion of the Government of India it is absolutely necessary for the public safety that it should be passed into law with the utmost possible despatch. The circumstances which have led to this legislation are fresh in the minds of all of us. It is therefore not necessary for me to give a history of the events, of the bomb outrages, and I am the more disinclined to do so because certain persons accused in connection with these transactions are still under trial. There is one point, and only one, in connection with the proceedings that I am compelled to mention, in order to support and justify the legislation in which we are engaged. It is the close connection between the Manicktollah conspirators and a certain section of the Press. Some have confessed that they drew their inspiration from newspaper writings. Among others the young man who threw the bomb at Mozufferpur has admitted that he was incited by writings in the *Yugantar*. I will make no further comments on events which are now *sub judice*. What I have stated is taken from proceedings in Courts of Justice, and is already public property.

“Now turning,” the Hon'ble Member continued, “to the class of newspaper against which this Bill is directed, I find that the *Yugantar* has been on five occasions during the past year the subject of prosecution for the offence of sedition.

On four occasions the printer and publisher has been convicted, and one case is still pending. The authors of the offending articles have never come forth into the light. So far from being deterred by prosecution, a fresh printer and publisher has been registered on each occasion of conviction and the tone of the newspaper has continued unimproved. In spite of five prosecutions the *Yugantar* still exists and is as violent as ever. The type of sedition has been incitement to subversion of British rule by deeds of violence. The policy of the newspaper has been to court prosecution in order to create pseudo-martyrs, and thus to enlist sympathy on the side of anarchy, and it may be presumed that a further inducement was to increase the circulation of the newspaper by pandering to the tastes of the depraved. I quote the following extract from the official translation of an article in the *Yugantar* which appeared a few days after the attempt on an officer's life in Mozufferpur which resulted in the terrible death of two ladies." The Hon'ble Member then quoted a passage which was afterwards the subject of the *Yugantar* trial already referred to, and portions of which were put to the jury by the learned Judge (see *Ch. xiii*).

"Two days ago," he continued, "I saw a telegram from Calcutta stating that the *Yugantar*, which usually appears on Saturday, had unexpectedly appeared on Friday, that thousands of copies had been struck, and that they were selling at a rupee a copy. The telegram gave some description of the contents, which in violence outvied any previous issue. I have not yet received the full translations. I have up to this point confined myself to the *Yugantar*, because it has already obtained so great a notoriety that nothing that I can say can make it more notorious. But writings of a similar type abound in other newspapers, not only in Calcutta but throughout India. I will not give any of these disreputable papers an advertisement by mentioning their names. I will content myself with stating the substance of articles which I have culled from them. One article referring to the partition of Bengal states that the ruthless knife of the butcher has severed in twain the throbbing body of the mother-land, and makes frantic appeals to all sons of the soil to combine and avenge the atrocity. Another makes-

insidious attempts to propagate the cult of Ramdas who instigated Shivaji to revolt against Moslem rule. Another instigates Indians to sacrifice their lives and to teach the rulers a bitter lesson. Another urges the Bengalis and the Gurkhas to join hands and rebel against the oppression of the bureaucracy. Another advises the Bengalis to resort to red, as the colour of revenge, and to sing the hymn of retaliation: 'A hundred heads for one head, to avenge the murder of the mother-land.' Another states that a huge sacrificial fire should be lit up and fed, not with ghee, but with blood. Another advocates that Indians should make use of blacksmith's tools, *lathis*, and slings and stones, to overmatch the enemies of their country. Another says that if by resorting to boycott we can gain our desires, we can only be said to postpone for the present our resolve to shed blood. Another says that if we desire independence we should be ready to be massacred by our rulers, so that their sword may become blunt. Another exhorts to die after killing, as therein the glory of dying will be enhanced. Another urges the sacrifice of life for liberty, for is it not a fact that Kali will not be propitiated without blood. Another advocates the methods of Nihilists and the use of bombs. I might go on for hours quoting such types as these. To an Englishman who knows not India, they would appear to be little more than ridiculous bombast. But to impressionable and immature minds in the East, they present an entirely different significance. We have already seen the terrible effect that they produce on the youthful student, and they must be judged by Eastern and not by Western standards. We have striking examples of how they have converted the timid Bengali into the fanatical *Ghazi*, and they are not to be ignored. The difference between the East and the West in this respect is the difference between dropping a lighted match on a stone floor, and dropping it in a powder magazine."

"I have quoted," he went on to add, "some of the dangerous incitements that are published by unscrupulous newspapers. I have given facts showing the effect which such writings have produced on misguided young men, and I have shown that prosecution has been tried, and tried again, and has completely failed to put a stop to this incitement to outrage,

Under these circumstances what is the duty of a responsible government? Its bounden duty surely is not only to make adequate provision to punish the perpetrators of outrages that actually occur, but also to close the fountain-head, and to insure that colleges of anarchy, assassination, rebellion, and violence are not openly maintained under the guise of newspapers circulated among the public."

The Hon'ble Member then proceeded to explain the proposed provisions. "The present Bill," he said, "is confined entirely to the emergency which is now facing us. It is intended to provide a more effective way than prosecution for attempts through newspapers to incite to murder and acts of violence. It is not meant as a substitute for, but as a supplement to prosecution. It is directed against newspapers which persistently defy the law, which court prosecution, which set up dummies for punishment while the real authors lie concealed, and which establish themselves as schools of anarchy and outrage, with the object of debauching young and immature minds, and inciting men to murder, armed revolt, and secret and diabolical schemes of general assassination. The only way to deal with such newspapers is to put an end to their existence, and this we propose to do in the Bill, by giving power to confiscate the printing-press and to extinguish the newspaper. This is the object of the present Bill, and these two powers are all the powers that it contains. Next as regards the means for effecting these ends. There are two ways in which they can be effected, by executive action or by judicial action. The former would be more prompt, and there are many who have urged us to adopt it. The latter, however, is more in accordance with the principles of modern administration, and at the sacrifice it may be, of some efficiency, we have chosen it. The Bill empowers the Magistrate, on application made on behalf of the Local Government, to take action in respect of the printing-press concerned, when he is of opinion that a newspaper contains any incitement to murder, or to an offence under the Explosive Substances Act, or to an act of violence. The first step is a notice to all concerned affixed on the place where the printing-press is. The next is the hearing of the case, which will be in the nature of a criminal miscellaneous proceeding. Evidence will be given on behalf of

the Local Government, and evidence may be tendered by any one who opposes the action. The Magistrate will then record a finding, and if the finding is that the newspaper contained the incitement alleged, he will proceed to order forfeiture of the printing-press. He will have the discretion of keeping the printing-press under attachment during the hearing of the case. Against an order of forfeiture an appeal will lie to the High Court, the period of limitation being fifteen days. A further power is given to the Local Government. When an order of forfeiture has been passed, the Local Government may annul the declaration made by the printer and publisher under the Press and Registration of Books Act, the effect of which annulment is that the newspaper will cease to lawfully exist."

His Excellency Lord Minto, the President, summed up the situation as follows:—"The lamentable incidents at Muzaffarpur have sent a thrill of horror throughout India, and have too clearly warned us that we must be prepared to deal immediately with an iniquitous conspiracy, and with murderous methods hitherto unknown to India." "To the best of my belief it has largely emanated from sources beyond the confines of India. Its anarchical aims and the outrageous doctrines it inculcates are entirely new to this country. But unfortunately the seeds of its wickedness have been sown amongst a strangely impressionable and imitative people—seeds that have been daily nurtured by a system of seditious writing and seditious speaking of unparalleled virulence, vociferating to beguiled youth that outrage is the evidence of patriotism and its reward a martyr's crown."

"It has been," His Excellency added, "with a heavy sense of responsibility that the Government of India has recognised that the law of the land has not been strong enough to enable us to cope with the present emergency. We have felt that we must have further powers. We have had two main points before us—How best to deal with bomb outrages and the conspiracies connected with them; and how to annihilate the evil influence which has done so much to inspire them. The machinery we have decided to adopt is before you in two Bills. In them, we have, after careful consideration, empowered judicial rather than executive procedure."

“ I look upon to-day’s legislation as exceptional, as framed to meet dangerous emergencies, and as regards the Newspaper Bill to give powers to deal with a particular class of criminal printed matter. It is quite possible our Bills may not be strong enough, and in that case we shall not fail to amend them. But the Newspaper Bill in no way takes the place of a General Press Act, and it in no way ties our hands as to the future introduction of such an Act. In my opinion a further general control of the Press in India is imperatively necessary. I believe it would be welcomed by the best Indian newspapers. They have recognised the evil of unbridled journalistic freedom under Indian conditions—conditions entirely different from those existing at home, where public opinion, based on the teachings of centuries of constitutional government, would be ever ready to refuse or to ridicule such unwholesome vapourings as are daily furnished to the people of India. India is not ripe for complete freedom of the Press. It is unfair upon her people that for daily information, such as it is, they should be dependent upon unscrupulous caterers of literary poison. We are called upon to regulate its sale. No exaggerated respect for principles of English freedom, totally unadapted to Indian surroundings, can justify us in allowing the poison to work its will.” The Bill was then passed as Act VII of 1908 (see *Appx.*).

The Seditious Meetings Act of 1907 had been in operation for nearly three and a half years when the question arose as to whether it should be renewed or allowed to expire. The Government of India decided that the measure should be renewed permanently, but purged of the provisions to which exception had been taken by the opponents of the Bill. His Excellency Lord Hardinge, the President, speaking on the 20th March, 1911, said:—“ The new Act is intended to be of a permanent character; and with that object in view, the clauses to which special objections have been taken in the past have either been modified or expunged. The new Act as it stands is the very minimum required to make it effective. But should it be found in practice that it is wanting in the required force, then legislation will become necessary to give it that force.”

The chief concessions made were the removal of “ political subjects ” from the scope of the Act, and the repeal of the provisions relating to “ meetings of more than twenty persons.” The Act was then passed as Act X of 1911 (see *Appx.*).