

CHAPTER XX.

THE LATEST PRESS LAW.

THE views expressed by His Excellency Lord Minto at the Council Meeting of the 8th of June 1908, as to the 'imperative necessity' for a General Press Act for India, took effect in a new measure, which, without interfering with the operation of existing laws, either penal or preventive, was designed to check the evil complained of. On the 4th February, 1910, a Bill was introduced "to provide for the better control of the Indian Press." The scope and character of this important measure, as well as the circumstances which contributed to induce special legislation may be ascertained from the exhaustive speech of the Hon'ble Member in charge of the Bill.

Sir Herbert Risley in introducing the measure said:—
"In the first place let me state as simply as possible what the Bill proposes to do. It will be convenient if I first describe the kind of matter which may not be published. This is set out in clause 4 of the Bill, under six separate heads. The first of these relates to incitements to murder, or to any offence under the Explosive Substances Act, or to any actual violence. Incitements of this nature are already covered by the Newspapers (Incitements to Offences) Act of 1908, but we think it advisable to include them in this Bill, in order that we may, if necessary, take action of a less severe kind than that prescribed by the Act of 1908. The next kind of writing which is forbidden is that which is likely to seduce any officer, soldier or sailor from his allegiance or his duty. That calls for no comment: it is obvious that such writings must be dangerous to the public welfare.

"Then under head (c) we come to writings which are likely to bring into hatred or contempt His Majesty, or the Government, or any lawful authority, or any Native Prince or Chief under the suzerainty of His Majesty, or which are likely to excite disaffection against His Majesty, or the Government, or such Princes or Chiefs, or to excite antipathy between members of different races, castes, classes, religions or sects. The greater

part of this head is covered by the terms of sections 124A and 153A of the Indian Penal Code. But we have made two additions of some importance. In the first place we have included what I may describe as the preaching of sedition against the Princes or Chiefs of our Native States. We have had not a few instances of newspapers published in British India containing seditious matter of that kind. The Government of India cannot tolerate this. They cannot allow their territories to be used as a safe asylum from which attacks can be launched upon Indian Princes. The other direction in which this heading goes beyond the terms of the two sections I have quoted, is that it includes the bringing of any lawful authority into hatred or contempt. There have been many venomous attacks upon Magistrates and Judges, even upon Judges of the High Courts, and this must be prevented.

“The fourth heading relates to intimidation and blackmailing. It will cover the case of the blackmailing of Indian Princes against which the corresponding clause of Lord Lytton’s Act of 1878 was directed. The fifth heading prohibits matter which is likely to encourage or incite any person to interfere with the administration of the law, or with the maintenance of law and order. Under the Indian Criminal Law Amendment Act of 1908, the Government have power to declare that an association which has these objects is an unlawful association, and a newspaper should not be allowed to do what an association may not do. The last sub-clause deals with the intimidation of public servants, and is taken *verbatim* from the Act of 1878. The protection which this sub-clause will give is certainly more necessary now than it was thirty years ago.”

“I will now show,” the Hon’ble Member continued, “how we propose to prevent the publication of matter of the kind I have described. Under the Press and Registration of Books Act of 1867 every person who wishes to keep a press for the printing of books or papers must make a declaration to that effect before a Magistrate. Another provision of that Act requires that every printer and publisher of a newspaper must make a similar declaration. These declarations are registered, and are available for the information of any one who wishes to take proceedings against the press or the newspaper. Clause 3 of

our Bill provides that every person, who makes a declaration hereafter as the keeper of a press, must deposit security for an amount to be fixed in each case by the Magistrate, but not being less than Rs. 500 or more than Rs. 5,000. Clause 8 contains a similar provision in respect of the publisher of a newspaper. The printer of a newspaper is not required to deposit security, as his case is already covered by the provision requiring security from the person who keeps the press. These provisions, as I have said, apply only to future registrations. In the case of existing presses and existing newspapers no security can be demanded until the press or paper offends by printing or publishing matter of the prohibited kind. But when a press or newspaper has printed or published such matter, the Local Government may at once call upon the person registered as the keeper of the press, or the publisher of the newspaper, to deposit security to an amount to be fixed by the Local Government, subject to the same limits as are prescribed for fresh registration."

"The next stage in the procedure provided by the Bill," he continued, "is that the Local Government can order the forfeiture of the security deposited, if it appears that the press has printed, or the newspaper has published, any matter of the prohibited kind. If the keeper of the press, or the publisher of the newspaper wishes to continue his business after such an order has been passed, he is at liberty to do so, but he must make a fresh declaration under the Press and Registration of Books Act, and the Magistrate may then demand enhanced security up to a maximum of Rs. 10,000. Should the keeper of a press, or the publisher of a newspaper, again publish prohibited matter after enhanced security has been taken, the Local Government may order the forfeiture of the enhanced security in the case of the newspaper, and of both security and press in the case of the printing-press. No keeper of a press who is registered at the time of the passing of this Bill will be affected by its provisions, unless and until he offends by printing prohibited matter; but if he does that, he may be called upon to deposit security. If he again offends, his security may be forfeited, while for a third offence both security and press may be forfeited. For persons who are now registered as publishers

of newspapers the procedure is the same. That is to say, no interference at all until one offence is committed; then a demand for security, which may be forfeited for the second offence; next the taking of enhanced security, and the forfeiture of this enhanced security for the third offence. In the case of new registration security is demanded from the beginning. This is necessary to provide against an evasion of the law by new registrations which are new only in name."

"It will be readily admitted," he added, "that if we take security at all, we must take it from the keepers of printing-presses; for the law, to be effective, must cover not only newspapers, but also books, pamphlets, leaflets, and every other kind of document by which seditious matter can be disseminated. But it may be asked, why take from the publisher of a newspaper, in addition to taking it from the keepers of presses? The answer is that we cannot always be certain of getting at the newspaper through its press, for difficulties have arisen in ascertaining at what press a newspaper is printed. Many of the small newspapers, which are notorious offenders, have no press of their own, but are printed at a job press, which may be changed from month to month, and it is by no means easy to learn with certainty at which particular press an offending issue of the newspaper was published. Moreover, if security were not demanded from the publisher of a newspaper, he might continue to offend with no greater penalty than the demanding of security from each of the different presses at which successive issues of his journal were printed. We have fixed a minimum as well as a maximum for the security to be demanded, in order to give an indication which will guide officers in all ordinary cases. But to meet the exceptional cases of the petty press, which publishes only trade circulars, bill headings and the like, and the case of the school or college magazine, and other similar publications which are not newspapers in the ordinary sense of the term, though they cannot be excluded from the definition—in order to meet these cases, we have given the Magistrate power to take reduced security, or to dispense with security altogether."

"The provisions which I have described," he continued, "so far relate to the cases of newspapers and of matter which

is printed at presses that are known. But we have also to deal with books and pamphlets, especially the latter, which are printed out of India, or secretly in India. To meet these cases power is taken for the Local Government to declare by notification that such publications are forfeited, and to issue search-warrants for their discovery. In aid of this provision power is also given to customs officials to detain suspected packages pending examination of their contents by the Local Government, and to post-office officials to open and detain, with a like object, any suspected packet which has been transmitted by post. We have also prohibited the transmission by post of any newspaper in respect of which the necessary declaration and deposit of security, when required, have not been made. Finally, we have laid an obligation on the printer of a newspaper to deliver to Government, at the time of publication, two copies of every issue. This has been rendered necessary by the failure of certain newspaper proprietors to send punctually the copies for which the Government subscribe, while in one case a subscription equal to ten times the ordinary subscription was demanded from the Government."

The Hon'ble Member then proceeded to describe the safeguards provided in the proposed measure against any improper use of its provisions. "So far," he said, "I have dealt only with the powers which are given by the Act. I will now turn to the check which we have provided. This consists of an appeal to a special tribunal of three Judges of the High Court against any order of forfeiture passed by the Government. If it appears to the High Court that the matter, in respect of which the order was passed, does not come within the terms of section 4 of this Bill, then the High Court will set aside the order of forfeiture. I think it will be admitted that, that is a very complete check upon any hasty or improper action by a Local Government. We have, therefore, barred all other legal remedies. There are two other clauses that I must mention. One provides that the penalty for keeping a press, or publishing a newspaper, without making the deposit of security, shall be the same as that imposed upon a person who keeps a press or publishes a newspaper, without making the declaration

required by the Press and Registration of Books Act. The other is a provision which saves the operation of other laws."

"I have explained," he added, "the scope of the Bill, what it proposes to do. I will now mention its limitations, what it does not propose to do. In the first place it does not create a censorship. It imposes no antecedent restraint on the Press: a man may publish what he pleases. He has the widest range for every form of intellectual activity within the limits laid down by the law. Secondly, it is not, like the Press Act of 1878, a purely executive measure. The initiative, indeed, rests with the Executive Government, but ample security against hasty or arbitrary action is provided, in the form of what is virtually an appeal to a highly competent judicial authority. Thirdly, it is not a measure of universal licensing, with power to the Government to withdraw or refuse a license at discretion. The liberty of unlicensed printing, for which Milton pleaded three centuries and a half ago, and at the time pleaded in vain, is untouched by this Bill. Security is demanded only from papers established after the passing of the Act. That is necessary to guard against the Protean changes of identity, of which we have had illustrations in Bengal. But security is one thing, and a system of licensing is another. Security may rightly be required in the interests of the community in order to guarantee that those, who undertake for the first time the important task of instructing the people regarding public affairs, shall at any rate be fully aware of the responsibility they incur. I do not set much store by precedents and parallels drawn from foreign sources. As Lord Morley has pointed out, no political principle whatever is capable of application in every sort of circumstances without reference to conditions in every place and at every time. Each country has its own problems, and must solve them in its own way. India has hers, of which this is one of the gravest. We too must travel on our own road with such guidance as our necessities give us; we cannot walk by borrowed light."

The Hon'ble Member proceeded in the next place to explain the considerations which operated to produce such a measure and the reasons for special legislation: "The Press in

India," he said, "has been free, except during two periods, for the last seventy-five years. The two periods which I have referred to were, first the period of the Mutiny, when the entire Press was under absolute control for one year and no more; and the second was from 1878 to 1881, when a portion of the Press was subject to the virtually nominal control imposed by the Vernacular Press Act of 1878. I will not touch upon the earlier years, but I will begin about the middle of the period which I have marked off, and I will endeavour to show what use the Press has made in comparatively recent times of Sir Charles Metcalfe's famous concession. Thirty-three years ago I was present, as Under-Secretary to the Government of Bengal, at a notable Durbar held by Sir Ashley Eden at Belvedere on the 12th August 1877. In addressing that Durbar the Lieutenant-Governor denounced in strong terms the disloyalty and sedition which were frequently published in the native press of Bengal. Even then rank treason was preached, and a war of independence was talked of, and Sir Ashley Eden thought it necessary to warn those whom he addressed that the character of the vernacular Press was creating an unfavourable impression, in many quarters, of the loyalty of the Bengalis. The warning was not heeded, and in the following year the tone and tendencies of the Press led to the passing of the Act of 1878, the object of which, like the object of the present Bill, was to prevent, not to punish sedition. As every one knows, the Act was in force for only three years, during which time recourse was only once had to its provisions. Its defects from our present point of view are palpable. It applied only to the vernacular Press and left untouched journals published in English, whether owned by Indians or by Europeans. Its machinery was purely executive, judicial intervention being expressly excluded; and it contained an impracticable provision for censorship which was soon repealed. The whole Act was repealed in 1881, and from that time till now the Press has been left to the operation of the ordinary law. Up to the year 1907 the policy of the Government was one of extreme forbearance, and prosecutions were of rare occurrence. Indeed, during the 37 years from 1870 to 1907 the law was put in motion only sixteen times. Among these cases, there is not a single case of acquittal. On two occasions the jury disagreed,

but the offenders would have been tried again, if Government had not thought fit to accept their apologies. I have described our forbearance as extreme; many people may think it excessive. But the ingrained instincts of all Englishmen are averse to interference with the Press, even by way of prosecution, and we continued to hope that time and education would bring wisdom. Our hope was vain; the Press did not mend its ways. It went from bad to worse, and at length it produced its inevitable results in the cruel and oppressive methods of the boycott. It was clear, moreover, that matters were not going to stop there, and that worse things were in store for us. As every one knows, we had not long to wait. Accordingly on the 3rd June, 1907, after careful and anxious consideration, the Government of India issued the following resolution:—

‘Certain circumstances attending the recent outbreaks of lawlessness in the Punjab and Eastern Bengal have forced upon the attention of the Government of India the deliberate efforts made by a number of newspapers, both English and vernacular, to inflame the minds of the people, to encourage ill-will between classes, to promote active hostility to the Government, and to disturb the public tranquillity in many different ways. The Governor-General has no desire whatever to restrict the legitimate liberty of the Press to criticise the action of the Government, and he would be most reluctant to curtail the freedom of the many well-conducted papers because of the misbehaviour of a few disloyal journals. But he is responsible for the maintenance of law and order among a vast and heterogeneous population, and he is unable to tolerate the publication of writings which tend to arouse the disorderly elements of society, and to incite them to concerted action against the Government. On these grounds he has determined that the dissemination of sedition, and the promotion of ill-will between classes must be repressed by firm and sustained action under the penal law. Accordingly, in supersession of previous orders on the subject, His Excellency in Council empowers Local Governments to institute prosecutions in consultation with their legal advisers, in all cases where the law has been wilfully infringed. He hopes that the warning now given may, in great measure, avert the necessity for numerous prosecutions, but if this hope should

unhappily not be realised, he relies upon the local authorities to deal with the evil effectively.'

"Up to the end of last year," he continued, "forty-seven prosecutions had been undertaken under these orders. Not one of these cases has failed, although in some instances the editor, manager, or proprietor has escaped, and only the registered printer or publisher has been convicted, while in others the Government have accepted an apology and withdrawn the prosecutions. Nevertheless we have to acknowledge defeat. We have succeeded in the minor object of punishing a certain number of offenders; we have failed in the major, the vital, the all-important object of curing a grave evil. We have proved that the law as it stands is sufficient to enable convictions for sedition to be obtained; but we have also proved that it was not sufficient to restrain the Press within the limits of legitimate discussion. In spite of our successful prosecutions, we see the most influential and most widely read portion of the Indian Press incessantly occupied in rendering the Government by law established odious in the sight of the Indian people. 'The Government is foreign, and therefore selfish and tyrannical. It drains the country of its wealth; it has impoverished the people, and brought about famine on a scale and with a frequency unknown before. Its public works, roads, railways, and canals have generated malaria. It has produced plague by poisoning wells in order to reduce the population that has to be held in subjection. It has deprived the Indian peasant of his land, the Indian artisan of his industry, and the Indian merchant of his trade. It has destroyed religion by its godless system of education. It seeks to destroy caste, by polluting maliciously and of set purpose the salt and sugar that men eat, and the cloth that they wear. It allows Indians to be ill-treated in British colonies. It levies heavy taxes and spends them on the army. It pays high salaries to Englishmen, and employs Indians only in the worst paid posts. In short, it has enslaved a whole people, who are now struggling to be free.'

"My enumeration," he added, "may not be exhaustive, but these are some of the statements that are now being implanted as axioms in the minds of the rising generation of educated youths, the source from which we recruit the great body of

civil officials who administer India. Every day the Press proclaims, openly, or by suggestion, or allusion, that the only cure for the ills of India is independence from foreign rule, independence to be won by heroic deeds, self-sacrifice, martyrdom on the part of the young, in any case by some form of violence. Hindu mythology, ancient and modern history, and more especially the European literature of revolution, are ransacked to furnish examples that justify revolt and proclaim its inevitable success. The methods of guerilla warfare as practised in Circassia, Spain, and South Africa; Mazzini's gospel of political assassination; Kossuth's most violent doctrines; the doings of Russian Nihilists; the murder of the Marquis Ito; the dialogue between Arjuna and Krishna in the *Gita*, a book that is to Hindus what the *Imitation of Christ* is to emotional Christians—all these are pressed into the service of inflaming impressionable minds. The last instance is perhaps the worst. I can imagine no more wicked desecration than that the sacrilegious hand of the anarchist should be laid upon the Indian Song of Songs, and that a masterpiece of transcendental philosophy and religious ecstasy should be perverted to the base uses of preaching political murder."

"Sedition," he continued, "has the monopoly of its audience, and that audience is large, and is increasing daily. No means are left untried to swell its numbers, and to infect the masses of the people. The peaceful life of the village has been invaded by youthful enthusiasts, who read out to an illiterate audience, attracted by natural curiosity, articles preaching the doctrines which I have described. Emissaries disguised as religious devotees travel about the country, and spread the gospel of anarchy among simple folk who believe that whatever is printed must be true. Worst of all, attempts are being made to enlist the women of India on the side of rebellion, by disseminating in the zenana, libels upon the Government—among them that infamous story about the introduction of plague. The consequences of this ever-flowing stream of slander and incitement to outrage are now upon us. What was dimly foreseen a few years ago has actually come to pass. We are at the present moment confronted with a murderous conspiracy, whose aim is to subvert the Government of the country, and to make

British rule impossible by establishing general terrorism. Their organisation is effective and far-reaching; their numbers are believed to be considerable; the leaders work in secret and are blindly obeyed by their youthful followers. The method they favour, at present, is political assassination; the method of Mazzini in his worst moods. Already they have a long score of murders, or attempted murders to their account. These things are the natural and necessary consequence of the teachings of certain journals. They have prepared the soil in which anarchy flourishes; they have sown the seed, and they are answerable for the crop. This is no mere general statement, the chain of causation is clear. Not only does the campaign of violence date from the change in tone of the Press, but specific outbursts of incitement have been followed by specific outrages."

In conclusion, the Hon'ble Member said:—"I appeal to the Council to give their cordial approval to this Bill. It is called for in the interests of the State, of our officers, both Indian and European, and most of all in the interests of the rising generation of young men. In this matter, indeed, the interests of the State and the interests of the people are one and the same. If it is good for India that British rule should continue, it is equally essential that the relations between the Government and the educated community should be cordial and intimate, and that cannot long be the case if the organs of that community lay themselves out to embitter those relations in every sort of way, and to create a permanent atmosphere of latent and often open hostility. There is plenty of work in India waiting to be done, but it never will be done if the energies of the educated classes are wasted in incessant abuse and suspicion of Government."

These are the chief passages of a memorable and important speech. Its value lies not merely in its lucid exposition of the provisions of the Press Act, but mainly perhaps in the vivid picture it affords of the extraordinary conditions which called it forth, and of the recent political situation in India, of which it is destined to remain a faithful and permanent record.

The Bill, which strangely enough was the first measure of the new and enlarged Legislative Council, was passed on the 8th February, and takes its place in the Indian Statute-book as Act I of 1910 (see *Appx.*).

After so lucid an exposition of its provisions further comment on the Act is unnecessary. It is worth while, however, to consider how far the new measure affects the operation of existing laws. Section 26 of this Act, like section 10 of the Newspapers Act (VII of 1908), expressly provides that it shall in no way interfere with the prosecution of offenders under the provisions of other laws. As regards the Penal Code, therefore, it may be said that its penal provisions against sedition and its cognate offences remain unaffected. As the initiative rests with the Government in any case, it is optional with them either to prosecute under the Penal Code, or to resort to the machinery of the Press Act, as they may think fit. But even so, there seems to be no actual bar to the application of both remedies, either concurrently or consecutively. Then again, there are cases, *e.g.*, where a press is unregistered and therefore unknown, where prosecution alone could be resorted to and the Press Act would be of little avail.

It is to be observed, moreover, that the Act, being a Press Act, is limited in its operation to the Press, and can only be applied to cases where sedition is disseminated through that medium. In other words, it applies only to written sedition or 'seditious libel.' It does not touch any of the other methods of dissemination specified in sections 124A and 153A. The platform and the stage are beyond its influence.

On the other hand, as regards Preventive measures it may be said that the Press Act cannot affect the operation of such measures as the 'Dramatic Performances Act of 1876' or the 'Prevention of Seditious Meetings Act of 1907,' for they are not in *pari materia*.

As regards the 'Newspapers (Incitements to Offences) Act of 1908,' it may be said to have concurrent operation, for it provides an alternative procedure.

As to section 108 of the Criminal Procedure Code (Act V of 1898), it has concurrent operation also, but only so far as the Press is concerned. That section, it will be seen, has a much wider scope, for it is framed to cover oral as well as written sedition.

As regards the 'Press and Registration of Books Act of 1867,' it may be said to work conjointly.