

CONTENTS.

PART I.

PENAL LAW.

CHAPTER I.

ORIGIN AND HISTORY OF THE LAW.

PAGE.

Macaulay's draft Penal Code—Sir Barnes Peacock's revised Code—His letter to Mr. Maine—Sir James Fitzjames Stephen's Speech in Council—Exposition of the Statute Law as to Sedition—Comparison of proposed measure—Remarks on 'liberty of the Press'—Remarks on Journalism—The law of Sedition as framed by Act XXVII of 1870

CHAPTER II.

SEDITION AT COMMON LAW.

As defined by Sir James Stephen—Definitions in 'Russell on Crimes'—Sullivan's case—Lord Fitzgerald's charge to Jury—His Definition of Sedition—*Dicta* of Lord Mansfield, Lord Kenyon, and Sir Michael Foster—Character of the offence explained—Remarks on the functions of juries—'Liberty of the Press'—Limits of political criticism—Seditious writings, prints, language—Liberal construction and generous verdicts desirable—Pigott's case—Baron Deasy's charge to Jury—Remarks on Journalism—Freedom of discussion—Limits of fair criticism ..10—20

CHAPTER III.

SEDITION AT COMMON LAW—*contd.*

Trial of John Burns—Justice Cave's charge to the Jury—Definition of 'Seditious Words'—What is not Sedition—'Seditious intention'—Maxim of Lord Tenterden—*Dictum* of Lord Kenyon—*Dictum* of Lord Fitzgerald—Language as the index to intention—'Seditious conspiracy'—Seditious meetings—Criminal liability of speakers and audience—Sedition against the King, or the Government—Divers meanings of the term Government—Lord Holt's conception—Lord Ellenborough's conception—Modern conception in England—Difference in India ..21—32

CHAPTER IV.

THE LAW IN OPERATION—THE FIRST TRIAL.

	PAGE.
The 'Bangobasi case'—Age of Consent Act—Passing of the Bill— Speech of Mr. Nugent on the public agitation—Necessity for legis- lation explained—Speeches by Sir A. Scoble, Sir G. Evans, and Rao Bahadur Nulka—Speech by Lord Lansdowne—The <i>Ban-</i> <i>gobasi</i> articles—Arguments of Counsel—Sir C. Petheram's charge to Jury—His Definition of 'disaffection'—He distinguishes disap- probation—His directions as to class of readers, class of paper, intention of writer, proof of intention—Government of India defined	. . . 33—41

CHAPTER V.

SOME NOTABLE TRIALS.

Tilak's case—Incidents of the trial—Seditious articles in <i>Kasari</i> — Arguments of Counsel—Murders at Poona referred to—Justice Straohey's charge to Jury—Section 124A explained—'Disaffec- tion' defined—Directions as to attempt, intention, meaning— Language as an index to motives—Distinction between language of hostility and that of loyalty—Value of the charge as an exposi- tion of the law—Endorsed by the Privy Council—Cited by other High Courts—A compendium of law and practice 42—50
--	-------------

CHAPTER VI.

SOME NOTABLE TRIALS—*contd.*

'Satara case'—Seditious article in the <i>Pratod</i> —Sir C. Farran's com- ments—Views of Justices Parsons and Ranade—Value of the Full Bench decision as an exposition of the law—'Disaffection' ex- plained by Sir C. Farran, and Justices Parsons and Ranade—The 'explanation' to section 124A criticised—The Allahabad case of Amba Prasad—Facts of the case in judgment of Full Bench— 'Disaffection' defined and the law explained—The 'explan- ation' condemned—The result of the four trials reviewed and judicial dicta summarised	. . . 51—50
---	-------------

CHAPTER VII.

THE LAW AMENDED.

The reasons for the amendment—Speech by the Law Member—Alter- native lines of action—Defects in the penal law—The four notable trials referred to—Judicial interpretation of the section stated— Sir James Stephen cited—Necessity for plainer language—No	
---	--

	PAGE.
change in the principles of the law—Merely a re-statement in accordance with consentient judicial authority—The proposed clause enunciated—Promoting class hatred included—Changes made by the Select Committee—Opposition to Bill—Difference in English and Indian conditions pointed out—Speeches by the Lieutenant-Governor of Bengal and Sir G. Evans—State of the Indian Press since repeal of Press Act in 1882—Reluctance of the Government to resort to preventive legislation—Remarks of Mr. Chalmers and the President, Lord Elgin 60—70

CHAPTER VIII.

WHAT IS SEDITION.

The new section 124A—No change in the law—Modifications explained—The meaning of Sedition—'Disaffection' not defined in the section—Reason for this—Meaning of term 'disaffection'—Not the converse of affection—Disloyalty distinguished—Sedition defined—Object of introducing the terms 'hatred' and 'contempt'—'Feelings of disaffection' judicially explained—Views of Sir C. Petheram, Sir C. Farran, Sir John Edge, Sir L. Jenkins and Justices Strachey, Parsons, Ranade and Batty—Methods of exciting 'feelings of disaffection' specified in section 124A—Publication essential to constitute an offence—Mere writing of seditious words is not enough—Sedition in <i>innuendo</i> —The attempt is as much an offence as the act—Difficulty of proving results—Attempt defined—'Intention' necessary though not specifically mentioned—Language and conduct as a guide to the intention—Views expressed by Sir C. Petheram, Sir L. Jenkins, and Justice Strachey— <i>Dicta</i> of Lord Tenterden and Justice Best—'Intention' explained by Sir John Edge—Justice Batty's construction of the term 'Government'—Views of Justice Strachey—The older conception of the term in England compared	.. 71—83
---	----------

CHAPTER IX.

CRIMINAL LIABILITY.

Taking part in the dissemination of seditious matter—Rules as to joint liability— <i>Dictum</i> of Sir C. Petheram, C. J.—Views of Justice Strachey—Effect of registration under Press Act of 1867—Rule when publication is admitted—when publication is denied—Remarks of Sir C. Farran, C. J., in 'Satara case' as to liability of an editor—As to a declared printer and publisher acting negligently—The Madras ruling on Act XXV of 1867—Effect of Lord Campbell's Act in England—Rule laid down for India—Remarks of Sir L. Jenkins, C. J., in Luxman's case as to liability of sub-editor and writer—His remarks in Vinayek's case as to printers and	
--	--

	Page.
publishers—Remarks of Justice Batty in Bhaskar's case on the same—Views expressed in the <i>Bande Mataram</i> case by an appellate bench—Remarks on efficacy of Registration in <i>Jugantar</i> case—Remarks in the <i>Rungpur Bartabaha</i> appeals—Publication an essential element in the offence—Lord Esher's illustration of inadvertent publication—Mr. Mayne's remarks on the same—Liability of booksellers and news vendors—Almon's case—The sale of 'Junius's Letters'—Lord Mansfield's rule as to a bookseller's liability—Principle of Lord Campbell's Act—Liability of news vendors—Liability of librarians—Rule as to innocent dissemination	84—97

CHAPTER X.

WHAT IS NOT SEDITION.

The object of the Explanation to section 124A—Effect of the modifications introduced in 1898—Observations of Justice Strachey on former provision—Protection limited to 'comments'—Difference between exciting 'disapprobation' and exciting 'disaffection'—Observations of Sir L. Jenkins—Remarks of Justice Batty—A plea of truth is no defence to a seditious libel—Observations of Sir L. Jenkins and Sir John Edge—Rule of construction laid down by Lord Fitzgerald, cited by Sir C. Pethoram—The correct method of treating isolated passages in a seditious article—The proper use of characteristic or particular phrases—The object of admitting collateral matter—The rule applies to speeches, and lectures as well as to articles—Applied to a book of poems—Views expressed in the *Karmajogin* case—The proper value of translations from the vernacular—Views of Justice Strachey on free and literal translations—Conclusions deducible therefrom 98—110

CHAPTER XI.

INCIDENTS AND RULES OF PRACTICE.

Rule as to seditious matter reproduced from other publications—Observations of Lord Fitzgerald—Doctrines enunciated in the *Bande Mataram* case—Rules to be observed in estimating the effect of seditious matter—Directions by Justice Strachey—Views expressed by Mr. Mayne—Approved by the Madras High Court—The question of Punishment—Directions by Sir C. Warren, C. J.—Remarks of Sir John Edge, C. J.—The real test applicable to all cases—Limits imposed by Criminal Procedure Code—Sanction of the Government necessary—Amount of proof considered sufficient in Tilak's case—Remarks of the Full Bench in Bombay case—Remarks of Sir A. White, C. J.—Other safeguards provided by the Legislature—Further incidents of the offence 111—121

CHAPTER XII.

ABETMENT OF SEDITION.

	PAGE.
The general provisions of the Penal Code applicable—Three ways of abetting an act—An abettor is an accessory before the fact—No provision for an accessory after the fact—Abetment as defined in the Code—Definitions in ' Russell on Crimes ' and Mayne's ' Criminal Law '—Definitions by Justice Willes, Justice Grose and Sir James Stephen—The leading case of abetment by conspiracy—The meaning of ' <i>Swaraj</i> ' discussed—Incidents of the case of <i>Chidambaram Pillai</i> —Abetment by aid illustrated in the case of <i>Leikut Hossein</i> and <i>Abdul Guffur</i> —Now law as to Criminal Conspiracy—Change effected	122—135

CHAPTER XIII.

THE LATER CASES.

The first trials after the amendment of 1898—Articles in the <i>Gurakhi</i> , a Bombay newspaper—Comments of Sir L. Jenkins in Luxman's case—The article ' <i>A white man's gun</i> '—Comments of Sir L. Jenkins thereon in Vinayek's case—The trial of Bhaskar—Article in the <i>Bhala</i> published at Poona entitled ' <i>A Durbar in Hell</i> '—Justice Batty's comments thereon—Case of the <i>Bande Mataram</i> of Calcutta—The article entitled ' <i>Politics for the Indians</i> '—Comments of the High Court thereon—The <i>Jugantur</i> case—Trial of the printer and charge to the Jury—Judicial comments on the seditious articles—Second trial of Tilak	136—140
--	---------

CHAPTER XIV

THE LATER CASES—*contd.*

Book of Poems entitled a ' <i>Short series for new India</i> '—Judicial comments on the character of the book—The <i>Rangpur Burtibaha</i> appeals—The articles charged—Inaccurate translations—Judicial comments on the articles—Liability of an absent printer—The <i>Karmajogin</i> case—The ' open letter ' of Arabindo Ghose entitled ' <i>To my Countrymen</i> '—Comments of Justice Fletcher thereon—Seditious book—Liability of owner of press—Dissimulation through Post—' <i>Matripuja</i> ' case	150—162
---	---------

CHAPTER XV.

COGNATE OFFENCES.

The offence of ' Promoting class hatred ' originally considered a form of sedition as in England—Reasons for the separation by

	PAGE.
the Select Committee—The new section introduced as section 153A—Its close affinity with section 124A—Numerous incidents in common—The law of Abetment applies to both equally—Rules of procedure common to both—Cases under section 153A—Difficulty of distinguishing the offence hitherto—The Cognate offence of ‘ Circulating Mischievous Reports ’—Defects in former section 505—The necessity for amendment—Important modifications made in the ‘ Exception ’—The new section 505—The case of <i>Mandir</i> under <i>cl. (b)</i> —Strong affinity between <i>cl. (c)</i> and section 153A—Rules and incidents of procedure common to both the Cognate offences	163—173

PART II.

PREVENTIVE LAW.

CHAPTER XVI.

ORIGIN AND HISTORY OF PREVENTIVE MEASURES.

Causes which contributed to produce the first measure—Sir Thomas Munro’s celebrated minute on the Indian Press—The preventive legislation of 1823 based on a system of licenses—The main provisions of the various Ordinances and Regulations—The repeal in 1835 and substitution of the system of registration now in force—Reasons for the repeal as stated in the minutes of Sir Charles Metcalfe and Mr. Macaulay—The minute of Mr. Prinsep predicting the possibility of future legislation—The main provisions of the Press Act of 1835—The Indian Act modelled on an English Statute—The legislation of 1857—Speech of Lord Canning on the necessity for legislation—Observations on the Native Press—Remarks of Sir James Colville and Mr. Peacock—The purport of the Act of 1857—The legislation of 1867—Remarks of Mr. Hobhouse—The main provisions of the Act—The Stage legislated for in 1876—Remarks by Mr. Hobhouse on the Dramatic Performances Act	174—188
--	---------

CHAPTER XVII.

LATER PREVENTIVE MEASURES.

The Vernacular Press Act of 1878—Circumstances which led to it—Speech of Sir A. Arbutnot in justification of the measure—The inefficiency of the Penal Law of Sedition—The character of a

	PAGE.
certain section of the Indian Press—The necessity for preventive measures—Speech of Sir Charles Paul, Advocate-General of Bengal—Remarks of Sir G. Evans, Sir Ashley Eden, and Sir John Strachey on the Vernacular Press—Observations of Lord Fitzgerald cited from the charge in Sullivan's case—Lord Lytton's exhaustive speech—His views on the Press as an institution in India—Its alien characteristics and uncongenial surroundings—'Liberty of the Press' a meaningless phrase—The necessity for controlling the sale of poisonous matter—The analogy of Lord Campbell's Act—Repudiation of the suggestion as to class legislation—Distinction not drawn between Europeans and natives—Only the vernacular papers affected, and not native papers published in English 189—202

CHAPTER XVIII.

LATER PREVENTIVE MEASURES—*contd.*

The Vernacular Press Act amended—Reason for the amendment—Statement by Sir A. Arbuthnot as to the operation of the Act for seven months—Results eminently satisfactory—Speech by Lord Lytton—Statement as to approval of Secretary of State and ratification of Parliament—Repeal of the Act—Speech by Sir W. Hunter—Reasons for the repeal—Remarks of Lord Ripon—Consequences of the repeal—Statements by Sir A. Mackenzie and Sir G. Evans—Position in 1898 as described by the Law Member—Preventive measures of that year—Section 108 of the Criminal Procedure Code—Scope and object of the provision—Remarks by the Law Member—Modifications by the Select Committee—Amendment and remarks by Sir G. Evans—Decision of the Calcutta High Court on the section—Various meanings given to the term <i>Swaraj</i> —Decision of the Bombay High Court—Views of Justice Chandavarkar of Bombay—Correct method of recording speeches	.. 203—216
--	------------

CHAPTER XIX.

RECENT PREVENTIVE LEGISLATION.

Act to prevent seditious meetings—Speech by Sir H. Adamson—The Ordinance preceding the Act—Necessity for legislation explained—Scope of the measure and objects contemplated—Policy of 'drift' and the evils attending it—Remarks by Sir E. Baker—Remarks by the President Lord Minto—The Bill for prevention of incitements to murder—Speech by Sir H. Adamson—Statement as to the condition of the country and the necessity for controlling the seditious section of the Press—Scope of the measure	
--	--

	PAGE.
and objects aimed at—Speech by Lord Minto—His views as to the urgent necessity for a general Press Act—Seditious Meetings Act, 1911—Concessions made—Remarks by Lord Hardinge	217—228

CHAPTER XX.

THE LATEST PRESS LAW.

The Bill for the ' better control of the Indian Press '—Speech by Sir H. Risley—Scope of the measure—Its procedure explained—Objects aimed at, and methods provided—Limitations and checks introduced—Summary of Press legislation in India—State of the Press in 1877—Statement of Sir Ashley Eden—Extreme forbearance of the Government—Notification of 1907—Prosecutions for sedition—The character of the seditious writing and doctrines propounded—Political assassination and rebellion advocated—Long score of murders and attempted murders consequent on such teaching—Urgent need for legislation—Importance of the speech—The Press Act of 1910 in relation to other laws, penal and preventive	229—240
---	---------

APPENDIX.

Press and Registration of Books Act, 1867—Dramatic Performances Act, 1876—Security for good behaviour, sec. 108 Criminal Procedure Code, 1898—Prevention of Seditious Meetings Act, 1911—Newspapers (Incitements to Offences) Act, 1908—Indian Press Act, 1910—Criminal Conspiracy, Act VIII, 1913	241—275
--	---------