

**The Press**

**under**

**The Press Act**

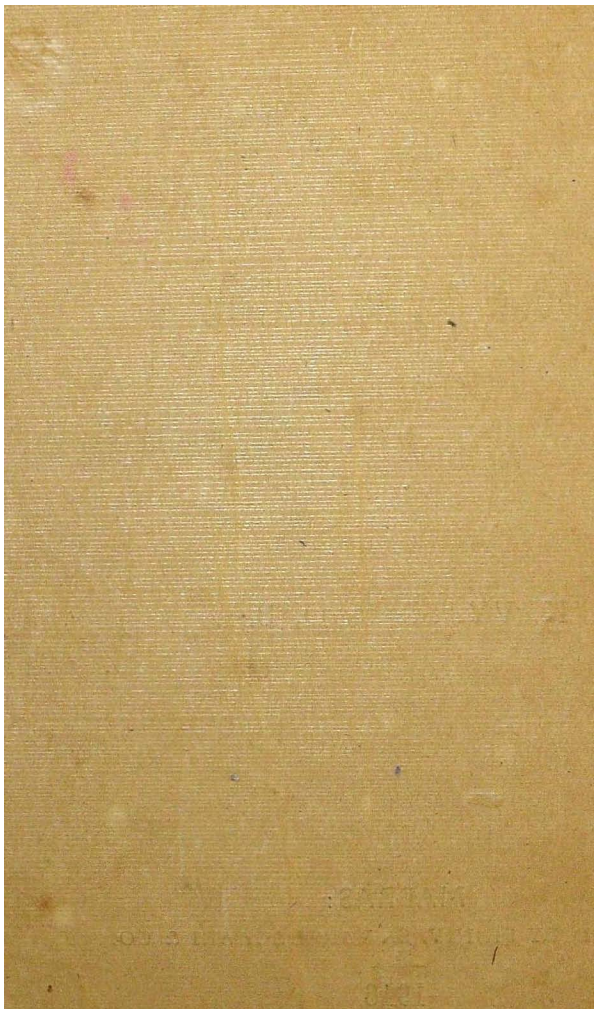
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Mr. B. G. Horniman, the talented editor of the *Bombay Chronicle*, was good enough to suggest the reproduction of what appeared in *Young India* in book form so as to be within easy reach of a larger class of readers—relating as it does to a matter of utmost concern to the Indian public. He was pleased to offer to have it published by the Press Association of Bombay, but to save time in view of the approaching Deputation to H. E. the Viceroy, it has been brought out in Madras.

I must express my great indebtedness to Messrs. Srinivasa Varadachari & Co. who have printed it with the equal expedition and thoroughness.

22nd September 1916.



# THE PRESS

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### INTRODUCTORY

NO two men understood the gravity of a free Press in India more distinctly than Sir Thomas Munro and Sir Charles Metcalfe, and yet both of them came to diametrically opposed conclusions, and they both had the good of this country at heart. A statesman of the patriarchal type, clear-headed and conscientious, Sir Thomas dreaded the very prospect of a free Press in India as a crime of statesmanship. Not that he did not have faith in the liberty of the Press. He was, to use his own words, "for the utmost freedom of the Press" in his own country. But in regard to India the case was radically different in his opinion. "A free Press and the dominion of strangers are things which are quite incompatible, and which cannot long

exist together"—was his considered dictum. In the minute he wrote in 1822 he vehemently opposed the relaxation of the stringent control which the Government had reserved to itself since the early days of the Company's regime, on the ground that a free Press would immediately corrupt the native army and expose British supremacy in India to danger and disaster. The clash of opinions in official despatches, notes and minutes until the year 1835 must have brought out everything that could have been urged for and against a free Press in India. And if any plea for a restricted Press, as the phrase went then, could have ultimately carried the day, it seems doubtless Sir Thomas Munro's must have done it, especially as his view was that of an administrator whose attachment to the natives of the country was phenomenally affectionate, sincere and devoted. Sir Thomas Munro had made no secret of his desire that he for one wished the continuance of British domination "to the remotest possible period." And at the same time, he laid down that if and when England should have to leave India, they are bound to see that they left it in a fit condition to rule itself. And strangely enough he emphatically

declared that both these objects would be frustrated by a free Press.\*

We of to-day can of course easily see Sir Thomas Munro's fallacious conclusions were natural to the apprehensions of the times in which he lived. They are similar in character to the fallacies that fetter England from following a more liberal and advantageous military policy in India. Another hallucination of that period was that a purely subject country like India had no need for a free Press, that being only an institution belonging to and an instrument wielded by a people who govern themselves. While Sir Thomas Munro was filled with the fear that a free Press would corrupt the native army, the Court of Directors argued that a free Press was the organ of a self-governing democracy, the accompani-

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\* "There are two important points," wrote Sir Thomas Munro, "which should always be kept in view in our administration of affairs here. The first is that our sovereignty should be prolonged to the remotest possible period and the second is that whenever we are obliged to resign it, we should leave the natives so far improved from their connection with us as to be capable of maintaining a free or at least a regular Government among themselves. If these objects can ever be accomplished, it can only be under a restricted Press."



ment of a representative Government, and as India was under British subjection there was no object in granting freedom to the Press of India. They said that the free Press for India should be found in England as England governed this country; and they took it for granted that so long as England held sway over India, the latter will have only to be governed and therefore would not need the organ of a self-governing community. But the good fortune of this country has been that England has produced at crucial and critical periods men of sufficient political imagination and political rectitude, who saw farther ahead than their contemporaries of narrow understanding and every day outlook. Lord William Bentinck, Sir Charles Metcalfe and Lord Macaulay whose coming to India was in every respect a blessing of Providence saw the problem in a different light. They began with the premise that English supremacy was to continue in India not as a self-perpetuating rule, carefully avoiding at any and all costs all that might possibly give room to shorten its duration, but that it was to be for the good of India and that every institution must be fostered with a free and liberal hand if it were for the good of the



country. And among these institutions they placed an unrestricted Press as of foremost value. To them it appeared that Sir Thomas Munro's second requirement that India must be capable of taking care of itself, should England leave it, could be accomplished only by pouring into the country the knowledge and energy of the West. And no imaginable object could do this except a free Press side by side with schools and colleges imparting a knowledge of western arts and sciences. Macaulay saw in one and the same vision that this agency of the Press and the school might possibly shorten the duration of England's irresponsible rule in India. If so, he considered the prospect as a circumstance to be proud of. Sir Charles Metcalfe in fact went the length of stating, referring to those who objected to such a policy as dangerous to British rule, "if their argument be true, the spread of knowledge may eventually be fatal to India. I close with them on that point, and maintain that whatever may be the consequence, it is our duty to communicate the benefits of knowledge. If India could only be reserved as a part of the British Empire by keeping its inhabitants in a state of ignorance, our

domination would be a curse to the country and ought to cease." Metcalfe only anticipated in more emphatic and unhesitating language Lord Morley's reference to "a mute, sullen, lifeless India." The well known reprimand of the Court of Directors to Sir Charles for his repeal of the restrictions on the Press and their expressed expectation of Lord Auckland following a different policy which was honoured in being ignored shows that those who were responsible then for British rule on the spot made up their minds that *the Government of India by England must be compatible with the existence of a free Press in this country*; and for ulterior consequences they had no craven fear of any kind.

Since then 80 years have gone by, and if British power abroad has not been to-day what it would and could have been otherwise, it is because the policy of Metcalfe and Macaulay has not found equally resolute acceptance from all their successors in India in other spheres of State policy.

And the question now is, are we to renounce and go back even upon the policy which after a close and wide survey of all possibilities triumphed eighty years ago?—while the arguments against a free Press cannot vitally

be different from what were so ably, so sincerely and yet so plausibly put forward by Sir Thomas Munro? A free Press has now become more necessary—not only because appetite increases by eating—but because to deny a free Press to India to-day would be a folly, whereas eighty years ago such a denial would have been the exercise of a too cautious discretion. To-day, the complexities of administration are by far too numerous to be efficiently coped with without taking the people with those who have to govern the country; and to try to take the people without a means of knowing their mind, is as trying to take a person gagging his mouth and fettering his feet. If we shall just try to imagine the state of this country with no such institution as the Indian Press, but with schools and colleges at work, with western literature and ideas propelling the life-blood of the country, well, every day, the authorities will by sheer weight of ignorance get disheartened, if not demoralised. And if beyond the borders of this vast empire we should look out and take stock of the world conflicts that must hereafter succeed one after another at long or short intervals, and if we realise the part that England will have to



play—incapable of following a policy of splendid isolation hereafter—then, the value of India as a shield and as a spear, as a means of offence and defence, as a source of strength as well as danger,—will become too vivid to be conscientiously ignored—even from the point of view of the future strength and safety of the British Isles, if not of every part of the British Empire. But what can possibly be worth having from India—with its voice stifled, its grievances suppressed, its efforts on its behalf under the ban of a Press Act? To give freedom to a minor, and deny it to him when he comes of age and at a time when on the possessions of the household evil eyes are perpetually cast, is a policy that must be repudiated by the wise and the wary as unnatural and unworthy. Furthermore to-day nobody looks upon a free Press as an accompaniment of self-government but as the possession of all peoples who are under government of any kind, as a *sine qua non* of good government.

It is not necessary at the present day to quote from Milton's *Areopagitica*, nor is it even necessary to allude to the eloquent appeal of Rajah Ram Mohan Roy to His



Majesty's Privy Council before the Indian Press obtained its redemption from Metcalfe. It ought not to be even necessary to appeal to the sense of self-interest of the Briton in his island home. The fact is autocracy will always make an effort to thwart the growth of liberalism in every country; autocracy in India may do this in a much less shocking manner; but the instinct of autocracy is always that, be it Eastern or Western in race and complexion. Statesmen must however project themselves into a wider arena of mental conception. They must ask the question—leave alone everything else—is it possible for England to rule India—to-day in the face of the world—of a zealous and inimical world, boiling with jealousy—is it possible to rule India—denying her a free Press? Will it not be cast in their teeth—how British rule has progressed backwards? This only in addition to all other considerations.

The fact is it is impossible to go back upon the existence of a press in India independent of the executive and answerable only to the judiciary. Its need must be taken as a political postulate and the bureaucracy must be asked to get on recognising the freedom of the press as an

established factor. Of course that freedom will and must be utilised increasingly to the detriment of the bureaucracy ; but by no means to the detriment of the true interests of Great Britain. This however is not a circumstance that ought to subordinate the press to the executive in India. For, if that should be done, they who do it cannot by any means stop with one such backward step alone. They will have to take other backward steps also, may be one by one, may be at intervals, but backward more and more there can be no doubt. In regard to all vital questions there can be but one principle ultimately, whether we should go forward or begin to retrace our steps ; for repression can be supported only by repression, withdrawal of an exercised right can be maintained only by the withdrawal of other rights, until at last—may be after a lapse of time—there can be no more right to be withdrawn. That is a historical development of British rule in India beyond the achievement even of the Indian bureaucracy. The other alternative is to be prepared to gradually make authority responsible to the people as has been the case in every part of the British Empire and is coming to be the case in every part of the

world. If this is acceded to, the entire struggle about the freedom of the Press in India disappears and we revert in the position of the Press to its being responsible to the Government only through the established judiciary of the land. If the fears of Munro have proved baseless, if the hopes of Macarlay and Metcalfe have proved well founded, is the consequence to be to prefer, 80 years after, the baseless fears of the former to the well founded hopes of the latter? That is the standpoint from which the Government of Lord Chelmsford in India and of Mr. Asquith in England may be implored to judge of the merits of the question of the Indian Press under the Press Act.

That Act, as will be seen from the following pages, empowers the executive to demand security without the intervention of a judicial tribunal in the first instance; empowers the same executive to order a forfeiture of that security, again without the intervention of a court; leaves that forfeiture practically irrevocable on account of the "hopeless task" that is laid on the aggrieved applicant to the court,—the task of proving an absolute negative. Hence, in the first instance, in the second instance and in the third instance, the



first and the last word is with the executive. Intended to be exercised as a preventive provision, it is virtually a punitive measure administered by the executive, a punitive measure in which even the quantum of punishment in the amount of the security demanded and forfeited is left to the option of the executive. Thus is the press sought to be "confined within the limits of legitimate discussion" according to the discretion of executive authorities—whose measures, action and constitution the same press, in the highest interests of England and India, has to review, criticise, approve or condemn day after day, as the only other Estate of the Realm, besides the Bureaucracy. Not by immaterial amendments, but by annulling all provisions for placing the Press and the executive in direct contact with each other—without the order of a court—can such a method of restoring order in Warsaw, as a permanent feature of the Indian Government, be determined, and the road to progress and advancement be once again thrown open—freed from tolls, exactions and inflictions imposed in virtue of executive authority and not as the findings of a tribunal of justice.



# THE PRESS UNDER THE PRESS ACT

## Section I—The Operation of the Press Act

### THE PRESS AND THE EXECUTIVE

Next only to the stability and good repute of the Government of a country is the value of the freedom of the press, and neither of them need be lightly treated by the upholders of the one or the defenders of the other. Although to undermine the authority of the Government or to sap the independence of the press is equally to disserve the country, it cannot be denied that, as things are at present, there is need to establish a much better understanding between them both. No longer is the press in any country where the Government is inclined to own its responsibility to the people—whether or not that Government is its nominee—condemned to live on the sufferance of the executive. In the progressive evolution of political institutions,

if "the Government" has come to be recognised as the supreme static force of a society, the press has at the same time come to be acknowledged as its vital dynamic force. It may pass for a maxim now-a-days that just as order without a settled Government is impossible, so is progress without a *free* press impossible. The one has consequently become an essential complement to the other; and the description of the press as the Fourth Estate of the Realm falls in fact somewhat short of its actual function where two other estates of the Realm may, as in India, be unknown. We may not have for a long time to come the House of Commons and a Second Chamber, but the press, until these institutions come into being, has to make up the deficiency of their absence. We in India have only the Crown represented by the executive, as our legislative chambers are no more than a part of the mechanism of the executive. Under such conditions, the press in India is practically the only other estate of the Realm, besides the executive. No statesman, who is more than a mere official, can afford to conceal from himself the fact, that the constitutional status of the press in British India as an estate of the Realm deserves to be

protected from subordination to the executive. Prior to the enactment of the Press Act, the position, in spite of the amendment of the provisions of the Penal Code as regards sedition during Lord Elgin's time, was in principle the same as in England, if not quite legally, yet constitutionally. At the root, both in England and in India, before the Press Act, the freedom of the Press was secured from what may be described as executive direction. The right of legal trial was the bed-rock upon which the independence of the press rested even in this country before the enactment of the Press Act. This freedom from executive control has been in a roundabout, indirect way practically uprooted by the Press Act and in its place an unhealthy contact has been established between the press and the executive. And once, the press is to consult the discretion of the executive, it will be impossible to expect the understanding that ought to subsist between the Government and the press, two great institutions in whose custody all that is valuable to a society is retained. So long as the Press Act continues to be in force, with its existing provisions, it



will be not only impossible to restore the mutual attitude that must prevail between them, but we must be prepared to relapse into a state of stagnation and ultimate decay as a progressive section of the world. In stating this position, I do not ignore the events that one by one led to the enactment of the Press Act, and the need in India for a somewhat stronger grip over a deliberately and irreconcilably inimical section of the public who may utilise the public press as a handle. It is because I believe, that without enfeebling the press, the authority of the Government may be maintained as effectively as may be deemed necessary, I hold that the Press Act prevents a better feeling between the Government and the Indian press. Should it continue to be applied to the press of the country, we must in fact bid good-bye to all further hopes of progress under British rule.

### THE INSTRUMENT OF CONTROL

Without going into the provisions of the Press Act somewhat fully, it is not possible to make the position intelligible to the vast majority of the public. The Act applies to all printing presses, and all publications



wherever printed, are also governed by it. Its object as regards printing presses was mainly to enable the Government to get at the Press in its material form more than the person or persons connected with it. Such an Act as this enabling the authorities to get at the plant and machinery applies not only to the case of those writings which are calculated to incite to murder or to any act of violence, or to seduce any officer in the Army or Navy from his allegiance, but also to writings supposed to have a tendency directly or indirectly to bring "into hatred or contempt the Government established by Law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India" and to writings supposed "to excite disaffection towards the Government." In all these respects "its provisions extend far beyond the Criminal Law." And whether as regards a press or a publication, and extending far beyond the Criminal Law of India, the appeal to a Court of Justice is no more than a make-believe as has been adjudged by no less an authority than a High Court Bench including the Chief Justice of Bengal. I shall presently show,

going into the few provisions of the Act, how this transformation is effected.

All presses may be divided into two classes for the purposes of the Act :—(1) presses in regard to which the declaration under the Press and Registration of Books Act 25 of 1867 has already been made prior to the enactment of the Press Act in 1910; and (2) those presses in regard to which that required declaration is made after the enactment of the Press Act either in regard to a new press or an old press which has to make a fresh declaration under the provisions of Act 25 of 1867 as for instance on account of a change of place. In short, all presses may be divided into those started prior to 9th February 1910 and those others started after the above date or which have to be registered once again. In regard to these latter the keeper of the press shall at the time of making the declaration deposit such security as may be demanded of him between Rs. 500 and Rs. 2,000, unless as an exceptional case the security is dispensed with for reasons to be stated. The general rule demands the furnishing of security; the exception is the exemption from it for such period as the Magistrate may choose to allow.

The other class of presses, those started before the Press Act, are as a rule exempted from all security, but are liable to furnish security, "whenever it appears to the Local Government that any such printing press" is used for any of the purposes described in section 4 sub-section (1) of the Act which includes a tendency to "bring into hatred or contempt the Government established by law or the administration of justice in British India or to excite disaffection towards the Government." The amount of security in these cases may vary from 500 to 5,000 rupees.

When security has once been furnished, by a press registered before 1910 or since 1910, *i.e.* whether the maximum be Rs. 2,000 or 5,000—"if it appears to the Local Government" that the press from which security has been taken "is used for the purpose of printing or publishing any newspaper, book, or other document, containing any words, signs or visible representations which are likely or may have a tendency directly or indirectly whether by inference, suggestion, allusion, metaphor, implication or otherwise, to bring into hatred or contempt the Government" etc.,—in such a case the Local Government may by notice in writing



to the keeper of the press stating the words to which exception is taken, declare the security and all copies of the paper, document or book forfeited. With this forfeiture the declaration under Section 4, Act XXV of 1867—Press and Registration of Books Act—shall be deemed to be annulled. A fresh declaration is necessary should the press be continued, and every person making such a declaration shall (without any option to the Magistrate) deposit a fresh security from Rs. 1,000 to Rs. 10,000. Should it appear after this second deposit of security, that the press is used for purposes for which the first security was declared forfeited under section 4 of the Press Act—then the Local Government may declare (1) the further security deposited, (2) the printing press, and (3) all copies of such newspaper or document forfeited. When the second security becomes liable to be forfeited, the entire plant and machinery of the press becomes similarly liable. The securities described herein may be demanded not only of all keepers of printing presses but also of publishers of newspapers.

The contact between the executive and the press, it will be seen, is sought to be established through this provision for the demand of

security. But for this contact, the executive will have to get into touch with the press only through the intervention of a court of law. This intervention has been dispensed with, and the provision for demand of security is the instrument of control of the press by the executive. When Pandit Malaviya moved an amendment—the only crucial amendment that was moved—"to make the order for the deposit of security a judicial order" in regard to the then existing presses, Sir Herbert Risley quickly rejoined "this strikes at the entire principle of the Bill" and declined to accept it. Direct control, at its own initiative was what the executive required and the Act was designed to meet this requirement.

### JUDICIAL REMEDY

Turning to recourse to a court of law, it is no doubt open to one who forfeits his security the first or the second time, or to a publisher whose publications are forfeited to apply to the High Court to set aside such order within two months of the date of forfeiture. A special bench of the Judges is provided for the disposal of the application. But this provision happens to be, according to the judgment in the case of Mahomed Ali, the

offer of an apple of Sodom to a man who has been deprived of everything that can appease his hunger. For, "the ground" on which he can make such an application is "that the newspaper, book or other document in respect of which the order was made" *did not contain* any words, signs or visible representations of the nature described in section 4, sub-section (1)." The aggrieved party, who furnishes security and forfeits it at the order of the Government has to prove a negative; *i. e.*, has to show that under no circumstances of a conceivable character could the words complained of have a tendency to "bring into hatred or contempt" the Government or to "excite disaffection towards the Government" or to "bring into hatred or contempt any class or section of His Majesty's subjects in British India." The question to be submitted to adjudication is not whether in the opinion of the Court the words or signs complained of directly or indirectly tend to have the effect described in section 4 of the Act, but whether the applicant could shew that they could not directly or indirectly tend to have the effect described in section 4. The very fact that the Local Government has ordered the forfeiture is evidence of the fact



that they should have so appeared to the Government. If the appellant should undertake to produce witnesses to prove that the words did not leave any such effect on them, the Government might undertake to cite witnesses to testify to the contrary; and the appellant necessarily goes to the wall with one such witness so testifying. There are negatives and negatives, negatives only in form which can be proved by positive evidence, as for instance, the statement that a man was not at a particular place at a particular time. But there are absolute negatives—which cannot by any practicable means be proved—as for instance—the statement that an article cannot produce on any person a feeling of anger, resentment or contempt. Such a burden being an impossible burden to discharge, the appellant practically goes to a tribunal that has no jurisdiction in the case. The Court seems to ask him, as he enters its portals: “Can you prove a negative, an absolute negative—can you discharge such an ‘impossible’ task? If not, we have no power to interfere.” Not only Mr. Mahomed Ali, but all appellants can, in such a case, leave the Court without a stain—but without any hope of judicial relief as well. In other

words according to the weight of the Calcutta decision the High Court has practically no more than to decide whether the paper "contained" words "which appeared to the Local Government" in a particular manner; not whether the words ought to have appeared so to the Local Government. Hence when the Local Government says it did so appear to it, all that the High Court has to do is to compare the words mentioned by the Government with the words appearing in the paper, and see how far the same words are to be found in both places. Well, for such a simple function so august a tribunal of "justice" as a special Bench of a High Court of Judicature appears to be a trifle too unnecessary, if it is not in fact a grim legal joke. A less complimentary way of dealing with the High Court can hardly be conceived! It is to such a provision that Sir Herbert Risley, who piloted the measure, referred as a "very complete check upon any hasty or improper action by a local Government." He added "we have therefore barred all other legal remedies." The full irony of this will be seen in the light of the observation of Sir Lawrence Jenkins in regard to "the remedy" on account of which the framers of the Bill "barred all other remedies."

The Chief Justice said: "The jurisdiction to pronounce on the wisdom or unwisdom of executive action has been withheld; it may be questioned whether even the semblance which this Act provides should not have been withheld, as it was by Act IX of 1878." Not only a civilian, but so eminent a lawyer as the then Legal Member Mr. S. P. Sinha, referring to the power of forfeiture, said: "it is to be exercised under safeguards which I will presently mention, which will make the Local Government hesitate before it makes an order of forfeiture, because there is a tribunal who may sit over it and reverse its decision." A more striking instance of the danger of trusting to the assurances and interpretations of responsible and qualified framers of a law to be undeceived later in the day by the tribunal competent to pronounce upon it has rarely been furnished in the annals of legislation. On the one hand the mover of the Bill assures "the initiative indeed rests" with the 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." And yet, that authority decides that there is absolutely no such security and confesses to its own incompetency!



Legislation on such lines cannot be expected to produce, it is hardly necessary to say, feelings of unbounded admiration, to be sure.

We cannot say what it would have been if Chief Justice Sir L. Jenkins and his two colleagues on the Special Bench in the appeal preferred by Mr. Mahomed Ali had held that they could go into the merits of the question, and decide whether in their opinion the words complained of were capable of the significance attached by the Local Government. They have decided otherwise, and have shown that the provision for legal trial need not have been included at all in the Act. Even if this decision should be dissented from by another High Court, the Press Act cannot be rendered compatible with the legitimate freedom of the press by any High Court claiming substantial jurisdiction as against any other High Court that feels unable to do it. As I shall show presently, the efficacy of any ultimate judicial remedy is of quite secondary importance when the executive reserve substantial powers of control to be exercised at their own discretion. It is the nature of these powers and the justification alleged on their behalf that deserve attention and call for concerted public action.

## Section II—The Aim of the Act

### EXECUTIVE CONTROL

In the light of the judgment in the case of Mr. Mahomed Ali, the legal legerdemain performed by the authors of the Press Act has become clearer than it would have been by a mere theoretical analysis of its provisions. The protection given by the Court is no more than a bubble that dissolves before one's eyes as one is beholding it; as one goes to seize it, there is nothing to seize. That is the achievement of its authors, and Sir Lawrence Jenkins has felt compelled to acknowledge the success of this legislative accomplishment. He has exercised exemplary restraint in exposing the hollow nature of the judicial relief the Act provides. But with all his restraint, he could not help admitting that the Government has indulged in one of those inscrutable jokes which it is only open to Governments

to do, and that there was no way for the High Court to call into question why such a joke should have been perpetrated upon it. He has admitted (1) that "the ability to pronounce on the wisdom or unwisdom of executive action has been withheld;" (2) that "the two alleged checks on executive action supposed to be furnished by the Act, one, the intervention of the Courts, is ineffectual; while the other" (the statement of grounds for the order of Government forfeiting a publication) "can be disregarded without impairing the practical effect of a forfeiture." He went a step further and observed with becoming judicial dignity "it may be questioned whether even the semblance (of this jurisdiction) which this Act provides should not have been withheld, as it was by Act IX of 1878." Had this been done, had the Act been introduced without that "semblance," the late Mr. Gokhale would not have committed the tactical blunder of voting in its favour along with the other non-official members; and it would have been an executive legislation pure and simple on the face of it as it is in reality. But taking the Act as it has been judicially interpreted in one province the conclusion is irresistible.



ble that the Press Act places the freedom of the entire Press completely at the mercy of the executive so far as that province is concerned. Wise after the event, the *Statesman* protested that it could not have been meant to be applicable to British-born subjects on the ground that they could not even by a strained construction of the effect of their writings, be credited with a desire to overthrow British supremacy. However, thanks to Mrs. Besant, it has been established that this law at any rate is no respecter of parentage. Had the *Statesman* correctly apprehended the main aim of the Act, it would not have committed the easy blunder of supposing that the Act was concerned with the writings in any section of the Press calculated or supposed to be calculated to undermine the stability of the Government. The significance of this statement will become apparent as we deal with the motives of those who framed this enactment. For the present it is enough to lay some necessary emphasis on the fact that the Press Act was purposely intended to apply to the entire Press, Indian and Anglo-Indian, English and Vernacular, without any exception, either on the score of the language of

the journal or of the race of the journalist.

In its frame work it is but a considerably extended reproduction of the Vernacular Press Act of 1878 to which Sir Lawrence Jenkins referred as withholding the "semblance" of jurisdiction from the Court ; and it is a reproduction without the saving grace of those exceptions which Lord Lytton's Act contained. And this Act is not a temporary measure, but is intended to be a permanent enactment on the Statute-book. At the time of its introduction Messrs. Gokhale, Bhupendranath Basu and Mudholkar moved amendments limiting the duration of the Bill to a definite period. All these amendments were one after another rejected by the Government. One of the capital blunders that Mr. Gokhale committed was to vote for the Bill as a substantive measure, knowing that it was *not* an "emergency Bill" for a limited duration and failing to realise the legal quibbling involved in the interdependence of sections 4 and 17 of the Act. He was so weighted down with the responsibility on the part of the reformed council to give every legitimate support to the authorities that he actually lent a hand in its enactment ; but it is plain, now that the true

character of the measure is known, that it in no way deserved it. However that may be, and even if the view of the Calcutta High Court should fail to prevail with any other High Court, one can easily realise what it is in reality and what it means to aim at if one recalls the announcements that foreshadowed the Act.

To realise this fully we should go back to the year 1908—twenty months before the Press Act came into being—when the Newspaper Incitement to Offences Bill of 1908 was passed. Lord Minto, then in the third year of his term of office, had become converted to the Civilian view that the Incitement to Offences Act alone would not suffice. For, he said :—

*"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."*

So, before his departure from India in 1910, he fulfilled his promise, and placed on the Statute-book the Press Act of February 1910. He also indicated in 1908 on what lines a general Press Act would be cast. It is only in the light of subsequent events that we are enabled to see the full significance of his statement on the occasion of the passing



of the Incitement to Offences Bill :—" *In my opinion a further general control of the Press in India is imperatively necessary.*" It was the "control" of the Press that the executive wanted—not provisions for punishing seditious writings or incitement to offences for which the Penal Code and the Incitement to Offences Bill then being enacted were amply sufficient—they wanted the Press to be brought under the control of the *executive* so that there might be no publications that the executive could not tolerate, not according to any judicial standard of right and wrong, but according to executive notions of propriety and impropriety.\* Lord Minto was candid enough not to leave in doubt what he exactly meant by this "general control." He explained himself in unmistakable terms. He laid down the dictum, on behalf of those for whom he was speaking, that "*India is not*

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\* When the Press Bill was introduced in 1910 February, Sir Herbert Risley, the mover, said in the very first sentence of his speech : " My Lord, I have the honor to move for leave to introduce a Bill to provide for the better control of the Indian Press or in other words to confine the whole of the Press, European or Indian, English or Vernacular, within the limits of LEGITIMATE DISCUSSION.

*ripe for complete freedom of the Press."* The Press Act was to be naturally therefore of a character that would be incompatible with complete freedom of the Press. And this Act, designed to be so incompatible, was fortunate enough to obtain in the Imperial Legislative Council the assent of several former and future Presidents of the Congress, with only two notable exceptions. Of course, we all know that the Indian Law Member then and there wanted to resign; but that something happened and he did not\* and in the general confusion of responsibility to

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\* On the 24th January 1910 a Police officer was shot dead by an anarchist within the precincts of the Calcutta High Court, in the broad light of day. At the first meeting of the Reformed Legislative Council held on the 25th January, *i.e.*, the next day after the commission of the crime, Lord Minto having referred to this deplorable outrage, went on to say—"We can no longer tolerate the preachings of a revolutionary press. We are determined to bridle literary license. I am glad to believe that the support of an enlarged Council will go far to assure the Indian public of the soundness of any measures we may deem it right to introduce." The Press Bill that had been drafted before 24th January was introduced in the Council on the 4th February and Mr. Sinha who had wanted to resign before the crime, as he could not agree to the Press Bill, withdrew his resignation as he did not want to weaken the hands of the Government just at that time.

the Government of the day on the one hand and to the higher interests of the country on the other, there was an accession of strength in favour of the Bill which it neither deserved nor was anticipated for on its behalf.

However, there was no lack of notice as to what the Press Act was to be nor was any deception sought to be practised. Lord Minto would not have spoken what he did not mean or intend, although he might have accepted the view of others. He could not have failed to realise the full significance of his observation "India is not ripe for complete freedom of the Press." At the time he was speaking, in 1908, there was complete freedom of the Press; and he expressed himself against the continuance of this freedom. What is the freedom of the Press for which in his opinion India was not ripe? Freedom to commit an offence in printing and publishing? Of course not; no one anywhere has freedom to do a wrong thing, except a few autocratic Governments who may reserve it to themselves. There was no complete freedom of the Press in the sense that the Press was free to commit an offence, to publish a libel, to promote a propaganda of sedition, to incite people to offences, or to foment hatred between class



and class. That freedom it did not enjoy even before the Press Act and no Press in the world enjoys. But, at the time Lord Minto was foreshadowing "a general Press Act" there was complete freedom of the Press, in the sense that that freedom could not be throttled at the discretion of the executive—that while there was no freedom of the Press to do a wrong thing, its freedom consisted in its not being liable to be maimed and crippled at the will of the executive. *Freedom of the Press, if it can mean anything at all, can only mean freedom from executive control.* Was Lord Minto right or wrong when he said that India is not ripe for its Press being free from bondage to the executive? At present however, whether he was right or wrong, what matters to us is that the control of the Press was to be exercised in a manner that would establish executive condemnation in place of legal trial by a judicial tribunal. When this is accomplished the axe is laid at the root of complete freedom of the Press, and India, not being ripe for it would no longer enjoy it. The "Statesman" of Calcutta will now understand why such an Act meant to control the entire Indian Press as an institu-

tion, not yet ripe for freedom from executive overlordship, could not exclude any journal from its operation. We revert now in our freedom of the Press, throughout its entire area, to 38 years ago, when Lord Lytton's Vernacular Press Act applied to a very small section of the Press and only in particular notified territories. One can easily realise why the frame work of the Act, withholding from the judiciary the right to pronounce on the wisdom or unwisdom of executive action, has been so designed, when one sees that full two years before its enactment Lord Minto almost pledged himself and his Government to the introduction of an Act that will establish executive control, which must naturally lie beyond the reach of judicial test.

### NOT A PANIC LEGISLATION

If in its operation the Act leaves the first and the last word with the executive, with a mere show of reference to the judiciary, if in its aim it seeks to establish an executive control over the Press as a body instead of seeking to take action against any particular press or journal which transgresses the law in force, it has to be equally realised that it was far from a "panic" legislation as has

been hastily supposed in some quarters. On the other hand, it was a deliberate piece of enactment which took nearly two years to evolve from the time that it was authoritatively foretold. In 1910, it should be remembered, there were no unusual circumstances to lead to any panic. The Reform Scheme had come into operation, there was an Indian Law Member in the Supreme Executive Council, and non-official majorities had been established in the Provincial Legislative Councils. Except in regard to the outstanding grievance generated by the partition of Bengal, the political atmosphere in 1910 was in no way different from what it continued to be when His Majesty's visit took place in 1911. In fact, between 1908 when "The Newspaper Incitement to the Offences Act" was passed, and 1910 when the Press Act was passed, the general political condition had undergone a most markedly decided change for the better. Lord Minto had "eased the horse" for a full four years and more; he was looking forward to leaving the country more pacified and trustful than when he had taken up the reins of Government. Speaking under the stress of the emotion engendered by the anarchical crime perpetrated within the Calcutta



High Court the very previous day, and addressing his last Calcutta Session of the Imperial Legislative Council, Lord Minto said referring to "the general political situation" in India, "I believe that situation to be better than it was five years ago." There was therefore little in the state of political feeling then prevalent to justify the character that has been attributed to the Act as a measure undertaken in a state of panic. On the other hand, the theory that would be more in keeping with all the circumstances is that the Government of India, prompted no doubt by the bureaucracy, with the concurrence of the Secretary of State in England, desired as a kind of *quid pro quo* against Lord Morley's reforms, a firmer control of the Press. As I have shown the authorities in India were by no means from the very first satisfied with the sufficiency of "The Newspaper Incitement to Offences Act." They had succeeded in getting an open declaration from Lord Minto in 1908 foreshadowing a general control of the Press. But such a control could not be easily commended to the acceptance of a born lover of and believer in the freedom of the Press as John Morley, especially before anything had been done in the way

of reform. The Reform Scheme was yet to be finally planned and adopted ; any additional repressive control of the Press would have been then an unthinkable demand on the part of the executive, when nothing had been done to justify Morley's accession to office or to fulfil the expectations it had given rise to. So, a period of two years of considerable stress and turmoil and of much greater unrest than the two years that followed the enactment of the Press Act had to elapse before a general control of the Press could be established by the introduction of necessary legislation. When, however, the Reform Scheme had been given effect to, and Lord Minto's term of office was drawing to its end, it was found that the psychological opportunity had arrived for enacting the law. In one of his speeches Lord Morley once pointed out the peculiar difficulty of reconciling two such institutions as an autocratic Government and a free Press. The problem of the Indian Government, he seemed to think, was no more than this in many of its phases. But, instead of reconciling the two, Lord Morley was prevailed upon to solve the difficulty by consenting in the end to the Press being brought under the control of the executive. Unfortunately, a tragic

event which occurred in Calcutta just about the time made it impossible for the Indian Law Member to withdraw his support from the Government which he could have done only by resigning his office. Lord Minto himself said that the resignation of the Law Member, actually tendered on account of his inability to support the Press Bill, was withdrawn by him, because he did not want to weaken the Government at a time when a foul crime had been perpetrated. We may assume the Press Bill would have become law, even if Mr. Sinha had resigned, since the legislation had taken definite shape before the assassination at the Calcutta High Court. Only, his resignation would have shown up its character completely on the spot, and indicated a more determined line of action to its opponents. To call a legislation of this kind a panic legislation is to miss its whole background and to give it the benefit of a justification to which it is far from entitled.

### THE ACT AND THE ANGLO-INDIAN PRESS

Anglo-Indian journals may not feel it incumbent on them to move in the matter, since they are right in the belief that in their case the Act will be as good as



non-existent. The grievances of the Anglo-Indian community requiring agitation in the press are few or none at all; and their journals are intended to interest those who are directly or indirectly in authority here. A few matters concerning the mercantile and planting community uniformly receive the best possible consideration of the Government; they have rarely any occasion, even if they should fail to receive such consideration, to incur the resentment of the executive, unless they should set a gross example by their criticisms to their Indian contemporaries. On the other hand, their role is that of a brake on the wheel of Indian progress, or that of perpetual apologists for the *status quo* in administration. Time was when Anglo-Indian Editors were ordered to leave the country by the next steamer that left India for Europe.\* But those days have changed. As Lord Curzon said in regard to non-official

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\* For example, Mr. Buckingham, Editor of the *Calcutta Journal*, which was suppressed in 1823, was ordered to leave India within two months for England, because he wrote that it was not becoming for a minister of the Scottish Church to accept the situation of Clerk of the Stationery of the East India Company. Mr. Buckingham's successor Mr. Arnot was arrested and put on board a home Army ship.

Anglo-Indians,—to-day it is a case of—"You are here to exploit and we are here to help you." If this is the mental relationship that subsists between the Government and the non-official Anglo-Indians, it is easy to understand that to the accredited organs of that community cannot be meted out a different kind of treatment from what the community receives. They may well afford to ignore the Press Act. If to-morrow the Commonwealth of Australia or the Dominion of Canada should promulgate a Press Act on the lines of the Indian enactment, and if our Anglo-Indian journalists should be sent over there to conduct the colonial journals, they will then see the significance of such a legislation to a free Press. The fact is they get things here for asking, and without asking; whereas, we can hope to get nothing of substantial value without a strenuous agitation against the heaviest odds, and liable to be distrusted, suspected and dealt with under provisions "of law" absolutely without a judicial remedy. The Anglo-Indian journals need not keep company with us in any of our endeavours, and it will probably be looked upon as a betrayal of the trust reposed in them, if they should hamper the discretion of

the executive by throwing the weight of their concurrence with the Indian Press. In this we do not mean to cast the slightest aspersion on the editors of Anglo-Indian journals, many of whom are as good specimens of humanity as most others ; but their politics are determined by the opinions of the constituency which supports them ; between them both the Indian Press cannot come in to divide their mutual obligations.\* Virtually therefore the freedom of the Press in India means the freedom of the Indian Press, which is an asset next only in value to the stability of British rule in India.

### SENSE OF FALSE SECURITY

In the next place, the Indian public ought not to be deceived into a feeling of security, by the fact that the Indian Press shows no decadence in the strength or independence of criticism. If, in spite of the existence of the Press Act, this is so, it is only because the

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\* It will be enough if they do not, on the other hand, lay themselves open to the charge which Mr. Gokhale brought against some of them in his speech on the Press Bill. He said "the terms of race arrogance and contempt in which some of these papers constantly speak of the Indians, and specially of educated Indians, cut into the mind more than the lash can cut into the flesh."



Local Governments are not as degenerate as the Press Act permits them to be. The Indian Press writes to-day strongly under the sufferance of the executive; it writes so at grave and perpetual risk to its conductors. We have all said on occasions and have to say almost daily, things which "directly or indirectly," "whether by inference, suggestion, allusion, metaphor, implication," or "*otherwise*," will tend to bring the Government into "contempt"—if the Government should choose to construe it so. The fact is this contempt is a peculiar and unanalysable human feeling more than many other feelings. If any body of persons should act in a way that is objectionable and if such an act should be exposed and criticised, it is not in the power of the person exposing it to safeguard those who are responsible for such conduct from a probable feeling of contempt in the public mind. The object of the writer is not of course to bring them into contempt. But the effect at times is. But, who should be liable to be punished for this? Under the law, it is the journalist! If the Press Act had not succeeded in completely muzzling the Press, it is due, firstly, to the fact that the Indian journalist is prepared to take legal

risks between sunrise and sunset as no other professional man has to do in this country ; and it is due in the next place to the fact that no Local Government chooses to put the Law into operation taking it at its face value.

It is, however, a bad policy for a nation to be tolerant towards a subversive and dangerous provision, simply because some people are prepared to take perpetual risks under it, and because the authorities do not always choose to apply it rigorously. Any apathy in this matter on the part of the public, prompted by the fact that strong and independent criticisms still continue in the Indian Press, will be an unhappy and impolitic abandonment of the only instrument of progress that is open to this country to employ. Every Press is as good as an army of school-masters being abroad every day ; and in the case of a Newspaper it is as good as many such armies. The Press Act applies not only to a Newspaper Press, but to every Printing Press. Publications in English and in the many vernaculars of India should be brought out in numberless directions if the country is to benefit at all by British rule. As the Press Act stands at present every Press already started and every new Press to be started is easily brought

under the operation of an Act which leaves little room for judicial adjudication. It is a new fetter on the enlightenment and progress of the country, not designed in a moment of panic, but the outcome of a deliberate conviction on the part of the Government that "India is not yet ripe for complete freedom of the Press" after its having enjoyed it for a period of seventy-five years, to the incalculable benefit of the Government and the people.



## Section III—Our Line of Action

### THE ROOT OF THE PRESS ACT

In the face of such a legislation, the issue that lies before the country is not any particular provision or provisions of the Press Act, but its acknowledged aim. That issue is whether there should be an Act definitely and deliberately intended to be incompatible with the legitimate freedom of the Press, or whether we should revert to what we were until 9th February 1910, since complete freedom of the press was established in 1835 by Sir Charles Metcalfe in the teeth of the unstatesmanly opposition of a visionless Court of Directors. To some the question may seem to be whether the Press Act should not be rendered unobjectionable, instead of the Act as a whole being repealed. If the executive is so inclined, it is welcome to prefer the former to the latter, but one can

only wonder what kind of an Act will remain when the Press Act is bereft of its objectionable elements. There will be nothing in it of a legislative measure, which is not a repetition of existing provisions. The only escape from such an outlook is to excise some of its obnoxious features, consenting to retain a few others. This may be a kind of compromise, but it will not restore to us the freedom of the Press as it was before 10th February 1910. Compromises are permissible in many public questions ; in fact compromises alone are practicable in many matters ; but in regard to the freedom of the Press, we must either have it in theory and in fact, or forgo it ; there is no such thing as having it in part and forgoing it in part. We cannot at the same time have a free and unfree press. The freedom that is insecure, not being founded on legal liberty is no freedom at all. It is merely sufferance. From a state of sufferance to a state of rightful legal liberty, there is no half way halting house, wherever else it may be, in regard to the unfettered right of criticism of the executive. The executive must understand that in asking for a free press, *we do not ask for an unpunishable press ; and*

nobody need object if the quantum of punishment is to be enhanced or the nature of the punishment should be varied, so that wrongdoing against the State may be quite efficiently deterred. But until one renders himself liable to punishment by the sentence of a competent court of justice, one should not be crippled, enfeebled, handicapped or prejudiced in owning or managing a press or a periodical or in publishing a book. Does this requirement admit of any compromise? We who are not simply under British rule, but consider ourselves an integral part and parcel of that rule, we can deplore nothing more bitterly and nothing more sincerely than a loosening of the bonds that hold India and England together. To us the real culprit in the press cannot be an object of welcome or even of extenuation. But it is ridiculous that the entire press should on account of the likely sins of a probable wrong-doer, be held as hostage, or that the anarchical crimes committed in Calcutta should be required to be expiated by the entire press of a country consenting to make its existence dependent upon the mood and temper of a majority in a council of four, or of a single head of



a Government. The Press Act enmeshes the entire press as an institution, on the plea that at any time, a single member of it may offend. It authorises security being taken from every press to be started and every periodical to be published. If a Press prints sedition, and if a periodical publishes it, let them be punished under the Penal Code and if necessary let additional power be taken under existing laws to confiscate any press that may deliberately persist in sedition after successive convictions, upheld by the highest Court of Appeal ; or if a man is convicted of sedition as publisher, let him be asked to furnish security against a probable repetition of his offence, if a court of law should think it reasonable, and should he wish to continue the publication. In these directions let the ordinary law be strengthened if necessary. For, all this is compatible with a free press, since a free press does not mean a press immune from punishment. But it is certainly incompatible with a free press if one can start an organ of public opinion or work a printing press only on furnishing a security at the demand of the executive. Under the ordinary law, if security for good behaviour has to be

taken, it cannot be done without a judicial proceeding, without evidence being adduced and a regular trial being gone through. But in the case of a press or periodical, all these safeguards are dispensed with if the executive desire to do so. And in the case of every new press the *prima facie* assumption seems to be against its good character, as exemption from security is only an exception to the general rule. The construction is that every press coming into existence does so only to be guilty of an offence against the State and therefore must furnish security for good behaviour, if called upon, while in the case of every old press, if the authorities persuade themselves that it has transgressed the permissible bounds of criticism, it must give security. In the one case, judgment on pure presumption of likely guilt; and in the other case one-sided judgment; in both cases action to be taken by the executive only; and in neither case any effective judicial remedy!!

The root of the Press Act is the power to demand security by the executive; the fruit of the Press Act is the forfeiture of the plant and machinery and of all securities furnished, practically at the order of the executive. Is

there room for compromise at the root of the Act? We cannot say give warnings and reasons before security is demanded and we shall be satisfied ; for this in no way alters the purely executive nature of the power to demand security. Will a Government feel justified in asking security of a medical or legal practitioner, because he may commit an offence in following his profession ? Does it demand security of its own servants, because they may offend against the law of bribery ? Does it demand security of a merchant, because he may employ false weights and measures or sell injuriously adulterated articles, or pass gilded brass for solid gold ? Of which professional man, of which public servant, of which banker who receives public money does the *Government* take security as a preventive punishment in advance ? How then can it be justified that if one should start a press or a journal he should be liable to furnish security, merely because the executive desires to control the press more than it controls anything else ?\*

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\* Sir Harold Stuart who was then Home Secretary and who defended the Bill with warmth and eloquence, quoted "a number of precedents" justifying the demand of security. But he forgot, and no non-official member



## THE PROVISION THAT MUST GO

Without the security provision, the Press Act becomes a rootless tree, and the press will revert from its noxious shadow to its subjection to the ordinary law of the land. If, however, this provision is to be retained, the question arises whether such demand, apart from forfeiture, should not be liable to be appealed against, the Court exercising substantial jurisdiction. If it should be so retained and if no periodical or press can be called upon to furnish security at its very birth, the mischievous effect of the Press Act is counteracted at the earliest stage, and no press and no periodical can possibly be strangled even as it is struggling for the first sight of day ; then the Press Act will be on the

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either pointed out, that in none of those instances is the security demanded by the Government. He mentioned such examples as Brokers' Association, the Stock Exchange and Inns of Courts. Similarly, in a Press Club it will be quite a legitimate provision if every member of the Club should have to furnish a security. The analogy on which Sir Harold sought to justify this provision can have bearing only when a member of the Stock Exchange or of an Inn of Court in England could be called upon by the Home Secretary to furnish security for good behaviour to the Magistrate within whose jurisdiction he resides, because of his being a member of that body.

Statute Book, repealed in effect although retained in form. It will simply be a special amplification of the law laid down in the Procedure Code. There need be no objection if this course will meet with the approval of the Government. But, if not, if the insistence is upon the right of the executive to demand security from every press started or to be started, *without* the right of the aggrieved party to challenge the demand in a court of law, then there is a press only on the sufferance of the executive. Only the other day there was an apt illustration of the nature of this sufferance we now enjoy as freedom of the press. The "Emigrant" of Madras had to suspend its publication when security was demanded of it; and it later on announced its intention to reappear when the demand was withdrawn. *It is not simply the probable forfeiture of the security, or the inutility of the appeal to the Court that weighs upon the freedom of the press.* Before the forfeiture takes place, before there is any need to try the efficacy of the jurisdiction of the Court, even as a paper comes into existence it may be branded to death by a demand of security. Some of those very papers, about whose attachment to Government, even they have not the

faintest speck of a doubt, will have to draw down the blinds if asked to furnish a security of Rs. 5,000. It is this reservation of power to demand security that amounts to a denial of the freedom of the press, as well as a denial of legitimate opportunities of service to the country, of legitimate means of earning an income, or of building up a fair reputation which all freedom necessarily implies. In fact, it is this that constitutes the poison sack of the legislation.

Our line of action must be directed against this power, as nothing else will restore to us the freedom we had before the Act came into existence, and before Lord Minto's surrender to the view of the Indian bureaucracy. That surrender as I have shown was the result of over two years siege. The first sign of his capitulation was announced by himself in 1908, when the Incitement to Offences Act was passed. The next man to surrender was Lord Morley, the distant but dominant partner in Downing Street. And he did it after promulgating his reform scheme, and perhaps *as a concession to the bureaucracy* against all his concessions to the people. Finally, the fort was stormed when the occasion was propitious—with Morley's reform on one side, and the



foul crime of a maniac on the other. Our battle ground must be the provision that enables the executive to demand security, and not the absence of clauses for reasons being assigned. Not these unsubstantial and vapoury grievances, not even the fact that there is no real jurisdiction of the Court. Reasons and warnings after all mean nothing in substance. Not even substantial jurisdiction vested in a Court can mean much, if it cannot come to the help of presses and periodicals which may find it too difficult to find the security demanded of them, and may consequently have to become abortive attempts or to disappear soon after birth or having been in existence. This kind of security provision can be compared to nothing else in nature than the cobra swallowing eggs before they are hatched, and that reputed monster of the reptile species making by a steady look of its glittering eyes the bird on the tree drop into its mouth. It is too awful in fact, that in regard to a country whose government is not in the hands of its own popular bodies, but of a hierarchy of officials, it is too awful that in regard to the press of such a country, such a power should be reserved to the officialdom. In a court of law a question is

argued, precedents are quoted, the presiding Judge feels the responsibility in open Court as a man pledged to justice in the eyes of his contemporaries all the world over, and conscious of what his distinguished predecessors in office have laid down before. He feels all this, in fear of God and without the fear of man. These safeguards are banished out of the precincts of an executive chamber. There the "Authority" sits biting his pen, or furiously smoking his "Bahadurs," with sheafs of reports of various kinds from C. I. D. and other sources, and the obedient Assistant waits without discretion and courage of contradiction ; the fiat is given in a few rapid words between heated lips. Well, everything else follows. And follows also the agitation, spontaneous to a great extent and engineered to some extent, but with nothing to belittle or discredit it. Well, what if a thing is "engineered?" What is there in the United Kingdom which is not engineered from Kitchener's Army to the Alexandra Day? And then, if the executive should persist in its *issat* by being more and more unreasoning, then constitutional agitation shrinks; but since grievances cannot remain unredressed, unconstitutional ideas could not but suggest

themselves. This is the entire Story of EXECUTIVE FINALITIES in India. And the Press Act, as it stands, gives perpetual scope for the consequences of these finalities.

The poison sack of the Press Act is the security provision, resting upon the unenunciated theory of executive finality. Even if the jurisdiction of the Court becomes substantial, it can only annul an unreasonable order of forfeiture, but it can do nothing in regard to presses and papers which have to wind up for inability to furnish the security demanded at the discretion of the executive. Hence, our resistance should be offered to the security provision first and foremost, to the pretention that security for good behaviour can be taken by officials from pressmen alone, without any legal justification, legally made out, as in ordinary cases. The power of demanding security as an executive measure without making good the imputation involved in such a demand before a competent court of justice ought to be absolutely determined. If this provision disappears, the Press Act disappears. If the Act is amended, so as to admit of judicial review, even in case of the demand of security, exempting from such demand all new presses



and periodicals, then it merely remains an echo of existing provisions. In any case, it must either entirely disappear from the Statute Book, or remain in a legitimate way as other existing laws.

## Section IV—The Case for the Government

### THE SUPPLY OF FUEL

Much that I have urged in the foregoing pages will fall short of full value if I do not advert to the case for the Government. That case was ably presented by Sir Herbert Risley, the Home Member, Sir Harold Stuart, the Home Secretary and last of all by Mr. (now Sir) S. P. Sinha, the Law Member. But of all those speeches in defence of the Bill, Sir S. P. Sinha's was the clearest contribution on its behalf—clearest, because he urged his "case" with the cool detachment of an advocate, whereas the Home Member and the Home Secretary were practically clients pleading their own cause. As Mr. Basu cleverly reminded the Council, Mr. Sinha had led many a forlorn hope to a successful issue, and his speech on the occasion was a forensic masterpiece. But, we have not yet come to the stage of presenting our destinies as an offer of appreciation to

a fine performance in the art of advocacy. Sir Herbert enumerated all the anarchical outrages as though there was any man in India who wanted criminals or those who incited to crimes not to be punished. His was a long and true tale of anarchical deeds—but there was no point in reciting it. However, he was honest in one respect—he said that the hostile comments were of such a nature that they should be “confined within legitimate limits of discussion.” That therefore was the object of the Bill.\* Sir S. P. Sinha admitted in his lawyer-like way, that if a man went out with a pistol or a bomb in search of a victim, he would not be deterred by the Press Act, but that that Act “would cut off the fuel from the fire.” He said “let us try and see if this does not cut off the source of supply without which the propaganda must fail sometime ‘or other.’” The question that emanates from this position is after these six

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\* The Statement of Objects and Reasons of the Press Bill contains the following explanation :—

“The continued recurrence of murders and outrages has shewn that the measures which have hitherto been taken to deal with anarchy and sedition require strengthening and that the real source of the evil has not yet been touched. Prosecutions have invariably proved successful, but have produced no permanent improvement in the tone of the press.”



years of experience, has the Press Act prevented policemen being shot in the streets of Calcutta or did it deter that most diabolical crime—which we cannot think of without shuddering and without a torrent of deep resentment running through the frame—did it deter that most awful crime?—the crime at Delhi 12 months after the annulment of the partition of Bengal? The enactment of the Press Act followed by such foul crimes must have disillusioned Sir Herbert Risley and made him revise his faith in the efficacy of the measure. Sir S. P. Sinha is happily in a position to take the public into his confidence without the restraint of office now. Of course it is quite possible to hold that but for the Press Act more crimes would have been committed—there is no arguing against such. The fact is—the most pathetic fact I may call it, the fact is as Lord Minto said in winding up the debate on the Press Bill itself, there is by the side of “a liberal political movement” in the country “an anarchical conspiracy waging war against British and Indian communities alike.” “Sedition” gives rise to anarchy is the theory of the official—and he thinks in the way of the man who would save his pound by saving his penny—that by preventing sedition he

can prevent anarchy. How can they prevent "sedition"?—by preventing hostile comments—said Sir Herbert. How can you prevent such comments? By reserving power to come down on a paper.—This is the process of argument that upholds the Press Act. But what about the "Liberal movement" of which Lord Minto spoke and the existence of which no official can deny—but to which Sir S. P. Sinha himself can testify as one of the Congress Presidents? to which Sir Harold Stuart can testify as an avowed admirer of Gokhale, the liberal Indian politician? What of this liberal attitude in the press? The official apologist says from liberalism to sedition from sedition to anarchy—and as we all want to root out anarchy—we shall bring "liberalism" under our control. But what is liberalism in Indian politics? but an attempt to enlarge the dominion of popular privileges, to reduce those of vested interests and to criticise "the excesses" of the executive? Hence a direct conflict between political liberalism and the executive must be the result of this plan of campaign against anarchy. Against such a conflict, however, Viceroy after Viceroy has pledged himself; but the Press Act makes such conflicts easily

possible at times inevitable. Lord Morley who saw through the whole line, said in introducing the Reform scheme—that to repression of liberalism there was no end,—but to “produce” “a mute, sullen, muzzled, lifeless India.”

### THE ALTERNATIVE

The alternative is of course not an India seething with anarchy and sedition, hostility and defiance. Let the critics of the press take a large map of India—following Lord Salisbury's advice in regard to foreign politics—let them see what troubles they can make allowance for in proportion to its population, area and complexities—and in proportion to troubles they have in so small a country as the United Kingdom of Great Britain and Ireland. Let them banish the notion they are foreigners here and let them then judge what there is for them to be alarmed at. Far be it from any of us to lull them into a sense of ease—secret plotting of political crimes has not been burnt to ashes as yet. But the way to burn it is not by traversing a road which brings the Government at every step in conflict with the legitimate freedom of the press. Let the Government by all means strike hard at an offender, but let it strike through the instrumentality of a Court and not



itself. And let it abandon the notion that it can "control" the press—an unoffending but critical press—to whatever unlooked for consequences such a critical attitude may, in the chain of causation, lead to. That can never be "controlled," but it can be combated, it can be corrected, it can be argued into a different position—while a seditious paper can be punished by the sentence of a Court. For "control" means that by sheer weight of authority the executive can make the press desist from writing what may displease it, although the criticism may be called for in the interests of the country. If the same paper or a press publishing a journal persists in seditious writing, proved seditious, let the Penal Law be amended to give the Court power of confiscation, if necessary, without any option, in specific cases of continued disloyalty. Otherwise, to try "to confine within legitimate limits," as the executive may be pleased to differentiate, the comments in the press, by any direct contact between the press and the executive will be to try a worse than futile remedy. A legislative measure for such a purpose must become discredited, if not repealed, and to work such an Act must seriously detract from the prestige of the Government.

These six years have shown the inutility of the Press Act to prevent anarchical crimes and its efficacy as an instrument only to harass without producing a conviction that the treatment or the procedure is deserved. In the next place, it must be admitted that during the last six years the tone of the public press has considerably improved—not because of the existence of the Press Act, but because of the working of the Reform Scheme from 1910—and because one great source of irritation was removed in the cancellation of the dismemberment of Bengal. The Press Act and the Reform Scheme came together—and within two years thereafter the momentous announcements by His Imperial Majesty the King-Emperor at Delhi. The change of policy then initiated and most loyally and faithfully carried out by Lord Hardinge has borne fruit—except that anarchy plots crimes in secret—even against so great a benefactor as Lord Hardinge. While therefore the Press Act has not prevented the criminal from committing his crimes, the political atmosphere has been rendered bright and clear by the operation of the Reform Scheme and the effect of the Delhi changes. The continuance of the Press Act under these circumstances,

incapable of wiping off anarchical plots, can only help to charge the sky with elements of unhealthy conflict. It cannot and has not "cut off the fuel from the fire," but it has potency for starting new fires for nobody's good, in different parts of the country. For, as the Act stands, the Government have only empowered themselves to be more arbitrary in regard to their critics, critics established not by the law, but recognised in all progressive political constitutions. A Government not responsible to the people to have such a power under the law is virtually to bring all our hopes to a stand-still, as the streaks of a new dawn are becoming visible, a dawn which is earnestly expected to usher in an era of strength and solidarity more than has been known in the history of any other Empire.

Lord Chelmsford will be judged by this first crucial test—as to how he will deal with this question—whether he means to govern India with an executive that will be responsible to the Crown, and a Press that will be punishable only by the judiciary, or if he wants to govern India two years after the War has been going on and after two years of revelation of Indian loyalty which must make any nation proud,



happy and grateful, if he wants to govern India now as a country that has no voice of its own, except what the executive may be pleased to permit—of its own discretion. Even the Viceroy of India cannot be the final arbiter in so momentous a question, but he can be a final authority for good. He can take a leaf out of the minutes of Sir Charles Metcalfe and override not an uninformed Court of Directors of 80 years ago, but merit the approval of a Prime Minister one of world's born leaders and political architects who has been emphatic in his protestations of regard for the constitutional rights of this country as a part of the British Empire. If Lord Chelmsford should unfortunately fail to do so, the Indian public must make a pilgrimage through chosen representatives to the shrine of all civic liberties, for a cause without which no other cause worth striving for can be achieved. If we should fail even there, which is simply incredible, if we should, our failure will suggest remedies compatible with the legal and constitutional rights we still enjoy under the Crown—an aspect of the subject which we may leave alone for the present.

# ACT NO. I OF 1910.<sup>1</sup>

[9th February, 1910.]

## AN ACT TO PROVIDE FOR THE BETTER CONTROL OF THE PRESS.

(With footnotes.)

**W**HEREAS it is necessary to provide for the better control of the Press; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Indian Press Act, 1910.

(2) It extends to the whole of British India inclusive of British Baluchistan, the Santha Parganas and the Pargana of Spiti.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

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<sup>1</sup> For Statement of Objects and Reasons, see Gazette of India, 1910, Pt. V, p. 13; for Report of Select Committee, see *ibid*, p. 15; and for Proceeding in Council, see *ibid*, Pt. VI, pp. 19 and 28.

(a) "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed :

(b) "document" includes also any painting, drawing or photograph or other visible representation :

(c) "High Court" means the highest Civil Court of Appeal for any local area except in the case of the provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North-Western Provinces and the High Court of Judicature at Madras respectively :

(d) "Magistrate" means a District Magistrate or Chief Presidency Magistrate :

(e) "newspaper" means any periodical work containing public news or comments on public news : and

(f) "printing-press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

3. (1) Every person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, (XXV of 1867) shall, at the

Deposit of security by keepers of printing-presses.



time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which a declaration was made prior to the commencement of this Act under section 4 of the Press and Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), is used for any of the purposes described in section 4, sub-section (1), the Local Government may, by notice in writing, require the keeper of such press to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than five thousand rupees,

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<sup>1</sup> Genl. Acts, Vol. I.

as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

4. (1) Whenever it appears to the Local Government that any printing-press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

(a) to incite to murder or to any offence under the Explosive Substances Act, 1908<sup>1</sup> (VI of 1908), or to any act of violence, or

(b) to seduce any officer, soldier or sailor in the Army or Navy of His Majesty from his allegiance or his duty, or

(c) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or section

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<sup>1</sup> Genl. Acts, Vol. VI.

of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or

(d) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(e) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or

(f) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to be interested, with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,

the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such newspaper, book or other document wherever found to be forfeited to His Majesty.



*Explanation I.*—In clause (c) the expression “disaffection” includes disloyalty and all feelings of enmity.

*Explanation II.*—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful means, or of the administrative or other action of the Government or any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (c).

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), shall be deemed to be annulled.

5. Where the security given in respect of any press has been declared forfeited under section 4, every

Deposit of further security.

person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867<sup>1</sup>

<sup>1</sup> Genl. Acts, Vol. I.

(XXV of 1867), shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

6. If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited,

(b) the printing-press used for the purpose of printing or publishing such newspaper, book or other document or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was, printed, and

(c) all copies of such newspaper, book or other document wherever found,  
to be forfeited to His Majesty.

7. (1) Where any printing-press is or any copies of any newspaper, book or other document are declared forfeited to His Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any police-officer, not below the rank of a Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(i) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1893<sup>1</sup> (V of 1898).

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<sup>1</sup> Genl. Acts, Vol. V.



8. (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be required to deposit security so long as such registration is in force :

Provided further that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that a newspaper published within its

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<sup>1</sup>Genl. Acts, Vol. I.

territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act, under section 5 of the Press and Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate, within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

9. (1) If any newspaper in respect of which

any security has been deposit-

Power to declare security forfeited in certain cases.

ed as required by section 8

contains any words, signs or

visible representations which

in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, under section 5 of the Press and Registra-

<sup>1</sup> Genl. Acts, Vol. I.

tion of Books wherever found, to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), shall be deemed to be annulled.

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

11. If after such further security has been deposited the newspaper again contains any words, signs or visible representations which in the opinion of the Local

Power to declare further security and newspapers forfeited.

<sup>1</sup> Genl. Acts, Vol. 1.



Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare—

- (a) the further security so deposited, and
- (b) all copies of such newspaper wherever found, to be forfeited to His Majesty.

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notification in the local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any police-officer may seize the same wherever found, and any Magistrate may by warrant authorize any police-officer, not below the rank of Sub-Inspector, to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in

manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898 (V of 1898).

13. The Chief Customs-officer or other officer authorized by the <sup>1</sup> Local Government in this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the <sup>2</sup> Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

14. No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under

Prohibition of transmission by post of certain newspapers.

<sup>1</sup> For notification by the Government of Eastern Bengal and Assam, authorizing all District Magistrates under the section, see Eastern Bengal and Assam Gazette, Extraordinary, dated 28th February 1910.

<sup>2</sup> For notification by the Government of Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette, Extraordinary, dated 28th February, 1910.

section 5 of the Press and the Registration of Books Act, 1867<sup>1</sup> (XXV of 1867), and the publisher has deposited security when so required under this Act.

15. Any officer in charge of a post-office or authorized by the Postmaster General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

Power to detain articles being transmitted by post.

(a) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

(b) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof, and shall deliver all such articles to<sup>2</sup> such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

<sup>1</sup> Genl. Acts, Vol. I.

<sup>2</sup> For notification by the Government of Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette, Extraordinary, dated 28th February, 1910.



16. (1) The printer of every newspaper in British India shall deliver at

Copies of newspapers printed in British India to be delivered gratis to Government.

such place and to such officer as the <sup>1</sup> Local Government may, by notification in the local official Gazette, direct,

and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

(2) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (1), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

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1. For notification by :—

(1) Government of Madras, see Fort St. George Gazette, 1910, Pt. I. p. 266.

(2) Chief Commissioner, Central Provinces, see Central Provinces Gazette, 1910, Pt. I. p. 112.

(3) Chief Commissioner, Ajmer-Merwara, see Gazette of India, 1910, Part II, p. 932.

(4) Chief Commissioner, North-West Frontier Province, see Gazette of India, 1910, Pt. II, p. 358.

17. Any person having an interest in any property in respect of which an order of forfeiture has been made under section 4, 6, 9, 11, or 12 may, within two months from the date of such order, apply to the High Court to set aside such order, on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

18. Every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges, or, where the High Court consists of less than three Judges, of all the Judges.

19. (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the

decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(3) Where there is no such majority which concurs in setting aside the order in question, such order shall stand.

**20.** On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper which are alleged to be of the nature described in section 4, sub-section (1).

Evidence to prove nature of tendency of newspapers.

**21.** Every <sup>1</sup> High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications,

Procedure in High Court.

**1** For Rules by the:—

(1) High Court, Calcutta, see Gazette of India, 1910, Pt. II, p. 407.

(2) High Court at Allahabad, see U. P. Gazette, 1910, Pt. II, p. 159A.

(3) High Court at Bombay, see Bombay Government Gazette, 1910, Pt. I, p. 549.

(4) Judicial Commissioner of Oudh, see U. P. Gazette, 1910, Pt. II, p. 820.



the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

**22.** Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

*Jurisdiction barred.*

**23.** (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of

*Penalty for keeping press or publishing newspaper without making deposit.*

Books Act, 1867<sup>1</sup> (XXV of 1867).

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867.

24. Where any person has deposited any security under this Act and ceases

Return of deposited security in certain cases.

to keep the press in respect of which such security was deposited, or being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

25. Every notice under this Act shall be sent

Services of notices.

to a Magistrate, who shall cause it to be served in the

<sup>1</sup> Genl. Acts, Vol. I.

manner provided for the service of summonses under the Code of Criminal Procedure, 1898,<sup>1</sup> (V of 1898).

26. Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act.

Operation of other laws not barred.

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<sup>1</sup> Genl. Acts, Vol. V.



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