REPORT

OF THE

PRESS LAWS ENQUIRY COMMITTEE

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CORRIGENDUM TO THE REPORT OF THE PRESS LAWS ENQUIRY COMMITTEE

(1) In the fifth line from the bottom on page 1 *substitute* the word "and" *for* "of".

(2) Between the word [illegible] in the second line from the bottom on page 2 *add* "E

(3) In the se[illegible] page 6 *substitute* the word "mere" *for* "more".

(4) In the eighteenth [illegible] on page 9 *substitute* the word "censors" *for* "censor".

(5) Between the words "Section" and "deals" in the 28th line from the top on page 12 *substitute* "6" *for* "7".

(6) At the end of the twentyninth line from the top on page 12 *substitute* "7" *for* "8".

(7) Between the words "to" and "person" in the fifteenth line on page thirteenth *insert* "a".

(8) In the ninth line from the bottom on page 15 *substitute* the word "do" *for* "to".

(9) *For* the letter "(b)" in line twentieth from the top on page 16 *substitute* the letter "g".

(10) In the twentyfourth line from top on page 16 *substitute* the word "sedition" *for* "seddition".

(11) In the twelfth line from the bottom on page 16 *substitute* the word "editions" *for* "editors".

(12) In the tenth line from top on page 17 *substitute* the word "President's" *for* "president's".

(13) In twelfth line from top on page 18 *substitute* "particulars" *for* "particular".

(14) In the second line from the bottom on page 18 *substitute* the word "firm" *for* "from".

(15) In the twelfth line from bottom on page 23 *substitute* the word "carriers" *for* "carrieries".

(16) After the word "society" occurring in the fifth line from bottom on page 24 *insert* a fullstop and the words "A free society".

(17) In the fifth line from bottom on page 27 *substitute* the word "New" *for* "Now".

(18) *For* the words "relates to documents.....such offence. Clause (c)" occurring in lines six to eight from bottom on page 31, *substitute* "offence involving violence; and clause (b) to documents which express approval or admiration of any such offence or a person involved in such offence. Clause (c) relates to documents which tend directly or indirectly to seduce a police officer".

(19) In the second line from top in the footnote on page 33 *substitute* the word "defined" *for* "declined".

(20) In the twentysixth line from bottom on page 37 *add* the letter "s" after the word "Government".

(21) In the twentieth line from top on page 38 *substitute* the figure "30" *for* "2".

(22) *Delete* the word "dated" occurring in the third column of the APPENDIX 'A' on page 41.

In column 3 of the statement on page 42:—

(1) *Delete* the word "dated" in the heading.

(2) Against serial no. 10, *for* the word "Do", *substitute* "No. 33/33/46-Poll (I), dated the 4th October 1947".

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REPORT OF THE PRESS LAWS ENQUIRY COMMITTEE

CHAPTER I.—INTRODUCTORY

We, the undersigned members of the Committee appointed to review the Press Laws of India, have the honour to submit this report to the Government of India in accordance with the instructions contained in the Home Department resolutions No. 33/33/46-Poll (I) dated the 15th March 1947 and 4th October 1947.

2. The terms of reference to the Committee are as follows:—

(1) To examine and report to Government on the laws regulating the Press in the principal countries of the world including India;

(2) To review the Press Laws of India with a view to examine if they are in accord with the Fundamental Rights formulated by the Constituent Assembly of India; and

(3) To recommend to Government any measures of reform in the Press Laws considered expedient upon such review.

Under the resolution dated the 15th March 1947, the appointment of the Committee was announced with the terms of reference mentioned at (1) and (3) above, in order to meet the demand both from the Press and in the legislature and in fulfilment of the undertaking given by the Hon'ble the Home Member in his speech at a meeting of the All India Newspaper Editors' Conference held on 13th October 1946. By the resolution dated the 4th October 1947, certain vacancies in the membership of the Committee, which had occurred due to constitutional changes and other reasons, were filled up and an additional term of reference mentioned at (2) was added.

3. A statement is enclosed (Appendix A), showing the membership of the Committee and the attendance of various members at the Committee's meetings. The first meeting of the Committee was held on 12th April 1947, when the Committee decided that the measures of reform in the Press Laws of India which they would recommend would be with reference to a free India. In this meeting, the Committee decided that the following Laws of India should be brought under review:—

1. Press and Registration of Books Act, 1867.
2. Indian States (Protection against Disaffection) Act, 1922.
3. Official Secrets Act, 1923.
4. Indian Press (Emergency Powers) Act, 1931.
5. Foreign Relations Act, 1932.
6. Indian States (Protection) Act, 1934.
7. Sections 124A, 153A and 505 of the Indian Penal Code, 1860.
8. Sections 99A to 99G of the Code of Criminal Procedure, 1898.
9. Sections 19 and 181A to 181C of the Sea Customs Act, 1878.
10. Section 5 of the Indian Telegraph Act, 1885.
11. Sections 25, 26 and 27A to 27D of the Indian Post Office Act, 1898.
12. Provisions of Provincial Public Safety Acts, etc. relating to Censorship of Control of publications.

The questionnaire was also approved in this meeting and the Committee decided to issue a general invitation to the public to send replies to the questionnaire and memoranda with an intimation of the desire to give oral evidence. It was also decided to collect information, regarding demand and

forfeiture of security with an appreciation of the effect of the action taken under the Indian (Emergency Powers) Act, from the Provincial Governments and to obtain their views and to invite the A.I.N.E.C. and the Provincial Press Advisory Committees to nominate representatives to give evidence before the Committee. The last date for the replies to the questionnaire and the submission of memoranda was specified as 31st May 1947, which was extended subsequently to 31st July 1947. After the first meeting of the Committee, far reaching constitutional changes took place, and the two Dominions of India and Pakistan were set up. In consequence, the terms of reference to the Committee were amended, as stated in paragraph 2, and certain changes were made in the membership of the Committee. In response to the request of the Committee, almost all Provincial Governments sent replies to the questionnaire and furnished information requested by the Committee. The second meeting of the Committee was held on 15th November 1947, when it was decided that Provincial Governments should be requested to depute representatives to give evidence before the Committee. The memorandum on behalf of the All India Newspaper Editors' Conference (A.I.N.E.C.) was received with a letter dated 13th December 1947, from the President of the Conference, and will be found in Appendix B to this report. The third meeting was held on 18th, 19th and 20th December 1947, the fourth meeting on 21st and 22nd January 1948, and the 5th meeting on 2nd, 3rd and 4th March 1948. A list of the witnesses who gave oral evidence before the Committee in the 3rd, 4th and 5th meetings is contained in Appendix C. The Committee takes this opportunity of expressing its gratitude to the A.I.N.E.C., the representatives of the Provincial Governments and other witnesses for the memoranda submitted by them and for assisting the Committee by giving oral evidence before the Committee. It was decided in the 4th meeting of the Committee that invitations to submit memoranda and to give oral evidence should be issued to certain prominent persons representing political parties and schools of thought but, to our great regret, they were unable to accept our invitation. The Committee in its 5th meeting considered the evidence recorded, and reached tentative conclusions. These were finalised in the 6th and last meeting of the Committee held on 22nd May 1948, when the report of the Committee was adopted and signed. The notes sent by certain members are contained in Appendix to this report, while a summary of our main recommendations will be found in Appendix D.

CHAPTER II.—REVIEW OF THE PRESS LAWS OF INDIA

4. The first term of reference to our Committee requires an examination of and report on the Press Laws of the principal countries of the world, including India. In this Chapter, it is proposed to give a historical review of the Press Laws of India and the reasons which led to their promulgation.

The Press of India has been fortunate in having associated with it a distinguished line of public men including Raja Ram Mohun Roy, Tilak, Pheroze Shah Mehta, Surendra Nath Banerjee, Mahatma Gandhi and Pandit Jawaharlal Nehru. The history of the Indian press shows that the conflict of the Press with authority is almost as old as the Press itself, and that the development of the Press in India has been closely connected with the expansion of British Rule in India, the spread of education and the growth of responsible Government. It is proposed in this chapter to give a historical outline of the development of the Press in India in order to show the background of the various Press Laws which are on the statute book today.

5. Although history records that, during the rule of the Moghal Emperors, there were official correspondents appointed to send reports on public and secret matters, and that newspapers and news-books were in circulation during the reign of Aurangzeb, the first newspaper to be established in India was the weekly English newspaper entitled 'The Bengal Gazette' or 'Calcutta General Advertiser', which appeared on 29th January 1780. This paper soon came in conflict with the then Governor General, Warren Hastings, who promulgated an order in November 1780, withdrawing permission to the newspaper to be circulated through the Post Office on the ground that the newspaper contained improper paragraphs tending to vilify private character and to disturb the peace of the English settlement in Calcutta. The establishment of certain other papers followed in Bengal, while the first newspaper to be founded in Madras was "The Madras Courier" which appeared in October 1785. During the next decade, the Madras Press was constantly in trouble with authority, and, in 1795, censorship was imposed on "The Madras Gazette", whose editor was prohibited from publishing copies of Government orders until they had been submitted for inspection to the Military Secretary. About the same time, free postage facilities were withdrawn from the newspapers in Madras. The early newspapers were in the English language and, being British-owned, devoted scant attention to the land in which they were published, because they were meant to serve the limited purpose of comment on the British administration of the day by those who were outside the privileged circle of the East India Company's higher officers. During this early period, there were no regular Press laws, and the ultimate sanction behind Government orders was the Government's power of expulsion of the editor from India, which power had been upheld by the Supreme Court of Judicature. Every foreigner was required to obtain a licence for his residence in the territories of the Company and, if any one incurred the displeasure of the Company's officials by writing or publishing anything which was not acceptable or palatable to them, his licence was cancelled, and he was asked to quit the country. The official records of the last decade of the 18th Century show that, on several occasions, the Government took exception to newspaper disclosure; and there is available the instance of the Editor of "The Bengal Hurkara" writing in 1798 to the Postal authorities that he would be under the necessity of exposing the extraordinary conduct of the people employed under that Department. In 1799, Lord Wellesley issued Regulations for the control of newspapers published in Calcutta providing that every newspaper should bear the name of the printer, that the name and address of the editor and proprietor should be communicated to Government and that no newspaper should be published unless it had been inspected by the Government censor appointed for the purpose.

The penalty for a breach of the regulation was immediate embarkation for Europe. The censor was instructed to prevent publication of matter relating to the following subjects:

"Public credit and revenues or the finances of the East India Company, Military operations and intelligence, conduct of Government officers, private scandal or libel on individuals, probability of war or peace between the East India Company and any of the Indian Powers, information useful to the enemy, and observations likely to excite alarm or commotion." These measures were justified on the ground that, as long as the necessity existed for the maintenance of absolute power, it was far better both for the State and individuals that it should be exercised to prevent and to punish offences. The East India Company was not concerned with the rights of free subjects and reserved to itself all the functions of the judiciary and the executive.

6. In 1811, the Government promulgated a new rule requiring the name of the printer to be uniformly affixed to all publications. This was the result of the anonymous publication, by certain missionaries, in their proselytisting zeal, of statements casting aspersions on the religious beliefs of Hindus and Muslims. Earlier in Madras, the Madras Government had passed an order that no paper should be printed without the previous sanction of the Government. The Governor of Madras justified this in the following words:—

"It is necessary in my opinion for the public safety that the Press in India should be kept under the most rigid control. It matters not from what pen the dangerous matter may issue. The higher the authority the greater the mischief. We cannot prevent the judges of the Supreme Court from uttering in open court opinions, however mischievous, but it is in our power, and it is our duty, to prohibit them from being circulated through the country by means of the Press."

7. The pioneer among Indian-owned newspapers was "The Bengal-Gazette" published in 1816 in Calcutta to give expression to Indian opinion which was becoming vocal. Lord Hastings, the Governor-General, was sympathetic and believed in utility of the Press. Other periodicals in the Bengali language were founded during the period 1816—1820. With the establishment of an Indian-owned Press, it was felt that the power of expulsion from India would not be of avail, and it was accordingly decided by Lord Hastings in 1818 to abolish censorship and to substitute in its place certain general rules for the guidance of the Editors. The object was to encourage the Press to develop a sense of responsibility, and not to force it into an attitude of relentless hostility to the administration. While the submission of newspapers to the Government censor prior to publication was dispensed with, the Editors were required to send to the Government one copy of every newspaper or periodical published by them, and were also prohibited from publishing matter relating to the conduct of higher officials, the proceedings of the court and Directors or other authorities in England, matter having a tendency to create alarm or suspicion among the native population or to interfere with their religious feelings or observations calculated to affect British power or reputation in India, and private scandal and personal remarks on individuals tending to excite dissension in society. The new regulations were hailed with almost unqualified enthusiasm in India, but the Court of Directors disapproved them in the strongest terms and instructed the Governor General to revert to the practice which had prevailed prior to 1818. In 1822, there was difference of opinion between the Governor-General, Lord Hastings, and his Council over the deportation of the Editor of a newspaper for giving publicity to an anonymous letter of a Military officer against his commanding officer. The Governor-General took the attitude of a constitutional and responsible ruler (answerable for his actions to Parliament and the British Public), whereas his colleagues on the Council approached the problem of the freedom of Press from the stand-

point of autocratic (but in their view benevolent) despots. It was about this time that Raja Ram Mohan Roy established a weekly organ of Hindu political and social information in which he published theological discussion refuting statements made by missionaries concerning Christianity and Hinduism.

8. The Press Regulations made by Lord Hastings did not have the force of law and, in 1823, statutory regulations known as Adam's Regulations were promulgated in Bengal, to be followed by similar regulations in Bombay. It was provided that no person shall print or publish any newspaper or periodical pamphlet or book in any language purporting to publish public news or comments on public news without a licence from the Government and that every such person shall declare the real names and addresses of the printers and publishers of such newspaper, etc., and that all changes in the above particulars shall be reported to the Government; and that every licence issued may be cancelled at any time by the Government. The penalty for a breach of the regulation was fine upto Rs. 400, but pamphlets of advertisements, catalogues, etc., were exempted from the regulation. The Government decided to allow any one who was opposed to the system of licensing the right to appeal to the Supreme Court. Raja Ram Mohan Roy and his colleagues utilised this right and appealed to the Supreme Court against the licensing system mainly on the ground that it would put a complete stop to the diffusion of knowledge and the consequent mental improvement. The appeal of Raja Ram Mohan Roy to the Supreme Court was not successful, and the second appeal to the Privy Council was also rejected. In Bombay Province, similar regulations were promulgated by Elphinstone, the Governor of Bombay, who maintained that "if all Presses be free, we shall be in a predicament such as no State has yet experienced. In other countries the use of the Press has greatly extended along with the improvement of the Government and the intelligence of the people; but we shall have to contend at once with the most refined theories of Europe and with the prejudice and fanaticism of Asia, both rendered doubly formidable by the imperfect education of those to whom every appeal will be addressed. Is it possible that a foreign government avowedly maintained by the sword, can long keep its ground in such circumstances." Sir John Malcolm was of the opinion that England and India could not be compared, and that the freedom of the Press in the latter country was inconsistent with the absolute power which the British wielded.

9. Lord Amherst, Governor-General, to whom certain objectionable passages from newspapers were submitted for orders in 1825, recorded the view that it would be very undesirable for the Government frequently to interpose its authority in matters relating to the periodical Press, or that casual and unimportant violations of the Rules and orders furnished to the Editors of Newspapers should be officially noticed. In 1826, the East Indian Company issued instructions that their servants were to cease their connections with newspapers. This decision was the result of an incident in Bombay, where a member of the Council of the Governor of Bombay was the owner of a newspaper.

10. With the growth of the Press and the awakening of public opinion, the question of the control of the Press again came to the fore in 1830. The immediate issue related to the reduction of the allowances given to the Army officers and the proposal to prohibit newspapers from commenting on the orders of Government reducing the allowances. The following extracts from the Minute recorded by Sir Charles Metcalfe, Member of the Governor-General's Council are of interest even at the present time as being noteworthy for their broad commonsense.

"I think on the present occasion that it will be infinitely better to allow anything to be said that can be said, than to furnish a new source of discontent, by crushing the expression of public opinion. I have, for my own part, always advocated the liberty of the Press, believing its benefits to outweigh its mischiefs; and I continue to the same opinion. Admitting that the liberty of the

Press, like other liberties of the subject, may be suspended when the safety of the State requires such a sacrifice, I cannot, as a consequence, acknowledge that the present instance ought to be made an exception to the usual practice of the Government; for if there were danger to the State, either way, there would be more, I should think, in suppressing the publication of opinion, than in keeping the valve open, by which bad humours might evaporate. To prevent men from thinking and feeling is impossible; and I believe it to be wiser to let them give vent to their temporary anger in anonymous letters in the newspapers, the writers of which letters remain unknown, than to make that anger permanent by forcing them to smother it within their own breasts, ever ready to burst out. It is no more necessary to take notice of such letters now than it was before."

11. In 1835, Metcalfe, acting as Governor-General, asked Macaulay to draft an Act on the subject of the Press for application to the whole of India. The views of Macaulay, who was the Legislative Member of the Supreme Council, are contained in the following minute:—

"The question before us is not whether the Press shall be free but whether being free it shall be called free. It is surely more madness in a Government to make itself unpopular for nothing; to be indulgent and yet to disguise its indulgence under such outward forms as bring on it the reproach of tyranny. Yet this is now our policy. We are exposed to all the dangers—dangers, I conceive, greatly overrated—of a free press; and at the same time we contrive to incur all the opprobrium of a censorship. It is universally allowed that the licensing system, as at present administered, does not keep any man who can buy a press from publishing the bitterest and most sarcastic reflections on any public measure or any public functionary. It is acknowledged that, in reality, liberty is and ought to be the general rule, and restraint the rare and temporary exception." In his Minute, the Governor General made the following comment:—

"The reasons which induced me to propose to the Council the abolition of the existing restrictions on the Press in India accord entirely with the sentiments expressed by Mr. Macaulay. These reasons were as follows:—

First, that the press ought to be free, if consistently with the safety of the State it can be. In my opinion it may be so. I do not apprehend danger to the state from a free press; but, if danger to the state should arise, the Legislative Council has the power to apply a remedy. Second, that the press is already practically free, and that the Government has no intention to enforce the existing restrictions, while we have all the odium of those restrictions, as if the press were shackled. It is no argument in favour of the continuance of these unpopular restrictions that they may at any time be enforced, for if restrictions should be necessary to ward off danger from the state, they may be imposed and enforced instantly. Third, that the existing restrictions leave room for the exercise of caprice on the part of the Government in India." On the suggested addition of a clause to the proposed law declaring that the Government will retain the power of instantly suppressing any publication Metcalfe noted as follows:—

"The power of providing for the safety of the state is inherent in the Legislature and the Government of every country. It is not probable that the safety of the state would be endangered so suddenly by any operations as not to afford time to the Legislative Council to apply a remedy; but if such an extreme case of sudden and imminent danger can be conceived, what Government would hesitate to protect itself until the Legislature of India could provide for the case." With regard to the suggestion for distinction between the Indian and non-Indian Press, his view was that "in all our legislation, we ought to be very careful not to make invidious distinctions between European and native subjects. As the proposed law now stands, it will be an act of grace, confidence and conciliation towards all; and may be expected to produce the effect which such acts are calculated to produce."

Referring to the opinion of those, who opposed his policy, Metcalfe said--

"If their argument be that the spread of knowledge may eventually be fatal to our rule in 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 be preserved as a part of the British Empire only by keeping its inhabitants in a state of ignorance, our domination would be a curse to the country and ought to cease. But I see more ground for just apprehension in ignorance itself. I look to the increase of knowledge with a hope that it may strengthen our empire; that it may remove prejudices, soften asperities, and substitute a rational conviction of the benefits of our Government; that it may unite the people and their rulers in sympathy, and that the differences that separate them may be gradually lessened, and ultimately annihilated. Whatever, however, be the will of Almighty Providence respecting the future Government of India, it is clearly our duty, as long as the charge be confided to our hands, to execute the trust to the best of our ability for the good of the people."

12. In 1835, Metcalfe's Act for the liberation of the Indian Press (No. XI of 1835) was passed in supersession of the then existing Press Regulations in Bengal and Bombay. The provisions of Metcalfe's Act were incorporated in 1867 in Part II of the Press and Registration of Books Act (XXV of 1867), which repealed Metcalfe's Act, and which is still in force. It is not, therefore, necessary to quote the provisions of Metcalfe's Act. However, Metcalfe's views on the freedom of the Press are as apposite today as they were over a hundred years ago and have, therefore, been stated somewhat fully. As a token of their admiration of Metcalfe's liberal attitude, the Calcutta public erected a public library on the banks of the Hooghly known as Matcalfe Hall. However, the Court of Directors not only condemned Metcalfe's action, but insinuated that he was prompted by an unwise desire for temporary praise. Metcalfe had also to pay dearly for his convictions, in that he was superseded, for promotion in his official career.

13. The emancipation of the Press, the spread of knowledge of English and rapid commercial expansion led to a great increase in the newspaper reading public at this time. Lord Auckland, who became Governor General in 1835, was in agreement with Metcalfe's policy, and succeeded in persuading the East India Company to withdraw their prohibition against their servants being connected with the Press. A number of the Company's senior officers were regular contributors to newspapers, and the orders issued in 1825 had become a dead letter. The prohibition against the connection of Government servants with public newspapers was revoked in 1841 subject to the restraints laid upon Military Officers by the rules of their service.

14. The cleavage between the Indian owned and British owned newspapers became marked in 1857, the year of the Indian Mutiny, when the Anglo-Indian Press teemed with statements of a highly provocative nature, and inflammatory incitements to revenge appeared in both the editorials and the correspondence columns. Writing on the subject of Anglo-Indian newspapers some six years later, Sir George Trevelyan said:—

"The tone of the press was horrible. Never did the cry for blood swell so loud as among these Christians and Englishmen in the middle of the nineteenth century."

The Indian Press on the other hand could not remain aloof from the violent passions which had been let loose. News-sheets, containing incitements to rebellion were widely circulated. The question of gagging the Press again came to the fore, and the old argument that a free press and the dominion of

strangers are things incompatible, gained ground. An Act was passed in 1857, to remain operative for one year, for regulating the establishment of printing presses and the circulation of printed books and newspapers. It was laid down that no person should keep a printing Press without previous sanction and without a licence from the Government; that all books and papers printed at a licensed press should have printed on them the name of the printer and of the publisher and the place of printing and publication and that a copy of every such book or paper should be forwarded to the Magistrate. Power was taken to prohibit the publication or circulation of any book or newspaper. Apart from the penalty of fine and imprisonment, the Act also provided for forfeiture of books and printing Presses. The executive instructions issued for the grant of licences to keep printing presses provided that no newspapers should contain any observation or statement impugning the motives or designs of the British Government in England or in India or in any way tending to bring the said Government into hatred and contempt, to excite disaffection or unlawful resistance to its orders, or to weaken its lawful authority or the lawful authority of its civil or military servants or any observation having a tendency to weaken the friendship towards the British Government of Indian princes, chiefs, or states in dependence upon or alliance with it. This act revived in effect the licensing provisions of the Regulation of 1823, and the Registration procedure of Metcalfe's Act was also retained.

15. After the assumption of the Government of India by the Crown in 1858 and Queen Victoria's proclamation, an important constitutional advance took place in 1861 in the passage of Indian Councils Act according to the provisions of which Indians were to be associated for the first time with the Government for legislative purposes. Public opinion was stirred by the reforms, and numerous newspapers were founded in the following two decades. Many of them exist today, and among them may be mentioned "The Times of India", "The Pioneer," "The Madras Mail", "The Amrita Bazar Patrika", "The Statesman", "The Civil and Military Gazette" and "The Hindu". The next event in the history of Press Laws was the enactment of the Press and Registration of Books Act (No. XXV of 1867) for the regulation of printing presses and newspapers, for the preservation of copies of books and for the registration of books. This Act, as amended by the Amendment Acts of 1890, 1914 and 1922, is still in force. The object of this Act is to provide for the regulation of printing presses and of periodicals containing news, for the preservation of copies of books and for the registration of books. Part I of the Act contains the interpretation clause in section 1; Part II (Sections 3 to 8A) contains rules for the making of declarations by keepers of presses and publishers of newspapers; Part III (Sec. 9 to 11A) contains rules regulating the delivery of books, Part IV (Sec. 12 to 17) relates to penalties; Part V (Sec. 18 to 19) relates to Registration of books and Part VI (Sec. 20 to 22) gives power to Government to make rules and to exempt books or newspapers from the provisions of the Act.

16. With the increase in the number and influence of newspapers, the criticism of the administration naturally grew, and some at least of it was considered to be irresponsible. Among the steps contemplated to meet the situation were the possibility of the establishment of an official newspaper and amendment of the Indian Penal Code to cover seditious writing and speeches. The difficulty of Government, arising from the Wahabi conspiracy of 1869-70, led the administration to pass legislation, namely, the Indian Penal Code (Amendment) Act 1870 (XXVII of 1870), for incorporating in the Code a section on sedition, namely 124-A. This section dealt with a person who "excites or attempts to excite feelings of disaffection to the Government established by law in British India."

17. The extent to which officers other than Army Officers in the service of Government were permitted to connect themselves with the Press was reagitated

in 1875, when Government passed orders that no officer in the service of Government should be permitted without previous sanction to become proprietor of any periodical or to edit or manage any periodical. Officers were not prohibited from contributing to the Press, but were directed, in view of their position, to confine themselves within the limits of temperate and reasonable discussion. They were prohibited from making public without previous sanction any documents or information of which they might become possessed in their official capacity. It was provided that, in cases of doubt, Government should decide whether any engagement of officers with the Press were consistent with the discharge of their duties to the Government.

18. In 1876, proposals were again made for a new law to deal with the growing criticism of Government in the press. In a Minute, the Legislative Member of Council stated:

"Neither knowledge nor freedom of speech can be acquired without some unpleasant excesses. We have chosen the generous, I think, the wise, policy of encouraging both, and we ought not to be frightened because some of the symptoms appear. People who increase their knowledge are sure to be discontented unless their power increases too, and will probably be impatient to acquire that power; and people who have newly acquired freedom of speech are likely at times to use their tongues without discretion. All that we must take as the drawback necessarily attendant on the benefit of having a more intelligent and less reticent people in India."

19. The Vernacular Press Act, which became law in March 1878, gave power to Government to call upon the printer and publisher of any paper in an Indian language not to publish anything likely to excite feelings of disaffection against the Government or antipathy between persons of different races, castes and religions among His Majesty's subjects. Speaking in the Legislative Council, the Viceroy regretted the necessity which, by some irony of fate, had imposed on him the duty of undertaking legislation for the purpose of putting restrictions on the Press. The object of the legislation was to prevent seditious appeal to the people and the Government hoped that the gradual spread of education and enlightenment in India might ensure and expedite the arrival of a time when the restrictions might with safety be removed. Contravention of the provisions of the Act was punishable not only with forfeiture of the bond but also with seizure of the Press. It will be seen that this Act was a precursor of the Indian Press (Emergency Powers) Act, 1931, which is in force today. For those, who wished to avoid the risk of being penalised, a system of censorship was introduced by the Government. Curiously, the British Government objected to the provision which allowed the editor to avoid the necessity of depositing a security by submitting to a censorship on the ground that, having regard to the wide variety of languages in India, the censor would have to be natives of the country, and that they would, in point of fact, have to write the newspapers. Accordingly, the provisions regarding censorship were deleted, and Government appointed a Press Commissioner in order to keep the Press fully and impartially furnished with accurate current information in reference to such measures or intentions on the part of Government as were susceptible of immediate publication without injury to the interests for which the Government was responsible. The Press Commissionership was abolished by Lord Ripon in March 1881. The passing of the Vernacular Press Act was bitterly resented by the Indian Press. The Amrita Bazar Patrika, which was till then bilingual, was equal to the occasion, and the issue of the paper following the passage of the Act appeared wholly in English. The Act resulted in the institution of other Indian-owned newspapers in English. The Act was ultimately repealed by Lord Ripon towards the close of 1881. The first notable case of contempt of court in India was recorded in 1883, when Surendra Nath Banerjee was sentenced to two months' imprisonment for commenting in the columns of "The Bengalee" on proceedings in the High Court involving the exposure of a Hindu idol in public. The writer claimed the honour of being

the first Indian of the generation to suffer imprisonment in the discharge of a public duty, and the effect of the case was to give stimulus to the Press.

20. During Lord Dufferin's term of office the 'Amrita Bazar Patrika' published certain information in connection with administration of the affairs of Bhopal. The Agent to the Governor-General considered these statements to be libellous and appealed to the Government for action. The Viceroy, however, negatived the proposal on the ground that legal proceedings would draw greater publicity to the matter under dispute. In 1889, the same newspaper published what purported to be a confidential Foreign Office document concerning Kashmir. This led to the passing, in October 1889, of an Act, called the Indian Official Secrets Act, to prevent the disclosure of official documents and information.

21. The year 1896 was a year of famine in Bombay, and, to add to the distress of the people, it was followed by an outbreak of bubonic plague. A Military officer and a civilian were murdered in connection with Plague Precautionary Measures at Poona, and Mr. Tilak, Editor of "Kesari", was tried for sedition and imprisoned for 18 months. The Government was seriously alarmed at the outbreak of violence and ascribed it largely to the suggestive propaganda in the Press. It was accordingly proposed to amend the Indian Penal Code in order to enable the Government to deal legally with the situation. The Law Member said :—

"We do not want a press in leading strings that can be made to dance to any tune that its censors may think fit to call. We want simply a free Press that will not transgress the law of the land. We are aiming at sedition and offences akin to it, and not at the Press."

The result was the substitution of the present sedition section in the I.P.C. (section 124-A) by the Amendment Act of 1898 for the original section which was inserted by the Amendment Act of 1870. The new provision did not alter the law of sedition, but restated it in plainer language. By the Amendment Act of 1898, a new section 153-A was also added to the Indian Penal Code and the original section 505 of the Indian Penal Code was amended to its present form. The former section deals with "promoting enmity between classes" and the latter with "statements conducive to public mischief".

22. The main factors which influenced the Press during the last decades of the nineteenth Century were the establishment of the Indian National Congress in 1885, the Indian Councils Act, 1892 and the interest in technical matters which had come from the West. The turn of the century saw a critical state of affairs. The intelligentsia was clamouring for rapid political advance and, in the absence of what was considered an adequate response from the authorities, much of the agitation had been driven underground, and terrorist movement grew in force. The Government's policy was devised to meet what were in their view reasonable demands and yet to yield nothing to the forces of extremism.

23. In December 1903, the Government sought to amend the Indian Official Secrets Act of 1889 with the object of placing civil matters on a level with naval and military matters. The Act applied to "whoever without lawful authority or permission (the proof whereof shall be upon him) goes to a Government Office and commits an offence under the Act." All offences under the Act were cognisable and non-bailable. Naturally, the proposal met with bitter opposition from the Press. Mr. Gokhale, opposing the measure, declared "In England, the Government dare not touch the liberty of the Press, no matter how annoying its disclosures may be, and has to reconcile itself to the matter, regarding them as only so much journalistic enterprise. In India, the unlimited power which the Government possesses inclines it constantly to repressive legislation. This single measure suffices to illustrate the enormous difference between the spirit in which the administration is carried on in England."

The Anglo-Indian Press was at one with the Indian Press in its opposition to this measure but the cleavage between the two sections of the Press became more marked than ever before during the Swadeshi movement of 1905 to 1908. The split in the Indian National Congress at Surat in December 1907 led to the parting of the ways between the liberals and the nationalists, and the Indian Press had to take its stand for one party or the other. Certain sections of the Anglo-Indian Press could hardly disguise their satisfaction at the trend of the events. In Bengal, part of the Press had adopted a style of writing which led the Government to fear the development of what they considered country-wide seditious movement. Anarchical ideas were undoubtedly gaining ground largely as the result of discontent over the Partition of Bengal. The Government felt that several newspapers were exceeding the bounds of criticism and, since they thought that the ordinary law could not be applied in these instances, they decided that fresh legislation should be introduced to meet what the Government of Bengal considered to be a threatening situation. This legislation was embodied in the Press Act of 1910, which empowered the Government to demand security from any newspaper. A similar provision existed in the Vernacular Press Act (IX of 1878) and exists in the Indian Press (Emergency Powers) Act, 1931, which is in force today. The criticism of the provision for demanding security could be summed up as follows in the words of Mr. T. V. Sheshagiri Ayyar:—

The first obnoxious feature was that it substituted the discretion of the Executive for the rights of publicity, audience and appeal. Secondly, it specifically violated the first principle of jurisprudence by directing the accused to prove that he was innocent. Thirdly, though an appeal was provided for, it had been pointed out in both the Calcutta and the Madras High Courts that the High Court had no power to question the discretion of the Executive. Furthermore, the provision had the effect of humiliating the intelligentsia, since journalists were asked to furnish security, at the discretion of the Executive, before they could publish a newspaper. This humiliation no intelligent man would like to be subjected to, and consequently the Act had been the cause of considerable disaffection in the country.

24. In March 1921, the Government decided to appoint Committees composed of Members of the Central Legislature to enquire into legislation which adversely affected the liberties of the individual. One of the Committee appointed was charged with the examination of the Press and Registration of Books Act, 1867, the Indian Press Act, 1910, and the Newspaper (Incitement of Offences) Act, 1908. The Committee unanimously recommended the repeal of the last two Acts on the grounds that they were emergency measures and that the political situation had undergone great changes since 1910. Incitment to murder and violent crimes were rarely found in the contemporary Press, but the Committee was not satisfied that the cessation was due solely or even mainly to the legislation, or that in the existing conditions, the ordinary law was not adequate to deal with such offences. Most of the witnesses examined by the Committee expressed the view that the Press Act had not been applied with equal severity to English-owned and Indian-owned newspapers. In regard to the Press and Registration of Books Act, the Committee recommended that the name of the Editor should be inscribed on every issue of the newspaper and the editor should be subjected to the same liabilities as the printer and publisher as regards criminal and civil responsibility, that a person registering under the Act should be a major, that the term of imprisonment in Part IV of the Act should be reduced from two years to six months, and that provision should be made for delivery to Government of copies of newspapers printed in British India. The Committee also recommended that the provisions of the Press Act, 1910 containing powers to seize and confiscate seditious leaflets and literature should be retained and that the ancillary powers of preventing importation and postal transmission of such literature should also be retained as a necessary corollary. The requisite amendments were carried out by the

Press Law (Repeal and Amendment) Act of 1922 (XIV of 1922) to the Press and Registration of Books Act, 1867, and sections 99A to 99G, sections 181A to 181C and sections 27A to 27D were added respectively to the Code of Criminal Procedure, 1898, the Sea Customs Act, 1878, and the Post Offices Act, 1898.

25. In 1922, a meeting of the Chamber of Princes made a request for special protection to the Indian States to replace that which had been taken from them by the Repeal of the relevant provision of the Press Act 1910. The Government were of opinion that they were bound to accept this request on account of treaty obligations. The Princes Protection Bill was accordingly introduced, but the Legislative Assembly having refused leave for the introduction, the Governor-General exercised his special powers under section 67B of the Government of India Act 1919, and certified the Bill which became the Indian States (Protection against Disaffection) Act 1922. Section 3 of this Act provides punishment of imprisonment upto 5 years, for any person editing, printing or publishing any document which brings into hatred or contempt, or excites disaffection towards any Prince or chief of a State in India, or the Government or Administration established in any such State. Section 4 provides that powers of forfeiture under section 99A—99G of the Criminal Procedure Code and of postal interception under sections 27B to 27D of the Indian Post Offices Act shall be applicable to documents of the nature described in Section 3. In 1923, the Official Secrets Act, which is in force today, was passed in order to consolidate the provisions of the British Acts of 1911 and 1920 in a form suitable for application to India; and the Official Secrets Acts of 1889 and 1903 were repealed. Section 3 of this Act provides penalty for spying; section 4 provides that communications with foreign agents shall be evidence of commission of certain offences; section 5 which is the main section affecting the press deals with "Official Secrets" and relates to "Wrongful communication etc. of information." Section 7 deals with unauthorised use of uniforms, falsification of reports, forgery, personation and false documents. Section 8 relates to interference with officers of the Police or members of the armed forces. Section 8 imposes the duty on every person of giving information as to the commission of an offence under section 3. Section 10 provides penalty for harbouring spies, while sections 11 to 15 are procedural.

26. In 1930, Mahatma Gandhi launched his civil disobedience movement. The country was in a state of ferment The Government had promulgated several Ordinances to arm the authorities with powers for dealing with what they considered intimation and unlawful instigation, etc. One of these was Indian Press Ordinance 1930 to provide for the better control of the Press. In 1931, while constitutional discussions and the Second Round Table Conference were taking place in London, Government decided to deal with the situation in Bengal by introducting a new Press Bill to "provide against the publication of matter exciting to or encouraging murder or violence." The Indian Press (Emergency Powers) Act, 1931, was the result. Under the original subsection (3) of Section 1, the Act was to remain in force for one year only and Government were given power to extend this period by another year. The operation of the Act was extended from time to time, and ultimately subsection (3) of section 1 was repealed by the Criminal Law (Amendment) Act, 1935, so as to make this statute a part of the permanent law of the country. By the same Criminal Law (Amendment) Act, the words "for the better control of the Press" were substituted for the words "against the publication of matter inciting to or encouraging murder or violence". Original section 4(1) of the Act had only two clauses, (a) and (b). Clauses (c) to (i) and the explanations were added by the Criminal Law (Amendment) Act, 1932. Under the scheme of this Act, section 4(1) defines certain classes of objectionable matter. Sections 3 and 7 empower the Government to require the keeper of a Press and the publisher of a newspaper respectively to deposit security upto Rs. 1000, which

may be increased to Rs. 3000 if any previous keeper or publisher has been required to deposit security. Sections 4 and 8 empower the Government to declare the security forfeited in certain cases; in respect of the keeper of the Press, there is also power to forfeit the Press. If no order of forfeiture is passed under section 4 or 8 within a period of three months after deposit of security under section 3 or 7, it is provided, under sub-section (2) of section 3 and 7, that the security shall, on application by the keeper of the Press, or the publisher of the newspaper, be refunded. Sections 5 and 9 provide for the deposit of further security respectively by the person making fresh declaration as keeper of the Press, or publisher of the newspaper, and the amount of the further security is to be not less than Rs. 1000, and not more than Rs. 10,000. Under sections 6 and 10, power is taken to declare further security and publications forfeited. Sections 15 to 18 of the Act deal with unauthorised news-sheets and newspapers. Section 15 provides for the grant of authorisation to person to publish a news-sheet. Section 16 and 17 confer power to seize and destroy unauthorised news-sheets and newspapers and to seize and forfeit undeclared presses producing such news-sheets, etc. Section 19 contains provision enabling the Government to declare certain publications forfeited and to issue search warrants for the same. Section 20 confers powers on certain officers to detain packages containing objectionable matter, as defined in section 4, sub-section (1), of the Act, when imported into British India. Section 21 prohibits transmission by post of unauthorised news-sheets or newspapers. Section 22 confers powers on postal authorities to detain postal articles, other than a letter or parcel, which are suspected to contain objectionable matter, or which are sent in contravention of section 21. Section 23 provides for an application to the High Court by the keeper of a Press or the publisher of a newspaper who has been ordered to deposit security under section 3 or 7 respectively or by any person having an interest in the property in respect of which an order of forfeiture has been made under sections 4, 6, 8, 10 or 19. The High Court has to decide if the document in respect of which the order was made did or did not contain matter of the nature described in section 4(1). The hearing of every such application is to be by Special Bench under section 24, and provision is made under section 25 for the Special Bench to set aside the order.

27. Another legislation affecting the press which replaced an ordinance promulgated in 1931, is the Foreign Relations Act, 1932, the object of which is to provide against the publication of statements likely to prejudice the maintenance of friendly relations between His Majesty's Government and the Governments of certain foreign states. Section 2 of the Act applies the provisions relating to defamation in Chapter XXI of the Indian Penal Code to defamation of a Ruler of a State outside but adjoining India or the consort or son or Principal Minister of such Ruler. The powers of forfeiture under sections 99A-99G of the Criminal Procedure Code and of postal interception under sections 27-B to 27-D of the Indian Post Office Act have been extended by Section 3 of the Foreign Relations Act to documents, etc., containing matter which is defamatory of such Ruler, Consort, Son or Minister.

28. In 1934, the Indian States (Protection) Act (XI of 1934) was passed to protect the Administrations of States in India which are under the suzerainty of His Majesty from activities which tend to subvert or excite disaffection towards, or to obstruct such Administration . By section 2, a conspiracy to overawe the administration of a State in India is made punishable, while by section 3 the provisions of the Press Emergency Powers Act, 1931, are extended to cover matter which tends directly or indirectly to bring into hatred or contempt or to incite disaffection towards the administration of a State. By section 4 of the Act, power is given to Magistrates to prohibit assemblies which intend to proceed into the territory of a State. Under section 5, the District Magistrate has power to direct, in case of emergency, any person to abstain from a certain act if it is considered that such direction is likely to prevent, or tends to prevent obstruction to the administration of a state in India or danger

to human life or safety or a disturbance of public tranquillity or a riot or an affray within a state. In short, the power conferred by section 144 of the Criminal Procedure Code has been extended to matters relating to Indian States by Section 5.

29. The Government of India Act was passed in 1935 and, in 1937, autonomous popular Governments came into power in eight out of the eleven provinces of India, and some of the Provincial Governments were faced with the problem of communal writings in the Press. Until their resignations in October 1939, Congress Governments were able to function without the use of special measures in dealing with communal and labour unrest. On its part, the Press realised its responsibility in relation to the democratic Governments. Responsible Government does not merely mean the rule of popular Government but the continual subjection of that Government to popular pressure so that it may act continually in accordance with the wishes of the people. Thus, Democracy places on the press the responsibility of continual vigilance in order to see that the Government functions in the real interest of the people and in accordance with their wishes. But, if the press itself sets an ignoble aim before it, it can claim no privilege in the sacred name of the freedom of the Press. The Press can have no special rights or privilege which an ordinary citizen does not possess. The establishment of democracy imposes on the press the added duty of using its powers for the welfare of all and not for the benefit of any section of society.

30. Popular Governments returned to power in April 1946 in the Provinces in which the Congress Ministries had resigned in 1939. A popular Interim Government came into power at the Centre in September 1946. On 30th September 1946, the wide powers for control of the press which were available under the Defence of India Rules came to an end. The communal situation in several Provinces of India was grave and serious communal riots occurred in several parts of the country. It became necessary for the Central Government and for the Provincial Governments to take special powers to deal with the communal situation and with writings in the Press which tended to promote feelings of hatred between different communities. During the course of 1946-47, most of the Provincial Governments enacted ordinances to deal with disturbed conditions. These ordinances were in due course replaced by temporary emergency legislation which was passed by the Legislatures. The following is a list of some of these enactments:—

(i) The Central Press (Special Powers) Act, 1947.
(ii) The Assam Maintenance of Public Order Act, 1947.
(iii) The Bengal Special Powers Act, 1947.
(iv) The Bihar Maintenance of Public Order Act, 1947.
(v) The Bombay Public Security Measures Act, 1947.
(vi) The C. P. & Berar Public Safety Act, 1947.
(vii) The Madras Maintenance of Public Order Act, 1947.
(viii) The Punjab Public Safety Act, 1947.
(ix) The U. P. Maintenance of Public Order (Temporary) Act, 1947.
(x) The Orissa Maintenance of Public Order Ordinance, 1948.

The provisions of these emergency enactments in so far as they affect the press, relate to the following:

Imposition of Censorship; control of publications; and import, possession or conveyance of documents.

31. We have now completed the historical survey of the Press Laws of India, in course of which we have examined the following Press Laws of India:—

The Press and Registration of Books Act, 1867, in paragraph 15; the Indian States (Protection against disaffection) Act, 1922, in paragraph 25; the Indian Official Secrets Act, 1923, in paragraph 25; the Indian Press (Emergency Powers) Act, 1931, in paragraph 26; the Foreign Relations Act 32 in paragraph 27; the Indian States (Protection) Act, 1934, in paragraph 28; sections 124-A, 153-A and 505 of the Indian Penal Code, 1860, in paragraph 21; sections 99-A to 99-G of the Code of Criminal Procedure, 1898, in paragraph 24; section 181A to 181C of the Sea Customs Act, 1878, in paragraph 24; sections 27A to 27D of the Post Office Act, 1898, in paragraph 24; and recent emergency legislation in paragraph 30. To complete our examination of the Press Laws enumerated in paragraph 2 of our Report, we add here remarks regarding the remaining provisions of law. Section 19 of the Sea Customs Act, 1878, gives power to the Central Government to prohibit or restrict the importation or exportation of goods into or out of India. Section 5 of the Telegraph Act, 1885, gives power to the Central Government or Provincial Government or an officer specially authorised by Government to take possession of licensed telegraphs and to order interception of telegraphic messages (which include under section 3(1) of the Act telephonic message also). Section 25 of the Indian Post Office Act, 1898, confers power on an officer of the Post Office to intercept, during transmission by post, goods which have been notified under section 19 of the Sea Customs Act or the import or export of which is otherwise prohibited. Section 26 of the Post Office Act provides power of interception of postal articles on the same lines as section 5 of the Telegraph Act.

32. With a population, according to the 1941 census, of 300 millions and a literacy percentage of about 12 on the total population, the Indian Union has, according to the latest information available, some 3,900 newspapers composed of 300 daily newspapers and 3,600 others, and the total circulation of these newspapers is over 7 millions. The prominent newspapers of the Indian Union are published in about a dozen main languages besides English. The highest circulation reached by a newspaper so far in India is between 50,000 to 100,000. The Indian Press, as we have seen in the foregoing paragraphs, has had a chequered career, and, although some may feel that it has suffered qualitatively, there can be no doubt that it has gained enormously in power and prestige. The declaration of the Independence of India on 15th August 1947 brought to an end the autocratic power with which the Press was in conflict ever since its inception. Several newspapers in India to yield profits to the proprietors who are in a position to engage editorial and other staff on reasonable terms. Under democratic Governments, and with the spread of literacy in the country the business of conducting newspapers is likely to be much less hazardous than in the past and the press in India can look forward to a bright future although problems of monopolies and cartels are bound to arise. The establishment of the All-India Newspaper Editors' Conference and associations and unions of working journalists are steps in the right direction which may lead to the evolution of a code of professional conduct and better professional organisation.

CHAPTER III.—FUNDAMENTAL RIGHTS AND PRESS LAWS OF OTHER COUNTRIES

33. The first and second terms of reference to our Committee require an examination of the laws regulating the Press in the Principal countries of the world and a review of the Press Laws of India with a view to examining if they are in accordance with the Fundamental Rights formulated by the Constituent Assembly of India. It is proposed to give in this Chapter a brief review of the Press Laws of certain Foreign countries which have become available to the Committee and to indicate certain points in connection with the modern trends in foreign countries. Towards the end of this Chapter, we propose to compare the Indian Press Laws with the Press Laws of Foreign countries and to examine how far the Press Laws of India are in accord with the Fundamental Rights formulated by the Constituent Assembly of India. Our recommendations on the various Press Laws of India will be found in Chapter V.

34. Articles 13 in Part III of the Draft Constitution of India in so far as it is relevant for our purpose contains the following provisions.

> "(1) Subject to the other provisions of this article all citizens shall, have the right—
>
> (a) to freedom of speech and expression
>
> (b) to practise any profession or to carry on any occupation, trade or business.
>
> (2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, seddition or any other matter which offends against decency or morality or undermines the authority or foundation of the State.....(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law or prevent the State from making any imposing in the interests of public order, morality or health restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing or empowering any authority to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation trade or business."

35. In U. S A., the constitutional provisions regarding the freedom of the Press are contained in article 1 of the First Amendment (1791) to the American Constitution which states "The Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the-press....."

No special Press Regulations exist in U.S.A., but provisions similar to section 26 of the Indian Post Office Act exist under which the Post-Master General has the power to deny the use of the mails to any publication which in his opinion is obscene. Use of the mails may be denied not only to a particular issue but also to future editors or issues of a publication. The definition of obscenity under the Federal law has been extended by an amendment to include matter of a character tending to incite arson, murder or assassination There are, in U.S.A., regulations in force against publications which incite to a forcible change of the constitution or to an overthrow of the social order. Not only the author but also the distributor of such publications is held responsible. Dispassionate arguments against the form of Government or recommendations of changes by lawful means are not prohibited, but the right to stir up a revolution is not recognised. With regard to reports of court proceedings, the position is that such reports must be characterised by fairmindedness, honesty, and accuracy. Reporting of trials in camera is prohibited. The Commission on freedom of the Press in its report entitled "A Free and Responsi-

ble Press" (The University of Chicago Press, 1947) recommends, as an alternative for the present remedy for libel, legislation by which the injured party might obtain retraction or a restatment of the facts by the offender or opportunity to reply. The Commission further recommends that the Government, through the media of mass communications inform the public of the facts with respect to its policies and of the purposes underlying those policies. The Commission also recommends the repeal of legislation prohibiting expressions in favour of revolutionary changes in American institutions where there is no clear and present danger that violence will result from the expressions. The president's Committee on Civil Rights, in the Report entitled "To secure these Rights" (U.S. Government Printing Office, Washington, 1947) recommends the enactment by Congress and the State Legislatures of legislation requiring all groups, which attempt to influence public opinion, to disclose the pertinent facts about themselves through systematic registration procedure

36. In England, the Press has a maximum of liberty. Although the freedom of the Press is not safeguarded by any special constitutional or legal provisions, there is no Press law as such; the Press falls under the common law which also determines the legal liabilities of the Press. The number of special Acts dealing with the Press is small. The Newspaper printers and Reading Room Repeal Act, 1869, makes it compulsory for the Printers' name to appear on the newspaper. The delivery of free copies is based on the Copyright Act of 1842 which was reenacted in 1911, and provides that one copy of every publication must be sent by the publisher to the British Museum. Five other great libraries may also claim a copy each. With regard to foreign relations, in Great Britain, words which may expose a foreign Government to contempt or hatred, or may cause disquiet in some way are not punishable, unless they contain an incitement to commit violent crimes. The Official Secrets Act, 1911, and 1920, contain provisions similar to those of the Indian Official Secrets Act, 1923, as stated in paragraph 25 above. However, under Section 6 of the Official Secrets Act, 1920, the duty is laid on every person to give on demand to a police officer or to a member of His Majesty's forces any information in his power relating to an offence or suspected offence, if so required, and, upon tender of his reasonable expenses, to attend at such reasonable time and place, as may be specified, for the purpose of furnishing such information. Failure to give information or to attend, when required, is punishable. There is no corresponding provision in the Indian Official Secrets Act, 1923. The British Post Office Act, 1908, contains provisions which authorise the postal authorities to detain postal articles containing indecent or obscene matter or packets suspected to contain contraband goods. The sensational reporting of legal news is curbed under the Law of Libel Amendment Act, 1926. With regard to sedition, the offence of sedition used, at one time, to be the subject of frequent prosecutions and was of rather wide application. During the present century, the importance of this crime has greatly decreased and prosecutions are now rare and convictions rarer still. It may be said approximately that sedition consists of conduct or works spoken or written which are intended to lead or are calculated directly to lead to civil war, insurrection or public disorder by stirring up hostility or revolt against the Government or the laws of the country or between different classes of the people. With regard to contempt of court, it is a crime to publish either verbally or in writing comments, whether defamatory or not, relating to cases pending in the court, which are calculated to prejudice the fair trial of those cases and so interfere with the course of justice. For example, to publish in a newspaper statements about the conduct or character of persons awaiting trial is a crime. There are provisions in the Customs Act which prohibit the importation of indecent or obscene matter or articles. There is not in peace-time any provision of law in the U.K. similar to section 5 of the Indian Telegraph Act.

37. In France, the Declaration of Rights of Man and Citizen (26th August 1789) recognises the following rights—

"No one should be disturbed on account of his opinions, even religious, provided their manifestation does not derange the public order established by law. The free communication of ideas and opinions is one of the most precious rights of men; every citizen can freely speak, write and print subject to responsibility for the abuse of this freedom in the cases determined by law." Under the Press Law of France, the printer bears the responsibility for an infringement of the provisions regarding the imprint; before a periodical publication makes its first appearance, a declaration containing the name of periodical, name and place of printing office, etc., is to be submitted to the public Prosecutor, and every change in any of the particular in the declaration is to be reported within 5 days. The printer and publisher is also required to deliver two copies of each book or newspaper to the competent authorities. Defamation of heads of States and diplomats and public insults to a Sovereign or a foreign Government as well as the defamation of a foreign nation are punishable with fine and imprisonment.

38. The constitutional provisions regarding freedom of the Press in certain other countries may be noticed. In Switzerland, liberty of the Press is guaranteed, but the Confederation may, by legislation, which is subject to the approval of the Federal Council, take measures necessary for the prevention of abuses. The Confederation may also prescribe penalties in order to suppress abuses of the liberty of the Press directed against the Confederation or Federal authorities. According to the Weimar Constitution of Germany, every German has the right within the limits of the General Laws to express his opinions freely by word of mouth, writing, printed matter or picture or in any other manner, Legal measures are admissible for the purpose of combating bad and obscene literature.

39. In the U.S.S.R., the citizens are guaranteed, by law, freedom of speech and freedom of the Press. Under the decree of December 1921, the permission of the authorities or the local Committee of Political Education is necessary for the establishment of private printing offices; and delivery of copies of publications free of charge is also provided. All private publishing offices which were then in existence, had to be registered.

40. The Chinese Law of Publications contains provisions requiring that the name of the publisher, the number of registration card, the date of publication and the names and addresses of the publishing concern and the printing plant shall always be printed on a newspaper or a periodical; that a publisher shall submit copies of each publication to specified authorities and libraries and revised and corrected copies of an original publication shall also be submitted. No publication shall carry any speeches or propaganda calculated to undermine the Kuomintang or violate the Three People's principles or to overthrow the national Government or damage the interest of the Chinese Republic or to disturb public order. Discussion of a court case, which is sub-judice, is prohibited. Provisions similar to those of the Indian Official Secrets Act and the Indian Sea Customs Act relating to importation of objectionable publications are also in existence.

41. In Norway, there is liberty of the Press, and no person may be punished for any writing, whatever its content may be, which he has caused to be printed or published unless he wilfully and manifestly has either himself shown, or incited others to, disobedience to the laws contempt of religion or morality or the constitutional powers, or resistance to their orders, or has advanced false and defamatory accusations against other persons. Name of the publisher or the publishing from and the place of printing are required to be printed on all publications. In the case of newspapers, the name of the editor is also required to be

printed, failing which both the editor and the publisher are liable to punishment. Copies of newspapers and periodicals are required to be submitted to the local police.

42. In Sweden, publishers of newspapers are required to notify to the Minister of Justice, the title of the newspaper and the place of printing, and, provided that the applicant has not been declared "unworthy to plead the cause of others", the Minister of Justice is entitled to issue a certificate to the effect that there is no impediment to the issue of the newspaper. Provisions exist for the printing, on every publication, of the name of the printer, the place of printing and the year of publication and also for the delivery, free of charge, of copies to specified authorities. Publications, which contain abusive, offensive or provocative pronouncement, regarding contemporary nations or states with which Sweden is in friendly relations, their sovereign Government or higher officials, etc., are liable to confiscation and are also punishable. Provision exists in the law for confiscation of imported publications which contain matter punishable under the law.

43. In Egypt, the keeper of a printing Press and the printer and publisher of every newspaper have to make a written declaration before local authorities. All changes in the declaration have to be notified in writing at least 8 days in advance, unless the change occurs in an unforeseen manner, in which case it is to be notified within 8 days after the event. The name and address of the printer and of the publisher, if the printer is not also the publisher, and the date of printing are required to be printed on all publications. The names of the owner of a newspaper and of the Chief Editor as well as those of the publisher, if any, and of the printing press have to be printed in a visible manner on the front page of each copy. There is provision for the free supply of copies of publications to authorities. Persons who sign a declaration in respect of a newspaper may be required to deposit cash or furnish a security acceptable to the authorities.

44. Having reviewed the press laws of India and of certain other countries, we now propose to state broadly the result of this review of India's press laws vis-a-vis those of foreign countries and the Fundamental rights contained in the draft constitution of India. Taking the Press and Registration of Books Act, it would appear that the practice of registration of presses and publicaions and for delivery of books obtains in most foreign countries (except in U.S.A., where the President's Committee has recommended legislation for the purpose), although the printing of the name of the editor is obligatory only in Norway and Egypt. The provisions of the Indian Official Secrets Act are similar to those of the Acts in force in U.K. and other countries. The Indian States (Protection against Disaffection) Act, 1922, and the Indian States (Protection) Act, 1934, are peculiar to India, and have no parallel. The provisions of the Indian Press (Emergency Powers) Act, 1931, for demand of security are, again, peculiar to India, and find no parallel in the Press Laws of other countries except Egypt The offences defined in sub-section (1) of section (4) of this Act and the provisions of section 20 to 22 of the Act do however correspond with the laws of foreign countries. The provisions of the Foreign Relations Act, 1932 are limited in scope, and wider provisions exist in the laws of France, Norway, and Turkey. Provisions, corresponding to section 19 of the Sea Customs Act and sections 25 and 26 of the Post Office Act and sections 124-A and 153-A and 505 I.P.C. are found in the laws of foreign countries. A provision, which has no parallel, is that of section 5 of the Indian Telegraph Act. It may be noted that the provisions of sections 181-A to 181-C of the Sea Customs Act and

sections 27-A to 27-D of the Post Offices Act relate to procedural matters, and are similar to those of sections 99-A to 99-G of the Code of Criminal Procedure. Provisions of the Provincial Emergency enactments, relating to the Press, correspond with the provisions of war time legislation in foreign countries, and have no parallel in the laws of foreign countries in peace-time.

45. We now proceed to consider broadly our second term of reference, namely, to examine how far the Press Laws of India are in accord with the Fundamental Rights formulated by the Constituent Assembly of India. In paragraph 34 above, the relevant provisions of the Draft constitution of India have been reproduced, and it will be noticed that operation of all existing laws relating to the Press is unaffected by the right to freedom of speech and expression. The Draft Constitution provides that the right of freedom of speech shall not prevent the State from making any law relating to sedition or any matter which undermines the authority or foundation of the State, and it is in the light of this provision, which would govern future enactments, that we have to examine the existing Press Laws. The Press and Registration of Books Act, providing as it does for the registration of presses and newspapers and the delivery of books, is not in our view in conflict with the Fundamental Rights. The Official Secrets Act is covered by the power given to the State to make laws relating to a matter which undermines the authority or foundation of the State. The same remark applies to section 19 of the Sea Customs Act, section 5 of the Indian Telegraph Act and section 25 of the Indian Telegraph Act and sections 25 and 26 of the Indian Post Offices Act and Emergency Legislation in Provinces. In general, it can be said that the provisions of sub-clause (2) of article 13 of the Draft Constitution are so wide that they would cover all the provisions of the existing Press Laws except perhaps the provision in the Indian Press (Emergency Powers) Act for demanding security, which may be held to conflict with the right to practise any profession or to carry on any occupation contained in sub-clause (b) of clause (1) of Article 13. We may add that, in making our recommendations in a later chapter for the repeal, retention, amendment, etc., of the specific provisions of the Press Laws of India, we have kept in view the Fundamental Rights contained in the Draft Constitution of India.

46. To conclude this chapter, the following extract is given from the report of the Drafting Committee on the Covenant on Human Rights (2nd session of the Sub-Commission on Freedom of Information and of the Press, Commission on Human Rights, United Nations Economic and Social Council). A U.N.O. Conference on freedom of information was held in Geneva during April 1948.

I. Every person shall have the right to freedom of thought and expression without interference by governmental action: this right shall include freedom to hold opinions, to seek, receive and impart information and ideas regardless of frontiers, either orally, by written or printed matter, in the form of art, or by legally operated visual or auditory devices.

II. The right to freedom of expression carries with it duties and responsibilities. Penalties liabilities or restrictions limiting this right may therefore be imposed for causes which have been clearly defined by law, but only with regard to:—

(a) Matters which must remain secret in the vital interests of the State;

(b) Expressions which incite persons to alter by violence the system of government;

(c) Expressions which directly incite persons to commit criminal acts;

(d) Expressions which are obscene; .

(e) Expressions injurious to the fair conduct of legal proceedings;

(f) Expressions which infringe rights of literary and artistic propriety;

(g) Expressions about other persons which defame their reputations or are otherwise injurious to them without benefiting the public.

Nothing in this paragraph shall prevent a State from establishing on reasonable terms a right of reply or a similar corrective remedy.

III. Previous censorship of written and printed matter, the radio and newsreel shall not exist.

IV. Measures shall be taken to promote the freedom of information through the elimination of political, economic, technical and other obstacles which are likely to hinder the free flow of information.

CHAPTER IV.—RIGHTS AND RESPONSIBILITIES OF THE PRESS

47. Before proceeding to comply with the third term of reference to our Committee and making specific recommendations, we think it would be advantageous to consider certain aspects of the principle of freedom and responsibility of the Press. In America, where the Press enjoys the greatest freedom, a Commission of twelve able and distinguished members, presided over by the Chancellor of the Chicago University, was appointed in 1943 to enquire into "the present state and future prospects of the freedom of the Press". The Commission devoted three years to their task, and their general report, entitled "A Free and Responsible Press", was published in 1947, to which we are indebted for the extracts reproduced in this chapter in paragraphs 50 to 59.

The American Declaration of Independence (4th July 1776) contains the following:—

"We hold these truths to be self-evident; that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness; that to secure these rights Governments are instituted among men deriving the just powers from the consent of the Governed; that whenever any form of Government becomes destructive of those ends it is the right of the people to alter or abolish it."

48. The following is the Preamble of the Draft Constitution of India:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and to secure to all its citizens;

Justice, social, economic and Political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and

To promote among them all fraternity assuring the dignity of the individual and the unity of the Nation;

in our Constituent Assembly this..... day of.....do hereby adopt, enact and give to ourselves this Constitution."

49. When great executive power is concentrated in the hands of the Cabinet, a lively instructed and critical public opinion is the only safeguard against the misuse of executive authority. Democracy can only survive in the atmosphere of constant controversy; it is essential to it that any Government, however strongly entrenched and however well intentioned, shall be aware that its actions are under constant scrutiny and that there hangs always over its head the sword of public criticism. Freedom of speech and of publication consists primarily, as has been very truly said by Alexander Meiklejoin, the American Philosopher, not in the liberty of the individual to speak or write what he chooses, but in the liberty of the public to hear and to read what it needs. No one can doubt that, if a Democracy is to work satisfactorily, ordinary men and women should feel that they have some share in Government. They should feel that the Government of the day is their Government, and will

respond to their wishes or explain why it can not do so. As the area of power exercised by the executive extends, so also grows the need for public control of Government policy and administration. Some continuing power of influencing Governments is necessary if Democracy is not to be ineffective between elections. The Press lives by disclosures; whatever passes into its keeping becomes a part of the knowledge and a history of our times. It is daily and for ever appealing to the enlightened force of public opinion, anticipating, if possible, the march of events, standing upon the breach between the present and the future and extending its survey to the horizon of the world. Newspapers are the mirrors of their times. They are current historians, and current history is not written only in Parliaments and Chancellories. It is written in the way of life of the great majority of the people, the kind of things they do and talk about, the kind of values they set themselves, the amusements they follow, the sort of things, even when they are silly things, that interest them.

50. The modern Press itself is a new phenomenon. Its typical unit is the great agency of mass communication. These agencies can facilitate thought and discussion. They can stifle it. They can advance the progress of civilization or they can thwart it. They can debase and vulgarize mankind. They can endanger the peace of the world. They can play the news up and down and change its signifiance, foster and feed emotions, create complacent fictions and blind spots, misuse great words, and uphold empty slogans. Their scope and power are increasing every day as new instruments become available to them.

Today society needs and is entitled to demand of its Press, first, a truthful, comprehensive and intelligent account of the day's events in a context which gives them meaning; second, a forum for the exchange of comment and criticism; third, a means of projecting the opinions and attitudes of the groups in the society to one another; fourth, a method of presenting and clarifying the goal and values of the society; and, fifth, a way of reaching every member of the society by the currents of information, thought, and feeling which the Press supplies. These standards are drawn largely from the professions and practices of the managers of the Press. All of these five ideal demands cannot be met by any one medium.

The first requirement is that the media should be accurate. They should not lie.

The second requirement means that the great agencies of mass communications should regard themselves as common carriers of public discussion. By the use of this analogy, it is not intended to suggest that the agencies of communication should be subject to the legal obligations of common carrieries, such as compulsory reception of all applicants for space, the regulation of rates, etc.

The third requirement is closely related to the two preceding. People make decisions in large part in terms of favourable or unfavourable images. Responsible performance here simply means that the images repeated and emphasized be such as are in total representative of the social group as it is. The truth about any social group, though it should not exclude its weaknesses and vices, includes also recognition of its values, its aspirations and its common humanity.

As regards the fourth requirement, the Press has a similar responsibility with regard to the values and goals of society as a whole. The mass media, whether or not they wish to do so, blur or clarify these ideals as they report the

failings and achievements of every day. There should be a realistic reporting of the events and forces that militate against the attainment of social goals as well as those which work for them. The agencies of mass communication are an educational instrument; and they must assume a responsibility like that of educators in stating and clarifying the ideals towards which the community should strive.

As regards the fifth requirement, it is obvious that the amount of current information required by the citizens in a modern society is far greater than that required in any earlier day. The need for the wide distribution of news and opinion, and making information available to every-body is increasing daily.

51. With the means of self destruction that are now at their disposal, men must live, if they are to live at all, by self restraint, moderation, and mutual understanding. They get their picture of one another through the Press. The Press can be inflammatory, sensational, and irresponsible. If it is, it and its freedom will go down in the universal catastrophe. On the other hand, the Press can do its duty by the new world that is struggling to be born. It can help to create a world community by giving men every where knowledge of the world and of one another, by promoting comprehension and appreciation of the goals of a free society that shall embrace all men.

Freedom of the Press is essential to political liberty. Where men cannot freely convey their thoughts to one another, no freedom is secure. Where freedom of expression exists, the beginnings of a free society and a means for every retention of liberty are already present. Free expression is therefore unique among liberties.

The right to freedom of expression is an expression of confidence in the ability of free men to learn the truth through the unhampered interplay of competing ideas. Where the right is generally exercised, the public benefits from the selective process of winnowing truth from falsehood, desirable ideas from evil ones. If the people are to govern themselves, their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information, and in the fair presentation of differing opinions. The right is also necessary to permit each man to find his way to the religious and political beliefs which suit his private needs.

Civilized society is a working system of ideas. It lives and changes by the consumption of ideas. Therefore, it must make sure that as many as possible of the ideas which its members have are available for its examination. It must guarantee freedom of expression, to the end that all adventitious hindrances to the flow of ideas shall be removed.

Freedom of expression is not merely a reflection of important interests of the community, but also a moral right. It is a moral right because it has an aspect of duty about it. If a man is burdened with an idea, he not only desires to express it, he ought to express it. He owes it to his conscience and the common good. The moral right of free expression achieves a legal status because the conscience of the citizen is the source of the continued vitality of the state. Freedom of expression is a necessary condition of adequate public discussion which is a necessary condition of a free society is chiefly one in which Government does expressly limit its scope of action in respect to certain human liberties, namely, those liberties which belong to the normal development of mature men. Here belong free thought, free conscience, free worship, free speech, freedom of the person, free assembly. Fredom of the Press takes its place with these.

52. But the moral right of free public expression is not unconditional. Since the claim of the right is based on the duty of a man to the common good and to his thought, the ground of the claim disappears when this duty is ignored or rejected. In the absence of accepted moral duties, there are no moral rights. Hence, when the man, who claims the moral right of free expression, is a liar, a dishonest inflamer of hatred and suspicion, his claim is unwarranted and groundless. From the moral point of view, at least, freedom of expression does not include the right to lie as a deliberate instrument of policy. The moral right does not cover the right to be deliberately or irresponsibly in error.

But a moral right can be forfeited and a legal right retained. Legal protection cannot vary with the fluctuations of inner moral direction in individual wills; it does not cease whenever a person has abandoned the moral ground of his right.

Many a lying, venal, and scoundrelly public expression must continue to find shelter under a "Freedom of the Press" built for widely different purposes, for to impair the legal right even when the moral right is gone may easily be a cure worse than the disease. Each definition of an abuse invites abuse of the definition. If the courts had to determine the inner corruptions of personal intention, honest and necessary criticism would proceed under an added peril.

53. Though the presumption is against resort to legal action to curb abuses of the Press, there are limits to legal toleration. The already recognised areas of legal correction of misused liberty of expression—libel, misbranding, obscenity, incitment to riot or violence, sedition in case of clear and present danger—have a common principle; namely, that an utterance or publication invades in a serious overt and demonstrable manner personal rights or vital social interest. As new categories of abuse come within this definition, the extension of sanctions is justified. The burden of proof will rest on those who would extend these categories, but the presumption is not intended to render society supine before possible new developmnts of misuse of the immense powers of the contemporary Press.

Freedom of the Pres means freedom from and freedom for. The Press must be free from the menace of external compulsions from whatever source. The Press must be free for the development of its own conceptions of service and achievement. It must be free for making its contribution to the maintenance and development of a free society.

54. This implies that the Press must also be accountable. It must be accountable to society for meeting the public need and for maintaining the rights of citizens and the almost forgotten rights of speakers who have no press. It must know that its faults and errors have ceased to be private vagaries and have become public dangers. The voice of the Press, so far as by a drift toward monopoly it tends to become exclusive in its wisdom and observation, deprives other voices of a hearing and the public of their contribution. Freedom of the Press for the coming period can only continue as an accountable freedom. Its moral right will be conditioned on its acceptance of this accountability. Its legal right will stand unaltered as its moral duty is performed.

The Press itself should accept responsibility for performance in the public interest. In several other walks of life, the occupational group is organised for this purpose, and erring members are disciplined by the group itself. There

should be a code of ethics with the same sanction behind it as the ethical code of lawyers or the medical profession. Unless the courts rule that the Bar Association was wrong in a particular instance, a man found guilty by the bar of violating the ethical code of lawyers will not be permitted to continue to earn his living by practising the profession. The medical profession has almost the same control over its members.

55. The element of personal responsibility, which is of the essence of the organisation of such professions as law and medicines, is missing in the service of communications. In the mass media, except at the higher levels of writing, the identity of the individual writer's product tends to be merged in a joint result, as in newspapers, where it is divided among reporter, copy desk and make up desk. The effective organisation of writers on professional lines is therefore almost impossible.

But if professional organisation is not to be looked for, professional ideals and attitudes may still be demanded.

56. The freedom of the Press, as stated above, is a conditional right—conditional on the honest and responsibility of writer, broadcaster or publisher. A man who lies intentionally or carelessly, or abuses his right of freedom is not morally entitled to claim the protection of the Fundamental Right. The Press must recognise the obligation which attaches to it in the interests of preserving the integrity of the State and public order and morality.

The Press must be accountable to some one, either to the community or to the Government. The effective agencies for protecting free expression are the community and the Government. The community acts, by routing social conflict through the ballot box, encouraging the method of discussion by making it a preliminary to action, and, then, by such traditions of self restraint and toleration as may exist. But, in the steadiest of communities, the struggle among ideas tends to become physical as it become prolonged, as we have recently seen, much to our grief, in loss and destruction of valuable lives and property. There is an incessant downtrend of debate towards the irrelevant exchange of punishments—malicious pressures, threats and bribes, broken windows and broken heads. Government is the only agency which, through its monopoly of physical force, can measurably insure that argument in speech and Press will continue to be argument and not competitive injury. The elementary function of Government in simply maintaining public order and the rights of person and property must be noted as the cornerstone of free expression, inasumuch as the crude menaces to freedom are always from within the community. The first line of defence for Press freedom is Government, as maintaining order and personal security and as exercising in behalf of press freedom the available sanctions against sabotage, sedition, incitement to murder or violence, blackmail, corruption etc.

57. Any power capable of protecting freedom is also capable of infringing freedom. This is true both of the community and Government.

Every modern Government, liberal or otherwise, has a specific position in the field of ideas; its stability is vulnerable to critics in proportion to their ability and persuasiveness. To this rule, a government resting on popular suffrage is no exception. On the contrary, just to the extent that public opinion is a factor in the tenure and livelihood of officials and parties such a Government has its own peculiar form of temptation to manage the ideas and images entering public debate.

If, then, freedom of the Press is to achieve reality, Government must set limits upon its capacity to interfere with, regulate, control, or suppress the voice of the Press or to manipulate the data on which public judgment is formed.

58. It must be observed that freedom of the Press is not a fixed or isolated value, the same in every society and in all times. It is a function within a society and must vary with the social context. It must be different in times of general security and in times of crisis; it will be different under varying states of public emotion and belief.

What a mind does with a fact or an opinion is widely different when it is serene and when it is anxious; when it has confidence in its environment and when it is infected with suspicion or resentment; when it is gullible and when it is well furnished with the means of criticism; when it has hope and when it is in despair, as our recent sad experience of mass migration and massacre in the country shows.

Whether at any time and place the psychological conditions exist under which a free Press has social significance is always a question of fact, not of theory. The Press itself is always one of the chief agents in destroying or in building the bases of its own significance.

59. Press laws cannot be fully understood unless one knows the evils against which they are directed. Now legal remedies and preventions are not to be excluded as aids to checking the more patent abuses of the Press. Such legal measures are not in their nature subtractions from freedom but, like laws which help to clear the highways of drunken drivers, are means of increasing freedom through removing impediments to the practice and repute of the honest Press.

CHAPTER V.—RECOMMENDATIONS.

60. In this chapter, we state our conclusions on the measures of reform in the Press Laws of India, in pursuance of the third term of reference to our Committee. With regard to the examination of witnesses, it may be mentioned that of the 18 witnesses who gave evidence before our Committee, (*vide* Appendix 'C') eight represented Provincial Governments, 4 being Hon'ble Ministers (Assam, East Punjab, West Bengal, and Orissa) one a Parliamentary Secretary (Bombay) and 3 Permanent Officials (C. P. & Berar, Madras and Delhi). The remaining ten are journalists all of whom excepting two gave evidence on behalf of All India or local bodies of journalists or Provincial Press Advisory Committees. The views expressed by the witnesses, who were all subjected to an exhaustive examination, cover a wide range; at one end of the scale is the witness who desires that there should be no legal impediment even to the preaching of violence for the purpose of changing the Government or the social order, while at the other end are witnesses who propose that the law regarding the registration of presses etc. should be tightened up in certain respects. Generally speaking, the witnesses who appeared before the Committee were divided into two camps: one the official group and the other the journalistic group. The former is generally in favour of the retention of all the Press Laws especially the Indian Press (Emergency Powers) Act 1931, whereas the latter has proposed the total repeal of certain laws and important amendments of most of the remaining laws.

61. The Press and Registration of Books Act, 1867.—This Act provides for the registration of printing Presses and periodicals and for the registration and preservation of Books. In accordance with the recommendations of the Press Committee of 1921, the definition of the term "Editor" was added by the Amendment Act of 1922, and 'Editor' means "the person who controls the selection of the matter that is published in a newspaper", which in its turn is defined as any printed periodical work containing public news or comments on public news. Section 3 provides for the particulars which are to be printed on books and papers. Under Section 4, the keeper of the printing Press is required to make a declaration, while section 5 contains the rules for publication of newspapers. Section 8 provides for the making of a declaration by a person who ceases to be a printer or publisher. Section 9 provides for the delivery of copies of books gratis to Government and section 11-A for copies of newspapers. Section 11 provides for the disposal of copies of books delivered under section 9. We accept the recommendation made by the A. I. N. E. C. that the words "name of the Press" should be substituted for the words "the name of the printer" occuring in section 3 of this Act since the term "printer" does not occur elsewhere in the Act. Some witnesses have suggested that sub-section (1) of Section 5 which requires that the editor's name shall be printed on every copy of a news paper should be deleted. We have carefully considered this suggestion, but regret our inability to accept it, since we are of opinion that the Editor does play an important part in the selection of the matter that is published in a newspaper, although the modern newspaper is a composite product resulting from the joint efforts of several persons. It may be noted that this sub-section was added on the recommendations of the Press Committee of 1921, and we do not consider this provision to be unreasonable. Two non-official witnesses, themselves editors, are in favour of retention of this subsection. It is true that, in Great Britain and America, there is no similar regulation, but it may be noticed that the President's Committee on Civil Rights in U. S. A. has recommended legislation requiring newspapers to disclose pertinent facts about themselves through systematic registration procedure (*vide* paragraph 35 of this report)*. With regard to subsection (2) of section 5, we agree with the A. I. N. E. C. that the words "to be printed and published" should be substituted for the words "printed and publish-

ed". Sub-section (3) of Section 5 requires a new declaration as often as the place of printing or publication is changed. As suggested by the A. I. N. E. C., we consider that this section should be so amended as to provide that temporary changes in the place of printing or publication may merely be notified to the Magistrate within 24 hours and, if this is done, there need be no fresh declaration so long as the publisher continues to be the same. The provision in sub-section (4) of section (5) that a new declaration shall be necessary as often as the printer or the publisher leaves British India has been commented upon by several witnesses, and we agree with the view of the A. I. N. E. C. that a new declaration should be necessary only if the printer or publisher is absent from the Indian Union longer than a period of 30 days. During this period, the liability of the printer or publisher would be constructive, and it is open to any printer or publisher, who does not wish to assume even constructive liability, to make a declaration under section 8 and to arrange for the filing of a fresh declaration by his successor. We recommend that, in keeping with the new status of India, section 11 should be amended so as to delete the reference to the British Museum and the Secretary of State for India and to provide that the copies delivered under section 9 shall be disposed of in such manner as the Central Government or the Provincial Government may determine. It may be mentioned here that the number of prosecutions under sections 12 to 16-A of this Act during the period 1931 to 1947 is as follows:—

Nil in Coorg, C. P. & Berar, Madras, Assam, Bombay and Bihar;

5. in Ajmer;

7 in Orissa;

67 in Delhi;

69 in Undivided Bengal, and

76 in Undivided Punjab.

62. The A. I. N. E. C. have made four suggestions with regard to the rules for publication of newspapers. First, that a declaration, which is not followed by publication of the newspaper within three months, should become void; secondly, that in case of newspapers, which cease publication for a period of 12 months or more, the declaration should become void; thirdly, that provision should be made for compulsory cancellation of the old declaration before a new declaration is accepted; and fourthly, that power should be given to the Magistrate to refuse acceptance of a declaration of a newspaper if it bears the name of an existing newspaper anywhere in India or at least in the same language. The object of the Press and Registration of Books Act, 1867, is to provide for the registration of printing Presses and newspapers, and we are not in favour of any regimentation in regard to declarations or names of newspapers. It is true that declarations filed in certain cases are not followed by the publication of the newspaper for a considerable time. It has been brought to our notice that this expedient has been resorted to by the management of certain newspapers against the possible suppression of an existing newspaper. We would commend the first suggestion for such action as Government may think fit to take. So far as we are aware, no difficulty has arisen in practice from the fact that there is no provision for the lapsing of the declaration of a newspaper which cease publication for a period of 12 months or more or that section 8 of the Act is optional. We are not therefore in a position to recommend these suggestions for action by Government. With regard to the question of a newspaper starting publication with the name of an existing newspaper, it is well-known that newspapers, bearing the

*NOTE.—Our colleague, Mr. S. A. Brelvi, dissents from our views in this matter and endorses the suggestions made by the A.I.N.E.C. that sub-section (1) of section 5 be deleted Mr. K. Srinivasan agrees with Mr. Brelvi.

same name or similar names, are published in different parts of the country. The Registration of newspapers is on a Provincial and not necessarily on a linguistic basis, and we see considerable difficulty in asking the registering Magistrate to ensure that a newspaper, which is to be registered, does not bear the name of an existing newspaper either in India or in the same language. We would be inclined to leave this question, which does not arise frequently, to the good sense of the journalistic profession.

63. Indian States Protection Acts, 1922 and 1934.—We next come to the Indian States (Protection against Disaffection) Act, 1922, which, as stated in paragraph 25 of this Report, was made by the Governor General in exercise of his special powers. In view of our subsequent recommendation that the definition of sedition should be amended so as to extend protection to the States which accede to the Indian Union, we see no reason for the continuance on the Statute Book of special legislation for the protection of Indian States, and accordingly recommended the repeal of this Act as well as of the Indian States (Protection) Act, 1934. We recognise that, with the cessation of autocratic rule in the acceding States, the Indian Union has become in effect one political unit, and we think that such special legislation is not necessary within the unit. We would, however, add that the provisions of the law in force in the provinces of India affecting the Press might be extended so as to cover statements, writings, etc., made or published in the provinces of India, which contain attacks on the States, and that reciprocal arrangements may be made with the acceding States in the matter. It may be mentioned that the repeal of the two Acts of 1922 and 1934, relating to Indian States, has been recommended not only by the A. I. N. E. C., but also by representatives of certain Provincial Governments and by all the non-official witnesses who have appeared before us.

64. Official Secrets Act, 1923.—Most of the witnesses, who appeared before us, have conceded that an Official Secrets Act is necessary. It is a well-recognised principle that matters, which must remain secret in the vital interests of the State, should not be allowed to be disclosed, and this limitation of the right of freedom of expression has been accepted in the United Nations Conference on Freedom of Information and the Press. It has been brought to our notice by certain witnesses that the provisions of section 5 of the Indian Official Secrets Act, 1923, which is the main section affecting the press, have been used in certain instances against publication of news of a trivial or unimportant character. We are unable to accept the contentions that the application of this Act should be confined to a National emergency or war emergency, and that the scope of the definition of document, information, etc., in Section 5 should be narrowed down to documents or information likely to imperil public safety in times of emergency. We recognise that the necessity of guarding State Secrets is not confined to an emergency; nor is it practicable to define which confidential information could be published in the interest of the public and without prejudice to the interests of the State. We have no doubt that the Government must be the sole judge in this matter, and we trust that popular democratic Governments in India would utilise the provisions of this Act only in case of genuine necessity and in the larger interests of the State and the public. Statistics regarding the number of prosecutions of newspapers for offences under section 5 of the Act during the period 1931 to 1946 show that there was only one prosecution throughout India, and we see no basis for the apprehension expressed by certain witnesses regarding the misuse of this Act. In passing, we desire to bring to the notice of Government the provisions

of section 6 of the British Official Secrets Act, 1920, to which reference has been made in paragraph 36 of this report.*

65. Indian Press (Emergency Powers) Act, 1931.—The difference of opinion between the official and non-official groups of witnesses has been most marked in thir approach to the Indian Press (Emergency Powers) Act, 1931. All the Official witnesses pressed for the retention of this Act on the grounds that the Act has been effective in preventing the evils against which it is directed; that this legislation is necessary in the present conditions; that its continuance is desirable in the public interest; that democratic Governments can be trusted to utilise the provisions of this act judiciously, and that the provision for an application to the High Court furnishes the necessary safeguard. On the other hand, the non-official witnesses are emphatic in their view that this Act should be repealed, although most of them agree that the offences defined in section 4 sub-section (1) of the Act should, where necessary, be incorporated in the ordinary law. The History of this Act and an outline of its provisions are contained in pargraph 26 of this Report, while reference to the criticism of similar provisions of the Press Act of 1910 has been made in paragraph 23. From the statistics collected by us from the Provinces, regarding the number of cases of demand and forfeiture of security, it appears that, except in Delhi, Madras, Bombay, Punjab (Undivided) and Bengal (Undivided), the occasions on which security was demanded from keepers of presses and publishers of newspapers have not been numerous. In the five provinces mentioned, the number of cases of demand of security and of forfeiture respectively has been as follows during the period 1931-1946:

Delhi	...	...	...	48 and 1
Madras	...	...	...	129 and 2
Bombay	...	...	...	596 and 33
Undivided Punjab		...	...	208 and 37
Bengal	...	...	...	200 and 48

Cases of forfeiture of Presses under section 4 and 17 and of forfeiture of publications under section 6 or 10 have been extremely rare. The only provisions of the Act, which have been used extensively, are for demand of security and for forfeiture of publication under section 19. The number of applications to the High Court under section 23 of the Act has been nil in Orissa, Coorg, Assam, under ten in Delhi, C. P. and Berar, Ajmer-Merwara, Madras and Bihar and Undivided Punjab, while, in the case of Bombay and Bengal (undivided), the numbers are 27 and 19 respectively for the period from 1931 to 1946. The number of successful applications in the last two provinces is seven each. A detailed reference may be made here to the offences defined in clauses (a) to (i) of subsection (1) of section 4 of this Act. Clause (a) relates to documents which incite to or encourage the commission of the offence of murder or any cognizable relates to documents which tend directly or indirectly to seduce a police officer offence involving violence; and clause (b) to documents which express approval or admiration of any such offence or a person involved in such offence. Clause (c) or a member of the Armed Forces from his allegiance or his duty: clause (d) to the bringing into hatred or contempt of the Government or the administration of justice or any class or section of the population and exciting of disaffection towards Government; clause (e) to the causing of fear or annoyance to any person and thereby inducing him to deliver property or to compel him to do or

*NOTE.—Our colleague, Mr. S. A. Brelvi, holds the view that the application of the Official Secrets Act must be confined, as the recent Geneva Conference on Freedom of Information has recommended, only to matters which must remain Secret in the interest of national safety. Mr. K. Srinivasan agrees with Mr. Brelvi.

omit to do an Act; Clause (f) to the incitement of a person to interfere with the administration of the law or the maintenance of law and order or to commit any offence or to refuse payment of land revenue, taxes or rent of agricultural land; clause (g) to the inducing of a public servant to resign his office or to neglect his public duty; clause (h) to the promotion of feelings of enmity or hatred between different classes; and clause (i) to the prejudicing of recruitment to the Armed Forces or Police Forces or the training, discipline or administration of such forces. The two clauses, which have been used more frequently than others in their application to newspaper articles for demand of security, are clauses (d) and (h) relating to sedition and communal writings. Of the total of over 500 cases of newspaper articles for which security was demanded, it appears from the information supplied by the Provincial Governments that about 30 and about 45 per cent of the cases related to clauses (d) and (h) respectively, while the percentage of cases under sections (a) and (b) was about 10 each.

66. After careful consideration of the evidence laid before us, and the weighty opinions of the Provincial Governments, our conclusion is that this act should be repealed. In our judgement, the retention of this Act on the Statute Book would be an anachronism after the establishment of a democratic state in India. As regards its effectiveness, little use of the Act has been made in certain Provinces, although the Governments of these Provinces as well as of the Provinces, in which the Act has been used extensively, are unanimous in their view that the action taken under the Act, or the threat of such action, has invariably had a salutory effect on the Press. We note the view of the Delhi Administration that precensorship has proved to be the most effective way of dealing with bad newspapers. We also note that, in some recent instances, the demand of security from a newspaper has more than been made good by public subscriptions. The general opinion of the Provincial Governments is that, so long as the present emergency lasts, it is necessary to have this Act on the Statute Book, if not for punishment, at least for prevention of offences by newspapers. Almost all the Provincial Governments, as stated in paragraph 30 of this Report, have enacted Emergency Legislation which generally contains provisions for the control of publication, and we are of opinion that, during an emergency, the proper and most effective way of dealing with recalcitrant newspapers is to utilise the provisions of such emergency legislation in consultation with the Press Advisory Committee. We are opposed to the retention on the Statute Book of this Act as a permanent law, and have no hesitation in recommending its repeal. We, however, are of the view that certain provisions of this Act, which do not find a place in the ordinary law of the country, should be incorporated in that law in suitable places. The following, are the provisions which we recommend for such incorporation:

(i) The offences defined in clauses (a) to (i) of sub-section (1) of Section (4) may be incorporated in appropriate places in the Indian Penal Code, or other law.

(ii) The provisions of sections 15 to 18 relating to unauthorised newssheets may be incorporated in Part IV of the Press and Registration of Books Act, 1867.

(iii) The provisions of section 19 respecting forfeiture may be incorporated in section 99A of the Criminal Procedure Code.

(iv) The provisions of section 20 may be incorporated in the appropriate section of the Sea Customs Act.

(v) The provisions of Sections 21 and 22 may be incorporated similarly in the Post Offices Act.

(vi) The provisions of section 32 may be incorporated in section 1 (Interpretation Clause) of the Press and Registration of Books Act, 1867 with the modification that the Magistrate should mean in a Presidency town the Chief Presidency Magistrate and elsewhere the District Magistrate or other Magistrate authorised in this behalf by the Provincial Government.*

67. Demand of security under ordinary law.—A suggestion has been made to the Committee that the provision of demanding security from the printer, or publisher of a newspaper should be incorporated in the ordinary law as a preventive measure, in case of conviction for a second or subsequent breach of the law by the newspaper. In this connection, it may be mentioned that, under the Press Law of Italy, persons, who have been condemned twice for offences committed by means of the press, are not allowed to assume the position of "Manager" of a newspaper. The representatives of Provincial Governments have laid stress on the fact that prosecution generally involves delay and undesirable publicity which often nullify the effect of the sentence which may be imposed, and occasionally a prosecution may give an impetus to the newspaper to pursue its chosen course of propaganda. In the case of an individual, it is undoubtedly true that he is at liberty to violate the law as many times as he may choose; but it is not correct that the only remedy for a serious breach of the law by an individual, either repeatedly or deliberately, is a trial in a court of law. Chapter VIII of the Criminal Procedure Code contains provisions which can be usefully employed against individuals. It is possible in case of an individual, for the Police to obtain information of the contemplated commission of an offence and to interpose effectively in serious cases by the arrest of such individual. In case of disputes over immovable property, which are likely to lead to a breach of the peace, the provisions of section 145 of the Criminal Procedure Code can be invoked, while, in urgent cases of apprehended danger, section 144 of the Code can be applied. All these provisions of law depend for their operation on the fixing of the identity of the individual concerned. In case, however, of a newspaper, which is the composite product of the joint efforts of several persons, personal responsibility can hardly be defined or fixed. Since, however, provision for the demand of security does not exist in the laws of progressive countries, we are reluctant to recommend any such provision, and hope that the Press will realise its rights and responsibilities and that the effective organisation of journalists on professional lines and the evolution of a code of conduct will produce the desired results.

68. Power to close a Press temporarily.—Another suggestion which has been made to the Committee is that provision should be made in the law to vest courts of justice with power to order the closing down of a press for a specified period in case of repeated violation of the law by the Press. The Indian Press (Emergency Powers) Act contains provisions for the forfeiture of a Press which on the repeal of the Act would not be available. The Press Committee of 1921 was of the view that, although section 517 of the Criminal Procedure Code affords some faint authority for the enactment of a provision in the law for confiscation of the Press, it would be inequitable to insert such provision in the Law. In our opinion, the closure of a Press for a specified

*NOTE.—Mr. S. A. Brelvi, our colleague, is, however, of the view that only offences declined in clause (a) and clause (b) of sub-section (1) of section 4 may be incorporated in appropriate places in the Indian Penal Code or other law with the proviso that the words 'religious communities" should be substituted for "classes" in clause (b). He also suggests that, if necessary, the offence of "inciting persons to commit criminal acts defined by the Penal Code" may also be incorporated in the ordinary law of the land. Mr. K. Srinivasan agrees with Mr. Brelvi.

period stands on a different footing, and it would be just and equitable if courts of justice are vested with the power of ordering the closing down of a Press for a specified period in case of repeated violation of the law. Except in the few cases, where the writer of an article is known, it is difficult to fix the identity of the individual or individuals responsible for a breach of the law involved in the publication of an article in a newspaper. The legal responsibility of the printer, publisher, and editor is well understood, but punishment is likely to be vicarious, and this consideration raises doubts regarding the propriety of the imposition of a sentence of imprisonment in most cases. The effect of pernicious propaganda carried on by newspapers day in and day out is likely to be more far-reaching than that produced by speeches. In the case of an individual culprit, the object of imposition of sentences is punitive, preventive or curative. The case of a newspaper guilty of an offence is generally dealt with by the imposition of a fine, and, unless the fine is heavy, it is not likely to have any preventive or curative effect. The maximum amount of fine may not prove adequate in all cases, and, in these circumstances, we consider that the punitive remedies available for dealing with recalcitrant presses should be strengthened, and accordingly recommend that necessary provisions should be made in the law to empower courts to order the closing down of a press for a specified period in case of repeated violation of the law by the Press. *

69. The Foreign Relations Act, 1932.—The Foreign Relations Act, 1932, as stated in paragraph 27 of this Report, has very limited scope, and is not adequate to meet the situation arising from the independent status of India and the establishment of foreign diplomatic missions in India and of Indian mission abroad.

We recommend that the Act, in its present form, should be repealed, and legislation should be undertaken to make provision on a reciprocal basis to protect heads of Foreign States, Foreign Governments and their diplomatic representatives in India from defamatory attacks and to prevent the circulation of false or distorted reports likely to injure India's friendly relations with foreign States. The General Assembly of the United Nations in a plenary meeting, held on 15th November 1947, considered the question of developing friendly relations amongst member states and to that end facilitating the diffusion of information calculated to strengthen mutual understanding and ensure friendly relations between the peoples. Governments of member states were invited, by a resolution passed in the meeting, to study such measures as might with advantage be taken on the national plane to combat within the limits of constitutional procedure the diffusion of false or distorted reports likely to injure friendly relations between States. *

70. Indian Penal Code.—The present position with regard to section 124-A of the Indian Penal Code is that the decision of the Federal Court, in the case of Niharendu Datt Mazumdar (1942 F. L. J. 47), to the effect that the

*NOTE.—Our colleague, Mr. S. A. Brelvi, however, does not approve of our recommendation made in this paragraph and considers it unnecessary. Mr. K. Srinivasan agrees with Mr. Brelvi.

*NOTE.—Our colleague, Mr. S. A. Brelvi, does not wholly agree with the views expressed in this paragraph (69) and recommends that the Government of Indian Union should accede to the Draft Convention concerning the institution of an international right of correction of false and distorted reports passed by the recent Geneva Conference on Freedom of Information and that it should also consider, in consultation with representatives of the Press, the advisability of Legislation to prevent the systematic diffusion of deliberately false or distorted reports which undermine friendly relations between peoples or States. Mr. K. Srinivasan agrees with Mr. Brelvi.

effect that the acts or words complained of must either invite to disorder or must be such as to satisfy reasonable men that such is their intention or tendency, has been overruled by the Judicial Committee of the Privy Council. We understand that there is a proposal before Government for the amendment of section 124-A so as to bring it in line with the law of sedition in Great Britain to which reference has been made in paragraph 36 of this Report. We consider that the section, in its present form, with the interpretation placed on it by the Privy Council, is too wide and is incompatible with a democratic form of Government. We recommend that this section should be amended so as to give effect to the judgement of the Federal Court and to bring the Indian Law in line with the English law on this subject.* We find ourselves unable to accept the recommendation of the A. I. N. E. C. that publishers of newspapers charged under this section should be triable only by a jury. Apart from the merits and demerits of the system of trial by jury in India, we are opposed in principle to the grant of special privileges to journalists.

71. With regard to section 153-A of the I.P.C., controversy centred round the interpretation of the word "classes" occurring in the section. Most of the non-official witnesses suggested an amendment of the Section to provide that the word "classes" refers only to religious divisions and not to economic or social divisions of society. Some witnesses went so far as to say that the lot of the down-trodden peasants and workers, depressed classes and backward tribes in certain parts of the country could be bettered in reasonable time only by promoting hatred among these classes against the existing system. As stated in paragraph 35 of this Report, the American Commission on Freedom of the Press has opposed legislation prohibiting expressions in favour of revoluntionary changes in American institutions where there is no clear and present danger that violence will result from the expressions. As in the case of section 124A of the I.P.C., we consider that section 153-A should be invoked to suppress only such speeches or writings on economic or social affairs as are intended or are likely to lead to violence. We accordingly recommend that a second explanation should be added to Section 153A to the effect that it does not amount to an offence under this section to advocate a change in the social or economic order provided that such advocacy is not intended or likely to lead to disorder, or to the commission of offences.* The A.I.N.E.C. has suggested that provision should be made for summary and in camera trials of offences under this section in order to avoid the evil effects of publicity. We are not in a position to make a definite recommendation in this matter, but suggest that it may be examined by Government, since the matter is of a general nature affecting the trial of cases.

72. We do not recommend any change in section 505 of the I.P.C. which penalises statements conducive to public mischief, but may point out that our recommendation for the incorporation in the ordinary law of the offences defined in section 4 (1) of the Indian Press (Emergency Powers) Act is likely to affect this section.

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*NOTE.—Our colleague, Mr. S. A. Brelvi, holds the view that, as recommended by the Geneva Conference, only expressions which incite persons to alter by violence the system of Government or which promote disorder should be regarded as seditious and the scope of the law on sedition should be strictly confined within the limit. Mr. K. Srinivasan agrees with Mr. Brelvi.

†NOTE.—Mr. S. A. Brelvi, our colleague, however, recommends that the word "religious communities" should be substituted for "classes" in this section. Mr. K. Srinivasan agrees with Mr. Brelvi.

73. **The Criminal Procedure Code.**—Sections 99A to 99G of the Criminal Procedure Code were added by the Amendment Act of 1922 and provide for forfeiture of certain publications (99A), application to the High Court to set aside order of forfeiture (99B), hearing by special bench (99C), order of special bench (99D), evidence to prove nature or tendency of newspapers (99E), procedure in High Court (99F), and bar of jurisdiction (99G), Section 99A has been utilised in a varying measure in several provinces during the period from 1931 to 1946. No orders under this section have been issued in Delhi, C.P. and Berar, and Coorg, while Orissa, Ajmer-Merwara, Assam, Madras and Bihar record 3, 16, 17, 25 and 27 orders respectively. In the remaining provinces, the number of orders is Bombay 54, Punjab (undivided) 83 and Bengal (undivided) 125. There has been no instance of an application to the High Court under Section 99-B during this period. In our judgement, the Government, even a democratic one, must be armed with powers to forfeit documents which contain incitement to disorder or the commission of offences, and we propose no change in sections 99A to 99G. None of the witnesses appearing before us has recommended any change in these sections. We consider that the procedure contained in these sections for obtaining redress by an aggrieved party through an application to the High Court is fair and just.

74. Some of the witnesses, who appeared before us, have made a grievance of the use of section 144 of the Criminal Procedure Code for controlling or prohibiting publication of a newspaper or of specified matter in a newspaper. The main argument is that the section has been used in order to stifle criticism of the Government in power or its officers, and that the legislature never intended the use of powers under section 144 for this purpose. This section contains provisions for the issue of temporary orders in urgent cases of nuisance or apprehended danger. An order under this section is justifiable only if the direction is likely to prevent:—

(i) nuisance or injury to any person lawfully employed;

(ii) danger to human life, health or safety;

(iii) the disturbance of public tranquility or a riot or an affray.

An order under this Section may be directed to a particular individual or to the public generally when frequenting or visiting a particular place. We share the doubts expressed by witnesses regarding the propriety of the application of this section to newspapers, and feel that it was not the intention of the framers of the Code that this section should be applied to the Press. We would, therefore, recommend that instructions should be issued by Government to Magistrates that orders in respect of newspapers should not be passed under this Section. If Government consider it necessary to have powers for issue of temporary orders to newspapers in urgent cases of apprehended danger, Government may promote separate legislation or seek an amendment of section 144 for the purpose.

75. **Sea Customs Act.**—Provisions similar to those contained in sections 19 and 181A of the Sea Customs Act exist in the laws of progressive countries. In our opinion, the provision in Section 181A for an application to the High Court within two months of the rejection of the application to the Provincial Government is an improvement on the laws of certain foreign countries in this behalf. We have no change to suggest in these sections but may point out that in case of repeal of the Indian Press (Emergency Powers) Act, the provisions of section 20 of that Act may be incorporated in the Sea Customs Act. We may add that the retention of sections 19, 181A to 181C of the Sea Customs Act is favoured not only by the official witnesses, but also by some of the non-official witnesses and by the A.I.N.E.C.

76. **Indian Telegraph Act.**—Section 5 of the Indian Telegraph Act gives power to the Government or an officer specially authorised in this behalf by the Government to order interception of telegraphic messages on the occurrence of a public emergency or in the interest of the public safety. Although legislative provision for interception of postal packages exists in U.S.A. and U.K., there is no enactment in force in these countries for interception of telegraphic messages, similar to section 5 of the Indian Telegraph Act. A majority of the non-official witnesses, who have appeared before us, have pressed for the repeal of this section, and instances have been cited by some witnesses of what appeared to be clear cases of misuse of this section by District Officers. The A.I.N.E.C. recommend that messages intended for publications should be exempted from interception. In our opinion, the Government must possess powers to order interception of telegraphic messages in an emergency. In a country of the size of India, it is obvious that an emergency may be a local one affecting a district and need not necessarily be confined to international or civil war or a proclaimed state of siege. The telegraph is very widely used in India for transmission of messages meant for publication in newspapers, and we have no doubt that, while on the one hand the power of interception may have been abused by officials in a few cases, on the other hand, false or distorted or irresponsible news has been transmitted over the telegraph in several instances. We, therefore, consider that power must be reserved to the Government to order interception of telegraphic messages in the vital interests of the State or to prevent violence or breaches of the law. The prevention of the broadcasting of messages with these objects is the responsibility of the State and this responsibility could be discharged most conveniently by interception of such messages. A private citizen, who objects to defamatory or libellous expressions transmitted over the telegraph, can seek remedy in a court of law, and obtain damages. But a State cannot always afford to take action after serious damage has been done by publication, and must have the power to prevent circulation of messages with the objects mentioned above. We think that democratic Government can be trusted to utilise their powers of interception for the public good. We cannot, however, fail to take account of the instances cited to us by witnesses of the improper exercise of these powers by subordinate officers of Government. Nor are we in a position to accept the proposal of the A.I.N.E.C. that messages intended for publication should be exempt from interception, because in our view this would involve a special privilege for the Press. A newspaper has no right to claim access to or to publish news which, in the interests of the State or the Society at large, should not be published. In a vast country, like India, it is obvious that the power of interception cannot be exercised solely by the Government, i.e., responsible Ministers and must necessarily be delegated on certain occasions. Our recommendation in this behalf is, therefore, that the Central and Provincial Governments should continue to have the power of telegraphic interception for use on special occasions of the occurrence of a public emergency or in the interest of the public safety provided the orders of the Minister in charge are invariably obtained, that delegations of this power should be the exception rather than the rule, that delegations should be for a specified and short period and not general and that clear instructions should be issued by Government to the specially authorized officers in order to ensure that these powers are not abused. Sub-section (2) of section 5 makes a certificate of the Central or Provincial Government conclusive on the question about the existence of a public emergency or the needs of public safety. As a further safeguard against possible abuse of these powers by Subordinate officers, we further recommend that provision should be made in the section itself, for example, by the addition of sub-section (3) that the orders passed by specially authorised officers of Government shall be

reported to the Central or Provincial Government as the case may be in order to enable the responsible Minister to judge the proper exercise of the powers and the orders passed in individual cases.*

77. **Post Office Act.**—As noted in Chapter 3 of our report, provisions for interception of certain types of postal matter exist in the Press Laws of progressive countries, and we have no recommendation to make regarding sections 25 and 27A to 27D of the Indian Post Office Act, 1898. With regard to section 26, we would invite attention to our remarks and recommendations in the above paragraph, which are applicable to this section with greater force, since the wording of this section is somewhat wider than that of section 5 of the Indian Telegraph Act and provides for interception not only on the occurrence of public emergency but also in the interest of public safety or tranquility. The non-official witnesses who appeared before us showed greater concern over the operation of section 5 of the Indian Telegraph Act which is but natural, since newspapers depend largely on telegraphic messages for the latest news and can obviate postal delay or interception by other means. Some of the non-official witnesses also pressed for the repeal of sections 25, 26 and 27A—27D of the Indian Post Office Act, although the A.I.N.E.C. proposes no change in these sections.

78. **Emergency Legislation.**—We have mentioned in paragraph 2 of our Report some of the emergency legislation enacted in India in the recent past. These enactments generally contain provisions regarding imposition of pre-censorship, and control of newspapers including suppression of newspapers. These provisions are undoubtedly similar to those contained in the Defence of India Rules. We agree with the view of the A.I.N.E.C. that, when a state of emergency arises, the necessary restraints on part of the Press are best observed by means of conventions agreed upon after mutual consultation between the Government and the representatives of the Press. The voluntary censorship of the Press in war time was worked by inviting newspapers to submit to the press censors any reports which might contain information of value to the enemy in the prosecution of the war, in order that the newspaper could receive authoritative advice on them. Newspapers were in no way legally bound to accept or follow that advice, and it was not a legal offence in itself to disregard the censor's advice. Yet behind this voluntary system, there was a legal sanction contained in the Defence of India Rules. In our view, the emergency legislation passed in the provinces is intended for nothing more than providing a legal sanction for dealing with recalcitrant newspapers. Under a system of self-restraint, disregard of the official advice gives to the culprit an advantage over its contemporaries. We note that the emergency legislation has been passed by popular legislatures, and that the operation of such legislation is limited to a specified period generally of 12 months with provision to extend it in special cases. We also note that the Press Advisory system is working fairly satisfactorily in most of the Provinces although much depends on the personal factor in this matter. Since the executive and the legislature must be the sole judges of determining when an emergency exists, we do not feel called upon to offer comments on the emergency legislation. We would, however, recommend strongly that, in order to avoid discontent and harmful effects of prosecution or other executive action under emergency legislation on the press, the Provincial Governments should make the widest possible use of the Press Consultative machinery and should avoid taking action against any newspaper except after consultation with the local advisory Committee.

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*NOTE.—Mr. S. A. Brelvi, our colleague, does not share the views expressed by us in this paragraph (76). He endorses the suggestion made by the A.I.N.E.C. in this regard and draws attention to one of the resolutions passed by the recent United Nations Conference on Freedom of Information solemnly condemning the use in peace time of censorship which restricts or controls freedom of information and inviting Governments participating in the conference to take the necessary steps to promote its progressive abolition. Mr. K. Srinivasan agrees with Mr. Brelvi.

Journalism is a specialised profession, and it is but meet that, in the first instance, a journalist should be judged by his colleagues on the Press Advisory Committee. By passing of the consultative machinery is fraught with danger and it should be possible for Government to devise methods to avoid delay in consultation. We do not accordingly contemplate any necessity for Government to make an exception to the rule of prior consultation with the local press committee or a selected body, even in emergent cases. We trust that the emergency legislation in so far as it affects the press will not be allowed to remain on the Statute Book a day longer than is absolutely necessary and that its use will be confined to serious cases of deliberate mischief.*

79. **Contempt of Court. Parliamentary Proceedings.**—We have completed our recommendations, regarding the press laws of India, and now proceed to consider some of the other matters which have been raised by witnesses in their evidence and by the A.I.N.E.C. in its memorandum. With regard to the law of contempt, the A.I.N.E.C. has stated that the law of contempt of court has been used in this country to punish newspapers unjustly. In the absence of evidence to support this contention, we are unable to pronounce any opinion. The A.I.N.E.C. has recommended that fair and *bona-fide* reports of court proceedings should be adequately protected. So far as we are aware, this is exactly the position. With regard to the suggestion of the A.I.N.E.C. that, where contempt proceedings are initiated on the complaint of a judge, who has any personal interest in the proceedings, the trial should be by other judges, we would refer to the provisions of section 556 of the Criminal Procedure Code and state that in our opinion, no case has been made out for a change in the law as suggested by the A.I.N.E.C.*

With regard to parliamentary proceedings, it is true that, while there is freedom of speech in legislature, there is no privilege attached to the publication in newspapers of statements made on the floor of the legislature. In Great Britain, all reports of Parliamentary proceedings, whether of the whole house or of committees thereof, are prohibited, and their publication is taken as a breach of privilege. Each House waives its privilege, in this respect so long as public reports are accurate and fair. But if wilfully misleading or incorrect accounts of debates are published, then those responsible for the publication will be punished, the technical ground for proceedings against them being that, to publish the report at all, is a breach of privileges. There are, however, no written legal provisions covering this point. We are unable to recommend that newspapers should be fully protected when they publish parliamentary proceedings, since, in our view, the privilege attached to speeches in the legislature cannot be passed on automatically to newspaper reports of such speeches. In our view, this is a matter for determination by the legislature concerned, and we have no recommendation to make in this behalf, since we understand that the Parliament of the Indian Union is likely to appoint shortly a committee to examine this question.

80. **Monopolies and Cartels.**—Another subject to which reference was made by certain witnesses is the growth of monopolies and Cartels and the difficulty of ensuring that sources of news are not polluted. One of the cardinal principles of the freedom of information is that there shall be free and equal access to all sources of information. Owing, however, to the monopolies of certain agencies as well as the trustification of the Press in certain hands, it is not always possible for the public to obtain true, responsible and objective news of events. It may seem paradoxical that, in certain foreign countries, where the circulation

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*NOTE.—Mr. S. A. Brelvi, our colleague, does not agree with the views expressed in the first sub-paragraph of this paragraph (78) but strongly supports the suggestions made by us in the second sub-paragraph. Mr. K. Srinivasan agrees with Mr. Brelvi.

*NOTE.—Mr. S. A. Brelvi, however, supports the suggestion made by the A.I.N.E.C. in this regard. Mr. K. Srinivasan agrees with Mr. Brelvi.

of a single newspaper may run into several million copies a day, and where the average citizen is literate and fully conscious of his rights and duties, the problem of cartels and monopolies has become acute. In India, although there are signs of the growth of cartels and monopolies in the Press and news agencies, the problem has not become acute yet, and we would content ourselves with recommending to Government that they should watch the situation and take action for instituting an enquiry before the position becomes dangerous.

81. Retraction.—The American Commission on freedom of the Press recommends, as an alternative for the present remedy for libel, legislation by which the injured party might obtain retraction or restatement of facts by the offender or an opportunity to reply. It appears from the book entitled "The Press Laws of Foreign Countries" (H. M. Stationery Office, London, 1926) that the Press Laws of Austria and Germany contain provision to the effect that the editor of a periodical shall be bound on demand to publish without charge a correction of any statement made in the periodical. Considering the numerous occasions on which untrue or distorted or exaggerated reports are published unintentionally, or may be deliberately, in newspapers and the small number of contradictions or corrections that are published, we are of the view that the general extension of the procedure of retraction or restatement or an opportunity to reply to all cases is not practicable. Newspapers generally align themselves with political parties, and there are also other circumstances that influence the conduct of a newspaper *e.g.*, the interests of the proprietor or of advertisers. A fair and responsible newspaper would undoubtedly welcome and publish contradictions or corrections. The laws of Austria provide that publication of a correction may be refused, *inter alia*, if the correction is received more than two months after the publication of a statement to be corrected. The excuse of non-receipt of a correction may provide a loophole for evasion and even if a correction is published in the same part of the newspaper and in the same print as the statement corrected, it is possible for a biased or irresponsible newspaper to nullify its effect by delaying publication or by a further dose of comment or propaganda. The capacity and the potentiality of a newspaper, which is so inclined for mischief can hardly be curbed by statutory regulations regarding retraction, and we think that the suggestion to give to the injured party, by legislation, the right of retraction or restatement of the facts or an opportunity to reply may be of some utility in cases of libel or slander—particularly in mitigation of damages, or in petty cases or as an alternative to a civil suit which would involve undesirable publicity. We do not consider that the proposal can be usefully extended to all types of misstatements etc.

82. A summary of our main recommendations will be found in Appendix 'D'.

In conclusion, we wish to place on record our deep sense of appreciation of the assistance rendered to us by our Secretary, Mr. G. V. Bedekar, (who has worked as Secretary in addition to his other duties), and the untiring zeal and industry with which the secretarial staff have discharged their duties.

GANGA NATH.
MOHAN LAL SAKSENA (*)
TUSHAR KANTI GHOSH (*)
DIWAN CHAMAN LALL (*)
MOHD. ISMAIL KHAN.
SRI NARAYAN MAHTHA.
S. A. BRELVI (†)
KASTURI SRINIVASAN (†)

G. V. BEDEKAR.
22*nd May*, 1948.

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*These members have sent separate notes, *vide* Appendix E.
†Subject to footnotes under paragraphs 61, 64, 66, 68, 69, 70, 71, 76, 78 and 79.

APPENDIX 'A'

Statement of Members and Attendance

Dates of Meetings :—

1st	12th April, 1947.	4th	21st and 22nd January, 1948.
2nd	15th November, 1947.	5th	2nd to 4th March, 1948.
3rd	18th to 20th December, 1947.	6th	22nd May, 1948.

S. No.	Name	Appointed under Government Resolution dated	Number of Meetings		Remarks
			For attendance	Attended	
1	Rai Bahadur Ganga Nath *Ex*-Judge of the Allahabad High Court and *Ex*-Chief Justice of Kashmir State.	No. 33/33/46-Political (I) dated the 15th March, 1947.	6	6	Chairman.
2	The Hon'ble Nawabzada Khurshid Ali Khan.	Do.	1	1	Ceased to be member in August, 1947.
3	The Hon'ble Rai Bahadur Sri Narayan Mahtha.	Do.	6	3	
4	Mr. Sri Prakasa	Do.	1	1	Ceased to be member in August, 1947 on appointment as India's High Commissioner in Pakistan.
5	Diwan Chaman Lall	Do.	5	4	Appointed India's Ambassador to Turkey.

S. No.	Name	Appointed under Government Resolution dated	Number of Meetings		Remarks
			For attendance	Attended	
6	Mr. Saddique Ali Khan . . .	No. 33/33/46-Political (I) dated the 15th March, 1947.	..	..	Resigned on 21-3-1947.
7	Mr. Kasturi Srinivasan . . .	Do.	6	Nil	..
8	Mr. Tushar Kanti Ghosh . . .	Do.	6	2	..
9	Mr. S. A. Brelvi	Do.	6	4	..
10	Sri Mohan Lal Saksena . . .	Do.	5	5	Appointed in the vacancy in lieu of Mr. Sri Prakasa.
11	Nawab Mohd. Ismail Khan . .	Do.	5	1	Appointed in the vacancy in lieu of Nawabzada Khurshid Ali Khan.
12	Mr. Hussain Imam	Do.	2	Nil	Appointed on 4-10-1947 in the vacancy in lieu of Mr. Saddique Ali Khan. He however resigned on 2nd January, 1948.

APPENDIX 'B'

Memorandum Submitted by the All-India Newspaper Editors' Conference (A.I.N.E.C.)

The All-India Newspaper Editors' Conference is concerned to point out that the Press in India has been labouring under grave statutory and administrative handicaps. It has not been able to function in an atmosphere of freedom for the simple reason that the country was not free. The basic principles and exigencies of an Imperialist administration called for a more rigorous control of the Press as public opinion became more and more hostile to the prevalent regime. It would be unnecessary at this stage to recall the bitter struggle that a large section of the Press was obliged to wage in defence of its elementary liberties. With the attainment of full national freedom, the justification for all those statutory and administrative restrictions on the functioning of the Press has disappeared.

At the outset our Conference would demand constitutional guarantees for the freedom of the Press. Following the American Constitution the Legislature may pass no law abridging the freedom of the Press. The Conference realizes that this demand does not mean that the general laws of the country were inapplicable to the Press. This demand is made as a guarantee for the freedom of expression and not as a charter for license on behalf of a privileged industry. Emergencies may demand temporary special control, but these special powers should be used with the greatest circumspection and should be strictly protected from abuse.

The American Commission on a FREE AND RESPONSIBLE PRESS recommends "the repeal of legislation prohibiting expression in favour of revolutionary changes in our institutions where there is no clear and present danger that violence will result from the expressions". Our Conference similarly demands the removal of statutory restrictions on the free communication of news and free expression of opinion where there is no incitement to violence. The general criminal law of the country should be relied upon to protect the community against offenders who seek to find in the Press a Vantage ground.

We now proceed to give our recommendations regarding the various laws at present in force, affecting the Press, in this country:—

I. Press and Registration of Books Act, 1867

This Act requires to be amended as follows:—

In *Section* 3 insert "the name of the press" in place of the "the name of the printer and the place of printing."

Every press has a declared Keeper and he is for legal purposes the printer of every work issuing from that press. The present formula creates a mythical individual who has very little to do with printing. Newspapers get over the anomaly by making the self-same individual Printer and Publisher. It is enough if the declaration is made by the Publisher.

In *Section* 5(4) substitute the words "Indian Union" for "British India" and the words "shall be absent from India for a period of more than thirty days" for the words "shall leave India."

Section 5—

Sub-section 1.—To be deleted.

It should no longer be obligatory to print the name of the Editor of the paper. The Publisher is responsible in law for everything published in the paper. It is bad law that multiplies the number of the accused needlessly. In Britain and America there is no such regulation.

Sub section 2.—In the formula of declaration substitute "to be printed and published" for "Printed and published".

The declaration has to be made BEFORE the paper is printed or published and not after the "printing and publishing had started".

Sub-section 3.—This sub-section requires a fresh declaration as often as the places of printing and publishing are changed. This is a serious hardship where owing to breakdown in the machinery or for other reasons the place of printing or publishing has to be changed. Magistrates are not available for filing declarations day and night. The difficulties are minimised by the Police Department not taking note on such temporary breaches of law. The section should be amended so as to lay down that changes in place of printing or publishing should be notified to the Magistrate within 24 hours. There should be no need for a fresh declaration as long as the publisher continues to be the same.

Apart from the difficulties of making fresh declarations in such cases there is the additional risk of fresh securities being demanded under the Press Act in case of fresh declarations.

So much for amendments. We would like to suggest the following additions to these regulations;

(i) Declarations of newspapers that are not published within three months of the date of declaration shall become void. This would prevent frivolous declarations as well as declarations intended to evade lawful restrictions on an existing paper.

(ii) Declarations of newspapers that are not published for a period of 12 months shall become void.

(iii) No declaration could be filed on behalf of an existing paper till the previous declaration was cancelled. (Section 8 is optional and does not make it compulsory).

(iv) No declaration could be filed for any newspaper if it bears the name of newspaper already in existence in India. This should apply at least to newspapers of the same language.

A good deal of confusion is created by papers assuming the name of a paper already in existence. At present Magistrates have no power to insist on a new name.

II. Indian States (Protection Against Disaffection) Act, 1922 .

The Act should be repealed. The States are more closely integrated to the Indian Union and do not need special laws for their protection.

III. The Official Secrets Act, 1923

The definition of "Official Secrets" in so far as it concerns publication is not clear or precise. Our Conference realizes that the Press cannot claim any right to publish information likely to be useful to the enemy in times of war and confidential Government information likely to imperil public safety in times of emergency. It cannot however accept the claim that every circular or note or instructions becomes a prohibited secret because it is marked "Secret and

Confidential". The Press claims the right to publish confidential Government information when publication is in the interests of the public and the two limitations mentioned above do not apply. Indeed it would be a matter of professional honour and distinction for a newspaper to expose secret moves when public interests justify such exposure.

No claim for protection can be sustained on public grounds for such circulars like the Hallet Circular, or the Puckle Letter or the Operation Asylum.

The Act must be made applicable to newspapers only in times of national emergency or war.

IV. The Indian Press (Emergency Powers) Act, 1931

This Act should be repealed.

The preamble saying that the Act is intended for the better control of the Press proclaims that the Press in India is a controlled press. It is a slur on the Fourth Estate in this country and constitutes a negation of one of the fundamentals of democracy *viz.*, a free press.

Originally enacted in 1910 the measure encountered bitter hostility from the Press and public alike. In response to sustained popular agitation it was repealed in 1924. In 1931 the measure was reenacted for the limited purpose of restraining "publication containing incitements to violent crimes". Later legislation amplified the section defining the offence into a veritable sedition code. Every operative part of the political agitation for national freedom was brought under its mischief. It is perhaps the longest and the most comprehensive section defining offence in any statute.

In several instances High Courts have set aside Government Orders demanding or forfeiting securities thus exposing the Act as an instrument of Executive tyranny.

Arbitrary Executive initiative, the unprecedentedly wide sweep of section 4 defining the offence, the heavy securities demanded and forfeited, and the humiliating intimidation involved in publishing a newspaper under a bond for good behaviour have made the Indian Press (Emergency Powers) Act the most obnoxious piece of legislation disfiguring the Indian Statute Book. Government must repeal it forthwith more in its own interests as a democracy than even in the interests of the Press as a free agent of public opinion.

V. Foriegn Relations Act, 1932

This Act was necessitated by the British Foreign policy. It is no longer necessary. Such acts to be useful, should be reciprocal. If any measure is necessary in the future it would be in accordance with the Indian Government's Foreign Policy. The objectives aimed at in such legislation are better achieved by a broad understanding with the Press rather than penal enactments

VI. Indian States (Protection) Act, 1934

This Act should be repealed. [See foregoing comment in Indian States (Protection Against Disaffection) Act, 1922].

VII. The Indian Penal Code

Section 124-*A*.—Publishers of newspapers charged under this section should be triable only by a Jury.

Section 153-*A*.—Provisions may be made for summary and *in camera* trials for avoiding the evil effects of additional publicity.

Section 505.—Should be retained.

VIII. **Criminal Procedure Code**

Sections 99-*A to* 99-*G*.—No need to amend or repeal.

IX. **Sea Customs Act**.

Section 19, *Sections* 181-*A to* 181-*C*.—No need to amend or repeal.

X. **Indian Telegraph Act, 1885**

Section 5.—Messages intended for publication should be free from the operation of clause (b) under sub-section 1—

The powers under this section have been gravely misused by officials to prevent the transmission of newsreports. Channels of communication should be free for the effective and useful functioning of a press. A newspaper's access to news should not be barred.

XI. **The Indian Post Office Act, 1898**

Sections 25, 26 *and* 27-*A to* 27-*D*.—No need to amend or repeal.

XII. **Public Security Measures Acts**

The Public Security Measures Acts passed by the various Provincial Governments and the Ordinance promulgated by the Governor-General contain powers similar to those assumed by Government under the Defence of India Act.

Under those Acts orders are passed imposing pre-censorship, restraining publication of certain items of news, suspending publication and even suppressing newspapers. In the Punjab a Press censor would not pass a High Court Judgement for publication. In Bengal there used to be an order restraining the size of head-lines. In the opinion of our Conference there can be no justification for those humiliating restrictions on the Press. The Conference is opposed to Government's assuming such wide and arbitrary powers and it is concerned to point out the need for statutory guarantees against such powers being abused. In any case the provinces should not legislate on these matters.

Where a state of national emergency arises the necessary restraints on the part of the Press are best observed by means of conventions agreed upon after mutual consultations between the Government and the representatives of the Press.

XIII. **Other Laws**

In the laws taken up for consideration, the Committee have not included (1) Section 144 of the Cr. P. C. and (2) The Law of Contempt of Court.

Criminal Procedure Code

Publication of news in the Press has in the past been prevented by orders passed on Editors, Printers and publishers under Section 144 of the Cr. P. C. The section was not meant for such a purpose and the Conference wants provision against any such future misuse.

Law of Contempt

The Law of Contempt of Court has been used in this country to punish newspapers unjustly. Fair and *bonafide* reports of Court proceedings should be adequately protected. Contempt proceedings should be initiated only on the complaint of the Judge against whose Court the contempt was committed and the trial should be by other judges than the one who had complained about the contempt.

Parliamentary Proceedings

Statements made on the floor of the Legislature are not considered privileged in this country. Newspapers should be fully protected when they publish Parliamentary proceedings.

REPORT OF THE PRESS LAWS ENQUIRY COMMITTEE

APPENDIX 'C'

List of Witnesses

S. No.	Name of Witness	Designation	Remarks
1	Mr. U. K. Oza. . . .	Journalist and Editor of "Sadhana", Rajkot	Individual capacity.
2	The Hon'ble Shri Bishnuram Madhi.	Minister, Assam Government, Shillong.	On behalf of the Assam Government.
3	The Hon'ble Sardar Swaran Singh.	Minister, East Punjab Government, Simla.	On behalf of the East Punjab Government.
4	Mr. M. D. Shahane . .	Director of Information, C. P. & Berar, Nagpur.	On behalf of the C. P. & Berar Government.
5	Mr. Jey Dev Gupta . .	Journalist, Kanpur . .	On behalf of the U. P. Journalists' Association.
6	Mr. J. N. Sahni . . .	Journalist, Delhi . .	On behalf of the A.I.N. E. C.
7	The Hon'ble Shri Kalipada Mukherji.	Minister, West Bengal Government, Calcutta.	On behalf of the West Bengal Government.
8	Mr. D. K. Kunte . .	Parliamentary Secretary, to the Prime Minister, Bombay.	On behalf of the Bombay Government.
9	Mr. C. V. Hunumantha Rao.	Director of Information, Madras.	On behalf of the Madras Government.
10	Mr. T. R. Deogirikar . .	President, Marathi Patrakar Parishad (Marathi Journalists' Association), Poona.	On behalf of the Association.
11	Mr. K. Santhanam . . .	Joint Editor, The Hindustan Times, Delhi.	On behalf of the A. I. N. E.C. and also in individual capacity.
12	Mr. Harkishan Singh Achreja	Director of Press and Publicity, Delhi.	On behalf of the Delhi Administration.
13	Mr. K. Srinivasan . .	Secretary, A. I. N. E. C. Bombay.	On behalf of the A. I. N. E. C.
14	The Hon'ble Pandit Lingaraj Misra.	Minister, Orissa Government, Cuttack.	On behalf of the Orissa Government.
15	Mr. A. D. Mani . . .	Editor, The Hitavada, Nagpur.	On behalf of the local branch of the A. I. N. E. C. and also on behalf of the Nagpur Journalists' Association.
16	Mr. M. Chelapathi Rau. .	Editor, The National Herald, Lucknow.	On behalf of the U. P. Press Consultative Committee.
17	Shri Radhanath Rath. .	Editor, Samaj, Cuttack. .	On behalf of the Orissa Press Advisory Committee.
18	Dr. Sachin Sen . . .	Editor of the Indian Nation, Patna.	Individual capacity.

REPORT OF THE PRESS LAWS ENQUIRY COMMITTEE

APPENDIX 'D'

SUMMARY OF MAIN RECOMMENDATIONS

(1) **Press and Registration of Books Act:**—Certain amendments are suggested in Section 3, section 5(2), section 5(3), section 5(4), and section 11. (Paragraph 61).

(2) The Indian States (Protection Against Disaffection) Act, 1922, and the Indian States (Protection) Act, 1934, should be repealed. (Paragraph 63).

(3) The Indian Press (Emergency Powers) Act, 1931, should be repealed but the following provisions of this Act, should be incorporated in the ordinary law of the country:—

(a) clauses (a) to (i) of section 4(i) which define offences should be incorporated in the Indian Penal Code, or other law.

(b) Sections 15, 16, 17, 18 and 32 should be incorporated in the Press and Registration of Books Act.

(c) Section 19 should be incorporated in Criminal Procedure Code.

(d) Section 20 should be incorporated in the Sea Customs Act.

(e) Sections 21 and 22 should be incorporated in the Indian Post Offices Act.

(f) Separate provision should be made to vest courts of justice with power to order the closing down of a Press for a specified period in case of repeated violation of the law by the Press. (Paragraphs 65, 66 and 68).

(4) The Foreign Relations Act, 1932, should be repealed and more comprehensive legislation should be undertaken to make provision on a reciprocal basis for protection of Heads of Foreign States, Foreign Governments and their diplomatic representatives in India from defamatory attacks etc. (Paragraph 69).

(5) (a) Section 124A of the Indian Penal Code should be amended to give effect to the judgement of the Federal Court in the case of N. D. Mazumdar.

(b) An explanation should be added to section 153A of I. P. C. to the effect that it does not amount to an offence under that section to advocate a change in the social or economic order provided such advocacy does not involve violence (Paragraphs 70 and 71).

(6) Section 144 of the Criminal Procedure Code should not be applied to the Press; and separate provision should, if necessary, be made by law for dealing with Press in urgent cases of apprehended danger (Paragraph 74).

(7) Section 5 of the Indian Telegraph Act and Section 26 of the Indian Post Offices Act should be amended to provide that the actions and orders of subordinate officers are reported to and reviewed by responsible Ministers of Government (Paragraphs 76 and 77).

(8) Before taking action against the Press under emergency legislation, the Provincial Governments should invariably consult the Press Advisory Committee or similar body (Paragraph 78).

REPORT OF THE PRESS LAWS ENQUIRY COMMITTEE

APPENDIX 'E'

NOTES BY MEMBERS

1. **Diwan Chaman Lall.**—There was practical unanimity in the evidence received by us on the question of cartels and monopolies. The examination of witnesses directed to this end proved the fact that there is a very grave apprehension in the minds of those engaged in the profession of journalism that a stage has arrived in India for the Government to take very serious notice of the tendency towards the formation of monopolies not only in connection with newspaper production but equally in connection with the news-agencies. Recent tendencies in India have shown that big business is becoming rapidly aware of the potentiality existing in newspaper control for the purpose of affecting public opinion. Such newspapers with large resources behind them are utilising every weapon for creating tendencious opinion and it is my opinion that unless immediate action is taken a grave menace to the freedom of expression and to the independence of newspapers will arise in the very near future; and it is possible that, if action is delayed, it may be very much more difficult to take effective steps against this tendency towards monopoly later on. Equally serious is the position in respect of news agencies. We are completely at the mercy today of a foreign-owned agency for all our information regarding world events. I suggest, therefore, that a national news-agency may be set up controlled not by any provincial or even the Central Government—but by an independent public authority in whom the public will have confidence. This news-agency should operate a domestic and a foreign service and compete, I hope, successfully with foreign agencies in the matter of both news received from abroad and news sent out to foreign newspapers. In France, there is a national news-agency as also in the U.S.S.R. In Great Britain, a sort of public corporation is being contemplated, organised principally by the leading newspapers. For the safety of the State and for the purposes of a correct appraisal of national and international news, it has become a matter of great urgency to promote such a news-agency, supported by the State but operated by public authority.

2. In regard to monopolies and cartels, the American system of a periodical declaration of the interest and capital involved in a newspaper or a publishing concern is the first step towards letting the public know who the people are who are attempting to mould their opinion. The second step should be to prevent concentration in the hands of big business of a series of newspapers; and where such a charge is established, action may be taken either under suitable legislation to be provided for this purpose or by administrative action under clear rules laid down by the administration. As a beginning, these steps may be sufficient, but if they are found to be ineffective then comprehensive legislation may be undertaken to prevent the creation of monopolies and cartels as far as newspapers are concerned.

3. I would be failing in my duty if I did not add that the law of defamation and libel is entirely inadequate, in regard to existing provisions, to overcome the growing menace to individuals arising from the growth of a mushroom press. The law needs to be strengthened and the penalties need to be made more severe and condign, thus making it by no means a paying proposition to indulge in unscrupulous attacks upon individuals who are unable to protect themselves. No doubt a compulsory provision making it incumbent upon newspapers to publish corrections of wrong or false statements is good in itself, but if a newspaper Proprietor knows that both criminal and civil proceedings (the latter resulting in heavy damages) of a serious nature can be taken by

the aggrieved person, we will be in a position to get to that state of cleanliness in the newspaper world which has been achieved in Great Britain solely, in my opinion, because of this stringency of the law and the effectiveness of its application.

D. CHAMAN LALL,
M.C.A.

New Delhi:
6th April 1948.

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(2) **Shri Tushar Kanti Ghosh.**—My approval of the report should be read subject to this note.

(1) I think that the name of the Editor should, as now, be published. Whatever might be the merits or demerits of British and American practice, we in this country cannot afford to disregard completely the historical background of the story of the growth and development of the Press and of the restrictions and restrains to which it has been subjected in its determination to give full publicity to news of public importance and to make fair and free comments on the measures and policies of Government. In the absence of the Editor's name in print the printer as well as other employees of the Press, including leader writers, reporters, news editors and sub-editors may be held liable in law in respect of matter for which the Editor should take full responsibility. The present Indian practice seems to me to be some sort of guarantee against frivolous or improper proceedings against innocent persons and I am of the opinion that it should be retained. (Para. 61 of the report).

(2) Whether a newspaper Press should or should not be closed down indefinitely or for a specified period in case of alleged violations of the law is a matter which, in my view, should be decided by appropriate courts of law. (Para. 68 of the report).

(3) I think that proceedings against a newspaper under Section 124A I.P.C. (sedition) should be tried with the help of jury. In initiating such proceedings it must be borne in mind that no prosecution should be encouraged in respect of any printed matter unless it amounts to a clear incitement to violence. That, as far as I know, is the rule in England at the present moment and in a recent case decided by the Federal Court of India (Niharendu Dutt Mazumdar's Case) that rule was accepted in interpreting the law of sedition (Para. 70 of the report).

(4) I am opposed on principle to any proceedings in a court of law being conducted *in camera* except in grave emergencies. I do not deny that there is substance in the contention that proceedings under Section 153A (class hatred) I.P.C. may sometimes provoke expressions on one side or on the other which, if exhaustively reported, may produce harmful effect on different sections of the community and endanger peace and communal harmony. But *in camera* proceedings tend to create suspicion in the public mind and undermine public confidence in the judiciary and the administration or interpretation of laws. That must be avoided, but in appropriate cases the court may decide to what extent and in what manner the proceedings before it under the relevant section should be reported and published in the press, and legislation for the purpose may be enacted, if necessary. (Para. 71). Here as under Section 124A incitement to violence or disorders alone should be regarded as the element of offence.

(5) I have no hesitation in stating that the provisions of the Indian Telegraph Act must not be allowed to be invoked to suppress or amend messages to the

Press. Such messages should have free and unfettered transit and any violations of law should be left to the operation of the normal course of justice (Para. 76).

(6) No emergency legislation should apply to the Press and the Charges against any newspaper in respect of its printed matter should be placed before appropriate courts and tried in accordance with the ordinary procedure (Para. 78).

(7) I see no reason why publication of parlimentary proceedings in the newspaper Press should not be fully protected. It should, however, be clearly understood that such publication should be fair and reasonably accurate (Para. 79).

TUSHAR KANTI GHOSH.

Dated 12*th May* 1948

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(3) **Shri Mohanlal Saksena**:—I do not agree with the recommendation of the Committee regarding the Officials Secrets Act. The application of the Official Secrets Act should be confined only to matters which must remain secret in the interest of the safety of the State. The Act should be amended accordingly and specific provision should also be made that the powers under the Act shall not be put into operation without the consent of the Minister concerned.

2. While I am in general agreement with the observations made by my colleague Diwan Chaman Lall and his note regarding cartels and monopolies and the desirability of setting up a National News Agency, I am afraid these questions do not come within the terms of reference of the Committee and as suggested by the majority it should be left to the Government to "watch the situation and to take action for instituting an enquiry before the position becomes dangerous".

MOHANLAL SAKSENA.

New Delhi,
Dated 26*th May*, 1948.

GIPD—82—74 M/of L—12-8-48—150.