

CHAPTER TWELVE

THE GILDED SHACKLES

'Spirit' and the Law

The laws governing India from the early days of the British rule were framed with an eye to perpetual domination over a disgruntled people, some of whom had fought the Moghuls successfully and preserved their independent status while carrying on an unrelenting struggle from generation to generation.

There was a constant apprehension of sporadic outbreaks, and instances were not lacking, challenging the claim of the foreigners coming under the cloak of traders to hold their sway over an ancient people who had managed their own affairs, with vicissitudes of fortune no doubt, from a time which recorded history has failed to explore.

With the passage of time the natural urge for better treatment, equal status, a share in the governance of the country and ultimately a craving for self-rule, was bound to make its appearance and the far-seeing British statesmen brought every bit of their ingenuity into full play to put the axe at the root of all sentiments of love for the Motherland. With the rising tide of nationalism more rigorous laws, like showers in the monsoon, were enacted combined with the issue of emergency ukases which sadly betrayed the relics of an age that was wrongly believed to have gone into desuetude.

Some of the Regulations that originated with the idea of terrorising the people in the early days proved their efficacy by frequent applications with greater ferocity against those who wanted to speak on behalf of the people and in the the best interests of the natives of the soil. It was in the fitness

of things that the foreigners attempted to hoodwink the civilized world by presenting a mask that theirs was a "Government established by law" in British India.

A study of the trend of legislation affecting the revolutionary activities of a section of the Indian population is highly interesting to a student of history of India. It reveals the inception, growth and eruption of a robust national sentiment in its various phases. Broadly divided, the Bengal anti-Partition Movement (1907-1910), the Punjab disorders (1910)—fruitful for promulgation of Martial Law Ordinances, the post Non-Co-Operation period (1924-1926), and the stage of widespread violent outbursts particularly in Punjab and Bengal (1930-1935), spurred the Government to experiment with different measures of unparalleled harshness interspersed with grudging Constitutional Reforms, to check, if not paralyse the rising tempo of the armed revolution in India.

The Acts and Ordinances hurriedly promulgated reveal the nervousness that the Government of India had been overtaken by. Like a drowning man they wanted to save themselves by catching at the straw of legislation in a violent whirlpool which had steadily been sucking them down to the bottom. Battered and exhausted completely in the raging fury of the tempest, at long last, the Britishers shrewdly planned a subtle device for peaceful withdrawal from the land, the diadem of His Majesty, King of the United Kingdom of Great Britain and North Ireland, and of British Dominions beyond the seas, Emperor of India.

Thus an Empire gained at the point of the sword was liquidated by the process of law, here in the home of the Indians, and there in the distant island home of the Rulers of India.

The Regulations and Laws introduced for the purpose, are:

Regulation X of 1804

(December 12, 1804)

Under the Regulation the Governor General-in-Council (s. 2) . . . ordering the existence of rebellion is empowered to suspend or to direct any public authority or officer to suspend the functions of the ordinary Criminal Courts of Judicature . . . and to establish Martial Law (in any city, district or any other place);

and to direct the immediate trial by courts-martial of all

persons owing allegiance to the British Government, but have acted in violation of the obligations of such allegiance or involved in waging war, helping enemy during open rebellion, etc.

The Bengal State Prisoners Regulation, III of 1818

(April 7, 1818)

The preamble runs 'whereas reasons of State, embracing due maintenance of the alliances formed by the British Government with foreign powers, the preservation of tranquillity in the territories of Native Princes entitled to its protection and the security of the British dominions from foreign hostility and from internal commotion occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or for other reasons be unadvisable or improper the Government of India can place an individual under personal restraint, without any view to ulterior proceedings of a judicial nature.

Similar Regulations are the *Madras State Prisoners Regulation, II of 1819*;

Bombay Regulation, XXV of 1827

State Prisoners Act of 1850

State Prisoners Act, III of 1858.

Indian Penal Code—Act XLV of 1860

The Indian Penal Code or the Law of Crimes was passed into law on October 6, 1860, and came into force on January 1, 1962.

Not only a specific criminal act but also an intention to commit an offence is liable to punishment.

There is a whole Chapter on offences against the State and other sections specifically dealing with feelings of enmity or hatred against it.

The person committing an offence is guilty; but whoever abets (s. 109) any offence, i.e., (i) instigates any person to do a thing, (ii) engages with one or more other persons in any conspiracy, and (iii) intentionally aids, by any act, or illegal omission, the doing of that thing, is punishable to the same extent as has been provided for the offence itself.

Further, whoever conceals a design to commit an offence (s. 118); a public servant concealing design to commit offence which is his duty to prevent (s. 110); are abettors and liable to be punished as if the offence itself had been committed.

Criminal conspiracy (s. 120-A) was introduced into the Code by Act VIII of 1913. Conspiracy is a substantive offence and it is quite distinct from abetment. Here it is not necessary to commit an offence or that any offence had actually been committed; it is the mere intention, i.e., when two or more persons agree to do an act which is not illegal by itself by illegal means (s. 120-A) is guilty of a crime.

In addition, whoever is a party to a criminal conspiracy (s. 120-B) is to be punished to the same degree as the offence, such as death, transportation for life, etc.

There is a whole Chapter (VI) of offences against the State.

Waging war, attempting to wage war, or abetting waging war against the Government are punishable with death or various terms of imprisonment.

Conspiracy to commit offences punishable under the foregoing section is equally a criminal offence (s. 121-A).

Collection of men, arms or ammunition or otherwise preparation to wage war with the intention of either waging or being prepared to wage war (s. 122); concealing with intent to facilitate design to wage war (s. 123); assaulting the Governor General or Governors, etc., with intent to compel or restrain the exercise of any lawful power (s. 124) are offences against the State.

Forceful articles in the *Kal* and *Kesari* served as handle to the Government to introduce s. 124-A in the I.P.C. in 1898.

The section (s. 124-A) enjoins that whoever by words either spoken or written, or by signs, or by visible representation or otherwise, brings or attempts to bring into hatred or contempt or attempts excites or attempts to exercise disaffection towards the Government is liable to be punished with imprisonment for life or any lesser term and or with fine.

Any effort for committing depredation, or making preparations for the same, on the territories of any Power in alliance or at peace with the Government of India (s. 126) is liable to punishment with imprisonment for seven years.

The servants of the Government voluntarily allowing a State

prisoner or a prisoner of war to escape (s. 128) are to be punished with imprisonment for life. A case of negligence (not voluntary) or aiding escape or harbouring a fugitive is an offence against the State.

Besides, the Army Act VIII of 1911, CHAPTER VII, provides for heavy punishment for a person who "not being himself subject to military law, exhorts or assists those who are subject to such law to commit gross breaches of discipline".

Abetting mutiny or attempting to seduce a soldier, sailor or airman from his duty (s. 131); abetment of assault (s. 133); of desertion (s. 135); harbouring deserter (s. 136) or concealing him on board a merchant vessel (s. 137); abetment of an act of insubordination (s. 138); wearing garb or carrying token used in the Army, etc., (s. 140) carry heavy penalty.

There is severe punishment for offences against public tranquillity (CHAPTER VIII).

To happen to be a member of an unlawful assembly (s. 142); joining unlawful assembly armed with deadly weapon (s. 144); joining or continuing in such an assembly knowing it to have been commanded to disperse (s. 145), are penal acts and entail heavy punishment.

'Harbouring an offender' is severely punishable (s. 212). In Act VIII, 1942 (repealed by Act II, 1948) 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of communication.

Harbouring an offender who has escaped from custody and whose apprehension has been ordered (s. 216) is punishable with imprisonment ranging between seven and three years with or without fine.

Most of the patriots were executed under a charge of murder (s. 300) to be met (s. 302) with death or a lesser punishment according to the circumstances of the event.

Robbery (s. 390); Dacoity (s. 391); Dacoity with murder (s. 396), attempt to commit Robbery, and or Dacoity when armed with deadly weapon (s. 398); making preparation to commit Dacoity (s. 399); are offences entailing heaviest punishment.

An attempt to commit an offence (Chapter XXIII—Attempts to commit offences, s. 511) punishable with transportation or imprisonment or cause such an offence to be committed, and in

such attempt does any act towards the commission of the offence, be punished with transportation or imprisonment or fine provided for the offence.

Some sections of the Indian Penal Code which were used to be frequently listed in the Schedule of Offences and were to be tried by Tribunal of Commissioners or Special Magistrates are the following, *viz.*,

Chapter XVI—Offences of Hurt. (ss. 326-7, 329, 332-3);
of Kidnapping (ss. 363-5, 368).

Chapter XVII—Offences of Extortion (ss. 385-7).
Robbery (ss. 390-4); Dacoity (ss. 395-402).
Mischief (ss. 431, 435-8, 440).

Criminal Trespass (ss. 454-5, 457-60).

Chapter XXII—Criminal Intimidation (s. 506).

The Press and Registration of Books Act, XXV of 1867

(March 22, 1867)

Enacted for the regulation of printing-presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books. 'Books' mean "every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed or lithographed."

All particulars are to be printed on books and papers (s. 3); keeper of printing presses are to make a declaration (s. 4). It was compulsory that copies of books should be delivered *gratis* to the Government (s. 9).

Dramatic Performances Act, XIX of 1876

(December 16, 1876)

An Act for "better control of public dramatic performances which are . . . seditious . . ."

Whenever (s. 3) executive authority is of the opinion that any play, pantomime, or other drama performed or about to be performed in a public place is likely to excite feelings of disaffection to the Government it may by order prohibit the performance.

When such an order is passed whoever (s. 5) takes part in

the performance, assists in any manner in conducting such a performance, being the owner or occupier of the house, room, place, opens, keeps or uses the same for any such performance or permits the same to be opened, kept or used for any such performance shall be punishable with imprisonment or fine or with both.

Any officer authorised in this behalf may call for (s. 7) for all information for ascertaining the character of the performance of the place where it is to be performed.

Every person so asked shall be bound to furnish the same to the best of his ability, failing which he is liable to punishment (s. 176 I.P.C.) for omission to give notice or information to public servants by persons legally bound to do it.

The Magistrate is competent to grant warrant (s. 8) to Police to enter and arrest and seize whoever or whatever is concerned with the performance. A dramatic performance in any (declared) area except under a valid licence (s. 10), is prohibited.

The Sea Customs Act, VIII of 1878

(March 8, 1878) -

The Government may prohibit or restrict importation or exportation of goods by sea or by land (s. 19).

By an Act, (IV) of 1889, s. 19-A was inserted to effect detention and confiscation of goods whose importation is prohibited.

The Indian Arms Act, XI of 1878

(October 1, 1878)

Under the provisions of this Act, Arms include (s. 4) any or all of the following, viz.,

Fire arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts or arms and machinery for manufacturing arms.

By judgment of the Courts, a "sharp knife with a tapering edge, sword sticks, parts of arms, serviceable or not, etc., come under the category of 'arms'.

The term 'ammunition' includes (s. 4): all articles specially designed for torpedo service and submarine mining, rockets, gun-cotton, dynamite, etc., etc.

The law enjoins (s. 5) that no person shall manufacture, convert or sell, keep, offer or expose for sale, any arms, ammunition or military stores, except under a licence and in the manner and to the extent permitted thereby. It prohibits (s. 6) persons from bringing, taking by sea or by land or out of British India any arms, ammunition or military stores except under a valid licence.

No person shall go armed with any arms (s. 13); shall have in his possession or control any cannon or fire-arms (s. 14); possess any arms of any description (s. 15).

Any contravention of the provisions aforesaid (s. 19) involves a punishment of imprisonment for a term of three years and or fine. (The punishment was enhanced by Act VII, 1934).

The Code of Criminal Procedure Act, V of 1898

(March 22, 1898)

Persons may be arrested without warrant (s. 54).

Part IV deals with Prevention of Offences; of which CHAPTER VIII adopts measure of security for keeping the peace and for good behaviour (ss. 106-110).

Security may be demanded for keeping the peace on conviction (s. 106); the Magistrate may require any person who is likely to commit a breach of the peace, or disturb public tranquillity, or do any wrongful act may ask the suspect to execute a bond for good behaviour; issue warrant of arrest [s. 107(3)]; demand security for good behaviour from persons disseminating seditious matter (s. 108); from suspected persons having no ostensible means of livelihood (s. 109); from habitual offenders (s. 110). Provisions relating to maintenance of peace and order (s. 144-5).

Under Chapter IX Unlawful Assemblies are to disperse on the order of the District Magistrate or a Police Officer (s. 127). Civil and military force are to be applied (ss. 128, 129) if order is disobeyed. Power is taken to commission the military to disperse assembly (s. 131).

Chapter XIII (ss. 149-153) deals with the preventive action of the police.

The Indian Post Office Act, VI of 1898

(March 22, 1898)

The Post Office may detain or seize [s. 27B(1)] any postal article in transmission which he suspects to contain any newspaper or book, any document containing any seditious matter and shall deliver the same articles to the police.

Prevention of Seditious Meetings Act, VI of 1907

(November 1, 1907)

The Act was brought into being to make better provision for prevention of public meetings likely to promote sedition or to cause disturbance of public tranquillity.

Notwithstanding that a meeting is held in a private place and admission controlled by tickets [s. 3(2)] and it is attended by more than twenty persons [s. 3(3)] are to be treated as 'public meetings'. Any police officer is to be allowed access [s. 4(2)] to it. The Magistrate is empowered (s. 5) to prohibit holding of any meeting. The speaker is liable to be arrested (s. 7) without any warrant.

This Act (VI) repealed the Regulation of Meetings Ordinance No. I of 1907.

Newspapers (Incitement to Offences) Act, VII of 1908

(June 8, 1908)

The Act provides for prevention of incitements to murder and to other offences in newspapers.

Under the Act [s. 3(1)] all copies of offending newspapers are to be confiscated, and printing presses are liable to be attached *ex parte* [s. 3(3)].

Under s. 4(1) the police is empowered to seize, detain or carry away property ordered to be forfeited.

The declaration by a Printer made under the Press and Registration of Books (Act XXV of 1867) may be annulled under s. 7.

Indian Criminal Law Amendment Act, XIV of 1908

(December 12, 1908)

It is enacted for the more speedy trial of certain offences (enumerated in the following Schedule), and for the prohibition of associations dangerous to the public peace.

Under s. 2 (4) steps may be taken to affect the proceedings of the Court and inquiries are to be conducted *ex parte*.

Part II deals with Unlawful Associations, a combination or body of persons [s. 15(1)]. Any association (s. 16) interfering with the maintenance of law and order or constituting danger to public peace, is to be declared 'unlawful' by a notification to that effect. Any one assisting in the management or promotion of an unlawful association is to be sentenced to a term of three years' imprisonment and or fine [s. 17(2)].

Under s. 3 of the Act:

SCHEDULE

Of the Indian Penal Code

Chapter VI—ss. 121, 121-A, 122, 123, 134

Chapter VII—131, 132.

Chapter VIII—148.

Chapter XVI—302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365, 368.

Chapter XVII—385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459, 460.

Chapter XXII—506.

Offences under the Explosive Substances Act.

Any attempt to commit or abetment of above offences.

The Indian Press Act, I of 1910

(February 9, 1910)

Enacted to provide for the better control of the Press.

Under s. 2 the following comes under the purview of the Act:

Book, document (painting, drawing, photograph or any visible representation), newspaper (containing news and com-

ments thereon), printing press (engines, machinery, types, lithographic stones, implements, utensils).

The keepers of the press acting prejudicially are to deposit security (s. 3). Power is taken to forfeit security [s. 4(1)]. Further security is to be demanded (s. 5) and still further security, printing press and publications are to be forfeited (s. 6). Search warrants may be issued under [s. 7(1)]. Publishers of newspapers are to deposit security [s. 8(1)]; such security is to be forfeited [s. 9(1)] and the offence continuing demand for further security is to be made (s. 10); the newspapers together with security are to be forfeited (s. 11); certain Publications are to be forfeited and search warrants are to be issued [s. 12(1)]. Any packages coming in or going out are to be detained (s. 13) on suspicion, and no package or paper are to be carried by post (s. 14); and these could be held (s. 15) without assigning any reason.

All copies of newspapers, etc. are to be delivered to the Government *gratis* (s. 16).

Army Act, VIII of 1911

(March 16, 1911)

When a unit of the Army begins, excites, causes or conspires to cause or joins in mutiny [s. 27(a)]; being present....does not use his utmost to suppress the same (b); having reason to believe in the existence, intention to conspiracy against the State does not without delay give information thereof to his Commanding or other superior officer (c); or commits an assault on his superior officer (d); disobeys lawful command (e) may be sentenced to death by Courts Martial.

Prevention of Seditious Meetings Act, X of 1911

(March 22, 1911)

The object is to consolidate and amend the law relating to the prevention of public meetings likely to promote sedition or cause a disturbance of public tranquillity.

The whole or any part of a Province may be declared a proclaimed area (s. 2). Meetings are banned [s. 4(1)] in a proclaimed area unless written notice of the intention to hold such meetings [s. 4(1)(a)], unless permission has been obtained in

writing from the District Magistrate (*b*). Any reporter on behalf of the police is to be allowed access to the meeting [s. 4(*2*)]. Public meetings may be prohibited (s. 5), and under CHAPTER VIII of I.P.C. and Ch. IX of the Criminal Procedure Code of 1898 any meeting can be declared unlawful.

The Prevention of Seditious Meetings Act, 1907, and the continuing Act, 1910, were hereby repealed.

Naval or Military News (Emergency) Ordinance, I of 1914

(August 7, 1914)

Promulgated for the control of publication of naval or military news (s. 1). It is not lawful to publish any information with reference to movements of military personnel. It affects the publisher, editor and printer of any newspaper, magazine, book, pamphlet or other document.

The Police is empowered to seize documents (s. 5); the Magistrate may confiscate all papers (s. 6); to issue search warrants (s. 7); the Police officer may search any place, seize and detain any documents (s. 8).

Foreigners Ordinance, III of 1914

(August 20, 1914)

Promulgated to provide for the exercise of more effective control over foreigners in British India. Householder is to report residence of any foreigner (s. 5).

Ingress into India Ordinance, V of 1914

(September 5, 1914)

To provide for the control of persons entering British India, whether by sea or by land, in order to protect the State from danger of anything prejudicial to its safety, interests or tranquillity. It is to form a part of and construed with the Foreigners Ordinance, 1914.

The Emergency Powers (Continuing) Ordinance, I of 1915

(January 12, 1915)

To continue in force the provisions of the Indian Naval and Military News (Emergency) Ordinance (I of 1914); the

Foreigners' Ordinance (III of 1914); the Ingress into India Ordinance (V of 1914); the Foreigners' (Amendment) Ordinance (VIII of 1914); the Foreigners' (Further Amendment) Ordinance (VIII of 1914).

The Defence of India (Criminal Law Amendment)

Act, IV of 1915

(March 19, 1915)

To provide for measures to secure the public safety and the defence of British India and for the more speedy trial of certain offences.

The Act is to remain in force [s. 1(4)] during the continuation of the war and for a period of six months thereafter.

The main object is to prevent persons communicating with the enemy or obtaining information which may be used for that purpose [s. 2(a)]; to secure safety of His Majesty's forces. . . . to prevent prosecution of any purpose likely to jeopardise the success of the operation of H.M.'s forces [s. 2(b)]; to prevent the spread of false reports or reports likely to cause disaffection or alarm or to prejudice H.M.'s relations with Foreign Powers or to promote feelings of enmity or hatred between different classes of H.M.'s subjects [s. 2(c)]; to secure safety of railways, ports, dockyards, telegraphs, post offices, etc., etc. [s. 2(d)]; to take possession of any property, movable or immovable [s. 2(e)]; direct person not to enter, reside or remain in any specified area [s. 2(f)]; prohibit or regulate the possession of explosives, inflammable substances, arms and all other munitions of war [s. 2(g)]; prohibit anything likely to prejudice the training or discipline of H. M.'s forces and to prevent any attempt to tamper with the loyalty of persons in the service of H.M. or dissuade persons from entering the military or police service [s. 2(h)]; enter or search any place suspected to be used for any purpose prejudicial to public safety or to the defence of British India to seize anything found there that is likely to be used for any such purpose [s. 2(i)]; arrest any person contravening or has any reasonable doubts of contravening [s. 2(j)]; prevent assistance being given to the enemy or doing anything against successful prosecution of the war [s. 2(l)]; to be punished

with seven years' imprisonment; or if the intention of the person so contravening is to assist H.M.'s enemies or to wage war against the King, with death.

Trial is to be held by Tribunals of Commissioners (s. 3); which may pass any sentence under the law (including death) to be accepted as final and conclusive [s. 6(1)].

The Anarchical and Revolutionary Crimes Act, XI of 1919
(The Rowlatt Act)
(March 21, 1919)

The legislation is to continue in force [s. 1(3)] for three years from the date of termination of the present war (World War I). It enjoins prohibition or restriction on publication of reports of trial (s. 11); accused may be convicted of any offence (s. 15) mentioned in Schedule (vide p. 618); may be awarded any sentence authorised by the law and no order of confirmation is necessary (s. 16); and the judgment is to be conclusive and excluded interference by any other Court including the High Court (s. 17).

In PART II (s. 21) the Governor General being satisfied that there is presence of any anarchical or revolutionary movement or chances of promotion of such acts as enumerated in the Schedule (p. 618) may declare any area to come under the provisions of the Act. Severe restrictions, such as execution of a bond with or without surety [s. 22(a)]; to notify any change of residence (b); remaining and residing in a particular area (c); refraining from any act calculated to disturb public peace or prejudicial to public safety (d); reporting himself to the police station, are to be imposed.

The orders are to be enforced for compliance by all means (s. 24); to secure attendance or production of any document or thing before an investigating officer (s. 26).

Under PART III any person may be arrested without warrant [s. 34 (1)(a)]; confined in place under such conditions or restrictions as are enjoined (b); the police is empowered to search any place (c); and arrest any suspect at any place.

Martial Law Ordinances of 1919

- Ordinance I—proclaimed on April 14, 1919—Expired.
 Ordinance II—The Martial Law (Extension) Ordinance,
 April 16, 1919—Expired.
 Ordinance III—The Martial Law (Sentences) Ordinance,
 April 18, 1919—Expired.
 Ordinance IV—The Martial Law (Further Extension) Ordinance,
 April 21, 1919—Expired.
 Ordinance VI—The Martial Law Trials (Continuance) Ordinance,
 May 27, 1919.

Indian Arms (Amendment) Act, XX of 1919

(September 24, 1919)

Under (s. 2) orders may be passed for depositing arms at Police Stations or with licensed dealers.

Act V of 1922

(February 22, 1922)

For repealing certain provisions of the Criminal Law Amendment Act, 1908, relating to the Schedule of offences enumerated therein.

Press Law Repeal and Amendment Act, XIV of 1922

(March 29, 1922)

To repeal Indian Press Act, 1910, the Newspapers (Incitement to Offences) Act, 1908, and to make provisions in regard to the liability of editors of newspapers, and to facilitate the registration of printers and publishers, and to provide for the seizure and disposal of offensive documents.

The Indian States (Protection against Disaffection) Act, 1922

(April 28, 1922)

Whoever edits, prints or publishes or is the author of any book, newspaper or other document which brings or is intended to bring into hatred or contempt, or excites or is intended to excite disaffection towards any Prince or Chief of State in India (s. 3) is liable to imprisonment up to five years; (s. 4) empowers

Government to forfeit any publication containing matter in respect of which a person is punishable under s. 3 above.

The Police (Incitement to Disaffection) Act, 1922

Whoever intentionally causes or attempts to cause disaffection towards His Majesty or the Government established by law in British India amongst the members of the police-force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of the police-force to withhold his services or to commit a breach of discipline is to be punished with imprisonment.

Official Secrets Act, XIX of 1923

(April 2, 1923)

The first Official Secrets Act (XV) was enacted for India in 1889. It was followed by the Indian Official Secrets (Amendment) Act V of 1904, and one Statute of Parliament, viz., the Official Secrets Acts, 1911.

Statute of 1911, dealt with (i) espionage, in obtaining secret information, (ii) breach of official trust by persons in the service of the State.

Combining the results of the two legislations, Act of 1904 and of 1911, the Act (XIX) of 1923 was put on the legislative anvil and passed into law on April 2, 1923.

If any person for any purpose prejudicial to the safety and interest of the State [s 3(1)]; approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place (a); makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, useful to an enemy (b); obtains, collects, records or publishes or communicates to any other person any secret or official code or pass word, or any sketch, plan, model, article or note or other document to be useful to the enemy (c); is liable to punishment from three to fourteen years.

Communication with foreign agents (s. 4); wrongful communication, etc., of information (s. 5); unauthorised use of uniforms, falsification of reports, etc., (s. 6); interfering with officers of the police or members of the army, are all punishable heavily under the code.

Under (s. 8) it shall be the duty of every person of giving information as to commission of offences.

Any person who attempts to commit or abets the commission of an offence (s. 9) under this act, or

if any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or has committed an offence (s. 10),

a Magistrate may grant search warrants [s. 11(1)], if in his opinion there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Power is granted to the police to arrest any person on the suspicion that a person is likely to commit a grave offence under this Act (s. 12).

The Bengal Criminal Law Act, 1925

(March 21, 1925)

The trial of offences enumerated under Schedule (p. 618) is to be done by Commissioner (s. 3). Political suspects are to notify [s. 11(1)(a)] residence; report himself to the police (b); conduct himself or abstain from acting in such manner as directed (c); to reside in certain specified area (d); not to enter, reside or remain in specified areas (e); and to be arrested and thrown into prison (f).

Police is empowered to arrest without warrant [s. 13(b)]. The arrested person is to permit [s. 16(a)] to be photographed; (b) his finger impression to be taken; to provide specimens of his handwriting (c); attend at places and times according to direction of the police (d).

The police is to search any place on suspicion (s. 17).

Bengal Criminal Law Amendment Act, 1925

(March 30, 1925)

By s. 3 trial was to be held by Commissioners who were empowered to pass any sentence (s. 6). All or any persons could be excluded from the Court (s. 8-A).

Extensive power is given to the Commissioners to deal with refractory accused. Presence of any accused who "has by voluntary act rendered himself incapable of appearing before the

Court, or resists his production before them or behaves before them in a persistently disorderly manner" at the trial could be dispensed with (s. 8-B).

Under s. 4 power is taken to order custody in jail outside Bengal.

Bengal Criminal Law Amendment Ordinance, I of 1930

(April 19, 1930)

Action may be taken [s. 2(i)] against a person who is acting or about to act in contravention of the provisions of the Arms Act, 1878, or Explosive Substances Act, 1908; against one who has committed, is committing or about to commit any offence specified in the Schedule (vide p. 618) (ii); with a view to interfere by violence or threat of violence with administration of justice (iii). Movements of suspect may be restricted in the manner hereinbefore stated or he may be committed to the custody of jail. Allowed to expire.

Ordinance II of 1930

(April 27, 1930)

It is intended to provide for better control of the press. Order for deposit of security by keepers of printing presses (s. 3); to declare security forfeited (s. 4) may be issued on Papers which whether by inference, suggestion, allusion, metaphor, implication or otherwise incites murder or incites any offence [s. 4(a)]; seduce soldier, etc. (b); brings the Government into hatred or contempt (c).

Over and above, forfeiture of security, and the newspaper itself is to be forfeited (s. 11).

The Ordinance was allowed to expire.

The Lahore Conspiracy Case Ordinance, III of 1930

(May 1, 1930)

The Lahore Conspiracy Case is to be tried by a Special Tribunal (s. 3); any sentence authorised by law can be passed and no order for confirmation is necessary (s. 8); power is assumed to secure orderly conduct of the trial and the attendance

of the accused is to be dispensed with if necessary (s. 9). Such judgment is final (s. 11).

The Ordinance was allowed to expire.

Ordinance IV of 1930

(May 15, 1930)

It is to provide for proclamation of martial law in the town of Sholapur and its vicinity, to empower military authorities to make regulations for administering it and to provide other matters connected therewith.

Ordinance V of 1930

(May 30, 1930)

It is to provide against certain forms of *intimidation*. No person is to *molest* any person with a view to cause such other person to abstain from doing or to do any act (s. 3).

Ordinance VI of 1930

(May 30, 1930)

It is mainly directed against the Civil Disobedience Movement to provide against instigation to the refusal of payment of certain liabilities. It expired in due course.

The 'Unauthorised News-sheets and Newspapers' Ordinance, VII of 1930

(July 2, 1930)

It is to provide for the control of unauthorised news-sheets and newspapers.

Power is taken to seize and destroy such papers (s. 4); power to seize and forfeit undeclared presses which the police may enter and search without warrant (s. 5).

Ordinance VIII of 1930

(August 15, 1930)

It is intended to extend to the district of Peshawar in the North-Western Frontier Province.

This was followed by the Unlawful Association Ordinance X of 1930 and the Unlawful Instigation (Second) Ordinance XI of 1930 with effect from December 12, 1930.

Bengal Criminal Law Amendment Act, VI of 1930

(October 16, 1930)

by which power was granted to the Executive to arrest and detain persons without trial.

A suspect is to notify his residence [s. 2(a)]; report himself to the police (b); conduct himself in such manner as directed (c); reside or remain in specified area (d); not to enter or reside or remain in a specified area (e); and to be committed to custody in jail (f).

A person could be arrested without warrant against whom there is reasonable suspicion. Any place can be searched or property seized (s. 4). Punishment is provided for disobedience or resistance (s. 5). Punishment for violation by the provisions is to extend to seven years.

Power is given (s. 6) to take photographs, finger-prints, specimen of handwriting and signature; and to direct any person to attend a place at such times as directed.

Bengal Criminal Law Amendment Act, 1930, was repealed by Act VII of 1934.

Indian Press (Emergency Powers) Act, XXIII of 1931

(October 9, 1931)

It is intended to provide against the publication of matter inciting to or encouraging murder or violence. It provides for better control of the Press and of unauthorised news-sheets and newspapers. Originally this power was taken under an Ordinance published in a Gazette Extraordinary on December 23, 1930.

The Government could prohibit (s. 2-A) the publication of any newspaper, news-sheet, pamphlet, leaflet or other document containing any class of information. Publication of names, etc., of certain witnesses, etc., were prohibited (s. 2-B). Keepers of printing presses were compelled to deposit security money when called upon to do so (s. 3). Powers were taken (s. 4) to declare

security or the press itself forfeited to the Government when it appeared to the Government that

any newspaper, etc., had incited or encouraged or tended to incite or encourage the commission of any cognizable offence involving, violence, directly or indirectly, expressed approval or admiration of such offence, or any person, real or fictitious, who had committed or was alleged or represented to have committed any such offence,

had seduced any officer, soldier, sailor or airman in the military, naval or air forces,

had brought into hatred or contempt the Government,

put any person in fear or to cause annoyance to him and thereby induce him to deliver any person, and property or valuable security,

had encouraged or incited, any person to interfere with the administration of the law or with the maintenance of law and order, revenue, tax, etc.,

had induced a public servant or servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office,

had promoted feelings of enmity or hatred between different classes of subjects,

had prejudiced the recruiting of persons to serve in any of His Majesty's services, etc.

also prohibited to disclose the identity of any witness.

Power was taken to seize and destroy unauthorised news-sheets and newspapers (s. 16); to seize and forfeit undeclared presses producing unauthorised news-sheets and newspapers (s. 17); to declare certain publications forfeited and to issue search-warrants for same (s. 19); to detain packages containing certain publications when imported into British India (s. 20); to detain articles being transmitted by post (s. 22).

Punjab Criminal Procedure Amendment (Supplementary)

Act, I of 1931

came into force on February 19, 1931, to supplement the Criminal Procedure (Punjab Amendment) Act, 1930, to enable any person convicted by the Special Magistrate to appeal to the High Court at Lahore (s. 3).

Bengal Criminal Law (Arms & Explosives) Act, XXI of 1932
(January 12, 1932)

It is to provide enhanced punishment for certain offences under the Arms Act, 1878, Explosive Substances Act, 1908, in their application to Bengal and to make special provision for trial.

Section 3 provides insertion of *Sec. 19-A* in the Arms Act to the effect that whoever commits any offence under *Cl. (c)* and *Cl. (d)* or *Cl. (f)* of *Sec. 19* shall, if the offence is committed in respect of a pistol, revolver, rifle or shot gun, be punished with transportation for life (in place of a maximum of three years' imprisonment).

Similarly, the additional *Sec. 5-A* in the Explosive Substances Act, enhances the punishment to transportation for life.

Trafficking in arms (*ss. 6 and 7*) is to be heavily punished.

Bengal Criminal Law Act, IV of 1932

(March 24, 1932)

In case of any reasonable doubt that a person [*s. 2(i)*] is a member of any association of which the objects and methods include the commission of any offence included in the Schedule (vide p. 618) . . . or the doing of any act with a view to interfere by violence or threat of violence with the administration of justice; or (*ii*) has been or being instigated or controlled by a member of any such association with a view to the commission or doing of any such offence or act; or (*iii*) has done or is doing any act to assist the operations of any such commission is to be arrested by an order in writing.

Bengal Criminal Law Amendment (Supplementary)

Act, VIII of 1932

(April 5, 1932)

under which power is taken (*s. 2*) to order custody of arrested person in jail outside Bengal.

The Bengal Criminal Law (2nd Amendment) Act, 1932

(October, 20, 1932)

mainly related to trial by Commissioners.

The Bengal Suppression of Terrorist Outrages

Act, XII of 1932

(October 20, 1932)

The Act is to continue in force as long as the Bengal Criminal Law Amendment Act of 1930, remains in force [(s. 1(3)]. The absconders are to be hounded out by all means [s. 2(a)].

CHAPTER I—deals with Emergency Powers under which power is taken to detain and question persons behaving suspiciously [s. 3(1)]; to take possession of immovable property [s. 4(1)]; to prohibit access or limit access to certain places (s. 6); to regulate traffic (s. 7); to regulate means of transport (s. 8); power to prohibit or regulate the purchase, sale or delivery or otherwise dealing in arms [s. 10(1)(a)]; to issue order on owners [s. 10(1)(b)]; to take possession of arms, explosives, etc. [s. 10(2)].

CHAPTER II—deals with appointment of Special Magistrates who are invested with powers for a period not less than four years (s. 24). Procedure is to be followed as in warrant cases (s. 26) and any sentence including sentence of death may be passed by them (s. 27).

The Bengal Public Security Act, XXII of 1932

(December 12, 1932)

is to provide for the maintenance of the public security in case of emergency and for trial of certain offences by Special Magistrates.

Emergency powers are taken under [s. 3(1)] of CHAPTER II, to control [s. 4(1)] suspected persons regarding movement, residence, conduct reporting to police, etc. Access or entry to certain places (s. 5) is limited; traffic is to be regulated (s. 6); services of the posts and telegraphs to the public is to be controlled (s. 7); to secure reports of public meetings (s. 8).

Very wide powers are given to Special Magistrates who are to be appointed under provisions of CHAPTER III.

**The Bengal Suppression of Terrorist Outrages (Amendment)
Act, XIX of 1932**

was published in the Calcutta Gazette dated January 12, 1933.

**The Provincial Criminal Law (Supplementary)
Act, IX of 1933
(April 13, 1933)**

Appeal is allowed to the High Court from the judgment of the Special Magistrates under the Bengal Public Security Act, 1932 (s. 2).

**The Bengal Smuggling of Arms Act, VI of 1934
(April 12, 1934)**

provides for issue of warrant on receipt of report (s 5); to arrest [s. 5(1)]; detain in custody [s. 5(3)].

To enforce attendance [s. 4(i)]; to forfeit bond executed for good conduct [s. 4(ii)]; issue of warrant on receipt of report (s. 5); to arrest [s. 5(1)]; detain in custody [s. 5(3)].

**Bengal Criminal Law Amendment Act, VII of 1934
(March 29, 1934)**

To supplement the Criminal Law of Bengal for the purpose of dealing more effectively with the terrorist movement and to that end to amend the Arms Act, 1878, the Explosive Substances Act, 1908, the Indian Press (Emergency Powers) Act, 1931, in their application to Bengal, and also to amend the Bengal Criminal Law Act, 1925, Bengal Criminal Law Act, 1930, and the Bengal Suppression of Terrorist Outrages Act, 1932.

Under [s. 4(20-A)] whoever goes armed with a pistol, revolver, rifle or other firearm.....or has any such firearm in his possession or under his control.....under circumstances indicating that he intended that such firearm should be used for the commission of any offence of murder shall....be punished with death, or transportation, or a term which may extend to fourteen years and fine.

The same provisions are applicable to Explosive Substances [s. 5(5-B)].

A new *Sec. (2-A)* is added to what is contained in *Sec. 2* of the Indian Press (Emergency Powers) Act, 1931, under which the Government may (s. 6) prohibit either absolutely or put restriction on publication in any newspaper, etc. of any class of information which . . . tends to excite sympathy with or secure adherents to the terrorist movement. New *Sec. 2-B* enjoins that neither the name nor the designation, nor any words, signs or visible representations disclosing the identity of the witness in a trial by Commissioners or Special Magistrates . . . be published in any newspaper.

Sec. 7-A(1)(a), a new clause, is to be added to *Sec. 7* of the Bengal Criminal Law Amendment Act, 1925, that if after the commencement of a trial by Commissioners under this Act any person surrenders or is arrested before the commencement of the trial, who if he had surrendered or had been tried jointly with the persons under trial . . . he shall be placed on his trial jointly with such other persons at the said trial under new *Clause 7-A(1)(b)*; evidence already recorded is to be used against any such person; and this can be done even after the conclusion of the trial (s. 11) under new *Clause 7-A(2)* of B. Cr. L. A. A., 1925.

If after an order of restriction over movement has been violated a person may be arrested (s. 14) and the punishment is to be very heavy (s. 16—s. 6 of the old Act). Any fine imposed may be realised from parents or guardians.

Section 23 amends the Bengal Suppression of Terrorist Outrages Act, 1932. Under *Section 24* new Sections (*11-A*) prohibiting use of places for purposes of certain associations; (*11-B*) to take possession of places are added. Addition of *Chapter III* (s. 35) to the previous Act makes possession of prohibited documents (*a*) under the Sea Customs Act, 1878, (*b*) to be forfeited with a penalty to a term of three years. Addition of s. 36 makes possession of documents (*a*) inciting to or encouraging the commission of certain offences; (*b*) directly or indirectly expressing approval or admiration of any such offence to be meted with a penalty of three years' imprisonment.

**The Bengal Public Security (Extending)
Act, XVIII of 1935
(October 31, 1935)**

The Criminal Law Amendment Act, XX of 1938
came into force on September 14, 1938, making dissuasion from enlistment and instigation to mutiny or insubordination after enlistment (s. 2) heavily punishable.

**The Defence of India Act, XXXV of 1939
(September 29, 1939)**

to provide for the measures to ensure the public safety and interference in the defence of British India and for the trial of certain other offences.

It invests the executive authority to make rules under Emergency Powers.

Rule [22(x)] is framed for the apprehension and detention in custody of any person reasonably suspected... of acting or being about to act in a manner prejudicial to public safety;

Rule 22(xviii) regulates the use of postal, telephone or telegraph services; regulates delivery of postal articles (xxxi); prevents or controls any use, calculated to prejudice the public safety, the maintenance of public order, the defence of British India or the prosecution of the war;

Section 3(3) provides in addition to sub-section (1) for the arrest and trial of persons who can be met with a punishment for seven years.

CHAPTER III provides for constitution of Special Tribunals (s. 8); which may take cognizance of offences without the accused being committed to it for trial (s. 10); and the accused may be tried in his absence [s. 10(5)].

**The Indian Penal Code Amendment Act, VIII of 1942
(March 14, 1942)**

According to this amendment "harbour" includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition or means of conveyance. (It was repealed by an Act of 1948).

A Paradox

For the safety of the Empire laws were placed on the Statute Book in an unending stream. The victorious march of the dauntless fighters continued through the array of sharp teeth and dangerous claws of the Law which could maul a warrior and make a cripple of him or kill him outright. They did not fail to realise at least a part of their aim. The mass quailed at their hideous look. Parents and well-wishers felt compelled to induce their wards to retire into the corners of a closed room. But the few, a very few, brave hearts, confronted the Acts with deserving ridicule and contempt. To them the laws were mere mockery better ignored or violated. Before the verdict of the history of a nation struggling for independence, the 'lawless laws' are as useless as bubbles at the seashore.

In the name of the law the gallows yawned and closed. Unspeakable torture was perpetrated, in the name of the law again, on men who could be killed but never subdued. They are the Immortals in an ephemeral world. A tear of gratitude, for which they never cared, and the 'humble tribute of a sigh' are all that the bewildered nation can offer them for the present.