

**LAW COMMISSION
OF INDIA**

THIRTY-EIGHTH REPORT

INDIAN POST OFFICE ACT, 1898

February, 1968

GOVERNMENT OF INDIA : MINISTRY OF LAW

61 Law—2

EXPLANATION OF ABBREVIATIONS USED IN THE REPORT

S. No.—Serial Number in the Law Commission's file on the subject.

REPORT ON THE INDIAN POST OFFICE ACT, 1898

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CHAIRMAN,
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5 Jorbagh, New Delhi—3.
February 24, 1968.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Thirty-eighth Report of the Law Commission on the Indian Post Office Act, 1898.

2. The circumstances in which the subject was taken up for consideration are stated in the first paragraph of the Report. After the subject was taken up, a Press Communique was issued inviting suggestions as to the changes needed in the existing Act. A study of the subject was undertaken, and a comprehensive draft Report was prepared. The draft Report was considered at the following meetings of the Commission :—

81st meeting, on 28th to 31st December, 1966;

82nd meeting, on 30th January, 31st January and 1st February, 1967.

3. The draft Report was revised according to the decision taken at the meetings mentioned above, and then circulated to State Governments, High Courts and other interested persons and bodies for comments.

4. The draft Report as circulated, and also the comments received thereon, were considered at the 92nd meeting of the Law Commission, held on the 15th and 16th January, 1968.

The Report has been revised according to the decision taken at that meeting.

5. I may add, that though the changes recommended by us are not extensive, consideration of the Act involved a detailed examination of several legal and constitutional issues, a comparative study on a vast scale, and a research into several branches of law, particularly torts and contracts.

6. In the drawing up of the report we received a great amount of help from our Secretary Mr. P. M. Bakshi who collected together all the references and highlighted the points of controversy on which the decisions of the Commission had to be given.

Yours sincerely,
J. L. KAPUR.

REPORT ON THE INDIAN POST OFFICE ACT, 1898

1. The revision of the Indian Post Office Act, 1898, has been referred to the Law Commission by the Government,¹ and this Report has been prepared accordingly. One of the points which the Ministry concerned with the Act desired the Commission to consider was, the period of limitation for a suit for compensation for a postal article which is not delivered². The whole Act has, however, been referred to the Commission for examination, and *consequently*, this Report proposes to deal with the entire Act.

Reference
to the
Commission.

2. The Indian Post Office Act, 1898 was enacted to replace the Act of 1866. In the Statement of Objects and Reasons annexed to the Bill which led to the existing Act³, it was pointed out, that since the 1866 Act was passed, certain defects and omissions had been brought to light and experience had shown that the express provisions of law, as contained in the Act, were, in respect of several matters, not suited to the requirements of postal work. Further, protection was also needed by the Post Office and powers were also required to enable its officers to deal with articles posted in contravention of the Act. Moreover, various schemes, such as postal insurance, the value-payable system and the money order system, remained outside the provisions of the Act and required legislative enactment. Finally, with the development of the Post Office, and the knowledge of the course of English Postal legislation, the necessity for some new penalties had become apparent. The 1898 Act was, therefore, intended to remove these difficulties and deficiencies and to bring the Act up-to-date.

English
Act.

3. The considerations which impelled the enactment of the 1898 Act⁴ show, in a fair measure, the lines on which periodical revisions of the Post Office Act should be attempted. They, therefore, constitute a good practical guide in fixing the objectives for revision of that Act itself. So ascertained, the main objectives for revision would be—

Scheme of
revision.

- (i) removal of difficulties felt in practice;
- (ii) bringing the Act in line with postal systems and facilities introduced later;
- (iii) need for new provisions on the lines of analogous useful provisions in the legislation of other countries.

1. S. No. 1 in Law Commission's file relating to the Indian Post Office Act, 1898.

2. See paragraph 130, *et seq.*, *infra*.

3. See Gazette of India, 1897, Part V, page 385.

4. See paragraph 2, *supra*.

Besides these, of course, the considerations generally borne in mind in revising any Act (e.g., conflict of decisions, constitutional problems, recommendations made in other reports and the like), have to be kept in view, in revising the Act.

Scheme of
the existing
Act.

4. We shall first examine the scheme of the Act. The existing Act is intended to consolidate and amend the law relating to the Post Office in India. Sections 1 to 3 contain preliminary provisions, and sections 4 to 5 embody the exclusive privilege of conveying letters reserved to the Government. Section 6 deals with the liability of the Government or its officers in respect of loss, misdelivery, delay or damage of postal articles in the course of transmission by post. Sections 7 to 15 deal with the rates of postage and incidental matters. Provisions as to postage stamps are contained in sections 16 and 17. The general conditions of transmission of postal articles would be found in sections 18 to 27-D.

Having so far dealt with provisions applicable to all articles, the Act proceeds next to deal in detail with specific kinds of postal services. Thus, sections 28 to 33 deal with registered and insured articles, and sections 34 to 36 are intended to provide for value-payable postal articles. Undelivered postal articles are regulated by sections 37 to 39, and provisions regarding the obligations of snips to carry and bring letters are dealt with in sections 40 to 42. Money orders are covered by sections 43 to 48, and, with this, the substantive provisions of the Act come to an end.

The Act, thereafter, proceeds to prescribe the penalties for various offences.

The provisions on the subject are divided into two groups, namely—

- (i) offences by officers of the Post Office, sections 49 to 57;
- (ii) other offences, sections 58 to 69.

General provisions regarding penalties are contained in sections 70 to 72.

Supplemental provisions constitute sections 73 to 75, and the maximum rates of inland postage are given in the First Schedule.

Rules and
notifications.

5. (a) An examination of the detailed provisions of the Act would reveal, that while the general principles are given in the Act, the Act contemplates rules to be made on a number of important matters.¹

1. See, for example, sections 8, 9, 16, 18, 19, 21, 22, 23, 29, 32, 33, 35, 36, 37, 39, 40, 43, 44, 46, 73 and 74

(b) Besides rules proper, there are a number of subjects on which notifications and orders can be issued; for example, fixation of rates of inland postage¹, declaration of rates of foreign postage², notification regarding delivery of articles to Customs authorities³, authorisation of officers to search postal articles transmitted in violation of the Customs Act⁴, notification of fees for registration⁵, notification regarding insurance of postal articles and compulsory insurance⁶, notification regarding value-payable articles⁷, notification regarding gratuities payable for conveyance of postal articles by ships⁸, notification authorising remission of sums by money orders⁹, authorising the issue of postal order¹⁰ and delegation of powers¹¹.

(c) In addition to general orders and notifications the Act also contemplated a number of special orders by the Government. Thus, in emergency or in the interest of public safety or tranquillity, the Government may direct that a postal article shall be intercepted or detained or otherwise disposed of in the specified manner¹².

(d) The range of the powers to make rules and orders so conferred is, thus, wide enough. This is understandable in view of the nature of the Act. The business of the Post Office is varied and multifarious. Details of its administration cannot be covered fully in an Act. The Department being concerned with international communications also, it may not always be possible to lay down rigid provisions on matters having international aspects. Further, geographical, economic and other relevant factors go on changing from time to time, and some elasticity has to be ensured for the smooth working of the Act. It is for these reasons that the Act seems to leave a wide discretion to the executive to make provisions on the various matters.

6. The main subject of transmission of postal articles is dealt with in the Indian Post Office Act, 1898. The Post Office discharges a number of other functions also, and several Acts have been passed relating to these functions, the important amongst which are listed below:—

Cognate
Acts.

- (1) The Government Saving Banks Acts, 1873.
- (2) The Indian Telegraph Act, 1885.

-
1. Section 7.
 2. Section 10.
 3. Section 24A.
 4. Section 25.
 5. Section 28.
 6. Sections 30 and 31.
 7. Section 34.
 8. Section 42.
 9. Section 43 (1), earlier Paragraph.
 10. Section 45.
 11. Section 75.
 12. Section 26.

- (3) The Post Office Cash Certificates Act, 1917.
- (4) The Indian Wireless Telegraphy Act, 1933.
- (5) The Telegraph Wires (Unlawful Possession) Act, 1950.

This Report is concerned with revision of the Post Office Act, and not with the other enactments mentioned above. We have, however, considered section 5 of the Telegraph Act, which is analogous to section 26 of the Post Office Act¹. We may also note, that we were requested to consider that section².

Examination of the Act. 7. We now proceed to consider the important points in connection with the Act which require examination.

Section 1—Title. 8. In sub-section (1) of section 1, the word "Indian" may be omitted, in accordance with recent legislative practice.

Section 2(a) "Director General". 9. In section 2, with reference to the definition of "Director General", it has been suggested³, that Members of the Posts and Telegraph Board should be nominated as *ex officio* Director General, so as to be included in definition of "Director General". The Board, it is stated, is an entity above the Director General, and exercises the powers of Government over the Directorate. Members of the Board are, (it is stated), now full time Members, (and not *ex officio* Members holding other posts in the Directorate and functioning as deputies to the Director General). The proposed change concerns the administrative set up of the Department, and we make no recommendation thereon.

Sections 2(d), 10 (1), 15, 27, Explanations 36 (1), and 46 (1)—References to Her Majesty's Government, etc. 10. A suggestion⁴ has been made to remove references to "Her Majesty's Government", and "British possession", etc., in the marginally noted sections (i.e., only the words "foreign country" may be retained in these sections). The suggested change could have been made by the Adaptation of Laws Order in 1950. As it has not been made so far, and as the whole Act is not being re-enacted, this verbal change is unnecessary. We do not, therefore, accept the suggestion.

11. As regards references to "Her Majesty", etc., and to "British possession", the comment of a State Government⁴ on our draft Report was as follows:—

"As to the two expressions objected to, "British possessions" may perhaps be allowed to remain, since some overseas possessions are still left to Great Britain. Retention of "Her Majesty's Government", is,

1. See paragraph 93, *infra*.
 2. S. Nos. 40 and 53 on Law Commission file.
 3. S. No. 96 (Suggestion of the Department).
 4. S. No. 170 (Comment of a State Government).

nowever, wholly indefensible. The impression created is that the Queen of England is being referred to as India's Queen as well. In the opinion of the Government, the references to "Her Majesty" should be deleted from the Act, wherever they occur."

Our view is, that no change is needed. Deletion of the references might lead to misconceptions. The apprehension expressed in the comment (about an impression being created about the Queen of England) is not shared by us.

12. (a) Regarding "mail ships" defined in section 2(d), a recommendation has been made in a previous report¹ to the effect, that if India is enjoying the powers and privileges under the Mail Ships Act, 1891, we should have a legislation of our own after entering into direct conventions with foreign countries (if India is not an original party to such a convention). This can appropriately be the subject-matter of a separate legislation, and need not be considered for incorporation in our Post Office Act.

Section 2
(d)—Mail
ships.

13. We have considered a suggestion² to include "impressions taken through franking machines authorised by the Director-General" in section 2(g), which defines "postage stamp". This seems to be covered by the existing words "impressed.....or otherwise indicated". No change is necessary.

Section 2(g)—
"Postage
Stamps"
and franking
machines.

14. In this connection, the following comment on our draft Report was considered by us³ :—

"It is doubtful if impressions taken through franking machines are so covered, (by the words "impressed etc."), because all the stamps and marks, referred to in the existing definition, seem to be indicative of payment of postage or other fees, whereas impressions made through franking machines seem to authorise and indicate despatch by post, free of charge."

The matter was further considered by us. In our view, no change is needed, and the existing language is wide enough to cover franking machines.

15. The following suggestion, regarding surcharge on stamps, was made by the Department in its comment on the draft Report⁴—

Section 2(g)
and sur-
charge on
stamps.

1. Fifth Report of the Law Commission (British Statutes applicable to India), page 56, bottom, and 57, top, entry No. 144 relating to the Mail Ships Act, 1891, etc.
2. S. No. 96 (Suggestion of the Department).
See also section 17 (2)
3. S. No. 170 (Comment of a State Government).
4. S. No. 169 (Comment of the Department).

"This Department has had under consideration for some time a proposal for issue of stamps with surcharge."

The intention is to enable this Department to issue such stamps for collecting money for benevolent funds, such as children's fund, etc. There is at present difficulty in the issue of such stamps as the existing provisions of the Post Office Act do not permit such stamps being brought out. It is, therefore, suggested that sections 2(g) and 16 of the Act may be suitably amended to permit the issue of such stamps."

In our view, this is a matter of policy. We do not express an opinion in the matter.

Section 2(h)
and (k)—
Definition
of Post
Office.

16. Section 2, clauses (h) and (k), contain two definitions of the same expression "Post Office", as spelt with small letters and with big letters respectively. Sir James Westland, while presenting the Report of the Select Committee on the Bill which led to the Act, admitted that there was a certain incongruity in this¹, but he said, that there was no difficulty in distinguishing which of the two expressions is used wherever they occur; one refers to a particular building or place, and the other refers to the Department of the Post Office. Since no difficulty has been experienced on this account, the definitions need not be disturbed.

Section 2
(i)—"Postal
Article".

17. It has been suggested², that in the definition of "postal article", "money orders" may be added. We are not, however, inclined to disturb the existing definition in the absence of any difficulty experienced in practice.

Section 2
(j)—
"Postmaster
General".

18. A suggestion has been, made² to re-define the expression "Postmaster General", in view of certain changes in the instructure of the Department and in the nomenclature of its officers.

The suggestion states—

(i) that there are no longer any "Deputy Postmaster-General", who are replaced by "Directors", and

(ii) that the Postmaster General is incharge of a Postal Circle, and further, that in some circles, there is no Postmaster General, but only a Director of postal Services or a Director of Telegraph holds charge. In order, therefore, to have a better legal authority, the expression "Postmaster General" should be redefined,

1. Gazette of India, March 19, 1898, Part VI, page 99.

2. S. No. 96 (Suggestion of the Department).

as the "Head of a Postal circle including a Director of Posts and Telegraphs or any other officer exercising the powers of the Post-master-General."

This is an administrative matter, and we make no recommendation thereon.

19. It has been suggested¹, that it should be provided that the exclusive privilege under section 4 is in the Central Government "in the Posts and Telegraphs Board". We are not in favour of the suggested change. The "Central Government" is the only expression that can be used in the Act; which particular Department of the Government should deal with a particular subject, need not be mentioned in the Act. Section 4.

20. We have considered a suggestion¹ to provide that the monopoly under section 4 shall extend to transmission by air or through air carriers. No such amendment appears to be necessary, as, in section 4(1), the words "by post" seem to be wide enough to cover transmission by air². Sections 4 and 5.

21. (a) Section 6 makes certain stringent provisions as to— Section 6—
Liability of
Post Office.

(i) liability of the Government, and

(ii) liability of the Post Office employees, as to loss, delay, misdelivery, damage, etc., of postal articles in course of transmission by post.

As to the Government, it provides, that the Government shall not be liable, except where the liability is expressly undertaken under the Act. As to officers of the Post Office, they are liable only if they have caused the loss, etc., fraudulently or by wilful act or default.

22. In the notes on clauses to the Bill which led to the Act³, it was stated, that in this clause the provisions of the corresponding section in the Post Office Act, 1866 (section 65) had been "amended"^{3,4}. No further explanation is given there. But it would appear from the proceedings in the Council after presentation of the report of the Select Committee on the Bill⁵, that some persons, mostly, strange

1. S. No. 96 (Suggestion of the Department).
2. Certain other provisions—sections 4 (1)(c) and 5 (b)—are proposed to be sections extended to aircraft, by amendments as proposed in this very Report, to 4 (1)(c) and section 5.
3. Gazette of India, November 6, 1897, Part V, page 385.
4. The earliest section was section 49. Post Office Act, (17 of 1854) See, *Winter v. Way*. (1863) 1 MHC.R 200, 202.
5. Gazette of India, March 19, 1898, Part VI, page 99.

to say, officials, had desired to fasten upon the Post Office Officials a greater responsibility than the Bill originally provided. Sir James Westland, referring to these suggestions, replied, that the clause defined the responsibility of the Post Office officials "in terms which as nearly as possible expressed the English law on the subject". He stated that the difficulty of making a Post Office official liable for mere negligence, that is to say, for doing something which, if the official had taken better care, he would not have done, arose out of the circumstance that Post Office business has always to be done at enormous pressure. In the despatch of letters and in their delivery, "any extremely careful sorting of letters is a practical impossibility."

23. The apparently sweeping exemption from liability, embodied in section 6, has to be read in the light of the judicial decisions thereon. Thus, it has been held¹, in one case, that the word "loss" does not mean "pecuniary or other loss to the owner of the goods sent by post", who has been wrongfully deprived of the possession or enjoyment thereof. It means loss to the Government of the article sent by post. In that case, a V.P.P. parcel delivered to the Post Office was not delivered by it, and the Government was held liable. The court observed, that a loss occurs where the department involuntarily or through inadvertence loses possession of the goods. If the Government does not prove that the article has been lost, it cannot escape liability to pay compensation for loss caused by non-delivery.

Similarly, it has been held², that, where, by reason of a label having been torn, it is not possible to deliver a V.P.P. article, the post office is not exonerated by section 6 or section 34.

24. In an Allahabad case³, which contains a lengthy discussion on the subject, it has been held that the exemption in section 6 does not give the Government the right to do what it likes with the articles entrusted to its care. The Post Office, if it accepts a V.P.P. article and does not realise the price at the time of delivery, is liable in damages to the sender. Section 6 was intended by the legislature to serve as a shield for the post office and its officers "in the legitimate discharge of the functions", but the shield cannot be converted into a weapon of inequity in the hands of a government department enjoying a monopoly of essential

1. *Union of India v. Narayan*, A.I.R. 1955 Cal. 371, 372 (D.B.).

2. *Secretary of State for India v. Radhey Lal*, I.L.R. 46 All. 455 ; A.I.R. 1924 All. 692 (D.B.).

3. *Union of India v. Firm Ram Gopal*, A.I.R. 1960 All. 672, paragraph 17, 19 and 40 (Dhavan J.). But see *Union of India v. Ranji Lal*, A.I.R. 1965 All. 183, 186, paragraph 10.

service; the section does not empower the post office or its officers to do what they like with articles entrusted to their care or commit wrongful acts against the owners of these articles. The court discussed at length and followed the observations of the Supreme Court in *C.I.T. v. P. M. Rathod*¹ to the effect, that the post office becomes an agent of the seller for the recovery of the price and if it fails to recover the price and delivers the goods, it is liable for the damages to the seller. In the Supreme Court case, the facts were these: The assessee was a manufacturer of perfumery at Rathlam (in Madhya Bharat—a Part B State) and sent out goods by V.P.P. to various customers in Part A and C States, and the question was whether the income from these sales accrued in the Part A and C States, where the payments were made, or in Rathlam where the proceedings were handed over by the post office to the assessee. (In the latter case, the concessional rates of income-tax then applicable to Part B States would come into play). The Supreme Court held, that payment to the post office was a payment to it as agent of the seller and not as agent of the buyer. The Supreme Court pointed out, that goods handed over to the post office could be delivered to the buyer solely against payment, and this payment is received for the seller. Once the buyer paid the price, it is the post office that is responsible for the payment of the money to the seller. Therefore, payment to the post office is payment to the seller at the place where the goods are delivered. This would negative the post office being an agent of the buyer. *"This shows that whatever be the jural relationship between the seller and the post office in respect of carriage of goods sent by the seller under the V.P.P. system, it becomes the agent of the seller for the recovery of the price and if it fails to recover the price and delivers the goods, it is liable for damages to the seller, I.L.R. 28 Mad. 213."*

Now, the decision in 28 Madras 213¹ referred to by the Supreme Court was to the effect, that the post office, when it accepts an article as V.P.P. is bound by contract to deliver the article to the addressee and to recover the price. If it does not do so, it has committed a breach of contract, for which it is liable in damages. In that case, a parcel containing jewellery was delivered for transmission to Colombo as a V.P.P. article, but it was, by mistake, delivered without collecting the amount from the addressee. The Post Office neither paid the money nor returned the article to the sender, who thereupon sued for recovery of the value of the parcel. Section 34 of the Post Office Act, proviso, was relied upon in defence, the argument being

1. *C.I.T. v. P. M. Rathod*, A.I.R. 1959 S.C. 1394, 1397, 1398.

2. *Moth Chetty v. Secretary of State*, (1905) I.L.R. 28 Mad. 213, 215 (Devies and Sankaran Nair JJ.).

that actual realisation from the addressee is a condition precedent to the State's liability to pay the amount to the sender. This contention was rejected, on the ground that the section did not affect "the common law liability of the post office to pay damages for delivery of the parcel without collecting the money"¹. The court observed, that the Post Office is bound by contract to collect the money when it delivers the article.

The Madras decision is, thus, expressly based on contract.

26. In an Orissa case², the liability of the Post Office for insured articles was regarded as statutory and not contractual. Whatever be the basis of the liability, it is clear that the sweeping provisions of section 6 and section 34, proviso, would not come in the way of recovery in such circumstances.

27. As regards the contractual element, it may be interesting to note an English case^{3,4}, in which it was held, that the Postmaster General is in a quite different position from a private individual. He is responsible to the Crown for running a public service and incidentally a monopoly. In accepting postal articles, he does not enter into a contract for carriage, and the mere acceptance of a postal packet does not create any contractual tie. (That case related to a registered postal article sent for international transmission, and there were provisions in the Post Office Warrant and in the certificate of posting which excluded a right to compensation).

English
law—
statutory
provisions
regarding
Crown li-
ability.

28. In England, under section 8(2) of the Post Office Act, 1953, the "registration" of or giving of a receipt for a postal packet or the giving or obtaining of a certificate of posting or postings or delivery of a postal packet shall not render the Crown in any manner liable for the loss of the packet or the contents thereof. Under section 2(1) (a) read with section 17 of the Crown Proceedings Act⁵, 1947, the Crown is liable in respect of certain acts of its servants or agents. But this does not apply in matters relating to a postal packet, under section 9(1) of that Act. Section 9(2) of that Act, however, provides, that proceedings may be brought against the Crown in respect of a registered inland packet for the loss or damage due to any wrongful act done or any default committed by a person employed as a servant or agent of the Crown while performing functions in relation to the receipt, carriage, delivery or other dealings with the packet. The amount recoverable is limited so

1. No cases were cited.

2. *Debananda v. Union of India*, A.I.R. 1965 Orissa 118.

3. *Triefus & Co. Ltd. v. Post Office*, (1957) 2 All E.R. 387, 394 (C.A.)

4. See also paragraph 28, *infra*.

5. The Crown Proceedings Act, 1947 (10 and 11 Geo. VI c. 44).

as not to exceed the market value of the packet, and cannot also exceed the maximum amount available under Post Office Regulations, having regard to the fee paid for registration¹. Relief is available only on a claim by the sender or the addressee. There are other detailed provisions, which need not be considered.

29. The basis of the cause of action for registered inland postal packets, by virtue of section 9(2)(b) of the Crown Proceedings Act, 1947, has been described as "statutory, but resembling bailment". The history of the law, as explained by Lord Denning in a recent decision, may be referred to².

Before 1947, when you sent a letter by post and it was lost or damaged in transit, you could recover nothing. You could not recover in contract, because it was held that neither the Postmaster General nor the Post Office, made any contract to carry the letter³. You could not recover in tort, because the Postmaster General was not liable for the torts of his subordinates⁴. Even when you sent a registered letter, you could recover nothing for the loss of it, because any claim was excluded by statute⁵.

Since 1947 you can still recover nothing for ordinary letters; and nothing for registered letters sent overseas. It is still the case that no action lies in contract⁶. Nor in tort⁷. But the law has been changed entirely as to registered inland postal packets. By section 9(2) of the Act of 1947 it is enacted that 'proceedings shall lie against the Crown under this sub-section in respect of loss or damage to a registered inland "postal packet"'. The cause of action is, to my mind, *entirely statutory*. The section does not merely lift a barrier to proceedings against the Crown (as it does in cases under sections 1 and 2 of the Act). It gives a new statutory cause of action.

One thing is quite clear. The Post Office is a bailee of the registered packet and when you examine this new statutory cause of action you will find it is very like the

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1. For details, see Halsbury, 3rd Edn., Vol. 30, page 178, paragraph 303.
 2. *Buildings and Civil Engineering Holidays Scheme Management Ltd. v. Post Office*, (1965) 2 W.L.R. 72, 78, 79; (1965) 1 All E. R. 163, (C.A.), discussed in 236 Law Times 213.
 3. *Whitefield v. Lord Le Despencer* (1778) 2 Cowp. 754, 764 (per Lord Mansfield).
 4. *Bainbridge v. Postmaster-General*, (1906) 1 K.B. 178 ; 22 T.L.R. 70, C.A.
 5. See section 13 of the Post Office Act, 1908.
 6. *Trisfus v. Post Office*, (1957), 2 Q.B. 352 ; (1957) 3 W.L.R. 1; (1957) 2 All E.R. 387, G.A.
section 9 (1) of the Crown Proceedings Act, 1947.

action which the common law gives on a bailment. So much so that, in matters not specifically covered by the action recourse may be had, I think, to the general principles governing the law of bailment. At common law, bailment is often associated with a contract, but this is not always the case¹⁻². An action against a bailee can often be put, not as an action in contract, nor in tort, but as an action on its own, *sui generis*, arising out of the possession had by the bailee of the goods³⁻⁴. The incidents of this cause of action are not to be found by looking at the old books on detinue and trover. We have outlived those forms of action, together with trespass and case⁵. Suffice it to say at the present day that if goods, which have been delivered to a bailee, are lost or damaged whilst in his custody, he is liable to the person damnified (who may be the owner or the bailor) unless the bailee proves that the loss or damage is not due to any fault on his part⁶⁻⁷. Likewise the Post Office (when they have accepted a registered packet, and it is lost or damaged whilst in their custody) are liable to the person damnified unless they can prove it was done without any fault on their part⁸, but as a matter of machinery the action must be brought in the name of the sender or addressee⁹.

Whether changes necessary in section 6.

30. The language of section 6 may thus create problems as discussed above¹⁰. But it does not appear to be desirable to make any *verbal amendments* in the section, the reason being that, in the first place, it will be better to wait for some time and to see if difficulties arise; and, in the second place, the law relating to State enterprises in general may be expected to develop in the near future, and if any points arise, they could be dealt with on a study of the concrete points.

Liability for insured articles.

31. As regards insured articles, under section 33 of the Indian Act, subject to the prescribed conditions, the Central Government is liable to pay to the sender compensation not exceeding the amount for which the postal article has been insured, for the loss of the postal article or damage caused in transmission by post. But the compensation

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1. *Reg. v. McDonald*, (1885) 15 Q.B.D. 323 ; 1 T.L.R. 561.
 2. *Meux v. Great Eastern Railway*, (1895) 2 Q.B. 387 11 R.L.R. 517 G.A.
 3. Winfield on the Province of the Law of Tort, page 100.
 4. Fifoot's History of the Common Law, page 24, *Midland Silicones v. Scrutton*, (1962) A.C. 446 (1962) 2 W.L.R. 186 ; (1962) ; 1 All E.R. 1 E.L. (E).
 5. *Leiang v. Cooper*, (1964) 2 All E.R. 929, C.A. ; (1964) 3 W.L.R. 573.
 6. *Coldman v. Hill*, (1919) 1 K.B. 443 ; 35 T.L.R. 146 C.A.
 7. *Coldman v. Hill*, (1919) 1 K.B. 443, 455, (per Scrutton L.J.).
 8. See section 9 (2) of the Act of 1947 at the beginning and end.
 9. See section 9 (3) and (4).
 10. Paragraphs 22-29, *supra*.

is not to exceed the value of the article or the amount of the damage. This provision seems to have worked smoothly, and need not be disturbed, so far as its substance is concerned.

32. (a) So far as the officers themselves are concerned, section 6 of the Indian Post Office Act provides, that an officer of the post office shall not incur any liability by reason of loss, misdelivery or delay of or damage, to a postal article in course of transmission by post, unless he has caused the same fraudulently or by his wilful default. "Default" has been interpreted as failure in duty, care, etc. which is the cause of some untoward event¹.

Liability of the officers themselves—Indian and English law.

(b) In England, an officer of the Crown is not subject to any civil liability for anything done or omitted to be done in relation to postal packet, except at the suit of the Crown^{2,3}.

The English Act goes too far in excluding liability even of the servants for a postal packet⁴⁻⁶.

In this respect, the Indian Act is more just and fair to the sender, as section 6 preserves the liability of the postal officer for wilful acts.

33. While on section 6, we may draw attention to a previous report of the Law Commission⁶, in which the general question of liability of the State in tort was considered.

Section 6 and the general question of State liability in tort.

The recommendation made there was, in substance, to the effect that (so far as is material to the subject under discussion) while the State should be generally liable for the torts of its servants and agents, the existing immunity under the Indian Post Office Act, 1898, may be preserved⁷⁻⁸.

1. *Rikhan Lal v. Banarasi Singh*, A.I.R. 1932 All. 139.

2. Section 9 (1), Crown Proceedings Act, 1947.

3. See Garner, *Administrative Law*, (1963), page 225.

4. Winfield on Tort, (1963), page 63.

5. See also Wade, *Administrative Law*, page 220.

6. First Report (Liability of the State in Tort), page 42, paragraph 66 sub-paragraph V.—Exceptions—Item (v) (Miscellaneous).

7. Compare the Federal Tort Claims Act, 28 U.S. Code (1948 Ed) [Judiciary and Judicial Procedure, section 2680 (b)] which barred "Any claim arising out of the loss, miscarriage or negligent transmission of letters or postal matter".

8. Title, 28 U.S. Code (1964 Edn) deals with the question.

Position
apart from
statutory
provisions.

34. It would be an interesting inquiry to make as to what would be the position of the Post Office apart from statutory provisions. The following points may be made:—

(i) The Post Office is not perhaps a "common carrier" as known to the common law.^{1,2} Therefore, the common law rule of absolute liability of a carrier (with certain qualifications) may not apply to the Post Office.

(ii) The Post Office is not (apart from V.P.P. and insured articles) a bailee by contract, because, (apart from V.P.P. and insured articles), it does not receive any consideration from the sender, and what it receives is merely a statutorily fixed fee. It is, of course, possible to argue, that such fee is the consideration for carrying all kinds of postal articles, but the position³ is not very clear as to how far there is a contract. If there is no contract, the Post Office is not a bailee, by contract, because bailment requires delivery of goods "on contract" under the Indian Contract Act⁴. Hence the obligation of a bailee to take as much care of the goods as a man of ordinary prudence would take of his own goods⁵, may not apply. It must, however, be noted, that in an English case—the *Winkfield*—the Postmaster General has been held to be entitled to sue for damages for loss of mails due to collision of ships caused by the defendant's negligence^{6,7}, apparently as a bailee in possession^{8,9}.

Winfield gives this summary of the case¹⁰:—

"When conversion of a thing bailed is committed by a third person (i.e., one who is neither bailor nor the bailee), the bailee can recover the full value of the thing from the third party, although

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1. Cf. section 2, Carriers Act, 1885, which, while defining "common carrier", excludes the Government.
 2. See also *Lane v. Cotton*, (1701), 1 Ld. Raym 646, where it was held that the Postmaster General is not a common carrier. In that case, he was held not liable for the loss of Exchequer Bills in the post, though there was a powerful dissent of Holt C. J. See Winfield, Selected Legal Essays, (1952), page 36.
 3. See paragraphs 24—30, *supra*.
 4. Section 148, Indian Contract Act, 1872.
 5. Section 151, Indian Contract Act, 1872.
 6. See the *Winkfield*, (1902) Probate 421 (1900—1903), All Eng. Reports Reprint: 345, 349 (C.A.).
 7. Street, Torts (1959), page 35.
 8. See Halsbury, 3rd Edn., Vol. 30, page 176, footnote (m), and Vol. 2, page 144.
 9. Also see Winfield, Tort, (1963), page 52.
 10. Winfield, Tort (1963), pages 545—546.

he (the bailee) would have a good answer to the bailor if he were sued for the loss of the chattel. Thus, in the *Winkfield*¹, mails were lost in a collision between ships one of which was carrying the mails. Now, the Postmaster General was not liable to the senders of the letters and parcels for their loss. Yet he was held entitled to recover their value from the owners of the ship responsible for the accident. But he was also bound to pay to the bailors any excess above his own interest and this "serves to soothe a mind disconcerted by the notion that a person who is not himself the complete owner should be entitled to receive back the full value of the chattel converted or destroyed."²

(iii) The Post Office is not an "involuntary bailee". It gets possession by choice³.

(iv) Since, however, the Post Office professes to accept goods of a certain description for conveyance to the addressee, it must be regarded as standing in some position akin to a bailee⁴. As a matter of fact, there is one view, that a bailment can exist independently of contract⁵. But, apart from that, a person who receives goods knowingly, and for certain service to be performed thereon, cannot remain absolutely without legal obligation. On this reasoning, the duty to take reasonable care may arise, and an action may lie in tort irrespective of contract. The relationship existing between the sender and the Post Office, and the nature of the service performed by the Post Office (apart from statute), might impose on the Post Office the obligation to take reasonable care of the goods⁶. This is nearest to the position of a private carrier, i.e. a carrier who is not a common carrier.

(v) The discussion may appear to be academic in view of the express provisions of section 6. But it is useful to bear these points in mind, in order to appreciate how section 6 has changed the rules that could otherwise have prevailed.

1 *The Winfield* (1902), Probate 42, overruling *Claridge v. South Staffs Transp. Co.* (1892) 1 Q.B. 422. See Holdsworth, *History of English Law*, vii, pages 443 et seq., for the history of the matter.

2 Collins M.R. in *The Winkfield*, (1902), Probate 42, 60.

3 As to involuntary bailees, see *Winfield on Tort* (1963), page 532f by Halsbury, 3rd Edn., Vol. 2, page 98, paragraph 1971 *Burnett "Conversion by an Involuntary Bailee"*, (1960) 76 L.Q.R. 364.

4 Compare the discussion by Lord Denning in the case cited in paragraph 29, *supra*.

5 *Winfield on Tort* (1963), page 7, citing his "Province of the Law of Tort" (1931), pages 97-99.

6 As to the theory that there is a general conception of the relations giving rise to a duty of care, see Lord Atkin's judgment in *Donoghue v. Stevenson*, (1932), A.C. 562, and the discussion in (1953), *Current Legal Problems*, 236, 238.

Sections 6, 30, etc.—
Suggestion regarding limitation and liability or registered articles.

35. It has been suggested¹, that the Department should be empowered to make rules to impose time-limits for compensation for loss or damage in respect of postal articles. The suggestion states, that sections 33, 34 and 48 "give power to the Central Government to frame rules about the liability of the Central Government". It adds, that the Department has prescribed certain time limits within which it will accept complaints and claims in respect of payment of compensation with regard to loss or damage in respect of postal articles, but it has been found that the courts have rejected the cases on the ground that the time limits fixed by the Department had no legal force as these sections do not empower the Central Government to fix time limits. The suggestion, therefore, is, that section 6 may be amended to empower the Central Government to fix time limits for the receipt of complaints or claims of compensation in such cases.

36. On a study of the rules, we find that there are certain rules² prescribing time limits. Thus, rule 81(d) provides that no compensation should be payable to the sender of the insured articles, where the sender has not given intimation of the loss within three months from the date of posting. Rule 102 provides, that the Central Government shall not incur any liability in respect of the sum specified for remittance to the sender in respect of a value-payable postal article, unless and until that sum has been received from the addressee and unless a claim for that sum has been preferred within one year from the date of posting of the article. Rules regarding various postal articles can be made under sections 33, 35, 36, 43 read with sections 48(a), and 74(1). Section 48(d) is also relevant as to wrong payment of a money order.

It is not necessary for us to express any opinion as to the validity of some of these rules, or to discuss the effect of the provision in section 74(3) under which rules made under the Act "shall have effect as if enacted by this Act." We are confining ourselves to the question whether the suggestion to amend section 6 on this point should be accepted. We are not inclined to accept the suggestion. A rule of limitation annexes a condition to the exercise of a right.^{3,4} Ordinarily, a power to impose a period of limitation should not be made exercisable by subordinate legislation.

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1. S. No. 96 (Suggestion of the Department).
 2. Rules 81 (d), 102 & 180D Indian Post Office Rules 1932.
 3. *Cf. E.S.I. Corpn. v. Government of Madhya Pradesh*, A.I.R. 1964 M.P. 75, 77; see also *Solar Works v. E.S.I.*, A.I.R. 1964 Mad. 376.
 4. See also *Miss Maria v. B.R. Baliga*, A.I.R. 1967 Bom. 472.

37. It has been suggested¹ that the liability of the Government should be extended to *registered articles*. It would not, however, be practicable to accept this suggestion *in toto*. Certain facilities are given in respect of registered articles.² To make the Post Office liable for the loss of registered articles would practically amount to placing registered articles on the same footing as insured articles. We are, however, recommending a *limited* provision³ in this respect.

Suggestion regarding liability.

38. A State Government⁴ has suggested that a liability for liquidated damages be imposed for negligence in the *delivery of letters*. We think that it would be impracticable to impose such a liability. We are not, therefore, in favour of the proposed change.

39. With reference to section 6, a High Court has expressed this view⁵. "The existing section 6 of the Indian Post Office Act, 1898 gives complete immunity to the Government. In the opinion of the Court the principles laid down by the Single Bench of the Allahabad High Court in A.I.R. 1960 All. 672, should be given statutory recognition⁶ by amending section 6 of the Act so as to make the Post Office liable where misdelivery, delay or damage to any postal article is due either to negligence or dishonesty on the part of the postal employees. The necessity of giving the principles laid down by the Allahabad High Court a statutory basis arises because it is a judgment of a single Judge and may not necessarily be followed by the other High Courts".

Section 6 and suggestion to make Post Office liable for misdelivery, etc., due to dishonesty, etc.

This suggestion may be examined with reference to the various categories of postal articles, namely:—

- (i) ordinary;
- (ii) registered;
- (iii) V.P.P.; and
- (iv) insured.

For ordinary (unregistered articles), no change is desirable. The Government cannot be made liable, having regard to the voluminous business that is transacted by the Post Office. For insured articles, no change is needed, as there are specific provision.⁷ As to registered articles, we are recommending certain changes.²

As to V.P.P. articles, the changes which we are recommending will suffice.⁹

1. S.No. 102 (Suggestion of a High Court).
 2. Indian Post Office Rules, 1933, rules 58 to 65.
 3. See section 28 (as proposed).
 4. S.No. 97 (State Government).
 5. S.No. 167 (Suggestion of a High Court).
 6. As to the Allahabad case, see paragraph 20, *supra*.
 7. See section 33.
 8. See section 28 as proposed.
 9. See section 34 as proposed.

Section 7
and peti-
tions to
President,
Parliament,
etc.

40. Under the English Act,¹ there is an exemption from postage in respect of petitions to the Queen, Parliament, etc. (provided the conditions mentioned in the section are fulfilled). We considered the question whether the adoption of such a provision would be desirable. We decided not to recommend any such change, as the exemption might be found to be unworkable, in practice.

Section 9—
Renewal of
registration.

41. Section 9, dealing with rules for the registration of newspapers for transmission by inland post, has figured in certain decisions. In one case,² the main point related to the power of a Postmaster General to cancel registration under the Rules. It was held, that if the Postmaster General once holds that a magazine comes within the purview of section 9, then it is not open to him, on the *same set of facts*, to come to a different conclusion afterwards, during the period when the registration is in force, and to cancel registration on that ground. Every successive Postmaster General cannot, while the registration is in force, cancel it on the ground that the newspaper does not satisfy the prescribed conditions. There is also a discussion in this case about the meaning of the expression "current topics", used in section 9(2), opening paragraph. No amendment of the section is, however, called for.

In a Bombay case,³ it has been held, that the right to concessional rates under the Act and rules thereunder is not a fundamental right under article 19 of the Constitution, where registration as a "newspaper" is denied to a short-story magazine.

Section 9
foreign
newspapers.

42. A reference has been made in a previous report of the Commission⁴ to the Post Office Act, 1913, which enables newspapers published in the British Dominions to be registered in England as registered newspapers under the Post Office Act, 1908. The Act merely confers a privilege upon newspapers published in India and circulating in England. A suggestion, however, has been made in the Report that the Ministry concerned may consider this statute along with other postal arrangements between India and the U.K.

Attention may, in this connection, be invited to the power of the Central Government to make rules under section 9 (providing for registration of newspapers for transmission by inland post as registered newspapers). The significance of registration is mainly for the purpose of postal rates, because, as would appear from section 7(1) and

1. Section 5(1), proviso, English Act.

2. *Kali Charan v. Postmaster General*, A.I.R. 1956 All. 87, 89.

3. *Sevanilal v. V. D. Dalvi*, A.I.R. 1961 Bom. 105, 110, paragraph 23.

4. Fifth Report of the Law Commission (British Statutes applicable to India), page 65, bottom, and page 66, top, entry No. 220.

the First Schedule to the Act, the Central Government, in fixing the rates of postage, fixes different rates for registered newspapers as a class of postal articles, as contrasted with other postal articles. Now, the conditions for registration in section 9(2) do not require that the newspaper must be published in India. Accordingly, there is nothing in the Act itself to bar registration of foreign newspapers if otherwise permissible under the Act and the rules made thereunder. Reference may also be made to section 10 of the Act, under which, when arrangements are in force with the U.K., or with any British Possession or foreign country for the transmission by post of postal articles between India and that country, the Central Government may, in conformity with such arrangements, declare the postal rates and other sums chargeable in respect of such postal articles.

43. The matter would not, therefore, require an amendment of the Post Office Act. The relevant provision in the latest Act on the subject in the U.K.—the Post Office Act, 1953—is section 13(1)(b), under which a publication is registrable under section 12 as a newspaper if it is printed and published in “the British postal area or some other part of Her Majesty’s Dominions or . . . India (provided it satisfies the other general conditions of registration). Under section 15 of that Act, where arrangements have been made with the Government of any other country or postal administration for the conveyance of postal packets between the British postal area and places outside the area, regulations may be made for carrying the arrangements into effect and other matters.

Section 9—
Constitutional
aspects.

44. The constitutional aspects of section 9 have been dealt with separately.¹

Section (9)
(2)(a)—Inter-
val of 31 days.

45. With reference to section 9(2)(a), the following suggestion was made² in the Department’s communique on our draft Report:—

“One of the conditions provided in section 9(2) of the Act is that the publication applying for registration for concessional rates of postage, should come out at intervals of not more than 31 days. There may be need for reducing the frequency. It is felt that no periodicity regarding the intervals within which a publication should come out, need be stipulated in the Act. This may be left to the Central Government to prescribe by framing necessary rules under this section. It is suggested that this section may be suitably amended.”

1. See Appendix 4.

2. No. 169 (Suggestion of the Department)

In our view, this is a matter of policy, and we would express no opinion thereon.

Section II—
Service
Stamps.

46. With reference to section 11, the following suggestion has been made relevant to service stamps¹:—

“Under section 11 of the Act, addressees of the articles sent under deficit service postage are liable to pay the deficit postage with such extra postage as is charged by the postal Department before the postal article is accepted, or to refuse payment of the postage and return it to the sender. In view of these provisions, even important and urgent articles may sometimes go undelivered for fault of the sender if sufficient postage is not affixed. It is, therefore, suggested, that in regard to postal articles sent under service postage, postage should not be collected from the addressee, but it may be delivered and the postage so collectable from the addressee may be collected from the sender only, following the same procedure as provided under section 27(2) of the Act.”

The position, as stated in the suggestion, is true². It would not, however, be practicable to collect the deficiency, once the postal article is delivered.

(The suggestion states, that the procedure in section 27(2) be followed, but that would be cumbersome). The suggested change cannot, therefore, be adopted.

47. A State Government had, in its comment on the draft report, stated as follows³:—

“It appears to this Government, that great inconvenience and at times great prejudice, may be caused, if the provisions of section 11 are followed even in the case of postal articles sent under service postage, but insufficiently stamped. The postal articles concerned may be a letter summoning a candidate for a post for an interview or a letter addressed to the Public Works Department of a State for arranging the accommodation of some Minister or superior officer of the Central Government in the State Guest House or a dak bungalow. It appears to this Government that in the case of insufficiently stamped postal articles sent under Service Postage, it will be quite easy to make a note of the particulars of the sender by the Post Office at the delivery and then to recover the deficit postage from the office which had sent it. The collection will be by way of mere book transfer.”

1. S.No. 114 (A State Government).

2. Rules 181(1)(a) and 182, Indian Post Office Rules, 1933.

3. S.No. 170 (Comment of a State Government).

We considered these points, but we came to the conclusion that no change is possible. It would not be practicable to recover the deficiency, as elaborate records will have to be kept before delivery.

48. It has been suggested¹ that we should insert, *in the Post Office Act*, a provision authorising postal officials to detain articles liable to customs duty for examination and assessment. Existing provisions of the law² are, in our opinion, adequate, and no change appears to be necessary³. Section 13—
Customs
duties.

49. We have considered a suggestion⁴ to add a provision as to forged money orders and fictitious stamps. The existing provisions of the law appear to be adequate,⁵ and no change is necessary. Section 17—
Forged
money orders
and
fictitious
stamps.

50. Section 18 deals with the re-delivery to the sender of postal articles, and with the recalling of postal articles. As has been held by the Supreme Court,⁶ the right of the sender to reclaim a letter is not an absolute right, as it is left entirely to the postal authorities to decide whether a letter once posted should be returned to the sender. The negative proposition given in section 18(2) sufficiently brings out this aspect emphasised by the Supreme Court. This section need not be disturbed. Section 18.

51. With reference to section 18, we have received a suggestion⁷ to empower the Government to make rules for changing the name and address of the addressee. We feel, that a wide power to change the name and address may be abused. The suggestion has not, therefore, been accepted.

52. The constitutional aspects of section 19 have been dealt with separately.⁸

53. It has been stated,⁹ that there is some repetition between sections 19(1) and 19(2), and that the section should be recast. It may be that there is some overlapping. But, in the absence of any practical difficulty, no change need be made. Section 19.

54. The constitutional aspects of section 19A have been dealt with separately.¹⁰ Section 19A.

55. The constitutional aspects of section 20 have been separately dealt with.¹⁰ Section 20

1. S.No. 96, last paragraph (Suggestion of the Department).

2. Sections 13, 24, 24A, 25, Post Office Act, and sections 82 to 84, Customs Act, 1962 (52 of 1962) may be seen.

3. See also paragraph 80, *infra*.

4. S.No. 88.

5. Sections 465, 471, 263A, Indian Penal Code, read with section 17(1), Post Office Act.

6. *Income-tax Commissioner v. Ogale Glass Works Ltd.*, (1955) 1 S.C.R., 185; A.I.R. 1954 S.C. 429.

7. S.No. 96 (Suggestion of the Department).

8. See Appendix 4.

9. S.No. 96 (Suggestion of the Department).

10. See Appendix 4.

Recommendation regarding destruction of obscene articles.

56. We apprehend that, with reference to clause (a) of section 20 (obscene articles, etc.), the power to destroy the obscene article under section 23(3)(b) of the Act read with the rules,¹ as exercisable under the existing procedure, may perhaps be invalid, as such a restriction may not be considered "reasonable" within article 19(2) of the Constitution. Reference has been separately made² to the case-law relating to analogous Acts and to comparable provisions in the Young Persons, etc., Act, the Cinematographs Act, etc., which provide for review or other suitable safeguards. Notice to the sender and to the addressee seems to be the minimum safeguard which can be devised from the point of view of procedural reasonableness. We, therefore, recommend, that, before destruction of the obscene article under section 23(3)(b) read with section 20(a), notice should be given to the sender,³ and to the addressee.

We think that the new proviso should be confined to action under section 20(a).

57. In its comment on our draft Report, a State Government⁴ had stated:—

"From the point of view of an invasion of the sender's freedom of speech and expression, the two clauses of the section (section 20) stand on the same footing; and action, which may amount to destruction, can be taken under section 23(3)(b) in respect of article sent in contravention of clause (a)... In the opinion of this Government, the proviso suggested to be inserted after section 23(3)(b) should refer to clause (b) of section 20 as well... The Postmaster General is the sole and final judge whether an article comes within the mischief of section 19 or 19A. This Government, therefore, thinks that the proviso suggested by the Central Commission should be recast so as to make it a proviso to the whole of section 23(3) and to include in it a reference to all the sections concerned, namely, section 19, section 19A and both the clauses of section 20."

A High Court⁵ had also suggested, that clause (b) of section 20, should be mentioned in the proviso to section 23(3)(b) as proposed to be added by us.

58. In our view, however, no such change is required.

Cases under section 19 and 19A would hardly raise questions of freedom of speech. As regards section 20(b), it is

1. Rule 217, Indian Post Office Rules, 1933.

2. See Appendix 4 (Constitutional aspects of certain sections).

3. Cf. section 24, Post Office Act.

4. S. No. 170 (Comment of a State Government).

5. S. No. 167 (Comment of a High Court).

not necessary to provide for notice, etc., because section 20(b) relates to postal articles containing *on the cover, etc.*, obscene, etc., writing, and the present procedure is not likely to be regarded as unreasonable.

59. The following suggestion¹ relevant to proposed section 23(3)(b), was made in a comment on our draft Report:—

“As regards sections 24, 27 and 27B, in each case, it is a provision for a notice on the addressee and not on the sender. Of the three sections mentioned above, section 27B also provides for an opportunity for testing the validity of the action of the Postal authorities, for it gives a right to “any person interested in the article” to apply to the State Government for relief and if that application fails, to apply to the High Court. Further, it is to be considered whether express provision should not be made for a right of the person notified to seek relief from other authorities. To this Government it seems that it will be better and more *in conformity with the recognised method of amending statutes, to adhere to the scheme of the Act and frame the proposed proviso on the lines of section 27B(2) and (3).*”.

We have carefully considered the comment.

In our view, section 27B is too cumbersome, and need not be followed. Moreover, section 27B is meant for seditious articles, while section 23(3)(b), proviso (proposed) is intended for obscene articles.

60. With reference to proposed proviso to section 23(3)(b), the following comment has been made² by the Department:

“The proviso to section 23 may be amended to prescribe a period of less than one month in respect of explosive or obnoxious or deleterious substances, as, for obvious reasons, it would not be possible or desirable to keep such substances in the post office up to a period of one month.”.

It may, however, be pointed out, that the proposed proviso³ is not relevant for *explosives*, etc.

No change is, therefore, needed in the proposed proviso.

61. We have received a suggestion⁴ to add a new clause in section 20, to the effect, that no person shall send by post

Suggestions
regarding
section 20, 7

1. S. No. 170 (Comment of a State Government).

2. S. No. 169 (Comment of the Department).

3. Section 23(3)(b), proviso (As proposed).

4. S. No. 81 (A State Government).

any article which is prejudicial to the security of India, or which is likely to bring India into *disrepute* with other countries or which questions the territorial integrity of India. We think, that the existing provisions of sections 20(b) (read with section 61), 26 and 27B (i)(ii), Post Office Act, and section 124A of the Indian Penal Code, and the general law of abetment and conspiracy under the Indian Penal Code and the Criminal Law Amendment Act,¹ dealing with writings questioning the territorial integrity of India, are enough. In the absence of any practical difficulty; it would not be advisable to insert a *wide section* in the Post Office Act, particularly when there is no such general crime of "acts prejudicial to the security of the State" (apart from the provisions in the Defence of India Rules and other similar special or temporary laws).

Section 20 and communications with the enemy and official secrets.

62. We have received a suggestion² to add, in section 20, the following, namely:—

- (i) communication with the enemy, etc., and
- (ii) communication in the nature of disclosure of official secrets.

As regards communications of the *first type*, section 26, Post Office Act, is the appropriate section, and section 20 need not be amended for the purpose.

As regards communications of the *second type*, penal provisions of the Official Secrets Act,³ appear to be sufficient. That Act, it is true, does not empower the *interception* of communications.⁴ If the suggested addition (in section 20) is intended to attract the provisions of section 23 (under which the articles can be destroyed), then the power is likely to be abused. The suggestion has not, therefore, been accepted⁵.

Section 20 (b) and objectionable matters.

63. It has been suggested,⁶ that in section 20(b), the words "objectionable or any matter which is an offence under Indian Penal Code or any other law" should be added. The expression "objectionable matter", however, would be very vague, and the wording "any matter which is an offence under the Indian Penal Code, etc." would be very wide. We have not, therefore, accepted the suggestion.

Section 21.

64. The constitutional aspects of section 21 have been separately dealt with.⁷

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1. The Criminal Law Amendment Act, 1961 (23 of 1961).
 2. S. No. 108 (Suggestion of a Deputy Inspector General of Police)
 3. The Official Secrets Act, 1923 (19 of 1923), sections 3(1)(c), 5(1)(a), 5(2), 6(3), etc.
 4. The power under section 11, Official Secrets Act, 1923, is of a limited nature.
 5. As to general power of interception, see section 26, Post Office Act.
 6. S. No. 108 (AD.I.G. of Police).
 7. See Appendix 4.

65. We have received a suggestion¹ to insert a provision regarding the maintenance of a register in the Post Office for articles sent under a certificate of posting. This would unnecessarily increase work, for which the fee charged would not be commensurate. A change in the law is not needed. If unscrupulous persons succeed in getting a certificate without actually posting a letter (as stated in the suggestion), the proper remedy would be to see that the letter is posted before the certificate is issued. In fact, the rules² do provide that the certificate shall be presented to the officer on duty at the post office *alongwith the* article to be posted.

Section 21
(1)(b) —
Certificate
of posting.

66. With reference to articles sent under certificate of posting, a State Government has, in its comment on the draft Report, stated³:—

“In the opinion of this Government, the Rule referred to (Rule 195) constitutes no safeguard at all, because the guarantee of a certificate of posting is, where it is abused, abused in collusion with the officer who stamps the postal seal on the certificate. If he is a colluding party, he cannot be depended on the insist on strict compliance with the Rule. A register in which all articles sent under a certificate of posting would be entered serially and in a chronological order would, on the other hand, make such abuse almost impossible, because tampering with such a register or making fictitious entries in it, would not be easy. Nor can it be said that the work of maintaining such a register will be unduly heavy.”

We have carefully considered the point raised in the comment. But we think that no such change is needed.

Even if it were practicable to provide for a register of articles posted under certificate, that cannot constitute a safeguard against collusion. An entry can be made fictitiously even in the register which is suggested in the comment under consideration.

67. It has been suggested,⁴ that section 22 (2) be deleted, as there are no separate parcel posts. We have not accepted the suggestion, as the existing provision is harmless.

Section 22.

68. The constitutional aspects of section 23 have been separately dealt with.⁵

Section 23.

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1. S. No. 108 (A D.I.G. Police).
 2. Rule 195 (1), Indian Post Office Rules, 1933.
 3. S. No. 170 (Suggestion of a State Government).
 4. S. No. 96 (Suggestion of the Department).
 5. See Appendix 4.

Section 23
(3)(c).

69. We have received a suggestion¹ from the Department to add "Superintendent of Post Offices" in section 23 (3) (a). Having regard to the fact that under section 23 (3) (a) any postal article sent by post in contravention of the provisions of sections 19 and 19A can (under the authority of the Postmaster General) be opened and destroyed², it is not desirable to extend the scope of the section in this manner. We have not, therefore, accepted the suggestion.

70. In its comment on the draft Report, the Department reiterated its suggestion, stating that "leaky articles are received in a large number in post offices and every case of destruction of such articles has to be referred to the Postmaster General and this unnecessarily takes considerable time"³.

We do not, however, think that it is wise, to give the power of destruction to lower officers. Delay should not be caused even by the existing provision, because in cases of urgency, instructions can be obtained by phone.

71. In its comment on our draft Report, a State Government⁴ had stated that section 19 prohibits the transmission by post of, *inter alia*, explosive, dangerous or deleterious substance and also of living creatures and things likely to injure postal articles or officers of the Post Office. If a postal packet was found to contain such substances or creatures or things, it would (it was stated) be dangerous to wait for the direction of the Postmaster General before the articles were destroyed. In the opinion of the State Government, therefore, the suggested addition⁵ of the Superintendent of Post Offices should be made to section 23 (3) (a).

The Comment was discussed before us at length. In our view, no such change is needed. It may be noted, that even under the suggested change, the directions of the Superintendent would have to be awaited, so that the position may not be better.

Section 23
(3)(b).

72. We have already recommended⁶ a suitable amendment in section 23 (3) (b), with reference to the power to destroy obscene articles.

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1. S. No. 96 (Suggestion of the Department).
 2. Section 19 deals with injurious articles, and section 19A deals with tickets, advertisements, etc., relating to lotteries not authorised by the Government.
 3. S. No. 159 (Suggestion of the Department).
 4. S. No. 170 (Comments of a State Government).
 5. Paragraph 70, *supra*.
 6. See paragraph 56, *et seq.*, *supra*.

Such a provision appears to be necessary, having regard to the consideration that a determination as to whether an article is or is not obscene should not be left to the Postmaster General without some such safeguard.

73. We have considered a suggestion¹ to add "police officers" in sections 23 and 27. It is not in our view desirable to confer the powers under these sections on police officers. We do not, therefore, accept this suggestion. Sections 23 and 27, and Police Officers.

74. The constitutional aspects of section 24 have been separately dealt with.² Section 24.

75. Section 24 does not, in our view, apply to action under other sections of the *Post Office Act itself*.³ Section 24 and action under other sections.

In its comment on our draft Report, a State Government⁴ had stated as follows:—

"This Government cannot agree that the opening words of section 24 exclude its application to cases under the different clauses of section 23, though it may be otherwise excluded. So far as opening words of section 24 are concerned, they constitute an all-embracing provision for a notice in all cases of receipt by Post Office for delivery of articles sent in *contravention of the Post Office Act as well as other Acts*. The notice, however, will have to be a notice to the addressee...."

The State Government, further, observed that the real difficulty is that the opening words of section 24 cannot, at least in the case of some of the postal articles, be reconciled with the second proviso, and therefore how those general words are to be construed in their bearing on the duty of giving notice, is a question.

76. The matter was discussed at length before us. The history of the opening words of section 24 (substituted by the Amendment Act of 1912) was looked into. In our view, section 24 does not apply to the matters provided for in sections 19 to 23, having regard to its history, and also having regard to the consideration that the words "Except as otherwise provided in this Act" are adequate to exclude the operation of the section in relation to cases *specifically* provided for.

1. S. No. 108 (A D.I.G. Police).

2. See Appendix 4.

3. See also Appendix 4, under section 19A.

4. S. No. 170 (Comment of a State Government).

We may, in this connection, refer to the relevant part of the statement of Objects and Reasons to the Amendment. Act of 1912¹—

“Clause 5—The absence of any definition of “contraband goods” in the existing Act has been repeatedly felt, and it is proposed to substitute a defining phrase making it clear that the provisions of section 24 are applicable to goods of which the import or transmission by post has been prohibited under the Excise, Opium or other laws.”

Section 24—
Power under
first proviso.

77. It has been suggested², that the power under section 24 be delegated to the Postmaster General, instead of the Director General. This seems to refer to section 24, First Proviso. This is an important power, and no change is desirable.

78. In its comment on our draft Report, a State Government had stated³:—

“This Government thinks that the first proviso to section 24 should be so amended as to make the calling in of two respectable witnesses, whenever a postal article is opened in the absence of the addressee or his agent, a universal rule, compulsorily to be followed in all cases without any direction of any higher authority.”

In our view, no such change is needed. In a small village, it may not be practicable to call witnesses.

Section 24A.

79. The constitutional aspects of section 24A have been separately dealt with⁴.

Section 24A
and Customs
Act.

80. With reference to section 24A and the Customs Act, the following suggestion⁵ was made:—

“Section 24A of the Act empowers the Department to hand over postal articles for customs examination to customs authorities. In actual practice the articles are being detained for customs examination in foreign post offices, but there is no provision for this in the Act. The Sea Customs Act, 1878, does not provide for the delivery of articles to the customs authorities, but provides that articles may be kept in the custody of the post office. The provisions in the two Acts are not consistent. It is felt that the law must be consistent,

1. Extract from the Statement of Objects and Reasons to the Bill which led to Act 3 of 1912.
2. S. No. 96 (Suggestion of the Department).
3. S. No. 170 (Suggestion of a State Government).
4. See Appendix 4.
5. S. No. 169 (Suggestion of the Department).

and there should be no conflict between the two enactments and, therefore, this discrepancy is pointed out to the Law Commission for such action as may be deemed proper."

The statutory provisions on the subject were examined by us. It appears to us, that there is no discrepancy. The subject is mainly governed by section 84 of the Customs Act, 1962, which leaves the matter elastic¹⁻².

81. The constitutional aspects of section 25A have been Section 25A. separately dealt with³.

82. Section 26 of the Act provides, that on the occur- Section 26. rence of any public emergency or in the interests of the public safety or tranquillity, the Central Government or a State Government or any authorised officer may, by order in writing, direct that any postal article or class of description of postal articles in course of transmission by post shall be intercepted or detained or disposed of in such manner as the authority issuing the order may direct.

83. Section 26, thus, imposes a restriction on the right of freedom of speech and expression, guaranteed by article 19(1) (a) of the Constitution, and the question has to be considered whether the restriction would be valid. The permissible heads of restriction under article 19(2) of the Constitution (so far as is relevant) are—"security of the State", "public order", incitement to the commission of an offence, and friendly relations with foreign States. It would be desirable to bring the language of the section in line with the permissible heads of restriction. The expression "public emergency" in section 26 appears to be very wide, because, if the "emergency" is not of such a nature as to affect the security of the State or public order, the provision would travel beyond the permissible heads of restriction.

84. It may be of interest to know the history of section 26. In the Bill which led to the Act, in the notes on clauses⁴, it was merely stated that the clause was based on the analogy of the Indian Telegraph Act, 1885 (obviously, the reference was to section 5 of that Act). When, however, leave to introduce the Bill was sought for, Sir James Westland explained, that "in this respect we copy the English law". Referring to a Bill which had been introduced in Parliament two years earlier, he said, that the English Bill did not directly make any special provision of

1. See section 84(b), Customs Act, 1962 (32 of 1962).

2. See also paragraph 48, *supra*.

3. See Appendix 4.

4. Gazette of India, November 6, 1967, page 386.

this kind, but it implied it in imposing penalty upon a Post Office officer, who delayed or intercepted any article otherwise than by direction of the State. In the Report of the Select Committee¹, Shri P. Ananda Charlu, in his note of dissent, said, that after action is taken under the clause, the grounds for it should be published; to hush up an affair was, he said, bad policy, while to give publicity would be a tangible warning to similar offenders. He stated, that the balance of advantage to the public, for whose protection the power was being taken, was to place even the Government under the reign of law.

85. When the Report of the Select Committee was discussed in the Council², Shri P. Ananda Charlu repeated his objection to the clause. He said, "a strong and just Government, above all others, must not shrink from daylight. The power in question is one which, it seems to me, must be as abhorrent to good Governments as to the public, and good Governments should themselves provide effectual checks and safeguards to render it impossible for bad Government. . . . readily to resort to arbitrary or high-handed proceedings." Shri Bishambar Nath also pointed out, that without due publicity about the occurrence of any "public emergency"; the power may be regarded as arbitrary. The clause was, however, passed without amendment.

Recommendation regarding section 26.

86. A detailed note examining section 26 in the light of article 19(1)(a) of the Constitution, and discussing other relevant aspects, is attached to this Report³.

The important points indicating our conclusion on the subject are:—

Point No. (1).—The expression "public emergency" in section 26(1), Post Office Act, may not be enough to make the power of interception of postal articles valid with reference to the freedom of expression, as it may embrace situations not falling under article 19(2) of the Constitution⁴.

Point No. (2).—In order to bring section 26 into conformity with article 19(2) of the Constitution, it is necessary to confine the section to the various heads given in article 19(2) of the Constitution, so far as its operation in respect of letters, books, postcards and newspapers is concerned.

[Other postal articles would not *ordinarily* raise questions of freedom of expression, (when the articles

1. *Gazette of India*, March 12, 1898, part V, page 212.

2. *Gazette of India*, March 26, 1898, part VI, pages 285 to 287.

3. See Appendix 5.

4. See paragraph 83, also.

are intercepted in post). Hence, it is not necessary to disturb the operation of the section in relation to them.]

Point No. (3).—Section 26(2), Post Office Act, may be omitted, as the legislature cannot bar judicial review of unconstitutional action taken under a section. The *vires* of an interference with the freedom of expression, when challenged, have to be examined on a consideration of the question whether, *in point of fact* the interference is attributable to a permissible source under article 19(2) of the Constitution.

Point No. (4).—Section 26, sub-section (1) need not be disturbed. Our recommendation to bring it into conformity with article 19(2) of the Constitution, recorded above¹, should be implemented by adding a new sub-section in section 26, to the effect that the power of interception, etc., shall, in respect of *letters, books, postcards, and newspapers*, be exercised only in the interest of the security of the State, public order, friendly relations with foreign States or preventing incitement to commission of an offence. (Other heads of article 19(2) will not, in practice, be important for the present purpose).

87. With reference to section 26, it was noted² that the amendment is acceptable to one of the Ministries of the Government of India.

Section 26 and comments received on the draft Report.

88. With reference to section 26 (as proposed), the comment of a State Government³ on our draft Report raised certain points. The first was—

“(1) This Government doubts whether it is at all necessary or proper to attach to section 26(1), in express terms, the limitations imposed by the Constitution.”

In our view,

it is necessary to amend section 26, as proposed.

89. The comment of the State Government⁴, further, says—

“In so far as the proposed sub-section ignores the other freedoms of which also section 26(1) is restrictive, it is defective.”

The point had been considered by us before formulating our proposals. Ordinarily, it is letters or newspapers which would be intercepted, under section 26, and their interception would not affect the freedom to carry on business, the

1. See Point No. (2), above.

2. S. No. 169, read with S.No. 174.

3. S. No. 170 (Comment of a State Government).

4. S. No. 170 (Comment of a State Government).

freedom to hold property, etc. Hence, the other fundamental rights are not of practical importance in relation to section 26. In any case, so far as the other fundamental rights are concerned, the permissible restrictions under article 19 are wider, than those under freedom of expression.

90. The State Government¹, in its comment, has stated—

“One of the occasions on which the power under section 26(1) can be exercised, is occurrence of any “public emergency”. But it seems to have been overlooked that the words “public emergency” used in section 26(1) are perfectly general and must also include an emergency proclaimed under Article 352 of the Constitution.”

The comment is not acceptable to us. It is precisely because the expression “public emergency” is very wide—much wider than the language of article 19, and that is why a difficulty may arise^{2,3}.

91. The State Government's comment⁴, further, says—

“(iv) Section 26(1) authorises interception or detention of a postal article in the course of its transmission by post. It is not clear to this Government why, if a notice to the sender was considered necessary in the case of action taken under section 23(3)(b), no notice should be considered necessary in the case of action taken under section 26(1).”

Now, we should point out, that there is a distinction between the situation envisaged by section 26, (on the one hand) and the situation envisaged by section 23 (in relation to obscene articles) (on the other hand).

Action under section 26 is taken in urgency and, (usually) for reasons of security of State. Notice to the sender would not be practicable. In our view, in considering the constitutionality of section 26—if it should ever be contested on the ground of want of notice—this distinction could be very properly relied upon.

92. Another point made by the State Government⁵ with reference to the recommendation for deletion of sub-section (2) of section 26 is this—“This Government is unable to support the recommendation. Whether a public emergency existed at a certain point of time or did not, cannot be justiciable by the Court nor can a Court decide whether a particular act was done in the interest of public safety or

1. S. No. 170 (A State Government).

2. See paragraphs 83 to 86, *supra*.

3. See also Appendix 5.

4. S. No. 170.

5. S. No. 170 (A State Government).

tranquillity, except perhaps when malice is alleged. It may further be pointed out, that whatever an Act of a legislature may say, the jurisdiction conferred on the High Courts by Article 226 of the Constitution and that conferred on the Supreme Court by Article 32, can never be taken away and, therefore, no uneasiness need be felt about sub-section (2) of section 26."

We do not agree with the comment. The *vires* of an action (when challenged) have to be examined with reference to the question whether, in *point of fact*, the action is constitutional.

93. We have considered the provisions of section 5, Telegraph Act, which are similar to section 26, Post Office Act. Our *recommendation* as to section 5 of the Indian Telegraph Act¹ is as follows:—

Recommendation regarding section 5, Telegraph Act.

(a) Section 5(1) (b) of the Telegraph Act may be *similarly amended*, i.e. on the lines on which section 26, Post Office Act is to be amended².

(b) Section 5(2) of the Telegraph Act may be *omitted*, for the same reason for which section 26(2), Post Office Act is to be omitted.

(c) As a result, section 5, Indian Telegraph Act³ should be amended to run somewhat on *these lines*:—

"5. On the occurrence of any public emergency, or in the interest of public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government, may—

Power for Government to take possession of licensed telegraphs and to order interception of messages.

(a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or

(b) order that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:

Provided that an order under clause (b) may be passed only when such order is required in the interests of the security of the

1. The Indian Telegraph Act, 1885 (13 of 1885).

2. See paragraphs 83-86, *supra*, as to the section 26, Post Office Act.

3. Indian Telegraph Act, 1885 (13 of 1885).

4. This is a rough draft only.

State, friendly relations with foreign States or public order or for preventing incitement to the commission of any offence."

Section 27. 94. As to section 27, the discussion regarding section 28 be seen¹.

Section 27B. 95. The constitutional aspects of section 27B have been separately dealt with².

Sections 28 and 29—
Court Notices sent by post. 96. The following suggestion³, relevant to section 28, was considered by us—

"Sometimes certain notices sent by the Courts or Government Offices are returned back on the plea of non-availability of the parties which indirectly helps the parties in delaying matters or escaping appearance. To avoid such recurrences, in every case of non-delivery or by non-availability of the addressee, it is suggested that a certificate may be obtained from the village Munsif and Sapanch of that particular place to that effect, and the certificate so obtained may be produced alongwith the letter or notice which is to be returned."

97. Our conclusion on the point raised in the suggestion⁴ may be thus summarised—

(a) The necessity of ensuring proper delivery of court notices cannot be denied. It may not, however, be practicable to require the postman to go to a village Munsif (or other corresponding authority), and it is also doubtful if the suggested provision will improve matters much. Hence, the suggestion could not be accepted *in toto*.

(b) But, the question of requiring a legibly written endorsement by a higher postal official in the case of all registered articles which are unserved or returned as "refused", was considered by us. We think, that such an endorsement, specifying the name of the postman who gave the report, would be useful, as a safeguard for ensuring that proper efforts were made to effect delivery. We recommend that the rules under section 29 be amended for the purpose. We may note that this recommendation of ours has found the approval of one High Court⁵, in its comment on the draft Report which we had circulated, and has not been objected to in the other comments.

1. See paragraph 73, *supra*.

2. See Appendix 4.

3. S. No. 114 (A State Government).

4. Paragraph 96, *supra*.

5. S. No. 163 (A High Court).

There should be no special fees for such an endorsement. The intention is, that the fees for registration (which are charged at present) should suffice for this extra facility¹.

[With reference to rules under section 28, the following suggestion has been made²:—

“As regards section 28, the suggestion of the Commission in case of non-delivery is acceptable with this proviso that the name of the witness before whom the article is tendered should be mentioned and his signature obtained, wherever possible.”

In our view, this would not be practicable.]

(c) Further, in the case of summonses, notices and other similar documents sent by courts or other authorities empowered to issue them, where they are sent by registered post, a special form should be obtainable by the sender on payment of an extra fee. This would be something like a “declaration” by the postman, analogous to the *affidavit* of a process-server required under the Civil Procedure Code³.

We recommend, that necessary amendment be made in the rules made under the Post Office Act.

98. The comment of a State⁴ Government as regards our suggestion⁵ in case of delivery for a declaration by the postal peon was—“the affidavit of the postal peon as in the case of process server under the Civil Procedure Code should be insisted upon so, that it may be evidence in Court till rebutted”.

In our view, however, an affidavit would not be practicable in the case of postal peons.

99. We have considered these points⁶ in detail, in view of the fact service of summons, etc. by post is now increasingly employed⁷⁻⁸.

1. As to the existing facilities for registered articles, see Rules 62, 63 64(1) and 65, Indian Post Office Rules, 1933.
2. S. No. 170 (Comment of a State Government).
3. See Code of Civil Procedure, 1908, Appendix B, Form No. 11, prescribed with reference to Order 5, rule 18 (Affidavit of process-server).
4. S. No. 170 (Comment of a State Government).
5. Paragraph 97, *supra*.
6. Paragraphs 96 to 98, *supra*.
7. Cf. Code of Civil Procedure, 1908, Order 5, Rules 9-10 (as amended locally), Order 5, Rule 20A (as added by local amendments) and existing Order 5, rule 20A(2).
8. See also Twenty-seventh Report of the Law Commission (Code of Civil Procedure 1908), page 46, Order 5, Rule 19A, (Proposed and Notes at page 136.

Occasions for setting aside an *ex parte* decree on the ground that the defendant did not actually "refuse" the summons served by registered post, often arise¹⁻², and in the absence of some reliable evidence it is difficult later to prove the refusal. The proposed changes may be of help in bringing some proof into existence.

100. Reference may also be made to the various statutory provisions as to letters sent by post³⁻⁴⁻⁵.

101. As to service by registered post, the under-mentioned cases may be seen ⁶⁻⁷⁻⁸⁻⁹⁻¹⁰⁻¹¹.

Section 28
and liability
of the State
for regis-
tered arti-
cles.

102. In the comment of a State Government¹² on our draft Report, the following suggestion was made (The suggestion was made under section 6):—

"It appears to this Government that some relaxation of the absolute terms of section 6 is called for. It will not make any extreme suggestion, but thinks that the law in this country should at least be brought into conformity with the present law in England in this regard. In the opinion of this Government, section 6 of the Indian Act should be amended so as to provide for an exception in the case of *registered articles on the lines of the British Statute.*"

A High Court¹³ has also made a similar suggestion (on the assumption, that in England the Post Office is liable to pay compensation in respect of registered inland packets where loss or damage is caused by any wrongful act done or any default committed by a person employed as a servant or agent of the Crown).

1. As to such instances, see (a) *Sunder Spinner v. Makan Bhula*, I.L.R. 46 Bom. 130; A.I.R. 1922 Bom. 377, and
- (b) *Appibai v. Lakshmi Chand*, I.L.R. 1954 Bom. 243; A.I.R. 1954 Bom. 157.
2. Also see *Butto Kristo v. Govindaram* A.I.R. 1939 Pat. 540, 547 (Harries C.J. and Chatterji J.).
3. Section 16, Indian Evidence Act, 1872.
4. Section 114, Indian Evidence Act, 1872 [illustration (f)].
5. Section 27, General Clauses Act, 1897.
6. *Teja Singh v. Jaswant*, A.I.R. 1935 Lah. 171, 172 (O. 5, R. 10, C.P.O.—Lahore).
7. *In re De Souza*, A.I.R. 1932 All. 374 (s. 27, General Clauses Act).
8. *Romesh Chandra v. National Tobacco Co.* A.I.R. 1940 Cal. 36, 537, 538 (s. 27, General Clauses Act).
9. *Roopchand v. Ranga Lal* A.I.R. 1914 Bom. 31, 32 (s. 27, General Clauses Act).
10. *Marihar v. Ram Shastri*, A.I.R. 1918 P.C. 102, 111, 112 (Notice under s. 106, Transfer of Property Act).
11. *Sundaram v. Sessa Ayar*, A.I.R. 1957 T.C. 208 (O. 5 R. 10, C.P.C. as amended in Travancore-Cochin) (Reviews Bombay cases).
12. S. No. 170 (Comment of a State Government).
13. S. No. 167 (Comment of a High Court).

103. The question of liability in England for "registered" articles was considered by us in detail. It appears to us, that "registration" in England really corresponds to "Insurance" under the Indian Post Office Act'. Hence the analogy of the English Act would not be appropriate, in this context.

104. The matter was, however, considered by us on the merits. It was felt, that having regard to the high fees now charged for registration, some liability for registered articles should be imposed on the Post Office. A modified proposal was submitted to us, namely, a statutory maximum for registration fee. But that was not approved. We think that a fixed liability of (say) Rs. 50 should be imposed. To implement this, we recommend a suitable amendment² of section 28.

105. It has been stated³, that sections 30 and 32 are repetitive, and may be re-cast. But the sections appear to be complementary to each other, and need not, therefore, be disturbed, in the absence of any difficulty caused in practice. Sections 30
and 32.

106. Section 33 deals with insured articles⁴. It has been suggested⁵ (apparently with reference to section 33), that besides the sender, *the addressee* must also be entitled to recover compensation (in respect of insured articles). Now, *as between the sender and the addressee*, this has to be worked out according to the contract between the sender and the addressee. On that point, the Post Office Act cannot appropriately make a provision. But, as against the Government, only the sender is, as the law stands now. The addressee can (if so advised and if so permitted by the contract), sue only the sender, at present. Section 33—
insured arti-
cles.

We think, that where the sender has *assigned his rights* to the addressee, the compensation should be payable to the addressee, by the Post Office.

To put the matter beyond doubt (particularly because the liability may be only "statutory")⁶ section 33 should be suitably *amended* to provide, that where the sender has assigned his rights to the addressee, the compensation shall be payable to the addressee.

An express provision is desirable in view of the restrictive language of section 33, which refers to the *sender* only.

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1. For a detailed discussion, see Appendix 14.
 2. See section 28 as proposed.
 3. S. No. 96 (Suggestion of the Department).
 4. See paragraph 31, *supra*.
 5. S. No. 102 (A High Court).
 6. See paragraphs 24, 25, 29, *supra*.

107. For the present purpose, it is unnecessary to consider whether, apart from such a provision as is proposed,¹ the right to compensation, under section 33 would be assignable as a benefit of contract and therefore as an "actionable claim"²⁻³.

Section 34
and V.P.P.
articles.

108. As regards V.P.P. articles, under section 34 of the Indian Act, the Central Government may direct that, subject to certain provisions a sum of money specified in writing at the time of posting by the sender of a postal article "shall be recoverable on the delivery thereof from the addressee, and that the sum so recovered shall be paid to the sender." There is, however, a proviso that the Central Government shall not incur liability in respect of the sum specified for recovery unless and until that sum has been received from the addressee. Though the proviso is expressed in rather wide terms, the cases already cited⁴ would show, that if the post office delivers an article without realizing the price of the V.P.P. it is liable to the sender for the value of the article. In view of this interpretation, the question arises whether the proviso requires any modification. Recovery of the price is a condition precedent to delivery, and if the post office does not carry out the condition which is meant to protect the sender, it is just and fair that the sender should not suffer damage. This principle, applied by the courts, should find a place in the proviso to section 34. We *recommend* that the provision should be *modified* accordingly⁵.

Section 34
and cases of
non-delivery.

109. Originally, this was the only change that we had proposed. But, regarding liability where the article is not delivered, the following suggestion was made in a comment⁶ on our draft Report; sent by a State Government.

"In the opinion of this Government, the proposed amendment is a very reasonable one, but it might go further. This Government.....thinks that not merely in the case where the postal authorities have delivered an article sent by Value Payable Post, to the addressee, but also in the case where they have failed both to deliver the article to him and to return to the sender they should be made liable under a direct provision made in section 34".

1. See paragraph 106, *supra*.

2-3. As to assignment in English law, see—

(i) Bailey, articles in 47 L.Q.R. 516 and 48 L.O.R. 248.

(ii) Chitty on Contracts (1961), Vol. 2, paragraph 867.

(iii) Hardy Ivamy, General Principles of Insurance Law (1966), pages 364, 372, 374, 376, and 382.

4. Paragraph 24, *supra*.

5. This may also necessitate modification of rule 102, Indian Post Office Rules, 1933.

6. S. No. 170 (Suggestion of a State Government).

The matter was discussed before us in detail.

The assumption made in the comment (that the Government is not liable) is correct.¹ And we think that this position is not fair.

In our view, in the following case also, the State should be liable, namely,—

“where the article has neither been delivered to the addressee nor returned to the sender in the original condition.”

In this respect, a query was raised before us, as to the following points—

(a) whether this amendment does not make an inroad on the general provision in section 6, and

(b) whether it is proper to make the Government liable for the value. We have reached the conclusion that to prevent hardship, the proposed change is desirable, particularly because fairly heavy charges are levied for Value Payable Post, which include charges under several heads².

110 Under proviso (b) to section 39, money or saleable property (not being of a perishable nature), found in any undelivered postal article, shall be detained for one year in the office of the Postmaster-General. Thereafter (if no person has established his right thereto), then the money is to be credited to the Post Office, and the saleable property is to be sold and the proceeds credited to the Post Office. Section 39.

It has been suggested³ that, in section 39, in place of the period of one year, such period as the Central Government may specify may be substituted. The suggestion states that the number of undelivered postal articles is increasing owing to increased postal traffic, and it would be desirable to reduce the period.

111. We considered the suggestion⁴ at some length. There are certain risks in reducing the period in the manner suggested.

The periods taken up in various formalities under section 37(3) and section 38(1)⁵, and in detention under section 39, main paragraph⁶, may not, in a particular case, take up

1. Cf. *Union of India v. Ramji Lal*, A.I.R. 1965 All. 184, 186, paragraphs 8—10.

2. See Rule 96 (2), Indian Post Office Rules, 1933.

3. S. No. 96 (Suggestion of the Department).

4. Paragraph 110, *supra*.

5. See also rules 208 and 209, Indian Post Office Rules, 1933.

6. See Rules 212 and 213, Indian Post Office Rules, 1933.

more than, say, five months. If the period of compulsory detention under section 39, proviso (b), is reduced to, six months, there is a risk of the articles being destroyed before the period of limitation has expired¹. The claimant can get the sale proceeds, it is true, but valuable evidence will be lost, if the article is destroyed. We are not, therefore, in favour of the proposed change.

Section 46
Money
Orders to
foreign
countries.

112. (a) In a previous Report² of the Law Commission, a recommendation was made to the effect, that if an arrangement has been made between the U.K. and India for the transmission of money orders, under the Post Office Act, 1908, *prima facie* an appropriate provision might be included in our *Post Office Act* to obviate the necessity of referring to the English statute. (The English Act, section 87, provided, that when arrangements have been made between the U.K. and any other country for the transmission of money orders, the provisions of the statute would be applicable to such money orders as far as is consistent with the tenor thereof³).

(b) Reference may be made, in this connection, to section 46 of our *Post Office Act*, under which, when arrangements have been made with any foreign country (including the U.K. or any British possession) for the issue and payment of money orders, the Central Government has power to make rules to give effect to such arrangements. There is also a general power to make rules under section 74, for carrying out any of the purposes and objects of the Act. Rules on the subject would, therefore, suffice, and an actual amendment of the Act is not strongly required. The relevant provision in the latest U.K. Act on the subject—the *Post Office Act, 1953*—is section 24, under which, when an arrangement is made with the Government or postal administration of any other country for the transmission of small sums through Post Offices under the charge of the Postmaster-General and the postal administration of other countries by means of money orders, then sections 20 to 23 of the Act (containing detailed provisions as to money orders) shall, so far as is consistent with the tenor thereof, apply as they apply to British money orders.

No amendment of our Act is, therefore, required.

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1. As to the period of limitation, *see* discussion in this Report on the subject, paragraph 83 *et seq.*, *infra*.
 2. Fifth Report (British Statutes applicable to India), page 63, bottom, and page 64, top, Entry No. 198 relating to the *Post Office Act, 1908* (In the U. K. this Act has been repealed by the *Post Office Act, 1953*).
 3. *See* now, section 24, *Post Office Act, 1953* (English Act).

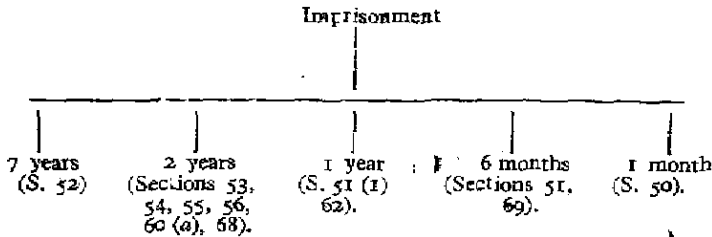
113. We now take up section 49 and the succeeding sections. The penal sections of the Act are analysed below, with reference to the punishment prescribed.¹ Analysis of penal sections.

Fine only Sections 49, 58, 59, 60 (b), 63, 64, 65, 66
67.

Imprisonment and Fine . . . Sections 52, 54, 55, 56, 58.

Imprisonment or fine . . . Sections 50, 51, 53, 60 (a), 61 (r), 62, 69

The sections providing for imprisonment may be further analysed, as follows:—



114. We have received a suggestion from the Government of a Union Territory² to enhance the punishments for certain offences. The suggestion states, that during recent years, there have been many cases of (a) misappropriation of V.P.P. and insured articles, and (b) delivery of V.P.P., and insured articles and money orders to wrong persons and that the Post Office Act requires to be amended to ensure that these articles are delivered to the right person. It suggests enhanced punishment for the relevant offences. We went through the penal provisions in the Post Office Act, from this point of view. We feel that, for acts of dishonesty and the like, sections 52 and 69 are enough. For negligence, section 49(d) already provides a fine up to fifty rupees. We also considered the question of increasing the amount of fine (in section 49 to 51, 63 and 67). We, however, felt that, on the whole there is no need for a change in the law. Active enforcement of the existing provisions would be a better course. We are not, therefore, inclined to recommend any change in this respect. Sections 49, 50, 51, 63, and 67.

115. With reference to section 52, it has been held³ that it is a necessary ingredient of section 52 that a paper should have been extracted from the parcel (and not merely examined). [That was a case in which the postal employees (accused) tampered with and extracted question papers of the S.S.L.C. Examination for March, 1936 (Madras)]. Section 52.

1. Cf. *Ramchandra v. State of Mysore*, A.I.R. 1964 S.C. 1701, 1703, paragraphs 8—10.

2. S. No. 98 (Government of a Union Territory).

3. *In re Sattar Khan*, A.I.R. 1939 Mad. 283, 289 left hand column.

No changes are necessary in the section.

Section 53. 116. As regards section 53, the expression "wilfully" has come up for detailed consideration before the Supreme Court.¹ No changes are necessary.

Section 53.
Proviso
(Interpre-
tation)

117. Section 53, proviso, deal with interception. It does not, however, stand on the same footing as section 26. Section 26 interferes with the freedom of expression, and requires amendment², while section 53 deals only *with prosecution*. Hence, it need not be amended.

Section 62.

118. We have received a suggestion³ to increase the punishment under section 62. The section embraces many acts,—serious as well as light—and, therefore, it would be unwise to enhance the punishment for all acts punishable under the section. It may also be added, that some *serious acts* of interference with letter boxes, etc.,—for example—mischief by fire—would be punishable under the Indian Penal Code also⁴. The punishment need not, therefore, be enhanced

119. In its comment on our draft Report, a State Government⁵ had stated, "It seems to this Government that the term of the sentence of the imprisonment which can be imposed under the section (section 62) should be enhanced, so that adequate punishment may be awarded in the case of serious offences such as trying to burn down a letter box".

In our view, no such change is necessary. Serious cases of burning can (as already pointed out)⁶ be dealt with under sections 435—438, Indian Penal Code.

Section 68.

120. Under section 68, whoever fraudulently retains or wilfully secretes or makes away with or keeps or detains, or, *when required by an officer of the Post Office*, neglects or refuses to deliver up any postal article which ought to have been delivered to any other person, etc. is punishable. A private Member's Bill introduced in the Lok Sabha⁷ proposed an amendment of this section whereunder, in substance, a person who does not return to the Post Office such a postal article becomes punishable; the existing requirement that there should first be a *requisition* by a postal officer before mere neglect or refusal to deliver may be

1. *Ramchandra v. State of Mysore*, A.I.R. 1964 S.C. 1701.

2. Paragraph 86, *supra* (Recommendation regarding section 26).

3. S. No. 108 (A Deputy Inspector General of Police).

4. Sections 435 to 438, Indian Penal Code.

5. S. No. 140 (Suggestion of a State Government).

6. See paragraph 118, *supra*.

7. See Bill No. 31 of 1962 (Lok Sabha), introduced by Shri Satis Chandra Samant.

punished, would, thus, be dispensed with, under the proposed amendment. We do not think that such a far-reaching change is advisable. While it would be a good thing if every person manifested his civic sense by returning a postal article wrongly delivered to him, even without a request from the Post Office, failure to do so should not be made an offence. Attention may, in this connection, be invited to section 55 of the English Act, which also does not go to that length.

121. There is one point on which the section in the English Act¹ differs from and is wider than section 68. Under the English Act, the provision is applicable to a postal article (in course of transmission by post) or any mail bag which has been found by the offender or any other person (besides a postal article which ought to have been delivered to any other person). This seems to be intended to cover a case where an article meant for 'X' is found by 'Y', though not "delivered" to him (the assumption being that the words "ought to have been delivered to any other person" do not cover this case). It does not, however, appear to be necessary to make such an elaborate provision. So far as articles of value are concerned, such cases would be rare, because they would be insured or, at least, registered, and, therefore, there would always be actual delivery by a postal official.

In its comment on our draft Report, a State Government² had stated:—

"The real deficiency in the section which required to be made up is, that it does not cover postal articles found by a person though they were not delivered to him and it has been sought to be made good in the corresponding section of the British Post Office Act of 1953, section 55, by introducing the words "any postal packet in the course of transmission by post or mail bag which has been found by him or by any other person." In the opinion of this Government, section 68 of the Indian Post Office Act should be remodelled on the pattern of section 55 of the English Act of 1953."

No such change is necessary, in our view.

122. (a) Under section 69, a person who wilfully and maliciously, etc., opens any letter or does any act preventing due delivery to another person is punishable. A private Member's Bill introduced in the Lok Sabha³ proposed to substitute the word "knowingly" for the words "wilfully and maliciously". We think that the word "knowingly"

1. Section 55, Post Office Act, 1953.

2. S. No. 170 (Suggestion of a State Government).

3. Bill No. 31 of 1962, (Lok Sabha) introduced by Shri Satis Chandra Samant.

would not fit in with the general tenor of the section. Diversion of letters with the intention of injuring another person is the gist of the offence punished by the section, and intention is the paramount consideration; knowledge has not much relevance. No change, therefore, is necessary on this point. The corresponding section in the English Act¹ runs on the same lines (on this point) as our section.

(b) There is one point on which the English section¹ is wider. The Indian section is confined to letters, while the English section speaks of "postal packet" which, as defined in section 87(1) of the English Act, means a letter, post-card, reply-post-card, newspaper, printed packet, sample packet, or parcel and every packet or article transmissible by post and includes a telegram. Though cases of postal articles (other than letters) being diverted would not be many, *there is no harm if the section is widened to cover all postal articles....*

Section 72,
Authority
for prosecution
section
of Act.

123. Section 72 runs as follows:—

"72. No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act unless upon complaint made by order of, or under authority from, the Director General or a Post Master General."

As a new section² has been proposed to penalise stealing a mail bag or postal article, we considered the question whether the new section should also be mentioned in section 72. After some discussion, we have come to the conclusion that it is not necessary to mention it in section 72, particularly because it embraces the stopping of a mail train also.

124. We have received a suggestion³ to give the power under section 72 to Postmasters of *District Headquarters* and to Superintendents (in view of the opening of large number of Post Offices). We think, that this may lead to harassment or inequality in the actual administration of the law, and are not in favour of the suggested change.

Suggestion
to make
certain
offences cog-
nizable con-
sidered.

125. We have received a suggestion⁴ to make certain offences under sections 52, 61, 62, 63, 67 and 68 of the Act cognizable and non-bailable. The penalties under some of these sections (e.g., section 67) is fine only, or imprison-

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1. Section 56, Post Office Act, 1953.
 2. See section 56A (proposed).
 3. S. No. 98 (Government of a Union territory).
 4. S. No. 108 (A Deputy Inspector General of Police).

ment for a short period. It is, therefore, better to leave the matter to be governed by the ordinary provisions of the Second Schedule to the Code of Criminal Procedure, rather than to enact special provisions as to cognizability or bail.

126. Section 73 relates to district posts. It has been suggested,¹ that the section may be deleted, as there are no district posts. The section is harmless, and we have not therefore, accepted the suggestion. Section 73.

127. A suggestion for inserting a provision to empower the Post Office to place letter boxes on the land of local authorities, has been made by the Department.¹ The suggestion states, that the Central Government has "full powers" to erect telegraph or telephone poles on any land, under the Telegraph Act, and that difficulty is caused because municipalities refuse to give permission to place post boxes on their land. Power to place post boxes on municipal lands.

We have considered the relevant provisions of the Telegraph Act. It appears, that the assumption that the power under the Telegraph Act is full or unqualified, is not correct. The relevant provisions of that Act² do not go to the length of empowering the Central Government to place telegraph poles, etc., on the land of local authorities.

That being the position, we are not in favour of the suggested change.

128. A suggestion³ has been made to add a provision penalising strikes, "go-slow" tactics etc. by postal employees. We think, however, that the Post Office Act is not the proper place for penalising such action of a concerted type. For acts of an individual employee, the Post Office Act⁴ does make the necessary provision. No change is, therefore, recommended on this point. Strikes.

129. Regarding telegrams, the following suggestion has been made⁵:— Telegrams sent by post in places where there is no telegraph office.

"At present, telegrams are being sent by ordinary tappal in place where the telegraph offices are not provided. In such cases the telegram will be delivered later than an ordinary letter. It is, therefore, suggested, that provision may be made either in the Act or rules for delivering telegrams by *special messengers* on payment of a nominal fee from the addressee for such special delivery."

1. S. No. 96 (Suggestion of the Department).

2. See sections 10, 12 (c), 14, etc., Indian Telegraph Act, 1885 (13 of 1885).

3. S. No. 108. (A Deputy Inspector General of Police).

4. See section 50.

5. S. No. 114 (A State Government).

The suggestion really pertains to rules under the Indian Telegraph Act¹. Hence, an amendment in the Post Office Act is not required.

Limitation for suit for compensation for postal article.

130. A question² has been raised as to the period of limitation for a suit for compensation for a postal article which is not delivered. Some of the articles in the Limitation Act of 1908 apparently relevant to this subject, were the following:—

| | | | |
|----------|-----------|------------|--|
| Art. 30 | | (1 year) | Against a carrier for compensation for losing or injuring goods. |
| Art. 31 | | (1 year) | Against a carrier for compensation for non-delivery of, or delay in delivering goods. |
| Art. 48 | | (3 years) | For specific movable property lost or acquired by theft or dishonest misappropriation or conversion or for compensation for wrongfully taking or detaining the same. |
| Art. 49 | | (3 years) | For other specific movable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same. |
| Art. 65 | | (3 years) | For compensation for breach of a promise to do anything at a specified time or upon the happening of a specified contingency. |
| Art. 115 | | (3 years) | For compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for. |
| Art. 120 | | (6 years) | Suit for which no period of limitation is provided elsewhere in the Schedule. |

131. (a) Of these³ articles 30 and 31 related to "carriers", and could not apply to the Post Office.

1. The Indian Telegraphs Act, 1885 (13 of 1885), section 7 (2).

2. Paragraph 1, *supra*.

3. Paragraph 133, *supra*.

(b) Articles 65 and 115 were based on "contract" and their applicability to the Post¹⁻² Office could be a matter of some debate.

(c) Articles 48 and 49 allowed a period of 3 years. Article 48 was intended for acts of conversion and the like, but article 49 could have been argued as applicable to certain kinds of acts, e.g., wrongful detention of, or injury to, a postal article.

132. The distinction between article 31 and article 48 is explained in the undermentioned cases³⁻⁵.

133. As to the distinction between articles 48 and 49, the undermentioned case⁶ may be seen.

134. The question whether, in a case which falls within the language of both articles 31 and 36, article 31 applies or article 36 applies would perhaps deserve consideration⁷. But it is unnecessary to discuss it now, as old article 36 has now been combined with old article 120⁸.

135. It may be noted, that the Limitation Act does not contain any specific articles dealing with suits to recover compensation under statute⁹⁻¹⁰. For a suit by the Central Government to recover a statutory cess, the starting point would be governed by article 120 (residuary), and not by article 50 (hire of animals, etc.)¹¹.

Again, for compensation under Rule 75A of the Defence of India Rules 1939, article 120 is the appropriate^{12,13}.

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1. Cf. paragraphs 24—29 and 34, *supra*.
 2. See also *Debananda v. Union of India*, I.L.R. 1964 Cut. 907 ; A.I.R. 1965 Orissa 118.
 3. *G. P. Venkataraman & Co., v. Union of India*, A.I.R. 1958 Mad. 321, 324, paragraph 10, 11 (Article 48 does not apply if the relief prayed for is not for possession).
 4. *Union of India v. Megh Raj*, A.I.R. 1958 Cal. 434, 437, paragraph 14 (K. C. Das Gupta & U. C. Law JJ.).
 5. *Martab Ali v. Union*, A.I.R. 1954 Bom. 297.
 6. *State of West Bengal v. Chandi Charan*, A.I.R. 1958 Cal. 433, 434.
 7. Cf. *G. P. Venkataraman & Co., v. Union of India*, A.I.R. 1958 Mad. 321, 325, paragraph 13.
 8. See article 113, Limitation Act, 1963 (36 of 1963).
 9. *Bapiraju v. Azimullah*, A.I.R. 1957 A.P. 79, 81, paragraph 15 (Subba Rao C. J. and Bhimasankaran J.) (Article 120 applies to a suit for compensation under the Vegetable, etc., oils Order).
 10. See also paragraph 105, *supra*.
 11. *R. C. Jall v. Union of India*, A.I.R. 1962 S.C. 1981, 1284, paragraph 5.
 12. *Panchanan Das v. Province of Orissa*, A.I.R. 1955 Orissa 57, 60, paragraph 8.
 13. See also *State of West Bengal v. Brindaban*, A.I.R. 1957 Cal. 44, paragraph 13—19, and paragraphs 42—44.

Hence, if the liability of the Post Office is regarded as purely statutory, article 120 would apply to suits for compensation for loss, etc., of postal articles¹.

Since there is no specific article fixing the time limit for a suit to enforce a statutory liability for specific performance of the contract inferable from a statute or statutory rules, article 120 would, presumably, apply².

136. It is possible to argue that the Government is not governed by article 115, particularly in respect of claims relating to insured postal articles where insurance is compulsory^{3,4,5}.

137. In one case, it has been held⁶, that since the Post Office does not carry articles for hire, but is performing its duties as a branch of the revenue, it is not a "common carrier". As regards limitation, it was held, that articles 65 or 120 (of the Act of 1908) would apply. In either case, the period would be three years or more.

[It may be noted, that though the Government is not a "common carrier" for the purposes of the Carriers Act⁷, it has been held⁸, that the Secretary of State, when sued as the owner of a railway concern, is a "carrier" for the purpose of article 31 of the Limitation Act, 1908].

138. Whatever be the precise article applicable, it is obvious, that the period would not be less than 3 years.

Now, it has been suggested^{9,10} by the Department, that the period should be one year. The suggestion also states, that article 120 of the old Act has been held to be applicable to suits for compensation for postal articles.

1. Cf. *Mathura Prasad v. Gaya Municipality*, A.I.R. 1938 Pat. 192.

2. Cf. *Brij Lal v. State of U. P.*, A.I.R. 1954 All. 383, 405, paragraph 54 (case relating to specific performance of a contract for mining lease).

3. Cf. Treitel (Law of Contract) (1966), page 5.

4. As to "compulsory contracts, compare *Jaitindra Nath v. Calcutta Corporation*. A.I.R. 1945 Cal. 144, 152 (Article 120).

5. For history of article, 115, see *Tricomdas v. Gopi Nath*, (1916) I.L.R. 44 Cal. 759, 766 (P.C.).

6. *Debananda v. Union of India*, I.L.R. 1964 Cuttack 903 ; A.I.R. 1965 Orissa 118.

7. See section 2, definition of "common carrier", Carriers Act, 1865 (3 of 1865).

8. See *Alamgir Footwear Co. v. Secretary of State*, A.I.R. 1933 All. 466 (case regarding railway).

9. S. No. 1—Suggestion of the Department of the Government of India concerned with the Post Office.

10. The suggestion in question was made after the Law Commission Third Report (Limitation Act) was submitted.

The judgment referred to by the Department seems to be a judgment of the District Judge, Jaunpur¹. It was held in that case, that a suit for compensation for loss of currency-notes sent in an insured cover would not be governed by articles 30 and 31, as the Post Office is not a "carrier", but it merely transmits articles from one place to another and the transmitted articles are actually carried by other carriers².

139. It may be noted, that the reason why a short period of limitation was provided in articles 30 and 31 was the difficulty of investigating and settling claims preferred against carriers after a long lapse of time, in respect of a few articles out of the quantity of goods that are constantly passing through their hands^{3,4,5}. These reasons apply to the Post Office also.

140. The above discussion is with reference to the Limitation Act of 1908. The Limitation Act of 1963⁶, which has replaced the Act of 1908, makes certain changes. Thereunder, the suits governed by old articles 30-31 are governed by the time-limit of *three years* (instead of 1 year)⁷. This change is the result of the recommendation made in the Law Commission's Report on the Limitation Act⁸. That Report recommended an increase in the period, because, in the case of railways, it is common knowledge that a long time is spent by the consignee in correspondence and, often, lengthy correspondence ensues. The question of postal articles was not, considered specifically. We think, that in respect of postal articles, the period of one year should suffice. Postal articles are not so costly as those sent by rail, and do not pass through many "systems" (as in case of Railways). Nor are they so numerous as to involve a study of many accounts before a suit is filed.

1. *Firm Samwal Das v. Union of India*, Civil Appeal No. 646 of 1954 decided by the District Judge, Jaunpur on 31-3-1968.

2. A copy of the judgment is contained in D. G. P. & T. file No. 12-5-160-CI, which we had obtained for perusal.

3. See *G. I. P. Rly Co. v. Radha Kishan*, A.I.R. 1926 Nag. 57, 59, right-hand (D.B.).

4. *Jaldu v. The Asiatic Steam Navigation Co.*, (1916) I.L.R. 39 Mad. 314, 315, left-hand (referring judgment of Spencer J.); A.I.R. 1916 Mad. 314 and 315.

5. *Gulab Rai v. Secretary of State for India in Council*, I.L.R. (1941) 2 Cal. 160, 167.

6. Limitation Act, 1963 (36 of 1963).

7. See Limitation Act, 1963 (36 of 1963) articles 10 and 11.

8. Third Report of the Law Commission (Limitation Act), page 30, paragraph 72, and page 83, draft Article 1.

141. We, therefore, *recommend*, that two articles dealing with compensation for postal articles may be inserted in the Limitation Act¹, say, after article 11 of the new Limitation Act (corresponding to old article 31), fixing a period of *one year*² for such suits³.

The starting point should be the same as is mentioned in articles 10 and 11 of the Limitation Act, 1963.

142. The new articles to be added⁴ in the Schedule to the Limitation Act, 1963⁵ may run somewhat on these lines:—

| | | | |
|--|---|----------|---|
| Cf. article 10, Limitation Act, 1963 (36 of 1963). | " IIA. Against the Central Government for compensation for losing or injuring a postal article. | One year | When the loss of injury occurs. |
| Cf. article 11, Limitation Act, 1963 (36 of 1963). | IIB. Against the Central Government for compensation for non-delivery of or delay in delivering a postal article. | One year | When the postal article ought to be delivered. ⁶ |

NOTE.—The heading in the portion of the Schedule to the Limitation Act, 1963 which governs articles 6–55, is "Suits on Contracts". The articles themselves may, however, cover suits on torts also.^{7,8}

Location of the new articles IIA and IIB.

143. About the placing of the new articles, the following comment had been made⁹ on our draft Report:—

"It appears to this Government that since the proposed Articles relate to a specific category of cases, namely, suits against the Central Government for loss of or injury to or non-delivery of articles sent by post, the difficulty may easily be solved by placing them under a separate and appropriate heading."

In our view, no such change is needed.

1. Limitation Act, 1963 (36 of 1963).

2. See paragraph 140, *supra*.

3. As to rules relating to disposal of undelivered postal articles, see sections 37 to 39 of the Act, and Rules 208 to 215 of the Indian Post Office Rules, 1953.

4. Paragraph 141, *supra*.

5. Limitation Act, 1963 (36 of 1963).

6. As to the expression "Central Government", see section 79, Code of Civil Procedure, 1908, and article 112, Limitation Act, 1963 (36 of 1963).

7. See rulings under old Articles 30 and 31; particularly *G. I. P. Rly Co. v. Rasett Chandmull*, (1895), I.L.R. 19 Bom. 185, 186 (Bayley C. J.), 187, 188 (Farran J.).

8. See also the 1899 Amendment as construed in *Jaldu Venkatasubba Rao v. Asiatic Steam Navigation Co.*, (1914) I.L.R. 39 Mad. 1, 10, 11, 12 (F.B.) and in *Chiranjil Lal v. B. N. Rly.*, I.L.R. 52 Cal. 372; A.I.R. 1925 Cal. 559, 560.

9. S. No. 170 (A State Government).

144. We give below a chart showing the new articles (i.e., in the Limitation Act, 1963) corresponding to articles of the 1908 Act, relevant to the subject.

| Articles in the Indian Limitation Act, 1908 | Articles in the Limitation Act, 1963 |
|---|---|
| 30 | 10 (period increased from 1 year to 3 years). |
| 31 | 11 (period increased from 1 year to 3 years). |
| 48 | 91 (also 68). |
| 49 | 91 (also 69). |
| 65 | 27. |
| 115 | 55. |
| 120 | 113 (period reduced from 6 to 3 years). |

145. In its comment on our draft Report, a State Government had stated¹ as follows:—

"The starting point of limitation might be fixed at the date on which the article mentioned was posted, as under the English Act, thus taking away from the plaintiff the advantage of the period between that date and the date when the loss or injury occurred or when the article ought to have been delivered and, at the same time, the period of limitation might be enlarged to two years. This would also remove the uncertainty about the starting point which, under the existing law, is vague and indeterminate. This Government suggests the above proposal for consideration. This Government thinks that instead of "for losing or injuring a postal article", it will be better to say "loss of or injury to a postal article".

Limitation-starting point.

Our view is, that no change in the draft is needed regarding the period, or regarding the starting point or the wording, as the proposed articles follow the wording of the existing articles regarding carriers. (The English provision which the comment has in mind is discussed elsewhere)².

146. The corresponding provision in England is quoted below³ :—

English law as to limitation.

"(3) No proceedings shall lie against the Crown under sub-section (2) of section nine of the Crown

1. S. No. 170 (A State Government).

2. Paragraph 146, *infra*.

3. Section 5, sub-section (3), of the Law Reform (Limitation of Actions) Act, 1954 (2 and 3 Eliz 2, c. 35).

Proceedings Act, 1947 (which authorises the taking of proceedings against the Crown in respect of loss or damage to registered inland postal packets) unless the proceedings are begun *within the twelve months* beginning with the date on which the packet in question was posted.”.

The provision has been thus explained¹--

“Sub-section (3).—This is the one exception to the general rule of parity between Crown and subject. When the Crown Proceedings Act, 1947, was passed, the Crown had the benefit of the twelve months period under the Limitation Act, 1939, section 21, so that no special provision was required. With the abolition of section 21, however, it was felt that serious embarrassment would be caused to the Post Office, if, in relation to their liability for registered inland postage packages, the old twelve months period was not re-enacted. To check a claim and trace out the relevant documents (which *ex hypothesi* would have to be kept) would after that lapse of time be inordinately expensive, if not impossible, and might well result in a mass of bogus claims to be paid because they could not be refuted. Any honest person would know about, and claim for, a lost registered package long before twelve months had gone by, and it seems not unreasonable that a special period should exist for this special type of case. The old limitation period of twelve months is accordingly re-enacted by this sub-section”.

Meaning of the expression “loss” “non-delivery”, etc. and scope of relevant articles relating to carriers.

147. We are aware, that the various expressions used in articles 10 and 11 (old articles 30-31), have raised several questions.

Thus, one question is as to the precise meaning of the expression “loss” in article 30².

As to the starting point under article 30, it has been held, that time does not run from date of knowledge of loss, but from date of loss^{3,4,5}.

“Loss” in article 30 means loss to the carrier⁶.

-
1. Stephen Chapman, Statutes on the Law of Torts (1962), page 444.
 2. See *Jai Narain v. G. G. of India*, A.I.R. 1951 Cal. 462, 464, paragraph 12.
 3. *Fusrhay v. Union of India*, A.I.R. 1960 Cal. 458, 462, paragraph 27.
 4. *E. I. Rly. v. Gopi Lal*, A.I.R. 1941 Cal. 304.
 5. *O. T. Rly. v. Mrs. Karam Chand*, A.I.R. 1958 All. 234, 253, paragraph 66.
 6. *Jugal Kishore v. G.I.P. Rly.*, I.L.R. 45 All. 43 ; A.I.R. 1923 All. 22.

148. Under article 30, the burden is on the defendant (who seeks to non-suit the plaintiff on the ground of limitation) to prove that the loss occurred before one year from suit¹⁻².

149. Another question is, as to the meaning of the expression "non-delivery" in article 31. The expression has now been given a wide meaning by the case-law.

"Non-delivery" of goods may be due to a variety of causes—

"The word "non-delivery" is a genus. Non-delivery of goods may be due to a variety of causes, e.g., (1) loss of the goods by the carrier, that is to say, loss owing to acts such as theft and robbery. (2) Deterioration owing to natural causes. (3) Destruction owing to natural causes such as flood or artificial causes, e.g. incendiarism. (4) Conversion. (5) Detention, e.g., where there is a dispute about wharfage and the railway administration wrongfully detains the goods. (6) Misdelivery either by honest mistake or on account of fraud. (7) Capricious act of the railway employees, e.g., the goods even on arrival at the destination are not delivered to the owner without any rhyme or reason. (8) Wrongful sale of goods, e.g., where the railway administration wrongfully sells the goods on arrival at the destination³."

Whatever be the cause of non-delivery, article 31 applies⁴.

150. The starting point in old article 31, as indicated by the words "ought to be delivered", may not be easy to apply, in a particular case⁵⁻⁶. The matter has been discussed elaborately in a judgment approved by the Supreme Court⁷⁻⁸.

1. As to "loss" in section 72, Railways Act, see *G. G. in Council v. Musaddi Lal*, (1961) 3 S.C.R. 647, 651.
2. *Union of India v. Amar Singh*, (1960) 2 S.C.R. 75, 88 ; A.I.R. 1960 S.C. 233, 235.
3. Cf. *G. G. in Council v. Mahabir Ram*, A.I.R. 1952 All. 891, 896.
4. See *Union of India v. Ainkumar* A.I.R. 1962 M.P. 190, 192, paragraph 5.
5. See Mitra, Law of Limitation and prescription, (1949), page 409
6. See also *Anandatal v. Union of India*, A.I.R. 1961 S.C. 108, 110, paragraph 5.
7. *Bootamal v. Union of India*, (1963) 1 S.C.R. 70, 76, 78, approving *Dominion of India v. Firm Aminchand*, A.I.R. 1957 Punjab 49 (F.B.).
8. The discussion in *Dominion of India v. Firm Amir Chand*, A.I.R. 1957 Punjab 49, 54, 55, paragraph 21-24 (F.B.), may be seen.

151. Most High Courts have taken the view that article 31 applies to suits on contracts, as well as to suits on tort. There is, however, some uncertainty as to whether article 30 applies to suit on contracts¹.

152. It may, sometimes, be difficult to decide which of the two articles apply to a case of *short delivery*²⁻³.

It is, however, clear, that where the goods are *delivered* but in a damaged condition, article 30 applies⁴⁻⁵.

153. Further, the question is sometimes raised if there may be some overlapping between the two Articles⁶ or whether the two are distinct from each other⁷⁻⁸.

154. These questions cannot, however, be considered in this Report. For the present purpose, we have to adopt the existing language of the articles in question⁹.

155. The Articles apply not only to a suit by the consignee, but also to a suit by the consignor^{10, 11, 12}.

1. See *Union of India v. Prabhat Marketing Co.*, A.I.R. 1953 Assam 190-192, paragraph 10.
(Suit for damages for breach of contract for shortage, Article 115 applies).
2. See the rival contentions put forth in *Shambhuram v. Union of India*, A.I.R. 1958 Pat. 118, 119, paragraph 4.
3. See case-law discussed in *O. T. Rly. v. Mrs. Karam Chand*, A.I.R. 1958 All. 234, paragraphs 12, 21, 40, 42 (F.B.).
4. *Jetnull v. D. H. Rly.*, A.I.R. 1962 S.C. 1879, 1885, paragraph 23.
5. See also *Dominion of India v. Nagardas and Co.*, A.I.R. 1955 Mad. 235, 236, paragraph
6. Cf. *National Swadeshi Stores v. G. G. Council*, A.I.R. 1948 Sind 26, 28, paragraph 18.
7. For an explanation of the distinction between the two articles, see *O. T. Rly. v. Mrs. Karam Chand*, A.I.R. 1958 All. 234, 246, 253, paragraphs 23 and 60 (F.B.) (Article 30 applies only when the carrier loses or injures the goods. It does not apply when the loss occurs to the plaintiff for some other fault of the carrier. Article 31 was applied for loss owing to misconduct).
8. See *Jwala Datt v. Union of India*, A.I.R. 1953 Pat. 351-368, paragraph 7 (Sinh aj.) (Under article 30, the goods should be lost or damaged. Under article 31, the goods should not have been delivered, or there have been delay).
9. See paragraph 144, *supra*.
10. *Mutsaddi v. B. N. Rly.* (1920) I.L.R. 42 All 390 ; A.I.R. 1920 All. 157, 158.
11. *Chiranjil Lal v. B. N. Rly.* (1924) 52 Cal. 372 ; A.I.R. 1925 Cal. 559, 561.
(Article 30 applies only when the carrier loses the goods).
12. *Vally Mohamad v. Netherland S. N. Co. Ltd.*, A.I.R. 1924 Cal. 173 175 (Reviews cases).

156. The question where exactly the new articles¹ should be placed, has caused us some anxiety. Articles 10 and 11 (of the Limitation Act of 1963) are grouped under the heading "Suits on Contracts". If the new articles are placed immediately after them, there is, no doubt, a possibility, that an argument may be advanced that they are confined to *suits on contracts*. Now, if the liability of the Post Office is regarded as *purely statutory*^{2,3,4,5}, then the placing of the new Articles after Articles 10 and 11 may become inappropriate. On the whole, however, we think⁶ that it is convenient to place them after Articles 10 and 11, because of the similarity in the language of those Articles (existing Articles 10, 11) and the proposed new Articles.

157. The points arising out of British statutes applicable to India, on matters connected with the Post Office, as dealt with in a previous Report⁷, have been already discussed⁸ at the appropriate places.

British Statutes applicable to India on the subject.

158. The important changes which we recommend in the Act have been explained above. The other changes which we recommend will be apparent from the draft amendments⁹ and Notes on Clause¹⁰.

Other changes.

159. We should make one point clear here, namely, that the question of revision of the Rules made under the Act is not within the scope of this Report. We have studied some of the rules, for the purpose of understanding the actual working of the Act, and have also ventured to suggest some changes¹¹, in the Rules where the matter was very important. Nevertheless, our study of, and recommendations regarding, rules are confined to points which arose in connection with revision of the sections of the Act themselves.

Amendment of rules not considered.

1.Paragraphs 141—144, *supra*.

2.*See* paragraphs 25—29 and 34, *supra*.

3.*Cf.* Lord Denning's judgment, referred to in paragraph 29, *supra*.

4.As to Indian cases on statutory Liability, *see*—

(i) *Secretary of State v. Guru Prasad*, (1892) I.L.R. 20 Cal. 51, and

(ii) *Mathura Prasad v. Gaya Municipality*, A.I.R. 1938 Pat. 192 (Article 120 applied).

5.*See* also paragraphs 135 and 141—143, *supra*.

6.*See* also paragraph 142, *supra*.

7.Fifth Report of the Law Commission (British Statutes Applicable to India).

8.*See* discussion under section 3 (d)—for mail ships; section 9, for registered newspapers; and section 46 for money orders. (Paragraphs 12, 41 and 112, *supra*).

9.Appendix I.

10.Appendix 2.

11.For example, paragraph 97 and paragraph 108 (foot-note), *supra*.

160. In order to give a concrete shape to our recommendations, we have, in Appendix I, put them in the form of draft amendments to the existing Act.

Appendix II contains Notes on clauses, explaining, with reference to the draft amendments in Appendix 1, any points that might require elucidation.

Appendix III summarises our recommendations in respect of other laws (or in respect of rules under the Act).

Appendix IV contains a detailed note discussing the constitutional aspects of some of the sections of the Act.

Appendix V discusses in detail section 26.

Appendix VI contains a list of some of the important provisions of Central Acts dealing with "emergencies". The list is not exhaustive.

Appendices VII to XIII deal with the position as to interception of postal article, including laws in some other countries.

Appendix XIV contains a note on liability for registered articles in England.

1. J. L. KAPUR—*Chairman.*

2. K. G. DATAR

3. S. S. DULAT

4. T. K. TOPE

5. RAMA PRASAD MOOKERJEE

} Members.

P. M. BAKSHI,

Joint Secretary and

Legislative Counsel.

New Delhi;

The 20th February, 1968.

EXPLANATION OF ABBREVIATIONS USED IN
APPENDIX 1

Eng. Act=~~The~~ Post Office Act, 1953
(1 and 2 Eliz. 2 c. 36).

APPENDIX I

RECOMMENDATIONS AS SHOWN IN THE FORM OF DRAFT AMENDMENTS

(This is a tentative draft only)

REPORT ON THE INDIAN POST OF ACT, 1898

Section 1

In section 1 of the Indian Post Office Act, 1898 (herein- 6 of 1898.
after referred to as the principal Act), in sub-section (1),
the word "Indian" shall be omitted.

Section 2

In section 2 of the principal Act, after clause (b), the
following clause shall be inserted, namely:—

'(bb) "mail" includes every conveyance by which Cf. s. 87(x),
postal articles are carried, whether it be a ship, air- Eng. Act.
craft, vehicle, horse or any other conveyance, and also
a person employed in conveying or delivering postal
articles'.

Section 3(c)

In section 3 of the principal Act, in clause (c), after the
words "according to the usual manner of delivering postal
articles to the addressee" the words "or the placing of a
postal article into a Post Office Box at the post office rented
by the addressee" shall be inserted.

Section 4

(i) In section 4 of the principal Act, in sub-section (1), Cf. s. 3
(2) (a),
English Act.
after clause (b), the following clauses shall be inserted,
namely:—

"(bb) letters conveyed and delivered by the sender
thereof personally:

(bbb) documents issued by a court of justice or Cf. s. 3(2)
(d), Eng. Act.
other authority entitled to issue the same, or any re-
turn or answers to such documents, sent, conveyed and
delivered otherwise than by post." Cf. s. 3(2)
(e), Eng.
Act.

(ii) in clause (c), after the words "by sea" the words
"or air" shall be inserted.

Section 5

In section 5 of the principal Act, in clause (b), after the
words "ports or places in India", the words "and owners
of or persons in charge of any aircraft on a flight between
places in India" shall be inserted. Compare
section 3(3)
(a), English
Act.

Section 10

In section 10 of the principal Act, the following sub-section shall be inserted at the end, namely:—

“(3) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may, make rules to give effect to such arrangements, in respect of postal articles other than those to which sections 36 and 46 apply.”

Section 23

In section 23 of the principal Act, in sub-section (3), after clause (b), the following proviso shall be inserted, namely:—

“Provided that before any such article as is specified in clause (a) of section 20 is destroyed, notices in writing shall be sent to the sender and the addressee, and the article shall not be destroyed until the expiry of one month from the date on which the last of such notices is sent.”

Section 26

In section 26 of the principal Act,—

(i) sub-section (2) shall be omitted;

(ii) the following sub-section shall be inserted at the end, namely:—

“(3) In respect of any letter, postcard, book or newspaper, an order under sub-section (1) may be passed only when such order is required in the interests of the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of any offence.”

Section 28

Section 28 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Subject to such conditions² as the Central Government may by rule, prescribe, the Central Government shall be liable to pay compensation, not exceeding fifty rupees, to the sender of a registered postal article for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

1. Compare section 5B (1), Cinematograph Act, 1952 (37 of 1952), which reads as follows:—

“5B. Principles for guidance in certifying films.—(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interest of the security of the State, friendly relations with foreign States, public order, decency or morality, or involves defamation or contempt of court or is likely to incite the commission of any offence.”

2. It is not necessary to mention “restrictions”, as in section 33.

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused."

Section 34

In section 34 of the principal Act, in the proviso, for the words "that sum has been received from the addressee" the words "*the postal article has been delivered to the addressee or except where the article has neither been delivered to the addressee nor returned to the sender in the original condition*" shall be substituted.

Section 33

Section 33 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Where the sender has assigned his right under this section to the addressee, and gives a written intimation of such assignment to the officer-in-charge of the Post Office, the compensation under sub-section (1) shall be payable to the addressee."

Section 42A (New)

After section 42 of the principal Act, the following section shall be inserted, namely:—

"42A. The provisions of sections 40, 41 and 42 shall, as far as may be, apply in relation to persons in charge of aircraft departing from or arriving at any place in India as they apply in relation to masters of ships departing from or arriving at any port in India."

Cf. section 26 read with s. 87 (1) definition of "Commander" English Act.

Application to aircraft.

Section 45

In section 45 of the principal Act, in the proviso, for the words "ten rupees", the words "*one hundred rupees*" shall be substituted.

Section 47A (New)

After section 47 of the principal Act, the following section shall be inserted, namely:—

"47A. Money orders shall be paid at such times and in such manner as the Director General may, from time to time, appoint."

Time and manner of payment of money orders.

Section 52

In section 52 of the principal Act, for the words "imprisonment for a term which may extend to seven years", the words "*imprisonment for life or for a term which may extend to ten years*" shall be substituted.

Section 56A (New)

After section 56 of the principal Act, the following section shall be inserted, namely:—

“56A. If any person—

(a) commits theft in respect of—

(i) a mail bag, or

(ii) any postal article in course of transmission by post, or

(iii) any movable property out of a postal article in course of transmission by post, or

(b) stops a mail with intent to rob or search the mail,

he shall be punishable with imprisonment for life or for a term which may extend to ten years, or fine, or both”.

Stealing mail bag or postal article.

Section 64

In section 64 of the principal Act, for the words “by this Act” the words “by or under this Act” shall be substituted.

Section 65A (New)

After section 65 of the principal Act, the following section shall be inserted, namely:—

“65A. Whoever, being the person in charge of an aircraft,—

(a) fails to comply with the provisions of section 40 read with section 42A; or

(b) without reasonable excuse, the burden of providing which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer-in-charge of the Post Office at a place of arrival, as required by section 41 read with section 42A,

shall be punishable with fine which may extend to one thousand rupees.”.

Penalty for in charge of aircraft.

Section 66

In section 66 of the principal Act, in sub-section (1),—

(a) for the words “being either the master of a ship arriving at any port in India or anyone on board”, the words “being the master of a ship or the person in charge of an aircraft arriving at any port or place in India or anyone on board” shall be substituted;

(b) for the words “port of arrival” the words “port or place of arrival” shall be substituted.

Cf. S. 52, English Act.

Compare S. 65.

Section 69

In section 69 of the principal Act, for the word "letter" wherever it occurs, the words "postal article" shall be substituted. Cf. s. 56
English Act.

Section 72A (New)

After section 72 of the principal Act, the following section shall be inserted, namely:—

"72A. Trial of offences.—(1) An offence under this Act may be tried by any court within the local limits of whose jurisdiction it was committed or the alleged offender is arrested or is in custody or, where the offence is in respect of a mail, mail bag, postal article, or money order or any movable property sent by post, within the local limits of whose jurisdiction the mail, mail bag, postal article, money order or movable property passed in the course of transmission by post. Cf. s. 70,
English Act.

Cf. s. 134,
Railways Act,
1890.
See also
sections 177
to 184, Code
of Criminal
Procedure,
1898.

(2) Abetment of an offence under this Act may be tried by any court by which the offence abetted may be tried.

(3) Nothing in this section shall effect the jurisdiction of a court competent¹⁻²⁻³⁻⁴ to try an offence under this Act by virtue of the provisions of the Code of Criminal Procedure, 1898." 5 of 1898.

Section 74

In section 74 of the principal Act,—

(i) in sub-section (3), the words "and on such publication shall have effect as if enacted by this Act" shall be omitted;

(ii) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions; and, if, before the

-
1. As to provisions applicable in ordinary cases, see sections 177 to 182, Code of Criminal Procedure, 1898.
 2. As to theft and misappropriation see section 181 (2) and (3), Code of Criminal Procedure, 1898.
 3. As to offender in journey, see section 183, Code of Criminal Procedure 1898.
 4. As to trial in Presidency Towns, see section 184, Code of Criminal Procedure, 1898.

expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule."

APPENDIX II

NOTES ON CLAUSES

Section 1

The change is verbal.¹

Section 2

Definition of "mail" is being added, which will be useful for the new section proposed to be inserted². The expression occurs in the existing provisions also. For example, see section 3 (d), section 67, etc.

Section 3 (c)

It has been suggested by the Department³, that in the definition of "delivery" should include delivery into—(i) P.O. Boxes at the post office, and (ii) private letter boxes at the addressee's premises. We have accepted the suggestion as to the first point. The second is already covered by the words "at the house or office of the addressee", in section 3 (c).

Section 4 (1) (bb) and (bbb) (New)

Certain provisions are being added on the lines of the English Act, to save—

- (i) letters taken by a person himself;
- (ii) Summons etc. issued by courts, etc.

The English provision is confined to courts, but other officers have also to be covered, as they possess a power to issue summons, etc.).

The following comment was made⁴ by the Department on the draft Report:—

(2) The proposed clause (bbb) to sub-section (1) of section 4 is acceptable so far as "documents issued by a Court of Justice" are concerned. The words "or other authority entitled to issue the same" may be dropped since, if such "other authority" exercise the powers of a court of justice. It is automatically covered by the words "a court of justice".

It is felt that the assumption made in the comment is not correct.

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1. See the body of the Report, paragraph 8.
 2. See section 56A (proposed), regarding stealing of mail bag, etc.
 3. S. No. 96 (Suggestion of the Department).
 4. S. No. 168 (Comment of the Department).

Section 4(1) (c)

This has been extended to aircraft.

Section 5(b)

This has been extended to aircraft.

Section 10

It has been stated by the Department¹, that while section 10(1) gives power to make rules on certain matters, it does not give a *general power* to give effect to arrangements made with foreign countries in respect of postal articles generally. It has been suggested, that such a power should be given.

The suggested change appears to be unobjectionable.

Necessary amendment has been proposed.

As regards registered, insured or value payable postal articles, and money orders, a suitable provision already exists in sections 36 and 46, and those articles have, therefore, been excluded from the provision sought to be added.

Section 23

The reasons for the proposed amendment have been already stated².

Section 26

The reasons for the proposed amendment have been already stated³.

Section 28

Reasons for the amendment proposed to section 28 have been already given⁴.

Section 33

The reasons for the change recommended in section 33 have been already explained⁵.

Section 34

The proviso to section 34 has been amended, for reasons already stated⁶.

1. S. No. 95 (Suggestion of the Department).

2. See body of the Report, paragraphs 56-72.

3. See body of the Report, paragraphs 85-86.

4. See body of the Report, paragraphs 102-104.

5. See body of the Report, paragraphs 106-107.

6. See body of the Report, paragraph 108, *et seq.*

Section 42A (New)

The object of the proposed amendment is to extend the provisions of section 40, section 41 and section 42, to aircraft. Compare section 26 of the English Act, read with the definition of "Commander" in section 87(1) of that Act.

Section 45

In section 45, the proviso states that a postal order should not be issued for an amount in excess of ten rupees. It has been suggested,¹ that the proviso be deleted.

The point was thus reiterated in the comment on the draft Report²—

"It is felt that the proviso to section 45 may better be removed, altogether, as that would make for great flexibility in bringing out postal orders in different denominations according to public demand."

The comment was not accepted *in toto*.³

It may not be desirable to delete the proviso, but the limit of Rs. 10 may be replaced by Rs. 100. (Some limit must be there, in this respect⁴).

Necessary change is proposed.

Section 47A (New)

It has been suggested by the Department⁵, that regarding delivery of Money Orders a provision should be inserted similar to sections 21(3), 29(3) and 32(3). There appears to be no objection to this suggestion.

Necessary provision is proposed.

Section 52

(1) Punishment under section 52 has been proposed to be increased to *life imprisonment or 10 years*⁶, in view of the gravity of the offence.

(2) Theft, (though it is also mentioned in the new section proposed for stealing mail bags, etc.⁷) has been retained in section 52, to retain its comprehensive scope.

1. S. No. 96 (Suggestion of the Department).

2. S. No. 169 (Comment of the Department).

3. As to postal orders, see Rules 180A to 180E, Indian Post Office Rules, 1938.

4. Section 21 (1), English Act, leaves the maximum amount to the Post master General.

5. S. No. 96 (Suggestion of the Department) under sections 21 (3), 29 (3) and 32 (3).

6. Compare section 56A (proposed) and section 57, English Act.

7. Section 56A (proposed).

Section 56A (New)

Section 56A is new. It is considered that it would be desirable to have a comprehensive provision on the lines of section 52 of the English Act, authorising severe punishments etc. in respect of any person who steals a mail bag or postal article or anything out of the postal article, or stops the mail with intent to rob or search the mail. While the subject matter of the proposed provision is (to some extent) covered by the existing provisions, either in the Post Office Act (e.g. section 52), or in the Indian Penal Code, the punishment under those provisions is not sufficiently severe. Thus, stopping a mail, even if it falls under the sections dealing with "robbery" in the Indian Penal Code¹, would not attract severe punishment. The same applies to the general offence of "theft"² under the Indian Penal Code.

Necessary change has therefore been proposed. A provision for fine has been made, to cover cases where the offender has substantially enriched himself. It is also considered, that the fine should be available as an *alternative* punishment to imprisonment, and the provision is framed on that basis.

Section 64

Section 64 provides that whoever, being required by this Act to make a declaration in respect of any postal article, etc. makes a false declaration shall be punishable, etc. In a Madras case³, the question arose whether the section could be applied against a person who had made a false declaration to the effect that a V.P.P. article was being sent in execution of a *bona fide* order received by him. Such declaration was required by the rules under section 35. The Court held, that such rules should be regarded as part of the enactment, and pointed out, that section 74(3) already provides that the rules shall have effect "as if enacted by the Act."⁴ It seems, however, desirable to make the position clear.

Necessary amendment has been proposed.

Section 65A (New)

The object of this amendment is to apply to aircraft the same provisions as are found in section 65 for ships. It is consequential on the proposed addition of a section⁵ applying the provisions of sections 40, 41 and 42 to persons in charge of aircraft.

1. Sections 390 to 398, Indian Penal Code.

2. Sections 378 to 382, Indian Penal Code.

3. *Crown Prosecutor v. G. Kothanda Ramiah*, (1910)—I.L.R. 33 M adras 511, 512, 513.

4. See also rule 95, Indian Post Office Rules, 1933.

5. See section 42A (proposed).

Section 66

The amendment is intended to extend the provisions of the section to aircraft.

Section 69

The reasons for the amendment have been already explained¹.

Section 78A (New)

Section 78A is new. Under section 70 of the English Act, an offence under the Act can be tried (briefly) by the court within whose jurisdiction the offence was committed or the offender is in custody or apprehended, or within whose jurisdiction the postal article passed in the course of transmission by post². A similar provision in our Act would be useful. The *general* rules regarding local jurisdiction of Criminal Courts are contained in section 177 *et seq* of the Code of Criminal Procedure, 1898. But there are no *special rules* to cover the case of offences committed regarding a postal article, which, in the very nature of things, has to travel from one place to another. While the cases where the offender *himself* is in journey, would be dealt with by section 183 of the Code of Criminal Procedure, 1898, the case where the *postal article* passed through several jurisdictions in course of *transmission* would not fall under any special provision. Section 184 of the Code of Criminal Procedure, 1898 does provide (*inter alia*), that offences against a law relating to the Post Office may be inquired into or tried in a Presidency Town where the offender and all the witnesses for the prosecution are to be found. But that section is confined to Presidency towns. It would be convenient to have a provision on the lines of section 70 of the English Act. Necessary changes has been proposed.

The following comment has been made³ as regards proposed section 72A, sub-section (2) (in the comment on the draft Report).

“Difficulties are bound to arise in the course of actual application of the proposed section if it is to co-exist with Criminal Procedure Code and co-act. It appears to this Government that since the proposed section is a special law and by virtue of the provisions of sections 1(2) and 5(2) of the Code will prevail over the provisions of the Code, it is not necessary to go out of one's way to save the jurisdiction of courts under the Criminal Procedure Code by means of a saving clause. Sub-section (2) of the proposed section may, therefore, be omitted.”

1. See the body of the Report, paragraph 122 (b).

2. This is in addition to the provisions relating to offences committed during journeys and offences committed in more than one country or place—Criminal Law Act, 1826 (7 Geo. c. 64), section 13 (a).

3. S. No. 170 (A State Government).

The comment was considered by us. In our view, it is necessary to have a savings provision, particularly because there are provisions in the Code¹ under which also jurisdiction can be exercised.

Section 74

Section 74(3), latter half, provides that rules under the Act shall have effect as if enacted by the Act. It is not the practice in modern times to have such a provision in the rule-making section generally, and this part of the sub-section should be removed.

In conformity with recent legislative practice, a provision required the rules to be laid before the Parliament with powers to modify or annul the rules, should be inserted².

Necessary change has been proposed.

With reference to section 74 as proposed, a State Government had, in its comment on the draft Report, stated³ :—

“This Government cannot agree that recent legislative practice has been to provide that Rules made by Executive authorities under a Statute must be laid before the Parliament and submitted to revision and modification. It appears to this Government that the procedure contemplated by section 23 of the General Clauses Act is far preferable. Section 74 may, therefore, simply provide that the rules should be framed after previous publication.”

Having regard, however, to well established recent legislative practice⁴, no alteration of or addition to the draft was considered necessary.

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1. See sections 183 and 184, Code of Criminal Procedure, 1898 (as examples).
 2. This is subject to any recommendation which the Law Commission may make in connection with the General Clauses Act, 1897 on the subject of laying of rules.
 3. S. No. 170 (Comment of a State Government).
 4. For a recent example, see section 21, Unlawful Activities (Prevention) Act, 1967 (37 of 1967).

APPENDIX III

RECOMMENDATIONS IN RESPECT OF OTHER LAWS (OR IN RESPECT OF RULES UNDER THE ACT)

I. *Limitation Act, 1963 (36 of 1963)*

Two articles should be inserted in the Limitation Act, to provide a period of one year for a suit for compensation for loss of, damage to, non-delivery or delay in delivery of, postal articles¹.

II. *Mail Ships*

Separate legislation should, if necessary, be enacted for Mail Ships, after entering into conventions².

III. *Indian Telegraph Act, 1885 (13 of 1885)*

Section 5 of the Indian Telegraph Act, 1885, should be amended as indicated in the body of the Report³, in order to bring it into line with article 19 of the Constitution.

IV. *Indian Post Office Rules, 1933.*

Certain amendments may be made in the Indian Post Office Rules, 1933, as indicated in the body of the Report⁴.

1. See body of the Report, paragraphs 141—142.

2. See body of the Report, paragraph 12.

3. See body of the Report, paragraph 93.

4. See body of the Report, paragraph 97 and paragraph 108 (foot-note)*

APPENDIX IV

CONSTITUTIONAL ASPECTS OF SOME SECTIONS OF THE POST OFFICE ACT

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous laws | Constitutional position |
|---|--|---|--|
| <i>Section 9—</i> | | | |
| It empowers the making of rules as to registered newspapers. (See rules 1, 30, 30A and 212, Indian Post Office Rules, 1933). | If the newspaper is registered under the Post Office Act, it gets the privilege of concessional postal rates under rule 1, Indian Post Office Rules, 1933. | ... | The section does not seem to conflict with any provision of the Constitution. Rules under the section must, of course, keep themselves within the limits allowed by the section. ¹ 1. |
| <i>Section 19(1)</i> bars the sending of explosives, dangerous and filthy articles, noxious substances, living animals etc., likely to cause injury to postal articles or to an officer of Post Office. | <i>Section 23(1)</i> —Any postal article sent by post in contravention of any provision of the Post Office Act may be detained, and either sent to the sender or the addressee (charging prescribed additional postage, if necessary). | <i>Section 5(1)</i> of the Indian Explosives Act, 1884 (4 of 1884) empowers the Central Government to regulate, by rules, the transportation etc. of explosives. A breach of the rules is punishable under section 5(3)(b) of that Act. | The restriction is reasonable. Explosives in a postal article, may, when the article is stamped for defacing the postage stamps, explode the article. This appears, therefore to be a reasonable restriction, in the interests of public order, or in the public interest. It, therefore, seems to be valid. Possibility of its coming into conflict with the freedom of speech and expression is small. |
| | <i>Section 23(3)(a)</i> authorises opening and destruction. ² | | |
| <i>Section 19(2)</i> bars the sending by post of any article or thing likely to injure postal articles in course of transmission by post or any officer of the post office. | <i>Section 61</i> provides for punishment. ³ | | |

1. See Rules 1, 30, 30A, 212, Indian Post Office Rules, 1933.

2. The power under section 23 (3)(a) is in addition to destruction under rule 214, Post Office Rules.

3. See also discussion relating to section 20, on the point whether breach of rules is an offence.

| Main section in the Indian Post Office Act. | Connected section in the Indian Post Office Act. | Other analogous laws | Constitutional position |
|--|--|---|--|
| Section 19A—bars the sending of tickets, etc., relating to unauthorised lottery. ¹ | Section 23(1)—empowers detention of the article, plus return to the sender or addressee. | Section 294A—Indian Penal Code punishes the keeping of lottery houses, or publication of proposals as to lotteries. | The restrictions do not raise any question of freedom of "expression" under article 19(1). It is, therefore, unnecessary to consider whether they fall under "morality" in article 19(2). |
| | Section 23(3)—Notwithstanding anything in sub-section (1), any postal article sent by post in contravention of section 19A, may "under the authority of the Postmaster General, if necessary, be opened and destroyed." [Section 24 does not seem to apply; see its opening words.] Section 61—provides for punishment. | | |
| Section 20—No person shall send by post— (a) any indecent or obscene printing, photograph, lithograph, etc., or any other indecent or obscene article, ² (b) or any postal article having thereon or on the cover thereof.— | Section 23(1)—Any postal article sent in contravention of any provision of the Post Office Act, may be detained, and either returned to the sender, or forwarded to its destination (charging prescribed additional postage, if necessary). | (a) Section 292—Indian Penal Code punishes publication, sale, distribution, etc., of obscene books, pamphlets, etc. | (i) The provision relating to obscenity or indecent matter is justified in the interests of "decency", or "morality" under article 19(2) of the Constitution. Hence, it is valid so far as the <i>substantive</i> aspects concerned. |
| | | | As to the meaning of "obscenity" under the Indian Penal Code, see a decision of the Supreme Court ³ which upholds the validity of section 292, Indian Penal Code. ⁴ |

1. Cf. rule 44, Indian Post Office Rules, 1933.

2. A similar provision is section 11 of the (English) Po Office Act, 1963 discussed in Russell on Crime, (1964), Vol. 2, page 1427.st

3. Ra jit Udeshi v. State, A.I.R. 1965 S.C. 880.

4. See also *Shanker & Co., v. State* A.I.R. 1955 Mad. 498, 501, paragraph 9, upholding the validity of section 3 (vi) of the Press (Objection) Matter Act, 1951, in so far as it related to obscene or indecent

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous laws | Constitutional position |
|---|--|--|--|
| <p>any words, marks or designs of an—</p> <ul style="list-style-type: none"> (i) Indecent, (ii) obscene, (iii) seditious, (iv) scurrilous, (v) threatening, or (vi) grossly offensive, character. | <p><i>Section 23 (2).</i>—Any officer incharge of a Post Office or authorised by the Postmaster General in this behalf may <i>open</i> any newspaper, book, packet or sample suspected to be in contravention of section 20(a).</p> | <p>(b) <i>Section 11(2) (b)</i> of the Customs Act, 1962 (52 of 1962) empowers the Central Government to prohibit the import of goods for various purposes, one of which is " maintenance of standards of decency or morality". (Further procedure to be followed, if the prohibition is violated, is contained in sections 112-113 of the Customs Act).</p> | <p>(ii) <i>The procedural part</i>, however, requires consideration. Section 23(3) (b), read with rule 217 of the Indian Post Office Rules 1933, authorises (<i>inter alia</i>) the destruction of the article without notice to the addressee. (Contrast section 24 of the Act, which provides for notice, etc.).</p> |
| | <p><i>Section 23 (3) (b).</i>—Notwithstanding anything contained in sub-section (1), any postal article sent by post in contravention of section 20 may be disposed of in such manner as the Central Government may, <i>by rule</i>, direct. (See Rule 217, latter half, of the Indian Post Office Rules, 1933, which authorises, <i>inter alia</i>, destruction of the postal article).</p> | <p>(c) <i>Section 98 (1) (c)</i> of the Code of Criminal Procedure, 1898 empowers the issue of a search warrant by a specified Magistrate, for search of a house etc. for obscene articles, if found in the house, are to be carried to a Magistrate).</p> | |
| | | <p>Section 3 (c) of the Dramatic Performance Act, 1876, prohibits, (<i>inter alia</i>), the display of a dramatic performance likely to deprave and corrupt persons present at the performance. There is no provision for giving notice, and this provision has been held to be void.¹</p> | |
| | <p>(Section 24 does not seem to apply.)</p> | | |

1. Section 3 (c) of the Dramatic Performance Act, 1876 was held to be void in *State v. Baboo Lad*, A.I.R. 1956 All. 571. The point was considered, but not decided, in *Harnam v. State*, A.I.R. 1958 Punj. 243, 244.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act. | Other analogous laws | Constitutional position. |
|--|--|----------------------|--------------------------|
|--|--|----------------------|--------------------------|

(D) A somewhat similar provision is contained in section 5B of the Cinematographs Act, 1952 (37 of 1952). There is also a power to forfeit certain publications in the Young Persons (Harmful Publications) Act, 1956 (93 of 1956). But both these Acts contain procedural safeguards. Thus, the Cinematographs Act, 1952, sections 4 (2) and 5-C, provide for hearing and appeal. The Young Persons etc. Act, 1956, section 5, provides for judicial review by the High Court.¹

Section 23 (3) (b) contemplates no notice to the addressee. This is also the position under section 3, Dramatic etc. Act, 1876, Rule 217, relating to postal articles governed by section 20, authorises the destruction of the articles or disposal in such manner as the Post Master General directs. The requirement of procedural reasonableness has therefore to be considered.²

The requirements of notice and judicial review have been regarded as very important in such cases, to support the validity of provisions interfering

1. Compare, also, section 4, Criminal Law Amendment Act, 1961 (23 of 1961).

2. As to the invalidity of section 3 (c) of the Dramatic Performances, etc. Act, 1876 see *State v. Baboo Lal*, A.I.R. 1956 All. 571. The point was considered, but not decided, in *Harnam, v. Punjab*, A.I.R. 1958 Pun 1243.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous laws | Constitutional position |
|--|---|----------------------|---|
| | | | <p>with the fundamental rights of freedom of speech and expression,¹</p> <p>A power to approach the High Court may save the validity of such restrictions.²</p> <p>It was held in a very early Allahabad case³ that destruction of copies of a book which was obscene could not be ordered by the Magistrate, in the absence of a specific power. (The decision related to section 418 of the Criminal Procedure Code as it was then in force. The present section is specific on the point).</p> <p>In a case under section of the Post Office Act,⁴ it was held, that cocaine was not an offensive, dangerous, filthy, noxious or deleterious within section 19. It was also observed, that even if rules had been made to prevent the sending of cocaine by post, the sending of articles by post in contravention of the rules so made did not seem to be an offence under section 61, which only deals with the sending of articles in contravention of the sections themselves, i.e., sections 19 and 20.⁵</p> |

1. *Cf. Ramia Shankar v. State*, A.I.R. 1954 All. 562, 568, 569, paragraph 12, relating to section 15 of the Press Emergency Powers Act, 1931, which empowered the District Magistrate to restrain the printing of newsheets.
2. *Cf. Shanti Lal v. State* A.I.R. 1954 Bom. 508, 509, paragraph 5, upholding the validity of section 11 of the Press (Objectionable Matter) Act 1951 in view of the position for judicial review.
3. *Empress of India v. Indarman*,¹ (1881) I.L.R. 3 All. 837, 844 (Straight J).
4. Section 521, Code of Criminal Procedure, 1898.
5. *Emp. v. Ismail Khan*, (1915) I.L.R. 37 All. 289.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous laws | Constitutional position |
|--|---|----------------------|---|
| | | | <p>In one Calcutta case,¹ a prosecution under section 61 of the Post Office Act read with section 29 for transmission by post of a printed post-card containing an advertisement of a patent medicine in language of an obscene nature, was upheld and the court adopted the well known test in <i>Queen v. Hicklin</i>² as to the test of obscenity.</p> |
| | | | <p>(iii) The provision as to "seditious" matter is valid. The Supreme Court interpretation of section 124A, Indian Penal Code will be applied here also so as to justify the provision in the interest of "public order" within article 10 (1) (a) and 19 (2) of the Constitution.</p> |
| | | | <p>(iv) The provision as to "scurrilous" attacks appears to be valid. It is unnecessary to consider here whether the provision will be interpreted as "scurrilous" and "indecent" though this is not likely.³ If such narrow.</p> |

1. *Sarat Chandra Ghose v. King Emperor*, (1904) I.L.R. 32 Cal. 247, 248 (Amcer Al and Part JJ.).
2. *Queen v. Hicklin*, (1868) L.R. 3 Q.B. 360, 371.
3. See *Kedar Nath v. State of Bihar*, (1962), Suppl. 2 S.C.R. 769 ; A.I.R. 1962 S.C. 955.
4. *Cf. P. Ramarathnam*, (1964) 2 M.L.J. 440 (Section 292A, Indian Penal Code—Madras Amendment—upheld) (Kalasham J.). ("Indecent and Scurrilous").
5. *Cf. Shankar & Co. v. State*, A.I.R. 1951; Mad. 491, 501, paragraph 8 as to section 3 (v), Press (Objectionable Matter) Act, 1951.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws. | Constitutional position |
|---|--|-----------------------|--|
| <p>Section 21 (2) — (a) (b) and (c) — Empower the making of rules specifying articles which may not be transmitted by post, prescribing the condition on which articles may be transmitted by post, and providing for detention and disposal of articles sent in violation of such rules.</p> | <p>Section 23 (1). — discussed above, under section 20.</p> <p>Section 23 (2) — discussed above, under section 20.</p> <p>Section 23 (3) (b) — Discussed above under section 20.</p> | | <p>interpretation is placed the section is undoubtedly valid.¹ But, even if it is construed widely, it seems to be saved by "morality" in article 19 (2).</p> <p>(v) The provision related to "threatening" matter does not raise a question of freedom of "expression". Hence, it is not necessary to discuss the question whether the provision may be justified in the interests of "morality" within article 19 (2) of the Constitution.²</p> <p>(vi) There is some difficulty about the word "offensive"³ but it seems to fall within "morality", in article 19 (2) of the Constitution.</p> <p>The power is, no doubt, wide. The rules may be invalid if they go beyond article 19 (2)⁴. The validity of the section <i>itself</i> is however, not affected. In any case, it would be neither necessary nor convenient to modify the <i>language of the section</i> so as to provide that the rules shall comply with the various heads mentioned in article 19. The provision would have to be extremely cumbersome, as it will have to deal not only with article 19 (2), but also with article 19 (3) (4), etc.</p> |

1. Cf. *Krishna Sharma v. State* A.I.R. 1952 Sau. 28, 30, paragraph 6, regarding section 3 (v) Press, etc., Act, 1951.
2. Compare section 503, Indian Penal Code.
3. See Basu, *Commentary on the Constitution*, (1965), Vol. I, pages 671-672.
4. The matter is discussed in Basu, *Constitution of India*, (1965), Vol. I, page 672.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws. | Constitutional Position |
|--|---|-----------------------|--|
| | | | Moreover, many of the rules ¹ would never come in conflict with article 19. Their true nature and character is not to interfere with the freedom of speech at all, but to regulate packing contents etc. of postal articles, or to exclude from the post injurious substances. ² |
| Section 23.—See discussion in this Appendix under sections 19, 20, 21. | | | |
| Section 24.—Except and otherwise provided in the Act, where a postal article suspected to contain any of the following three categories ³ of goods, nemely, | | | (i) So far as the first category under section 24 is concerned, the validity of the section is linked up with the other enactment (such as the Imports and Exports Control, etc., Act or the Customs Act), under which import is prohibited. The procedure given in section 24 is also a fairly reasonable one, and <i>prima facie</i> , therefore, the provisions of the section as to this category would not raise any serious constitutional difficulty. |
| (a) any goods of which the <i>import</i> by post is prohibited by or under any enactment for the time being in force, or | | | |
| (b) any goods of which <i>transmission</i> by post is prohibited by or under any enactment etc. or | | | |

1. See Rules 8 to 43, and 44 to 46, Indian Post Office Rules, 1933.

2. Cf. discussion in *Hamdard Dawakhana v. Union of India*, A.I.R. 1960 S.C. 554-564, paragraph 20.

3. This is not a reproduction of the language of the section, but an analysis.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|---|
| <p>(c) anything liable to duty, is received for delivery at a Post Office, a notice is to be sent to the addressee "inviting him to attend" within a specified time. The postal article is then opened and examined (before witnesses if so directed by the Director General), and then delivered to the addressee, unless required for the purpose of any further proceeding under the law.</p> | | | <p>(i) These remarks also apply to the second category of goods, i.e., goods whose transmission by post is prohibited under any enactment.</p> <p>(iii) The third category, i.e., "anything liable to duty", must be confined to goods on which a duty is lawfully leviable; and, therefore, (though the section does not say so), action can be taken in respect of this category of goods only where the duty is leviable under some other law. For this reason, the validity of the section in respect of this category need not be independently examined. The procedure is also fairly reasonable.</p> |
| | | | <p>NOTE.—Section 24 can, possibly, apply also to goods the transmission whereof is prohibited by an order under section 144 of the Code of Criminal Procedure—(assuming that section 144 can be lawfully used for that purpose).¹ It is, however, unnecessary to consider the aspect for the purpose of revision of the Post Office Act.</p> |

1. As to the use of section 144, Code of Criminal Procedure, 1898 to restrain freedom of the press, see—

- (i) *P. T. Chandra v. Emp.*, A.I.R. 1942 Lah. 171, 172 (F.B.), (*Tribune Case*).
- (ii) *In re Ardeshr*, A.I.R. 1940 Bom. 42, 43.
- (iii) *Babu Lal v. State*, (1961) 3 S.C.R. 423 ; A.I.R.1961S.C. 884.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|--|
| <p><i>Section 24A.</i>—Empowers an officer of the Post Office empowered by the Central Government to deliver to the Customs authority any postal article received from beyond India and suspected to contain anything liable to duty to a Customs authority specified in the Central Government's order. Further action is to be taken by such Customs authority in accordance with the Customs Act, or other law.</p> | .. | .. | <p>This is linked up with the Customs Act or other relevant law, which imposes the duty. The power can be exercised by an officer of the Post Office empowered by the Central Government, and is confined to articles received from beyond the limits of India, and suspected to contain anything liable to duty. Its validity in this context need not therefore, be examined minutely. It is not likely, in practice, to interfere with the freedom of speech, and so far as the other rights guaranteed by the Constitution are concerned, the provision seems to be a reasonable restriction in the public interest.</p> |
| <p><i>Articles sent in contravention of Import and Export (Control) Act, 1947 or the Customs Act, Section 25.</i>—Empowers an officer of the post office empowered by the Central Government in this behalf, to search for any goods in course of transmission by post, being goods whose export or import is banned or restricted under the Customs Act or other law. The goods are to be delivered to an officer appointed by the Central Government, who may dispose of the goods in such manner.</p> | | | <p>(1) The section is connected with the restrictions under the Import and Export (Control) Act, 1947 or under section 11, Customs Act, 1962 or similar laws. Most of these are within the ambit of the words, 'in the interest of general public' used in article 19 (6) of the Constitution. In case the restrictions imposed in those other Acts are themselves held to be void, then section 25 of the Post Office Act will be void in relation to those restrictions. Its validity need not be independently considered.</p> |

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|--|--|
| <p>as the Central Government may direct. "In carrying out any such search such officer of the post office may open or unfasten, or cause to be opened or unfastened any newspaper or any books, pattern or sample packet in course of transmission by post."</p> | | | <p>(2) The last sentence of this section does authorise the opening of many postal articles, <i>but not letters</i>. Hence, in practice, its coming into conflict with the freedom of speech is not likely.</p> |
| <p>Section 26.—Empowers the Government or an authorised officer to order to intercept, etc. postal articles in a public emergency or for public safety or tranquility</p> | | <p>There is a wider provision for interception in rule 23, Defence of India Rules, 1962.</p> | <p>(i) Interception of letters under section 26 might conflict with the freedom of expression, under article 19 (1) (a) of the Constitution.</p> <p>(ii) Interception and destruction of V.P.P. article might conflict with the sender's freedom of property, under article 19 (1) (g) of the Constitution.</p> <p>(iii) Interception and destruction of articles ordered by post and already paid for by the addressee might conflict with the addressee's right to property, under article 19 (1) (g) of the Constitution. If the articles are not paid for, such interception etc. might affect the sender's similar right.</p> |
| | | | <p>The last two kinds of conflicts, however would be rare, in view of the circumstances in which the order under section 26 would be passed, i.e., public emergency or public</p> |

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|---|
| <p><i>Section 27 (1).</i>—Where an article is received from a place beyond India, bearing a used or fictitious stamp, the officer in charge of the Post Office shall send a notice to the addressee to come to take the delivery.</p> | | | <p>safety, etc. Therefore, only the first kind of conflict with the Constitution required to be considered. It has been separately discussed¹.</p> |
| | | | <p>(a) In so far as the section affects <i>the sender</i>, he will be in a foreign country. Hence no question of fundamental rights arises.</p> |
| | | | <p>(b) In so far as the section affects <i>the addressee</i>, the position is this :—</p> |
| <p><i>Section 27 (2).</i>— If the addressee appears and agrees to make known the name of the sender and to deliver the fictitious stamp and the part containing the address, article shall be delivered to him.</p> | | | |
| <p><i>Section 27 (3).</i>—If the addressee absents himself, or if he appears and refuses to make known the name of the sender or refuses to deliver the part of article containing the fictitious stamp, the article shall not be delivered to him and will be disposed of as the Central Government may direct.</p> | | | <p>The addressee has two fundamental rights with regard to such articles, namely :—</p> |

1. See detailed note relating to section 26.

| Main section in the Indian Post Office Act | Connected section in the Indian post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|--|
| | | | <p>(i) freedom of speech and expression, (which includes, the right to <i>seek and receive</i> ideas and information, through any medium);</p> <p>(ii) right to property.—if the addressee has pre-paid the price for the article, or if an article belonging to him is sent back by post, by, say, a repairer);</p> |
| | | | <p>At first sight, the restriction envisaged by section 27 (3) may appear to be violative of the Constitution, on the ground that the penalty <i>qua</i> the addressee has no bearing to or relation with any crime of the person penalised (the addressee).</p> |
| | | | <p>The sender (or his servant) or some other person may be the guilty party, and they are not the representatives or agents of the addressee.</p> |
| | | | <p>But the answer is, that the crime is with regard to <i>foreign postage</i>, and to check it or to punish it, this course is necessary, as it would be difficult to trace the actual offender.</p> |

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|--|--|
| <p><i>Section 27(B)(1)(a)</i> empowers an officer of the Post Office authorised by the Post Master General to detain any postal article suspected to contain any newspaper, book, or document, containing seditious matter (<i>i.e.</i>, matter punishable under section 124A, Indian Penal Code).</p> | <p><i>Section 27B(2)</i>.— Notice to be given to the addressee.</p> <p><i>Section 27B(3)</i>.— Order passed by State Government after notice subject to review by the High Court.</p> | <p>(1) <i>Section 99A</i>, Code of Criminal Procedure, 1898, empowers the State Government to seize any document or newspaper or book as defined in the Press and Registration of Books Act, 1867, if it is seditious or promotes hatred, etc. or hurts religious feeling.</p> | <p>Further, the penalty by way of detention of the article and subsequent disposal, <i>in such manner as may be directed by the Central Government</i>, is imposed only on refusal of the addressee to make known the address and name of the sender, etc. The restriction, therefore, appears to be reasonable, and in the public interest.</p> |
| <p><i>Section 27B(1)(b)</i>.— empowers such officer to detain any newspaper as defined in the Press, etc., Act 1867, printed otherwise than in conformity with the rules laid down in that Act.</p> | | | <p><i>Section 27B</i>.—(1) Detention of seditious articles will not violate the Constitution as such action will be in the interest of the security of the State or public order.</p> <p>(ii) The Government's order is not final, but can be judicially reviewed by the High Court. Hence, procedural validity is satisfied.</p> |
| | | | <p>(ii) Under section 4 of the Young Persons (Harmful Publications) Act, 1956 (93 of 1956), the State Government is empowered to declare any publication as likely to</p> |

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|--|
| | | | <p>corrupt young persons and incite them to commit violence or offence, and to order forfeiture of every copy. This order is open to judicial review by the High Court, on the application of any person interested in the forfeited article.</p> |
| | | | <p>(iii) As regards the Press and Registration of Books Act, 1867, the relative provision in section 27B of the Post Office Act is linked up with that Act of 1867. It may also be added, that it has been held that the Act of 1867, is not violative of article 19 (1)(a) of the Constitution, as it does not, in fact, place <i>any more restriction</i> than is necessary for registration. The object of registration under the 1867 Act is merely to obtain <i>information</i> about the press and their publications¹. The 1867 Act was not intended to establish <i>control</i> over printing presses and newspapers, but to regulate printing presses and newspapers and to preserve copies². In any case, the validity of s. 27B, Post Office Act, need not be independently examined.</p> |

1. *Inre G. Alavandar*, A.I.R. 1957 Mad. 427.

2. *Mrs. Taramati v. Addl. District Magistrate Kutch* A.I.R. 1964 Gujarat 278, 280.

| Main section in the Indian Post Office Act | Connected section in the Indian Post Office Act | Other analogous Laws | Constitutional position |
|--|---|----------------------|---|
| | | | (iv) Sections 27B and 27C of the Post Office Act, in a way, only <i>aid the law given in section 99A of Criminal Procedure Code</i> ¹ by providing for detaining the objectionable article, and sending it to the officer appointed by the State Government. It may be noted, that section 99A, Criminal Procedure Code is wider, as it covers also articles which are violative of sections 153A and 295A of the Indian Penal Code. |

1. As to the validity of section 99A, Cr. P. C. see *N. Veerabrahman v. State*, A.I.R. 1959 Andhra Pradesh 572, 576, paragraph 13 (Provision for judicial corrective relied on for maintaining the validity).

APPENDIX V

DETAILED NOTE ON SECTION 26, POST OFFICE ACT

Section 26 of the Indian Post Office Act raises certain questions of vices, as it empowers the Government, etc. to intercept, detain or dispose of any postal article or class of postal articles, etc., in a "public emergency" or for preserving public safety or tranquility.

The validity of the section has to be examined with reference to the freedom of speech and expression guaranteed by article 19(1)(a) of the Constitution.

Article 19(1)(a) and Article 19(2), as they, now stand, run as follows:—

"19. (1) All citizens shall have the right—

(a) to freedom of speech and expression;"

section of
certain rights
regarding
freedom of
speech, etc.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation, of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests to the sovereignty and integrity of India¹, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

If the object of the right to freedom of speech is to prevent public authorities from assuming control of the minds of the people, then it is obvious that section 26 comes into conflict with the right. Freedom of speech must imply freedom of effectively conveying one's views². The interception of a letter means a break in this freedom, as it hampers the free and uninhibited communication of one's views. Therefore, section 26 does impose a restriction on the freedom guaranteed by article 19(1)(a) of the Constitution.

Now, in ordinary times, precensorship is incompatible with the freedom of expression³, at least unless there are reasonable safeguards⁴. The power of interception is analogous to censorship, as it permits a specified authority to determine what shall or shall not pass through the mails and, therefore, requires strong justification for its validity. That validity can be derived, if at all, only from article 19(2), which enumerates the permissible sources of restriction.

1. See the Constitution (Sixteenth Amendment) Act, 1963.

2. Cf. *Romesh Thappar v. The State* A.I.R. 1950 S.C. 124, which was referred to by the Privy Council in *Oliver v. Buttigieg* (1966) 2 All E.R. 459(P.C.) (Case from Malta). (1966), 3 WLR 310 ; 320.

3. Cf. *Express Newspapers v. Union of India*, A.I.R. 1958 S.C. 578.

4. *Virendra v. State*, A.I.R. 1957 S.C. 896, 901, paragraph 12.

The next question is, whether the restriction is saved by article 19(2), that is to say, whether the restriction is—

- (i) reasonable, and
- (ii) in the interest of one or more of the permissible heads specified in article 19(2).

In coming to a decision on this question, one has to bear in mind several points, chief amongst them being—

- (i) the situation in which the power of interception can be exercised;
- (ii) the authorities by whom the power can be exercised;
- (iii) the articles in respect of which it can be exercised;
- (iv) the nature and effect of the power; and
- (v) the procedure for the exercise of the power.

As regards the *situation*, it is described in the section as one of "public emergency" or "public safety or tranquillity". The former—"public emergency"—will require detailed treatment.

Regarding the *authority*, the Central Government or the State Government or any officer specially authorised by either of them can exercise this power by a written order. There is, thus, delegation, no doubt, but that by itself does not appear to be a fatal defect. The provision for delegation does not seem to be unreasonable in itself. The provisions of the section are attracted only in an emergency, and the initial judge of the emergency must, often, be an officer of the locality^{1,2}.

As regards *articles*, any postal article or class or description of postal articles in course of transmission by post can be interfered with. This certainly includes letters and newspapers and books.

As regards the *nature and effect* of the order, the articles can be—(i) intercepted, (ii) detained, or (iii) disposed of in such manner as the authority concerned may direct.

As regards *procedure*, there is no provision for judicial review, apparently because the power is to be exercised in a public emergency or in the interest of the public safety or tranquillity.

Bearing in mind this analysis of the section, we may proceed to examine in detail the substantive as well as procedural aspects of the section.

1. Cf. *Babulal v. The State* (1961), 3 S.C.R. 423 ; A.I.R. 1961 S.C. 884, 889, paragraph 22.

2. See also *Veerendra v. The State* A.I.R. 1957 S.C. 496.

The procedural aspect may be disposed of first. The section does not lay down any hearing, etc.¹, but that not be conclusive as regards the validity of an for an emergency law². In judging the reasonableness of a restriction, the extent and urgency of the evil sought to be remedied thereby, disproportion of the imposition, and the prevailing condition at the time, etc., have all to be considered³.

We may now consider the substantive aspects.

In this connection, the situation in which, the power under section 26 can be exercised is described as one of "public emergency" and "public safety or tranquillity". These will have to justify themselves.

It is from this angle that the matter is to be viewed, and, though in a substantial number of cases, the power may not be abused, yet if it is capable of being exercised in a situation not expressly permitted by the Constitution, it may require modification. We have, therefore, to consider in detail whether the power is confined to the permissible heads.

Before the First Amendment to the Constitution, under article 19(2), the only permissible head of restriction on the freedom of speech and expression (so far as is relevant for the present purpose) was "security of the State". In *Romesh Thappar v. State of Madras*⁴, the ban imposed by the Government of Madras under section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, on the entry and circulation in the State of a journal called the "Cross Roads" was declared to be invalided, on the ground that the Constitution had placed in a distinct category those offences against public order which aimed at undermining the security of the State or overthrowing it, and made their prevention the justification for legislative abridgement of freedom of speech and expression. Nothing less than endangering the foundation of the State or threatening its overthrow could justify curtailment of the right to freedom of speech and expression. The Supreme Court further observed, "The Constitution thus requires a line to be drawn in the field of public order or tranquillity, marking off, more or less roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of peace of purely local significance, treating for this purpose the difference in degree to be a difference in kind."

1. *Basu*, Commentary on the Constitution, (1965), Vol. 1, page 671.
2. *Cf. Babula v. The State*, (1961), 3 S.C.R. 423 ; A.I.R. 1961 S.C. 884, 889, paragraph 22
3. *Cf. State of Madras v. V. G. Row*, A.I.R. 1952 S.C. 196.
4. *Romesh Thappar v. State of Madras*, (1950) S.C.R. 594; A.I.R. 1950 S.C. 124, 128, paragraph 10.

Therefore, according to this decision "public order" is to be classified into two categories—one major and the other minor, that is to say—

(a) major offences affecting the security of the State; and

(b) minor breaches of peace of local significance.

This decision was followed in *Brij Bhushan's case*¹.

It is well-known, that by the First Amendment to the Constitution of India, minor categories of public order were brought in. After the First Amendment, the Supreme Court examined the scope of article 19(2) in 1952, and upheld the validity of section 4(1) (a) of the Indian Press (Emergency Powers) Act, 1931, relating to words etc. which incite to, etc., the commission of any offence of murder or a cognizable offence involving violence².

Thereafter, in 1960, Mr. Justice Subba Rao (as he was then) had occasion to interpret the expression "public order". While examining the provisions of the U.P. Special Powers Act, 1932, he observed, "But in India under Article 19(2) this wide concept of public order is split under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interest of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head 'public order' in its most comprehensive sense. But the juxtaposition of the different grounds indicate that though sometimes they tend to overlap they must be ordinarily intended to exclude each other. Public order is something demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that *public order is synonymous with public peace, safety and tranquillity*".³

A later decision of the Supreme Court reiterates this view⁴.

It is true, that the expression "in the interest of" in article 19(2) is wider than the expression "for the maintenance of", so that a law which is not designed *directly* to protect the general public against any particular evil may be valid if it is enacted in *the interest* of the public order or the general public, as the case may be⁵.

1. *Brij Bhushan v. Shailja of Delhi*, A.I.R. 1950 S.C. 129.

2. *State of Bihar v. Shailja Bala*, A.I.R. 1952 S.C. 329.

3. *The Superintendent, Central Prison v. Dr. Ram Manohar Lohia*, A.I.R. 1960 S.C. 633, 639.

4. *O. K. Ghosh v. Joseph*, A.I.R. 1963 S.C. 812, 814, 815, paragraph 10.

5. Cf. *Ramji Lal v. State of U.P.*, A.I.R. 1957 S.C. 620, 622, paragraph 7, referring to *Debi Saran v. State*, A.I.R. 1954 Patna 254.

This amplification, however, does not "ignore the necessity for an intimate connection between the Act and the public order sought to be maintained by the Act¹."

As was observed by the Supreme Court², "The limitation imposed in the interest of public order, to be a reasonable restriction, should be one which has a *proximate* connection or *nexus* with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order".

In short, the serious and grave forms of public disorder which are calculated to endanger the security of the State fall under "security of State", and the relatively minor breaches of the peace of purely local significance fall under "public order"³. Therefore, national upheavals, such as revolutions, civil strikes, and war, may be covered by "security of the State", and local disorders may be covered by "public order"⁴;

In a recent case before the Supreme Court⁵, the meaning of the expression "maintenance of public order" in rule 30(1) (b) of the Defence of India Rules, 1962, and section 3 of the Defence of India Act, 1962, was considered in detail, and the expression "maintenance of law and order" (which was employed in the detention order in issue in that case) was also considered. According to the majority view⁶, "public order" was narrower than "maintenance of law and order". According to the analysis contained in one of the judgments⁷, there are three concentric circles. The expression "law and order" represents the largest circle, within which is the next circle representing "public order", and the smallest circle represents "security of the State." By using the expression "maintenance of law and order", the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

Now, the expression "public emergency" in section 26, Post Office Act, appears *in addition* to the words "public safety or tranquillity", which also are mentioned in the section. It is therefore, obviously intended for cases *other than those covered* by public safety or tranquillity—in

1. *Superintendent, Central Prison v. Dr. Ram Manohar Lohia*, A.I.R. 1960 S.C. 633.

2. *Superintendent, Central Prison v. Dr. Ram Manohar Lohia*, A.I.R. 1960 S.C. 633, 639.

3. Cf. discussion in the judgment of Patanjali Sastri J. in *Romesh Thappar v. State of Madras*, (1950) S.C.R. 594, 601; A.I.R. 1950 S.C. 124.

4. Basu, Commentary on the Constitution (1965) Vol. 1, page 671, assumes that section 26 would be covered by "in the interest of public order".

5. *Dr. Ram Manohar Lohia v. State of Bihar*, A.I.R. 1966 S.C. 740, 745, 758, 761, paragraphs 8, 52 and 66 (May, 1966).

6. Sarkar, Hidayatullah and Bachawat JJ.

7. Judgment of Hidayatullah J. (on behalf of himself and Bachawat J.)

other words, for a situation other than local disorder. It takes in national upheavals which affect the security of the State. But, apparently, it also takes, in emergencies of a public nature which might have *nothing* to do with the security of the State (or with public order), and it is here that it seems to go beyond the Constitution.

"Emergency", it may be noted, may be of an economic character also¹.

There is another aspect of the matter. The class of articles which can be intercepted is not linked up with "public order", etc., so that the section sweeps within its ambit even activities constituting a legitimate exercise of the freedom of speech^{2,3}. There is no principle to guide the officer concerned—except that of "emergency" etc. which itself goes beyond the Constitution,—with the result that the restriction may not be regarded as reasonable⁴.

We may examine in detail the meaning of the expression "emergency" as explained in some decisions⁵.

It has been observed, that the word "emergency" in section 2(1) (a) of the Compensation (Defence) Act, 1939 (2 & 3 Geo. 6 c. 75), may require different meanings to be attributed to it, having regard to the power in right of which possession was taken⁶.

The expression "emergency", as used in Admiralty directions relating to vessels in convoy, means the sudden occurrence of facts causing an apprehension of danger or difficulty⁷.

The expression "present emergency" in the Rating and Valuation (Postponement of Valuations) Act, 1940 (3 & 4 Geo. 6, c. 12), section 1(4), means the World War, 1939—1945, and its concomitants, such as the blackout⁸.

1. As to economic emergencies, see *Helvering v. Davis*, (1937) 301 U.S. 619; 81 L. Ed. 1307, and contrast *A.G. for Canada v. A.G. for Ontario*, (1937) A.C. 355 (P.C.).

2. See generally,—

(i) *Virendra v. State*, A.I.R. 1957 S.C. 896.

(ii) *Hamdard case*, A.I.R. 1960 S.C. 554 (decision as to section 8 of the Drugs, etc., Act).

3. Cf. *Lovell v. Griffin*, (1938), 308 U.S. 444, and Basu, *Commentary on the Constitution*, (1965), Vol. 1, page 651.

4. Cf. *R. M. Seshadri v. Dist. Municipality, Tanjore*, A.I.R. 1954 S.C. 747, 748, paragraph 4.

5. For legislative definitions, see Stroud's *Judicial Dictionary* (1952), Vol. 2, page 940.

6. (1943) 1 All. E.R. 672, 675, approved on other ground (1944) 1 All. E.R. 60.

7. *The Larehbank*, (1943) A.C. 299.

8. *Conservative Club v. Westminster Assessment Committee*, (1943) 1 All. E.R. 104, 106, affirmed in *Westminster Assessment Committee v. Conservative Club*, (1944) A.C. 55.

Thus, "emergencies" may be of various types, that is to say, not only of imminent war or a rebellion or internal subversion, but also natural catastrophes, and economic emergencies. The last mentioned (economic emergencies) do not necessarily fall under "security of the State".

In England, under the Emergency Powers Act, 1920², an emergency can be declared by the Crown whenever it appears that the supply and distribution of food, water, fuel or light or the means of commotion or generally the essentials of life of the community or any substantial portion of it are in danger etc³. The Act was invoked at the time of the coal strike of 1921, the threatened strike in 1924 and the general strike in 1926⁴.

Similar provision is found in the emergency laws of other countries, for example, in the Emergency Powers Ordinance of Northern Rhodesia⁵.

In a Lahore case⁶, the court followed the dictionary meaning of the word "emergency" as given in Webster's Dictionary, which is, "An unforeseen occurrence or combination of circumstances which calls for immediate action or remedy". The court observed, that an emergency may result from an unforeseen combination of circumstances, and that this combination may not take place all at once, but gradually. An immediate action may be rendered necessary when the *culminating point* is reached.

As to Ordinances under the Indian Constitution or under the Government of India Act, 1935, undermentioned cases^{7,8,9} may be seen.

1. For materials as to emergency, see—

- (i) Holland, "Emergency Legislation in the Commonwealth", (1950) 13 Current Legal Problems 148;
 - (ii) Note "Civil Liberties in Great Britain and Canada during the War", Vol. 55, *Harvard Law Review* 1006.
 - (iii) M. C. Setalvad, "War and Civil Liberties" (1946).
 - (iv) "The War and the Constitution", Vol. 4, *Modern Law Review* 82.
 - (v) Jennings, "Rule of Law in Total War", 50 *Yale Law Journal* 365.
 - (vi) Rossiter, *Constitutional Dictatorship*, page 177.
2. Emergency Powers Act, 1920 (10 & 11 Geo. 5, c. 55).
 3. See also the Emergency Powers (Defence) Act, 1939.
 4. See also the orders passed in 1966.
 5. Section 2(1), Emergency Powers Ordinance of Northern Rhodesia, discussed in (1960) 13 Current Legal Problems 148, 162.
 6. *Des Raj v. Emp.*, A.I.R. 1930 Lah. 781, 789 (regarding the Lahore Conspiracy Case Ordinance 1930) (decision under section 72 of the Government of India Act, under which, in cases of "emergency", the Governor-General could make Ordinances for the peace and good government of India.).
 7. *Joan Prasanna v. Province of West Bengal*, A.I.R. 1949 Cal. 1 (F.B.).
 8. *Emp. v. Sibnath*, A.I.R. 1945 P.C. 156.
 9. *Lakshminarayan*, A.I.R. 1950 F.C. 59.

Section 26, thus, in view of the wide meaning of "emergency", may operate so as to abridge the freedom of speech and expression for a purpose not authorised by article 19(2), and is, to that extent, likely to conflict with the Constitution.

There are no decisions as to the validity of section 26. In a Supreme Court case¹, the validity of the pre-censorship on newspapers under section 144, Criminal Procedure Code was considered, but the exact issue that is now being discussed was not dealt with.

The next question is whether the section should be amended on this point. It is true, that one principle of construction of statutes is, that if the impugned provisions of a law can come within the constitutional powers of the Legislature by adopting one view of the words of the impugned section or Act, the court will take that view of the section and limit its application accordingly, in preference to a view which would make it unconstitutional on another interpretation of the words in question^{2,3,4}.

It is possible, that, on this principle, the scope of the expression "public emergency" in section 26(1) will be narrowed down by the courts, and if that is done, the validity of the section (in the present context) may be saved.

Since, however, an opportunity has now arisen for revising the Act, it seems desirable that the matter be put beyond controversy⁵, particularly in view of the rather wide meaning of the expression "public emergency".

1. *Babulal v. State*, (1961) 3 S.C.R. 423; A.I.R. 1961 389.

2. See in *re Hindu Women's Rights to Property Act*, (1941) E.C.R. 12 and *R.M.D. Chamarbaugwala v. the Union of India*, (1957) S.C.R. 930; A.I. R. 1957 S.C. 628, 633.

3. *Kedar Nath v. State of Bihar*, (1962) Supp. 2 S.C.R. 769, A.I.R. 1962 S.C. 955 (Validity of section 124A, Indian Penal Code, upheld).

4. And see the American authorities discussed in the dissenting judgment of Kapur J. in *Amar Nath Bali v. State*, A.I.R. 1951 Punjab 18, 24-26, paragraphs 36-46.

5. Examples of such controversies are:—

(i) *In re Bharati Press*, A.I.R. 1951 Pat. 12, 25, 28, paragraphs 13 and 33 (S.B.) [section 4(1), Press Emergency Power Act, 1931].

(ii) *State v. Hariprasad*, A.I.R. 1952 Sau. 25, 28, paragraph 6 [section 4(1) (d), Press Emergency Powers Act, 1931].

(iii) *Bhamshankar v. State*, A.I.R. 1952 Sau. 57 F.B. [section 7(1) Press Emergency Powers Act, 1931].

(iv) *Pattamal v. Chief Presidency Magistrate*, A.I.R. 1951 Mad. 950 [section 3(1), Press Emergency Powers Act, 1931].

though the later Supreme Court decisions cited — e.g. *Kedar Nath* — enable a validating construction.

The form in which the section should be amended has been considered in detail. One alternative is to limit section 26 to only two grounds ("security of the State" and "public order"). The other alternative is to mention, in the section, all the grounds specified in article 19(2)^{1,2}. On the one hand, it is not likely that the power under the section will be required to be exercised except in the interests of "security of the State" or "public order". On the other hand it would be better to adopt the second alternative, which is wider, to cover unforeseen situations.

Sub-section (2) of section 26 may now be considered. It provides, that if any doubt arises as to the existence of a public emergency or as to whether any act done under section 26(1) was in the interest of public safety and tranquillity, a certificate of the Central Government or of the State Government, as the case may be, shall be conclusive proof on that point. This has the effect of totally barring judicial review.

Section 26-
(2)—R-
commenda-
tion.

Now, if section 26 is to be modified so as to narrow down its present width³, then sub-section (2) loses much of its practical utility, and should be omitted. Even if the expression "public emergency" is retained, sub-section (2) cannot bar judicial review, when a constitutional question arises, and should be omitted on that ground also.

Analogous
laws—
Section 5,
Telegraph
Act, and
provision
in Wireless
Telegraphy
Act.

There is a provision similar to section 26(1) in section 5 of the Indian Telegraphs Act^{4,5}. There does not seem to be a similar provision in the Wireless Telegraphy Act⁶, but there is a power under section 10(iii) of that Act regarding conditions governing the issue of licence of wireless telegraphy apparatus under the Act.

The section in the Indian Telegraphs Act was considered in detail by the Press Commission.

The following passages from the Press Commission's Report⁷ may be quoted :—

"1063. *Indian Telegraph Act*.—Section 5 of the Act enables Government, or any officer specially authorised by Government, on the occurrence of any public emergency or in the interests of public safety (a) to

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1. Cf. section 5B(1), Cinematograph Act, 1952 (37 of 1952).
 2. Cf. also section 11(2)(a)(b)(c)(u)(v), Customs Act, 1962 (52 of 1962).
 3. See discussion relating to section 25(1).
 4. Section 5 of the Indian Telegraphs Act, 1885 (13 of 1885).
 5. Cf. section 52, Telegraph Act, 1852 (English Act).
 6. The Indian Wireless Telegraphy Act, 1933 (17 of 1933).
 7. *Press Commission of India Report*, (1954), Part I, pages 406-407; paragraphs 1063-1071.

take temporary possession of any telegraph established, maintained or worked by any person licensed under the Act, and (b) to order that any message or class of messages from any person or class of persons or relating to any particular subject brought for transmission by or transmitted or received by any telegraph shall not be intercepted or detained or shall be disclosed to Government or the officer specially authorised. If any doubt arises as to the existence of public emergency or whether the act done is in the interest of public safety, a certificate of Government shall be conclusive proof on the point.

1064. In so far as the provisions of this section can come into force only on the occurrence of any emergency or in the interest of public safety, they cannot be said to be not in consonance with the Freedom of the Press and outside the scope of permissible legislative restrictions under Article 19(2) of the Constitution.

1065. As regards the actual operation of the Act, the Press Laws Enquiry Committee have stated as follows:—

“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 authorised 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 order passed in individual cases.”

1066. This recommendation of the Press Laws Enquiry Committee is supported by the Marathi Patrakar Sangh. The Indian Federation of Working Journalists have not indicated in what direction the law requires amendment. The A.I.N.E.C. have pointed out that powers under the Act have been exercised, even where there is no emergency, under pressure from the local Executive. All the State Governments who have replied to our question on this subject have urged that such powers are necessary in times of emergency and in the interest of public safety.

1067. The emergency contemplated is not necessarily wartime emergency, and the section in effect contemplates imposition of censorship on dissemination of news even during peace time under certain conditions. We support the Press Laws Enquiry Committee's recommendations in this behalf.

1068. *Sea Customs Act, 1878*—Section 19 of the Sea Customs Act, 1878, enables the Central Government from time to time, by notification in the official gazette, to prohibit or restrict the bringing or taking by sea or by land of goods of any specified description into, or out of, India across any customs frontiers. This section is not limited in its operation to any emergency or in the interest of public safety. In so far therefore as it prohibits dissemination of news, otherwise than in relation to an emergency or public safety, it appears not to be in consonance with the Freedom of the Press of Article 19(2) of the Constitution. In case, however, of newspapers and periodicals, which are liable to forfeiture under section 99A of the Criminal Procedure Code, or any other matter which is liable to affect the security of the State, this section should continue to apply. It would be anomalous to ban the production of that type of literature in this country, but permit its import.

1069. Sections 181A to 181C authorise detention and further disposal of any package suspected to contain any newspaper or any document the publication of which is punishable under section 124A, Indian Penal Code. As we have already stated, this section, as it stands, appears to us to be inconsistent with the Freedom of the Press and to be ultra vires of the Constitution. If that view is accepted these sections will have to be repealed or the references to section 124A will have to be replaced by references to the new section 121B, Indian Penal Code, which is suggested for enactment.

1070. *Indian Post Office Act, 1898* Section 25 is contingent on the validity of section 19 of the Sea Customs Act or any other similar law. The remarks on that section would also apply to section 25 of the Post Offices Act.

1071. Section 26(1) is on a par with section 5(1) of the Indian Telegraph Act, and our remarks under that section would also apply to this section of the Post Office Act."

The recommendations of the Press Commission may be thus summarised:—

(i) The Central and State Governments should continue to have the power of telegraphic (or postal) interception for use on special occasions of the occurrence of a public emergency or in the interests of public safety, provided the orders of the Minister in charge are invariably obtained;

(ii) Delegations of this power should be sparingly made;

(iii) Delegations, when made, should be for a specified and short period, and not general;

(iv) clear instructions should be issued by the Government to specially authorised officers in order to ensure that the power is not abused;

(v) to prevent abuse of powers by the subordinate officers, a provision should be made in the section to the effect, that the orders passed by the specially authorised officers of Government shall be reported to the Central or the State Government, as the case may be, so that the responsible Minister may judge the proper exercise of the powers and the orders passed in individual cases.

Section 5 of the Telegraph Act has not, so far been amended¹. A Private Member's Bill to delete section 5(1)(b) was introduced in the Lok Sabha².

It would appear³, that it has not been possible to accept the recommendation of the Press Commission relating to the amendment of section 5, Telegraph Act, and section 26, Post Office Act.

1. Section 5 of the Telegraph Act has not been amended. Suitable action can, however, be taken by making a provision in rules under section 7(2)(b).

2. Shri Yash Pal Singh's Bill to amend the Indian Telegraph Act (Lok Sabha, 1965).

3. See the statement placed on the Table of Lok Sabha on 18th February, 1964, as to the factual position regarding implementation of the Press Commission's recommendations (Items 57 of the Statement—“Censorship in Emergency”). It is an enclosure to S. No. 106, Law Commission's file No. F. 1(1)/62-L.C.

There is a provision for interception in rule 23 of the Defence of India Rules, 1962, quoted below:—

"23. Power to intercept and censor postal articles.

(1) Notwithstanding anything contained in section 26 of the Indian Post Office Act, 1898 (6 of 1898), any person appointed by the Central Government to be a censor may—

(a) order that any postal article or class or description of postal articles in course of transmission by post shall be intercepted or detained or shall be disposed of in such manner as the censor, may direct;

(b) open and examine the contents of any postal article, and delete, destroy or remove any part thereof which the censor considers to be prejudicial to the public safety or interest or to the defence of India or civil defence or the efficient conduct of military operations.

"(2) Any person who delivers any postal article for transmission, either by an indirect route or otherwise, in such a manner as is calculated to evade examination by a censor, shall be punishable with imprisonment which may extend to five years, or with fine, or with both."

The expression "public order" seems to have been used in England in two Acts, namely, the Theatres Act, 1843¹, and the Public Order Act, 1936². The former Act empowers the Lord Chamberlain to prohibit the performance of any stage play whenever he has reason to believe that such performance would go against good manners, decorum or the preservation of public order. The latter Act was intended to prohibit, *inter alia*, the use of threatening, abusive or insulting words or behaviour in a public place, etc. with intent to provoke a breach of the peace, etc. Position in England.

In the U.S.A., "public order" has figured in certain decisions^{3,4,5,6,7}. The net result of these decisions seems to be that the State may punish speeches and expressions of Position in U.S.A.

-
1. Theatres Act, 1843 (6 & 7 Vict. c. 68), section 9.
 2. Public Order Act, 1936 (1 Edw. 8 & 1 Geo. 6 c. 6).
 3. *Feiner v. New York*, (1951) 340 U.S. 315 (Speech which violate public peace and order).
 4. *Cantwell v. Connecticut*, (1940) 310 U.S. 296, 308 (Statute of Connecticut requiring previous permission of Secretary of Public Welfare Council before soliciting contributions for a religious cause,—held violative of 14th and First amendments, as amounting to a previous restraint which was not needed, to deal with any clear and present danger).
 5. *Chaplinsky v. New Hampshire*, (1942) 315 U.S. 568 (Offensive, derisive or annoying utterances).
 6. *Saia v. New York* (1948) 334 U.S. 558.
 7. *Terminiello v. City of Chicago*, (1949) 337 U.S. 1. (Reviews cases).

opinion tending to incite an *immediate breach* of the peace or riot, regulate the places and hours of public meetings and discussions, and the use of public streets in relation to the exercise of the right to freedom of speech, etc.

"[The] offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot... When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace and order appears, the power of the State to prevent or punish is obvious."¹

Most of the American cases, however, do not deal with the aspect of *interception* of a communication for reasons of security of the State. There are a few decisions dealing with previous restraint or with censorship generally.

But the rest of them relate to scandalous or obscene matters, or to the distribution of pamphlets in public parks^{2, 3, 4, 5}, etc., or seditious⁶ and fraudulent matters⁷.

1. *Cantwell v. Connecticut*, (1940) 310 U.S. 296, 308.

2. *Near v. Minnesota*, (1931) 283 U.S. 697. (Previous restraint upon publication of malicious, scandalous and defamatory newspapers *i.e.* restraint in the form of court information held violative of the First Amendment).

3. *Lowell v. Griffin*, (1938) 303 U.S. 444.

4. *Niemotko v. Maryland*, (1951) 340 U.S. 268. (Judgment of Frankfurter J. contains a summary of the previous decisions).

5. *Rockwell v. Morris*, (1961) 211 NYS 2d 25; *certiorary denied*, (1961) 368 U.S. 913.

6. *U.S. v. Burleson*, (1921) 255 U.S. 407 (Seditious matters).

7. *Donaldson v. Read Magazine*, (1948) 333 U.S. 178 (Fraudulent matter).

APPENDIX VI

EMERGENCY PROVISIONS IN CENTRAL ACTS

An illustrative list of Central Acts¹ containing provisions dealing with emergency (with or without use of the expression "emergency" or "public emergency").

(Prepared for a study of section 26, Indian Post Office Act, 1898).

| Act | Section | Gist | Whether the expression "emergency" used |
|--|-----------------------|--|--|
| 1 | 2 | 3 | 4 |
| (1) The Police Act, 1861 (5 of 1861). | Section 15. | Empowers the State Government, by proclamation, to declare that any area is in a "disturbed or dangerous", state. Thereupon, additional police force can be employed and the District Magistrate may recover the costs from the inhabitants. | Expression "Emergency" not used. |
| (2) The Indian Telegraph Act, 1885 (13 of 1885). | Section 5(1) and 5(2) | Empowers the Central or State Government or any officer authorized by either,— (a) to take possession of a telegraph, or (b) to intercept, detain or disclose to the Government etc. telegraph messages, in case of <i>public emergency</i> . Government's certificate as to "public emergency" is final. | Expression "public emergency" is used, in section 5. |
| (3) Railways Act, 1890 (9 of 1890). | Section 27A. | Central Government may, in the public interest direct a railway to give special preference for transporting certain goods. | Word "Emergency" not used. |

1. The Acts are arranged chronologically.

| Act | Section | Gist | Whether the expression "emergency" used. |
|---|-------------------|--|---|
| 1 | 2 | 3 | 4 |
| (4) The Epidemic Diseases Act, 1897 (3 of 1897). | Section 2 and 2A. | Section 2 empowers the State Government, and section 2A empowers the Central Government, to take (or empower any person to take) measures to prevent the outbreak of a dangerous epidemic, when it thinks that the ordinary provisions of the law are insufficient for the purpose. (The Central Government's power is confined to ships, etc.). | Word "Emergency" not used. |
| (5) The Land Acquisition Act, 1894 (1 of 1894). | Section 17 | See <i>Somawanti v. State</i> , A.I.R. 1963 S.C. 151, 171, (Mudholkar J.'s judgment). | Expression "emergency" is used in section 17. See the case law summarised in <i>Abdul Jabbar v. State of West Bengal</i> , (1966) 71 C.W.N. 129, 137. |
| (6) The Code of Criminal Procedure, 1898 (5 of 1898). | Section 144 | Empowers the specified Magistrates to pass orders for prevention of any obstruction, injury or danger to human life or property, etc. In case of <i>emergency</i> , the order may be passed <i>ex parte</i> . | Word "Emergency" used in section 144 (2). |
| (7) The Indian Post Office Act, 1898 (6 of 1898). | Section 26 | Empowers the Central Government, State Government or any officer specially authorised in this behalf by the Central or State Government, to intercept, detain and dispose of any postal article in "public emergency". | Word "public emergency" used in section 26. |

| Act | Section | Gist | Whether the expression "emergency" used. |
|--|---------------------------------------|--|---|
| 1 | 2 | 3 | 4 |
| (8) The Indian Works of Defence Act, 1903 (7 of 1903). | Section 6(3) | Empowers the Central Government in case of emergency, to declare that all or any of the powers conferred by sub-section (1) may be exercised any time within six months after the publication of the notice under section 3(2). Such notification shall be <i>conclusive proof</i> of the emergency. | (i) Word "Emergency" used in section 6(3). (ii) Also makes the notification conclusive proof of emergency. |
| (9) The Indian Ports Act, 1908 (15 of 1908). | Section 68B. (read with section 68A). | Empowers the Central Government to authorise any officer to require the authorities, during the existence of emergency, to perform specified duties for carrying out any manoeuvres in connection with any scheme for the defence of the said port in the time of war. | Word "Emergency" used in section 68B. |
| (10) The Indian Boilers Act, 1923 (5 of 1923). | Section 34(2) | Empowers the State Government, in case of emergency, to exempt (by general or special order in writing) any boilers or steam pipes from the operation of all or any of the provisions of the Act. | Word "Emergency" used in section 34. |
| (11) The Indian Official Secrets Act, 1923 (19 of 1923). | Section 11(2) | Empowers a Police Officer, not below the rank of Superintendent, to empower another police officer in the case of great emergency or in the interest of State, to | "Emergency" used in section 11(2). |

| Act | Section | Gist | Whether the expression "emergency" used |
|--|--|---|---|
| 1 | 2 | 3 | 4 |
| | | exercise the powers of search or entry, etc., which normally is conferred by the Magistrate on a Police Officer not below the rank of the officer-in-charge of a police station under section 11(1) of the said Act. | |
| (12) The Indian Soldiers (Litigation) Act, 1925 (4 of 1925). | Provisions of the entire Act. | Provides for suspension of legal proceedings or execution of decrees of any Court of law, where the opposite party is a soldier—serving under special or war conditions. | Expression "Emergency" not used. Use of the Act is contemplated only war, etc. |
| (13) The Indian Lighthouses Act, 1927 (27 of 1927). | Section 7(1), 7(2) and Proviso. | Control of local light houses. | Under section 7(2), Proviso, a local lighthouse authority may, in "emergency", take suitable action |
| (14) The Criminal Law Amendment Act, 1932 (23 of 1932). | Section 10 | Empowers the State Government to make certain offences cognizable temporarily. | Word "Emergency" not used, except in headnote to section 6. |
| (15) The Indian Aircraft Act, 1934 (22 of 1934). | Head note to section 6. "Power of Central Government to make orders in emergency." | Section 6 empowers the Central Government, in the interest of public safety or tranquillity, to order, by a notification in the gazette, the cancellation of any license or certificate, the regulation of flights of aircraft, erection of aerodromes etc. | Word "emergency" used in head note to section 6. |
| | | Disobedience of such order is punishable with three years imprisonment, or fine or both. | |

| Act | Section | Gist | Whether the expression "emergency" used |
|---|--|--|--|
| 1 | 2 | 3 | 4 |
| Indian Aircraft Act 1934 (contd.) | Section 8 B—Headnote. "Emergency powers for protecting public health." | Power to take measures to prevent epidemics. | "Emergency" used in the head note. |
| (16) The Indian Tariff Act, 1934 (32 of 1934). | Section 4A. | Emergency power of the Central Government, to increase or levy export duties by notification in the Gazette, even if the article is not included in the Second Schedule. However, the notification is to be laid before the Parliament, if sitting, soon after, and if not sitting, within 7 days of, its re-assembly. | Expression "emergency" used in the marginal note to section 4A. |
| 17) Armed Forces (Emergency Duties Act, 1947 (15 of 1947). | Preamble, long title, —short title, and section 2. | Under section 2, the Central Government may (temporarily) declare any specific service to be of vital importance to the community. Thereafter, it is the duty of a member of the armed forces to obey a command in relation to employment in that service. | Word. "Emergency" used in preamble, long title and short title. |
| (18) Trading with the Enemy (Continuance of provisions) Act, 1947 (16 of 1947). | Heading, title and sections 2(1), 72(2). | Seeks to extend the provisions of the Defence of India Rules, 1939 (made under the Act of 1939), relating to the control of trading with States at war (and persons etc. belonging to States at war), with the Government of India, and the custody of property belonging to them, | Expression "emergency" used in the title of this Act, and in the previous Ordinance. |

| Act | Section | Gist | Whether the expression "emergency" used |
|--|---------------------|---|---|
| 1 | 2 | 3 | 4 |
| (19) The Factories Act, 1948 (63 of 1948). [Cf. section 150(1), Factories Act, 1937 (English)]. | Section 5 | even after the expiry of the Defence of India Act, 1939 and of the Emergency Provisions (Continuance) Ordinance, 1946. Empowers the State Government to exempt (by notification, etc.) any factory or class of factories from all or any provisions of the Act, in case of <i>public emergency</i> , for a specified period not exceeding 3 months at a time. | The expression "public emergency" is used in section 5. |
| (20) The Representation of the People Act, 1951 (43 of 1951). | Section 57 | Empowers the Presiding Officer to adjourn the poll in case of riot or violence or natural calamity or any sufficient cause on account of which it is not possible to hold the poll. | "Emergency" used in the marginal note. |
| (21) Railway Companies (Emergency Provisions) Act, 1951 (51 of 1951). | Title and section 3 | Empowers the Central government to appoint directors in a Railway Company, where a situation has arisen in the affairs of a Railway Company which has prejudicially affected the convenience of persons using the railway or has caused serious dislocation in any trade or industry using the railway, or has caused serious unemployment amongst a section of the community, or when, in the opinion of the Central Government, it is necessary to take the management of the company <i>in the national interest</i> . | Word "emergency" used in the short title. |

| Act | Section | Gist | Whether the expression "emergency" used. |
|--|---|---|---|
| 1 | 2 | 3 | 4 |
| (22) The Mines Act, 1952 (35 of 1952). | Section 39(a) | Empowers the Central Government to make rules providing for exemption of all persons except adolescents from the provisions of section 20, 30, 31, 34 or 36(5) in case where an emergency involving serious risk to the safety of the mine or of persons employed therein is apprehended. | "Emergency" used in section 39(a). |
| (23) The Life Insurance (Emergency Provision) Act, 1956 (9 of 1956). | Preamble and title | Provides for taking interest, of management of life insurance pending nationalisation thereof. | The word "Emergency" used in the short title. |
| (24) The Arms Act, 1959 (54 of 1959). | Section 17(9) | Central Government may revoke all arms licences. | Not used. |
| (25) The Defence of India Act, 1962 (51 of 1962). | Preamble, and section 1(3). | Preamble refers to the "Proclamation of Emergency". Section 1(3) limits the duration of the Act to the Emergency and six months thereafter. | The "Proclamation of Emergency" referred to. |
| (26) The Personal Injuries (Emergency Provision) Act, 1962 (59 of 1962). | Preamble, title and section 2(5). | Empowers the Central Government to make a scheme for the grant of relief in respect of injuries sustained during the period of emergency, by certain persons. | Word "emergency" used, in short title. |
| (27) The Emergency Risks (Goods) Insurance Act, 1962 (62 of 1962). | Preamble, title and sections 1(b), 5(1), 2, 9 and 10. | Makes provisions for insurance of goods in India against damage by enemy action during the period of emergency. | Word "Emergency" used in short title. |

| Act | Section | Gist | Whether the expression "emergency" used. |
|--|--|--|--|
| 1 | 2 | 3 | 4 |
| (28) The Emergency Risks (Factories) Insurance Act, 1962 (63 of 1962). | Preamble, title & sections 1(3), 2, 3, 4, 4, 5, 7 and 8. | Makes provisions for insurance of certain property, like factories and their buildings, against damage by enemy action, during the period of emergency. | Word "emergency" used in short title. |
| (29) The Major Port Trusts Act, 1963 (38 of 1963). | Section 90 | The Board under the Act is empowered to set apart funds for different purposes, including for an emergency arising in the ordinary conduct of work under this Act. | Used in the body of section 90. |

APPENDIX VII

STATUTORY PROVISIONS IN ENGLAND AS TO INTERCEPTION OF
POSTAL ARTICLES

The following provisions in England may be noted:—

(1) Section 11(1)(b)(c), Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), penalising the sending of a postal packet containing *indecent or obscene* prints or articles or containing words etc., which are grossly offensive¹.

(2) Section 11(3), Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), empowering the making of regulations for preventing sending or delivery of postal packets containing words, etc., of a *libellous* character.

(3) Section 17(1), Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), regarding the Postmaster General's power to *detain* any postal packet suspected to contain goods chargeable with customs duty.

(4) Section 58(1), proviso, Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), which saves power of the Secretary of State to order by warrant in writing that letters passing through the Post Office may be opened or detained (extract attached).

(5) Under section 52 of the Telegraph Act, 1863 (26 & 27 Vict. c. 112), the Secretary of State can by warrant, authorise such persons as he thinks fit to assume control of *telegraph works* where such action is "expedient for the public service"².

(6) Section 20, Telegraph Act, 1863 (31 & 32 Vict. c. 110). (Punishment of an official for disclosing or intercepting messages, contrary to his duty). (This legislation does not expressly cover telephones³).

1. Section 11(1)(b)(c), Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), presumably, is not governed by the test laid down in the Obscene Publications Act, 1959. See Wade and Phillips, *Constitutional Law*, (1960), page 549.

2. See Halsbury, 3rd Edn., Vol. 7, page 379, paragraph 803(2).

3. The question of tapping telephones was considered in England in a Report of the Privy Councillors (1957), Cmd. 283; discussed in Wade and Phillips, *Constitutional Law*, (1960), page 178.

EXTRACTS OF SECTIONS 11 (1) (b) (c), 11 (3), 17 (1) AND 58 (1) OF THE ENGLISH POST OFFICE ACT, 1953 (1 & 2 ELIZ. 2 C. 36).

Prohibition on sending by post of certain articles.

"11. (1) A person shall not send or attempt to send or procedure to be sent a postal packet which—

(a)

(b) encloses any *indecent or obscene* print, painting, photograph, lithograph, engraving, cinematograph films, book, card or written communication, or any indecent or obscene article whether similar to the above or not; or

(c) has on the packet, or on the cover thereof, any words, marks or designs which are *grossly offensive or of an indecent or obscene character.*

(2)

(3) Post office regulations may be made for preventing the sending or delivery by post of any such articles as are mentioned in paragraph (b) or (c) of sub-section (1) of this section or of any postal packet having thereon, or on the cover thereof, any words, marks or designs of a libellous character.

(4)

Power to detain postal packets containing Contraband.

17. (1) Without prejudice to the last foregoing section, the Postmaster-General may detain any postal packet suspected to contain any goods chargeable with any customs duty which has not been paid or secured or any goods in the course of importation, exportation or removal into or out of the United Kingdom, the Channel Islands or the Isle of Man contrary to any prohibition or restriction for the time being in force with respect thereto under or by virtue of any enactment and may forward the packet to the Commissioners of Customs and Excise.

(2) & (3)

Opening or delaying of postal packets by officers of the Post Office.

58. (1) If any officer of the Post Office, contrary to his duty, opens, or procures or suffers to be opened, any postal packet in course of transmission by post, or wilfully detains or delays, or procures or suffers to be detained or delayed, any such postal packet, he shall be guilty of a misdemeanour and be liable to imprisonment or to a fine, or to both:

Provided that nothing in this section shall extend to the opening, detaining or delaying of a postal packet returned for want of a true direction, or returned by reason that the person to whom it is directed has refused it, or has refused or neglected to pay the postage thereof, or that the packet cannot for any other reason be delivered, or to the opening, detaining or delaying of a postal packet under the authority of this Act or in obedience to an express warrant in writing under the hand of a Secretary of State.

(2)

APPENDIX VIII

REPORT OF COMMITTEE IN ENGLAND REGARDING INTERCEPTION
OF COMMUNICATIONS

In England, a Committee examined the question of interception. The circumstances in which the committee was appointed are thus stated:—

Security

Telephone communications (interception).—On June 6, 1957, the Home Secretary was asked in the House of Commons in what circumstances he had authorised the police to supply the Bar Council, in connection with a disciplinary matter affecting a barrister, with transcripts of intercepted telephone conversations in the London area.

Mr. Butler replied that the material in question was obtained under the authority of a warrant of the Secretary of State and related to the case of a notorious and self-confessed criminal; that it was disclosed to the Bar Council in response to a request from the Council for assistance in inquiries which they were making into complaints about the professional conduct of a particular barrister; that the Member who asked the question could be assured that the Secretary of State only acted in this way when he realised that the public interest necessitated such action; that this action would never be used except in the interests of public order; that he was not prepared to go into detail in this matter, which derived from the prerogative and which was a power that he should exercise at his discretion; that he considered that the circumstances of this case justified the action that was taken (571 H.C. Deb. 1469-1471; see also 1487-1497, 1500-1501).

On June 7, 1957, the Home Secretary made a statement and answered further questions. He said that the prerogative power of intercepting telephone communications could be used only by the personal authority of the Secretary of State; that this power was one which Parliament had always recognised to be essential for the protection of society; that it was used solely in cases involving the security of the State, or for the purpose of detecting serious crime; that information from this source was jealously guarded and it was settled principle that it was not disclosed to persons outside the public service; that the circumstances of this case were, however, wholly exceptional; that it was represented to the Secretary of State that the disclosure of this information to the Bar Council was

L. (1957) Public Law 254, 255.

desirable in the interests of maintaining our high standard in the administration of justice and that the Secretary of State felt it to be his duty to supply to the Bar Council information which had already been obtained; that he must make clear that this case would not be treated as a precedent; that Her Majesty's Government appreciated to the full the necessity of preventing any abuse of this necessary but distasteful power; that the decision was taken by his predecessor as Secretary of State; that in his (Mr. Butler's) opinion, the general principle that this sort of information was not disclosed to persons outside the public service should be the line of conduct in future; that there was no question of using this power to obtain information about what passed between a lawyer and his instructing solicitor or a member of the legal profession and his client; that the power was used to detect serious crime and would never be used for prying into confidential communications between an accused person and his legal adviser (571 H.C. Deb. 1573-1579; see also 572 H.C. Deb. 413-424, June 27, 1957).

On June 28, 1957, it was announced that a committee composed of Sir Norman Birkett, Lord Monckton and Mr. Patrick Cordon Walker, would inquire into the practice. Their terms of reference are "to consider and report upon the exercise by the Secretary of State of the executive power to intercept communications and, in particular, under what authority, and to what extent, and for what purposes this power has been put; and to recommend whether, how, and subject to what safeguard, this power should be exercised, and in what circumstances information obtained by such means should properly be used or disclosed."

The main points made in the Report of the Committee of Privy Councillors have been thus summarised¹.

Security

Telephone communications (interception).—On October 31, 1957, the Prime Minister stated that he had received the Report of the Committee of Privy Councillors, that the Government accepted all recommendations and that arrangements were being made to give effect to those which called for a change in procedure (575 H.C. Deb. 398-399).

The Committee's report stated that the origin of the power of the Executive to intercept communications could only be surmised, but the power had been exercised from very early times and had been recog-

1. See (1958) Public Law 71 to 73, extracting the summary from Commonwealth Survey (Commonwealth Office of Information) Vol. 12, 1957.

nised as lawful by a succession of statutes covering the last 200 years or more. The manner of its exercise had from time to time been the subject of public discussion, and in 1844 had been the subject of investigation by two secret committees, one of each House of Parliament, which inquired into the law respecting the detaining and opening of *letters at the General Post Office*, but both these committees had recognised the power as lawful.

The committee found some difference of view on the authority to intercept telephone messages; in one view it was identical with the power to open letters; in another, it rested on a comparatively modern statute.

It is today the invariable practice that the interception of communications is carried out only on the authority of the Secretary of State for Home Affairs (or, in the case of Scotland) given by warrant under his own hand; the warrant sets out the name and address or telephone number of the person whose communications are to be intercepted. The Secretary of State has to satisfy himself, on the facts of each particular case, that it is proper to issue his warrant. In practice, the principle on which he acts is that the purpose of the interception must be either to detect serious crime or to safeguard the security of the State.

The power of interception is now almost exclusively exercised, under warrant from the Secretary of State, by the Metropolitan Police, the Board of Customs and Excise and the Security Service; the Committee found that "it is used with the greatest care and circumspection, under the strictest rules and safeguards." They were satisfied that "the Secretaries of State and all the officials concerned have taken, and continue to take, scrupulous care to ensure the strict observance of the purposes to which it is intended by the Home Office that the interception of communications should be directed and confined", that "interception is highly selective and is used only where there is good reason to believe that a serious offence or security interest is involved", and that the use of the power has been effective in detecting major criminals and preventing injury to national security.

They recommended that the exercise of the power in these limited spheres should be allowed to continue under the same strict rules and supervision: "the criminal and the wrongdoer should not be allowed to use services provided by the State for wrongful purposes quite unimpeded, and the Police, the Customs, and the Security Service ought not to be deprived of an effective weapon in their efforts to preserve and maintain order for the benefit of the community." In

the opinion of the committee, "the interference with the privacy of the ordinary law-abiding citizen or with the individual liberty is infinitesimal and only arises as an inevitable incident of intercepting the communications of some wrongdoer. It has produced no harmful consequences.

The committee reached the conclusion, however, that, in the Marrinan case, which had given rise to the investigation, the decision of the Home Secretary, Lord Tenby, to permit the disclosure of information contained in telephone intercepts to the Bar Council and the Benchers of Lincoln's Inn was a *mistaken* decision, though there could be no doubt that it was "wholly governed by considerations of the public interest". They recommended that "in no circumstances should material obtained by interception be made available to any body or person whatever outside the public service".

Among other safeguards which, the committee recommended, should be adopted, were:

that there should be a regular review of outstanding warrants not less than once a month;

that warrants should be valid only for a stated period;

that each warrant should relate only to one individual, of whom particulars should be specified;

that full records should be kept in the Home Office in each case;

that there should be no extension of the powers of interception beyond those existing powers which the committee has defined.

While agreeing with other members of the committee on their main conclusions and recommendation, Mr. Gordon Walker made reservations on the continued use of the existing power of interception in view of public repugnance. He considered that the power should be used for the detection of crime only in the most rare and urgent cases, such as the apprehension of dangerous criminals or lunatics; and for security purposes only for direct counter-espionage and protection of high secrets of State, or for the prevention of the employment of fascists or communists on work vital to the State (the two purposes he added, for which the Security Service at present mainly intercepts communications)¹.

1. Even after the Committee's Report, a controversy arose in 1959. See Comment, "Interception, Partial and Impartial", (1960) Public Law 5, and 514 H.C. Deb. 1184, 1388, and 615 H.C. Debates 1523, 1536 *et. seq.*

As regards the 1957 Report, the following extract from one study¹ would be of interest—

An important limitation on the principle in *Entick v. Carrington* must, however, be noted. The principle assumes that the action of the administrator which has been called in question infringes some legally protected interest of the private citizen. Yet upon investigation it may be decided by the court that no such *legally protected interest* has been infringed. This was very clearly brought out in an affair which gave rise to much public discussion, and resulted in the appointment of a committee whose report is entitled "Report of the Committee of Privy Councillors appointed to inquire into the interception of communications"². Three Privy Councillors of undisputed authority, Lord Birkett, Lord Monckton and the Rt. Hon. Patrick Gordon Walker, considered how far the practice of wire-tapping (as it is commonly known) could be justified.

The Committee found that the power was on the whole wisely used; warrants for interception were sparingly granted (in 1956, 183 letters and 159 telephone interceptions were authorised) and only when the Home Secretary was personally satisfied that the public interest required it. *The origin and basis of the power of intercept communications is obscure, though it has been exercised for many years.* (In the eighteenth century the Bishop of Bath and Wells was the chief government decoder). The Committee's conclusions suggest that there are two views as to the origin and basis of the power. First, it is said that there is a prerogative power, or a power in the nature of a prerogative power, to intercept communications in the public interest. (Prerogative, we may here interpose, is that law for the Queen which is no law for the subject. It is the name for the common law discretionary power of the Crown). This power is said to be impliedly recognised by a long series of statutes relating to the Post Office from 1710 to 1953. Thus, section 58, sub-section (1) of the Post Office Act, 1953, makes it an offence for any officer of the Post Office to open any communication except under the express warrant in writing of a Secretary of State. Now it is certainly a curious prerogative which enables one Minister of the Crown to interfere with the statutory functions of another; and it is also certainly curious that none of the many writers on the prerogative throughout the centuries has referred to this power; and it is of course clear that long user of itself does not make legal what is otherwise illegal. There is, therefore, much to be

1. Heuston, *Essays in Constitutional Law*, (1964), pages 50—52.

2. H.M.S.O. (1957) Cmd. 283.

said for the second view, which is simply that no prerogative power is needed to intercept communications because no unlawful act is thereby committed. This was the view of the Post Office down to 1937 so far as telephonic communications were concerned. The Post Master General's view until that year, when he was persuaded to follow the Home Office practice, was that anyone could tap telephone, and indeed if one looks at the statutes it appears there is some justification for this view. The Acts do not authorise the Secretary of State to issue a warrant, presumably because anyone may do so; they merely make it a criminal offence to interfere with communications except under the authority of such a warrant. This view depends upon the fact that a legal power is only required if some legally protected interest of the subject is being invaded, and in the case of interception of communications it is hard to see just what that interest may be. If we look at the recognised heads of civil liability it is hard to see how interference with a postal packet, or even more, a telephonic communication, can possibly be fitted into any of them. Breach of contract is out of the question, for it was re-affirmed by the Court of Appeal in 1957¹ that the services which the Postmaster-General renders are not of a contractual character. Nor does a Post Office servant who opens a letter commit any tort or breach of bailment. Trespass to chattels is out of the question because the plaintiff is not in possession of the article, nor indeed has he a right to immediate possession of it, for the Post Office regulations provide that one who has posted a letter is unable to retrieve it. The other torts such as conversion or detainee seem equally inappropriate; in any event section 9(1) of the Crown Proceedings Act, 1947, effectually bars such actions². The conclusion would seem to be that it is time for Parliament to review the situation and place the whole matter on a firm statutory basis."

1. *Tristram & Co. v. Post Office*, (1957) 2 Q.B. 352; (1957) 2 All. E.R. 387 (C.A.).

2. The sub-section not only relieves the Crown from liability in respect of all telephone messages, loss of or damage to all unregistered postal packets, but also exempts from liability any officer of the Crown except at the suit of the Crown itself. It seems that one is without any remedy if a postmaster destroys one's mail before one's eyes. This is a remarkable, perhaps a unique, exception to the principle that every official is individually responsible for his torts.

APPENDIX IX

LEGAL ISSUES RAISED BY INTERCEPTION OF POSTAL ARTICLES

The question¹ whether interference by way of interception of postal articles amounts to any illegality at all, may be usefully considered. So far as *tangible* goods of economic value are concerned, the following points can be made:---

(a) It has been held in one case², that the Post Master General can take on the character of a bailee, so as to be entitled to sue a third person. In that case it was also observed, that the Post Master General would have a good answer to an action *by the bailor* for damages for loss of the thing bailed. But that was because the Crown could not be sued. In India, in view of section 6 (last part), the Post Office may perhaps incur liability also *qua* bailee; and if that is so, then, by not carrying out the duty of conveying the goods, it commits the tort of conversion, at least if the goods are destroyed or materially interfered with, because the goods were placed in the Post Office *only for the purpose* of being transmitted to the addressee.

The following discussion regarding bailment may be cited³—

'Bailment is essentially a delivery on terms, but none of the definitions we have is exhaustive in view of the widely different forms a bailment can take. In *Terms d-e la Ley* it is written:

"Bailment is a delivery of things whether it be of writings, goods or stuff to another, sometimes to be delivered back to the bailor, that is to him that so delivered it, sometimes to the use of the bailee, that is to say, of him to whom it is delivered, and sometimes also it is delivered to a third person."

And in Stephen's Digest of Criminal Law:

"When one person delivers, or causes to be delivered, to another any movable thing in order that it may be kept for the person making the delivery, or that it may be used, gratuitously or otherwise, by the person to whom delivery is made, or that it may be

1. See the query raised in Heuston, *Essays in Constitutional Law* (1964), pages 50—52.

2. *The Winkfield*, (1902), *Probate* 42, 54, 60.

3. Vaines, *Personal Property*, (1957) pages 67—68.

kept, as a pledge by the person to whom delivery is made, or that it may be carried, or that work may be done upon it by the person to whom delivery is made gratuitously or not, and when it is the intention of the parties that the specific thing so delivered, or the article into which it is to be made, shall be delivered either to the person making the delivery, or to some other person appointed by him to receive it, the person making the delivery is said to bail the thing delivered: the act of delivery is called a bailment; the person making the delivery is called the bailor, the person to whom it is made is called the bailee."¹

The above definitions avoid indentifying a bailment *with a contract* but until recently judges and writers have more or less consistently treated bailment as an express or implied *contract*², and it is curious that the two cases which deny that a bailment is an express or implied *contract*², and it is a great deal to be said for this mode of treatment and it might well be asked whether, for practical purposes, bailment is not better regarded as a contract in view of the importance of the contractual terms⁴ which generally dominate the relationship⁵.

"However, it is clear that bailment is *sui generis*, and modern writers adopt this view mostly without question and the theoretical difficulties of treating bailment as a contract are apparent when one considers, in addition to the simple case of bailment by

1. These definitions are cited by Romer, L.J., in *Ashby v. Talhurst*, 1937) 2 All E.R. 837; (1937) 2 K.B. 242. Cf. the first definition given by Sir William Jones, op. cit., 1, "a delivery of goods, on a condition express or implied, that they shall be restored by the bailee to the bailor or according to his direction as soon as the purpose for which they were bailed shall be answered."

2. Sir William Jones, op. cit., defines bailment "a delivery of goods in trust, on a contract express or implied, that the trust shall be duly executed, and the goods be delivered, as soon as the time or use for which they were bailed shall have elapsed or be performed." Cf. his first definition, *supra*.

3. *R. v. Robson* (1861), L.E. & Ca. 93; *R. v. McDonald*, (1885), 15 Q.B.D. 323; holding respectively that a married woman and an infant could be guilty of larceny as a bailee. Cf. *Smith v. Plomer* (1912), 15 East 607. See also *Meux v. Great Eastern Rail Co.*, (1895) 2 Q.B.D. 387.

4. Halsbury's Laws (3rd Edn.), 96, states "It must be remembered, however, that bailment is a contract and the parties may always vary the incidents by the terms of the contract."

5. For an unsuccessful attempt at evasion, see *Elder Dempster v. Paterson, Zochonis & Co.*, (1924) A.C. 522.

6. Winfield, op. cit., 97; Fifoot, op. cit. 25; Ceshire and Fifoot on Contract; Goodeve, Personal Property, Chap. 2, section 3; Kenny, Outlines of Criminal Law, Chap. XIII; Paton, Bailment in Common Law, 29.

finding, the problem of discovering the consideration¹ in a gratuitous bailment (said in *Coggs v. Bernard* (*Barnard*)² to be in fact that the owner entrusts the goods with the bailee), the position of a distraining landlord³ or the distrainer of a chattel damage feasant, the undoubted bailment that exists when goods are not collected from a carrier at their destination⁴, or the bailment that may arise upon a misdelivery.⁵

Thus, it is not accurate to assume that a bailment arises only on contract⁶. "Bailment is necessarily to be dealt with by the Contract Act only so far as it is a kind of contract. It is not to be assumed that without an enforceable contract there cannot in any case be a bailment."⁷

If the view that the Post Office is a bailee is accepted, then such bailment would seem to fall within the species "mandatum"—wherein goods are delivered to some who is to carry them or to do something to them without reward^{8,9}.

(b) As regards conversion, it is true, that ordinarily only a person in possession or entitled to immediate possession can sue in conversion. He must have the right of possession and a right of property in the goods

1. But conundrums on consideration are sterile to the modern lawyer. Law Revision Committee's Sixth Interim Report; *Central London Property Trust Ltd. v. High Trees House, Ltd.* (1947) K.B. 130; Denning, L.J. in 15 M.L.R. 1.

2. (1703) 2 Id. Raym. 909 and see the well-known and odd case of *Bainbridge v. Firmstone* (1838), 8 Ad. & El. 743.

3. 2 Blackstone's Commentaries 452, says the distrainer subject to a contract implied by law, e.g. to restore the goods on payment before sale. But *quaere* whether he is a bailee. See page 62, *ante*.

4. See *Mitchell v. Lancashire and Yorkshire Rail Co.*, (1875), L.Q. 10 Q.B.D. 256. Here the contract provided for the contingency but the terms did no more than state what in fact was the common law. See page 94, *post*.

5. Cf. *Elvin and Powell, Ltd. v. Plummer Roddis Ltd.* (1933), 50 T.L.R. 158, with *Hiort v. Bott.* (1874), L.R. 9 Each. 86, and see page 84, *post*.

6. See Cheshire and Fifoot, *Contracts*, (1964), pages 72, 73 74; Vainces, *Personal Property*, (1957), page 76.

7. Pollock & Mulla, *Indian Contract Act*, (1957), page 562, criticises the assumption to the contrary in *Ram Yulam v. State of U.P.*, A.I.R. 1950 All. 206, 207.

8. As to classification of bailments, see *Coggs v. Bernard*, (1703) 2 Ld. Rayman 909; Wilshire, *Common Law*, (1951); pages 583, 587, Vainces, *Personal Property* (1957), page 82.

9. For a full discussion, see Paton, *Bailment in the Common Law*, (1952), pages 29, 37.

at the time of the conversion or detention^{1-2,3,4}. It is also true, that the *sender* of goods by post cannot retrieve the goods sent by mail, without the orders of the competent authority⁵. But that provision seems to be intended only to ensure that the process of transmission is not affected, and not to regulate the proprietary rights of the parties concerned.

(c) Moreover, as has been observed⁶, sometimes the owner's right to immediate possession is remitted by the very act of conversion, so as to entitle him to sue in trover. Thus, it has been held, that if goods have been placed in the hands of a bailee for a limited purpose, and he deals with them in a manner inconsistent with the terms of the bailment, (as by selling them), the right to possession reverts in the owner, who can forthwith sue the bailee for conversion^{7,8,9}.

(d) Further, an owner has, in any case, a right to sue for goods if he is deprived of possession even if he is not entitled to immediate possession, for an injury to his reversionary interest^{10,11}, and this head of liability (action on the case for damage to his interest in the goods) would seem to be appropriate at least where the articles in question *are destroyed*.

(e) If the property in the goods has passed to the addressee¹², then certainly the addressee can sue for the goods, either as owner or as a person entitled to get immediate possession.

So far as goods *having no economic value*, or goods having a value besides an economic one, are concerned, these points can be made:—

(i) The sender or the addressee—whoever is regarded as entitled to the immediate possession of

1. Halsbury, 3rd Edn., Vol. 38, page 783, paragraph 1297.

2. *Jarvis v. Williams*, (1955) 1 All.E.R. 108, 111 (C.A.).

3. *Commercial Banking Co. v. Mann*, (1961) A.C. 1; (1960) 3 All. E.R. 482 (P.C.).

4. Generally, see Warren, "Qualifying as Plaintiff in an action for a conversion" (1936) 49 Harvard L. Rev. 1084.

5. Section 18 of the Indian Post Office Act, read with rule 201, Indian Post Office Rules, 1933.

6. Fleming, Torts, (1965), page 64.

7. *North General Wagon Co. v. Graham* (1950) 2 K.B. 7; (1950) 1 All E. R. 780, as explained in *Reliance Car Etc. v. Roding Motors*, (1952) 1 All E. R. 1935(C.A.).

8. See Salmond, Torts, (1961), page 278.

9. See also Paton, Bailment in the Common Law (1952), page 385.

10. Street, Torts, (1959), page 59.

11. *Mears v. L.S.W. Rly. Co.*, (1862) 11 C.B.N. 350.

12. As between the sender and the addressee, the answer to the question whether property has passed to the addressee depends on many other factors, e.g., whose agent the Post Office is. See *I.T.C. v. Ogale glass Works*, A.I.R. 1954 S.C. 429.

goods—*can sue in detinue*¹. It is not the economic loss that is significant in the case of such goods (for example, letters), but another kind of loss, i.e. loss of the literary matter of information or views in question. The sender or addressee would like to have the goods *in specie*—which is possible in detinue alone^{2,3,4}.

Detinue is the form of action which lies when one person wrongfully detains the goods of another. The gist of the action is unlawful failure to return the goods, when the goods are demanded⁵.

Thus, wrongful *taking* is redressed by trespass; wrongful *detention* is redressed by *detinue*; and wrongful *destruction* or disposal is redressed by conversion. This applies to papers also⁶. In fact, any chattel can be the subject-matter of conversion⁷.

“The standard remedy of a person who has been deprived of goods is conversion; and detinue is the standard remedy against a person who fails to return the goods”⁸. In detinue, the suit is primarily for the return of the chattel⁹.

The gist of the action of detinue is unlawful detainer, and it is an action of tort. It is no longer necessary to allege “delivery” (detinue sur bailment) or “finding” (detinue sur trover), and it can be brought against any one who unlawfully detains goods from a person entitled to immediate possession, without regard to the means by which possession is obtained¹⁰. For wrongful deprivation of use and possession of the plaintiff’s goods, conversion is the recognised legal expression¹¹. The action of detinue, on the other hand, is based upon a wrongful *detention* of plaintiff’s chattels^{12,13}.

1. As to detinue, see Salmond, Torts, (1961), page 290, articles 48; Snell, Equity, (1960), page 531, paragraph 4 Paton, Bailment in the Common Law (1952), page 379.

2. Street, Torts, (1959), page 57.

3. As to specific restitution, see Keeton, Equity, (1955), pages 118–119; Salmond Torts (1961), page 292.

4. See Halsbury, 3rd Edn., Vol. 38, page 77. *et seq.*

5. See *Ballett v. Mingay*, (1943), 1 All. E.R. 143, 145 (C.A.).

6. *M'Leod v. M'Ghie*, (1841) 2 Man & G. 326 (mutilating a guarantee), cited in Fleming, Torts, (1965), page 60.

7. See definition of conversion in Salmond, Torts (1961), page 262.

8. J.A. Weir, Note—“Tort, Contract and Bailment”. (November, 1965), *Camb. L.J.* 186, 190.

9. See *Sinnan Chetty v. Aiabigi Aiyer*, (1923) I.L.R. 45 Mad. 852, 861.

10. Wilshire, Common Law, (1951), pages 324, 325.

11. Clerk & Lindsell, Torts (1961), paragraph 899.

12. Clerk & Lindsell, Torts, (1961), paragraph 934.

13. For damage by negligence, see Simpson, Action on the case for Conversion (1959) 75 L.Q.R. 364.

(ii) The recipient of a letter acquires the property in the paper^{1,2,3}. But the property in *the contents* is in the sender, at least so far private matters are concerned^{4,5,6}.

(iii) A letter is an "original literary work", and the writer has copyright therein, and can restrain any publication of copies of his letter as an infringement^{7,8}.

Would not the destruction of a literary work amount to destruction of a recognised literary property, and thus be actionable?

(iv) The writer of a confidential work can, in certain cases, prevent its publication^{9,10}.

Opening of such letters may, perhaps therefore, constitute an *injury*, though this has not yet been decided.

In a case before the House of Lords¹¹, publication of unpublished lectures of a university professor was restrained, and this was on the ground that such publication was in the nature of a *breach of confidence* which fell within the ordinary scope of equitable restraint^{12,13}.

An English case¹⁴ relating to photographers may be cited in this connection. In that case, a photographer had, by arrangement, taken and sold to the plaintiff some photographs of herself, (*i.e.* the plaintiff). The photographer, then, at a subsequent date, without the plaintiff's knowledge, used the negative to have her likeness inserted in Christmas cards. The plaintiff

1. Paton, *Jurisprudence* (1946), page 128.

2. *Cf.* section 10, Illustration (c), Specific Relief Act, 1877 (1 of 1877) (repealed); now section 8, Specific Relief Act, 1963 (47 of 1963).

3. *See also Oliver v. Oliver*, (1861) 11 C.B. (N.S.) 139; 132 R.R. 505; 31 L.J. C.P. 4.

4. *Cf.* section 54, illustration (y), and section 55, illustration (d), Specific Relief Act, 1877 (1 of 1877) (repealed); now sections 39-39, Specific Relief Act, 1963 (47 of 1963).

5. Halsbury, 3rd Edn., Vol. 8, pages 437-438.

6. Copinger, *Copyright*, (1958), page 28.

7. Copinger on *Copyright* (1958), page 27.

8. *British Oxygen Co. v. Liquid Air Co.*, (1925) 1 Ch. 383.

9. Halsbury, 3rd Edn., Vol. 8, page 438.

10. For a full discussion, see Gopingar, *Copyright* (1958), pages 31 to 38.

11. *Caird v. Sime*, (1887) 12 App. Cas. 326.

12. *See* Hanbury, *Modern Equity*, (1957), page 551.

13. *See also* Snell, *Equity*, (1966), pages 721, 722. *See also* D.I., Mathieson, in (1961) 39 Canadian Bar Review 409.

14. *Pollard v. Photographic Co.* (1888) 40 Ch. D. 345.

applied for an injunction to restrain this. She had not (as was the necessary) registered any copyright in the negative, but she contended that there was an *implied condition in her contract* that the negative should not be used for any other purpose than to supply photographs to herself. The court held that, a photographer was not justified in striking off copies of a photograph for his own use unless, expressly or implied, he had authority from his client. "I say expressly or impliedly", the Court stated, "because a photographer is frequently allowed, on his own request, to take a photograph of a person under circumstances in which a subsequent sale by him must have been in contemplation of both parties, though not actually mentioned."

The court considered that an abuse of a confidence—analogueous to the misuse of information obtained in confidential employment—arose in this case, and granted the injunction prayed for. It was said that, though failure to register the copyright barred the plaintiff from enforcing a remedy for breach of copyright, she was still entitled to relief on the grounds of breach of a contract¹.

Injury to feelings may justifiably enhance the damages. Thus, in one case², the Court of Appeal, with reference to an unauthorised publication of the photograph of a murdered man along with his daughter and son-in-law, observed, "It was an intrusion into his life, deeper and graver than an intrusion into a man's property".

(v) Interception of letters, moreover, may raise many questions, for example, whether it is legally open to a post office official (apart from a *valid* statutory provision) to read and (thus interfere with) letters between a husband and wife, letter conveying business secrets, letters containing confidential communications, and the like. The last words of section 6 of the Indian Post Office Act show, that the Act gives no *protection* in case of *wilful* acts. If the law recognises (or, in future, is likely to recognise), the interest of the sender or addressee in these matters, then such interception is, or is likely to become, actionable.

It is likely, that courts would be inclined to extend the protection which has so far been extended to tangible goods, (or intangible goods with a pecuniary value), to communications and similar interests also.

1. As to injunctions to prevent breaches of confidence, see *Snell*, Equity (1966) page 721.

2. Cf. *William V. Settle*, (1960), 2 All. E.R. 806, 812 (C.A.).

(vi) The question is not of a *physical object* only; it may also be of the *personal interest*¹. If the language of property fails to meet the object of protecting this personal interest, the law may, in future, evolve *other methods*. The uncertainty that has existed so far on the subject is due to the fact that the interest sought to be protected has remained ill defined and unidentified. *It is for this reason that statute may have to intervene, to define the position.*

(vii) The matter is, however, not very important in India, because, even if there is no breach of any right recognised at ordinary law, the fundamental right under article 19(1)(a) is violated, and the remedy under articles 32 and 226 of the Constitution is always open.

The position resulting from this discussion can be thus summarised :

(1) The relationship between the Post Office and the sender is either of a bailor and bailee, or akin to that of a bailor or bailee. At the worst, the Post Office is a stranger, and the owner has all rights against the Post Office that he has against any other person.

(2) Whatever be the relationship, the proprietary remedy of conversion or of injury to reversionary interests is available to the owner—(who may be the sender or addressee) if the articles have a pecuniary value.

(3) The remedy of detinue is available to the owner (who may be the sender or addressee), for all articles.

(4) Further, in the case of articles having mainly literary or sentimental value, destruction of the article [under section 23(3), for example] would perhaps amount to interference with literary property; opening of the article would often amount to a breach of confidence; and even where no question of literary property or confidence is involved, the law may in future recognise and protect other interests, so that interference may become actionable.

1. See Paton, Jurisprudence, (1946), page 128, as to personal st.

Regarding literary property, it may be noted that while *destruction* of a literary work does not seem to have so far figured in any reported case, this is because there is only a partial understanding of literary property. As has been observed¹—

“Much of the difficulty surrounding the concept of copyright arises from the fact that while it protects economic rights, the concept of property involves rights other than economic rights. Copyright is unique because it is special form of intangible property and should be limited to economic rights. But it is a derivative right, being derived from the larger property interest an author has in his works. As it exists today, the derived right destroys the larger property interest, but if the larger interest is recognised, the result is that literary property has two component parts—a commercial right and a creative right. Since one is primarily economic in nature and the other primarily personal in nature, they provide both a basis for delineating problems of literary property, and a framework for resolving the problems in terms of purpose without resort to technicalities.”

¹. I. Patterson, “Statute of Anne”, (1966) 3 Harvard Journal of Legislation 223, 252, (February, 1966).

APPENDIX X

POSITION IN CANADA REGARDING INTERCEPTION OF POSTAL ARTICLES

In Canada, the following statutory provisions seem to be relevant regarding interception.

Section 7. (Canada) Post Office Act, 1951.

Section 6(f) and 6(g) (Canada) Post Office Act, 1951—empowers the making of regulations regarding the conditions under which mailable matter may be sent, and for excluding non-mailable matter from mails.

Section 59. (Canada) Post Office Act, 1961, punishes a person sending any explosive, dangerous, etc., substance.

Section 41. (Canada) Post Office Act, 1951—"Notwithstanding anything in any other Act or laws, nothing is liable to demand, seizure or detention while in the course of post except as provided in this Act or the regulations."

EXTRACT OF SECTION 7, CANADIAN POST OFFICE ACT, 1951.

Use of Mails for Unlawful purposes

Unlawful
use of
mails.

67. (1) Whenever the Post-master General believes on reasonable grounds that any person—

(a) is, by means of the mails,

(i) committing or attempting to commit an offence, or

(ii) aiding, counselling or procuring any person to commit an offence, or

(b) with intent to commit an offence, is using the mails for the purpose of accomplishing his object, the Post-master General may make an interim order (in this section called an "interim prohibitory order") prohibiting the delivery of all mail directed to that person (in this section called the "person affected") or deposited by that person in a post office.

Prohibitory
Order
Notice.

(2x) Within five days after the making of an interim prohibitory order the Post-master General shall send to the person affected a registered letter at his last known address informing him of the order and the reasons therefor and notifying him that he may within ten days of the date of registered letter was sent, or such longer period as the Post-master General may specify in the letter, request that the order be inquired into, and upon receipt within the said ten days or longer period of a written request by the person affected that the order be inquired into, the Post-master General shall refer the matter, together with the material and evidence considered by him in making the order, to Board of Review consisting of three persons nominated by the Post-master General one of whom shall be a member of the legal profession.

(3) The Board of Review shall inquire into the facts and circumstances surrounding the interim prohibitory order and shall give the person affected a reasonable opportunity of appearing before the Board of Review, making representation to the Board and presenting evidence. Board of Review.

(4) The Board of Review has all the powers of a Commissioner under Part I of the Inquiries Act, and, in addition to the material and evidence referred to the Board by the Post-master General, may consider such further evidence, oral or written, as it deems advisable. Powers of Board.

(5) Any mail detained by the Post-master General pursuant to sub-section (8) may be delivered to the Board of Revenue, and, with the consent of the person affected, may be opened and examined by the Board. Opening of mail by consent.

(6) The Board of Review, shall, after considering the matter referred to it, submit a report with its recommendation to the Post-master General, together with all evidence and other material that was before the Board, and upon receipt of the report of the Board, the Post-master General shall reconsider the interim prohibitory order and he may revoke it or declare it to be a final prohibitory order, as he sees fit. Report of Board.

(7) The Post-master General may revoke an interim or final prohibitory order when he is satisfied that the person affected will not use the mails for any of the purposes prescribed in sub-section (1), and the Post-master General may require an undertaking to that effect from the person affected before revoking the order. Revocation of order.

(8) Upon the making of an interim or final prohibitory order and until it is revoked by the Post-master General, Effect of order.

(a) no postal employee shall without the permission of the Post-master General

(i) deliver any mail directed to the person affected, or

(ii) accept any mailable matter offered by the person affected for transmission by post,

(b) the Post-master General may detain or return to the sender any mail directed to the person affected and anything deposited at a post office by the person affected, and

(c) the Post-master General may declare any mail detained pursuant to paragraph (b) to be undeliver-

able mail, and any mail so declared to be undeliverable mail shall be dealt with under the regulations relating thereto.

Interim
order deem-
ed final
order.

(9) Where no request that an interim prohibitory order be inquired into is received by the Post-master General within the period mentioned in sub-section (2), the order shall, at the expiration of the said period, be deemed to be a final prohibitory order [(1951) c. 57 s. 7]’.

APPENDIX XI

AUSTRALIA—POSITION REGARDING INTERCEPTION OF POSTAL ARTICLES.

Extract of section 30-E, Australian Crimes Act, 1950—1960.

"30E. (1) No book, periodical, pamphlet, handbill, poster or newspaper issued by or on behalf or in the interests of any unlawful association shall—

(a) if posted in Australia, be transmitted through the post; or

(b) in the case of a newspaper, be registered as a newspaper under the provisions of the Post and Telegraph Act 1901—1923.

(2) Any newspaper registered under that Act, which is issued by or on behalf or in the interest of any unlawful association, shall be removed from the register.

(3) Any book, periodical, pamphlet, handbill, poster or newspaper posted in Australia, the transmission of which would be contravention of this Act, shall be forwarded to the General Post Office of the State in which it was posted, and shall be forfeited to the Commonwealth and shall be destroyed or disposed of as the Post-master General directs."

Sections 3, 29, 40—44, 57, 96, 107 of the (Australian) Posts and Telegraph Act, 1904—1950, prohibit the sending of obscene and certain other objectionable matter by post. (No provision for interception is, however, contained in these sections).

Books, etc. issued by unlawful association not transmissible by post.

Inserted by No. 9, 1926, s. 17.

Deregistration of newspapers. Amended by No. 30, 1932, s. 5. Amended by No. 84, 1960, s. 63 and the Schedule.

APPENDIX XII

NEW ZEALAND—POSITION REGARDING INTERCEPTION OF POSTAL ARTICLES.

Extract of section 30 to 34, 44 and 84, New Zealand Post Office Act, 1959

Detention of suspected postal articles. Cf. 1928, No. 12 S. 36. "30. Where the Post-master General or Post-master has reason to suspect that any postal article contains any enclosure in fraud or violation of this Act, or of the Customs Acts, or of any enactment prohibiting or controlling the transfer of money or valuable securities by post, he shall detain the postal article for opening and examining in accordance with section 31 of this Act.

Opening of suspected postal articles. Cf. 1928, No. 12 s. 37. 31. Every postal article which is detained under section 30 of this Act may be opened and examined at post office by two officers of the Post Office specially nominated for that purpose by the Post-master General, or by one such officer nominated as aforesaid in the presence of another officer or in the presence of an officer of the Customs who, before the opening of the articles, shall make the declaration set forth in the First Schedule to this Act and shall not be opened or examined otherwise.

Notification to addressee or sender of detained postal articles. Cf. 1928, No. 12 s. 39(2). Disposal of articles opened under this Act. Cf. 1928, No. 12, section 39 (1), 40. articles 32. Where it is intended to open a postal article under section 31 of this Act, the Post-master General shall cause notice thereof to be sent to the addressee if he is known or otherwise to the sender thereof if he is unknown.

33. (1) Subject to the provisions of this Act, if any postal article opened or examined under this Act is found to be in fraud or violation, or to have been posted in fraud or violation, of this Act or of any enactment prohibiting or controlling the transfer of money or valuable securities by post, the Post-master General may direct that the postal article be forfeited; and any such article shall be destroyed or otherwise disposed of in accordance with this direction.

(2) If any postal article opened under this Act is found to be fraud or violation, or to have been posted in fraud or violation, of the Customs Acts, it shall be handed over to the Customs Department to be dealt with in accordance with the Customs Act.

(3) Every postal article opened under this Act and found to contain any valuable or saleable enclosure shall together with its contents be safely kept pending its disposition under this section, and a list of any such postal articles together with a memorandum of the contents thereof shall be made and preserved.

Opening of postal articles under Governor General's Warrant. 34. (1) The Governor-General may, by Warrant under his hand, direct the *Postmaster-General* or any officer to *detain or open any postal article for any purpose mentioned in the Warrant.*

(2) If any postal article opened under this section is found to contain any money or enclosure belonging to the New Zealand Government, the officer opening the article may extract the money or enclosure therefrom and dispose of it in such manner as the Postmaster-General directs.

Cf. 1928,
No. 12 s.
31; 1933,
No. 23, s. 4.

44. If the Postmaster-General has at any time reasonable ground to suspect any person in New Zealand or elsewhere to be engaged in—

Prohibition
of postal
articles for
certain
addressee.

(a) Any business or undertaking relating to illegal betting, or to the conduct of an illegal letter, or to fortune telling; or

Cf. 1928,
No. 12,
s. 32.

(b) Any obscene, immoral, or unlawful business or undertaking; or

(c) Advertising in direct or indirect terms regarding sexual matters in a manner likely to be offensive—the Postmaster-General may by notice in the Gazette order that no postal article addressed to that person (whether by his own or any fictitious or assumed name) or to his address without a name shall be forwarded or delivered under this Act.

84. (1) The Governor-General may from time to time, by Order in Council, make regulations for the control or prohibition of *telegraph messages in time of war or when war is reasonably to be apprehended.*

Wartime
control of
telegrams.
Cf. 1928,
No. 12,
s. 161(6),
(7).

(2) Every person who commits a breach of any regulation made under sub-section 1 of this section commits an offence and shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred pounds, or to both."

APPENDIX XIII

U.S.A.—POSITION REGARDING INTERCEPTION OF POSTAL ARTICLES

It would seem¹, that in the U.S.A. there are three instrumentalities² employed by the post office for the restraint of mail. The first is confiscation and destruction, used primarily against obscene matters and foreign political propaganda.

Since 1957, certain procedural rights for persons whose material was non-mailable on the ground of obscenity have been provided for, namely, written notice of the reasons for barring the mail, hearing before a Post Office examiner, and decision after two days of the hearing in case of a periodical³.

Authority for barring from the mail papers containing foreign political propaganda is said to be derived from the Espionage Act, 1917, and the Foreign Agents Registration Act, 1938. The 1938 Act required agents for foreign principals within the United States to register, and failure to do so was a crime. The 1917 Act punishes the possession of papers in aid of a foreign Government which violate any penal statute, and also makes such material non-mailable.

The second instrumentality is what is known as "stop order". This was first authorised against persons found to be using the mails to defraud, and the effect of the order was that all mail addressed to the person or company concerned was intercepted, stamped "fraudulent", and returned to the sender. The validity of such order in relation to fraudulent mail has been upheld, though not without strong dissent⁴⁻⁵.

This power was later authorised in relation to mails dealing with obscenity also. It can be used, however, only against mails addressed to the company concerned which is directly connected with the specific issue of its periodicals which is found to be obscene⁶. This authority has later been extended to mails suspected of promoting fraud, obscenity or gambling⁷.

1. See Pritchett, *Americal Constitution* (1959), page 404.
2. (i) Confiscation and destruction,
(ii) Stop order, and
(iii) Refusal of second class permit.
3. 39 Code of Federal Regulations 203 (November 9, 1959), cited in Pritchett, *Americal Constitution* (1959), page 404.
4. *Leach v. Carlile*, (1922) 258 U.S. 138.
5. *Donaldson v. Read Magazine*, (1948), 333 U.S. 178.
6. *Sumnerfield v. Sunshine Book Co.*, (1955), 349 U.S. 921.
7. (1956) 70 Stat. 699.

The third type of restraint is refusal to grant "second class mailing privileges." This power has been used, though not without dissent¹, against matter not mailable under the Espionage Act. The validity of this power in fields unrelated to national security, is doubtful², and one case³ the attempt of the Post Master General to withdraw the second class mail privilege from a magazine, on the ground that the material was so close to obscene that it was morally improper and not for the public welfare and the public good, was invalidated.

What is and what is not obscene is always a matter difficult to decide. Thus, a post office ban on the mailing of nudist magazines was, in one case, reversed by the Supreme Court⁴. On the other hand, in a very recent case⁵, the ban imposed by the Post Master General against one Magazine was upheld.

(1) Article 1, section 8, Clause 7 of the Constitution of the U.S.A. says, that "The Congress shall have power to establish post offices and post roads". This postal power embraces all measures necessary to ensure the safe and speedy transit and prompt delivery of the mails.

Power to protect the mails.

(2) The postal power also includes the power to exclude from the mails publications designed to defraud the public or corrupt its morals, such as lotteries⁶ and fraudulent matter⁷.

Power to prevent harmful use of the postal facilities.

It may be noted, that in the *Donaldson* case⁸ what was sustained was a court order forbidding the delivery of a mail and money orders to a magazine for conducting a puzzle contest which the Post Master General had found to be fraudulent.

But there is some doubt as to whether a power to exclude from second class mail can be exercised arbitrarily, or whether that power is subject to some limitation. While the second class mail need not be kept open to publications of all types⁹, this does not imply that the power can be exercised arbitrarily¹⁰.

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1. *Milwaukee Publishing Co. v. Burleson*, (1921) 255 U.S. 407.
 2. See *Hannegan v. Esquire*, (1946) 327 U.S. 146.
 3. *Hannegan v. Esquire*, (1946) 327 U.S. 146.
 4. *The Sunshine Book Co. v. Summerfield*, (1958) 355 U.S. 372.
 5. Case against Ginzberg, regarding the Eros Magazine (*Time Magazine*, 1st April, 1966) (Supreme Court of U.S.A.).
 6. *Ex parte Jackson*, (1878) 96 U.S. 727, 732.
 7. *Donaldson v. Read Magazine*, (1948), 333 U.S. 178.
 8. *Donaldson v. Read Magazine*, (1948) 333 U.S. 178.
 9. *Hannegan v. Esquire*, (1946) 327 U.S. 146, 155, (per Douglas J.).
 10. *Lewis Publishing Co. v. Morgan*, (1913) 229 U.S. 228 (per White C.J.).

Excluding power generally as an adjunct to other powers.

(3) Apart from the power to close the mails, to particular types of publications which are harmful, a much broader power of exclusion was asserted in one Act of 1935¹, whereunder to induce compliance with the regulatory requirements of that Act, Congress denied the privilege of using the mails for any purpose to holding companies which failed to obey that law, *irrespective of the character of the material to be carried*. The Supreme Court, treating this as a penalty, held the statute to be constitutionally valid, because the regulations whose infractions were thus penalised were themselves valid, but it declared, that Congress could not exercise its control over the mails to enforce requirement which lay outside its constitutional province²⁻³.

Fourth Amendment.

By virtue of the Fourth Amendment, a sealed letter deposited may not be opened by the postal authorities without the sanction of a Magistrate⁴. The Fourth Amendment, however, is confined to *material* things, and hence its language cannot be extended to telephone messages⁵⁻⁶.

The following statutory provisions in force in the U.S.A. are relevant⁷:

(a) 18 U.S. Code, Article 1717—Letters etc. which are non-mailable "shall not be conveyed in the mails or delivered from any post office etc." These include matter advocating or *urging treason*, insurrection, or forcible resistance to any law of U.S., and matter in violation of certain sections of Title 18, of the U.S. Code.

[These sections of Title 18, U.S. Code, are—

499—Forgery of military etc. passes.

506—Forging of seals.

1. The Public Utility Holding Company Act, 1935; see (1946) 15 U.S. Code 79d, 79e.

2. *Electric Bond & Share Co. v. Securities Exchange Commission*, (1938), 303 U.S. 419.

See also *American (Power and Light) Co. v. S.E.C.* (1946) 329 U.S. 90.

3. *Electric Bond & Share Co. v. Securities Exchange Commission*, (1938), 303 U.S. 419, 422.

4. *E. parte Jackson*, (1878), 96 U.S. 727, 733.

5. *Olmstead v. U.S.* (1928) 277 U.S. 438; 72 L. Ed. 944 (Majority judgment).

6. *On Lee v. U.S.* (1952) 343 U.S. 747, 753 (Majority judgment).

7. These refer to the edition of the U.S. Code before 1964. In the 1964 edition of the U.S. Code, some changes have been made but not in substance. See, now, Title 39 U.S.C. section 4001, (1964) read with Title 18, sections 1302, 1341, 1342, 1461, 1463, 1714, 1715, 1716 1717, 1718 (1964 edition).

793—Gathering etc. or losing defence information.
794—Gathering or delivering defence information to Government.

915—(Personation of) foreign diplomats.

954—False statements influencing foreign Government.

956—Conspiracy to injure property of foreign Government.

957—Possession of property in aid of foreign Government.

960—Expedition against friendly nation.

964—Delivering armed vessel to belligerents.

1017—Wrongfully using Government seals.

1542—False statement for passport.

1543—Forgery and false use of passport.

1544—Misuse of passport.

2388—Activities affecting armed forces during war.

(b) 18, U.S. Code, article 1341 (Fraudulent matter) (Delivery may be withheld).

(c) 18, U.S. Code, articles 1461 and 1463 (Obscene matter, information about contraceptives, and incitement to heinous crimes) (Delivery may be withheld).

[Indecent matter can be withdrawn from the mails under regulations to be made by the Post Master General].

(d) 39, U.S. Code (1960 Revision) Articles 4251, 4351, 4352, 4451, 4551 deal with "second class mail"¹. Where any publication has been accorded second class mail privileges, the same shall not be suspended or annulled until a hearing is granted to the parties interested.

We may discuss the procedure regarding second class mail in the U.S.A. A "second class mailing" permit can be denied to a publication by the Post Office. When this is done, publication through the mails becomes prohibitively costly. To be eligible for a second-class permit, a publication must—

- (i) be issued at stated intervals;
- (ii) have a known office;
- (iii) be printed;

1. As to second class privileges, see—

Hannagan v. Esquire, (1946) 327 U.S. 146, which seems to limit the authority of *Milwaukee Leader case*, (1921) 255 U.S. 407.

(iv) be for the dissemination of information of a public character or devoted to literature, the sciences, arts or some special industry;

(v) have a legitimate list of subscribers;

(vi) be designed primarily for non-advertising purposes¹.

The second class permit cannot, however, be denied on the ground that the publication does not contribute to the public welfare. The Post Office Department denied a second class mailing to the *Esquire magazine*, on the ground that the publication did not contribute to the public good and to the public welfare, but the Supreme Court² did not uphold this standard, and pointed out, that to withdraw this privilege from a publication simply because its contents seemed to one official not good for the public would sanction withdrawal of the second-class rate tomorrow from another periodical whose social or economic views seemed harmful to another official.

(e) 39, U.S.C. (1960 Revision) Article 4005—Where the Post Master General finds any person conducting lotteries or fraudulent schemes through the mail, he can stop such mail matter of those persons.

(f) Vol. 39, U.S.C. (1960 Revision)* Articles 4006—4007 empower the Post Master General to exclude the letters and mail matter of any person obtaining through mail, money for *obscene*, lewd, etc., articles, or depositing in mails information as to where such articles can be obtained. He can make an interim order for 20 days, and get it confirmed by the U.S. District Court.

NOTE:—The power to authorise temporary detention of mail does not apply to mail addressed to publishers of publications which have entry as second class matter, or to mail addressed to the agents of those publishers.

(h) Vol. 39 U.S.C. (1960 Revision),

Section 4008—(added in 1962)—Mail matters, except sealed letters, originating, etc., in a foreign country and determined by the Secretary to the Treasury to be "Communist political propaganda" shall be detained by the Post Master General, and the addressee notified. If the addressee does not desire delivery within a reason-

1. See Wiggins, *Freedom or Secrecy* (Oxford University Press, New York), (1956), page 187.

2. *Hannegan v. Esquire*, (1946) 327 U.S. 146, 157, 158.

3. For the law before 1960, see Gellhorn & Byrnes *Administrative Law* (1960), pages 771—772.

able time (not exceeding 60 days), it is disposed of as the Post Master General directs.

(i) Vol. 39, U.S.C. (1960 Revision) —

Section 4001—(1) Matter the deposit of which in mails is punishable under the following sections of Title 18 of U.S.C. is non-mailable.

(2) Non-mailable matter is to be disposed of as the Post Master General directs.

[The sections of Title 18 of referred to are—

| <i>Title 18 U.S.C.</i> | <i>Provisions referred to</i> |
|------------------------|---|
| 18 1302 . . . | Lotteries. |
| 18 1341 . . . | Frauds & spindles. |
| 18 1342 . . . | Fictitious name or address for unlawful business. |
| 18 1461 . . . | Obscenity inciting abortion and filthy, vile and indecent thing, etc. |
| 18 1463 . . . | Obscene, etc., matter of envelope. |
| 18 1714 . . . | Foreign divorce information. |
| 18 1715 . . . | Firearms. |
| 18 1716 . . . | Injurious articles (poisons, reptiles, etc.). |
| 18 1717 . . . | Many matters, including matter advocating treason, insurrection or forcible resistance to any U.S. law. |
| 18 1718 . . . | Libellous matters on wrappers, etc. |

NOTE:—Under 18 U.S.C., section 1716, no person other than an authorised officer of the Dead Letter Office or acting under a search-warrant can open a letter without the addressee's consent.

(j) It is stated^{1,2}, that in the U.S.A. publications, (particularly those received from foreign countries) have been held up, if in the opinion of the officials concerned the publications showed a subversive intent.

(k) Mails sent from abroad to persons not registered under the Foreign Agents' Registration Act, 1938 (as amended) can be forfeited.

1. Wiggins, Freedom or Secrecy (Oxford University Press, New York), (1956), page 187.

2. See also Gastberg, Freedom of Speech in the West (1960), (Allen & Unwin) page 145, referring to Bolte, "Security through Book Burning" (1955), page 90.

(l) In times of war, special restrictions under the Espionage Act, 1917 come into play¹⁻².

(m) There is a provision prohibiting interception of telephonic communications³. But that is not relevant for the present purpose.

1. *Masses Publishing Co. v. Patten*, (1917) 244 Fed. 535 (August 1917 issue of a magazine excluded from the mails, being of a revolutionary and anti-war character).

2. *Milwaukee etc. v. Burleson*, (1921) 255 U.S. 407.

3. Sections 501, and 605, and 1308, Federal Communications Act (1934), 47 U.S.C. 151; See "Electronic Eavesdropping" (1964) Am. Bar Ass. Journal 540, 542 and 543.

APPENDIX XIV

Liability for registered articles in England

Under the (English) Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36), section 8(1)(b), Post Office Regulations may make provisions (*inter alia*) as to the "registration" of postal packets. Under section 8(2) of the (English) Post Office Act, 1953, the "registration" of a postal packet shall not render the Crown in any manner liable for the loss of the packets or contents thereof, save as provided in section 9 of the Crown Proceedings Act, 1947. Under section 9(2) of the Crown Proceedings Act, 1947, the Crown is liable to the extent specified in that section.

Relevant portions of these provisions are extracted below:—

Extract of section 8 of the Post Office Act, 1953

(1 & 2 Eliz. 2 c. 36).

"8(1)

(2) Save as provided in section 9 of the Crown Proceedings Act, 1947, the registration of or giving of a receipt for a postal packet, or the giving or obtaining of a certificate of posting or delivery of a postal packet, shall not render the Crown in any manner liable for the loss of the packet or the contents thereof." Conditions of transit of postal packets.

Extract from section 9(2) and section 9(5) of the Crown Proceedings Act, 1947 (10 & 11 Geo. 6 c. 44).

9. "(2) Notwithstanding the provisions of section 13 of the Post Office Act, 1908, proceedings shall lie against the Crown under this sub-section in respect of loss of or damage to a *registered inland* postal packet, not being a telegram, in so far as the loss or damage is due to any wrongful act done or any neglect or default committed by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, carriage, delivery or other dealing with the packets: Liability in connection with postal packets.

Provided that.....

(c) the amount recoverable in any such proceedings shall not in any event exceed the maximum amount which, under regulations made under section 81 of the Post Office Act, 1953 is available for compensating the persons aggrieved having regard to the fee paid in respect of the registration of the packet; and

(d) the Crown shall not be liable under this sub-section in respect of any packet unless such conditions as are prescribed by virtue of sub-section (5) of this section in relation to registered inland postal packets have been complied with in relation to that packet.

For the purposes of any proceedings under this sub-section, it shall be presumed, until the contrary is shown on behalf of the Crown, that the loss of or damage to the packet was due to some wrongful act done, or some neglect or default committed, by a person employed as a servant or agent of the Crown while performing or purporting to perform his functions as such in relation to the receipt, delivery or other dealing with the packet.

(5) Regulations may be made under section 81 of the Post Office Act, 1953, for prescribing the conditions to be observed for the purpose of this section in relation to registered under postal packets."

Thus, it appears that—

(a) the quantum of liability for "registered" postal packets in England would depend on the *amount* of fee paid, by virtue of section 9(2) (c) of the Crown Proceedings Act, 1947, which speaks of the "maximum amount".

(b) Further, the fee for "registration" in England is not a fixed one (as in India), but a varying one.

(c) "Registration" of a postal packet in England therefore, corresponds more to what is known as "insurance"¹ under the Indian Post Office Act², then to "registration" under the Indian Act³.

1. There appears to be no separate provision for "insurance", in the English Act.

2. Section 30 to 33, Indian Post Office Act, 1898.

3. Section 28. Indian Post Office Act, 1898.