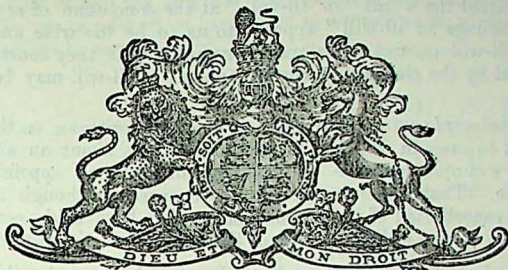


THE



# Bombay Government Gazette.

Published by Authority.

THURSDAY, 10<sup>TH</sup> FEBRUARY 1898.

*Separate paging is given to this Part, in order that it may be filed as a separate compilation.*

## PART VI.

### LEGISLATIVE DEPARTMENT.

The following Report of the Select Committee on the Bill to amend the Indian Penal Code in relation to Extra-territorial Offences was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 4th February 1898:—

We, the undersigned, Members of the Select Committee to which the Bill to amend the Indian Penal Code in relation to Extra-territorial Offences was referred, have considered the Bill with the further amendments in the Penal Code given notice of at the meeting of Council held on the 21st December, 1897, and the papers noted in the list appended, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Clause 2.*—We have altered *Illustration (b)* to this clause by making it apply to a Native State in India. We think it is unsafe to attempt to define the status of tribal territory in an *illustration*.

3. *Clause 4.*—We have carefully considered the new clause proposed by the Government, and we have inserted it in the Bill with the following amendments:—

- (a) For the expression “the Government” we have substituted the phrase “the Government established by law in British India.” This restores the language of the Act of 1870. Having regard to the terms of section 17 of the Indian Penal Code, which defines “Government,” the omission of the words “established by law in British India” might be held to give an extended meaning to the term “Government,” whereas it ought to have exactly the same meaning as in the Act of 1870.
- (b) We have altered the term of imprisonment from ten years to three, thus restoring the law of 1870. The term of ten years is provided as an alternative for transportation in sections 121 A and 122; but apparently the framers of the Act of 1870, in section 124A, wished to draw a marked distinction between minor offences and offences of a very serious character where transportation would be the only appropriate punishment.
- (c) We have omitted the words “or promotes or attempts to promote feelings of enmity or ill-will between different classes of Her Majesty’s subjects,” and have framed a new clause to deal with the offence thereby indicated. It appears to us that the offence of stirring up class-hatred differs in many important respects from the offence of sedition against the State. It comes more appropriately in the Chapter relating to offences against the public tranquillity. The offence only affects the Government or the State indirectly, and the essence of the offence is that it predisposes classes of the people to action which may disturb the public tranquillity. The fact that this offence is punishable in England as seditious libel is probably due to historical causes, and has nothing to do with logical arrangement.

- (d) We have omitted the words "or ill-will" at the conclusion of *explanation* 1. The expression "all feelings of ill-will" appears to us to be too wide and vague. It is only when feelings of ill-will amount to disloyalty or enmity that they constitute such disaffection as is contemplated by the clause. A certain amount of ill-will may be compatible with genuine loyalty.
- (e) We have added *explanation* 3 to make it clear that criticism on the action of Government is not confined to cases in which it is sought to bring about an alteration of what has been done. For example, suppose the Government make an appointment which is considered objectionable. That appointment may be criticised, although the criticism may not have in view the cancellation of the appointment. We have made consequential amendments in *explanation* 2 to make the language of the two *explanations* uniform.

4. *Clause 5*.—The object of framing this clause has already been detailed. In framing it we have altered the words "enmity or ill-will" into "enmity or hatred," and we have fixed the maximum punishment at two years' imprisonment.

We recommend that the clause when passed should be included in section 196 of the Code of Criminal Procedure, so that offences under it should only be prosecuted under the authority or with the sanction of the Government.

5. *Clause 6*.—We have inserted the clause proposed by the Government, but we have altered and enlarged the scope of the *exception* to the clause. No doubt the statements, rumours and reports referred to are of a highly mischievous character, but, having regard to the conditions under which modern journalism and the discussion of public questions are necessarily carried on, we think that, when the statement, rumour or report is published without any criminal intent, it is going too far to require the person who published it to prove its actual truth. To require such proof might be throwing an impossible burden upon him, and it should be sufficient for him to show that he had reasonable grounds for believing it, as, for instance, by showing that he made due inquiry before he published it.

6. The publication ordered by the Council has been made as follows :—

*In English.*

<i>Gazette.</i>	<i>Date.</i>
Gazette of India ... ..	17th October 1897.
Fort Saint George Gazette ... ..	2nd November 1897.
Bombay Government Gazette ... ..	4th November 1897.
Calcutta Gazette ... ..	3rd November 1897.
North-Western Provinces and Oudh Government Gazette ... ..	30th October 1897.
Punjab Government Gazette ... ..	30th October 1897.
Burma Gazette ... ..	13th November 1897.
Central Provinces Gazette ... ..	30th October 1897.
Assam Gazette ... ..	13th November 1897.
Coorg District Gazette ... ..	1st November 1897.
Sind Official Gazette ... ..	18th November 1897.

*In the Vernaculars.*

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras ... ..	Tamil ... ..	23rd November 1897.
	Telugu ... ..	23rd November 1897.
	Hindustani ... ..	23rd November 1897.
	Kanarese ... ..	23rd November 1897.
	Malayalam ... ..	23rd November 1897.
Bombay ... ..	Marathi ... ..	23rd December 1897.
	Gujarathi ... ..	23rd December 1897.
	Kanarese ... ..	23rd December 1897.
Bengal ... ..	Bengali ... ..	16th November 1897.
	Hindi ... ..	23rd November 1897.
	Uriya ... ..	25th November 1897.
North-Western Provinces and Oudh ... ..	Urdu ... ..	20th November 1897.
	Urdu ... ..	18th November 1897.
Burma ... ..	Burmese ... ..	20th November 1897.
Central Provinces ... ..	Hindi ... ..	1st December 1897.
Assam ... ..	Bengali ... ..	27th November 1897.
Coorg ... ..	Kanarese ... ..	1st December 1897.
Sindh ... ..	Sindhi ... ..	25th November 1897.

7. We do not think that either the original provisions of the Bill as introduced or the further amendments in the Penal Code above referred to have been so altered as to require re-publication, and we recommend that the Bill be passed as now amended.

(Signed)	M. D. CHALMERS.
( " )	C. M. RIVAZ.
( " )	C. C. STEVENS.
( " )	H. E. M. JAMES.
( " )	P. ANANDA CHARLU.*
( " )	G. H. P. EVANS.†
( " )	LAKSHMISHWAR SINGH.‡

The 31st January 1898.

So far as I know, there never has been any serious doubt expressed as to the true meaning of section 124A now in the Penal Code. No difficulty could arise except upon the view that the *explanation* attached to the section cannot be read along with it as *virtually* defining the term "disaffection." It has thus become urgent to remove the difficulty interposed by that view. This is best met by throwing the substance of the *explanation* into the form of a definition as follows:—

"Feelings of disaffection mean all feelings incompatible with a disposition to render obedience to the lawful authority of the Government established by law in British India and to support the lawful authority thereof against unlawful attempts to subvert or resist that authority."

This, which has come from the Defence Association, I suggested in the Committee and the majority were against me. By adding to such a definition provisos such as Mr. Stephen has made part of his section 102 in his "Draft Code," the law will, in my judgment, be elucidated far better than by the proposed *explanations*, which I am for omitting as a necessary consequence.

The proposed words "hatred, contempt and enmity" are, in my opinion, the very worst that could be chosen. Standing by themselves, they are, in the last degree, vague, misleading and obscure. By giving room for no small amount of fanciful speculation, they cannot fail to prove most hurtful to public interests by spreading a sense of *uncertainty* and *virtually* stifling all *frank* discussion of public questions. I would therefore score out, from the clause now proposed, the words "to bring or attempt to bring into hatred or contempt or." I may also point out that the definition I have recommended would be wide enough to cover all forms of real *political* hatred, which should be penalised. I very much doubt whether what is proposed in the Bill as contained in these objected words is good or sound law at the present day.

I am for eliminating the penalty of transportation from the section. A study of the history of this section shows how it is a mistake in the section and how the Law Commissioners, who sat on the original Draft Penal Code, criticised it in strong terms. The danger of retaining it has been already once exemplified and may be, any day, exemplified again and again. The danger lies in its being viewed—as it is too sure to be by not a few—as the maximum, permissible in all cases except where extenuating circumstances or other grounds for leniency exist.

I am opposed to the proposed clause 153A as a dangerous piece of legislation and as being impolitic (among other reasons) by necessitating Government to side with, or to appear to side with, one party as against another. In my humble judgment it will only accentuate the evil which it is meant to remove. Far from healing the differences which still linger, or which now and then come to the surface, it would widen the gap by encouraging insidious men to do mischief in stealth, with the sure hope that the Government would come down on such as openly resented. It would have all the repressive effects which the proposed amendments on 124A cannot fail to have, much to the detriment of undoubted rights and useful work.

In clause 505, as proposed to be altered, I would omit the words "or which is likely to cause" from each of (a), (b) and (c) and substitute the words "and thereby to induce any person" for the words "whereby any person may be induced" in (b). Intent being in this, as in 124A, the essence of the offence, the words which I have objected to must of necessity introduce a world of confusion which might be easily illustrated. They are bound to operate prejudicially to public good. It is perhaps necessary to add, with reference to clause 153A and the changes in 505, that, whereas the prior sanction of Government which is prescribed will be something of a guarantee, it will mostly depend on the strength with which the case is urged by the District Officer; for I fear that, in the face of a strong representation by the latter, the Government would, naturally and perhaps not improperly, hesitate to take upon itself the responsibility of withholding sanction. The mischief of these sections lies not so much in the natural results which will follow, as in the unnatural and exaggerated dread they would undesirably inspire in most cases. In such a result the balance of advantage will *not* be on the side of the public.

(Signed) P. ANANDA CHARLU.

The 31st January 1898.

\* I sign subject to the objections embodied in my minute of dissent.

† I think the words "tending to the disturbance of public tranquillity" or words to that effect might be advantageously inserted in section 153A.

‡ Note of dissent appended.

I sign the report subject to the following observations:—

1. I think that, in accordance with the opinion of the majority of the Judges of the Calcutta High Court, it should be clearly stated in section 124A that the intention to produce the effects mentioned therein is the basis of the offence. A similar alteration should be made in *explanation 2*, and after the words "by lawful means" the words "or for the purpose merely of showing that they are erroneous but" should be inserted, and after the word "without" the words "the intention of" should be added. As the High Court has pointed out, comments made for such a purpose and without the *intention* of exciting hatred or disaffection are legitimate and allowable. Criminal intent is the essence of the law of sedition as it prevails in England. It should be made quite clear that in all prosecutions under sections 124A, 153A and 505, the onus shall lie on the prosecution to prove the intention in the mind of the accused at the time, or at all events to adduce such evidence as to enable the Court reasonably to infer the same from his acts. In this as in all other penal cases the accused is entitled to demand that his guilt shall be fully proved against him by the prosecution beyond all reasonable doubt. I submit that this class of prosecutions should not be exceptionally dealt with, but that they should be called upon to discharge the duties which ordinarily belong to all prosecutions in criminal cases, *viz.*, that the burden of proving the offence lies on them.

2. Having regard to the language of *explanation 1* and to recent judicial rulings on the meaning of "disaffection" it seems to me that the words "brings or attempts to bring into hatred or contempt or" are superfluous and may lead to unnecessary difficulties. As regards "hatred" I must confess that I am no better able than is Worcester's Dictionary to distinguish between the meaning of that word and "enmity," the term which is employed in *explanation 1*. As regards "contempt" the idea conveyed by that word seems to be fully covered by the rest of the section, unless indeed it is desired to give so dangerous an extension to the scope of the section as will enable Government to prosecute to a conviction persons responsible for those cartoons, skits or other comic productions with which newspapers and other periodicals not infrequently try to enliven their readers.

3. I think further that the definition of "disaffection" in *explanation 1* to section 124A is far too vague, and would recommend the adoption in its place of some such definition as that suggested by the European and Anglo-Indian Defence Association. I quote it here for the sake of convenience:— "Feelings of disaffection mean all feelings incompatible with a disposition to render obedience to the lawful authority of the Government established by law in British India and to support the lawful authority thereof against unlawful attempts to subvert or resist that authority."

4. The remarks I have made in paragraph 1 with regard to the importance of making the intention the basis of the offence contemplated by section 124A apply equally to the offence contemplated by the new section 153A. It should be clearly stated in the section that *mens rea* is an essential ingredient of the offence under section 153A.

5. Both section 153A and section 505 when passed should be included in section 196 of the Code of Criminal Procedure, so that offenders under them should be prosecuted only under the authority and with the sanction of the Local Government.

6. There is one more point with regard to section 124A which has, I think, been overlooked and which to my mind is of great importance. The section as it stands is far too comprehensive. It appears to me that some attempt should be made to restrict the discretion of Judges in inflicting punishment. For instance, under the proposed section it is quite possible to punish a journalist or a public speaker who is only guilty of using indiscreet language calculated at most to give rise to trifling feelings of irritation. Surely such action on the part of the journalist or the public speaker ought not to be considered as a penal offence. I think there should be some differentiation between the punishment allotted for acts like those mentioned above and for intentional acts of sedition.

(Signed) LAKSHMISHWAR SINGH.

## LIST OF PAPERS.

*Papers relating to the Bill as introduced.*

- From Agent to Governor General in Baluchistan, No. 7634, dated 23rd November 1897 [Paper No. 1].  
 From High Court, Calcutta, No. 4159, dated 2nd December 1897 [Paper No. 2].  
 From Chief Commissioner, Central Provinces, No. 9563, dated 10th December 1897 [Paper No. 3].  
 From Government, Bombay, No. 9251, dated 18th December 1897 [Paper No. 4].  
 From Government, Burma, No. 557-L.—26, dated 22nd December 1897 [Paper No. 5].  
 From Chief Commissioner, Assam, No. 137-L. & L.—2416-J., dated 20th December 1897, and enclosures [Papers No. 6].  
 From Government, Bengal, No. 5688-J., dated 21st December 1897, and enclosures [Papers No. 7].  
 From Chief Commissioner, Ajmere-Merwara, No. 90-C.—500, dated 19th December 1897 [Paper No. 8].  
 Note by the Hon'ble Pandit Bishambar Nath, dated 25th December 1897 [Paper No. 9].  
 From Chief Commissioner, Coorg, No. 2047, dated 27th December 1897 [Paper No. 10].  
 From Government, North-Western Provinces and Oudh, No. 62—VI-954-C., dated 7th January 1898, and enclosures [Papers No. 11].  
 From Government, Bengal, No. 451-J., dated 18th January 1898, and enclosures [Papers No. 12].  
 From Government, Madras, No. 1828, dated 31st December 1897, and enclosures [Papers No. 13].  
 From Government, Punjab, No. 37, dated 8th January 1898, and enclosures [Papers No. 14].

*Papers relating to the further amendments proposed in the Code.*

- From Chief Commissioner, Assam, No. 45-T., dated 31st December 1897 [Paper No. 1].  
 From Chief Commissioner, Coorg, No. 4-Camp, dated 3rd January 1898 [Paper No. 2].  
 From Agent to Governor General, Baluchistan, No. 35-C., dated 5th January 1898, and enclosures [Paper No. 3].  
 From Government, Burma, No. 150-L.—3, dated 6th January 1898, and enclosures [Papers No. 4].  
 From Government, North-Western Provinces and Oudh, No. 63, dated 8th January 1898, and enclosures [Papers No. 5].  
 From Chief Commissioner, Central Provinces, No. C.-3, dated 10th January 1898, and enclosures [Papers No. 6].  
 From Government, North-Western Provinces and Oudh, No. 110, dated 12th January 1898, and enclosure [Papers No. 7].  
 From Government, Bombay, No. 270, dated 10th January 1898, and enclosures [Papers No. 8].  
 From Chief Commissioner, Central Provinces, No. 213-C., dated 9th January 1898 [Paper No. 9].  
 From Mahajana Sabha, Madras, dated 17th January 1898 [Paper No. 10].  
 From Government, Punjab, No. 79, dated 14th January 1898, and enclosures [Papers No. 11].  
 From High Court, Calcutta, No. 207, dated 21st January 1898, and enclosure [Papers No. 12].  
 From Government, Bengal, No. 545-J., dated 22nd January 1898, and enclosure [Papers No. 13].  
 From European and Anglo-Indian Defence Association, Calcutta, No. 768, dated 23rd January 1898 [Paper No. 14].  
 From Government, Bengal, No. 514-J., dated 22nd January 1898, and enclosure [Papers No. 15].  
 From Government, Madras, No. 115, dated 10th January 1898, and enclosures [Papers No. 16].  
 From Chief Commissioner, Ajmere-Merwara, No. 265-J., dated 21st January 1898, and enclosure [Papers No. 17].  
 From Inhabitants of Madras, dated 21st January 1898 [Paper No. 18].  
 From Maharaja Sir Jotindro Mohan Tagore, K.C.S.I., dated 28th January 1898 [Paper No. 19].  
 From Bombay Presidency Association, dated 26th January 1898 [Paper No. 20].  
 Note by Bar Library, Calcutta, dated 28th January 1898 [Paper No. 21].

## No. II.

*A Bill to amend the Indian Penal Code.*

XLV of 1860. WHEREAS it is expedient to amend the Indian Penal Code; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short title and commence- Penal Code Amendment ment, Act, 1898; and

(2) It shall come into force at once.

XLV of 1860. 2. Section 4 of the Indian Penal Code is hereby repealed, and the following section is substituted therefor, namely:—

“4. The provisions of this Code apply also to any offence committed by—  
Extension of Code to extra-territorial offences.

[31 & 33 Vict., c. 93, s. 1.] (1) any Native Indian subject of Her Majesty in any place without and beyond British India;

[28 & 29 Vict., c. 17, s. 1.] (2) any other British subject within the territories of any Native Prince or Chief in India;

[24 & 5 Vict., c. 67, s. 22, & I. P. c. 4.] (3) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India.

*Explanation.*—In this section the word ‘offence’ includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

*Illustrations.*

(a) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(b) B, a European British subject, commits a murder in Kashmir. He can be tried and convicted of murder in any place in British India in which he may be found.

(c) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(d) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.”

XLV of 1860. 3. After section 108 of the Indian Penal Code the following section shall be added, namely:—

[24 & 25 Vict., c. 47, s. 22.] “108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India.

*Illustration.*

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder.”

4. Section 124A of the Indian Penal Code is hereby repealed, and the following section is substituted therefor, namely:

“124A. Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred

or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Government established by law in British India shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

*Explanation 1.*—The expression ‘disaffection’ includes disloyalty and all feelings of enmity.

*Explanation 2.*—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

*Explanation 3.*—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.”

5. After Section 153 of the Indian Penal Code the following section shall be inserted, namely:—

“153A. Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of Her Majesty’s subjects shall be punished with imprisonment which may extend to two years or with fine, or with both.”

6. Section 505 of the Indian Penal Code is hereby repealed and the following section is substituted therefor, namely:—

“505. Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier or sailor in the army or navy of Her Majesty or in the Royal Indian Marine or in the Imperial Service Troops to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to two years, or with fine or with both.

*Exception.*—It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.”

J. M. MACPIERSON,

Secretary to the Government of India.