

THE



# Bombay Government Gazette.

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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 consolidate and amend the law relating to Criminal Procedure was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 18th February 1898:—

WE, the undersigned, Members of the Select Committee to which the Bill to consolidate and amend the law relating to Criminal Procedure was referred, have considered the Bill 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. All the amendments proposed by us are printed in antique type. Of these a large proportion are merely verbal and do not call for explanation or comment. All the more important are detailed in the following paragraphs of this Report.

3. *Clause 4. Definitions.*—We have omitted the proposed new definitions of “accused,” “Court of Session” and “trial”.

“*Complaint.*”—We have restored this definition to its original form, and amended the definition of “offence” so as to make it cover acts on which proceedings under section 20 of the Cattle-trespass Act, 1871, may be founded.

“*Judicial proceeding.*”—We have added the words “on oath” in this definition, because the power to take evidence on oath is the characteristic test of judicial proceedings. We have omitted the new words providing for consequent proceedings which the Bill as introduced proposed to add to the definition, as they appear to be too wide. On the other hand, we have altered the word “means” at the commencement of the definition into “includes” and have thus given the Courts a certain latitude of construction.

“*Pleader.*”—At the suggestion of the Bengal Government we have restored the definition as it is in the Code of 1882.

4. *Clause 9.*—We have inserted here as in a more appropriate place sub-section (2) of clause 269 and sub-section (3) of clause 193 of the Bill as introduced.

5. *Clause 10.*—In sub-section (2) we have altered the limit of time from three months to six months to meet a suggestion of the Bengal Government.

6. *Clause 14.*—We have added a provision to sub-section (2) to enable Special Magistrates to be appointed for a term only. This will empower Local Governments to appoint Special Magistrates on probation and also to make appointments to meet temporary emergencies.

7. *Clause 17.*—We have recast sub-section (4) so as to provide for urgent applications being disposed of by the District Magistrate in the frequent case where there is no Additional or Assistant Sessions Judge for the division in question.



8. We have omitted clause 20 of the Bill as introduced, on the representation of the Bombay Government that the provision has now become obsolete and is no longer required. We have broken up clause 18 into two, which will prevent any alteration in the numbering of the following clauses.

9. *Clause 21.*—The Government of Madras recommend that all Presidency Mag's rates should be subordinate to the Chief Presidency Magistrate in the like manner as, in a district, Magistrates are subordinate to the District Magistrate. This appears to be sound in principle, and the clause as it stands enables the Chief Presidency Magistrate, with the sanction of the Local Government, to make rules on this footing. We are informed, however, that in Calcutta the Presidency Magistrates are not considered as subordinate to the Chief Presidency Magistrate. If this be so, we have no doubt that the Local Government in sanctioning rules under this clause will pay such regard as it thinks right to any existing practice.

10. *Clause 25.*—We have added to the list of *ex officio* Justices of the Peace, Governors, Lieutenant-Governors and Chief Commissioners.

11. *Clause 29.*—We have omitted the proviso to this clause and specified in the second schedule the respective Courts by which offences under other laws are triable.

12. *Clause 30.*—We have amended this clause so as to make it capable of application to all non-regulation provinces. We have further, on the recommendation of the Punjab Government, authorized Local Governments to invest first class Magistrates with powers under the clause.

13. *Clause 31.*—In accordance with the recommendation of the Judges of the Bombay High Court, we have dispensed with the necessity for confirmation of sentences passed by Assistant Sessions Judges where such sentences exceed four years. For the most part such confirmation is simply a preliminary to an appeal and interposes a useless formality which delays the hearing of the appeal on the merits.

14. *Clause 34.*—Similar considerations apply to the confirmation of sentences passed by specially empowered Magistrates. We have therefore dispensed with such confirmation.

15. *Clause 35.*—On the recommendation of the High Court, North-Western Provinces, we have empowered Courts in India, as in England, to pass concurrent, as well as consecutive, sentences of transportation and imprisonment. The effect of this change will probably be to mitigate sentences and at the same time also to discourage frivolous appeals. We have also omitted the first of the proposed *illustrations* to this clause, as we think it might give rise to difficulties.

16. *Clause 40.*—We have omitted the *illustration* to this clause, as we think that in the case proposed to be covered by it the officer should be re-appointed.

17. *Clause 42.*—We have omitted sub-clause (c), as we think the matters for which it proposed to provide are sufficiently provided for by sub-clause (b) of this clause and Chapter IX.

18. *Clause 54.* We have omitted the proposed sub-section (3), as we consider that the matter can best be dealt with by local legislation relating to *chaukidars* and village-policemen.

19. *Clause 61.*—We have omitted the proposed sub-section (2), as various difficulties have been pointed out in connection with its provisions.

20. *Clause 83.*—We have omitted the proposed sub-section (3), as we consider that the powers in question should only be exercised by the Commissioner of Police in Presidency-towns. Similar consequential alterations have also been made in clauses 85 and 86.

21. *Clause 88.*—We have omitted sub-section (8), as the trial of what is practically an interpleader suit in a Criminal Court might give rise to difficulty.

22. *Clause 103.*—We have added a new sub-section (4) so as to provide that where a person is searched under a search-warrant he shall be entitled to a list of all things taken from him.

23. *Clause 107.*—We have amended this clause. As it stood, proceedings could not be taken against a person outside the jurisdiction, although he might be instigating a breach of the peace within the jurisdiction, but, as such extended power requires careful exercise, we have provided that the power of taking action in such cases shall only be exercised by Chief Presidency or District Magistrates.

We can find no reason for conferring powers under sub-section (3) of this clause (formerly clause 108), which relates to inferior Courts, on Courts of Session and High Courts; so we have limited the sub-section to Magistrates not empowered to act under sub-section (1).

24. *Clause 109.* We have inserted as clause 108 the clause of which notice was given by the Government on the 21st December last. In inserting it we have made the following modifications:—

We have confined the jurisdiction to Chief Presidency and District Magistrates and to especially empowered Presidency and First Class Magistrates, and we have provided that the bond may be with or without sureties.

We have cut out the reference to "obscene matter," as we think that that is sufficiently provided for by the ordinary law. We have explained the reference to "seditious matter" by reference to the provisions of the proposed new Section 124A of the Indian Penal Code, and we have included matter punishable under the proposed new Section 153A of that Code.

We have cut out the reference to "defamatory matter" as that term is much too wide, and after consideration we have substituted the words "any matter concerning a Judge which amounts to criminal



intimidation or defamation under the Indian Penal Code". The term "Judge" will, of course, have the meaning assigned to it by the Indian Penal Code. This perhaps does not protect all the public officers who, we think, are entitled to protection, but it is difficult to draw any other satisfactory line.

We have considered the question whether these orders should be subject to appeal or revision, and we have come to the conclusion that they ought to be subject to revision, as the High Court can then act of its own motion as well as on the petition of the party aggrieved. In case there should be any doubt on the point, we have provided in clause 43 (6) that all orders under the Code (not expressly expected) made by an inferior Court shall be subject to revision by the High Court.

25. *Clause 110.*—We have added the offence of habitual cheating to sub-clause (d), we have omitted sub-clause (e) as unnecessary, and we have substituted a more specific provision for sub-clause (f) [now sub-clause (e)], which seemed dangerously wide.

26. *Clause 118.*—The proposal to substitute police supervision for giving security has received very little support from any quarter, and has been strongly condemned by the Government and High Court of the North-Western Provinces. We have therefore omitted sub-section (2) of this clause.

27. *Clause 124.*—We have re-drafted this clause in accordance with suggestions from Bombay.

28. *Clause 131.*—We are of opinion that the proposed extension of the powers contained in this clause to officers of volunteers is undesirable for the reasons stated by the Government of Bengal, and have therefore omitted the reference to volunteers.

29. *Clause 132.*—We have after consideration restored sub-section (2) of this clause to its original form, as on the whole it seems to us to be better that the verdict of the jury should be final.

30. *Clause 145.*—As the law stands at present, the date of the order under sub-section (1) of this clause is taken as the critical date for the purpose of determining actual possession. This appears to give an unfair advantage to a person who has forcibly dispossessed another. But difficulties arise when the test of actual possession at the time of the institution of the proceedings is departed from. We think that the proviso we have added to sub-section (4) goes as far as is possible to meet the evil in question without involving the Magistrate in an inquiry into title or right to possession, which is the function of a Civil Court.

31. *Clause 157.*—We have omitted the proposed addition to this clause as unnecessary.

32. *Clause 150.*—We have omitted the proposed proviso to this clause, as we think that the question of the attendance of parda-nashin ladies may be left to custom and controlled by executive orders.

33. *Clause 151.*—We have amended this clause by reverting to the law as it stood under the Codes of 1861 and 1872. Under those Codes a person examined by a police-officer was bound to answer all material questions, but was not liable to be prosecuted for giving false evidence in respect of his answers under section 193 of the Indian Penal Code (see I. L. R., 7 Cal., 121 and 10 Cal., 405). It seems to us unfair that a man should be liable to be convicted of giving false evidence on the strength or by the aid of a statement supposed to have been given to a police-officer, but which is not given on oath, which he has not signed, and which he has had no opportunity of verifying. Such statements may be hurriedly taken down as rough notes; the police-officer is not trained in taking evidence, and the notes are often faked out by another officer. They bear no resemblance to depositions, and ought to have no weight as such attached to them. We are aware that there are inconveniences in abolishing the direct liability for giving false evidence to the police, but the balance of expediency seems to us to be in favour of the old law. The provisions of sections 202 and 203 of the Indian Penal Code appear to us to afford a sufficient safeguard against false information.

34. *Clause 162.*—This clause, as drafted, proposed to affirm the decision of the Allahabad High Court, which was in conflict with the decision of the Calcutta High Court. The Governments of Bengal, the North-Western Provinces, Madras, Bombay and Burma and most of the authorities consulted approve the decision of the Allahabad High Court, but the question involved (namely, whether the accused is entitled to inspect statements taken down by the police under section 161) is full of difficulty. In the first place, it is essential in the interests of public justice that the sources of police information should be kept secret. If the names of informers or detectives and the nature of their information be disclosed, the detection of crime would be seriously crippled. In the second place, it is unfair to a witness that his evidence should be discredited on the strength of an alleged statement made to a policeman, which he may have had no opportunity of verifying or correcting. Such statements must necessarily be often taken down hurriedly and may be incorrectly copied out. They are not taken down as depositions, or with regard to the rules of evidence, but merely to aid the police in the course of their investigation. But, in the third place, it may be most important for the accused to show that a witness called for the prosecution is telling a story substantially different from that which he told when first questioned by the police. We have endeavoured to reconcile these conflicting interests by reverting to the language of the Codes of 1861 and 1872 and adding a proviso, compelling the Court, on the application of the accused, to refer to such statements and then empowering it in its discretion to allow him to have copies of them. We then provide for the mode in which these statements are to be used. It is clear that a witness ought not to have his credit impeached on the strength of a statement alleged to have been made to a policeman unless and until it is shown that he has made that statement.

35. *Clause 167.*—It has been held by the High Court of Madras that the clause does not contemplate remands for successive periods of fifteen days. We think this decision is right and have put in words to make the point clear. Any further proceedings should be taken under section 344.



36. *Clause 169.*—We have omitted the proposed sub-section (2), as we think that the point is sufficiently covered by clause 173 (3).

37. *Clause 174.*—On the suggestion of the Government of the North-Western Provinces, we have omitted the proposed new sub-section (6) as unnecessary.

38. *Clause 181.*—On the recommendation of the High Court, North-Western Provinces, we have made provision in this clause for the Court by which the offences of kidnapping and abduction may be inquired into or tried.

39. *Clause 191.*—We have recast this clause so as to make it clear, first, that the accused shall be informed of his right to be tried by another Court; and, secondly, that if he elects not to be tried by the Magistrate, he must signify his election as soon as possible.

40. *Clause 194 (2).*—The practice and procedure relating to criminal informations differs in many respects from the ordinary procedure laid down by this Code, as, for example, by dispensing with the preliminary inquiry before Magistrates. Now that the provisions of section 144 of Act X of 1875 are included in the Code instead of being contained in a separate Act, it is desirable to show that they are not subject to the general provisions of this Code. We have therefore prefixed the words "Notwithstanding anything in this Code contained" to this sub-section.

41. *Clause 195.*—We have, after consideration, restored this section to its original form, adding provisions to explain the ambiguous expression "the Court to which appeals ordinarily lie."

42. *Clause 196.*—We have added to the list of offences which can only be proceeded against under the order of the Government offences under sections 108A, 153A and 505. The two latter offences resemble in substance offences against the State, and offences under section 108A involve questions affecting foreign States.

43. *Clause 202.*—We have substituted the words "is not satisfied as to the truth of a complaint" for "sees reason to distrust the truth of a complaint" in this clause in order to give a little further latitude to the Magistrate's discretion.

44. *Clause 222.*—We have inserted the proposed sub-section (3) of clause 234 in this clause and have added a qualification to prevent the charge being framed in so vague a manner as to embarrass the accused.

45. *Clause 225.*—In accordance with the recommendation of the Calcutta High Court, we have omitted the proposed sub-section (2), as the point aimed at appears to be sufficiently covered by clause 537.

46. *Clause 250.*—We have inserted a heading to this clause to show that it applies to proceedings under the following Chapters as well as under Chapter XX.

47. *Clauses 256 and 257.*—After careful consideration we have adopted the redraft of these clauses suggested by the Judges of the Calcutta High Court. Even under these amended clauses, the right of cross-examination may be abused and witnesses unnecessarily harassed; but we think, on the whole, that the possible abuse of the system does not justify us in making any severer restriction on the existing right of the accused.

48. *Clause 260.*—We have included in sub-section (1) the offence of dishonest misappropriation of property under section 403 of the Penal Code.

49. *Clause 292.*—We have restored this clause substantially to the form which it had in the Code of 1872 and in the High Courts Criminal Procedure Act, 1875. We think that the right of reply should depend on the fact whether the accused does or does not produce evidence.

50. *Clause 310.*—We have omitted the proposed new clause (c) as unnecessary.

51. *Clause 320.*—The definition of "Judge" given by the Indian Penal Code is too wide, as it would include Honorary Magistrates and other persons not intended to be exempted from serving on juries. We have therefore limited the exemption to salaried Judges, whose public duties occupy their whole time. We have also made express provision for the exemption of legal practitioners in actual practice. They are exempt in England, and Local Governments have already exempted them in many parts of India. We think the exemption should be universal.

52. *Clause 322.*—On the recommendation of the North-Western Provinces High Court, we have provided for the local publication of extracts from the jury-list instead of the whole list.

53. *L—Special Provisions for High Court.*—A question was raised in connection with these clauses whether the provisions of clause 275 relating to juries in Sessions Courts should not be extended to the High Court. We consider, however, that any alteration in the existing jury laws raises far-reaching questions of great difficulty upon which it is beyond the province of this Committee to enter.

54. *Clause 345.*—We have omitted the proposed references to sections 428, 429 and 430 of the Indian Penal Code in sub-section (2), as many objections have been raised to making offences under these sections compoundable.

55. *Clause 376.*—We considered a suggestion of the Calcutta High Court that, where one accused is sentenced to death and the other accused is sentenced to transportation only, the Court should have power to inquire into the facts of the case so far as relates to the latter. We think that the law should be left as it stands, as the Court can always communicate with the Local Government if it thinks that the sentence on the accused not sentenced to death should be remitted or reduced.



56. *Clause 350.*—We have omitted this clause in the Bill as introduced, as for reasons already given under clause 31 we think that the appeal should lie at once without the intermediate formality of confirmation. We have substituted a clause providing the procedure to be followed when a Magistrate not empowered under clause 562 is of opinion that a first offender should be dealt with under that provision.

57. *Clause 358.*—We have recast the proposed new sub-section (2) so as to enable a Court at once to pass sentence of imprisonment where a person ordered to pay money fails to enter into a bond undertaking to appear if the money is not paid or recovered by distress.

58. *Clause 371.*—We have altered the proposed new sub-section (3) in accordance with the suggestion of the North-Western Provinces High Court.

59. *Clause 372.*—A question has been raised as to the meaning of the term "by way of school discipline" in this clause. We have omitted the term and empowered the Local Government to provide for the whipping of juveniles in such manner as they may think fit.

60. *Clause 399.*—We have amended the drafting of the proposed new sub-section (3) to make its meaning clearer.

61. *Clause 408.*—We have recast the first proviso [now proviso (b)] to this clause to bring it into accord with clauses 31 and 34 as proposed to be amended by us. We have also provided that, when any person is convicted by a District Magistrate for an offence under section 124A of the Indian Penal Code, the appeal shall lie direct to the High Court. In the case of a Chief Presidency Magistrate this is already provided for.

62. *Clause 411.*—Our attention has been called to this clause, which confers on all Presidency Magistrates, whether stipendiary or honorary, final powers six times as great as those of a Sessions Judge or District Magistrate. Outside of Calcutta, we believe that Presidency Magistrates are all stipendiary Magistrates, but we are informed that in Calcutta there are over 100 Honorary Presidency Magistrates, many of whom have no legal training. We do not think it right that these extensive powers should be exercisable by non-stipendiary Magistrates, but, as there appears to be difficulty about differentiating their powers from those of stipendiary Magistrates, we have substituted three months for six months as the amount of the maximum sentence which can be given by any Presidency Magistrate without appeal.

63. *Clause 431.*—We think that an appeal against a sentence of fine should not abate by reason of the death of the accused, because it is a matter which affects his estate. We have accordingly excepted this case.

64. *Clause 435.*—We have restored this clause to its original form except that we have included in sub-section (3) proceedings under Chapter XII.

65. *Clause 437.*—We have restored this clause to its original form, as the proposed addition might give rise to difficulties.

66. *Clause 438.*—We have added a sub-section to enable an Additional Sessions Judge to exercise the power of a Sessions Judge under this chapter in cases transferred to him by the Sessions Judge.

67. *Clause 439.*—In accordance with various suggestions made we have modified sub-section (5) of this clause by providing that a party who is entitled to appeal and does not choose to exercise his right shall not be entitled to apply for revision. This will not interfere with the right of a revisional Court to interfere of its own motion where it is of opinion that substantial justice has not been done. We have also, as noticed above under clause 108, added a saving [sub-section (6)] of the general right of revision.

68. *Clause 465.*—We have omitted the proposed new sub-section (3) to which objection has been taken.

69. *Clause 476.*—We have omitted the proposed new sub-section (3) as the matter can more conveniently be dealt with in clause 537.

70. *Clause 480.*—We have omitted the proposed reference to section 174 of the Penal Code as we think that the procedure of this clause should be confined to offences committed in the presence of the Court.

71. *Clause 487.*—We have omitted the reference to Presidency Magistrates in this clause as they are now sufficiently numerous to prevent any difficulty arising if the clause is made applicable to them.

72. *Clause 503.*—It may be inconvenient that a Resident in a Native State should himself be required to take evidence on commission. We have therefore provided by a new sub-section (4) for the delegation by him of his functions to an officer who has not less than first class magisterial powers.

73. *Clause 507.*—Various High Courts have held that the depositions taken under this chapter are only evidence in the Court from which the commission issued, and that if the evidence is required in another Court a fresh commission must issue. We have therefore provided that depositions may, subject to certain qualifications, be received at subsequent stages of the case.

74. *Clause 512.*—The Bombay High Court have suggested that the provisions of this clause should be extended to cases where the offender is unknown and should not be confined to cases where he has absconded. We think, however, that a distinction should be drawn between the two cases, and therefore in adopting the Bombay High Court's suggestion we have provided that this procedure shall only apply to cases of great gravity, that it should only be put in force under an order of the High Court, and that mere delay, expense or inconvenience in obtaining the presence of the deponent should not be sufficient ground for making the deposition evidence against the person subsequently accused.



75. *Clause 537.*—We have omitted the words “whether interlocutory or final” proposed to be inserted after the word “orders,” as we think they are unnecessary, having regard to the provisions of clause (a). We have added an *Explanation* which does not fetter the discretion of the Courts, but which directs their attention to the question whether objections for want of form have been taken at the earliest opportunity. This seems obviously right.

76. *Clause 544.*—The Bombay Government have suggested that restrictions should be imposed on the payment of the expenses of witnesses who are unnecessarily summoned. We think that, as the clause stands, the Local Government has full power to provide for such a matter by rule and therefore that further legislation is unnecessary.

77. *Clause 550.*—We have inserted a new clause after clause 549 giving police-officers express power to seize property which they suspect to have been stolen. This power is assumed in clause 523, which prescribes the procedure to be followed with respect to such property when seized, but, following the precedent of section 81 of the Calcutta Police Act, 1866, we think it is better to give the power expressly.

78. *Clause 556* (as re-numbered).—We have added words to the *Explanation* to this clause to affirm a decision of the Allahabad High Court that a Magistrate is not disqualified from trying a case merely because he has had a local view. Of course, there may be other reasons arising out of his previous connection with the case which might render him unfit to try it, but these are left untouched by the clause.

79. *Clause 557* (as re-numbered).—We have added a clause providing that pleaders should not sit as Honorary Magistrates in presidency-towns or districts in which they practise their profession. A pleader who has retired or is not engaged in practice in the district is often obviously the fittest person to be a Magistrate, but it is clearly wrong that a pleader should be alternating between practice and the Bench, acting one day as a Judge and another day as a pleader in the same Court. Of course, if he were appointed to act in a stipendiary post, he would necessarily give up his practice while so acting and no objection would arise. Having regard to the existing state of things, we have not gone so far as the English law relating to solicitors (Justices Qualification Act, 1871, 34 and 35 Vict., c. 18), which disqualifies them from being Justices in any county in which they act. We have merely provided that pleaders shall not sit while in actual practice.

80. *Clause 562* (as re-numbered). *First offenders.*—We have altered the drafting of this clause to provide for two points. *First*, we think that these powers may be exercised by all Magistrates of the first class and by specially empowered Magistrates of the second class. *Secondly*, we have indicated the procedure to be followed when a Second Class Magistrate or a Third Class Magistrate who is not empowered considers that an order should be passed under this section.

81. *Clause 563* (as re-numbered).—We have re-drafted this clause, as we propose to confine the exercise of the power of arrest to the Court having power to pass sentence, and not, as in England, to give power to any Magistrate to order the arrest of a first offender for breach of the conditions.

82. *Clause 565* (as re-numbered). *Habitual offenders.*—In view of the strong objections that have been made to police-supervision, we have recast these clauses. In place of an order for police-supervision we propose to substitute an order simply requiring an habitual offender on release to give notice of his intended residence to the police; and we have empowered Local Governments, with the sanction of the Governor General in Council, to make rules providing the manner in which notice of residence or change of residence is to be given.

83. *Schedule II.*—We have considered the proposal given notice of by the Government to make offences under section 124A of the Penal Code triable by Presidency Magistrates or Magistrates of the first class. We think it better to confine the jurisdiction in such cases to Chief Presidency and District Magistrates. We have, as already noticed, guarded this new jurisdiction by providing for an appeal to the High Court.

84. We have placed offences under section 153A of the Indian Penal Code on the same footing as offences under section 505 of that Code are at present, except that we have taken away the jurisdiction of Second Class Magistrates.

85. We have altered the Courts by which offences under section 211 of the Penal Code are triable, empowering Presidency Magistrates and Magistrates of the first class to try cases punishable with imprisonment for seven years or upwards.

86. On the recommendation of the Punjab Government, we have extended the power to try cases under sections 365, 369, 377, 382, 401, 435, 440, 465, 468 and 471 of the Penal Code to Presidency Magistrates and Magistrates of the first class.

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

Gazette.		In English.		Date.
Gazette of India	...	...	...	24th October 1897.
Fort Saint George Gazette	...	...	...	16th 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	...	...	...	28th October 1897.



<i>In English.</i>			
<i>Gazette.</i>			<i>Date.</i>
Burma Gazette	...	...	13th November 1897.
Central Provinces Gazette	...	...	30th October 1897.
Assam Gazette	...	...	13th November 1897.
Coorg District Gazette	...	...	1st December 1897.
Sind Official Gazette	...	...	2nd December 1897.

<i>In the Vernaculars.</i>			
<i>Province.</i>		<i>Language.</i>	<i>Date.</i>
Bombay	...	Marathi	...
	...	Gujarathi	...
	...	Kanarese	...
Bengal	...	Bengali	21st December 1897.
North-Western Provinces and Oudh	...	Urdu	...
	...	Hindi	...
Central Provinces	...	Bengali	1st January 1898.
Assam	...	Kanarese	8th January 1898.
Coorg	...	Marathi	...
	...	Sindhi	...

88. We do not think that the measure has been so altered as to require re-publication, and we recommend that it be passed as now amended.

(Signed) M. D. CHALMERS.  
 ( " ) C. M. RIVAZ.  
 ( " ) R. M. SAYANI\*.  
 ( " ) BISHAMBARNATH.†  
 ( " ) C. C. STEVENS.  
 ( " ) H. T. PRINSEP.\*  
 ( " ) J. D. LATOUCHE.

*The 16th February 1898.*

I sign the Report subject to the following observations :—

*Section 108.*—This is a most objectionable section. Simply on information, which may or may not be true, any person, alleged to be disseminating or attempting to disseminate, or *in anywise abetting* the dissemination of, seditious matter or any matter the publication of which is punishable under section 153A, may be required to give security for good behaviour, and on failing to give such security may be *rigorously* imprisoned. This section should, therefore, be omitted. If it is, however, retained, it should not be put into force without previous Government sanction; all orders made under it should be subject to appeal to, and revision by, the High Court; the period of security should be reduced to one month and sureties should not be required.

*Section 145, clause (4), proviso.*—On re-consideration I reserve my opinion until discussion in Council.

*Sections 163 and 172.*—I believe these sections, as now modified, will do. But I reserve my opinion regarding them.

*Section 275.*—In a trial by jury before the High Court, just as before the Court of Sessions, a majority of the jury should, at the option of the accused, consist of persons neither Europeans nor Americans. In all cases both before the High Court and the Court of Sessions the trial should be by jury.

*Section 432, clause (5).*—This section should be omitted as unnecessarily harsh.

*Section 526, clause (8).*—The trial should not proceed beyond the stage at which the accused is called on for his defence. The appeal, if final, should not be heard; the result of the application should be awaited.

*Schedule II, column 8, section 124A.*—The offence created by this section should be heard by the High Court and by the Court of Session, and not by any inferior Court. The trial should be by jury. The rest of the Bill seems to be reasonable. But I reserve my opinion until discussion in Council.

(Signed) R. M. SAYANI.

*The 16th February 1898.*

\* Minute of Dissent appended.

† I have signed subject to the remarks embodied in the Note of Dissent appended hereto.



I am glad to express my obligations to my Hon'ble Colleagues on the Select Committee for the courtesy and forbearance shown by them towards me, in the course of a protracted discussion that we had, from day to day, in connection with the several provisions and amendments in the draft Criminal Procedure Code. They have, however, not been able to agree with me as to some points; and it is only in respect of them that I feel bound to give expression to my dissentient views.

*Clause 108.*—The insertion as clause 108 of the clause of which notice was given by the Government on the 21st December last is, I submit, objectionable. Besides other exceptions to which it is open, the extension of the powers it confers is not safeguarded by a right of appeal to the High Court; while the scope of the clause is calculated to bring all Newspapers under a complete control of Magistrates, many of whom might not be indisposed to give effect to the provisions of the clause upon mere information. It is desirable also to subject the initiation of proceedings under this clause, if it is allowed to stand in its present form, to the sanction of the Local Government, which is already provided for prosecutions either under section 124A or the proposed new section 153A.

Orders under this clause have no doubt been made subject to Revision by High Court, but that procedure would place a person concerned rather under a considerable disadvantage, as, under sub-section (1) of section 439 of the Criminal Procedure Code, the High Court may, *in its discretion*, exercise any of the powers conferred on a Court of appeal by certain sections specified therein. Besides, as a matter of practice, the High Courts are generally not disposed in the exercise of their Revisional powers to go into questions of appreciation of the weight of evidence.

*Clause 162.*—This clause, as drafted, substantially affirms a recent ruling of a majority of the Full Bench of the Allahabad High Court, which I understand is in conflict with the decisions of the Calcutta High Court.

As the proviso attached to sub-section (1) of section 162 stands, it would, I think, be difficult, if not impracticable, for an accused person to prove a statement alleged to have been made to a Policeman, unless or until such person were to call the Policeman himself as his own witness.

Such a step would ordinarily prove dangerous to the defence of an accused person, as a policeman, being in the attitude of a *hostile* witness, might on cross-examination depose to matters tending to prejudice the defence seriously.

*Clause 172 (2).*—In this sub-section (2) the words "*but to aid it in such inquiry or trial*" should be eliminated. It is not just that a document, forming a part of the "Brief" for prosecution, should be permitted to be looked into by a Court conducting an enquiry or a trial, in absence, or without the knowledge, of an accused person, when he or his agent can have no access to such a document, it being a "sealed book" to him.

*Clause 439 (5).*—This sub-section (5) tends to deprive the accused of the benefit of double remedy, which has been allowed to him under the existing law. It is rather unreasonable that while the High Court is to exercise, on its own motion, the power of Revision, even in a case of this description, the party aggrieved is denied the right of moving it for the same purpose.

*Clause 526 (8).*—The proposal for conferring on the trying Magistrate the power of rejecting an application for leave to move the High Court for the transfer of a case is not a sound one. I may be allowed to invite the attention of the Council to the remarks of the Hon'ble Mr. Ilbert on the subject, in the Report of the proceedings of this Council dated the 25th January 1884. An Application of the kind referred to in this clause is ordinarily made by the accused, and very seldom, or I should say rarely, by the Public Prosecutor or the Complainant. The power conferred upon a trying Magistrate is, I apprehend, liable to be abused where his mind is prejudiced with local feelings or like causes.

*L Special Provision for High Court.*—I regret I am unable to appreciate the force of the observation made in the Report in connection with a question raised as to the composition of jury. I see no reason why the provisions of clause 275 of Criminal Procedure Code, relating to juries in Sessions Courts, should not be extended as well to Trials held before the High Court in the Presidency-towns. The existing distinction as to the exercise and application of powers under the jury system is, to say the least, most illogical, if not invidious.

*Schedule II, sections 124A and 153A of Column 8.*—The alteration proposed to be made here, for making offences under sections 124A and 153A triable by the Chief Presidency or District Magistrate, is open to a grave objection. There is no question of lending undue *eclat* or of giving notoriety to proceedings in cases of sedition. In absence of a specific provision in the Code, allowing such Trials to be held in the *mufassal* with the aid of jury, it is desirable, in the ends of justice, that persons accused of offences of sedition should be triable by independent Tribunals commanding the confidence of the people, so that no cause for any supposed distrust might arise.

A High Court or Sessions Court allowed to try cases with the aid of jury or assessors would generally be preferable to a District Magistrate, as in majority of instances such Prosecutions are likely to originate on his motion; and ordinarily he is the chief Executive authority also. If the law of sedition here is to be assimilated to the law of Great Britain, why should not the same safeguards be extended here which the Humanity of the law allows there?

The Code provides remedy in such cases for applying for leave to transfer to High Court, but the procedure is attended with difficulties against which an accused person would have to contend, presumably to his disadvantage.

I would reserve my opinion as to one or two points.

The 16th February 1898.

(Signed) BISHAMBAR NATH.



I sign this Report with the following reservations :—

I disapprove of section 115 (4), proviso. The object of this can in my opinion be abundantly attained under the present law. It is distinctly an alteration of that law in respect of the power that it proposes to confer on a Magistrate, while no opportunity has been given to Local Governments or High Courts to express their opinion on this amendment. And all these authorities except the Local Governments of Bengal and Assam, have approved of the present law as emphasized by the Bill. Lastly, it is a very dangerous innovation, and it is one that in my opinion is almost certain to lead to a practice which is altogether opposed to the principle of all trials, and thus will cause disastrous consequences to the party against whom such an order is passed. On the other hand, if a Magistrate gives such a party an opportunity of meeting the case which he may think is *prima facie* established, but which I may observe is not on the issue to which the proceedings have up to this time been directed, the proceedings will cease to have their summary character, and thus lose their principal recommendation. I shall take an opportunity, on an amendment to omit this proviso, to explain myself more fully. At present I merely state generally the grounds upon which I shall proceed.

In respect of the new section 108, as I understand that some of the members of this Committee will move an amendment disapproving of it, I reserve my opinion in regard to the manner in which this section is to operate as to the freedom of action by a Magistrate without sanction of Government and the finality of his order.

(Signed) H. T. PRINSEP.

#### LIST OF PAPERS.

##### *Papers relating to the Bill as introduced.*

- From Government, Madras, R. No. 1549, dated 14th October 1897, and enclosures [Papers No. 1].  
 From Mr. P. R. Desai, Pleader, District Court, Ratnágiri, dated 27th November 1897 [Paper No. 2].  
 From Government, Punjab, No. 1622, dated 9th December 1897, and enclosures [Papers No. 3].  
 Endorsement by Home Department, No. 1504, dated 24th November 1897, and accompaniments [Papers No. 4].  
 From Government, Burma, No. 110-L.—27, dated 4th December 1897, and enclosures [Papers No. 5].  
 From Government, Madras, No. 1744, dated 9th December 1897, and enclosures [Papers No. 6].  
 From Government, Bengal, No. 5646-J, dated, 20th December 1897, and enclosures [Papers No. 7].  
 From Government, Punjab, No. 1689, dated 16th December 1897, and enclosures [Papers No. 8].  
 From Chief Commissioner, Assam, No. 144-L. & L.—2403-J., dated 18th December 1897, and enclosures [Papers No. 9].  
 From Government, Punjab, No. 1742, dated 23rd December 1897, and enclosures [Papers No. 10].  
 From Chief Commissioner, Central Provinces, No. 10012, dated 30th December 1897, and enclosures [Papers No. 11].  
 Note by the Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E., dated 3rd January 1898 [Paper No. 12].  
 From Chief Commissioner, Coorg, No. 2070, dated 29th December 1897 [Paper No. 13].  
 Note by the Hon'ble Pandit Bishambar Nath, dated 5th January 1898 [Paper No. 14].  
 From Government, Bombay, No. 2, dated 3rd January 1898, and enclosures [Papers No. 15].  
 From Government, Bengal, No. 19-J., dated 6th January 1898, and enclosures [Papers No. 16].  
 From the Hon'ble R. F. Rampini, Judge, High Court, Calcutta, No. 37, dated 7th January 1898, and enclosure [Papers No. 17].  
 From Legal Practitioners Association, Ahmedabad, dated 5th January 1898 [Papers No. 18].  
 From Agent to Governor-General in Baluchistan, No. 34-C., dated 5th January 1898, and enclosures [Papers No. 19].  
 Telegram from Chief Commissioner, Ajmere-Merwara, No. 217-C., dated 11th January 1898 [Paper No. 20].  
 From Government, North-Western Provinces and Oudh, No. 64, dated 10th January 1898, and enclosures [Papers No. 21].  
 Office Memorandum from Home Department, No. 38, dated 12th January 1898 [Paper No. 22].  
 From Government, Bengal, No. 273-J., dated 13th January 1898, and enclosures [Papers No. 23].  
 From European and Anglo-Indian Defence Association, No. 761, dated 12th January 1898 [Paper No. 24].  
 From Government, Bombay, No. 269, dated 10th January 1898, and enclosures [Papers No. 25].  
 Office Memorandum from Finance Department, No. 222-Ex., dated 4th January 1898, and enclosures [Papers No. 26].  
 From Resident, Hyderabad, Camp, No. 13, dated 15th January 1898 [Paper No. 27].  
 From Government, Bengal, No. 452-J., dated 19th January 1898, and enclosures [Paper No. 28].  
 From High Court, Calcutta, No. 212, dated 21st January 1898 [Paper No. 29].  
 From Government, Madras, No. 85, dated 15th January 1898, and enclosure [Papers No. 30].  
 From Government, Bombay, No. 505, dated 19th January 1898, and enclosure [Papers No. 31].  
 From Government, Bengal, No. 513-J., dated 22nd January 1898, and enclosure [Papers No. 32].



- From Editor, Khichri Samachar, Mirzapur, dated 18th January 1898, and enclosure [Papers No. 33].
- From Babu Kanye Lall Mukerjee, Vakil, High Court, Calcutta, dated 23rd January 1898 [Paper No. 34].
- From High Court, Calcutta, No. 235, dated 24th January 1898, and enclosure [Papers No. 35].
- From Chief Commissioner, Ajmere-Merwara, No. 266-C., dated 21st January 1898, and enclosures [Papers No. 36].
- Memorandum by Pandit Radhakrishan, Pleader, Gonda District, dated 22nd January 1898 [Paper No. 37].
- From Chief Commissioner, Assam, No. 6-L. & L.—288-J., dated 21st January 1898, and enclosure [Papers No. 38].
- From President, Thirteenth Indian National Congress, and enclosure [Papers No. 39].
- From Furreedpore Peoples' Association, dated 31st January 1898 [Paper No. 40].
- From certain Mukhtars of Burdwan, dated 28th January 1898 [Paper No. 41].
- From Poona Sarvajanic Sabha, No. 8, dated 28th January 1898 [Paper No. 42].
- Indorsement from Home Department, No. 107, dated 31st January 1898, and enclosure [Papers No. 43].
- From Bar Library, Mozufferpore, dated 31st January 1898, and enclosure [Papers No. 44].
- Note by the Hon'ble C. C. Stevens, dated 3rd February 1898 [Paper No. 45].
- From Bar Library, Barisal, dated January 1898 [Paper No. 46].
- From Government, Bengal, No. 832-J., dated 7th February 1898, and enclosure [Papers No. 47].
- Note by W. A. Bonnaud, Esq., Officiating Chief Presidency Magistrate, Calcutta, dated 9th February 1898 [Paper No. 48].
- From European and Anglo-Indian Defence Association, No. 772, dated 8th February 1898 [Paper No. 49].
- From Government, Bengal, No. 1-J. T., dated 7th February 1898, and enclosure [Papers No. 50].
- From Gya Bar Association, No. 17, dated 10th February 1898, and enclosure [Papers No. 51].
- From European and Anglo-Indian Defence Association, No. 776, dated 10th February 1898 [Paper No. 52].

PAPERS RELATING TO THE FURTHER AMENDMENTS PROPOSED TO BE MADE IN THE CODE.

- From Chief Commissioner, Assam, No. 46-T., dated 31st December 1897 [Paper No. 1].
- From Chief Commissioner, Coorg, No. 3-Camp, dated 3rd January 1898 [Paper No. 2].
- From Agent to Governor-General in Baluchistan, No. 35-Camp, dated 5th January 1898, and enclosures [Papers No. 3].
- From Government, Burma, No. 148-L.—4, dated 6th January 1898 [Paper No. 4].
- From Chief Commissioner, Central Provinces, No. C.-4, dated 10th January 1898, and enclosures [Papers No. 5].
- From Government, North-Western Provinces and Oudh, No. 103, dated 12th January 1898, and enclosure [Papers No. 6].
- From Chief Commissioner, Ajmere-Merwara, No. 208-C., dated 9th January 1898 [Paper No. 7].
- From Government, Punjab, No. 80, dated 14th January 1898, and enclosures [Papers No. 8].
- From High Court, Calcutta, No. 208, dated 21st January 1898, and enclosure [Papers No. 9].
- From Government, Bengal, No. 542-J., dated 22nd January 1898, and enclosure [Papers No. 10].
- From Government, Bombay, No. 575, dated 21st January 1898, and enclosures [Papers No. 11].
- From Government, Madras, No. 117, dated 19th January 1898, and enclosures [Papers No. 12].
- From Inhabitants of Madras, dated 21st January 1898 [Paper No. 13].
- From Calcutta Bar, dated 28th January 1898, and enclosure [Papers No. 14].
- From President, Public Meeting of Inhabitants of Baranagore, &c., dated 24th January 1898, and enclosure [Papers No. 15].
- From Legal Practitioners' Association, Ahmedabad, dated 29th January 1898, and enclosure [Papers No. 16].
- From Vakils' Association, Madras, dated 6th February 1898 [Paper No. 17].
- From Chief Commissioner, Assam, No. 6-L. & L.—420-J., dated 7th February 1898, and enclosures [Papers No. 18].

J. M. MACPHERSON,  
Secretary to the Government of India.