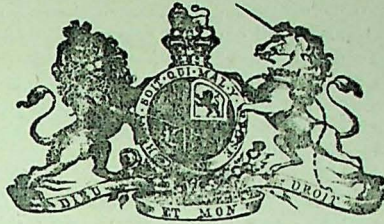


THE



Bombay Government Gazette.

Published by Authority.

THURSDAY, 30TH JULY 1885.

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

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced into the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 22nd July 1885, and was referred to a Select Committee :—

Bill No. 13 of 1885.

A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows :—

Code of Criminal Procedure, 1882.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

2. For section 34 of the same Code the following shall be substituted, namely :—

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding

seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely :—

"Where a superior officer of Police has been appointed under section 153, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

7. (1) For the third paragraph of section 401 of the same Code the following shall be substituted, namely :—

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely:—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

8. After section 475 of the same Code the following shall be inserted, namely:—

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

10. After section 541 of the same Code the following shall be inserted, namely:—

"541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal to the person be removed to a criminal jail.

(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

(b) the court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

11. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code the following shall be inserted, namely:—

Correction of omission in Schedule II.

Column 2.	Column 3.	Column 4.	Column 5.	Column 6.	Column 7.	Column 8.
"If offence charged be punishable with imprisonment for seven years."	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class."

12. In the part of Schedule III of the same Code entitled "IV, Ordinal Powers of a Sub-divisional Magistrate," the following shall be inserted after the second article, namely:—

"(2A) Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

13. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed. Bom. VII of 1867.

Indian Penal Code.

14. (1) For section 225A of the Indian Penal Code, the following shall be substituted, namely:—

"225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

(2). Section 651 of the Code of Civil Procedure is hereby repealed. XIV of 1882.

Prisoners' Act, 1871.

15. For section 30 of the Prisoners' Act, 1871, v of 1871. the following shall be substituted, namely:—

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government."

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

Addition to section 31.

XIV of 1882.

XIV of 1882.

XLV of 1860.

"In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council."

17. For section 32 of the same Act the following shall be substituted, namely:—

Substitution of new section for section 32.

"32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, X of 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India."

Removal of prisoners from territories under one Local Government to territories under another.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (9 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency-town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

Section 6.—This section will remove a doubt which has been expressed as to whether High Courts other than those referred to in section 266 can make rules under the Code regarding the manner in which jurors shall be chosen by lot.

Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined,

they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

Section 9.—This section is suggested by I. L. R. 10 Cal. 1026. The effect of it will be that a Local Government may appoint as many Chemical Examiners as it thinks fit. All must be gazetted as "Chemical Examiners" and must sign as such, but they can, for departmental purposes, be graded or distinguished from one another in such manner as the Local Government desires.

Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second-column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

Section 13.—The last nine words of section 24, Act V of 1861, were repealed by Schedule I of the Code of 1882. Through an oversight the same words in section 23, Bombay Act VII of 1867, remained unrepealed and are still in force (I. L. R. 8 Bombay 534). It is now proposed to repeal them.

Section 14.—It is proposed by this section to substitute for section 225A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

Section 16.—The object of this section, as of section 8, is to empower the Governor-General in Council to send prisoners of unsound mind to the part of India where persons in their condition are likely to be best cared for.

Section 17.—It occasionally happens that members of criminal tribes, while on marauding expeditions in other provinces than that in which they have their homes, are arrested, ordered to give security for good behaviour, and imprisoned in default of giving it. In such cases it seems proper that the prisoners should ordinarily be sent back to the district from which they came, instead of being released in a district which may be hundreds of miles distant from their homes and where dishonesty might be their only possible means of subsistence.

The 13th July 1885.

(Signed) C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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Bill No. 13 of 1885.

A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

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1867.
NLV of 1860.
V of 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows:—

Code of Criminal Procedure, 1882.

X of 1882.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

2. For section 34 of the same Code the following shall be substituted, namely:—

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely:—

"Where a superior officer of Police has been appointed under section 158, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

7. (1) For the third paragraph of section 401 of the same Code the following shall be substituted, namely:—

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely:—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

8. After section 475 of the same Code the following shall be inserted, namely:—

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

New section to follow section 541.

10. After section 541 of the same Code the following shall be inserted, namely:—

"541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

"(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

"(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

"(b) the court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure."

XIV of 1882.

XIV of 1882.

11. In Schedule II of the same Code, between the two lines of entries against section 211 of the Indian Penal Code the following shall be inserted, namely:—

Correction of omission in Schedule II.

XLV of 1860.

the following shall be inserted, namely:—

Column 2.	Column 3.	Column 4.	Column 5.	Column 6.	Column 7.	Column 8.
"If offence charged be punishable with imprisonment for seven years.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class."

12. In the part of Schedule III of the same Code entitled "IV, Ordinary Powers of a Sub-divisional Magistrate,"

Correction of omission in Schedule III.

the following shall be inserted after the second article, namely:—

"(2A) Power to require security for good behaviour, section 110."

Bombay District Police Act, 1867.

Ben. VII of 1867.

13. The last nine words of section 23 of the Bombay District Police Act, 1867, are hereby repealed.

Amendment of Bombay District Police Act.

Indian Penal Code.

Substitution of new section for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

14. (1) For section 225A of the Indian Penal Code, the following shall be substituted, namely:—

"225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful

XLV of 1860.

Resistance or obstruction to lawful apprehension in cases not otherwise provided for.

apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

(2). Section 651 of the Code of Civil Procedure is hereby repealed.

Prisoners' Act, 1871.

15. For section 30 of the Prisoners' Act, 1871, the following shall be substituted, namely:—

Substitution of new section for section 30 of the Prisoners' Act.

of 1871. the following shall be substituted, namely:—

"30. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government."

X of 1882.

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

Addition to section 31.

"In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council."

17. For section 32 of the same Act the following shall be substituted, namely:—

Substitution of new section for section 32.

"32. When any person is, or has been, sentenced to imprisonment by any Court, or, in default of giving security for maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India."

Removal of prisoners from territories under one Local Government to territories under another.

X of 1882.

STATEMENT OF OBJECTS AND REASONS.

The object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (9 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency-town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

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Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined, they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

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Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

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Section 14.—It is proposed by this section to substitute for section 225A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

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A Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

WHEREAS it is expedient to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871; It is hereby enacted as follows :—

Code of Criminal Procedure, 1882.

1. In the last paragraph of section 31 of the Code of Criminal Procedure, 1882, for the words "any sentence of imprisonment for a term exceeding three years" the words "any sentence of transportation or imprisonment for a term exceeding four years" shall be substituted.

2. For section 34 of the same Code the following shall be substituted, namely :—

"34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of transportation or imprisonment for a term exceeding four years shall be subject to confirmation by the Sessions Judge."

3. In section 88 of the same Code, after the words "District Magistrate" the words "or Chief Presidency Magistrate" shall be inserted.

4. In section 110 of the same Code, for the words "Sub-divisional Magistrate or Magistrate of the first class" the words "or Sub-divisional Magistrate or a Magistrate of the first class" shall be substituted.

5. In section 173 of the same Code, the following shall be substituted for the second paragraph, namely :—

"Where a superior officer of Police has been appointed under section 153, the report shall, if the accused has been released on his bond under section 169, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

6. In section 266 of the same Code, for the word and figures "section 307" the words and figures "sections 276 and 307" shall be substituted.

7. (1) For the third paragraph of section 401 of the same Code the following shall be substituted, namely :—

"If any condition on which a sentence has been suspended or remitted by the Governor-General in Council or the Local Government is not fulfilled, the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence."

(2) After the third paragraph of the same section the following shall be inserted, namely :—

"The condition on which a sentence is suspended or remitted under this section may be one to be performed by the person in whose favour the sentence is suspended or remitted, or one independent of his will."

8. After section 475 of the same Code the following shall be inserted, namely :—

"475A. The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India."

9. In section 510 of the same Code, for the words "the Chemical Examiner or Assistant Chemical Examiner to Government" the words "a Chemical Examiner to Government" shall be substituted.

New section to follow section 541.

10. After section 541 of the same Code the following shall be inserted, namely:—

“541A. (1) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

“(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

“(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

“(b) the court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.”

XIV of 1882.

XIV of 1882.

11. In Schedule II of the same Code, between the two lines of entries

Correction of omission in Schedule II.

against section 211 of the Indian Penal Code the following shall be inserted, namely:—

XLV of 1860.

Column 2.	Column 3.	Column 4.	Column 5.	Column 6.	Column 7.	Column 8.
“If offence charged be punishable with imprisonment for seven years.”	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.”

12. In the part of Schedule III of the same Code entitled “IV, Ordinary Powers of a Sub-divisional Magistrate,”

Correction of omission in Schedule III.

the following shall be inserted after the second article, namely:—

“(2A) Power to require security for good behaviour, section 110.”

Bombay District Police Act, 1867.

13. The last nine words of section 23 of the

Bom. VII of 1867.

Amendment of Bombay District Police Act.

Bombay District Police Act, 1867, are hereby repealed.

Indian Penal Code.

Substitution of new section for section 225A of the Indian Penal Code, and repeal of section 651 of the Code of Civil Procedure.

14. (1) For section 225A of the Indian Penal Code, the following shall be substituted, namely:—

“225A. Whoever, in any case not provided for in section 224 or section 225 or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful

XLV of 1860.

apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

(2). Section 651 of the Code of Civil Procedure is hereby repealed.

Prisoners' Act, 1871.

15. For section 30 of the Prisoners' Act, 1871, v of 1871.

Substitution of new section for section 30 of the Prisoners' Act. the following shall be substituted, namely:—

“30. When any person is, or has been, sentenced to imprisonment

Removal from one jail to another in territories under Local Government.

by any Court, or, in default of giving security

for keeping the peace or maintaining good behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.”

X of 1882.

16. After the second paragraph of section 31 of the same Act the following shall be inserted, namely:—

“In any case in which the Local Government is competent under this section to order the removal of a prisoner to a lunatic asylum or other fit place of safe custody within the territories subject to its administration, the Governor General in Council may order his removal to any lunatic asylum or other fit place of safe custody in any part of British India, and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of the Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor-General in Council.”

17. For section 32 of the same Act the following shall be substituted, namely:—

“32. When any person is, or has been, sentenced to imprisonment

Removal of prisoners from territories under one Local Government to territories under another.

by any Court, or, in default of giving security for maintaining good

behaviour, has been committed to, or is detained in, prison under section 123 of the Code of Criminal Procedure, 1882, the Governor-General in Council may order his removal during the period for which he has been sentenced to imprisonment or the security has been ordered to be given, as the case may be, from the jail or place in which he is confined to any other jail or place of imprisonment in British India.”

X of 1882.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to correct certain minor defects in the criminal law which have been brought to the notice of the Government of India during the three years which have elapsed since the Code of Criminal Procedure, 1882, was passed.

The following are the reasons for each of the proposed amendments.

Section 1.—An Assistant Sessions Judge may pass a substantive sentence of transportation for any term not exceeding seven years under section 121A or section 124A of the Indian Penal Code, or a substituted sentence of transportation for a term not less than seven years under section 59 of that Code. But only sentences of imprisonment for a term exceeding three years are declared subject to confirmation by the Sessions Judge. The omission to require that certain sentences of transportation as well as of imprisonment should be subject to confirmation was clearly an oversight. It is now proposed to correct the omission, and, in accordance with the opinion of the Hon'ble the Chief Justice and Judges of the Bombay High Court, to extend to four years the term of transportation or imprisonment which an Assistant Sessions Judge may award without the sentence being subject to confirmation. Under section 35 of the Code a first class Magistrate can pass an aggregate sentence of imprisonment for four years which is subject only to appeal.

Section 2.—A District Magistrate specially empowered under section 30 may, under the provisions of section 59 of the Indian Penal Code, pass a sentence of transportation for seven years, instead of awarding sentence of imprisonment (9 Sutherland's Weekly Reporter, Criminal Rulings, 6). Such a substituted sentence of transportation should be subject to confirmation by the Sessions Judge.

As section 34 now stands, an aggregate sentence of imprisonment for four years passed by a District Magistrate specially empowered under section 30 is subject to the confirmation of the Sessions Judge, while such a sentence passed by one of his subordinates exercising the powers of a first class Magistrate is subject only to appeal. It seems desirable, therefore, as recommended by the Bombay High Court in the case of Assistant Sessions Judges, to extend to four years the term of imprisonment which a District Magistrate may award under section 34 without the sentence being subject to confirmation.

The difference between the powers of the Assistant Sessions Judge and those of a Magistrate specially empowered under section 30 being thus very trifling, it has been thought best to put the latter on precisely the same footing as the former, and section 34 has accordingly been re-cast.

Section 3.—This section is intended to correct an oversight in the drafting of section 88. Section 10 of the Code confines the term "District Magistrate" to the Magistrate of a district outside a Presidency-town.

Sections 4 and 12.—The object of these sections is to make it clearer than section 110 and Schedule III now do that Sub-divisional Magistrates have power, without being specially empowered by the Local Government in that behalf, to require security for good behaviour from habitual offenders.

Section 5.—This section will restore the practice that obtained while the Code of 1872 was in force. Under that Code police-reports under section 125 were submitted through the superior officer of police appointed under section 117, but those under section 127 were submitted direct to the Magistrate.

Section 6.—This section will remove a doubt which has been expressed as to whether High Courts other than those referred to in section 266 can make rules under the Code regarding the manner in which jurors shall be chosen by lot.

Section 7.—It would seem that the only sort of condition on which suspension or remission of sentence may now be granted under section 401 is a potestative condition, that is to say, a condition to be performed by the convict and dependent on his will. This limitation may prove inconvenient, and sometimes prevent the release of convicts who might otherwise be set at large.

Section 8.—The object of this section is to give the Governor-General in Council the same powers in regard to the removal of persons confined under Chapter XXXIV of the Code as he possesses under section 32 of the Prisoners' Act, 1871, in the case of persons under sentence of imprisonment. It is desirable that, by whatever Local Government criminal lunatics may have been ordered to be confined, they should be confined wherever the most suitable accommodation has been provided for the custody of such persons.

Section 9.—This section is suggested by I. L. R. 10 Cal. 1026. The effect of it will be that a Local Government may appoint as many Chemical Examiners as it thinks fit. All must be gazetted as "Chemical Examiners" and must sign as such, but they can, for departmental purposes, be graded or distinguished from one another in such manner as the Local Government desires.

Section 10.—The power of a Criminal Court to order the transfer from the civil jail to the criminal jail of a civil prisoner against whom a criminal charge is made having been questioned in the Bombay Presidency, the Local Government asked the High Court whether that Court could make a rule conferring the power. In reply the Hon'ble the Chief Justice and Judges stated that they were very doubtful whether they had authority to make any valid rule on the subject, and advised that, if the conferment of the power was deemed necessary, recourse should be had to legislation.

It appears to the Government of Bombay and to the Government of India that the power should be conferred, and the object of this section is to confer it.

At the same time, in order that the rights given to decree-holders by the existing law may not be interfered with, it has been provided that the prisoner shall ordinarily be sent back to the civil jail when his detention under the orders of the Criminal Court has ceased.

Section 11.—Under the Code of 1872 the offence, under section 211 of the Indian Penal Code, of making a false charge of an offence with intent to injure, was triable by the Court of Session exclusively when the offence charged was punishable with imprisonment for seven years or upwards. While the Bill which became the Code of 1882 was under consideration, the Select Committee determined, on the suggestion of a Sessions Judge, that Magistrates of the first class should be empowered to deal with cases under section 211 when the offence charged was punishable with imprisonment for seven years, cases where the offence charged was punishable with imprisonment for a term exceeding seven years continuing to be exclusively triable by the Court of Session. The entry in the second column of Schedule II, in the second line of entries against section 211, was altered accordingly; but the additional entries which it is proposed by section 11 of this Bill to insert in Schedule II will make still clearer the alteration which the Select Committee intended to effect.

Section 13.—The last nine words of section 24, Act V of 1861, were repealed by Schedule I of the Code of 1882. Through an oversight the same words in section 23, Bombay Act VII of 1867, remained unrepealed and are still in force (I. L. R. 8 Bombay 534). It is now proposed to repeal them.

Section 14.—It is proposed by this section to substitute for section 225A of the Indian Penal Code a section that will cover not only the case there provided for, but the cases which section 651 of the Code of Civil Procedure was intended to meet, and others, such as those referred to in I. L. R. 8 Cal. 331 and 7 All. 67, for which no provision has hitherto been made.

Section 15.—The exigencies of prison administration occasionally necessitate the transfer from one jail to another within the same province of persons who have been imprisoned in default of giving security for keeping the peace or maintaining good behaviour.

Section 30 of the Prisoners' Act only provides for the transfer of persons *sentenced* to imprisonment. "Sentence" seems to imply an antecedent conviction for an offence, and persons who are imprisoned for default in furnishing security are not persons who have been so convicted.

Section 16.—The object of this section, as of section 8, is to empower the Governor-General in Council to send prisoners of unsound mind to the part of India where persons in their condition are likely to be best cared for.

Section 17.—It occasionally happens that members of criminal tribes, while on marauding expeditions in other provinces than that in which they have their homes, are arrested, ordered to give security for good behaviour, and imprisoned in default of giving it. In such cases it seems proper that the prisoners should ordinarily be sent back to the district from which they came, instead of being released in a district which may be hundreds of miles distant from their homes and where dishonesty might be their only possible means of subsistence.

The 13th July 1885.

(Signed) C. P. ILBERT.

D. FITZPATRICK,
Secretary to the Government of India.