

*Thursday,  
23rd February, 1893*

ABSTRACT OF THE PROCEEDINGS  
OF THE  
Council of the Governor General of India,  
  
**LAWS AND REGULATIONS**

**Vol. XXXII**

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ABSTRACT OF THE PROCEEDINGS  
OF  
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,  
ASSEMBLED FOR THE PURPOSE OF MAKING  
LAWS AND REGULATIONS,

1893

VOLUME XXXII



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1893

*Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Acts of Parliament 24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14.*

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The Council met at Government House on Thursday, the 23rd February, 1893.

PRESENT :

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, V.C., G.C.B., G.C.I.E., R.A.

The Hon'ble Sir P. P. Hutchins, K.C.S.I.

The Hon'ble Sir D. M. Barbour, K.C.S.I.

The Hon'ble Sir A. E. Miller, Kt. Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Woodburn, C.S.I.

The Hon'ble J. L. Mackay, C.I.E.

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble Palli Chentsal Rao Pantulu, C.I.E.

The Hon'ble Sir G. H. Evans, K.C.I.E.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

The Hon'ble J. Buckingham, C.I.E.

NEW MEMBER.

The Hon'ble MR. BUCKINGHAM took his seat as an Additional Member of Council.

**BILL TO LEGALIZE EXECUTION IN BRITISH INDIA OF CAPITAL SENTENCES PASSED BY BRITISH COURTS IN FOREIGN TERRITORY.**

The Hon'ble SIR ALEXANDER MILLER presented the Report of the Select Committee on the Bill to legalize in certain cases the execution within British India of capital sentences which have been passed by British Courts exercising in or with respect to foreign territory jurisdiction which the Governor General in Council has in such territory.

62 *BILL TO LEGALIZE EXECUTION IN BRITISH INDIA OF  
CAPITAL SENTENCES PASSED BY BRITISH COURTS IN  
FOREIGN TERRITORY ; HABITUAL OFFENDERS.*

*(Sir Alexander Miller ; Sir Philip Hutchins.)* [23RD FEB., 1893.]

He said that the changes made by the Select Committee were purely verbal and he did not think it necessary to take up the time of the Council on this occasion by going into them. He had to apologise sincerely to Members of Council for bringing them down to a very meagre bill of fare, but at the time when to-day's sitting of the Council was arranged he was under the impression that Dr. Rash-Behary Ghose would be ready with the Partition Bill and that the Council would really have had some business to transact.

HABITUAL OFFENDERS BILL.

The Hon'ble SIR PHILIP HUTCHINS said :—

“ There is a Bill which I introduced last month, the Habitual Offenders Bill, about which I should like to say a few words before the Council is adjourned. It is not down in the agenda paper, but it has occurred to me that Hon'ble Members may like to have the earliest possible intimation of our intentions with regard to it, especially as it has not met with universal approval. If Your Excellency sees no objection, perhaps I may be allowed to say that it will not be proceeded with this session and to explain why we have come to this resolution.

“ Hon'ble Members have doubtless noticed that exception has been taken to some provisions of the Bill in several quarters. It is undoubtedly, a new departure, and there is no part of it which can be considered urgent or which the Council ought to be asked to pass into law without the fullest discussion and deliberation. I have ascertained that some of the material opinions for which we have called cannot well be furnished by a date which would permit of the measure receiving adequate consideration before the end of next month. It seems better, therefore, that I should not ask for a Select Committee at all during this session, but that the whole Bill should stand over till next cold weather. This will give abundant time for Local Governments and the public generally to consider each portion of the Bill in all its bearings and to arrive at mature conclusions. Meanwhile the opinions which led to the introduction of the measure will be published for general information.

“ At the same time I am glad to have this opportunity of giving some further explanations with regard to the Bill, and especially that part of it which relates to surveillance as an alternative to security for good behaviour, as it appears to have been misapprehended in certain quarters.

23RD FEB., 1893.]

[Sir Philip Hutchins.]

“The effect of section 4 is merely to enable the Magistrate to make an order for surveillance instead of sending a man to gaol. I cannot suppose any one would object to that. Surveillance is obviously something milder than incarceration.

“But section 3 gives to a Magistrate having jurisdiction discretion to determine whether in the particular case security can be accepted as an adequate protection for the public, or whether the habits of the person informed against are such that he ought rather to be placed under surveillance. This provision has been denounced as savouring of oppression. I am entirely of the opinion that even the habitual should be fairly treated, but, on the other hand, I must assume that the Legislature holds the executive authorities responsible for the prevention of crime, as far as this is possible, and is prepared to give them all reasonable powers needful to that end. I expect that we shall find a general consensus among persons who have any knowledge of the habits of the criminal classes that this provision is not only reasonable but even necessary. I will give a concrete instance by way of elucidating its intention. The most dangerous of the habitual offenders against property—the professional burglar or robber—finds little difficulty in furnishing security. Even if he has no money of his own, it is a good investment for the particular habitual receiver whom he patronizes to find the required sureties, or if need be, to deposit the necessary sum in cash. The robber is then free to carry on his depredations wherever he thinks he can do so with impunity, and the surety incurs no risk at all so long as the robber escapes detection. For such a case, I venture to submit, surveillance would operate far more effectually as a safeguard to the public. Indeed, it seems to be the only effectual safeguard.

“Setting aside for the moment the new clause (f) of section 2, no one can be made the subject of an order either for security or surveillance who has not been judicially proved to be an habitual offender against property. In fact, section 2, omitting clause (f), does little more than express the present law in clear language. It has been said that the police will have no difficulty in finding any number of witnesses to make out an obnoxious person to be an habitual; but as a matter of fact, so far as my experience goes, this is a case in which witnesses are especially averse to come forward. A man's neighbours often know him to be a dangerous criminal, and will tell you so out of Court and pray earnestly for protection against him; but they are afraid to come forward as witnesses, knowing that at the worst he will give security, while the more dangerous his character the more certain he is to wreak vengeance on those who depose against him.

[*Sir Philip Hutchins.*]

[23RD FEB., 1893.]

depose against him. Moreover, it should be remembered that, even when witnesses are forthcoming, they will be subject to cross-examination, contradiction and all the other ordinary tests of honesty and credibility.

“ As to the new clause (f) I do not wish at present to add anything to what I said when I introduced the Bill. It was inserted in a tentative way to meet wishes of some of the Local Governments, and personally I can only say that I am inclined to think something of the kind desirable. When it comes before a Select Committee they will of course consider carefully what other authorities have to say about it and report for the consideration of the full Council the conclusion at which they may arrive.

“ I am sorry to see that section 5 has also been misunderstood : a careful perusal of the section would, I think, have removed the misapprehension. It requires not only two convictions, but also that the Court shall be fully satisfied that the convict habitually commits crime or depends on crime as a means of livelihood, before he can be declared an habitual offender. The declaration is further subject to appeal. I cannot at present see what other safeguards are required or even possible.

“ As to the last section the only question of principle appears to be whether it should be retained in this general enactment or relegated to a separate Bill which will apply only to the Punjab, where it is known to be required. As it is certain to be a mere dead-letter where it is not required, it seems of little practical importance how this question may be decided : when a Select Committee comes to be appointed they will see what is recommended by the various local authorities, and report their opinion. The justification of the provision is very simple. It can only be put in force where there is a widespread conspiracy to commit offences, such, *e.g.*, as arisen, and to screen the offenders. In such a locality it cannot be unjust to levy contribution from those classes which connive at and facilitate such offences, while the classes who suffer from them will simply help to indemnify one another against the losses to which every one of them is exposed.”

The Council adjourned to Thursday, the 9th March, 1893.

CALCUTTA ;  The 24th February, 1893.	} J. M. MACPHERSON, <i>Offg. Secretary to the Government of India,</i> <i>Legislative Department.</i>
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