

*Thursday,
17th August, 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.

The Council met at Viceregal Lodge, Simla, on Thursday, the 17th August, 1893.

PRESENT :

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

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

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. L. Mackay, C.I.E.

EXCISE ACT, 1881, AMENDMENT BILL.

The Hon'ble SIR DAVID BARBOUR moved that the consideration of the Bill to amend the Excise Act, 1881, be postponed to the next meeting of the Council. He explained that certain difficulties had arisen in connection with the Bill which would require further consideration, and that it was desirable to postpone it.

The Motion was put and agreed to.

TRIBUTARY MAHALS OF CUTTACK BILL.

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to make provision for certain matters connected with the Tributary Mahals of Cuttack. He said :—

“Up to about the year 1888 it had never been declared whether the Tributary Mahals of Cuttack were, or were not, British territory ; but, apparently ever since cession of Orissa to the Company, they have been administered

[*Sir Alexander Miller.*]

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by the Government of Bengal under certain Regulations, and under an Act of the Governor General in Council—Act XX of 1850—especially applying to them. However, in 1887, the Government of India came to the conclusion that they ought to be considered as in British India, and on the 12th April, 1888, their view was confirmed by a Despatch from the Secretary of State; and then it became necessary to make some arrangements for their future administration. This has been hanging, I may say, ever since the 16th July, 1888, when Sir Andrew Scoble wrote an opinion in which he said that by legislation we ought to provide for the validation of past acts of administration, for the repeal of the enactments I have mentioned, and for any subsidiary measures that might be necessary. The matter has, practically been settled lately in great part by the issue of sanads to the Chiefs of these Mahals; but, in order to put things perfectly right, it is thought desirable to repeal the Act of the Governor General in Council which I have mentioned, and the enactments under which the Mahals have been administered, and to validate expressly all the acts of administration which have been done for the last fifty years, or more, under these enactments.

“We have taken advantage of the opportunity to introduce a provision, proposed by the Government of Bengal, and which, under the peculiar circumstances of this case, we thought might be accepted, although I confess it goes further than I should like to admit as a general rule, that all sentences of British Courts, and certain specified sentences by Native Courts, in the Mahals, may be carried into effect in British India.

“The Bill which I propose to introduce is not exactly in the words in which Members who have copies in print will find it; but the variations are not very material, and will probably be considered best after the bill has been circulated.”

The Motion was put and agreed to.

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and the Calcutta Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

*AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 301
1882, AND INDIAN PENAL CODE.*

1893.]

[*Sir Philip Hutchins.*]

**CODE OF CRIMINAL PROCEDURE, 1882, AND INDIAN PENAL
CODE AMENDMENT BILL.**

The Hon'ble **SIR PHILIP HUTCHINS** moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882, and the Indian Penal Code. He said :—

"I make this Motion at the request of the Hon'ble Dr. Lethbridge. Before he went on leave he handed me a draft, the lines of which have been generally adhered to in the Bill which I now ask leave to introduce. I propose to make it applicable to the crime of murder as well as to that of dacoity; but beyond this there is only one alteration of any importance which I have ventured to make in the draft which my hon'ble friend had prepared, and to that I will draw attention later on.

"Hon'ble Members are probably aware that it has recently been found necessary to take energetic measures for the suppression of dacoities and other organized offences on or near the boundaries between our North-West and Central Provinces and the States of Central India and Rajputana. In the course of these operations a serious obstacle has been encountered. It has been ascertained to be a common practice for gangs of dacoits or individual malefactors, after committing crime within the States, to come across the border for shelter and remain concealed in British territory with the connivance of British subjects. Under our Penal Code, as it now stands, a person who harbours and protects these brigands cannot be touched, however notorious they may be, and however atrocious the crimes which they have committed or of which they stand accused. Thus the officers of justice are powerless unless they can succeed in laying hands on the criminal himself, and there are many, bound to him by ties of friendship or self-interest, who are leagued together to prevent his apprehension.

"Harbouring or concealing an offender is indeed punishable under Sections 212 and 216 of the Code; but an offender can only mean a person who has committed an offence, and the word 'offence' is defined in the Code in so technical a manner that it does not cover any kind of crime committed in a Native State. The crime may be one which, if it had occurred in British India, would have rendered the perpetrator liable to a long term of imprisonment, or even to transportation for life or the gallows; but, as it has been committed outside British India, it is not an offence, and consequently the man who committed it is not an offender, and other people may shelter or conceal him with impunity.

"It does not seem necessary to enlarge on the danger or inconsistency of this state of things. Murders and organized dacoities are equally dangerous to

302 AMENDMENT OF CODE OF CRIMINAL PROCEDURE,
1882, AND INDIAN PENAL CODE.

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society and deserving of punishment, wherever committed; and it is equally necessary that others should be deterred from holding out to the murderer or the dacoit such comfort or assistance as would in England constitute them accessories after the fact.

"The main object of this Bill then is to extend the meaning of the word 'offence' in certain sections of the Penal and Procedure Code so as to include acts committed outside British India which amount to murder or dacoity—I include in the latter such acts as making preparation or attempting to commit dacoity. I do not, however, propose to make these acts *substantive* offences, punishable under the Penal Code; but merely to declare that they shall be *deemed* to be offences, equally with similar acts committed in British India, for the purpose of bringing to justice persons who in British India are guilty of criminal acts or omissions in relations to them.

"The sections of the Code of Criminal Procedure affected by the Bill are 44 and 45, which impose a legal obligation to report the commission of certain specified offences, of which murder and dacoity are two. Correlative to these sections of the Procedure Code are sections 176, 177, 201, 202 and 203 of the Penal Code, which provide for the punishment of persons who, in breach of this obligation, either omit to give information at all, or substitute information which is false or misleading; Section 201 also deals with the offence of causing a disappearance of evidence in order to screen the offender. Lastly, there are the two sections already mentioned 212 and 216, which are aimed, at harbourers. In Section 216, which relates to the harbouring of escaped prisoners or offenders specifically ordered to be arrested, the need for including offences in Foreign States has already been recognized by the Legislature. By Act X of 1886 a clause was added to this section, the effect of which is to give the word 'offence' even a wider signification than that which is now desired. According to that clause the word includes not merely murders and dacoities committed out of British India, but every sort of crime so committed for which extradition could be obtained. Subject, however, to anything which may be advanced to the contrary by Local Governments or others, it seems expedient that the law should be uniform in this respect; and accordingly, in Section 5 of the Bill, I have cut down the clause framed in 1886 so as to include only murders and dacoities. Should the Select Committee eventually decide that the clause of 1886 should be retained, then I think it will have to be considered whether the other amendments made by this Bill should not be assimilated thereto, and extended so as to cover all crimes mentioned in the Extradition and Fugitive Offenders Acts. Possibly a middle course may be found preferable, and the term 'offence' everywhere extended to

AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 303
1882, AND INDIAN PENAL CODE.

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[*Sir Philip Hutchins.*]

murders, dacoities and a few other definite heinous offences. I specially invite all Local Governments to express their opinions on this point. It is curious that, when Section 216 was thus enlarged in 1886, the necessity for inserting a similar clause in Section 212, which deals with the harbourers of offenders not yet arrested or ordered to be arrested, was overlooked.

“The other main object of the Bill which I shall now lay on the table is to explain what is meant by harbouring, and to provide for the punishment of persons affording the same sort of protection or assistance to what I may call prospective dacoits—to gangs, that is to say, which have assembled together to commit dacoity but have not yet carried out their purpose. It is proposed to declare that the supplying of offenders with food, clothes, arms or ammunition, or giving them any sort of assistance to enable them to avoid apprehension amounts to ‘harbouring’.

“I must not conclude without acknowledging the cordial manner in which the Rulers of the States chiefly concerned are co-operating with our own officers in this matter. The object of this Bill is to protect their subjects and suppress brigandage in their territory; but the converse state of things has given rise to similar difficulties, marauders from British territory finding shelter and protection from confederates in the States. I am glad to say that the Darbars are taking energetic measures to prevent this, and, when this Bill becomes law, it will enable our officers on their part to fulfil their reciprocal obligations in regard to the States.”

The Motion was put and agreed to.

The Hon'ble SIR PHILIP HUTCHINS also introduced the Bill.

The Hon'ble SIR PHILIP HUTCHINS also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 31st August, 1893.

S. HARVEY JAMES,

Secretary to the Government of India,

Legislative Department.

SIMLA ;
The 18th August, 1893. }