

*Wednesday,
10th January, 1912*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. L

April 1911 - March 1912

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OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA

ASSEMBLED FOR THE PURPOSE OF MAKING

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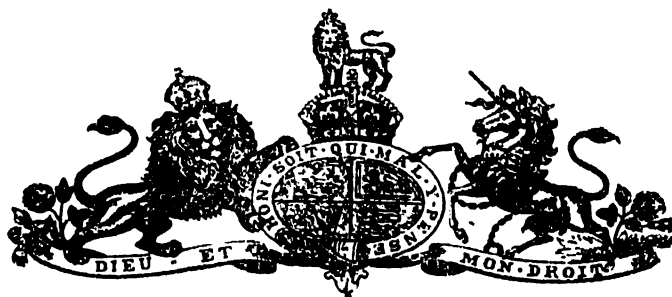


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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE INDIAN COUNCILS ACTS, 1861 TO 1909 (24 & 25 VICT., c. 67, 55 & 56 VICT., c. 14, AND 9 EDW. VII, c. 4).

The Council met at Government House, Calcutta, on Wednesday, the 10th January 1912.

PRESENT:

The Hon'ble SIR GUY FLEETWOOD WILSON, G.C.I.B., K.C.B., K.C.M.G., *presiding*,
and 52 Members, of whom 47 were Additional Members.

ABSENCE OF GOVERNOR GENERAL AND VICE-PRESIDENT OF THE COUNCIL.

The Hon'ble Sir Guy Fleetwood Wilson :

"In the absence of His Excellency at Bombay and owing to the lamented indisposition of the Vice-President, it devolves on me as senior Member of Council to preside at the deliberations of the Council to-day."

OATH OF OFFICE.

The following Additional Members made the prescribed oath or affirmation of their allegiance to the Crown:—

The Hon'ble MR. GULAM MUHAMMAD BHURGRI.
The Hon'ble MR. VINCENT.
The Hon'ble MR. CARR.
The Hon'ble MR. ARTHUR.
The Hon'ble MR. LYON.
The Hon'ble MR. SAUNDERS.
The Hon'ble KHAN BAHADUR MIAN MUHAMMAD SHAFI.
The Hon'ble MR. FREMANTLE.
The Hon'ble MAUNG MYE.
The Hon'ble MR. ENTHOVEN.
The Hon'ble MR. FIFFE.

[*Sir James Meston ; Mr. Gokhale ; Sir Harcourt Butler ; Mr. Syed Ali Imam.*] [10TH JANUARY 1912.]

The Hon'ble Sir James Meston : " With your permission, Sir, I beg to lay on the table, on behalf of the Hon'ble Finance Member, a statement* showing the proportion of appointments on Rs500 and over held by Indians and Europeans in 1910, as compared with 1903 and 1867. This is the statement which was promised in the Hon'ble Sir Guy Fleetwood Wilson's reply given to the question put by the Hon'ble Raja of Dighapatia at the meeting of Council held on the 24th March 1911.

" I also seek permission to lay on the table certain returns† asked for by the Hon'ble Mr. Mudholkar in the question put by him at the meeting of Council held on the 22nd September 1911. Part of the question has already been replied to at the meeting before mentioned."

QUESTIONS AND ANSWERS.

The Hon'ble Mr. Gokhale asked :—

" Will the Government be pleased to state whether the sum of 50 lakhs for 'the promotion of truly popular education,' announced by His Excellency the Governor General on the day of the Coronation Durbar at Delhi, includes the present State expenditure on primary education or is in addition to it; and whether the grant is an annual one or is only a non-recurring allotment?"

The Hon'ble Sir Harcourt Butler replied :—

"The sum of 50 lakhs for 'promotion of truly popular education' announced by His Excellency the Governor General on the day of the Coronation Durbar at Delhi will be an Imperial grant in addition to the existing expenditure on primary education and will be an annually recurring grant."

The Hon'ble Mr. Gokhale asked :—

" Will the Government be pleased to state what Municipalities and District Boards or Councils in each Presidency or Province were invited to express an opinion on the Elementary Education Bill now before the Council, and how many of such bodies have expressed an opinion on the measure? Will the Government lay on the table copies of all opinions on the Bill received from Local Bodies by the various Local Governments and Administrations?"

The Hon'ble Mr. Syed Ali Imam replied :—

" All communications which have been received on the Elementary Education Bill have been printed as papers relating to the Bill and copies thereof have already been sent to all Hon'ble Members. A set of such of them as contain opinions or summaries of opinions of Municipalities and District Boards or Councils is laid on the table; the information which the Hon'ble Member desires will be found, so far as it can be obtained, in those papers."

The Hon'ble Mr. Gokhale :

" May I say in connection with this that what I want is opinions received by Local Governments and Administrations, not by the Government of India—all opinions received by Local Governments and Administrations."

The Hon'ble Mr. Syed Ali Imam :

" Sir, I shall be in a position to answer the question of the Hon'ble Member after further consideration."

**Vide* Appendix A.
†*Vide* Appendix B.

[10TH JANUARY 1912.] [*Mr. Gokhale; Mr. Gordon; Mr. Subba Rao; Sir A. Earle; Mr. Maclagan.*]

The Hon'ble Mr. Gokhale asked :—

“ Have the Government submitted their proposals on the subject of the position of Provincial Engineers to the Secretary of State for India? If so, when may the final orders of the Secretary of State be expected?”

The Hon'ble Mr. Gordon replied :—

“ The despatch on the subject of the position of the Provincial Engineers of the Public Works Department was sent to the Secretary of State by the mail of the 10th August last. It is expected that a reply will be received at an early date.”

The Hon'ble Mr. Subba Rao asked :—

“ With reference to the reply given by the Hon'ble the Home Member to a question asked by me on the 22nd September last on the subject of the recruitment for the executive branch of the Provincial Service, will the Government be pleased to say whether they are now in a position to supply the information there requested.”

The Hon'ble Sir A. Earle replied :—

“ The necessary information has been obtained from Local Governments and a statement* is laid on the table which answers the first part of the question asked by the Hon'ble Member on the 22nd September 1911.

“ As regards the second part of the question the Hon'ble Member is informed that the only Province where the executive branch of the Provincial Service is filled exclusively by promotion from the subordinate service is British Baluchistan. The reasons why such a course is adopted are (1) that residents of Baluchistan are not yet fitted for the work of an Extra Assistant Commissioner without considerable preliminary training in subordinate posts, and (2) that residents of other Provinces can only obtain knowledge of the special conditions obtaining in Baluchistan by working in subordinate posts.”

The Hon'ble Mr. Subba Rao :

“ Will the Government be pleased to say from what time and year such a course has been adopted in Baluchistan ? ”

The Hon'ble Sir Archdale Earle :

“ I presume that this has always been the case. If the Hon'ble Member wishes for a more definite statement, I shall have to ask for notice.”

CO-OPERATIVE SOCIETIES BILL.

The Hon'ble Mr. Maclagan moved that the Hon'ble Mr. Mudholkar and the Hon'ble Mr. Fremantle be added to the Select Committee appointed to report on the Bill to amend the law relating to Co-operative Credit Societies.

The motion was put and agreed to.

INDIAN LUNACY BILL.

The Hon'ble Sir Archdale Earle moved that the Bill to consolidate and amend the law relating to Lunacy be referred to a Select Committee consisting of the Hon'ble Sir J. L. Jenkins, the Hon'ble Mr. Syed Ali Imam, the Hon'ble Maalvi Syed Shamsul Huda, the Hon'ble Mr. Dadabhoi,

* Vide Appendix C.

[*Sir A. Earle; Mr. Clark; Mr. Syed Ali Imam.*] [10TH JANUARY 1912.]

the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Surgeon General Sir C. P. Lukis, the Hon'ble Mr. Kenrick, the Hon'ble Mr. Mudge, the Hon'ble Mr. Vincent, the Hon'ble Mr. Carr, the Hon'ble Mr. Arthur and the mover.

The motion was put and agreed to.

INDIAN POST-OFFICE (AMENDMENT) BILL.

The Hon'ble Mr. Clark moved that the Bill to amend the Indian Post-Office Act, 1898, be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoj, the Hon'ble Nawab Saiyid Muhammad Sahib Bahadur, the Hon'ble Sir Charles Stewart-Wilson, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Carr, the Hon'ble Mr. Saunders and the mover.

The motion was put and agreed to.

DELEGATION BILL.

The Hon'ble Mr. Syed Ali Imam: "The Bill before the Council is, as has been pointed out in the Statement of Objects and Reasons, a measure designed to facilitate delegation of executive powers and duties in respect of non-controversial matters. Those who are acquainted with the work of administration are aware that a stage has been reached in the affairs of the State when some measure of decentralisation has become an imperative necessity to simplify and improve our system of government in the direction of bringing the executive into closer touch with local conditions. The desire to centralise authority, however small or trifling, was capable of receiving gratification at a time when the administration of the country was free from the complexity with which it is burdened now. In the last 50 years India has taken long strides in the development of her moral and material resources. Each step has been synchronised with some form of legislation as is evidenced by the ponderous bulk of her Statute-book. To meet the requirements of her advancing social and political welfare an elaborate administrative machinery has grown up, and to obtain the very best results it seems to be unavoidable that within reasonable and cautious limits its action should be so regulated and adjusted as to give increased utility without impairing its efficiency. Problems of great moment are pressing themselves on the attention of the Government of India and the Local Governments. The legitimate aspirations of the people to take intelligent part in the concerns of their country rightly demand sympathetic consideration and earnest endeavour at the hands of the authorities, and to secure this it has become evident that there should be some relief at head-quarters from the wasteful expenditure of time and energy on the exercise of petty executive powers and duties. A careful examination of these by the Royal Commission on Decentralisation has clearly demonstrated the urgency of effecting devolution of such powers and duties on subordinate authorities. Numerous enactments dealing with multifarious details of the many branches of administration and their off-shoots have from time to time laid up an accumulation of a mass of unimportant centralisation of executive authority. The sections of these enactments relating to such centralisation are a legion in themselves, and any attempt on my part to place before the Council this formidable array will be inconsequential, as to realise the correct bearing of each of these would require an examination of the particular Act in which they find place. This will be a gigantic effort for our legislative assembly even if there was a disposition to spread out the winter sessions far beyond their usual length and without any appreciable break in the continuity of the sittings. When introducing this Bill, my Hon'ble colleague, Sir John Jenkins, depicted before the Council the extraordinary difficulties with which the Government of Bombay and the Government of India have met in the work of collecting and scheduling together the various enactments and their sections with a view to the

[10TH JANUARY 1912.] [Mr. Syed Ali Imam.]

preparation of a general Decentralisation Act. But even if an extra turn of the screw be put on the patient labour of the secretarial and a fairly comprehensive schedule be produced, the result will hardly justify such devotion from the point of view of the usefulness of the undertaking. A general Decentralisation Act embodying specific amendment of every Act affected would involve cumbrous legislation without any uniformity of shape, not to speak of the rigidity and incompleteness inseparable from such a questionable course. On the other hand, an attempt to inflict on the deliberations of this Council sheaves of petty amending Bills is to court not only undue delay, but what is far more undesirable, the serious dislocation of its ordinary work of legislation. This will be particularly deplorable at the present juncture when a heavy programme of urgent legislative measures has to engage our undivided attention for some time to come. Mature and anxious considerations of the difficulties and objections that attach to our embarking on either of these two courses leave no option but to abandon them in favour of an Act of delegation to provide for devolution of authority in certain cases with proper safeguards and under effective control. The Bill before the Council gives prominence to the two principles that underlie its inception. On the one hand it provides to cover a wide area for the application of its provisions and on the other it jealously restricts its operation to cases for the disposal of which administrative convenience is effected without in the slightest degree endangering the liberty or the rights of the subject. The exclusion of the two Codes of Criminal and Civil Procedure and of any enactments relating to the constitution of the Civil Courts from the purview of this Bill is in itself sufficient to remove apprehension of the improper use of the powers conferred by the proposed legislation. A further exclusion is contained in clause (b) of section 4 of the Bill. It relates to cases of previous sanction or consent by a superior authority to the exercise of power under any enactment by an inferior authority. Even for administrative purposes this provision narrows down the scope of the Bill considerably, but regard for the principle of duality of control is the justification for its insertion in the Bill. It will be observed that these two exclusions are so far-reaching that it will be hard to find any matter of a truly controversial character in respect of which it is possible to make a delegation of power under this Bill in favour of a subordinate authority. Within the narrow limits of the scope of this Bill additional precautions have been taken by subjecting the powers of delegation to the conditions laid down in the various sub-clauses of section 5. These are intended to ensure publicity and invite criticism before a single devolution of power can be given effect to. I do not propose to dwell on all these conditions as they will be considered by Hon'ble Members in due course. But I venture to offer a few remarks on the conditions embodied in sub-clauses (6) and (7). Taken together these two sub-clauses mark a great departure in the relations of the Executive Government to the Legislative Councils of this country. This part of the Bill emphasises a point of view which is of growing interest in the affairs of India. To hold devolution of authority in abeyance till the draft notification has been considered by Hon'ble Members who may wish to put interpellations or move resolutions on the same, has, although in the present instance limited to the application of the provisions of this Bill, a deep significance. It is laden with potentialities and sets up a precedence of special value with regard to the association of the duly constituted representatives of the people with the executive administration of the country. It is the first glimpse in India of the analogy of the procedure adopted under some similar circumstances in the Houses of Parliament in England. True it is that the constitutional strength of a resolution of this Council is not more than merely advisory, but to seek that advice before action is taken denotes a large measure of the appreciation of the views of this assembly by Government. Should a draft notification evoke a hostile motion largely supported by Hon'ble Members representing the people, Government will be in a position to pause for a further consideration of the proposed action before final orders are passed. This is a feature of the Bill that will create a new bond of mutual help and co-operation which bids fair to open a new chapter in the public life of the country in its relation to administrative reforms.

[Mr. Syed Ali Imam; Mr. Gokhale; Mr. Clark.] [10TH JANUARY 1912.]

"Before I close my submissions I should like to point out that legislative sanction to such delegation of powers and duties as is embodied in this Bill is neither novel nor unprecedented. The Port of London Act can be quoted as an instance in England. In India the principle of delegation has received legislative approval in Act V of 1868. Act XVIII of 1888 is illustrative in the case of Burma. In very recent times a striking example is found in the Indian Civil Procedure Code, 1908, where many minor matters that were part and parcel of the old law have by delegation devolved on the High or Chief Courts Rules Committees, whose action is subject to no legislative control but only the sanction of the executive Government. Numerous other instances can be quoted in which the direct application of the law has been delegated by Indian Acts to executive authority on the basis of a mere notification without any of the effective safeguards and precautions taken in the Bill before the Council.

"There is one more point to which I should like to make a passing reference. The Bill does not provide for the cancellation of an order of delegation once it is passed. Some of the opinions that we have received on this Bill seem to treat the silence as a grave omission. In this connection I need only point to section 21 of the General Clauses Act of 1897 which is a sufficient remedy for amending, varying or rescinding such an order.

"I trust, Sir, that on careful examination of the terms of this Bill, Hon'ble Members will agree with me that this is a modest measure of real and intrinsic usefulness that I have the honour to ask them to refer to a Select Committee for consideration. I move that the Bill be referred to a Select Committee consisting of the Hon'ble Sir J. L. Jenkins, the Hon'ble Sir G. M. Chitnavis, the Hon'ble Mr. Subba Rao, the Hon'ble Mr. Gokhale, the Hon'ble Babu Bhupendranath Basu, the Pandit Madan Mohan Malaviya, the Hon'ble Mr. Gates, the Hon'ble Mr. Phillips, the Hon'ble Mr. Mudholkar, the Hon'ble Sir Archdale Earle, the Hon'ble Mr. Lyon, the Hon'ble Mr. Arthur and myself."

The Hon'ble Mr. Gokhale: "Sir, I have no wish to offer any opposition to the motion before the Council, but because no opposition is offered at this stage, we should not on that account be understood—and in this I speak on behalf of several non-official members—we should not be understood to assent to the principle of the Bill. On the face of it, the Bill looks like asking the legislature to grant a blank cheque to the executive in certain matters. At the same time I see that several safeguards, and some of them important safeguards, have been provided. The measure, therefore, is one which requires to be subjected to close scrutiny, such as only a Select Committee can bring to bear upon it. While, therefore, we are willing that the Bill should go to the proposed Select Committee, we are anxious, as I have already said, that we should not on that account be understood to assent to the principle of the proposed delegation."

The motion was put and agreed to.

WHITE PHOSPHORUS MATCHES PROHIBITION BILL.

The Hon'ble Mr. Clark moved that the Bill to prohibit the importation, manufacture and sale of matches made with white phosphorus be referred to a Select Committee, consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Sir V. D. Thackersey, the Hon'ble Mr. Phillips, the Hon'ble Surgeon General Sir C. P. Lukis, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Enthoven and the mover.

The motion was put and agreed to.

CENTRAL PROVINCES EXCISE BILL.

The Hon'ble Mr. Clark: "Sir, the motion standing in my name is that the Bill to consolidate and amend the Excise Law in the Central Provinces

[10TH JANUARY 1912.] [Mr. Clark; Sir James Meston; The President.]

be referred to a Select Committee. I have to ask the Council to allow me to withdraw that motion. I ought to explain for the information of Council that I ask for withdrawal today only because we have not yet received from the Central Provinces Administration their observations on the Bill. The Bill is a purely local one, which is only taken here because the Central Provinces have not got a Legislative Council of their own, and we cannot very well proceed without having their observations upon it."

The Council agreed and the motion was withdrawn.

LIFE ASSURANCE COMPANIES BILL.

The Hon'ble Mr. Clark moved that the Bill to provide for the Regulation of Life Assurance Companies be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoy, the Hon'ble Mr. N. Subba Rao, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Meredith, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Lyon, the Hon'ble Mr. Carr, the Hon'ble Mr. Enthoven, the Hon'ble Mr. Fyffe and the mover.

The motion was put and agreed to.

PROVIDENT INSURANCE SOCIETIES BILL.

The Hon'ble Mr. Clark moved that the Bill to provide for the Regulation of Provident Insurance Societies be referred to a Select Committee consisting of the Hon'ble Mr. Syed Ali Imam, the Hon'ble Sir C. Graham, the Hon'ble Mr. Dadabhoy, the Hon'ble Mr. N. Subba Rao, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Mudholkar, the Hon'ble Mr. Meredith, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Arthur, the Hon'ble Mr. Lyon, the Hon'ble Mr. Carr, the Hon'ble Mr. Enthoven, the Hon'ble Mr. Fyffe and the mover.

The motion was put and agreed to.

INDIAN STAMP (AMENDMENT) BILL.

The Hon'ble Sir James Meston moved that the Bill further to amend the Indian Stamp Act, 1899, be referred to a Select Committee consisting of the Hon'ble Sir Guy Flectwood Wilson, the Hon'ble Mr. Syed Ali Imam, the Hon'ble Maulvi Syed Shamsul Huda, the Hon'ble Mr. Dadabhoy, the Hon'ble Babu Bhupendranath Basu, the Hon'ble Mr. Gates, the Hon'ble Mr. Armstrong, the Hon'ble Mr. Carr and the mover.

The motion was put and agreed to.

ADJOURNMENT OF COUNCIL.

THE PRESIDENT: "That terminates the business of the Council today, and the Council will adjourn to Friday, the 23rd of February 1912, at 11 o'clock."

W. H. H. VINCENT,
Secy. to the Government of India,
Legislative Department.

CALCUTTA :
The 12th January 1912.)