

*Tuesday,
31st January, 1911*

ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor General of India,

LAWS AND REGULATIONS

Vol. XLIX

April 1910 - March 1911

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ASSEMBLED FOR THE PURPOSE OF MAKING

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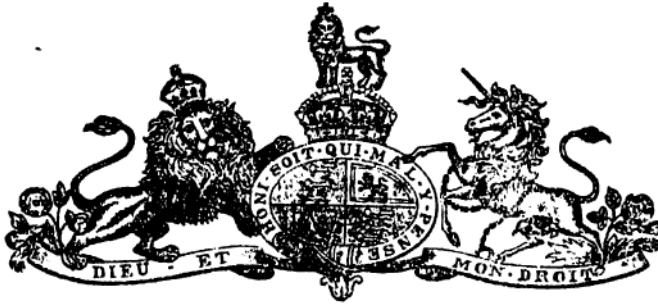


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GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

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. 87, 55 & 56 VICT., c. 14, AND 9 EDW. VII, c. 4).

The Council met at Government House, Calcutta, on Tuesday, the 31st
January 1911.

PRESENT :

His Excellency **BARON HARDINGE OF PENSHURST**, P.C., G.C.B., G.C.M.G., G.C.V.O.,
G.M.S.I., G.M.I.K., Viceroy and Governor General of India, *presiding*,

and 36 Members, of whom 31 were Additional Members.

RAIDS ON NORTH-WEST FRONTIER.

The Hon'ble Mr. Wood laid on the table a comparative return* showing the number of raids committed in the North-West Frontier Province in the years 1909 and 1910 which was referred to in his reply to the question of the Hon'ble Mr. Sachchidananda Sinha at the meeting of the Council held on the 3rd January 1911.

QUESTION AND ANSWER.

On behalf of the Hon'ble Sir Sassoon David, the Hon'ble Mr. Gokhale asked :—

“ Will Government be pleased to lay on the table a statement showing the percentage allowed, and the manner in which the capital cost is estimated, in different Provinces for depreciation on machinery and building in ascertaining the net profits of factories for income-tax purposes ? ”

The Hon'ble Sir G. Fleetwood Wilson replied :—

“ The statement desired by the Hon'ble Member will be laid on the table as soon as it is ready. Some points of detail still remain to be decided in consultation with Local Governments.”

INDIAN FACTORIES BILL.

The Hon'ble MR. ROBERTSON : “ I rise, my Lord, to present the Report of the Select Committee on the Bill to consolidate and amend the law regulating labour in Factories. The Committee regret that they were unable to

*Vide Appendix A.

complete their deliberations in time to allow their Report to be submitted at the last meeting of the Council. But the subject-matter of the Bill is difficult and contentious, and several of the clauses required a great deal of consideration before they were put into the shape in which they now appear. I may state that the Committee held in all twelve meetings occupying something not very far short of forty hours, in addition to meetings of Sub-Committees for working out and putting into legal form the decisions come to in the full Committee. Having been in charge of the Bill in the Select Committee, I should like to express my personal obligations to the members for the great trouble they have taken and the help they have afforded in putting the measure into the form it now presents. If I may be allowed to mention names from amongst so many who have spent laborious days over the Bill, I should like to refer to the sound practical advice we have had from the Hon'ble Sir Vithaldas Thackersey and the Hon'ble Mr. Birkmyre. I am sure the other members of the Committee will agree with me as to the value of the services they have rendered us.

"I shall now, my Lord, deal very briefly with the principal amendments which have been made in the Bill. But, before doing so, I may mention that no alteration has been made in the essential provisions of Chapter V of the Bill, which fix the working hours for adult males in textile factories at twelve. As will be seen from the Report, these provisions are not accepted by several members of the Committee. The case for and against direct limitation of the hours of labour of adult males was debated in the Council on the motion to refer the Bill to the Select Committee, and on this point of principle there will no doubt be much to be said when the measure is finally discussed. This is a subject on which we must agree to differ, and I need not therefore take up the time of the Council with any remarks on it now. But with certain reservations on particular points, I may say that the Bill, as now presented, has, but for this question of principle, been agreed to by all the members of the Committee.

"I come then, my Lord, to the provisions of the Bill as amended. In dealing with these I shall follow as far as possible the sequence of the chapters of the Bill.

"We have proposed that the Bill if passed into law should come into force on the 1st day of July 1912. This will give time for factory owners to adapt themselves to the altered circumstances, for factories to be provided with electric light installations where this is desired, and for the Local Governments to prepare and publish new codes of rules adapted to the provisions of the law.

"The definition of the word 'factory' as contained in the Bill has been the subject of much consideration. When the Bill was first published the definition of a 'factory' which it contained and which followed closely the definition in the existing Act, was subjected to much criticism, particularly in view of the more stringent provisions which the Bill introduced with regard to the employment of labour. As defined in the revised draft the word 'factory' still includes not only the buildings where the manufacturing process is actually carried on, but the precincts of such buildings. But a new clause has been added which makes it clear that, though persons employed outside the main manufacturing portion of the factory will be taken into account in determining whether any concern is to be reckoned as a factory by reason of employing more than 40 persons simultaneously, such persons will not be subject to the provisions of the Act respecting employment and holidays, but only to the regulations regarding health and safety and inspection.

"Chapter II of the Bill deals with the appointment of Inspectors and certifying Surgeons. The Factory Commission in their Report expressed themselves strongly as to the inadvisability of inspection of factories being carried out by *ex officio* Inspectors, as they considered that orders on technical matters should be passed only by experts employed for the purpose. In the Report of the Select Committee this opinion is endorsed, but in deference to the representations of certain Local Governments that it would be impossible for the expert factory Inspectors to regularly visit factories in out-of-the-way places, provision has been made in the Bill for the appointment of additional

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[*Mr. Robertson.*]

Inspectors where the employment of such is considered necessary. In such cases it will probably not be necessary or advisable to give the additional Inspectors full powers under the Act, and a clause has been inserted enabling Local Governments to define the powers which they are to exercise.

"The provision which requires that before a child can work in a factory it must possess a certificate of age and fitness for employment has been retained. And it has been laid down that every child must carry such certificate when at work or a token giving reference to the certificate. It is believed that the prescription of such a rule will greatly facilitate the inspection of children in factories, and as such it will be useful for ensuring that the law in this respect is carried into effect.

"Chapter III, which contains the provisions relating to the health and safety of operatives, has not undergone much change. In several of the clauses in this Chapter, an Inspector is empowered, where he finds that a specific provision of the law is not being complied with, to serve an order on the manager of the factory directing him to take measures for such compliance. Against such an order an appeal is allowed to the Local Government, who may appoint an authority subordinate to it to hear the appeal. It has been strongly represented to us that in appeals against orders made by the Inspector under this Chapter, the appellate authority should be assisted by expert assessors who could advise him with regard to the matter in dispute. Provision for the appointment of such assessors has now been made in the Bill. The clause which deals with the important question of fencing of machinery has been entirely recast. It now provides that certain dangerous parts of machinery, as well as other parts which the Local Government may by rule specify as dangerous, shall be securely fenced. This is a substantive provision of the law and any breach of it becomes an offence under the Act. In addition to this, power is given to the Inspector to pass an order requiring any other parts not declared dangerous as above to be fenced, and such an order will be the subject of appeal in the manner to which I have just referred.

"Chapter IV deals with the hours of employment of operatives and with holidays in all classes of factories. As originally drafted the Bill provided that exemptions from the main provisions of the Chapter, and also from the provisions of Chapter V relating to textile factories, should be given by rules made under the Act. The opinion has been generally expressed that the standard exemptions from these provisions of the Act should be laid down in the Bill itself, leaving Local Governments to deal by rule only with exemptions required in special circumstances or in new cases that may arise. The working out of these exemptions has, as was anticipated, given a considerable amount of trouble, and their insertion in the Bill has necessarily occasioned some complexity in the clauses affected. We have added two Schedules to the Bill which set forth specified exemptions, and have arranged the latter in parts following the main principles on which the exemptions have been given. I may perhaps make my meaning more clear, if I explain the case of exemptions from the compulsory half hour stoppage after six hours continuous working, which is laid down in clause 21 of the Bill. First we have put in Part A of Schedule I, which refers to this clause, all work of an urgent nature or such as must be kept going while the main manufacturing process of the factory is discontinued; such as work by the supervising staff, work which has to do with keeping the machinery running and in good order, for instance, in the boiler-house or engine-room or in the mechanic shop, and work in the packing up of the finished articles or receiving or despatching of goods. Part B of the Schedule contains a list of factories, in certain departments of which for technical reasons continuous production is necessary and where the work cannot be stopped for half-an-hour. Such are tanneries, sugar-refineries, chemical works and the like. In these factories the half-hour interval is not required to be given in the departments concerned. Part C of the Schedule contains a further list of factories which are to be entirely exempted from the provisions of the half-hour stoppage. In these work requires to be carried on throughout the factory uninterruptedly. Such are flour-mills, rice-mills, ice-factories, gas-works and the like. When a further case for exemption

arises, the Local Government will be enabled to grant exemption, subject to such conditions as may be imposed, in accordance with the general principles which have been laid down.

"These remarks apply generally, as I have already mentioned, to the main provisions of the Act which deal with hours of employment and holidays. I may add a word of explanation as regards Schedule II, which contains the exemptions from the grant of the Sunday holiday. In Part A of this Schedule is given a list of factories which, by reason of continuous production being necessary in certain processes, are not required to stop work on these processes on Sundays. It will be noticed that this list is very much akin to the list of factories which are similarly exempted in Schedule I from the half-hour stoppage on working days. But there is a difference in this respect. The continuous processes carried on in some factories are such as cannot be completed within the week. These are entered in the Second Schedule as requiring exemption from the Sunday holiday provision. In other factories the continuous process, though it cannot be suspended during the day, does not necessarily extend over a week. These factories are placed in a separate list in the First Schedule for the purpose of exemption from the half-hour stoppage provision. I shall not encroach upon the patience of the Council further by saying anything more about this somewhat complicated matter. I hope that the clauses of the Bill, as now drafted, will provide fully for the normal exceptions which have to be recognised when making substantive provision in the law as to the employment of the operatives.

"Chapter V of the Bill lays down a 12-hours working day for male adults in textile factories. I have already mentioned that the members of the Committee are not in agreement as to the provisions of this Chapter. As it stands, the Chapter follows the Bill as drafted. But here again care has been taken to mention the principal exemptions which are required to the 12-hours rule. As we are dealing only with textile factories, these exemptions are comparatively few. They concern principally the operatives who are employed in subsidiary work connected with the engine-room and the running of the machinery, or in special processes in which occasionally overtime is unavoidable, such as calendering and finishing, sewing and tailoring, or packing up and despatching of goods.

"Chapter VI deals with notices and registers and calls for but few remarks. Clause 36 of the Bill has been substantially altered. As it now stands, it requires that there shall be posted up in some conspicuous place near the main entrance of the factory an abstract of the Act and rules, and what may be described as the standing orders of the factory laying down the hours of employment of the operatives. It was originally proposed that copies of these standing orders should be submitted to the Inspector once a month. This would have given trouble to factory occupiers, and in the new clause they are required to notify to the Inspector only when changes take place. The clause, moreover, will not be applied to seasonal factories.

"Chapter VII confers rule-making powers upon the Local Government which are to be exercised subject to the control of the Governor General in Council. It is to be noted that the previous sanction of the latter is not required to the publication of the rules.

"Chapter VIII deals with penalties and procedure. And here two important changes have been made. The first makes the occupier and manager jointly and severally responsible for compliance with the Act. This has been strongly pressed upon us in many quarters as being necessary in order better to secure that the provisions of the law are not evaded. The second change is that we have adopted the recommendation of the Factory Commission and have drafted a clause based on the English Statute, enabling the occupier or manager when charged with an offence under the Act to make a complaint before the Court charging the person whom he alleges to be the actual offender, and to obtain exemption from liability if he establishes that he acted diligently to enforce the execution of the Act and that the other person committed the offence without his knowledge, consent or connivance. We believe that this provision is a useful and a suitable one, but in view of the joint liability of

[*Mr. Robertson; the President.*] [31ST JANUARY 1911.]

the occupier and manager and as the special procedure laid down requires to be worked with care, we have recommended that prosecutions for offences against the Act should be triable only by a Magistrate of the first class.

"Chapter IX contains certain supplemental provisions, the only one of which I need refer to being that which lays down certain regulations regarding the computation of time. The Bill as originally drafted contained a somewhat complicated provision for changing the local mean time into the standard time which is observed practically all over India. This provision has been given up, and instead we have left it to the Local Government to notify the hours of standard time which should be adopted in any particular area for commencing work in the morning and closing work in the evening. But, in order to maintain the principle of a limit being set to the total period during which an operative can be in the factory, we have prescribed times which adhere to this principle. In doing so we have for the sake of simplicity adopted half-hourly periods. Further, the times of beginning and ending work can be changed according to the different seasons of the year. Thus, in Northern India in the cold weather, when people are disinclined to turn out early in the morning, the hour of commencing work may be put at half past six or seven o'clock.

"I have now referred to the principal changes which have been made in the Bill and which are incorporated in the draft which has been prepared by the Select Committee. I hope and believe that these changes have gone far to render the Bill as revised a good practical working regulation. As I said at the commencement of my remarks, the changes have been generally accepted by the members of the Committee who represent important industries which are affected by the Bill. Many of the new provisions have been suggested by these members, to whom the Government is much indebted for the practical advice they have given in the consideration of a difficult and complicated measure."

ADJOURNMENT OF COUNCIL.

His Excellency THE PRESIDENT: "Gentlemen, the work of the Council, being now concluded, the Council will adjourn till the 1st of March, when the Financial Statement will be taken."

J. M. MACPHERSON,

*Secretary to the Government of India,
Legislative Department.*

CALCUTTA ;
The 3rd February 1911. }