

**JOINT/SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1932**

**The Code of Criminal Procedure
(Amendment) Bill**

List of Reports of Select or Joint Committees
presented in the Legislative Assembly in 1932.

| Serial No. | Short title of the Bill. | Date of presentation. | Remarks. |
|------------|--|-----------------------|----------|
| 1. | The Indian Partnership Bill. | 26.1.32. | |
| 2. | The Wire and Wire Nail Industry (Protection) Bill. | 15.2.32. | |
| 3. | The Bamboo Paper Industry (Protection) Bill. | 16.2.32. | |
| 4. | The Bengal Criminal Law Amendment (Supplementary) Bill. | 22.2.32. | |
| 5. | The Sugar Industry (Protection) Bill. | 23.2.32. | |
| 6. | The Foreign Relations Bill. | 29.2.32. | |
| 7. | The Indian Air Force Bill. | 10.3.32. | |
| 8. | The Ancient Monuments Presentation (Amendment) Bill. | 5.4.32. | |
| 9. | The Port Haj Committees Bill. | 5.9.32. | |
| 10. | The Tea Districts Emigrant Labour Bill. | 5.9.32. | |
| 11. | The Code of Criminal Procedure (Amendment) Bill. | 12.9.32. | |
| 12. | The Children Pledging of Labour Bill. | 19.9.32. | |
| 13. | The Criminal Law Amendment Bill. | 7.11.32. | |
| 14. | The Indian Merchant Shipping (Amendment) Bill. | 14.11.32. | |
| 15. | The Indian Tariff (Ottawa Trade Agreement) Amendment Bill. | 12.12.32. | |

LEGISLATIVE ASSEMBLY.

We, the undersigned, Members of the Select Committee to which the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. *Clause 2 (a) and (b).*—While we are of opinion that the provisions here made for payment of compensation are advisable as a further check on the making of frivolous applications for transfer, we consider that a maximum limit should be fixed in the Act to the amount of compensation that may be awarded.

(c) We consider that the power to obtain an adjournment on notifying to the Court an intention to apply for transfer should not be confined to cases in which the notification is made before the inquiry or trial begins. The party may not be aware of the circumstances giving rise to an apprehension that he will not receive an impartial hearing until after the hearing has commenced: those circumstances may arise only in the course of the trial. We recognize the necessity of greater safeguards against the abuse of the section than those now existing. We think that provision should be made for a compulsory adjournment if a party notifies his intention to move for a transfer at any time before the arguments begin, that is to say at any time before the defence closes its case. At the same time we recognize that the power at present enjoyed of paralysing the action of the Court by repeatedly notifying an intention to make an application, sometimes without any intention of following up the notification with an application, must be checked. We have accordingly provided that when once a party

has secured an adjournment the Court shall not be bound to adjourn on any subsequent intimation of an intention to apply for a transfer made by that same party, and that where there are more than one accused, it shall not be possible for different accused by a series of successive intimations to secure a series of adjournments.

We note that the inherent power of the Court under section 344 to adjourn a case is not affected, but we have inserted an explanation after sub-section (9) of section 526 of the Act to make this absolutely clear.

Our alterations in the new sub-section (8) have made it necessary for us to retain sub-section (9) of the section in the Act.

3. The Bill was published in the Gazette of India, dated the 10th September, 1932.

4. We think that the Bill has not been so altered as to require re-publication and we recommend that it be passed as now amended.

H. S. GOUR.

H. G. HAIG.

MOHD. YAMIN KHAN.

MOHD. AZHAR ALI.

*B. L. PATIL.

M. SHAH NAWAZ.

B. R. PURI.

F. X. DESOUZA.

F. E. JAMES.

*AMAR NATH DUTT.

C. P. RAMASWAMI AIYAR.

SIMLA,

The 10th September, 1932.

NOTES OF DISSENT.

Though one compulsory adjournment is provided at any stage of an inquiry or trial, in a joint trial of two or more accused the right exhausts itself once it is exercised by any one of them and the others will be at the mercy of the trial magistrate, if such an occasion arises later on. This is undoubtedly a serious flaw. In principle one accused in no sense represents any other co-accused and practically their interests may be even conflicting. But Government complain that this 'several' right of compulsory adjournment is liable to be much more abused when there are more than one accused. Under the circumstances there seems to be little or no choice between the two evils.

Further clause 2 (c) restricts its operation to inquiries under Chapters VIII and XVIII. But I think that the right of compulsory adjournment is equally valuable in inquiries other than those falling under the said two Chapters. At one time there was some divergence of opinion as to whether proceedings under Chapters X, XII, XXXVI could be transferred from one court to another. But it was advisedly set at rest. "The word 'criminal' has been omitted to make it clear that the powers of a High Court to transfer criminal cases extend to the transfer

of miscellaneous proceedings under the Code"—Statement of Objects and Reasons (1914). A proceeding under section 14 of the Legal Practitioners Act, in a criminal court was held to be transferable and so also an inquiry under the Workmen's Breach of Contract Act. It is clear that the necessity has been keenly felt in the past. I am therefore of opinion that this right of compulsory adjournment should be extended, as at present, to all inquiries that may be made under the Code.

Now coming to clause 2 (b) I say without any hesitation that the maximum amount of compensation of Rs. 250 is too high. It may be argued that the High Court will consider each case on its own merits. But it should not be forgotten that the maximum always indicates and fixes the general standard. We know as a matter of fact that the transfer applications are opposed by the Government Pleaders or their assistants and no application takes more than a couple of hours at the most. Besides we are now substituting the word 'compensation' for the word 'costs'. Therefore in all propriety the compensation should be commensurate with the reasonable amount of costs. I am therefore of opinion that the maximum should be limited

*Subject to note of dissent.

to Rs. 100 ; otherwise the inevitable effect would be to scare away many *bonâ fide* applications and to strengthen the hands of a magistrate with autocratic tendencies.

B. L. PATIL.

The 11th September, 1932.

I regret that I cannot agree to the Bill as it emerges from the Select Committee. The Bill

attempts to restrict the rights of parties in a criminal case in favour of dishonest Judges and Magistrates against whom a party may have a just grievance. The safeguard given is illusory and not real, specially in cases where there are more than one accused. Speedy disposal of a case should not have overriden dispensation of justice.

AMAR NATH DUTT.

[AS AMENDED BY THE SELECT COMMITTEE.]

[Words printed in italics indicate the amendments suggested by the Committee.]

A

BILL

Further to amend the Code of Criminal Procedure, 1898, for a certain purpose.

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for the purpose hereinafter appearing ; It is hereby enacted as follows :—

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1932.
Short title. Procedure (Amendment) Act, 1932.
2. In section 526 of the Code of Criminal Procedure, 1898,—
Amendment of section 526, Act V of 1898. V of 1898.

(a) in sub-section (5), for the words " has power under this section to award by way of costs " the words " may under this section award by way of compensation " shall be substituted ;

(b) in sub-section (6.1), for the word " costs " the word " compensation " shall be substituted, and for the words " any expenses reasonably incurred by such person in consequence of the application " the words " such sum not exceeding two hundred and fifty rupees as it may consider proper in the circumstances of the case " shall be substituted ; *

(c) for sub-section (8) * * the following sub-section shall be substituted, namely :—

" (8) If in any inquiry under Chapter VIII or Chapter XVIII or in any trial, any party interested intimates to the Court at any stage before the defence closes its case that he intends to make an application under this section, the Court shall, upon his executing, if so required, a bond without sureties, of an amount not exceeding two hundred rupees, that he will make such application within a reasonable time to be fixed by the Court, adjourn the case for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon :

Provided that nothing herein contained shall require the Court to adjourn the case upon a second or subsequent intimation from the same party, or, where an adjournment under this sub-section has already been obtained by one of several accused, upon a subsequent intimation by any other accused " ;

(d) to sub-section (9) the following Explanation shall be added, namely :—

“ Explanation.—Nothing contained in sub-section (8) or sub-section (9) restricts the powers of a Court under section 344 ” ; and

(e) after sub-section (9) as so amended the following sub-section shall be added, namely :—

“ (10) If, before the argument (if any) for the admission of an appeal begins, or, in the case of an appeal admitted, before the argument for the appellant begins, any party interested intimates to the Court that he intends to make an application under this section, the Court shall, upon such party executing, if so required, a bond without sureties of an amount not exceeding two hundred rupees that he will make such application within a reasonable time to be fixed by the Court, postpone the appeal for such a period as will afford sufficient time for the application to be made and an order to be obtained thereon.”

GOVERNMENT OF INDIA.
LEGISLATIVE ASSEMBLY
DEPARTMENT.

Report of the Select Committee on the Bill further to amend the Code of Criminal Procedure, 1898, for a certain purpose, with the Bill, as amended.