

*Thursday,  
15th February, 1894*

**ABSTRACT OF THE PROCEEDINGS**

**OF THE**

**Council of the Governor General of India,**

**LAWS AND REGULATIONS**

**Vol. XXXIII**

**Jan.-Dec., 1894**

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

1894

VOLUME XXXIII



Published by Authority of the Governor General.



CALCUTTA  
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA,  
1895

*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 Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).*

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The Council met at Government House on Thursday, the 15th February, 1894.

PRESENT :

His Excellency the Viceroy and Governor General of India, P.C., LL.D.,  
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 A. E. Miller, KT., Q.C.

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

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

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

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

The Hon'ble Dr. Rashbehary Ghose.

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

The Hon'ble C. C. Stevens.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

The Hon'ble Mahárájá Partab Narayan Singh of Ajudhiá,

QUESTIONS AND ANSWERS.

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

(a) Whether it is the fact that in the Central Provinces, under the rules in the old Settlement Code issued by Sir Richard Temple, the Government share was limited to half assets ?

(b) Whether or not it is the fact that malguzar's or proprietor's sir-land has been under the current settlement assessed for the first time according to the prevailing rates in the village, and the malguzar thus deprived of the advantage he derived from it under the old settlement ?

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(c) Whether the Government considers that the absorption of 60 or 65 per cent. of the assets as land-revenue, and 13½ per cent. on such land-revenue as cesses, leaves a sufficient margin for the landholding classes, after making due allowance for the cost of management, rise in the prices of necessaries, the uncertainties of seasons and of prices, unrealized rents, and miscellaneous income, and other expenses incidental to the management of the village?

(d) Whether the Government will be pleased to limit its demand, as in the North-Western Provinces, to half assets, and,

(e) If not, will the Government be pleased, in the necessary interests of the landholding classes, to make some reasonable reduction in the high percentage that is now being absorbed as land-revenue and cesses?

The Hon'ble SIR ANTONY MACDONNELL replied:—

“(a) In replying to the Hon'ble Member's question, I have in the first place to say that in determining, for the guidance of its officers, the share of the assets to be taken as land-revenue in the Central Provinces, the Government is not bound by any statutory limits.

“It is not the fact that under the old Settlement Code for the Central Provinces the Government limited its revenue to one-half of the assets in the sense in which the term 'assets' appears to be used by the Hon'ble Member. He means, I understand, the actual assets at the time of settlement. In 1855 it was laid down by executive order for the North-Western Provinces 'that about one-half, and not two-thirds as heretofore, of the well-ascertained net assets should be the Government demand,' and this order was extended to eight districts of the Central Provinces formerly known as the Saugor and Nerbudda Territories.

“The meaning of the phrase 'well-ascertained net assets' was explained at some length in paragraphs 47 to 52 of Mr. Thomason's Directions to Settlement-officers in the North-Western Provinces, to which paragraphs the Central Provinces Code expressly referred for a definition of it. To use the words of the 'Directions,' net assets were 'what may be expected to be the net produce during the period of settlement.' It was explained that in calculating 'the net produce of years to come' the Settlement-officer should take into account the waste-land available for cultivation, improvement of cultivation, a rising

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demand for the products of the district, the opening of new communications, and so on. In brief, the 'assets' of the old Settlement Code were the prospective assets, not the actual assets at the time of settlement. Hence a so-called half assets assessment of a village at the last settlement of the Saugor and Nerbudda Territories meant very much more as a rule than 50 per cent. of the assets actually realized or realizable at the time. At the settlement now in progress, on the other hand, there is no assessment on prospective assets, but only on assets which are actually realizable when the settlement is made.

" To the remaining ten districts of the Central Provinces the rule of approximate half assets was never even nominally applied. The order in force at the last settlement in the Nagpur and Chhattisgarh country was expressed in the following terms by the Government of India in 1860 :—' The true gross rental of each estate having been ascertained by careful enquiry, the Governor General in Council would be disposed to allow the malguzars in all cases at least 40 per cent. for expenses of management and proprietary profits, and to extend the limit in certain cases to 50 per cent.' That is to say, the rule was approximately 60 per cent. and the exception 50 per cent., while the 'true gross rental' meant the prospective, not the actual, rental.

" (b) It is not the fact that the malguzar or proprietor has at the current settlement been assessed for the first time at the prevailing rates of the village. As a matter of fact, at the old settlement to which the Hon'ble Member refers, the assets on which the assessment was based included a rent for the malguzar's sir or home farm estimated on the basis of the competition rents paid in the village. This is practically the rule now.

" (c) Yes, because the application of the rule for assessing from 60 to 65 per cent. only concerns those exceptional cases in which the revenue taken at last settlement and hitherto paid punctually and without difficulty is found not to be below 65 per cent. of the assets. The application of the rule is permissive only and not obligatory. It is intended only to save the State from the undue surrender of revenue hitherto paid without difficulty. But enquiry will be made as to the operation of the rule; which it is believed has had little or no effect outside the Mahratta Districts, where under Native rule exceptionally high assessments had been imposed.

" With regard to that portion of the question which refers to cesses, I have to say that these cesses, which amount on the average to about 7 per cent. on the

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rental, are to some extent paid by the tenants. The larger portion, about 6 per cent., is contributed by the landlord, but more than half of this portion goes towards the pay of the village-accountant, and should, therefore, be regarded as costs of management, which in any case the malguzar would have to incur; while the balance is a contribution to those local objects of public utility, controlled by Local Boards, which are similarly supported in other Provinces. I cannot hold out any hope that these cesses, imposed partly in the interests of the malguzar, partly for objects of local utility, will be reduced.

“(d) No, because in comparison with the North-Western Provinces, the position in the Central Provinces at the present is very advantageous in respect to the extent of waste-land and the possibilities of further development.

“(e) The rule laid down for the guidance of the Chief Commissioner at the re-settlement now in progress is a material mitigation of that which I have quoted in my answer to question (a). The rule now is that the share of the assets to be taken by the Government shall ordinarily not fall below one-half or 50 per cent., nor ordinarily exceed three-fifths or 60 per cent., the average being about 55 per cent. Permission, however, is given to the Chief Commissioner to go below 50 per cent. when he thinks it desirable to do so, having regard to the circumstances of the village; and to go up to, but not beyond, 65 per cent. in those cases in which the revenue of last settlement is found to exceed 65 per cent. of the actual assets as now ascertained, and has been hitherto paid without difficulty. In other words, we take 50 to 60 per cent. (and in exceptional cases between 60 and 65 per cent.) of actual assets, according to the circumstances of the estate, allowing the proprietor to have the whole of the rental of waste-land brought under cultivation during settlement, all the profit of improvements executed by himself, and all the increase on his own lands, on the lands of the unprotected raiyats whose rents he may enhance, or on waste-lands due to the better prices caused by new railways, improved communications and the general progress of the country, etc. Having regard to the facts that under Mahratta rule the malguzars of the Central Provinces had no proprietary rights in their estates, their present beneficial position being the recent creation of the British Government; that the assessment is now fixed on the actual assets, including miscellaneous income; that the raiyats' rents in the Central Provinces, even after enhancement, still represent a very much smaller share of the produce than is usual in other Provinces; that owing to the favourable climatic conditions of the Province those rents are not

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subject to the same variations of seasons as in most other parts of India, and that they are collected without difficulty—the Government of India can hold out no hope that a smaller share of the assets than the existing orders allow will be taken as revenue at the current settlement. There will, in my opinion, be greater justification for the Hon'ble Member's suggestion of a rule for limiting the assessment to one-half of the actual assets when the margin of culturable waste-land has been reduced, and the Province has fully responded to the large outlay upon it in the construction of railways and other public works from which it is now very largely benefiting, but to which it has not hitherto made any appreciable contribution."

The Hon'ble GANGADHAR RAO MADHAV CHITNAVIS asked :—

Is the Government aware that grazing-dues and forest-rates in the Central Provinces, even after the reduction made by the Hon'ble Sir Antony MacDonnell, the late Chief Commissioner, press hard upon the agricultural and other classes who make their living by dealing in forest-produce generally? Will the Government be pleased to make a further reduction in this direction? If not, will the Government be pleased to ask the Local Administration to make an enquiry into the subject in consultation with the leading men of the Province, and report as to whether or not it is a fact that forest-charges are a general complaint with the people, and that a further reduction in the present dues and rates will afford a much-needed relief?

The Hon'ble SIR ANTONY MACDONNELL replied :—

"In replying to the Hon'ble Member's questions, it is necessary to distinguish between the great agricultural class and the limited class of people who deal in the forest-produce which the non-agricultural classes require. In connexion with the agricultural class generally, I have to state that during 1891 and 1892 a careful enquiry was instituted throughout the Central Provinces into the question of the rates charged for grazing and extraction of forest-produce from Government forests, the object being to reduce the rates charged for grazing and for the forest-produce required for agricultural and domestic uses. The results of that enquiry are embodied in a Resolution dated 5th January, 1893, which was published by the Chief Commissioner, Central Provinces, for general information. The Resolution effects substantial reductions in the rates previously paid, besides conferring on the people important privileges in connexion with the use of Government forests in the

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Central Provinces. The charge for grazing a buffalo now varies, according to the abundance or scarcity of fodder, from a quarter to half an anna per mensem, the charge for cows or oxen being one-half these rates. The charge for dead firewood, thorns for fencing fields, cut grass for fodder, and leaves for manure is for a head-load of sixty pounds weight only one pie, the smallest coin in the realm, or three annas per ton.

“ These rates have been very favourably received by the people, and it is altogether premature to say that they press hard upon them, or that further reductions are at present called for. But the Government of India recognize the desirability of cheapening as much as possible the price of all descriptions of forest-produce necessary for the agricultural and domestic uses of the population, and will commend the subject to the continued attention of the Central Provinces Administration.

“ As regards the more limited class of people who deal for profit in the forest-produce in question, I have to say that they mostly supply the wants of towns. It is believed that the rates in force allow these people to make a substantial profit on their transactions. This point, however, will also be commended to the Chief Commissioner’s attention.”

#### INDIAN PORTS ACT, 1889, AMENDMENT BILL.

The Hon’ble MR. WESTLAND moved that the Report of the Select Committee on the Bill to amend the Indian Ports Act, 1889, be taken into consideration. He said :—

“ I ought to mention, in connection with the discussion of this Bill in Select Committee, that certain definite proposals were put before us on the part of the Agents of the Steamer Companies for making more economical arrangements for the work which at present falls upon the Port-officer of the Balasore ports. We are hardly in a position to examine these suggestions in detail; but, on the other hand, even if it were possible to reduce the expenditure of the ports by the whole amount of the Port-officer’s salary, still the remaining expenditure would absorb more than the whole revenue which the passing of the present Bill will enable the Government to levy.

“ The Committee on this ground agreed to recommend the passing of the Bill, but on the understanding that the suggestions of the Agents of the Steamer Companies shall be fully investigated by the Government of Bengal, and that,



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until they come to a conclusion upon them, the additional powers given by this Act will not be brought into operation. I have the authority of His Honour the Lieutenant-Governor for expressing his concurrence in this understanding, and the fact that the Government of Bengal has for so long a time consented to bear the burden of the deficit of these ports is sufficient evidence of their reluctance to impose any avoidable burdens upon the trade."

The Hon'ble MR. PLAYFAIR said :—

" My Lord, I have listened with much interest to the remarks which have fallen from the Hon'ble Member in charge of the Bill.

" Looking to the character and condition of the trade of Orissa, it appears to me that the only reason for raising the duties of the Balasore ports must be a financial one, and this can only be justified if it is found that the present scale of expenditure is necessary, and cannot be reduced, or cannot be met from Provincial funds. The opinion expressed and adhered to by the Bengal Chamber of Commerce has been that the proper course to follow would be to reduce the expenditure of the Balasore ports so as to bring it within the receipts, abolishing the appointment of a special Port-officer, and constituting the Joint Magistrate of Balasore *ex officio* Shipping Master for that port and the Customs and Salt Officer at Chandballi *ex officio* Shipping Master there. The Steamer Companies trading between Calcutta and Balasore ports endorse this opinion, and offer their assistance in carrying out the recommendation. Considering how backward the trade of Orissa is, and that since 1871 it has only increased to about 290,000 passengers both ways, and  $1\frac{1}{2}$  crores of rupees value of goods, for a population of about  $5\frac{3}{4}$  millions, it seems clear that the true policy is, if at all possible, to make the ports of the province free, to encourage trade to the utmost. After all, if their support were made a charge upon Provincial revenues, the amount to be provided would be very trifling. In making this remark I admit that, on the other hand, it may be said the additional dues provided for by this Bill would not in themselves crush out the trade with Orissa, but, as forming an addition to charges on goods entering an already overtaxed port such as Calcutta now is, they become of more special importance. I have to observe that the construction of canals on the Orissa coast and the opening of the Bengal-Nagpur Railway have already interfered with the sea traffic, and that in all probability the East Coast Railway when completed will further divert traffic from the Orissa ports and may even turn away a portion of the present trade of Orissa from the port of Calcutta. It will

74 *AMENDMENT OF INDIAN PORTS ACT, 1889; AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882, AND INDIAN PENAL CODE; AMENDMENT OF CODE OF CRIMINAL PROCEDURE, 1882.*

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be a satisfaction therefore if the Local Government will, before exercising the power conferred upon it by this Bill which is about to be passed into law, carefully consider the views and proposals expressed by the Chamber of Commerce and by the Steamer Companies engaged in this trade, and endeavour to reduce the cost of expenditure rather than meet the present scale of expenditure by the increase of port-dues."

The Motion was put and agreed to.

The Hon'ble MR. WESTLAND also moved that the Bill be passed.

The Motion was put and agreed to.

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

The Hon'ble DR. LETHBRIDGE presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, and the Indian Penal Code. He said that he would reserve the few remarks which he had to offer on the Bill till the time when the Report was taken into consideration.

CODE OF CRIMINAL PROCEDURE, 1882, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882. He said:—

"The Bill which I wish to bring under the notice of the Council is a very short one of two sections, one of which expands section 44 and the other section 45 of the existing law. I shall first offer a few observations, for the consideration of the Council, on the expansion of section 44. The amendment in this section which I have to propose is the addition of the offences of unlawful assembly and rioting to those crimes which must be reported to the Magistrate under the law as it at present stands. At present the only section of the public who are under an obligation to report the commission of, or intention to commit, the offence of unlawful assembly or rioting are the owner or occupier of the land or any person claiming an interest in the land on which such unlawful assembly is held, or such riot is committed. This obligation

as imposed on the owner of land emerges from the terms of section 154 of the Indian Penal Code. But it is, I submit, highly desirable that the obligation should rest on the public generally having means of information. My Lord, it is the obvious duty of every citizen to contribute, so far as his knowledge and ability permit, towards the maintenance of law and order in his neighbourhood. But daily experience shews that people will not go out of their way to meddle in matters which do not concern them. If the Government wishes to enlist any particular class of the people in the active support of the law, it must prescribe for their guidance what they have to do. We know well—it is a matter of common experience—that riots involving loss of life and property frequently occur which are preventible, and could easily be prevented if the village-officers gave timely warning to the Magistrate or the police of the threatened disturbance. The Criminal Procedure Code as it now stands places them under no legal obligation to give the notice, and, consequently, very frequently no notice is given. The riot takes place, there is perhaps loss of life and property, bad blood is engendered, and the peace of the locality is disturbed. All this may often be avoided by a little timely warning to the authorities. There can, my Lord, be but little question of the propriety of taking precautions in matters like these, and of requiring from those having local knowledge such timely information as will enable the authorities to take precautions. The amendment which I propose adds a substantial and, as it seems to me, a reasonable re-enforcement of the inadequate means which we now possess of getting that information.

“I pass on to section 45. As this section at present stands, ‘every village-headman, village-watchman, village-police-officer, owner or occupier of land, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or officer in charge of the nearest police-station any information which he may obtain respecting \* \* \* the commission of, or intention to commit, any non-bailable offence in or near such village.’ The obligation to report some other matters touching the maintenance of law and order in the village is also laid by the section on the persons I have enumerated: but for my present purpose I am only concerned with clause (c) of the section, which imposes, as I have said, the obligation to report the commission of, or intention to commit, any non-bailable offence to the nearest Magistrate or police-officer. The first amendment of this section which I have to propose is the addition of the village-accountant to the list of village-officers who are bound to report the commission of, or the intention to commit, a non-bailable offence. The official,

or duly enrolled and registered village-accountant, with whom my amendment is concerned, my Lord, is a public servant, whose duties bring him into intimate relations with all parties and classes in the village, and whose means of knowing what is going on in the village are extensive and minute. It seems to me to be obviously desirable that the Government should have a right to require from him such information as he can furnish touching the maintenance of law and order in the village: and I do not anticipate that on this point there will be divergence of opinion.

“The next amendment to section 45 which I have to propose is the inclusion of the offences of unlawful assembly and rioting among those of which village-officers and landholders are specifically bound to give notice. This amendment is in a measure a repetition of that proposed to section 44: and it might perhaps be thought that the end in view is sufficiently secured by the latter amendment. But it has been thought well to define, with special exactitude, the duties of the village-officers in regard to breaches or threatened breaches of the peace; and there is, so far as I can see, no objection to, but an advantage in, this being done. The arguments in support of both amendments are practically the same, though, in the case of section 45, they may be regarded as possessing a special cogency, inasmuch as the village-officers and landowners naturally know more of what goes on in their village than outsiders can.

“Another amendment of this section to which I desire to call the attention of the Council lays on the persons enumerated in the section the obligation of reporting to the Magistrate ‘any matter touching the maintenance of the public peace or the prevention of crime or the safety of the property or persons of the inhabitants which the District Magistrate, by general or special order, made with the previous sanction of the Local Government, has directed him to communicate information.’ Respecting this amendment I would first observe that it is concerned not with the general or even with the local public, but with village-officials and with the proprietors of the village-lands. From the very nature of the case we are entitled to demand from these strictly limited classes more extensive and minute information regarding the maintenance of order in the village than we should be justified in asking from the general public. My Lord, the first duty of an organized Government is to preserve the peace: but it is impossible to preserve the peace, amid jarring elements and conflicting interests, unless we have timely warning of impending danger. From what quarter or in what way difficulties may arise it is frequently impossible to

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foresee ; and in the interests of order it is imperative that the District Magistrate, the officer responsible for maintaining the public tranquillity, be authorized to require from the village-officials from time to time such information of the character I have stated as will enable him to discharge his duty in this connexion to the Government and to the public. As a matter of fact, the District Magistrate does now, in various parts of the country, require from the village-officials such information as my amendment contemplates : but he does so under inadequate legal sanctions. We require a stronger legal sanction for our orders than we now possess : and that it is hoped to obtain through this amendment. In regard to the owners or occupiers of the lands, the obligation to supply information touching the maintenance of the peace has existed from the earliest times, and lies indeed at the very root of the conception of the zamindari tenure of land in this country. No class of persons should be more interested in the maintenance of peaceful and orderly government than the proprietors of the soil, and I should desiderate from their good sense as well as from their self-interest a hearty concurrence in the amendment which I submit to the judgment of the Council in this matter.

“ I may add that the Bill takes power to appoint a village-headman for the purposes of the section if a headman has not been appointed under any other law.”

The Motion was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL also introduced the Bill.

The Hon'ble SIR ANTONY MACDONNELL 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 22nd February, 1894.

CALCUTTA ;  
The 19th February, 1894. }

S. HARVEY JAMES,  
*Secretary to the Government of India,*  
*Legislative Department.*