

Tuesday, 25th September, 1860

PROCEEDINGS

OF THE

LEGISLATIVE COUNCIL OF

INDIA

Vol. VI

(1860)

THE CHAIRMAN moved the introduction of the following new Section after the above :—

“Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

Agreed to.

Sections 72 and 73 were passed as they stood.

Sections 74 and 75 were passed after amendments.

THE CHAIRMAN moved the restoration, with modifications, of Section 76 of the Original Code. The Section as proposed was as follows :—

“Whoever unlawfully compels any person to labor against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.”

Agreed to.

Sections 76 and 77 (relating to rape) were passed after amendments.

Section 78 (respecting unnatural offences) was passed as it stood.

Section 1 of Chapter XVII (of Offences against Property) was passed after an amendment in illustration (k).

The consideration of the Code was then postponed, and the Council resumed its sitting.

The Council adjourned at 5 o'clock, on the Motion of Mr. Harington, till Tuesday morning at 7 o'clock.

Tuesday Morning, September 25, 1860.

PRESENT :

The Hon'ble the Chief Justice, *Vice-President*,
in the Chair.

H. B. Harington, Esq.,	C. J. Erskine, Esq.,
H. Forbes, Esq.,	and
A. Scone, Esq.,	Hon'ble Sir C. R. M. Jackson.

PENAL CODE.

MR. ERSKINE said, he had received a very voluminous correspondence from the Bombay Government,

suggesting that the crime of adultery be made a penal offence. It was not desirable that the papers should be printed. He should therefore move that they be laid upon the table.

THE VICE-PRESIDENT, in putting the question, observed that there was now in the Penal Code a Clause which provided for the offence.

The Motion was carried.

The Order of the Day being then read for the adjourned Committee of the whole Council on the “Indian Penal Code,” the Council resolved itself into a Committee for the consideration of the Code.

Section 2 of Chapter XVII related to theft.

Some conversation ensued as to making this Section applicable to larceny in dwelling houses.

The Section was ultimately passed as it stood, the Chairman undertaking to prepare a new Section specially providing for the other matter.

Section 3 (relating to theft by a clerk or servant of property in the possession of his master or employer) was passed after the substitution of “ten years” for “seven years,” as the maximum term of imprisonment to which the offender was liable.

Section 4 (relating to theft after preparation made for causing death or hurt in order to the committing of the theft) was passed after a similar amendment.

Section 5 (defining extortion) was passed after a verbal amendment in illustration (c), and with the correction of a misprint in illustration (a).

Sections 6 to 9 were passed as they stood.

Section 10 rendered extortion by threat of accusation of offence punishable with death, transportation, &c., liable to be punished with imprisonment for ten years and fine.

SIR CHARLES JACKSON said, there were certain accusations tantamount to assassination, such as accusations of unnatural offences, which he thought, ought to be punished with transportation for life.

The Section was passed with the addition of words to the above effect.

Section 11 (relating to the offence of putting a person in fear of accusation of an offence in order to commit extortion) was passed after the enhancement of the term of imprisonment from seven to ten years, and with the addition of the same words as in the preceding Section.

Section 12 defined robbery.

Mr. ERSKINE said, he observed it declared by this Section that "extortion is robbery, if the offender, at the time of committing the extortion, is in the presence of the person put in fear," but there was no provision making extortion robbery, if committed by the offender speaking in the hearing of, and intending that he should be overheard by, the person put in fear.

After some conversation, the following explanation was introduced into the Section, on the Motion of the Chairman, in order to meet the case above suggested:—

"The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint."

SIR CHARLES JACKSON pointed out that the same definition made extortion robbery, if committed by putting a person "in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person *present at the time of committing the extortion*." He (Sir Charles Jackson) saw no necessity for the words in italics. Suppose a person came to another person's house with two or three men dressed up as Policemen, and said that he would instantly have the other's wife arrested unless he paid him some money. Why was it necessary that the wife should be present? It was quite clear that she should be so near as to be liable to instant arrest, but he (Sir Charles Jackson) did not think it was necessary for the definition to provide that she should be present. He should therefore propose the omission of the words in question.

The Motion was carried, and after some further amendments in the Illustrations, the Section was passed.

Section 13 defined dacoity.

Mr. ERSKINE asked, if it was necessary to use the expression dacoity for gang robbery. It was a mere local and technical term and was not, he believed, used in Madras or Bombay or in the Supreme Courts. If there was no objection, he should move the substitution of gang robbery for dacoity.

The Motion was at first carried; but a difficulty having afterwards become apparent of defining a dacoit, and of providing against belonging to a gang of dacoits—

THE CHAIRMAN said that, as the term dacoity was pretty generally known throughout Bengal, it might be advisable to restore the original wording of the Section. He therefore made a Motion to that effect.

The Motion was carried, and the Section was passed as it originally stood.

Sections 14 to 18 were passed as they stood.

Sections 19 and 20 severally prescribed seven and five years as the minimum term of imprisonment, the former for robbery or dacoity with attempt to cause death or grievous hurt, and the latter for attempting to commit robbery or dacoity when armed with a deadly weapon.

Mr. HARRINGTON did not see the necessity for retaining these Sections which merely fixed a minimum of punishment. The principle of the Code was to leave the minimum of punishment for all offences, except those of the gravest character, such as offences against the State, murder, and attempts to commit murder, to the discretion of the Judge.

THE CHAIRMAN referred to a report submitted, he thought, by Mr. Samuells, in which he gave an account of the cruelties practised by the dacoits, and he thought that the Sections in question ought to be allowed to stand for the purpose of deterring offenders.

Mr. ERSKINE asked, if it was not inconsistent to have a minimum of punishment in Section 19, and not in the preceding Section which related to dacoity with murder.

THE CHAIRMAN explained the reason of the distinction to be that, under Section 18, if any one of several persons conjointly committing dacoity, committed a murder, every one of those persons was liable to punishment; whereas Section 19 related to a particular offender.

The Sections were ultimately passed after the substitution of seven years for five years in Section 20.

Sections 21 to 24 were passed as they stood.

Section 25 was passed after a verbal amendment.

Section 26 (relating to the dishonest misappropriation of property in the possession of a deceased person at the time of his death) was passed after the addition, on the Motion of the Chairman of a provision rendering misappropriation by a clerk or servant employed by the deceased at the time of his death, punishable with imprisonment for seven years, instead of for three years, as provided by the Section in respect of other offenders.

Section 27 (defining criminal breach of trust) was passed after the addition of the following illustration:—

"A, a carrier, is entrusted with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust."

Section 28 was passed as it stood.

THE CHAIRMAN moved the introduction of the following new Section after Section 28:—

"Whoever being entrusted with property as a carrier, wharfinger, or warehouse keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Agreed to.

Section 29 (relating to criminal breach of trust by a clerk or servant) was passed after the substitution of seven years for five years as the term of imprisonment.

Section 30 was passed as it stood.

The consideration of the Code was then postponed, and the Council resumed its sitting.

The Council adjourned at 9 o'clock on the Motion of Mr. Harrington, till to-morrow morning at 7 o'clock.

Wednesday Morning, Sept. 26, 1860.

PRESENT:

The Hon'ble the Chief Justice, Vice-President,
in the Chair.

H. B. Harrington, Esq., C. J. Erskine, Esq.,
H. Forbes, Esq., and
A. Scounce, Esq., Hon. Sir C. R. M.
Jackson.

PENAL CODE.

The Order of the Day being read for the adjourned Committee of the whole Council on "The Indian Penal Code," the Council resolved itself into a Committee for the further consideration of the Code.

Sections 31 to 35 of Chapter XVII were passed as they stood.

Sections 36 and 37 were passed after a verbal amendment.

Section 38 was passed as it stood.

Sections 39 and 40 were passed after the substitution of three years for two years as the term of imprisonment for cheating, with the knowledge that wrongful loss might thereby be caused to a person whose interest the offender is bound to protect, and for cheating by personation.

Section 41 proposed three years as the term of imprisonment for cheating and dishonestly inducing a delivery of property.

SIR CHARLES JACKSON said, that in some cases three years' imprisonment would be a very inadequate punishment for this offence. He would suggest ten years.

THE CHAIRMAN said, only three years' imprisonment was provided for theft.

SIR BARNES PEACOCK said, this was a more serious offence than simple theft. It required the employment of some skill and ingenuity, and was committed by a superior class of offenders. The offence, moreover, was one very prejudicial to trade.