

ASSAM ACT III OF 1934

THE ASSAM CRIMINAL LAW AMENDMENT
ACT, 1934*[Published in the *Assam Gazette* of the 9th May 1934.]

Whereas it is expedient to supplement the ordinary criminal law in Assam ;

Preamble.

And whereas the previous sanction of the Governor-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1.(1) This Act may be called the Assam Criminal Law Amendment Act, 1934 ;

Short title
commence-
ment, extent
and dura-
tion.

(2) It extends to the whole of Assam.

(3) This section and section 2 shall come in to force at once.

3. [The remaining provisions of this Act, in whole or in part, shall come into force in such areas and on such dates as the (appropriate Government)², may by notification in the [official Gazette]³ specify and for this purpose different dates may be specified for different areas].

2. In this Act, unless there is anything repugnant in the subject or context, "the Code" means the Code of Criminal Procedure, 1898.

Definition.

*For Statement of Objects and Reasons, see *Assam Gazette (Extraordinary)* dated 9th March, 1934 : for Proceedings in Council, see *Assam Gazette*, 1934, Part VI, pages 337—339, 669—707 787—835, 861—888.

1. Substituted by Assam Act II of 1936 for the words "The remainder of the Act shall come into force in such area and on such date as the Local Government may by notification direct".

2. Substituted by the A. O. 1937 for "L. G".

3. Substituted by the A. O. 1937 "for *Assam Gazette*".

Power of the
appropriate
Government
to direct
trial by
Commissioners
in
certain cases.

[and 'the appropriate Government' means, in relation to any of the matters enumerated in List I in the Seventh Schedule to [the Constitution]¹ Central Government, and in relation to any other matter, the [State Government]².

3.(1) The [appropriate Government]³ may, by order in writing direct that any person accused of any offence specified in the First Schedule shall be tried by Commissioners appointed under this Act.

(2) No order under sub-section (1) shall be made in respect of or be deemed to include, any person who has been committed under the Code for trial before a High Court, but save as aforesaid an order under that sub-section may be made in respect of, or may include, any person accused of any offence specified in the First Schedule whether the offence was committed before or after the commencement of the Act.

Appointment
and quali-
fication of
Commissioners.

4.(1) Commissioners for the trial of persons under this Act shall be appointed by the [appropriate Government].⁴

(2) Such Commissioners may be appointed for the whole of Assam or for any part thereof, or for the trial of any particular accused person or persons.

(3) All trials under this Act shall be held by three Commissioners, of whom at least two shall be persons who at the time of appointment under this section are serving as, and have for at least three years served as or exercised the power of, Sessions Judges or Additional Sessions Judges, or are persons qualified [under clause (2) of Article 217 of the Constitution]⁵ for appointment as Judges of a High Court.

(4) At any time before the commencement of the trial of any person under this Act, the [appropriate Government]⁴ may, by an order in writing stating the reasons therefore, withdraw the case of such person from the Commissioners appointed for the trial and transfer it for trial to three other Commissioners appointed in this behalf.

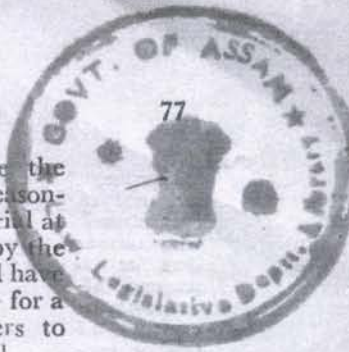
1 Substituted by the A. O. 1950 for "the Government of India Act, 1935."

2 Substituted by A. O. 1950 for "Provincial Government".

3 Inserted by the A. O. 1937.

4 Substituted by A. O. 1937 for "L. G."

5 Substituted by the A. O. 1950.



(5) At any time in course of trial or before the commencement of trial if the accused has any reasonable apprehension that he will not have a fair trial at the hands of the Commissioners appointed by the [appropriate Government]¹ as aforesaid he shall have the right to move the [appropriate Government]¹ for a transfer of the case to three other Commissioners to be appointed by the [appropriate Government].¹

5. (1) Commissioners appointed under this Act may take cognisance of offences without the accused being committed to them for trial, and in trying accused persons, shall, subject to the provisions of section 13, record evidence in the manner prescribed in section 356 of the Code and shall, in other respects also, subject to the Act and to any rules made thereunder follow the procedure prescribed by the Code for the trial of warrant cases by Magistrates.

Procedure of
Commissioners

(2) In the event of any difference of opinion among the Commissioners, the opinion of the majority shall prevail.

6. (1) The Commissioners may pass upon any person convicted by them any sentence authorised by law for the punishment of the offence of which such person is convicted.

Powers of
Commissioners.

(2) If any trial under this Act it is found that the accused person has committed any offence whether such offence is or is not an offence specified in the First Schedule, the Commissioners may convict such person of such offence and pass any sentence authorised by law for the punishment thereof.

{7} The provisions of the Code, so far only as they are not inconsistent with the provisions of, or the special procedure prescribed by or under, this Act shall apply to the proceedings of Commissioners appointed under this Act, and such Commissioner shall have all the powers conferred by the Code on a Court of Sessions exercising original jurisdiction.

Application
of the Code
of Criminal
Procedure to
Proceedings
of Commis-
sioners.

¹ Substituted by the N. O. 1931 for "Local Government".

Procedure for trial of accused who surrenders or is arrested after commencement of trial or conclusion of previous trial.

8. Notwithstanding anything contained in this Act or in any other Act—

- (1) (a) if after the commencement of a trial by Commissioners under this Act any person surrenders or is arrested who, in the opinion of the [appropriate Government]* might, if he had surrendered or been arrested before the commencement of the trial, have been tried jointly with the persons under trial the [appropriate Government]* may direct that he shall be placed on his trial jointly with such other persons at the said trial:

Provided that the name of such person was included with the names of the persons under trial in the order under sub-section (1) of section 3 directing their trial or in the report under clause (a) of sub-section (1) of section 173 of the Code;

- (b) when any person in respect of whom a direction has been made under sub-clause (a) is produced before the Commissioners, any evidence already recorded in the trial may be admitted as evidence against him or in his favour;

- (2) in a trial by Commissioners under this Act of any person who has surrendered or been arrested after the conclusion of a previous trial under this Act at which, in the opinion of the Commissioners, he might, if he had surrendered or been arrested before the commencement of such previous trial, have been tried jointly with the persons then tried any evidence recorded in such previous trial may be admitted as evidence against him or in his favour:

Provided that the name of such person was included with the names of the persons previously tried in the order under sub-section (1) of section 3 directing their trial or in the report under clause (a) of sub-section (1) of section 173 of the Code.

*Substituted by the A.O. 1937 for "Local Government".

(3) where any evidence recorded in the absence of the accused person is admitted under sub-clause (b), of clause (1) or clause (2) the Commissioners may on their own motion recall any witness who has given such evidence in order that he may be further examined or cross-examined and shall, at the instance of the accused person or his pleader, recall any such witness for such purpose, unless, in the opinion of the Commissioners, for reasons to be recorded in writing, it is not necessary in the interest of justice that the witness should be recalled.

(4) The provisions of this section shall apply—

(i) to the trial of persons who surrendered or were arrested before the date of the commencement of this Act, in respect of any offence for which they have not at such date been placed on trial, as well as to the trial of persons who surrender or are arrested after that date;

(ii) to the admission of any evidence recorded, whether such evidence was recorded before or after the said date in a trial under this Act.

9. (1) Commissioners trying an offence under this Act may, with a view to obtaining the evidence of any person supposed to have been directly concerned in or privy to, the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative, to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof. Tender of Pardon.

(2) Where, in the case of any offence for the trial of which by Commissioners an order has been made under sub-section (1) of section 3, a pardon has, before the passing of such order, been tendered to and accepted by any person under section 337 of the Code, the provision of sub-sections (2) and (3) of that section of the Code shall apply as if the accused person had been committed for trial to the Commissioners.

(3) For the purpose of sections 339 and 339A of the Code pardons tendered under sub-section (8) and sub-section (2) shall be deemed respectively to have been tendered under sections 338 and 337 of the Code.

Power to
exclude per-
sons or
public from
place of
trial.

10. (1) In any trial by Commissioners appointed under this Act, the Commissioners may, if they think fit, order at any stage of the trial that the public generally or any particular person shall not have access to, or be or remain in, the room or building used for the trial.

(2) Where in the course of any such trial the [Government]¹ Prosecutor certifies in writing to the Commissioners that it is expedient in the interests of the public peace or safety, or of the peace or safety of any of the witnesses in the trial that the public generally should not have access to or be or remain in, the room or building used for the trial, the Commissioners may order accordingly.

Power to
deal with
refractory
accused.

11. (1) When any accused, in trial by Commissioners appointed under this Act, has by his voluntary act rendered himself incapable of appearing before the Commissioners or resists his production before them or behaves before them in a persistently disorderly manner, the Commissioners may, at any stage of the trial by orders in writing made after such inquiry as they think fit, dispense with the attendance of such accused for such period as they may think fit and proceed with the trial in his absence, provided the accused is represented by a pleader.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed to plead not guilty.

¹ Substituted by the A. O. 1950 for "Crown".

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being present in person if he has become capable of appearing or appears before the Commissioners and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code, no finding, sentence or order passed in a trial by Commissioners appointed under this Act shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of accused whose attendance has been dispensed with under sub-section (1).

12. Notwithstanding anything contained in the Indian Evidence Act, 1872, when the statement of any person has been recorded by any Magistrate, such statement may be admitted in evidence in any trial before Commissioners appointed under this Act if such person is dead or cannot be found or is incapable of giving evidence, and the Commissioners are of opinion that such death, disappearance or incapacity has been caused in the interest of the accused.

13. (1) In any trial by Commissioners appointed under this Act, a Commissioner may dictate the evidence of any witness in narrative form to a stenographer, typist or clerk, who shall take down the same:

Special provisions for recording evidence.

Provided that the Commissioners may cause any particular question or answer to be so taken down.

(2) The evidence taken down under sub-section (1), or a transcript or copy thereof, shall be signed by the Commissioners after they have corrected any clerical errors therein, and on such signature shall form part of the record.

(3) Notwithstanding anything contained in section 356 of the Code where evidence is recorded in the manner provided in sub-sections (1) and (2) it shall not be necessary for the Commissioners to record any memorandum of such evidence.

14. The [appropriate Government]* may, by notification in the [Official Gazette]†, make rules not inconsistent with this Act to provide for all or any of the following matters, namely:—

Rule-making powers of appropriate Government

(i) the times and places at which Commissioners appointed under this Act may sit;

* Substituted by the A. O. 1937 for "Local Government".

† Substituted by the A. O. 1937 for "Assam Gazette".

- (ii) the procedure of such Commissioners including the appointment and powers of their President, and the procedure to be adopted in the event of any Commissioner being prevented from attending throughout the trial of any accused person ;
- (iii) the conduct of and the procedure at trials, the manner in which prosecutions before such Commissioners shall be conducted and the appointment and powers of persons conducting such prosecutions ;
- (iv) the execution of sentences passed by such Commissioners ;
- (v) the temporary custody or release on bail of persons referred to or included in any order made under sub-section (1) of section 3, and the transmission of records to the Commissioners ; and
- (vi) any matter which appears to the [appropriate Government]¹ to be necessary for carrying into effect the provisions of this Act relating to or ancillary, to trials before Commissioners.

Appeals and
confirmations

15. (1) Any person convicted on a trial held by Commissioners under this Act may appeal [the High Court for the State of Assam]² and such appeal shall be disposed of by the High Court in the manner provided in Chapter XXXI of the Code.

(2) When the Commissioners pass a sentence of death, the record of the proceedings before them shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court which shall exercise in respect of such proceedings all the powers conferred on the High Court by Chapter XXVII of the Code.

¹ Substituted by the A. O. 1937 for "Local Government".

² Substituted by the A. O. 1950 for "the High Court of Judicature at Fort William in Bengal".

16. (1) Where, in the opinion of the [appropriate Government]¹, there are reasonable grounds for believing that any person—

Power of the appropriate Government to deal with certain suspects

- (i) is a member of an association of which the objects and methods include the commission of any offence included in the Second Schedule or the doing of any act with a view to interfere by violence or threat of violence with the administration of justice¹; or
- (ii) has been instigated or is being controlled by a member of any association with a view to the commission or doing of any such offence or act : or
- (iii) has done or is doing any act to assist the operations of any such association : or

the [appropriate Government]¹ may, after giving the person or persons concerned such reasonable opportunity to explain his conduct as may be practicable, by order in writing, give any or all of the following directions, namely, that such person—

- (a) shall notify his residence and any change of residence to such authority as may be specified in the order :
- (b) shall report himself to the police in such manner and at such periods as may be so specified :
- (c) shall conduct himself in such manner or abstain from such acts as may be so specified :
- (d) shall reside or remain in any area so specified :
- (e) shall not enter, reside in or remain in any area so specified :
- (f) shall be committed to custody in jail ; and may at any time add to, amend, vary or rescind any order made under this section :

¹ Submitted by the A. O. 1937 for "Local Government".

Provided that such order shall be reviewed by the [appropriate Government] ¹ at the end of one year from the date of the making of the order, and shall not remain in force for more than one year unless upon such review the [appropriate Government] ¹ directs its continuance.

(2) The [appropriate Government] ¹ in its order under sub-section (1) may direct—

- (a) the arrest without warrant of the person in respect of whom the order is made at any place where he may be found by any police officer or by any [servant of the Government] ² to whom the order may be directed or endorsed by or under the general or special authority of the [appropriate Government] ¹;
- (b) the search of any place specified in the order which in the opinion of the [appropriate Government] ¹ has been, is being or is about to be used by such person for the purpose of doing any act, or committing any offence, of the nature described in sub-section (1).

Service of orders under section 16

17. (1) An order made under sub-section (1) of section 16 shall be served on the person in respect of whom it is made in the manner provided in the Code for the service of a summons, and upon such service such person shall be deemed to have had due notice thereof.

(2) If an order made under sub-section (1) of section 16 is not served personally on the person in respect of whom it is made, and due diligence has, in the opinion of the [appropriate Government] ¹, been exercised to effect such service, the [appropriate Government] ¹ may, by a notification published in the [Official Gazette] ³ and in such newspapers as it thinks fit, direct the said person to appear before such [servant of the Government] ² at such place and within such period as may be specified in the notification for the purpose of receiving the order.

¹ Substituted by the A. O. 1937 for "Local Government".

² "Servants of the Crown" were substituted for "officer of the Government" by A.O. 1937, "Government" again has been substituted for "Crown" by A. O. 1950.

³ Substituted by the A. O. 1937 for "Assam Gazette".

18. (1) Any [servant of the Government]¹ authorised in this behalf by general or special order of the [appropriate Government]² may arrest without warrant any person against whom a reasonable suspicion exists that he is a person in respect of whom an order might lawfully be made under sub-section (1) of section 16.

Power to
arrest with
out war-
rant

(2) Any officer exercising the power conferred by sub-section (1) may, at the time of making the arrest, search any place and seize any property which is, or is reasonably suspected of being, used by such person for the purpose of doing any act, or committing any offence of the nature described in sub-section (1) of section 16, and may require in writing any police officer subordinate to him and not below the rank of a Sub-Inspector or any officer in-charge of a police station as defined in the Code, whether in the same or a different district or jurisdiction to search any such place and seize any such property. The officer to whom such requisition is addressed shall thereupon search the place or places specified in the requisition and forward the property found, if any, to the officer at whose request the search was made. The provisions of the Code, so far as they can be made applicable, shall apply to any search made under this sub-section.

(3) Any officer making an arrest under sub-section (1) shall forthwith report the fact to the [appropriate Government]², and may, by order in writing, commit any person so arrested to custody pending receipt of the orders of the [appropriate Government]² and the [appropriate Government]² may by general or special order specify : the custody to which such person shall be committed :

Provided that no person shall be detained in custody under this section for a period exceeding fifteen days, save under a special order of the [appropriate Government]², and no person shall in any case be detained in custody under this section for a period exceeding two months.

1 "Servants of the Crown" were substituted for "officer of the Government" by A. O. 1937, "Government" again has been substituted for "Crown" by A. O. 1950.

2 Substituted by the A. O. 1937 for 'Local Government'.

Enforcement of orders 19. (1) The [appropriate Government]¹ and every [servant of the Government]² to whom any copy of any order made under section 16 has been directed or endorsed by or under the general or special authority of the [appropriate Government]¹ may use any and every means necessary to enforce compliance with such order.

(2) Any officer exercising any of the powers conferred by section 18 may use any and every means necessary to the full exercise of such powers.

Penalties for breaches of orders under sections 16 and 17 20. (1) Whoever knowingly and wilfully disobeys any direction in an order made under sub-section (1) of section 16 shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) Whoever fails to comply with any direction in a notification published under sub-section (2) of section 17 shall, unless he proves that he had no knowledge of the notification, or that it was not possible for him to comply therewith and that he has taken all reasonable steps to make known to the officer before whom he was directed to appear the place where he may be found and the cause which rendered it not possible for him to comply therewith, be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(3) Notwithstanding anything contained in the Code, any offence under this section shall be a cognizable and non-bailable offence, for which a warrant shall ordinarily issue in the first instance.

Power of photographing etc., persons in respect of whom order has been made under section 16 21. (1) Every person in respect of whom an order has been made under sub-section (1) of section 16 shall, if so directed by any officer authorised in this behalf by general or special order of the [appropriate Government]¹—

- (a) permit himself to be photographed ;
- (b) allow his finger prints to be taken ;
- (c) furnish such officer with specimens of his handwriting and signature ;
- (d) attend at such times and places as such officer may direct for all or any of the foregoing purposes.

1 See foot note 2 prepage

2 See foot note 1 prepage.

(2) If any person fails to comply with or attempts to avoid any direction given in accordance with the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

22. The power to issue search warrants conferred by section 98 of the Code shall be deemed to include a power to issue warrants authorising the search of any place in which any Magistrate mentioned in that section has reason to believe that any offence specified in the First Schedule has been, is being or is about to be committed, and the seizure of anything found therein or thereon which the officer executing the warrant has reason to believe has been, is being or is intended to be, used for the commission of any such offence: and the provisions of the Code, so far as they can be made applicable shall apply to searches made under the authority of any warrant issued under this section, and to the disposal of any property seized in any such search and an order for search issued by the [appropriate Government];¹ under sub-section (2) of section 16 shall be deemed to be a search warrant issued by the District Magistrate having jurisdiction in the place specified therein, and may be executed by the person to whom the order is addressed in the manner provided in this section.

Power of search.

23. (1) Within one month from the date of an order by the [appropriate Government]¹ under sub-section (1) of section 16, the [appropriate Government]¹ shall place before two persons, who shall be either Sessions Judges or Additional Sessions Judges having, in either case, exercised for at least five years the powers of a Sessions Judge or Additional Sessions Judge, the material facts and circumstances in its possession on which the order has been based or which are relevant to the inquiry, together with any such facts and circumstances relating to the case which may have subsequently come into its possession, and a statement of the allegations against the person in respect of whom the order has been made and his answers to them, if furnished by him. The said Judges shall consider the facts and circumstances and the allegations and answers and shall report to the [appropriate Government]¹ whether or not in their opinion there is lawful and sufficient cause for the order.

Scrutiny of case by two judges.

(2) On receipt of the said report, the [appropriate Government]¹ shall consider the same and shall pass such order thereon, as appears to the [appropriate Government]¹ to be just or proper.

¹ Substituted by the, A.O. 1937, for "Local Govt".

(3) Nothing in this section shall entitle any person against whom an order has been made under sub-section (1) of section 16 to attend in person or to appear by pleader in any matter connected with the reference to the said Judges, and the proceedings and report of the said Judges shall be confidential.

Power to suspend operation of order under section 16.

24. (1) When an order under sub-section (1) of section 16 has been made against a person, the [appropriate Government]¹ may at any time, without conditions or upon any conditions which such person accepts, direct the suspension or cancellation of such order.

(2) If any condition on which an order has been suspended or cancelled is in the opinion of the [appropriate Government]¹ not fulfilled, the [appropriate Government]¹ may revoke the suspension or cancellation, and thereupon the person in whose favour the suspension or cancellation was made may, if at large, be arrested by any police officer without warrant, and the order under sub-section (1) of section 16 shall be deemed to be in full force.

(3) If the conditions on which such suspension or cancellation has been made include the execution of a bond with or without sureties, the [appropriate Government]¹ may at once proceed to recover the penalty of such bond.

(4) A Magistrate of the first class shall in default of payment of such penalty issue, on application made in this behalf by an officer of the [appropriate Government]¹ specially empowered, a warrant for the attachment and sale of the movable property belonging to the defaulter or his estate if he be dead. On the issue of such a warrant the provisions of sub-sections (3) and (4) of section 514 of the Code shall apply to such recovery.

Visiting Committees.

25. (1) The [appropriate Government]¹ shall by order in writing, appoint such persons as it thinks fit to constitute visiting committees for the purposes of this Act, and shall by rules prescribe the functions which these committees shall exercise.

(2) Such rules shall provide for periodical visits to persons under restraint by reason of an order made under sub-section (1) of section 16.

(3) No person in respect of whom any such order has been made requiring him to notify his residence or change of residence or to report himself to the police or to abstain from any specified act, shall be deemed to be under restraint for the purposes of sub-section (2):

26. The [appropriate Government]¹ shall make to every person who is placed under restraint by reason of an order under sub-section (1) of section 16, a monthly allowance for his support of such amount as is, in the opinion of the [appropriate Government],¹ adequate for the supply of his wants and may also make to any members of his family or near relatives who are dependent on him for support such allowance as may seem to the [appropriate Government]¹ appropriate in all the circumstances of the case.

Allowances to persons under restraint and their dependence.

Explanation.—In this section the expression “under restraint” has the same meaning as in section 25.

27. The [appropriate Government]¹ may make rules providing for the procedure to be followed regarding the notification of residence and report to the police by persons in respect of whom orders have been made under section 16, and for the place and manner of custody of all persons arrested or committed to or detained in custody under this Act.

Power to make rules.

28. All rules made under this Act shall be published in the [Official Gazette]² and on such publication shall have effect as if enacted in this Act.

Publication of rules.

29. No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act, and the powers conferred by section 491 of the Code shall not be exercised in respect of any person arrested, committed or detained in custody under this Act.

Bar to suits, prosecution and other legal proceedings.

Explanation.—No act or means done or used with out reasonable or legitimate cause or care shall be deemed as done or used in good faith.

Amendment of Act XXIII of 1931. 30. The Indian Press (Emergency Powers) Act³, 1931, shall, in its application to Assam be amended in the following manner:—

(1) After section 2 of the Act, the following sub-heading and sections shall be inserted, namely:—

Prohibition of publication of certain information.

2A. The [State Government]⁴ may, by notification in the official Gazette, prohibit either absolutely or subject to such conditions and restrictions as may be specified in the notification, the publication in any newspaper, book or other document of any class of information which, in the opinion of the [State Government]⁴, tends to create an atmosphere favourable to the gaining of adherents to the terrorist movement.

Power to prohibit publication of certain information.

¹ Substituted by the A. O 1937 for “L. G.”.
² Substituted by the A. O 1937 for “Assam Gazette.”
³ This Act has been repealed by the Press (Objectionable Matter) Act, 1951 (Act 56 of 1951).
⁴ Substituted by A. O 1950 for “Provincial Government.”

Prohibition of names, etc., of certain witnesses.

2B. Neither the name nor the designation nor any words, signs or visible representations disclosing the identity of any witness in a trial by Commissioners appointed under the Assam Criminal Law Amendment Act, 1931, shall, without the permission of the Commissioners, or, after the termination of the trial, without the permission of the [Government by which the Commissioners were appointed] be published in any newspapers, book or other document.

(2) In sub-section (1) of section 4 of the Act after clause (i) the following words and clauses shall be inserted, namely:—

“or which

(j) give any information in contravention of a notification under section 2-A, or

(k) disclose the identity of any witness in contravention of the provisions of section 2-B.”

Penalty for possession of certain prohibited documents.

“31. Whoever knowingly has in his possession any newspaper, book or other document—

(a) the importation of which has been prohibited under the Sea Customs Act, 1878, or VIII of 1878.

(b) copies whereof have been declared to be forfeited to [Government] 3 under any law for the time being in force,

shall be punishable with imprisonment which may extend to three years or with fine or with both.

Penalty for possession of documents inciting to or encouraging the commission of certain offences.

“32. Whoever has in his possession any newspaper, book or other document which contains any words, signs or visible representations which—

(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder, robbery, dacoity, or criminal intimidation, or any offence punishable under the Indian Arms Act, 1878, the Explosive Substances Act, 1908, or under sections 121, 122 A, 124 326, 329, 332, 386, 399, 400, 402, 435, 436, 440, or 457, of the Indian Penal Code; XI of 1878, VI of 1908, XLV of 1860

1. Substituted by the A. O. 1937 for “L. G.”

2. Sections 31 to 35 inserted by Assam Act VII of 1935.

3. Substituted for “His Majesty” by the A. O. 1950.

or

- (b) directly or indirectly express approval or admiration of any such offence in a manner likely to encourage the commission of the offence,

shall, unless he proves that he had such newspaper, book or document in his possession—

- (i) in circumstances indicating that he did not intend that it should, and did not know that it could, be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement; or
- (ii) for the purpose of *bona fide* research or study not connected with the furtherance or encouragement of the terrorist movement,

be punishable with imprisonment which may be extended to three years or with 'fine' or both.

XXIII of
1931.

"33. In section 31 and 32, 'book', 'document' and 'newspaper' have the same meaning as in clauses (1) (2) and 5) respectively of section 2 of the Indian Press (Emergency Powers) Act, 1931.

Meaning of
"book"
"document"
and "newspapers"

"34 (1) No Court shall take cognizance of an offence punishable under section 31 or section 32 except upon complaint made by order of or under authority from the [appropriate Government]¹ or a District Magistrate empowered by the [appropriate Government]¹ in this behalf.

Cognizance
of offences
under sections 31 and 32.

(2) No complaint shall be made under subsection (1) unless the [appropriate Government]¹ or the District Magistrate, as the case may be—

- (a) is satisfied that the newspaper, book or document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement, and
- (b) is of opinion that the person alleged to have committed the offence—
- (i) intended that the newspaper, book or document should, or knew that it could be used for the purpose of disseminating any doctrine tending to further or encourage the terrorist movement, or
- (ii) is a person to whom the provisions of subsection (1) of section 16 of the Assam Criminal Law Amendment Act, 1934, are applicable.

Assam Act
III of 1935.

1. Substituted by the A. O., 1937 for "L. G."

Offences
under sec-
tion 31 or
section 32 to
be cognizable
and bailable.

"35. Notwithstanding anything contained in the Code, an offence punishable under section 31 or section 32 shall be cognizable and bailable."

THE FIRST SCHEDULE

(See Section 3 and 6)

Any of the following offences, if in the opinion of the [appropriate Government]¹, there are reasonable grounds for believing that such offence has been committed by a member, or a person controlled or instigated by a member, of any association of which the objects or methods include the commission of any of such offences, namely:—

- (a) any offence punishable under any of the following sections of the Indian Penal Code namely, sections 121, 121-A, 122, 123, 148, 216, 302, 304, 326, 327, 328, 329, 332, 333, 364, 385, 386, 387, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 459, 460 and 506; XLV of 1860.
- (b) any offence under the Explosive Substances Act, 1908. VI of 1908
- (c) any offence under the Indian Arms Act, 1878; XI of 1878
- (d) any attempt or conspiracy to commit or any abetment of, any of the above offences.

THE SECOND SCHEDULE

(See Section 16)

- (1) Any offence punishable under any of the following sections of the Indian Penal Code, namely, section 121, 121-A, 122, 123, 148, 216, 302, 304, 326, 327, 329, 332, 333, 392, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 457, and 506. Act XLV of 1860.
- (2) Any offence under the Explosive Substances Act, 1908. VI of 1908.
- (3) Any offence under the Indian Arms Act, 1878. XI of 1878.
- (4) Any attempt or conspiracy to commit, or any abetment of, any of the above offences.

¹ Substituted by the A. O. 1937 for "L.G".