

# ACT No. XI OF 1874.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 5th  
May 1874).

An Act to amend the Code of Criminal Procedure.

**F**OR the purpose of amending the Code of Criminal Procedure; It is hereby enacted as follows:— Preamble.

1. In section two, after the fourth paragraph, the following shall be inserted, (namely):— Amendment of section 2.

“The cases in which the Police may arrest without warrant or not, in the case of each offence under the Indian Penal Code or any other law referred to in section eight;

whether a warrant or a summons shall ordinarily issue in the first instance,

whether the offence is bailable or not, and the Court by which the offence is triable,

are indicated respectively by the third, fourth, fifth and seventh columns of the fourth schedule hereto annexed.”

2. To section four the following clause shall be added (namely):— Addition to section 4.

“In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.”

3. To sections eighteen and thirty-six, the following words shall be added (namely):— Amendment of sections 18 and 36.

“or if he think further enquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused person to be necessary, he may direct such enquiry or evidence to be made or taken.”

4. In

[ Price three annas and six pias. ]

Amendment of section 39. 4. In section thirty-nine, after the word "limits," the following words shall be inserted (namely): "and may, with the previous sanction of the Governor General in Council, declare any local area to be a District."

Addition to section 42. 5. To section forty-two, the following clause shall be added (namely):—

"With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it may think proper, to any officer under its control, the power conferred by the first clause of this section."

Amendment of sections 44 and 47. 6. In section forty-four and the first paragraph of section forty-seven, the word "criminal" shall be omitted.

Addition to section 46. 7. To section forty-six, the following illustration shall be added (namely):—

"*Illustration.*—A Magistrate of the third class having jurisdiction finds an accused person guilty, but considers that he ought to receive a more severe punishment than imprisonment for a term of one month, or a fine of fifty rupees. On recording the finding, submitting the proceedings and forwarding the accused to the Magistrate of the District, such Magistrate may pass a sentence on the accused including solitary confinement and whipping."

Amendment of section 59. 8. In section fifty-nine, after the word "Court," the words "inferior to a Court of Session" shall be inserted.

Addition to section 63. 9. To the second paragraph of section sixty-three the following words shall be added (namely):—

"Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, cap. 104, section fifteen, or under section sixty-four of this Code."

Proviso of section 64 repealed. 10. In section sixty-four, the proviso shall be repealed.

Power to transfer criminal cases from one High Court to another. 11. After section sixty-four, the following section shall be inserted (namely):—

"64A. Whenever it appears to the Governor General

not

neral in Council that it will promote the ends of justice or tend to the general convenience of parties or witnesses, he may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court.

“And the Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in or presented to such Court.”

12. For the second paragraph of section seventy-five, the following shall be substituted (namely):— Amendment of section 75.

“When the offence, or one of the offences, complained of is punishable with death or transportation for life, the commitment shall be to the High Court.

“And where any person so committed is charged with several offences, of which one is punishable with death or transportation and the other with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offence.”

13. In section one hundred and eighty-six, for the words “charged before any Criminal Court with an offence,” the following words shall be substituted (namely):— Amendment of section 186.

“accused in any Criminal Court of an offence.”

14. In section one hundred and ninety-five, Explanation III, for the word ‘cannot,’ the words “shall not ordinarily” shall be substituted. Amendment of section 195, Explanation III.

15. To section two hundred and two, clause first, the following words shall be added (namely): “unless the Magistrate is satisfied that such Government Pleader or other person is already aware of the commitment and the form of the charge.” Addition to section 202.

16. To

Addition to  
section 216.

**16.** To section two hundred and sixteen, the following explanation shall be added (namely) :—

“EXPLANATION III.—The charge shall be prepared as soon as the Magistrate is of opinion that a *prima facie* case has been established against the accused person, although the whole of the evidence for the prosecution may not have been completed.”

Amendment  
of section  
222, para.  
(10).

**17.** In section two hundred and twenty-two, first paragraph (10), the following shall be substituted (namely) :—

“(10.) Insult with intent to provoke a breach of the peace under section five hundred and four, or criminal intimidation under section five hundred and six, of the Indian Penal Code.”

Amendment  
of section  
231.

**18.** In section two hundred and thirty-one, for “section four hundred and seventy-two,” the following words shall be substituted (namely) :—

“Section thirty-three, section four hundred and thirty-five, section four hundred and seventy-two, and section four hundred and seventy-four.”

Amendment  
of section  
247.

**19.** To section two hundred and forty-seven the following words shall be prefixed (namely):—“The person conducting the prosecution shall then open his case, and”

Amendment  
of section  
249.

**20.** For the first paragraph of section two hundred and forty-nine, the following shall be substituted (namely) :—

“When a witness is produced before the Court of Session or before the High Court in the exercise of its original or appellate criminal jurisdiction, the evidence given by him before the committing Magistrate may, in the discretion of the presiding Judge, be treated as evidence in the case, if it was duly taken in the presence of the accused person.”

Amendment  
of section  
263.

**21.** In the fourth paragraph of section two hundred and sixty-three, after the word “verdict,” the words “of the jurors or” shall be inserted; and for the fifth and sixth paragraphs of the same section the following shall be substituted (namely) :—

“If the Court disagrees with the verdict of the jurors

jurors, or of a majority of the jurors, on all or any of the charges on which the prisoner has been tried, and considers it necessary for the ends of justice to do so, it may submit the case to the High Court. If the Court does so, it shall not record judgment of acquittal or of conviction on any of the charges on which the prisoner has been tried; but it may either remand him to custody or admit him to bail.

“The High Court shall deal with the case so submitted as it would deal with an appeal, but it may acquit or convict the accused person on the facts as well as law, without reference to the particular charges as to which the Court of Session may have disagreed with the verdict; and if it convict him, shall pass such sentence as might have been passed by the Court of Session.”

22. For section two hundred and seventy-one, the following sections shall be substituted (namely):—

“271. Any person convicted on a trial held by a Sessions Judge may appeal to the High Court.

“An appeal may lie on a matter of fact as well as a matter of law, except where the conviction was in a trial by jury, in which case the appeal shall be admissible on a matter of law only.”

“271A. When any such person is sentenced to death, the Sessions Court shall give him a copy of the sentence and inform him that, if he wishes to appeal, his appeal must be made within seven days; and the Court shall delay the transmission of the reference hereinafter required for a reasonable time not exceeding seven days to allow of the appeal and reference being made at the same time.

“When it appears that the execution of the sentence should not be delayed, the Sessions Court may forward the reference at once, recording its reasons for so doing.”

“271B. Where the Judges composing the Court of appeal, reference or revision are equally divided, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver

Amendment of section 271.

Appeal from sentence of Sessions Judge.

Procedure in case of sentence of death.

Procedure where Judges of Court of appeal, &c., are equally divided.

his

his opinion, and the judgment or order shall follow such opinion."

Amendment  
of section  
272.

**23.** In the second paragraph of section two hundred and seventy-two, for the words "and the rules of limitation shall not apply to appeals presented under this section," the following clause shall be substituted (namely):—"No appeal shall be presented under this section after six months from the date of the judgment complained of."

Amendment  
of section  
274.

**24.** In the second clause of section two hundred and seventy-four, the last twenty words shall be omitted, and to the section the following explanation shall be added (namely):—

"EXPLANATION.—A sentence by which imprisonment is awarded in default of payment of fine, is not a sentence by which two or more punishments are combined, within the meaning of the second clause of this section."

Amendment  
of section  
276.

**25.** For section two hundred and seventy-six, the following shall be substituted (namely):—

Copies of  
proceedings.

"**276.** If any person affected by a sentence or other order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any other proceeding not being the judgment or order provided for by section four hundred and sixty-four, he shall, on applying for such copy, be furnished therewith provided that he pay for the same, unless the Court, for some special reason, sees fit to furnish it free of cost."

Amendment  
of section  
278.

**26.** To section two hundred and seventy-eight, the following clause shall be added (namely):—

"In rejecting an appeal under this section, the Appellate Court shall not enhance the sentence."

Amendment  
of section  
279.

**27.** To section two hundred and seventy-nine, the following words shall be added (namely):—

"and in cases under section two hundred and seventy-two, where the Appellate Court decides to hear the appeal, it shall also cause notice to be given to the respondent."

**28.** To

**28.** To the first clause of section two hundred and eighty, the following words shall be added (namely) :—

Amendment  
of section  
280.

“or order the appellant to be retried.”

**29.** In the second paragraph of section two hundred and ninety-six, the words “Provided that” shall be omitted and the following words shall be added (namely) :—“upon the matter of such complaint or of which the accused person has been, in the opinion of the Court or Magistrate, improperly discharged.

Amendment  
of section  
296.

“Provided that, if in the opinion of such Court or Magistrate, the evidence shows that some other offence has been committed by the accused person, such Court or Magistrate may direct the Subordinate Court to inquire into such offence.”

**30.** In the third paragraph of section two hundred and ninety-seven, for the word “inconveniently” the word “incorrectly” shall be substituted.

Amendment  
of section  
297.

**31.** For section two hundred and ninety-eight, the following shall be substituted (namely) :—

Amendment  
of section  
298.

“298. The High Court or the Court of Session may direct the Magistrate of the District, by himself or by any of the Magistrates subordinate to him,

“or the Magistrate of the District may direct any subordinate Magistrate,

“to make further inquiry into any complaint which has been dismissed under section one hundred and forty-seven.”

**32.** For the fourth paragraph of section three hundred and two, the following section shall be substituted (namely) :—

Amendment  
of section  
302.

“302A. In cases tried by any Court inferior to a Court of Session, where the accused person is sentenced to imprisonment, the Court shall forthwith forward him with a similar warrant for the execution of the sentence to the officer in charge of the jail of the District in which the trial was held :

“But where the accused person is sentenced to whipping, the sentence may be executed at such place and time as the Court may direct.”

**33.** In

Amendment  
of sections  
311 and 312.

**33.** In the third paragraph of section three hundred and eleven, after the word "Magistrate," the words "or a Superintendent of a Jail" shall be inserted.

And in the first and second paragraphs of section three hundred and twelve, after the word "Magistrate," the words "or Superintendent" shall be inserted.

Amendment  
of section  
322.

**34.** To the first clause of section three hundred and twenty-two the following words shall be added (namely), "or grant a reprieve or respite in respect of such sentence," and the following clauses shall be added to the same-section (namely):—

"This section applies to all punishments inflicted by the High Court. Provided that nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment:

"When any fine or forfeiture is imposed on any person for any offence, the Governor General in Council or the Local Government may (subject to the provisions of section three hundred and eight) direct that a share or proportion of such fine be paid over to the prosecutor towards defraying his expenses, as the Governor General in Council or the Local Government thinks fit."

Amendment  
of section  
330.

**35.** After the second paragraph of section three hundred and thirty, the following shall be inserted (namely):—

"If the witness is within the local limits of the ordinary original criminal jurisdiction of any of the High Courts of Judicature at Fort William, Madras and Bombay, the Court dispensing with his personal attendance may direct a commission to any Police Magistrate within such limits, and such Police Magistrate shall have the like power to compel the attendance and examination of witnesses as he possesses for that purpose in cases pending before him."

And in the third paragraph of the same section, for the words "to which," the words "upon which" shall



shall be substituted, and for the words "cause a return to be made," the words "shall examine the witness" shall be substituted, and after the word "Magistrate," the words "or Police Magistrate" shall be inserted.

And after the fourth paragraph of the same section, the following paragraph shall be inserted (namely):—

"After any commission issued under this section has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition of such witness may be used as evidence in the case and shall form part of the record."

**36.** In section three hundred and seventy-nine the following words shall be omitted (namely), "by or under the direction of an officer in charge of a Police-station, or by a Police officer making an investigation."

Amendment  
of section  
379.

**37.** In the second paragraph of section three hundred and ninety-eight, for the words "accused person," the words "party or witness" shall be substituted.

Amendment  
of section  
398.

**38.** In section four hundred and eighteen, before the word "trial," the words "inquiry or" shall be inserted;

Amendment  
of section  
418.

and to the same section the following explanation shall be added (namely):—

"EXPLANATION.—In this section the term 'property' includes not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

**39.** To section four hundred and twenty-five, the following clause shall be added (namely):—

Amendment  
of section  
425.

"The trial of the fact of the unsoundness of mind of the accused person shall be deemed to be part of his trial before the Court."

40. For

Amendment  
of section  
451.

40. For the first sentence of the illustration to section four hundred and fifty-one, the following shall be substituted (namely) :—

“ A is convicted of an offence under section 196 of the Indian Penal Code upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine, was false or fabricated.”

Amendment  
of section  
464.

41. For the second paragraph of section four hundred and sixty-four, the following shall be substituted (namely) :—

“ The judgment or order shall be explained to the accused person or person affected by it, and on his application a copy thereof shall be given to him without delay free of cost and in his own language, if practicable, if not, in the language of the Court.”

And to the seventh paragraph of the same section, the following words shall be added, (namely) :—

“ where such error or defect is in a matter not affecting the merits of the case.”

Addition to  
section 466.

42. To section four hundred and sixty-six, the following clause shall be added (namely) :—

“ In this section the expressions ‘ Judge’ and ‘ public servant’ shall be taken to have the meaning assigned to them respectively by the Indian Penal Code.”

Chapter  
XXXVI ap-  
plied to Pre-  
sidency  
Towns.

43. Chapter XXXVI (*Of the Dispersion of unlawful Assemblies*) shall be deemed to apply to the towns of Calcutta, Madras and Bombay, and the word “ Magistrate,” wherever it occurs in the said chapter, shall be deemed to include a Magistrate of Police.

Amendment  
of section  
503.

44. To section five hundred and three, the following words shall be added (namely) :—“ And in case such penalty cannot be so recovered, the surety shall be liable, by order of such Magistrate, to imprisonment in the civil jail for a period not exceeding six months.”

Correction of  
section 527.

45. In section five hundred and twenty-seven, for the words “ four hundred and twenty-one,” the words

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words "five hundred and twenty-one" shall be substituted.

46. In the third column of the fourth schedule to the Code of Criminal Procedure, opposite No. 323, for the words "Shall not arrest without warrant," the words "May arrest without warrant" shall be substituted; and opposite No. 428, for the word "Ditto," the words "May arrest without warrant" shall be substituted.

Amendment of schedule IV, column 3, Nos. 323 and 428.

47. In this Act, "section" means section of the Code of Criminal Procedure.

Interpretation of "section."

And all references to the Code of Criminal Procedure made in Acts heretofore passed or hereafter to be passed shall be read as if made to such Code as amended by this Act.

References to Code of Criminal Procedure.