

## ACT No. XII OF 1923.

[PASSED BY THE INDIAN LEGISLATURE.]

(Received the assent of the Governor General on  
the 16th March, 1923.)

An Act further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings.

V of 1898.  
IX of 1874.  
IX of 1908.  
C. P. Act I  
of 1917.

**W**HEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, the European Vagrancy Act, 1874, the Indian Limitation Act, 1908, and the Central Provinces Courts Act, 1917, in order to provide for the removal of certain existing discriminations between European British subjects and Indians in criminal trials and proceedings; It is hereby enacted as follows:—

1. (1) This Act may be called the Criminal Law Amendment Act, 1923.

Short title  
and com-  
mencement.

(2) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

V of 1898.

2. (1) In sub-section (1) of section 4 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the said Code), for clause (i) the following clause shall be substituted, namely:—

Amendment  
of section 4,  
Code of  
Criminal  
Procedure,  
1898.

“(i) “European British Subject” means—

European  
British sub-  
ject.

(i) any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Islands or any Colony, or

(ii) any

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[Price four annas and nine pies.]

(ii) any subject of His Majesty who is the child or grand-child of any such person by legitimate descent."

(2) In clause (j) of the same sub-section, after the word "Rangoon" the words "and the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind" shall be inserted.

Amendment of section 22, Code of Criminal Procedure, 1898.

3. In section 22 of the said Code, the words and brackets "(other than the presidency-towns)" shall be omitted, and for the words "European British subjects" the words "persons resident within British India and not being the subjects of any foreign State" shall be substituted.

Repeal of sections 23 and 24, Code of Criminal Procedure, 1898.

4. Sections 23 and 24 of the said Code shall be omitted.

Amendment of section 29, Code of Criminal Procedure, 1898.

5. In sub-section (1) of section 29 of the said Code, for the words and figures "provisions of section 447" the words "other provisions of this Code" shall be substituted.

Insertion of new section 29A in the Code of Criminal Procedure, 1898.

6. After section 29 of the said Code the following section shall be inserted, namely:—

Trial of European British subjects by second and third class Magistrates.

" 29A. No Magistrate of the second or third class shall inquire into or try any offence which is punishable otherwise than with fine not exceeding fifty rupees where the accused is an European British subject who claims to be tried as such."

Insertion of new section 34A in the Code of Criminal Procedure, 1898.

7. After section 34 of the said Code the following section shall be inserted, namely:—

Sentences which Courts and Magistrates may pass upon European British subjects.

" 34A. Notwithstanding anything contained in sections 31, 32 and 34—

(a) no

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(a) no Court of Session shall pass on any European British subject any sentence other than a sentence of death, penal servitude, or imprisonment with or without fine, or of fine, and

(b) no District Magistrate or other Magistrate of the first class shall pass on any European British subject any sentence other than imprisonment which may extend to two years, or fine which may extend to one thousand rupees, or both."

8. Section 111 of the said Code shall be omitted.

Repeal of section 111, Code of Criminal Procedure, 1898.

9. In sub-section (1) of section 206 of the said Code, the words and figures " Subject to the provision of section 443 " shall be omitted.

Amendment of section 206, Code of Criminal Procedure, 1898.

10. Section 214 of the said Code shall be omitted.

Repeal of section 214, Code of Criminal Procedure, 1898.

11. In section 215 of the said Code, the words and figures " or section 214 " shall be omitted.

Amendment of section 215, Code of Criminal Procedure, 1898.

12. In section 266 of the said Code, after the word " includes " the following words shall be inserted, namely:—" the Courts of the Judicial Commissioners of the Central Provinces, Oudh and Sind and ".

Amendment of section 266, Code of Criminal Procedure, 1898.

13. In sub-section (2) of section 274 of the said Code, for the word " three " the word " five " shall be substituted; and to the same sub-section the following proviso shall be added, namely:—

Amendment of section 274, Code of Criminal Procedure, 1898.

" Provided that, where any accused person is charged with an offence punishable with death, the jury shall consist of not less than seven persons and, if practicable, of nine persons."

14. For

Substitution of new section for section 275, Code of Criminal Procedure, 1898.

14. For section 275 of the said Code the following section shall be substituted, namely:—

Jury for trial of European and Indian British subjects and others.

“ 275. (1) In a trial by jury before the High Court or Court of Session of a person who has been found under the provisions of this Code to be an European or Indian British subject, a majority of the jury shall, if such person before the first juror is called and accepted so requires, consist, in the case of an European British subject, of persons who are Europeans or Americans and, in the case of an Indian British subject, of Indians.

(2) In any such trial by jury of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, a majority of the jury shall, if practicable and if such European or American before the first juror is called and accepted so requires, consist of persons who are Europeans or Americans.”

Amendment of section 284, Code of Criminal Procedure, 1898.

15. In section 284 of the said Code, for the words “ two or more shall be chosen, as the Judge thinks fit,” the words “ not less than three and, if practicable, four shall be chosen ” shall be substituted.

Insertion of new section 284A in the Code of Criminal Procedure, 1898.

16. After section 284 of the said Code the following section shall be inserted, namely:—

Assessors for trial of European and Indian British subjects and others.

“ 284A. (1) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European or Indian British subject, if the European or Indian British subject accused, or, where there are several European British subjects accused or several Indian British subjects accused, all of them jointly, before the first assessor is chosen so require, all the assessors shall, in the case of European British subjects, be persons who

are

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are Europeans or Americans or, in the case of Indian British subjects, be Indians.

(2) In a trial with the aid of assessors of a person who has been found under the provisions of this Code to be an European (other than an European British subject) or an American, all the assessors shall, if practicable and if such European or American before the first assessor is chosen so requires, be persons who are Europeans or Americans."

17. After section 285 the following heading and section shall be inserted, namely:—

Insertion of new section 285A in the Code of Criminal Procedure, 1898.

" DD.—*Joint trials.*

285A. In any case in which an European or American is accused jointly with a person not being an European or American, or an Indian British subject is accused jointly with a person not being an Indian, and such European, Indian British subject or American is committed for trial before a Court of Session, he and such other person may be tried together, but if he requires to be tried in accordance with the provisions of section 275 or section 284A and is so tried, and the other person accused requires to be tried separately, such other person shall be tried separately in accordance with the provisions of this Chapter."

Trial of European or Indian British subject or European or American jointly accused with others.

18. For section 312 of the said Code the following section shall be substituted, namely:—

Substitution of new section for section 312, Code of Criminal Procedure, 1898.

" 312. The High Court may prescribe the number of persons whose names shall be entered at any one time in the special jurors list :

Number of special jurors.

Provided that no definite number of Europeans or of Americans or of Indians shall be so prescribed."

19. (1) In sub-section

Amendment  
of section  
326,  
Code of Cri-  
minal Proce-  
dure, 1898.

19. (1) In sub-section. (1) of section 326 of the said Code, after the words " for any such trial " the following words shall be added, namely :—

" and including, where any accused person is an European or an American, as many Europeans or Americans as may be required for the purpose of choosing jurors or assessors for the trial."

(2) To the same section the following sub-sections shall be added, namely :—

" (3) Where the accused requires and is entitled to be tried under the provisions of section 275, there shall be chosen by lot, in the manner prescribed by or under section 276, from the whole number of persons returned the jurors who are to constitute the jury until a jury containing the proper number of Europeans or Europeans and Americans or of Indians, as the case may be, has been obtained :

Provided that, in any case in which the proper number of Europeans or Americans cannot otherwise be obtained, the Court may, in its discretion for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

(4) Where, under the proviso to sub-section (3), the Court proposes to summon as a juror any person in His Majesty's Army, the provisions of section 317 shall apply in like manner as they apply for the purpose of the summoning of military jurors for a trial under section 316."

Repeal of  
section 336,  
Code of Cri-  
minal Proce-  
dure, 1898.

20. Section 336 of the said Code shall be omitted.

Amendment  
of section  
390,  
Code of Cri-  
minal Proce-  
dure, 1898.

21. In section 390 of the said Code, after the word " shall " the words " subject to the provisions of section 391 " shall be inserted.

22. In

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**22.** In sub-section (1) of section 391 of the said Code, for the words "is sentenced to whipping in addition to imprisonment in a case which is subject to appeal" the following shall be substituted, namely:—

Amendment of section 391, Code of Criminal Procedure, 1898.

- "(a) is sentenced to whipping only and furnishes bail to the satisfaction of the Court for his appearance at such time and place as the Court may direct, or  
(b) is sentenced to whipping in addition to imprisonment."

**23.** In section 408 of the said Code, clause (a) of the proviso shall be omitted.

Amendment of section 408, Code of Criminal Procedure, 1898.

**24.** In section 413 of the said Code, the words "or the District Magistrate or other Magistrate of the first class" and the words "or of whipping only" shall be omitted; and after the words "one month only or" the words "in which a Court of Session or District Magistrate or other Magistrate of the first class passes a sentence" shall be inserted.

Amendment of section 413, Code of Criminal Procedure, 1898.

**25.** In section 414 of the said Code, the words "of imprisonment not exceeding three months only, or" and the words "or of whipping only" shall be omitted.

Amendment of section 414, Code of Criminal Procedure, 1898.

**26.** Section 416 of the said Code shall be omitted.

Repeal of section 416, Code of Criminal Procedure, 1898.

**27.** For Chapter XXXIII including sections 443 to 463 of the said Code the following Chapter and sections shall be substituted, namely:—

Substitution of new Chapter for Chapter XXXIII, Code of Criminal Procedure, 1898.

"CHAPTER XXXIII.

SPECIAL PROVISIONS RELATING TO CASES IN WHICH EUROPEAN AND INDIAN BRITISH SUBJECTS ARE CONCERNED.

443. (1) Where, in the course of the trial outside a presidency-town of any offence punishable with imprisonment,

Determination regarding applica-

bility of this  
Chapter.

imprisonment, the accused person, at any time before he is committed for trial under section 213 or is asked to show cause under section 242 or enters on his defence under section 256, as the case may be, claims that the case ought to be tried under the provisions of this Chapter, the Magistrate inquiring into or trying the case, after making such inquiry as he thinks necessary; and after allowing the accused person reasonable time within which to adduce evidence in support of his claim, shall, if he is satisfied—

(a) that the complainant and the accused persons or any of them are respectively European and Indian British subjects or Indian and European British subjects, or

(b) that, in view of the connection with the case of both an European British subject and an Indian British subject, it is expedient for the ends of justice that the case should be tried under the provisions of this Chapter,

record a finding that the case is a case which ought to be tried under the provisions of this Chapter, or, if he is not so satisfied, record a finding that it is not such a case.

(2) Where the Magistrate rejects the claim, the person by whom it was made may appeal to the Sessions Judge, and the decision of the Sessions Judge thereon shall be final and shall not be questioned in any Court in appeal or revision.

(3) Where the Magistrate rejects the claim, he shall stay the proceedings until the expiration of the period allowed for the presentation of the appeal or, if an appeal is presented, until it has been decided.

Definition of  
"complain-  
ant."

444. For the purposes of section 443; "complainant" means any person making a complaint or, in relation to any case of which cognizance is

taken



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taken under clause (b) of section 190, sub-section (1), any person who has given information relating to the commission of the offence within the meaning of section 154 :

IX of 1890.

Provided that a Public Prosecutor, a public servant, a member, officer or servant of any local authority, a railway servant as defined in section 3 of the Indian Railways Act, 1890, or an officer or servant of any company, association or other body to which the Local Government may, by general or special order published in the local official Gazette, declare the provisions of this section to apply, shall not, by reason only of the fact that he has made a complaint of, or given information of, an offence in his capacity as such Public Prosecutor, public servant, railway servant, member, officer or servant, be deemed to be a complainant within the meaning of this section, nor shall a police-officer be so deemed by reason only of the fact that a report under section 173 relating to a case has been made by or through him.

445. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a summons-case, the Magistrate trying the same shall direct that the case be referred to a Bench of two Magistrates and shall send a copy of such order to the District Magistrate who shall forthwith provide for the constitution of a Bench of two Magistrates of the first class, of whom one shall be an European and the other an Indian, for the trial of the case.

Procedure in  
summons-  
cases.

(2) Where the Magistrates constituting the Bench by which a case is tried under this section differ in opinion, the case, together with their opinions thereon, shall be laid before the Sessions Judge, who may examine any party or recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall thereafter pass such judgment,

sentence

sentence or order in the case as he thinks fit and as is according to law.

(3) Any person convicted by a Bench under this section shall have the same right of appeal as if he had been convicted by a Magistrate of the first class, and any person convicted by a Sessions Judge under sub-section (2) shall have the same right of appeal to the High Court as if he had been convicted by the Sessions Judge at a trial held by the Sessions Judge under this Code.

(4) In any case in which it is impracticable to constitute a Bench in accordance with the provisions of sub-section (1) in any district, the District Magistrate shall transfer the case for trial by a like Bench to such other district as the High Court may, by general or special order, direct.

(5) Notwithstanding anything contained in this section, the Local Government may, by notification in the local official Gazette, direct that all summons-cases tried under the provisions of this Chapter in any district specified in the notification shall be tried as if they were warrant-cases in accordance with the provisions hereinafter in this Chapter laid down for the trial of warrant-cases.

Procedure in  
warrant-  
cases.

446. (1) Where a Magistrate or a Sessions Judge decides under section 443 that a case ought to be tried under the provisions of this Chapter and the case is a warrant-case, the Magistrate inquiring into or trying the case shall, if he does not discharge the accused under section 209 or section 253, as the case may be, commit the case for trial to the Court of Session, whether the case is or is not exclusively triable by that Court.

(2) Where an accused is committed to the Court of Session under sub-section (1), the Court shall proceed to try the case as if the accused had required to be tried in accordance with the provisions of section 275, and the provisions of that section and the other provisions of Chapter XXIII,

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so far as they are applicable, shall apply accordingly:

Provided that where the trial before the Court of Session would in the ordinary course be with the aid of assessors and the accused, or all of them jointly, require to be tried in accordance with the provisions of section 284A, the trial shall be held with the aid of assessors all of whom shall, in the case of European British subjects, be persons who are Europeans or Americans or, in the case of Indian British subjects, be Indians.

447. If at any stage of an inquiry or trial under this Code it appears to the Magistrate that the case is or might be held to be a case which ought to be tried under the provisions of this Chapter, he shall forthwith inform the accused person of his rights under this Chapter.

Court to inform accused persons of their rights in certain cases.

448. For the purpose of the trial in Rangoon of any person under the provisions of this Chapter, references to the Sessions Judge shall be construed as references to the High Court of Judicature at Rangoon.

References to Sessions Judge to be construed as references to High Court in Rangoon.

449. (1) Where—

- (a) a case is tried by jury in a High Court or Court of Session under the provisions of this Chapter, or
- (b) a case which would otherwise have been tried under the provisions of this Chapter is under this Code committed to or transferred to the High Court and is tried by jury in the High Court, or
- (c) a case is tried by jury in the High Court in a presidency-town and the High Court grants leave to appeal on the ground that the case would, if it had been tried outside a presidency-town, have been triable under the provisions of this Chapter,

Special provisions relating to appeal.

then, notwithstanding anything contained in section 418 or section 423, sub-section (2), or in the letters

patent

Indian British subject, or as European or American.

Indian British subject, or where any person claims to be dealt with as an European (other than an European British subject) or an American, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purpose of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall deal with him accordingly.

(2) When any such claim is rejected by the Magistrate and the person by whom it was made is committed by the Magistrate for trial before the Court of Session, and such person repeats the claim before such Court, such Court shall, after such further inquiry, if any as it thinks fit, decide the claim, and shall deal with such person accordingly.

(3) When any Court before which any person is tried rejects any such claim as aforesaid the decision shall form a ground of appeal from the sentence or order passed in such trial.

Failure to plead status a waiver.

528B. If in any such case an European or Indian British subject or an European (other than an European British subject) or an American does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before and rejected by the committing Magistrate, it is not repeated before the Court to which such person is committed, he shall be held to have relinquished his right to be dealt with as an European British subject or an Indian British subject, or an European or an American, as the case may be, and shall not assert it in any subsequent stage of the case.

Trial of person as belonging to class

528C. Where a person, not being an European British subject, is dealt with as an European British subject or, not being an Indian British subject, is dealt

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dealt with as an Indian British subject or, not being an European (other than an European British subject) or American, is dealt with as an European or American, and such person does not object, the inquiry, commitment, trial, or sentence, as the case may be, shall not, by reason of such dealing, be invalid.

to which he does not belong.

528D. (1) Unless there is something repugnant in the context, all enactments made by the Governor General in Council or the Indian Legislature which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons are not expressly referred to therein.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

(2) Nothing in this section shall be deemed to authorise any Court to exceed the limits prescribed by this Code as to the amount of punishment which it may inflict on an European British subject or to confer jurisdiction on any Magistrate of the second or third class for the trial of such subjects."

34. For section 534 of the said Code the following section shall be substituted, namely :—

Amendment of section 534, Code of Criminal Procedure, 1898.

" 534. An omission to inform under section 447 any person of his rights under Chapter XXXIII shall not affect the validity of any proceeding."

Omission to give information under section 447.

IX of 1874.

35. In section 4 of the European Vagrancy Act, 1874 (hereinafter referred to as the said Act), for the words " the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure " the words " the nearest Magistrate of the first class " shall be substituted.

Amendment of section 4, Act IX of 1874.

V of 1898.

36. In sections 5, 8 and 29 of the said Act, for the word " Justice " the words " Magistrate of the first class " shall be substituted.

Amendment of sections 5, 8 and 29, Act IX of 1874.

37. In sections 7, 9, 10 and 24 of the said Act, for the words " Justice of the Peace exercising powers as aforesaid " the words " Magistrate of the first class " shall be substituted.

Amendment of sections 7, 9, 10 and 24, Act IX of 1874.

class "

class" shall be substituted; and, in section 10 of the said Act, the words "Justice of the Peace," where they first occur, shall be omitted.

Amendment of section 19, Act IX of 1874.

**38.** In section 19 of the said Act, for the words "Justice of the Peace," wherever they occur, the words "Magistrate of the first class" shall be substituted.

Amendment of section 30, Act IX of 1874.

**39.** In section 30 of the said Act, the words "beyond the limits of the said towns" the words and brackets "(other than those contained in Chapter XXXVIII of the same Code)", and the words "If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section" shall be omitted.

Amendment of section 35, Act IX of 1874.

**40.** In section 35 of the said Act, the words "Justices of the Peace exercising the powers of a Magistrate of the first class" shall be omitted.

Amendment of the First Schedule to Act IX of 1874.

**41.** In the First Schedule to the said Act, for the words "Justice of the Peace for exercising the powers of a Magistrate of the class" the words "Magistrate of the first class" shall be substituted.

Amendment of First Schedule to Act IX of 1908.

**42.** In the First Schedule to the Indian Limitation Act, 1908, the following item shall be inserted after item 150, namely:—

"150A.—Under the Code of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.	Seven days.	The date of the finding."
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Amendment of section 3, Central Provinces Courts Act, 1917.

**43.** In section 3 of the Central Provinces Courts Act, 1917, the words "except in reference to proceedings against European British subjects and persons jointly charged with the European British subjects" shall be omitted. C. P. Act I of 1917.