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No. 8237 (Judicial), dated Ootacamund, the 27th October 1893.

From—The Honourable J. F. Price, C.S.I., Chief Secretary to the Government of Madras.

To—The Secretary to the Government of India, Home Department.

I AM directed to reply to your letter, dated 4th October 1893, No. 1160, Public, in which this Government has been invited to give its opinion on certain subjects connected with the agitation against the slaughter of cattle. The information called for in your letter dated 29th August 1893, No. 1-1C. Police, on the same subject, will be furnished at an early date. As your later letter is of an urgent character, His Excellency in Council considers it expedient to reply to it at once in preference to delaying the answer until the information referred to in your other communication is available.

2. The Madras Government recognises the gravity of the facts which have come to light, and shares the opinion expressed by Sir Charles Crosthwaite that immediate legislation is necessary. His Excellency in Council therefore endorses the proposal to insert two sections on the subject of conspiracy in the Penal Code (making the penalty for belonging to an unlawful society two years' rigorous imprisonment and fine as suggested by Sir Charles Crosthwaite), and to amend section 503 of the Code in the manner specified in your letter under reply.

3. This Government has also no objection to the amendment of section 45 of the Code of Criminal Procedure in the mode suggested in your letter, but the addition of an explanation enabling the District Magistrate to appoint Village Headmen, where there are none at present, is hardly necessary so far as regards this Presidency, and in the form drafted by the Legal Remembrancer the "explanation" is perhaps somewhat too peremptory in that it compels the District Magistrate to appoint Headmen instead of leaving it to his discretion.

4. As regards the imposition of punitive police, I am to point out that there is already an Act on the subject in this Presidency. This enactment (Act III of 1882, Madras) however labours under the defects alluded to by Sir Charles Crosthwaite, and His Excellency in Council would suggest that the Government of India should undertake legislation to repeal all local enactments on the subject of punitive police and to replace them by an Act in which provision is made for the matters specified in clause III of paragraph 3 of your letter under reply.

5. The insertion in the Cattle-trespass Act of a clause prohibiting the establishment of private pounds does not seem to be open to serious objection, but it appears to this Government to be somewhat too drastic a measure to forbid private individuals to establish "go-sálas," which are, it is understood, of the nature of asylums for useless cattle. The section which Sir Charles Crosthwaite would add to the chapter on penalties in the Cattle-trespass Act will not attain the object in view, for the rescue of cattle on their way to the slaughter-house will not be a *seizure* "under the provisions of section 10 or 11 of the Act," and the proposed section would therefore be inoperative to meet such cases. Moreover, the rescue of cattle on the way to the slaughter-house and intimidation in regard to the taking of cattle to pounds are already punishable under other laws.

6. As remarked above, the Government of India will be addressed again on the questions raised in paragraph 5 of your letter under reply, but the present opportunity may be taken to state that, so far as Government is aware, the movement for the protection of cattle has not attained any magnitude in Madras, and that there has hitherto been no difficulty regarding the slaughter of cattle for beef supply or otherwise.

7. With regard to the question of imposing legal restraint upon the Press, His Excellency in Council thinks that the amendment of section 503, Indian Penal Code, in the manner indicated in your letter under reply, will be sufficient, and that any larger measure would give rise to the greatest dissatisfaction and would probably cause more mischief than it would cure.

8. For the present there appears to be no necessity to restrict, in the manner suggested in paragraph 7 of your letter under reply, the slaughter of cattle in Madras. Almost every Municipality in the Presidency possesses a beef slaughter-house, and the Government has never heard of any objection to the establishment of such places. At the same time as difficulties may arise in the future, the Government sees no objection to legislation on the lines suggested in the last sentence of paragraph 7 of your letter. In the event of serious disturbance it might be useful to possess the power to prohibit departure from here by means of rules having the force of law. There is certainly no need for any general provision such as that in force in the Punjab.

COW (Rape) Dispt^{W342}
Original gone to Bombay
12.9.1997

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CPM/Ref 2.20C

[CONFIDENTIAL.]

No. 393 M., dated the 28th October 1893.

From—O. C. Whitworth, Esq., Acting Secretary to the Government of
Bombay, Judicial Department.

To—The Secretary to the Government of India, Home Department.

I am directed to acknowledge the receipt of your letter No. 1461, dated the 4th instant, and to submit, for the consideration of His Excellency the Governor General in Council, the observations of this Government on the first two proposals for the amendment of the Indian Penal Code advocated by Sir Charles Crosthwaite, and to forward copies of the opinions received by His Excellency the Governor in Council from Mr. Justice Fulton, Mr. Hammick and Mr. Batty, and a summary of the opinions of some other officers whom His Excellency in Council has deemed it expedient to consult.

2. As regards the proposal for the insertion in the Indian Penal Code of the two sections dealing with the law of conspiracy, I am directed to observe that, although His Excellency the Governor in Council sees no objection in principle to the enactment, as part of the general criminal law, of provisions designed to assimilate the law of conspiracy in this country to that obtaining in England, it is inevitable that their enactment, at this particular crisis, should be regarded and represented both by the Native Press throughout India, and by a powerful section of the English Press, as directed specially against an object with which the Hindu community are more or less identified, and which they are coming to treat as a party question as between themselves and the Muhammadans. This is an objection which the Government of India will doubtless carefully consider. To this Government it appears sufficiently weighty to furnish a conclusive reason for abstaining from legislation on the lines contemplated unless the most absolute necessity for it is established. So far as this Presidency is concerned, although the anti-kine-killing agitators have been by no means idle, the movement has not up to the present time taken any such hold on the people as to become a serious menace to the public tranquillity, and special legislation is not called for. It is, however, of course, impossible to foresee what further development may take place even here; and the state of things in the North-West Provinces is different. If the Governor General in Council is satisfied that the system of agrarian terrorism described by Sir Charles Crosthwaite is as widespread and effectual as is alleged, and that it cannot be dispelled or suppressed otherwise than by special legislation, this Government has no objection to offer.

3. Even in the North-West Provinces, I am to observe, it is apparently the methods rather than the ostensible objects of the Gorakshini Societies that constitute the danger; and if any means could be devised of so strengthening the existing provisions of the law as to secure convictions in cases where individual liberty of action is interfered with, that course would apparently be preferable to the insertion of special sections directed against membership of the societies, and therefore more liable to be misrepresented as directed against the religious and economic aspect of the movement.

4. It is, however, above all things important that, if there is to be legislation at all, it should be thoroughly effectual, and this Government fully recognises the difficulty likely to arise in obtaining evidence of specific acts of terrorism even in cases which the law could reach if they were established.

5. In this connection I am to observe that, for reasons clearly stated in the letters from the Hon'ble Mr. Fulton and the Hon'ble Mr. Batty, it seems important, if the legislation is to take the form proposed, to avoid the use of the word "injury" in the definition of an unlawful society, as being likely to reproduce the same legal uncertainty in dealing with unlawful societies which has been shown to attend the application of the law, as it stands, to the particular forms of intimidation and extortion which are practised by the societies now in question. The difficulty might perhaps be obviated, I am to suggest, by substituting for the word "injury" in section 510A the words used in section 41 to define "injury," with the omission of the word "illegally," which

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is that out of which the doubt arises. The section would then run as follows:—

"An unlawful society is a society of two or more persons whose common object is by causing harm to any person, in body, mind, reputation, or property, or by threats of such harm, to compel any person to do, etc."

6. As regards the proposed amendment of section 503 of the Indian Penal Code, I am directed to observe that His Excellency the Governor in Council most fully realizes the present unsatisfactory condition of the Native Press. The evil, however, is the result mainly of the entire absence in this country of the salutary check, which is supplied in England and indeed in every western country, where a free Press is established and permitted, by the practice of conducting newspapers on party lines, which ensures mistakes and misstatements being speedily exposed and refuted, and by the desire which animates a large proportion of English newspapers, but only a few in India, to give the public correct information, to cultivate a high tone of criticism and to eliminate personal abuse and innuendo. In India the Press most lamentably lacks the courage to criticize itself. The European newspapers rarely notice what is stated in the Native papers, and when they do, any adverse comment is treated by the Native Press as the outcome of race prejudice. In the Native Press itself one newspaper never condemns misstatements or false accusations or misleading criticism in another, or cares to correct them in its own pages, except under pressure and in grudging terms, which show no conviction of impropriety or error. His Excellency the Governor in Council agrees generally in Sir Charles Croathwaite's remarks as to the mischievous tendency of this state of things, but doubts whether any but the most radical legislation could check it, and that only at the cost of still greater evils. It seems to him that the alteration in section 503 now proposed would hardly be attended with such practical benefit as would compensate for the outcry with which any measure, however reasonable, which might be represented as an encroachment on the freedom of the Press, would be met certainly in this country and probably also in England. The scope of the section it is proposed to amend, it must be remembered, is very limited. For one such false report as would come within its application there are hundreds of articles published daily which are more inflammatory and generally mischievous, and which cannot be met by contradiction or withdrawal. So far as the special danger arising from false reports in times of disturbance is concerned, His Excellency the Governor in Council is disposed to believe that on such occasions an appeal by the authorities to the Press to abstain, as a matter of loyalty and good feeling, from the publication of any reports or other matter likely to inflame animosities or embarrass the authorities in preserving the public peace would meet with a ready response, at any rate from the more respectable portion of the Press, and tend as strongly to enlist sympathy on the side of order, as the conviction of any Editor, however deservedly, for what would be regarded as mere journalistic indiscretions, would certainly tend to alienate it. I am therefore to deprecate the proposed enlargement of the provisions of section 503, more especially at the present juncture. The combination of legislation to curb the license of the Press generally with legislation to confront a movement more or less political, inspired by one section of the community would put a powerful weapon into the hands of agitators. As Mr. Aston observes in paragraph 7 of his letter—"To the extent to which the cow-protection societies are declared by constituted authority to be a menace to peaceful and orderly administration, legislation to suppress them cannot be openly opposed with consistency by any persons posing as law-abiding citizens. Such legislation ought to have the open support of that portion of the Press which is not under the control of the agitators. It does not seem wise to run the risk of weakening or losing the support of that portion by including it in a general crusade, or to give the other portion a chance of confusing the issues and masking an opposition to the suppression of seditious societies under cover of a defense of the liberty of the Press."

Ed.—W. B. G.

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[STRICTLY CONFIDENTIAL.]

[Accompaniment to Bombay Government, Judicial Department, letter No. 293-M., dated the 28th October 1893.]

Precis of replies to Government Resolution No. S. B.—44, dated 12th October 1893.

(1) Honourable Mr. E. T. Candy, Judge of the High Court, Bombay.— States that being away from his books he cannot give an opinion of any value.

As regards proposed insertion in the Indian Penal Code of two sections dealing with the law of conspiracy, sees no reasons why that Code should not contain certain provisions answering to the English Common Law of conspiracy. Great care will be necessary in ascertaining and defining what that law really is. Considers definitions of conspiracy given by the Advocate General, Bengal, and the Legal Remembrancer, North-Western Provinces, too broad.

The proposed amendment of section 505, Indian Penal Code, seems very desirable.

(2) Honourable Mr. E. M. H. Fulton, Judge of the High Court, Bombay.— "In reference to your letter S. B.—44-A. of 1893, dated the 12th instant, I have the honour to state that, owing to the gravity of the subject and my want of acquaintance with the circumstances which led the Government of the North-West Provinces to submit to the Government of India the proposals for the amendment of the Indian Penal Code and other laws which are now under consideration, I experience great difficulty in offering an opinion. So far, however, as I am able to judge, I doubt whether in this Presidency any sufficient occasion has yet arisen for special legislation; but at the same time I must confess that I know so little the extent to which the Cow-protection Society has spread throughout this part of India and the nature of its operations, that I am hardly qualified to express any views.

Assuming that the state of affairs in the North-West Provinces is such as is described in the letter of the Chief Secretary of those Provinces, I doubt whether the addition to the Penal Code of the proposed sections 510A and 510B will be effective for the prosecution of the members of the society.

The principal avowed object of this society appears to be by threats of excommunication to prevent Hindus from selling cattle to persons likely to kill them, or from sending them to pounds where they are likely to be sold to such persons. But if the proposed sections became law, the question would at once arise whether such threats under such circumstances were threats of injury as defined in section 43 of the Code. They certainly are threats of consequences likely to harm the persons threatened in body, mind, reputation, or property; but it is open to argument whether they are threats of harm *illegally* caused. The term 'illegal' is defined in section 43, and it has yet to be decided whether under the existing law it is illegal for a Hindu caste to excommunicate a member who kills a cow or does acts which tend to result in the slaughter of that animal. Very probably the opinion of the learned Advocate General of Bengal is correct and the methods adopted by the Cow-protection Societies are such as to bring their acts within the definition of criminal intimidation; but until it has been authoritatively decided that the penalty of excommunication by the duly constituted heads of the caste for cow-killing or for acts tending to the slaughter of the cow is illegal, the result of prosecutions must be uncertain: and as the new sections do not seem to meet this difficulty, the expediency of their enactment seems questionable. Taking it for granted that the threats held out by the society are illegal and amount to criminal intimidation, I should have thought that members who had contributed to the funds or attended meetings might, when placards had been published or other acts of an intimidating nature had been done, be prosecuted for abetment by conspiracy under the second head of section 107 and punished under section 109 or sec-

tion 116. Supposing that the object of the society were to threaten with death all Hindus who sold cows to Musalmans and placards were issued and pamphlets circulated containing such threats, the Courts would, I apprehend, have no difficulty in convicting of abetment of criminal intimidation persons who, knowing its objects, had joined the society. But the real difficulty in the present case seems to lie in the uncertainty as to the illegality of the threats complained of. This difficulty does not seem obviated by the proposed sections, and I therefore do not see much use in their enactment. It is true they would get rid of the necessity of proving some act done in pursuance of the conspiracy and in furtherance of the object in view, but if evidence can be procured to prove membership of the society and the nature of its objects, it ought in many cases to be equally easy to prove the publication by the society of some pamphlet or placard or some other act in furtherance of its objects. The sections themselves would still leave the law uncertain in the most material particular and seem consequently undesirable. If legislation is necessary for the suppression of the Cow-protection Society, it will, I think, have to be more explicit. It is for Government to consider whether such legislation is necessary. On this very serious question it is impossible for me to express any decided opinion. But if it is so necessary as to render it expedient to face the political agitation likely to result, care should, I think, be taken to make it effective.

The reason for the proposed amendment of section 15, Criminal Procedure Code, appears to depend on the system in force in the North-Western Provinces. I do not know of any necessity for such amendment in this Presidency.

Act V of 1861, the 15th section of which it is proposed to amend, is not in force in this Presidency; but to the general principle of enabling Government to levy from disturbed districts compensation for the sufferers by disturbances, there is not, I think, any valid objection. Here a remnant of this principle still lingers in section 37 of Regulation XII of 1827, which enables the levy of compensation from villages into which stolen property is traced. This section used to be enforced in the northern part of Gujarat. But I think it is now hardly ever resorted to.

As regards the proposed amendment of section 503, Indian Penal Code so as to throw on the accused the burden of proof of good faith, I do not think it is desirable. In times of trouble and agitation it would no doubt be useful, but in ordinary times I think it would be inexpedient to render liable to punishment every one who carelessly repeated an alarming report which might lead to a breach of the peace. If special legislation is at present required owing to the ill-feeling between Hindus and Muhammadans, it should, I think, be limited to such districts, and remain in force for such periods only, as the Governor General in Council might from time to time be pleased to prescribe."

(3) *Honourable Mr. Basil Lang, Acting Advocate General, Bombay.*—The addition of the proposed two sections to the Indian Penal Code is desirable, it being impossible to suppress the societies referred to under the existing law. The proposed amendment of section 503, Indian Penal Code, is necessary and desirable.

(4) *Honourable Mr. H. Bally, Remembrancer of Legal Affairs.*—^{"2"}
The amendments proposed are—

- (a) The insertion of two sections, to be called 510 A and 510 B, for the purpose (i) of defining unlawful societies, (ii) of rendering membership of such societies punishable.
- (b) The amendment of section 503, Indian Penal Code, with a view to attach penalties to the circulation and publication of alarming rumours, whether knowledge of their falsity or special intention be proved or not.

3. With reference to the first of these proposed amendments, it seems from the opinion of the Honourable the Advocate General cited in the papers to be doubtful—

(a) whether the present law is not sufficient to deal with the mischief aimed at;

(b) whether, if that is the case, it is politic, at the present juncture, to give prominence by proposals for new legislation to a subject on which ill-feelings are already inflamed.

4. The law, as it now stands, would treat as an abettor any person who 'engages with one or more other person or persons in any conspiracy for the doing of any thing' only in case 'an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing' (section 107, Secondly, Indian Penal Code).

5. That is to say, a society that never takes any action whatever, but ends entirely in talk, without leading directly or indirectly to any consequences, would not be an unlawful society under the law as it at present stands.

6. The proposed definition would go beyond this, and would render mere promises, even if subsequently abandoned and never acted on in any way by anybody, punishable under the Code.

7. It is submitted that this would be unnecessarily severe, and might lead persons who had unadvisedly made such promises to keep them as soon as they found that by merely making them they had already exposed themselves to punishment.

The existing law is sufficient to deal with all cases in which any harm arises, and to alter it in the direction proposed might lead to vindictive and malicious prosecutions.

8. For this reason, I think the definition of an unlawful society unnecessary. If it is to be retained, it would also be necessary to define membership in such a society. Otherwise the Courts would find some difficulty in determining what would be sufficient to constitute membership. At present, Explanation 5 to section 109 is sufficient to connect the members of a society with extended ramifications, even where no direct concert between all the individual members can be proved.

9. Section 510.1 as drafted makes it necessary to prove that the common object is 'injury' or the threat of 'injury.'

10. The word 'injury' is defined in section 41, Indian Penal Code, as 'any harm whatever illegally caused.'

11. And from section 43 of the Code, it would seem that the harm would not be 'illegal' unless it were 'an offence or prohibited by law or would furnish ground for a civil action.'

12. From the cases cited on page 10 of the papers, it would seem that the ultimate resource of the societies in question, to give effect in case of recalcitrancy to their decisions, would be exclusion from caste, and religious penalties.

13. The question would therefore arise whether exclusion from caste and religious penalties were within the meaning of the word 'injury' as defined in the Code.

14. The rulings at I. L. R., 6 Madras, 381, and I. L. R., 8 Madras, 140, decide that certain forms of religious penalties, including excommunication and 'conventional punishments,' are not 'injuries' within the meaning of the Code.

15. The Honourable the Advocate General considers that those cases would have no application to the mischief now aimed at. His reason is that in those cases the punishments purported to be inflicted in the exercise of religious authority.

16. But it is submitted that if exclusion from caste and religious penalties are not conventional punishments inflicted in exercise of religious authority, the associations in question would probably find no difficulty in obtaining the colour of religious authority, so as to bring their *modus operandi* under the protection of the rulings cited.

26. Section 510-A would only touch cases of compulsion used with a view to future acts or omissions. It would be necessary to provide also for vindictive action taken to punish a past act or omission. (*Vide I. L. R., 6 Mad., 358.*)

27. With reference to the proposed amendment of section 505, Indian Penal Code, I have the honour to submit that a change in the direction contemplated seems very desirable, and that for this purpose the following draft might serve :—

- (1) In section 505 of the Indian Penal Code, for the words 'he know to be false' there shall be substituted the following, *viz.*, 'is false or which he does not know to be true.'
- (2) In the same section, after the words 'with intent to cause' there shall be inserted the following, *viz.*, 'or knowing that he is likely thereby to cause.'

28. It is wholly unnecessary to insert the words 'otherwise than in good faith' in respect of action which is intended or likely to lead to an offence against the State or against the public tranquillity."

(5) *S. Hammick, Esq., District Judge, Ahmednagar.*—"As required by Government Resolution No. S R.—44 of 1893, dated the 12th instant, I have the honour to inform you that in my opinion the amendment of section 505, Indian Penal Code, advocated by Sir Charles Crosthwaite, is not only unobjectionable in principle, but is indispensable in order to give practical effect to the provision.

2. As regards the proposal to insert two sections dealing with the law of conspiracy, I presume that the contemplated sections are those numbered 510-A and 510-B in Mr. Davis's Note. If such is the case, I am unable to recommend their adoption. They appear to me to go beyond the English law of conspiracy and to be too vague and far-reaching.

3. I am inclined to think that the provisions of the Indian Penal Code on abetment will, if full effect be given to them, be found to give Magistrates the powers necessary to deal with any case which may arise. It should be borne in mind that when abetment takes place by instigation, it is not necessary in order to obtain a conviction that there should have been any overt act done in consequence of the instigation, nor must the act abetted have been committed. I fear that an attempt to define an unlawful society and legislation rendering membership punishable by fine and imprisonment would result in more mischief than advantage. The formation and spread of secret societies is one result which might probably be expected.

4. If, however, in order to obtain a necessary control over societies it is thought necessary to make conspiracy punishable even where there has been no overt act, I would suggest the simple expedient of amending section 107 of the Indian Penal Code by striking out of the paragraph headed 'Secondly' the portion beginning with the word 'if' and ending with the word 'thing.' I think that such a change might promote perjury and malicious prosecutions, and therefore I am not its advocate, but if some such control as Sir Charles Crosthwaite indicates is necessary, I should prefer to obtain it in this way rather than by an entirely new provision making the membership of an 'unlawful society' a criminal offence."

(6) *Honourable Mr. J. Nugent, Commissioner, S. D.*—The addition of the proposed two sections to the Indian Penal Code is necessary, in order that prompt and effectual steps may be taken to check the mischievous activity of the Gorakhshini Sabhas as they exist in Oudh and the North-Western Provinces. States that in his Division the anti-cow-killing movement has little strength or vitality. There is only one petty association, which has caused little trouble. If matters were elsewhere as they are here, he would deprecate any action on the part of Government. The Hindu peasant in the Southern Division has no real objection to his cattle, when past work, going to the butcher, and would not long submit to the decrees of private associations for

which there is no Government sanction. If under the existing law prosecutions might succeed, yet failure is probable, and would be disastrous. Government must of course be prepared for a violent clamour against the proposed addition to the law.

The proposed amendment of section 503, Indian Penal Code, is most desirable and should prove highly salutary. It will, however, encounter the most strenuous opposition from the Native Press.

(7) *G. B. Reid, Esq., Commissioner, N. D.*—Approves of the two new sections and of the amendment of section 503, Indian Penal Code.

(8) *W. F. Sinclair, Esq., District Magistrate, Thdna.*—There seems to be no objection to the proposed legislation on conspiracy, so far as may be necessary to bring the law of India in that matter up to the level of the English Common Law.

The amendment to section 503 seems to be open to question. States that in England, in the heat of political controversy, public men and papers spread false and mischievous reports without due care and attention, and therefore not in good faith, according to the Indian Penal Code (section 52). Does not think that such are proper subjects for penal legislation or prosecution.

The state of things described by Mr. Chief Secretary LaTouché is as different as possible from that of the Bombay mussoor. Here the Police are efficient and not corrupt. Were they so, the local weaknesses of police forces are not reasons for altering the Penal Code.

(9) *H. F. Ashton, Esq., Judge of Thdna.*—Is fully convinced that legislation in the matter under report is both expedient and necessary.

He would recommend in the Penal Code "the insertion of sections dealing with the law of conspiracy in Chapter VIII (Offences against the Public Tranquillity) rather than in Chapter X (Criminal Intimidation and Annoyance), because the proper point of view seems to be the paramount obligation to maintain the public tranquillity, and not the mere narrower necessity of punishing wrongs to individuals."

The new sections in Chapter VIII, Indian Penal Code, might be as follows:—

Section 141 A.—A society of several persons is designated an "unlawful society," if any act done in prosecution of any common object of the persons composing that society is likely to create an unlawful assembly or to lead to the intentional commission of an offence for the purpose of carrying into effect any common object of the persons composing that society.

Section 142 A.—Whoever knows, or with ordinary care might know, or has reason to believe, that any unlawful society is such, and becomes a member of that society, or continues to be a member of it, is said to be a member of an unlawful society.

Section 143.—(Add the words italicised.) Whoever is a member of an unlawful assembly, or of an unlawful society, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Illustrations should be added by the Legislature to the definition of an unlawful society and the being a member of one. The illustrations should be taken from the operations of the cow-protection movement, as this will assist the Magistrates, and can do no harm as the object of the new legislation will be fully understood.

Adds:—"If it is necessary (as to which I am not so convinced) that the unlawfulness of a conspiracy should be expressed in terms of the common object of the society and not merely in terms of what acts done in furtherance of the common object are likely to lead to, then the following might be added as paragraph 2 in section 141A:—

"A society of several persons is also designated an unlawful society if the common object of the persons composing that society is, by causing or by threat of causing to any person any harm whatever in body, mind, reputation, or property, to compel that person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do, or to forego any legal right."

As regards the proposed amendment of section 505, Indian Penal Code, doubts the need of changing the burden of proof as to good faith. Suggests that if it is necessary to amend section 505, Indian Penal Code, at all, the words "which he knows to be false" might be enlarged into "which he knows or with ordinary care might know, to be false," and the words "with intent" left as they stand.

An amendment of section 505, Indian Penal Code, would be interpreted as a crusade against the Press. Considers that the "license" of the Press in this country can be properly curbed by enforcing a license fee for establishing a Press, and insisting on a deposit of caution money.

Thinks that it would be a mistake to recommend the combination of legislation to curb "license" of the Press with legislation to confront a secret sedition movement inspired by one section of the community.

Gives notes in amplification of above opinions:—

The papers under notice show that the unruly manifestations of the objection to killing kine have not been spontaneous. Designing persons, for a purpose of their own, have been setting themselves to arouse a latent sentiment. Notes that in Kathiawar there has been a similar unspontaneous agitation against taking life at all. Doubts the advisability of concessions to one class at the cost of restricting the lawful exercise of the lawful rights of a minority. Quotes an instance of European officers who were, while shooting game near Ahmedabad, mobbed by villagers at the instigation of a banya of Ahmedabad, who escaped punishment by keeping in the background. Thinks that legislation to control the operations of persons who seek their own ends by stirring up latent prejudice against taking life will not irritate the feelings of the community generally. The definition of an unlawful society should not be framed in such a way as to suggest a challenge to the sacerdotal class to obtain express ecclesiastical authority for the operations of agents of the movement. Two days before the Bombay riots a Hindu gentleman described the aims of the Cow-protection Society in the papers as sacerdotal. The operations of the societies have reached a stage where they become a challenge to the executive to vindicate the supremacy of the law. There are therefore cogent reasons for early legislation.

The movement being a menace to the public tranquillity, opposition to legislation is forestalled by placing the main amendment of the Indian Penal Code on that foundation in Chapter VIII.

His suggested definition of an unlawful society is intended to get rid of the difficulties introduced by the question of the freedom of religious discussion and the lawful methods adopted by agents of religious bodies.

Considers that the term "injury" should not be used in a definition of an unlawful society. "Injury" is defined in the Indian Penal Code as harm illegally caused; and the illegality would often be doubtful.

Opposes of the existing system of allowing a discretion to the Magistrates to erect an otherwise lawful act into an offence by mere magisterial order, when the public peace cannot otherwise be preserved. The definition should make it clear that harm threatened or caused by a society becomes *ipso facto* illegal, when caused to further the aims of a conspiracy to compel others to forego their legal rights under circumstances which constitute a menace to the public tranquillity.

(10) J. Montenth, Esq., District Magistrate, Bijdpur.—The suggested amendment of the law seems in itself expedient and not open to objection, and it may be useful for the suppression of societies which profess to exercise criminal intimidation by threatening or exacting penalties from persons who have not voluntarily joined them. The difficulty of taking action under the existing law lies in the condition, as regards abetment, that an act or illegal omission must take place in pursuance of a conspiracy. It is desirable that the mere agreement to commit an offence should be made punishable. This object would most conveniently be attained by the elimination from section 107, clause 2, Indian Penal Code, of the condition above quoted. As, however, any act whatever done in pursuance of a conspiracy makes the law of abetment applicable, he does not clearly understand the difficulty of prosecution under the existing law.

(11) J. Davidson, Esq., District Magistrate, Ednara.—Has no experience of the societies referred to, although most of the landlords in his district are Brâhmans, but on theoretical grounds approves of the proposed legislation.

Observes that in England the existing law on conspiracy is one of the chief grievances of the labour members of Parliament, that there is considerable agitation among the working classes to amend the law. These proposals will probably cause notice or opposition in the Imperial Parliament, and bearing in mind the very great loss of prestige which Government would sustain were the proposed legislation withdrawn owing to opposition in Parliament, draws attention to the absolute necessity of securing free support from the Secretary of State before any legislation is attempted.

(12) R. H. Vincent, Esq., Acting Commissioner of Police, Bombay City.—The proposed sections 510 A and B are advisable, not only for the control of the particular societies named, but also to bring under Police control older unlawful or rather criminal societies which are on the increase, i.e., swindlers and cheats in general, but in particular so-called mercantile firms or associations whose sole purpose is to defraud the public and who make great use of the value-payable post.

Thinks the freedom of the Press in India is without parallel in the whole civilised world; and the suggested amendment of section 505, Indian Penal Code, would be of great value.

(13) Colonel R. I. Crawford, Acting Commissioner in Sind.—Approves the proposed legislation, which he considers necessary.

(14) H. Scannell, Esq., Acting Inspector-General of Police.—Considers the proposed legislation necessary. The crusade against king-killing is new, and is due to the agitation fomented by the educated classes.

(15) Honourable Mr. W. H. Crowe, Judge of Poona.—So far as the district of Poona is concerned, there are no grounds for the proposed legislation. To deal with an agitation such as is said to exist in the North-Western Provinces some legal enactment would be necessary. Prefers a separate Act to any alteration of the Penal Code, the result of which might be doubtful owing to the Indian Penal Code definition of 'injury.'

It is desirable to strengthen the hands of the executive so that they may have a firmer control over certain sections of the Press. The amendment which he would suggest to section 505, Indian Penal Code, is to substitute for the words "knows to be false" the words "does not know, or has not reason to believe, to be true," and after the word "tranquillity" to insert the words "or knowing or having reason to believe that such report may cause fear or alarm to the public and thereby may induce any person to commit an offence as aforesaid."

(16) *P. S. P. Lely, Esq., District Magistrate, Surat.*—Considers it most necessary that such combinations should be put down with a strong hand. Caste system is the most efficient machinery in the world for boycotting. But the addition to section 570, Indian Penal Code, proposed by Mr. Deas would make penal a general movement to enforce by caste penalties total abstinence from liquor, while such joint action would highly commend itself to more respectable Hindu sentiment, and it would be impossible to punish it. No prosecution under the proposed new sections should be authorized without sanction of the District Magistrate under the control of Government.

Exd.—W. B. O.

4. Mr. Woodburn has no hesitation in the opinion, in which he is supported by all his advisers here, that in these Provinces the existing law is, in the words of your letter of the 29th August, amply sufficient to control any agitation or local disturbance which may be due to the movement.

5. He is, however, further desired by your letter of the 4th instant to give his opinion as to the necessity or expediency of the definite amendments of the law which have been recommended by the Government of the North-West Provinces. They are amendments of Imperial Acts, and the proposals become therefore immediately matters of grave Imperial concern. It is not a question of their necessity for local purposes, on which another administration could not prudently offer an opinion, but of the effect on the country at large which the public discussion of these measures would entail. The Central Provinces are at this moment quiet; that they would not remain so under an agitation to which that on the Consent Bill was a plaything is quite certain. For it is impossible to conceal that these measures are, in the first instance, directed against the Hindus. It is true that they will be applicable in the end to all creeds and classes alike, but in the meantime they will be used to control the Hindus, whose bigotry and violence have led to these proposals. This is a very serious matter. There is not a doubt that many members and adherents of the Gaoraksha Sabhas have joined them under genuine religious feeling and in entire innocence of any disloyal design. By all these the British Government will be charged with having openly sided with the Muhammadans and against them in a matter which concerns their religion. The opportunity will be taken by the Sabha leaders throughout India to raise the cry of religion in danger, and to inflame passions wherever they are dying down; and the very people whom we can now use to counteract criminal tendencies in the Sabhas will be forced into an opposition which, with some at least, will develop into an active disloyalty. This danger appears to the Officiating Chief Commissioner to be so very imminent and grave that he finds himself constrained to press the point urgently and earnestly on the Government of India. Sir James Lyall is right in the advice he gives in the papers you have enclosed that, while it is very necessary to hold the balance perfectly even between the two, it is more important politically to keep straight with the Hindus than with the Muhammadans.

Every Hindu in the country (and they are the enormous majority) knows and admits that the forcible removal of another man's cattle is an offence under his own religion as well as ours, and that riot and bloodshed must be and ought to be punished. There is not a Hindu in the country outside of some of the higher ranks who could not at this juncture be readily persuaded into the belief that in some vague way the new legislation is aimed at preventing his obedience to the dictates of his religion.

It is, of course, quite possible to beat down and live down this feeling, but it would become an extremely grave and difficult position if this feeling were to extend to the Hindu army, in which, the Officiating Chief Commissioner is informed, there are already many innocent and loyal subscribers to the Sabhas.

If there are these dangers—and unfortunately of their reality he can entertain no manner of doubt—the Government of India ought in his judgment to be perfectly assured, before undertaking any fresh legislation, that nothing short of it will enable the executive authorities to cope with the situation.

6. It is only in view of the gravity of the issue for other parts of the Empire that the Officiating Chief Commissioner approaches conclusions drawn by the ripe experience and calm judgment of the Lieutenant-Governor of the North-West Provinces. But he indulges the hope that the Lieutenant-Governor may now find the position less serious than it seemed in August. So far as has been made public, there has not been a single riot in the Azamgarh country since the disturbance of June, or a single recent instance there of the rescue of cattle from Muhammadans. According to the information which still reaches the Officiating Chief Commissioner from those parts—private, but not, he ventures to think, wholly untrustworthy,—the people are already heartily and wholesomely sick of the expenses and of the presence of the punitive police. He cannot but hope with some confidence that the agitation in that part of India will completely subside under the strong measures of repression and punishment which

have been in force for some time, and the active and admirable scheme of organised conciliation which has now been set in motion. In these diseases of the body politic the experience of other cases is sometimes not without use. The Central Provinces were the first to have the fever. In their case it was not severe, but it has been obstinate. The symptoms in the North-West Provinces have been certainly more violent, but the treatment has been much more drastic and severe, and there is reason to trust and anticipate that the course of the epidemic will be correspondingly shorter.

7. The amendments proposed by the Government of the North-West Provinces are, with perhaps one exception, good and useful alterations, which everyone will agree may with advantage be made when the effervescence and unrest which unquestionably are prevalent at this moment in many parts of India have calmed down; but under present circumstances it is the strong and clear opinion of the Officiating Chief Commissioner that legislation in these directions is inexpedient and dangerous. Indeed, some of the amendments do not appear to be of great immediate importance or value. If the country is really banded together to conceal information, it will not make much difference if the Government can punish the village accountant as well as the headman when the trouble is over. And, although it may be theoretically correct to charge the cost of punitive police on those whose conduct has made its imposition necessary, the taxation, as a matter of fact, happens in this case to fall mainly, if not altogether, on the people who ought to bear it. Six-sevenths of the Azamgarh people are Hindus. They are the richer class of the two, and under the Police Act as it stands they are presumably paying more than six-sevenths of the charges for police.

8. The exception which was mentioned above was that of the extension to India of the English law of conspiracy. The Officiating Chief Commissioner understands that in England this law is practically obsolete, and the greatest care and circumspection would be required in adapting it to India. For example, there is not a village in the country in which morality is not maintained by caste panchayats, who punish misdemeanours by mulcts and penalties of various sorts. Under the section drafted by the Legal Remembrancer of the North-West Provinces, every person so punished would be able to threaten his caste fellows with prosecution under the Penal Code. The drafter, of course, never contemplated the loosening and subverting in one short sentence of the whole caste system of India. But the criticism illustrates the extreme difficulty of the ground upon which the proposed extension of the English law would enter. So many limitations and explanations would be necessary that the new law would possibly be unworkable. And if it were workable, its effect would be to drive into secret conspiracies those movements in regard to which we have at present at least the advantage of complete and unconcealed information. The advantage is a very important one, and there is nothing in these papers more striking (as it seems to the Officiating Chief Commissioner) than the perfect frankness with which every detail of these Societies is communicated to our officers. We know every circumstance of their rise, their progress, and even of their decay; and, as the Magistrate of Azamgarh has remarked, it is absurd to suppose that the majority of the adherents of the league are actuated at present by disloyal intentions.

9. It is a familiar taunt that they are timid who do not advance. There are circumstances in which it is the truest courage and also the soundest wisdom to hold on one's course unmoved. The principles of British administration in India no man has put more clearly and incisively than Sir Charles Crosthwaite. "They are, first, on the part of Government itself, an impartial toleration of all creeds; secondly, a fixed determination to maintain the lawful liberties of all its subjects, and sternly to repress any person or class of persons who infringe the lawful liberty of others; thirdly, when dispute arises as to what are the lawful liberties of any class, to decide according to established custom and usage by patient enquiry from those who know the usage." If the Officiating Chief Commissioner has expressed himself in this letter at greater length and with more earnestness than is customary in official correspondence, it is, I am to say, because of his firm conviction that these principles are so thoroughly known and throughout the land that the British Government will never have any real difficulty in enforcing them under the executive authorities it now possesses.

5. The office of "Public Mediator" should be made as honourable and important as possible. Persons holding it should be exempted from the provisions of the Arms Act, should be admitted to Darbars and *Khas Mulakats*, and should receive *sanads* of appointment. In all areas where there is a fairly considerable Muhammadan population the District Magistrate should, by executive action, procure the nomination, under section 149D., of mediators representing the Hindu and Muhammadan sections, respectively, as under section 148E. these representative officers of the rival creeds will be of valuable assistance to him in the anticipation of disturbances due to religious feeling.

6. It will be observed that under sub-section (2) of section 148A. the circulation of inflammatory pamphlets or pictures and the delivery of inflammatory harangues would be prohibited.

DRAFT CHAPTER FOR CRIMINAL PROCEDURE CODE.

Chapter XII-A.—Concerning disputes as to matters of religion: and the appointment of Public Mediators.

Section 148A.—Whenever a District Magistrate is satisfied from a Police report or other information that a dispute likely to cause a breach of the peace exists between two or more sections of the public residing in any local area within his jurisdiction regarding the performance by a person or persons belonging to one section of any lawful act, rite or ceremony which, either in itself, or from the time, place or manner of its performance is offensive to the religious convictions of any other section, he may make an order in writing stating the grounds of his being so satisfied and may thereupon—

- (1) call upon the members of each section resident within the local area to which his order relates, by proclamation published in such manner as the Local Government may by rule direct, (a) to nominate a representative, or representatives, either in relation to the dispute or for their religious interests generally, and (b) to cause the attendance before him of the Public Mediators thus nominated, at a time and place to be named in the proclamation, for the purpose of arriving at an amicable settlement of the dispute;
- (2) prohibit, pending the settlement of the dispute, the doing of any act, either absolutely, or in a particular manner, or at a particular time or place, which is likely to hinder an amicable settlement.

Section 148B.—If the Public Mediators nominated under section 148A. attend before the District Magistrate and arrive at an agreement concerning the settlement of the matter of dispute, the terms of the agreement shall be recorded by the District Magistrate and signed by the Mediators. The District Magistrate may thereupon, if he thinks fit, issue orders in accordance with the terms of the agreement. The agreement shall be filed for record in the District Magistrate's office and shall, as far as possible, be given effect to, as occasion requires, unless and until it is set aside by an agreement of later date.

An order under this section may be directed to a particular individual, to the public generally, or to a section of the public. It shall be published in such manner as the Local Government may by rule direct.

Section 148C.—Should the members of any section of the public who have been called on to nominate a representative or representatives under clause (1) of section 148A. refuse or neglect to do so, or should the Public Mediators when nominated be unable to arrive at any agreement, the District Magistrate may move the Local Government to proclaim the local area to which his order under section 148A. relates, to be in a disturbed or dangerous state, and may thereupon arrange with the Inspector-General of Police for the quartering, under section 15 of Act V of 1801 (the Police Act) of a force of extra Police sufficient to ensure the maintenance of the peace in the area aforesaid, until Public Mediators have been appointed and a settlement has been arrived at.

Section 148 D.—The members of any section of the public residing within any defined local area may at any time select from among their number a fit and proper representative to act on their behalf as Public Mediators in the settlement of any disputes as to matters of religion, and may apply to the District Magistrate to have the name of the representative so chosen registered in the Magistrate's Court, or substituted for any name already so registered. If the District Magistrate is satisfied, after such enquiry as seems necessary, that the application represents the wishes of the section of the public from which it purports to proceed, and that the person whose name is put forward is a true and proper representative of that section, he shall register his name accordingly as a Public Mediator for the area aforesaid. Persons whose names have been thus registered shall be treated as representatives for the purposes of section 148-A, and will, should the occasion arise, be summoned to appear before the District Magistrate for the purposes of that section.

Section 148 E.—It shall be the duty of every Public Mediator appointed under section 148 D., to communicate to the District Magistrate any information which he may receive (a) of matters likely to offend the religious prejudices of the section of the public which he represents or to engender feelings of hostility against them, upon religious grounds, or (b) of any circumstances leading to the belief that a breach of the peace is contemplated by any members of his section or of a hostile section of the public residing within the same local area, from religious motives.

Lsd.—W. B. G.