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PART VI

Bills introduced into the Council of the Governor General of India and
Bills published before introduction in that Council

GOVERNMENT OF INDIA

LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1943 :—

L. A. BILL No. 4 OF 1943

A Bill further to amend the Indian Penal Code

WHEREAS it is expedient further to amend the Indian Penal Code, for the purpose XLV of 1860 hereinafter appearing ;

It is hereby enacted as follows :—

- Short title
Amendment of section 299, Act XLV of 1860
Culpable homicide
1. This Act may be called the Indian Penal Code (Amendment) Act, 1943.
 2. For section 299 of the Indian Penal Code (hereinafter referred to as the said Code) XLV of 1860 and *Illustrations (a) and (b)* to that section, the following shall be substituted, namely :—
“Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such an act to cause death, commits the offence of culpable homicide.”

Illustrations

(a) A assaults and strikes B with a knife in the leg or some other non-vital part of the body. Death results. A has committed the offence of culpable homicide because he knows that he is likely to cause death by striking a person with a knife.

(b) A assaults and strikes B with a lathi or other blunt weapon on a non-vital part of the body. Death results. A has not committed culpable homicide because death is not likely to result from such a blow. He has committed an offence of simple or grievous hurt.”

- Insertion of a new section 299-A in Act XLV of 1860
Punishment for culpable homicide
3. After section 299 of the said Code, the following section shall be inserted, namely :—
“299A. Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to ten years, or with fine or with both.”

- Amendment of section 300, Act XLV of 1860
4. (a) In section 300 of the said Code, the words “culpable homicide in murder” wherever they occur should be substituted by the words “culpable homicide amounting to murder”.

(b) In the *Exceptions* to section 300 of the said Code, the words “Culpable homicide is not murder” wherever they occur should be substituted by the words “culpable homicide does not amount to murder.”

- Amendment of section 302, Act XLV of 1860
5. In section 302 of the said Code, for the word “murder” the words “culpable homicide amounting to murder” shall be substituted.

- Amendment of section 303, Act XLV of 1860
6. In section 303 of the said Code, for the word “murder” the words “culpable homicide amounting to murder” shall be substituted.

- Amendment of section 304, Act XLV of 1860
7. In section 304 of the said Code, the paragraph beginning with the words “or with imprisonment of either descriptions” and ending with the words “injury as is likely to cause death” shall be omitted.

- Amendment of section 307, Act XLV of 1860
8. In section 307 of the said Code, for the word “murder” the words “culpable homicide amounting to murder” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

Section 299 I. P. C. was originally intended to define all offences which resulted in voluntary causing of death. No sentence was attached to it.

The words “with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death” are reproduced and explained and amplified in section 300 as firstly, secondly and thirdly. Fourthly was intended to be equivalent in murder cases to the words “with the knowledge that he is likely by such act to cause death” in section 299.

But there is a difference between fourthly in Section 300 and the above words in Section 299 whereas there is no difference between the words “with the intention, etc.” in section 299 already quoted and firstly, secondly and thirdly in section 300.

There is no difference between murder and culpable homicide not amounting to murder except for the protection afforded to the accused by the *Exceptions* to section 300.

A difficulty then arose, was there any offence of culpable homicide and if so, what was its punishment? A punishment was attached to it under section 304 second part. This meant that section 299 ceased to be a definition of all offences resulting in voluntary causing of death and became the definition of culpable homicide only. Consequently the first part of section 299 “with the intention,

etc.” became not only redundant but confusing and the *Illustrations (a) and (b)* have turned to be still more confusing because they are clear illustrations of murder, and there is no illustration of ‘culpable homicide’ as distinguished from ‘murder’ due to this confusion. It is not properly understood by Sessions Courts that there are three offences of voluntary causing of death (1) Culpable Homicide, (2) Culpable Homicide not amounting to murder and (3) murder. To clarify this position it is suggested that the definition of culpable homicide should be amended as follows :—

“Whoever causes death by voluntarily doing an act with the knowledge that he is likely by such act to cause death commits the offence of culpable homicide.” To this should be added section 299A. “Whoever commits culpable homicide shall be punished with imprisonment of either description for a term which may extend to 10 years or with fine or with both” i.e., the 2nd part of section 301. The *Illustrations (a) and (b)* to section 299 be deleted as they are illustrations of murder and in its place other illustrations given as are mentioned in the Bill. Changes suggested in other sections are merely consequential. Apart from the importance of clarifying the definitions of these three offences, injustice and waste of time arise at present because an accused is entitled to be defended by counsel if he is charged with murder and it is not always

easy to obtain experienced counsel when the Sessions Judge amends a charge from culpable homicide or culpable homicide not amounting to murder to a charge of murder

and this is frequently done. It is to remove this confusion and consequent difficulties in the trial of cases that this Bill is introduced.

MUHAMMAD AHMAD KAZMI

ALLAHABAD :
The 5th January 1943

M. N. KAUL
Secy. to the Govt. of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1943 :—

L. A. BILL NO. 5 OF 1943

A Bill further to amend the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898, for V of 1898 the purpose hereinafter appearing :

It is hereby enacted as follows :—

Shot title and commencement

1. (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1943.

Amendment of section 378, Act V of 1898

(2) It shall come into force at once.

2. To section 378 of the Code of Criminal Procedure, 1898 (hereinafter referred to as V of 1898 the said Code), the following proviso shall be added, namely :—

Amendment of section 429, Act V of 1898

“ Provided that the case will not be so laid before another Judge, if the only difference of opinion between the Judges is about the giving of the benefit of doubt to the accused, and the accused shall be acquitted. ”

3. To section 429 of the said Code the following proviso shall be added, namely :—

“ Provided that the case will not be so laid before another Judge, if the only difference of opinion between the Judges is about the giving of the benefit of doubt to the accused, and the accused shall be acquitted. ”

STATEMENT OF OBJECTS AND REASONS*

The question of weighing evidence and coming to a definite conclusion on the basis of the evidence especially oral evidence is a difficult matter. No cut and dried principles can be laid down for the purpose. No definite standards can be prescribed and the only thing that we can lay down, can be that only such conclusions are to be accepted as appeal to a reasonable mind. In the administration of Criminal Law, it is a well established principle that benefit of doubt should be given to the accused. In practice when a case is tried by a Magistrate or a Judge, or is heard in appeal, and such a Magistrate or Judge feels that there is some reasonable doubt about the guilt of the accused, he can give him the benefit of doubt. But a rather different position is provided by the present Code when the case is heard by a Bench of the High Court Judges. It cannot be doubted that in respect of experience and maturity of thought and reason, the Judges of the High Court stand generally at a higher level than the other comparatively less experienced Magistrates and Judges. Persons holding the posts of High Court Judges reach those places by a process of selection either from services or from legal profession which guarantees a high standard of legal knowledge, common sense and reasonableness of mind. When two or more Judges hear an appeal they have got a further advantage of being in a position to have a free exchange of views amongst themselves—a privilege not enjoyed by Magistrates or Sessions Judges. So if a Judge with this backing and advantages entertains a doubt about the guilt of the accused, we can unhesitatingly say that it is a reasonable doubt. It is for this purpose that I am moving this amendment. When one of the two High Court Judges hearing an appeal is of the opinion that the guilt of the accused has not been fully proved, then it

must be considered to be a view worthy of consideration. Recently in a case the Honourable the Chief Justice of the Allahabad High Court observed :

“ It is a fundamental principle underlying the administration of criminal justice that an accused person is entitled to the benefit of doubt as to his guilt. The doubt, however, must be doubt of a reasonable mind. If a criminal case is being heard by a bench of two judges of His Majesty's Court of Justice and if one of the judges entertains doubt about the guilt of an accused person, I should think that there should be no escape from the conclusion that the doubt of the judge concerned is the doubt of a reasonable mind. I therefore consider that it is about time that the legislature should lay down that in the event of difference of opinion between a bench of two judges of High Court the opinion of the Judge acquitting the accused person must prevail and in such a case a reference to a third judge is unnecessary.” (Mula and others vs. K. E. reported in *Leader* dated 3rd October, 1942). In an earlier case *Kazem Thakoor and others vs. K. E.* (10 *Southerlands Weekly reporters criminal* page 45) a full bench of five judges of the Allahabad High Court held that “ where a difference of opinion arises between two judges of the High Court in a criminal appeal the opinion of a senior judge prevails, under section 36 of the Letters Patent, notwithstanding section 420 of the Code of Criminal Procedure”.—That case of course was decided on the interpretation of a clause of the Letters Patent which no longer exists on the statute book, but I refer to it only to show that a practice different from the present practice was at a time recognized by the statute and there is no harm likely to result if on the basis of recognised principles we change the present practice.

ALLAHABAD :
The 8th January 1943

MUHAMMAD AHMAD KAZMI

M. N. KAUL
Secy. to the Govt. of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 11th February, 1943 :—

L. A. BILL NO. 6 OF 1943

A Bill further to amend the Indian Merchant Shipping Act, 1923

WHEREAS it is expedient further to amend the Indian Merchant Shipping Act, 1923, XXI of 1923 for a certain purpose ;

It is hereby enacted as follows :—

Short title, and commencement

1. (1) This Act may be called the Indian Merchant Shipping (Amendment) Act, 1943.

(2) It shall come into force at once

*The Governor General has been pleased to accord the previous sanction required under clause (a) of sub-section (2) of section 67 of the Government of India Act, as saved from repeal by paragraph 12 of the Government of India (Commencement and Transitory Provisions) Order, 1946, to the introduction of this Bill in the Legislative Assembly.

Amendment of section 200-A, Act XXI of 1923

2. In sub-section (1) of section 200-A of the Indian Merchant Shipping Act, 1923, XXI of 1923 after the words "together with a sum of one rupee for each day" the words "in respect of a deck pilgrim and a sum of three rupees for each day in respect of a cabin class pilgrim" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

If a pilgrim holding a return ticket is owing to his inability to obtain accommodation on a pilgrim ship detained at Jeddah for a longer period than 25 days, the shipping company concerned is bound to pay under section 209A (1) of the Indian Merchant Shipping Act, 1923, to the Central Government in respect of such pilgrim a sum of one rupee for each day after the expiry of 25 days. The time during which a pilgrim ship is prevented from sailing from Jeddah due to an outbreak of an infectious disease, war disturbance, &c., is not taken into account in computing the period of 25 days. In actual practice the money due from the shipping company is realized by the British

Legation, Jeddah, and paid to the pilgrim concerned on the spot. A pilgrim travelling in a cabin usually pays more money in the shape of fare including the cost of food than that paid by a pilgrim who travels on a deck, but both get compensation at the same rate (i.e., one rupee per day), from the shipping company under the existing law. In view of the higher standard of living of the cabin class pilgrim the present rate of compensatory allowance is quite inadequate. It is proposed therefore, to amend the aforesaid section so as to compensate him at an increased rate of Rs. 3 per day. The rate proposed is moderate as compared with the high cost of living at Jeddah.

ALAHABAD :

The 8th January 1943

FAZAL-I-HAQ PIRACHA

M. N. KAUL

Secy. to the Govt. of India

GOVERNMENT OF INDIA LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill was introduced in the Legislative Assembly on the 11th February, 1943 :—

L. A. BILL NO. 7 OF 1943

A Bill further to amend the Durgah Khawja Saheb Act, 1936

WHEREAS it is expedient further to amend the Durgah Khawja Saheb Act, 1936, for XXIII of 1936 the purpose hereinafter appearing ;

It is hereby enacted as follows:—

Short title

1. This Act may be called the Durgah Khawja Saheb (Amendment) Act, 1943.

Amendment of section 5, Act XXIII of 1936

2. In section 5 of the Durgah Khawja Saheb Act, 1936 (hereinafter referred to as the XXIII of 1936 said Act),—

(1) in sub-section (1),—

(i) for the word "twenty-five" the word "twenty-two" shall be substituted ;

(ii) for clause (d) the following shall be substituted, namely :—

"(d) (i) one residing in Ajmere-Merwara (other than a member of the Khadim community) elected by Muslim members of local bodies in Ajmere-Merwara ;

(ii) one elected by Muslim members of local bodies in the Province of Delhi ;"

(iii) for clause (g) the following shall be substituted, namely :—

"(g) two Sajjadanashins of the Shrines of the Chishti order (one from the Nezami, and one from the Sabri groups) of Sufis co-opted by the members of the Committee referred to in clauses (a) to (f), in a meeting convened by the Chief Commissioner of Ajmere-Merwara for the purpose."

(2) Sub-section (2) shall be omitted, and sub-section (3) and (4) shall be re-numbered as sub-sections (2) and (3) respectively.

3. After section 5 of the said Act, the following shall be inserted as sections 6, 7 and 8, namely :—

"6. The names of the members of the committee elected, nominated and co-opted under clauses (a) to (g) of sub-section (1) or nominated under sub-section (3) of section 5, shall be published by the Chief Commissioner of Ajmere-Merwara in the *Gazette of India*.

7. No person shall be qualified to be a member of the committee if—

(a) he cannot read and write Urdu ;

(b) he has been convicted by a criminal court of any offence involving moral turpitude ;

(c) he has less than 25 years of age ;

(d) he is of unsound mind and stands so declared by a competent court ;

(e) he has, on any previous occasion, been removed from office under section 8.

8. The Central Government may remove from office—

(i) the President or any member, if the President or such member—

(a) is convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude which, in the opinion of the Local Government, unfits him to hold office ;

(b) is convicted of any offence under this Act ;

(c) refuses to act or becomes incapable of acting or acts in a manner which the Local Government considers to be prejudicial to the interests of the Wakf ;

(d) applies for being adjudged or is adjudged an insolvent ; or

(e) is in the opinion of the Local Government guilty of misconduct in the discharge of his duties ;

(ii) the President, if he fails without an excuse, which is in the opinion of the Local Government sufficient, to attend three consecutive meetings of the Committee ;

(iii) any member who, without the permission of the President, fails to attend six consecutive meetings of the Committee."

4. In sub-section (1) of the section 9 of the said Act, for the words "their election, nomination or co-option" the following shall be substituted, namely :—

"publication of their names in the *Gazette of India* under section 6, and shall include any further period which may elapse between the expiration of the said five years and the date of the first meeting of the next succeeding Committee at which a quorum is present."

Amendment of section 9, Act XXIII of 1936

Insertion of sections 6, 7 and 8 in Act XXIII of 1936

Publication of the names of members of the Committee

Disqualification of members

Removal of President and members

Amendment of section 10, Act XXIII of 1936

5. In section 10 of the said Act,—

(a) in sub-section (1), the words “ and a Vice-President ” shall be omitted ;

(b) for sub-section (2) the following shall be substituted, namely :—

(2) If the Committee fails to elect the President within sixty days from the date of the publication of the names of the members of the Committee in the *Gazette of India* under section 6, the Chief Commissioner of Ajmere-Merwara may appoint as President one of the members of the Committee except those who are elected under clauses (a) to (c) of sub-section (1) of section 5.” ; and

(c) In sub-section (3), the words “ and Vice-President ” shall be omitted.

Amendment of section 14, Act XXIII of 1936
Power to make rules

6. For section 14 of the said Act, the following shall be substituted, namely :—

“ 14. In the case of elections under clause (c) or sub-clause (i) of clause (d) of sub-section (1) of section 5, the Chief Commissioner of Ajmere-Merwara, in the case of election under sub-clause (ii) of clause (d) of the said sub-section, the Chief Commissioner of Delhi, and in the case of elections under clause (e) of the said sub-section, the Presidents of both Chambers of the Legislature concerned, acting together, or the President of the Legislative Assembly concerned, as the case may be, may make rules to provide for—

(i) the procedure for such elections ; and

(ii) the decision of election disputes.”

Amendment of section 15, Act XXIII of 1936

7. To sub-section (1) of section 15 of the said Act, the words “ subject to the approval of the Chief Commissioner of Ajmere-Merwara.” shall be added in the end and the full stop in the end of the said sub-section shall be converted into a comma.

Amendment of section 19, Act XXIII of 1936

8. To section 19 of the said Act, the following words shall be added at the end, namely :—

“ provided it is not contrary to the terms of wakf deed or in absence of wakf deed against the wishes of the donor or wakif.”, and the full stop in the end of the said section shall be converted into a comma.

Amendment of section 20, Act XXIII of 1936
Audit of accounts

9. For section 20 of the said Act, the following shall be substituted, namely :—

“ 20. (1) The accounts of the Committee shall be audited and examined every year by such auditor as may from time to time be appointed by the Local Government.

(2) For the purpose of any such audit and examination of accounts the auditor may, by a demand in writing, require from the Committee or any member or servant of the Committee, the production before him of any document and papers which he deems necessary, and may require any person holding or accountable for any such books, deeds, vouchers, documents or papers to appear before him at any such audit and examination, and to answer all questions which may be put to him with respect to the same or to prepare and submit any further statement which such auditor may consider necessary.

(3) Within thirty days after the audit and examination have been completed, the auditor shall submit a report to the Committee upon each account audited and examined, and shall forward copies of his report to the Local Government and to the Committee.

(4) The report of the auditor shall among other matters specify all items of expenditure which in his opinion are illegal, irregular or improper, all cases of failure to recover money or property due to the Committee, all instances of loss or wasteful expenditure of money or property due to negligence or misconduct and all instances in which any money or property has been devoted to any purpose not authorised by this Act.

(5) The Committee shall cause the report and abstracts of accounts to be published in at least one English and one Urdu newspaper.”

Insertion of new sections 21, 22, 23, 24, 25 and 26 in Act XXIII of 1936

10. After section 20 of the said Act, the following shall be added as sections 21, 22,

Consideration of auditor's report by the committee

21. The Committee in general meeting shall consider the reports of the auditor and satisfy itself that no expenditure shown therein has been incurred otherwise than in accordance with the provisions of this Act, (a) and shall pass such orders as are in its opinion necessary and proper to rectify any illegal, unauthorised or improper expenditure, as it deems, proper, or

(b) Serve a notice on the person concerned requiring him to show cause within one month from the date of the service of such notice why such payment should not be surcharged or such amount should not be charged against him ; after considering such cause as may be shown by him and affording him a reasonable opportunity of being heard, the Committee may surcharge such payment or charge the amount of any loss or deficiency against him and shall in every case, certify the amount due from him.

Recovery of certified amount as public demand

22. Every amount certified under sub-section (b) of section 21, as due from him shall, if not paid within sixty days next after the date of the certification thereof, be recoverable from him as a public demand payable to the Committee.

Payment of audit cost from Durgah Fund

23. The cost of the audit of the accounts shall be paid out of the Durgah Fund.

Appeal against order of charge or surcharge

24. A person aggrieved by any order of surcharge or charge made against him under sub-section (b) of section 21, may, within thirty days of such order, appeal to the prescribed authority which may, after making such enquiry as it considers proper, pass such orders as as it thinks fit.

Stay of certified proceeding

25. Notwithstanding anything to the contrary contained in section 22, pending disposal of such appeal, all proceedings on the certificate shall be stayed.

Publication of annual report

26. The Committee shall every year prepare a report on the administration of the Durgah and publish it in Urdu newspaper.”

STATEMENT OF OBJECTS AND REASONS

The Durgah Khwaja Sahab Act was passed in 1936. Since then difficulties have arisen in its smooth working. The present amending Bill proposes to remedy the defects and obviate those difficulties.

The changes proposed in the Bill are though minor, but very essential.

The Durgah Khwaja Sahab at Ajmersharif is an All-India Institution and required therefore fair representation of all places and interests. A glance over the composition

of the Durgah Committee will at once point out that there has been some deviation in the said Principle, inasmuch as, the province of Delhi being an adjoining province and part and parcel of the same centrally administered area, has been denied any representation on the Durgah Committee whereas the Muslim public of Ajmere-Merwara, say practically of Ajmersharif town, have been given too much representation, say 9 seats out of 25. Not only the different interests concerned for the

peaceful and efficient administration of the Durgah and responsible for the proper conduct of the religious rights and ceremonies within the shrine, have been given adequate representation on the Committee, that is to say, the Mutawalli one seat, the Sajjadanashin one seat, and the Khadims two seats, in all 4 seats, but the Muslims of the town, of Ajmersharif have got 5 seats on the Committee; and this is quite disproportionate and unfair having regard to the population and contributions made to the Durgah by various constituencies (provinces); as a result of this over representation of the town people, there is always trouble in the peaceful administration of the Durgah so much so that the Mutawalli had to bring a suit for the declaration of his rights as Mutawalli, which ended in a decree in his favour. The Committee had to be saddled with unnecessary heavy expenses.

The changes proposed to be made in the amending Bill are explained briefly as follows:—

Clause 2 of the Bill proposes an amendment of section 5 to provide representation to the Muslims of Delhi.

Clause 3 of the Bill—section 6 provides for the publication of names of the members of the Committee and its procedure.

Section 7 provides for addition in the disqualifications of members of the Committee.

Section 8 provides for the removal of President and members of the Committee from their office.

Clause 4—minor amendment in section 9.

Clause 6—substitution of section 14 with minor changes.

Clause 7—seeks amendment of section 15, to provide safeguards against irregularities in framing bye-laws by the Committee.

Clause 9—substitution of section 20, with necessary changes to make it self-contained.

Clause 10—Section 21 provides for the consideration of the Auditor's report by the Committee and order of surcharge.

Section 22 provides for recovery of certified amounts as Public demand.

Section 23 provides for payment of audit costs.

Section 24 provides for an appeal against the order of surcharge by the Committee.

Section 25 provides for the stay of certificate proceedings during the pendency of appeal.

Section 26 provides for publication of the annual report by the Committee.

M. A. GHANI

M. N. KAUL
Secy. to the Govt. of India

GOVERNMENT OF INDIA
LEGISLATIVE ASSEMBLY DEPARTMENT

The following Bill* was introduced in the Legislative Assembly on the 11th March, 1943:—

L. A. BILL No. 16 OF 1943

A Bill to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability

WHEREAS it is expedient to impose on employers a liability to pay compensation to workmen sustaining war injuries and to provide for the insurance of employers against such liability;

It is hereby enacted as follows:—

1. (1) This Act may be called the War Injuries (Compensation Insurance) Act, 1943.

(2) It extends to the whole of British India, and applies also to British subjects in any part of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "employer", "adult" and "minor" have the meanings assigned to those expressions in the Workmen's Compensation Act, 1923;

(b) "the Fund" means the War Injuries Compensation Insurance Fund constituted under section 10;

(c) "gainfully occupied person" and "war injury" have the meanings assigned to those expressions in the War Injuries Ordinance, 1941;

(d) "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of a workman in any employment in which he was engaged at the time the injury was sustained, and where the disablement is of a permanent nature, such disablement as reduces his earning capacity in any employment which he was capable of undertaking at that time;

Provided that every injury specified in items 2 to 9 of the Schedule shall be deemed to result in permanent partial disablement;

(e) "prescribed" means prescribed by rules made under section 13;

(f) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time the injury was sustained;

Provided that permanent total disablement shall be deemed to result from the permanent total loss of the sight of both eyes or from an injury specified in item 1 of the Schedule or from any combination of injuries specified in items 2 to 9 of the Schedule where the aggregate percentage of disability as specified in that Schedule against those injuries amounts to one hundred per cent;

(g) the "Scheme" means the War Injuries Compensation Insurance Scheme referred to in sub-section (1) of section 6;

(h) "wages" means wages as defined in the Workmen's Compensation Act, 1923, and "monthly wages" has the meaning assigned to that expression by section 5 of the Workmen's Compensation Act, 1923, and shall be calculated for the purposes of this Act in the manner laid down in that section;

(i) "workmen" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business) who is employed in any of the employments specified in section 5.

3. (1) There shall, subject to such conditions as may be specified in the Scheme, be payable by an employer, in respect of a war injury sustained by a gainfully occupied person who is a workman to whom this Act applies, compensation, in addition to any relief provided under the War Injuries Ordinance, 1941, of the amount and kind provided by section 4.

(2) The compensation payable under this Act shall be payable in accordance with the provisions made in this behalf contained in the Scheme.

* The Governor-General has been pleased to give the previous sanction required by the proviso to section 126A of the Government of India Act, 1935, to the introduction in the Legislative Assembly of this Bill.

Short title, extent, and commencement

Definitions

Compensation payable under the Act by whom and how payable

VIII of 1923

VII of 1941

VII of 1923

VIII of 1923

VII of 1941

Amount of compensation

4. (1) The compensation payable under this Act shall be as follows, namely :—

- (a) whose death results from the injury—
 - (i) in the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923, reduced by hundred and twenty rupees, and
 - (ii) in the case of a minor—two hundred rupees ;
 - (b) where permanent total disablement results from the injury—
 - (i) in the case of an adult—the amount payable in a like case under the Workmen's Compensation Act, 1923, reduced by one thousand and eight rupees, and
 - (ii) in the case of a minor—one thousand two hundred rupees ;
 - (c) where permanent partial disablement results from the injury—
 - (i) in the case of an injury specified in the Schedule—such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of disablement,
 - (ii) in the case of an injury not specified in the Schedule—the percentage of such compensation specified in the Schedule for a disablement held by a competent medical authority acting under the Scheme made under the War Injuries Ordinance, 1941, to be of corresponding degree,
 - (iii) where more injuries than one are sustained—the aggregate of the compensation payable in respect of those injuries, so however as not to exceed in any case the compensation which would have been payable if permanent total disability had resulted from the injuries ;
 - (d) where temporary disablement, whether total or partial, results from the injury—
 - (i) in the case of an adult—the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923, reduced in each case by seven rupees, and
 - (ii) in the case of a minor—the half-monthly payments payable in a like case under the Workmen's Compensation Act, 1923.
- (2) Where the monthly wages of a workman are more than three hundred rupees, the compensation payable under this Act shall be the amount payable under the provisions of sub-section (1) in the case of a workman whose monthly wages are more than two hundred rupees.

Workman to whom the Act applies

5. (1) The workmen to whom this Act applies are—

- (a) workmen employed in any employment or class of employment to which the Essential Services (Maintenance) Ordinance, 1941, has been declared under section 3 of that Ordinance to apply, whether such declaration is or is not subsequently revoked ;
- (b) workmen employed in any factory as defined in clause (j) of section 2 of the Factories Act, 1934 ;
- (c) workmen employed in any mine within the meaning of the Indian Mines Act, 1923 ;
- (d) workmen employed in any major port ;
- (e) workmen employed in any employment specified in this behalf by the Central Government by notification in the official Gazette.

(2) This Act shall not apply to workmen employed by the Crown, nor, unless the Central Government otherwise orders by notification in the official Gazette, to workmen employed by a Federal railway.

War Injuries Compensation Insurance Scheme

6. (1) The Central Government shall, by notification in the official Gazette, put into operation a scheme to be called the War Injuries Compensation Insurance Scheme whereby provision is made for all matters necessary to give effect to the purposes of this Act and whereby the Central Government undertakes, in relation to employers of workmen to whom this Act applies, the liabilities of insuring such employers against liabilities incurred by them to workmen under this Act and the Scheme.

(2) The Scheme shall secure that any liability of the Central Government as insurer under the Scheme is determined by a policy of insurance issued in the prescribed form by a person acting on behalf of the Central Government.

(3) The Scheme may provide that it shall come into operation or shall be deemed to have come into operation on such date as may be specified therein.

(4) The Scheme may be amended at any time by the Central Government.

(5) Without prejudice to the generality of the provisions of sub-section (1), the Scheme may—

(a) make provisions regulating the payment of the compensation payable under this Act and the Scheme, including provision for punishment by fine not exceeding one thousand rupees for the contravention of any requirement of the Scheme ;

(b) specify conditions or circumstances which will disentitle a workman to the compensation payable under this Act, and make it an express or implied condition of any policy of insurance issued under the Scheme that the payment of compensation in defiance of such specifications is not covered by the policy ;

(c) provide for cases in which an employer has of his own accord undertaken a part or the whole of the liability imposed by this Act ;

(d) provide for the final assessment of the total premium due on a policy of insurance under the Scheme as a percentage of the total wages bill of an employer for the twelve months preceding the termination of the present hostilities, and for the assessment of the total premium due on a policy which has ceased to be in force before the termination of the present hostilities owing to the employer having gone out of business.

(e) provide for the recovery from an employer of the total premium due on a policy of insurance including provision for its recovery by periodic advance payments of an amount based on a percentage of his total wages bill for any prescribed period, the separate funding of the payments so made by each employer, and the eventual adjustment of the total premium as finally assessed against the total of such periodic payments :

Provided that the first of such periodic payments shall be an amount representing not more than eight annas per hundred rupees of the wages bill for the period by reference to which the amount of the payment is fixed :

Provided further that such periodic payments shall not be more frequent than once in each quarter of a year ;

(f) provide for the repayment by the Central Government to an employer who has made a payment of compensation for which he is liable under this Act of the amount so paid within the limits imposed by this Act and the Scheme.

Employment of
agents by the Central
Government

7. The Central Government may employ or authorise the employment of any person or firm to act as its agents for any of the purposes of this Act, and may pay to persons or firms so employed such remuneration as the Central Government thinks fit:

Provided that no person or firm shall be so employed unless that person or firm is a member of an association prescribed in this behalf.

Compulsory
insurance

8. (1) Every employer of workmen to whom this Act applies or is subsequently made applicable shall, before such date as may be prescribed, or before the expiry of such period as may be prescribed after his having first become such an employer, take out a policy of insurance issued in accordance with the Scheme, whereby he is insured until the termination of the present hostilities or until the date, if any, prior to the termination of the present hostilities at which he ceases to be an employer to whom this section applies, against all liabilities imposed on him by this Act.

(2) Whoever contravenes the provisions of sub-section (1) or, having taken out a policy of insurance as required by that sub-section, fails to make any payment by way of premium thereon which is subsequently due from him in accordance with the provisions of the Scheme shall be punishable with fine which may extend to two thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention or failure continues.

Prohibition of certain
insurance business

9. (1) After the date on which the Scheme is put into operation no person shall, except as a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme, carry on the business of insuring employers in British India against the liabilities for insurance against which the Scheme provides.

(2) Nothing in sub-section (1) applies to any policy of insurance entered into before the date on which the Scheme is put into operation and current after that date or to any policy of insurance covering liabilities undertaken in excess of the liabilities imposed by this Act.

(3) Whoever contravenes the provisions of sub-section (1) shall be punishable with fine which may extend to five thousand rupees and with a further fine which may extend to one thousand rupees for every day after the first on which the contravention continues.

War Injuries
Compensation
Insurance
Fund

10. (1) The Central Government shall establish a fund for the purposes of this Act to be called the War Injuries Compensation Insurance Fund into which shall be paid all sums received by the Central Government by way of insurance premiums under the Scheme or by way of payments made on composition of offences under section 15 or by way of expenses or compensation awarded by a Court under section 545 of the Code of Criminal Procedure, 1898, out of any fine imposed under this Act, or by way of penalties imposed under the Scheme, and out of which shall be paid all sums required for the discharge by the Central Government of any of its liabilities under this Act or the Scheme, or for the payment by the Central Government of the remuneration and expenses of agents employed for the purposes of the Scheme, or for the payment by the Central Government of the costs of administering the Scheme.

(2) If at any time the sum standing to the credit of the Fund is less than the sum for the time being necessary for the adequate discharge of the purposes of the Fund, the Central Government shall pay into the Fund as an advance out of general revenues such amount as the Central Government considers necessary.

(3) If at any time the amount standing to the credit of the Fund exceeds the sum which in the opinion of the Central Government is likely to be required for the making of payments out of the Fund the excess shall be paid into general revenues.

(4) The Central Government shall prepare in such form and manner as may be prescribed and shall publish either annually or at such shorter intervals as may be prescribed an account of all sums received into and paid out of the Fund.

Power of Central
Government to
obtain information

11. (1) Any person authorised in this behalf by the Central Government may, for the purpose of ascertaining whether the requirements of this Act and of the Scheme have been complied with,—

(a) require any employer to submit to him such accounts, books or other documents or to furnish to him such information as he may reasonably think necessary, and

(b) at any reasonable time enter any premises or upon any property under the control of an employer and require any person found therein or thereon, whom he reasonably believes to be in possession of information relevant to his investigation, to furnish to him such information as he may reasonably think necessary.

(2) Whoever wilfully obstructs any person in the exercise of his powers under this section or fails without reasonable excuse to comply with any request made thereunder shall, in respect of each occasion on which any such obstruction or failure takes place, be punishable with fine which may extend to one thousand rupees.

(3) Whoever in purporting to comply with his obligations under this section knowingly or recklessly makes a statement false in a material particular shall be punishable with fine which may extend to one thousand rupees.

Recovery of premium
unpaid

12. (1) Without prejudice to the provisions of sub-section (2) of section 8, where any person has failed to insure as or to the full amount required by this Act and the Scheme and has thereby evaded the payment by way of premium of any money which he would have had to pay in accordance with the provisions of the Scheme but for such failure, an officer authorised in this behalf by the Central Government may determine the amount of which has been so evaded, and the amount so determined shall be payable by such person and shall be recoverable from him as provided in sub-section (2).

(2) Any sum payable in accordance with the provisions of the Scheme by way of premium on a policy of insurance issued under the Scheme and any amount determined as payable under sub-section (1) shall be recoverable as an arrear of land-revenue.

(3) Any person against whom a determination is made under sub-section (1) may, within the prescribed period, appeal against such determination to the Central Government whose decision shall be final.

Default in payment of
compensations

13. Where an employer has failed to pay within a reasonable time any compensation which he is liable under this Act to pay, an officer authorised in this behalf by the Central Government may order payment of the compensation to be made out of the Fund, and may require the employer to pay by way of penalty a sum not exceeding twice the amount of the compensation in respect of which default was made, and such penalty shall be recoverable as an arrear of land-revenue.

Limitation of prosecutions

14. No prosecution for any offence punishable under this Act shall be instituted against any person except by or with the consent of the Central Government or an authority authorised in this behalf by the Central Government.

Composition of offences

15. Any offence punishable under sub-section (2) of section 8 may, either before or after the institution of the prosecution, be compounded by the Central Government or by any authority authorised in this behalf by the Central Government on payment for credit to the Fund of such sum as the Central Government or such authority, as the case may be, thinks fit.

Bar of legal proceedings

16. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

(2) No suit shall be maintainable in any civil Court against the Central Government or a person acting as its agent under section 7 for the refund of any money paid or purporting to have been paid by way of premium on a policy of insurance taken out or purporting to have been taken out under this Act.

Power to exempt employers

17. The Central Government may, by notification in the official Gazette, exempt from the provisions of this Act any employer or any class of employers, and shall so exempt any employer on the employer's request, if satisfied that he has before the commencement of this Act entered into a contract with insurers substantially covering the liabilities imposed on him by this Act, for so long as that contract continues.

Power to make rules

18. (1) The Central Government may, by notification in the official Gazette, make rules to carry into effect the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may prescribe—

(a) the principles to be followed in ascertaining the total wages bill of an employer, including provision for the exclusion therefrom of certain categories of wages;

(b) the form of the policies of insurance referred to in sub-section (2) of section 6;

(c) the period referred to in clause (e) of sub-section (5) of section 6;

(d) the associations referred to in the proviso to section 7;

(e) the date and the period referred to in sub-section (1) of section 8;

(f) the form of and the manner of preparing and publishing the account referred to in sub-section (4) of section 10.

Application of the Scheme to Indian States

19. (1) If the Central Government is satisfied that by the law of an Indian State provision has been made substantially corresponding to the provision made by this Act imposing liabilities upon employers and requiring them to take out policies of insurance covering such liabilities, the Central Government may, by notification in the official Gazette, declare that this section shall apply to that State.

(2) On the application of this section to any State the Scheme made under this Act shall extend to the undertaking by the Central Government in respect of employers in that State of the same liabilities in the same manner, to the same extent and subject to the same conditions as if such employers were in British India.

(3) On the application of this section to any State the provisions of section 9 shall be deemed to prohibit any person except a person authorised by the Central Government as its agent to issue policies in pursuance of the Scheme from carrying on after the date of the notification by which this section is applied the business of insuring employers in that State against liabilities insurance against which is provided under the Scheme.

THE SCHEDULE

[See section 2 (1) and 4 (1)]

Item No.	Injury	Percentage of disability
1	Loss of two or more limbs Lunacy Jacksonian epilepsy Very severe facial disfigurement	100
2	Loss of right arm above or at the elbow	90
3	Severe facial disfigurement Total loss of speech Loss of left arm above or at the elbow Loss of right arm below the elbow Loss of leg at or above the knee	70
4	Loss of left arm below the elbow Loss of leg below the knee Permanent total loss of hearing	60
5	Loss of one eye Loss of right thumb or four fingers of right hand	50
6	Loss of all toes of both feet above knuckle Loss of left thumb or four fingers of left hand or three fingers of right hand	40
7	Loss of all toes of one foot above knuckle Loss of all toes of both feet at or below knuckle	30

Item No.	Injury	Percentage of disability
8	Limited restriction of movement of joints through injury without penetration, limited function of limb through fracture Loss of two fingers of either hand Compound fracture of thumb or two or more fingers of either hand with impaired function.	20
9	Loss of one phalanx of thumb Loss of index finger Loss of great toe	10

STATEMENT OF OBJECTS AND REASONS

The War Injuries Ordinance, 1941, empowered the Central Government to make a scheme providing for the grant of relief in respect of war injuries. It also provided that no compensation should be payable under the Workmen's Compensation Act in respect of a war injury. Workmen under that Act are now only entitled to receive relief from Government under the War Injuries Scheme.

2. In more highly industrialised countries—where variations in the industrial wage scale are not so large as in India, payments under the Personal Injuries Scheme are, in respect of labour, both relief and compensation. In India the amount of relief under the War Injuries Scheme does not at present give higher paid labour adequate compensation. It is impossible for Government themselves either to increase generally the scale of relief under the War Injuries Scheme or to undertake a liability to pay further compensation to a particular class of employees from Government funds. It is, however, reasonable that that obligation should be put on certain

employers. There is also probably more danger to employees in factories and other industrial concerns (which may be a target for enemy attack) than there is elsewhere.

3. The Bill imposes on employers of essential services, of factory and mine labour, in major ports, and other employments to be specified, an obligation to pay compensation in respect of war injury to their workmen, calculated to amount to the difference between the amount paid by Government under the War Injuries Scheme and the amount which would have been payable under the Workmen's Compensation Act if the war injury had given a right to compensation thereunder. This will mean additional payments in respect of labour drawing roughly over Rs. 24 a month.

4. Many employers are prepared to undertake the extra liability but the liability may prove either an

embarrassment or an impossibility in the case of a factory which might be seriously damaged by enemy action, unless insurance can be taken out to cover the risk. It is understood that few insurance companies are now prepared to cover such risks although in a few cases insurance in this matter has been effected. The Bill therefore provides for compulsory insurance with the Central Government, of the liability referred to above, by employers throughout British India.

5. A provision has also been made to extend the scheme of insurance to employers in States provided that provisions substantially corresponding to the provisions of this Bill are made in that State.

6. The Bill follows closely the War Risks (Goods) Insurance Ordinance and the War Risks (Factories) Insurance Ordinance.

B. R. AMBEDKAR

M. N. KAUL

Secy. to the Govt. of India

NEW DELHI :

The 5th March, 1943