

1031
Public (1896) Department.

ORDINARY MS.

G.O., Nos 1189-90

DATED 7. 11-96

INDEXED.

[Despatch Abstract.]

Bill to amend Act XXXVII of 1850.

Submitting to India the remarks of
the Govt with reference to certain
provisions in the —

Revised

[illegible]

G.O.	No.	Department.	Date.	G.O.	No.

செப்பனிருபவர் பெயர்
செப்பனிருவதற்காக எடுத்த
கொள்ளப்பட்ட நாள்
செப்பலிரு முடிந்த நாள்
சுறிபாதுகலும்
கு.பா.எ.
கையொப்பம்
ஆராய்ச்சி
உதவியாளர்
கையொப்பம்

18th Sept.

My dear Davidson,

I return the Gazette
of India containing the Bill
to amend Act XXXV of 1850.

His Excellency wishes to
know

(1) whether it is probable that the Bill will be referred to Local Boards for remarks now that it has been introduced.

G.O.	No.	Department.	Date.	G.O.	No.

G.O.	No.	Department.	Date.	G.O.
	2695	497		

(2) whether under the existing act the Local Govt. can make inquiries into the conduct of all superior public servants;
 to this power

(3) to what extent this power will be affected by the proposed amendment.

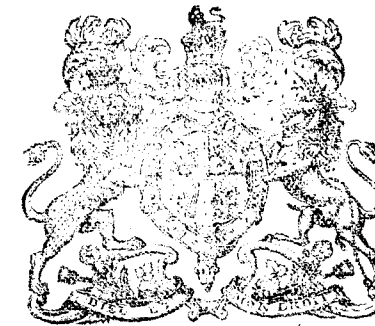
proposed
2/3 the answer to (1) is in
the negative or doubtful
the bill shd. be circulated

at once with a H.S.
order so as to enable the
Govt. to telegraph a pro-
test to the Govt. of India
if need be.

Yours sincerely
H. Allmon

செப்பனிருபவர் பெயர்
செப்பனிருவதற்காக எடுத்த
கொள்ளப்பட்ட நாள்
செப்பனிட்டு அடித்த நாள்
சுரிபாதிக்கும்
உராய்ச்சி
உலையாளர்
கையொப்பம்
கையொப்பம்

1966
1966
1966



The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 12, 1896.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 10th September, 1896:

No. 20 OF 1896.

A Bill to amend Act XXXVII of 1850 (for regulating Inquiries into the behaviour of Public Servants).

WHEREAS it is expedient to amend Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*); It is hereby enacted as follows:

1. The said Act XXXVII of 1850 may be called the Public Servants (Inquiries) Act, 1850.

2. In the preamble to the said Act, for the words "the East India Company" the word "India" shall be substituted.

3. In section 2 of the said Act, for the words "the East India Company, not removable from his office without the sanction of the same Government," the word "Government" shall be substituted.

4. For section 23 of the said Act the following section shall be substituted, namely:

23. The powers of Government under this Act may in all cases be exercised by the Governor General in Council, and, when the person accused can be removed by the Local Government, those powers may also be exercised by the Local Government.

STATEMENT OF OBJECTS AND REASONS.

SECTION 23 of Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*) defines the expression "Government" as used in that enactment so as to mean "the Governor General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused". The language of this section is obscure, and refers to an obsolete state of facts. The object of this Bill is to remove doubts which may arise on the construction of this section, and to declare by whom the powers of "Government" may be exercised.

2. The opportunity has been taken to furnish Act XXXVII of 1850 with an appropriate title.

The 8th September, 1896.

M. D. CHALMERS.

S. HARVEY JAMES,

Secretary to the Government of India.

Public (1896) Department. AA

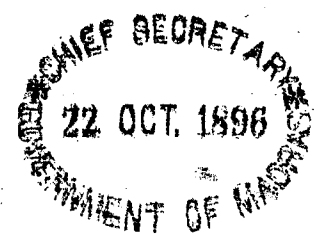
cs.

To await further
from India.

S.B.

23/10/6

CURRENT No. 3515



MA 15/6

From

The British Consular
Agent
Pondicherry

Order

No. 129

Dated 21st October 96

Received 22 - 10-96

Registered 23 - 10-96

Enclosures

Spare copies.

SUBJECT.

Reporting that he
was presented to H. E.
the Governor of Pondicherry
and obtained permission
to take up his duties
in the absence of
his Exequatur or any
order appointing
him to the office.

File when not sent out to Pub. R.

BACK PAPERS.

G.O.	No.	Department.	Date.
	831119-20	Pub	10-10-56

FURTHER PAPERS.

G.O.	No.	Department.	Date.

NOTE FOR THE SECRETARY.

E

The Provisional Committee
on the proposed Bill
I may be able to get some
light.

For L.A.

Recd by
11 A.M.
12/19/56

Yesterday's letter did not
contain anything about the bill.
Perhaps today's letter may be
sent. or India asked by wire
(urgent) whether the bill is going
to be rep'd to local govt.

P.S.'s queries 2 & 3 cannot be
answered without paper which will
be looked up.
12/19/56

BACK PAPERS.

G.O.	No.	Department.	Date.
	83119-20	Pub	10-10-56

FURTHER P

G.O.	No.

NOTE FOR THE CHIEF SECRETARY.

Attention is invited to D.B.
from the P.S. to Mr Davidson
and the slips attached.

As there is nothing in today's
happal order are requested as
to whether if of I should be
asked by win whether it is going
to refer the bill to Lord youke
or whether the bill may be
circulated.

Papers are being looked
up with to answer queries 2+3 of
the P.S.

119
19/10/56

2
Copy of telegram to the G.
of India, Leg. Sept, 27/19-91,
N^o 552.

Please wire whether
Bill to amend Act XXXVII
of 1850 will be referred to
the Govt for remarks.

(Fair copy by C.S.)

Public (1896)) Department.

CURRENT No. 3036

From the govt. of India
Legislative Dept.

Order

No. 1814

Dated 14
Received 20
Registered 21 } Sept. 96
Enclosures — 2
Spare copies. — 5 of each encls.

SUBJECT.

Forwarding for publication
in the Port. St. George Gazette
papers re the bill to amend
Act XXXVII of 1857 (for regulating
inquiries into the conduct of Public
Servants.

10

STATEMENT OF OBJECTS AND REASONS.

SECTION 23 of Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*) defines the expression "Government" as used in that enactment so as to mean "the Governor General in Council, the Governor or Deputy Governor of the Presidency of Fort William in Bengal, the Governor in Council of the Presidencies of Fort St. George and Bombay, respectively, and the Lieutenant-Governor of the North-Western Provinces and Oudh, whose sanction is necessary for the removal of the person accused." The language of this section is oblique, and refers to an obsolete state of facts. The object of this Bill is to remove doubts which may arise on the construction of this section, and to declare by whom the powers of "Government" may be exercised.

2. The opportunity has been taken to furnish Act XXXVII of 1850 with an appropriate title.

The 24th September, 1896.

M. D. CHALMERS.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT

ANNEXURE

Bill to amend Act XXXVII of 1850
(for regulating Inquiries into the
behaviour of Public Servants).

(Statement of Objects and Reasons.)

BILL

TO

*Amend Act XXXVII of 1850 (for regulating
Inquiries into the behaviour of Public
Servants).*

WHEREAS it is expedient to amend Act
XXXVII of 1850 (for regulating Inquiries
into the behaviour of Public Servants); It is
hereby enacted as follows:—

1. The said Act XXXVII of 1850 may be
called the Public Servants
(Inquiries) Act, 1850.

2. In the preamble to the said Act, for the
words "the East India
Company" the word "India"
shall be substituted.

3. In section 2 of the said Act, for the words
"the East India Company,
not removable from his
office without the sanction
of the same Government," the word "Govern-
ment" shall be substituted.

4. For section 23 of the said Act the following
section shall be substituted,
namely:—

"23. The powers of Government under this
Act may in all cases be
exercised by the Governor
General in Council, and,
when the person accused can be removed by
the Local Government, those powers may also be
exercised by the Local Government."

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

A
BILL
TO

Amend Act XXXVII of 1850 (for regul-
ing Inquiries into the behaviour
Public Servants).

(Mr. Chalmers.)

No. 1814

FROM

H. M. C. Curdiffe, Esquire,
Offg. Deputy Secretary to the Government of India,
Legislative Department,

TO

The Chief Secretary to Government,
Madras

Dated Simla, the 14th September, 1896.

SIR,

I am directed to forward herewith six
3drd Amend Act copies of the notes noted on the margin
XXXVII of 1850 (for
regulating inquiries
into the behaviour
Public Servants),
with statement of
Objects and Reasons,
and to request that they may be published
in the Fort St. George Gazette in English
and in such other languages as the Governor
in Council may deem proper and that the
dates of such publication may be com-
municated to this Department as soon
as possible.

I have the honour to be,
Sir,
Your obedient servant

Public (189) Department.

CURRENT No.

CHIEF SECRETARY
20 SEP 1896
GOVERNMENT OF MADRAS

Order

Telegram.
From the govt. of India
Legislative Dept.

No.

Dated }
Received } 21st September
Registered }
Enclosures - nil
Spare copies. - nil

SUBJECT.

Enquiring whether the
Madras govt. has any
summar to offer on the
Bill to amend to Act
37 of 1850.

Con
Class

INDIAN

To
(Office)

Words
55/6

Day
21

Hour
16

Minute
40

Signal
Indication

22 SEP 1896

To
(Person)

Madras

From

(Person)

LEGISLATIVE COUNCIL OF MADRAS

Legislative

Your telegram of 15th inst. re
Bill No. 15 passed act

89 37 of 1850 x

I proposed to pass bill
at early meeting here
as unlikely I'll make
Cubism x if your government
wishes to make any

remarks please communicate a
memo by telegram or
if necessary letter x
by letter please indicate
by wire x

54 Word Form.

Time from

P.M.

Sent to

L.N.

At

By

At

By

At

By

At

By

Telegraph Master

OOTACAMUND 22 9/96

CHIEF SECRETARY
22 SEP 1896
DEPARTMENT OF MADRID

My dear Arundell

With reference to the
note from Price, Mr. Goff
desires me to say that
he wishes the Bill circu-
lated with a Note for order
without delay.

Yours sincerely
W. A. Chiswick

22/9

D. O.



OOTACAMUND,

Sept 30th 1896.

7. 11. 1896

My dear Sir,

I write a line to tell
you that India has sent the Bill to
London. Act No. 1858 down
here for publication only. It has not
yet been for opinion or remarks.
I myself do not see that the proposal
submitted is open to objection. I expect
however that I have not looked into the
point closely. Yours sincerely
Hendrickson

C. 3076 & file

H.M. and circ.

6 June 1896

It seems to me that the proposed new section 23 will withdraw the authority of the Govt., provided that the word "removed" merely means "removed from office" & not "dismissed from the service of Govt." But the meaning intended to be attached to the word should certainly be ascertained.

I think also that the proposed alteration of S. 2 should be opposed. As the Act stands, the formal appointment of a Comr. or Comrs. to the use of the prescribed formalities of enquiry apply only to cases of formal & public enquiry into infractions of discipline by any person "not removable from his office without the sanction of the Govt." But, if these words be omitted, whenever formal & public enquiry is necessary into the conduct of any Govt. servant, the matter of how low degree, the Comr. or Comrs. will have to be appointed. The formalities of the Act provided for would be going much too far - but I see that there is any such whatever in this amendment. The authority, I consider that it tends to hamper the admin.

RS
24/9/96

In his Semi-Official in the file submitted, the Private Secy. to the Governor puts three questions regarding the Bill to amend Act No. VII of 1855 which was introduced in the Council of the Governor General on the 10th instant.

(1) Whether it is probable that the Bill will be referred to Local Govts. for remarks now that it has been introduced.

Attention is invited to C. No. 3076 in the file with which copies of the Bill were forwarded but which does not ask for any expression of the opinion of this Govt. on the Bill.

(2) Whether under the existing Act the Local Govt. can make enquiries into the conduct of all superior public servants.

Attention is invited to a copy of the Act put up which has been corrected in pencil in accordance with the Bill. Under sec. 22 the Govt. can pass such orders on the report of the Commissioners "as appear just and consistent with its powers in such cases" and under sec. 23 the word "Govt." means inter alia the Govt. of Port St. George & in Council "whose sanction is necessary for the removal of the person accused". Sec. 23 has been struck out and the revised section is as follows.

"The powers of Govt. are as follows."

may in all cases be exercised by the G.G. in C. and when the person accused can be removed by the local Govt., these powers may also be exercised by the local Govt."

It is to be noted that this power will be affected by the proposed amendment.

The answer to this question depends on the relative value attached by the Govt. of India to the two phrases already noted "can be removed" and "may be removed".

"Can be removed" means that the person accused can be removed by the local Govt."

"May be removed" means that the person accused can be removed by the local Govt."

a member of the Indian Civil Service could not be removed by the local Govt. but it might be argued that its sanction to such removal by the Secy. of State would be necessary.

The revised section restricts the powers enjoyed by the local Govt. under the old section. In this connection attention is invited to para 3 of letter No. 63, d/ 31st Jan 1903 to the G. of India.

In the case of Mr. Ramachandra Rao, lately a Statutory Civilian. It will be seen from page 13 of those proceedings that the Advocate General was of opinion that the expressions "removal" and "removal from office" in Act XXVII of 1890 do not necessarily mean de dismissal from public service. He held therefore that the Govt. was empowered by the Act to appoint a Commission in the case although it had not the power to remove Mr. Ramachandra Rao from the service of Govt.

Act to mean an order of removal from office & Sec 2 did provide for removal from office without the sanction of Govt. According to the provisions of the Act, the local Govt. has the power to remove a person from office without the sanction of the Govt. of India. But Sec 2, as amended, makes it impossible for the local Govt. to remove a person from office without the sanction of the Govt. of India.

1. I think on the whole the effect of the amendment is to restrict the powers of the local Govt. in the removal of a person from office. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

2. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

3. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

4. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

5. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

6. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

7. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

of serious charges against officers. It is not removable without the sanction of the Govt. of India. I think that the decision of the Commission might have the effect of making the people think that all proceedings against officers must necessarily be conducted under the Act. This is a good thing. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act. It is not a good thing to rely on the preamble. The meaning of the preamble is a sufficient basis for the interpretation of the Act.

24/9/96

service of Govt. But the words "removable from his office" have now been struck out of sec. 2 of the Act. The word "removable" in revised sec. 23 may still apply to removal from office which this Govt. has the power to order even in the case of a member of the Civil Service; for it can place him under suspension, or it may remove him from the service of Govt. in which case the Govt. in future will have no power under the Act as regards all officers appointed by the Secy. of State or by the Govt. of India.

It will be seen from G.O. No. 10, d/ 13th April 1903 that the G. of India apparently approved the action taken by this Govt. in appointing a commission under Act XXVII of 1890 to enquire into the charges against Mr. Ramachandra Rao.

It is submitted that should be asked by what would be the exact effect on the powers of the local Govt. under the existing Act of the provisions of the Bill now under consideration.

21.9.96. The proposed alterations do not appear to modify the powers now possessed by the local Govt., but...

it seems desirable that
the ambiguity of the
word "removed" in new
sec 23 should be set
at rest.

MA 21.9.96

Attention is invited
to a telegram received from
the L. & J. after the above
was written; and also to
the d/o from the Private
Secretary stitched with it.

MA 22.9.96

19
Ordinary Telegram ^{25/9}

To Legislative
Council

500 Your letter 14th
and telegram 21st
regarding Bill to
amend 37 of 1850.
His Govt. desires to
know whether the
word removed in
Section 23 of Bill
means removed from
office or dismissed
from the service of
Govt. and whether
the Bill will affect
in any way the power
exercised by ^{Govt.} Govt.
under existing Act.
Please wire reply.

J.B.
25/9/96

MA
25.9.96

Public (1896) Department.

Approved Telegram
To the Private Secretary
Governor's Camp.

CURRENT No. 3224

580x - India wires, begins,
Removed x x x x, ^{anyway,} ends.
Does His Excellency
desire further action.
Papers follow by post
after circulation.

From the Govt. of India
Legislative

Submitted to Honble
Members at H. Q.

No.

580B

580B

1896
Day before circ.

Dated 1896

Received

Registered

2 no. Copies of

Enclosures - nil

Spare copies. - nil

SUBJECT.

Spencer is, as India now
has been dismissed from service
which will not materially modify (and
reduce) the power of the Govt. As
Governor stands, this Govt. has proposed
under the Act in the case of charges
against Indian Civil servants, that
they be "removed" (i.e. dismissed from
service) by order of the Govt. of India.
The Govt. of India has proposed that
before he is made a Civil servant, the
Governor should be satisfied that the
person is a fit person to be made a
Civil servant.

Replying to the
letter of the
Govt. of India
dated 1896
the Govt. of India
has decided that
the Govt. of India
should be satisfied
that the person
is a fit person to
be made a Civil
servant.

Recirc. to
the Hon. Mr. Grose & J.
If H.M. concurs
with H.R. I will
vice as H.R. proposes.

MA 10.9.6.

Send V.I. to Hon
to June 22
1876

The Telegram should
have been sent
with this for my
signature. Send it
to meet me at
the Post Office tomorrow
morning at 8 am

MA 10.9.6.

File of the telegram proposed by
H.R. is submitted for the Chief
Secretary's signature as directed.
The Office by mistake sent the
file on return from C.S. direct
to the C.S. without signature

MA
17.10.96

Club

The following Telegram
will be despatched to the
Legislature.

621 x In continuation my Telegram
585 third instant x This Government
understands that the effect of bill
will be to deprive it of power
it now possesses of putting the
act in operation in cases of members
of the Indian Civil Service and others
who cannot be dismissed by
this Government & if this view be
correct this Government proposes
to address Government of India
on the whole subject.

At
(Sd) by ag. C. S.

NOTE FOR THE CHIEF SECRETARY.

I find that your
telegram No. 621 was
despd. from Boby on the
same day that this
left Simla - they appar-
ently crossed - and no
further action appears
to be called for.

3013
M.A. 109. 19/10/16

Public (1896) Department. ✓

CURRENT No. 1142

Telegram
From

The Govt. of India,
Legislative Dept.

Order

No.

Dated 17th

Received 19th

Registered 19th

Oct 5/96

Enclosures — —

Spare copies.

SUBJECT.

Requesting to know
if there are any further
observations to offer
proposed on the bill
to amend Act 37 of
1850.

Code
Class.

INDIAN

TELEGRAPHS

To

(Office)

From

(Office)

Day

Hour

Minute

Office

To

(Person)

From

(Person)

Madras

CHIEF SECRETARY
19. OCT. 1896
GOVERNMENT OF MADRAS

Word Form.

Madras telegram 58
that have you
further observation
offer proposed to
bill one hundred
In from Mr. with whom paper now
As

ed. from

LS.

sent to

LS.

Mrs.

Mrs. by

MADRAS FCT 18-10

1896 10 19 18-10

Public (189 /) Department.

CURRENT No. 30 29

27

Telegram

From the Govt. of India
Legislative.

Order

E

No.

Dated 23 "
Received 24 "
Registered 24 " } Enclosure 96

Enclosures

Spare copies.

SUBJECT.

Stating that the Govt.
of India will not proceed
with the bill to amend
act 37 of '50 until the
Calcutta Session.

To (Office) *Madras* From (Office) *Calcutta*
 Words. Day. Hour. Minute. Official Instructions.

CA 303
TO Madras
at once on point
indicated - or are further connected?



From (Person) *Legisla. Secy*

KA *four telegrams* *24.10.86*

seventeen *the* *propos*
not *to* *be* *with*
The *will* *be* *at* *the*
Session *at* *present* *not*
understood *how* *it*
involves *any* *change*
such *as* *you* *will* *be* *able* *to* *write*
at *once*

Sent to *Madras* At *Calcutta* Hrs. *24-10-86*
 M. by *W.D.W.B.*

Bill to amend Act XXXVII of 1850.

Public DEPARTMENT.

C. No. 3529 & file.

G.
1 25
500-3-10-05.

H. M. & Circ.

29

FOR ORDERS.

*
for regulating inquiries into
the behaviour of public ser-
vants.

India intimates by wire that
it will not proceed with the Bill to
amend Act XXXVII of 1850 until the
Calcutta Session, and remarks that it
is not understood how the Bill involves
any change as pointed out by this Govt.

The points to be indicated in
the reply have already been noted upon
and a draft is put up for app'oval.
I. As to the revised § 23. What is
sired is that the word "removed" in the
revised section should be defined to
mean "removal from office" and not
"from service". India has intimated that
the latter definition is intended; and
in that case similar action to that
taken in Statutory ^{Civilian} Ramachandra Rao's
case and approved by India could not
be taken after the Bill has passed,
II. With reference to § 2, the draft
embodies the argument in the Hon. Mr.
Pliss's note dated 22nd Sept. and the
point noted by His Excellency as re-
gards Sec. 25. It would be possible
under the Bill for a case to occur
in which Govt. could suspend an

in Mr. Atkinson's case
RA

officer without being able to hold
an enquiry into the charges against him.

813
6.10.96

The draft is intentionally
phrased with some
emphasis.
M 26.10.96

[G.]
24.
500-22-4-96.

Public DEPARTMENT

Papers to be read in proceedings:—

Again G.O., dated 189 , No.
Again G.O., dated 189 , No.
Current No. 3529 of 189 , dated , from
" " " 189 , " " "
" " " 189 , " " "

30

Recirc. to

ORDER.

H. M.S. & Circ.

with ref. to H.E.'s note

M 30.10.

The Govt. of India will be
addressed.

M 26.10.96

LETTER:-

To
The Secretary to the Govt. of India
Legislative Dept.

SIR,

With reference to the
correspondence ending with your
telegram of the 23rd instant regard-
ing the Bill to amend Act XXVII of
1850, I am directed to state that
in the opinion of His Excellency
the Governor in Council there are
strong objections to accepting as
the definition of the word "removed"
in § 23, the limited meaning conveyed
in your telegram of the 1st instant,
viz. "dismissed from service". As the
law now stands this Govt. can pro-
ceed, and has when occasion required,
proceeded, under the Act against

1. I request in para. 1, the attention drawn in red ink.
2. The note quite like the form of para. 2 & 3.
You are quite sure that the statements made
are quite correct (see footnote marked B). Would it
not suffice to print out the true effect of the
allusion and to say that as we believe
grounds are put forward for making it, and
as it might lead to mis-understanding, - it
seems undesirable.
3. If the attention drawn in para. 1 is
not to be indicated.

M 30.10.96

Indian Civil Servants, and others, can be "dismissed from service" by order of the Secretary of State. The effect of the present Bill will be, His Excellency in Council considers, to deprive ^{the} Govt. of the power it now possesses of putting the Act into operation in such cases. Such an enquiry for instance as that proposed in Mr. Lyall's letter No. 174, dated 1st April 1893 could not have been undertaken; and cases might occur in which the Govt. might suspend an officer from his appointment but would be unable to hold an enquiry into the charges against him. I am ~~therefore~~ to convey the strong protest of this Govt. against the proposed limitation of meaning in § 2, to suggest that the word "removed" should be defined to mean "removed from office" and not "dismissed from the service of Govt."

2. I am further to state that His Excellency in Council is opposed to the proposed alteration of § 2. Under the existing Act, the power of appointment of a Commissioner or Commissioners and the rest of the procedure prescribed, is limited to cases of formal and public enquiry into imputations of misconduct by any person "not removable from his office without the sanction of the Govt." If the words just proposed are omitted the section will require that when an enquiry is necessary into the conduct of any Govt. servant, the

and to read that power in the Supreme Government alone.

The conduct of the enquiry would necessarily devolve on the Government of India. It appears to this Government that such a procedure would not only result in great loss of time and efficiency, but would be seriously injurious to discipline. I trust that this Government sincerely deprecates the withdrawal of its power and the centralization of that power in the Government of India, which the measure under consideration seems to contemplate. [If the Government of India decide on the adoption of the Bill.]

See Sec 25 of the Act, which is to be inserted in the Bill.

3
matter what his position may be, such enquiry shall be formal and public, and shall be carried out by the Commissioner or Commissioners appointed under the provisions of the following section of the Act. Such a procedure in the opinion of His Excellency the in Council would seriously hamper the administration without serving any useful purpose. This Govt. therefore considers that § 2 should provide solely for the case of persons not removable from office without the sanction of Govt. According to the preamble the Act relates to such persons only, but § 2, as amended, would make it refer to all public servants indiscriminately from a petty peon or village officer upwards.

3. I am to remark that although § 25 of the Act reserves the authority of Government to suspend or remove any public servant without an enquiry under the Act, yet the existence of the law inclines the Govt. to act under its provisions in all cases of serious charges against officers "not removable without the sanction of Govt."; and it is feared that the excision from section 2 of the words I have referred to, might be taken to imply an intention that all formal enquiries into the misconduct of public servants should as a rule be conducted under the Act, the reservation in Sec. ²⁵ notwithstanding.

MA 26-10-96

Para 1 ² I agree to H.R.'s suggestion
but would omit the words included
within blue pencil brackets. H.R.'s
addition is a strong protest. It
therefore seems unnecessary that
the letter should say "I am to
carry the strong protest etc."
Paras 2 + 3. I have no objection
to their being put as H.R. sug-
gests, but think it would be
well to point out that the
wording of the preamble cannot
govern the rest of the Art. I believe
this to be the correct principle of
interpretation.

D.W.

31/10/96

J.

31/10/96



ACT OF THE GOVERNMENT OF INDIA.

The following Act of the Governor-General of India in Council received the assent of His Excellency the Governor-General on the 14th January 1897, and is hereby promulgated for general information :—

ACT No. I OF 1897.

An Act to amend Act XXXVII of 1850 (for regulating Inquiries into the behaviour of Public Servants).

WHEREAS it is expedient to amend Act XXXV (I) of 1850 (for regulating Inquiries into the behaviour of Public Servants); It is hereby enacted as follows :—

Title of Act XXXVII, 1850. * 1. The said Act XXXVII of 1850 may be called the Public Servants (Inquiries) Act, 1850.

2. In the preamble to the said Act, after the word "removable" the words "from their appointments" shall be inserted, and for the words "the East India Company" the word "India" shall be substituted.

Amendment of preamble Act XXXVII, 1850. 3. In section 2 of the said Act, for the words "the East India Company, not removable from his office without the sanction of the same Government," the words "the Government, not removable from his appointment without the sanction of the Government," shall be substituted.

Substitution of new section for section 23, Act XXXVII, 1850. 4. For section 23 of the said Act the following section shall be substituted, namely :—

[Paisa, 6 pias.]

"23. The

ACT No. I of 1897.

"23. The powers of the Government under this Act may in all cases be exercised by the Governor-General in Council, and when the person accused ~~can~~ be removed from his appointment by the Local Government, those powers may also be exercised by the Local Government."

J. M. MACPHERSON,
Secretary to the Government of India.

(Republished by order of His Excellency the Governor in Council.)

J. F. PRICE,
Chief Secretary.

H.G. and circ

*I app. for the draft as
it stands*

*Resubmitted to
H.G. the Governor.
MA 5-11.*

PRINTED AND PUBLISHED BY THE SUPERINTENDENT, GOVERNMENT PRESS

Public Department.

G. No. 3529 and File.

ORDER:- *No 118997-11-96*

The Govt. of India will be
addressed.

REFERENCE:- *No 1190.*

To
The Secretary to the Govt. of India
Imperial Department
Sept 9/11/96
SIR,

With reference to the correspondence
ending with your telegram of the 23rd
ultimo regarding the Bill to amend Act
XVII of 1850, I am directed to state
that in the opinion of His Excellency
the Governor in Council there are strong
objections to accepting as the definition
of the word "removed" in *Section* 23, the
limited meaning conveyed in your
telegram of the 1st *October* instant, viz "dis-
-missed from service". As the law now
stands this Government is empowered, and
has, when occasion requires, proceeded,
under the Act aforesaid, to dis-
serve, and others, who can be "dis-
-missed from service" by order of the
Secretary of State alone.

The

MA 5/11/96

24 35

to cases of formal and public enquiry into imputations of misbehaviour by any person "not removable from his office without the sanction of Government".

Section
It is true that ~~clause~~ 25 of the Act, which it is not proposed to repeal, reserves the authority of Government to suspend or remove any public servant without an enquiry under the Act. Yet the existence of the law inclines the Government to act under its provisions in all cases of serious charges against officials "not removable without the sanction of Government". It is feared that the extension from *Section* ~~clause~~ 2 of the words referred to, might be taken to imply an intention that all formal and public enquiries into the misconduct of public servants of all grades should, as a rule, be conducted under the Act, the reservation ⁱⁿ ~~of~~ Section 25 notwithstanding. The wording of the preamble may perhaps be quoted as a sufficient safeguard against this interpretation. But His Excellency in Council believes that the wording of a preamble cannot govern the rest ^{and consider it desirable that a note} ~~of the Act, and that the meaning of~~ ^{which the Act should} ~~not~~ ^{be} clear without ~~reference~~ ^{reference} to the preamble, which strictly speaking is no part of the Act at all.

and also in the words "If the fact of
decides on the adoption of the Bill", and
the omission of the word "thereby"

4.11.66

have been recorded

[G.
78
800-1]

would strongly press on the Council of the C. of I. that
Section 2-

In this case, I would vote at the

now "undemocratic".

A. 54 11/96

5013
2/11/16

3/4/96
3. 11. 96

NOTE ~~UNDER 1000~~ 36.

Two requests were made in
letter No 1190 dated 11/96:-
i. that the word "removed" should
be defined to mean "removal
from office" and not "dismissal
from the service of Govt."
ii. that § 2 should provide wholly
for the cases of persons "not
removed from office without
the sanction of Govt." [The words
within quotation marks are in the
original Act but were left
out in the draft Bill]

It will be seen that in
Act I of 1897 India has
complied with the 2nd
request and reinserted
the words excised, only
substituting appointment
for office.

^{special} definition of
"removed" has been added.
but the words "from
his appointment" have
been inserted after removed
in § 23. This it is pro-
posed is all that

is required, as
the Hon. Mr. Bliss in
his note of the 22nd Sept
remarked -

"The notification 23 will
not be a new authority
of this sort, provided
that the word "removed"
merely means "removed
from office".

This sort of
representation
would appear to
to have been
respected unless
there is any objection
to the substitution
of "appointment for
office".

The "Appointment" seems to
be more definite and a better
word than "Office".

C. O.
1/2/11

H. M. and circ
for information with
reference to the correct
substitution.

When given for copying
When copied
When examined
When signed

189

37

READ AGAIN G.O., No.
189

DATED

STATEMENT No.

ENCLOSURE TO G. No.

ORDER OF GOVERNMENT

A A A A A A A

LETTER OF GOVERNMENT

STATEMENT WITH DITTO

PAYERS NOT FILED UP, BEING WANT FOR DESPATCH
IN ORIGINAL

N.B.
A = Copy in full.
B = Not to be copied
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Q = Copy heading only