

Government of Madras.

EDUCATIONAL DEPARTMENT.

Recd.

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Enclosures

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G.O. No. 1093, 2nd October 1915.

Delegation of powers.

Authorizing the Inspector-General of Police to sanction, for not more than three years in each case, the exemption of sub-inspectors of police from the general educational qualifications required of candidates for the Criminal Judicial test, higher grade.

2
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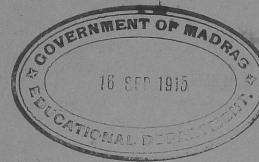
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3

Government of Madras.

JUDICIAL DEPARTMENT.



Recd.

Regd.

16/9 } 1915.

Enclosures

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G.O. No. 1941, 18th August 1915.

Criminal prosecutions in Magisterial and Sessions Courts.

Passing orders on the proposals made by the Inspector-General of Police and certain District Magistrates for improving the present system of conducting — and addressing the Government of India on the subject.

Get a copy
of the rules
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17/9

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—the following papers :—

I

Letter—from the Hon'ble Mr. H. WHEELER, C.S.I., C.I.E., Secretary to the Government of India, Home Department (Judicial).

To—the Secretary to the Government of Madras, Judicial Department.

Dated—Simla, the 11th August 1914.

No.—1401.

I am directed to address the local Government upon the important subject of the conduct of criminal prosecutions in magisterial and sessions courts.

2. Prominent attention was drawn to the question in Chapter IX of the report of the Police Commission, which detailed the various arrangements which they found in force in different Provinces, and arrived at the conclusion that “the present arrangements for the prosecution of offenders are almost universally unsatisfactory and the necessity for improvement is insisted on in every province.” In considering the remedies to be applied, the Commission (paragraph 177) deprecated the substitution of pleaders for prosecuting Police officers, and contemplated a regular system of public prosecutors, recruited from the Bar, for appearance primarily in sessions courts though, when directed to do so by the District Magistrate in important cases, in magisterial courts also; otherwise they recommended the placing of reliance upon properly trained police inspectors and sub-inspectors (paragraph 178).

3. The subsequent replies of local Governments to the reference on the point indicated general agreement with these conclusions and in addressing the Secretary of State the Government of India remarked as follows in their Despatch No. 2, dated the 26th January 1905 :—

“With the aims of the Commission with regard to the strengthening and ‘improving of the prosecuting agency we are in entire agreement. The answers of ‘local Governments to our reference on the subject also manifest a general approval of ‘the recommendations where they have not been already anticipated by existing ‘procedure, while such criticism as has been made has been prompted either by the ‘exigencies of local conditions or by considerations of the expense involved. We ‘accept the Commission’s proposals, but must regard them not as an end immediately ‘attainable, but rather as an ideal to be borne in mind and worked up gradually in ‘each province with due regard to local conditions.”

In this opinion the Secretary of State concurred.

4. Since then the Government of India have from time to time sanctioned isolated schemes for the improvement of the remuneration of public prosecutors, the most comprehensive being that applicable to Bengal and Bihar and Orissa, but the large increase in the numbers of the legal profession and the more frequent employment of pleaders by accused persons seem to be developing a tendency for more prosecutions to prove

unsuccessful, notwithstanding the undoubted improvement in the work of the police. The statement is not infrequently made in the press and elsewhere that the increased expenditure in the police in recent years has had little effect on the success with which crime is investigated and the criminal brought to justice, and it is possible that an explanation may to some extent be found in the growing strength of the Bar as engaged by the defence. Moreover a weak representation of the prosecution throws an undesirable onus upon the court of seeing that its case is properly elicited, while if the inadequacy of the normal prosecuting staff requires the constant employment of special pleaders on high fees in important cases, it may happen that the permanent retention of a better qualified agency, while ensuring improved results in all cases, might even be more economical.

5. The Government of India think, therefore, that the matter is well deserving of review in all provinces, and the points upon which, in particular, they would like information, in addition to any others which may suggest themselves to the local Government are as follows :—

(a) Has the system outlined by the Police Commission been actually brought into force? If not, what still remains to be done?

(b) Are prosecutions, as a matter of fact, now ordinarily properly conducted in the sense that the representatives of the Crown are sufficiently well equipped to cope with the defence? Statistics are, of course, an imperfect test, but it would be interesting to know the actual results, since, say, 1906, in magistrates' and sessions courts respectively, as evidenced by the proportion of convictions and acquittals and discharges in police prosecutions.

(c) If the answer to (b) is in the negative, to what is this defect to be attributed and how can it best be remedied?

6. The Governor-General in Council will be glad in due course to be favoured with an expression of the views of the Governor in Council.

II

Endorsement No. 2614/A-1, Judicial, dated 18th September 1914.

Referred to the Inspector-General of Police for remarks. He is requested to furnish Government with the statistics referred to in paragraph 5 of the letter from the Government of India. He should also state the number of prosecuting inspectors and sub-inspectors employed in each year with a short account of their legal and general educational qualifications.

P. RAJAGOPALA ACHARIYAR,
Secretary to Government.

To the Inspector-General of Police.

III

Endorsement No. 2614-A-2, Judicial, dated 22nd September 1914.

Malabar,
Salem,
Madras,
Kistna,
Tanjore,
Tinnevely,
Godavari,
Rannad,

Referred to the District Magistrate, _____ for general remarks as to the success

of the present system of conducting prosecutions and for any proposals which may be considered likely to result in more efficient conduct of cases.

(By Order.)

H. A. WATSON,
Under Secretary to Government.

IV

Letter—from A. R. LOFTUS-TOTTENHAM, Esq., M.A., I.C.S., District Magistrate of
Rannad at Madurai.
To—the Secretary to Government, Judicial Department.
Dated—the 22nd November 1914.
No.—R.O.C. 1616-Mgl.

In reply to Government endorsement No. 2614-A-2, Judicial, dated 22nd September 1914, I have the honour to state that my Sub-divisional Magistrates and District Superintendent of Police consider that the present system of conducting prosecutions has worked satisfactorily in this district and I agree with them.

2. The system in force here is precisely that outlined by the Police Commission (paragraph 178 of their report) except that instead of having a prosecuting inspector with a staff of sub-inspectors at district headquarters and a prosecuting sub-inspector at each sub-divisional headquarters we have one prosecuting inspector and one prosecuting sub-inspector for the whole district.

3. It would no doubt be an improvement, since there are three sub-divisions, to have an additional prosecuting sub-inspector, so that there would be as many prosecuting officers as there are sub-divisions, in addition to the Public Prosecutor (here an Indian Barrister distinct from the Government Pleader) at district headquarters. I can offer no other suggestions.

4. The professional calibre of the vakils engaged in the ordinary run of cases is not such that they are likely seriously to outrage (so to speak) the prosecuting police officers. In the average case intricate legal problems do not arise and the presiding magistrate ought to have sufficient knowledge, not to be misled by fallacious arguments.

5. While it is undesirable that the magistrates should usurp the functions of the prosecutor or the defence vakil, it is highly important to quote the words of the Commission (*loc. cit.*) "that they should realise that in every case . . . it is their 'duty to do all in their power to ascertain the truth. They must not sit to try cases 'in indolent dependence on a prosecutor putting the evidence before them, as if they 'had no concern with the justice of the matter or with the public interests'".

6. This is a point of view that I have frequently impressed on sub-magistrates, both as sub-divisional magistrate and as District Magistrate, and if magistrates do their duty in this respect we need not be alarmed by the "growing strength of the 'Bar'".

V

Letter—from R. B. WOOD, Esq., I.C.S., District Magistrate, Tanjore.
To—the Secretary to Government, Judicial Department.
Dated—the 5th December 1914.
No.—R.C. 1646/M.

I have the honour to reply to Government endorsement No. 2614-A-2, dated 22nd September 1914, on the present system of conducting police prosecutions in criminal courts. I propose to take first the existing method; secondly the difficulties which are met with, and finally the possible remedies.

2. Prosecutions in the sessions courts are conducted by the Public Prosecutor, who is one of the leading vakils at the headquarter stations; and he has the assistance of the local police who have put up the case. This system cannot be improved upon, and calls for no criticism.

3. In the magistrates' courts Government may employ a vakil for any specially difficult case, but this is so rarely done that it can scarcely be regarded as a normal method. The usual police case is prosecuted by one of two agencies, either by the special prosecuting officers attached to the police force, or by the ordinary police staff. The special prosecuting officers in this district consist of a prosecuting inspector and a prosecuting sub-inspector. The ordinary staff prosecuting a case, will be one of the sub-inspectors or head constables attached to the police station within the limits of which the offence was committed.

4. The difficulties with which the prosecuting agency has to contend are twofold, first, those which are peculiar to the special prosecuting inspector and sub-inspector

and to the ordinary police, respectively; and secondly, those which are common to both. There are also certain causes which will always operate against a high percentage of convictions, irrespective of what prosecuting agency is employed. I shall deal with those in some detail, as it is only by exactly realising the difficulties that we may be able to devise a proper remedy.

5. (i) *The number of courts.*—The special prosecuting staff consists of two men, and the courts in which they may have to work are six first-class magistrates' courts (excluding the District Magistrate) and twenty second-class magistrates' courts, excluding Bench courts and the third-class courts of sub-registrars. In each of these twenty-six courts, some 20 to 30 police cases *per annum* will be brought, of which four or five may be taken to be *prima facie* important enough, or difficult enough, to call for the services of the special staff. It will be at once evident how much time must be wasted in travelling from court to court, and how the scattered nature of the courts goes far to limit the number of cases in which the special staff can be employed. The above figures of course exclude the vast number of nuisance cases and cases under local and municipal laws.

(ii) *The duration of cases.*—The average duration of original cases in which the special staff appears is probably five days. This may be thought high, and I have no statistics to prove it, but it does not seem necessary to get them as it would take considerable time. As the special agency only deals with the more serious cases, they are usually rather involved, and nearly always contested. It is assumed in high places that the accused always wishes to get his trial over quickly; this assumption is justified by experience in English courts, but it is absolutely wrong to apply that experience to India. If the accused is guilty, delays are invaluable, since witnesses may die, or may be won over, or may fall into contradictions at different times. Further the magistrate may be changed, which gives opportunity for a *de novo* trial and all the chances of further delays. And time is always valuable for the preparation or elaboration of the defence. If the accused is innocent, time is still valuable for the same reasons.

6. It is undoubtedly the business of the magistrate to see that unnecessary adjournments are not given. But the magistrate is very tied down. The prosecution witnesses are cross-examined at great length, and at the close of the day the prosecution is still unfinished. The magistrate cannot usually go on next day, since he has other cases posted for that day. On the adjourned day of hearing the prosecution is perhaps finished, and the accused charged: then he recalls all the prosecution witnesses for re-cross-examination, and can often keep it on till the evening. His list of defence witnesses is put in, and at the next hearing two or three of them have not come (they have evaded service). Between each hearing, the accused can delay the case by putting in applications for transfer, with affidavits by friends who swear that they "understand" that such and such irregularities have been committed by the magistrate: or that he has certain friendships or enmities, with some of the witnesses, or that the accused has at some previous time complained against him and does not anticipate a fair trial. First the Divisional Magistrate, then the District Magistrate, then the High Court gets the petition and calls for the records. If a transfer is finally obtained, then proceedings have to be restarted and a *de novo* trial is begun.

7. These manoeuvres only occur in their fullness in big cases, and usually in cases which are not police cases: but they occur in one form or another often enough in police cases, to seriously add to their average duration, while the magistrate can do very little. Thus every case taken up by the special staff will last for probably five days, irrespective of travelling.

8. The difficulties which obstruct the ordinary staff when prosecuting a case, are different, and may be said to be:

(i) *Ignorance of law.*—This applies more to head constables than to sub-inspectors, though the latter too, especially if young, are no match for vakils.

9. (ii) *Jealousy.*—The law that investigating officers shall not prosecute their own cases, results in the rule that when there are two sub-inspectors in a station, each sub-inspector prosecutes the cases investigated by the other. It is almost an invariable fact, that when there are two sub-inspectors, they are jealous of each other's

work and the prosecuting sub-inspector is therefore not displeased if his rival's cases fail. In fact, the only man among the ordinary police who is anxious for a case to be carried through successfully is a man who has had a hand in investigating it, or one of his superior officers under whom he has been working.

10. (iii) *Section 495 (4), Criminal Procedure Code.*—This is the law referred to above. The Police Commission were reluctant to change it as they held that investigating officers should not be detained in court. This objection would be all very well if no other police officer were sent to court in his place, but it is of no force whatever when every one knows that no police case is ever put through without one of the station police being present to prosecute it, or to help the special staff to prosecute it. One of the strongest aids which the accused gets is the law which prevents any officer who has taken part in the investigation of an offence from prosecuting it. These are the men who know the case inside out, and to prohibit them from prosecuting is to deprive the prosecution of all its sting.

11. Finally, we have the cases which operate against the prosecution, by whatever agency it is conducted:—

(i) *The wrong attitude of the magistrate.*—The Indian magistrate regards magisterial cases as a game of chess in which he is an independent umpire. In his endeavour to be impartial, he forgets that it is his duty to find out the truth, to acquit the innocent, and to convict the guilty. One of the chief difficulties of every District Magistrate is to make his magistrates understand and remember the real duties and functions of a magistrate. They are also frequently misled by superficial arguments, by ignorance of English and by High Court rulings misapplied.

12. (ii) *Careless charge sheets.*—As it is the custom for each sub-inspector to take the case which happens to be brought to him when on duty, he works it from beginning to end. Even if young and raw, he too often refuses to take help from his senior sub-inspector and charges are put in which are bound to fail.

It has been suggested that when there are two sub-inspectors in a station charge sheets should only be put in by the senior: or at best that every charge sheet should be countersigned by the inspector, but I do not much care for either proposal.

13. (iii) *Unexpected difficulties in simple cases.*—This is a not infrequent cause of police cases failing which seemed quite easy, and which have been left to a head constable to prosecute. But he is not competent to deal with the difficulty, and the magistrate, as umpire, gives the game against him!

14. (iv) *Doubtful cases.*—These are cases in which the police do not expect a conviction, though there is a certain amount of evidence and little moral doubt of the guilt of the accused. In such cases it is the part of the magistrate and not of the police to decide whether the accused is guilty or not. As a rule, the accused will be given the benefit of the doubt by the magistrate, but this would not justify the police in refraining from prosecuting the case.

15. Of the above difficulties, the wrong attitude of the magistrate and the doubtful cases do not come within our present purview: and the opportunities which the accused has to obstruct and delay the progress of the case cannot be corrected by any alteration of the prosecution methods. Leaving these evils alone, we have to look for a remedy for all the others. These, it will be remembered, are the limitations imposed on the use of the special agency by the number of courts and the duration of cases, the failures of the ordinary police owing to ignorance of law, jealousy and the effect of section 495 (4), Criminal Procedure Code, and the failures arising from careless charge sheets and from unexpected difficulties cropping up in simple cases. Three remedies have been suggested: first, to raise the standard of the special agency, secondly, to increase the special agency, and thirdly, to entrust all police cases to one of the local vakils practising in each magistrate's station.

16. My District Superintendent of Police, Mr. Phillips, suggests that the prosecuting agency should consist of a prosecuting Deputy Superintendent and a prosecuting inspector on Rs. 250—500 and Rs. 150—200 recruited direct from vakils of good ability and allowed to work without a special uniform, which is supposed to be unpopular with the better class of pleaders. This remedy does not touch the difficulty that two men only cannot deal with more than about 150 cases altogether

a year at the most. The abilities of the members of the present special staff are quite good: in cross-examination they are usually superior to the ordinary vakil. The remedy is aimed at an evil which does not exist, and does not touch the difficulties which do exist.

17. The next remedy is the increase of the special agency or as an alternative to entrust all police cases to a special local vakil. The cheapest of these alternatives is the first though it would involve a considerable increase of men. I think that the minimum required is a special prosecuting police officer for every divisional magistrate's division. The prosecuting inspector would take the headquarter division, and important cases in other divisions. The special sub-inspectors of each division would prosecute all police cases as a matter of course, excluding municipal and towns nuisance cases. He would probably not have more than four courts, in some cases only three, to deal with: and consequently he would not be affected by the number and the distance of the courts; he would not be embarrassed by the delays in cases: he would not be jealous of the investigating officers, since success would reflect credit on him, whoever had investigated the case; he would be available to help in the preparation of charge sheets, and to point out to the investigating police any weak points: he would always be in court and the failures of justice rising from unanticipated difficulties could scarcely rise as he would be on the spot to meet them.

18. It would be advisable to make these posts interchangeable with those of the ordinary police, as a knowledge of investigation helps the prosecuting officers just as a knowledge of prosecuting helps an investigating officer. It would also be advisable to make it the duty of prosecuting sub-inspectors to attend other courts, when they are disengaged, to learn how their work is done by other people, especially the sessions court.

It may be objected that these sub-inspectors ought not to have spare days on which they are doing nothing, and drawing pay all the same: and I would therefore point out that the very essence of a successful scheme is that there should always be a special prosecuting officer available. This can only be effected at the expense of such officers having some part of their time unoccupied. To try to employ their spare time on other Government work, will be to ruin their usefulness as prosecuting officers. It is this point of view which leads one towards the other alternative of employing vakils, who will only be paid for the days they actually work in court: but as their fees are not likely to be less than Rs. 10 a day, and in many cases may be more, it will be clear that cheapness is on the side of the special police agency: and I have no doubt that they will be more efficient, since they will be subject to discipline and control: they can be punished and rewarded for bad and good work: they will not be so liable to be approached by the accused: they will be more *au fait* with police records and police methods: they will not be hampered by civil work and private ambitions: and they will get much more criminal experience.

VI

Letter—from C. A. INNES, Esq., I.C.S., Acting District Magistrate, Malabar.

To—the Secretary to Government, Judicial Department.

Dated—Calicut, the 10th December 1914.

No.—D. 1691/M.

With reference to Government endorsement No. 2614-A-2, dated 22nd September 1914, calling for my remarks as to the success of the present system of conducting prosecutions in criminal courts, I have the honour to state as follows.

2. The existing prosecuting staff of this district consists of a prosecuting police inspector and sub-inspector for each of the police districts of North and South Malabar. I consulted my sub-divisional magistrates on the question raised in the above Government endorsement and the general opinion is that the present prosecuting staff is both insufficient and inefficient. I concur in their views for the following reasons.

3. First, as regards the adequacy of the staff, it is reported that the prosecuting police inspector appears to conduct the prosecution only in important police cases even in first-class magistrates' courts and his appearances in subordinate magistrates' courts are few and far between. The prosecuting sub-inspector ordinarily gets notice of hearing of police cases on the same day from more than one sub-magistrate

in the district with the result that in practice the majority of cases especially in sub-magistrates' courts are conducted not by the special prosecuting police officers but by sub-inspectors and head constables in charge of police stations. Obviously, if sub-inspectors have to run about the country conducting prosecutions in which they have little or no immediate concern in the courts of magistrates, some of whom are touring officers, two results follow :—

- (i) their ordinary station work must inevitably suffer considerably.
- (ii) the cases they conduct which are ordinarily charged from a station other than that of which the sub-inspectors are in charge are not properly got up and represented in court.

This practice of withdrawing station-house officers for prosecution work in courts has been strongly deprecated by the Police Commission both for the reason that it will result in dislocation of the investigation work of the station and because the station-house officers are not likely to prove efficient prosecutors in courts. In spite of the undesirable practice above referred to instances are not rare, especially in sub-magistrates' courts, where cases had to be adjourned more than once for want of a prosecuting officer to conduct the prosecution. I consider that this evil is one of the chief causes for the long pendency of cases in magistrates' courts.

4. Next, as regards the efficiency of the existing prosecuting staff the majority of my sub-divisional magistrates are of opinion that the work of the prosecuting police officers in court is distinctly indifferent and that they are not able to handle cases as skilfully as the average vakil for the defence. The prosecuting staff do not—though they ought to—stand in the same position in relation to the investigating staff as a vakil does to his client. They are too frequently the mouth pieces of the investigating sub-inspector and have no hand in shaping the actual form of the case which they are to put before the court. This is due to two causes :—

(a) the charge sheets and records are put into the hands of the prosecuting officers far too late to enable them to study the records and supply defects in prosecution evidence in proper time and

(b) the prosecuting officers are often inclined to think that they have no responsibility for the form in which the case is presented.

5. Again the members of the prosecuting staff do not always appear to be chosen for it because of their fitness for the work they are to do in court which ought to be the sole test in the choice of prosecuting officers. Prosecuting officers should possess a real aptitude for cross-examination of witnesses and shaping of cases and some of the other gifts that make for the success of a vakil. The Bar has developed in numbers and efficiency during the past ten or twelve years, but the prosecuting staff has not been developed in the same proportion. So long as it continues to be the practice to depute police officers who are found inefficient in executive work to the prosecuting staff without regard to their capabilities the latter must inevitably continue to be inefficient.

6. With a view to remedy the defects of the existing system, I beg to make the following suggestions for the consideration of Government. For the purposes of conducting prosecutions in courts I would propose that each circle inspector should have a sub-inspector—chosen primarily for legal ability—attached to him and that this officer should prosecute all ordinary cases in the circle. He would, at the same time, be a personal assistant to the circle inspector. Under this arrangement he would be in far closer touch with the circle inspector than the present prosecuting staff ever can be and can frequently consult him. Further, the circle inspector himself would, under this system, be in immediate touch with the cases of his circle before they go to court. The records would reach the prosecuting sub-inspector in good time and he can study his cases and put them properly before the court. As regards the more important cases including appeals the existing prosecuting inspectors of police for North and South Malabar would continue to attend to them. The prosecuting sub-inspectors may be graded so that they may get promotion without having to revert to the executive line. The prosecuting inspectors of police should be chosen for special merit from among the prosecuting sub-inspectors.

7. A good deal of the inefficiency of the prosecuting staff is also due to the inherent difficulties of the prosecution of criminal cases and the additional obstacles thrown in its way by the Criminal Procedure Code which is undoubtedly pro-accused in all cases. One way of lessening its inefficiency would be to supply the prosecuting staff with up to date and exhaustive law books dealing with Criminal Law and the Law of Evidence and a Criminal Law Journal. At present they have no books of any real value or law journals supplied to them and are thus decidedly at a disadvantage as compared with pleaders whose success is less often due to superiority of intellect than to their possession of a number of good law books and of facilities for reference to a decent law library. It is no wonder that the prosecuting police officers find it difficult to argue questions of law or to confine the exuberance of defence vakils within the proper limits. I would therefore recommend that the members of the prosecuting staff may be supplied with good commentaries on the Indian Penal Code, Criminal Procedure Code and the Evidence Act and a good criminal digest and a law journal like the Criminal Law Journal. The advantage of having these books for reference will certainly repay the cost which, I think, will not be very much.

8. I beg to add that I am not in favour of recruiting the prosecuting staff from the Bar. Among other reasons against it it may be mentioned that we cannot get the best men from the Bar for the purpose and the mediocre men will not prove more efficient than the existing staff especially if the latter are given proper facilities for improving their knowledge of law and keeping it up to date.

VII

Letter—from J. M. TURING, Esq., I.C.S., District Magistrate, Kistna.

To—the Secretary to Government, Judicial Department.

Dated—Mauslipatam, the 19th December 1914.

No.—D. Dis. 2246/Magl.

With reference to Government endorsement No. 2614-A-2, dated 22nd September 1914, I have the honour to state that in my personal opinion the existing system under which police prosecutions (other than those before a sessions court) are conducted by a prosecuting inspector is not entirely satisfactory.

2. My experience is that prosecuting inspectors are apt to fail in bringing out the salient points of a case during the examination of witnesses, and that in their general handling of the witnesses, they compare unfavourably with an efficient vakil. I am, therefore, inclined to the view that Government should retain standing vakils for large towns where the criminal work is heavy, and that the activities of the prosecuting inspector should be limited to cases filed before subordinate magistrates in smaller stations and to cases heard by sub-divisional magistrates on tour. In order to secure the services of really good vakils a fairly big retaining fee or a reasonably high fee per case will be necessary. Second or third-rate vakils will be no better than a prosecuting inspector. They are quite as bad as and often worse than the prosecuting inspectors in handling witnesses and are apt to rely too much on their eloquence in addressing the Bench, a mode of proceeding reverse of what is required.

3. I ought, however, to add that my views on the subject are not shared by the Additional District Magistrate or the Joint Magistrate, Bezwada, both of whom have had quite as much experience as myself of magisterial work. They are of the opinion that police prosecutions are usually satisfactorily conducted and that the representatives of the Crown are sufficiently well equipped to cope with the defence. They point out that for the majority of police cases the most elementary knowledge only of law is required, and that the accused are generally undefended by counsel, while for complicated and important cases a vakil can always be specially engaged to conduct the prosecution.

4. The only suggestion these officers have to make relates to an increase in the staff. They consider that there should be a prosecuting inspector for each sub-divisional magistrate's charge with one or two sub-inspectors for the same area.

I agree that the efficiency of the present system is seriously hampered by the paucity of staff.

VIII

Letter—from E. B. ELWIN, Esq., I.C.S., District Magistrate, Gōdāvari.

To—the Secretary to Government, Judicial Department.

Dated—the 27th December 1914.

With reference to Government's endorsement No. 2614-A-2, dated 22nd September 1914, I have the honour to say that generally speaking the present system of conducting prosecutions is fairly successful. The Public Prosecutor does the work in the sessions court assisted by police officers. In other courts the Prosecuting Inspector of Police does it except in certain grave cases which I think it desirable to request the Public Prosecutor to conduct.

2. The Prosecuting Inspectors of Police are usually fairly efficient, but I think they should be better trained for this special work and suggest that they should be made to work with the Public Prosecutor before they are put on this. They should also be invariably required to have passed the Criminal Higher Test.

3. It happens sometimes that the prosecuting inspector has too much work to attend to cases all over the district, and also that the Public Prosecutor is too busy to take up grave cases when required. This leads to either great delay or conduct of cases by inferior Inspectors or Sub-Inspectors of Police. To meet this difficulty I think it would be well to give the District Magistrate power to employ local pleaders when absolutely necessary.

IX

Letter—from C. G. TODHUNTER, Esq., I.C.S., District Magistrate, Tinnevely.

To—the Secretary to Government, Judicial Department.

Dated—the 4th January 1915.

No.—D. Dis. 5-Magl/14.

With reference to Government endorsement No. 2614-A-2, dated 22nd September last, asking for remarks as to the success of the present system of conducting prosecutions and for proposals likely to result in more efficient conduct of cases, I have the honour to report as follows.

2. The enclosed statement gives the required statistics of convictions, discharges and acquittals. I have taken the figures for the period from 1909 to 1913—figures for years previous to this not being available for some of the divisions.

3. As remarked by the Government of India, these statistics are not a safe test, but as they stand they indicate that, while in one division the percentage of conviction was so high as 84, in the other divisions it ranged from about 66 to 75.

4. The success or otherwise of prosecutions is due to various circumstances, of which the most important is the efficiency of the prosecuting agency.

5. The prosecuting agency in this district consists of—

- (1) A Public Prosecutor.
- (2) A prosecuting inspector of police.
- (3) A prosecuting sub-inspector of police.

6. The work of No. (1) is practically confined to the sessions court, where he conducts the prosecution and argues criminal appeals on behalf of the Crown. He is a member of the Bar of long standing and no change is necessary as regards the conduct of cases in the sessions court.

7. Nos. (2) and (3) deal with cases in magistrates' court.

8. Owing to the large number of cases it is not possible for the prosecuting inspector or his assistant to appear in all cases. In cases in which they do appear, the general impression of the officers, whom I have consulted, is that they represent the interests of the Crown adequately and are able to cope with the defence pleaders.

9. It is, however, necessary not only that the prosecution should be properly conducted in all courts but also that the charge sheets put in especially in important cases and in cases likely to be contested, should receive previous scrutiny by a competent agency.

10. The present staff is inadequate to fulfil the above purposes and the District Superintendent of Police recommends and I agree with him that there should be one sub-inspector for each sub-division as recommended by the Police Commission. This would involve an increase of two sub-inspectors for this district.

ENCLOSURE.

STATISTICS of police cases in the Tinnevely district for five years from 1909 to 1913.

Division.	Number of cases instituted.	Number ended in conviction.	Number ended in discharge or acquittal.
(1) Sermadevi division	1,895	1,568	327
(2) Tinnevely "	844	629	215
(3) Kovilpatti "	1,303	985	318
(4) Tuticorin "	1,082	690	392
Total	5,124	3,872	1,252

X

Letter—from G. F. PADDISON, Esq., M.A., I.C.S., District Magistrate, Madurai.

To—the Secretary to Government, Judicial Department.

Dated—the 7th February 1915.

No.—R. Dis. 3/Magl.

Adverting to Government endorsement No. 2614-A-2, Judicial, dated the 22nd September 1914, calling for a report on the subject of the conduct of criminal prosecutions in magisterial and Sessions Courts, I have the honour to report that my Divisional Magistrates are of opinion that the knowledge of law of the prosecuting staff is insufficient and that they cannot in fairness do full justice to the work entrusted to them. Most of them are not well versed in law and in handling cases entrusted to them they prove not infrequently a failure as against experienced vakils of larger legal acumen engaged by the defence.

2. As there is only one Prosecuting Inspector and a Sub-Inspector to assist him in this district and the time at their disposal being very limited, they find it extremely difficult to cope with the work of the whole district.

3. The following are some of the remedial measures suggested by the Divisional Magistrates:—

- (i) to improve the standard of investigation by diminishing the amount of writing work and thus enabling the Sub-Inspectors and Inspectors to devote more time in investigating and prosecuting cases;
- (ii) to allot to every station or for a circle one Sub-Inspector at least who has some experience in prosecuting cases;
- (iii) to increase the number of present prosecuting staff on the lines suggested by the Police Commission.

4. I have so little experience as a Magistrate before the introduction of the orders based on the Police Commission Report that I am unable to say whether there has been any marked improvement since 1906. I have no experience of the prosecuting staff in this district. From the little I have seen in other districts I do not think that the Prosecuting Inspectors reach a very high standard of knowledge of law nor in view of the high pay and position open to the legal profession is it likely that the post will be attractive to the best legal talent. I think the present system of employing Prosecuting Inspectors for ordinary cases and obtaining extra legal assistance for special cases is the best attainable.

XI

Letter—from E. W. LEIGH, Esq., I.C.S., District Magistrate, Salem.

To—the Secretary to Government, Judicial Department.

Dated—the 18th February 1915.

No.—175/D.M.D.

With reference to Government endorsement No. 2614-A-2, Judicial, dated 22nd September 1914, I have the honour to submit a statement showing the result of cases

put up before the Magistrates and before the Sessions Court from 1906 to 1913 and to report as follows.

2. The employment of a leading member of the local Bar as a Public Prosecutor for conducting cases before the Sessions Court has been in vogue in this district for a very long time. As a result of the recommendation of the Police Commission on this subject one Inspector and one Sub-Inspector of Police have been appointed Prosecuting Officers to conduct cases in the Magistrates' courts in the district.

3. As regards the success of the system : as far as the Sessions Court is concerned, the present system is satisfactory. As regards cases before Magistrates, section 495 of the Criminal Procedure Code lays down that no Police Officer who has taken *any part* in the investigation of the offence shall be allowed to conduct the prosecution. This means that in every important case the Sub-Inspector of the station is or should be debarred from prosecution. Either the Inspector or a head constable must do it unless the Prosecuting Inspector can be spared. Clearly head constables are not qualified for such work except in petty cases, *i.e.*, nuisance cases and petty municipal offences. Hence in the absence of a special officer appointed for the purpose, the real work of prosecution must fall on the Inspector and he also has to assist in investigating when the case is at all serious.

4. At present we have only two Prosecuting offices for the district, *i.e.*, for the four Sub-Divisional Magistrates' divisions and for assistance in sessions to the Public Prosecutor. The present staff may well be increased therefore so as to conform to the recommendations of the Police Commission. Besides the Prosecuting Inspector of Police for the district, there should be a Prosecuting Sub-Inspector for each sub-division for the prosecution of cases within it.

5. The staff also needs to be more specially trained. Very few police officers at present have either the special training or special gifts which make a good prosecuting officer, but also very few pleaders will present a case for the Crown in its most telling form. The best type of prosecuting officers would be a Police officer trained for the purpose in law and quite unconnected with the case.

6. I do not think any real useful deductions can be made from the statistics. The fact is that a Magistrate in Divisional charge or a Sub-Magistrate always does his best to help the prosecution to present his case fully. Consequently the failure of the prosecuting staff would not be apparent except in very difficult cases.

ENCLOSURE.

STATEMENT showing the number of cases prosecuted from 1906 to 1913 with their results in Salem district.

Year.	Police prosecutions before Magistrates.						Police prosecutions before sessions court.		
	Cases presented by the prosecuting agency.			Other cases.					
	Number presented.	Number convicted.	Number discharged or acquitted.	Number presented.	Number convicted.	Number discharged or acquitted.	Number presented.	Number convicted.	Number discharged or acquitted.
1905	131	90	41	980	768	212	112	73	39
1906	129	84	45	891	708	183	70	46	24
1907	222	156	66	899	742	157	80	59	21
1908	186	112	74	959	643	316	79	54	25
1909	166	109	57	814	581	233	56	36	20
1910	160	98	62	626	408	218	76	51	25
1911	203	142	61	496	462	43	36	29	6
1912	126	78	48	648	452	96	36	26	10
Total ..	1,313	869	444	6,112	4,764	1,358	543	373	170
Average ..	164	109	55	764	594	170	68	47	21
Percentage ..	.	66.5	33.5	.	77.7	22.3	..	69.1	30.9

XII

Official Memorandum No. 2614-A-4, Judicial, dated 30th April 1915.

Endorsement No. 2614-A-1, Judicial, dated 18th September 1914, regarding the conduct of criminal prosecutions in magisterial and sessions cases.

The attention of the Inspector-General of Police is invited to the marginally-noted communication and he is requested to expedite his reply thereto which should reach Government before the 10th May 1915. Two reminders have already been received from the Government of India on the subject and the attention of the Inspector-General of Police is now drawn to the fact that this is the third reminder issued to him.

(By order.)

E. A. HARVEY,
Under Secretary to Government.

To the Inspector-General of Police.

XIII

Telegram—from the Inspector-General of Police.

To—the Secretary to Government, Judicial department.

Dated—Madras, the 11th May 1915.

No.—122.

Reference Judicial Department Memorandum 2614-A-4, dated 30th ultimo. Report will be submitted beginning of next week.

XIV

Letter—from P. L. MOORE, Esq., C.I.E., I.C.S., Inspector-General of Police.

To—the Secretary to Government, Judicial Department.

Dated—Madras, the 15th May 1915.

No.—D, 590.

I have the honour to submit my reply to Judicial endorsement No. 2614-A-1, dated the 18th September 1914, on the subject of the conduct of criminal prosecutions in Magisterial and Sessions Courts and the adequacy of the prosecuting staff. I regret that there was some unavoidable delay in preparing this report, as the collection of statistics required by the Government of India for a period of eight years entailed considerable labour and could not be accomplished earlier. The reports received from some Superintendents in the first instance were found defective and fresh information had to be called for.

2. In their reference the Government of India enquire whether the system outlined by the Police Commission in regard to the agency for the prosecution of offenders has been actually brought into force and, if not, what still remains to be done. The Police Commission recommended the employment of a pleader as Public Prosecutor in every sessions division to conduct prosecutions before Sessions Courts, and in important cases before Magistrates, and the employment of a Prosecuting Inspector in each district and a Prosecuting Sub-Inspector at the headquarters of every sub-division. The practice obtaining in this Presidency is that prosecutions before Sessions Courts are conducted by a pleader of the local Bar, who is appointed Public Prosecutor by the Government, and that in every district with a few exceptions, a Prosecuting Inspector and a Prosecuting Sub-Inspector are employed. The exceptions are Jeypore, the Nilgiris and the Railway Police districts, in the first two of which neither a Prosecuting Inspector nor a Sub-Inspector is employed as the districts are small and backward. A proposal for the employment of a Prosecuting Inspector in Jeypore was recently submitted to Government who ordered that the

question should be deferred for the present—G.O. No. 2779, Judicial, dated 11th December 1914. In each of the Railway Police districts there is a Prosecuting Inspector but not a Prosecuting Sub-Inspector. In the Madras City a Prosecuting Inspector with a Prosecuting Sub-Inspector as his assistant is employed in each of the two Deputy Commissioners' ranges.

3. The next point raised by the Government of India is whether prosecutions are, as a matter of fact, ordinarily properly conducted in the sense that the representatives of the Crown are sufficiently well equipped to cope with the defence. A statement is enclosed showing the results of the prosecutions from 1906 to 1913 in police cases prosecuted by (1) the prosecuting agency, *i.e.*, Prosecuting Inspector and Sub-Inspector, before Magistrates; (2) the ordinary police staff before Magistrates and (3) Public Prosecutors in Sessions Courts. It will be seen from the statement that in each of the years to which it relates the percentage of convictions obtained in cases prosecuted in Sessions Courts was less than that secured under the two heads. These figures are an imperfect test, but so far as they go, they indicate that the representatives of the Crown are fairly well equipped to cope with the defence. It cannot, however, be denied that the existing police prosecuting staff is inadequate in numbers, and that consequently the conduct of prosecutions is not as efficient as one would wish. In the first place, a large number of cases have to be prosecuted by the ordinary police who are not specially equipped for the purpose, because the prosecuting staff cannot attend to all prosecutions in a district. Secondly, much of the time of the Prosecuting Inspector and his assistant is spent in travelling from court to court and they have not sufficient time to study cases thoroughly. Most Superintendents are of opinion that the prosecuting staff needs increasing in order that a larger number of cases may be prosecuted by this agency than is the case at present. I am inclined to agree with them and consider that for the present it would be sufficient to employ a Prosecuting Sub-Inspector in each magisterial sub-division.

4. Regarding the employment of special pleaders to conduct prosecutions in Magistrates' courts in substitution of the existing police agency, most officers are opposed to the suggestion, their chief objection being that pleaders, however well versed in law, lack executive experience of police work which is essential. Other objections raised are that they would not be under the control of the Police and that some of them might abuse the information which they obtained from police records. It may also be said from experience that vakils of the class generally found in Magistrates' courts are rarely equal to our Prosecuting Inspectors in ability. It is only in the higher class of the profession that we can look for men who are equally competent but it is doubtful if they would care to take up police prosecutions. While I would deprecate the substitution of pleaders for prosecuting staff generally, I am in favour of an experiment being made of employing pleaders in one or two selected districts, it being understood that they will be placed under the control of the Police. To attract the proper stamp of man it will be necessary to pay them a sufficiently high rate of fee.

5. Public Prosecutors who conduct prosecutions in Sessions Courts are appointed by Government on the recommendation of District Magistrates and are in no way under the control of the Police. Some are excellent officers and some are not and in the latter case it is practically impossible to get rid of them. It would, in my opinion, be preferable if a police officer with legal qualifications and holding the rank of a Deputy Superintendent were permitted to prosecute cases in the Sessions Courts.

6. A statement of the number of Prosecuting Inspectors and Sub-Inspectors employed in each year from 1906 to 1913 with their legal and general educational qualifications is enclosed. The Police Commission recommended that the police prosecuting staff should pass a special examination in criminal law and procedure and law of evidence. In this Presidency all Inspectors except Reserve Inspectors are required to pass the Criminal Judicial Test, Lower grade. Many Sub-Inspectors also pass this test and generally those who have passed the test are selected for the post of Prosecuting Sub-Inspector. This test may be made obligatory for Prosecuting Sub-Inspectors.

ENCLOSURES.

(1)

RESULTS OF prosecutions.

Year.	Police prosecutions before Magistrates.						Police prosecutions before Sessions Courts.			Percentage of convictions.		
	Cases prosecuted by the Prosecuting Agency.			Other cases.								
	Number prosecuted.	Number convicted.	Number discharged or acquitted.	Number prosecuted.	Number convicted.	Number discharged or acquitted.	Number prosecuted.	Number convicted.	Number discharged or acquitted.	In cases prosecuted by the Prosecuting Agency.	In cases prosecuted by the ordinary police staff.	In sessions cases.
1906 ..	2,147	1,403	744	14,565	11,310	3,275	1,151	715	414	65.3	77.5	63.2
1907 ..	2,990	2,114	876	14,371	10,620	3,751	1,160	787	372	70.7	73.8	67.4
1908 ..	3,553	2,620	933	13,431	10,123	3,308	1,197	774	423	73.7	75.3	64.5
1909 ..	4,210	3,043	1,167	13,403	9,845	3,558	1,191	763	423	72.3	75.4	64.06
1910 ..	5,247	3,837	1,350	11,517	8,409	3,148	1,103	696	404	74.1	72.9	68.1
1911 ..	5,201	3,757	1,444	10,923	7,534	3,389	1,244	806	433	72.2	69.9	64.7
1912 ..	5,860	4,083	1,777	11,185	7,889	3,296	1,199	802	397	69.7	70.5	66.8
1913 ..	6,071	4,224	1,847	11,227	7,617	3,610	1,258	825	433	69.6	67.8	65.6

(2)

STATEMENT showing the legal and educational qualifications of Prosecuting Inspectors and Sub-Inspectors employed during the years 1906—1913.

Year.	Number of Prosecuting Inspectors in the Presidency.	Qualifications of the Prosecuting Inspectors.	Number of Prosecuting Sub-Inspectors.	Qualifications of the Prosecuting Sub-Inspectors.
1906	21	One B.A., B.L. Three B.A. and Criminal Higher. Four B.A. and Criminal Lower. Two F.A. and Criminal Higher. Three B.A. and Pleders' test. One Matriculation, Pleders' test and Criminal Higher. One Matriculation and Criminal Higher. Five Matriculation and Criminal Lower.	1	One B.A. and Criminal Higher.
1907	24	One Criminal Lower. Two B.A. and B.L. Five B.A. and Criminal Higher. Five B.A. and Criminal Lower. Two F.A. and Criminal Higher. Three F.A. and Pleders' test. One Matriculation, Pleders' test and Criminal Higher. One Matriculation and Criminal Higher. Five Matriculation and Criminal Lower.	3	One B.A. and Criminal Higher. One B.A. One Matriculation.
1908	24	Four B.A., B.L. Three B.A. and Criminal Higher. Four B.A. and Criminal Lower. Two F.A. and Criminal Higher. Three F.A. and Pleders' test. One Matriculation, Pleders' test and Criminal Higher. One Matriculation and Criminal Higher. Six Matriculation and Criminal Lower.	10	Four B.A. and Criminal Higher. One B.A. and Criminal Lower. Two B.A. Three Matriculation and Criminal Lower.
1909	24	Four B.A., B.L. Three B.A. and Criminal Higher. Four B.A. and Criminal Lower. Two F.A. and Criminal Higher. Two F.A. and Pleders' test. One Matriculation, Pleders' test and Criminal Higher. Eight Matriculation and Criminal Lower.	16	Six B.A. and Criminal Higher. One B.A. and Criminal Lower. One B.A. Two F.A. and Criminal Lower. Five Matriculation and Criminal Lower. One Criminal Lower.

* Includes two Prosecuting Inspectors in the Madras City.

Statement showing the legal and educational qualifications of Prosecuting Inspectors and Sub-Inspectors employed during 1906—1913—*cont.*

Year.	Number of Prosecuting Inspectors in the Presidency.	Qualifications of the Prosecuting Inspectors.	Number of Prosecuting Sub-Inspectors.	Qualifications of the Prosecuting Sub-Inspectors.
1910	* 25	Four B.A., B.L. Four B.A. and Criminal Higher .. Six B.A. and Criminal Lower .. Two F.A. and Criminal Higher .. Two F.A. and Pleders' test .. One Matriculation, Pleders' test and Criminal Higher. One Matriculation and Criminal Higher. Five Matriculation and Criminal Lower.	18	Six B.A. and Criminal Higher. One B.A. and Criminal Lower One F.A. and Pleders' test. Two F.A. and Criminal Lower. One F.A. Five Matriculation and Criminal Lower. One Matriculation. One Criminal Lower.
1911	* 27	Five B.A., B.L. Six B.A. and Criminal Higher .. Six B.A. and Criminal Lower .. Two F.A. and Criminal Higher .. Two F.A. and Criminal Lower .. One Matriculation, Pleders' test and Criminal Higher. One Matriculation and Criminal Higher. Four Matriculation and Criminal Lower.	22	Six B.A. and Criminal Higher. One B.A. and Pleders' test. Two B.A. and Criminal Lower. One F.A. and Criminal Higher. Two F.A. and Criminal Lower. Eight Matriculation and Criminal Lower. One Matriculation.
1912	* 28	Five B.A., B.L. Seven B.A. and Criminal Higher .. Five B.A. and Criminal Lower .. Two F.A. and Criminal Higher .. Two F.A. and Criminal Lower .. One Matriculation, Pleders' test and Criminal Higher. Six Matriculation and Criminal Lower.	† 26	Three B.A. and Criminal Higher. One B.A. and Pleders' test. Two B.A. and Criminal Lower. Three F.A. and Criminal Higher. Four F.A. and Criminal Lower. Nine Matriculation and Criminal Lower. Four Matriculation.
1913	* 28	One M.A., B.L. Five B.A., B.L. Five B.A. and Criminal Higher .. Four B.A. and Criminal Lower .. Three F.A. and Criminal Higher .. One F.A. and Pleders' test .. Two F.A. and Criminal Lower .. One Matriculation, Pleders' test, and Criminal Higher. Six Matriculation and Criminal Lower.	† 25	Four B.A. and Criminal Higher. One B.A. and Pleders' test. Two B.A. and Criminal Lower. Two F.A. and Criminal Higher. Four F.A. and Criminal Lower. Nine Matriculation and Criminal Lower. Three Matriculation.

* Includes two Prosecuting Inspectors in the Madras City.

† Includes two Prosecuting Sub-Inspectors in the Madras City.

Order—No. 1941, Judicial, dated 18th August 1915.

The Government of India having drawn the attention of Local Governments to the desirability of examining the present system of conducting criminal prosecutions, the Inspector-General of Police and certain selected District Magistrates were requested to report whether the existing system has worked satisfactorily and to make any suggestions which they might consider likely to result in the more efficient conduct of cases. The majority of the officers consulted, while agreeing generally that criminal prosecutions are now satisfactorily conducted, consider that there is much room for

improvement in the present system and have made several suggestions, the more important of which are :—

(i) that the existing number of the Police prosecuting staff should be increased so that there may be a Prosecuting Sub-Inspector of Police for each magisterial sub-division ;

(ii) that the efficiency of the Police prosecuting staff and their standard of training should be raised and additional facilities provided for acquiring legal knowledge and keeping it up to date ;

(iii) that before they are entrusted with the conduct of cases they should be given special training by being made to work with the Public Prosecutor of the district ;

(iv) that the experiment of employing pleaders in one or two selected districts to conduct prosecutions in Magisterial cases should be tried, the pleaders being placed under the control of the Police ; and

(v) that Police officers with legal qualifications and holding the rank of Deputy Superintendent should be permitted to prosecute cases in sessions courts.

The Governor in Council has carefully considered the above suggestions and proceeds to pass the following orders.

2. *Suggestion (i).*—The Government agree that the main defect in the present arrangements is the inadequacy of the Police prosecuting staff, and although it may not be possible immediately to increase the number to the extent contemplated by the Indian Police Commission and recommended by the Inspector-General of Police, they are prepared to remedy the defect as funds permit. The Inspector-General of Police is accordingly informed that he may submit to Government proposals for appointing one or more additional Prosecuting Sub-Inspectors in those districts in which the work is heaviest.

3. *Suggestion (ii).*—The Government direct that all prosecuting police officers appointed hereafter should have passed the Criminal Judicial Test (Higher grade), unless they have already passed the pleaders' test or obtained the degree of Bachelor of Laws. Orders will issue in the Educational Department empowering the Inspector-General to grant exemptions under the Special Test Examinations notification to Sub-Inspectors whose general educational qualifications are not such as to admit them to the test.

The Government also agree that adequate facilities should be afforded to the police prosecuting staff for acquiring legal knowledge and keeping themselves abreast of the latest rulings and that for this purpose they should be provided with suitable law books. The Inspector-General of Police is requested to submit proposals to give effect to this suggestion.

4. *Suggestion (iii).*—The suggestion that prosecuting police officers should be specially trained under the Public Prosecutors in the districts is under the consideration of Government and separate orders will issue on this point.

5. *Suggestion (iv).*—The Government do not consider it desirable that vakils should be substituted for the police prosecuting agency ; nor are they willing to accept the Inspector-General's proposal to try the experiment in selected districts.

6. *Suggestion (v).*—The Government do not consider that the substitution of a Deputy Superintendent of Police for the Public Prosecutor in sessions courts would be an improvement.

7. The attention of the Inspector-General of Police is drawn to paragraph 5 of the letter from the District Magistrate, Malabar, D. No. 1691/M., dated the 10th December 1914, in which the latter refers to the practice of deputing police officers who are found inefficient in executive work to the prosecuting staff without regard to their capabilities, and he is requested to submit to Government a special report as to the capacities and antecedents of the officers deputed to the work of prosecution in that district.

8. The Government agree with the suggestion of the District Magistrate, Tinnevely, in paragraph 9 of his letter D. Dis. No. 5/Magl., dated the 4th January 1915, that the charge sheets put in, especially in important cases and in cases likely to be contested, should receive previous scrutiny by a competent agency. The Inspector-General of Police and District Magistrates will be requested to issue necessary instructions to give effect to this suggestion.

9. The following letter will be sent to the Government of India.

(True Extract.)

E. H. Hunter
For Ag. Secretary to Government.

To the Inspector-General of Police.
 " the Commissioner of Police.
 " all District Magistrates.
 " the Chief Presidency Magistrate.
 Copy to Educational Department.
 " Financial Department.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

No. 1942.

From

THE HON'BLE MR. C. G. TODHUNTER, I.C.S.,

Acting Secretary to the Government of Madras,

Judicial Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

Dated Ootacamund, the 18th August 1915.

SIR,

I am directed to reply to Home Department letter No. 1401, dated the 11th August 1914, on the subject of the conduct of criminal prosecutions in magisterial and sessions courts.

2. The Government of India inquire in the first place whether the system outlined by the Police Commission has been actually brought into force, and, if not, what still remains to be done. Before the Police Commission reported there were in this Presidency competent Public Prosecutors for every sessions court and Prosecuting Inspectors of Police for every district except the Nilgiris. The Police Commission recommended the employment of a pleader as Public Prosecutor in every sessions division to conduct prosecutions before sessions courts, and in important cases before magistrates, and the employment of a Prosecuting Inspector in each district and a Prosecuting Sub-Inspector at the headquarters of each sub-division. The only general addition made in consequence of the Commission's recommendations was the appointment of a Prosecuting Sub-Inspector to each district in which there was already a Prosecuting Inspector. Each of the Railway Police districts was, however, also provided with a Prosecuting Inspector, while in the Madras City a Prosecuting Inspector with a Prosecuting Sub-Inspector was added to the staff of each of the two Deputy Commissioners' ranges.

3. The Inspector-General of Police and the District Magistrates who have been consulted as to the adequacy of the staff so constituted are of opinion that the police prosecuting staff in the districts stands in urgent need of increase as the two officers employed are quite unable to attend to all the cases and courts that require their attention. The Governor in Council accepts this view and I am directed to state that he is prepared to remedy the present inadequacy of the staff as funds permit by gradually increasing the number of prosecuting Sub-Inspectors in those districts in which the work is heaviest. When this has been done the system outlined by the Police Commission will be almost completely in force.

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4. As regards the second question, namely, whether prosecutions are, as a matter of fact, now ordinarily properly conducted in the sense that the representatives of the Crown are sufficiently well equipped to cope with the defence, I am directed to enclose a statement showing the results of the prosecutions from 1906 to 1913 in police cases prosecuted by (1) the police prosecuting agency before magistrates; (2) the ordinary police staff before magistrates; and (3) public prosecutors in sessions courts. These figures, so far as they go, indicate that prosecutions are on the whole being conducted in all courts with fair success and that is also the opinion of the majority of the officers consulted. I am in this connection to forward, for the information of the Government of India, a statement showing the number of Prosecuting Inspectors and Sub-Inspectors employed in the year 1913 and their legal and general educational qualifications.

5. In view of the opinion that has been expressed in reply to question (b) of Mr. Wheeler's letter, question (c) requires no answer.

6. To sum up, I am to say that while this Government consider that the present police prosecuting staff is competent to perform its duties, they find it inadequate in point of numbers, and are issuing orders to remedy this defect so far as is financially possible. They also consider that the methods of selecting and training the members of this staff are open to improvement, and to effect this are issuing the necessary instructions.

I have the honour to be,

Sir,

Your most obedient servant,

C. G. TODHUNTER,
Acting Secretary to Government.

ANNEXURES.

(1)

RESULTS of prosecutions.

Year.	Police prosecutions before Magistrates.						Police prosecutions before Sessions Courts.			Percentage of convictions.	
	Cases prosecuted by the Prosecuting Agency.			Other cases.							
	Number prosecuted.	Number convicted.	Number discharged or acquitted.	Number prosecuted.	Number convicted.	Number discharged or acquitted.	Number prosecuted.	Number convicted.	Number discharged or acquitted.	In cases prosecuted by the Prosecuting Agency.	In cases prosecuted by the ordinary police staff.
1906 ..	2,147	1,403	744	14,585	11,310	3,275	1,131	715	414	65.3	77.5
1907 ..	2,990	2,114	876	14,371	10,620	3,751	1,160	787	372	70.7	73.8
1908 ..	3,553	2,920	933	13,431	10,123	3,308	1,197	774	423	73.7	75.3
1909 ..	4,210	3,043	1,167	13,403	9,845	3,558	1,191	763	423	72.3	75.4
1910 ..	5,247	3,887	1,360	11,517	8,469	3,148	1,103	696	404	74.1	72.9
1911 ..	5,201	3,757	1,444	10,923	7,534	3,389	1,244	806	433	72.2	68.9
1912 ..	5,800	4,083	1,717	11,185	7,889	3,296	1,199	802	397	69.7	70.5
1913 ..	6,071	4,224	1,847	11,227	7,517	3,710	1,268	826	433	69.6	67.8

(2)

STATEMENT showing the legal and educational qualifications of Prosecuting Inspectors and Sub-Inspectors employed during 1913.

Year.	Number of Prosecuting Inspectors in the Presidency.	Qualifications of the Prosecuting Inspectors.	Number of Prosecuting Sub-Inspectors.	Qualifications of the Prosecuting Sub-Inspectors.
1913 ..	* 28	One M.A., B.L. Five B.A., B.L. Five B.A. and Criminal Higher .. Four B.A. and Criminal Lower .. Three F.A. and Criminal Higher .. One F.A. and Pleaders' test Two F.A. and Criminal Lower .. One Matriculation, Pleaders' test, and Criminal Higher .. Six Matriculation and Criminal Lower ..	† 25	Four B.A. and Criminal Higher .. One B.A. and Pleaders' test .. Two B.A. and Criminal Lower .. Two F.A. and Criminal Higher .. Four F.A. and Criminal Lower .. Nine Matriculation and Criminal Lower .. Three Matriculation

* Includes two Prosecuting Inspectors in the Madras City.

† Includes two Prosecuting Sub-Inspectors in the Madras City.

22
16

NOTES CONNECTED WITH G.O. Nos. 1941-42, JUDICIAL, DATED
18TH AUGUST 1915.

[SUBJECT.—*Conduct of Criminal Prosecutions.*]

Previous papers:

<i>Police Commission's report and Government of India's resolution thereon.</i>	G.O. 1061,	Judicial,	15th July	1910.
G.O. 1573, Judicial, 26th July 1895.	" 79	"	17th January	1911.
Letter 1010, " 2nd " 1904.	" 646	"	11th April	"
" 1011 " " "	" 1200	"	25th July	"
G.O. 1045-A-46 " 1st July " "	" 102,	Financial,	8th February	1913.
" 332 " 20th February 1906.	" 554	"	14th August	"
" 1412-13 " 22nd August " "	" 2299,	Judicial,	14th November	"
" 1012 " 4th June 1907.	" 187	"	27th January	1914.
" 1416 " 12th August " "	" 2770	"	11th December	"
" 512-13 " 31st March 1908.	" 545	"	11th March	1915.
" 712 " 1st June 1909.	" 1164	"	26th May	"
" 346 " 7th March 1910.	" 1422	"	23rd June	"

I

Letter from the Government of India, Home Department, No. 1401, dated 11th August 1914.

JUDICIAL DEPARTMENT.

The proposals of the Indian Police Commission for conducting prosecutions in the courts were:—

- (1) the employment of pleaders for sessions courts and, in important cases, before magistrates;
- (2) the appointment of an inspector of police at the headquarters of every district with a staff of sub-inspectors to assist him;
- (3) the appointment of a sub-inspector at the headquarters of every magisterial sub-division; and
- (4) the giving of discretion to District Magistrates to engage special counsel in very serious cases.

This Government approved generally
Letter 1011, Judicial, 2nd July 1904.

Paragraph 25 of Home Department letter 1112, 8th November 1905, on pages 7-8 of G.O. 332, Judicial, 20th February 1906.

should be regarded as an ideal to be worked

Paragraph 8 (3) of Home Department letter 287, 31st March 1905, on page 4 of G.O. 1045-A, 1st July 1905.

2. At present there are twenty-six prosecuting inspectors and twenty-four prosecuting sub-inspectors in this Presidency.

Paragraph 1 of office-note on page 2 of notes to G.O. 2299, Judicial, 14th November 1913.

Each district has an inspector and a sub-inspector with the exception of the districts of Jeypore and the Nilgiris where there are no prosecuting police officers and the Railway Police districts where there are no prosecuting sub-inspectors.

3. Last year when the Inspector-General applied for the entertainment, temporarily for one year, of a second prosecuting sub-inspector for the Tinnevely district, Mr. Curgenven proposed to ask *Cf. his note, 1st August 1913, on page 5 of notes to G.O. ibid.* the Inspector-General to examine the whole question of the adequacy of the district prosecuting staff but the Honourable Member did not approve of it on the ground that it would be inviting a general expansion.

4. Before replying to the Government of India, the remarks of the Inspector-General of Police may be invited and he may be requested to furnish the statistics called for in paragraph 5 (b) of India's letter. Draft submitted.

It is also for consideration whether the Honourable the Judges of the High Court may be consulted.

T.K.—9-9-14.

P.DER.—10-9-14.

5. There is a public prosecutor for every sessions division and for every additional and assistant sessions judge's court. District Magistrates are also authorised to engage private pleaders to conduct

vide G.O. 79, 17th January 1911, and paragraph 3, part VI, of Law Officers' Précis. prosecutions in cases where the public prosecutor or the prosecuting police inspector could not attend.

P.G.S.S.—12-9-14.

6. The present reference relates mainly to the question of the adequacy and efficiency of the police prosecuting agency. It seems unnecessary to consult the High Court. In addition to the information required by India, the Inspector-General of Police may also be asked to state, for each of the years to which the statistics relate, the number of prosecuting inspectors and sub-inspectors employed—classified according to the general and legal educational qualifications possessed by each.

H. A. WATSON—16-9-14.

C.V.—14-9-14.

A reference to the Inspector-General on the lines given above would appear to be the only action necessary and possible at present.

H. A. WATSON—16-9-14.

I have passed the draft, which may issue at once. Will it not be well to ask a few selected District Magistrates also?

P. RAJAGOPALA ACHARIYAR—17-9-14.

Refer to a few District Magistrates also.

H.A.W.—17-9-14.

Messrs. Innes, Bedford, Knapp, Turing, Wood, Todhunter, Elwin and Tottenham may perhaps be consulted. Draft submitted.

K.T.—18-9-14.

H.A.W.—21-9-14.

[Endorsements No. 2614 A-1, Judicial, dated 18th September 1914 and No. 2614 A-2, Judicial, dated 22nd September 1914—II and III.]

IV—XI

Replies from District Magistrates.

Draft official memorandum to the Inspector-General of Police submitted.

B.T.—30-4-15.

M.J.—30-4-15.

Issue.

E. A. HARVEY—30-4-15.

[Memorandum No. 2614 A-4, dated 30th April 1915—XII.]

XIII

Telegram from the Inspector-General of Police, No. 122, dated 11th May 1915.

Please see the telegram from the Inspector-General of Police. It is stated that the report will be submitted at the beginning of next week*. Submitted that

* 17th May.

the Inspector-General may be reminded again on the 20th instant, if a reply is not received by that time.

B.T.—12-5-15.

M.J.—12-5-15.

XIV

E. A. HARVEY—14-5-15.

From the Inspector-General of Police, No. D/590, dated 15th May 1915.

The file relates to the conduct of criminal prosecutions in magisterial and sessions courts. The Government of India have called for information on certain points referred to in paragraph 5 of their letter. The remarks of certain selected District Magistrates and of the Inspector-General of Police were invited on the subject and their replies are considered below.

2. Paragraph 5 (a) of Government of India's letter—How far Police Commission's recommendations were given effect to in this Presidency?—Attention is solicited to paragraphs 1 and 2 of this department's note on page 1 *ante* in which the recommendations of the Police Commission and the existing system in this Presidency are outlined. The only recommendation of the Commission which has not been adopted is that which relates to the appointment of a sub-inspector at the headquarters of every magisterial sub-division. The reasons for not giving effect to this particular recommendation will be found in Sir G. Stokes' and Sir James Thomson's notes, dated 14th June 1904 and 16th June 1904 on pages 2 and 3 of notes to letter No. 1011, Judicial, dated 2nd July 1904. It is now for consideration whether prosecuting sub-inspectors should be appointed in every magisterial sub-division.

3. Paragraph 5 (b) of India's letter—Efficiency and adequacy of the existing prosecuting staff—As regards the conduct of prosecutions in sessions courts, it is generally accepted that the existing arrangement of having a member of the local bar as public prosecutor has worked satisfactorily. The figures of convictions furnished by the Inspector-General of Police also show an average of 65 per cent.

Police prosecuting agency—Efficiency.—The opinion of the majority of District Magistrates consulted and of the Inspector-General of Police is that the "representatives of the Crown are sufficiently well equipped to cope with the defence." Mr. Innes (District Magistrate, Malabar) however states "that the work of the prosecuting police officers in court is distinctly indifferent and that they are not able to handle cases as skilfully as the average vakil for the defence" and considers that it is due in part to the want of up to date and exhaustive law books which places them at a disadvantage as compared with vakils, and also because they do not trouble themselves with the actual shaping of the cases. Mr. Turing (District Magistrate, Kistna) too is of the opinion that the prosecuting inspectors "in their general handling of the witnesses compare unfavourably with an efficient vakil." Judged by the figures for convictions obtained by the special prosecuting agency which work out to about 71 per cent., it will appear that the work turned out by the special agency is satisfactory. The educational and other qualifications of the present prosecuting staff generally appear to be adequately high as will be seen from the Inspector-General's statement accompanying his letter, dated 15th May 1915.

Adequacy of the existing staff.—All the officers consulted consider that the present staff is inadequate and that it should be increased by an addition of a prosecuting sub-inspector for each magisterial sub-division.

4. Paragraph 5 (c) of India's letter.—It will be seen from paragraph 3 *ante* that the existing prosecuting staff may be regarded as efficient. But the officers consulted think that there is room for improvement and make certain suggestions which are considered below.

5. *Suggested remedies for improving the efficiency of the existing prosecuting agency.*—(a) Employment of pleaders in one or two selected districts in place of the prosecuting staff.

(b) Employment of a police officer of the rank of Deputy Superintendent with legal qualifications to prosecute cases in sessions courts.

(c) To make obligatory the passing of the Criminal Judicial test by prosecuting sub-inspectors.

(d) The supply of law books to the prosecuting staff.

(e) The employment of prosecuting sub-inspectors in all magisterial sub-divisions.

Points (d) and (e) have already been adverted to.

As regards (a), Mr. Innes states that he is not in favour of recruiting the prosecuting staff from the bar as the best men from the bar will not be available for this work and the mediocre men will not prove more efficient than the existing staff. The Inspector-General, however, is in favour of trying the experiment provided those men are placed under the control of the police. Attention is solicited to the Hon'ble Mr. K. Rama Ayyangar's speech in moving the resolution regarding appointment of a committee to inquire into Police administration, and the Honourable Member's reply thereto at page 9 of notes to G.O. No. 1164, Judicial, dated 26th May 1915.

In regard to (b) *ante*, please see Mr. Wood's remarks in paragraph 16 of his letter, from which it will be seen that he does not view this proposal with favour. The Inspector-General is in favour of this proposal.

As regards (c), in view of the fact that legal training is considered desirable, the Inspector-General's suggestion to make obligatory the passing of the Criminal Judicial test may be accepted.

C.R.S.—29-5-15.

6. Before a reply to the Government of India is prepared, it is for orders as to how far the Government would be prepared to consider favourably the suggestions made by the officers consulted which are enumerated above. With reference to paragraph 5 (e) of the letter from the Government of India, this appears to be necessary. If, however, it is considered that the existing prosecuting staff is generally satisfactory and India should be so informed, this Government may perhaps express concurrence with suggestions (a), (c) and (d) only *ante*.

7. The Hon'ble Sir P. S. Sivaswami Ayyar, K.C.S.I., has desired to see the draft reply to India in this case.

M.J.—11-6-15.

How far this Government have put into effect the recommendations of the Commission for the conduct of prosecutions in courts appears in the Inspector-General's letter.

Our reply to question (a) (India's letter) may be based on this.

E.A.H.—12-6-15.

2. The merits and defects of the present special agency are discussed by District Magistrates and the Inspector-General, and only Messrs. Innes and Paddison consider that the present prosecuting police staff are really inefficient, and the reasons given to support this view are not convincing.

3. It would appear that the present prosecuting inspectors and sub-inspectors are in the majority of cases equal to their task; this is borne out by the figures supplied by the Inspector-General and certain District Magistrates showing percentage of convictions, which are perhaps more satisfactory than might have been expected.

4. This does not mean that the special agency cannot be much improved—

(a) In training.

(b) In numbers.

To take (b) first. The efficiency of the prosecuting agency is seriously hampered and impaired by lack of numbers. These are not nearly enough to go round; and they have not the time as a rule to get up their cases thoroughly, which of course

includes putting in charge sheets. Prosecuting officers often never seem to have seen the papers before they appear in court. They also have no time to study law and keep themselves abreast of the latest rulings. To increase efficiency, therefore, an increase in the numbers of the prosecuting staff is demanded. To start with, a general working rule may be laid down that there should be at least one qualified prosecuting sub-inspector in every magisterial sub-division. In heavy charges such as Rajahmundry and Bezwada, more than this might be required; while in light charges such as Bhadrachalam or Polavaram, they could probably be dispensed with altogether. In the same way there might be districts in which more than one prosecuting inspector would be necessary.

(a) *Training.*—It is admitted that in some respects the training is defective. The special agency will of course get a certain amount of practical police training in the regular line; that is indispensable; but the proposal to make the two lines interchangeable seems to be going too far. That, I understand, roughly describes the existing state of affairs; what appears to be called for is increased specialisation in the training of the special prosecuting agency, in order to make them a match in learning and disputation with good class pleaders, not merely the inferior vakils who usually ply in magisterial courts. The prosecuting police officer will, or at least should, have the advantage of the purely professional men, in so far as he is used to handling men and real facts. However while it is not desirable that police officers should become compendium of legal learning and High Court rulings, it cannot be denied that a certain amount of knowledge of law will be a great addition to their experience and commonsense.

5. On these grounds we may support the proposals—

(a) That the prosecuting staff should be increased in numbers as suggested at A above.

(b) That the members should be selected for their fitness for the duty and legal qualifications.

(c) That the prosecuting agency should be regarded as a special branch of the service with promotion within itself.

(d) That in addition to practical police training, they should be required to study law and pass at least Criminal Higher test. Persons possessed of the B.L. Degree might be encouraged to join the force by prospects of early promotion in the special branch.

Suitable books of course should be provided for the use of the prosecuting staff both for reference and study.

There appears to be no reason to alter the existing procedure of engaging a vakil of good standing called the public prosecutor to conduct police cases in sessions courts; the present system works well.

Nor does there seem to be a good case for engaging standing counsel to prosecute in magisterial courts. Not only is the existing staff generally adequate but if steps are taken to increase their efficiency on the lines suggested above, there will be still less need to engage outside counsel. If however any special need arises, there would be no objection to the District Magistrate engaging a pleader to conduct the prosecution as a special case.

6. A few words as to suggestion (a) on page 4 (office note). There seem to be considerable difficulties in the way of recruiting the prosecuting staff direct from the bar; as Mr. Innes points out, good class vakils are not likely to enter this branch of the service. However an experiment, such as the Inspector-General suggests, may be tried in one or two districts. It is however submitted that the formation of what will be practically a special branch of the service with good prospects of advancement for men with good legal qualifications is likely to have the effect desiderated by the Hon'ble Mr. Rama Ayyangar and the Honourable Member (Sir Harold Stuart) in the legislative council debate on police re-organisation.

7. If the above suggestions or any of them are approved, they may be embodied in the reply to question (c) in Government of India's letter.

8. The case may be treated as urgent: two reminders have been received from India. Disposal has been chiefly delayed by the Inspector-General of Police.

E. A. HARVEY—12-6-15.

The Government of India enquire—

(a) how far the system outlined by the Police Commission has been actually brought into force;

(b) if prosecutions are as a matter of fact now properly conducted (and they ask in this connection for statistics since 1906 in regard to prosecutions in magistrates' and sessions courts); and

(c) if it is considered that prosecutions are *not* as a matter of fact now ordinarily properly conducted, to what the defect is due and how it can be remedied.

2. Perusal is solicited of the replies furnished by the Inspector-General of Police and selected District Magistrates. The Inspector-General has furnished information, which may be furnished to India. So far as statistics go, they appear to support the view that prosecutions *are* on the whole being conducted in all courts with fair success. Taking the years 1906 to 1913 it will be seen that in sessions courts the percentage of convictions has ranged from 63 to nearly 68. In the courts of magistrates, separate figures have been given for the work of the special prosecuting staff and the normal police staff. The former have secured convictions ranging from 65 to over 74 per cent. and the latter from about 68 to nearly 78 per cent. It may appear paradoxical that the normal police staff should show the best record, that the special prosecuting staff of the police department should come next, and that the admittedly capable staff of public prosecutors in sessions courts should come last. The explanation is no doubt the fact that the difficulty is greatest in those cases which go to the Sessions; next come those cases which are handled by the special prosecuting staff; and lastly those which are conducted by the ordinary police. I would answer India's query (b) in the affirmative, *i.e.*, that prosecutions *are* now ordinarily properly conducted and I would as already stated furnish the statistics quoted above. In the view taken by me, no answer is needed to India's question (c). As to (a), the action taken till now on the recommendations of the Police Commission, the information given by the Inspector-General in paragraph 2 of his letter may be embodied in the letter to India.

3. Proceeding next to details, there appears to be a general consensus of opinion as to the need for increasing the special prosecuting staff. I would briefly indicate this need in the letter to India and say that, when finances permit, we propose to take action for strengthening the staff.

4. I shall now proceed to offer a few remarks on the reports received from the several District Magistrates and the Inspector-General. Mr. Tottenham of Rāmnād, concurring with his sub-divisional magistrates and Superintendent of Police, says explicitly that the present system has worked satisfactorily in his district. He wants an additional prosecuting sub-inspector. He points out, what is liable to be overlooked, that the professional calibre of the vakils engaged in the *ordinary* run of cases is *not* such that they are likely to outdistance the Government prosecuting staff. Mr. Wood of Tanjore has written a great deal which, though interesting, does not appear to be particularly relevant to the points under consideration. He has no fault to find with the way in which prosecutions are conducted in sessions courts. He complains of the insufficiency of the present special prosecuting staff. Please see paragraph 16 of his letter and the statement made therein that the abilities of the members of the present staff are quite good and that in cross-examination they are usually superior to the ordinary wakil. He wants a substantial increase of the staff. Please see paragraph 17 of his letter. In regard to the suggestion so often made, that it would be well to entrust police cases to special local vakils, I would invite attention to the last paragraph of Mr. Wood's letter and to the considerations urged by him against the proposal and in favour of strengthening the special police agency. Great weight is in my opinion due to these considerations. It is an undoubted advantage to have a prosecuting staff subject to discipline and control, liable to be punished or rewarded for bad or good work, not liable to be approached by the accused, *au fait* with police records and police methods, and not hampered by civil work and private ambition. It may be urged that these criticisms would all apply to the public prosecutors we now have in sessions courts. The obvious reply is that the

leaders of the bar who generally serve us in sessions courts are picked men, whereas the local vakils whom alone we could secure as public prosecutors at magisterial stations are generally of an inferior type. Mr. Innes of Malabar considers the present prosecuting staff both insufficient and inefficient. The insufficiency is obvious and in that respect Mr. Innes concurs with the other District Magistrates. In regard to the question of efficiency, please see paragraph 4 of Mr. Innes' letter where he urges that the police prosecuting staff is distinctly indifferent and not able to handle cases as skilfully as the average wakil for the defence. The evil, I suspect, is a local one and may, I think, be treated as such. I am led so to suspect from paragraph 5 of Mr. Innes' letter where he refers to the practice of deputing police officers who are found inefficient in executive work to the prosecuting staff without regard to their capabilities. I think that the Inspector-General should be called upon to furnish a special report in regard to this matter. Mr. Innes proposes a substantial strengthening of the special prosecuting staff and some specialisation in it. Please see paragraph 6 of his letter and also paragraph 7 in regard to the need for furnishing the prosecuting staff with adequate law books. So far as the question of recruiting the prosecuting staff from the bar is concerned, Mr. Innes is at one with Mr. Wood in condemning the proposal. He points out with truth (paragraph 8) that we cannot get the best men from the bar for the purpose and the mediocre men whom we *would* secure will not prove more efficient than the existing staff, especially if the latter are given adequate facilities. In regard to this point please see Mr. Turing's report from Kistna. Mr. Turing appears to be of the opinion that the special prosecuting staff is not up to the mark and he recommends that standing vakils be retained in large towns where criminal work is heavy, the activities of the police prosecuting staff being limited to cases filed before the magistracy in the smaller stations and cases heard on tour. Mr. Turing admits that to secure the services of really good vakils a fairly big retaining fee or a reasonably high fee per case will be necessary and he recognises that a second or third rate wakil will be no better than a prosecuting inspector. In view of Mr. Turing's condemnation of the prosecuting staff of his district, I must point out that his opinion does not appear to be shared by his additional District Magistrate and Joint Magistrate, both of whom have had quite as much experience as Mr. Turing himself of the district and both of whom are of the opinion that police prosecutions are usually satisfactorily conducted and that the representatives of the Crown are sufficiently well equipped to cope with the defence. Mr. Turing endorses the view expressed by so many others that the present system is seriously hampered by the paucity of the staff. Mr. Elwin of Gōdāvari considers that the present system is fairly successful and that the police prosecuting staff is fairly efficient. He thinks that they should be better trained and makes the suggestion (which merits examination) that they should be made to work with the public prosecutor for a while to obtain that training. Mr. Elwin also complains of the insufficiency of the staff, which leads either to great delay or the conduct of cases by inferior agency. Mr. Todhunter of Tinnevely endorses the general opinion in regard to the efficiency of the prosecuting work in sessions courts, and in regard to magisterial courts also he is of opinion that the prosecution is adequately done and by men who are able to cope with the defence. The suggestion made by him that the *prosecuting staff should have an opportunity of scrutinising in advance the charge sheet put in is a good one*, but it is after all a matter of detail. Mr. Todhunter agrees with all other officers consulted about the inadequacy of the prosecuting staff. Mr. Paddison of Madara is one of the few officers who consider that the prosecuting staff do not now do full justice to the work entrusted to them. But he has admittedly had no experience worth mentioning of the staff in the district. He wants a strengthening of that staff and concludes his letter by the statement that the present system of employing prosecuting inspectors for ordinary cases and obtaining extra legal assistance for special cases is the best attainable. Mr. Legh of Salem wants an increase in the prosecuting staff so that there may be a sub-inspector for each division, also that the staff should be more specially trained. The Inspector-General considers that the prosecuting staff is now fairly equipped but complains of its inadequacy in point of numbers. He wants a prosecuting sub-inspector for each magisterial sub-division. In regard to the proposal to employ pleaders to conduct prosecutions generally, please see paragraph 4 of Mr. Moore's letter where he points out the objections to this course. Mr. Moore is

however in favour of trying the experiment of employing pleaders in one or two selected districts, it being understood that they will be placed under the control of the police. It is doubtful if any pleader with self-respect would agree to this condition, and I would deprecate the experiment, firstly because it appears to be unnecessary, and secondly because it may lead to trouble in more ways than one. Nor is the suggestion made by Mr. Moore in paragraph 5 of his letter that in sessions courts a police officer with legal qualifications and holding the rank of Deputy Superintendent may be permitted to prosecute, worthy of adoption. There would be an outcry against a course like that if it is taken. It is sure to be condemned as retrograde. Also the conduct of prosecutions in sessions courts is one of some difficulty and involves a substantial amount of legal training which it is unlikely that a Deputy Superintendent would possess.

5. On the whole I think that all that is needed is to strengthen the special police prosecuting staff, to give it more of training (without making it a completely distinct branch), to supply it with adequate facilities by way of law books, etc., to put down the pernicious practice (should it exist) of making the prosecuting branch of the service the dumping ground for inefficient executive men. These however are all matters of detail.

6. Orders are solicited as to the lines on which to address India.

P. RAJAGOPALA ACHARIAR—22-6-15.

In answering the first question, we should point out that we had, before the Police Commission reported, a competent public prosecutor for every sessions court and a prosecuting inspector for every district except those mentioned by the Inspector-General. The only addition made in consequence of the Police Commission's recommendations was the appointment of a prosecuting sub-inspector to each district in which there was a prosecuting inspector.

2. In reply to question (b), I would give the information about the qualifications of our prosecuting inspectors and sub-inspectors which is given under the year 1913 in enclosure No. 2 to the Inspector-General's letter. On the general question, I agree with the Secretary and would reply in the sense of his note.

3. The main difficulty in our present system is the inadequacy of the staff and we must remedy this as funds permit. I would tell the Inspector-General at once that he may make proposals for one or more additional prosecuting sub-inspectors in those districts in which the work is heaviest.

4. I would prescribe the Criminal Higher test for all prosecuting police officers appointed hereafter unless they have passed the Pleaders' test or obtained the Degree of "B.L."

5. A training under the public prosecutor would undoubtedly be valuable but I am not sure that we can impose this without the consent of the public prosecutor in each case. I would, therefore, consult a few District Magistrates demi-officially about the willingness of the public prosecutor to give the training. To be of value it should extend over a period of at least six months.

6. I agree with the Secretary that we cannot substitute vakils for our police prosecuting agency, for to get a satisfactory stamp of vakils we should have to spend a good deal of money.

7. I also agree with the Secretary in thinking that it would not be an improvement to substitute a Deputy Superintendent for the Public Prosecutor in sessions trials.

H. A. S[THURAT]—28-6-15.

I agree. I have also to express concurrence throughout with the Secretary.

P. S. S[IVASWAMI AYYAR]—30-6-15.

A draft order on the case and a draft letter to India are submitted for approval.

* These are the same District Magistrates to whom the general question was referred for remarks. A draft demi-official to eight District Magistrates* is also submitted with reference to paragraph 5 of the Honourable Member's note *ante*.

2. The following points in the draft order are for orders:—

(1) *Paragraph 3 of draft order*.—Honourable Member's order in paragraph 4 *ante* is that the Criminal Higher test should be prescribed for all prosecuting police officers appointed hereafter. Under note (2) to article 4 of the Special Tests notification, the Criminal Judicial test (Higher and Lower) is open only to candidates who have passed the F. A. examination or the Intermediate examination of the Madras University. Under Police Orders 47 and 58 (Volume I), the Secondary School-Leaving certificate is now the minimum qualification required for the appointments of inspector and sub-inspector of police. If the Criminal Higher test is now to be prescribed for all future prosecuting police officers (inspectors and sub-inspectors), they will

Yes.

E.A.H.—29-7-15.

have to be exempted from the general educational qualification required and specially permitted by Government to appear for the test. A sentence has accordingly been added to paragraph 3 of the draft order. Educational will have to accept it before issue.

(2) *Supply of law books to the prosecuting staff*.—It is apparently the intention

E.A.H.—29-7-15.

that the Inspector-General should be asked to submit proposals for this purpose. A sentence has been added to this effect in the draft.

5. Paragraphs 2 and 3 of the draft order involve additional expenditure and have to be accepted in Financial.

M.J.—28-7-15.

Drafts for approval.

E. A. HARVEY—29-7-15.

The drafts are circulated to Educational and Financial o.s.

With reference to the matter of the law books, it may be pointed out that the

* *Vide* G.O. 1422, Judicial, 23rd June 1915. supply of commentaries to sub-magistrates was recently refused*.

C. G. TODHUNTER—2-8-15.

EDUCATIONAL DEPARTMENT.

This department is concerned with the question raised in the first part of paragraph 3 of the draft order, namely, that of exempting such of the police inspectors and sub-inspectors as do not possess the general educational qualifications required by note (2) to article 4 of the Special Tests notification, with a view to their appearing for the Criminal Judicial test, higher grade.

2. In the first place, it is submitted that it is unnecessary to exempt the police inspectors. Under the Public Service Notification (page 11), police inspectors are required to have passed the Criminal Judicial test, lower grade; and under note (2) to article 4 of the Special Tests Notification a pass in the First Examination in Arts or the Intermediate Examination of the Madras University is the minimum general educational qualification necessary for appearing for the Criminal, lower, test. This note lays down the same general educational qualification as the minimum for Criminal, higher also. Police inspectors should thus ordinarily have passed the F.A. or Intermediate examination and would therefore be qualified to appear for Criminal, higher. Cases, in which persons not so qualified are exempted and appointed as police inspectors, would naturally be few and it is unlikely that any of them will be considered fit for prosecuting inspector's place. If any are found to exist, their case may come up to Government for special exemption. No general exemption for police inspectors is therefore needed.

3. As regards sub-inspectors, as the draft order now stands, the Inspector-General

of Police will have to submit each application to Government. The Inspector-

General being in a better position to judge of the character of the officer recommended for exemption, the Government will have greatly to rely on his recommendation in passing orders on the applications. In order to minimize correspondence on the

subject with the Government, it is for consideration whether the power of exempting this class of officers may not advantageously be delegated to the Inspector-General himself.

4. The proposal to grant such exemption is not without precedent. Under note (4) to article 4 of the Special Tests Notification, the Matriculate or Secondary School Leaving Certificate-sub-inspectors and head constables of the City and District Police are allowed to appear for Criminal test, lower grade, *on production of a certificate from the Commissioner or the Inspector-General of Police*, as the case may be, *to the effect that they are deserving of the concession*; and under note (5) all sub-registrars are permitted to appear for Criminal, lower, irrespective of their general educational qualifications. The former is apparently intended to enable competent subordinates of the Police department to qualify for the inspector's post, while the latter is intended to enable sub-registrars to discharge properly their duties as special magistrates, to which office they are employed sometimes, though they do not require a knowledge of criminal law for the proper discharge of their duties as sub-registrars. In view of these precedents, it is for consideration whether the proposal in paragraph 3 above may be accepted. If it is, a note may be added at the end of article 4 of the Special Tests Notification, on the lines of note (7) thereto, as follows:—

"Note (8).—Notwithstanding anything in note (2) above, the Criminal Judicial test, higher grade, will be open to the police sub-inspectors, who are exempted by the Inspector-General of Police from the general educational qualifications prescribed therein, provided that the exemption granted by the Inspector-General shall not enable a candidate to appear more than three times for the test."

This order altering the notification will have to issue in Educational after the preliminary general order issues in Judicial. If this is approved, paragraph 3 of the draft may require some modification. Alterations are indicated in pencil in the margin.

C.R.—5-8-15.

I have amended the draft in the sense indicated.

C. G. TODHUNTER—6-8-15.

FINANCIAL DEPARTMENT.

This case relates to the question of the measures to be adopted for improving the present system of conducting criminal prosecutions in magisterial and sessions courts. Some of the measures, which the Judicial Department have decided to adopt in connection with an inquiry made by the Government of India on the subject, involve expenditure on Provincial funds; and the case is sent to this department for acceptance as the draft commits Government to a liability on Provincial funds. The proposals with which this department is concerned are set out below.

2. *Appointment of one or more additional prosecuting sub-inspectors in heavy districts (Paragraphs 1 (i) and 2 of draft).*—The original proposal of the Police Commission, which is now urged by the Inspector-General of Police, viz., that each magisterial sub-division should have a prosecuting sub-inspector, was estimated in 1904 to involve the addition to the police force of sixty-three sub-inspectors. This addition, taking the average pay of sub-inspectors at Rs. 66 per mensem, would have cost Rs. 4,158 per mensem or ₹50 lakh per annum. The Judicial Department, however, propose now to adopt a less costly measure; and it is proposed to inform the Inspector-General that proposals may be submitted for the appointment of one or more additional prosecuting sub-inspectors in those districts in which the work is heaviest. The extra cost will be known only after the proposals are received.

3. *Purchase of suitable law books for the use of the police prosecuting staff (Paragraphs 1 (ii) and 3 of draft).*—The extra cost involved in this proposal is not known.

G.O. 1422, Judicial, 23rd June 1915. As observed in Judicial Secretary's note, dated 2nd August 1915, Government have recently declined to supply commentaries to sub-magistrates. The question as

to what books should be supplied to the prosecuting police staff and what extra cost will be incurred on this account will be settled when the Inspector-General's detailed proposals are received.

4. *Special training of police prosecuting staff under the public prosecutors (vakils) in each district (Paragraphs 1 (iii) and 4 of draft and draft demi-officials to Collectors).*—This has not yet been decided upon by Government and selected Collectors are being consulted. It is not known whether this measure, if eventually adopted, will entail any extra expenditure in the shape of fees for training to be paid to the public prosecutors.

5. On the whole the liability involved in the present proposals of the Judicial Department is not known. It is not, it is submitted, likely to be considerable. As to the question of recovering any portion of the cost of the present proposals from

Imperial funds, even if the present reforms be considered as introduced at the instance of the Government of India, it does not appear likely that Government will agree to make good the cost by an assignment from Imperial—please see

correspondence in G.O. No. 554, Financial, dated 14th August 1913. The draft may be accepted in Financial.

W.O.F.—9-8-15.

A.S.—13-8-15.

L. E. KERSHAW—14-8-15.

Accepted in Financial.

A. BUTTERWORTH—16-8-15.

JUDICIAL DEPARTMENT.

Submitted that the drafts may now issue.

B.T.—17-8-15.

M.J.—17-8-15.

The Secretary has evidently dealt with the drafts in Judicial as he has approved them. They may issue without being submitted to him.

E. A. HARVEY—17-8-15.

Demi-official—from the Hon'ble Mr. C. G. TODHUNTER, I.C.S., Acting Secretary to Government, Judicial Department.

To—
 C. A. ISNER, Esq., I.C.S., District Magistrate, Malabar.
 E. W. LEIGH, Esq., I.C.S., District Magistrate, Salem.
 G. F. FADDISON, Esq., I.C.S., District Magistrate, Madura.
 J. M. TURLING, Esq., I.C.S., District Magistrate, Kistna.
 R. B. WOOD, Esq., I.C.S., District Magistrate, Tanjore.
 F. R. HERINGWAY, Esq., I.C.S., District Magistrate, Unnevelly.
 T. E. MOIR, Esq., I.C.S., District Magistrate, Godavari.
 A. R. LOTTUS-TOTTENHAM, Esq., I.C.S., Ramnad.

Dated—Ootacamund, the 18th August 1915.
 No.—2345/A-1.

In connection with the question of improving the efficiency of the present police prosecuting agency in the mufassal, a suggestion has been made to Government that before Prosecuting Inspectors and Sub-Inspectors are entrusted with the conduct of cases they should be given special training by being made to work with the Public Prosecutor of the district. The Government consider that a training of this sort for a period of at least six months would be valuable, but they are not sure that they can impose it without the consent of the Public Prosecutor in each case. I am desirous to ask you to ascertain and report whether the Public Prosecutor in your district would be willing to give the training.

[G.O. Nos. 1941-42, Judicial, dated 18th August 1915.]

Not to be printed
Educational DEPARTMENT. 20

C. No. 3205 From the Judicial Dept. No. 1941, dated 18. 8. 1915.

SUBJECT Empowering the I.G. of Police to sanction exemption from the examination rule

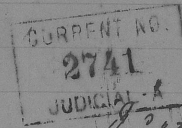
N
As a copy of this department's notes connected with the G.O. read above is required for the disposal of the current, the Judicial Department may be requested to furnish a copy of the note.

PA
17.9.15
20.9.15

20.9.15

Justus

Cal no 3205-1
23.9.15



Judl Deptt

lis-

A notes copy of the G.O. referred to is put up which may be furnished to the Educational Deptt.



18.8
23.9.15
23.9.15

23.9.15

W. us.

Educational Department

Just G.O. 2741 A-1
24.9.15

Page 30+31 of C.F.

Please see this department note on pages 9+10 of note to G.O. 1941 Judl, 18. 8. 15. The note proposed therein may be

- 2)
- (M) he added to art. 4 of the Special Tests Notification.
2. A draft order is submitted for approval.

DA
27.9.15

[Signature]
28.9.15

[Signature]
This should have been put through
at least a month ago

[Signature]
1.10.15

RECEIVED
1475
JAN 1 1916

RECEIVED
JAN 1 1916

19

C. No. 3205, From the Judicial Department, No. 741, dated 18-8-1916

to ministerial & Sec cons Court
and organize the Gov. of the
on the Subject. 191

ORDER.

No. 109300, dated 2. 10. 1981

ORDER.

24

The Inspector-General of Police will be authorized to sanction the exemption from the general educational qualifications prescribed in note (2) to art. 4 of the Special Tests Notification of sub-inspectors of police ~~deserving~~ ~~and~~ ~~therefore~~ appearing for the Criminal Judicial test, higher grade, subject to the condition that the Inspector-General shall not permit a candidate to appear for the test more than three times.

2. The following notification will be published in the Fort St. George Gazette:

Notification

The following note shall be
~~the following~~ shall be inserted and

(verified from the Gazette Volume)

(5) to art. 4 of the Special Tests Notification published on page 341 to 352 of Part I B of the Port St George Gazette of the 27th April 15:—

- Note (5) - Notwithstanding anything contained in note (2) above, the Criminal Judicial Sub. higher grade, shall be open to sub-inspectors of police who have been exempted by the Inspector General of Police from the general educational qualifications prescribed therein, provided that the exemption granted by the Inspector General shall not enable a candidate to appear more than three times for the test."

PP
27.9.15

IK
28.9.15

1.10.15



Signature
28/9/15

The I.G. of Police
Commissioner of Police
Judicial Dept
Sd/- for publication of the
notific. in the Gazette.
ET. (order only)
Commissioner for Port. Exams.

PRESS SLIP.

ORDINARY.

PREFERENCE.

URGENT (a). 24

Sect. II-38-2-15.

DEPARTMENT.

Current No. dated 191 ..

G.O. No. 938 dated 191 8.

(b)
Number of MS. pages sent { Correspondence
(b)
Notes ✓

Brief subject.....

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(a) If a paper is marked to be printed urgently, the Superintendent of the section concerned should sign the Press slip. The Superintendent should exercise a careful discretion in the matter.

(b) Each letter, memorandum, or order, or set of orders, in the file of correspondence should be headed in succession with the Roman numeral I, II, III, etc., the number being written in red ink or blue chalk above the item. The particular papers to be printed in the special issue-copies should be indicated by the Roman numeral (I, II, etc.) by which that item has been headed in the correspondence file. All matter, including marginal remarks or references, to be printed should be written in ink and matter which should not be printed should be encircled. Initials and signatures that are not quite legible should be re-written distinctly.

(b) For rules regarding printing of notes, see rule 315 of the office Manual.

(c) The number of copies and the details of distribution should be filled in by the Superintendent or Referencer concerned.

(d) In the absence of special instructions to the Press to keep matter standing for a specified period, ordinary papers of 8 pages and under will be kept standing for one week, and larger papers for two weeks only. The type of notes and of all confidential papers is distributed immediately after striking.

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(c) Signature copies of letters to the Secretary of State or to the Government of India should be printed on hand-made paper.

(d) This slip should be returned by the Press to the Secretariat when proofs are furnished; it will be sent back to the Press when proofs are returned corrected and should be finally returned to the Secretariat when struck-off copies are supplied.

(e) The names of the Secretary and Members should be printed in full when they occur on the right hand side, only the first time when they appear on the left side, the initials alone being printed later.

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P.T.O.

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Clerk.

Referencer.
Clerk.

C

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Referencer.
Clerk.

Supdt.

Supdt.

Supdt.

SPECIAL INSTRUCTIONS.

Delegation of powers.

Authorizing the J. of Police to sanction, for not more than three years in each case, the exemption of sub-inspectors of police from the General educational qualifications required of candidates for the Criminal Justice, higher grade.

TO BE FILLED IN BY THE PRESS.

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