

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1915	Press
		~~Mis.~~
174-175		
Dated	25.11.1962	-19.

11/12

Not to be folded or roughly handled

4/7/30

*Proceedings of the Madras Government, Judicial Department,
25th November 1862.*

No. 174. Read the following letter from E. C. BAYLEY, Esq., Secretary to the Government of India; to A. J. ARBUTHNOT, Esq., Acting Chief Secretary to Government of Fort Saint George, dated Fort William, the 13th August 1862, No. 4,188.

Home Department.
Legislative.

With reference to your letter No. 753, dated 7th May 1862, I have the honor to forward for communication to His Excellency the Governor of Madras, a Minute recorded by His Excellency the Viceroy and Governor General under the provisions of the 24th and 25th Vic., C. 67, Sec. 40, signifying his reasons for withholding his assent from the Bill "to make better provision for the management of Boats and Catamarans in the Madras Roads" passed by the Council of the Governor of Madras for making Laws and Regulations on the 29th April last.

2. I am further desired to point out that the stringency of the provisions in Sections IV, V, VII and VIII of the Bill now disallowed would appear to require some fuller explanation of the evils which those Sections are intended to meet than that which is contained in the Statement of Objects and Reasons attached to the Bill, which Statement in the present instance consists, I am to observe, of a mere abstract of the contents of the Bill.

3. I am directed further to remark that the Bill under notice proposed to attach to several offences the penalty of flogging, while the abstract propriety of adding that punishment to the List* of those recognized by the Penal Law of India is yet under the consideration of the Council of the Governor General for making Laws and Regulations.

(* See Section 53 of the Penal Code.)

MINUTE BY HIS EXCELLENCY THE GOVERNOR GENERAL, dated the 13th August 1862.

I am unable to give my assent to this Bill in its present form, for the following reasons:—
Bill to make better provision for the management of Boats and Catamarans in the Madras Roads.

1stly. Because it makes certain acts offences which are already punishable under the Indian Penal Code, and provides punishment for the offences so created different from the punishments provided for the same offences by the said Code.

2ndly. Because the previous sanction of the Governor General to these alterations of the Penal Code was not sought or obtained, as required by the Act of the Imperial Parliament 24 and 25 Vic., Cap. 67, Sec. 43.

3rdly. Because no subsequent explanation has been furnished to show that these deviations from the Penal Code are necessary, or that the importance of adhering to its provisions, received from the Government of Madras, when this Bill was under discussion, the consideration which it deserves.

(Signed) ELGIN AND KINCARDINE,
Viceroy and Governor General.

No. 175. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 25th November 1862, No. 1,916.

I am directed to acknowledge the receipt of your letter of the 13th August last, No. 4,188, forwarding a Minute recorded by His Excellency the Viceroy and Governor General signifying

*Proceedings of the Madras Government, Judicial Department,
25th November 1862.*

his reason for withholding his assent from the Bill "to make better provision for the management of Boats and Catamarans in the Madras Roads."

2. The grounds upon which the Bill has been disallowed by the Governor General are—

1st. That some of the offences constituted by it are already punishable under the Indian Penal Code, and that for such offences penalties are provided different from those provided for the same offences, in the Penal-Code.

2nd. That the previous sanction to such alterations of the Penal Code was not obtained.

3rd. That the alterations are not shown to be necessary.

3. It is further observed in your letter that the stringency of the provisions in Sections IV, V, VI, VII and VIII of the Bill require further explanation, and that objection is taken to the punishment of flogging having been introduced into the Bill while the abstract propriety of adding that punishment to the list of those recognized by the Penal Law of India is yet under the consideration of the Council of the Governor General for making Laws and Regulations.

4. In regard to the 1st and 2nd of these objections, I am directed to observe that in the opinion of the Madras Government the Bill in question is such a "special and local law" as is expressly excluded from the operations of the Penal Code by Section V of that enactment. Under that Section the Boat Act No. IV of 1842 continued in force, and it is not included in the list of Acts repealed by Act XVII of 1862. It cannot, the Governor in Council apprehends, have been the intention of Legislature when passing Section V of the Penal Code that it should refer only to existing special and local laws, but should afford no sanction for modifications or amendments of the existing law. In the opinion of the Madras Government the same reasons which rendered it necessary that the Boat Act of 1842 should not be repealed on the passing of the Penal Code apply to the alterations of that Act provided for in the Bill now under consideration. A special Act for the management of the Boats in the Madras Roads is requisite, inasmuch as the special provisions which are necessary find no place in the General Code. The only question then is, whether that special Act should be complete in itself or be incomplete. The class for whose guidance it is intended is an uneducated class, who may possibly make themselves acquainted with the provisions of a single Act, but who cannot be expected also to eliminate from the Penal Code every provision which can apply in their special vocation as boatmen. It would be a mere snare to them if a Boat Act were published for their guidance, which was either wholly silent as to many offences relating to boats, or referred them, in general terms, to the Penal Code for information.

5. This being so, it appears to His Excellency in Council that the Bill is not such an alteration of the Penal Code as requires the sanction of the Governor General. The Penal Code relates to offences which may be committed by any member of the community and which require to be dealt with uniformly throughout India. The Boat Bill relates to offences which can only be committed by a couple of hundred persons, and which are impossible out of Madras. Nothing in the Boat Bill alters the operation of the Penal Code, as regards the general public. Nor are the provisions of the Penal Code altered, even as regards boatmen; for although summary powers of punishment are given to the Magistrates under the Boat Bill, it is still in the power of any one to prefer a formal indictment, instead of resorting to a summary conviction; and where that course is adopted, the sentence will be under the Penal Code and not under the Boat Act.

6. With reference to the actual provisions of the Boat Bill, they may be divided into two classes—first, those which constitute offences unknown to the Penal Code; secondly those which relate to offences punishable under that Code.

Under the former head come Sections 2, 5, 6, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 23, the first portion of Section 24 and Section 26.

Under the second head come Section 22, the latter clause of Section 24, Sections 25 and 27.

*Proceedings of the Madras Government, Judicial Department,
25th November 1862.*

7. The difference between the penalties of the Boat Act and of the Penal Code in the latter class of cases, will be found in the subjoined Table.

Offence.	Boat Act.	Penal Code.
Breach of Contract of service.	14 days imprisonment with or without hard labor, Section 22.	Imprisonment of either description not exceeding one month, or fine up to Rupees 100, or both, Section 490.
Where life endangered.....	Hard labor not exceeding 6 months, 50 lashes, Section 22.	Imprisonment of either description up to 6 months or fine of Rupees 1,000, or both, Section 280.
Violence or improper language.	Hard labor not exceeding two months, 50 lashes, Section 22.	Imprisonment of either description for 3 months or fine of Rupees 500, or both, Section 352.
(N. B.—This Section extends to cases to which Sections 352, 504 of the Penal Code would not apply.)		Imprisonment up to two years, fine, or both, Section 604.
Unseaworthy Boat endangering life.	Fine not exceeding Rupees 100 and revocation of License, Section 24.	Imprisonment of either description up to 6 months, fine up to Rupees 1,000, or both, Section 282.
Malicious injury to Goods or Cargo.	Imprisonment of either description not exceeding 6 months, 50 lashes, Section 25.	Imprisonment of either description for 3 months, Section 426, or if property is above value of Rupees 50, for 2 years and fine, Section 427.
Obstructing search.....	Imprisonment of either description not exceeding 3 months, fine up to Rupees 100, revocation of License, Section 27.	Imprisonment of either description up to 3 months or fine up to Rupees 500, or both, Section 186.

8. It will be seen that the penalties of the Boat Bill are, in every case, lighter than those of the Penal Code. Where, however, the heavier punishment is deserved, it will, as before observed, be always competent to the Magistrate to commit for trial, instead of summarily convicting under Section 31.

9. As to the reasons which were considered to render it necessary that penalties lighter than those provided in the Penal Code should be provided in the Bill for certain offences, I am to state that it was considered desirable for the more prompt disposal and for the more effectual repression of the offences in question that the power of punishing them summarily should be vested in the Town Magistrates. The Code of Criminal Procedure not having been declared applicable to the Town of Madras, the powers of these Officers are limited to those conferred on them by the Madras Police Acts No. XIII of 1856, and XLVIII, 1860, and all cases which they are not competent to dispose of under the latter enactment must be committed for trial before the High Court, a course of procedure which necessarily entails very inconvenient delay in cases which cannot be promptly dealt with.

10. In regard to the Sections referred to in para. 2 of your letter, I am to offer the following explanation.

11. Sections IV and V provide for registration of the owners of boats and of the boatmen attached to each boat. This system is sanctioned and is now in force under Act IV of 1842. The expediency of adopting it was suggested by the Government of India in their letter of the 10th March 1855, No. 995 in the course of the correspondence which passed regarding the functions of a Marine Police Force. It is found of great assistance in bringing to justice boatmen charged with malpractices, by facilitating their identification.

Proceedings of the Madras Government, Judicial Department,
25th November 1862.

12. Sections VII and VIII provide that each boatman shall be confined to the services of the owner under whom he is registered for the period of his engagement. This provision is very necessary. Without it the identification of the boat in which a theft may have been committed, would furnish no clue to the discovery of the offender.

13. I am to observe in conclusion that corporal punishment is provided for in the existing Boat Act IV of 1842, Section XV, and that such a punishment is absolutely necessary in order to the maintenance of order among the class of persons to whom the Bill now under consideration applies. As has been already observed, Act IV of 1842 is still in force, not being one of the Acts repealed by Act XVII of 1862. Regulation X of 1832, which confers the power of flogging on Officers in charge of Jails is also one of the laws still in force in this Presidency, and corporal punishment can be inflicted by the Magistrate of the Presidency Towns of Calcutta, Madras and Bombay under Acts XIII of 1856, and XLVIII of 1860; this last Act, it is to be observed, having been passed subsequent to the enactment of the Penal Code. In these circumstances the Madras Council considered themselves justified in retaining the punishment in the new Boat Bill. It is confined to three cases—1st, where life is endangered; 2nd, where property is wilfully and maliciously injured or damaged; and 3rd, where violence or intimidation or indecent language is used towards passengers and others.

14. The Governor in Council trusts that under this explanation His Excellency the Viceroy and the Governor General will be pleased to give his assent to the Bill referred to.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

Minute by His Excellency the Governor General
dated the 13th August 1862.

Bill to make better provision
for the management of Boats
and Cutters on the
Roads.

I am unable to give my
assent to this Bill in its
present form for the following reasons.

1st Because it makes certain acts offences
which are already punishable under the
Indian Penal Code, and provides punish-
ments for the offences so created different
from the punishments provided for the
same offences by the said Code.

2nd Because the previous sanction
of the Governor General to these alterations
of the Penal Code was not sought, or
obtained, as required by the Act of the
Imperial Parliament 24 & 25. Vic. Cap 67
Sec. 43.

3rd Because no subsequent explana-
tion has been furnished to show that
these deviations from the Penal Code
are

are necessary, or that the importance of
adhering to its provisions, received from the
Government of Madras when this Bill
was under discussion, the consideration
which it deserves.

Ugri Munda
Buisoy & Goeran fua

Depd. 26/11/52.
per the order of the
Chief Secy.

No. 1915
Just Department.

The Secretary to the Government
of India.

Home Department.

Sir,

I am directed to acknow-
ledge the receipt of your letter
of the 13th August last No. 188
forwarding a Minute recorded
by His Excellency the Viceroy
and Governor General signifi-
ing his reason for withholding
his assent from the Bill to
make better provision for
the management of Boats
and Catamarans in the
Madras Roads.

2. The grounds upon which
the Bill has been disallowed
by the Governor General are
1st. that some of the Offences
constituted by it are already
punishable under the
Indian Penal Code
and

MD

W

JP

Ed. H.

and that for such Offences penalties are provided different from those provided for the same Offences, in the Penal Code.

2nd that the previous sanction to such alterations of the Penal Code was not obtained.

3rd that the alterations are not shown to be necessary.

3. It is further observed in your letter that the stringency of the provisions in Sections IV. V. VI. VII and VIII of the Bill require further explanation, and that objection is taken to the punishment of flogging having been introduced into the Bill while the abstract propriety of adding that punishment to the List of those recognized by the Penal Law of India is yet under the consideration of the Council of the Governor General for making Laws and Regulations.

In

4. In regard to the 1st and 2nd of these objections, I am directed to observe that in the opinion of the Madras Government the Bill in question is such a "Special and Local law" as is expressly excluded from the operations of the Penal Code by Sec. V of that enactment. Under that Section the Boat Act No. IV of 1842 continued in force and it is not included in the list of Acts repealed by Act XVII of 1862. It cannot, the Governor in Council apprehends, have been the intention of Legislature when passing Section V of the Penal Code that it should refer only to existing Special and Local laws, but should afford no sanction for modifications or amendments of the existing law. In the opinion of the Madras Govt. the same reasons which rendered it necessary

necessary that the Boat Act of 1842 should not be repeated on the passing of the Penal Code apply to the alterations if that Act provided for in the Bill now under consideration. A special Act for the management of the Boats in the Madras Roads is requisite, inasmuch as the special provisions which are necessary find no place in the General Code. The only question then is whether that special Act should be complete in itself or be incomplete. The class for whose guidance it is intended is an uneducated class, who may possibly make themselves acquainted with the provisions of a single Act, but who cannot be expected also to eliminate from the Penal Code every provision which can apply in their special vocation as boatmen. It would be a mere snare to them

them if a Boat Act were published for their guidance, which was rather wholly silent as to many offences relating to Boats, or referred them, in general terms, to the Penal Code for information.

5. This being so it appears to His Excellency in Council that the Act is not such an alteration of the Penal Code as requires the sanction of the Governor General. The Penal Code relates to offences which may be committed by any member of the community, and which require to be dealt with uniformly throughout India. The Boat Act relates to offences which can only be committed by a couple of hundred persons, and which are impossible out of Madras. Nothing in the Boat Act alters the operation of the Penal

8. It will be seen that the penalties of the Boat Act are, in every case, lighter than those of the Penal Code. When, however, the heavier punishment is decreed it will, as before observed, be always competent to the Magistrate to commit for trial, instead of summarily convicting under Section 31.

9. As to the reasons which were considered to render it necessary that penalties lighter than those provided in the Penal Code should be provided in the Bill for certain Offences, I am to state that it was considered desirable for the more prompt disposal and for the more effectual repression of the Offences in question that the power of punishing them summarily should be vested in the Town Magistrate. The Code of Criminal Procedure not having been declared

applicable

5
applicable to the Town of Madras the powers of these Officers are limited to those ^{conferred} imposed on them by the Madras Police Act No 13 of 35, and all cases which they are not competent to dispose of under the latter enactment must be committed for trial before the High Court a course of procedure which necessarily entails very inconvenient delay in cases which cannot be too promptly dealt with.

10. In regard to the Sections referred to in para 2 of your letter I am to offer the following explanations.

11. Sections IV and V provide for registration of the owners of Boats and of the boatmen attached to each boat. This system is sanctioned and is now in force under Act IV of 1842 the expediency of adopting it was suggested by the Govt.

of

of India in their letter of the 10th March 1855 No 995 in the course of the correspondence which passed regarding the functions of a Marine Police Force. It is found of great assistance in bringing to justice boatmen charged with malpractices by facilitating their identification.

12. Sections VII and VIII provide that each boatman shall be confined to the service of the owner under whom he is registered for the period of his engagement. This provision is very necessary - without it the identification of the boat in which a theft may have been committed would furnish no clue to the discovery of the offender.

12. I am to observe in conclusion that corporal punishment is provided for in the existing Boat Act

Act IV of 1842, Section XV and that such a punishment is absolutely necessary in order to the maintenance of order among the class of persons to whom the Act now under consideration applies. As has been already observed Act IV of 1842 is still in force, not being one of the Acts repealed by Act XVII of 1852. Regulation XX of 1852 which confers the power of flogging on Officers in charge of jails is also one of the laws still in force in this Presidency. In these circumstances the Madras Council considered themselves justified in retaining the punishment in the new Boat Act. It is confined to three cases - 1st where life is endangered 2^d where property is wilfully and maliciously injured or damaged and 3^d where violence

And corporal punishment must be inflicted by a Magistrate or a Police Officer. The following is the substance of the letter from the Government of Bombay dated 13-10-50. This case is, it is observed, having been reported to the Government of the Presidency by the

violence or intimidation
or indecent language is
used towards passengers
and others.

13. The Governor in Council
trusts that under this ex-
planation His Excellency
the Viceroy and Governor
General will be pleased
to give his assent to the
Act referred to.

Fort St George
25th November

W/R

174-5775

Prosser Ross

Received 1862 & paid

1875

To

to the Hon. Secy of the War

of the

War Dept

of the 20/6/63

of the 25/6/63

Submitting an explanation
relative to the fact that the
letter provision for the manage-
ment of the County of Alameda
in the "Sharon Road" and
stating that it will elicit the
assent of the Boardway to
the County of Alameda
to the effect.