

# MADRAS RECORD OFFICE.

Government of Madras.

*Judicial* DEPARTMENT.

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| G.O. No. | 414           | Press          |
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| 256-257  |               |                |
| Dated    | 22 - 3 - 1864 |                |

Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,*  
*22nd March 1864.*

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No. 256. Read the following letter from C. F. CHAMIER, Esq., Registrar of the High Court of Judicature at Madras; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 15th January 1864, No. 3.

I am directed to acknowledge receipt of the Proceedings of Government, dated the 18th November 1863, held on the Reports and Statistical Returns furnished through the High Court, relative to the subject matter of the "Bill to authorize the punishment of whipping in certain cases," pending before the Government of India in the Legislative Department.

2. In paragraph 3 it is remarked that, "the opinion of the High Court is given in a few words; and the Judges have not recorded their views on any of the important considerations connected with the subject, which are, more or less, fully discussed in the letters of the District Officers: the Honorable the Judges will be requested to supply this omission."

3. In paragraph 10 it is observed that, "the Governor in Council would be disposed to add to Section 7 of the Bill, a proviso that sentences of Corporal punishment, passed by any Officer inferior to a Subordinate Magistrate of the first class, shall not be carried into effect until approved by the Magistrate of the District. He resolves, however, to call the special attention of the Honorable the Judges of the High Court to this Section, and to request that they will furnish the Government with a full expression of their views as to the powers which should be entrusted to the several grades of Officers of the Magistracy in passing sentences of Corporal punishment."

4. I am directed to intimate that the Judges are always willing, and have frequently shown their willingness, to give such opinions upon legislative matters, as their judgment and experience have dictated; but that, as in so doing they are not performing judicial functions, or any duty imposed upon them by Her Majesty's Letters Patent, they do not recognize the right of Government to demand their opinions in these matters.

5. Still less do they recognize the right of Government to indite and promulgate in the public papers, language implying that, by omitting a detailed statement of the reasons for their opinion upon the Bill in question, they have neglected some duty.

6. In this instance the Judges are willing to make a few additional observations on the question of the expediency of legalizing whipping as a punishment for crimes. The Judges are decidedly of opinion that it is the most repressive of all punishments; there is no criminal, how hardened soever, who does not dread its infliction; men who are indifferent to all other punishments, have a panic fear of this.

The Judges are not unmindful of the objection that reformation is one main object of punishment. It is so, however, because of the security it affords to society against the offender's relapse into crime, and the influence of evil companionship upon others. The primary object of punishment is the repression of crime; and this it seeks both by means of the deterring influence of the example and warning held out to others, and by the effect upon the offender himself of the suffering he undergoes. In both these respects it is the fear of punishment that mainly operates; and no objection exists, which should preclude the public from the salutary effect of Corporal punishment in the prevention of crimes of frequent occurrence or of an aggravated or revolting nature.

8. With regard to the offences for which it should be awardable, the Judges consider that it might with advantage be authorized in the case of offences against the person, of an aggravated character, in addition to the offences enumerated in the Bill. The systematic infliction of the punishment of flogging by the Criminal Courts of Malabar produced, as the Judges believe, the most salutary effect in the repression of crimes of this character.

9. On the subject of the proviso which the Governor in Council is disposed to add to Section 7 of the Bill, the Judges are of opinion that whenever a sentence of Corporal punishment is passed by a functionary inferior to a Subordinate Magistrate of the first class, it should not be executed without the sanction of the Officer exercising the full powers of a Magistrate, to whom the Subordinate Magistrate passing the sentence is immediately subordinate. If, in all such cases, a reference had to be made to the Magistrate of the District, there would in many instances be much delay in carrying the sentence into effect.

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10. With respect to the powers which should be entrusted to the several grades of the Magistracy in passing sentences of Corporal punishment, the Judges are of opinion that the jurisdiction of Subordinate Magistrates of the second class should in this respect be limited to 25 stripes, and that of Subordinate Magistrates of the first class to 50 stripes; the maximum number of stripes awardable under Section 8 being raised, as the Government propose, to one hundred.

No. 257. To the Honorable Sir C. H. SCOTLAND, Knight, Chief Justice of the High Court of Judicature at Madras, dated Fort Saint George, 22nd March 1864, No. 414.

I am directed to acknowledge the receipt of the Registrar's letter, under date the 15th January last, submitting the further observations of the Honorable the Judges of the High Court respecting the Bill to authorize the punishment of whipping in certain cases; and to observe that His Excellency the Governor in Council is unable to admit the validity of the objections urged by the Honorable the Judges against the course taken by the Government in noticing, in the Proceedings of Government under date the 1th November last, the omission of the Judges to record their views on any of the important considerations connected with the subject of the Bill in question which are more or less fully discussed in the letters of the District officers, and in placing those Proceedings on the Editor's table.

2. It appears to His Excellency that it is clearly the province of the Judges of the High Court to furnish the Government with such suggestions as their judicial experience may enable them to offer on projects of law affecting the administration of justice. There is certainly no mention of this function in the Letters Patent constituting the High Court, but it is one which for a long series of years has been discharged by the Judges both of the late Supreme Court and of the late Sudder Court, and which is performed by the High Courts in the other Presidencies as well as in Madras; and, in the opinion of His Excellency in Council, there is unquestionably a moral, if there be no legal, obligation on the Judges to continue rendering this aid to the Executive Government and the Legislature. Indeed His Excellency in Council cannot think that any Judge on the Indian Bench would decline to render such aid. Certainly such assistance would never be refused by Her Majesty's Judges in England.

3. If then it be one of the duties of the Honorable the Judges to furnish the Executive Government with their opinion on subjects of the nature of that referred to in the Proceedings of Government now adverted to, it is equally, His Excellency in Council must maintain, the duty of the Government, and is no infringement of that courtesy and consideration which is due to the Honorable the Judges, to notice any points on which they may have omitted to record their opinion. That this was the case in the matter now under consideration, will not be denied; and the Governor in Council is of opinion that the very brief allusion, couched in no uncourteous terms, to what appeared to the Government the defective character of the report made by the High Court, was fully warranted, especially since it prevented the Government replying with fullness to the call made upon them by the Government of India for information on a contemplated Legislative measure seriously affecting the administration of criminal justice.

4. In regard to the publication of the Proceedings of Government, I am to observe that the matter under consideration was one of much public interest, and that the Governor in Council did not feel himself justified in withholding the papers from the Press, because the order of Government contained an allusion to what were deemed to be omissions on the part of the Honorable the Judges.

5. The Bill, as you will have seen, has since been passed.

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

\* The debate on the Whipping Bill shows that the Bill was fully reported on by the High Court at Calcutta.

Edw. T. O'Connor.

Sept 22/3

Judicial Department  
No. 414.

The Honorable Sir C. H. Scotland, Knight,  
Chief Justice of the High Court  
of Judicature at Madras

Worthy Sir,

I am directed to acknowledge the receipt of the Registrar's letter under date the 15th January last, submitting the further observations of the Honorable the Judges of the High Court respecting the Bill to authorize the punishment of whipping in certain cases; and to observe that His Excellency the Governor in Council is unable to admit the validity of the objections urged by the Honorable the Judges against the course taken by Government in noticing

*[Handwritten signature]*

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Letters

I rather think that in  
the debate on the subject  
of the Bill reference was  
made to the opinion of the  
High Court in the High  
Court in Calcutta.  
So this might be taken  
as a precedent in a case  
5/10

I would quite like to  
see the Bill passed  
by the Legislature  
1/11

Letters Patent constituting  
the High Court, but it is  
one which for a long series  
of years has been discharged  
by the Judges both of the  
late Supreme Court and  
of the late Sudder Court,  
and which is performed  
by the High Courts in the  
other Presidencies as well  
as in Madras; and, in  
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to continue rendering this  
aid to the Executive Govern-  
ment and the Legislature.  
Indeed, His Excellency in  
Council <sup>cannot think</sup> feels assured  
that there is not a Judge  
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would seriously maintain  
that

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22<sup>nd</sup> March 1864 }

June 12 to Aug 23 1864  
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to the Democratic  
the Chief Justice

Patent 23d March 1864

Respecting the  
mission of the High  
Court to send the wine  
on the 10th & authorized  
Shipping

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