

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	163	Press ~~Mis.~~
271-272 Dated	30-1-	12/865

89

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

30th January 1865.

No. 271. Read the following Proceedings of Government in the Legislative Department.

Read letter from A. COLVIN, Esq., Officiating Under Secretary to the Government of India, to J. D. MAYNE, Esq., Assistant Secretary to Government, Fort Saint George, Legislative Department; dated Fort William, 29th December 1864, No. 7030.

Home Department.

Legislative.

I am directed to acknowledge the receipt of your letter, No. 181, dated the 7th July, on the subject of regulating the sale of poison by law.

2. In reply, I am directed to transmit to you the accompanying copy of a letter, addressed to the Government of the North-Western Provinces, No. 1545, dated the 6th March 1863, and to state that, with reference to the concluding paragraph of that letter, the Governor General in Council is not prepared at present to propose any general legislation, such as has been suggested by the Government of Madras.

3. I am directed to express regret at the delay which has occurred in replying to your letter, and to explain that it has been caused in procuring from another Department correspondence bearing on the question.

From E. C. BAYLEY, Esq., Secretary to the Government of India, to J. D. SANDFORD, Esq., Officiating Secretary to the Government of the North-Western Provinces; dated Fort William, 6th March 1863, No. 1545.

Home Department.

Judicial.

Sir George Couper's letter, No. 849A, dated the 20th of October, having, with its enclosures and the papers noted in the margin, been laid

From Secretary to Government North-Western Provinces, to Secretary to Government of India, Foreign Department, No. 475, dated 11th June 1860, with enclosures.
Ditto, ditto, No. 753B, dated 13th February 1862, with enclosure.

before the Honorable the President in Council, I am directed to communicate the observations and orders of the Government of India thereon, in the following terms:

2. In the 6th paragraph of the letter under acknowledgement, the Honorable the Lieutenant Governor states that on three occasions the attention of the Government of India has been invited to the crime of "theft or robbery by poisoning," with a view to special legislation, or action of some kind.

3. It appears to the Honorable the President in Council that the Indian Penal Code and the Code of Criminal Procedure contain ample provisions for the suppression of the crime in question, and for the detection, conviction, and punishment of persons guilty of the same; and that what is required is not any new or special Law, or any action on the part of the Government of India, but that the existing law should be properly and intelligently administered by the local Authorities.

4. There can be no doubt, the President in Council thinks, that the offence which is declared in the correspondence received from the Government of the North-Western Provinces to be so prevalent in those Provinces is "robbery," not simply "theft." Section 390 of the Indian Penal Code declares that theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away, or in attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes, or attempts to cause, to any person death or hurt, or wrongful restraint, &c. According to Section 319 of the Code, whoever causes bodily pain, disease, or infirmity, to any person, is said to cause hurt. Any hurt which endangers life, or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits, is declared by Section 320 to be "grievous." Section 321 declares that whoever "does any act with the intention of causing hurt to any person, or with the knowledge that he is

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30th January 1865.*

"likely thereby to cause hurt to any person," is said "voluntarily to cause hurt;" and Section 322 points out what constitutes the "voluntarily causing grievous hurt." That the administering poison with a view to rob the person to whom the poison is administered, whereby, if death does not actually ensue, life is almost always endangered, and insensibility, or violent retching, or vomiting

* (See note on Indian Penal Code by Morgan and Macpherson, page 287, where, in treating of "hurt," it is remarked a person who mixes a deleterious potion, and places it on the table of another may cause serious hurt, &c.)

and purging generally caused, is within the definition of "voluntarily causing hurt," or "grievous hurt," appears to the Honorable the President in Council to admit of no doubt.*

5. Section 394, to which no allusion is found in the correspondence from the North-West Government, enacts:—"If any person in committing or attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall be liable to fine."

6. Section 310 says:—Whoever shall have been habitually associated with any other, or others, for the purpose of committing robbery by means of, or accompanied with, murder, is a Thug; and the next Section provides that whoever is a Thug shall be punished with transportation for life, and shall also be liable to fine. His Honor in Council has no doubt that the provisions of the two Sections just quoted would be found applicable to very many of the persons who are alleged to be associated together in this country for the purpose of committing robbery by poisoning, or who may hereafter become so associated; and that such persons might be proceeded against under the laws and rules which have from time to time been passed for the suppression of Thuggee.

7. Section 401 of the Penal Code provides that whoever shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft, or robbery, shall be punished with rigorous imprisonment, for a term which may extend to seven years, and shall also be liable to fine. This Section would doubtless reach many of the persons mentioned in the last preceding paragraph, who might not be within reach of the Section therein quoted.

8. Section 328 of the same Code declares that whoever administers to, or causes to be taken by, any person, any poison, or any stupefying, intoxicating, or unwholesome drug, or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description, for a term which may extend to ten years, and shall also be liable to fine.

9. Section 296 of the Code of Criminal Procedure declares that whenever it shall appear to the Magistrate of the District, or to an Officer exercising the powers of a Magistrate, that any person is by repute a robber, or thief, or of notoriously bad livelihood, such Magistrate, or other officer, may require security for the good behaviour of such person for a period not exceeding one year, which period may be extended, under the circumstances stated in the following Section, to three years; and Section 301 provides that, in default of finding the required security, the party may be imprisoned for the full period for which he has been required to give security.

10. Section 209 and 210 of the Criminal Procedure Code contain provisions for the tender of pardon to offenders with a view to secure the conviction of other persons; and Section 54 provides for the remission of punishment after conviction, including (as it appears to the President in Council) the suspension of punishment. The Section says "when any person has been sentenced to punishment for an offence, the Governor General of India in Council or the Local Government, may, at any time, without conditions, or upon any conditions which such person shall accept, remit the whole, or any part, of the punishment to which he shall have been sentenced."

11. With this large body of substantive Criminal Law and Criminal Procedure Law in operation, it appears to His Honor in Council that it cannot be said that the Legislature has not done its duty, or that it has failed to make ample provision for the suppression of the particular crime under consideration, and the detection, conviction, and punishment of those who are

*Proceedings of the Madras Government, Judicial Department,
30th January 1865.*

guilty of the same. And it certainly does seem to His Honor in Council that if the Criminal Authorities, in the North-Western Provinces, with all these provisions of law in their hands, are unable effectually to cope with the crime, the defect must be not in the law itself, but in the administration of the law, and in the absence of proper arrangements for carrying out its provisions.

12. With regard to what is called the "Approver system," as it is now applied to the crimes of Thuggee and Dacoitee, and the proposed extension of that system to the crime of robbery by poisoning, the President in Council observes that the system rests upon no express provision or authority of Law, beyond what is contained in the Section of the Code of Criminal Procedure relating to the conditional or unconditional remission of punishment, which has been already quoted (Section 54), and in that part of the Law of Evidence, now in force, which declares that no person shall be incompetent to be a witness, in any case, by reason of a conviction for any offence. The system was introduced in the year 1837, not by recourse to legislation, beyond the alteration in the Law of Evidence just mentioned (see Act No. XIX of 1837), but by Circular instructions approved of by the Governor General in Council, and issued by the Court of Nizamut Adawlut for the Lower Provinces of Bengal, under Order, No. 247, dated the 22nd September 1837. These instructions, as originally issued, applied to the crime of Thuggee only, but they were subsequently extended to the crime of Dacoitee. Similar instructions have been issued at different times to the Criminal authorities in the North-Western Provinces, and are still in force in those Provinces. There is ground for believing that the Section of the Criminal Procedure Code (54), relating to the remission of punishment, on conditions, or without conditions, was introduced specially to legalize the use of approvers convicted of Thuggee or Dacoitee, with a view to the conviction of others guilty of the like offences, and their remand to Jail, again to undergo imprisonment, in the event of their failing to fulfil the conditions on which they may have been let out of Jail. It is only necessary to add that the exercise of the power given to this Section is not confined to the Governor General in Council: the power may be exercised by any Local Government. The attention of the Lieutenant-Governor of the North-Western Provinces does not appear to have been directed to this Section.

13. It is again proposed that the sale of poisonous drugs should be permitted only under license, and that the possession of such drugs for sale, without a license, should be made an offence. But I am to remark that the correspondence received from the Government of the North-Western Provinces shows that the persons who engage in the crime of robbery, by administering to their victims poisonous and other drugs, have no occasion to resort to the shops of Druggists or others, for the purchase of the drugs of which they generally make use. Dhatoora and Kharrecara (the sweet scented oleander), which, or preparations therefrom, are the poisons most frequently used by such persons, grow luxuriantly in jungles and gardens, and are often to be found on the road side. The restriction, therefore, proposed to be placed on the sale of deleterious drugs would in no way interfere with the use of these two poisons; while as regards Opium, Bhang, Churus, Ganja, and other intoxicating drugs, which are also used by the same classes of persons, with a view to reduce their victims to a state of insensibility before they proceed to rob them, these preparations are already required to be sold under license.

Order, 23rd January 1865, No. 20.

Upon a consideration of what has been stated by the Government of India in the letters above recorded, the Governor in Council deems it inexpedient at present to legislate on the subject therein referred to.

(True Extract).

(Signed) J. D. MAYNE,
Assistant Secretary to Government,
Legislative Department.

*Proceedings of the Madras Government, Judicial Department,
30th January 1865.*

No. 272. ORDER THEREON, 30th January 1865, No. 163.

Communicated to the Magistrates of Districts and of Police, and to the Inspectors General of Police and Jails, for information.

(True Extract).

A. J. ARBUTHNOT,
Chief Secretary.

To the Magistrate of
„ Magistrate of the Police Court.
„ Inspector General of Police.
„ Inspector General of Jails.

Exd. J. H. Burns

LEGISLATIVE DEPARTMENT.

No. 181.

FROM

J. D. MAYNE, Esq.,

Assistant Secretary to the Government of Fort Saint George,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT, (LEGISLATIVE.)

SIR,

I am directed by the Governor in Council to submit, for the consideration of His Excellency the Viceroy and Governor General in Council, the annexed copy of an order passed by the Madras Government on a letter from the Coroner of Madras, bringing to notice the presentment of an Inquest held before him, suggesting that the sale of poisons should be regulated by Law.

2. It was the intention of the Governor in Council to direct that a Bill on the subject should be introduced into the local Council for making Laws and Regulations, and a Bill was accordingly prepared for the purpose, a copy of which is sent herewith. On further consideration it has appeared to His Excellency that the subject is one which can be more fitly dealt with by the Imperial Government; and I am accordingly to request that the subject may receive the consideration of His Excellency the Viceroy and Governor General in Council.

FORT SAINT GEORGE,
7th July 1864.

I have the honor to be,
Sir,
Your most obedient Servant,

*Assistant Secretary to Government,
Legislative Department.*

Exd. J. Tulloch.

No. OF 1864.

A

BILL

TO

Regulate the sale of Poisonous Drugs.

WHEREAS the unrestricted sale of Poisonous Drugs facilitates the commission of Crime, it is enacted as follows:—

I. It shall be lawful for the Local Government to publish in the Fort Saint George and District Gazettes, lists of Poisonous Drugs, and from time to time to add to or vary the same; and the term Poisonous Drugs in this Act shall be taken to mean such Drugs as are for the time being included in the said lists.

II. The Commissioner of Police in the town of Madras, and in all other places the Magistrate of the District or such other Officer as the Governor in Council may authorise, shall be empowered to issue licenses for the manufacture or sale of all, or any specified Poisonous Drugs, and such licenses shall be in the form stated in Schedule A of this Act, and shall be registered in a book kept for that purpose. Such license may be refused, or may be cancelled by the Officer authorised to grant it, if he shall be of opinion that the applicant, or the person to whom it was issued, is not a fit person to be entrusted with it.

III. Where any license is cancelled, a notification to that effect shall be made in the Registry book, and the party holding the license shall be bound, upon demand, to return it to the office from which it was issued.

SCHEDULE A REFERRED TO IN SECTION II.

License for sale of Poisonous Drugs.

A. B. is hereby authorized to sell (or manufacture, or sell and manufacture,) all (if only some, specify which) Poisonous Drugs. Such sale (or manufacture or both) is to be carried on only at house No. _____ This license is liable to be cancelled upon any breach of its terms, or of the provisions of Act No. _____ of 1864, Madras.

Date _____ (Signature of Officer issuing license.)

SCHEDULE B REFERRED TO IN SECTION V.

Day of sale.	Name and surname of purchaser.	Purchaser's place of abode.	Condition or occupation.	Quantity of Poisonous Drugs sold.	Purpose for which required.

(Purchaser's signature.)

Witness.

Seller's signature.

Or if purchaser cannot write, seller to put here the words "cannot write."

Proceedings of the Madras Government, Legislative Department,
23rd January 1865.

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No. 48. From A. COLVIN, Esq., Officiating Under Secretary to the Government of India, to J. D. MAYNE, Esq., Assistant Secretary to Government, Fort Saint George, Legislative Department; dated Fort William, 29th December 1864, No. 7030.

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3. It appears to the Honorable the President in Council that the Indian Penal Code and the Code of Criminal Procedure contain ample provisions for the suppression of the crime in question, and for the detection, conviction, and punishment of persons guilty of the same; and that what is required is not any new or special Law, or any action on the part of the Government of India, but that the existing law should be properly and intelligently administered by the local Authorities.

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*Proceedings of the Madras Government, Legislative Department,
23rd January 1865.*

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13. It is again proposed that the sale of poisonous drugs should be permitted only under license, and that the possession of such drugs for sale, without a license, should be made an offence. But I am to remark that the correspondence received from the Government of the North-Western Provinces shews that the persons who engage in the crime of robbery by administering to their victims poisonous and other drugs have no occasion to resort to the shops of druggists or others, for the purchase of the drugs of which they generally make use. Dhatoora and Khatreeara (the sweet scented oleander), which, or preparations therefrom, are the poisons frequently used by such persons, grow luxuriantly in jungles and gardens, and are often to be found on the road side. The restriction, therefore, proposed to be placed on the sale of deleterious drugs would in no way interfere with the use of these two poisons; while as regards Opium, Bhurush and other intoxicating drugs, which are also used by the same classes of persons, with a view to reduce them to a state of insensibility before they proceed to rob them, the restrictions already required to be sold under license.

THEOREN, 23rd January 1865, No. 20.

No 49
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to
recorded, the Governor in Council deems it inexpedient at present
e subject therein referred to.
(True Extract).

Am J. M. S. S.
Assistant Secretary to Government,
Legislative Department.

To the
Judicial
Police.
ment.

hint of Feb

Jan 15 1865 24th

Receiving of the
Revenue Dept
No 20

Pat 1237 Henry 185

Pat 2085

No. 112

received in explanation
in the present to the
in the subject of the
case of Howard,

N 163-30 & January 1865
No. 1 sealed to the
the 21 of District
& of the ~~for information~~
& to the Inspector General
of the & bails for
formation.

27/12/12

With Orders.

The Magistrate of the
Magistrate of the
Police Court
Inspector General
Superior Court
} 24/12/12