

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	869	Press ~~Mis.~~
Dated	20-6-1918	

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
20th June 1865.

No Read the following letter from P. P. HUTCHINS, 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, 5th June 1865, No. 44.

In their Proceedings of 5th April 1864, No. 466, the Government requested the High Court to call upon the Session Judges and Magistrates of the various Zillahs to furnish reports on the working of the Whipping Act (VI of 1864), for the information of His Excellency the Governor General in Council. These reports have at length been received, and I am now directed by the High Court to state the substance of the remarks which have been offered, and to annex a figured Statement showing the particulars required by the Supreme Government.

2. The reports are confined to the year 1864, at the close of which the Act had not been in force quite nine months. There appears, however, to be a general impression that the re-enactment of a law authorizing whipping was very desirable, and although there is a great diversity of opinion as to the degree of dread with which this kind of punishment is regarded by those classes of criminals upon which it generally falls, nearly all the officers who have any opinion at all agree that its effect is more or less beneficial. The Chief Justice and Judges are not prepared to dissent from this view; but they have seen too little of the working of the Act to allow of their pronouncing a definite opinion in its favor. It will not be possible to estimate its effect until statistics for some time to come.

3. As the Act commences with a specification of offences for which whipping may be awarded, it will be convenient first to refer to the suggestions offered upon that point. Section 2 provides that whipping may be inflicted *in lieu* of other punishment, on a first conviction of certain offences. The Acting Session Judge of Bellary is of opinion that even for a first offence the Judge or Magistrate should be empowered to award a moderate whipping *in addition* to imprisonment. The Session Judge of Rajahmundry makes a somewhat similar recommendation, in regard to the offence of house breaking. This crime is rife in his District, and the certainty of a whipping might tend to repress it; but a simple whipping without imprisonment would, in his opinion, be an altogether inadequate penalty. The offence of robbery does not occur in this Section, but is one of the offences for which (Section 4) whipping may be added to other punishment upon a second conviction. The Session Judge of Coimbatore remarks that a simple flogging would be the most satisfactory sentence in most cases of robbery without aggravation. He accordingly suggests that robbery should be added to the offences specified in Section 2. Mr. Justice Innes, I am instructed to say, concurs in the suggestion that the first offence of robbery should be made punishable with whipping, but he considers that the whipping should be awardable in addition to imprisonment, provided that the latter does not extend beyond five years (vide Section 7).

4. It has also been suggested that certain offences, of which no mention is made either in Section 2 or Section 4, should be made punishable with whipping. The Joint Magistrate of Malabar proposes to extend the Act to those aggravated offences of mischief which fall under Sections 430, 433, and 435 to 439 of the Penal Code, and his suggestion is supported by the Magistrate of the District except in

respect of Section 430. Mahomed Esuf Saib, Deputy Magistrate of South Arcot, makes a similar proposal, in regard to offences falling under Sections 147, 148, 279, 294 to 298, 353, 355, 357, 428, and 429.

5. Next, with regard to the right of appeal:—Under the Criminal Procedure Code, the right of appeal exists against every sentence, except a sentence of imprisonment not exceeding one month, or fine not exceeding Rupees 50. It, therefore, exists against every sentence of flogging. A sentence of flogging, without imprisonment, however, must be carried into effect at once, and in such a case the right of appeal is a right without a remedy. The Session Judge of Trichinopoly, when more than 50 lashes are awarded, a period of 15 days should be allowed before the sentence is carried into effect, to enable the prisoner to appeal. Devaskhamany Pillay, Deputy Magistrate of South Arcot, also advocates some alteration of the law in this respect. Upon this point the Honorable the Chief Justice has recorded the following observation:—

“I think it objectionable that the Act does not contain some provision relating to a person sentenced to whipping, in lieu of imprisonment, an interval for the exercise of the right of appeal, and providing, in case of appeal, for the suspension of the punishment of whipping and detention during the appeal. The provision might properly be confined to sentences inflicting such a number of stripes as should be considered in excess of the punishment commensurate with a month's imprisonment.”

Perhaps it might also be made contingent upon the prisoner's expressing a wish to appeal, upon which point he should be questioned by the Magistrate.

6. The Act left it to the Governor in Council to prescribe the instrument and mode of corporal punishment, and, following the old Regulation (VIII of 1828, Madras Code), His Excellency in Council has directed that in the case of adults whipping should be inflicted with a cat-o-nine tails. The Magistrate of South Canara, Mr. G. L. Morris, prefers the rattan. He finds that “in the neighbouring province of Coorg, where the rattan is still used, corporal punishment is both more equal and more dreaded than in South Canara.” Other Magistrates have alluded to the inequality of the cat as an instrument of punishment, but they do not assert a preference for the rattan. The uncertainty of the cat is probably due to the varying skill and temper of the Policeman executing the sentence. It should here be mentioned that, so far as can be gathered from the reports before the Court, the powers given to the Magistracy by the Act appear to have been exercised with proper moderation.

7. The annexed tabular Statement does not include whippings within the town of Madras. Referring to the operation of the Act within the High Court's original jurisdiction, Sir A. Bittleson has observed as follows:—

“I believe that in Madras the punishment of whipping *alone* has not been found very effectual; and my impression is that ultimately it will be found desirable to give a discretionary power to the Judges, in all cases in which whipping is allowed, of coupling it with imprisonment.”

An unusually large number of references have been made to the High Court as to the true interpretation of this Act, and I am directed to conclude this Report with a summary of the constructions which have been placed upon its more important provisions.

Section III. A prisoner was correctly held liable to imprisonment *and* whipping, although the trial for the second offence commenced immediately after the sentence was passed for the first. The Act does not even require that the offence should have been committed after a previous conviction, and certainly not that the sentence should be followed upon that conviction shall have been undergone.

Section III. The second offence must be the very *same* as the first, and not merely of a similar nature. A person previously convicted of simple theft under Section 379 is not liable to whipping, in addition to imprisonment, on a conviction of theft in a building, under Section 380.

Section IV. In order to render a prisoner punishable under this Section, it is not necessary that the former conviction should have taken place at a time when the Penal Code was in force. A previous conviction under the old law is sufficient.

Section V. The law nowhere gives any definition of the term “juvenile offender.” It is for the Magistrate in each case to determine whether the prisoner belongs to that class.

Section XI. The time at which the fitness required by the Act is ascertained is that specified in Section 9.

Section XI. When the offender, while undergoing whipping, is found unable to bear the remainder of the punishment, execution shall be stayed, and the prohibition which immediately follows, that no sentence of whipping shall be executed by instalments, clearly shows that the staying is to be final. The provisions of the following Section confirm this view. Sections 11 and 12 read together mean this: A man, though sentenced to whipping, is not to be whipped unless in a fit state to suffer that punishment. The whipping is not to be commenced if he is unfit to bear it at all, and then he is to be kept in custody till the Court can revise the sentence. But if it be commenced, it is not to be continued longer than the man is fit to bear it, and when the man has had all he can bear (in the opinion of the Medical Officer), the executioner is to stay his hand, and the sentence has been fully satisfied, for it cannot be executed by instalments.

Proceedings of the Madras Government, Judicial Department,
20th June 1865.

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HIGH COURT OF JUDICATURE,
MADRAS, 5th June 1865.

(Sig)

P. P. HUTCHINS,
Registrar, Appellate Side.

• Juvenile Offenders, Section 5.

Proceedings of the Madras Government, Judicial Department,
20th June 1865.

No. 139. To the Secretary to the Government of India, Home Department, dated Fort Saint George, 20th June 1865, No. 869.

Adverting to your letter of the 8th March 1864, No. 1694 (paragraph 7), communicating the instructions of the Governor General in Council as to the submission of an Annual Report on the working of Act VI of 1864, I am directed to submit the annexed copy of a letter from the Registrar of the High Court, furnishing a report on the working of the Act in question, for the nine months of 1864 during which it was in operation, accompanied by a Statement of the number of cases in which the punishment of whipping was inflicted, classified in the manner suggested by the Supreme Government.

2. It will be seen, from this Statement, that the total number of persons whipped during the nine months in question was 1491, of whom only 26 were re-convicted persons, and that the number of persons sentenced to whipping as an additional punishment was only 139.

3. Several of the officers, whose opinions are quoted in the letter from the Registrar of the High Court, are in favor of making the sentence of whipping additional to imprisonment in those cases in which, as the Act now stands, it is substituted for the latter mode of punishment. The Government are not at present prepared to express any opinion on this point, the time during which the Act has been in operation having been too short to admit of any satisfactory judgment being arrived at on the efficacy of the punishment, when unaccompanied by a sentence of imprisonment. So far as the statistics of the nine months can be relied on, as affording grounds for an opinion on this point, it would seem that the punishment has been efficacious, only 26 persons having been sentenced on re-conviction, out of a total number of 1491.

4. The Chief Justice suggests, and the Governor in Council concurs in the suggestion, that in those cases in which the sentence may prescribe such a number of stripes as should be considered in excess of the punishment commensurate with a month's imprisonment, time should be allowed for an appeal, on the prisoner expressing a wish to appeal. Should this proposal be entertained in any future revision of the Act, the number of stripes to be inflicted without appeal might be fixed at 50.

(Signed) W. HUDLESTON,
Acting Secretary to Government.

Exd, J. H. Burns.

Copd. A. Pereira.

S. ...

Memorandum.

It is requested that the following figures may be substituted for those entered opposite the South Arcot District in the Statement which accompanied the Report on the Whipping Act dated 5th June 1865, and that a corresponding change may be made in the Totals.

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High Court of
Judicature, Madras,
13th June, 1865.

M. A. M. A. M.
Registrar.
Appellate Side

To. The Chief Secretary to
Government.

Copd. A. Pereira.

L. D. M.

Statement showing the operation of Act. Vth of 1864 (Whipping Act) in the province
of Madras 1864.

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High Court of
Judicature, Madras, }
5th June 1865.

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- M. Tambiappan.

^x Juvenile offenders Section

Registrar,
Appl. M. to Side

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The Secretary to the Government
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