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Judicial (~~193~~ 1878) Department.

Criy SERIES.

G.O. No. 493

DATED 8. 3-1878

[Despatch Abstract.]

Law regarding Security for Good behaviour - Letter to the Govt of India -

BACK PAPERS.

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CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

8th March 1878, No. 493.

Security for Good Behaviour.

Read the following paper:—

No. 31. *From JAMES O'KINEALY, Esq., Officiating Secretary to the Government of India, Home Department, (Judicial,) to the Chief Secretary to Government of Madras, dated Fort William, 16th February* 1878, *No.* 3-219, *Confidential.*

With reference to the accompanying letter from the Government of Bengal, No. 416, dated 23rd ultimo, recommending, for reasons specified, that in all cases in which persons are required to furnish security for good behaviour there should be an appeal to the Sessions Judge and the High Court, and suggesting that in any future amendment of Act X of 1872 (The Criminal Procedure Code) this point should be taken into consideration, I am directed to request that you will be good enough, with the permission of His Grace the Governor in Council, to submit an early report as to the working of the Law in the Madras Presidency.

2. The Government of India are of opinion that the statistics appended to the letter from the Government of Bengal tend to show that, in the Lower Provinces at all events, the Law has been very greatly abused.

ENCLOSURE No. 1.

From H. A. COCKERELL, Esq., Officiating Secretary to the Government of Bengal, Judicial, Political, and Appointment Departments, to the Officiating Secretary to the Government of India, Home Department, dated Calcutta, 23rd January 1878, No. 416.

Under Section 409 of the old Criminal Procedure Code, Act XXV of 1861, any person required by the Magistrate of a District, or other officer exercising the powers of a Magistrate, to give security for good behaviour, might appeal to the Court of Session to which such Magistrate was subordinate. The law of appeal in these cases was, however, materially altered in the new Code of Criminal Procedure, Act X of 1872. Under Section 267 of this Act any person required by a Magistrate of the first class to give security for good behaviour may appeal to the Magistrate of the District; but under Section 286 there is no appeal against an order of the Magistrate of the District in such cases. Many instances have come to the notice of the Lieutenant-Governor in which the powers conferred on District Magistrates under Chapter 38 of Act X of 1872 have been greatly abused. A copy of a Circular, No. 56, dated the 22nd August 1877, addressed to all Commissioners of Divisions, as well as an extract (paragraph 20) from the Resolution recorded on the Administration Report of the Police Department for the year 1876 containing the remarks made by the Lieutenant-Governor on this subject, are herewith submitted for the information of the Government of India.

2. The Lieutenant-Governor considers that it is very necessary that in all cases in which persons are required to furnish security for good behaviour there should be an appeal to the Sessions Judge and the High Court as in other criminal cases. I am to suggest that in any future amendment of Act X of 1872 this subject may be duly taken into consideration.

ENCLOSURE No. 2.

From H. A. COCKERELL, Esq., Officiating Secretary to the Government of Bengal, Judicial Department, to all Commissioners, dated Calcutta, 22nd August 1877, No. 56.

I am directed to request your attention to the state of things indicated by the figured statement annexed showing the cases of bad livelihood reported and those in which convictions have been had in the years 1872 to 1876.

2. There has, to the Lieutenant-Governor's mind, clearly been a great abuse of the power conferred on the police and Magistrates in respect to prosecutions for bad livelihood; for the intention of the law was certainly not that the police should be turned loose on the country to prosecute and harass every one against whom there was the slightest ground for suspecting that his character was not altogether unexceptionable.

3. In his Minute of 14th January 1876, which forms the introductory chapter of the report on the administration of Bengal for 1874-75, Sir Richard Temple pressed strongly upon the Magistrates and Police, and very properly, that it was their duty to watch the movements of bad characters, and to exercise sufficient supervision of them in their villages, but to be very careful that the supervision was not to be "carried so far as to lead indirectly to oppression and do harm while aiming at good." It is to Mr. Eden quite inconceivable how this order can, as he understands that it is, be held to justify the oppressive proceedings which have certainly taken place in many districts in respect to the arrest of persons whom the police choose to say they suspect of being bad characters, and the demand from them of security, or failing it condemnation to imprisonment for a long term. The Lieutenant-Governor is of opinion that there is no greater indication of an inefficient and idle police and a careless and inconsiderate Magistracy than the admission that crime cannot be checked without locking up, precisely as if they were convicted criminals, all persons of whom it is thought or said by their enemies or neighbours that they are persons who may possibly at some future time or another commit an offence. It is a mode of dealing with crime which would not be tolerated in any country except India. It is a power which it is perhaps necessary to keep in reserve here for the purpose of crushing out offences so peculiar to the country and so dangerous to society as gang-robbery, but it is a power to be used only in very exceptional and rare circumstances.

4. It is impossible to conceive a greater reproach to the Police than this admission that they are so deficient in any detective ability that they can only keep crime from increasing by confining every person who it is thought is in any way capable under sufficient temptation to commit crime. No doubt Magistrates will point to tabular statements, and show that crime has decreased since these extreme measures were adopted. But this is only true to a very limited and insignificant extent; and it would, indeed, be extraordinary if, were all the suspected persons and all those whose poverty exposes them to special temptation were locked up, crime were not to decrease. But how little real good is done by the indiscriminate prosecution of suspected persons is clear from the fact that while burglaries and dacoities were 23,698 in 1875, they have only been reduced to 21,793 in 1876, while the convictions and imprisonment on mere suspicion amounted to 3,618. It is quite possible, too, that this variation in crime between the two years is quite normal and unconnected with these proceedings.

5. In Dacca, where the number of persons imprisoned on suspicion had increased from 33 to 158, the burglaries increased; and though the dacoities decreased, it was obviously a very strong measure to institute 264 prosecutions and imprison 158 persons charged with no specific offence to procure such a result as a diminution of 10 dacoities.

6. In Shahabad the cases have risen from 74 in 1872 to 645 in 1876, and from 36 convictions to 502. The dacoities have remained exactly the same in 1876 as in the previous year, though there has been a falling off in burglaries. In Rungpur the prosecutions have risen from nine with eight convictions in 1872 to 250 with 177 convictions in 1876.

7. All the persons thus locked up for long terms of years will, it may be safely assumed, return from jail determined and hardened criminals, whatever their character may have been before.

8. The proper way to procure a decrease of crime and break up gangs of dacoits and burglars is to make detection and conviction a probable consequence of crime; but this involves a great deal of labor and some considerable intelligence and perseverance, and it is, therefore, not to be wondered at if the police prefer having all suspicious persons locked up in order that they may lead lives of idleness and quiet in their stations; and so long as they are encouraged to do this by the District Superintendents and Magistrates, it is not to be expected that they will act with any real vigor or put themselves to any inconvenience in watching the movements of suspected characters, and taking up and working out difficult clues in investigation invested to them.

9. The expense to Government of the present system of proceeding against suspected criminals is enormous. In Shahabad 502 persons have been convicted and are now lodged in jail, and fed and clothed at the Government expense. This is the full ordinary population of a large

district jail, and the idleness of the Shahabad police, and the inability of their superiors to control them, throws upon Government the whole cost of supporting these men for terms varying from one year to two years, and of building new jails and increasing old ones, because the regular jails are overcrowded with men of this class. No less than 3,618 persons have been convicted under these sections this year in Bengal, and if to these are added the persons convicted in the previous year, most of whom are still in jail, it will be seen that Government has to keep up a population equal to that of four central jails, because the police are slovenly and incapable in the performance of their duties.

10. No officer who is at all acquainted with the character of Native police, or with the peculiarities of Native village society, can possibly have any doubt of the amount of oppression, alarm, extortion, intimidation, and wrong involved in 5,062 prosecutions of this sort in a single year.

11. I am to request that you will be good enough to obtain a list of all these convictions during the last twelve months, and to send for a certain number of cases, and see how the inquiries have been conducted. The Lieutenant-Governor will be glad to consider any recommendation you may desire to make on behalf of persons who have been convicted under these sections of the Penal Code. Magistrates and Police officers should be told plainly that the Lieutenant-Governor will not consider them deserving of promotion if they cannot manage to check and control crime without having indiscriminate recourse to a form of procedure which was intended to be exceptional and special in its application. The Magistrates and District Superintendents of Shahabad, Dacca, Dinagepur, Rungpur, Monghyr, Manbhum, and Burdwan should be especially warned of the dissatisfaction with which the Lieutenant-Governor has viewed their action in this matter.

STATEMENT showing the Number of Convictions in each District for bad livelihood during the years 1872 to 1876.

Districts.	1872.		1873.		1874.		1875.		1876.	
	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.
Burdwan	55	17	27	8	38	12	60	31	162	120
Bancoorah	53	41	55	41	19	12	42	32	43	31
Beerbhum	7	5	10	4	11	10	9	1	5	2
Midnapur	119	74	231	132	206	145	194	148	114	67
Hooghly	16	10	52	11	19	4	19	5	158	56
Howrah	23	11	14	9	13	15	9	9	11	9
Total ...	273	158	389	205	306	198	333	226	493	285
24 Pergunnahs ...	202	144	128	72	87	54	95	51	100	63
Nuddea	83	40	59	26	34	12	56	33	86	45
Jessore	347	229	88	53	75	35	200	158	201	124
Moorshedabad ...	53	12	64	37	64	21	100	35	195	144
Total ...	685	425	339	188	260	122	451	277	582	376
Dinagepur	71	39	15	19	10	5	92	54	363	220
Maldah	13	4	12	6	7	1	23	11	47	30
Rajshahye	43	32	34	15	25	19	45	27	63	48
Rungpur	9	8	143	120	137	131	243	197	250	177
Bogra	12	...	23	26	6	2	8	2	25	7
Pubna	62	44	35	20	60	41	67	46	90	65
Darjeeling	1	...	3	2	4	...	1	4	...	...
Jalpaiguri	...	...	5	14	15	12	32	62	51	46
Total ...	211	127	270	222	264	211	511	403	889	593

STATEMENT showing the Number of Convictions in each District, &c.—(*Continued.*)

Districts.	1872.		1873.		1874.		1875.		1876.	
	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.
Dacca	45	9	72	29	149	50	117	33	264	158
Furreedpur	56	28	129	98	76	35	76	56	128	62
Backergunge ...	128	47	371	220	88	46	87	35	137	50
Mymensingh ...	22	8	63	15	37	18	32	16	79	38
Tipperah	70	26	57	18	62	35	56	28	107	84
Total ...	321	118	692	380	412	184	368	168	715	392
Chittagong	31	14	26	16	36	24	27	14	19	10
Chittagong Hill Tracts	...	...	1	7	1	...	...	...	4	5
Noakhally	29	11	46	22	26	10	52	21	41	24
Total ...	60	25	73	45	63	34	79	35	64	39
Patna	147	104	109	91	49	38	120	96	154	149
Gya	146	109	241	179	145	101	70	30	217	137
Shahabad	74	36	51	16	58	39	183	89	645	502
Tirhoot	205	130	170	129	190	140	...	...	...	...
Mozufferpur ...	...	...	...	...	...	...	209	177	94	65
Durbhunga	...	...	...	...	...	...	153	82	119	97
Sarun	73	51	84	66	110	76	101	89	99	82
Chumparun... ...	123	99	125	94	74	57	173	157	228	201
Total ...	768	529	780	575	626	451	1,009	720	1,556	1,230
Monghyr	93	64	64	44	140	106	159	136	244	209
Bhagulpur	125	71	48	42	22	17	6	3	10	8
Purneah	259	122	233	156	394	267	107	101	180	122
Sonthal Pergunnahs.	34	54	18	12	5	4	43	57	66	113
Total ...	511	311	363	254	561	394	315	297	500	452
Cuttack	3	3	1	1	3	5	2	2	1	...
Pooree	1	1	1	1	3	2	7	5	1	...
Balasore	25	22	29	25	25	20	55	45	26	17
Gurjhar Mehals ...	...	...	...	...	...	...	...	...	...	...
Total ...	29	26	31	27	31	27	64	52	28	17
Hazaribagh... ...	2	3	22	8	47	20	34	33	32	26
Lohardugga ...	7	5	1	...	6	4	1	1	2	2
Singbhum	3	7	...	...	1	1	...	...	4	7
Manbhum	17	15	47	27	34	21	368	268	197	199
Total ...	29	30	70	35	88	46	403	302	235	234
Grand Total ...	2,887	1,749	3,007	1,931	2,557	1,667	3,533	2,480	5,062	3,618

Extract from a Resolution on the Administration Report of the Police Department for the year 1876, dated Calcutta, 26th December 1877.

Para. 20. In treating of dacoities he (the Inspector-General) attributes the decrease to the more systematic repressive measures which have been taken against bad characters, the chief among which is their incarceration in default of security for good conduct, and takes much credit for the action of the police in working these sections of the law. But in discussing the subject of petty crime, where he has to account for an increase of offences, he states that "the result of our police operations has been to drive the perpetrators of serious crimes, committed at intervals and on the property of the well-to-do, to take to petty thefts and burglaries committed constantly and on the rich and poor indiscriminately"; and he elsewhere remarks with much justice that the people probably "prefer taking the chance of a dacoity or two happening at intervals in their villages to being systematically plundered of small sums or property of small value by old dacoits converted into local petty thieves." It appears then that, although 3,618 bad characters were locked up last year in pursuit of the object of exterminating dacoity, a very large number of dacoits are still at large, of whom some committed the 137 dacoities which occurred during the year, and the others, prevented by the vigilance of the police from committing crime in numbers of five and upwards, have taken to solitary burglaries and thefts. With apparent inconsistence the decrease in the number of burglaries in Dinagepur is attributed to the working of the vagrancy sections of the law by the Magistrate of that district. Inquiries have convinced the Lieutenant-Governor that the law has been grossly abused in that district, and a review of the cases by the Commissioner showed that the bulk of the convictions were not warranted by the evidence. Mr. Monro remarks that if we stop here, we leave half our work undone, and he advocates measures of repression which will largely diminish petty, as they have largely diminished serious, crime. In other words, having, by locking up for various terms or requiring security from 7,765 persons in three years, succeeded in reducing the number of offences against property from 64,808 in 1873 to 61,112 in 1876, we are to go on until we have locked up the offenders in the great majority of the latter. This is a sufficiently appalling prospect, and, apart altogether from the question of accommodation for the vast multitude of suspects whom it proposes to imprison, the Lieutenant-Governor is quite unable to understand how any one with the results of the last year's police action before him could support such a scheme. It is not clear how it happens that while the police by mere force of supervision have been able to deter large numbers of criminals from associating in gangs of five, and thus committing dacoity, their success stops abruptly at this point, and they are powerless either to prevent criminals from committing burglaries alone, or in twos or threes, or to lay their hands on those over whom they are said to keep so strict a watch. The evil is probably greater, and the result more demoralising to the lower classes, than the continuance of dacoity. Mr. Eden does not in the least doubt that the efforts of the police in watching the movements of bad characters were productive of much good during the year, and that they prevented the commission of much organised crime. But he believes that such efforts properly guided would have sufficed for the whole object which has been attained, without the aid of wholesale locking up of suspects; and further, that legitimate supervision of bad characters and the utilisation of the knowledge thus acquired of their habits and movements should and must suffice for the prevention and detection of petty as of serious offences against property. The extent of the injustice and oppression which has been occasioned by prosecutions for bad livelihood is apparent on the face of the returns. Of 4,861 persons who were actually tried for bad livelihood during the past year no less than 1,243, or more than 25 per cent., were acquitted. These are very different from acquittals for specific offences. It may often happen that an innocent man is sent up for trial for a specific offence by a perfectly honest investigating officer. But where the charge is one of general bad livelihood, depending chiefly on the repute in which a man is held by his neighbours, an ordinarily careful police officer can rarely be deceived. But this is not all. It appears that the number of cases, cognisable dishonest crime, serious and petty, was 938 less in 1876 than in 1875, and Mr. Eden is willing to admit that this may possibly be to some extent the result of the imprisonment of 1,138, more persons on suspicion in the former than in the latter year, though even this is very doubtful. In some districts, however, such as Monghyr, a positive increase in burglaries has followed on the imprisonment of a large number of suspects. After allowance is made for the fact that the proportion of convictions to detected cases shows that on the average three persons are concerned in every two cases, it is still quite evident that a large number of persons confined for bad livelihood during the year would, according to the police statistics, not have been concerned in a single offence had they been left at large. The essence of the offence supposed to be proved against bad characters is that they are habitual criminals; whereas it is only by supposing that the great majority would only have committed one offence each that all those convicted are shown to have been rightly punished. Mr. Eden fears that very many of the persons convicted were really innocent, and an examination of some cases which have come before him quite confirms him in the belief that a vast amount of bitter wrong and oppression has been wrought upon the people. Apart, moreover, from the grievous injustice done to the innocent, this wholesale system of prosecutions must defeat its own object in the future. Nothing more certainly leads to the formation of organised bodies of

marauders, than the congregation of bad characters for comparatively short periods. The really guilty are thrown together and have ample time for maturing future schemes, while those who have been wrongly convicted, knowing the stigma which will always attach to them, and surrounded by evil influence in jail, will, in the majority of cases, return to society hardened criminals. Any man once in jail is, without much analysis of the nature of the crime for which he was confined, entered in the police records and known in his village as a "dagi" or marked man. He is for the rest of his life subject to the persecution of unscrupulous police subordinates and to denunciation by any of his neighbours with whom he happens to quarrel. Nothing could express more clearly the Lieutenant-Governor's view of the manner in which these investigations are conducted than the following description in the Inspector-General's own words: "The consequence is that, in the majority of cases of bad character sent up, the police do not send up the names of the respectable inhabitants, but summons the chowkeedar and two or three cultivators to testify against the accused," and yet the Inspector-General considers it a matter for congratulation that during the year 1876 no less than 5,154 persons were sent up for trial under such circumstances, that 3,618 of them were thrown into jail, and 1,243 persons were dragged away from their houses, and after judicial inquiry declared not to be the bad characters they were charged to be by the police. Mr. Eden finds in the bare figures of the present report abundant proof that a lamentable amount of suffering and wrong has been caused; and, looking to the vast number of false cases of different kinds instituted all over Bengal, he is determined that this fearful engine of oppression shall not be left uncontrolled in the hands of the police, but shall only be used under most effectual safeguards. All inquiries of this nature should be most full and searching, and should, as a rule, be held by the Magistrate in the village of the accused. Mr. Eden will leave it to the judicial officers to satisfy themselves most fully on the spot not that the accused is a person who may possibly, if left at large, commit some offence, that he is a person who has some time of his life been in jail on some charge or other, but that he is really a criminal who supports himself by preying upon society.

No. 32. *To the Secretary to the Government of India, Home Department, dated Fort St. George, 8th March 1878, No. 493.*

I am directed to reply to your letter No. 3-219, dated 16th February ultimo. That letter is headed "Confidential," and this communication will be so marked also; but I am to point out that before the letter reached this Government, the enclosure had been discussed in the "Pioneer" of 21st idem, in an article entitled "The locking-up System."

2. The Government of India inquire how the law regarding requisitions of security for good behaviour is worked in this Presidency. The statistics for the last two years in respect of which the returns are completed show* that, taking the 21 Madras districts, some three or four persons on the average are annually required to find this form of security in each district; the average population of a Madras district being a million and a half.

* Year.	No. of Persons proceeded against.	No. of Persons convicted.
1875 ...	71	42
1876 ...	155	87

3. Minutes recorded by His Grace and Sir W. Robinson are enclosed. It will be seen that any change in the present law is deprecated.

(Signed) D. F. CARMICHAEL,
Chief Secretary.

MINUTE by His Grace the PRESIDENT, dated 4th March 1878.

I have not noticed, since I have been in Madras, any indication of the law of security for good behaviour being harshly worked or used for extortion.

2. It is a law necessary for public security, but exceedingly open to abuse if not carefully watched, and I therefore gave some attention thereto, but found no reason to think it was wrongly used, or that cases were insufficiently investigated. The figures given by the Chief Secretary confirm this view.

3. No doubt it is possible that among this small number there may be a case or two which might be deemed harsh, for such cases have occasionally happened even in England in recent times although rarely.

4. As regards change of the law suggested, I am averse to it. Frequent changes of the law are evils—unavoidable if the change is essential—to be avoided if the change be not essential; greater freedom of appeal is suggested as a remedy for what has occurred in Bengal, but I am of opinion that it would not remedy it.

5. The remedy must be sought in more careful scrutiny by the Magistrates of the cases and evidence before them, and careful, close, and constant supervision of the action of the Police in such cases by the superior officers of the Police. From the figures given, it seems that in Dacca as 158 only were imprisoned for want of sureties; out of 264 prosecutions there were 106 persons wrongfully prosecuted and defamed without remedy.

In Shahabad	645	
	502	
		143
In Rungpur	250	
	177	
		73
In Bengal	5,062	
	3,618	
		1,444

6. This large proportion of unfounded prosecutions indicates to my mind that there must be a want of sufficiently strict watch over the Police, and that the Police from their own observation do not fear the condemnation of the Magistrate for bringing forward unfounded cases.

7. Now, would an appeal remedy this state of things more effectually than a stringent watch over the administration of the law and the procedure of the Police? I think not, for, taking the total Bengal prosecutions of 5062, 1444 cases, which were probably those of the greatest oppression, because unfounded, could never come before any appellate court at all. I think also not, because an appellate court will decide only whether the committal was good on the recorded evidence, and such, it must be assumed, has been generally sufficient on the face of it; and supposing even that the appellate tribune reversed one-third of the convictions equal to ·1209, which would be a large per-centage, it would have failed to touch the still larger number of unfounded charges which could never be the subject of appeal, and which are, to my mind, the worst feature of the case.

8. The introduction of more frequent appeals also introduces greater uncertainty, detracts in the eyes of the people from the authority and dignity of the local Magistrate, by no means necessarily induces greater caution on the part of the Magistrate, and will give to the Police, if so disposed, an additional opportunity for extortion, for if this power of the law is now used as an engine of oppression and extortion, then every opportunity which is afforded of reversal or modification of decision will become an additional opportunity of fleecing friends or relatives.

9. An additional or extended power of appeal will not weed extortioners out of the Police; it may correct bad law or want of form in magisterial procedure, but it will not cause a Magistrate to properly test evidence, especially *ex parte* evidence, at the moment it is given, if the disposition of the Magistrate is not inclined thereto. It is really the careful exercise of the magisterial power and discretion only which can repress an oppressive and extortionate disposition on the part of a Police.

10. And that careful exercise will only be ensured by the knowledge that the exercise of the power is closely watched and any abuse of it promptly checked.

The matter should certainly be treated as confidential in reply, but there is no reason why, if it be thought well, the return of cases in Madras Presidency should not be published.

BUCKINGHAM AND CHANDOS.

MINUTE by the Hon. Sir W. ROBINSON, K.C.S.I., dated 6th March 1878.

I think that the provisions of the law herein alluded to are, as they stand, admirable in every respect, and I should deprecate meddling with them. Appeals and superior revision are provided where really required, without needlessly hampering a careful and judicious magisterial administration. The facts which the Lieutenant-Governor of Bengal so reasonably condemns are the result of mal-administration by both Police and Magistracy; for the combination is indispensable to success in these wrong doings.

2. In this Presidency the combination never has occurred, and vigilant control over the Police has prevented abuse of the law from arising at their hands from the very first. Even during the early years of severe struggle with the worst forms of gang-robbery in this Presidency, the officers of the Police of all grades "have fully understood" (to use the words of the Inspector-General) "that the expedient of putting persons up for security is only to be used in *extreme cases*, and that it is a *sign of defeat*." No prosecution under these provisions of the law has been permitted to be initiated by the Police without the personal intervention of the District Superintendent or his Assistant, or under the order of the Magistrate of the District or Division; and these latter have been most watchful and restrictive in the management of the matter. The marginal statement for the last 5 years shows how carefully the Law has been worked in this Presidency. The average has been six prosecutions per district per annum. If any thing, the error has been on the safe side, as an inspection of the Registers of the known depredators evinces.

Years.	Numbers prosecuted.	Number convicted.
1876 ...	155	87
1875 ...	71	42
1874 ...	249	152
1873 ...	65	27
1872 ...	110	68
	630	336

3. Thus large experience enable me to hold that abuse of the powers of the Law by the Police can be kept under complete and salutary control; where it occurs, the department is obnoxious to such just animadversions as the Lieutenant-Governor has administered.

4. The judicial features of the matter are somewhat different, and here more sessional control might possibly be claimed. If Magistrates direct undue prosecutions or encourage the Police to bring up improper persons under these Sections, administrative control is not perhaps so direct; but I cannot conceive that in this Presidency at least the Magistracy would otherwise than respect and advance the proper wishes of the Government to keep the exercise of these exceptional powers under the strictest limit. Here certainly we require no further legislation or increased sessional restrictions.

W. ROBINSON.

CONFIDENTIAL.

JUDICIAL DEPARTMENT.

Security for Good Behaviour.

No. 493.

FROM

THE HON. D. F. CARMICHAEL,
Chief Secretary to the Government of Fort St. George,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
HOME DEPARTMENT.

SIR,

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

FORT ST. GEORGE,
8th March 1878.

Chief Secretary.

MINUTE by His Grace the PRESIDENT, dated 4th March 1878.

I have not noticed, since I have been in Madras, any indication of the law of security for good behaviour being harshly worked or used for extortion.

2. It is a law necessary for public security, but exceedingly open to abuse if not carefully watched, and I therefore gave some attention thereto, but found no reason to think it was wrongly used, or that cases were insufficiently investigated. The figures given by the Chief Secretary confirm this view.

3. No doubt it is possible that among this small number there may be a case or two which might be deemed harsh, for such cases have occasionally happened even in England in recent times although rarely.

4. As regards change of the law suggested, I am averse to it. Frequent changes of the law are evils—unavoidable if the change is essential—to be avoided if the change be not essential; greater freedom of appeal is suggested as a remedy for what has occurred in Bengal, but I am of opinion that it would not remedy it.

5. The remedy must be sought in more careful scrutiny by the Magistrates of the cases and evidence before them, and careful, close, and constant supervision of the action of the Police in such cases by the superior officers of the Police. From the figures given, it seems that in Dacca as 158 only were imprisoned for want of sureties; out of 264 prosecutions there were 106 persons wrongfully prosecuted and defamed without remedy.

In Shahabad ...	...	645 502
		143
In Rungpur ...	...	250 177
		73
In Bengal ...	...	5,062 3,618
		1,444

6. This large proportion of unfounded prosecutions indicates to my mind that there must be a want of sufficiently strict watch over the Police, and that the Police from their own observation do not fear the condemnation of the Magistrate for bringing forward unfounded cases.

7. Now, would an appeal remedy this state of things more effectually than a stringent watch over the administration of the law and the procedure of the Police? I think not, for, taking the total Bengal prosecutions of 5062, 1444 cases, which were probably those of the greatest oppression, because unfounded, could never come before any appellate court at all. I think also not, because an appellate court will decide only whether the committal was good on the recorded evidence, and such, it must be assumed, has been generally sufficient on the face of it; and supposing even that the appellate tribune reversed one-third of the convictions equal to ·1209, which would be a large per-centage, it would have failed to touch the still larger number of unfounded charges which could never be the subject of appeal, and which are, to my mind, the worst feature of the case.

8. The introduction of more frequent appeals also introduces greater uncertainty, detracts in the eyes of the people from the authority and dignity of the local Magistrate, by no means necessarily induces greater caution on the part of the Magistrate, and will give to the Police, if so disposed, an additional opportunity for extortion, for if this power of the law is now used as an engine of oppression and extortion, then every opportunity which is afforded of reversal or modification of decision will become an additional opportunity of fleecing friends or relatives.

9. An additional or extended power of appeal will not weed extortioners out of the Police; it may correct bad law or want of form in magisterial procedure, but it will not cause a Magistrate to properly test evidence, especially *ex parte* evidence, at the moment it is given, if the disposition of the Magistrate is not inclined thereto. It is really the careful exercise of the magisterial power and discretion only which can repress an oppressive and extortionate disposition on the part of a Police.

10. And that careful exercise will only be ensured by the knowledge that the exercise of the power is closely watched and any abuse of it promptly checked.

The matter should certainly be treated as confidential in reply, but there is no reason why, if it be thought well, the return of cases in Madras Presidency should not be published.

BUCKINGHAM AND CHANDOS.

MINUTE by the Hon. Sir W. ROBINSON, K.C.S.I., dated 6th March 1878.

I think that the provisions of the law herein alluded to are, as they stand, admirable in every respect, and I should deprecate meddling with them. Appeals and superior revision are provided where really required, without needlessly hampering a careful and judicious magisterial administration. The facts which the Lieutenant-Governor of Bengal so reasonably condemns are the result of mal-administration by both Police and Magistracy; for the combination is indispensable to success in these wrong doings.

2. In this Presidency the combination never has occurred, and vigilant control over the Police has prevented abuse of the law from arising at their hands from the very first. Even during the early years of severe struggle with the worst forms of gang-robbery in this Presidency, the officers of the Police of all grades "have fully understood" (to use the words of the Inspector-General) "that the expedient of putting persons up for security is only to be used in *extreme cases*, and that it is a *sign of defeat*." No prosecution under these provisions of the law has been permitted to be initiated by the Police without the personal intervention of the District Superintendent or his Assistant, or under the order of the Magistrate of the District or Division; and these latter have been most watchful and restrictive in the management of the matter. The marginal statement for the last 5 years shows how carefully the Law has been worked in this Presidency. The average has been six prosecutions per district per annum. If any thing, the error has been on the safe side, as an inspection of the Registers of the known depredators evinces.

Years.	Numbers prosecuted.	Number convicted.
1876 ...	155	87
1875 ...	71	42
1874 ...	249	152
1873 ...	65	27
1872 ...	110	68
	630	336

3. Thus large experience enable me to hold that abuse of the powers of the Law by the Police can be kept under complete and salutary control; where it occurs, the department is obnoxious to such just animadversions as the Lieutenant-Governor has administered.

4. The judicial features of the matter are somewhat different, and here more sessional control might possibly be claimed. If Magistrates direct undue prosecutions or encourage the Police to bring up improper persons under these Sections, administrative control is not perhaps so direct; but I cannot conceive that in this

Regr. No.

HOME 1878 DEPT.

[ ]

From the Government of Fort St. George.

Dated 8th *March* 1878.	*No.*
Issued	*Enclosures*
Recd.	*Spare copies*

D. No. Progs.

L. No. 493. No.

Law regarding Security for good behaviour.—Intimating that the Madras Government deprecate any change in the present law.

Proof

MINUTE by the Hon. W. HUDLESTON, dated March 1878.

I think the statistics given by the Chief Secretary are sufficient to show that the provisions of the law are not so worded as to be productive of evil *here*, and I would only add to them the number of persons confined in default of security.

2. I do not think we have any reason to say that the law needs alteration.

3. Eighty-seven reputed bad characters *required to find security* for good behaviour out of a population of 31 millions is a sufficient proof of this.

4. The contrast with Bengal is very marked. *There*, then, have been 3618 persons *confined in default of security* out of a population of (I think) 66 millions.

W. HUDLESTON.

I would treat the matter in *confidence* as the Government of India marked it.

Regr. No.

HOME 1878 DEPT.

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From the Government of Fort St. George.

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Correct confusing.

Boof

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Years.	Numbers prosecuted.	Number convicted.
1876 ...	155	87
1875 ...	71	42
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1872 ...	110	68
	630	336

3. Thus large experience enable me to hold that abuse of the powers of the Law by the Police can be kept under complete and salutary control; where it occurs, the department is obnoxious to such just animadversions as the Lieutenant-Governor has administered.

4. The judicial features of the matter are somewhat different, and here more sessional control might possibly be claimed. If Magistrates direct undue prosecution ~~under these provisions~~ or encourage the Police to bring up improper persons under these Sections, ~~departmental~~ control is not perhaps so direct; but I cannot conceive that in this Presidency at least the Magistracy would otherwise than respect and advance the proper wishes of the Government to keep the exercise of these exceptional powers under the strictest limit. Here certainly we require no further legislation or increased sessional restrictions.

/s

W. ROBINSON.

admirable

Correct carefully

Proof

MINUTE by His Grace the PRESIDENT, dated 4th March 1878.

I have not noticed, since I have been in Madras, any indication of the law of security for good behaviour being harshly worked or used for extortion.

2. It is a law necessary for public security, but exceedingly open to abuse if not carefully watched, and I therefore gave some attention thereto, but found no reason to think it was wrongly used, or that cases were insufficiently investigated. The figures given by the Chief Secretary ~~comprise~~ this view. confirm

3. No doubt it is possible that among this small number there may be a case or two which might be deemed harsh, for such cases have occasionally happened even in England in recent times although rarely.

4. As regards change of the law suggested, I am averse to it; frequent changes of the law are evils, unavoidable if the change is essential, to be avoided if the change be not essential; greater freedom of appeal is suggested as a remedy for what has occurred in Bengal. But I am of opinion that it would not remedy it.

5. The remedy must be sought in more careful scrutiny by the Magistrates of the cases and evidence before them, and careful, close, and constant supervision of the action of the Police in such cases by the superior officers of the Police. From the figures given, it seems that in Dacca as 158 only were imprisoned for want of sureties; out of 264 prosecutions there were 106 persons wrongfully prosecuted and defamed without remedy.

In Shahabad	645 502	
		143
In Rungpur	250 177	
		73
In Bengal	5062 3618	
		1444

own

6. This large proportion of unfounded prosecutions indicates to my mind that there must be a want of sufficiently strict watch over the Police, and that the Police from their observations do not fear the condemnation of the Magistrate for bringing forward unfounded cases. or

7. Now, would an appeal remedy this state of things more effectually than a stringent watch over the administration of the law and the procedure of the Police? I think not, for, taking the total Bengal prosecutions of 5062, 1444 cases, which were probably ~~then~~ those of the greatest oppression, ~~became~~ unfounded, could never come before any appellate court at all. I think not, ~~for~~ because an appellate court also will decide only whether the committal was good on the recorded evidence, and because such, it must be assumed, has been generally sufficient on the face of it; and supposing even that the appellate tribune reversed one-third of the convictions equal to ·1209, which would be a large per-centage, it would have failed to touch the still larger number of unfounded charges which could never be the subject of appeal, and which are, to my mind, the worst feature of the case.

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10. The matter should certainly be treated as confidential in reply, but there is no reason why, if it be thought well, the return of cases in Madras Presidency should not be published.

BUCKINGHAM AND CHANDOS.

And that careful Exercise will only be insured by the Knowledge that the Exercise of the power is closely watched and any abuse of it promptly checked.

10

I have not noticed since I have been in Madras any indication of the law of Security for good behaviour being readily worked or used for extortion —

It is a law necessary for public security — but exceedingly open to abuse if not carefully watched and I therefore gave some attention thereto. but found no reason to think it was wrongly used or insufficiently investigated —

The papers given by the Chief Secretary confirm this view —

No doubt it is possible that among this number there may be a case or two which might be deemed

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there were 106 persons
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defamed ~~without~~ unjustly

in Shahabad	645 502	143
in Rungpur	250 177	63
in Bengal	5062 3618	1444

This large proportion of
~~unjustified~~ unjustified prosecutions
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watch over the police — and that the police from their operations do not fear the condemnation of the Magistrate for bringing forward unfounded cases —

Now would an appeal remedy this state of things — I think not — for an appellate court — will decide only whether the committal was good on the recorded evidence — and such it must be assumed — has been generally sufficient on the face of it —

and supposing even that the appellate tribunal reversed 1/3 of the convictions = 1209 which would be a large per centage — it would leave fearful [illegible] of [illegible] men

charges — which could never be the subject of appeal — and which are to my mind the most fearful feature of the ~~Jacobs~~ case —

The introduction of more frequent appeals also introduces greater uncertainty — detracts in the eyes of the people from the authority & dignity of the local magistrate and by no means necessarily induces greater caution on the part of the magistrate — and will give to the police if so disposed — an additional opportunity for extortion — for if this feature of

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The matter should certainly be treated confidentially in reply - but there is no reason why it should be thought with the return of cases

In Madras Presidency
Should not be published
BM. 4/3

Minute by His Grace the Governor
8th March 1878.

Minute by the Hon'ble Sir W. Robinson, KCSI.
8/6 March 1878

Minute

I think that the Provisions of the Law herein alluded to are, as they stand, admirable in every respect; and I should deprecate meddling with them. Appeals and Superior revision are provided where really required without needlessly hampering a careful and judicious Magisterial administration. The facts which the Lt. Governor of Bengal so reasonably condemns are the result of mal-administration by both Police & Magistracy for the Combination is indispensable to success in these wrong doings.

In this Presidency, the Combination never

has occurred and a vigilant control over the Police has prevented abuse of the Law from arising at their hands. From the very first - even during the early years of severe struggle with the worst forms of gang-robbery in this Presidency - the Officers of the Police of all grades "have fully understood" (to use the words of the Inspector General) "that the expedient of putting persons up for security is only to be used in extreme cases and that it is a sign of defeat". No prosecution under these provisions of the Law has been permitted to be initiated by the Police without the personal intervention of the District Superintendent or his Assistant or under the orders of the Magistrate of the District or Division - and these latter have been most watchful and restrictive in the management of the matter. The marginal statement for the last 5 years shows how carefully the Law has been worked in this Presidency. The average has been 6 prosecutions per district per annum. If any thing, the error has been on the safe side, as an inspection of the Registers of the known Depredators Crimes.

Years	Number prosecuted	Number convicted
1876	98	97
1875	57	48
1874	181	168
1873	62	60
1872	110	68
	502	441

1876.	155	87
1875.	71	42
1874.	249.	152.
1873.	65.	27
1872	110	68
	630	336

5/630
21/126 (6
126

Thus large experience enable me to hold that abuse of the powers of the Law by the Police can be kept under a complete & salutary control; where it occurs, the Department is obnoxious to such just animadversion

as the Lieutenant Governor has administered.

The judicial features of the matter are somewhat different & here more sessional Control might possibly be claimed - If Magistrates direct undue prosecution under these provisions or encourage the Police to bring up improper persons under these sections, Departmental Control is not perhaps so direct; but I cannot conceive that in this Presidency at least the Magistracy would otherwise than respect and advance the proper wishes of the Government to keep the exercise of these exceptional powers under the strictest limit. Here certainly we require no further legislation or increased sessional restrictions.

16/3/1878 [illegible]

Present matter be reported to the Judicial Secretary's section about Sessions' section & Pro-Cons &c

Jud Dept

Confidential letter from India
Home Dt. d/16-2-78.

This is called "Confidential" but here seems no good reason for it - and the subject is already discussed in "Pioneer" of 21st inst. article headed "Locking up system".

2. The law as to "suspects" is this.

S. 504 Cole - C.P.

(a) Vagrants may be locked up, in default of security for good behaviour, for six months - by the Dt. Mag or by any 1st class Mag - Besides the Dt. Mag, there may be in a Madras dist, some four or five 1st class Magistrates, viz - the ~~Joint~~ Joint Mag. the Head Asst. a "paid" Asst. a native Dt. ~~Deputy~~ Mag -

S. 505

(b) Reputed thieves & rogues may similarly be locked up for one year - by the same officers. If the 1st class Mag who sentences is not the Dt. Mag, an appeal lies to the Dt. Mag in both cases, (a) and (b) - but if the Dt. Mag sentences, there is no appeal -

The older law allowed an appeal to the Sessions Ct: but from the sentences

In any 1st class Magt. of the Dt. Magt. himself;
but now appeals from such decisions of 1st class Magts. lie to the Dt. Magt; and from his decision – up to one year's requisition for security – there is no appeal.

The argument for the change made was that it was necessary to strengthen the hands of the Dt. Magt, who alone is responsible to Govt. for the peace & good order of his distt. – Many other changes were made with the same object, under the strenuous advocacy of Sir George Campbell.

S. 506-7-8. (e) – Extra-ordinary suspects – If any Magt. thinks one year's security insufficient – he may call upon the party to furnish it for three years: but his decision is inoperative till confirmed by the Sessions Judge, who may modify or annul the order. From the Sessions Js order there is no appeal to the High Ct.

3. The Bengal Govt. wishes to restore the old law –

Submitted that a Dt. Magt and (with an appeal to him) a 1st class Magt may be trusted up to one years requisition, as at present.

A crotchety Dt. Judge like Nelson wd. release every vagrant committed by Price; and yet Price is immediately responsible for keeping down crime.

I may mention that the provisions of the Code for security for "keeping the peace" are exactly similar to Behaviour security – Up to 1 year, the Dt. Magts order is unappealable – If we alter one, we must alter the other; but without this we may leave both alone.

Chap XXXVII

The object of the law, as justly stated by Dr Eden, is to coerce criminals who wd. otherwise prey upon society – Because Bengal officials have worked it wrongly, is no reason to alter it – We dont work it harshly – I find, for the last 3 years reported on ('76) – that

155 persons were 'put up' for security
67 were released without proceedings.
87 were required to find sureties –

We have 21 districts, with an average pop. of 1½ millions: so that the percentage is infinitesimal.

We keep a good look out on over zealous Police & magistracy – other Govts may do the same, without altering the basis fundamentally a good law as it stands.

Note
I know here are some orders on the subject: but can't trace them at this moment. H. 1/3/8.

H. 25/2/8.

I think the statistics given by the Ch. Secy. are suff.t to show that the provisions of the law are not worked as the prevention of evil here & Ind.a only add to them, the number of persons confined in default of security.

I do not think be able any reason to say that the law needs altering.

87 repeated bad characters required to find security for good behaviour out of a pop.n of 31 millions is a suff.t proof of this.

The contrast in the Bengal is very marked. There the law has 3618 persons confined in default of security out of a pop.n of (I think) 66 millions.

I do not trust the marks in confid.t as the G. of B. law marked it.

[CONFIDENTIAL.]

No. 3/219

FROM

JAMES O'KINEALY, ESQ.,
Offg. Secretary to the Govt. of India.

To

THE SECRETARY TO THE GOVERNMENT OF
Madras.

Home Dept.
Judicial.

FORT WILLIAM, the 16 February 1878.

SIR,

WITH reference to the accompanying letter from the Government of Bengal No. 416, dated 23rd ultimo, recommending, for reasons specified, that in all cases in which persons are required to furnish security for good behaviour, there should be an appeal to the Sessions Judge and the High Court, and suggesting that in any future amendment of Act X. of 1872 (The Criminal Procedure Code) this point should be taken into consideration, I am directed to request that you will be good enough, with the permission of His Grace the Governor in Council to submit an early report as to the working of the Law in the Madras Presidency.

2. The Government of India are of opinion that the statistics appended to the letter from the Government of Bengal tend to show that, in the Lower Provinces at all events, the Law has been very greatly abused.

I have the honour to be,

SIR,

Your most obedient Servant,

J. O'Kinealy

Offg. Secretary to the Govt. of India.

Exd.—C. A. S.

Home Dept. Press—No. 104—13-2-78—40.

No. 416, dated Calcutta, the 23rd January 1878.

From—H. A. Cockerell, Esq., Offg. Secretary to the Government of Bengal, Judicial, Political and Appointment Departments.

To—The Offg. Secretary to the Government of India, Home Department.

Under Section 409 of the old Criminal Procedure Code, Act XXV. of 1861, any person required by the Magistrate of a District, or other officer "exercising the powers of a Magistrate," to give security for good behaviour might appeal to the Court of Session to which such Magistrate was subordinate. The law of appeal in these cases was, however, materially altered in the new Code of Criminal Procedure, Act X. of 1872. Under Section 267 of this Act any person required by a Magistrate of the first class to give security for good behaviour may appeal to the Magistrate of the District, but under Section 286 there is no appeal against an order of the Magistrate of the District in such cases. Many instances have come to the notice of the Lieutenant-Governor in which the powers conferred on District Magistrates under Chapter 38 of Act X. of 1872 have been greatly abused. A copy of a circular No. 56, dated the 22nd August 1877, addressed to all Commissioners of Divisions, as well as an extract (para. 20) from the Resolution recorded on the administration report of the Police Department for the year 1876 containing the remarks made by the Lieutenant-Governor on this subject, are herewith submitted for the information of the Government of India.

2. The Lieutenant-Governor considers that it is very necessary that in all cases in which persons are required to furnish security for good behaviour there should be an appeal to the Sessions Judge and the High Court as in other criminal cases. I am to suggest that in any future amendment of Act X. of 1872 this subject may be duly taken into consideration.

No. 56, dated Calcutta, the 22nd August 1877.

From—H. A. Cockerell, Esq., Officiating Secretary to the Government of Bengal, Judicial Department.

To—All Commissioners.

I am directed to request your attention to the state of things indicated by the figured statement annexed showing the cases of bad livelihood reported and those in which convictions have been had in the years 1872 to 1876.

2. There has, to the Lieutenant-Governor's mind, clearly been a great abuse of the power conferred on the police and Magistrates in respect to prosecutions for bad livelihood; for the intention of the law was certainly not that the police should be turned loose on the country to prosecute and harass every one against whom there was the slightest ground for suspecting that his character was not altogether unexceptionable.

3. In his Minute of 14th January 1876, which forms the introductory chapter of the report on the administration of Bengal for 1874-75, Sir Richard Temple pressed strongly upon the Magistrates and Police, and very properly, that it was their duty to watch the movements of bad characters, and to exercise efficient supervision of them in their villages, but to be very careful that the supervision was not to be "carried so far as to lead indirectly to oppression and do harm while aiming at good". It is to Mr. Eden quite inconceivable how this order can, as he understands that it is, be held to justify the oppressive proceedings which have certainly taken place in many districts in respect to the arrest of persons whom the police choose to say they suspect of being bad characters, and the demand from them of security, or failing it condemnation to imprisonment for a long term. The Lieutenant-Governor is of opinion that there is no greater indication of an inefficient and idle police and a careless and inconsiderate Magistracy than the

admission that crime cannot be checked without locking up, precisely as if they were convicted criminals, all persons of whom it is thought or said by their enemies or neighbours that they are persons who may possibly at some future time or another commit an offence. It is a mode of dealing with crime which would not be tolerated in any country except India. It is a power which it is perhaps necessary to keep in reserve here for the purpose of crushing out offences so peculiar to the country and so dangerous to society as gang-robbery, but it is a power to be used only in very exceptional and rare circumstances.

4. It is impossible to conceive a greater reproach to the police than this admission that they are so deficient in any detective ability that they can only keep crime from increasing by confining every person who it is thought is in any way capable under sufficient temptation to commit crime. No doubt Magistrates will point to tabular statements and show that crime has decreased since these extreme measures were adopted. But this is only true to a very limited and insignificant extent; and it would indeed be extraordinary if, were all the suspected persons and all those whose poverty exposes them to special temptation were locked up, crime were not to decrease. But how little real good is done by the indiscriminate prosecution of suspected persons is clear from the fact that while burglaries and dacoities were 23,698 in 1875, they have only been reduced to 21,793 in 1876, while the convictions and imprisonments on mere suspicion amounted to 3,618. It is quite possible, too, that this variation in crime between the two years is quite normal and unconnected with these proceedings.

5. In Dacca, where the number of persons imprisoned on suspicion had increased from 33 to 158, the burglaries increased; and though the dacoities decreased, it was obviously a very strong measure to institute 264 prosecutions and imprison 158 persons charged with no specific offence to procure such a result as a diminution of 10 dacoities.

6. In Shahabad the cases have risen from 74 in 1872 to 645 in 1876, and from 36 convictions to 502. The dacoities have remained exactly the same in 1876 as in the previous year, though there has been a falling off in burglaries. In Rungpur the prosecutions have risen from nine with eight convictions in 1872 to 250 with 177 convictions in 1876.

7. All the persons thus locked up for long terms of years will, it may be safely assumed, return from jail determined and hardened criminals, whatever their character may have been before.

8. The proper way to procure a decrease of crime and break up gangs of dacoits and burglars is to make detection and conviction a probable consequence of crime; but this involves a great deal of labour and some considerable intelligence and perseverance, and it is therefore not to be wondered at if the police prefer having all suspicious persons locked up in order that they may lead lives of idleness and quiet in their stations; and so long as they are encouraged to do this by the District Superintendents and Magistrates, it is not to be expected that they will act with any real vigour or put themselves to any inconvenience in watching the movements of suspected characters, and taking up and working out difficult clues in investigation entrusted to them.

9. The expense to Government of the present system of proceeding against suspected criminals is enormous. In Shahabad 502 persons have been convicted, and are now lodged in jail, and fed and clothed at the Government expense. This is the full ordinary population of a large district jail, and the idleness of the Shahabad police, and the inability of, their superiors to control them, throws upon Government the whole cost of supporting these men for terms varying from one year to two years, and of building new jails and increasing old once because the regular jails are overcrowded with men of this class. No less than 3,618 persons have been convicted under these sections this year in Bengal, and if to these are added the persons convicted in the previous year, most of whom are still in jail, it will be seen that Government has to keep up a population equal to that of four central jails, because the police are slovenly and incapable in the performance of their duties.

10. No officer who is at all acquainted with the character of Native police or with the peculiarities of Native village society can possibly have any doubt of the amount of oppression, alarm, extortion, intimidation, and wrong involved in 5,062 prosecutions of this sort in a single year.

11. I am to request that you will be good enough to obtain a list of all these convictions during the last 12 months, and to send for a certain number of cases, and see how the inquiries have been conducted. The Lieutenant-Governor will be glad to consider any recommendation you may desire to make on behalf

of persons who have been convicted under these sections of the Penal Code. Magistrates and police officers should be told plainly that the Lieutenant-Governor will not consider them deserving of promotion if they cannot manage to check and control crime without having indiscriminate recourse to a form of procedure which was intended to be exceptional, and special in its application. The Magistrates and District Superintendents of Shahabad, Dacca, Dinagepur, Rungpur, Monghyr, Manbhum and Burdwan should be especially warned of the dissatisfaction with which the Lieutenant-Governor has viewed their action in this matter.

Statement showing the number of convictions in each district for bad livelihood during the years 1872 to 1876.

Districts.	1872		1873		1874		1875		1876	
	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.
Burdwan	55	17	27	8	38	12	60	31	162	120
Bancoorah	53	41	55	41	19	12	42	32	43	31
Beerbhum	7	5	10	4	11	10	9	1	5	2
Midnapur	119	74	231	132	206	145	194	148	114	67
Hooghly	16	10	52	11	19	4	19	5	158	56
Howrah	23	11	14	9	13	15	9	9	11	9
Total ...	273	158	389	205	306	198	333	226	493	285
24-Pergunnahs	202	144	128	72	87	54	95	51	100	63
Nuddea	83	40	59	26	34	12	56	33	86	45
Jessore	347	229	88	53	75	35	200	158	201	124
Moorshedabad	53	12	64	37	64	21	100	35	195	144
Total ...	685	425	339	188	260	122	451	277	582	376
Dinagepur	71	39	15	19	10	5	92	54	363	220
Maldah	13	4	12	6	7	1	23	11	47	30
Rajshahye	43	32	34	15	25	19	45	27	63	48
Rungpur	9	8	143	120	137	131	243	197	250	177
Bogra	12	...	23	26	6	2	8	2	25	7
Pubna	62	44	35	20	60	41	67	46	90	63
Darjeeling	1	...	3	2	4	...	1	4	...	...
Jalpaiguri	...	...	5	14	15	12	32	62	51	46
Total ...	211	127	270	222	264	211	511	403	889	593
Dacca	45	9	72	29	149	50	117	33	264	158
Furreedpur	56	28	129	98	76	35	76	56	128	62
Backergunge...	128	47	371	220	88	46	87	35	137	60
Mymensingh	22	8	63	15	37	18	32	16	79	38
Tipperah	70	26	57	18	62	35	56	28	107	84
Total ...	321	118	692	380	412	184	368	168	715	392
Chittagong	31	14	26	16	36	24	27	14	19	10
Chittagong Hill Tracts	...	...	1	7	1	...	...	...	4	5
Noakhally	29	11	46	22	26	10	52	21	41	24
Total ...	60	25	73	45	63	34	79	35	64	39
Patna	147	104	109	91	40	38	120	96	154	149
Gya	146	109	241	179	145	101	70	30	217	137
Shahabad	74	36	51	16	58	39	183	89	645	502
Tirhoot	205	130	170	129	190	140	...	...	...	...
Mozufferpur	...	...	...	...	...	...	209	177	94	65
Durbhunga	...	...	...	...	...	...	153	82	119	97
Sarun	73	51	84	66	110	76	101	89	99	82
Chumparun	123	99	125	94	74	57	173	157	228	201
Total ...	768	529	780	573	626	451	1,009	720	1,556	1,230

Districts.	1872		1873		1874		1875		1876	
	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.	Cases reported.	Persons convicted.
Monghyr	93	64	64	44	140	106	159	136	244	209
Bhagulpur	125	71	48	42	22	17	6	3	10	8
Purneah	259	122	233	156	394	267	107	101	180	122
Sonthal Pergunnahs	34	54	18	12	5	4	43	57	66	113
Total ...	511	311	363	254	561	394	315	297	500	452
Cuttack	3	3	1	1	3	5	2	2	1	...
Pooree	1	1	1	1	3	2	7	5	1	...
Balasore	25	22	29	25	25	20	55	45	26	17
Gurjhar Mehals	...	...	...	...	...	...	...	...	...	...
Total ...	29	26	31	27	31	27	64	52	28	17
Hazaribagh	2	3	22	8	47	20	34	33	32	26
Lohardugga	7	5	1	...	6	4	1	1	2	2
Singbhum	3	7	...	...	1	1	...	...	4	7
Manbhum	17	15	47	27	34	21	368	268	197	199
Total ...	29	30	70	35	88	46	403	302	235	234
Grand Total ...	2,887	1,749	3,007	1,931	2,557	1,667	3,533	2,480	5,062	3,618

Extract from a Resolution on the Administration Report of the Police Department for the year 1876, dated Calcutta, the 26th December 1877.

PARA. 20. In treating of dacoities he (the Inspector General) attributes the decrease to the more systematic repressive measures which have been taken against bad characters, the chief among which is their incarceration in default of security for good conduct, and takes much credit for the action of the police in working these sections of the law. But in discussing the subject of petty crime, where he has to account for an increase of offences, he states that "the result of our police operations has been to drive the perpetrators of serious crimes, committed at intervals and on the property of the well-to-do, to take to petty thefts and burglaries committed constantly, and on the rich and poor indiscriminately"; and he elsewhere remarks with much justice that the people probably "prefer taking the chance of a dacoity or two happening at intervals in their villages to being systematically plundered of small sums or property of small value by old dacoits converted into local petty thieves". It appears then that, although 3,618 bad characters were locked up last year in pursuit of the object of exterminating dacoity, a very large number of dacoits are still at large, of whom some committed the 137 dacoities which occurred during the year, and the others, prevented by the vigilance of the police from committing crime in numbers of five and upwards, have taken to solitary burglaries and thefts. With apparent inconsistence the decrease in the number of burglaries in Dinagepur is attributed to the working of the vagrancy sections of the law by the Magistrate of that district. Enquiries have convinced the Lieutenant-Governor that the law has been grossly abused in that district, and a review of the cases by the Commissioner showed that the bulk of the convictions were not warranted by the evidence. Mr. Monro remarks that if we stop here, we leave half our work undone, and he advocates measures of repression which will largely diminish petty, as they have largely diminished serious, crime. In other words having, by locking up for various terms or requiring security from 7,765 persons in three years, succeeded in reducing the number of offences against property from 64,808 in 1873 to 61,112 in 1876, we are to go on until we have locked up the offenders in the great majority of the latter. This is a sufficiently appalling prospect, and, apart altogether from the question of accommodation for the vast multitude of suspects whom it proposes to imprison, the Lieutenant-Governor is quite unable to understand how any one with the results of the last year's police action before him could support such a scheme. It is not clear how it happens that while the police by mere force of supervision have been able to deter large numbers of criminals from associating in gangs of five, and thus committing dacoity, their success stops abruptly at this point, and they are powerless either to prevent criminals from committing burglaries alone, or in twos or threes, or to lay their hands on those over whom they are said to keep so strict a watch. The evil is probably greater, and the result more demoralizing to the lower classes, than the continuance of dacoity. Mr. Eden does not in the least doubt that the efforts of the police in watching the movements of bad characters were productive of much good during the year, and that they prevented the commission of much organized crime. But he believes that such efforts properly guided would have sufficed for the whole object which has been attained, without the aid of wholesale locking up of suspects; and further, that legitimate supervision of bad characters and the utilization of the knowledge thus acquired of their habits and movements should and must suffice for the prevention and detection of petty as of serious offences against property. The extent of the injustice and oppression which has been occasioned by prosecutions for bad livelihood is apparent on the face of the returns. Of 4,861 persons who were actually tried for bad livelihood during the past year, no less than 1,243, or more than 25 per cent., were acquitted. These are very different from acquittals for specific offences. It may often happen that an innocent man is sent up for trial for a specific offence by a perfectly honest investigating officer. But where the charge is one of general bad livelihood, depending chiefly on the repute in which a man is held by his neighbours, an ordinarily careful police officer can rarely be deceived. But this is not all. It appears that the number of cases, cognizable dishonest crime, serious and petty, was 938 less in 1876 than in 1875, and Mr. Eden is willing to admit that this may possibly be to some extent the result of the imprisonment of 1,138 more persons on suspicion in the former than in the latter year, though even this is very doubtful. In some districts, however, such as Monghyr, a positive increase in burglaries has followed on the imprisonment of a large number of suspects. After allowance is made for the fact that the proportion of convictions to detected cases shows that on the average three persons are concerned in every two cases, it is still quite evident that a large number of persons confined for bad livelihood during the year would, according to the police statistics, not have been concerned in a single offence had they been left

at large. The essence of the offence supposed to be proved against bad characters is that they are habitual criminals; whereas it is only by supposing that the great majority would only have committed one offence each that all those convicted are shown to have been rightly punished. Mr. Eden fears that very many of the persons convicted were really innocent, and an examination of some cases which have come before him quite confirms him in the belief that a vast amount of bitter wrong and oppression has been wrought upon the people. Apart, moreover, from the grievous injustice done to the innocent, this wholesale system of prosecutions must defeat its own object in the future. Nothing more certainly leads to the formation of organized bodies of marauders than the congregation of bad characters for comparatively short periods. The really guilty are thrown together and have ample time for maturing future schemes, while those who have been wrongly convicted, knowing the stigma which will always attach to them, and surrounded by evil influence in jail, will, in the majority of cases, return to society hardened criminals. Any man once in jail is, without much analysis of the nature of the crime for which he was confined, entered in the police records and known in his village as a "dagi" or marked man. He is for the rest of his life subject to the persecution of unscrupulous police subordinates and to denunciation by any of his neighbours with whom he happens to quarrel. Nothing could express more clearly the Lieutenant-Governor's view of the manner in which these investigations are conducted than the following description in the Inspector General's own words: "The consequence is that, in the majority of cases of bad character sent up, the police do not send up the names of the respectable inhabitants, but summons the chowkeedar and two or three cultivators to testify against the accused", and yet the Inspector General considers it a matter for congratulation that during the year 1876 no less than 5,154 persons were sent up for trial under such circumstances, that 3,618 of them were thrown into jail, and 1,243 persons were dragged away from their houses, and after judicial inquiry declared not to be the bad characters they were charged to be by the police. Mr. Eden finds in the bare figures of the present report abundant proof that a lamentable amount of suffering and wrong has been caused; and, looking to the vast number of false cases of different kinds instituted all over Bengal, he is determined that this fearful engine of oppression shall not be left uncontrolled in the hands of the police, but shall only be used under most effectual safeguards. All enquiries of this nature should be most full and searching, and should, as a rule, be held by the Magistrate in the village of the accused. Mr. Eden will leave it to the judicial officers to satisfy themselves most fully on the spot, not that the accused is a person who may possibly, if left at large, commit some offence, or that he is a person who has some time of his life been in jail on some charge or other, but that he is really a criminal who supports himself by preying upon society.

? he is always where he argue is offence except. some villages are nests of depredators. h

Exd.—D. N. M.

Home Dept. Press—No. 104—15-2-78—145.

Fin^L DEPARTMENT.

No. 493.

To

The Secretary to the Government
of India,
Home DEPARTMENT.

Sir,

I am directed to reply to your letter No $\frac{3}{219}$ of 16th July ult^o. That letter is headed "Confidential" and this comm^n will be so marked also: but I am to point out that before the letter reached this Gov^t, the enclosure had been discussed in the "Pioneer" of 21st idem, in an article entitled "The Lashing up system".

2. The Gov^t of India inquire how the law regarding requisitions of Security for Good Behaviour is worked in this Presid^y. The statistics for the last two years in respect of which the Returns are completed show that, taking the 21 Madras districts, on the average some 3 or 4 persons are annually required to find this form of Security in each district, the average population of Madras district being a million & a half.

3. The Minutes recorded by this Gov^t to Members of Council are enclosed. It will be seen that any change in the present law is deprecated.

D.S.

7-3-8

+ Sir W. Robinson minute with the Govt.

+ 3 Minutes to follow 12/6

Prop. to ex this L. & Minutes 12/6

Gov Prop of Minutes

X

Year	No. of persons proceeded against	No. of persons convicted
1875	71	42
1876	155	87.

The Govt. Minute returned, for a [illegible] of some [illegible]

Fin. Dept. 5-4-80.
8 March 78.

187 DEPARTMENT.

No.

To

The Secretary to the
Government of
Department.

Dated 187 .

Regr. No.

HOME 1879 DEPT.

[ ]

From the Government of Fort St. George.

Dated 24th May 1879.	*No.*
Issued	*Enclosures*
Recd.	*Spare copies*

D. No.	**Progs.**
L. No. 1221.	**No.**

Kazi.—Offering remarks on the proposed Bill for the registration of Mahomedan marriages and divorces; and suggesting the expediency and propriety of re-establishing the office of Kazi by Government nomination for the purpose of marriages and divorces.

CONFIDENTIAL.

JUDICIAL DEPARTMENT.

Kazi.

No. 1221.

FROM

C. G. MASTER, ESQ.,

Acting Chief Secretary to the Government of Fort St. George,

TO

THE SECRETARY TO THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

SIR,

With reference to the correspondence noted in the margin, relative to the registration of Mahomedan marriages and divorces, I am directed by His Grace the Governor in Council to offer the following remarks on the proposed Bill, since passed as Bengal Act I of 1876, copy of which was received with letter from the Government of Bengal, dated 15th December 1876, No. 3995, Judicial Department.

Letter from the Government of India, dated 2nd February 1876, No. 182, and the correspondence quoted therein.
To Government of India, dated 4th May 1877, No. 1124.
Endorsement of Government of India, Home Department, Judicial (communicating Despatch from Secretary of State), 19th September 1877, No. 1429.

2. After most careful consideration of the whole question, His Grace in Council is of opinion that this Bill fails to remove the evils which the virtual abolition of the office of Kazi has created, and that it is calculated to give rise to other evils from the nature of appeal provided therein. For instance, it seems highly inexpedient to this Government that, in lieu of the presence of a recognized officer at a marriage or divorce, with power to prescribe the forms and ceremonial necessary to make it valid, and whose decision is final and record conclusive, the Bill should provide for the substitution of a machinery of registration by an officer whose decision as to registry is not final, and whose registry is not conclusive; and also, that it should make this latter officer, though chosen for his knowledge of customs and laws, subject to an appeal to an officer whose qualifications will invariably be in no way judicial, and who will in most cases be a European or Hindu. And in regard to such an appellate tribunal, I am to remark that it must necessarily be unsatisfactory to the Mahomedan community, as it will be no fit authority to determine the many intricate questions which must arise in connexion with the nature of its duties. It is, moreover, observed that the Bill, suggested as a palliation, is not satisfactory to the Mahomedans, who desire that it should be compulsory; and I am to remark that to be compulsory, it must be penal; and that yet being compulsory, and so rendered by heavy penalties, it will still be of no real value, inasmuch as it will fail to prove the validity of the ceremonial it records.

3. Under these circumstances, the Government, in order to avoid any interference with the customs and manners of Mahomedans, would suggest the expediency and propriety of re-establishing the office of Kazi by Government nomination for the purpose of marriages and divorces. The office, as is well known, was not abolished because its holders were unfit, or because the discharge of the duties were in any way prejudicial to the State, but ceased to exist merely from the circumstance that by Mahomedan Law it needed the confirmation of the sovereign power, viz., that power of confirming or appointing, which was formerly vested in the Governor in Council, and which has been repealed without any substituted provision.

4. I am accordingly instructed to recommend very strongly the restoration of the power by an enactment (a suggested sketch is enclosed), to provide for a sufficient number of persons to discharge the duties appertaining to the office, and thus to give the Mahomedan community the most complete remedy for the wrongs of the past. The suggested measure will, it is believed, effect this without any expense to the State, or any meddling by the State with religious rites or customs. The enactment, it is thought, can only with propriety be one generally applicable to India.

5. In conclusion, I am directed to recall attention to the remarks of His Excellency the Governor-General in Council, as conveyed in the confidential circular of the Home Department, dated 23rd December 1870, No. 2223-31, and in which remarks His Grace's Government most fully concur. It is there stated that the present state of things may be regarded as a grievance by the Mahomedan community, inasmuch as the State declines to discharge a function with which, according to the Mahomedan Law, it is invested, though to do so will cost nothing to the State, and would be a considerable convenience to the Mahomedans; and that by withholding from them a benefit which the Government might confer on them without in any way injuring other classes of the community, it throws away a legitimate means of influence, and possibly affords some sort of color to disaffected classes of Mahomedans that the British Government is hostile to their religion.

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

OOTACAMUND,
24th May 1879.

Acting Chief Secretary.

Regr. No.

HOME 1879 DEPT.

[ ]

From the Government of Fort St. George.

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Kazi.—Offering remarks on the proposed Bill for the registration of Mahomedan marriages and divorces; and suggesting the expediency and propriety of re-establishing the office of Kazi by Government nomination for the purpose of marriages and divorces.

Govt. of {1879} Madras.

JUDICIAL.

To

THE LEGISLATIVE DEPARTMENT,

&c., &c., &c.

Dated May, 24th.

Issued

Recd. *Encl.*

G.O., 24th May 1879, *No.* 1220.

MAY.

Nos. 261—265.

Kazi.—Recommendation made to Government of India and Secretary of State that a Bill be brought in for all India permitting each local Government to license a sufficient number of persons to be Kazis for the purposes of marriage and divorce among the Mahomedan community.

A Bill for continuing the Office of Kazi among the Mahomedans.

Preamble.

WHEREAS the office of Kazi has always been found requisite in the provinces of India for the purpose of preparing and attesting deeds of transfer and other legal documents relating to the celebration of marriages under the former Native Governments; and whereas the want of such duly appointed Kazis has caused, and is causing, serious prejudice to the well being of the Mahomedan community; It is hereby enacted as follows:—

Government to license persons selected by the Mahomedan community for the office of Kazi.

1. It shall be lawful for the Governor in Council, from time to time, to issue his license to such fit and proper persons as shall be selected by the Mahomedan community concerned to discharge the office of Kazi in all matters connected with marriage and divorce as completely as at any time heretofore.

If Mahomedan community fail to select, Government may appoint after three months' notice.

2. If the Mahomedan community concerned shall at any time fail to agree upon any fit and proper person to fill the position and discharge the duties of Kazi in any particular town or place, the Governor in Council may, after three months' notice of his intention to do so, issue his license to such person of the Mahomedan persuasion as he shall deem qualified to discharge the office, and who shall have signified his willingness to act in such office or position.

License to continue until revoked.

3. All such licenses issued by the Governor in Council as aforesaid shall continue and be in force until revoked by him.

3. If, as I believe my colleagues agree in this general view, and that the fairest course to the Mahomedan population, the simplest for the State, and the one likely to involve the least possible interference with matters of their customs and usages, will be to restore the office of Kazi. I would suggest that the Government of India and Secretary of State be addressed with reference to former communication, pointing out that the measure suggested as a palliation is not satisfactory to the Mahomedans, who desire it should be compulsory; that to be compulsory, it must be penal; and that yet being compulsory and so rendered by heavy penalties, it will be of no real value as proving the validity of the ceremonial it records.

4. That the appeal necessarily provided from the proposed registering officer to Registrars will necessarily bring before such Government officers for decision, these officers being European or Hindu, all the intricate questions which may arise in connection with Mahomedan marriage and divorce; that such an appellate tribunal cannot long be satisfactory to Mahomedans themselves.

5. That the office was not abolished because its holders were unfit or the discharge of the duties in any way prejudicial to the state; that it has been abolished by the circumstance that it needs the confirmation of the sovereign power according to the ruling of our own Courts; and that the power formerly left to the Governor in Council of confirming or appointing has been repealed without any substituted provision.

6. That the Government after full deliberation are unanimously of opinion that the office of Kazi, so far as appertains to matters of marriage and divorce, should be continued; and that, therefore, they may be permitted to enact a Bill for the purpose of enabling them to confirm the nomination of a sufficient number of persons to discharge the office; and they further state that such a measure will leave the Government far more free from any questions connected with these ceremonials than a measure which will bring intricate questions before Government officers ill-qualified to decide them, and which require the Governor in Council, from time to time, to make regulations as to the attendance of officers at Mahomedan marriage and divorce, and remuneration to be given, &c.

7. An admitted and crying evil has been wrought, and is daily increasing by the past indirect legislation, and it is due to the Mahomedan community to give the most complete remedy. The suggested measure will effect it without any expense to the State, or any meddling by the State with religious rites or customs.

8. Such is the outline of letter I would suggest; and I annex the outline of the measure I would propose to submit.

(Signed) BUCKINGHAM AND CHANDOS.

31st December 1877.

MINUTE by the Hon. W. HUDLESTON.

I am decidedly in favor of His Grace's suggestion to urge on the Government of India the expediency and propriety of re-establishing the office of Kazi by Government nomination for the purpose of marriage and divorce; and I think His Grace's sketch Bill is calculated to provide what is necessary, only that I think such a measure cannot possibly be one for a single Presidency, and must be for all India.

2. As regards the suggested mode of laying the question before Government, I observe that the Bill for compulsory registration, as printed in the draft Proceedings of Government, does contain a penalty for *non*-registration; but this appears to be a subsequent addition to the manuscript draft, on which I imagine our previous remarks must have been passed to the effect that there was no real compulsion.

Note by the Hon. Sir W. Robinson, K.C.S.I.

It is not very distinct that all must take out registration certificate before marriage or divorce.

3. The draft, too, is one prepared under instructions of Government, and not submitted or proposed to us from any other quarter; and the objections which have suggested themselves to His Grace can scarcely be urged in the manner suggested, although it may properly be set forth that the leading members of our Mahomedan community, to whom the Bengal Act was referred for opinion, consider that *compulsory* registration is essential to render the measure of any value; while compulsion at once raises certain objections to the details of the Bengal Act which, moreover, this Government are given to understand has been practically inoperative.

4. All the provisions for linking the marriage, &c., registration system with that of the department for registering documents, though existing in the Bengal Act, are in no way in accordance with any provision of law for registering marriages other than those of Mahomedans.

5. I do not, however, feel sure that the appeal against refusal to register would necessarily raise the intricate questions anticipated by His Grace, as the Bill and the Bengal Act only require the Registrar to ascertain the fact of the marriage or divorce having taken place, and the identity of the parties; but unquestionably the provision opens up the question as to the *validity* of the ceremonial; for a Registrar might conscientiously hold that the evidence adduced does not establish the fact of a valid marriage or divorce having been performed, and refuse, therefore, to register, and although the District Registrar or Inspector-General of Registration might on appeal disallow the ground of refusal as being *ultra vires*, he might, on the other hand, admit them.

6. In any case, complications are likely to occur; and the re-establishment of the office of Kazi by the State seems the only effective remedy. I don't think that the limitation of the Kazi's powers to the purposes of marriage and divorce will really restrict them within what Mahomedan law recognizes us the powers of a Kazi appointed by the State; but I don't attach much weight to the consideration.

3rd January 1878. (Signed) W. HUDLESTON.

No. 263. ORDER THEREON, 24th May 1879, No. 1220.

Having very carefully reconsidered the whole question connected with the virtual abolition of the office of Kazi, the grave evils entailed thereby on the Mahomedan community, and the palliative measure suggested of bringing in a Bill for the registration of Mahomedan marriages and divorces, His Grace the Governor in Council is convinced, after full deliberation, that the continuance of the office of Kazi is the only practical solution of the difficulty which will meet the just needs of this large section of Her Majesty's Subjects; and he accordingly resolves that the Government of India and the Secretary of State be addressed, pointing out that the measure suggested is not satisfactory to the Mahomedans, and recommending that a Bill be brought in for all India on the lines of the sketch annexed, permitting each local Government to license a sufficient number of persons to be Kazis for the purposes of marriage and divorce among the Mahomedan community.

(True Extract.)

Acting Chief Secretary.

To the Legislative Department.
" Advocate-General.

a renewed and strong representation to the Government of India and Secretary of State as to the unfairness to a great body of Her Majesty's Subjects of the refusal to appoint Kazis by the only authority that can appoint them, and pray that Act XI of 1864 may be considered as repealed to all intents and purposes, so as to allow of the appointment being made by Government.

(Signed) W. HUDLESTON.

MINUTE by His Grace the GOVERNOR.

I have carefully read these papers.

2. I am convinced that the fairest course to the Mahomedan community, the simplest course for the State, and the course which will keep the State most free from being in any way mixed up with any questions of religious rites or usages, is to simply enact a law authorizing Government to appoint persons to act as Kazis in matters connected with marriage and divorce amongst the Mahomedan community.

3. By a side wind, the appointment of Kazi,—an office necessary to the validity of marriage and divorce according to Mussulman custom,—has been put an end to, not because it was alleged that the office was useless or the holders bad, but simply because it is an appointment requiring to be made by the sovereign power and from some sentimental idea that nominating a Mahomedan official was a participating in, or interfering with, some religious rites, the authority to appoint has been annulled.

4. Admitted crying evils have arisen, and it is suggested that a Bill establishing a registrative machinery by which one who wishes to do so may voluntarily on payment of fees register his marriage or divorce, may be passed; it being carefully provided, however, that such registration shall give no validity, nor its absence in any way invalidate any marriage or divorce.

Note by the Hon. W. HUDLESTON.

I would point out to His Grace that the printed Bill in draft Proceedings provides a penalty for non-registration.

(Signed) W. HUDLESTON.

MINUTE by His Grace the GOVERNOR.

After giving my best attention to this subject, I am forced to the conclusion that the proposed Bill may palliate, but will not remove the evils which the virtual abolition of the office of Kazi has brought about, that it will in time give rise to other evils by means of the nature of the appeal provided therein.

2. In lieu of a recognized officer present at the marriage or divorce, with power to prescribe the forms and ceremonial necessary to make it valid, and whose decision is final and record conclusive, the Bill will substitute a machinery of registration by an officer whose decision, even as to registry, is not final, and whose registry will not be conclusive. Himself chosen for his knowledge of Mahomedan customs and laws, he is to be subject to an appeal to an officer whose qualifications, unless accidentally, will be in no way judicial, frequently of inferior ability, who will in most cases be a European or an Hindu, who will yet have to decide on the delicate and intricate questions arising in connection with Mahomedan marriage and divorce.

No. 262. MINUTE by His Grace the GOVERNOR.

Reading these papers I fail to see the objection to maintaining the old office of Kazi.

2. The proposed draft is nominally compulsory, but not really so; for what is the compulsion? A marriage is not to be validated by entry nor invalidated by non-entry. There are probably good reasons for the non-restoration, but I have not detected them, and the simple maintenance of the Kazi office would seem to deal with every thing except the obligation to forward copy register to Inspector-General of Registration.

17th June 1877. (Signed) BUCKINGHAM AND CHANDOS.

MINUTE by the Hon. Sir W. ROBINSON, K.C.S.I.

His Grace's note goes to the root of the thing, and the Bill as it stands is not, as he points out, compulsory in any sense. It further seems to me defective in a primary element of successful working. The framer's idea no doubt is, that every Kazi, who alone, I believe, is legally empowered to perform marriages himself, or by deputy, will take out a license as Registrar; but the Kaziship has been virtually abolished, or is rapidly ceasing to be as the old nominees by Government die out, and there is no lawful means of replacing them. The certificate of registration will not create a legal function to celebrate marriages in any person, and it may be doubted whether any Mahomedan marriage is really legal if a religious function is necessary to validity. How this is I am not sure, but clearly the creation of registration will comfort no existing or rising difficulty on this score. I scarcely see how an enactment of this kind is to work. His Grace assures us that the voluntary act does not work in Bengal, and probably the cause is not to be found in the absence of the compulsory principle so much as in the absence of a still more vital principle.

2. I am quite prepared again to urge a reconsideration of the English sectarian policy of late years in those quasi-religious matters; for I believe that great injustice has been done to the people by it during the past forty years. Property has been imperilled by the way we have withdrawn from the protection of trusts devoted to the public religious purposes of the people; and, as in this case, the dearest social needs of some of our Subjects have been cruelly traversed.

3. The attempt, I confess, seems somewhat hopeless in the present temper of authority, both in the Government of India and at Home; but I would thankfully join a last attempt to obtain justice in the matter.

4. In the mean time, I would suggest that Mr. Scharlieb be requested to draw up a careful precis of the law and correspondence on the Kazi question for the information of His Grace and Council with a view thereto.

20th June 1877. (Signed) W. ROBINSON.

MINUTE by the Hon. W. HUDLESTON.

The Bill is clearly not calculated to make registration of Mahomedan marriages and divorces compulsory, inasmuch as it expressly declares that registration or non-registration adds or detracts nothing as to the validity of the marriage or divorce, and it provides no other penalty (except fine for neglect.)

As printed in the draft Proceedings; but this seems to be a subsequent addition to the manuscript draft.

2. It is, therefore, not likely to be more effective than the Bengal Act, but still I would introduce the Bill, and allow it to be published; and meanwhile I would make

Original

CONFIDENTIAL.

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

24th May 1879, No. 1220.

Kazi.

Read again the following Proceedings of Government in this Department, dated 4th May 1877, No. 1123.

Read also the following papers:—

No. 261. *Despatch from the Right Honorable the Secretary of State for India.*

Judicial,
No. 28.

INDIA OFFICE, LONDON,
9th August 1877.

MY LORD,—The despatch of your Excellency in Council, dated 25th June, No. 27 of 1877, on the subject of the registration of Mahomedan marriages and divorces, has been considered by me in Council.

2. The Government of Madras has resolved to bring into its local legislature a Bill in terms similar to those of Bengal Act I of 1876; but the Bombay Government does not consider it advisable to resort to legislation at present on account of the widely different opinions entertained on the subject by the leading Mahomedans in that Presidency.

3. Under these circumstances, I do not think it would be right to press the subject further on the Government of Bombay. It is probable that if a real evil exists, and legislation in Bengal and Madras supplies an efficient remedy, the Mahomedan community in Bombay will, at no distant period, apply of its own accord for similar protection to that enjoyed by their brethren in the other Presidencies.

I have, &c.,
(Signed) SALISBURY.

To His Excellency the Right Honorable
The Governor-General of India in Council.

No. 1429.

Copy forwarded to the Government of Madras, with reference to their letter, No. 1124, dated 4th May 1877.

(By order,)

HOME DEPARTMENT, JUDICIAL,
SIMLA, *19th September* 1877.

(Signed) L. NEILL,
Offg. Under Secy. to the Govt. of India.