Sectt. II-27—45,00 —1-11-35.

Judicial (~~193~~ 1873) Department.

M S. SERIES.

Letter ~~G.O.~~ No. 830

DATED 24. 5. 73

Confidential

[Despatch Abstract.]

Whipping - Jails - Views of Madras Government - Replied to Government of India

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Proceedings of the Madras Government, Judicial Department,
24th May 1873.

CONFIDENTIAL.

Read the following papers:—

No. 147. From C. G. MASTER, Esq., Acting District Magistrate of Ganjam, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Chetterpore, 28th April 1873, No. 824.

In reply to G. O., 14th April 1873, No. 580, Judicial Department, I have the honour to report that the change in procedure has not been generally perceived or ordinarily observed by the Magistracy in this district, and hence no inconvenience has been felt by this modification of the procedure under the old Whipping Act.

2. There can be no question, however, about the very great inconvenience which will ensue if the directions in the last clause of Section 302, Act X. of 1872, are literally followed. The Magistrates who are authorized to inflict this punishment live, in many cases, at places* remote from the District Jail, and it is obvious that practically sentences of whipping will not be passed if the punishment can only be inflicted after a lengthy journey.

* Places.	Miles from District Jail.
Chicacole	115
Russelkondah	50
Baligudah...	110
Udayagiri...	75
Aska...	24
Surada	40
Kimidi	99
Narasanapetta...	103

3. I have further to point out that literal observance of the same clause would bring every prisoner in the district to the District Jail, whereas the Government are aware that sub-jails are provided for the accommodation of prisoners sentenced to a month or under. There is also a Hill Jail at Russelkondah especially for convicts of the Khond and Sourah tribes, which cannot be considered the District Jail.

4. The wording of the clause under review differs in no respect from that of the corresponding clause in Section 384 of the old Code of Criminal Procedure; and if the word "District" does not include taluq or other sub-division, the great majority of warrants issued under this section must, as observed by Mr. Nelson in his commentary, have been illegal.

5. Magistrates have in this District been supplied with triangles under the sanction of the High Court since the new code came into operation. This radical change seems, therefore, to have escaped the notice of most. If the punishment of whipping is to be of real practical utility, it is requisite that the offences described in Sections 2 and 3, Act VI. of 1864, should be capable of summary disposal under that Act.

No. 148. From J. R. DANIEL, Esq., Acting Collector of Vizagapatam, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Vizagapatam, 14th May 1873.

I have the honour to report upon the Order of Government, No. 580, dated 14th April 1873, regarding the execution of sentences of whipping.

2. The change in the procedure introduced by Section 302 of the new Procedure Code has entirely escaped the observation of all the Magistrates in this

district; all the sentences of whipping passed since the introduction of the new Act have been executed in the same way as before, that is, the accused is taken before the nearest medical officer; and in no case where whipping has been the only punishment has the prisoner been sent to the District Jail.

3. In this district the observance of this new provision would cause the greatest inconvenience. Few Magistrates would sentence a man to whipping if he must be brought down to the District Jail for execution. This district is the most extensive in the Presidency; a great part consists of wild hill tracts, and the distance is enormous; the journey to the District Jail would be a greater punishment, in many cases, than the whipping itself.

4. If this provision continues to be law, the Whipping Act will rarely, if ever, be used in the district.

No. 149. From W. S. FOSTER, Esq., Magistrate of the Godavery District, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Cocanada, 22nd April 1873.

I have the honour to acknowledge the receipt of the Order of Government, No. 580, dated 14th April 1873, Judicial Department.

2. I have not felt any inconvenience myself from having to send prisoners sentenced to whipping to the District Jail, because I have not sentenced any one to whipping only. I will report further on this matter when I receive replies from the other Magistrates.

3. I must say that I had overlooked the change in procedure, and the proceedings in question made me read the section more carefully, and I write at once to mention that it seems clear to me that if the "Jail of the District" mentioned in the section means only the jail that goes by the name of the "District Jail," even imprisonment in a subsidiary jail is illegal. In cases tried by a Magistrate, the court shall forward the accused person to the officer in charge of the Jail of the District. I shall not alter the present practice of confining short-sentenced prisoners in subsidiary jails until I hear from you. The change would cause a great deal of trouble, especially in the case of prisoners whose sentences expire when they are on their way to the jail.

No. 150. From W. S. FOSTER, Esq., Magistrate of the Godavery District, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Cocanada, 13th May 1873, No. 174.

With reference to the Order of Government, No. 580, dated 14th April 1873, I have the honour to inform you that the change in procedure has not generally been observed by the Magistrates.

2. There will certainly be inconvenience in carrying out the provisions of the law, if the "Jail of the District" only refers to the chief jail in the district; for as prisoners would have to be taken 40 or 50 miles to be flogged, it would be a perceptible enhancement of punishment.

3. If this is the right interpretation of the section, then I do not think that confinement in subsidiary jails, of prisoners sentenced to imprisonment, is legal.

No. 151. From G. D. LEMAN, Esq., Acting Magistrate of Kistna District, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Masulipatam, 8th May 1873.

I have the honour to reply to Proceedings of the Madras Government, dated 14th April 1873, that none of the Magistrates of this district who have passed sentences of whipping have noticed that the procedure under the old Whipping Act was altered by Section 302 of Act X. of 1872. Such change will, without doubt, cause great inconvenience. The nearest Sub-Magistrate's station to Guntoor is Bezwada, distant 20 miles; the farthest Tummerikota, 80 miles. I do not think the change was in any way necessary, and it would seem to have been caused by an oversight. The only reason that I can fancy for sending prisoners so far is to secure the attendance of a medical man, but that attendance can be dispensed with under Section 311.

2. The new procedure does away with one of the chief advantages that did attach to a sentence of whipping, that it was summary and inflicted on the spot; it was a warning to other evil doers.

3. There is no provision for payment of batta to the man whipped, who, I suppose, will be turned out of the jail guard as soon as his punishment is over, to find his way home as best he can.

4. I would call the attention of the Government to the fact, not only whipping, but all sentences are to be enforced in the District Jail by Section 302 of this Act; and hence it seems that the use of sub-jails for the reception of persons sentenced to less than one month's imprisonment by a Magistrate is no longer legal. It is utterly impossible to find room in the District Jail here for one-twelfth of the petty offenders convicted by the various Magistrates.

5. The whole of the last paragraph in Section 302 requires re-writing to suit this district.

No. 152. From J. G. HORSFALL, Esq., Acting Magistrate of Nellore, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Nellore, 30th April 1873.

I have the honour to report, with reference to Proceedings of the Madras Government, Judicial Department, dated 14th April 1873, No. 580, that no inconvenience has arisen in this district from the procedure laid down as to whipping under Section 302, Act X. of 1872, simply because the change introduced has not been observed or acted upon by the Magistrates.

2. Section 302 directs that, if the accused person is sentenced to transportation, imprisonment, or whipping, the court shall forthwith forward him with a warrant for the execution of the sentence to the officer in charge of the Jail of the District; and Section 311 directs that the punishment of whipping shall be inflicted in the presence of a Magistrate; and also, unless the court which passed the sentence otherwise orders, in the presence of a medical officer. If Sections 302 and 311 are taken jointly and not separately, we have three officials necessary for the due execution of a sentence of whipping. The officer in charge of the jail, a Magistrate, and a Medical Officer. It is possible that one individual may combine these

qualifications in his own person, but this will rarely be the case; and such, from the wording of the code, could never have been the intention of the Legislature.

3. I am inclined to think that the provisions of Section 302 are intended, in cases of whipping, to apply to the Court of Session only, and those of Section 311 to the Magistrates. This tallies with the practice heretofore followed.

4. Should the wording of the code as it stands not admit of this interpretation, I have no hesitation in recommending its early amendment. The procedure is especially open to objection in respect to juvenile offenders, who ought not to be sent long distances in custody of the Police to receive merely a few stripes with a rattan. The Magistrates will never inflict whipping under such circumstances.

No. 153. From W. D. HORSLEY, Esq., Magistrate of Cuddapah, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Camp Raichoti, 14th May 1873.

I have the honour to report confidentially on the subject of Proceedings of Government, Judicial Department, dated 14th April 1873. The procedure in Section 302, Act X. of 1872, has not been generally noticed by Magistrates in this District. Two only have actually observed the change in the procedure.

2. I have no hesitation in saying that so long as Section 302 continues to be law, persons sentenced to be whipped only, and the Police in escorting such persons to the District Jail, will be put to the very greatest inconvenience. There are three Magistrates in the sub-division of this district empowered to inflict lashes, and their courts are at a distance of 80 miles from the District Jail. The Police force is already numerically weak in this district, and this additional escort duty will bear heavily on them. The sentenced persons will be unnecessarily detained in custody, and will be put to a great deal of needless vexation and trouble. The effect of the procedure as it now stands will be to cause Magistrates to avoid whipping, unless they can add imprisonment to the sentence. The moral effect of a whipping in a locality where the offender is known is often greater than the bodily pain it actually inflicts. This good effect will be quite lost if the sentence is executed according to the new procedure.

No. 154. From J. H. MASTER, Esq., District Magistrate of Bellary, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Ramandroog, 21st April 1873.

I have the honour to acknowledge the Proceedings of Government, (Confidential,) No. 580, dated the 14th instant.

2. The change in procedure enjoined by Section 302 of Act X. of 1872 (last clause), has, I regret to say, not been perceived, and it has therefore not been ordinarily observed by Magistrates in this district.

3. The Government will, however, doubtless have observed that immense inconvenience must result if the execution of every sentence of whipping is to be carried out in "the Jail of the District." For instance, if the Head Assistant Magistrate of this district, who resides at Pennakonda, were to pass a sentence of whipping, and perhaps of whipping only, the prisoner would have to be forwarded 100 miles by road to the District Jail.

4. The Police throughout the district receive regular lessons in flogging, and a Magistrate ought to have the power of carrying out a sentence of whipping on the spot.

5. I beg to suggest that the law be altered so as to permit this.

No. 155. From J. HOPE, Esq., Acting Magistrate of Kurnool, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Kurnool, 9th May 1873, No. 152.

With reference to Government Order of 14th ultimo, No. 580, I have the honour to report that prior to its receipt the new provision of law by which accused persons sentenced to whipping must be forwarded with a warrant for the execution of the sentence to the officer in charge of the Jail of the District had been entirely overlooked, and was not observed by such of the Magistrates as have passed sentences of whipping.

2. Since Act X. of 1872 came into force, no sentences of whipping have been passed by the District Magistrate, or his Assistant at Kurnool. The Head Assistant Magistrate, Mr. Turner, and the Deputy Magistrate Ramachendra Rao, each passed such sentences in three cases on as many different individuals, and had the sentences executed at the places where the trials had been held. Neither the Deputy Magistrate D. Timmapa, nor the 2nd Class Magistrate of Koilakuntala in his division, have passed any sentences of whipping. So that as yet in no single case has a prisoner sentenced to whipping been sent by any of the Magistrates to the officer in charge of the Jail of the District to have the sentence carried out.

3. I think that the new provision of law is calculated to give rise to much inconvenience in the execution of sentences of whipping; and this, of course, will be in proportion to the distance of each Magistrate's Court from the district head quarters. In the case of the Head Assistant Magistrate of this district, who resides ordinarily at Cumbum (105 miles distant), and whose division is altogether separated from the rest of the district by the broad range of the Nallamala Hills, the inconvenience is likely to be so great as altogether to deter him from passing sentences of whipping alone. Such sentences are the only ones that can be affected by the change of procedure, as in other cases (viz., where whipping is added to a sentence of imprisonment) the prisoner would have to go to the jail at any rate.

4. I am not aware that there was much (if any) abuse of the liberty enjoyed by Magistrates of carrying out their sentences of whipping on the spot under the supervision of a Medical Officer. It is obvious that under the new procedure there will be, besides public inconvenience, considerable injustice in respect to the *inequality* of the punishment. A man who has to march in custody 60, or 100, or more miles to get his whipping is evidently much more severely punished in mind and body than a man at or close to head quarters, whose sentence can be executed at once. But if it is considered better on the whole to have the heavier sentences of whipping carried out at the District Jail, I would support the

recommendation of Deputy Magistrate D. Timmapa, as regards the lighter sentences (say those under 60 lashes), and would propose either that they should be carried out as heretofore on the spot, or entrusted to the Sub-Magistrates in charge of the Subsidiary Jails.

5. I enclose the report of the Deputy Magistrate.

No. 156. From D. TIMMAPAH, Deputy Magistrate of Piapaly, to the Acting Magistrate of Kurnool, dated Piapaly, 2nd May 1873.

With reference to your endorsement on a copy of the Proceedings of the Madras Government, Judicial Department, dated 14th April 1873, No. 580, (Confidential), I have the honour to report, that since the new Code of Criminal Procedure (Act X. of 1872) was brought into operation, no sentence of whipping was passed either by me or by the 2nd Class Magistrate of Koilkoontla in the division under my charge.

2. I do not think there will be any inconvenience in giving effect to the provisions of Section 302 of the Code of Criminal Procedure, which provides that an accused person sentenced to whipping should for the execution of the sentence be forwarded to the officer in charge of the Jail of the District in which the trial is held, but inconvenience will be felt in giving effect to the latter part of Section 311 of the Code of Criminal Procedure, which provides that "the punishment of whipping shall be inflicted in the presence of a Magistrate," as one of the Magistrates in the station in which the District Jail is situated will have to be present at the time of execution of all the sentences of whipping passed by all the 1st and 2nd Class Magistrates in the District; and further, the accused person will have to undergo, in addition to the sentence passed against him, the trouble of journey under Police custody from the station of the Magistrate passing the sentence to the District Jail, which will occupy a week or so in some instances.

3. The execution of the sentence of whipping on the spot whereabouts the offence was committed, and in the presence of the friends and relations of the convict and of the criminal population of the locality, and especially in cases of pick-pocketing and other kinds of theft committed during fairs and festivals, where people are brought together, and in cases of juvenile offenders, will, I consider, be the best method of setting a good example. This object will be defeated if the sentence is executed privately within the walls of the District Jail, or even publicly on the outside of it.

4. If the execution of the sentence of whipping by the officer in charge of the District Jail be considered more advantageous, I respectfully beg leave to suggest that it may be limited to sentence of whipping of more than 60 lashes if cat-o'-nine-tails be the instrument employed, or of more than 12 lashes if with a rattan; and that the execution of those under the above limit may be entrusted to the Subordinate Magistrates who are the officers in charge of Subsidiary Jails, as is done in the case of sentences of imprisonment not exceeding one month, as ruled by the Government, notwithstanding a similar provision in Section 284 of the old code in respect of sentences of imprisonment.

No. 157. From O. B. IRVINE, Esq., Acting District Magistrate of Chingleput, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Sydapet, 29th April 1873.

In reply to the Proceedings of Government, dated 14th April 1873, Judicial Department, calling for a confidential report, regarding the working of Section 302, Act X. of 1872, I have the honour to state that, as a matter of fact, no effect has been given in this district to the section, and the change in the procedure has not been observed, or at any rate acted upon.

2. I have no hesitation in saying, that if Magistrates were to adhere to the strict letter of the law, as laid down in the section, the highest inconvenience would arise. The time of the Police would be taken up in simply marching to and from the District Jail at Chingleput, distant 35 miles from the Magistrate's head quarters, and more than double that distance from many parts of the district. A sentence of whipping *only* (by which I understand a whipping to be administered immediately after conviction) would become impossible; because it would be accompanied by detention for a number of days after conviction—that is, until the sentence of whipping could be carried out in the District Jail.

3. Another evil attending the rigid adherence to the letter of Section 302 would be, that after being marched out to the District Jail and whipped, the unfortunate natives would be turned adrift, often in a strange part of the district, miles away, perhaps two or more days' journey from their villages, and left to find their way back to their villages as best they may, and more often than not, without means of honestly maintaining themselves during the period occupied by the journey. This would be a great hardship in all cases, but how would the system work in the case of juvenile offenders?

4. A strict enforcement of the law, as laid down in the section, would also practically dispel in a great measure the wholesome effect of whipping. I refer especially to this punishment as carried out at fairs and festivals, where large crowds assemble, and pickpockets carry on a thriving trade. People of the latter class are not deterred by a sentence of imprisonment, and the only fit punishment is a whipping inflicted immediately on the offence being proved, and in the most public manner possible.

5. I avail myself of this opportunity to point out that by Clause 4, Section 302, it is provided that not only in cases of whipping, but in all cases, Courts passing sentence are to send the accused to the "Officer in charge of the Jail of the District." According to the strict rendering of the section, there is only one jail for each district, and this would seem to render imprisonment in the Subsidiary Jails illegal. I would respectfully suggest that, to remove any doubt which might arise from a too critical examination of the section, and assuming that the local Government have the power to establish as many jails in a district as are deemed necessary, a Notification should be issued by the Government, declaring that for the purpose of Act X. of 1872 all Subsidiary Jails should be regarded as District Jails. Such a Notification would also in a great measure remove the inconvenience which must necessarily arise from a strict observance of Section 302 in cases of whipping.

No. 158. From H. SEWELL, Esq., Acting Magistrate of North Arcot, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Vellore, 19th May 1873, No. 26.

I have the honour to submit the confidential report called for by Government in their Proceedings of the 14th April 1873, No. 580, relative to the working of Clause 4, Section 302, Criminal Procedure Code.

2. From the reports I have received, and from my own observation, it appears that the letter of the law is not followed out except in cases where a sentence of imprisonment above one month is inflicted in addition to a sentence of whipping.

3. I need hardly point out that in many cases the Whipping Act must be put in abeyance if Section 302 is to be strictly carried out. If a boy is sentenced to receive half a dozen stripes with a rattan at a station 50 or 100 miles distant from the District Jail, and if he has to be forwarded there for the execution of the sentence, he must be kept for a week or ten days in illegal custody on the road.

3. Again, under Section 302 all convicted prisoners must be forwarded to the District Jail, so that a person sentenced to 24 hours' simple imprisonment must be sent there, however distant may be the place of his sentence. In this case the sentence might expire on the road, and the Subsidiary Jails would be entirely useless.

4. Pending further orders I presume that the present mode of procedure should be allowed to continue.

No. 159. From H. E. SULLIVAN, Esq., Magistrate of South Arcot, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Camp Tindevanam, 16th May 1873.

I have the honour to submit the report called for in G. O., Judicial Department, dated 14th ultimo, No. 580.

2. The change in the procedure in regard to the execution of a sentence of whipping introduced by Act X. of 1872 has not been productive of any inconvenience in this district as yet, for the simple reason that the alteration of the law had entirely escaped the notice of every officer of the magistracy until attention was drawn to it by the Order under report.

3. The Penal Law provides whipping *pur et simple* as the penalty of certain offences, and evidently contemplates the punishment being inflicted immediately sentence is passed. The new Procedure Code enhances the punishment by keeping the convict in duress and painful suspense for such time as may be necessary to traverse the distance between the place of sentence and the place of execution. A march of 100 miles in handcuffs is in itself a punishment, and the prospect of 100 lashes at the end of it is not calculated to lighten the toil of the journey.

4. The section might stand if it had reference only to a town within the limits of which the jail was situate, but having effect, as it has in this Presidency, over an area in each district of several thousand square miles, the necessity of amendment is obvious.

5. Section 311 of the new Procedure Code prescribes that the punishment of whipping is to be inflicted in the presence of a Magistrate. As in the Madras Presidency none of the Jail Superintendents, so far as I am aware, exercise magisterial functions, it follows that a Magistrate must be permanently attached to the jail to see each sentence carried into execution.

6. I take this opportunity of respectfully submitting that I am not alone in thinking that Act X. of 1872 is susceptible of a good deal of amendment. As instances I may mention that Section 9, which vests the appointment of all grades of Magistrates exclusively in the hands of Government, is productive of great practical inconvenience, as is also Section 295, which precludes all courts, save the Sessions Court and the Magistrate of the District, from calling for records of courts subordinate to them.

No. 160. From J. B. PENNINGTON, Esq., Acting District Magistrate of Trichinopoly, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Trichinopoly, 28th April 1873, No. 10.

In reply to Government Order, No. 580, dated 14th April 1873 (Confidential), I regret to have to report that the provisions of Section 302 had been overlooked in this District. They will be carefully observed in future, and will cause no material inconvenience.

No. 161. From W. McQUHAE, Esq., Acting District Magistrate, Madura, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Shunbaganore, 5th May 1873, No. 114.

With reference to the Order of Government, Judicial Department, dated 14th April 1873, No. 580, I have the honour to report that the change in procedure therein alluded to had not been perceived by the Magistrates in this district. The greatest inconvenience will undoubtedly be felt in giving effect to the provisions of Section 302 of the new code with regard to sentences of whipping and imprisonment for short periods. The new procedure is evidently unsuitable for large districts where Magistrates are stationed 80 and 100 miles from the District Jail; and it needs no argument to show that a prisoner ought not to walk from 150 to 200 miles in order to receive half a dozen strokes with a light rattan, or 40 or 50 lashes with a cat-o'-nine-tails. Another consideration is that no one in the village will know that the prisoner has been punished. He will keep out of the way till his back is healed, and say he has been acquitted.

No. 162. From R. K. PUCKLE, Esq., District Magistrate of Tinnevelly, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Palamcottah, 22nd April 1873.

In reply to your confidential circular, No. 580, dated 14th instant, inquiring whether Magistrates have observed the change in procedure relative to whipping, I have the honour to inform you that the magistracy of this district continue to whip as formerly, and have not as yet forwarded prisoners to be whipped at the District Jail.

2. Unfortunately both the Joint Magistrate and the additional Joint Magistrate are absent from the district, while the Head Assistant Magistrate has only just joined. I am therefore unable to furnish other opinions than my own, but it seems to me that half the value of whipping as a punishment will be lost if the offender is not

whipped on the scene of his crime, while the labour, of the Police will be very greatly increased by having to escort such offenders from long distances to the District Jail to be whipped.

No. 163. From H. B. GRIGG, Esq., District Magistrate of Nilgiris, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Ootacamund, 25th April 1873, No. 48.

With reference to G. O. No. 580, dated 14th April 1873, I have the honour to state that the provisions of Section 302 of Act X. of 1872 have not hitherto been noticed by the magistracy of this district. Their attention, however, has now been drawn thereto.

2. I am of opinion that the carrying out of the provisions of this section will cause inconvenience and tend greatly to rendering the Whipping Act (so far as the single punishment) nugatory. The speediness of the punishment, its execution generally before the friends of the offender, even if not in his native place, and the suitability of the punishment for young offenders, all important essentials, are more or less nullified. It is hardly probable that, for example, in this District, the Joint Magistrate of Wellington will sentence an offender to whipping when he remembers that the culprit must be sent 12 miles to Ootacamund for punishment. He would probably accept the alternative of sentencing him to a few days' imprisonment.

3. The fact must also be kept in mind that it will throw extra work on the Police.

No. 164. From J. F. PRICE, Esq., Acting District Magistrate of Salem, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Thalli, 21st April 1873, No. 1.

I have the honour to acknowledge the receipt of the Proceedings of Government, Judicial Department, No. 580, dated 14th instant.

2. Neither I nor any of the other Magistrates in the district have perceived the alteration of procedure introduced by Section 320 of the new Code of Criminal Procedure.

3. I consider that this provision of law is one which should certainly be changed, observing it will not only lead to a very great increase of expense, but will rob whipping of one-half of its efficacy. The general public, including the thieving portion of it, cannot know what takes place in the inside of a jail, but when an offender is flogged before a large number of people, as is usually the case at present, the nature of the punishment is placed before it in a tangible form, and its deterrent effect is thereby very much increased.

4. If every one who is sentenced to whipping has to be sent to the Central Jail to receive his punishment, which, as far as I have seen, can be just as well and in every way much more effectively inflicted at the place where he is sentenced, the consequences must be either an immense increase in the cost of the administration of justice, or an almost entire cessation of the infliction of whipping, except in the case of old offenders sentenced to it in addition to imprisonment.

No. 165. From H. S. THOMAS, Esq., District Magistrate of South Canara, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Mangalore, 23rd April 1873, No. 543.

Dated 14th April 1873, No. 580, Judicial Dept.

With reference to the confidential Proceedings of Government noted in the margin, I have the honour to report that the change in procedure introduced by Section 302 of Act X. of 1872 has generally been overlooked in this district, and that prisoners sentenced to whipping have hitherto been dealt with according to the old practice.

2. The observance of the new procedure will no doubt be attended with great inconvenience. The transmission of prisoners from the several outlying stations to the jail of the district, merely for the purpose of receiving the punishment of whipping, will necessitate their being escorted by the Police for a distance of 30 to 90 miles, and kept under confinement during the number of days occupied in making the journey, with the additional mental punishment of several days' contemplation of their coming flagellation. Besides the travelling and additional imprisonment and expectation thus entailed on convicts, and the extra duties thrown on the police to the detriment of detection, offenders from the interior will be conveyed to the head-quarter station, whipped, and immediately turned out of the jail to take care of themselves without a penny in their hands, and being then away from their friends and relations, and unable to work for some time, will be driven to beg their bread, or resort to unlawful means to support themselves on their way home, instead of repenting their past folly. The head-quarter station will also suffer from having such characters collected there and let loose upon it under such circumstances.

3. If the terms of Section 302 are strictly adhered to, even short-sentenced prisoners will also have to be forwarded to the District Jail, as no provision is made therein for their confinement in the Subsidiary Jails, and those buildings, constructed at so great an expense, will be unutilized. Under this system the sentence of many a prisoner would expire before reaching the jail, and more prisoners being sentenced to imprisonments under one month than to whipping, the inconvenience felt in their case will be still greater.

4. Under these circumstances, I have the honor to request the instructions of Government as to whether I am to enforce at once a literal observance of the provisions of Section 302, or to await an early amendment thereof.

5. I take this opportunity to bring to the notice of Government the difficulty of carrying out the provisions of Section 464 of the new Code of Criminal Procedure, which requires that *a copy of every order shall be given to the party affected by it in his own language.* In a district where so many languages are in use, that the persons brought before the courts may speak English, French, Portuguese, German, Arabic, Hindustanee, Guzeratti, Concani, Canarese, Tulu, Malayalum, Tamil, or Telugu, and the courts have not competent translators attached to them for the purpose, it is next to impossible to observe the directions of the law; while to grant copies to persons neither able to read nor desiring to appeal, is simply wasting labour. I trust therefore that the Government will be pleased to recommend also a modification of this section.

No. 166. From W. LOGAN, Esq., Acting Magistrate of Malabar, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Calicut, 28th May 1873, No. 48.

I have the honour to report, as requested in G. O., Judicial Department, No. 580, dated 14th April 1873, that in the greater part of this district the change made by Section 302 of Act X. of 1872 had not been perceived, and that in no part of it was the section interpreted as meaning that persons sentenced to short terms of imprisonment (under one month) or whipping were to be forwarded to the *principal* Jail of the District. If the section were to be so interpreted, the trouble caused to individuals and the additional expense to Government would be enormous. I am issuing orders that the old practice is to continue until a definite ruling declares it to be illegal.

No. 167. From Major W. S. DREVER, Acting Inspector-General of Police, to the Hon. W. HUDLESTON, Chief Secretary to the Government of Fort St. George, dated Ootacamund, 12th May 1873, No. 20-C.

With reference to Section 302 in the revised Criminal Procedure Code, directing prisoners sentenced to whipping being forthwith forwarded to the officer in charge of the District Jail for the execution of the sentence, I have the honour respectfully to draw the attention of Government to the very great difficulty, not to say impossibility, of carrying out such provision of the law in this Presidency. As Government are aware, there is but one jail at the head quarter station of each district which can be deemed a "District Jail," and to send in all prisoners sentenced by Magistrates not at the Cusbah station, but at distances from 10 to 100 miles off, to be flogged, is not only to add greatly to their respective punishments, but to entail an increased amount of escort duty on this department which its reduced establishment is quite incapable of meeting.

2. It has hitherto been customary for the Police to carry out sentences of flogging on the spot, and there are officers in attendance at all Magistrates' Courts for the purpose. I think this practice much more likely to have a salutary effect than prolonged detention in custody with a view to intramural flogging in a distant jail. There are, moreover, other drawbacks to which I need scarcely allude, but with which Government are doubtless well acquainted. I refer to contingent sickness or escape of prisoner, absence of Jail Superintendent, &c.

No. 168. To the Secretary to the Government of India, Home Department (Judicial), dated Ootacamund, 24th May 1873, No. 830.

I am directed to acknowledge receipt of your Officiating Under Secretary's confidential letter, No. 643, dated 5th April 1873, enquiring whether the change in the law relating to whipping effected by Section 302 of the Code of Criminal Procedure, which prescribes that persons so sentenced shall be forwarded with the warrant for execution to "the Jail of the District," has been perceived and ordinarily observed by Magistrates, and whether any inconvenience has resulted.

2. In reply I am to inform you, that in scarcely a single instance has this change in the law been perceived, and that now that the attention of the Magistrates of Districts has been drawn confidentially to the subject, they one and all condemn the alteration as involving such extreme inconvenience, hardship, enhancement of punishment, and weakening of its exemplary effect, as practically to be certain to result in the complete abandonment of this method of punishment, except in those stations in which "the Jail of the District" may happen to be situated.

3. Many of the Magistrates' stations in this Presidency are 80 or 100 miles distant from "the Jail of the District," and the very great majority of them are situated at considerable distances from this centre. It is scarcely necessary to point out how seriously it would enhance a sentence of whipping to send the prisoner in custody of the police for this journey, and (especially in the case of juvenile offenders) to discharge him after the sentence was executed at this distance from his village to find his way home. The legality of this prolonged detention is also open to question. Nor, in fact, would it be possible, with the available police force, to provide escorts for such cases. The Inspector-General of Police reports that the force would be quite incapable of performing the duty.

4. The great advantage of whipping as a summary and exemplary punishment for minor offences will be entirely lost under the changed system, but there are other difficulties entailed by the change in the law if the letter is to be strictly observed. Section 311 prescribes, as in the old Whipping Act, that the punishment shall be inflicted in the presence of a Magistrate, but, except at the comparatively few "Central Jails," the Superintendents of the Jails in this Presidency are not vested with the powers of a Magistrate, and even at the Central Jails it seems open to question whether the bestowal of Magisterial powers by the jail rules would fully meet the intention of the law. It would follow that either every Jail Superintendent must be formally appointed to be a Magistrate under the Criminal Procedure Code, which is open to objection, or a Magistrate must attend from outside on each occasion of a whipping being inflicted.

5. There are, however, still further difficulties created by this alteration and the literal interpretation of it which is apparently deemed necessary. It is not only sentences of whipping, but every case of imprisonment which must be forwarded to the "Jail of the District." The same objection in regard to minor offences and sentences exists here as in the case of whipping; and in many instances the period of the sentence would be more than occupied by the journey to the "Jail of the District." Section 384 of the old code contained the same expression in regard to sentences of imprisonment, but it has always been held here to include "Taluk or sub-division of a District," and it is an express instruction of this Government that all criminal prisoners sentenced to less than thirty days' imprisonment shall be confined in the Subsidiary Jail of the Taluk, provided that such confinement shall not extend beyond fourteen days if a District Jail is within twenty miles' distance of the sentencing Magistrate's station.

6. Very considerable expense has been incurred in erecting and improving these Subsidiary Jails, and this Government deem it of great importance that their use should be continued as hitherto; in fact, as already pointed out, it will not be feasible to abandon it.

Proceedings of the Madras Government, Judicial Department,
24th May 1873.

---

7. I am to recommend that as regards sentences of imprisonment, or imprisonment and whipping, the interpretation of the expression "Jail of the District," which has prevailed in this Presidency, may, if deemed necessary, be legalized by enactment; and that as regards sentences of simple whipping, the requirement of transmission to a jail at all be repealed.

(Signed) W. HUDLESTON,
Chief Secretary.

Office of the Inspector General of Police.

C. No. 20 Ootacamund 12th May 1873

From

The Ag Inspector General of Police,

To

The Chief Secretary to Government,
Fort St. George.

Sir,

Enclosures None

With reference to Section 302 in the revised Criminal Procedure Code, directing Prisoners sentenced to whipping, being forthwith forwarded to the Officer in Charge of the District Jail for the execution of the Sentence, I have the honor respectfully to draw the attention of Government to the very great difficulty, not to say impossibility, of carrying out such provision of the Law in this Presidency. As Government are aware, there is but one Jail at the Head Quarter Station of each District which can be deemed a "District Jail" and to send in all Prisoners sentenced by Magistrates not at the Cusbah Station but at distances from 10 to 100 miles off, to be flogged, is not only to add greatly to their respective punishments, but to entail an increased amount of escort duty on this Department which its reduced establishment is quite incapable of meeting

2. It has hitherto been customary for the Police to carry out sentences of Flogging on the spot, and there are Officers in attendance at all Magistrates' Courts, for the purpose. I think this practice much more likely to have a salutary effect, than prolonged detention in custody with a view to intramural flogging in a distant Jail. There are moreover other drawbacks to which I need scarcely allude, but with which Government are doubtless well acquainted. I refer to contingent sickness or escape of prisoner, absence of Jail Superintendent &c.

I have the honor to be,
Sir,
Your most obed^t Servant
W C Drew
Ag Inspector General of Police

Whipping

Procgs. 1873 Dept

From

The Insp. Genl of Police

To

The Chief Secretary to Govt.

Ootacamund

Dated 12 May 1873
Recd 12th —

No. 1030. Enclosure None

C. No 20

Requests that with refce to Sec 302 C. C. P. the course hitherto pursued in regard to flogging of Prisoners by the Police may be allowed to continue.

Orig: Draft with one copy of letter & one copy of Pro sent for reference at Orty - 9/6

2 Copies Home for Volume

No 307.

Tanjore Magistrate's office
Calimere Point: 3rd June 1873.
Tritrapoondy Taluq,

From The Honorable D. Arbuthnott
District Magistrate of Tanjore

To The Honorable W. Hudleston
Chief Secretary to Government
Madras

Sir,

With reference to the Proceedings of Govt. dated 14th April 1873 No 580, I have the honor to report, that the change in the procedure effected by section 302 of Act X of 1872 in regard to the execution of sentences of whipping, has not been perceived and ordinarily observed by the Magistrates in this District

2. There can be no doubt that if the requirements of the law were strictly enforced and all persons sentenced to whipping were forwarded to the District Jail, very great inconvenience would be caused to the public

and needless vexation and delay to the persons convicted. There are at present 9 Magistrates in this District who are empowered to pass sentences of whipping, and of these not more than 2 have their Head quarters at a station in which a District Jail is located. There would of course be considerable delay in the prisoners reaching the District Jail stations and consequently they would have to be detained unnecessarily for a period of several days, thus causing needless trouble to all concerned. Thus for instance the Deputy Magistrate of Tanjore might go on Circuit to Meenpisal and there sentence a person to whipping. If the prisoner were to be forwarded to the District Jail for undergoing his sentence he will have to be taken to Tanjore a distance of 78 miles, and it is manifest that such a Course, in as much as it would necessitate the detention of the prisoner for many days, amounts to

inflicting

inflicting extra punishment; not to speak of the trouble and cost to the state in the way of providing proper escort and paying batta for the subsistence of the prisoner. The punishment would also lose a great deal of its efficacy if inflicted at a distance from the scene of the offence, and the ignominy would be less felt if the convict were personally unknown to the spectators.

3. It appears true, that the new law is defective not only as regards the execution of sentences of whipping but also as regards the execution of sentences of imprisonment. section 302 requires that all persons sentenced to imprisonment should be sent to the Jail of the District, and this procedure in the case of short sentenced prisoners would entail very great hardship and a great deal of extra work on the Police. The sub Magistrates' stations being in several cases at considerable distances from the District Jail, sentences of imprisonment may expire in many instances, before the offender reaches

the Jail, and he will then either have to be released at once in which case the requirements of the law is still unsatisfied, or he may have to be detained for a longer period than is mentioned in the warrant, which is manifestly unjust and illegal. It was to obviate the inconveniences arising from this state of things that subsidiary Jails were established by Government, but the effect of the present change in the law has been to render the establishment of such Jails altogether nugatory.

4. Practically no inconvenience has been experienced as the change in the law has not been observed and understood by the Magistrates in general, as already stated, but it is very undesirable that such an anomalous state of things should continue, and I would strongly urge the necessity for a speedy amendment of the law, with retrospective operation to the time when the new Code of Criminal Procedure was introduced.

I have the honor to be
Sir
Your most obedient Servant

D. W. Cuthcott
Magistrate

No 25

Confidential—

Coimbatore Magistrate's office,
Coimbatore, 24th June 1873.

From,

A. Wedderburn Esquire,
Magistrate of Coimbatore.

To,

The Honorable W. Hudleston,
Chief Secretary to Government,
Fort Saint George.

Sir,-

With reference to Government Order dated 14th April last, No 580, embodying a letter from the Officiating Under Secretary to the Government of India, Home Department, (Judicial) dated 5th Idem, No 643, I have the honor to report that since the introduction of the Code of Criminal Procedure (Act X of 1872) no persons have been forwarded to the officer in charge of Central Jail for the execution of sentences of whipping only - It would, in

---

1873
Judl. Department
From
The Ag. Magistrate
Coimbatore
To
The Chief Secretary
to Government
Fort St. George
Dated 24th June 1873
Recd 27th June 1873
No 307
No 1225.
Report called for in Government Order Judicial Department
of 14th April 1873 No 580.-

most cases, be very inconvenient to send persons from a distance only to be whipped in the central Jail; the deterrent effect of whipping is far more efficacious when administered on the spot. Add to this that the sentence, as carried into effect by European warders, might be far more severe than anticipated by the native Magistracy.

I have the honor to be,
Sir,
your most obed^t. servant.

A Wedderburn
Magistrate.

Judl 1873 Despatch.
No 25

From,
The Magistrate of
Coimbatore

To,
The Chief Secretary
to Government
Fort St. George.

Dated 24th }
Recd. 25. } June 1873

No: 1368

Reports that since the introduction of the Criminal Procedure Code no persons have been sent to the Central Jail for execution of sentences of whipping only.

Despd. with 58p copies

Confidential

Judicial Department.

No. 830.

To

The Secretary to the Government
of India,
Home Department.
(Judicial)

Sir,

I am directed to acknowledge receipt of your Officiating Under Secretary's Confidential letter No. 643, dated 5th April 1873, enquiring whether the change in the law relating to whipping effected by Section 302 of the Code of Criminal Procedure, which prescribes that persons so sentenced shall be forwarded with the warrant for execution to "the Jail of the District," has been perceived and ordinarily observed by Magistrates, and whether any inconvenience has resulted.

In

J DS

2. In reply I am to inform you that in scarcely a single instance has this change in the law been perceived, and that now that the attention of the Magistrates of Districts has been drawn confidentially to the subject they one and all condemn the alteration ([illegible]) as involving such extreme inconvenience, hardship, enhancement of punishment and weakening of its exemplary effect, as practically to be certain to result in the complete abandonment of this method of punishment, except in those stations in which "the Jail of the District," may happen to be situated.

Execution of sentences of whipping only.

Many

6

3. Many of ~~our~~ the Magistrates Stations in this Presidency are 80 or 100 miles distant from "the Jail of the District," & the very great majority of them are situated at considerable distances from this centre. It is scarcely necessary to point out how seriously it would enhance a sentence of whipping to send the prisoner in custody of the Police for the journey, & (especially in the case of juvenile offenders) to discharge him after the sentence was executed at the distance from his village to find his way home. The legality of the prolonged detention is also open to question. Nor in fact would it be possible with the available Police force to provide escort for such cases. The Inspector General of Police

: reports that the force would be quite incapable of per:forming the duty.

4. The great advan:tage of Whipping as a summary and exemplary punishment for minor offences will be entirely lost under the changed system, but there are other difficulties entailed by the change in the law if the letter is to be strictly observed. Sec:tion 311 prescribes, as in the old Whipping Act, that the punishment shall be inflict:ed in the presence of a Magistrate, but except at the comparatively few "Central Jails", the Super:intendents of the jails in this Presidency are not vest:ed with the powers of a Magistrate, and even at the Central Jails, it

seems

seems open to question whether the bestowal of Magisterial powers by the Jail Rules would fully meet the in:tention of the law. It would follow that either every Jail Superintendent must be formally ap:pointed to be a Magis:trate under the Criminal Procedure Code, which is open to objection, or a Magistrate must attend from outside on each oc:casion of a Whipping being inflicted.

5. There are how:ever still further difficul:ties created by this altera:tion and the literal in:terpretation of it which is apparently deemed necessary. It is not only sentences of Whipping, but every case of imprisonment which must be forwarded

to the "Jail of the District."
The same objection in re:
:gard to minor offences
and sentences exists here
as in the case of Whipping,
and in many instances
the period of the sentence
would be more than oc:
:cupied by the journey
to the "Jail of the District."
Section 384 of the old
Code contained the same
expression in regard to
sentences of imprisonment,
but it has always been
held here to include
"Taluk or Sub-division
of a District," and it is
an express instruction of this
Government that all cri:
:minal prisoners sentenced
to less than 30 days im:
:prisonment shall be con:
:fined in the Subsidiary
Jail of the Taluk provided
that

that such confinement shall
not extend beyond 14
days if a District Jail is
within 20 miles distance of
the Sentencing Magistrate's
Station.

6. Very consider:
:able expense has been in:
:curred in erecting and
improving these Subsidiary
Jails, and this Government
deem it of great importance
that their use should be
continued as hitherto, in
fact, as already pointed
out, it will not be feasible
to abandon it.

7. I am to recom:
:mend that as regards
sentences of imprisonment,
or imprisonment and
Whipping, the interpreta:
:tion of the expression "Jail
of the District", which has
prevailed in this Pre:
:sidency, may, if deem
necessa

necessary, be legalised by enactment, and that as regards sentences of simple whipping the requirement of transmission to a jail at all be repealed.

Ootacamund,
24. May 1873

Whipping in Jails

24 May 1873 - 830

1873 Judl. Department

No. 830

To

The Secretary to the Government of India Home Department.

Dated 24 May 1873.

CONFIDENTIAL.

JUDICIAL DEPARTMENT,

No. 830.

FROM

THE HON. W. HUDLESTON,
Chief Secretary to the Government of Fort St. George,

To

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

SIR,

I am directed to acknowledge receipt of your Officiating Under Secretary's confidential letter, No. 643, dated 5th April 1873, enquiring whether the change in the law relating to whipping effected by Section 302 of the Code of Criminal Procedure, which prescribes that persons so sentenced shall be forwarded with the warrant for execution to "the Jail of the District," has been perceived and ordinarily observed by Magistrates, and whether any inconvenience has resulted.

2. In reply I am to inform you, that in scarcely a single instance has this change in the law been perceived, and that now that the attention of the Magistrates of Districts has been drawn confidentially to the subject, they one and all condemn the alteration as involving such extreme inconvenience, hardship, enhancement of punishment, and weakening of its exemplary effect, as practically to be certain to result in the complete abandonment of this method of punishment, except in those stations in which "the Jail of the District" may happen to be situated.

3. Many of the Magistrates' stations in this Presidency are 80 or 100 miles distant from "the Jail of the District," and the very great majority of them are situated at considerable distances from this centre. It is scarcely necessary to point out how seriously it would enhance a sentence of whipping to send the prisoner in custody of the police for this journey, and (especially in the case of juvenile offenders) to discharge him after the sentence was executed at this distance from his village to find his way home. The legality of this prolonged detention is also open to question. Nor, in fact, would it be possible, with the available police force, to provide escorts for such cases. The Inspector-General of Police reports that the force would be quite incapable of performing the duty.

4. The great advantage of whipping as a summary and exemplary punishment for minor offences will be entirely lost under the changed system, but there are other difficulties entailed by the change in the law if the letter is to be strictly observed. Section 311 prescribes, as in the old Whipping Act, that the punishment shall be inflicted in the presence of a Magistrate, but, except at the comparatively few "Central Jails," the Superintendents of the Jails in this Presidency are not vested with the powers of a Magistrate, and even at the Central Jails it seems open to question whether the bestowal of Magisterial powers by the jail rules would fully meet the intention of the law. It would follow that either every Jail Superintendent must be formally appointed to be a Magistrate under the Criminal Procedure Code, which is open to objection, or a Magistrate must attend from outside on each occasion of a whipping being inflicted.

5. There are, however, still further difficulties created by this alteration and the literal interpretation of it which is apparently deemed necessary. It is not only sentences of whipping, but every case of imprisonment which must be forwarded to the "Jail of the District." The same objection in regard to minor offences and

sentences exists here as in the case of whipping; and in many instances the period of the sentence would be more than occupied by the journey to the "Jail of the District." Section 384 of the old code contained the same expression in regard to sentences of imprisonment, but it has always been held here to include "Taluk or sub-division of a District," and it is an express instruction of this Government that all criminal prisoners sentenced to less than thirty days' imprisonment shall be confined in the Subsidiary Jail of the Taluk, provided that such confinement shall not extend beyond fourteen days if a District Jail is within twenty miles' distance of the sentencing Magistrate's station.

6. Very considerable expense has been incurred in erecting and improving these Subsidiary Jails, and this Government deem it of great importance that their use should be continued as hitherto; in fact, as already pointed out, it will not be feasible to abandon it.

7. I am to recommend that as regards sentences of imprisonment, or imprisonment and whipping, the interpretation of the expression "Jail of the District," which has prevailed in this Presidency, may, if deemed necessary, be legalized by enactment; and that as regards sentences of simple whipping, the requirement of transmission to a jail at all be repealed.

OOTACAMUND,
24th May 1873.

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

Acting Under Secretary
for *Chief Secretary.*

CONFIDENTIAL.

JUDICIAL DEPARTMENT.

No. 830.

FROM

THE HON. W. HUDLESTON,
Chief Secretary to the Government of Fort St. George,

To

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

SIR,

I am directed to acknowledge receipt of your Officiating Under Secretary's confidential letter, No. 643, dated 5th April 1873, enquiring whether the change in the law relating to whipping effected by Section 302 of the Code of Criminal Procedure, which prescribes that persons so sentenced shall be forwarded with the warrant for execution to "the Jail of the District," has been perceived and ordinarily observed by Magistrates, and whether any inconvenience has resulted.

2. In reply I am to inform you, that in scarcely a single instance has this change in the law been perceived, and that now that the attention of the Magistrates of Districts has been drawn confidentially to the subject, they one and all condemn the alteration as involving such extreme inconvenience, hardship, enhancement of punishment, and weakening of its exemplary effect, as practically to be certain to result in the complete abandonment of this method of punishment, except in those stations in which "the Jail of the District" may happen to be situated.

3. Many of the Magistrates' stations in this Presidency are 80 or 100 miles distant from "the Jail of the District," and the very great majority of them are situated at considerable distances from this centre. It is scarcely necessary to point out how seriously it would enhance a sentence of whipping to send the prisoner in custody of the police for this journey, and (especially in the case of juvenile offenders) to discharge him after the sentence was executed at this distance from his village to find his way home. The legality of this prolonged detention is also open to question. Nor, in fact, would it be possible, with the available police force, to provide escorts for such cases. The Inspector-General of Police reports that the force would be quite incapable of performing the duty.

4. The great advantage of whipping as a summary and exemplary punishment for minor offences will be entirely lost under the changed system, but there are other difficulties entailed by the change in the law if the letter is to be strictly observed. Section 311 prescribes, as in the old Whipping Act, that the punishment shall be inflicted in the presence of a Magistrate, but, except at the comparatively few "Central Jails," the Superintendents of the Jails in this Presidency are not vested with the powers of a Magistrate, and even at the Central Jails it seems open to question whether the bestowal of Magisterial powers by the jail rules would fully meet the intention of the law. It would follow that either every Jail Superintendent must be formally appointed to be a Magistrate under the Criminal Procedure Code, which is open to objection, or a Magistrate must attend from outside on each occasion of a whipping being inflicted.

5. There are, however, still further difficulties created by this alteration and the literal interpretation of it which is apparently deemed necessary. It is not only sentences of whipping, but every case of imprisonment which must be forwarded to the "Jail of the District." The same objection in regard to minor offences and

CONFIDENTIAL.

JUDICIAL DEPARTMENT.

No. 830.

FROM

THE HON. W. HUDLESTON,
Chief Secretary to the Government of Fort St. George,

To

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

SIR,

I am directed to acknowledge receipt of your Officiating Under Secretary's confidential letter, No. 643, dated 5th April 1873, enquiring whether the change in the law relating to whipping effected by Section 302 of the Code of Criminal Procedure, which prescribes that persons so sentenced shall be forwarded with the warrant for execution to "the Jail of the District," has been perceived and ordinarily observed by Magistrates, and whether any inconvenience has resulted.

2. In reply I am to inform you, that in scarcely a single instance has this change in the law been perceived, and that now that the attention of the Magistrates of Districts has been drawn confidentially to the subject, they one and all condemn the alteration as involving such extreme inconvenience, hardship, enhancement of punishment, and weakening of its exemplary effect, as practically to be certain to result in the complete abandonment of this method of punishment, except in those stations in which "the Jail of the District" may happen to be situated.

3. Many of the Magistrates' stations in this Presidency are 80 or 100 miles distant from "the Jail of the District," and the very great majority of them are situated at considerable distances from this centre. It is scarcely necessary to point out how seriously it would enhance a sentence of whipping to send the prisoner in custody of the police for this journey, and (especially in the case of juvenile offenders) to discharge him after the sentence was executed at this distance from his village to find his way home. The legality of this prolonged detention is also open to question. Nor, in fact, would it be possible, with the available police force, to provide escorts for such cases. The Inspector-General of Police reports that the force would be quite incapable of performing the duty.

4. The great advantage of whipping as a summary and exemplary punishment for minor offences will be entirely lost under the changed system, but there are other difficulties entailed by the change in the law if the letter is to be strictly observed. Section 311 prescribes, as in the old Whipping Act, that the punishment shall be inflicted in the presence of a Magistrate, but, except at the comparatively few "Central Jails," the Superintendents of the Jails in this Presidency are not vested with the powers of a Magistrate, and even at the Central Jails it seems open to question whether the bestowal of Magisterial powers by the jail rules would fully meet the intention of the law. It would follow that either every Jail Superintendent must be formally appointed to be a Magistrate under the Criminal Procedure Code, which is open to objection, or a Magistrate must attend from outside on each occasion of a whipping being inflicted.

5. There are, however, still further difficulties created by this alteration and the literal interpretation of it which is apparently deemed necessary. It is not only sentences of whipping, but every case of imprisonment which must be forwarded to the "Jail of the District." The same objection in regard to minor offences and sentences exists here as in the case of whipping; and in many instances the period of the sentence would be more than occupied by the journey to the "Jail of the District." Section 384 of the old code contained the same expression in regard to sentences of imprisonment, but it has always been held here to include "Taluk or sub-division of a District," and it is an express instruction of this Government that all criminal prisoners sentenced to less than thirty days' imprisonment shall be confined in the Subsidiary Jail of the Taluk, provided that such confinement shall not extend beyond fourteen days if a District Jail is within twenty miles' distance of the sentencing Magistrate's station.

6. Very considerable expense has been incurred in erecting and improving these Subsidiary Jails, and this Government deem it of great importance that their use should be continued as hitherto; in fact, as already pointed out, it will not be feasible to abandon it.

7. I am to recommend that as regards sentences of imprisonment, or imprisonment and whipping, the interpretation of the expression "Jail of the District," which has prevailed in this Presidency, may, if deemed necessary, be legalized by enactment; and that as regards sentences of simple whipping, the requirement of transmission to a jail at all be repealed.

OOTACAMUND,
24th May 1873.

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

Acting Under Secretary
for *Chief Secretary.*

sentences exists here as in the case of whipping; and in many instances the period of the sentence would be more than occupied by the journey to the "Jail of the District." Section 384 of the old code contained the same expression in regard to sentences of imprisonment, but it has always been held here to include "Taluk or sub-division of a District," and it is an express instruction of this Government that all criminal prisoners sentenced to less than thirty days' imprisonment shall be confined in the Subsidiary Jail of the Taluk, provided that such confinement shall not extend beyond fourteen days if a District Jail is within twenty miles' distance of the sentencing Magistrate's station.

6. Very considerable expense has been incurred in erecting and improving these Subsidiary Jails, and this Government deem it of great importance that their use should be continued as hitherto; in fact, as already pointed out, it will not be feasible to abandon it.

7. I am to recommend that as regards sentences of imprisonment, or imprisonment and whipping, the interpretation of the expression "Jail of the District," which has prevailed in this Presidency, may, if deemed necessary, be legalized by enactment; and that as regards sentences of simple whipping, the requirement of transmission to a jail at all be repealed.

OOTACAMUND,
24th May 1873.

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

Acting Under Secretary
for Chief Secretary.

Salem District Magt.'s Office
Camp
Thalli
Oosoor Taluq
April 21st. 1873.

Confidential No. 1.

From
The Acting District Magistrate
Salem.

To
The Chief Secretary to Government
Fort St. George
Ootacamund.

Sir

I have the honor to acknowledge the receipt of the Proceedings of Government Judicial department No. 580 dated 14th. Instant.

2. Neither I, nor any of the other Magistrates in the District, have perceived the alteration of procedure introduced by Section 320 of the new Code of Criminal Procedure.

3. I consider that this provision of law is one which should certainly be changed. Observing it will not only lead to a very great increase of expense but will rob whipping of one half of its efficacy. The general public, including the thieving portion of it, cannot know what takes place in the inside of a Jail, but when an offender is flogged before a large number of people, as is usually the case at present, the nature of the punishment is placed before it in a tangible form and its deterrent

effect is thereby very much increased.

4. If every one who is sentenced to whipping has to be sent to the Central Jail to receive his punishment - which, as far as I have seen, can be just as well and in every way much more effectually inflicted at the place where he is sentenced, the consequences must be either an immense increase in the cost of the administration of justice or an almost entire cessation of the infliction of whipping except in the case of old offenders sentenced to it in addition to imprisonment.

I have the honor to be
Sir,
Your most Obedient Servt.

Ned Nicholl
Ag District Magistrate

Judicial
Magisterial Department
From
The Ag District Magistrate
Salem
To The Chief Secy to Govt.
Confidential
Dated April 21st 1873
Despatched ditto
Received No 969.
Confidential No 1
Enclosures - None
Furnishing the Confidential report regarding Section 302 Act X of 1872 required by Proceedings of Govt Jud Dept No 580 dated April 14th 1873.

Confidential

No. 543.

District Magistrate's Office
Mangalore, 23rd April 1873.

From
H. S. Thomas Esquire
District Magistrate of
South Canara.

To
The Honorable W. Hudleston
Chief Secretary to Government
Judicial Department
Fort St. George.

Sir,

Dated 14th april 1873 No. 580. J. D.

With reference to the confidential Proceedings of Government noted in the margin, I have the honor to report that the change in procedure introduced by Section 302 of Act X of 1872 has generally been overlooked in this District, and that prisoners sentenced to whipping have hitherto been dealt with according to the old pratice.

2. The observance of the new procedure will no doubt be attended with great inconvenience. The transmission of prisoners from the several outlying stations to the Jail of the District merely for the purpose of receiving the punishment of whipping, will necessitate their being escorted by the Police for a distance of 30 to 90 miles and kept

under confinement during the number of days occupied in making the journey with the additional mental punishment of several days' contemplation of their coming flagellation - Besides the travelling and additional imprisonment and expectation thus entailed on Convicts, and the extra duties thrown on the Police to the detriment of detection, offenders from the interior will be conveyed to the Head Quarter station, whipped and immediately turned out of the Jail to take care of themselves without a penny in their hands - and being then away from their friends and relations and unable to work for some time, will be driven to beg their bread, or resort to unlawful means to support themselves on their way home, instead of repenting their past folly. The Head Quarter station will also suffer from having such characters collected there and let loose upon it under such circumstances.

3. If the terms of Section 302 are strictly adhered to, even short-sentenced prisoners will also have to be forwarded to the District Jail, as no provision is made therein for their confinement in the Subsidiary Jails, and those buildings constructed at so great an expense, will be unutilized - Under this system the sentence of many a prisoner would expire before reaching the Jail, and more prisoners being sentenced to imprisonments under one month than to whipping, the inconvenience felt in their case will be still greater.

4. Under these circumstances, I have the honor to request the instructions of Government as to whether I am to enforce at once a literal observance of the provisions of Section 302, or to await an early amendment thereof.

5. I take this opportunity to bring to the notice of Government the difficulty of carrying out the provisions of Section 464 of the new Code of Criminal Procedure, which requires that a copy of every order shall be given to the party affected by it in his own language. In a District where so many languages are in use that the persons brought before the Courts may speak English, French, Portuguese, German, Arabic, Hindustanee, Guzeratti, Concani

Canarese, Tulu, Malayalum, Tamil or Telugu - and the Courts have not competent translators attached to them for the purpose, it is next to impossible to observe the directions of the law; while to grant copies to persons neither able to read nor desiring to appeal, is simply wasting labor. I trust therefore that the Government will be pleased to recommend also a modification of this Section.

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

District Magistrate

Confidential.

No 48/1873.

Ootacamund
District Magistrate's Office
25th April 1873.

From,
The District Magistrate
of
Nilgiris
Ootacamund

To,
The Chief Secretary
to Government
Fort Saint George
Madras

Sir,

With reference to G. O. cr No 580 dated 14th April 1873, I have the honor to state that the provisions of Section 302 of Act X of 1872 have not hitherto been noticed by the Magistracy of this District. Their attention, however has now been drawn thereto.

Better have left alone

2 I am of opinion that the carrying out of the provisions of this section will cause inconvenience and tend greatly to rendering the whipping act (so far as the single punishment) nugatory. The speediness of the punishment; its execution generally before the friends of the offender, even if not in his native place; and the suitability of the punishment for young

offenders; all important essentials; are more or less nullified. It is hardly probable that, for example, in this District, the Joint Magistrate of Wellington will sentence an offender to whipping when he remembers that the culprit must be sent 12 miles to Ootacamund for punishment. He would probably accept the alternative of sentencing him to a few days imprisonment.

3. The fact must also be kept in mind that it will throw extra work on the Police.

I have the honor to be
Sir,
Your Most Obedt Servant,

H B Grigg
District Magistrate

1873.
Deptt Judicial

From, The District Magistrate
Nilgiris
To The Chief Secretary to Govt
Fort St George

Dated 25th
Recd } April 1873

No 48/1873.

Enclosure none

No. 974

Submitting his views on the working of the provisions of Section 302 of Act X of 1872

No. 824 Confidential

From
The Acting District Magistrate
Ganjam
To
The Chief Secretary to Government
Fort Saint George
Ootacamund

Dated Chetterpore 28th April 1873

Sir,

In reply to G. O. 14th April 1873 No. 580, Judicial Department, I have the honor to report that the change in procedure has not been generally perceived or ordinarily observed by the Magistracy in this District and hence no inconvenience has been felt by this modification of the procedure under the old whipping Act.

2. There can be no question, however about the very great inconvenience which will ensue if the directions in the last clause of Section 302 Act X of 1872 are literally followed. The Magistrates who are authorized to inflict this punishment live in many cases at places+ remote from the District Jail and it is obvious that practically sentences of whipping will not be passed

+ Places	Miles from District Jail
Chicacole	115
Russelkondah	50
Baliguclah	110
Udayagiri	75
Aska	24
Surada	40
Tinnicli	99
Narasanapetta	103

if the punishment can only be inflicted after a lengthy journey.

3. I have further to point out that literal observance of the same clause would bring every prisoner in the District to the District Jail whereas the Government are aware that Sub-jails are provided for the accommodation of prisoners sentenced to a month or under. There is also a Hill Jail at Russelkondah especially for convicts of the Khond and Sourah Tribes which cannot be considered the District Jail.

4 The wording of the clause under review differs in no respect from that of the corresponding clause in section 384 of the old C. C. P. and if the word "District" does not include Taluq or other sub-division the great majority of warrants issued under this section must, as observed by Mr. Nelson in his Commentary, have been illegal.

5. Magistrates have in this District been supplied with triangles under the sanction of the High Court since the new Code came into operation. This radical change seems therefore to have escaped the notice of most. If the punishment of whipping is to be of real practical utility it is requisite that the

offences described in Sections 2 & 3 Act VI of 1864 should be capable of summary disposal under that Act.

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

Acting District Magistrate
Ganjam

Cop^d & Ex^d by
E. V. Johnson
H^d Clerk

24

Trichinopoly, Magistrate's Office.
28th April 1873
No: 10

From
The Acting Distt Magistrate
of Trichinopoly

To
The Chief Secretary
to Government
Fort St George

Sir,

In reply to Government Order No: 580 dated 14th April 1873 (Confidential) I regret to have to report that the provisions of Section 302 had been overlooked in this District. They will be carefully observed in future and will cause no material inconvenience.–

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

J. W. Pennington
Actg Distt Magistrate

To
The Chief Secretary
to Government
Fort St George

Judicial 1873 Department
From
The Actg Dt Magistrate
of Ganjam
To
The Chief Secretary
to Government
Fort St George
Dated 28 April
Despd 29 do } 1873
Recd 1st May
No. 1027
No. 824.
Replies to G. O. No 580 d/14 April 1873 regarding the procedure under the old Whipping act.–

Judicial 1873 Department
From
The Ag Distt Magistrate
Trichinopoly
To The Chief Secretary
to Government
Fort Saint George

Dated 28th April 1873
Received 3rd May
[illegible] No 10
no 975:
Reports with reference to Government order No 580 dated 14th April 1873 (Confidential) that the provisions of Section 302 had been overlooked in this District & will be observed in future.

Piapaly
Deputy Magistrate's Office
2nd May 1873.

From
The Deputy Magistrate
of Piapaly
To
The Acting Magistrate
of Kurnool.

Sir,

With reference to your endorsement on a copy of the Proceedings of the Madras Government Judicial Department dated 14th April 1873 No 580 (Confidential), I have the honor to report that since the new Code of Criminal Procedure (Act X of 1872) was brought into operation, no sentence of Whipping was passed either by me or by the 2nd class Magistrate of Koilkoontla in in the Division under my charge

2. I do not think there will be any inconvenience in giving effect to the provisions of section 302 of the Code of Criminal Procedure, which provides that an accused person sentenced to whipping should for the execution of the sentence be forwarded to the Officer in charge of the Jail of the District in which the trial is held, but inconvenience will be felt in giving effect to the latter part of section 311 of the Code of Criminal Procedure which provides that "the punishment of whipping shall be inflicted in the presence of a Magistrate," as one of the Magistrates in the station in which the District Jail is situated will have to be present at the

time of execution of all the sentences of whipping passed by all the 1st and 2nd Class Magistrates in the District, and further the accused person will have to undergo, in addition to the sentences passed against him, the trouble of journey under Police custody from the station of the Magistrate passing the sentence to the District Jail, which will occupy a week or so in some instances.

3. The execution of the sentence of whipping on the spot whereabouts the Offence was committed and in the presence of the friends and relations of the convict, and of the criminal population of the locality, and especially in cases of pick-pocketting and other kinds of theft committed during fairs and festivals where people are brought together, and in cases of juvenile offenders, will, I consider, be the best method of setting a good example- This object will be defeated if the sentence is executed privately within the walls of the District Jail or even publicly on the outside of it.

4. If the execution of the sentence of whipping by the Officer in charge of the District Jail be considered more advantageous, I respectfully beg leave to suggest that it may be limited to sentences of whipping of more than 60 lashes if cat-o'-nine-tails be the instrument employed, or of more than 12 lashes if with a rattan; and that the execution of those under the above limit may be entrusted to the subordinate Magistrates who are the Officers in charge of subsidiary Jails, as is done in the case of sentences of imprisonment not exceeding one month as ruled by the Government, notwithstanding a similar provision in section 384 of the Old Code in respect of sentences of imprisonment.

I have the honor to be
Sir,
your most obedient Servant
D Tinnospuh
Deputy Magistrate.

25

No. 114

Madura Magistrate's Office
on Circuit
(Camp) Shembaganore in Pareatola
Talug
5th May 1873.

From,

W. McQuhae Esquire
Acting District Magistrate
Madura

To,

The Honorable W. Hudleston
Chief Secretary to Government.
Judicial Department
Fort Saint George.

Sir,

With reference to the Order of Government, Judicial Department, dated 14th April 1873 No. 58. I have the honor to report that the change in procedure therein alluded to had not been perceived by the Magistrates in this District. The greatest inconvenience will undoubtedly be felt in giving effect to the provisions of Section 302 of the New Code with regard to sentences of whipping and imprisonment for short periods. The new procedure is evidently unsuitable for large Districts where Magistrates are stationed 80 and a hundred miles from the District Jail and it needs no argument to show that a prisoner ought not to walk from a hundred and fifty to two hundred miles in order to receive half a dozen strokes with a light rattan or forty or fifty lashes with a Cat Onine tails. Another Consideration is that no one in the village will know that the prisoner has been punished. He will keep out of the way till his back is healed and say he has been acquitted

I have the honor to be,
Sir
Your Most Obedt Servt

W. M. Tuhee
Ag Dist Magistrate

1873 Judicial Deptt

From

The Ag Magistrate

Madura

To

The Chief Secretary

to Government

Fort St George

Dated 5th } May 1873

Recd 12th }

No1028. No 114

Enclosure None

Reporting that greatest incon=venience will be felt in giving effect to the pro=visions of section 302 of the new Code crimt Procedure with regard to sentences of whipping & imprisonment for short periods

---

Kristna District

Magistrate's Court

Masulipatam 8th May 1873.

From.

G. D Leman Esquire

Acting Magistrate

of Kristna District.

To.

The Honorable W. Hudleston

Chief Secretary to Government

Fort Saint George

Sir,

I have the honor to reply to Proceedings of the Madras Government dated 14th April 1873, that none of the Magistrates of this district who have passed Sentences of whipping have noticed that the Procedure under the old whipping Act was altered by Section 302 of Act X of 1872.- Such change will without doubt cause great inconvenience.- The nearest Sub Magistrate's station to Guntoor is Bezwada distant 20 Miles, the farthest Tummerikota 80 Miles I do not think the change was in any way necessary and it would seem to have been caused by an oversight. The only reason that I can fancy for sending prisoners in so far is to secure the attendance of a Medical man; but that attendance can be dispensed with under Section 311.

2. The New Procedure does away with one of the chief advantages that did attach to a sentence of whipping that it was summary and inflicted on the spot it was a warning to other evil doers.

3. There is no provision for payment of batta to the man whipped who I suppose will be turned out of the jail guard as soon as his punishment is over to find his way home as best he can.

4. I would call the attention of the Government to the fact not only whipping but all sentences are to be enforced in the

regard to sentences of whipping & imprisonment for short periods

District Jail by Section 302 of this Act, and hence it seem that the use of Sub Jails for the reception of persons sentenced to less than one month imprisonment by a Magistrate is no longer legal. It is utterly impossible to find room in the District Jail here for one twelfth of the petty offenders convicted by the various Magistrates.

5 The whole of the last para in Section requires rewriting to suit this District

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

G. D. Ewan
Ag Magistrate

Magrath
ag. H. C.

1873
Judicial Department

From
The Ag. Magistrate
of Kistna Dist.
To The Chief Secretary
to Government
Fort Saint George

Dated 8th May 1873.
Recd. 13 — " — No. 1039.

W. Wainnett – Hon
[illegible]

States that Magistrates in Kistna Dist have not noticed the change of procedure in passing sentences of whipping under the new Procedure Code.

Confidential. No. 152. Kurnool Magistrate's Office
9th May 1873.

From
James Hope Esquire
Ag. Magistrate of Kurnool

To
The Chief Secretary
to Government
Ootacamund.

Sir

With reference to Government Order of 14 Ultimo No. 580, I have the honor to report that prior to its receipt the new provision of law by which accused persons sentenced to whipping must be forwarded with a warrant for the execution of the sentence to the Officer in charge of the Jail of the District, had been entirely overlooked, and was not observed by such of the Magistrates as have passed sentences of whipping.

2. Since Act X of 1872 came into force, no sentences of whipping have been passed

by the District Magistrate
or his Assistant at Kurnool,
The Head Assistant Magistrate, Mr. Turner, and the Dy
Magistrate Ramachendra
Rao, each passed such sentences
in three cases on as many
different individuals, and had
the sentences executed at
the places where the trials had
been held. Neither the Deputy
Magistrate V. Timmappa,
nor the 2nd Class Magistrate
of Koilakuntla in his division,
have passed any sentences
of whipping. So that as yet
in no single case has a
prisoner sentenced to whipping,
been sent by any of the
Magistrates to the Officer
in charge of the Jail of the
District to have the sentence
carried out.

3. I think that the
new provision of law is calculated to give rise to much
inconvenience in the execution
of sentences of whipping,
and this of course will be in
proportion to the distance
of each Magistrate's Court
from the District Head quarters.
In the case of the Head Asst.
Magistrate of this District
who resides ordinarily at
Cumbum (105 miles distant)
and whose division is altogether
separated from the rest
of the District by the broad
range of the Nallamala Hills,
the inconvenience is likely to
be so great as altogether to deter
him from passing sentences
of whipping alone. Such sentences are the only ones that
can be affected by the change
of procedure, as in other cases
(viz where whipping is added
to a sentence of imprisonment)
the prisoner would have to go
to the Jail at any rate.

15

4. I am not aware that there was much (if any) abuse of the liberty enjoyed by Magistrates of carrying out their sentences of whipping on the spot under the supervision of a Medical Officer. It is obvious that under the new procedure there will be besides public inconvenience, considerable injustice in respect to the inequality of the punishment. A man who has to march in custody 60, or 100, or more miles, to get his whipping is evidently much more severely punished in mind and body, than a man at or close to Head quarters whose sentence can be executed at once. But if it is considered better on the whole to have the heavier sentences of whipping carried out at the District Jail, I would support the recommendation of Deputy Magistrate D. Timmappa as regards the lighter sentences (say those under 60 lashes) and would propose either that they should be carried out as heretofore on the spot, or entrusted to the Sub Magistrates in charge of the Subsidiary Jails.

5. I enclose the report of the Deputy Magistrate.

I have the honor to be
Sir
Your most obedt. Servt.

James Hoke
Ag. Magistrate

Judl. Department
1873.

From
The Ag Magistrate
of Kurnool

To
The Chief Secretary
to Government
Ootacamund.

Dated 9th May 1873.
Recd 12 –

No. 1031. No 152.
Enclosure 1.

Reporting on the inconveniences felt in giving effect to Section 302 of Act X of 1872 in the case of persons sentenced to whipping.

(Confidential) No 174.

Godavery District
Magistrate's Office
Cocanada, 13th May 1873

From H. S. Foster Esquire
Ag Magistrate

To The Honorable W. Hudleston
Chief Secretary to Government
Fort St George

Sir,

With reference to the order of Government No. 580 dated April 14th 1873, I have the honour to inform you that the change in procedure has not generally been observed by the Magistrates

2 There will certainly be inconvenience in carrying out the provisions of the Law, if the "Jail of the District" only refers to the Chief Jail in the District for as Prisoners would have

to be taken 40 or 50 miles to be flogged, it would be a perceptible enhancement of punishment.

3 If this is the right interpretation of the section, then I do not think that Confinement in Subsidiary Jails, of prisoners sentenced to imprisonment, is legal.

I have the honour to be,
Sir,
Your Most Obedient Servant
W S Foster
Ag Magistrate

Exd. P Ramachandram
Hd Clerk

Judl. 1873 (Confidential)
From
The Magistrate
of Godavery Dt.
To The Chief Secretary
to Govt.
Fort St. George
Dated 13th May 1873
Received 20th – No. 174
Enclo. None **No. 1095.**
W.K
Subject
Referring to the
Order of Government
of the 14th April 1873
No. 580, informing
that the change in
procedure has not
been generally observed
by the Magistrates.

Camp Ruichoti
May 14/73

To
The Chief Secretary
to Govt.

Sir,

I have the honor to report confidentially on the subject of Proceedings of Govt. Judicial Dept. dated April 14th 1873.

The procedure in Section 302 Act X of 1872 has not been generally noticed by Magistrates in this district. Two only have actually observed the change in the procedure.

I have no hesitation in saying that so long as Section 302 continues to be law persons sentenced to be whipped only & the Police in escorting such persons to the District Jail, will be put to the very greatest inconvenience. There are 3 Magistrates in the Sub Division of this District empowered to inflict lashes & their Courts are at a distance of 80 miles from the District Jail. The Police force is already numerically weak in this District & this additional Escort duty will bear heavily on them. The sentenced persons will be unnecessarily detained in custody & will be put to a great deal of needless vexation & trouble.

The effect of the procedure as it now stands will be to cause Magistrates to avoid whipping unless they can add imprisonment to the sentence. The moral effect of a whipping in a locality where the offender is known is often greater than the bodily pain it actually inflicts. The good Effect will be quite lost if the sentence is Executed according to the new procedure.

I have the honor to be
Sir
Your Obedt Servant
J. D. Rowley
Magistrate of
Cuddapah

1873
Judicial Department
From
the Magistrate
of Cuddapah
Dated 14th May 73
No 1072
Reports on the procedure in Section 302 of Act X of 1872 in respect of whipping -

---

3

Vizagapatam
May 14. 1873

From
J. R. Daniel Esq
Ag Collector. Vizagapatam

To
The Honble W. Huddleston
Chief Secretary

Sir

I have the honour to report upon the order of Government No 580 dated April 24. 187[illegible] regarding the Execution of sentences of whipping

The change in the procedure introduced by Sec. 302 of the new Procedure Code has Entirely Escaped the observation of all the Magistrates in this District; all the sentences of whipping passed since the introduction of the new Act have been Executed in the same way as before that is the accused is taken before the Medical officer; and in no case when whipping has been the only punishment has the prisoner been sent to the District Jail.

In ~~this District~~ the observance of this new Provision would cause the greatest inconvenience, ~~and~~ few Magistrates would sentence a man to whipping, if he must be brought down to the ~~the~~ District Jail for execution; This District is the most extensive in ~~the~~ Presidency, a great part consists of wild hill tracts, and the distances are enormous; the journey to the District Jail would be a greater punishment, in many cases, than the whipping itself.

If ~~this~~ provision continues to be law, the whipping Act will rarely if ever, be used in the district.

I have the honour to be
Sir
Your most obed^t Servant
J R Daniel

Judicial 1873 Sept

From H. Daniel Esq.
Ag. Magte. Vizagapatam
9th
21st May

No 1101

Reports regarding the execution of sen-tences of whipping

"Confidential"

South Arcot

Magistrate's Office
Camp - Tindivanam
16th May 1873.

From
H. E. Sullivan Esqre
Magistrate of S. Arcot

To
The Honorable W. Hudleston
Chief Secretary to Government
Fort Saint George.

Sir,

I have the honor to submit the report called for in G. O. Judicial Department dated 14th Ultimo No. 580.

2. The change in the procedure in regard to the Execution of a Sentence of whipping introduced by Act X of 1872 has not been productive of any inconvenience in this District as yet for the simple

reason that the alteration of the Law had entirely escaped the notice of every Officer of the Magistracy until attention was drawn to it by the order under report.

3 The Penal law provides whipping *pur et simple* as the penalty of certain offences and evidently contemplates the punishment being inflicted as immediately sentence is passed. The new Procedure Code enhances the punishment by keeping the convict in duress and painful suspense for such time as may be necessary to traverse the distance between the place of sentence and the place of Execution - A march of 100 miles in handcuffs is in itself a punishment and the prospect of 100 lashes at the end of it is not calculated to lighten the toil of the journey.

4. The Section might

stand if it had reference only to a town within the limits of which the jail was situate but having effect as it has in this Presidency over an area in each District of several thousand square miles, the necessity of amendment is obvious.

5. Sec. 311 of the new Procedure Code prescribes that the punishment of whipping is to be inflicted in the presence of a Magistrate. As in the Madras Presidency none of the Jail Superintendents, so far as I am aware, exercise Magisterial functions it follows that a Magistrate must be permanently attached to the Jail to see each sentence carried into Execution.

6. I take this opportunity of respectfully submitting that I am not alone in thinking that Act X of 1872 is susceptible of a

good deal of amendment. As instances I may mention that Sec. 9 which vests the appointment of all grades of Magistrates exclusively in the hands of Government is productive of great practical inconvenience as is also Sec. 295 which precludes all Courts save the Sessions Court and the Magistrate of the District from calling for records of Courts Subordinate them.

I have the honor to be
Sir
Your most obedient servant

Acting Magistrate.

1873
Judicial Department
From
The Magistrate of
South Arcot.

To
The Chief Secretary
to Govt.

Dated 16th May 1873.
Recd. 19.
Enc. "

Reporting confi-dentially on G.O. dated 14th April 1873 No. 580.

South Arcot
No. 26 Magistrate's Circuit Off
Camp Tellore 19 May 187

From

Henry Sewell Esqr
Ag. Magistrate of
South Arcot

To

The Honble W. Hudleston
Chief Secretary to Govt.
Fort Saint George

Sir

I have the honor to subm the Confidential Report called for by Government in their Proceed of the 14 April 1873, No. 580, rel to the working of Clause 4 Section Criminal Procedure Code.

2 From the Reports I hav :caived and from my own observa it appears that the letter of the La not followed out except in cases a sentence of imprisonment al one month in additi

nance of whipping.

I need hardly point out that many cases the Whipping Act must be nt in abeyance if Section 302 is literally carried out. If a boy is sentenced receive half a dozen stripes with a rattan a station fifty or a hundred miles stant from the District Jail and if has to be forwarded there for the execution of the sentence, he must be for a week or ten days in illegal tody on the Road.

Again under Section 302 all victed Prisoners must be forwarded District Jail, so that a person enced to twenty four hours simple prisonment must be sent there ever distant, may be the place of entence. [illegible] case the sentence b expire [illegible] d and the Subsidiary Jails would be entirely less.

the execution of sen

4 Pending further orders I presume that the present mode procedure should be allowed continue.

I have the honor to be
Sir,
Your most obedt Servt
Henry [illegible]
Ag Magistrate

South Arcot
Magistrate's Office
Camp Villenore
19 May 1873

To
The Hon'ble W. Huddleston
Chief Secretary to Govt
Fort Saint George

From The Acting Magistrate
of North Arcot

To The Chief Secretary
to Government

Dated 19th May 1873
Despatched 20th May 1873
Recd. 22nd — "
No. 1104 Ro. 26
Enclosure None

Submits the Confidential report called for by Government in their Proceedings of 14th April 1873 relative to the working of clause 4 section 302 C. P. C.

Confidential

No. 19

Malabar Magistrate's Court
Calicut 28th May 1873.

From,

W. Logan Esquire
Ag: Magistrate of Malabar

To,

The Honble W. Hudleston
Chief Secretary to Govt.
Ootacamund.

Sir,

I have the honour to report as requested in G. O. Judicial Department No. 580 dated 14th April 1873 that in the greater part of this District the change made by Section 302 of Act X of 1872 had not been perceived, and that in no part of it was the section interpreted as meaning that persons sentenced to short terms of imprisonment (under one month) or whipping were to be forwarded to the principal Jail of the District. If the Section were to be so interpreted, the trouble caused to individuals and the additional expense to Government would be

Confidential

enormous. I am issuing orders that the old practice is to continue until a definite ruling declares it to be illegal.

I have the honor to be,
Sir,
Your most Obdt Servant,
Wm Grogan
Ag: Magistrate

T.N.S.

1873. Judl. Deptt.

From

The Ag Magistrate
of Malabar

S.L. 830

The Chief Secy to
Government
Ootacamund

Dated 28: May
Recd 30. — " — } 1873.

No. 48.

No 1177.

Reporting that the change in procedure under Sec: 302 of Act X of 1872, had not been perceived in the greater part of the District.

Enclosure to
Go 830 Judl
d/ 24. 5. 73

of the Section, and assuming that the Local Government have the power to establish as many jails in a District as are deemed necessary, a Notification should be issued by the Government, declaring that for the purposes of Act X of 1872, all subsidiary jails should be regarded as District jails. Such a Notification would also in a great measure remove the inconvenience which must necessarily arise from a strict observance of the Section 302 in case of Subsidiary

I have the honor to be
Sir
Your most obedient servant
Ob Irvine
Ag District Magistrate

Chingleput
District Magistrate's Office
Saidapet
29th April 1873.

Jud^l. Department 1873

From Ag. Magistrate of Chingleput.

To Chief Sec: to Government

Dated 29th April 1873
Recd. 1st May.
Enclosures - Nil.

No. 976

Replying to Proceedings of Govt. dated 14th April in the Judicial Dept regarding the working of Sect. 302 of the Criminal Procedure Code Act X of 1872 ——

Confidential Recd. 3d May/73

7

From J.G. Horsfall
Acting Magistrate
Nellore

To The Hon'ble W. Hudleston
Chief Secretary to Government
Ootacamund

Sir

I have the honor to report, with reference to Proceedings of the Madras Government Judicial Department dated 14th April 1873 No 580, that no inconvenience has arisen in this District from the procedure laid down as to whipping under Section 302 Act X of 1872 simply because the change introduced has not been observed or acted upon by the

Magistrates

2. Section 302 directs that if the accused person is sentenced to
transportation imprisonment or
whipping the Court shall forthwith
forward him with a warrant for
the execution of the sentence to the
officer in charge of the jail of the 3
District; and section 311 directs
that the punishment of whipping But see last clause of sec 302
shall be inflicted in the presence
of a Magistrate and also unless the
Court which passed the sentence
otherwise orders in the presence 4
of a medical officer. If sections
302 and 311 are taken jointly
and not separately, we have three
officials necessary for the due
execution of a sentence of whipping.

the officer in charge of the Jail, a Magistrate, and a Medical Officer. It is possible that one individual may combine these qualifications in his own person, but this will rarely be the case, and such from the wording of the Code could never have been the intention of the Legislature.

I am inclined to think that the provisions of Section 302 are intended in cases of whipping to apply to the Court of Session only and those of Section 311 to the Magistrates. This tallies with the practice heretofore followed.

Should the wording of the Code as it stands not admit of this interpretation I have no hesitation in recommending its early amendment.

The procedure is especially open to objection in respect to juvenile offenders who ought not to be sent long distances in custody of the Police to receive merely a few stripes with a rattan. The magistrates will never inflict whipping under such circumstances.

I have the honor to be
Sir
Your most Obedt Servant
J. G. Horsfall

Nellore
April 30th 1873.

Judicial. 1873. Dept.

From the Ag. Magistrate
of Nellore.

d/30 April 1873.

No 977

Submits report regarding
Section 302. Act X of
1872. procedure relating
to Whipping.

From O. B. Irvine Esqr.
Acting District Magistrate of Chingleput

To The Hon. W. Hudleston
Chief Secretary to Government

Sir. In reply to the Proceedings of Government dated 14th April 1873 Judicial Department calling for a confidential report regarding the working of Sect. 302 Act X of 1872, I have the honor to state that, as a matter of fact, no effect has been given in this District to the Section, & the change in the procedure has not been observed, or at any rate acted upon.

2. I have no hesitation in saying, that if Magistrates were to adhere to the strict letter of the law, as laid

down in the Section, the highest inconvenience would arise. The time of the Police would be taken up in simply marching to and from the District Jail at [illegible], distant 35 miles from the Magistrate's Head Quarters and more than double that distance from many parts of the District. A sentence of whipping only, (by which I understand a whipping to be administered immediately after conviction,) would become impossible, because it would be accompanied by detention for a number of days after conviction — that is, until the sentence of whipping could be carried out in the District Jail.

3. Another evil attending the rigid adherence to the letter of Sect. 302 would be — that after being marched out to the District Jail & whipped, the unfortunate native would be turned adrift, often in a strange part of the District — mile

away – perhaps two or more days journey from their villages – and left to find their way back to their villages as best they may, & more often than not, without means of honestly maintaining themselves during the period occupied by the journey. This would be a great hardship in all cases, but how would the system work in the case of juvenile offenders?

4. A strict enforcement of the law, as laid down in the Section, would also practically defeat in a great measure the deterrent effect of whipping. I refer especially to this punishment – as carried out at fairs and festivals, where large crowds assemble, & pickpockets

carry on a thriving trade. People of the latter class are not deterred by a sentence of imprisonment. & the only fit punishment is a whipping inflicted immediately on the offence being proved, and in the most public manner possible.

5. I avail myself of this opportunity to point out that by clause 4 Sect 302, it is provided that not only in cases of whipping, but in all cases, Courts passing sentence are to send the accused to the "Officer in charge of the Jail of the District".
According to this strict rendering of the section, there is only one Jail for each District, & this would seem to render imprisonment in the subsidiary jails illegal.

I would respectfully suggest that to remove any doubt which might
from a too critical examination

Judl. 1873 Dept.

From
The District Magte:
of South Canara
To
The Chief Secy: to Govt.
Judicial Dept:
Fort St George.

Dated 23rd }
Recd. } April 1873

No. 973 No. 543

Enclo: none

Reporting on the change of procedure introduced by Sec: 312 of Act X of 1872; & suggesting the advisability of amending Sec: 464 of the said Act

Judicial 1873 Dept.

From the Magistrate of
the Godavery District.

d/22d April 1873.

No. 971.

Submits report regarding
Section 302. Act X of
1872 - procedure relating
to Whipping.

From

The District magte of Tinnevelly

To

The chief secretary to Govt.

Sir

In reply to your confidential circular No 580 dated 14th inst: enquiring whether magistrates have observed the change in procedure relative to whipping I have the honor to inform you that the magistracy of this district continue to whip as formerly & have not as yet forwarded prisoners to be whipped at the district jail.

Unfortunately both the joint magistrate & the additional joint magistrate are absent from the district while the Head assistant magte has only just joined – I am therefore unable to furnish other opinions than my own but it seems to me that half the value of whipping as a punishment will be lost if the offender is not whipped on the scene of his crime, while the labour of the Police will be very greatly increased by having to escort such offenders from long distances to the District jail to be whipped –

I have the honor to be
Sir
Your obedient servt

Palamcottah
April 22. 1873.

R K Puckle
Dist: Magte.

Judicial. 1873. Dept.

From
District Magte of Tinnevelly

To
Chief Secy to Gov

Dated April 22. 1873

No 972

Reporting on change
in procedure relative
to whipping.

From the District Magistrate
of Bellary.

To The Chief Secretary
to Government

Dated Ramandroog.
April 21st 1873

Sir

I have the honour to acknowledge the Proceedings of Government, Confidential, No 580, dated the 14th Inst.

2. The change in procedure enjoined by Section 302 of Act X of 1872 (last clause), has, I regret to say,

not been perceived, and it has therefore not been ordinarily observed by Magistrates in this district.

3. The Government will however, doubtless, have observed that immense inconvenience must result, if the execution of every sentence of whipping is to be carried out in "the Jail of the District." For instance, if the Head Assistant Magistrate of this district, who resides at Pennakonda were to pass a sentence of whipping, and perhaps of whipping only, the prisoner would

have to be forwarded a hundred miles by road to the District Jail.

4. The Police throughout the district receive regular lessons in flogging, and a Magistrate ought to have the power of carrying out a sentence of whipping on the spot.

5. I beg to suggest that the law be altered so as to permit this.

I have the honour to be
Sir
your most obedient servant
Master
District Magistrate

Judicial. 1873. Dept.

From the District Magistrate of Bellary.

of 21 April 1873.

No. 970.

Reporting on change in procedure relative to Whipping.

Camp
Dhenkanikottah
May 1st. 1873

My dear Mr. Huddleston

Since the extremely inconvenient provisions of Section 302. C.C.P. have come into notice, I have as Dt. Mgt. received, for review sundry Calendars in which the punishment of whipping has been awarded and from which it appears that the Officer passing the sentences

Carried them out, as usual on the spot.

Their doing so appears to me to be illegal, but no one in the Dpt. has noticed the correct law on the subject and I have thought it better not to draw attention to it, as no confidential report on the subject had been called for.

I do not know whether I am right in remaining silent or not and therefore write to ask you what I should do.

If the present law is carried

out, there will be a great increase in the cost of the administration of justice, but I doubt whether, now that I know what the law is, I should on this account allow a legal error to continue

Yours sincerely

Frederick Rice

1873

Indn. Depd.
From
H. Price Esqre

Recd. 5. May/73.

Mr. Hammett
Hovaany
Replies Decd.

Cocanada
April 22nd 1873.

Sir,

I have the honor to acknowledge the receipt of the order of Government Nº 380 dated April 14th 1873, Judicial Department.

I have not felt any inconvenience myself from having to send prisoners sentenced to whipping to the District Jail: because I have not sentenced any one to whipping only. I will report further on this matter when I receive replies from the other Magistrates.

I must say that I had overlooked the change in procedure, and the proceedings in question made me read the Section more carefully, and I write at once to mention that it seems clear to me that if the "jail of the district" mentioned in the Section means only the jail that goes by the name of the "District Jail", even im-"prisonment in a Subsidiary Jail is illegal. In cases tried by a Magistrate, the Court shall forward the accused person to the Officer in charge of the Jail of the district. I shall not alter the present practice of confining short sentenced Prisoners in Subsidiary Jails, until I hear from you. The change would cause a great deal of trouble, especially in the case of Prisoners whose sentences expire when they are on their way to the Jail.

I have the honor to be, Sir,
~~I remain~~.
Your most Obedt Servant
William S Foster

The Chief Secretary
to Government.

Vichy

5. 5. 73

Dear Huddleston,

In answering the G.O. about whipping in Jail it did not occur to me to consider the Convenience of the subjects! I fancied it was the Convenience of the officials that was referred to — It must be always inconvenient to be whipped — anywhere

Carry them out rigorously — I'm sorry to say I have not done so

Yours sincerely

Pennington

but it is no more of a hardship to the sentenced to whipping alone even if it involves a walk to the Jail, than to go in for a weeks imprist (say) & a whipping -

I'm not at all in favour of floggings in the middle of villages, and was much relieved to think that all the dirty work would be done inside the jail in future

I doubt very much if this punishment will lose much of its deterrent effect, & it will no longer be a degrading spectacle & source of amusement to small boys -

After sending off my letter it occurred to me that it will cause some inconvenience to the Town Subd Magte. who will most likely have to be present; but that might be obviated by making the Supts of Jails Magistrates - I expect all the whippings they have carried out so far have been illegal - for all whippings were then

Keep with the Prisons [illegible]

carried out in presence of a Magte even
under the old Law

Is there any objection to Cantonment
Magistrates being made Official Visitors
of Jails? it would be a convenience often
when the Judge is away & the Magistrate out —
that reminds me that the Rules for Official
Visitors are very strict — and rather difficult
carry out — I wonder how many Officials visit —