Judicial (1895) Department.

ORDINARY MS.

G.O., No. 23-24.

DATED 8th Jan. 1895.

INDEXED.

[Despatch Abstract.]

JAIL CODE

Passing orders on letter from the Inspector-General of Prisons submitting a reply to G.O., dated 27th September 1894, No 2347, regarding the changes in existing rules rendered necessary by the passing of the Prisons Act, 1894, and addressing the Government of India in connection therewith.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
C. No	637		95 —	R 228/95			
G. No	691		95 —	766-5/95		Printed	

List of amendments to be made in the Jail Code, Madras, under Section 60, Act IX of 1894

✓ 1. Rule 20 A. After rule 20, insert the following:—

Rule 20 A – Under section 60, clause (5) of the Prisons Act, 1894, the Governor-in-Council has been pleased to extend to Subsidiary Jails the following provisions of the said Act, namely, Sections 4 and 5, so much of section 6 as requires that there shall be a Superintendent for every Prison, sections 7, 8, 9, 10, 11, (excepting the last 15 words of clause (2)), 12, 13, 14 (excepting the second paragraph), 15, 17, 18, 24 clause (1), 26, 31, 32, 33 clause (1), 35 clauses (1) and (3), 36, 37, 40, 42, 43, 44, 45, 46, clauses (1), (2), (5), (6), (7) and (9), 49, 50, 51, 52, 54, 55, 56, 61 and 62.

Supdt

✓ 2. Rule 53. At the beginning insert:— "During the absence of the Superintendent of a Central Jail, of the Penitentiary, or of the District Jails of Tanjore and Palamcottah, the powers and duties conferred on him by law shall be exercised and performed by the Medical Officer of the Jail, except the Government otherwise directs".

"How about the Civil Jail Madras? D 28/4

3. Rule 72. A. After Rule 72 insert the following:—

Rule 72 A. "During the absence of the Medical Officer of a Jail, the powers and duties conferred on him by law shall be exercised and performed by the Assistant Surgeon, where such officer exists, and where the [illegible] such officer, by the senior medical subordinate of the Jail."

4. √ Rule 356 A. After Rule 356 insert the following:— Rule 356 A— The following shall be deemed to be prohibited articles within the meaning of section 45, clause (12) of the Prisons Act 1894 viz:- poisons, alcohol in any form, tobacco or the implements for smoking, snuff, opium, ganja or other hemp drug, betel, areca-nut, food, clothing, money, jewellery, knives or other weapons, tools for working wood, metals or leather, explosives, matches, books or writing materials, letters, postage stamps, playing cards, or any other article received, possessed or transferred otherwise than by due authority.

√ 5. Rule 360. Insert the following as matters which shall be recorded in the Punishment Book, and amend Form No. 17 accordingly, viz:—

(1).(a). whether the prisoner is a Habitual or not.

(5)(a). the number of previous prison offences recorded against the prisoner.

(5)(b). the date of the prisoner's last prison offence

√ (11) (a). Initials of Tailor.

√ 6. Rules 377 and 378. For these rules substitute the following, viz:—

√ Rule 377. Penal diet shall consist of the following restricted diet, viz.—

A

A.. Europeans and East Indians— $1\frac{1}{2}$ lb. of bread per diem with water.

B. Natives and Foreign Convicts— 12 ozs sifted ragi flour with $\frac{1}{2}$ oz salt per diem, with water.

why not ragi

N. B. Six ozs of flour and $\frac{1}{4}$ oz salt shall be made into a thick kanji for the morning meal and six ozs of flour and $\frac{1}{4}$ oz salt shall be made into an unleavened cake for the evening meal.

√ Rule 378. No task of labour shall be enforced on any day on which a prisoner is on penal diet, but he may be supplied with work to occupy him. Every prisoner shall be weighed before being placed on penal diet and on the expiry of the period of penal diet undergone, and the weights shall be duly recorded. The effect of penal diet on a prisoner's health shall be carefully watched both by the Superintendent and Medical Officer, and if the health of a prisoner is injuriously affected to a material extent by penal diet, the prisoner shall be restored to the ordinary dietary. The Superintendent shall be bound to cancel any unexpired period of penal diet if the Medical Officer recommends it, but the Medical Officer shall record in writing his reasons for the recommendation.

√ 7. Rule 397. Cancel the last three words.

√ 8. Rule 406 (as amended by the second list of corrections) and Rule 407. Cancel and substitute the following:—

√ 406. In the first week of each month a list shall be made out of those prisoners who, on the supposition that they will earn their full ordinary marks during the intervening period, will be entitled to release in the course of the month next ensuing. This list shall be submitted to the Superintendent, signed by him and filed in the office. If the prisoner fails to earn the number of marks assumed in the list, or if from bad conduct he forfeits any of the marks already earned, the date of his release will be proportionately deferred; while if, on the other hand, he earns an additional number of marks, the date of his release will be proportionately advanced. As soon as he has earned such number of marks as entitles him to release, he shall, if otherwise eligible, be released by the Superintendent, without further sanction or reference. The amount of remission finally earned shall be endorsed on the prisoner's warrant and the endorsement signed by the Superintendent.

✓ 9. Rule 409. lines 3 and 4. Cancel the words:—
" nor shall the name of such prisoner be included in the statement referred to in Rule 406 *supra*."

✓ 10. Rule 926. at the end add the following:—
" Provided that, so far as is consistent with the interests of justice, such prisoners shall be allowed to see their duly-qualified legal advisers without

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the presence of any other person".

✓ 11. Rule 1055. For the figures "16" substitute the figures "18".

✓ 12. Rule 1067. For the word "sixteen" in line 1, substitute the word "eighteen", and for the word "twenty" in line 2 substitute the words "twenty-two".

✓ 13. Rule 1069, line 1, Cancel the words:—
"and adolescents under the age of 18".

✓ 14. Rule 1092 Cancel the first 19 words.

✓ 15. Rule 1329. Cancel and substitute the following:—

✓ 1329. The general control of all Subsidiary Jails within his district vests in the District Magistrate by virtue of clause (ii), section 11 of the Prisons Act, 1894.

✓ 16. Rule 1330. Cancel the first two lines and substitute the following:—
" The chief magisterial officer of the station in which a Subjail is situated shall be the Superintendent thereof."

✓ 17. Rule 1331. Cancel the first 12 words and substitute the following:—
" During the absence of the Superintendent of a Subsidiary Jail."

✓ 18. Rule 1338. Cancel and substitute the following:—

"For the purposes of the Prisons Act 1894, the senior Medical Officer of the station in which the subjail is located shall be the Medical Officer of the Jail. Where there is no medical officer in the station, the duties of the Medical Officer under the Act shall be performed by the Superintendent of the Jail. In the absence of the senior medical officer of the station, the duties of the Medical Officer under the Act shall be performed by the next senior medical officer in the station, or if there is no other medical officer in the station, by the Superintendent.

√ 19. Rule 1340. Cancel.

√ 20. Rule 1356. Cancel and substitute the following:— "1356. The acts which constitute prison offences are declared in section 45 of the Prisons Act 1894 and in Chapter XX supra. Under Rule 20 A supra Superintendents of Sub-Jails have power to take cognizance of any such offence and to punish the offender with any of the punishments, specified in clauses (1), (2), (5), (6) (7) or (9) of the Prisons Act, 1894".

√ 21. Rule 1357. In line 8, after the word "view" cancel the last 8 words and insert the words:— "whether the prisoner is a habitual or not, the number of previous prison offences recorded against the offender, the date of the prisoner's

prisoner's last prison offence, the punishment awarded for the present offence, the date of infliction, the initials of the Superintendent, a of the Jailor (if any)"; and amend Form No 17 accordingly.

A.G. Cardew
Inspector General of Prisons.

Recd.

5873

5873

No. 6319.

Ootacamund.

OFFICE OF THE INSPECTOR-GENERAL OF ~~JAILS,~~ Prisons

Dated 31st October 1894.

From

A. G. CARDEW, ESQ., M.A., I. C. S.

INSPECTOR-GENERAL OF ~~JAILS,~~ Prisons

To

THE Hon'ble Mr. T. F. Price C. S. I.

CHIEF SECRETARY TO GOVERNMENT,

SIR,

1 Enclosure.

I have the honour to submit for the consideration of His Excellency the Governor-in-Council the following reply to G.O. 27th September 1894 No. 2347. The subjects are noticed in the order of the clauses of paragraph 1 of those Proceedings.

2. Extension of provisions of Act IX of 1894 to Subsidiary Jails. (clause 1 para. 1 of G.O. 27th Septr. 1894 No. 2847).

(1). There is no objection to the omission of the last 15 words of Section 11 (2) of the Act, of the second paragraph of Section 14, of sections 28 and 29, of clause (10) of Section 46, and of section 48, from the list of sections to be applied to Subsidiary Jails.

(2). It is, however, submitted that it is desirable to extend clauses (1), (3) and (4) of Section 27 of the Act to Subsidiary Jails, as similar provisions, contained in section 7, Madras Act V of 1869, have hitherto been in force; and that it is also desirable to extend sections 33 and 34, because in the case of the Subsidiary Jail at Ootacamund, Civil prisoners remain, not merely when en route but throughout their term of confinement.

(3). There is also no objection to the extension to subsidiary Jails of a part of section 6 and of sections 8, 26, 35(3), 61 and 62, as proposed by Government.

(4). The objection to the extension of sections 17, 18 and 37 is that, except in 3 or 4 sub-jails, there is no such officer as the Jailor. Moreover, in some subjails the warrants are kept by the Warder-Peon, in others by the Magisterial Clerk, and the provisions of section 18 would be thus troublesome to carry out. There is less difficulty as regards sections 17 and 37, but, on the whole, the application of these sections to Sub-Jails does not seem to me to be called for.

The proposed Rule 20A to be inserted in the Code has, however, been drafted strictly in accordance with the orders of Government. If, on consideration of clauses (2) and (4) of this paragraph, any modification is decided on, it is requested that that draft rule may be corrected accordingly.

3. Extension of Act IX of 1894 to the Criminal Leper Ward.

It was not considered that any orders extending

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the provisions of Act IX of 1894 to the Criminal Leper Ward were required, because by Rules 5 and 11 of the Jail Code, (which is itself deemed to have been made under Act IX of 1894), the Criminal Leper Ward is expressly declared to be a Jail. This declaration must override the terms used in paragraph 3 of G.O. 21st November 1891 No. 2891, the Jail Code having been issued considerably later than that G.O. To remove any doubt on this point I propose to cancel the first 19 words of Rule 1092 of the Jail Code which are unnecessary, and a draft amendment to this effect is included in the List. If the Government considers that Act IX of 1894 does not thus apply to the Criminal Leper Ward, I recommend that the whole Act be applied thereto by rule under section 60. In the circumstances, however, no rule on this point is drafted.

4. Classification of Adults and Juvenile Prisoners (clause (4) para. 1 of G.O. 27th September 1894 No. 2347).

Draft amendments modifying Rules 1055, 1067, and 1069 of the Jail Code are included in the List of amendments. It appears to me that Rule 1058 provides sufficiently for the separation of the two classes of Juveniles from one another. It will be impossible in most Jails to carry out separation by day of Juveniles who have attained puberty from Juveniles who have not attained puberty, and of both from Adults. If any further Rule is held to be necessary, the adoption, in place of Rule 1058, of words analogous to those used in Rule 850 of the Bengal Jail Code seems the best course i.e. of some such terms as these:—

"1058. In Jails where adequate means of separating the two classes of Juveniles from one another do not exist, they shall, during the day be kept under the eye of a prison officer who shall see that no familiarity or communication takes place between the two classes. At night juveniles of the first class shall be locked up, each in a separate cell, or cubicle; while those of the second class may be similarly treated, or may sleep in a ward together."

This change does not, however, appear to me to be necessary and it is not, therefore, included in the list of draft amendments to the Jail Code. It will be necessary to direct the attention of all Magistrates concerned to the change in the age at which an offender ceases to be a Juvenile for the purposes of Rule 1056 of the Jail Code. This will be done as soon as the orders of Government are received. There is some inconvenience in having a discrepancy between the definition of a Juvenile for Jail purposes and that contained in the Criminal Procedure Code and the Reformatory Schools Act, but this cannot be helped, and it appears from Chapter XXIII of the Bengal Jail Code to have existed for many years in Bengal.

5. Record of Refusals to Admit (clause (6) para. 1 of the G.O.).

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It would be more convenient if the record of these refusals were ordered to be made in the Jailor's Report Book. (Code Form No. 4), should the Government see no objection. That this was the intention of the Legislature will be seen by a reference to Section 40 (2) of the Bill as communicated to me by G.O. 19th January 1894 No. 112.

6. Rules to be made under Section 46(4) of the Act. (clause 8, para. 1 of the G.O.).

It appears to me to be doubtful whether the proviso in Enclosure II to the Government of India's Letter will bear the meaning placed on it by Government. The forfeiture of future marks not yet earned is a different thing from exclusion from the benefits of the Remission System and subclause (b) printed in the Government of India's Letter was probably intended to meet the case of a prisoner who is fined marks in excess of those as yet earned. If, for instance, he has been in Jail a month and has earned 56 marks, and is fined 96 marks, the fine is not a temporary exclusion from the Mark System but a forfeiture of marks in advance of their being earned. In the one case (i.e. of a fine of unearned marks) the award of daily marks is still carried out, and if the convict is lazy and earns a fewer number of marks than he ordinarily would, it will take him a longer time to make up the 40 unearned marks which he has been fined.

In the other case (i.e. that of temporary exclusion from the Mark System) the award of daily marks ceases altogether during the period of exclusion awarded. As there is thus a definite distinction between the two punishments, the amendment to Subclause (f) proposed in paragraph 6 of my Letter No. 4827 dated 9th August 1894 seems to be necessary and would certainly make the rules clearer.

7. Form of Fetter Register. (Clause (11) of the G.O.)

As the Government observes, it will be desirable to amend Form No. 18 when the use of Fetters as a punishment is introduced. As this will not commence until the Government of India has prescribed the pattern and weight of the fetters to be used by rule under Section 59 of the Act, the amendment of the Fetter Register can be carried out with the other changes to be then effected.

8. Legality of Rule 397 of the Jail Code (clause (12) para. 1. of the G.O.).

An amendment cancelling the last three words of this Rule is submitted. The rest of the Rule does not appear to need alteration. It is not inconsistent with Section 46 clause (4) of the Act, and is practically a useful provision.

9. Rules 407 and 409 of the Jail Code (clause (14) para 1. of the G.O.)

It will be seen from paragraph 13 of my Letter 9th August 1894 No. 4827 that it is proposed to cancel Rule 407, incorporating such of its pro-
visions

provisions as need to be retained in the new Rule 406. As regards Rule 409, there appears to be no reason to change the existing procedure regulating the award of marks and grant of remission to European Military prisoners. The reasons stated by Government in paragraph 30 G.O. 6th Nov. 1891 No. 2286, for not extending the remission rules to such prisoners apparently still hold good, and the retention of Rule 409 is not inconsistent with the provisions of section 59 clause (5) of the Prisons Act 1894. All that is necessary seems to be, with reference to paragraph 10 clause (5) of Home Department Letter No. 5 Jails — 370, dated 9th July 1894, to obtain the sanction of the Government of India to the retention of the rule. As a practical matter, however, the Rule is of no importance whatever, European Military Prisoners sentenced by Courts Martial being rarely, if ever, admitted into the Jails of this Presidency. A small verbal amendment of the Rule is needed, and this is provided for in this List of Amendments.

G.O. 1873 / 24.7.94

10. Rules covering the delegation of duties of Jail Officers. (clause (21) para. 1 of the G.O.).

An addition to rules 53 and 72 dealing with the performance of the duties of Superintendents and Medical Officers of Central and District Jails in their absence is included in the List of Amendments. As regards Subsidiary Jails, Rule 1329 of the Jail Code declares that the Superintendence of every
Subsidiary

Subsidiary Jail is vested in the District Magistrate. It is necessary to revise and alter this Rule, leaving District Magistrates to exercise control over subjails in virtue of section 11(2) of the Act. Other alterations are necessary in Rules 1330 and 1331 and are provided for. No change is desirable in the wording of Rule 1328, as it would be inexpedient to give Assistant Magistrates, Civil Surgeons, or Deputy Inspectors General of Police authority over Deputy Collectors in charge of subjails under Rule 1330.

11. It is further necessary to recast Rule 1338 so as to bring it more into accordance with the terms of the Prisons Act, though it will be observed that as section 3 does not apply to Subsidiary Jails the declaration referred to in the last sentence of the first paragraph of clause (1) para. 1 of the G.O. is unnecessary. The term "Medical Officer" is not defined in the Act, and though the term "Medical Subordinate" is defined, that definition will not apply to subjails and, therefore, will not affect Rule 1338 at all. In the absence of the definitions, which are certainly not needed in the case of subjails, the term "Medical Officer" will bear its ordinary general significance. A revised rule 1338 has been drafted accordingly. It is proposed to cancel Rule 1340, as its provisions are a dead letter, and as, under Rule 1330, the Senior Magistrate of the station is almost always the Superintendent. When the Code is revised it will be desirable to substitute the words "the Superintendent" for the words "the Officer in executive charge of the Jail" in Rule 1341 and elsewhere, but it does not appear to be worth while to make these verbal alterations at present.

12. For the guidance of Superintendents of Sub-jails it seems necessary at once to revise Rule 1356, which would otherwise be likely to mislead them as to their powers of punishment. An amended Rule is accordingly included in the List. Rule 1357 has also to be corrected in order to bring it in harmony with Rule 360 and with the requirements of section 51 of the Act.

13. Upon receipt of the Orders of Government on this Letter, the amendments to the Jail Code therein sanctioned under Section 60 of the Prisons Act will be printed and circulated in the ordinary course, along with any other amendments of the Code which may meantime have received the Sanction of Government, as the Fifth List of Corrections.

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

A.G. Cardew.

Inspector General of Prisons.

5873

JUDICIAL.

JAIL (1894) DEPARTMENT.

GO 2347-8 : 27/9/94
345-6 : 14.2.94 do
172 : 25.1.94 Mis
112 : 19.1.94 "
1804-5 : 18.11.90 SC
2391 : 21.11.91 S.C.
Prisons Act
2286 : 6.11.91
1823 : 16.7.94 & connected papers

From
THE INSPECTOR-GENERAL OF ~~JAILS,~~ Prisons

To
THE CHIEF SECRETARY TO GOVERNMENT.

CHIEF SECRETARY
2 NOV 1894
GOVERNMENT OF MADRAS

Dated 31st } October 189 .
Despatched }
Received 2nd Nov
Regd. 3rd Nov

No. 6319

ENCLOSURES. 1.

Subject.

Submitting, for the consideration of His Excellency the Governor in Council, a reply to G.O. 27th Sept. 1894 No. 2347 – regarding the changes in existing rules rendered necessary by the passing of the Prisons Act, 1894

6/11

For orders

3/11

Judl.

Govt. G.O. of 27 Septr. 1894 No 2347 J

Current No. 5873 d/ 31 Octr. 1894
From the I.G. of Jails

For orders

This current is Mr. Cardew's reply to the G.O. read above. It is accompanied by a list of amendments which that order requires to be made in the Jail Code under s 60 of the new Prisons Act IX of 1894.

2. The first three paragraphs of Mr. Cardew's letter deal with the remarks contained in the first clause of the first paragraph of the G.O. In the list of amendments submitted Rule 20 A is drafted strictly in accordance with the instructions of Govt. & appears correct with two exception viz:

WS (i) It seems desirable to insert after "Subsidiary jails" the words "and to the "officers, and the prisoners confined, "therein." This is a merely verbal alteration following the wording of s 60(s) in the Act; many of the sections now to be applied relate to jail officers & prisoners rather than to the jails themselves.

WS (ii) The comma after 46 should be omitted. – This too is merely verbal.

But Mr. Cardew raises objections to the rule as drafted & his objections are as follows: –

(a) "It appears desirable to extend "clauses (1) (3) & (4) of s 27 of the Act to "Subsidiary Jails inasmuch as similar provisions contained in s 7, Madras Act V of 1869 have hitherto been in force.

This is correct; the extension of these clauses will leave matters just as they are.

(b). "It is also desirable to extend ss 33 & 34 because in the Ootacamund sub-jail civil prisoners are detained throughout their term of confinement". – This practice appears to be at variance with Code Rule No. 1320, which forbids it "except for special "reasons and as a temporary measure". But as the practice is allowable as a temporary measure, it is as well to have the sections exte

These provisions are no doubt desirable & should be enforced as far as possible. But are they so practicable that their enforcement should be made a matter of law? I doubt it. – For instance, how in a sub-jail are female prisoners to be prevented from seeing male prisoners? Let the I.G. make a rule if he pleases. But I don't see how the law is to be extended.

WS

Very well
WS

It would

17 & 37. & especially as in Subjails there is no jailer, & in some cases the warrants are kept by the warder-peon or magisterial clerk. – This appears a sound objection especially as only so much of S6 as requires the appointment of a Supdt. (& not that of a "jailer" also) was ~~been~~ to be extended to Subjails.

WS

In this connection it seems worthy of notice that rule 20 A extends SS 8, 51 & 54 to Subjails, which sections make mention of "the jailer". As no "jailer" is to be appointed in subjails it would seem desirable to omit the portions relating to "jailers", or to modify these sections so as to render the reference to "the jailer" unnecessary. Rules not inconsistent with these sections might be framed if their modification is undesirable.

Very well – In S. 8 omit the words "subordinate to the jailer" and "the jailer with the sanction of"; in S. 51 (3) omit the words "jailer and" & for "their" read "his"; and in S. 54 (1) omit the words "jailer or"

WS

3. As regards the Criminal Leper Ward Mr Cardew points out with apparent correctness that rules 5 & 11 of the Jail Code which has the force of law under S 2(2) of the Act expressly declare it ~~the Leper~~ to be "a jail." There is thus no need to specify what portions of the Act shall be applicable to it. In this connection however, to remove all doubt Mr Cardew proposes in amendment no. 14 to cancel the first 19 words of Code Rule no. 1092, which refer to the constitution of the leper ward as a "place of "confinement under SS 41 of the Cr. P.C."

It seems to me that the Cr. Leper Ward should not be treated as a jail & that the refce thereto in rule 11 should come out. Then it will have to be decided what sections of the Act shd. apply to it – I can't say without knowing more about it – For instance, is there a jailer there? Evidently ~~all~~ so much of the Act as applies to Civil Prisoners & to Prs under sentence of death need not be extended – The I.G. should reconsider the matter. ~~[illegible]~~ WS

4. Clauses (2) & (3) of the Govt. order require no reply. With reference to Clause (4) Mr Cardew submits draft alterations in rules 1055 1067 & 1069 but points out that the separation by day of juveniles who have attained puberty from those who have not is impossible in most jails. He considers that rule no 1058 is sufficient; if Govt. does not accept this view he recommends the substitution of a rule analogous to Rule No 830 in the Bengal Jail Code (vide para. 4 of his letter).

Rule 1058 will do as amended.

WS

It seems worthy of consideration whether Rules nos. 1067 & 1068 regarding adolescents might not be omitted altogether now that individuals under 18 are to be treated as juveniles.

Ask the I.G. – I don't see now what we want with refce to adolescents, nor can I see why '22' should be substituted for '20' in rule 1067 WS

I do not object. All I wished was that no new form should be devised for this record of refusals

WS

Very well. Let him have his way

WS

5. Para 5 of ~~the~~ Mr Cardew's letter deals with clause (6) of the G.O. He suggests that form 4 should be used for the entry of refusals to admit, instead of form no. 29. He points out that the original bill prescribed an entry in "the jailer's journal" – i.e. form no 4.

6. With refce to clause 8 of the G.O. Mr Cardew shews that there is a distinction between the forfeiture of future marks not yet earned and temporary exclusion from the benefits of the remission system viz. that in the former case a record of the marks subsequently earned must be maintained whereas no such record is necessary in the latter case. This difference does exist & it would therefore seem desirable to retain the amendment suggested by Mr Cardew viz. the insertion of the words "or temporary" after "permanent" in sub clause (f) under 85 referred to in Enclosure II of the Govt. of India letter read in G.O. of 24 July 1894 No. 1823 Jud. With refce to the remark of Govt. that "there is no penalty midway "between complete exclusion from the "remission system & forfeiture of the "marks which would probably be "earned during a period of three months" it would seem desirable to retain the revised proviso mentioned in para 1 (8) of G.O. of 27 Septr. 1894 No. 2347.

At the same time there is practically no difference as far as concerns the convict between the "forfeiture of future marks "not yet earned" & "temporary exclusion "from the benefits of the remission system" though it is true that in the former case he has an incentive to behave well whereas in the latter case his only object would be to avoid incurring further punishment as he would profit nothing by doing specially good work. This latter form of punishment would therefore be more rarely employed & the sanction of the I.G. to temporary as well as permanent exclusion from the benefits of the system appears desirable.

7. With ref. to clause (10) of the G.O. it seems that the I.G.'s alterations in Code Rule 360 & Form no 17 do not give effect to the whole of s.51 of the Act. The second clause of that section requires in the case of serious prison-offences the entry of the names of the witnesses proving the offence, & in the case of offences for which whipping is awarded the recording of the prisoner's defence. Mr Cardew's alterations do not provide for these requirements. The amendment of Rule no 1357 is similarly defective.

8. Para 7 of Mr Cardew's letter points out that the amendment of Form 18 (The Fetter Register) ~~cannot be carried out~~ can be more conveniently carried out after the Govt. of India has under s.59 of the Act prescribed the pattern & weight of the fetters to be used: draft rules on this subject form Enclosure III of the Govt. of India letter read in G.O. of 24 July 1894 & when finally settled they will require further alterations in form no. 18.

9. With reference to clause (12) of the G.O. (at the foot of page 9) Mr Cardew amends Rule no 397 by the omission of the words "or Inspector General". This appears to be sufficient as under s11(1) the Supdt. shall "subject to the orders "of the I.G. &xxx manage the prison in all matters relating to discipline xxx punishment xx". There is thus no objection to the words "under the orders of the I.G." which occur in the second line of the rule.

10. The instructions conveyed in clause (14) of the G.O. are carried by the substitution of the Govt. of India Rule (19 in appendix to resolution read in G.O. of 18 Jany 1893 No. 180 Jud.) for rules 407 & 408. There is no need to retain any portion of 407. 409 is retained subject to verbal alteration necessitated by the

Revision of the Jail Code with reference to the Prison Act II of 1894

point this out
WS

H.M.
For orders

replies to clause (11) of the G.O. &

But ~~I thought that~~ the idea was ~~that~~ loss of future marks for more than 3 months should be liable to cancellation or modification by the I.G.. If so, won't the simple omission of the words "or the I.G." clash? It seems to me it will
WS

HS

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the abolition of rule 406; Mr Cardew merely remarks that the reasons assigned in para 30 of G.O. of 6 Novr. 1891, No 2286 Jud. still hold good viz:—

(i) that "it is questionable whether the "grant of remission under the ordinary "rules to European soldiers would be legal "in the face of the Army Act 1881 which "contains no provision under which such "could be accorded"

(ii) that, "when the question was discussed in "1875 the Commander in chief objected "to the extension of the system to European "soldiers under sentence of imprisonment"

(iii) that the submission of reports to the Commander-in-chief for his orders on the question of release renders any application of the mark rules to European soldiers unnecessary as each individual case is decided by the C in C.

11. Amendment 4 in Mr Cardew's list carries out the instructions contained in clause (18) of the G.O. but one correction seems necessary. For the expression "tools for working wood or metals or leather", Mr Cardew substitutes "tools "for working wood, metals or leather" × which may be misinterpreted as prohibiting the introduction of "metals or leather" instead of "tools for working metals or leather". It seems better to retain the wording of clause 18 of the G.O.

× Hardly I should think

HB

12. Amendment No 6 contains the alterations sanctioned in clause (20) of the G.O.

13. With reference to clause (21) Mr Cardew submits the following proposals with a view to framing "comprehensive rules "under s.62 of the Act providing for the "performance of the duties of the Supdts "& the medical officer in central district "& subsidiary jails during their absence"

(a) Additions to rules 53 & 72 (vide amendments 2 & 3) provide for the case of Central & Dist. jails, & the penitentiary but do not over the Civil Jail Madras; possibly no additions to rules 883 & 885 are needed. Presumably there is always a Surgeon in charge of the sd district — but is the Suptdt of Prisons always present.

The G. of I. advised the other day ~~that~~ we were not to talk of Asst. Surgeons, I think, but of "Asst. to the Civil Surgeon" — vide Rule 72 A
HS
12/12/94

(b) As regards subsidiary jails,
Rule no 1329 is altered by amendment no 15 so as to bring it into accordance with section 11(2) of the Act. — Rules 1330 & 1331 are altered by the substitution of the expression "superintendent" for "officer in executive charge of", & similar changes. This has the effect of formally appointing Superintendents to subjails as required by that portion of s. 6 of the act which is to be extended to Subjails.

vide amendments 16 & 17
D

Next. Rule 1338 is amended so as to provide for the appointment of a "Medical officer" in every subjail to wit the senior medical officer of the station, in his absence the next senior medical officer, & in the absence of ~~any~~ all medical officers the Superintendent himself. The new draft rule forms no. 18 in Mr Cardew's list of amendments.

14. Mr Cardew further proposes to cancel Rule 1340 which provides that the officer in executive charge of a subjail shall submit his journal once a week to the Senior Magistrate at the station. He argues that its provisions are ~~almost~~ a dead letter as under rule 1330 the Senior magistrate of the station is almost always the superintendent. This is generally the case — but not so wherever there is a subjail at a subdivisional magistrate's headquarters & a stationary submagistrate too. This is not an uncommon state of affairs. There seems however but little reason to retain the rule.

15. The substitution throughout the Code of "superintendent" for "officer in executive charge" Mr Cardew proposes to defer until the code is completely revised. This seems desirable.

16. Amendment No 20 revises rule No. 1356 correctly, but for a clerical omission of the words "Section 46 of" before "the Prisons Act, 1894" at the end of the rule.

~~& A similar~~

17. The amendment of Rule No. 1357 is defective as pointed out above in para. 7 of this note.

D
29.11

15/12/94

Revision of the Jail Code with refce to the Prisons Act

H. M.

(For orders)

Office

Put up the Bengal Jail Code with [illegible] if available.

Done

29/11

C 11/12

R 13/12

[G. / 24]
100—29-9-94.

Judicial DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated 18 , No.

Again G.O., dated 27 Septr. 1894, No. 2347 Judl.

Current No. 6873 of 1894, dated 31 Octr. from the I.G. of Prisons

Current No. of 18 , dated from

22/12/94

Order 8th Jany/95 No 23

Mr Cardew's letter & the list of propo amendments in the Jail Code accompanying it call for the following rem

2. The first three paragraphs of the I.G.'s letter deal with the question which sections of the act should be extended to the subsidiary jails. Mr Cardew accepts the suggestions made in clause (1) of para 1 of G.O. 27 Septr. 1894 No 2347 subject to one or two exceptions ~~these are the~~ and additions. The reasons which he assigns for the extension of sections 33 & 34 of the Act to the case of subsidiary ~~rules~~ jails ~~and~~ is sufficient, & the objections raise to the extension of sections 17, 18 & 37 are sound but the Govt. does not consider it ~~desirable~~ advisable to apply clauses (1), (3) & (4 of section 27 to subsidiary jail. The provisions contained in these clauses are ~~no doubt~~ certainly desirable and should be enforced by executive order as far as possible, but it appears to Govt. doubtful whether they are so practicab that their enforcement should be made

er of law. It is for instance hardly possible in a subjail to prevent female prisoners from seeing male prisoners. The I. G. is at liberty to issue orders on the subject if he so wishes but the Govt. is not prepared to ~~make~~ give such rules the force of law.

3. Rule 20 A should be revised with reference to the foregoing remarks, & further amended by the insertion of the words "and to the officers and the prisoners confined therein", and by the omission of the comma after ~~the~~ "46". ~~& by minor alterations in sec. 2~~. In addition to these changes, it appears necessary to modify sections 8, 51 & 54 of the Act before applying them to the case of subjails, inasmuch as they refer to "the jailer" and it is not proposed to appoint a "jailer" in subjails. All that seems required is the omission in section 8 of the words "subordinate to the jailer" & "the jailer with the sanction of", in section 51(3) the omission of the words "jailer and" & the substitution of "his" for "their", and in section 54, the omission of the words "jailer or". These alterations involve no inconsistency with the provisions of the Act & there appears no reason why the sections so altered should not be ~~applied~~ extended to subsidiary jails.

after "Subsidiary jails"

The Govt. cannot accept

Mr. Cardew's contention that the Criminal Leper Ward is a jail by reason of the issue of Rules 5 & 11

[G. / 24]
100—29-9-84.

DEPARTMENT.

Papers to be read in Proceedings:—

Again G.O., dated 18 , No.
Again G.O., dated 18 , No.
Current No. of 18 , dated from

Current No. of 18 , dated from

of the Jail Code. The repealed enactment did not empower the ~~Local~~ Govt. to declare that a particular place ~~shall~~ should be deemed to be a jail, & declarations of that description consequently have not the force of law though purport to be issued under specific provisions of the law. For this reason the Criminal Leper Ward must be held to be a place of confinement specially appointed under S. 541 of the Code of Criminal Procedure, 1882. As such it is not a "prison" within the meaning of S. 3 of the Prisons Act, & it will be necessary expressly to extend to it such sections of the Act as may appear desirable. Code Rule 20.11 as it stands is thus hardly consistent with s. 3 of the Act & should be amended. It will further be necessary for the I.G. to make his recommendations as to the extension to the Criminal Leper Ward of portions of the Act.

5. Mr. Cardew's draft alterations in Code Rules 1055 & 1069 are approved, as also the amended version

rule no. 1038 which is given in para. 4 of his letter. He will however be requested to consider whether it is not possible to omit altogether rules 1067 & 1068. Now that all individuals under 18 years of age are to be treated as juveniles, it appears to Govt. unnecessary to make special rules regarding adolescents; in this connection it is observed that the I.G. has assigned no reason for raising the age limit mentioned in rule 1067 from 20 to 22.

6. The Govt. has no objection to Mr. Cardew's proposal to enter refusals to admit in form no 4 instead of form no 29. All that Govt. desired was to avoid the creation of an ~~new~~ for additional form for the purpose.

7. With reference to para. 8 of Mr Cardew's letter the Govt. withdraws its objection to his proposal to amend sub clause (f) printed in Enclosure II of the Govt. of India's letter read in G.O. of 24 July 1894 No. 1823 Judl. by the insertion of the words "or temporary" after "permanent". The Govt. of India will accordingly be addressed on the subject.

The I.G.'s alterations in Code Rules 360, & 1357 & Form no. 17 do not give effect to the whole of section 57 of the Act, inasmuch as they do not provide ~~for~~ in the case of serious prison-offences for the entry of the names of the witnesses proving the offence, and in

500—20-6-94.

DEPARTMENT.

No.

From

Dated 189 ,

~~FOR ORDERS.~~

the case of offences for which whipping is awarded for the recording of the prisoner's defence.

9. Mr. Cardew's suggestion to defer amending Form 18 (the fetter register) is approved.

10. The proposal to amend Code Rule no. 397 by omitting the words "or Inspector-General" appears hardly adequate inasmuch as it has been proposed to make (a Supdt's order directing) the forfeiture of future marks ordinarily obtainable during a period exceeding three months ~~subject to the confirmation~~ liable to cancellation or modification by the I.G. If the Govt. of India accepts that proposal a further alteration of the rule will be necessary. The matter must however lie over until the Govt. of India's ~~fav~~ ~~replied~~ reply is received.

11. The cancellation of Code Rule no. 407 & the alterations in no. 406 are approved; Rule no. 409 does not appear to require any alteration except the verbal correction made by Mr. Cardew. As he points out, it will however be necessary to obtain the sanction of the Govt. of India to the retention of the rule.

12. Rule 366 A is correct & clear

"but for one exception. The expression "tools for working wood, metals or "leather" is not quite so clear as "tools for working wood or metals "or leather" which should be substituted for it, in order to avoid the remote possibility of the rule's being interpreted as ~~prohibiting the admission~~ defining 'metals' & "leather" as prohibited articles, a misconstruction which the Comma after 'wood' makes possible.

13. Revised Rules 377 & 378 are correct & call for no remarks

The Govt. has no comment to make on

14. Mr. Cardew's proposals for framing comprehensive rules providing for the performance of the duties of the Supdt. & the Medical Officer in Central Dist. & Subsidiary jails during their absence, except that in rule 72 A, the expression Assistant Surgeon should be replaced by Asst. to the Civil Surgeon with refce. to G.O. No 905 Public of 29 Nov 1892. The I.G. should however state why he has proposed no alterations so as to cover the case of the Civil Jail, Madras.

15. The cancellation of Code Rule No. 1340 appears desirable, but as Mr. Cardew ~~points~~ suggests the substitution of the word "Superintendent" for the expression "Officer in executive charge" may with advantage be postponed until the complete revision of the Code is possible.

~~the I.G.'s proposals are approved. A revised list of amendments shld be submitted for~~ D

16. Revised Rule No. 135 B requires a slight correction; by ~~what is probably~~ a clerical omission the words "section 46 of" have been left out before "the Prisons Act, 1894".

17. Subject to the foregoing remarks

600—20-6-94.

DEPARTMENT.

No.

From

Dated 189 ,

FOR ORDERS.

the amendments proposed by the I.G. are approved, ~~& the necessary corrections and additions to the jail Code may be made~~.

17. He should however submit a revised list for formal sanction & communication to the Govt. of India with refce to para 11 of the Govt. of India letter read in G.O. of 24 July 1894 No 1823 Jul.

(from orders)

D

Ue.

JH 21/12/94

Copied 10/1/95

DESPATCHED 21 JAN 95 IN M.S

The I.G. of Prisons

No 24 dt. 8 Jany/95

Letter to the Govt. of India, Home Dept.

DESPATCHED JAN 95 IN M.S

KB 22/12/94

Sir,

In continuation of my letter of 27 Septr. 1894 No 2348 Jud. I am directed to suggest an additional amendment in the draft rules on the subject of the loss of privileges under the remission system, viz: the insertion of the words "temporary or" before the word "permanent" in sub clause (f), clause 4 of section 5 in the draft bill submitted by the Prison Conference of 1892 – vide Enclosure II to your letter No 5 Jails/370 of 9 July 1894.

2. When this amendment was suggested by the local I.G. of Prisons it was at first considered unnecessary on the ground that "temporary exclusion from

the benefits of the remission system was to be covered by sub clause (b) of the same clause. It has however been pointed out that there is a distinction between the forfeiture of future marks not yet earned & temporary exclusion from the benefits of the remission system – vizt that in the former case it is necessary to maintain a record of the marks subsequently earned – but to be forfeited whereas in the latter case no such record need be kept. I am to say that inasmuch as exclusion from the benefits of the remission system deprives a convict of all incentive to doing good work during the period of such exclusion it appears to this Govt desirable to make this form of punishment subject to ~~the~~ confirmation by the Inspr General. (If the Govt of India concurs in this view.) The proposed amendment will thus not necessitate any change in section 9 of the Conference Draft bill reprinted in the Enclosure to your letter referred to above.

3. I am further directed to ~~forward~~ ~~submit~~ solicit ~~for~~ the sanction of the Govt of India to the retention of Rule no. 409 in the present Jail Code, subject to a slight alteration consequential on changes in rule no 406 necessitated by the introduction of the Prisons Act 1894.

I have &c.

D
16-12

Fd
21/11/94

Amendment of the Jail Code

H. M.

(from orders)

Note. This draft is submitted to H. M. inasmuch as para. 4 contains a new proposition differing from that set forth in the Note for orders which is believed to ~~have been~~ be incorrect.

D
16-12

ep 23-4
8/1/95

[illegible]

When given for copying ______
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When examined ______
When signed ______ } 189 .

READ AGAIN G.O., No. DATED
189 ,

CURRENT NO.

ENCLOSURES TO C. NO.

ORDER OF GOVERNMENT .. .. .. A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

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