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MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2347-48 Press Mis.

Dated 8-11-37 18 44.

No to be folded or roughly handled

GOVERNMENT OF MADRAS.

JUDICIAL DEPARTMENT.

READ—again the following paper:—

G.O., dated 24th July 1894, No. 1823, Judicial.

ABSTRACT.—Referring to the Inspector-General of Prisons, for remarks, letter from the Government of India inviting attention to such provisions in Act No. IX of 1894 (an Act to amend the law relating to Prisons) as call for executive action.

READ—also the following paper:—

From A. G. CARDEW, Esq., M.A., Inspector-General of Prisons, to the Chief Secretary to Government, dated Ootacamund, 9th August 1894, No. 4827.

I have the honour to submit the following reply to G.O., dated 24th July 1894, No. 1823. In view of the extensive nature of the subject, I have endeavoured to confine my remarks to the points absolutely requiring notice, and have omitted detailed statement of reasons or discussion of *pros* and *cons*, as far as possible.

2. *Paragraph* 2 *of Home Department Letter, No.* 5-*Jails*—370, *dated* 9*th July* 1894.—it is necessary to extend to subsidiary jails certain parts of Act IX of 1894, as Madras Act V of 1869 has been repealed and there is at present no law relating to this class of jail. It is accordingly recommended that it be declared by rule under section 60 that sections 4, 5, 7, 9 to 15, 24 (2), 27 to 29, 31 to 33, 34, 35 (1), 36, 40, 42 to 45, 46 clauses (1), (2), (5), (6), (7), (9) and (10), 48, 49 to 52 and 54 to 56 shall be applicable to subsidiary jails. In most sub-jails there is no jailor and sections referring to the jailor are, therefore, omitted. A rule will be necessary declaring that the officer in charge of a subsidiary jail shall be the Superintendent of the Jail for the purposes of the Act. It is unnecessary to declare what places are subsidiary jails, for this has already been done by Rules 15 and 1320 of the Jail Code, which remain valid under section 2 (2) of the Act.

3. *Paragraph* 3 *of Home Department Letter.*—*Vide* infra.

4. *Paragraph* 4 *of Home Department Letter.*—The case of convicted prisoners is sufficiently dealt with by Chapter XXXVI of the Jail Code. As regards under-trial prisoners an addition to the following effect to Rule 926 of the Jail Code appears necessary:—

"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 the presence of any other person."

5. *Paragraph* 5 *of Home Department Letter.*—The list of offences was drawn up after considerable discussions by the Jail Conference of 1892, and should be adopted intact, except so far as it overlaps section 45 of the Act. Most of the clauses in the list which are covered by that section have been omitted in the Home Department letter. Clause (37) might also be omitted and the other 37 clauses approved. The only addition which I would suggest is that of clause covering petty thefts of Government property which it is not always convenient to prosecute, such as a convict stealing a piece of cloth from the looms or taking a fellow-prisoner's coat. To deal with this, the following clause should be added:—

(38) Stealing or misappropriating any article of Government property.

6. *Paragraph* 6 *of Home Department Letter.*—The only amendment to the draft rules referred to in this paragraph which seems required is the insertion of the words "temporary or" before the words "permanent exclusion" in sub-clause (*f*), clause 4, of the Conference's section 5. The last sentence of section 9 is also unnecessary, being covered by section 48 (2) of the Act.

7. *Paragraph* 7 *of Home Department Letter.*—I agree with the Government of India's objections to handcuffing to a staple, the use of cross-bar fetters and the imposition of handcuffs at night. In other respects the rules proposed by the Conference of 1892 may be accepted.

8. *Paragraph* 8 *of Home Department Letter.*—There is little that is new, so far as this Presidency is concerned, in the sections here referred to. It will be necessary to revise the form of punishment book prescribed in Rule 360 of the Jail Code so as to show, in addition to matters now recorded—

(1) whether the prisoner is a habitual or not;
(2) the number of previous prison-offences recorded against the prisoner;
(3) the date of prisoner's last prison offence;
(4) initials of jailor.

In all serious offences the names of witnesses are already recorded in column 6 of Form No. 17 appended to the Jail Code, and in cases punished by whipping, the matters required by the Act to be recorded are placed on record.

9. *Paragraph* 9 *of Home Department Letter.*—The necessary amendments to Rules 621 and 634 of the Jail Code have already been made in the first list of corrections, dated 1st August 1893.

10. *Paragraph* 10 *of Home Department Letter—Section* 59, *Clauses* (2) *and* (3), *of the Act.*—These clauses deal with closely-connected matters. The Jail Conference of 1892 declared on the one hand that "the only feasible criterion for deciding whether an offence is serious or minor is the character of the punishment awarded," and on the other hand that it was impossible to determine the particular punishment which should be awarded for particular offences. Accepting these principles, which seem unquestionably to be correct, no rules can be framed under section 59 (3) of the Act which will not do positive harm by restricting the discretion of Superintendents in apportioning punishment to offences. It would obviously be absurd to lay down that certain acts, *e.g.*, receiving prohibited articles [section 45 (12)] *shall* or *shall not* receive some particular punishment. A convict may be in possession of a cheroot end which he may have accidentally picked up outside the jail or he may have a hoard of cigars giving clear proof of systematic trafficking. In my opinion, therefore, any attempt to declare what offences or classes of offences shall be punished by particular punishments must end in failure. For exactly the same reasons it is impossible to classify jail offences into two hard-and-fast categories of serious and minor, the circumstances of each case being capable of modifying the seriousness of most jail offences indefinitely.

11. On the other hand, for the purposes of Annual Statement No. VI annexed to the administration report, it is necessary to classify punishments into major and minor, and the Act seems to be wrong in not containing a separate clause on this subject. The rules, therefore, which I would propose to be made under clauses (2) and (3) of section 59 would therefore be merely the following :—

Rule 1.—Every offence shall be deemed to be serious or minor according as it receives a major or a minor punishment. Provided that if two punishments—one major and the other minor—are awarded for the same offence, the offence shall be classed in accordance with the more severe of the two punishments.

Rule 2.—For the purposes of the last preceding rule the following punishments shall be deemed to be minor and major, respectively, viz.—

Minor punishments—

(1) Formal warning.
(2) Change of labour.
(3) Loss of privileges under the remission system except such as are included under "Major punishments."
(4) Gunny clothing.
(5) Penal diet.
(6) Cellular confinement not exceeding 14 days.
(7) Separate confinement " "

Major punishments—

(1) Hard labour for simple-imprisonment convicts.
(2) Loss of marks equalling remission of three months and upwards or cancellation of remission to a similar extent and permanent or temporary exclusion from the remission system.
(3) Imposition of handcuffs.
(4) " of fetters.
(5) Separate confinement in excess of 14 days.
(6) Solitary confinement.
(7) Penal diet combined with solitary confinement.
(8) Whipping.

There appears no ground for treating forfeiture of marks as a minor punishment and cancellation of remission as a major form, as proposed by the Conference of 1892. It may be well to add that there is no provision of Act IX of 1894 requiring the division of offences into serious and minor, and that the classification of punishments is merely intended to enable the Government at the end of the year to form some idea of the character, as well as of the amount, of punishment used in its jails. A further revision of Annual Statement VI will be needed if the above division of punishments is adopted, but that would be in any case desirable.

12. *Paragraph* 10 *of Home Department Letter—Section* 59, *Clause* (4), *of the Act.*—The draft rule proposed by the Conference of 1892 may be approved. The Government will observe that escape from jail has not been made a prison offence under Act IX of 1894. Unless, therefore, it were made a prison offence by rule under section 45 (1), it cannot now be dealt with otherwise than by prosecution.

13. *Paragraph* 10 *of Home Department Letter—Section* 59, *Clause* (5), *of the Act.*—The Government of India having now made rules, having the force of law under this clause, regulating the award of marks and the remission of sentence, all remission in this Presidency will in future be granted under those rules and not under section 401 of the Criminal Procedure Code. The formal sanction of Government to the release of convicts under the remission system is therefore no longer necessary, and Rule 19 of the rules contained in the appendix to Home Department Resolution, dated 9th November 1892, No. 10-Jails—610-623, must now be brought into force. Sanction is accordingly requested to cancel Rule 406 of the Jail Code, as amended by the second list of corrections, and Rule 407, and to substitute for them Rule 19 above referred to.

14. *Paragraph* 10 *of Home Department Letter—Section* 59, *Clause* (6), *of the Act.*—The rules here quoted as recommendations of the Committee of 1889 are clearly mere proposals for rules and not such rules as could themselves be adopted. What is required is some definite authority to Jail officers to fire on prisoners in certain circumstances. It is also desirable to give the Superintendent authority, where necessity arises, to call in the aid of the Military or Police and to empower those bodies to fire on prisoners, subject to the Superintendent's control. The following rules are suggested :—

Rule 1.—Any jail officer may fire on any prisoner escaping or attempting to escape; provided that resort should not be had to the use of fire-arms unless the jail officer has reasonable ground to believe that he cannot otherwise prevent the escape.

Rule 2.—Any jail officer may fire on any prisoner engaged in any combined outbreak, or in any attempt to force or break open the outer gate of the jail, and may continue to fire so long as such combined outbreak or attempt is being actually prosecuted.

Rule 3.—Any jail officer may fire on any prisoner using violence to any jail officer, provided that he has reasonable ground to believe that the life of the jail officer is in danger.

Rule 4.—Before having resort to fire-arms a jail officer shall give at least one warning to the prisoner about to be fired on, and shall, if possible, give three warnings.

Rule 5.—In any case in which the Superintendent of a jail is unable to deal with any combined outbreak or any attempt to force or break open the outer gate of the jail or with any prisoners using violence to any jail officer, he may, subject to such

orders as may be prescribed by the Local Government, call in the aid of the Military or the Police, and such Military and Police shall then have the same powers of firing on prisoners, subject to the authority of the Superintendent, as are conferred in the foregoing rules on jail officers.

15. *Paragraph* 10 *of Home Department Letter—Section* 59, *Clause* (7), *of the Act.*—The rules regulating the release of prisoners on medical grounds have recently been revised and are embodied in Rules 592 and 593 of the Jail Code as amended by the third list of corrections.

16. *Paragraph* 11 *of Home Department Letter.*—The rules which may be framed under section 60 of the Act cover the whole ground of the Jail Code, but as all rules hitherto in force continue to hold good unless actually inconsistent with the Act, it is only necessary to deal with such matters as have either been omitted from the Jail Code or as must be revised in consequence of the new enactment.

17. The first matter to be dealt with in this connection is that covered by clause (*f*) of section 60 and the rule required is a definition of prohibited articles. The following is submitted :—

Rule.—The following shall be deemed to be prohibited articles within the meaning of section 45 (12) of the Prisons Act, viz.—

Alcohol or spirituous liquors, tobacco or the implements for smoking, snuff, opium, ganja or other hemp drug, betel, areca-nut, food, clothing, money, jewellery, knives or other weapons, books or writing materials, letters, postage stamps, playing cards, matches, or any other article received, possessed or transferred otherwise than by due authority.

18. The next matter required to be dealt with under section 60 is the definition of penal diet with reference to clause (9) of section 46. This may be dealt with either under clause (*e*) or clause (*f*) of section 60. In the absence of orders from Government I have already instructed Superintendents that the penal diet to be in future followed is the No. 1 bread and water diet referred to in Rule 377, and I now submit the following rules to be substituted for Rules 377 and 378, viz.—

Rule 1.—Penal diet shall consist of the following restricted diet, viz.—

A.—Europeans and East Indians—1¼ lb. of bread per diem with water.

B.—Natives and foreign convicts—12 ozs. sifted raggi flour with ½ oz. salt per diem with water.

N.B.—Six ozs. of flour and ¼ oz. salt shall be made into a thick *kanji* for the morning meal and 6 ozs. of flour and ¼ oz. salt shall be made into an unleavened cake for the evening meal.

Rule 2.—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 the 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.

19. These appear to me to be the only two matters in which it is necessary at present to frame fresh rules. Owing to the passing of the new Act various rules of the Jail Code need to be amended, *e.g.*, Rules 1, 2, 21, 51, 117, 148, 155, 156, 158, 289, 305, 354, 355, 356, 357, 358, 360, &c., but the amendment of these rules which will involve the revision of the code cannot be undertaken until the Government of India has framed its rules under section 59.

20. Paragraph 11 of the Home Department letter requests that "draft rules may be framed and submitted in matters as to which rules already approved under the provisions of the repealed Acts (and consistent with Act IX of 1894) do not exist."

If this request is to be taken literally, the whole Jail Code must be submitted for the sanction of the Governor-General in Council, because no rules have hitherto been approved by the Government of India (except those connected with remission and a few other detached points), Madras Act V of 1869 necessitating no reference to the Supreme Government. It may, however, be reasonably assumed that the Government of India is not going to embark on the impossible task of revising the Jail Codes of every province *in toto*, and that only such rules need be submitted as have now to be newly framed.

21. Section 60 of Act IX of 1894 gives Local Governments power to make rules *subject to the control of the Governor-General in Council.* It is evident, therefore, that no previous sanction of the Government of India is necessary to amendments of the Jail Code in matters falling within that section, though the Government of India has a general power of control when it chooses to exercise it. When the extreme delay which is involved in a reference to the Government of India is remembered, it is evident that it would be intolerable that every small alteration of the Jail Code should have to be submitted to that authority.

22. I have now referred to all matters arising out of Home Department letter of the 9th July 1894 except that of "History tickets." On this subject, I beg to invite a reference to paragraph 108 (3) of the annual report for 1893 and to express a hope that the Government will resist the attempt to force the Bengal history ticket on this Presidency. The system in force in Madras jails is to collect the details, which in Bengal are placed on the history-ticket, in the convict registers. By this system the same knowledge of each convict's history is secured as is attained by the history-ticket method, with the additional advantage that the record is not in the custody of the prisoner but in that of responsible Jail officers. No answer has ever been made to the objection, which is fatal to the Bengal method, that it leaves it in the power of an ill-conditional habitual to destroy the record of his offences. He may be punished for doing so, but the record is lost irrevocably, unless records are duplicated. A careful and impartial trial has been given to the history-ticket system in Madras and it has failed. I have personally examined the working of the system in Bengal and other provinces, and I am of opinion that it has gained in vogue because it is convenient to the inspecting officer, *i.e.*, the head of the department. For these reasons I believe the Madras system to be preferable, even if a fresh start were being made and either system could be adopted with equal convenience.

23. The facts, however, are otherwise. The histories of the 9,000 odd convicts now in confinement in this Presidency have hitherto been recorded in the registers, and the introduction of a different system would mean a complete revolution in the books maintained in Madras jails. It would be impossible to maintain history-tickets alongside of our present registers, as the scriptory work would be doubled. Thus in order to adopt the history-ticket system the whole record of our long-term convicts would have to be rewritten and the whole scheme of registers revised. I earnestly trust that the Government will not consent to so useless a waste of energy, time and money, involving, as it would, extra establishment and large outlays in printing and stationery.

24. With reference to the second clause of paragraph 12 of the Government of India's letter, I beg to state that the practice there referred to has long been followed in this Presidency.

25. A summary of the changes in the Jail Code to be made under section 60 of the Act is annexed. As already noted, other changes will be needed, as soon as the Government of India's rules are made. I also enclose copy of a circular, No. 3379, which was addressed to Superintendents of Jails on the 20th June last, regarding the new Act.

ANNEXURE.

AMENDMENTS to be made in the Jail Code under section 60, Act IX of 1894.

1. *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 abovenamed

Act, viz., sections 4, 5, 7, 9 to 15, 24 (1), 27 to 29, 31 to 33, 34, 35 (1), 36, 40, 42 to 45, 46 clauses (1), (2), (5), (6), (7), (9) and (10), 48, 49 to 52, 54 to 56.

2. *Rule* 356-*A*.—Insert the following:—

The following shall be deemed to be prohibited articles within the meaning of section 45 (12) of the Prisons Act, viz.—

Alcohol or spirituous liquors, tobacco or the implements for smoking, snuff, opium, ganja or other hemp drug, betel, areca-nut, food, clothing, money, jewellery, knives or other weapons, books or writing materials, letters, postage stamps, playing cards, matches, or any other article received, possessed or transferred otherwise than by due authority.

3. *Rule* 360.—Insert the following as matters which shall be recorded in the punishment book, 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 jailor.

4. *Rules* 377 *and* 378.—For these rules substitute the following, viz.—

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

A. Europeans and East Indians—1½ lb., of bread per diem with water.
B. Natives and foreign convicts—12 ozs. sifted raggi flour with ½ oz. salt per diem, with water.

N.B.—Six ozs. of flour and ½ oz. salt shall be made into a thick kanji for the morning meal and 6 ozs. of flour and ½ 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 the 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.

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

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.

6. *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 the presence of any other person."

7. *Rule* 1330.—For the purposes of the Prisons Act, 1894, the officer in executive charge of a sub-jail shall be deemed to be the Superintendent thereof.

(Signed) A. G. CARDEW,
Inspector-General of Prisons.

Circular.

Proceedings of the Inspector-General of Jails.

Order—dated 20th June 1894, No. 3379.

The special attention of all Superintendents is drawn to the fact that, from the 1st July next, Madras Act V of 1869 is repealed and Act No. IX of 1894 comes into force.

2. In due course rules will be made by Government under the new Act and will be embodied in a revised issue of the Jail Code. Until this is done, the present Jail Code will continue in force except where it is inconsistent with the new Act.

3. The actual changes in jail administration will be few and the following appear to be the chief points requiring present attention, viz.—

Section 15.—Medical officers must in future record the particulars here given whenever a prisoner dies. The Inspector-General of Jails directs that, for the present at least, these particulars shall be recorded in the Case-book.

Section 29.—Superintendents must arrange at an early date for their solitary cells being furnished with an inexpensive bell or with some such means of communication with the Jail officer on duty.

Section 32 (2).—Superintendents should not discharge under this clause civil prisoners, to whom clothing or bedding has been supplied at jail expense, without great care and the fullest consideration.

Section 42.—Until fresh rules are framed, the term "prohibited articles" will be held to apply to the articles specified in clause (2), Rule 148, of the Jail Code.

Section 46.—The punishments here laid down must be adopted from 1st July. All rules in the Jail Code will continue to apply so long as they are not inconsistent with the Act.

Clause (1).—*Warnings.*—As there are no history-tickets in this Presidency, the last 6 words of this clause have no effect.

Clause (4).—*Fines of marks, &c.*—No change in existing rules will arise at present.

Clauses (6) *and* (7).—The use of handcuffs and fetters as punishments should be avoided as far as possible pending the issue of further rules by Government.

Clause (8).—Relegation to the close prison as a punishment is limited to six months. This does not affect Chapter XVIII of the Jail Code.

Clause (9).—Penal diet will in future be limited to 4 days. Pending further orders the penal diet to be imposed shall be—

(1) For Europeans—No. I bread and water: Rule 377 of the Jail Code.
(2) For Natives and Burmans—No. I bread and water: Rule 377 of the Jail Code.

The No. II stirabout diet for Europeans and penal diets Nos. II and III for Natives must be regarded as abolished.

Clause (13).—Offences relating to work may in future be punished with any number of stripes not exceeding 30.

Section 47.—Special attention should be paid to the provisions of this section.

Section 48.—Care must be taken to observe the provisions of this section, especially clause (2) of it.

Section 54.—All subordinates should be informed of this new provision of the law. It will be well to have it read out and explained on parade to all warders, and to draw general attention to it in the jail order book.

Section 57.—No change will be made at present with reference to this rule.

4. The Act IX of 1894 was published in the *Fort St. George Gazette* of the 10th April 1894. Spare copies will shortly be supplied.

(Signed) A. G. CARDEW,
Inspector-General of Jails.

To all Superintendents (with spare copies for Medical officers of Central Jails, Tanjore and Palamcottah).

Order—dated 27th September 1894, No. 2347, Judicial.

The above correspondence relates to the changes in existing rules rendered necessary by the passing of the Prisons Act, 1894. The Government proceeds to pass orders upon the proposals of the Inspector-General.

(1) His Excellency in Council agrees with the Inspector-General that sections 4, 5, 7, 9, 10, 11, 12, 13, 14, 15, 24 (1), 31–33, 35 (1), 36, 40, 42–45, clauses (1), (2), (5), (6), (7) and (9) of 46, 49–52 and 54–56 should be extended to sub-jails, but

would omit the last fifteen words of section 11 (2) and the second paragraph of section 14 when extending them. The extension of sections 27–29, clause (10) of section 46 and section 48 seems unnecessary. Regarding the extension of clause (2) of section 33 and of section 34 the Government is doubtful. Their provisions relate only to civil prisoners committed to prison in execution of a decree and a civil prisoner who is merely confined *en route* in a sub-jail would hardly come within their scope. Their extension seems, therefore, to be unnecessary. The following are the additional provisions which the Government thinks should be extended, viz., so much of section 6 as requires that there shall be a Superintendent for every prison, sections 8 and 26, clause (3) of section 35 and sections 61 and 62. To meet the case where there is no sub-jail medical officer, it will be necessary to appoint under section 62 a person to perform the duties imposed upon the medical officer by certain of the sections which have been extended to sub-jails. The term "Medical officer," as used in the Act, excludes a medical subordinate, but the medical officer of most sub-jails is a medical subordinate and some sub-jails have neither medical officer nor medical subordinate. It will be necessary, then, to declare that the duties of the medical officer shall be performed by the medical subordinate in sub-jails where there is no medical officer and by the officer in executive charge in sub-jails where there is neither medical officer nor medical subordinate.

The Government is also inclined to extend sections 17, 18, 26 and 37. For the purpose of carrying out the provisions of section 26 without undue trouble, the officer in executive charge can be declared under section 62 to be the person who shall in all sub-jails perform the duties imposed upon the medical officer by clauses (1) and (2) of the section. It is observed that the Inspector-General has omitted to specify the portions of the Act which should be applied to the criminal leper ward. He should report on this point and on the suggested extension of sections 17, 18, 26 and 37 to sub-jails.

(2) A further representation regarding the use of the history ticket will be made to the Government of India. The maintenance of the existing registers seems to be essential, and the Government fully agrees with the Inspector-General's objections to the introduction of what amounts to a system of duplicate registers.

(3) Under sub-section (2) of section 11 of the Act, the Government prohibits District Magistrates from issuing orders to the Superintendents of District Jails. District Magistrates have never issued such orders hitherto and the Government sees no reason why they should do so in future.

(4) The Inspector-General will note the change in the system of classifying adult and juvenile prisoners which is made by sub-section (2) of section 27 of the Act and will prepare a draft of the alterations in the Jail Code rendered necessary thereby.

(5) As remarked by Mr. Cardew, it is necessary to add to Code Rule 926 a proviso enabling under-trial prisoners to see their legal advisers. In other respects Chapter XXXVI of the Jail Code carries out the intention of section 40 of the Act.

(6) Refusals to admit should be entered in the present register No. 29 which the Government hereby prescribes for this purpose under sub-section (2) of section 41 of the Act.

(7) The Government agrees with the Inspector-General's views regarding the acts which should constitute prison offences and they will be commended to the Government of India.

(8) The Government also agrees generally with Mr. Cardew's observations on the rules to be made under section 46 (4), but the proposed amendment of sub-clause (*f*) printed in enclosure II to the Government of India's letter seems unnecessary because the proviso in that enclosure shows that temporary exclusion from the benefits of the remission system is to be covered by sub-clause (*b*) and is not to exceed three months. The Government is not, however, in favour of this limitation to three months. The effect of it is that marks already converted into remission may (with the previous sanction of the Inspector-General) be forfeited to any extent, while

marks earned but not so converted cannot be forfeited for more than three months, and also that there is no penalty midway between complete exclusion from the remission system and forfeiture of the marks which would probably be earned during a period of three months. The Government would, therefore, replace the proviso by one to the effect that forfeiture under sub-clauses (*a*) and (*b*) for a period exceeding three months shall be liable to cancellation or modification at the hands of the Inspector-General to whom it shall be reported.

(9) Regarding the use of irons the Government agrees with the Inspector-General, but observes that the last sentence of section 46 of the Act renders the proviso to enclosure III of the Government of India's letter unnecessary.

(10) As remarked by the Inspector-General a slight alteration of Code Rule 360 and Code Form No. 17 seems all that is required to give effect to section 51 of the Act.

(11) The existing rules in Chapter XXXI of the Jail Code relative to confinement in irons as a means of safe custody appear suitable and sufficient, but, as observed in paragraph 21 of G.O., dated 6th November 1891, No. 2236, Judicial, Code Form No. 18 seems to need amendment to show when fetters are imposed as a punishment and when as a means of restraint only.

(12) The Inspector-General's remarks on the subject of classifying offences and punishments are much to the point and the Government agrees with him in thinking that the classification of an offence as "serious" or "minor" must depend upon the degree of severity of the punishment which is inflicted on account of it.

If this view is adopted, it is only necessary to attempt a classification of punishments. In this connection the Government of India suggests that "penal diet combined with solitary confinement for not more than 48 hours" and "cellular confinement for not more than 14 days" should be classed as "minor," although the Prison Conference suggested that they should be treated as "major" penalties. The Inspector-General accepts the suggestion of the Government of India so far as regards "cellular confinement for not more than 14 days," but he has not specially noticed the proposal regarding "penal diet combined with solitary confinement for not more than 48 hours."

The Government of India has not, apparently, noticed that the list of punishments prepared by the Conference omits all reference to "penal diet combined with cellular and separate confinement" and that, if the combination of penal diet and solitary confinement is to be treated as "minor" in some cases, the combination of penal diet with separate and cellular confinement must be similarly classified.

The Government of India seems to have also overlooked the fact that cellular confinement is restricted by law to 14 days and that therefore some lower limit (say, seven days) must be fixed when classifying the combination of penal diet with cellular confinement as a "minor" penalty. The Inspector-General has removed solitary confinement into the "major" list, but, if the Government of India's proposal to treat "penal diet combined with solitary confinement for not more than 48 hours" as a "minor" penalty is acted upon, plainly solitary confinement without penal diet for not more than 48 hours must be similarly treated.

The Inspector-General's proposal to treat all forms of punishment by means of irons as "major" seems reasonable, in view of the fact that such forms of punishment have been heretofore unknown in Madras.

In connection with the classification of forfeitures of marks and remission the Government notes that Code Rule 397 appears to be now illegal, for the new Act confers no powers of punishment upon the Inspector-General. But, apart from this, the Government cannot endorse Mr. Cardew's proposal to treat forfeiture of less than three months' remission, that is, forfeiture of any number of marks not exceeding $24 \times 89 = 2,136$, as "minor." The proposals of the Conference on this subject are also, as the Inspector-General points out, open to objection and, on the whole, the Government would prefer to class the following forms of punishment as "minor," viz. :—

2. The Inspector-General will now frame, in the light of the foregoing remarks, a draft of such revised rules as can be issued at once, without waiting for the issue of the rules under section 59, and submit them for the approval of Government under section 60.

3. The following letter will be despatched to the Government of India :—

[Here enter No. 2348, dated 27th September 1894.]

(True Extract.)

Chief Secretary.

To the Inspector-General of Prisons.
„ all District Magistrates.
„ the Surgeon-General.

Exd. S. J. Pereira.

Govt. of {1894} Madras.

JUDICIAL.

Issued

Recd. *Encl.*

G.O., 27th Sept. 1894, No. 2347.

SEPTEMBER.

Prisons Act, 1894.

Passing orders regarding the changes in existing rules rendered necessary by the passing of the —.

27TH SEPTEMBER 1894, No. 2348, JUDICIAL.

JUDICIAL DEPARTMENT.

LETTER—from

THE CHIEF SECRETARY TO THE GOVERNMENT OF FORT ST. GEORGE,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA, HOME DEPARTMENT.

SIR,

I am directed to reply to Mr. Hewett's letter dated 9th July 1894, No. 5 Jails—370, relating to the provisions of Act IX of 1894 (the Prisons Act) which require executive action. The various paragraphs of the letter are dealt with in order below and the accompanying copy of the Proceedings of the Madras Government of this date will supply information on such matters as it has not been deemed necessary to allude to in this letter.

2. *Paragraph* 2.—The necessary action has been taken on this paragraph.

3. *Paragraph* 3.—On the subject of "History tickets" I am to invite particular attention to paragraphs 22 and 23 of the enclosed copy of a letter from the Inspector-General of Prisons and to paragraph 108 (3) of the Madras Jail Administration report for 1893. The history-ticket system was introduced experimentally into three jails towards the close of 1892 at the suggestion of the Inspector-General and it proved a complete failure. The system is useful for inspection purposes but two Inspectors-General and the three Superintendents who have had experience of its working have expressed unhesitatingly the opinion that the clerical labour which it involves, the danger that the tickets may be lost or tampered with or destroyed and its tendency to cause undue haste in the infliction of punishments greatly outweigh its advantages. It is unnecessary to advert to the frequent protests made by this Government against the compulsory introduction of the system but the Government of India will perhaps see reason to reconsider its decision in the light of the objections now urged by the Inspector-General.

With due respect, His Excellency the Governor in Council cannot forbear from expressing the opinion that the introduction of the system has been ordered without sufficient consideration of the nature of the jail records and registers maintained in Madras. These show all the details which in Bengal appear on the history ticket and there is this great advantage attendant upon the Madras system that the record of a convict's career is not in his custody and liable to falsification and destruction by him, but is in the hands of a responsible jail official. The Inspector-General reports that the introduction of the history-ticket system here will necessitate a complete change in the nature of the jail records, that the scriptory work will be doubled and that a large increase of establishment and expenditure will be necessary to carry it out. The Government concurs with this view, for, under no circumstances, would His Excellency in Council be prepared to abandon the maintenance of registers on the present system, in view of the great danger of falsification and destruction of records which it seems to him would result, if the history ticket constituted the sole account of a convict's career.

If, however, the Government of India insists upon the introduction of the system, His Excellency in Council considers that this should at least be gradual. It will cause a considerable expenditure of time, money and trouble to prepare a history ticket for each of the prisoners now in confinement and it seems sufficient if history tickets are prepared for those prisoners only who are admitted hereafter.

It is no doubt the case that the Prisons Act contemplates the use of these tickets and it may be argued that this fact renders the introduction of the system essential, but history-tickets are necessary only for the purposes of sections 35 (2) and 46 (1), and it would be possible to comply with the provisions of these two sections without difficulty. The maintenance of tickets on the plan advocated by Drs. Walker and Lethbridge, which is what the Government of India apparently desires, is, however, a very different matter.

4. *Paragraph* 4.—The necessary steps have been taken.

5. *Paragraph* 5.—This Government considers that the offences specified in the list drawn up by the Prison Conference of 1892 may be declared to be prison offences with the exception of those covered by sub-sections (2) to (16) of section 45 of the Act. It is observed that the offence numbered as (37) in the list appears to fall within this exception. Further it seems advisable to add "stealing or misappropriating any article of Government property" to the list, as it is not always convenient to prosecute for an offence of this character.

6. *Paragraph* 6.—The draft rules on the subject of loss of privileges under the remission system which were prepared by the Prison Conference and are printed as enclosure II to Mr. Hewett's letter seem suitable on the whole. This Government does not, however, see any reason for the limitation on sub-clauses (*a*) and (*b*) imposed by the proviso. Its effect is that marks already converted into remission may (with the previous sanction of the Inspector-General) be forfeited to any extent, while marks earned but not so converted cannot be forfeited to an extent in excess of the number which would be ordinarily obtainable in three months and, also, that there is no penalty midway between permanent exclusion from the remission-system and exclusion for a period of three months. It seems advisable to replace the proviso by a clause requiring that cases of forfeiture under sub-clauses (*a*) and (*b*) shall be reported to the Inspector-General whenever they involve the loss of more marks than would ordinarily be obtainable in three months and enabling the Inspector-General to cancel or modify the Superintendent's order in such cases. The last sentence of enclosure II is unnecessary with reference to section 48 (2) of the Act.

7. *Paragraph* 7.—This Government would adopt the rules printed as enclosure III to Mr. Hewett's letter subject to the modifications suggested by the Government of India. The proviso to these rules is rendered unnecessary by the last sentence of section 46 of the Act.

8. *Paragraph* 8.—The necessary action has been taken.

9. *Paragraph* 9.—This has been duly noticed.

10. *Paragraph* 10 (2) and (3).—I am to commend paragraphs 10 and 11 of the Inspector-General's letter to the notice of the Government of India.

This Government fully agrees with the Inspector-General in thinking that serious offences should be simply defined as offences for which a major punishment has been inflicted and minor offences as offences for which a minor penalty has been awarded.

As regards the classification of punishments His Excellency in Council considers that the following scheme would be suitable :—

A.—Minor.

(1) Formal warning;
(2) Change of labour;
(3) Forfeiture of remission not exceeding seven days and forfeiture of marks equivalent to the same period;
(4) Temporary forfeiture of class, grade or prison privileges;
(5) Exclusion for not more than ten days from the benefits of the remission system;
(6) Gunny clothing;
(7) Penal diet;
(8) Separate confinement for not more than one month;

(9) Cellular confinement for not more than seven days;
(10) Solitary confinement for not more than forty-eight hours;
(11) Penal diet combined with any one of the penalties specified in clauses (8), (9) and (10).

B.—Major.

All other forms of punishment.

Regarding the proposal to treat all cellular confinement not exceeding fourteen days as "minor," I am to point out that cellular confinement for longer periods is not legal and it has therefore been suggested above that all periods of cellular confinement in excess of seven days should be treated as "major."

11. *Paragraph* 10 (4).—A draft rule relating to the circumstances under which acts constituting both prison offences and offences against the Indian Penal Code may be dealt with as prison-offences forms enclosure IV to Mr. Hewett's letter. It appears suitable on the whole, but I am to point out that escape and attempt to escape are not mentioned in sub-sections (2) to (16) of section 45 of the Act and that, unless they are declared to be prison-offences, the *only* legal way of dealing with them will be by prosecution. The reference to escape in enclosure IV is, therefore, unnecessary. But His Excellency in Council inclines to think that escape and attempt to escape should be declared to be prison-offences and that prosecution on account of them should be optional. In the case of long-term convicts it will occasionally be advisable to punish these offences departmentally.

12. *Paragraph* 10 (6).—I am to invite attention to the Inspector-General's remarks in paragraph 14 of his letter on the subject of firing upon prisoners and to suggest that the following rules should be made :—

"1. Any jail officer may fire on any prisoner escaping or attempting to escape; provided that resort should not be had to the use of fire-arms unless the jail officer has reasonable ground to believe that he cannot otherwise prevent the escape.

"2. Any jail officer may fire on any prisoner engaged in any combined outbreak, or in any attempt to force or break open the outer gate of the jail and may continue to fire so long as such combined outbreak or attempt is being actually prosecuted.

"3. Any jail officer may fire on any prisoner using violence to any jail officer, provided that he has reasonable ground to believe that the jail officer is in danger to life or limb, or that other grevious hurt will be caused to him, if he does not fire.

"4. Before firing upon a prisoner under the authority conveyed in Rules 1 and 2, a jail officer shall give at least one warning to the prisoner about to be fired upon.

"5. In any case in which the officers of a jail are unable to deal with any combined outbreak or any attempt to force or break open the outer gate of the jail or with any prisoners using violence to any jail officer, they may, subject to such orders as may be prescribed by the local Government, call in the aid of the military or the police, and such military and police shall then have the same powers of firing on prisoners as are conferred in the foregoing rules on jail officers."

It will be observed that it is not proposed to require that a warning should be given before firing on a prisoner who is using violence to a jail officer; in this case instant action will generally be necessary to prevent serious consequences.

13. *Paragraph* 10 (7).—The following are the Jail Code rules which at present regulate the release of prisoners whose death is anticipated. They seem to His Excellency in Council to be suitable in every way :—

"592. In all cases of complete and incurable blindness not caused by any act of the prisoner in order to procure release, of decrepitude or other incurable infirmities, such as absolutely incapacitate a prisoner from all commission of further crime of the nature of that for which he is confined, a report recommending the release of such prisoner shall be submitted by the Superintendent to the Inspector-General. This report shall state the amount of remission earned, and the date on which the prisoner would be released in ordinary course; it shall give details of the prisoner's conduct in jail, and of the periods spent in hospital or on the convalescent gang; it shall give information as to the prisoner's home, and relatives likely to receive him (if any), and it may contain such remarks as to the propriety of the prisoner's release as may appear necessary to the Superintendent. It shall be accompanied by a nominal roll (Form No. 53, Appendix iii, p. ci.) and by a report by the medical officer on the prisoner's medical case.

"592-A. The Inspector-General, if the case appears to him to be one suitable for submission to Government under this rule, shall forward the report and its enclosures to the Magistrate of the district in which the prisoner's home is situated or in which the prisoner's relatives reside, and shall enquire whether in the Magistrate's opinion there would be any objection to the conditional release of the prisoner from jail. Upon receipt of the District Magistrate's opinion, the case shall, at the discretion of the Inspector-General, be submitted for the orders of Government.

"593. If the medical officer considers (i) that any prisoner is dangerously ill (his illness not having been purposely caused or aggravated by the convict himself), (ii) that his illness, whether caused by imprisonment or not, will be so aggravated by further imprisonment as to render his early death certain, and (iii) that the prisoner will have a fair chance of recovery or of material prolongation of life, if released, he shall record a certificate in the following form :—

'I, AB, hereby certify that convict No.——, Name——, is in my opinion dangerously ill, suffering from (name of disease). His illness has not been caused or aggravated by any acts of the convict in order to procure release, and I sincerely declare that in my opinion he will certainly die very shortly if he remains in confinement, but that *he will have a fair chance of recovery (or his life will be materially prolonged)* if he is released.'

"In order to be accepted by Government the certificate must be strictly in accordance with the terms of this rule. To it the medical officer shall append a full statement of the medical case and of the reasons which lead him to the belief expressed in the certificate.

"594. Upon such a certificate and statement being recorded by the medical officer, the Superintendent shall forthwith forward the same direct to the Chief Secretary to Government. He shall also forward a nominal roll showing the prisoner's crime and sentence, conduct and age, period of sentence undergone, and remission earned, and may add any remarks as to the advisability or not of release being granted.

"595. In the absence of instructions to the contrary, every release from jail on medical grounds under Rules 592–594 shall be subject to the condition that the convict agrees and subscribes to the conditions set forth in Form No. 52 shown in Appendix iii., p. c., as to the terms to which the suspension of sentence is subject. This form shall be printed in English and in the vernacular of the district to which the convict belongs. The convict shall sign both the English and the vernacular copy, and the latter shall be delivered to him on his release, the English copy being retained in the jail. The convict shall be instructed to produce his copy of the form of release when reporting himself to the police authorities, but it should not then be taken from him. A prisoner released from a jail situated in a district other than that in which he wishes to reside, will be handed over to the police of the district in which the jail is for escort to the district where he proposes to reside.

"596. If it is ascertained that a prisoner who has thus been conditionally released has broken the conditions on which he was released by committing a new offence, information should be given to the Magistrate of the district who will report the matter to Government as directed in G.O., dated 8th February 1887, No. 265."

14. *Paragraph* 11.—I am to invite attention to the Inspector-General's remarks in paragraphs 20, 21 and 25 of his letter. The complete revision of the Jail Code cannot be undertaken until after the issue of such rules as the Government of India intends to make under section 59. The Inspector-General has, however, been directed to prepare drafts of such rules under section 60 as can be revised without inconvenience prior to the issue of the rules under section 59 and copies of these will be forwarded to the Government of India for its information as requested. I am to point out that the rules to be made under section 60 do not require the formal sanction of the Government of India and to say that His Excellency in Council assumes that there is no intention of requiring the submission to the Government of India as a regular practice of all amendments in the Jail Code.

15. *Paragraph* 12.—Such action as is necessary has been taken.

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

J. F. PRICE,
Chief Secretary.

OOTACAMUND,
27th September 1894.

Esd. S. J. Pereira.

Regr. No.

HOME 1894 DEPT.

[ ]

From the Government of
Fort St. George.

Issued

Recd. *Encl.*

Letter, 27th Sept. 1894, No. 2348.

SEPTEMBER.

Prisons Act, 1894.

Replying to letter from the Government of India relating to the provisions of the — which require executive action.

No. Acknowledged 19 Prisons

OFFICE OF THE INSPECTOR-GENERAL OF JAILS,

Dated 9th September 189 .

From

A. G. CARDEW, ESQ., M.A.,

INSPECTOR-GENERAL OF ~~JAILS~~, Prisons

To

THE

CHIEF SECRETARY TO GOVERNMENT,

SIR,

Enclosure.

I have the honour to submit the following reply to G.O. No. 4th July 1894 No. 1823. In view of the extensive nature of the subject I have endeavoured to confine my remarks to the points absolutely requiring notice, and have omitted detailed statement of reasons or discussion of pros and cons, as far as possible.

2. Para 2 of Home Department Letter No 6 Jails - 370 dated 9th July 1894.

It is necessary to extend to Subsidiary Jails certain parts of Act IX of 1894, as Madras Act V of 1869 has been repealed and there is at present no law relating to this class of Jail. It is accordingly recommended that it be declared by Rule under —— Section 60 that Sections 4, 5, 7, 9 to 15, 24 (1), 27 to 29, 31 to 33, 34 35 (1), 36, 40, 42 to 45, 46 clauses (1) (2) (5) (6) (7) (9) and (10) 48, 49 to 52 and 57 to 66 shall be applicable to Subsidiary Jails. In most Sub-Jails there is no Jailor and Sections referring to the Jailor are therefore omitted. A rule will be necessary declaring that the Officer in charge of a Subsidiary Jail shall be the Superintendent

intendent of the Jail for the purposes of the Act. It is unnecessary to declare what places are Subsidiary Jails for this has already been done by Rules 15 and 1320 of the Jail Code, which remain valid under Section 2 (2) of the Act.

3. Para 3 of Home Department Letter. Vide infra

4. Para 4 of Home Department Letter.

The case of Convicted Prisoners is sufficiently dealt with by Chapter XXXVI of the Jail Code. As regards Undertrial Prisoners an addition to the following effect to Rule 926 of the Jail Code appears necessary :—

"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 the presence of any other person".

5. Para 5 of Home Department Letter

The list of offences was drawn up after considerable discussions by the Jail Conference of 1892 and should be adopted intact, except so far as it overlaps Section 48 of the Act. Most of the clauses in the list which are covered by that Section have been omitted in the Home Department Letter. Clause (37) might also be omitted and the other 37 clauses approved. The only addition which I would suggest is that of clause covering petty thefts of Government property which it is not always convenient to prosecute, such as a Convict stealing a piece of cloth from the looms or taking a fellow prisoner's coat. To deal with this, the following clause should be added :—

(38) stealing or misappropriating any article of Government property.

6. Para 6 of Home Department Letter

The only amendment is the draft Rules referred to in this paragraph which seems required is the insertion of the words "Temporary or" before the words "Permanent reclusion" in sub clause (f), clause 4 of the Conference's section 5. The last sentence of Section 9 is also unnecessary, being covered by Section 43 (2) of the Act.

7. Para 7 of Home Department Letter.

I agree with the Government of India's objections to handcuffing to a staple, the use of cross-bar fetters and the imposition of handcuffs at night. In other respects the rules proposed by the Conference of 1892 may be accepted.

8. Para 8 of Home Department Letter.

There is little that is new, so far as this Presidency is concerned, in the Sections here referred to. It will be necessary to revise the form of Punishment Book prescribed in Rule 280 of the Jail Code so as to show, in addition to matters now recorded —

(1) whether the prisoner is a habitual or not
(2) the number of previous prison-offences recorded against the prisoner
(3) the date of prisoner's last prison offence
(4) initials of Jailor.

In all serious offences the names of witnesses are already recorded in column 6 of Form No 17 appended to the Jail Code and in cases punished by whipping the matters required by the Act to be recorded are placed on record.

9. Para 9 of Home Department Letter

The necessary amendments to Rules 621 and 634 of the Jail Code have already been made in the First List of Corrections, dated 1st August 1893.

10. Para 10 of Home Department Letter Section 5 Clauses (2) and (3) of the Act.

These clauses deal with closely connected matters. The Jail Conference of 1892 declared on the one hand that "the only feasible criterion for deciding whether an offence is serious or minor is the character of the punishment awarded"

and on the other hand that it was impossible to determine the particular punishment which should be awarded for particular offences. Accepting these principles, which seem unquestionably to be correct, no rules can be framed under section 59 (3) of the Act which will not do positive harm by restricting the discretion of Superintendents in apportioning punishment to offences. It would obviously be absurd to lay down that certain acts. e.g. receiving prohibited articles (Section 45 (12)) shall or shall not receive some particular punishment. A Convict may be in possession of a Cheroot - and which he may have accidentally picked up outside the Jail or he may have a hoard of cigars giving clear proof of systematic trafficing. In my opinion therefore, any attempt to declare what offences or classes of offences shall be punished by particular punishments must end in failure. For exactly the same reasons it is impossible to classify Jail offences into two hard and fast categories of serious and minor, the circumstances of each case being capable of modifying the seriousness of most Jail offences indefinitely.

11. On the other hand, for the purposes of Annual Statement No VI annexed to the Administration Report, it is necessary to classify punishments into major and minor and the Act seems to be wrong in not containing a separate clause on this subject. The Rules, therefore, which I would propose to be made under clauses (2) and (3) of Section 59 would therefore be merely the following

Rule 1. Every offence shall be deemed to be serious or minor according as it receives a major or a minor punishment.

Provided that if two punishments one major and the other minor, are awarded for the same offence, the offence shall be classed in accordance with the more severe of the two punishments

Rule 2. For the purposes of the last preceding Rule

Rule the following punishments shall be deemed to be minor and major respectively viz:-

Minor Punishments

(1) formal warning
(2) change of labour
(3) loss of privileges under the remission system except such as are included under "Major Punishments"
(4) gaming clothing
(5) penal diet
(6) Cellular confinement not exceeding 14 days
(7) separate confinement ——do——

Major Punishments

(1) Hard labour for Simple Imprisonment for 3 months
(2) Loss of Marks equalling Remission of three months and upwards or cancellation of remission to a similar extent and permanent or temporary reduction from the Remission System
(3) Imposition of Hand cuffs
(4) Imposition of Fetters
(5) Separate confinement in excess of 14 days
(6) Solitary confinement
(7) Penal diet combined with Solitary Confinement
(8) Whipping.

There appears no ground for treating forfeiture of marks as a minor punishment and cancellation of remission as a major form, as proposed by the Conference of 1892. It may be well to add that there is no provision of Act IX of 1894 requiring the division of offences into serious and minor and that the classification of punishments is merely intended to enable the Government at the end of the year to form some idea of the character, as well as of the amount of punishment used in its Jails. A further revision of Annual Statement VI will be needed if the above division of Punishments is adopted, but that would be in any case desirable.

12. Para 14 of Home Department Letter Section 59 clause (4) of the Act.

The draft Rule proposed by the Conference of 1892 may be approved. The Government will observe that escape from

Jail has not been made a prison offence under Act IX 1894. Unless, therefore, it were made a prison offence by Rule under Section 45 (1), it cannot now be dealt with otherwise than by prosecution

13. Para 10 of Home Department Letter. Section 59 clause (5) of the Act.

The Government of India having now made rules, having the force of law, under this clause, regulating the award of marks and the remission of sentence, all remission in this Presidency will, in future, be granted under these rules and not under Section 401 of the Criminal Procedure Code. The formal sanction of Government to the release of Convicts under the Remission system is, therefore, no longer necessary, and Rule 19 of the Rules contained in the Appendix to Home Department Resolution 9th November 1892 No 10 Jails-610-628 cannot now be brought into force. Sanction is accordingly proposed to cancel Rule 406 of the Jail Code, as amended by the 2nd List of Corrections and Rule 407 and to substitute for them Rule 19 above referred to. -

14. Para 10 of Home Department Letter Section 59 clause (6) of the Act.

The Rules here quoted as recommendations of the Committee of 1889 are clearly mere proposals for rules and not rules as could themselves be adopted. What is required is some definite authority to Jail officers to fire on prisoners in certain circumstances. It is also desirable to give the Superintendent authority where necessity arises, to call in the aid of the Military or Police and to empower those bodies to fire on prisoners, subject to the Superintendent's control. The following rules are suggested:-

Rule 1 Any Jail officer may fire on any prisoner escaping or attempting to escape; provided that recruit should not be had to the use of fire arms unless the Jail officer has reason to ground to believe that he cannot otherwise prevent the escape

Rule 2. Any Jail officer may fire on any prisoner engaged in any combined outbreak or in any attempt to force or break open the outer Gate of the Jail, and may continue to fire so long as such combined outbreak or attempt is being actively prosecuted.

Rule 3. Any Jail officer may fire on any prisoner using violence to any Jail officer, provided that he has reasonable ground to believe that the life of the Jail officer is in danger

Rule 4. Before having recourse to fire-arms a Jail officer shall use at least one warning to the prisoner about to be fired on, and shall if possible give three warnings

Rule 5. In any case in which the Superintendent of a Jail is unable to deal with any combined outbreak or any attempt to force or break open the outer gate of the Jail or with any prisoners using violence to any Jail officer, he may, subject to such orders as may be prescribed by the Local Government call in the aid of the Military or the Police and such Military and Police shall then have the same powers of firing on prisoners, subject to the authority of the Superintendent, as are conferred in the foregoing rules on Jail officers.

15. Para 10 of Home Department Letter Section 59 clause 7 of the Act.

The rules regulating the release of prisoners on medical grounds have recently been revised and are embodied in Rules 592 and 593 of the Jail Code as amended by the 2nd List of Corrections

16. Para 11 of Home Department Letter.

The rules which may be framed under Section 60 of the Act cover the whole ground of the Jail Code, but as all rules hitherto in force continue to hold good unless actually inconsistent with the Act, it is only necessary to deal with such matters as have either been omitted from the Jail Code or as must be revised in consequence of the new enactment

17. The first matter to be dealt with in this connection is that covered by clause (f) of section 60 and the rule required is a definition of prohibited articles The following is submitted :—

Rule. The following shall be deemed to be prohibited articles within the meaning of Section 48 (2) of the Prisons Act, namely :—

Alcohol or Spirituous liquors, tobacco, or the implements for smoking, snuff, opium, ganja or other hemp drug, betel, areca-nut food, clothing, money, jewellery, knives or other weapons, books or writing materials, letters postage stamps, playing cards, matches or any other article received possessed or transferred otherwise than by due authority

18. The next matter required to be dealt with under Section 60 is the definition of Penal Diet with reference to clause (g) of Section 46. This may be dealt with either under clause (e) or clause (b) of Section 60. In the absence of orders from Government I have already instructed Superintendents that the Penal Diet to be in future followed is the No I Bread and water Diet referred to in Rule 377 and I now submit the following Rules to be substituted for Rules 377 and 378 Viz :—

Rule 1. Penal Diet shall consist of the following restricted diet, namely :—

A. Europeans and East Indians
1½ lbs of bread per diem with water

B. Natives and Foreign Convicts
12 ozs: sifted raggi flour with ½ oz: salt per diem with water

N. B. 6 ozs. of flour and ¼ oz: salt shall be made into a thick kanji for the morning meal and 6 ozs of flour and ¼ oz: salt shall be made into an unleavened cake for the evening meal.

Rule 2. 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 the 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. A 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.

19. There appear to me to be the only two matters in which it is necessary at present to frame fresh rules. Owing to the passing of the new Act various rules of the Jail Code need to be amended e.g. Rules 1, 2, 21, 51, 117, 148, 153, 156, 168, 289, 305, 352, 353, 356 357, 358, 360 etc, but the amendment of these rules which will involve the revision of the Code, cannot be undertaken until the Government of India has framed its Rules under section 59.

20. Para 11 of the Home Department Letter requests that "draft rules may be framed and submitted in matters as to which rules already approved under the provisions of the repealed acts (and consistent with Act IX of 1894) do not exist". If this request is to be taken literally, the whole Jail Code must be submitted for the sanction of the Governor General in Council, because no rules have hitherto been approved by the Government of India (except those connected with remission and a few other detached points) Madras Act V of 1869 necessitating no reference to the Supreme Government.

It may, however, be reasonably assumed that the Government of India is not going to embark on the impossible task of revising the Jail Codes of every Province *in toto* and that only such rules need be submitted as have now to be newly framed.

21. Section 60 of Act IX of 1894 gives Local Government's power to make rules *subject to the control of the Governor General in Council*. It is evident therefore that no previous sanction of the Government of India is necessary to amendments of the Jail Code in matters falling within that section though the Government of India has a general power of control when it chooses to exercise it. When the returns delay which is involved in a reference to the Government of India is remembered, it is evident that it would be intolerable that every small alteration of the Jail Code should have to be submitted to that authority.

22. I have now referred to all matters arising out of Home Department Letter of the 9th July 1894 except that of "History Tickets". On this subject I beg to quote a reference to para 108 (3) of the Annual Report for 1893 and to express a hope that the Government will not sanction the attempt to force the Bengal history ticket on this Presidency. The system in force in Madras Jails is to collect the details which in Bengal are placed on the history-ticket, in the Convict Registers. By this system, the same knowledge of each Convict's history is secured as is attained by the History-Ticket Method, with the additional advantage that the record is not in the custody of the prisoner but in that of responsible Jail officers. No answer has ever been made to the objection which is fatal to the Bengal method that it leaves it in the power of an ill-conditioned habitual to destroy the record of his offences. He may be punished for doing so, but the record is lost irrevocably, unless records are duplicated. A careful and impartial trial has been given to the History Ticket System in Madras and it has

failed. I have personally examined the working of the system in Bengal and other Provinces and I am of opinion that it has gained in vogue because it is convenient to the inspecting officer i.e. the head of the Department. For these reasons I believe the Madras system to be preferable, even if a fresh start were being made and either system could be adopted with equal convenience.

23. The facts, however, are otherwise. The histories of the 9000 odd convicts now in confinement in this Presidency have hitherto been recorded in the Registers and the introduction of a different system would mean a complete revolution in the Books maintained in our Madras Jails. It would be impossible to maintain history tickets alongside of our present Registers, as the scriptory work would be doubled. Thus in order to adopt the History Ticket system the whole record of our long term Convicts would have to be re-written and the whole scheme of Registers revised. I earnestly trust that the Government will not consent to so useless a waste of energy, time and money, involving as it would, extra establishment and large outlays in printing and stationery.

24. With reference to the second clause of para 12 of the Government of India's Letter I beg to state that the practice there referred to has long been followed in this Presidency.

25. A summary of the changes in the Jail Code to be made under Section 60 of the Act is annexed. As already noted, other changes will be needed, as soon as the Government of India's rules are made. I also enclose copy of a Circular No 3379 which was addressed to Superintendents of Jails on the 20th June last, regarding the new Act.

I have the honour to be
Sir,
Your Most obedient Servant
A G Cardew
Inspr Genl of Prisons

24-7-94 1823 Jail Department Inward
1894 : 2.6 pakas
580 : 8.3 "
1822 : 1.8. "13"
Basic Report 93
188 of 92 30-394 Revn

JUDICIAL.

JAIL (189) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF ~~JAILS~~,

To

THE CHIEF SECRETARY TO GOVERNMENT.

RECEIVED CHIEF SECRETARY'S
9 AUG 1894
GOVERNMENT OF MADRAS

Dated
Despatched } August 1894.
Received

No.

ENCLOSURES. 2.

Subject.

Submitting his remarks on the New Prison Act IX of 1894 as called for in G.O. No 1822 dated 4th July 1894.

31 Annexure 21

Amendments to be made in the Jail Code under section 60, act IX of 1894.

1. Rule 30 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 abovenamed act, viz: Sections 4, 5, 7, 9 to 15. 24(1), 27 to 29. 31 to 33, 34, 35(1), 36, 42 to 45. 46 clauses (1), (2), (6), (6). (7). (9) and (10). 48, 49 to 52, 54 to 56.

2. Rule 356 A. Insert the following:—

The following shall be deemed to be prohibited articles within the meaning of section 45 (2) of the Prisons Act, namely:—

Alcohol or spirituous liquors, tobacco, or the implements for smoking, snuff, opium, ganja, or other hemp drug, betel, areca-nut, food, — clothing, money, jewellery, knives or other weapons, books or writing materials, letters, postage Stamps, playing cards, matches or any other article received, possessed or transferred otherwise than by due authority.

3. Rule 360. Insert the following as matters which shall be recorded in the Punishment Book viz:—

(1a) whether the prisoner is a habitual or not

(6a)

(51a) the number of previous prison offences recorded against the prisoner.

(51b) the date of the prisoner's last prison offence.

(11a) initials of tailor.

4. Rules 377 and 378. — For these rules substitute the following, namely: —

Rule 377. Penal diet shall consist of the following restricted diet, namely: —

A. Europeans and East Indians —

1½ lbs. of bread per diem, with water.

B. Natives and Foreign Convicts.

12ozs. sifted raggi flour with ½ oz salt per diem, with water.

N.B. 6oz. of flour and ½ oz. salt shall be made into a thick kanji for the morning meal and 6. ozs of flour and ½ 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 the 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.

5. Rules 401 (as amended by the second list of Corrections) and Rule 407. Cancel and substitute the following: —

On 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

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.

6. Rule 26. 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 the presence of any other person.

7. Rule 1880. For the purposes of the Prisons Act 1894 the Officer in executive charge of a Subjail shall be deemed to be the Superintendent thereof.

185.

A.J. Cardew
Insp. Genl of Prisons.

Proceedings of the Inspector General of Jails.

Order dated 26th June 1894, No 3879.

The special attention of all Superintendents is drawn to the fact that, from the 1st July next, Madras Act V of 1869 is repealed and Act No IX of 1894 comes into force.

2. In due course rules will be made by Government under the new Act and will be embodied in a revised issue of the Jail Code. Until this is done, the present Jail Code will continue in force except where it is inconsistent with the new Act.

3. The patrol charges on Jail administration will be four and the following papers are to be the chief points requiring present attention, viz:—

Section 15. Medical Officers must inspect personally the particulars here given whenever a prisoner dies.

The Inspector General of Jails directs that for the present at least, these particulars shall be recorded in the Diary book.

Section 17. Superintendents must arrange at convenient dates for their Library books being furnished with an explanation dealt on with, pursuant to section 17 of communication with the Jail Officer on duty.

Section 22(2). Superintendents should not discharge under the clauses such prisoners to whom clothing or bedding has been supplied at jails

expenses, without great care and the fullest consideration.

Section 42. Until fresh rules were framed, the term "prohibited articles" will be held to apply to the articles specified in clause (2) Rule 119 of the Jail Code.

Section 43. The punishments here laid down must be adopted from 1st July. All rules in the Jail Code will continue to apply so long as they are not inconsistent with the Act.

Clause (1) Warnings - As there are no History - Tickets for the Prisoners, the last 6 words of this clause have no effect.

Clause (4) Fines of Meals etc - No change in existing rules with exception at present.

Clauses (6) and (7) The use of Landaffs and fetters as punishments should be avoided as far as possible pending the issue of further rules by Government.

Clause (8) - Reference to the future Prison as a punishment is limited to six months. See also next appendix Chapter XVIII of the Jail Code.

Clause (9) Canal Diet will in future be limited to 4 days Sending - further system the Penal Diet to be enforced should be -

(1) for Europeans - No I Bread and water - Rule 377 of the Jail Code.

(2) for Natives and Eurasians - No I and No II Bread and Water Rule 378 of the Jail Code.

The No II Ditto - About Diet for - Europeans and Penal Diets No II and III for Natives must be regarded as abolished.

Clause (12) Offences relating to wood - many, in future, be punished with any number of stripes not exceeding 30.

Section 47 Special attention should be paid to the provisions of this section.

Section 48. Care must be taken to observe the provisions of this section, especially clause (2) of it.

Section 52. All Subordinates should be informed of this new provision of ... it will be well to have it read ... and explained ... hereafter to all Warders, and to draw general attention to it in the Jail Order book.

Section 57. No changes will be made at present with reference to this rule.

4. The Act IX of 1894 was published in the Fort Saint George Gazette of the 19th April 1894. Spare copies will shortly be supplied.

(Signed) A Gloveer

Inspector General of Jails.

To
All Superintendents
(with spare copies to Medical Officers of Central Jails, Tanjore and Palamcottah)

500—20-6-94.

59

Legal Department.

No. 3956

From Sydney Prisons

9 Aug. 1894

Dated 189 ,

TO ORDERS.

This circular relates to the changes in the rules & procedure of the Jail Department rendered necessary by the passing of the said Prisons Act.

(1) Section 2 (2) of the Act.

This causes the existing Jail Code so far as it is consistent with the present Act; certain alterations in the Code will be necessary, however, & these will be referred to later on.

(2) Section 3 (1)

This section takes Parts 2 & 4, subsidiary Jails & persons appointed under Sec. 5 of the Act from the operation of the Act (Sub sec. 6 (3)) but power is left to extend any of the provisions of the Act to subsidiary Jails & persons appointed under Sec. 5 of the Act. The G. of J. desires to recommend that the necessary orders may be issued under Sec. 6 (3) to point out that the Visiting Conference of Judges should not be extended to subsidiary Jails & that all the powers of Visiting Justices given by the Act

The S.G. proposes to apply sections 4, 5, 7, 9–15, 24(1), 27–29, 31–33, 34, 35(1), 36, 39(1), 40, 42–45, clauses (1), (3), (6), (7), (9) & (10) of 46, 48, 49–52 & 54–56, to Sub-Jails.

Save so far as the Bodies can possess Corporate powers under the Act, the Sheriff is the Corporate Body in the Jail, & all Contracts & Agreements made under the Act are made by the Sheriff.

The S.G. also proposes that the officer in charge of a Sub-Jail shall be declared to be the Keeper for the purposes of the Act.

The sections which the S.G. proposes to extend seem suitable, on the whole, but a few remarks on this subject seem necessary, viz:—

(a) Instead of one Medical Officer a Keeper for each Jail is declared to be entitled to Subjails; also Medical Officers under the Act; this latter provision would not be applicable to Subjails, as Medical Officers are not appointed to Subjails under Code Rule 1338.

(b) The appointment of Keepers to Subjails is usually made by the Sheriff, & not by the Govt. as the Act requires.

(c) The S.G. does not propose to extend sec. 6 to Subjails, although it is the duty of the Keeper under that section to report to the Govt. the state of the Jail, & the Govt. to make rules for the management of the Jail. Sec. 6 also requires the Keeper to keep a Register of Punishments, which is not required in Subjails.

(d) Sec. 7 requires the Keeper to report to the Govt. the name of any Prisoner who has been under punishment for more than 7 days, but this is not required in Subjails.

(e) Sec. 9 requires the Keeper to report to the Govt. the name of any Prisoner who has been under punishment for more than 7 days, but this is not required in Subjails.

(f) Sec. 10 requires the Keeper to report to the Govt. the name of any Prisoner who has been under punishment for more than 7 days, but this is not required in Subjails.

(g) Sec. 11 requires the Keeper to report to the Govt. the name of any Prisoner who has been under punishment for more than 7 days, but this is not required in Subjails.

(h) Sec. 12 requires the Keeper to report to the Govt. the name of any Prisoner who has been under punishment for more than 7 days, but this is not required in Subjails.

(i) Sec. 13–15 are also excluded, for which no medical officer is required. Where there is no Medical Officer, the Sections may be modified, but generally, S.21 seems to be unnecessary. S.22 is covered by the 42–45 & the specific clauses, pp. 46 & 48 and (3), S.50 is not necessary. S.54 is not applicable to Subjails, because there cannot be a Jailer in any Subjail.

Proportion remarks, as before.

JG

I think the expression "Keeper" also mentioned in Ss 50 & 54.

S. 15 need not appear, the duties of both Medical Officer are there specified, one Surgeon being of course sufficient.

JG

If so, S. 50 should also be excluded.

JG

Ex I think Secs 6 and 7 be applied

JG

I think the "Keeper in charge" should be declared to be both Superintendent & Jailer & Secs 37 and 38 extended — Secs 17 & 18

I agree if this definition made

JG

Still another confusion in the Sections is

(a) As far as only as much of sec. 6 as requires that there shall be a Subjail Standard Officer for each Jail should be extended to Subjails. Code Rule 1338 declares that the senior civil Medical Officer of the Station shall be the Medical Officer of the Subjail. Thus the Medical Officer of a Subjail is usually a Medical Subordinate but sometimes a Commissioned Officer & occasionally there is no Medical Officer at all. See some of the sections which the S.G. proposes to extend to Subjails assume the existence of a Medical Officer. If so much of sec. 6 as requires a Medical Officer for each prisoner is extended, the Law would require a Medical Officer for each Subjail, if so much of sec. 6 as requires a Medical Officer for each prisoner is extended, the Law will be require a Commissioned Officer for each Subjail & will thus occasionally run contrary to Code Rule 1338.

So much only of sec. 6 as relates to the Keeper, therefore, is extended to Subjails & in case where there is no Subjail Medical Officer, sec. 6 would be extended to a person prescribed as the Keeper who shall perform the duties devolving on the Medical Officer; such person will have to be, necessarily, the officer in executive charge, but the S.G. can be consulted about this.

Ex I think Sec 26 need be applied

Ex I think Sec 26 need be applied

Ex in case any other was to do such duty of a Medical Officer JG W

The principle of Plan will be found Sections 27–29 at all. The Code only provides that is required JG W

I think we had better by express Words enumerate what Rules shall apply to Subjails

(b) The application of sec. 11 to Subjails will place the Keepers of them under the control of the S.G. (as they are at present) (Code Rule 1329), but clause (3) of the section will prevent the authority of the S.G. from being complete by omitting from him the power of (c) The S.G. does not propose to extend sec. 26 to Subjails (although it is better that it should not be extended. The section requires the Surgeon medically to examine each prisoner before removal to another prison & provides for discharge of a prisoner who is suffering from serious illness. Code Rules 1372 & 1844, however, provide for both these cases at a neighbouring Hospital only if the prisoner has a long journey to make & for the removal of prisoners who are seriously ill to the nearest Hospital. Cases how largely Subjails are used as mere Lodging-places, the Code renders some better than the provisions of the Act.

(d) There may be some difficulty about wording clause (2) of sec. 27 in every case but it is not necessary to anticipate trouble at the Extension of the whole section to Subjails, as proposed by the Superintendent. See, in this connection, Code Rule 1347 which is

(c) Civil prisoners are not comprised in the subjects of the extension of clause (2) of sec. 33 is therefore unnecessary.

(d) For the same reason there is no need to extend sec. 36.

(e) Clause (3) of sec. 35 ought to be extended as well as clause (2).

(f) It will be observed that the H.G. proposes to give to Justices of the Peace powers to confirm the following punishments only, viz, flogging, stoppage of bad conduct pay, forfeiting, stoppage of good conduct pay, reduction to cellular confinement. The H.G. proposes to secure uniformity except that it is done left to the discretion, in view of the consolidation of duties, the power of giving cellular confinement would throw off much case.

(i) The H.G. proposes to extend sec. 48 but not sec. 47. The large powers of sec. 47 will not usually be used if 48 is extended, it seems advisable to extend 47 also as that section is referred to in sec. 48. The extension of either section appears unnecessary, because it is not proposed to give the Regt. powers to award cellular confinement etc. if the condition regarding this form of punishment which appears in 48 is therefore inapplicable.

(j) It is seems advisable to extend sec[s] 61 & 62 to Ludjmah. The extension of sec. 62 is necessary

X I am not sure of this. Take the instance of a man arrested under Act II of 64. I don't think that he would be the proper person of confinement destined for the regular day subsidy as subsidiary force of three days. But in the case of civil debtors it will doubtless be necessary to furnish them with subsistence in their funds for their custody when en route to the place where they are to be kept in confinement. But of this he to be done when are they to be kept for the night when on the way from the place of arrest to the final place in which they are to be confined?

And here we may mention that we apprehend no serious difficulties are likely to occur.

W JS

* It will be practically a dead letter for no Local Govt in these any place for cellular confinement to regard the report that as will be overruled.

W JS

X I am not sure of this. Take the instance of a man arrested under Act II of 64. I don't think that he would be the proper person of confinement destined for the regular day subsidy as subsidiary force of three days. But in the case of civil debtors it will doubtless be necessary to furnish them with subsistence in their funds for their custody when en route to the place where they are to be kept in confinement. But of this he to be done when are they to be kept for the night when on the way from the place of arrest to the final place in which they are to be confined?

And here we may mention that we apprehend no serious difficulties are likely to occur.

W JS

* It will be practically a dead letter for no Local Govt in these any place for cellular confinement to regard the report that as will be overruled.

W JS

I don't think s. 61 necessary

Sec. 62 is necessary

W JS

W JS

W JS

that it has got to be D of the
secret of rail administration
& the ticket is exchanged in
the Act of the Indian Govt
is now enforced that the
G. of S. attaches much im-
portance to the introduction of
that measure & is to be
introduced every where with
delay.
but Curzon protests vehe-
mently against these orders
in paras 22 & 23 of his letter.
He says it will necessitate
the re-writing of the records
of all long term convicts
The revision of the whole
scheme of regulations.
It is probably useless to
try to prove the G. of S.; it is
obdurate.
The scheme must apparently
be accepted but it is desir-
able that it should be applied
only to new admissions.
It is impossible to write
off the histories of 9,000
odd convicts now in confine-
ment. As to the future main-
tenance of the tickets, the
Govt seems to realise exaggerated
the difficulties. The working
up of the tickets in the
form given by W. & L. would
certainly be a serious matter
but it can be judiciously
alleviated. Weights will
have to be entered under Rule
35 (2) & warnings under Rule
46 (1), but the Local Govts is
given an option as to the
stage referred to in Rule 35

* It seems likely although one more effort might be made. It is ultimately useless [illegible]. As it is Dr Lee's instructions to it is highly probable that nothing to be [illegible]

J Thirtle
I would try again
JM
J. W.

This is the only thing to [illegible] Govt is compelled to introduce the working tickets. There is nothing in the Rule as far as I can see absolutely requiring it to be kept. Rules are alterable. It will [illegible]

JM
W

The G of I should be invited after they receive the Home Dept Circulars to suggest some to meet administrative

W JM

45

Principle & this would I submit not do unless the subsequent registration must prevent registers are to be maintained. Given them it would not be obeying orders to the very [illegible] to the [illegible].

The framers of the proposed rules [illegible] & Road Tickets — of a [illegible] [illegible] — may [illegible] [illegible] [illegible]

W Thirtle JM

W

45

& the Rules under sec. 60(1) can be so framed as to reduce the Tickets to a suitable form.

The maintenance of the personal Conduct register is essential because of the danger that the History Ticket of any convict may be lost or destroyed.

(4) Section 11 (2).

Regarding this Section see para. 2(7) of Govt Letter No. 346, J. 14 Feb 94. This Govt objects to the system of control by Dr. Bagh. over Rail Supt. Pit is doubtless in consequence of this objection that the section, as it stands, subjects the powers conferred on Dr. Bagh to such General or Special orders as the Local Govt may choose to issue.

Subd. 1 that a General order may cease under this section prohibiting Dr. Bagh. from issuing orders to Supts. of Provincial Jails.

(5) Section 27 (2).

The Madras system of classifying youthful prisoners is described in para. 3(17) of Govt Letter No. 1390, J. 7 July 1893. The main difference between it & the system now prescribed by Law is the abolition in the new classification of the distinction between Reformatory & Ordinary with the fixing of 18 instead of 20 as the minimum adult age. The Govt of

should be drawn to the chan
as the Code must be revised
in this particular.

(6) Section 40

This provides that arrangements
shall be made for visits to
prisoners off friends etc & for
prisoners who are under trial
holding communication privately
with their legal advisers.
The G. off U. requests that rules
may be made to carry out the
intention of this section.
The A.G. says the present Code
rules will be
sufficient iff an
provision on the subject of
private interviews between
undertrials & their pleaders is
added to Rule 926.
The J.G.'s views may be obtained.

(7) Section 41 (2)

Code Rule 241 empowers the
Sate Govts to remove Visitors.
Sec. 41 restricts the powers to
the Jailor & requires him to
maintain a record in a form
prescribed by Govt of all
refusals to admit Visitors.
The inconsistency between the
Code & the Act should be pointed
out to the G. of I & he should be
asked to prepare a form
of register for the formal appro-
val of Govt under sec. 41(2).

(8) Section 45

Clause (1) of Sec. 59 gives Govt
the powers, with the previous
sanction of the G. off U, to define
the acts which constitute
prison offences & clause (1)
of sec. 45 declares that the
acts as defined shall be

Is response ref. seems needed - Reports
handout may be entered, as would all admitted
case, in Form No 29, the ref. now kept BM
W J. 9

Is not anything footnoted in No 34
BM

Yes & the i am ask all the views for
BM Which it may be desirable to enforce
JG punishment.
W & this seems needless.
I think it may be dropped in my opinion
W JG BM

47

47

prison offences.
The G. of U. intends (vr. para. 1
of its letter) to empower Visi-
tors of the Local Govt to
define (in lyt the acts which
constitute prison-offences &
the Madras Govt is merely asked
for its views as to the acts
which should be defined as
prison-offences.
This exemption of power is
not strictly legal but, see
other grounds, seems unobjectionable
The Prisons Conference of 1892
drew up a list of 61 acts
which constitute offences,
but of these, 23 are covered
by clauses (2) — (6) of sec. 45.
These remain 38 which are
stated in Enclosure 1 to
Sudiá's letter.
The J.G. recommends that all
these 38 acts (with the possible
exception of that mentioned as
37 in the enclosure to Sudiá's
letter) should be defined as
acts which constitute prison
offences.
Act No 37 is covered by clause
(2) of sec. 45 & it may be
omitted as proposed by the G.
Act No 17 hardly amounts to
an offence & Act No 32 is
very practically & cannot be
covered by No 33.
Govt Cardiff would add to the
list the following offences
"Stealing or misappropriating
any article of Govt property
Clearance, as the powers out of
is not always expedient to
prosecute Govt servants for petty thefts

discipline; of course, if the Staff or misappropriation is a serious one, the Supt. would prosecute or send the prisoner for punishment to a Magistrate under sec. 58.

(9) Section 46 (4)

Sec. 59 (5) gives the Local Govt. power, with the previous sanction of the G. of I., to make rules for the award of marks & the abstraction of remissions. Sec. 46 (4) gives the G. G. in C. power to make rules for punishing prisoners by the loss of marks.

Draft rules on this subject were prepared by the Prison Conference of 1892 & are printed as Enclosure III to Indian Letter.

The G. of I. seeks relation between Govt's powers of the Draft:

Mr. Cadell would add the words "Temporary or" before "permanent exclusion" in sub-clause (5) of the Draft rule & the words "No officer cadet" to the Supt. shall have power to award any punishment whatever" like corresponding clause (2) of sec. 49 of the Act in to the same effect. It will also, of course, be necessary to suitably amend the last of the Draft rules as it relates to provisions connected with the deprivation of marks as a punishment.

Mr. Carr does not propose any amendments.

W. 29

The proviso in Encl: II of Indian Letter shows that temporary exclusion is contemplated by them, & confined to more than 3 months. The insertion of "temporary or" would, we think, be useful. Perhaps remarks should be confined to more than 3 — say 6 — months, but there may be cases that do not fall under the proviso. The proper proviso would be one to support the Supt. in the event of a punishment of exclusion for more than any months, the I. G. could not interfere in working the order. So far as Bombay there is no such provision at present. W 29

I think it would be better if the Bombay views were given effect to.

W 29

(10) Section 46 (6) & (7).

These clauses empower the G. of I. to prescribe the patterns & weights of handcuffs & fetters when used as a mode of punishment.

The Conference of 1892 drafted regulations on this subject & other Madras Govt. is asked whether they are suitable for adoption in this Presidency.

These rules provide (i) for the use of handcuffs, fetters, bar-fetters, cross-bar-fetters; (ii) for handcuffing in front, by day or night, for not more than 12 hours at a time; (iii) for handcuffing behind, by day, for not more than six hours at a time; (iv) for handcuffing to a staple, by day, for not more than nine hours with an interval of one hour; (v) for fetter-fettering for not more than twelve months; (vi) for bar-fettering for not more than six months; (vii) for cross-bar-fettering for not more than 240 hours; & the whole is subject to the proviso that convicted civil prisoners are not liable to the rules.

The use of irons has been the subject of much discussion. Hitherto the use of irons as a mode of punishment has been prohibited in Madras & they are employed only under the circumstances set out in Code Rules 621 & 630. The only set of irons

was discussed by Walker J. Lethbridge in Chap. XVIII of their Report. They advocated their use as a means of punishment & suggested that the following three limits should be enforced, viz:— handcuffs in front, 12 hours; handcuffs attached to a staple, during the day; handcuffs behind, 6 hours; fetters not exceeding 4 lbs, 12 months; (Cross) Bar fetters, 10 days. H. & L. were disposed to doubt whether handcuffing at night should be permitted. See para. 7 of Genl. Letter No 1005 of 18 Nov. 90, however, this Govt. expressed an opinion adverse to the use of irons as a mode of punishment & particularly objected to standing handcuffs or handcuffs attached to a staple. Again, in para 21 of G.O. 6 of 1891, No 2286, Genl., the same opinion was expressed & standing handcuffs & bar-fetters were stigmatized as barbarous. Finally in Genl Letter No 1632, of 14 Aug 1893, the Madras Govt withdrew its objections to the use of irons as a mode of punishment on the following conditions, viz, that handcuffing at night or behind or for more than 6 hours should be prohibited, that fetters shall be chains or links weighing not more than 4 lbs & that bar-fetters shall be absolutely prohibited.

The whole matter was considered by the Prisons Conference of 1893,

The truth is that the necessity, which even experience in jail management failed themselves under, of devising punishments of these kinds, merely shows unwisdom & disregarding to depart unnecessarily from the old-fashioned punishment of whipping. DH

Dr Mr Thomas, Inspr of Prisons, Mad

Lieutenant Layne Mad

51

It will be seen that Mr. Ch. Carden (recording) adopts Walker & Lethbridge's views practically in their entirety. Except that they made provision for handcuffing at night. The G. of I. now observes that it would be appropriate to handcuffing by night & to a staple & of the use of Cross bar fetters. The G. of I. has thus accepted the opinion of this Govt & the S. G. is in favour of adopting the rules forming Enclosure III, subject to the modifications suggested by the G. of I.

Subm. to the Govrs. may the Enclosure, the proviso at the end of Enclosure III is unnecessary by the last sentence of sec. 26 of the Act.

(118) Section 51

The G. of I. calls attention to the provisions of this section relating to the Punishment-Books & asks that orders for its due maintenance may be issued.

The S. G. observes that a slight alteration of Code Rule 360 & Code Form 17 is all that is necessary.

(121) Section 56.

This section declares that the S.G. may, with the sanction of the Local Govt, lay down rules for the confinement of prisoners in irons in lieu of their being handed over to the Police.

G. & L. quoted with approval on p. 81 of the Report of the 1st

DH

25

DH

25

XXV

Sir Arthur Hobhouse. Convicts
have to work & the like

Nothing need be said about this

W. J.

Sir

Sir

Sir

"a general indication of the ordinary gravity of each offence" para. 23 of Legl Resolution read on G.O. 10 Jan 1873, No 110, Jud., general concurrence with the Conference's views expressed & the annual statement of prisoners' cases (No VI) which accompanies the last Report was modified so as to distinguish major from minor offences.

The Conference's classification of offences will be found on pp. 37–39 of its Report.

The G. of I. now wants to know whether the Madras Govt accepts the classification suggested by the Conference.

Mr Cardew's remarks on this subject are much to the point.

He argues thus:—

"(i) the division of offences into serious & minor is necessary & the only question is as to the principle on which the division should proceed;

"(ii) so much depends upon attendant circumstances that it is impossible to predicate of most offences whether they are serious or trifling;

"(iii) the punishment inflicted is a criterion of the gravity of an offence;

"(iv) therefore every offence should be classed as serious or minor according as a major or minor punishment was inflicted on account of it"

my solitary confinement for not more than 7 days to be similarly treated.

The views of the Conference receive general approval of the G. of I. in para. 28 of its Resolution read on G.O. 7 Mar. 93, No 110, Jud, & in the original Bill, punishments were classified in practice accordance with the Conference's suggestions.

Govt raised no objections to the proposed classification but as passed into law, the Act leaves the classification to be fixed by rule & the G. of I. asks that Govt to frame draft rules on the subject.

The G. of I. takes the opportunity of express the opinion that penal diet combined with solitary confinement for not more than 14 days' and cellular confinement for not more than 14 days' (both which punishments would be 'major' under the Conference scheme) should be classed as 'minor' punishments.

Mr Cardew accepts Govt's views regarding "cellular confinement not exceeding 14 days" but he does not like the suggestion contained in the proposal that penal diet combined with solitary confinement for not more than 14 days' is minor.

He has, apparently, not observed that the list of punishments omits all reference to penal diet combined with

"cellular & rigorous confinement" & that, if the combined penal diet & solitary confinement is to be treated in same manner as "prison" as would the combination of penal diet & rigorous & cellular confinement which Govt has not noticed relates to cellular confinement. Under the Act this form of confinement is restricted to 14 days & Govt proposed to classify as minor cellular confinement not exceeding 14 days above that & up to 28 days' the entire punishment is to be 'major', solitary 28 hours solitary confinement penal diet should also be 'minor'?

The G. G. transfers, also, all forms of punishment by imprisonment to the major list &, as this form of punishment has been hitherto unknown in Madras, perhaps the proposal may be endorsed.

Mr Cardew's proposals regarding remission & the case of prisoners serving much less reasonable under Code Rule 603 twenty-four marks five one day's remission; under Rule 395 Subsec. may not fine more

Rule 96 marks (= 4 days) under Rule 397 marks accidentally converted into remission may be cancelled by the C.J. alone & only for serious offences.

Rule 397 appears to be illogical now, for the Act confers no powers of punishment upon the C.J. & it will therefore have to be revised.

Subject apart from this, the C's proposal to treat forfeiture of less than 3 months' remission (i.e., possibly 2 x 89 = 178 marks) as minor appears far too serious. The proposals of the Conference on this point are also open to objection, as H.C. points out, & perhaps the best plan will be to class as minor

(1) forfeiture of remission not exceeding 14 days & forfeiture of marks equivalent to the same period &

(2) temporary forfeiture of class, grade or privileges &

(3) temporary exclusion from the remission system & all other forms of forfeiture as major.

In this connection it should be noted that Rule 89 does not distinctly provide for the division of punishments into 'major' & 'minor' but it does provide for the fixing of the punishments awardable for each class of prison-offence

minor

It is vital that the C.J.'s on the subject should be ordered.

(b) Given, then, that offences are to be classified with reference to the punishments inflicted, the next question to be decided naturally is "how shall punishments be classified" (S. & L. (Rpt. pp. 95 & 96 of Report) proposed the following scheme —

(1) Loss of marks
(2) Loss of labour
(3) Separate confinement for short periods
(4) Restriction of a meal
(5) Handcuffs
(6) Standing handcuffs
(7) Fetters for not more than 30 days
(8) Penal clothing.

(1) Solitary confinement
(2) Separate C. for long periods
(3) Penal diet
(4) Handcuffs behind
(5) Fetters for more than 30 days
(6) Cross bar fetters
(7) Whipping

major

The Conference views on the subject are to be found on pp. 364 & 365 of its Report. It accepted in the main, S. & L.'s classification but made the following changes:

(i) Warnings to be added to the list of minor punishments;
(ii) certain forms of loss of marks to be transferred to the head 'major';
(iii) Restriction of meals to be omitted altogether;
(iv) Penal diet to be transferred to 'minor';

57

the Conference abandoned as impracticable the attempt to attach a precise penalty to a given offence & the C.J. seems to have wisely determined to do nothing in this direction. Clause (3) of sec. 59 ought never to have been passed.

(c) The next question to be decided is one likely to be difficult, the cases where departmental action should be taken in preference to criminal prosecution for offences.

The Conference proposed (vide Evidence 87) to limit action to serious offences & to define offences as those of the nature of rioting, escaping from custody, inciting to mutiny, suffering to escape, causing death by a rash or negligent act, attempting suicide, causing grievous hurt & committing any offence triable exclusively by a Sessions Court or constituting a grave offence under the I.P.C.

Indian views on offences as to the proposed rule.

Bal. Candeo approves of it & he adds that 'escape' & 'attempt to escape' are not terms in offences under the Act.

Regarding this last point, two courses are open, viz.

(1) to declare escape & attempt to escape to be serious offences entailing

Sec. 45(1) in which event it will be necessary to declare whether they shall be punished departmentally or judicially or (2) not to declare them to be prison offences, in which event there is no need to lay down that prosecution shall always be resorted to, because prosecution will then be the only legal mode of punishing the prisoners perpetrating them.

Subject to these remarks, the Rules proposed by the Conference printed as enclosure IV may it is hoped, be approved.

(4) With reference to clause (8) of sec. 59 the G. of I now forwards the draft rules which are printed as the Appendix to India Resolution read in G.O. of 18 Jan 93, No 110, Jud.

These rules have already been incorporated into the Indian Jail Code (Cr. Chap. XXI) with the exception of Rule 19, which could not legally be introduced into Bra Desa until the new Act came into force. Now this Rule 19 must take the place of Code Rule 406 by the expedient of applying to Govt for sanction under sec. 401 Cr. P. to the release of prisoners who have earned remission until ceases.

Code Rule 407 will also need amendment & probably Code

Rule 409 but, as regards this latter Rule, the Mgt. should be consulted, because the questions connected with the release of invalids &c are somewhat complicated & will need careful & separate consideration.

(5). The next point is the rules to be made regarding the use of irons as punishment for prisoners.

This Govt invited the favourable subject to appear in the Act itself & these powers they should take were discussed on pp. 21 & 22 of my book, & in C.S.'s note, under cover of Govt's letter dt 7 July 1893, No 1870.

The provisions proposed were considered by this Govt in Council in para. 4 of the said letter. The Legislative Department decided to leave the matter to be dealt with by rules framed under the Act.

The L.G. now submits a set of draft rules, but they do not seem to be in any way expansion to those contained in the section originally drafted by this Govt & if they be then shall decline may be commended to the G. of I. as suitable for issue as a rule having the force of law.

There is however, one point about Mr Condon's draft rules which demands further notice. The paragraph last

Dist Supt. should have power to call in the Police or the Military to suppress an outbreak & that the Police & Military shall, as regards the control of the Supt, have the same powers of firing on prisoners as are given by the rules to Civil officers.

It is submitted that this suggestion should not be adopted. Full powers are given to both Police & Military by Chap. IX of the C.C.P. of all that the Supt. has to do is to report the outbreak to a Mag. or Police Station House officer or to a Commissioned Military Officer. The delay will therefore be no greater than if the power sought by the Q. is conferred upon Supts. & it is not consistent with the spirit of Chap. IX C.C.P. that a Commissioned Civil Officer should act in subordination to any one except a Magistrate. If it is considered that said Supts should possess power to control & direct the Police & Military in the event of an outbreak, this power can best be conferred by appointing said Supts to be Mags for the purposes of Chap. IX C.C.P. but even this seems unnecessary.

(5) The next point relates to the release of prisoners who are in danger of death.

Too little I think. But subject to will now have full powers. MW

MW X It does in a way, vide Reinforcements Act s. 25 & 48 (1). Section 48 (1). 25 contains exemption MW

Domiciliary 7 days MW

W

The no. of days must be specified on the analogy of 10(1) — say 10 MW

W

This is the best course if subject otherwise, to such case must be provided, which must be considered MW

W

60

MW

60

India invites attention to para. 20 of its review and to G.O. 1 Oct. 80, No. 2094, Jud. & asks for a statement of the practice prevailing in this Presidency.

This is a matter which has been much discussed & our leaders rules on the subject seem suitable & consistent with Indian views.

It will suffice to amend India rule of Code Rules 572, 573, 574, 575 & 576 as revised in G.O. 3 & Board's 94, No. 580, Jud.

(9) Sir G. of I. in Draft Circular Instructions under clause (3) of sec. 59 no remarks on this subject are noted called for.

(14) Section 60.

Sir Fuller in para. 11 of his Letter to the Secretariat that Draft rules may be framed under section 60 & submitted to it for approval.

M.P.C. remarks

(i) that the revision of the Civil Code rendered necessary by the provisions of the new Act cannot be undertaken till India has issued its own rules under sec. 59;

(ii) that it is to be presumed that India wants to see only the rules which have to be made in consequence of the passing of the new Act

(iii) that rules under sec.

DEPARTMENT.

No.

Dated 189 .

FOR ORDERS.

There are two Penal Diets for Europeans & Eurasians, viz, 'Bread & Water' & 'Skilly'. The former may be given for a period of 15 days but with intervals; the latter may be given for 42 days but, similarly with intervals.

For natives there are three Penal Diets, viz, 'Bread & Water', 'Skilly-about' & 'Full Skilly about' & they are restricted as above described, except that the 'Full Skilly-about' may be given for 84 days with intervals. The Act restricts Penal Diet to 96 hours, or 4 days, as the I.G. proposes to cancel the rules relating to the 'Skilly-about' & 'Full Skilly-about' Diets & provide for the 'Bread & Water' Diet as the Penal Diet'. Also, as the period of short food is now only 4 days, part of Code Rule 379 is unnecessary & the I.G. submits a revised draft for it.

Govt's proposals on this subject may be approved?

(15) Section 62.

This empowers Govt to declare the persons by whom the Duties of Supt. & Med. Officer shall be performed in their absence.

So far as regards Subjails, Code Rule 1331 perhaps provides all that is necessary & Code Rule 53 meets the case of the Supt of a Dt. Jail but it seems advisable to issue a General order under this S. & it is submitted that the I.G. may be asked to prepare one for issue.

Sd/ 2 Feb.

Only if the Mag. strongly urges him. This may convey a wrong impression.

Yes – we must provide against serious emergency – & not let our own hands be tied. The disturbances are not likely to occur often – but we ought to be able to deal with them promptly & effectually.

Sd/

Sd/ 2 Feb.

Subject to remarks made in C.S.P. & Jail Officers' conference on this Section.

Sd/

Sd/ DEPARTMENT.

d in Proceedings:—

17

1879, No. 1522, Jud.

18 , No.

Copy from Govt of Bengal

Order from 27th Sept. 1879, No. 5847

P.S.

The above correspondence relates to the changes in existing rules rendered necessary by the passing of the Prisons Act, 1894. The Govt proceeds to pass orders upon the proposals of the I.G. in Council

(1) Govt agrees with the I.G. that sections 4, 6, 7, 9, 10, 12, 13, 15, 24 (1), 35–38, 35 (1), 36, 42, 42–45, clauses (1), (2), (5), (6), (7) & (9) of 46, 47–52 & 54–56 should be extended to Subjails, but thinks I.G. would omit the last 15 words of section 11 (2) & the second paragraph of sec. 14 when extending them. The extension of sections 27–29, clause (2) of sec. 46 & sec. 48 seems unnecessary. Regarding the extension of clause (2) of sec. 33 & of sec. 34 the Govt is doubtful. These provisions relate only to civil prisoners committed to prison in execution of a decree & a civil prisoner who is merely confined for contempt in a Subjail would be sent within three days to the District Jail. Their extension seems therefore

2.

to be unnecessary. The following provisions are the additional provisions which the Govt. thinks should be extended, viz. sect 20 needs of sec. 6 as requires that there shall be a Surgeon Superintendent for every prison, sec. 226, clause (3) of sec. 35 & sec. 2 & 61 & 62.

To meet the case where there is no Subjail Medical officer, it will be necessary to appoint under sec. 62 a person to perform the duties imposed upon the Med. Officer by certain of the sections which have been extended to Subjails. The term Medical Officer, as used in the Act, includes a Medical Subordinate, but the Medical Officer of most Subjails is a Med. Subordinate & some Subjails have neither the Medical Subordinate nor the Medical Officer [illegible] It will be necessary, then, to declare that the duties of a Med. Officer shall be performed by the Medical subordinate in Subjails where there is no Medical Officer & by the officer in executive charge in Subjails where there is neither Med. Officer nor Med. Subordinate.

The Govt. is also inclined to extend secs. 17, 18, 26 & 37. For the purpose of carrying out the provisions of sec. 26 with regard to Females, the Officer in Executive charge can be declared under sec. 62 the person who shall in all Subjails perform the duties imposed upon the Med. Officer

Add "with proviso" words underlined in pencil

Combatten?

I think last word and the two words before it are illegible

500—20-6-94.

From

by clauses (1) & (2) of the section. It is observed that the G. of I. is omitted to specify the portions of the Act which should be applied to the Criminal Lunatic Asylum. He should report on this point.

(2) A further representation regarding the use of the ~~Indian Lunatic~~ Asylum Act will be made to the G. of I. The maintenance of the existing registers seems to be essential, & the Govt. fully agrees with the I. G.'s objections to reduction of what ~~is~~ to a ~~Provincial~~ system of ~~registers~~ Asylum registers.

(3) Under sub-section (2) of section 11 of the Act, the Govt. prohibits Medical Officers leaving orders to the Superintendents of District Jails. Dr. Sug.[n] have never issued such orders & the Govt. sees no reason why they should do so in future.

(4) The I. G. will note the change in the system of classifying adult & juvenile prisoners which is made by sub-section (2) of sec. 27 of the Act & will prepare a draft of the alterations in the Jail Code rendered necessary thereby.

(5) As remarked by the Govt. of India, it is necessary to add to Code Rule 926 a proviso that under trial prisoners to see their legal advisers, the rules

6 JAO
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X X

Jail Code carries out the
intention of sec. 40 of the Act.
(6) Refusals to admit should be
entered in the present register
No 29 which the Govt. have by
prescribed for this purpose
under sub-section (2) of sec. 40 of
the Act.
(7) The Govt. agrees with the
J.G's views regarding the offences
acts which should constitute
offences & they will be communicated
to the G. of J.
(8) The Govt. also agrees generally with
Mr Cardew's observations on the
rules to be made under sec. 46 but
but the proposed amendment
of sub-clause (5) printed in
Enclosure II to the G. of I.'s
Letter seems unnecessary because
the provision in that Enclosure
shows that temporary exclusion
from the benefits of the
remission system is to be
covered by sub-clause (6) viz.
not to exceed three months.
The Govt. do not, however,
in favour of this limitation
to three months, press for an
hard & fast way. The effect of
it is that marks about to be
converted into remission
may (with the previous sanction
of the J.G.) be forfeited to
any extent, while marks
earned but not so converted
cannot be forfeited for more
than three months, & also
that there is no penalty
which may intervene completely
exclusion from the remission
system of forfeiture of the

[5]
500—3.04.

Papers to be

(9) Again G.O., dated 20 July
Again G.O., dated
(10) Current No. 3956 of 18 96, dated

Current No. of 18 , dated

2579

marks which would preclude
the earning during a period
of three months. The Govt.
would, therefore, replace
the provision by one to the
effect that forfeiture under
sub-clause (2) (b) for a
period exceeding three months
shall be liable to cancellation
or modification at the
hands of the J.G. to whom
it should be reported.
(9) Regarding the use of
crown the Govt. agrees with
the J.G. that offences that
the last proviso of
sec. 46 of the Act can deem
the provisions to be contained in
of the G. of I's Letter enumerated
(10) to be removed by the J.G.
a slight alteration of
Code Rule 360 & Code Form
No 17 seems to be that is
required to give effect to
sec. 51 of the Act.
(11) The existing rules in Chap.
XXXI of the Jail Code relating
to employment in irons as
a measure of safe custody appear
suitable & sufficient, but,
as observed in para. 21 of
G.O. 6 Nov 1891, No 2256, the
Code Form No 19 seems to need
amendment to show when
fetters are imposed as a
punishment & when as a
means of restraint only.
(12) The J.G's remarks on the
subject of classifying offences
of juvenile inmates are noted
to the point & the Govt. agrees
with them in thinking that
the classification

Jail Code carries out the intention of sec. 40 of the Act.
(6) Refusals to admit should be entered in the present register No 29 which the Govt. have by prescribed for this purpose under sub-section (2) of sec. 40 of the Act.
(7) The Govt. agrees with the J.G's views regarding the offences acts which should constitute offences & they will be communicated to the G. of I.
(8) The Govt. also agrees generally with Mr Cardew's observations on the rules to be made under sec. 46 but but the proposed amendment of sub-clause (5) printed in Enclosure II to the G. of I.'s Letter seems unnecessary because the provision in that Enclosure shows that temporary exclusion from the benefits of the remission system is to be covered by sub-clause (6) viz. not to exceed three months. The Govt. do not, however, in favour of this limitation to three months, press for an hard & fast way. The effect of it is that marks about to be converted into remission may (with the previous sanction of the J.G.) be forfeited to any extent, while marks earned but not so converted cannot be forfeited for more than three months, & also that there is no penalty which may intervene completely exclusion from the remission system of forfeiture of the

KH JG W

both this rule provides for the absence of the head officer. The J.G. should prepare a rule for issue under the section which will deal with this point as well.

KH 6/4/97 JG W

as to whether 'penal' or 'minor' punishment is to be inflicted upon the degree of severity of the punishment which is inflicted on account of it.

If this view is adopted, it is only necessary to alter the classification of punishments in this connection the G. of S. suggests that 'penal diet combined with solitary confinement for not more than 48 hours' and 'cellular confinement for not more than 14 days' should be classed as 'minor', although the Prison Conference suggests that they should be treated as 'major' punishments. The S.G. accepts the suggestion of the G. of S. as far as regards 'cellular confinement for not more than 14 days', but he has not specially noticed the proposal regarding 'penal diet combined with solitary confinement for not more than 48 hours'.

The G. of S. has not, apparently noticed that the list of punishments prescribed by the Conference omits all reference to 'penal diet combined with cellular or separate confinement' & that, if the combination of penal diet & solitary confinement is to be treated as 'minor' in some cases, the combination of penal diet with separate & cellular confinement must be similarly classified.

decided to take the of course in Exec. charge & to declare the officer in charge to be the Sept. The Hon. Sir Sir. no doubt intended that the extension of sec. 17 as proposed by him may have occasionally, for in some subjects, the officer in exec. charge will be Supt., Sailor & Medical Subordinate, & will therefore be obliged in one capacity to report to himself in two others.

Mem doubting, a nothing) agt of manner & action in matters of discipline, non de Supt. known of it Pd

Note The above proposal to extend sec 6 to observers that Govt may appoint any officer to do the duty therein referred to. It is respectfully submitted for consideration whether it will not give a door of unnecessary trouble. say that for P.

Note The Hon Sir Grose proposes to declare the officer in exec. charge to be both Supt. & Sailor & to extend Sec 17, 18 & 37. But it is respectfully submitted that there is no provision in the Act whereunder Govt can declare the Supt. to be also the Sailor. The result desired might no doubt be attained by calling the officer in exec. charge of a ship the 'Sailor', & then declaring, under sec. 62 that the Sailor shall do the duties of the Supt., but it will

The G. of S. seems to have also overlooked the fact that cellular confinement is available by law to the Supt. & that therefore some lower limit (say, 7 days) must be fixed when classifying the combination of penal diet with cellular confinement as a 'minor' punishment. The S.G. has removed solitary confinement into the 'major' list, but, if the G. of S.'s proposal to treat 'penal diet combined with solitary confinement for not more than 48 hours' as a 'minor' penalty is adopted upon solitary confinement without penal diet for not more than 48 hours must be similarly treated.

The S.G.'s proposal to treat all forms of punishment by means of irons as 'major' seems reasonable, in view of the fact that such forms of punishment have been long before unknown in India.

In connection with the classification of forfeiture of marks & remission the Govt notes that Cor Rule 397 appears to be now illegal, for the new Act confers no powers of punishment upon the D.G. But, apart from this, the Govt cannot endorse Mr Cardew's proposal to treat forfeiture of

than 3 months' remission,
that is, a forfeiture of any
number of marks not exceeding
2 x Dg = 2136, as "minor".
The proposals of the Conference
on this subject are also,
as the S.G. points out, open
to objection, on the whole,
the Govt would prefer
to class the following forms
of punishment as "minor", viz:-
(a) forfeiture of remission
not more exceeding
7 days & forfeiture of
marks equivalent to
the same period;
(b) temporary forfeiture
of class, grade or minor
privileges &
(c) Exclusion for not more
than 10 days from the
benefits of the remission
system;
all other forms of forfeiture
being treated as "major".
(13) The Govt concurs with the
S.G. in thinking it expedient
to adopt the proposals of
the Conference relative to the
circumstances in which acts
which constitute both prison-
offences & offences under the
I.P.C. should be followed by
criminal prosecution. They
do not accept the
recommendation that the Govt.
should declare cases
of attempt to escape to be
prison-offences under Sec.
52 (1), for the criminal prosecution
should be ordered, as they
do now, in exceptional cases
& Govt may not always be
expedient.

41?

71

(14) Rule 17 of the Rules
governing the disposal of the
Remission of the G. off. P.
read in G.O. 1 of Jan. 1923,
No. 110, Jail Dept, must also
take the place of Code
Rule 906. Code Rule 907
will also need amendment
(probably Code Rule 909,
but as the subject of the
release of military convicts
is somewhat complicated,
the S.G. will report his
views regarding the amend-
ment of this latter rule.
(15) The rules proposed in
para. 14 of the S.G.'s letter
seem suitable & will be
recommended to the G. of
I. subject to the following
alterations, viz:-
(1) Rule 3 should run -
"Any Jail Officer may
fire on any prisoner
using violence to any Jail
Officer, provided that no
more reasonable ground
to believe that the Jail
Officer is in danger of
loss of life or limb
or that other prisoners
will be caused to
flee, if he does not fire."
(2) Rule 4 should run -
"Before firing upon a
prisoner under the
authority conveyed in
Rules 1 & 2, a Jail Officer
shall give a loud
one warning to the prisoner
about to be fired upon."
(3) The Rule 5 be rewritten "the
offences of prisoners

be substituted for the words "the sheriff of a County", & the words "they may" should be substituted for the words "he may" & the words "subject to the authority of the Court" should be omitted.

(16) With reference to Sect. 10(7) of Mr Mundella's letter a copy of Code Rules 592, 592 A, 593, 594, 595 & 596, as amended by Order in Council 1879, No 880, &c, will be sent to the Govt of S.

(17) With reference to Sect. 11 of Mr Mundella's letter the Govt of S. will be informed that the revision of the said Code cannot be undertaken until the rules which the Govt of Scotland & Ireland under sec. 69 of the Act have been issued & it will be found that Rules made under sec. 69 do not require the Union sanction of the Govt of S. & I.

(18) The list of prohibited articles proposed in Sect. 17 of the Govt letter is objected to the substitution of the words "Alcohol in any form" for the words "Alcohol or spirituous liquors" & to the addition of "poisons, explosives & tools for working wood or metals or leather".

(19) As recommended in Sect. 23 of the Govt letter, the liability under relating to the conveyance of prisoners whose cases are

78

Note

Some slight verbal alterations made in the Am. & Mex. Draft.

Note

Letters M.E.'s suggestion which Mr. Lay will perhaps explain. Paragraphs numbered from 1 to 5 inclusive 1813

J Number N. des. ci above

Jay

Note

Cannot be letter to substitute the words "the said officer of the light vessel" so as the sight of a jail is remarkable

Note ref. to the Sm. Pox Hospital remarks, this section is limited to sec. 131 C.C.P.

Copies Cyphers to Progs desps from Oct 13/1874
Book of Letters & Encr
Gaol Cy 15/10/74

[illegible] Counsel for [illegible]
now expressing the opinion
that the certificate of
the register has been ordered
without sufficient Con-
sideration of the nature of
the said records & requisites
maintained in such cases.
Have shown all the details
which in Counsel's opinion
on the Mississippi Patent &
to this Court advantage
attendant upon the Federal
system that the records of
a county Court are to be
presumed correct & can
not be read by & liable to
falsification & destruction
by time, whereas the Lands of
a responsible civil officer.
The U.S. respects that the
united nation of the Mississippi
Patent System have ever
received a complete
change in the nature of the
Civil records, that the Jurisdic-
tion will be doubled &
that a large increase of
Establishment & expenditure
will be necessary & carry
it out. The Govt. conceives
with this view, for, under
the circumstances, should
U.S. [illegible]
[illegible]
[illegible]
[

of the system, & it is [illegible]
that [illegible] would involve
a considerable expenditure of
time, money & trouble to
prepare a History Sheet
for each of the prisoners
now in confinement & it
seems sufficient if Many
History Sheets are prepared
for prisoners only who are
admitted hereafter.
It is no doubt the case that
the Prisons Act contemplates
the use of these Sheets such
& it may be argued that
this fact renders the introduction
of the system essential, but
History Sheets are necessary
only for the purposes of
sections 30 (2) & 46 (2) & will
be possible to comply with
the provisions of these two
sections without Difficulty.
But the maintenance of
Sheets on the plan advocated
by Dr Hoffbauer & Lelbinger
which is what the G. of J.
appears by Decree, is a
very different matter.
4. Paragraph 4. The necessary
steps have been taken.
5. Paragraph 5. This Govt concurs
that the Borstal offences (specified in the list
set by the Prison Conference
of 1922 [illegible] should be
punishable by Penal Servitude
& Imprisonment. They belong to a group of offences
appropriate to the Exclusion
of [illegible] cases covered
by sub-sections (2) & (16) of
sec. 45 of the Act. It may be
[illegible] that the offence number
(37) in the list appears to

fall within this description &
it seems advisable to
[illegible] any article of Gds produced
by the Act, as it is not
always convenient to prosecute
for an offence of this
character.
6. Paragraph 6. The Draft-
sman on the subject of loss
of privileges under the remission
system which were prepared by
the Prison Conference & are
printed as Enclosure III to
Mr. Howell's Letter seem
acceptable on the whole. This
Govt does not, however, see
any reason for the limitation
to clauses (a) & (b) imposed by
the Prisons. The effect is that
murders already convicted into
remission may (with the previous
sanction of the S. G.) be forfeited
to any extent, while murders
Executed but not so convicted
cannot be forfeited to an extent
in excess of the remission which
would be ordinarily obtainable
in three months & also, that
there is no power whatever
to [illegible] remission
between [illegible] & [illegible]
[illegible] the remission system
Exclusion for a period of
three months. It seems advisable
to replace the provisions by a
clause requiring that cases of
forfeiture under sub-clauses
(a) & (b) shall be referred to the
S. G. if otherwise they involve
the forfeiture loss of more
than would ordinarily be obtained
in three months of enabling the
S. G. to amend or modify [illegible]

Apt to order in one to cases the last sentence of subsection II is unnecessary with reference to sec. 4 p (2) of the Act.

7. Paragraph 7. This form would adopt the rules framed as Enclosure III to H.E. Secretary's letter subject to the modifications suggested by the G. of S. The proviso to these rules is rendered unnecessary by sec. 46 of the Act.

8. Paragraph 8. The necessary action has been taken.

9. Paragraph 9. This has been duly noted.

10. Paragraph 10 (2) #(3). I am to recommend para 10 & 11 of the S. G's letter to the notice of the G. of S.

This Govt fully agrees with the S. G. in thinking that serious offences should be simply defined as offences for which a major punishment has been inflicted & minor offences as offences for which a minor punishment has been inflicted.

As regards the classification of punishments H.E. in C. considers the following scheme would be suitable:—

A. Minor.

(1) Formal warning;
(2) Change of Cadre;
(3) Forfeiture of remission not exceeding seven days & forfeiture of marks equivalent to the same period;
(4) Temporary forfeiture of class, grade or prison privileges;

For Orders
This seems equitable as desp. Conf.t can be given for 6 months.

(5) Reclusion for not more than ten days from the benefits of the remission system;
(6) Prison clothing;
(7) Penal diet;
(8) Solitary confinement not more than seven days;
(9) Cellular confinement for not more than seven days;
(10) Solitary confinement for not more than forty-eight hours;
(11) Penal diet combined with one of the punishments specified in clauses (8), (9) & (10).

Major.

All other forms of punishment.

Regarding the proposal to treat all cellular confinement not exceeding 14 days as minor I am to point out that the confinement for longer period is not legal & it has therefore been suggested above that all periods of cellular confinement in excess of seven days should be treated as major.

11. Paragraph 10 (2) A. Draft rule relating to the circumstances under which acts constituting both prison offences & offences against the I.P.C. should be dealt with as prison offences under Enclosure IV to the Secretary's letter. It appears desirable that I should point out that escape & attempt to escape will not be included

in sub-sections (2) to (16) of sec. 45 of the Act, that unless they are declared to be prison offences, the only legal way of dealing with them will be by prosecution. The reference to escape in enclosure IV is, therefore, unnecessary. But H.E. in C. inclines to think that escape should be declared to be prison-offences & that prosecution on account of them should be optional.

In the case of long-term convicts it will occasionally be impossible to punish these offences adequately.

12. Paragraph 10 (6). I am to invite attention to the S/S remarks in para. 14 of his Letter on the subject of firing upon prisoners & to suggest that the following rules should be made:—

[Delete 2d misplacement of the words "front" applying rule 4 & rule 3 ?]

"1. Any Jail officer may fire on any prisoner escaping or attempting to escape; provided that recourse should not be had to the use of fire-arms unless the Jail officer has reasonable ground to believe that he cannot otherwise prevent the escape.

"2. Any Jail officer may fire on any prisoner engaged in any Combined outbreak, or in any attempt to force or break open the outer gate of the Jail and may continue to fire so long as such Combined outbreak or attempt is being actively prosecuted.

"3. Any Jail officer may fire on any prisoner using violence to any Jail officer, provided that he has reasonable ground to believe that the Jail officer is in danger of losing life or limb or that other grievous hurt will be caused to him, & he does not fire.

"4. Before firing upon a prisoner under the Authority conveyed in Rules 1 and 2, a Jail officer shall give at least one warning to the prisoner about to be fired upon.

"5. In any case in which the officers of a Jail are unable to deal with any Combined outbreak or any attempt to force or break open the outer gate of the Jail or with any prisoners using violence to any Jail officer, they may, subject to such orders as may be prescribed by the Local Government, call in the aid of the Military or the Police, and such Military and Police shall then have the same powers of firing on prisoners as are conferred in the foregoing rules on Jail officers."

C. Parmelia (017). Ap-
pearing on the tube wall
at present against the
column of primary colum-
ella in subiculum. They
seem to be in C. d. be-
tween in every way.

14. Paragraph 11. of am to similr standing to the S.P.'s remarks in para 20, 21 & 25 of his letter. The complete revision of the said Code cannot be undertaken until after the issue of such rules as the G. of I. intends to make under sec. 59. The matters which can be dealt with by the Local Govts, however, can be dealt with at once. A draft of such rules, as can be prepared without necessary delay (excepting those relating to the issue of the rules see Desp. dep. 59 & copies of these will be forwarded to the G. of I. for its information as requested. I am to point out that the rules to be made under sec. 59 do not require the formal sanction of the G. of I. & to say that the P. in C. assumes that there is no intention of requiring (by the G. of I. as a regular practice) the submission of all amendments in the Jail Code, non-regular functions.

15. Paragraph 12. Such action as is necessary has been taken.

Please ack.

21/9/94

592. In all cases of confirmed and incurable blindness not to be cured by any act of the prisoner in order to procure release of unexpirable or other remarkable information, such as absolutely incorrectable of persons from all commission of further crime of the nature of that for which he is confined a report recommending the release of such prisoner shall be submitted by the Superintendent of the Gaol to Government. This report shall state the Account of remission earned, and to what month the prisoner would be released in ordinary course. It shall give details of the prisoner's conduct in jail, and of the period spent in hospital or on the Convalescent Gang; it shall give information of the prisoner's home, and relatives likely to receive him (if any), and it may contain such remarks as to the propriety of the prisoner's release as may appear necessary to the Superintendent. It shall be accompanied by a Nominal Roll (Form No. 53, Appendix III, p. 60) and by a report by the Medical Officer on the prisoner's medical Case.

592-A. The Inspector General, if the Case appears to him to be one suitable for recommendation to Government under the Rule, shall forward the report described in the Magistrate of the District in which the prisoner is now confined or in which the prisoner ordinarily resides, and shall require whether in the Magistrate's opinion there would be any objection to the conditional release of the prisoner from Gaol. Upon receipt of the District Magistrate's opinion, the Case shall, at the discretion of the Inspector General, be submitted for the orders of Government.

593. If the Medical officer considers (i) that any person is dangerously ill (this illness not having been purposely caused or aggravated by the Convict himself), (ii) that his illness, should it end by ~~death~~ imprisonment or not, will be so aggravated by further imprisonment as to render his early death certain, and (iii) that the prisoner will have a fair chance of recovering a long life, if released, he shall record a certificate in the following form:— "I, A.B., Civil Surgeon of [illegible], hereby certify that Convict No. —, Name —, is in my opinion dangerously ill, suffering from (name of disease). His illness has not been caused or aggravated by any act of the Convict in order to procure release, and I sincerely declare that in my opinion

The Orkney Act

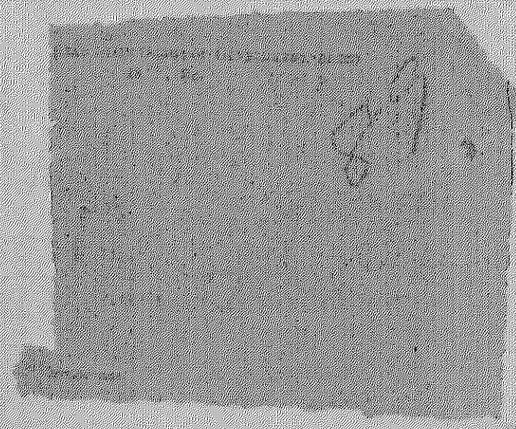
(From Rules)

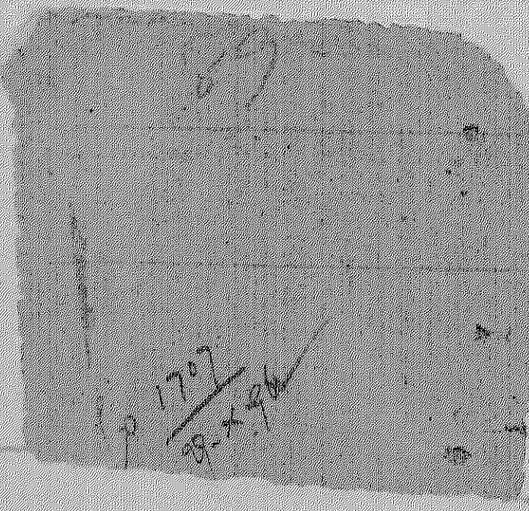
It will concern the very liberty of the prisoner's confinement, that he will have a fair chance of recovery (or his life will be prematurely forfeited) when released. The order of the accepted by Government for the Certificate must be strictly in accordance with the terms of the Rule. To it the Medical officer shall confound a full statement of the Medical Case and of the reasons which lead him to the belief expressed with the Certificate.

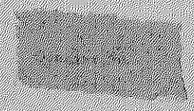
5th. Upon such a certificate and statement being received by the Medical officer, the Superintendent shall forthwith forward the same direct to the Chief Secretary to Government. He shall also forward a nominal roll showing the prisoner's Crime and Sentence, Conduct and age, period of Sentence undergone, and remission earned, and may add any remarks as to the advisability of such of release being granted.

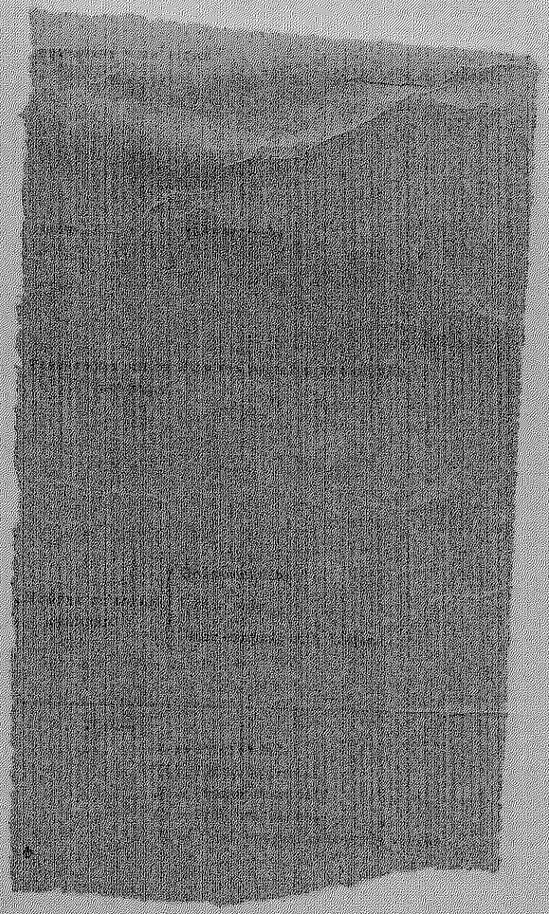
5th. In the absence of instructions to the contrary, every release from Civil or Medical grounds under Rules 572-574 shall be subject to the condition that the Convict agrees and subscribes to the Conditions set forth in Form No. 52 shown on page 111. post. as to the term of his suspension of Sentence as subject. This Form shall be printed in English and in the vernacular of the district to which the Convict belongs. The Convict shall sign both the English and the vernacular Copy, and the latter shall be delivered to him on his release. The English Copy being retained in the file. Convict shall be entrusted to produce his Copy of the form of release when required by the police authorities, but it should not be taken from him. A prisoner released from a jail situated in a district other than that in which he wishes to reside, will be handed over to the police of the district in which the jail is, for escort to the limits within he proposes to reside.

6th. If it is ascertained that a prisoner who has thus been conditionally released has broken the conditions on which he was released by committing any offence, information should be given to the Magistrate of the District who will report the matter to Government as directed in Rule 8th. February 1877, No 285.









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