

Separation of
Judicial & Executive
Functions.

Madras Committee's Report,
1924.

Government of Madras

JUDICIAL (MAGISTERIAL) DEPARTMENT

G.O. No. 112, 17th March 1924

Separation of Judicial and Executive functions—Committee's report and the statement of the Government thereon—Published.

READ—the following papers:—

I

Report of the Committee on the Separation of Judicial and Executive functions.

We, the members of the Committee, appointed to consider the question of the separation of the judicial and executive functions, have the honour to submit this, our report.

The points referred to us for consideration are indicated in the resolution of the Legislative Council of 22nd September 1922, in pursuance of which the Government have appointed this Committee. And those points are to investigate and report on—

- (1) the steps to be taken to separate the judicial and executive functions now exercised by some of the officers;
- (2) the cost involved in the taking of such steps;
- (3) the different stages in which the separation can be given effect to, if it cannot be completely carried out at once;
- (4) the administrative changes necessary for the purpose;
- (5) any legislation that may have to be undertaken.

2. At the first meeting of the Committee held on 9th March 1923, two schemes were propounded, one by Mr. C. V. Venkataramana Ayyangar and the other by Mr. Rutherford, which are reproduced in Appendix I and the Committee decided to invite public criticism thereon and referred them to a number of gentlemen of all classes competent to express an opinion thereon—vakils, merchants, landholders, publicists, judicial and executive officers—in service and retired—from all parts of the Presidency. A general invitation to the public was also issued in all the local papers. On the whole 82 persons were by name consulted and of them 40 have responded and their replies are tabulated in a statement appended to this report.

3. By the terms of the reference, read along with the speeches in Council, the Committee were clearly precluded from considering the question of the desirability of separation of the functions, although, in the view of three of the members, there is not much need in the circumstances of this Presidency to have an entire separation right through the whole of the criminal judiciary. In every country, in England, France and the United States of America, the functions overlap at some point or other of the machinery. However, as we are not to consider that aspect of the matter, we confined our attention to the question of scheme or schemes, which would bring about a complete separation. The Committee unanimously agreed at the outset that in order to secure the safety of person and property the preventive powers in chapters VIII—XII of the Criminal Procedure Code assigned to magistrates, should continue to remain with the Collector-Magistrate, and his executive subordinates represented by the divisional officer, tahsildars and deputy tahsildars who would be also magistrates for these chapters. The appeals provided in these chapters would lie to the Sessions Judge as provided in the newly amended Criminal Procedure Code.