



SUPPLEMENT.
TO THE
BOMBAY GOVERNMENT GAZETTE.

Published by Authority.

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PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following amended Bill, which it is intended to introduce into the Council of the Governor of Bombay for the purpose of making Laws and Regulations, is, together with the Statement of Objects and Reasons accompanying it, published for general information :—

A Bill for the Establishment and Regulation of Reformatory Schools for Juvenile Offenders.

WHEREAS it is expedient to provide for the Establishment and Regulation of Reformatory Schools as contemplated in the Code of Criminal Procedure in which Juvenile Offenders may be detained and corrected and may receive such instruction and be subject to such discipline as shall appear most conducive to their reformation and to the suppression of crime And whereas it is considered advisable to provide for the confinement in such Reformatories of Juvenile Offenders who may be sentenced by any of the Criminal Courts in the Presidency of Bombay ; It is enacted as follows :—

Preamble.

The Governor in Council may upon application made to him by the Directors and Managers of any Industrial School direct the Inspector of Gaols and the Director of Public Instruction to examine and report upon its condition and regulations.

I. The Governor of Bombay in Council upon application made to him by the Directors or Managers of any School in which industrial training is provided and in which children are clothed lodged and fed as well as taught may direct the Inspector of Gaols and Director of Public Instruction to examine and report to him upon its condition and regulations and any such instructions as shall appear to the satisfaction of the said Governor in Council to be useful and efficient for its purpose shall be held to be a Reformatory School under the provisions of this Act and a Certificate to that effect shall be given to the Directors or Managers of the Institution under the signature of one of the Secretaries to Government Provided always that it shall be lawful for the Inspector General of Prisons or Director of Public Instruction to visit from time to time any Reformatory School which shall have been so certified as aforesaid and if upon the report of either or of both of them the said Governor in Council shall think proper to withdraw the said Certificate the withdrawal shall be notified in writing by one of the Secretaries to Government to the Directors or Managers of the said Institution and the same shall forthwith cease to be a Reformatory School within the meaning of this Act.

II. Whenever the Governor in Council shall grant a Certificate under this Act to any Reformatory School a notice thereof specifying the names of the Directors or Managers thereof shall within one Calendar month be published in the *Bombay Government Gazette* and such publication shall be sufficient evidence of the fact of such Reformatory School having been certified to justify the Judge or Magistrate before whom any such Juvenile Offender shall have been convicted to commit such Juvenile Offender thereto subject to the provisions of this Act and whenever the Governor in Council shall withdraw the Certificate granted to any Reformatory School notice of such withdrawal shall within one Calendar month be given in the said *Gazette*.

III. Whenever after the passing of this Act any person under the age of sixteen years shall be convicted of any offence punishable by law before any Police Magistrate or any of the Criminal Courts subject to the Presidency of Bombay then and in every such case it shall be lawful for any Court Judge or Police Magistrate before or by whom such offender shall be so convicted in addition to the sentence then and there passed as a punishment for his offence to direct such offender to be sent at the expiration of his sentence to some one of the aforesaid Reformatory Schools to be named in such direction the Directors or Managers of which shall be willing to receive the said offender and to be there detained for a period not less than two years and not exceeding five years and such offender shall be liable to be detained pursuant to such direction Provided always that no offender shall be directed to be so sent and detained as aforesaid unless the sentence passed as a punishment for his offence at the expiration of which he is directed to be so sent and detained shall be one of imprisonment for fourteen days at the least Provided also that the Court Judge or Police Magistrate may if he thinks right direct such term of imprisonment to be carried out as far as practicable in the Civil Gaol or in separation from the more heinous offenders and provided also that the Governor in Council may at any time order any such offender to be discharged from any such School.

IV. If any offender who shall be ordered to be confined in any of the aforesaid Reformatory Schools shall at any time during the term of such confinement escape from the place of his confinement or in his conveyance to such place of confinement or from any lands belonging to the Reformatory he shall be punished by an addition not exceeding one year to the term for which he at the time of his escape was subject to be confined and if an offender so punished by such addition to the term of confinement shall afterwards be convicted of a second escape he shall be liable to be imprisoned with imprisonment of either description for a term not exceeding three years and if any offender who shall be ordered to be confined in the said Reformatory shall at any time during the term of such confinement attempt to escape from the place of his confinement or shall forcibly break out of his cell or shall make any breach therein with intent to escape he being convicted thereof shall be punished by imprisonment for a term not exceeding twelve Calendar months in addition to the punishment to which he at the time of committing any such offence was subject.

V. Every person who shall rescue any offender who shall be ordered to be confined in any Reformatory either during the time of his conveyance to the said Reformatory or whilst such offender shall be in the custody of the person or persons under whose care and charge he shall be so confined and also every person who shall aid in any such rescue shall be liable on conviction to be imprisoned with rigorous imprisonment for a term not exceeding one year and every person having the custody of any such offender or employed by the person having such custody as an Assistant or Guard who shall knowingly allow such offender to escape and also every person who shall by supplying arms tools or instruments of disguise or otherwise in any manner aid any such offender in any escape or in any attempt to make an escape though no escape be actually made or who shall attempt to rescue any such offender or aid in any such attempt though no rescue be actually made shall on conviction be liable to fine or to be imprisoned with imprisonment of either description for a term not exceeding two years or both and every person having such custody as aforesaid who shall negligently suffer any such offender to escape shall on being lawfully convicted of the same be liable to fine or imprisonment not exceeding three months or to both at the discretion of the Court.

VI. In every case in which any Juvenile Offender shall be sentenced to be detained in a Reformatory School under this Act the Court by which he shall be so sentenced shall in the Warrant direct that the parent of such offender shall if of sufficient ability contribute to his support and maintenance a sum not exceeding Rupees three per month and upon the complaint of the Directors or Managers or any one of them named in the notice published in the *Government Gazette* under Section II. of this Act it shall be lawful for the Zilla Judge or Magistrate of Police to summon the

parent and on the hearing of such summon whether the party summoned shall appear or not to examine into his or her ability to contribute to such offender's support or maintenance and to make an order upon him or her for such monthly payments not exceeding Rupees three per month as shall seem reasonable during the whole or any part of the detention of such Juvenile Offender in any such Reformatory School such payment to be made at such times as by such order may be directed to the Director or Manager of the Institution or to such person as may be appointed to receive the same and by him to be accounted for and paid as the Zilla Judge or Magistrate of Police may direct.

VII. In case default be made for the space of fourteen days in payment of any sum of money which may have become payable by such parent under any such order such sum of money shall in every such case be levied upon the goods and chattels of the Defendant by distress and sale thereof and if it shall appear on confession of the Defendant or otherwise or if it shall be returned to the Warrant of Distress in any such case that no sufficient goods of the party against whom such Warrant shall have been issued can be found it shall be lawful to the Magistrate or Judge to whom such return is made to commit the Defendant to prison for any term not exceeding ten days unless the sum to be paid and all costs and charges of the distress and of the commitment and conveying of the Defendant to prison (the amount thereof being ascertained and stated in the Warrant or Commitment) shall be sooner paid.

VIII. The Governor of Bombay in Council upon the application of the Directors or Managers of any Reformatory School for youthful offenders already established in whole or in part by voluntary contributions or of the Promoters of a Reformatory School intended to be so established may make an order for the payment of money in aid of such Reformatory School or of the Establishment thereof subject to such conditions as may be agreed upon between the Governor in Council and the said Directors Managers or Promoters Provided that in the case of any Reformatory established in the Island of Bombay payment in aid may be made out of the Municipal Fund as to a "public work" under Section XXVIII. Act XXV. of 1858.

IX. The Governor in Council may remove any youthful offender under sixteen years of age from any Gaol to any Reformatory School under this Act Provided always that such removal shall not increase the period for which such offender was sentenced to remain in the Gaol.

The Governor in Council may remove any youthful offender from any Gaol to any Reformatory under this Act.

Section 433 of Act XXV. of 1861 to be applicable to all Officers exercising Magisterial authority in Military Cantonnments.

X. Section 433 of Act XXV. of 1861 shall be applicable to all Officers exercising Magisterial authority in Military Cantonnments.

Interpretation Clause.

XI. The word Parent in this Act shall include any person legally liable to maintain a child.

STATEMENT OF OBJECTS AND REASONS.

His Excellency the Viceroy having for reasons given in his Minute of the 25th July last hereunto annexed, withheld his assent from the "Act for the Establishment and Regulation of Reformatory Schools for Juvenile Offenders" passed by the Council on the 28th March 1862, the accompanying Bill is submitted to the Council, free, it is hoped, from the objections to which its predecessor was open but meeting in every other way all that it was the object of the former Bill to attain. The Bill is to be translated into Marathi, Gujarathi and Canarese.

(Signed) W. E. FRERE.

R. WEST,

Officiating Under-Secretary to Government.

Bombay Castle, 29th December 1862.

MINUTE BY THE RIGHT HONORABLE THE VICEROY.

I am unable to give my assent to this Bill in its present form for the following reasons :—

Firstly.—Because it imposes on persons escaping from or rescuing from or allowing offenders in their custody to escape from Reformatories heavier penalties than those to which persons are liable who commit the corresponding offences in the case of ordinary Prisons.

Secondly.—Because, although it may be contended that as Reformatories are not Prisons, the discrepancy above referred to, does not involve any technical alteration of the Provisions of the Penal Code, the imposition of the heavier Penalty for the minor offence is not consistent with a substantial adherence to its spirit, or to the Principle laid down in the following extract from a letter of the Law Commissioners by whom the preparation of the Indian Penal Code was originally undertaken, to which the attention of the Governor General in Council has been specially directed in a recent despatch.

“It appears to us also highly desirable that, if the Code shall be adopted all those penal laws which the Indian Legislature may, from time to time, find it necessary to pass should be framed in such a manner as to fit into the Code. Their language ought to be that of the Code. No word ought to be used in any other sense than that in which it is used in the Code. The very part of the Code in which the new Law is to be inserted ought to be indicated. If the new law rescinds or modifies any provision of the Code, that provision ought to be indicated. In fact, the new law ought, from the day on which it is passed, to be part of the Code, and to affect all other provisions of the Code, and to be affected by them, as if it were actually a Clause of the Original Code. In the next Edition of the Code the new law ought to appear in its proper place.”

Thirdly.—Because in replying to the inquiries addressed to him by the Secretary to the Government of India in the Home Department on this point, the Secretary of the Bombay Government states “the part referred to by you, viz., that the Penalties imposed in the Bill on persons escaping from or rescuing from or allowing offenders in their custody to escape from Reformatories are heavier than those to which under the Penal Code persons are liable who commit the corresponding offences in the case of an ordinary prison was not specially considered while the Bill was passing through the Legislature,” and further that “His Excellency sees no reason to disapprove of the Act because the Bombay Legislature followed as exactly as circumstances permitted the provisions of Imperial Acts rather than the analogy of the Penal Code.”

Even if these propositions could be assented to without disparagement to the principle above quoted, or to the authority and consistency of the Indian Penal Code, they would hardly be applicable to the present case. For the penalties imposed by the Bill for the Establishment and Regulation of Reformatory Schools for Juvenile Offenders, passed by the Council of Bombay, are not taken exclusively from Acts of the Imperial Parliament for the Establishment and Regulation of Reformatories, but mainly from the Act for the Establishment of the Parkhurst Prison which is an Institution of a very different character.

(Signed) ELGIN AND KINCARDINE,
Viceroy and Governor General.

The 25th July 1862.