

THE



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PART V.

PROCEEDINGS OF THE LEGISLATIVE DEPARTMENT, BOMBAY.

The following Bill, together with the Statement of Objects and Reasons accompanying it, is published in accordance with Rule 15 of the Rules for the Conduct of Business at Meetings of the Council of His Excellency the Governor of Bombay for making Laws and Regulations:—

Bill No. 11 of 1873.

A Bill for the Regulation of Jails in the City and Presidency of Bombay and the enforcement of discipline therein.

WHEREAS it has become necessary that the laws relating to Jails in the City and Presidency of Bombay should be amended; It is enacted as follows:—

I. Rule, Ordinance and Regulation No. III of 1827, Bombay Laws repealed. Act No. X. of 1862, Bombay Act No. IV. of 1865, and Bombay Act No. V. of 1865 are hereby repealed.

II. The provisions of Act VIII. of 1856 (an Act for the better control of the Jails within the Presidencies of Fort St. George and Bombay) are hereby rendered applicable to all Jails situated in the City of Bombay and the supervision of those Jails is vested in the Inspector General of Prisons.

III. Nothing in the preceding Section shall be held to interfere with or affect the authority or liability of the Sheriff of Bombay and Superintendent of the Common Jail over and in regard to persons committed by the High Court, whether in execution of a decree, or for contempt of Court or other cause.

IV. From and after the date on which this Act shall come into operation there shall be two classes of Jails established in the City and Presidency of Bombay, including Aden and the Province of Sind:—

(1.) Civil Jails for the confinement of persons committed to prison or custody in a Civil Jail, or under process of any Civil Court, or by order of any other Court, in

cases in which the law directs that persons so committed to prison or custody shall be confined in the Civil Jail.

Criminal Jails, for the execution of sentences under Section 53 of the Indian Penal Code (Act XLV. of 1860), and for the confinement of persons committed to custody or imprisonment by any Court of criminal jurisdiction, in all cases in which the law does not expressly direct that such persons shall be confined in the Civil Jail.

V. There shall be a Civil Jail for each District at the seat of the District Court, provided that it shall be in the power of the Governor in Council to establish Civil Jails at other convenient places.

VI. Except in the City of Bombay the Nazir of the District Court or of the chief Civil Court at the place where the Civil Jail is located shall be *ex-officio* keeper of the Civil Jail, and shall be responsible for the safe custody of the prisoners, and for the preservation of cleanliness and good order in the Jail and among the prisoners, and shall have such establishment under him as the District Judge, with the sanction of the Governor in Council, may direct.

VII. The Judge or the Assistant Judge of the District in which a Mofussil Civil Jail is situated shall visit such Civil Jail at least once in each month, and shall issue such orders connected with the economy of the Jail, the good management, health, and accommodation of the prisoners, as he may think fit. He shall record the date of his visit, and any remarks he may have to make, in a book to be called "the Visitor's Book," and shall bring any special cases to the special notice of Government.

VIII. A Medical Officer to be appointed by the Governor in Council shall attend the Civil Jail, and shall be bound to offer such advice to the District Judge, or other officer in charge of the Civil Jail, as may seem expedient to him with regard to the sanitary state of the Jail and of the prisoners. He shall also

administer remedies at the expense of the Government to the sick, provided that nothing contained in this Section shall prevent a prisoner in a Civil Jail from employing any medical man he may think fit to consult.

IX. The Civil Jail shall be opened daily for the admission of those wishing to visit prisoners from 9 A.M. till 3 P.M., and no stranger shall on any account be allowed to sleep in the Civil Jail.

X. Prisoners in the Civil Jail may either make their own arrangements for their subsistence, or may, within the amount of subsistence money or batta furnished by the party at whose suit they are detained, require the Nazir or (if confined in the Civil Jail for the City of Bombay) the Sheriff to furnish their food and other necessities out of the subsistence money fixed for them by the Court by which they are committed, provided that excess in the use of intoxicating liquors or drugs be strictly prohibited. A Tariff of prices approved by the District Judge on the first day of each month shall be kept in each Mofussil Civil Jail and shall be accessible to all the prisoners.

XI. Whenever a prisoner shall die in the Civil Jail, the Nazir or (if such prisoner be confined in the Civil Jail for the City of Bombay) the Sheriff shall immediately report such death to the nearest Magistrate, who shall thereupon inquire into the cause of such death, and make a written report thereon to the Inspector General of Prisons, and the corpse of the prisoner so dying shall, after the Medical Officer appointed under Section VIII. of this Act has certified to his death, be made over to his friends, or, in failure of their taking the corpse, it shall be buried at the expense of the Civil Jail Fund, as hereinafter provided.

XII. The balance of subsistence money remaining in hand at the time of a prisoner's death or release shall be credited to a fund, to be called "the Civil Jail Fund," to be expended on the burial of those buried at the expense of the Fund, and in procuring comforts for sick prisoners.

Criminal Jails to be of three kinds.

XIII. Criminal Jails shall be of three kinds:—

- (1) Central,
- (2) District, and
- (3) Subordinate.

XIV. Subordinate Jails may be established by order of the Governor in Council in any part of the country as occasion may require, and may also, as occasion requires, be abolished or removed, from time to time, to other places.

XV. *Clause 1st.*—All convicts sentenced by Criminal Courts to periods of imprisonment not exceeding fourteen days, shall be sent to undergo their sentences in the District Jail, or in the Subordinate Jail, whichever may be the nearer to the place where sentence is passed upon the convict.

Clause 2nd. All persons committed by Criminal Courts for intermediate custody pending trial before the Court of Session shall be sent to the District Jail.

XVI. District Jails shall be established at the seats of the Courts of the Session Judges, and may be established at the seats of Assistant Judges at detached Stations, and all convicts sentenced by the Courts of Session, and all others, not specially ordered or required by the last preceding Clause to be imprisoned in another Jail, shall be imprisoned in the District Jail. Nothing however in this Section is to be held as interfering with the power of the local Government, or of the Inspector General of Prisons, if specially empowered by Government, to direct the removal of prisoners from one Jail to another, or to prevent a Central and a District Jail being united in one Jail.

XVII. Central Jails may be established at any places the Governor in Council may think fit, and prisoners shall be sent to those Jails under such general rules as the Governor in Council may, from time to time, issue.

XVIII. Subject to the provisions hereinafter contained, every Criminal Jail shall be governed and superintended by a person to be appointed by order of the Governor in Council, who shall be called the Superintendent of the Jail, and to whom the Jailor shall be subordinate.

XIX. The Superintendent shall be responsible for the safe custody of the prisoners from the time they are received into the Jail, until they are discharged by lawful authority. All warrants for the commitment of persons to custody issued in accordance with the provisions of Section 303 of Act X. of 1872 shall be directed to the Superintendent and he shall be responsible for the due execution of all warrants and orders regarding prisoners and their punishment.

XX. The Jailors of District, Central, and Subordinate Jails shall be appointed by the Inspector General of Prisons, provided that it shall be competent for the Governor in Council to declare, by Notification in the *Government Gazette*, that certain Officers are *ex-officio* Superintendents or Jailors of Subordinate Jails.

XXI. No Superintendent shall receive any prisoner into custody without the warrant of a Court or Officer having authority to commit to prison or custody, or, in the case of a prisoner sentenced by Court Martial, without an authenticated copy of the sentence or order required by Articles 87 and 88 of Act XXIX. of 1861, or without the warrant of a Court or Officer having authority to transfer a prisoner from one Jail to another.

XXII. All clothing and other property and money delivered with, or found upon, the person of a criminal prisoner on his admission into Jail, shall be taken charge of by the Jailor, under such rules for its safe custody as the Inspector General of Prisons with the sanction of Government may make, and the prisoner shall have no claim thereto until his discharge. In the event of the prisoner's death while he is undergoing his sentence, such property shall be made over to whomsoever he may appoint to receive it, and, failing such appointment, it shall be made over to the Civil Court under Chapter II. of Regulation VIII. of A.D. 1827, as if there were no heir or executor competent or willing to take possession of such property, provided that any property or money found in possession of a criminal prisoner, at any date subsequent to his admission, shall be forfeited to Government.

XXIII. Such clothing, bedding, and other household articles as are necessary for prisoners in Criminal Jails, shall be supplied at the expense of Government by the Superintendent of the Jail, under the direction of the Inspector General of Prisons.

XXIV. All prisoners confined in Criminal Jails shall be subsisted at the expense of the Government, the allowance, which shall always be of food and not of money, being regulated by the Inspector General of Prisons under the orders of Government.

XXV. Male prisoners shall always, and in all Jails, be kept separate from female prisoners, and those sent to Jail for punishment from those sent there for safe or intermediate custody.

Sick prisoners shall always be sent to the Jail Hospital, and prisoners sent to Hospital shall be detained there until the Surgeon direct that they may be returned to Jail, and with regard to any further sub-division of prisoners, the Jailor shall attend to any orders on the subject that he may receive from the Superintendent of the Jail, provided that, consistently with the objects of this Act, due care is taken in regard to religious prejudices, and to protect the trivial offender from, of necessity, associating with the vicious and heinous offender.

XXVI. Prisoners sentenced to hard labour, rigorous imprisonment, transportation, penal servitude or death, shall, at the discretion of the Officer in charge of the Jail, be secured with fetters, handcuffs, or stocks, it being understood that such means of restraint are to be imposed as a necessity only for the maintenance of discipline and security against the escape of prisoners and not as a part of the punishment. The same means of restraint may, when it is necessary, be applied to other prisoners; Provided always, that British born subjects sentenced to hard labour, rigorous imprisonment, penal servitude, or death, shall not be secured with fetters, excepting when it may be urgently neces-

sary so to secure them for the discipline of the Jail or the prevention of violent or dangerous behaviour.

XXVII. The Jailor shall be careful to prevent drunkenness, gaming, petty thefts, and immoral or disorderly conduct of any sort within the Jail, and to report to the Superintendent of the Jail all instances of such misconduct, as well as all prisoners guilty of disobedience, or of violent or refractory conduct, or of using insulting or abusive language, or of refusing or wilfully neglecting to perform the work, or of wilfully mismanaging the work allotted to them, or of malingering, or of wilfully disabling themselves, or of the breach of any rules prescribed for the good management or economy of the Jail.

XXVIII. The Superintendent of the Jail, on such report being made to him, and being satisfied of the fact, or when any misconduct of the nature described in the preceding Section is committed or occurs in his presence, may punish such misconduct or breach of discipline by solitary confinement for a period not exceeding seven days, by confinement in the stocks for a period which may extend to twelve hours, by penal diet, or by corporal punishment not exceeding twenty-five stripes with a rattan of not more than three-eighths of an inch diameter: Provided always that corporal punishment shall not be inflicted on any male prisoner, unless the Medical Officer of the Jail shall state that the prisoner can bear it without danger to his general health, and that such corporal punishment shall not be inflicted except in the presence of the Superintendent of the Jail, and that corporal punishment shall in no case be inflicted on any female prisoner: Provided also that when penal diet is awarded as a punishment it shall not be extended beyond 96 consecutive hours and it shall not be repeated in the case of the same prisoner under an interval of seven days.

XXIX. The Superintendent of the Jail shall keep a book, to be called "the Punishment Book," in which shall be recorded the prisoner's name, the breach of prison discipline of which he was guilty, the date on which it was committed, the punishment inflicted, and the date of the infliction of such punishment.

XXX. Whoever, without due permission, takes or attempts to take, or introduces or attempts to introduce, or throws or

Punishment for taking prohibited articles into Jail, &c.

attempts to throw, into any part of a Jail, or gives or attempts to give, or permits to be given, to any prisoner any article prohibited by the rules to be made under this Act, or communicates or attempts to communicate with any prisoner in any mode contrary to such rules, shall be liable to be apprehended and brought before a Magistrate, and, on conviction, shall be punished with fine, which may extend to fifty Rupees, or with imprisonment of either description, which may extend to two months.

XXXI. In the case of District and Central Jails a Medical Officer to be appointed by the Governor in Council shall attend the Jail, and administer remedies to the sick, removing such as require it to the Hospital. In the event of the Civil Surgeon being appointed under Section XVIII. of this Act to be Superintendent of a Jail, he shall himself attend, as Medical Officer, and administer remedies to the sick.

XXXII. When a sentence has been fully executed, the Superintendent shall cause to be made over to the prisoner the clothing taken from him under Section XXII. and shall cause to be received from him the clothing and other articles with which he was furnished at the expense of the Government, and shall endorse upon the warrant a statement of how it has been executed, and shall then discharge the prisoner. The Superintendent of the Jail shall then return the warrant with his endorsement thereon to the Officer from whom it was received.

XXXIII. In the presence of the Superintendent of the Jail, and at the time of discharging the prisoner, the Jailor shall make over to him any other property or money he may have received with the prisoner or found on him and taken charge of, as directed in Section XXII., and shall take his receipt for the same; and the receipt, countersigned by the Superintendent, shall be deemed to be and is a good acquittance and release from all claims by the prisoner or his representatives against the Jailor for such property or money.

XXXIV. When a prisoner is released, the Superintendent of the Jail may, if he sees sufficient reason, grant him a sum of

Subsistence money may be given to a prisoner on his discharge.

money sufficient for his subsistence until he reach his native village, or the place where he was apprehended.

XXXV. No prisoner in a Criminal Jail being in Hospital on the expiration of his sentence, shall be discharged from the Hospital, except at his own request, or unless the Surgeon certify that he can be discharged without endangering his life or protracting his illness; the Superintendent shall explain to him that his sentence has expired, and shall direct all restraint to be removed, and, on the Surgeon reporting the late prisoner convalescent and about to leave the Hospital, the Superintendent of the Jail may grant him, if necessary, subsistence money, as provided in the last Section.

XXXVI. If any prisoner shall die in Jail before full execution of his sentence, the Superintendent shall immediately report such death to the nearest Magistrate, who shall thereupon inquire into the cause of such death, and make a written report thereon to the Inspector General of Prisons, and upon such death taking place, the warrant shall be returned by the Superintendent to the Officer who issued it, with an endorsement showing how far it had been executed, and with a certificate attached to it from the Surgeon certifying to the prisoner's death.

XXXVII. If any prisoner make his escape from Jail, the Superintendent shall endorse on his warrant to what extent his sentence had been carried out, and the date of the escape, and shall return the warrant to the Officer who issued it, and the warrant and endorsement shall be proof in every Court that the prisoner was convicted, that he underwent the extent of punishment endorsed on the warrant, and that he effected his escape from confinement on the day stated.

XXXVIII. The Inspector General of Prisons shall, from time to time, with the sanction of Government, make such rules and orders as may appear necessary for the supervision, employment, custody, clothing, dieting, treatment, and classification of prisoners, and for the management of Jails.

The Inspector General of Prisons may make rules.

XXXIX. In the case of Mofussil District Jails the Magistrate of the District, or his Assistant or Deputy, shall, once in every week, visit the District Jail and Hospital, to hear complaints, and to see that considerations of cleanliness, health, and security are attended to, and a proper management maintained in all respects. He shall examine the Punishment Book, and record his proceedings and observations in a book, to be called "the Visitor's Book." He shall bring any special cases to the special notice of the Inspector General of Prisons, or, if necessary, of the Government, and he may direct petitions from prisoners to Government to be prepared and forwarded. The Superintendent of the Jail is hereby required to forward to Government all petitions to Government from prisoners under sentence (or undergoing confinement) in the Jail.

XL. Visitors for Central and Subordinate Jails and for Jails in the City of Bombay shall be appointed by the Government, for the purposes contemplated in the preceding Section, to the provisions of which they shall in all respects conform.

XLI. Nothing contained in this Act shall be construed as interfering with the power vested in the Governor in Council, under Act VIII. of 1856, of control of all Jails, and to appoint persons to inspect and superintend Jails, and to vest in them such power and authority, for the purpose, as to the Governor in Council may seem proper.

XLII. The words "Inspector General of Prisons" shall mean the Officer appointed under the provisions of Section II. of Act VIII. of 1856, to inspect and superintend the Jails in the Bombay Presidency, subject to the orders of the Governor in Council.

XLIII. This Act shall come into operation three months after the publication by the Governor of the assent thereto of the Governor General, and all prisoners in Jail at the time this Act comes into operation shall, until the expiration of their sentences, be held, whatever their sentences may be, to be in legal custody, notwithstanding any thing in this Act provided, so long as it would not be illegal under any of the Acts now repealed.

STATEMENT OF OBJECTS AND REASONS.

The existing law relating to the management of the various classes of Jails in this Presidency has been found by experience to be defective in several respects, and the present Bill is introduced with a view to remedying these defects.

Under the law as it now stands the Inspector General of Prisons is unable to supervise or exercise any controlling authority over the Jails in the City of Bombay. It is, however, for many reasons desirable that he should be vested in respect to these Jails with the same powers which he possesses in regard to the Mofussil Jails, and for this purpose the provisions of Act VIII. of 1856 are by Section 2 of this Bill rendered applicable to the Jails situated in the City of Bombay, and the supervision of those Jails is vested in the Inspector General of Prisons. Under these circumstances the existence of the present Committee of Management of the House of Correction is no longer necessary, and Rule, Ordinance and Regulation No. III. of 1827, by which the Committee was constituted and its duties and powers defined, is consequently repealed.

At present there is no law authorizing the infliction of the punishment of whipping on convicts in the Bombay County Jail, and the necessity for some enactment legalising such punishment has more than once been brought to the notice of Government. In the case of prisoners confined in the House of Correction the punishment of whipping has been authorized by Bombay Act V. of 1865. The present Bill provides in Section 28 for the infliction of corporal punishment on prisoners confined in Criminal Jails, and as this provision is applicable alike to the Mofussil and the Bombay City Jails, no separate measure legalising the infliction of the punishment of whipping in the Bombay County Jail is requisite, nor is it any longer necessary to retain in the Statute book Bombay Act V. of 1865 which is accordingly repealed.

Amongst the punishments authorized by Section 26 of Bombay Act IV. of 1865 penal diet was not included. This particular form of punishment has, however, been found to be very efficacious both in England and in other parts of India where it is had recourse to in the Criminal Jails, and it has consequently been deemed expedient now to legalise the award of penal diet in the Jails of this Presidency, due restrictions being placed on the number of consecutive days for which it can be inflicted and on its frequent repetition.

Experience has proved the necessity for some alterations in the existing law concerning Subordinate Jails. Under Section 13 of Act (Bombay) IV. of 1865 prisoners sentenced to terms of imprisonment not exceeding one month must be sent to the Subordinate Jail, if a Jail of that description is nearer to the place where sentence is passed upon them than is the District Jail. It is, however, in many instances found to be impossible to provide any kind of hard labour in Subordinate Jails for prisoners sentenced to rigorous imprisonment, and consequently to carry out adequately the sentence passed upon them. The result is that convicts sentenced to rigorous imprisonment for three or four weeks frequently spend the period of their sentence in idleness, and therefore the punishment awarded to them loses much of its deterrent effect, and simply amounts to mere confinement without any occupation in a lock-up. As the entire abolition of Subordinate Jails is undesirable, and in many cases it is advisable that such Jails should be maintained for the confinement of prisoners sentenced to very short terms of imprisonments by Criminal Courts situated at a long distance from the District Jail, the defect in the existing system will, it is considered, be best met by reducing from one month to fourteen days the maximum term of imprisonment to undergo which a convict can be sent to a Subordinate Jail. This will materially diminish the number of prisoners who must be sent to the Subordinate Jails and will therefore tend to facilitate the obtaining of suitable labour for the reduced number of convicts confined in those Jails, and at the same time ensure the subjection in the District Jail to proper Jail discipline and hard labour of all persons sentenced to longer terms of imprisonment than fourteen days.

By the Bill the power of appointing the Jailors of all Jails is granted to the Inspector General of Prisons, and a considerable portion of the authority and responsibility vested in the Jailor under Bombay Act IV. of 1865, is transferred from that official to the Superintendent of the Jail, a measure which recent experience has shown to be highly necessary.

The other modifications effected are of comparatively minor importance.

(Signed) A. ROGERS.

4th September 1873.

By order of His Excellency the Governor in Council,

JOHN NUGENT,

Acting Under Secretary to Government.

Poona, 5th September 1873.