

*Thursday,
11th January, 1894*

ABSTRACT OF THE PROCEEDINGS
OF THE
Council of the Governor General of India,

LAWS AND REGULATIONS

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ABSTRACT OF THE PROCEEDINGS
OF
THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,
ASSEMBLED FOR THE PURPOSE OF MAKING
LAWS AND REGULATIONS,

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Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., cap. 67, and 55 & 56 Vict., cap. 14).

The Council met at Government House on Thursday, the 11th January 1894.

P R E S E N T :

His Excellency the Viceroy and Governor General of India, G.C.M.G., G.M.S.I., G.M.I.E., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I.

His Excellency the Commander-in-Chief, K.C.B., G.C.I.E., V.C.

The Hon'ble Sir A. E. Miller, K.T., Q.C.

The Hon'ble Lieutenant-General H. Brackenbury, C.B., R.A.

The Hon'ble Sir C. B. Pritchard, K.C.I.E., C.S.I.

The Hon'ble J. Westland, C.S.I.

The Hon'ble Sir A. P. MacDonnell, K.C.S.I.

The Hon'ble Dr. Rashbehary Ghose.

The Hon'ble Fazulbhai Vishram.

The Hon'ble C. C. Stevens.

The Hon'ble J. Buckingham, C.I.E.

The Hon'ble A. S. Lethbridge, M.D., C.S.I.

The Hon'ble Gangadhar Rao Madhav Chitnavis.

The Hon'ble H. F. Clogstoun, C.S.I.

The Hon'ble W. Lee-Warner, C.S.I.

The Hon'ble P. Playfair.

QUESTION AND ANSWER.

The Hon'ble MR. FAZULBHAJ VISHRAM asked :—

Whether the Government have any intention of imposing any import-duty on silver, and, if not, whether they will make a public declaration of their intentions in order to relieve the mercantile community of the great anxiety now prevailing amongst them.

The Hon'ble MR. WESTLAND replied :—

“ The Government of India regret that it is impossible for them to make, at present, such a declaration as that which the Hon'ble Member's question suggests. They fully understand the anxiety of the mercantile community for information as to this most important subject.

[*Mr. Westland; Sir Alexander Miller; the* [11TH JANUARY 1894.
Lieutenant-Governor.]

"The commercial situation created by the closing of the mints is engaging their earnest attention, as well as that of Her Majesty's Government, with whom they have been in constant communication on the subject. All that the Government of India can now add is that it is impossible for them, under present circumstances, to make any announcement which would place it out of their power to propose an import-duty on silver if, and when, they consider it desirable to do so."

PRISONERS ACT, 1871, AMENDMENT BILL.

The Hon'ble SIR ALEXANDER MILLER moved that the Bill to amend the Prisoners Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir Antony MacDonnell, the Hon'ble Dr. Rashbehary Ghose, the Hon'ble Fazulbhai Vishram, the Hon'ble Dr. Lethbridge and the Mover. He said:—

"The Bill is a very short one, and its object is merely to amend, in some small particulars, which I explained at the time of the introduction of the measure, the Prisoners Act of 1871, which was found not to work satisfactorily in respect to some minor points. I do not think, therefore, that I need trouble the Council at this stage with any further explanation of them."

His Honour THE LIEUTENANT-GOVERNOR said:—"I trust I shall not be considered out of order if I express a hope that when this Bill is laid before the Select Committee it may be redrafted in such a way as to make it somewhat more intelligible to the public and to the officers who will have to act in accordance with its provisions. It is drafted in what I may call an allusive way. In section 16 of the Act, for instance, it is said that for the words 'acting under the authority' the words 'acting, whether within or without British India, under the general or special authority' shall be substituted; and in another case that for the first sixteen words of section 19 of the Act the following words shall be substituted.

"This form of drafting a Bill by reference to the original Act makes the Bill difficult to understand, and I would venture to suggest that it would be easier for persons who have to consider the Bill and afterwards to carry out the Act if the original sections could be printed with the words which it is proposed to substitute in italics so as to show exactly the purport and bearing of the alterations to be made."

AMENDMENT OF PRISONERS ACT, 1871; AMENDMENT OF 15
PRISONS ACT, 1870.

11TH JANUARY 1894.] [Sir Alexander Miller; the Lieutenant-Governor;
Sir Antony MacDonnell.]

The Hon'ble SIR ALEXANDER MILLER said:—"With reference to His Honour the Lieutenant-Governor's remarks I do not think there will be any difficulty whatever in printing alongside of the Bill the sections as they will stand with the alterations which it is proposed to make. That I think will answer the purpose he desires."

His Honour THE LIEUTENANT-GOVERNOR said:—"That will sufficiently answer the purpose."

The Motion was put and agreed to.

PRISONS ACT, 1870, AMENDMENT BILL.

The Hon'ble SIR ANTONY MACDONNELL moved for leave to introduce a Bill to amend the law relating to Prisons. He said:—

"My Lord, before asking Your Lordship to put to the Council the Motion which stands against my name, I wish, with your permission, to explain as briefly as I can the reasons which have satisfied the Government of India that legislation on this important subject is desirable. It is known to the Council that in England, and in Europe generally, the ideas regarding prison discipline, which prevailed before the end of the last, and even at the beginning of the present, century, were very different from those which are generally accepted at the present day. Even in England, where humane views on the question made more rapid progress than elsewhere, the cause of prison reform, though urged with all the zeal of a Howard and an Elizabeth Fry, made but little way until this century had well begun. It is therefore not surprising that in matters of prison management and discipline India was, to say the least, as backward fifty years ago as England had been before the century had commenced. But in this, as in other matters, the administration of Lord William Bentinck was one of great reform and of greater hope. Until his time our penal system had continued to be largely fashioned on Muhammadan usage, corporal punishment being a principal means of punishing crime. By Regulation II of 1834, which abolished corporal punishment altogether, a response—in some respects an exaggerated response, as we have since found—was made to the growing humanitarian demands of the time, and a pledge was practically given that a system of prison discipline would be introduced which would be in harmony with those ideas on the subject that were daily finding wider acceptance in England. The first step, my Lord, in redemption of this pledge was taken two

years later, and consisted in the appointment of the famous Committee on Prison Discipline, which was composed of the most distinguished Anglo-Indian statesmen and jurists of the day, including one of the foremost exponents of the liberal sentiments of the time, Mr. (afterwards Lord) Macaulay. The report which two years later the Committee presented was worthy of its authors, and remains the solid foundation of all later progress. Though earlier in point of publication, it is really the complement of those other two great works—the Penal Code and the Code of Criminal Procedure—with the first of which Lord Macaulay's name is also imperishably associated.

“The Committee reported in 1838 to the Governor General, Lord Auckland, the son of that Lord Auckland under whose auspices, and those of Mr. Justice Blackstone and Mr. Howard, the first step had been taken sixty years before towards the practical improvement of prison discipline in Great Britain. If, my Lord, the experience of half a century has not in every particular confirmed the forecasts of this admirable report, it has abundantly established the wisdom, expediency and humanity of its main recommendations, which, for the first time in an Eastern country, recognized the true principles of penal administration and of the philosophy and practice of punishment.

“The recommendations of the report of 1838 turned on the congregation in central prisons or penitentiaries of all prisoners sentenced to more than one year's imprisonment; on the retention in district jails of prisoners sentenced to lesser terms of seclusion; and on the provision of intra-mural labour and discipline of a reformatory as well as of a punitive character. To the success of this scheme the construction of central prisons, of which there were, I believe, none in the interior at that time, and of district prisons, of which there were not many worthy of the name, was essential, and this meant the expenditure of money for which the Government seems to have been as badly off fifty years ago as it unhappily is today. Lord Auckland's and Lord Ellenborough's Governments, therefore, did nothing but accept and approve the recommendations of the report, and it was not until Lord Dalhousie's time that progress was made with even its minor suggestions. During the memorable administration of Lord Dalhousie, much good was done here and there on the lines of the report by earnest and zealous men, notably by Mr. Woodcock in the North-Western Provinces; but, after all, their efforts were desultory, and the substantial effect of them will be understood from the following extract which I make from a

1894.]

[*Sir Antony MacDonnell.*]

minute on the subject of jail discipline in India, recorded by the Governor General, Sir John Lawrence, on the 3rd March, 1864:—

‘A period of twenty-six years has elapsed since the Prison Committee appointed by Lord William Bentinck submitted their report, in which the ends of the then existing system of jail management were exposed and certain reforms recommended and carried out; but it is generally admitted that the full measure of improvement contemplated by Lord William Bentinck, to which the Government was pledged by a legislative enactment (Regulation II, 1834), has never been carried out.

‘Although much good has been effected by the appointment of Inspectors of Prisons in the different Presidencies and Provinces, and though doubtless there has been a great amelioration of the condition of prisoners of all classes in this country, especially as regards food and clothing, yet still little progress has been made either towards the improvement of prisoners or prevention of crime, while the loss of life among all classes of those confined in jails continues year after year to be very great, amounting at present to 7 per cent.’

“As a proof of the great progress which has since been made in the sanitation of jails, I may say, by the way, that the mortality for the last year was 3·59 per cent., or about one-half the rate mentioned by Sir John Lawrence.

“Sir John Lawrence’s examination of the condition of jails in India led him to appoint the second Commission of Enquiry into jail management and discipline, and one of the points especially recommended to the Commission’s notice as deserving of particular attention was, to quote again the Governor General’s words, ‘the want of some settled principles which should be observed alike in every jail throughout the country.’

“The Report of the Commission of 1864, proceeding on the lines of the report of 1838, laid down a system of prison discipline which, though with many modifications and additions, may be said to be still in operation. The hope of the Commission was that each Local Government, while accepting the system in principle, might adapt it to local circumstances, so that there might be unity of purpose amid reasonable diversity of practice. But experience has shown that diversity in practice has gone far to obscure the unity of purpose. The Indian Penal Code is the uniform law of offences and punishments throughout British India, and it is obviously necessary and proper that the punishment inflicted under that Code should be uniformly enforced, so that a sentence of imprisonment should have the same meaning and effect in every Province and in every jail of the Empire. This was the goal at

which Sir John Lawrence aimed, and which the Commission he appointed sought to reach. But they failed because the centrifugal tendencies established by local legislation were too strong for the centripetal force created by their rules. Each of the three great Provinces of Madras, Bombay and Bengal, having a local Legislative Council, provided itself with a local Act regulating jails, while an Act of this Council regulates the jails in those Provinces which have no Legislatures of their own. It naturally followed that jail administration developed on divergent lines in the great divisions of the Empire, while the co-ordinating authority of the Government of India—acting executively—was ineffective to control the divergence. No one, my Lord, is a stronger supporter of provincial decentralization than I am; no one more fully accepts the policy with which the name of your lamented predecessor Lord Mayo is so closely identified, and of which we daily see the abundant fruit. But every rule has, it is said, its exception, and provincial legislation for jails forms one of the exceptions to the competency of Provincial Governments to do most things within their jurisdiction, and to do them well. There are, as I have said, four different Acts in operation connected with jails, and these Acts differ *inter se* in various important points. They differ as to the offences against jail discipline, enumerated in them; they differ as to the punishments which might be inflicted for these offences; and they differ as to the authorities competent to inflict these punishments. No wonder that in the several Provinces divergent systems of jail management have grown up whereby there has been, and is, a sacrifice of that uniform enforcement of sentences which effective penal administration requires. This defect was very clearly perceived so long ago as 1877 by the third Jail Commission, which was appointed by Lord Lytton's Government; and the remedy they proposed was the enactment of a prison law for the Empire which should secure that uniformity of system which was necessary to give (say) a sentence of six months' rigorous imprisonment passed by a Magistrate in Madras or Bombay the same meaning as regards the community and the same effect as regards the individual prisoner as a sentence of six months' rigorous imprisonment passed by a Magistrate in Bengal, the North-Western Provinces or the Punjab.

"The Commission's recommendations were at first well received by Lord Lytton's Government, and a draft Bill was actually prepared in accordance with them. But circumstances were unfavourable to legislation, the matter was postponed, and for ten years longer the Government of India earnestly strove by

1894.]

[*Sir Antony MacDonnell.*]

executive orders to reduce to uniformity the divergent local practices, especially in matters of punishment and sanitation. I do not say that a considerable measure of success has not been secured. On the contrary, as much has been done perhaps as the nature of the case allowed. But the success attained in securing uniformity was insufficient, and at last, in 1888, the fourth Jail Commission, of which our hon'ble colleague Dr. Lethbridge was a member, was appointed by Lord Dufferin's Government to enquire into facts upon the spot and furnish the Governor General in Council, not merely with opinions, in which the Commissions of 1864 and 1877 had perhaps too largely dealt, but with an exhaustive statement of concrete examples illustrative of the defects to be found in the working of the existing systems. The object and scope of this, the last Jail Commission's, mandate will be perceived by the Council from the following passage which I quote from the Resolution appointing the Commission :—

'The administration of jails with respect to economy, sanitation and discipline has for many years received the careful attention of the Governor General in Council. Three Commissions (in 1836, 1864 and 1877) have, under the orders of the Government of India, considered and reported on the general principles which ought to be observed in the management of Indian jails. There is on the part of the Governor General in Council no wish to reconsider the principles so laid down, but an examination of the statistics of jails in different Provinces, and even of prisons in the same Province, shows that great diversity of practice exists in carrying the principles into effect. The Governor General in Council is not to be understood as advocating absolute uniformity of administration in all Provinces in connection with jail administration. He admits that local circumstances must always give rise to diversities of practice. But an examination of the provincial reports for some years satisfied him that the divergencies in regard to the cost of maintaining prisoners, in regard to their sanitary condition and in regard to discipline points to the existence of defects which it is desirable to remove. There being no longer any doubt regarding principle, and the question being one of practice, it appears to His Excellency in Council that improvement can best be effected by means of a careful and thorough examination of experts on the spot into the causes which operate in certain Provinces and certain jails to produce a variation, for example, in the death-rate ranging from 11 to 72 per mille of the average strength, a variation in the cost of maintenance of prisoners per head ranging from Rs. 44-11-7 to Rs. 91-2-10, and a variation in the ratios per cent. of punishment for offences against jail discipline ranging from 33 to 328.'

"Acting under these instructions the Jail Commission of 1888 visited the various Provinces and made a most exhaustive enquiry into all matters connected with jail administration, bringing out in great detail the points in which the practice of one Province differs from that of another. Their report has satisfied the Government of India—and this was also the opinion of the Commissioners

themselves—that great divergencies exist where it is essential that uniformity should prevail, and that this uniformity cannot be secured without legislation and the enactment of a single Prisons Act for the whole Empire. In this view nearly all Local Governments have now concurred, and this concurrence is, I think, in itself a strong proof of the correctness of the conclusions at which your Excellency's Government had arrived. An amended and consolidated Prisons Bill for British India has, therefore, been prepared on the basis of the Commission's report, after a special and further examination of their recommendations in regard to jail offences and punishments by a Conference of experts on jail management from all Provinces, which was convened for the purpose in 1892. The Bill was then circulated to all Local Governments for consideration, and it has since been modified and amended in accordance with their criticisms. It is this Bill so modified and corrected that I have now the honour to ask for leave to introduce, and I trust that the Council is satisfied that all the care and deliberation which its great importance requires have been bestowed upon the preparatory and initial stages of the measure.

“My Lord, I wish now to say a few words on the Bill itself, which will be, I hope, in the hands of Hon'ble Members before the end of this week. In constructing the Bill the model of the existing law has been closely followed; indeed, the Bill retains the same classification of subjects, and the same division into twelve chapters, as the Council will find in Act XXVI of 1870. The first chapter deals with definitions, and the Council will find that the definitions of the existing law have been considerably expanded with a view to meeting difficulties and solving doubts which have arisen in actual practice; but the only point in the chapter which I wish to mention now is the distinction drawn between a ‘prison’ and a ‘subsidiary jail.’ This distinction has been drawn with the object of enabling Local Governments to exempt from some of the more strict disciplinary provisions of the Bill those houses of detention which are situated not at the head-quarters of districts but at subdivisions and out-stations in which civil and unconvicted prisoners are detained pending trial, or in which persons convicted of trivial offences, and sentenced to not more than a month's imprisonment, are secluded. The distinction has been drawn in accordance with the following recommendation of the Jail Conference of 1892:—

‘We did not consider it desirable that the power of punishment conveyed by the Act should in all cases be bestowed on the Superintendents of subsidiary jails and of those of subordinate jails (especially of the lower class) in Bombay. These jails are often under the

1894.

[*Sir Antony MacDonnell.*]

supervision of officers on very low pay and of limited experience, and we did not think it right to invest them with the same plenary powers of punishment as an officer in charge of a central jail may possess. We therefore propose to limit the original application of the Act to central, district and (in Bengal) intermediate jails, while empowering the Local Governments by rule to invest any or all officers in charge of subsidiary or subordinate jails with any or all of the powers of punishment conferred by the Act.'

"The distinction then is dictated by humane and prudential motives, and will, I hope, meet with the approval of the Council.

"The next nine chapters follow generally the existing law with such amplifications as experience has shewn to be necessary. They do not seem to me to raise any question of new principle on which it is necessary to remark at this stage. In many instances the additions or modifications are only on points of drafting.

"The most important changes in the law are embodied in Chapter XI. It is around these provisions that I expect discussion is most likely to arise, and I shall be pardoned if I dwell upon them for a few moments. Hitherto the tendency of opinion has been to relegate the definition of jail offences and the punishment they involve to rules made by the Executive Government in accordance with the Jail Act. There is much to be said for this way of dealing with the matter, and it will not, I believe, be possible to abandon it altogether. Remember that every breach of a jail regulation is a jail offence, and that it is impossible to foresee all the regulations which have to be observed in jails, and inexpedient to make legislation necessary for the purpose of adding to or modifying such regulations, which doubtless will change with time and place. Still it has been thought better to go as far as possible in the direction of limiting local discretion to create jail offences and of including in the law itself, at all events, the more important and serious of these offences. On this point then the Bill proposes to enlarge the Act of 1870 in one direction and to restrict its operation in another. We enlarge it by increasing the number of jail offences specifically mentioned in the law; and we restrict it by providing that, before disobedience of any jail regulation becomes punishable, the regulation shall have been sanctioned by the Governor General in Council. The regulations, involving penal consequences, will thus be as uniform for all Provinces as the law itself.

"That, my Lord, is the way the Bill deals with the definition of offences against jail discipline: it remains for me to say a word on the connected question of punishments. Hitherto there have been in use in jails, besides the

punishment prescribed by law, other forms of punishment, consisting in the modification, to the disadvantage of the prisoner, of matters of discipline, or treatment left to the discretion of the jail authorities, such as loss of good-conduct marks, relegation to a disagreeable form of labour, modification in diet privileges, and so forth. The Government of India think it desirable, in order to prevent the introduction of objectionable forms of punishment and to secure the due record of all punishments of whatever nature, to specify exhaustively in the law all punishments which may be employed. The effect will be to restrict the discretion and to define the authority of prison officers in regard to punishments in all Provinces, and thereby to produce uniformity in prison discipline.

"I shall not detain the Council with an examination of the various descriptions of punishment provided in the Bill. They have been devised with the object of increasing the irksomeness of prison life for unruly prisoners, while avoiding recourse to corporal punishment or reduction of diet, which the Government of India regard as extreme measures not to be ordinarily employed. But there is one punishment recognized in the Bill—the use of irons—which I do not wish to pass by without a word of explanation. At present it is only in the Lower Provinces of Bengal that jail authorities can impose irons as a punishment for breach of prison discipline. In all other Provinces the order of a Magistrate is necessary. The Government of India is of opinion that the Bengal system on this point is the preferable one. While there are strong objections to the unnecessary use of irons for purposes of safe custody—to fettering all prisoners as a safeguard against their escaping—the use of irons seems to the Government of India to be a suitable and humane kind of punishment for a large number of jail offences. The Government of India, as I have intimated, discourage, from motives of humanity, the frequent employment of corporal punishment in jails; and the objections to the frequent use of penal diet are obvious from a sanitary point of view. If recourse to these severe forms of punishment in ordinary cases of recusance is to be effectively discountenanced, it is all the more necessary to invest jail authorities with adequate means of coercion for the control of unruly and hardened criminals. It is to be remembered that the fetters and handcuffs to be used in Indian jails are not the manacles which melo-dramatic novelists depict or over-wrought philanthropists imagine—just as the solitary cells for which the Bill renews provision are not exactly reproductions of Venetian *oubliettes* or the dungeon of Bonnivard. The fetters to be used in our jails will be as to weight and form prescribed by rule made by the Governor General in Council; and their use will be made no

11TH JANUARY 1894] [*Sir Antony MacDonnell; Sir Alexander Miller.*]

more irksome than is necessary to deter from misconduct, and to obviate the employment of severer forms of punishment.

"In conclusion, I may add that the Bill in its last chapter confers a power on the Government of India to make rules for the management of jails on matters which cannot conveniently be dealt with by the law itself, and that a similar power is conferred on Local Governments in matters regarding which there is no important end to be gained by insisting on uniformity of procedure in all Provinces.

"Other provisions of the Bill deal with the matter of labour and of solitary confinement, but they raise no questions of principle which need be brought to notice on this occasion, and I therefore, my Lord, beg now to move that leave be given me to introduce the Bill."

The Motion was put and agreed to.

The Hon'ble SIR ANTONY MACDONNELL also introduced the Bill.

The Hon'ble SIR ANTONY MACDONNELL also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English, and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

REPEALING AND AMENDING BILL (BOMBAY).

The Hon'ble SIR ALEXANDER MILLER moved for leave to introduce a Bill to repeal certain obsolete enactments and to amend certain other enactments. He said :—

"The Bill is one of those which are commonly now known as a Repealing and Amending Bill, and deals only with certain obsolete matter affecting the Presidency of Bombay. It is now proposed to introduce it because the new edition of the Bombay Code is in preparation and it is thought necessary to get rid of this obsolete matter before printing it. The Bill is approved by the Government of Bombay and is a purely formal one, so I do not think it necessary to trouble the Council further about it."

The Motion was put and agreed to.

[*Sir Alexander Miller.*] [11TH JANUARY 1894.]

The Hon'ble SIR ALEXANDER MILLER also introduced the Bill.

The Hon'ble SIR ALEXANDER MILLER also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the Bombay Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 25th January 1894.

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| CALCUTTA ; | } | J. M. MACPHERSON, |
| <i>The 19th January 1894.</i> | | <i>Deputy Secretary to the Government of India,</i> <i>Legislative Department.</i> |