

The Prisoners Act.
(INDIA ACT III, 1900.)
(2nd February, 1900.)

PART I.

PRELIMINARY.

1. ****

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,-

(a) "Court" includes any officer lawfully exercising civil, criminal or revenue jurisdiction; and

(b) "prison" includes any place which has been declared by the Governor, by general or special order, to be a subsidiary jail.

PART II.

GENERAL.

Officers in charge of prisons to detain persons duly committed to their custody.

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Officers in charge of prisons to return writs, etc., after execution or discharge.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid, other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

PART III.

5-13. ****

PART IV

14. ****

Power for officers in charge of prisons to give effect to sentences of certain courts.

15. Officers in charge of prisons may give effect to any sentence or order or warrant for the detention of any person passed or issued any Court or tribunal acting, whether within or without the Union of Burma under the general or special authority of the President of the Union.

the previous sanction of the Governor, which may be given by general or special order.

Warrant of officer of such Court to be sufficient authority.

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the Governor, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

Execution in British Burma of certain capital sentences not ordinarily executable there.

18. (1) Where a British Court exercising, in or with respect to territory beyond the limits of British Burma, jurisdiction which the Governor has in such territory,-

(a) has sentenced any person to death; and

(b) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person or no suitable appliances for his execution in a decent and humane manner, be executed in British Burma, has issued its warrant for the execution of such sentence to the officer in charge of a prison in British Burma, such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner and subject to the same conditions in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure.

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall be such as the Governor in this behalf may, by general or special order, direct.

(3) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or if the Court consist of two or more Judges, at least one of the Judges, is an officer of the Crown authorized to act as such Judge by the Governor:

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consist of more than one Judge, be signed by a Judge who is an officer of the Crown authorized as aforesaid.

PART V.

PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

Persons under sentence of penal servitude how to be dealt with.

19. (1) Every person under sentence of penal servitude may be confined in such prison within British Burma as the Governor, by general order, directs, and may, while so confined, be kept to hard labour and, until he can conveniently be removed to such prison, be imprisoned, with or

without hard labour, and dealt with in all other respects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

(2) The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.

20. Every enactment now in force in British Burma with respect to persons under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act, be construed to apply to persons under sentence of penal servitude.

Power to grant license to person sentenced to penal servitude.

21. (1) The Governor may grant to any person under sentence of penal servitude a license to be at large within such part of British Burma and during such portion of his term of penal servitude as may be specified in the license and upon such conditions as the Governor may by general or special order prescribe.

(2) The Governor may revoke or, subject to such conditions, alter any license granted under sub-section (1).

Licensee, to be allowed to go at large.

22. So long as any license granted under section 21, sub-section (1) continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the license.

Apprehension of convict where license revoked.

23. In case of the revocation of any such license as aforesaid, any Secretary to the Government may, by order in writing, signify to any Magistrate that the license has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Magistrate shall issue his warrant accordingly.

Execution of warrant.

24. A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of British Burma, and shall have the same force in any place within British Burma as if it had been originally issued or subsequently endorsed by the Magistrate or other authority having jurisdiction in the place where it is executed.

Licensee when arrested to be brought up for recommitment.

25. (1) When the licensee; for whose arrest a warrant has been issued under section 23, is arrested thereunder, he shall be brought, as soon as conveniently may be, before the Magistrate by whom the warrant was issued, or before some other Magistrate of the same place, or before a Magistrate having jurisdiction in the district in which the licensee has been arrested.

(2) Such Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the recommitment of the licensee to the prison from which he was released under the license.

Recommitment.

26. When a warrant has been issued under section 25, sub-section (2), the licensee shall be recommitted accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

27. If a license is granted under section 21 upon any condition specified therein, and the licensee-

(a) violates any condition so specified; or

(b) goes beyond the limits so specified; or

(c) knowing of the revocation of the license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest; he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

PART VI.

REMOVAL OF PRISONERS.

28. ****

Removal of prisoners.

29. (1) The Governor may, by general or special order, provide for the removal of any prisoner confined in a prison-

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour, to any prison in British India.

(2) The Governor and (subject to the orders of the Governor) the Inspector-General of Prisons may, by general or special order, provide for the removal of any prisoner confined as aforesaid in a prison in British Burma to any other prison in British Burma, [or to any lunatic asylum in British Burma for the purpose of observation as to the mental condition of any such prisoner].

Lunatic prisoners how to be dealt with.

30. (1) Where it appears to the Governor that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the Governor may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within British Burma, there to be kept and treated as the Governor directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

- (2) Where it appears to the Governor that the prisoner has become of sound mind, the Governor shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within British Burma, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.
- (3) The provisions of section 31 of the Lunacy Act shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo.
- (4) In any case in which the Governor is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within British Burma, the Governor may order his removal to any such asylum or place within any part of British India or within the territories of any Native Prince or State in India by agreement with the Government of such part of British India or with such Native Prince or State, as the case may be; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed under sub-section (1) shall, so far as they can be made applicable, apply to a prisoner removed under this sub-section.

31. ****

PART VII.

PERSONS UNDER SENTENCE OF TRANSPORTATION.

Appointment of places for confinement of persons under sentence of transportation and removal thereto.

32. (1) The Governor may appoint places within British Burma to which persons under sentence of transportation shall be sent; and the Governor, or some officer duly authorized in this behalf by the Governor, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.
- (2) In any case in which the Governor is competent under sub-section (1) to appoint places within British Burma and to order the removal thereto of persons under sentence of transportation, the Governor may appoint such places in any part of British India by agreement with the Government of that part, and may by like agreement give orders or duly authorize some officer to give orders for the removal thereto of such persons.

PART VIII.

DISCHARGE OF PRISONERS.

Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

33. The High Court may, in any case in which it has recommended to His Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

34. ****

Power for civil Courts to require appearance of prisoner to give evidence.

35. Subject to the provisions of section 39, any civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of the appellate jurisdiction of the High Court is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under section 35.

36. (1) Where an order under section 35 is made in any civil matter pending-

(a) in a Court subordinate to the District Judge, or

(b) in a Court of Small Causes, it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,-

(i) the District Judge to which the Court is subordinate, or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under sub-section (1) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which in his opinion render the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

Power for certain criminal Courts to require attendance of prisoner to give evidence or answer to charge.

37. Subject to the provisions of section 39, any criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of the appellate jurisdiction of the High Court is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the officer in charge of the prison:

Provided that if such criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such criminal Court is subordinate or within the local limits of whose jurisdiction such criminal Court is situated.

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

38. Where any person, for whose attendance an order as in this Part provided is made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Procedure where removal is desired of person confined more than one hundred miles from place where evidence is required.

39. (1) Where a person is confined in a prison more than one hundred miles distant from the place where any Court, subordinate to the High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required, shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, and if the prison is within the local limits of the appellate jurisdiction of the High Court to which such Court is subordinate, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the District or Sub-Divisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, and such Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

40. ****

Prisoner to be brought up.

41. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorizes him to be taken back to the prison in which he was confined.

Power to Governor to exempt certain prisoners from operation of this Part.

42. The Governor may, by notification in the Gazette, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined; and thereupon, and so long as such notification remains in force, the provisions of this Part, other than those contained in sections 44 to 46, shall not apply to such person or class of persons.

Officer in charge of prison when to abstain from carrying out order.

43. In any of the following cases, that is to say, -

(a) where the person named in any order made under section 35, section 37 or section 39 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of the prison in which he is confined shall apply to the District or Sub-divisional Magistrate within the local limits of whose jurisdiction the prison is situate and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed; or

(b) where the person named in any such order is under committal for trial; or

(c) where the person named in any such order is under a remand pending trial or pending a preliminary investigation; or

(d) where the person named in any such order is in custody for a period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined; the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued a statement of the reason for so abstaining:

Provided that such officer as aforesaid shall not so abstain where-

- (i) the order has been made under section 37; and
- (ii) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed; and
- (iii) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

Commissions for Examination of Prisoners.

Commissions for examination of prisoners.

44. In any of the following cases, that is to say, -

- (a) where it appears to any civil Court that the evidence of a person confined in any prison within the local limits of the appellate jurisdiction of the High Court who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it; or
- (b) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter; or
- (c) where the District Judge declines, under section 36, to countersign an order for removal; the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined.

45. ****

Commission how to be directed.

46. Every commission for the examination of a person issued under section 44 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution of the commission to the officer in charge of the prison, or to such other person as he may think fit.

Service of Process on Prisoners.

Process how served on prisoners.

47. When any process directed to any person confined in any prison is issued from any criminal or revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

48. (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process.

(2) Such certificate as aforesaid shall be prima facie evidence of the service of the process, and, if the person to whom the process is directed requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be so sent.

Miscellaneous.

49.****

Deposit of costs.

50. No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appears to the Court to which the application is made that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure.

Power to make rules under this Part.

51. (1) The Governor may make rules-

- (a) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance;
- (b) for regulating the amount to be allowed for the costs and charges of such escort; and
- (c) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the Gazette, and shall, from the date of such publication, have the same force as if enacted by this Act.

Power to declare who shall be deemed officer in charge of prison.

52. The Governor may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

[ATTACH LIST 1] 01 THE FIRST SCHEDULE.(See sections 35 and 37.)